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Notice and Grounds of Appeal Filed.

(Filed.)

NEW JERSEY SUPREME COURT.

PROTECTIVE FINANCE CORPORA-
TION,
Plaintiff-Appellee,
vs.
SAMUEL GLASS,
Defendant-Appellant.

} Notice and
} Grounds of
} Appeal.

10

To William R. Vanecek,
Attorney for Protective Finance Corporation.

20

Sir:

Take Notice that the defendant, Samuel Glass, ap-
peals to the New Jersey Court of Errors and Ap-
peals for the whole of the judgment entered in this
cause on May 25th, 1923, in favor of the plaintiff,
Protective Finance Corporation, because the Supreme
Court erred therein in not entering a judgment in
favor of the defendant and against the plaintiff for
some one or more of the reasons urged in the New
Jersey Supreme Court.

Dated, May 29th, 1923.

WEINBERGER & WEINBERGER,
Attorneys for Defendant-Appellant.

Sat below: Justices Parker, Bergen and Minturn.

40

Notice of Appeal.

(FILED DECEMBER 13, 1922.)

PASSAIC DISTRICT COURT.

10	PROTECTIVE FINANCE CORPORATION, a corporation, vs. SAMUEL GLASS, { Plaintiff, Defendant.
----	--

To Wm. R. Vanecek, Attorney for Plaintiff:

Sir:

20 Take notice that the defendant, Samuel Glass, hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the City of Passaic rendered in the above stated action on the sixth day of December, nineteen hundred and twenty-two.

WEINBERGER & WEINBERGER,
Attorneys for Defendant-Appellant.

30

40

Summons.

City of Passaic,
County of Passaic, To Wit:

The State of New Jersey, To Sergeant-of-Arms of
District Court or any Constable of said County:

(L. S.)

Summon Samuel Glass to appear before the District 10
Court of the City of Passaic, to be held at the District
Court Room, in the O'Leary Building, 127 Prospect
Street, in the said City, on the sixth day of December,
A. D., 1922, at ten o'clock in the forenoon, to answer
unto Protective Finance Corporation, a corporation,
in an action on contract. Demand Five Hundred
Dollars. Hereof fail not.

WITNESS: W. Carrington Cabell, Esquire, Judge of 20
said Court, at Passaic, aforesaid, the twenty-eighth
day of November, in the year of our Lord, One Thou-
sand Nine Hundred and Twenty-two.

D. DEMURO,
Clerk.

30

40

PASSAIC DISTRICT COURT.

Summons in an Action on Contract.

10 PROTECTIVE FINANCE CORP., a
Corp.,
vs.
SAMUEL GLASS.

Demand	\$500.00
Costs	\$ 3.60
Returnable Dec. 6, 1922.	

20

Attorney for Plaintiff.

PASSAIC DISTRICT COURT.

30 Take notice that the plaintiff's state of demand in the within action has been filed with the Clerk of this Court, and that a trial will be demanded upon the return of summons.

Yours, etc.,
W. R. VANECEK,
Attorney for Plaintiff.

Passaic, N. J., Nov. 28, 1922.

To the within named Defendant or whom it may concern.

40

B.

Demand.

Plaintiff demands of the defendant the sum of Five Hundred Dollars for that:

1. Defendant, at the request of the plaintiff, issued certain policies of insurance covering loss and damage upon certain automobiles in the names of the owner thereof, and also that of the plaintiff herein, as mortgagee, which said policies are more particularly enumerated in Schedule A annexed hereto. 10

2. Said policies were subsequently cancelled upon the days and dates set forth in Schedule A and the return premiums upon the same became due and payable by the defendant to the plaintiff, as the plaintiff had in the first instance paid the premiums upon the said policies of insurance. 20

3. The amounts due for return premium as aforesaid is the sum of \$256.49 for the policies set forth in the schedule annexed hereto.

4. Plaintiff has demanded of the defendant the said sum of \$256.49 but which the defendant has refused and neglected to pay the plaintiff.

Plaintiff requests judgment of \$256.49, interest and costs. 30

W. R. VANECEK,
Attorney of Plaintiff.

*Demand**Schedule A*

	Fox	18.59	
	Stead	46.02	
	Gosses	4.13	
	Fascella	3.94	
10			
		72.68	
	20	14.53	
			58.15
	Hull	26.33	
	Thompson	10.85	
	Carpenter	6.96	
	Bernhard	63.48	
20	Germond	.50	
	Langa	79.65	
	Zulauf	17.03	
	Howard	11.05	
	Matusz	8.65	
		215.50	
	22½	48.49	
			176.01
30	McKamey	12.55	
	Fox	24.31	
		36.86	
	15	5.53	
			31.33
40			265.49

Docket Entries.

