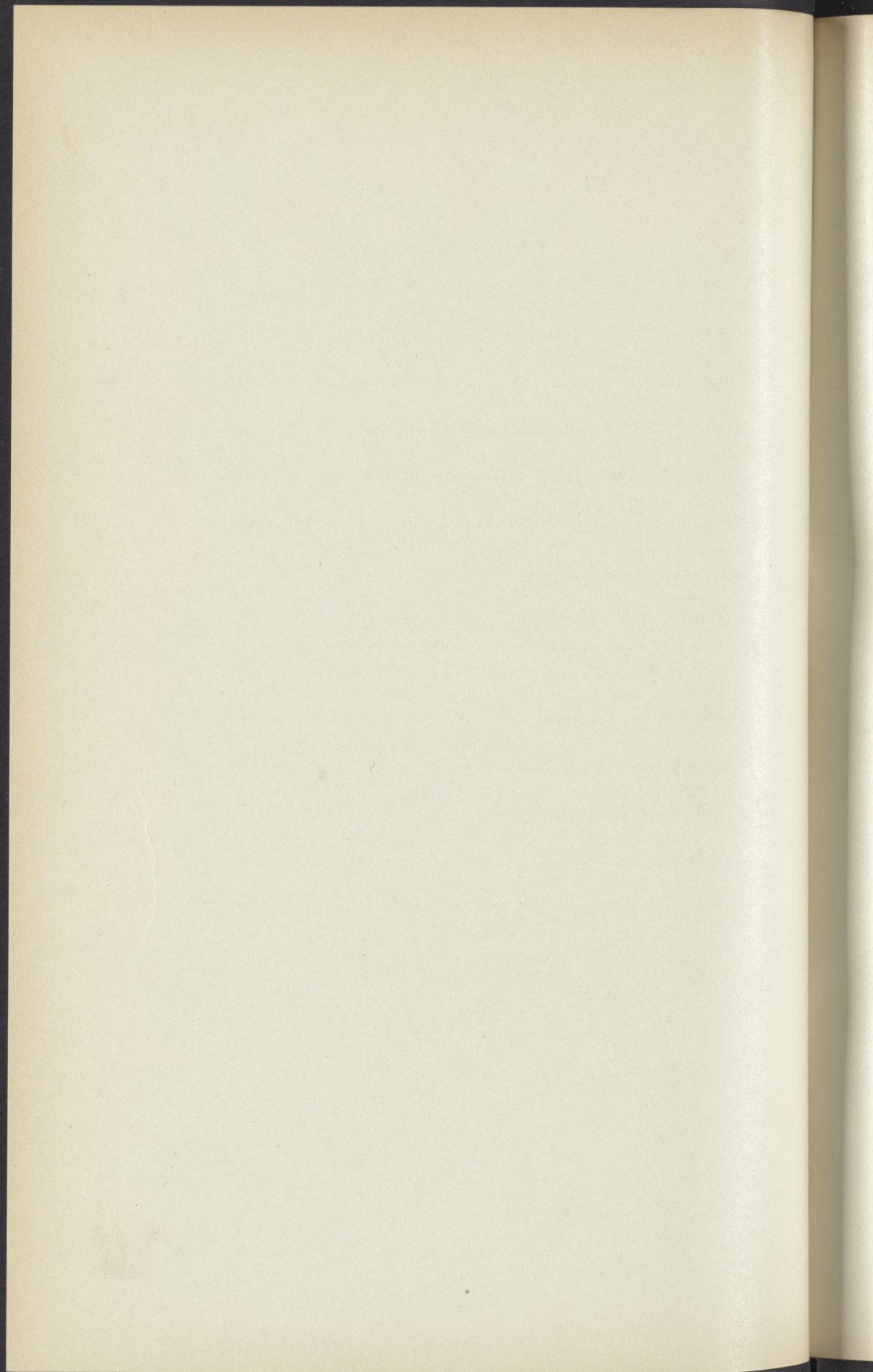


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SUMMONS.

(Filed Jan. 22, 1929.)

THE STATE OF NEW JERSEY TO SAMUEL BLUM AND
MAXWELL SUGARMAN: 10

(Seal) You are summoned to answer the annexed complaint of Walter Husted in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness WILLIAM S. GUMMERE, Esquire, Chief Justice of the Supreme Court at Trenton, this fifteenth day of January, nineteen hundred and twenty-nine. 20

FRED L. BLOODGOOD,
Clerk.

LOUIS H. MILLER,
Attorney of Plaintiff.

materials furnished and labor performed by plaintiff for defendants as aforesaid.

4. The amount due on December twelfth, nineteen hundred and twenty-eight, charged in conformity with said agreement, was eight hundred five dollars ninety-three cents.

5. Defendant Samuel Blum has paid on account of said claim the sum of four hundred dollars. Plaintiff says the balance of four hundred five dollars ninety-three cents is still due and owing from defendants to plaintiff, besides interest thereon from December twelfth, nineteen hundred and twenty-eight. 10

6. Plaintiff demands from the defendants, or from either of them in the alternative, \$405.93 damages, besides interest and costs of suit.

LOUIS H. MILLER, 20
Attorney of Plaintiff.

Following is a statement and bill of particulars of the plaintiff's demand:

Millville, N. J.
12/12/28.

Samuel Blum and Maxwell Sugarman,
TO Walter Husted, Dr. 30

To labor and material furnished at Sugarman Building, Main Street, Millville, N. J., second floor now occupied by Samuel Blum as a clothing factory.

Labor and Material. Office.
1360 ft. wall board @6¢ 81.60

1360 ft. 2" panel striping @2¢	27.20
Two doors	16.00
Two locks	6.00
1 set bolts	1.45
Carpenter labor, 67¾ hrs. @1.00 per hr	67.75

TOILET ROOMS.

Labor and Material.	
Changing to suit	17.00
20 lbs. nails @6¢	1.20
10 Private toilet	14.00
2 panel doors	16.00
250 ft. roofers	11.80
Labor and Material.	

ELEVATOR.

80 ft. steel cable @15¢	12.00
Irons & Bolts	19.66
One winding winch	38.00
Two pulley blocks	6.50
14 lb. nails	1.12
20 Two 4x6x6	3.12
Forty ft. T. & G flooring	4.50
Safety fence	11.60
Carpenter labor, 33½ hrs. @1.00	33.50

SKYLIGHT WIRE & WINDOW BARS.

Labor and Material.	
Seventy-four feet window wire	14.00
Forty-five pieces flat iron ¼x1"	13.50
Twenty-seven pieces round iron ½"	16.00
Labor erecting, twenty-nine & ¼ hrs.	29.00
30	NEW FLOORS.

Laying new flooring as per contract	\$100.00
Enclosing Stairway.	
Labor and Material.	
Nine hundred & sixty ft. wall board @6¢	57.60
Forty 2x4x10	30.00
Two doors	16.00

Complaint 5

Two locks	6.50
One set bolts	1.40
Carpenter labor, seventy-three & one-half hrs. @1.00	73.50
COAL BIN.	
Paving with concrete	39.93
Partition railing.	
Labor and Material.	
Twenty-five 2x2 balusters	3.30
Three double-acting hinges	1.20 10
Carpenter labor, thirteen & one-half hrs. @1.00	73.50
<hr/>	
Total amount due for said labor and material	\$805.93
Paid on account by Samuel Blum	400.00
<hr/>	
	\$405.93

Besides interest.

Dated January 15, 1929. 20

LOUIS H. MILLER,
Attorney of Plaintiff.

[ENDORSED.]

Notice to the within named defendant:

10 In case the within summons and complaint are served upon you personally, then take notice that if you intend to make a defense to said action, you must file an affidavit of merits within ten days from the date of service thereof upon you, and must file your answer within twenty days from the date of such service, and in default of the filing thereof judgment will be entered against you.

Louis H. Miller,
Attorney of Plaintiff.

20

Duly served within summons and complaint upon within named defendants, Samuel Blum and Maxwell Sugarman, by showing the original to each and leaving with each a true copy thereof with each personally at their usual places of business, Millville, Cumberland County, New Jersey, the 16th day of January, 1929.

30

John H. Evans,
Sheriff.

Sheriff's fees, \$7.50.

ANSWER OF DEFENDANT, SAMUEL BLUM.

(Filed Jan. 18, 1929.)

NEW JERSEY SUPREME COURT.
CUMBERLAND COUNTY.

WALTER HUSTED, *Plaintiff,* } Louis H. Miller,
v. } Attorney for Plain-
SAMUEL BLUM and MAX- } tiff;
WELL SUGARMAN, } M. Joseph Greenblatt,
Defendants. } Attorney for De-
fendant, Samuel
Blum.

10

The defendant, Samuel Blum, answering the com-
plaint says:

20

1. He denies paragraphs one, two, three, four, five
and six and the allegations made therein.

Special defense:

1. Defendant, Samuel Blum, has paid any and all
sums of money due from him to the said plaintiff
and holds a receipt from the said plaintiff.

2. The plaintiff has released and discharged this
defendant from the payment of any money for the
improvements and alterations to the Sugarman
Building, as described in the complaint.

30

M. J. GREENBLATT,
*Attorney for Defendant,
Samuel Blum.*

plaint. Defendant did not order any labor or materials for the alteration and improvement to the Sugarman Building as set forth in plaintiff's complaint, nor is defendant indebted to the plaintiff by reason thereof.

THIRD DEFENSE.

Any and all transactions described in the plaintiff's complaint were had between the plaintiff and the defendant, Samuel Blum. The said Samuel Blum is not a partner or agent of defendant, Maxwell Sugarman, and the said defendant Maxwell Sugarman is not responsible nor liable for any transaction had between the said Samuel Blum and plaintiff referred to in the plaintiff's complaint. 10

FOURTH DEFENSE.