Docket 55. Case 18570.

IN THE DISTRICT COURT OF THE CITY OF
PASSAIC.

Before: Hon. W. Carrington Cabell, Judge.

10

PROTECTIVE FINANCE CORPORATION,
a Corporation

vs.

SAMUEL GLASS.

In an Action
upon Contract,
Demand,
\$500.00.
Atty. of Pl'ff.
W. R. Vanecek.

November 28, 1922, a summons was issued in the
above-entitled cause returnable December 6, A. D.
1922, at 10 o'clock A. M., and was returned by the
Sergeant-at-Arms as follows:

20

Served this summons Nov. 29, 1922, by reading the
same to the defendant and delivering to him a copy
thereof.

THOMAS A. HOPKINS,
Sergeant-at-Arms.

November 28, 1922. Plaintiff filed State of De-
mand.

30

December 4, 1922. Defendant filed affidavit.

December 6, 1922. Hearing before the Court.

Sidney J. Turner, Stenographer, sworn.

Samuel Schomer, sworn.

Max Krumholz, sworn.

Samuel Glass, sworn.

Nathan Lenz, sworn.

William R. Vanecek, sworn.

40

Docket Entries

The evidence being closed, the Court entered judgment in favor of plaintiff in the sum of \$265.49.

December 13, 1922, defendant filed notice of appeal.

December 13, 1922, defendant filed bond duly approved by the Court.

10 I hereby certify that the above is a true copy, of the contents noted, in Docket 55, page 270, of the Passaic District Court, in the above mentioned case.

Dated, December 21, 1922.

DOMINICK DEMURO,
Clerk Passaic District Court.

(Seal.)

20

30

40

Transcript of Testimony.

PASSAIC DISTRICT COURT.

PROTECTIVE FINANCE CORPORATION (a corporation),	}	Action at Law.	10
Plaintiff,			
vs.			
SAMUEL GLASS,			
Defendant.			

Transcript of testimony of witnesses taken on Wednesday, the 6th day of December, 1922, in the Passaic District Court, Passaic, New Jersey, before His Hon. W. Carrington Cabell, Judge of the said Court, without a jury.

20

Appearances:

William Vanecek, Esq., for the plaintiff.

Irving L. Werksman, Esq., of Weinberger & Weinberger, for the defendant.

(It is admitted by counsel for the Protective Finance Corporation [a corporation] that the said Protective Finance Corporation filed its certificate of incorporation to do business in this state just previous to the starting of this action.)

30

SAMUEL SCHOMER, a witness produced on behalf of the plaintiff, being duly sworn according to law, upon his oath, testified as follows:

Direct-examination by Mr. Vanecek:

Q. Mr. Schomer, you are the president of the Pro-

40

Plaintiff's Witness, Samuel Schomer, Direct

protective Finance Corporation, are you not? A. I am; yes, sir.

Q. And, as president of the Protective Finance Corporation, did you receive any insurance policies from Mr. Samuel Glass? A. Yes, sir.

Q. Mr. Schomer, I show you a schedule—I believe
10 that is a paper that you gave me? A. Yes.

Q. And this paper that I show you—it is a list of what? What is this paper that I now show you? A. That is a paper giving a list of the cancelled policies.

By Mr. Werksman:

Q. Who was that paper made by? A. By me.

Q. It was made by you and later typewritten—is that correct? A. Yes, sir.

20 Q. Typewritten in your office? A. Yes.

By Mr. Werksman:

Q. Did you typewrite it yourself? A. No, I didn't typewrite it. My stenographer did, from the books.

Q. That information contained on that paper was taken from the books? A. Yes, sir; that was made up by the bookkeeper.

Q. And your bookkeeper was who? A. Mr. Crum-
30 holtz.

Q. And is Mr. Crumholtz in your employ at the present time? A. Yes, sir.

Q. How long has the bookkeeper been in your employ? A. Since the month of July.

Q. And prior to the month of July, who kept the records of the policies and the books? A. Mr. Glass did—Samuel Glass.

Q. You know that he kept a record of these policies
40 in question, do you? A. Yes, sir; he did. He was supposed to.

Plaintiff's Witness, Samuel Schomer, Direct

Q. And he kept the books and records of the Protective Finance Corporation, did he? A. Yes, sir.

Q. And you know Mr. Glass' handwriting, do you? A. Yes, sir.

Q. These cancellations that you show here are what? A. They were paid to Mr. Glass when he was in my employ.

10

Mr. Werksman: I object to this witness testifying concerning transactions made or entries made in the books of the plaintiff by some other person or persons other than himself.