Defendant, Maxwell Sugarman, and plaintiff, Walter Husted, agreed and understood that prior to the furnishing of the labor and material mentioned in the plaintiff's complaint that Maxwell Sugarman, the defendant, was no party to the transaction had between the plaintiff and Samuel Blum, and that defendant, Maxwell Sugarman, should not be liable or responsible for any labors or materials used, but that the plaintiff was dealing solely with the defendant, Samuel Blum, and that the defendant, Samuel Blum, was to be responsible to the plaintiff therefor, and that the defendant, Maxwell Sugarman, should not at any time be looked to for payment for either labor or material concerning this transaction. 20 30

J. ROY OLIVER,
Attorney for Defendant,
Maxwell Sugarman.

REPLICATION TO ANSWERS.

(Filed Jan. 22, 1929.)

10

NEW JERSEY SUPREME COURT.
CUMBERLAND COUNTY.

	WALTER HUSTED,	} Replication to Answers. Action at Law.
	<i>Plaintiff,</i>	
	v.	
20	SAMUEL BLUM and MAX- WELL SUGARMAN,	} Replication to Answers. Action at Law.
	<i>Defendants.</i>	

Plaintiff denies all of the allegations contained in the several answers of the defendants.

LOUIS H. MILLER,
Attorney of Plaintiff.

30

TESTIMONY.

NEW JERSEY SUPREME COURT.
CUMBERLAND COUNTY.

WALTER HUSTED, 10
Plaintiff, }
v. }
SAMUEL BLUM and MAX- } Action at Law.
WELL SUGARMAN, }
Defendants. }

APPEARANCES:

LOUIS H. MILLER, Esq., for the plaintiff;
M. J. GREENBLATT, Esq., for the defendants (J. 20
ROY OLIVER, Esq., for the defendants).

The above entitled case was tried April 25, 1929,
before HON. WILLIAM FRANK SOOY, Judge, and a
jury.

(Mr. Miller opened plaintiff's case to the jury.) 30

(Mr. Greenblatt opened the case to the jury for
the defendant, Samuel Blum.)

(Mr. Oliver opened the case to the jury for the
defendant, Maxwell Sugarman.)

The Court: There is no dispute that the account insofar as it sets forth items that will correctly show the account between whoever it may be?

Mr. Oliver: As far as we are concerned, we don't know.

Mr. Miller: We never heard that there was until
10 Mr. Greenblatt said something about it.

Mr. Greenblatt: I deny the allegations of the complaint and set up a separate defense.

The Court: You deny all the allegations; but what I was figuring is this: I assume from the opening of counsel for the defense that your defense is that you paid all you owed.

20 Mr. Greenblatt: Yes.

The Court: You don't dispute that Mr. Husted did work and furnished materials, but you say you paid all you owed.

Mr. Greenblatt: We dispute that he did all the work he demanded payment for, in the sum of \$800. We dispute that; we did dispute that, but at settlement settled for what has been charged to us.

30 The Court: But as I understand it at the time of the settlement your client claimed he didn't owe anything at all. He didn't dispute the amount of \$800, but he simply said he didn't owe anything.

Mr. Greenblatt: Oh, no. He did owe some money. He had the office bill and had some floor laid.

The Court: But he did dispute that he owed certain items.

Mr. Greenblatt: That is right.

The Court: He didn't dispute that those items had been furnished or that the work had been done and that the labor had been performed; but he said, "I don't owe that by reason of the fact that I didn't contract for it."

10

Mr. Greenblatt: And, secondly, that the charges made for items which were ordered were not reasonable.

The Court: All right. Now, then, you have settled, as you claim, the full amount that you owed?

Mr. Greenblatt: That is right.

The Court: Mr. Oliver says: "We don't owe anything. We don't know whether the items are correct or not." Now, why spend a whole lot of time in proving delivery of this lumber and the performing of that work when the real question as between you and the plaintiff is whether or not you have been released by that receipt, and the real dispute as with their client is whether or not he was ever a party to any contract or understanding.

20

Mr. Miller: This receipt shows when we paid \$400.

30

The Court: Of course we could make this case take two or three days; but the real meritorious issue from your opening is that you don't owe a cent more than you paid.

Mr. Greenblatt: That is right.

The Court: Then why bother with the proof of the other items?

Mr. Greenblatt: Well, I am not anxious to have them prove any particular items at all, except I do want to present my defense as I have outlined it.

10 The Court: He has to go on the stand and prove that an agreement was made between Mr. Blum and himself to do certain work, and he has also got to prove that that agreement included Mr. Sugarman. But what I am suggesting is that we don't go into the items of the account.

Mr. Greenblatt: Except to show that they were unreasonable and that my client objected to them and that we afterwards adjusted them.