The Court: If the books were produced, they could be used in evidence. The books themselves are really the best evidence.

Q. The books of the Protective Finance Corporation, prior to July, were kept by Mr. Samuel Glass, were they? A. Yes, sir.

20

The Court: You must bring the books here.

Q. Mr. Schomer, is there any record of the cancelled policies report that you got from anybody else? A. Yes, sir.

Q. You did get a record or report of the cancelled policies from someone else, did you? A. Yes, sir; the American Insurance Company.

30

Q. This paper that you have here—where did you get the list of cancelled policies and the amounts of the premiums—return premiums? A. That was made in an agreement between Mr. Glass and myself about these policies—an agreement made between Mr. Glass and me at my office that after he left our office he should pay to the Protective Finance Corporation the return premiums every month—on the 25th of each month; that we should send the insurance policies

40

Plaintiff's Witness, Samuel Schomer, Direct

direct to the insurance company, and they should send him the bill, and send us a copy of his bill about how much contains on the return premium of each policy—and he should make the returns to the Protective Finance Corporation on the 25th of every month.

Q. And you should collect from whom? A. We
10 should collect from Mr. Glass.

Q. And that paper that you have there—is that paper from the insurance company showing the cancellation of the policies? A. That is; yes, sir.

Mr. Werksman: I object to any reference being made by the witness or counsel to any such paper as that.

Q. These papers are directed to whom? A. Mr.
20 Glass.

Q. And each policy has a separate memorandum on? A. Yes.

Q. Giving the name to whom the policy was issued and the amount of the return premium due you? A. Yes, sir.

Q. Then these memorandums that you testify concerning here, are memorandums incorporated in that list you have? A. Yes, sir; correct.

30 By the Court:

Q. Where the memorandum has an index—you have that there simply to help you find them, but it is not official in any way? A. No.

Q. Mr. Schomer, you, as president of the Protective Finance Corporation, did you at any time request Mr. Samuel Glass to return to you these return premiums that are mentioned in that paper, as you
40 say he agreed to do?

Plaintiff's Witness, Samuel Schomer, Direct

Mr. Werksman: I object to the question as leading.

Q. Did you at any time speak to Mr. Samuel Glass concerning these return premiums referred to in Schedule "A"? A. Yes, sir; for the last four months they are overdue.

Q. You mean that some of them are four months overdue? A. Yes, sir. 10

Q. Just tell the Court, if you will, the circumstances under which you asked Mr. Glass about these return premiums on these cancelled policies—what did you say to him about the matter and what did he say to you? A. We send him a bill first—our bookkeeper kept sending a bill and he see him on the outside and he spoke to him personally about them.

Q. What did you say to Mr. Glass when you spoke to him about the return premiums, and what did he say to you? A. Well, we send him the bill to be paid, and he said he will pay, but he delayed it and put it off from time to time, and he has never paid it. 20

Q. Has he ever paid you the amount that is due on the cancelled policies? A. No, sir; he never has.

Q. Or any part thereof? A. No.

Q. And the amount due you on the return premiums for the cancelled policies is how much? A. \$265.49. He paid over to us the money before he left our office—he paid regular then every two weeks, but after we discharged him from our office we had a hard time to collect from him. He promised to pay to us all the time and he kept putting it off and he didn't pay the money to us. 30

Q. Did you collect anything from Mr. Glass ever since the time that he left your office? A. No, sir; we did not. 40

Plaintiff's Witness, Samuel Schomer, Direct

Q. When did the cancellations become due? A. Some of them the insurance company cancelled whenever they feel like it, and the office cancelled it when the people turn over the merchandise.

Q. Mr. Schomer, I show you a slip—who is that slip from? A. This slip is from the American Central Insurance Company.

Q. Here, for instance, is a policy to H. Gosses—when was that policy cancelled that was issued to him?

Mr. Werksman: I object. The books themselves are the best evidence. He didn't make the entries and didn't keep the books—and I don't think his testimony should be permitted.

Q. From the advices and information which you received from the American Insurance Company, how much is due you on return premiums for cancelled policies?

Mr. Werksman: I object to the question on the ground that any statement made to this witness or the Protective Finance Corporation is not binding upon Mr. Glass, this defendant in this case—it cannot be testified to by this witness.

The Court: Except that this witness has testified that the return premiums should be paid to the plaintiff—that it was so agreed. There was an agreement, this witness has testified. I'll allow it.

Exception granted.