20 The Court: Let me put it this way, then: For the plaintiff let him prove his agreement that he had with both defendants; that he did the work we will leave until after the defense is done, and if the defense is embarrassed by not having proof as to the various items, then we will let them open up for that.

Mr. Greenblatt: All right.

30 The Court: That will simplify it, I think.

WALTER HUSTED, the plaintiff, called as a witness in his own behalf, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Miller:

Q. Where do you live? 10

A. Millville.

Q. What is your business?

A. Contractor.

Q. And were you employed by some one to do the work prescribed in the complaint in this case?

A. Yes.

Q. Did you perform the work?

A. I did.

Q. When the work was completed did you prepare and deliver to Mr. Blum a statement of claim for that work? 20

A. I did.

Q. I show you a paper dated 12/15/28 on letter-head Walter Husted, addressed to Samuel Blum and marked paid 12/17/28, and ask you if that is the document that you presented to the defendant Blum?

A. That is it.

Q. Did you sign that receipt?

A. Yes, sir.

Q. What led to your signing that? 30

A. Why, Blum paid four hundred dollars.

Q. What was the entire bill?

A. \$806.00.

Q. And what did he say about the balance of the bill?

A. Well, when the work was done —

Q. No, what did he say about the balance of the bill?

A. Why, he said he would not pay only one-half of the bill.

Mr. Greenblatt: That is objected to.

The Court: He has a right to explain a receipt, even though the receipt is in writing. That is outside of the hearsay rule—I mean outside of the rule
10 against proving by parole.

A. He said that it was up to Sugarman to pay the other half, as he didn't own the building.

Mr. Greenblatt: I object to that unless it is shown Sugarman was present.

The Court: Well, that testimony can only be
20 binding between Mr. Blum and Mr. Husted and cannot bind Mr. Sugarman.

Q. Did he pay you four hundred dollars and did you sign that document?

A. Yes.

Q. Did you then go to Mr. Sugarman?

A. I went to Sugarman, yes, sir.

Q. And made demand on him to pay the balance?

A. Yes.

30 Mr. Oliver: I object to these questions as leading—all of them.

The Court: Yes, they are all leading.

Q. Well, what did Mr. Sugarman say?

A. Why, he disclaimed any knowledge of the bill.

He said he had not ordered the work done. He says he didn't know anything about it, and he says, "You didn't have no dealings with me," which I didn't. My dealings were with Blum.

Q. Did either of them dispute the amount of this bill? Did either of them dispute the fact that the work was worth eight hundred dollars?

A. No.

Q. They didn't dispute the amount of your bill?

A. No.

10

Q. And the controversy then only related to what you say?

A. Yes.

Q. About who should pay?

A. Yes.

Q. Now, go back to the beginning of it. With whom did you make arrangements to do this work?

A. With Blum.

Q. State the circumstances. What was said between you and Mr. Blum when you arranged to do this work? 20

A. Well, I had a contract to do alterations to this building for the Board of Trade of Millville, and this man "Howard Riek" was standing good for the money. My contract on that work amounted to \$2,205, if I remember right. After the work was done that was specified in my contract, then Blum, before he occupied the building, wanted certain work of his own done.

Q. Was he then intending to occupy it, did he say? 30

A. Oh, yes, sure.

Q. For what purpose, did he say?

A. For manufacturing pants.

Q. What did Blum say he wanted?

A. Why, Blum wanted different work done. He was going to occupy this place as his factory and he didn't want to bring his people into a barn to work.

He wanted things right and he agreed—he said, “You do what I order you to do and I will pay the bill.”

Q. And thereupon you did the work?

Mr. Greenblatt: Objected to as leading.

A. Absolutely.

10 Q. Did you make a charge in the books —

Mr. Greenblatt: We make no dispute. We have no dispute between these gentlemen. We want to be fair each to the other; but he did make a charge in the book.

The Court: There is no dispute as to that just now. In other words, I presume we are not going into the book account.

20 Q. Was any part of this balance of \$405 paid to you?

A. No.

Q. And it is due and owing from either one of these gentlemen; isn't it?

Mr. Oliver: I object to the form of the question.

A. It has never been paid, never.

30 The Court: That is as far as you can go, I think, Mr. Miller.

Mr. Miller: Well, cross-examine.

The Court: I assume Mr. Oliver has no cross-examination.

Mr. Oliver: No.

Cross-examination.

By Mr. Greenblatt:

Q. You had a contract for the purpose of altering that building into a factory; did you?

A. I did.

Q. And wasn't that contract for the purpose of placing it in shape so that Blum could use it?

A. Certain alterations, yes.

Q. Well, you were to alter that garage so as to make it suitable for a factory; weren't you?

A. Yes.

Q. And to build stairways? Wasn't there a stairway to be built to it?

A. Yes.

Q. And to place a floor?

A. To what?

Q. Put new flooring in?

The Court: Let me interrupt just a minute, Mr. Greenblatt. At the time you gave the receipt that was handed to you by your counsel, you say that Mr. Blum told you that he would pay you \$400 and that you would have to collect the rest from Mr. Sugarman? Is that the way I understand it?

The Witness: Yes, sir.

The Court: What did you say to that?

The Witness: Why, I told him I didn't see how we could hold Sugarman responsible for him, because I had not done no business with Sugarman.

The Court: But you signed down at the bottom—

that you were going to charge the balance of it to Maxwell Sugarman.

The Witness: That was at Blum's say so.

The Court: Well, you said so, too; didn't you?

The Witness: I didn't know whether I was going to get the money from Sugarman or not.

10

The Court: But you signed a receipt in which you said, "Received of Samuel Blum payment in full of the above amount," meaning thereby the sum of \$1200?

The Witness: Yes, sir.

The Court: And you said in that receipt the balance was to be charged to Maxwell Sugarman?

20

The Witness: Yes.

The Court: Now, then, that was written there by yourself on your own typewriter?

The Witness: Yes.

The Court: And was written there before you took the bill to Blum for payment?

30

The Witness: No, after. After I took the bill to Blum then he wouldn't pay the full amount and he told me it was up to Sugarman to pay the other half, as he owned the building.

The Court: And you went back to your office?

The Witness: And put this on the bottom; that the balance was to be charged to Sugarman.

The Court: Then you came back to Blum?

The Witness: To Cohen, Blum's partner, and took Cohen down to my house in my car.

The Court: And then Cohen paid the four hundred dollars and you signed the receipt then? 10

The Witness: Yes.

The Court: But Cohen wouldn't pay you the four hundred dollars until you had agreed to charge the balance to Sugarman?

The Witness: That is right.

Mr. Greenblatt: No further questions. 20

Mr. Miller: We offer that receipt in evidence.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff P1.)

Re-direct examination.

By Mr. Miller:

Q. Do you have a book account of this transaction? 30

A. Yes.

Q. Did you make it yourself?

A. My own handwriting.

Q. From what did you make it?

A. From time sheets.

The Court: That is not disputed now, Mr Miller.

Mr. Miller: All right; that is all.

(Witness excused.)

10 The Court: Well, Mr. Miller, in view of his testimony that he went to Blum and presented a bill for \$800 and Blum said: "No, I won't pay it. I don't owe it. I will pay you \$400, but I won't pay you another cent. You have to charge the rest to Sugarman," and in view of the fact that he then went away and came back and got hold of Mr. Cohen and Cohen said: "No, I won't pay it, except the four hundred dollars. I will pay you that if you will charge the rest to Sugarman," and then he goes
20 home and on his own typewriter puts on, "I received \$400 and I will charge the rest to Sugarman" —

Mr. Miller: It does not amount to anything. There is no consideration. If you owe me a thousand dollars and you pay me five hundred dollars and I give you a receipt in full, I can sue you for the balance.

30 The Court: Not if you agree to receive a lesser sum.

Mr. Miller: Yes, sir; because there is no consideration. It is nudum pactum. I think you will find lots of cases on that, if your Honor please—yes, sir. I was in Everett Newcomb's office where we handled money, and that was one of the principles that was

inculcated in my mind, and you will find cases on it, too. I would not say if it were a release under seal —

Mr. Greenblatt: If your Honor please, there was a dispute, the testimony is, that he didn't owe that money, and that the \$400 was received in full payment; not that he didn't agree that there was \$805 due. There was a dispute that he owed it entirely; and that this man then accepted \$400 in full settlement. We don't care where he charged the balance as far as we were concerned; we were willing to pay four hundred dollars. There was a consideration. If there had not been a disputed bill and \$50 were taken from it, that would be a defense; but where it is disputed, then, of course, there is an additional consideration, and it is certainly a defense in full. 10

The Court: In other words, your contention is that when the plaintiff went to your client the question as to the amount owed was entirely in dispute. 20

Mr. Greenblatt: Yes, just as I said in my opening.

The Court: And that the agreement between the parties—so far as your client was concerned, the amount was \$400 and that the plaintiff took that \$400 in full satisfaction of the amount they agreed upon as due? That is your contention? 30

Mr. Greenblatt: That is right.

Mr. Miller: But this receipt distinctly says it is only half the claim. It could not be so because it

says: "The above account is one-half of total amount due for labor."

The Court: Yes, but Mr. Greenblatt says that your man came there claiming that there was \$800 due from somebody.

Mr. Miller: Sure. He does now.

10 The Court: And that he presented a bill to Mr. Blum for that \$800; that Mr. Blum said to him: "No, I don't owe you \$800 at all. All I owe you of that is \$400."

Mr. Miller: No, he said: "I owe you one-half of that."

20 The Court: "One-half of it," and then your client says: "All right. I will agree with you that that is all you owe me and I will charge the other to Mr. Sugarman." I think Mr. Greenblatt is right about that.