Q. How much is there due the Protective Finance Corporation on return premiums for cancelled policies? A. \$265.49 in one bill.

Plaintiff's Witness, Samuel Schomer, Cross

Q. And that amount, \$265.49, according to the agreement, was due on the 25th? A. Yes, sir. He agreed to pay us on the 25th of each month.

CROSS-EXAMINATION by Mr. Werksman:

Q. Mr. Schomer, you are what officer in the Protective Finance Corporation? A. President. 10

Q. And the Protective Finance Corporation organized or incorporated when? A. In 1921.

Q. And you were in existence in the City of Passaic and State of New Jersey for a long time as the Protective Finance Corporation? A. Since last July.

Q. July of 1921? A. Yes, sir.

Q. You have been operating and doing business as the Protective Finance Corporation, a corporation, under the laws of the State of Delaware? A. Yes. 20

Q. And you have been operating and doing business in the State of New Jersey for a period since July, 1921? A. Yes.

Q. And the business of the Protective Finance Corporation is that of financing automobiles? A. Everything—not only automobiles.

Q. What else do you finance? A. Everything that comes in—automobiles, mortgages, everything that comes to our office, but mostly automobiles. 30

Q. What else besides automobiles do you finance? A. Notes.

Q. By that you mean that you discount notes? A. Yes, whatever we can do.

Q. Do you do that—discount notes? A. Yes, we do.

Q. And you give out money on first and second mortgages, do you? A. No. 40

Plaintiff's Witness, Samuel Schomer, Cross

Q. What other business do you do besides financing automobiles and discounting notes? A. Mostly finance automobiles.

Q. Have you any idea as to the number of transactions the Protective Finance Corporation has put through since its existence as a corporation? A.

10 What do you call transactions?

Q. Business—you know what I mean; how many automobiles have you financed since your existence as a corporation? A. I couldn't tell you that.

Q. Can't you give me an idea? A. I don't know.

Q. Will you say you have financed a hundred?

Q. Five hundred? A. I would not say.

Q. Do you know how many accounts you have on your books today? A. No.

20 Q. Can you give us an idea? A. I can't say.

Q. Will you say you have a hundred accounts on your books today? A. Yes.

Q. Will you say you have five hundred accounts on your books? A. I can't say.

Q. Mr. Glass became identified or associated with you in July, 1921? A. Yes.

Q. As second vice president, I believe? A. Yes.

30 Q. And he continued in your employ from the 2nd day of July, 1921, until when? A. Until the last day of July, I believe.

Q. 1922? A. Yes, the 13th or 14th of July, 1922, I think it was.

Q. These accounts that you have enumerated here in this Schedule "A," annexed to your state of demand are accounts or transactions with your clients prior to Mr. Glass' severance with your corporation? A. Yes.

40 Q. And you did business with A. W. Hull, did you? A. I couldn't tell the names of all.

Plaintiff's Witness, Samuel Schomer, Cross

Q. Did you do business prior to July 8th, 1922, with one E. J. Fox? A. Yes.

Q. And with J. H. Stead? A. Yes.

Q. And H. Gosses? A. Yes.

Q. And S. Fascella? A. Yes.

Q. A. W. Hull? A. Yes.

Q. J. J. Thompson? A. Yes.

10

Q. And Rose Carpenter? A. Yes.

Q. I. T. Bernhard? A. Yes.

Q. E. Germond? A. Yes.

Q. L. A. Langa? A. Yes.

Q. H. Zulauf? A. Yes.

Q. C. E. Howard? A. Yes.

Q. Mateuszewski? A. Yes.

Q. And C. L. McKamey? A. Yes.

Q. E. J. Fox? A. Yes.

20

Q. And all this business was done through Mr. Samuel Glass as agent, was it not? A. Insurance business, yes.

Q. And Mr. Glass would represent what company? A. He represented lots of them.

Q. Name some of the companies he represented—can you? A. The American Central Insurance Company.

Q. Will you name others that he represented as agent? A. I can't. I don't just know what companies. We dealt, I know, direct with Mr. Glass.

30

Q. Did Mr. Glass do any other business with you writing up insurance other than you have mentioned? A. Yes.

Q. I mean writing up your insurance policies other than you have mentioned? A. Yes.

Q. And, in fact, every policy issued or ever drawn with you was written up through Mr. Glass—isn't

40

Plaintiff's Witness, Samuel Schomer, Cross

that so? A. Yes, every policy that we had business with him.

Q. He would write up the insurance, wouldn't he?

A. Yes, sir.

Q. At the time—in July, 1922, you had not filed with the Secretary of State of the State of New Jersey, a certificate permitting you to do business—yes
10 or no? A. We filed in July, 1922.

Q. You say, under oath, that you filed with the Secretary of State of New Jersey a certificate allowing you to do business in this state as the Protective Finance Corporation? A. I say in July, 1922—yes.

Q. You say you did? A. Yes.

Q. Why did you make application now to have your certificate filed if you had one filed in July, 1921? A. We find that the papers which I handed
20 with instructions to Mr. Glass to file them in Trenton was stolen out of our office. They was never filed in Trenton.

Q. So that you never filed any paper with the Secretary of State at Trenton? A. I know I signed a paper to be sent by Mr. Glass to Trenton to be filed there.

Q. Did you file a certificate with the Secretary of State at Trenton? A. I handed one to Mr. Glass to
30 be filed.

Q. So that you personally did not file any paper with the Secretary of State at Trenton? A. I signed this paper to be filed—Mr. Glass was to file it—it was turned over to Mr. Glass to file, and he never filed it.

Q. This paper that you say you signed, who was that paper given to you by? A. Mr. Vanecek. I
40 signed the paper and Mr. Vanecek handed it to Mr. Glass to file in Trenton.

Plaintiff's Witness, Samuel Schomer, Cross

Q. When was this? A. It was either the first or second week in July, 1921.

Q. Mr. Glass didn't go to work for you until the 8th of July, did he? A. Yes, he did; he was there from the first.

Q. Didn't you tell the Court that Mr. Glass started to work for you on the 8th of July, 1921? A. He 10
left on the 8th or 12th of July.

Q. When did Mr. Glass start to work for you or the Protective Finance Corporation? A. July 1st, 1921.

Q. And you gave the paper that you speak of to him then? A. Yes. I can't say if it was that day or the next day; I know I signed the paper. Mr. Vanecek brought the paper and I signed it, and Mr. Vanecek gave it to Mr. Glass to send to Trenton. 20

Q. Did Mr. Vanecek give it to Mr. Glass to file? A. He gave it to me and I signed it and gave it to Mr. Glass.

Q. As a matter of fact the paper was never filed in Trenton? A. That I don't know, only what I hear now. The first I knew was last week it was filed in Trenton.

Q. And you continued doing business then from July 1st, 1921, to the present time without filing 30
this certificate at the Secretary of State's office at Trenton? A. I didn't know about it. Mr. Glass was in the office and he was responsible for it to file the paper in Trenton.

Q. When was Mr. Glass elected as second vice president? A. On the 6th day of July, 1921, and we got his contract, too, signed by him and his duties, too, and so on.

Q. All the business that you speak of that Mr. Glass 40
did, you knew he was representing an insurance com-

Plaintiff's Witness, Samuel Schomer, Cross

pany, did you not, as agent? A. He represented lots of insurance companies.

Q. And you knew that all the policies he would issue would be issued through the companies he represented? A. I don't know.

Q. Did you know that he represented any insurance company? A. I don't know.

Q. Mr. Glass did all of his business in your office, didn't he, yes or no? A. We had with him an agreement that he should have the right to do business in that office.

Mr. Werksman: I ask that the answer of the witness be stricken out as not responsive.

The Court: I'll allow it.

Exception granted.

20

Q. Mr. Glass had no other office than the office situated with you to do work in? A. He used our office, he used to do some at our office and he used to work at his home.

Q. You say you did not know if he represented any insurance company? A. I don't know how many he represented.

Q. Did he represent one or more? A. I know he represented the American Central Insurance Company, I don't know how many more.

Q. Under the terms of the insurance policy, the premiums were to be made payable to the assured, weren't they? A. No, sir.

Q. Have you a policy with you? A. No, I have not.

Q. You claim that all of these moneys as itemized in Schedule A annexed to your state of demand are to be returned by you to your assured or clients? A.

40

Plaintiff's Witness, Samuel Schomer, Cross

Whatever people are entitled to be paid, we pay the money out to them.

Q. That obligation rests on the insurance company under the terms of its policy, does it not? A. No, sir.

Q. These various amounts you have itemized in Schedule "A" of your demand, have these moneys all been paid out to the persons mentioned therein? A. Less one part there, the rest of them have all been paid. 10

Q. Have you your books here to show they have been paid? A. The bookkeeper has; ask him. I don't know.

Q. Have you paid to Mr. Stead \$46.02? A. No, sir.

Q. You haven't paid that as yet? A. No, but we have to pay it. 20

Q. As a matter of fact, you are now being sued for it now, are you not? A. Yes, sir.

Q. Are you being sued by anybody else for any return premiums? A. No, sir; but we are responsible for them.

Q. Have you any of your contracts here that you made with your clients for automobiles financed by you for them? 30

Objected to by Mr. Vanecek.