Mr. Miller: I would feel that the law is too well settled and that you cannot pay a thousand-dollar debt with five hundred dollars.

30 The Court: I agree with you that you cannot do that; but I don't agree with you that if I have a claim against you for \$800 which I consider to be absolutely just, and I come and present it to you, and you say: "No, I don't owe you \$800, but I owe you \$400 and I will pay you that," and I take that \$400—that then I have not released you from the balance of my claim.

Mr. Miller: Oh, well, that is a different proposition, where there is a disputed bill. Here is a receipt from this man, where this man says this is half this bill. There is no disputed bill.

The Court: Your client's testimony, as I understand it, is that Mr. Blum said: "I don't owe that bill. I do owe half of that bill," or four hundred dollars, to be exact, which is so near one-half that I suppose those were the words they used—"and that is all I will pay you, the half I owe." That is what you testified to; wasn't it? 10

The Witness: Yes, sir. He said it was not up to him to pay the other half, as he didn't own the building.

The Court: And you said to him: "All right. I will accept from you that which you say you owe me and I will charge the other to Sugarman"? 20

The Witness: No, that was at Blum's say-so. He wouldn't give me any money.

Mr. Miller: He said: "I only owe half of it now," because of an arrangement which would involve the other man Sugarman. Now, when you go to Sugarman he says: "I have nothing to do with it."

The Court: But before he goes to Sugarman, Mr. Blum says to him: "I only owe you half of it and the other half Sugarman owes you," and the plaintiff says: "All right. I will take the half you owe me and I will charge the other to Sugarman." Now, he does not agree to take \$400 from Blum in settlement of the \$800; but he says: "I will take \$400 30

from you in settlement of that which you say you owe me and I will collect the balance from Sugarman"; in other words: "I will take Sugarman as my debtor for the four hundred remaining."

Mr. Miller: You cannot make a man debtor in that way. He was not giving this man anything of value by saying: "Charge it to Sugarman."

10 The Court: Nor did he have to charge it to Sugarman. He could have said: "I won't charge this to Sugarman. You are my debtor." Instead of that it seems to me that what he said was: "I will take the four hundred dollars from you and agree with you that that is what you owe me, and I will collect from Mr. Sugarman the balance."

20 Mr. Miller: Well, I would agree to all that and say there was no release under well-settled cases; it was nudum pactum, no consideration moving, and that the payment of the four hundred dollars did not discharge the balance. If there had been a dispute and an accord and satisfaction of the dispute, that would be different; but here is an entirely different proposition.

The Court: I do not agree with you.

30 Mr. Miller: This gentleman on the stand has told the circumstances. He has been frank enough to say that he had no dealings whatsoever with Sugarman, but that Blum said he should frame his receipt that way. I think, however, it is a question of law.

The Court: I think it is, Mr. Miller. I know there is a line of cases in support of your original

proposition, but I do not think there is anything that will support the proposition that would defeat a non-suit in this case; because as I understand it the agreement between the parties was, as far as Mr. Husted and Mr. Blum are concerned: "You, Mr. Blum, say you owe me \$400. All right, I will take that \$400."

Mr. Miller: No.

10

The Court: That is the way it appears to me.

Mr. Miller: What he said was: "You owe me eight hundred dollars." Blum said: "No, Sugarman should pay half of that."

The Court: I will grant a non-suit. Of course, there is no question as to there being nothing on which to hold Mr. Sugarman.

20

Mr. Miller: His testimony would be and has been that he had no relation with Mr. Sugarman at all.

The Court: So that he would have to be released.

Mr. Miller: We would have to let him go.

EXCEPTION.

30

Whereupon the plaintiff excepted to said order for non-suit, which exception is allowed accordingly.

W. F. Sooy,
Circuit Judge.

EXHIBIT P1.

C O P Y

12.15.28

	Samuel Blum		
	to		
10	Walter Husted, Dr.		
	Office	\$150.00	
	Floor	100.00	
	Window bars and skylight wire	50.00	
	Moving toilets	10.00	
	Door	10.00	Paid
	Railing	10.00	12/17/28.
	Elevator	70.00	
		<hr/>	
		\$400.00	
20	\$400.00		
	25.00 Cr.		
	<hr/>		
	\$375.00		
	175.00 Ck.		
	<hr/>		
	\$200.00		
	200.00 His check		
	<hr/>		

30 The above account is one-half of total amount due for labor & material furnished at Sugarman Bld. on Main St. Millville, N. J., balance to be charged to Maxwell Sugarman.

12/15/28 Received of Samuel Blum payment in full for above amount.

Walter Husted.

JUDGMENT.

NEW JERSEY SUPREME COURT.

SAMUEL BLUM and MAX WELL SUGARMAN, <i>Defendants,</i> ads. WALTER HUSTED, <i>Plaintiff.</i>	}	Action at Law. On Postea.	10
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Costs,
 \$51.50. 20

It is ordered that judgment of non-suit be and hereby is entered in favor of defendants and against the plaintiff, with costs to be taxed nisi.