Objection sustained.

Plaintiff's Witness, Max Krumholtz, Direct

MAX KRUMHOLTZ, a witness produced on behalf of the plaintiff, being duly sworn according to law, upon his oath testified as follows:

Direct-examination by Mr. Vanecek:

10 Q. Mr. Krumholtz, you are the bookkeeper for the Protective Finance Corporation and the person whom Mr. Schomer said took Mr. Glass' place after Mr. Glass retired? A. Yes, sir.

Q. And you have held Mr. Glass' position since Mr. Glass left the Protective Finance Corporation? A. Yes, sir.

Q. You keep the books? A. Yes.

20 Q. Will you just open up your books and show us where these policies appear and the date of their cancellation? A. Yes; this book here shows when the policies were written and is all in Mr. Glass' handwriting. As far as cancellations are concerned, we have letters direct from the insurance company confirming that the policies were received by them and the amounts.

Mr. Werksman: I object to that as hearsay.
Objection overruled. Exception granted.

30 The Witness (continuing): John H. Stead, written in December, 1921, I don't know the exact date. Mr. Glass wrote that and he didn't put the date in. The next is H. Gosses, that was issued in February, 1922. Mr. Glass knows these books.

40 (It is admitted by Mr. Werksman that the figures contained in Schedule "A" and the information contained therein is correct, with the exception of the name J. H. Stead, there being some question as to whether he has been paid or not.)

*Motions**CROSS-EXAMINATION by Mr. Werksman:*

Q. Have you with you the books of the Protective Finance Corporation? A. Yes, sir.

Q. What books have you? A. A book I have here is a book in which was entered by Mr. Glass the dates of the issuing of the policies and the amounts as Mr. Glass reported them. 10

Q. Does that book contain the accounts of the Protective Finance Corporation? A. Yes, sir.

Q. With the persons named in Schedule "A"? A. Yes.

Q. And you have there, have you, a record of the several transactions with the insurance company made by Mr. Glass when he was in the employ of the Protective Finance Corporation? A. Yes, sir; and in his own handwriting, too. 20

PLAINTIFF RESTS.

Mr. Werksman: I offer in evidence a certificate of Thomas F. Martin, Secretary of State of New Jersey, bearing date the 21st day of November, 1922, certifying that the Protective Finance Corporation has not filed any certificate therein, either as a foreign or domestic corporation. 30

Said certificate referred to is admitted in evidence and is marked Exhibit D1 on behalf of the defendant.

Mr. Werksman: Now, if the Court please, I respectfully move for a non-suit on the ground first; that under Section 98 of the corporation act, compiled statutes, page 1658, it 40

Motions

10 provides that "until such corporation so trans-
acting business in this state shall have obtained
such certificate of the Secretary of State, it
shall not maintain any action in this state, up-
on any contract made by it in this state." Con-
struing that section, I have here a case, *Wolf*
v. Lancaster, in which case the Court held that
an action cannot be maintained for sales made
prior to the filing of such a certificate with the
Secretary of State.

20 I contend as a matter of law that even
though, as in this case, a certificate has been
filed subsequent to the transaction in question,
that that of itself does not cure the fact that
a certificate had not been filed prior to the
time the actual work or contract in this case
was made.

The Court: It does not appear that there
is any such regulation under the laws of Dela-
ware.

30 Mr. Werksman: I also call your Honor's at-
tention to the case therein cited, the case of
Delaware River Quarry Co. v. Bethlehem Co.,
53 Atl. Rep. 533. The reasoning laid down in
this case, I contend is analagous to the situa-
tion in the case at bar. It says: "Where such
a corporation does not register as provided by
such act before entering into a contract to be
enforced in the courts, it has no right of ac-
tion therefor." I also desire to cite in support
of my contention *Goldmark v. Magnolia*
Metal Co., 65 Law. 341; *Groel v. United Elec-*
tric Co., 69 Equity 397; *Lehigh Structural*
40 *Steel Co.*, page 376, Ill. Atl. Rep.; *Faxon Co.*

Motions

v. Lovett Co., 60 Law., page 128; also the cases reported in 254 Federal at page 325, these cases all holding, as in this case, where a company has held itself out as a corporation transacting business in this state and has not complied with Section 98 of the corporation act, it cannot maintain any action in this state, and the filing of a certificate would not revive any action in its behalf. 10

The evidence in this case shows that the transactions were performed within the confines of this state. It appears that it was not one transaction, but a series of transactions over a period of over a year, as will appear in the Schedule "A" annexed to the state of demand, and I contend that would constitute the doing of business within this state, and this action cannot be maintained at this time. 20

The Court: I'll deny your motion.

Exception granted.

The Court: The statute on its face does not appear to place any penalty except the \$100 or \$200, whatever amount it is, for doing business without filing the certificate. There is nothing in that section that prevents suing or invalidates the contract; but Section 98, in my opinion, simply prevents suit until the certificate is filed. I'll deny your motion. There is evidence before the Court that there was an agreement between the Protective Finance Corporation and the defendant Glass as to payments by him to the Protective Finance Corporation on monthly statements from the insurance company of certain return premiums. 30
40

Motions

10 That is the testimony of the plaintiff. There
is further testimony that this defendant was
entrusted as an officer of the plaintiff corpora-
tion with a document for filing with the Sec-
retary of State before this business was done,
and if that document was not filed it was due
to the negligence of this defendant, and surely
the Court will not permit him to take ad-
vantage of his own wrong even though the
law is very positive and as you represent it to
be. I'll deny your motion.

Exception granted.

20 Mr. Werksman: I ask for a nonsuit on the
ground that it appears from the evidence ad-
duced in this case that the transactions were
had between the Protective Finance Corpora-
tion and Samuel Glass, the defendant, as agent
for one or more insurance companies. It is
very evident from the facts presented that the
transactions were had with Mr. Glass, true
enough, as an office holder of the corporation,
but primarily as agent for a disclosed princi-
pal; and, I think the rule is well settled in
New Jersey that where you deal with one who
discloses his principal, any action you might
30 have or bring is against his principal and not
as against the agent.

The Court: Your motion is denied. The
testimony shows that he undertook personally
to take the money.

Defendant's Witness, Samuel Glass, Direct

SAMUEL GLASS, the defendant, being duly sworn according to law, upon oath, in his own behalf testified as follows:

Direct-examination by Mr. Werksman:

Q. Mr. Glass, you were formerly connected with the People's Bank and Trust Company, were you not? 10
A. Yes; I was.

Mr. Vanecek: I object. What has that got to do with this case?

Q. You became identified with the Protective Finance Corporation in July, 1921, I believe? A. Yes.

Q. In what capacity? A. I understood that I was to be second vice president.

Q. Were you as a matter of fact elected as such? 20
A. No, I was not.

Q. When you went in with this corporation, what were your duties? A. To run the business for them.

Q. What do you mean by running the business?
A. I was to manage the business and handle the business from every angle. They couldn't run it themselves because they had no business experience whatever.

Q. When you say you were to run the business, 30
just tell the Court what your duties were and what you did? A. I had various duties.

Q. What, for instance? A. To keep the books, write up the insurance on different cars they were financing, interviewing the people and dealers that came in.

Q. Did you have occasion to represent any insurance companies? A. Yes; I did.

Q. Can you give us the names of the different companies that you represented? A. Yes; the American 40

Defendant's Witness, Samuel Glass, Direct

Central Insurance Company of St. Louis, the American Automobile Insurance Co. of St. Louis, the Mutual Life Insurance Company, Ocean Accident and Guaranty Corporation, the California Insurance Company and the Missouri State Life Insurance Company, that is all I can think of.

10 Q. Any others? A. That is about practically all.

Q. Were you an agent or broker? A. Agent and also had a broker's license.

Q. Were you agent for those particular companies you have mentioned? A. Yes.

Q. Did you write any insurance for these companies with the Protective Finance Corporation or their clients? A. Yes, sir; I did.

20 Q. What arrangement did you have, if any, with the Protective Finance Corporation with reference to any premiums? A. They paid me when I submitted my bill within thirty days after the policies were issued. Assuming, for instance, the policies were written in July, they were payable August 20th.

Q. Who would pay you for the premiums? A. The Protective Finance Corporation.

30 Q. Would you receive any money at all from the vendee under the conditional bill of sale? A. Not on the original transaction. If they desired additional insurance on their particular cars, that would be handled directly through me.

Q. That is, the original insurance was paid by them to the Protective Finance Corporation? A. Yes.

Q. And they in turn would pay it over to you? A. Yes, sir.

By the Court:

40 Q. Their agreement was to pay you on the 20th

Defendant's Witness, Samuel Glass, Direct

of the month following, when you would render them a bill—is that it? A. Yes, sir.

Q. With reference to any cancelled policies, who would receive the unearned premiums? A. While I was with them, they received them.