Entered May 6, 1929.

On motion of

M. JOSEPH GREENBLATT,
Atty. for deft. Samuel Blum;

J. ROY OLIVER,
Atty. for deft. Maxwell Sugarman.

A true copy.

FRED L. BLOODGOOD,
Clerk. 30

judgment of non-suit be entered in favor of both defendants, against plaintiff; whereas said motion for non-suit should have been overruled.

3. The trial Judge, over the objection of plaintiff, on motion of defendant Samuel Blum, unlawfully ordered that judgment of non-suit be entered in favor of said defendant Samuel Blum and against plaintiff; whereas said motion for non-suit should have been denied. 10

4. The trial Judge, over the objection of plaintiff, unlawfully ordered that judgment of non-suit be entered in favor of defendant Maxwell Sugarman and against plaintiff; whereas said motion should have been denied.

5. Judgment of non-suit was unlawfully entered against plaintiff in favor of both defendants, over plaintiff's objection. 20

6. Defendants were granted a non-suit, over plaintiff's exception, notwithstanding plaintiff had offered and put in evidence good and sufficient evidence in support of his complaint, on trial of the issues joined.

Dated Millville, N. J., June 18, 1929.

LOUIS H. MILLER,
Attorney of Plaintiff. 30

[ENDORSED.]

Due and legal service of the within notice and grounds of appeal on defendant Samuel Blum is hereby acknowledged this 19th day of June, 1929.

M. J. Greenblatt,
Attorney of Defendant
Samuel Blum.

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Due and legal service of the within notice and grounds of appeal on defendant Maxwell Sugarman is hereby acknowledged this 20th day of June, 1929.

J. Roy Oliver,
Attorney of Defendant
Maxwell Sugarman.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

WALTER HUSTED,
Plaintiff-Appellant,

v.

SAMUEL BLUM and MAXWELL SUGARMAN,
Defendants-Respondents.

ACTION AT LAW.

ON APPEAL.

BRIEF FOR PLAINTIFF-APPELLANT.

Defendants are sued jointly, or severally in the alternative. Husted the plaintiff-appellant is a building contractor. Defendant Sugarman is the owner of a building to which alterations and repairs were made by Husted. Blum, a clothing manufacturer, had arranged with Sugarman to use the second floor of the building for manufacturing purposes, after the alterations and repairs were completed by the contractor, Husted.

While Husted was employed on this work for Sugarman, he was engaged by Blum to perform certain other work on that part of the building Blum expected to occupy and use as a clothing factory; and it was agreed that Husted should charge a reasonable price for the goods sold and the reasonable value of the services rendered in performing the additional work.

The work done at Blum's direction was completed, and it is not disputed that its reasonable value is \$805. After completion of the work Husted presented to Samuel Blum a bill for it in the sum of \$805.

The Court fairly summed up the gist of the plaintiff's testimony at page 22, line 10 &c.

"He (Husted) went to Blum and presented a bill for \$800, and Blum said:

'No, I won't pay it. I don't owe it. I will pay you \$400, but I won't pay you another cent. You have to charge the rest to Sugarman,' and in view of that fact he then went away and came back, and got hold of Cohen (an agent of Blum) and Cohen said: 'No, I won't pay it, except the four hundred dollars. I will pay you that if you charge the rest to Sugarman,' and then he goes home and on his own typewriter puts on, 'I received \$400 and I will charge the rest to Sugarman' " p. 22.

Husted testified (p. 19, line 31); "Why I told him I didn't see how we could hold Sugarman responsible for him, because I had not done no business with Sugarman."

When Sugarman was requested to pay the balance he refused to do so. He disclaimed any knowledge of the bill. He said he had not ordered the work

done, pp. 16, 17. Husted testified (top page 17): "He (Sugarman) said he had not ordered the work done. He says he didn't know anything about it, and he says, 'You didn't have no dealing with me,' which I didn't. My dealings were with Blum."

Husted then made out the bill Exhibit P1 (page 28) to Blum for \$400, placing at the bottom of the bill the notation:

"The above account is one-half of total amount due for labor and material furnished at Sugarman's building, on Main Street, Millville, N. J., balance to be charged to Maxwell Sugarman. 12/15/28. Received of Samuel Blum payment in full for the above amount. Walter Husted."

On this testimony plaintiff was non-suited as to both defendants.

POINTS.

1. There was no release and discharge.
2. There was no payment.
3. There was no accord and satisfaction.
4. The judgment of non-suit should be reversed as to both defendants.

I.

THERE WAS NO RELEASE UNDER SEAL AND
DISCHARGE.

A release and discharge is pleaded by Blum; but there is no testimony from which it may be in-

ferred, nor is it claimed, that a release under seal was given.

II.

THERE WAS NO PAYMENT.

The receipt, Exhibit P1, is not conclusive evidence of payment. Where a receipt is given with knowledge and there is no fraud or mistake, yet no proof that there was no consideration, it will not sustain a defense of payment.

Kenny v. Kane, 50 L. 562.

A debt cannot be extinguished by a mere statement by the creditor that he does not intend to enforce it, or that he forgives it, or even by a receipt for the whole when in fact a part only has been paid.

Brown v. Johnson, 36 Eq. (Court of Errors) at p. 350.

A receipt can be explained, and can be so explained by anything which occurs either at the time of giving it or subsequently. It is neither a deed nor a perfected contract which has the effect to shut out all parol evidence tending to vary its effect. Nor can the subsequent receipt on settlement have any greater efficacy.

Dorman v. Wilson, 39 L. 474, 475.

III.

THERE WAS NO ACCORD AND SATISFACTION.

Where the debt is liquidated or certain and is due, payment by the debtor and receipt by the creditor

of a less sum is not a satisfaction thereof, although the creditor agrees to accept it as such, if there be no release under seal or new consideration.

Decker v. Smith, 88 L. 630, 632, citing

Castelli v. Jereissati, 80 L. 295;

Roberts v. Banse, 78 Id. 57;

Gussow v. Beineson, 76 Id. 209;

Eckert v. Wallace, 75 Id. 171;

Chambers v. Niagara Fire Ins. Co., 58 Id. 216;

Line v. Nelson, 38 Id. 358;

Braden v. Ward, 42 Id. 518;

Daniels v. Hatch, 21 Id. 391;

1 C. J. 539.

In this case the claim was liquidated; there was no dispute; and there was no release under seal. There having been no release, and no accord and satisfaction, the judgment of non-suit was erroneous, and should be reversed.

IV.

THE JUDGMENT OF NON-SUIT SHOULD BE REVERSED AS TO BOTH DEFENDANTS.

Under the principles declared in the decided cases, above cited, the non-suit was wrong as to the defendant Blum. It is respectfully contended that it was wrong, also, with respect to the defendant Sugarman, and that the judgment of non-suit must be set aside as to both defendants.

Crouse v. Perth Amboy Pub. Co., 85 N. J. L. at page 476, opinion of Mr. Justice Parker, was a suit brought by Crouse against Perth Amboy Publishing Company and one Steuerwald, in the alterna-

tive. A verdict was rendered in favor of Steuerwald and against the Publishing Company. On prosecution of a rule to show cause Steuerwald was not made a part of the rule, and it was held that he was a necessary party. Said Mr. Justice Parker, at page 478:

“Again, if the verdict be set aside as to the company, there ought to be a new trial as to both defendants, for if Steuerwald’s verdict stands, peradventure a second jury will find the company not liable, and the plaintiff, though plainly entitled to be paid by one or the other, gets nothing from either. In such a case the rule should require both the plaintiff and the alternative defendant to show cause, and include both verdicts.”

This principle of law arises from an application of the rules laid down in the Practice Act of 1912, permitting a suit in the alternative and requiring to be joined as defendants all necessary persons, so that a determination can be had of any question involved in the controversy between the parties.

Therefore, the judgment of non-suit should be set aside as to both Blum and Sugarman, or the interest of the plaintiff may be unjustly jeopardized if there be a new trial.

Respectfully submitted,

LOUIS H. MILLER,
*Of Counsel with Plaintiff-
Appellant.*

Millville, N. J.,
July 16, 1929.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

WALTER HUSTED,
Plaintiff-Appellant,

v.

SAMUEL BLUM and MAXWELL SUGARMAN,
Defendants-Respondents.

ACTION AT LAW.

BRIEF OF DEFENDANT-RESPONDENT,
SUGARMAN.

FACTS.

The defendant, Sugarman, is the owner of a building in the City of Millville, N. J., which he had rented to the defendant, Blum. Husted, the plaintiff, a contractor, was making certain alterations in that building for the owner. During the course of said work, the defendant, Blum, the tenant, ordered additional work done. Upon the completion of the work, the plaintiff presented the defendant, Blum, with a bill for eight hundred and five (\$805) dollars which the defendant, Blum, refused to pay, and he claimed that he did not owe it entirely; that it was

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unreasonable and that some of it was done for the owner of the building and was improperly charged to him.

In the face of this dispute, the plaintiff thereupon accepted from the defendant, Blum's, partner (Cohen) the sum of four hundred (\$400) dollars in full settlement of this disputed bill, and now seeks to recover from both of the defendants the balance due.

ARGUMENT.

From the plaintiff's testimony, it is clear that the defendant, Sugarman, is not indebted to him in any sum whatsoever and the judgment of non-suit in so far as this defendant is concerned, should be affirmed.

Respectfully submitted,

J. ROY OLIVER,
*Attorney for Defendant-
Respondent, Sugarman.*

M. J. GREENBLATT,
Of Counsel.