Q. Would you pay it over to them? A. Yes.

Q. Mr. Schomer, the president of the Protective Finance Corporation, in his direct-examination testified about a certain contract made with you, or promise that you made with him, about turning over all return premiums on cancelled policies to the Protective Finance Corporation—is that so—did you ever make any such contract or promise? A. No, sir; I know of no such contract that I made with them. 10

Q. What was your understanding with him? A. I had no understanding whatever with him when I left that office. We had been continually misunderstanding each other. 20

Q. Have you ever been discharged from the employ of the Protective Finance Corporation? A. Absolutely not.

Q. The persons mentioned in Schedule "A" annexed to the plaintiff's demand—have they been paid, do you know? A. I don't know. I do know that one has not been paid. 30

By the Court:

Q. How do you know that? A. Because he spoke to me about it—he is suing for his now.

Q. You don't know it then, do you? A. He told me he had not been paid—he demanded payment from me.

Q. You say he demanded payment from you? A. Yes. 40

Defendant's Witness, Samuel Glass, Direct

Q. Why? A. Because I was agent for the insured and any losses that occurred the insured reported to me, and when the policy is cancelled, the insured looks to me for the return premium.

Q. There is a claim made for the sum of \$265.49, by the Protective Finance Corporation—is that money due and owing to the Protective Finance Corporation?
10 A. No, sir.

Q. Who is that money due and owing to? A. To the insured.

Q. Why do you say it is due to them? A. Because the only place in the policy where the Protective Finance Corporation—

The Court: You can't testify as to what is in the policy.
20

Mr. Werksman: I ask exception to the Court's ruling as to the conditions of the policy.
Exception allowed.

Q. When you severed your connections or relations with the plaintiff corporation, Mr. Glass, was there any demand made upon you for any moneys of any kind due and owing to them? A. No, sir.

Q. Or at any time subsequent since your severance with the plaintiff corporation, was any demand made upon you for moneys due and owing the plaintiff?
30 A. Yes.

Q. Who was that demand made by? A. Mr. Krumholtz.

Q. Who is Mr. Krumholtz? A. My successor, I understand.

Q. And he is connected with the Protective Finance Corporation? A. Yes, I understand so.
40

Defendant's Witness, Samuel Glass, Re-direct

Q. And he is the person who testified on the stand that he was the bookkeeper? A. Yes.

Q. Did you ever admit any obligation of any kind due and owing to them? A. I admit owing those return premiums to someone.

Q. And who is that someone? A. The assured.

Q. And are you ready to turn that money over to the assured? A. Yes. 10

Q. Are you ready and willing to turn it over to the Court? A. Yes, sir.

CROSS-EXAMINATION by Mr. Vanecek:

Q. You say, Mr. Glass, you are no longer employed by the Protective Finance Corporation? A. Yes, sir. 20

Q. How did you sever your connections with the corporation? A. I politely left their employ when I felt that conditions were not what I would want them to be.

Q. Isn't it a fact that you were told that your services were no longer required? A. No, absolutely not.

Q. You were first employed last July to manage the business of the Protective Finance Corporation, were you not? A. Yes. 30

RE-DIRECT EXAMINATION by Mr. Werksman:

Q. Mr. Glass, Mr. Schomer has testified that on the first or second of July, 1921, he caused to be delivered to you a paper purporting to be—

Withdrawn.

40

Defendant's Witness, Samuel Glass, Re-cross

Q. Mr. Schomer testified that he gave you a certificate to file with the Secretary of State of New Jersey for the plaintiff corporation on July 1st or 2nd of 1921—is that true, Mr. Glass? A. Absolutely not; no, sir, he did not.

10 Q. Were you ever told to file any paper of any kind of that nature? A. No, never.

Q. Did you ever have a paper of that nature in your possession purporting to be a certificate which was handed to you with instructions to file the same with the Secretary of State? A. No, sir.

Q. Did Mr. Vanecek ever hand you a signed paper purporting to be a certificate with instructions to file the same with the Secretary of State? A. No; he absolutely did not.

20 Q. Or Mr. Schomer? A. No.

Q. Or any member of the Protective Finance Corporation ever give you a paper or certificate to file with the Secretary of State? A. No.

Q. Were you ever informed or cognizant of any such paper having been signed and presented to you for filing with the Secretary of State? A. No.

30 Q. No such paper or certificate was ever handed you by any one connected with the Protective Finance Corporation—that is correct, is it? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Vanecek:

Q. You say the company paid for all these premiums, did they? A. Yes.

Q. You received no money from anybody else but them for the original insurance? A. For the original insurance, yes.

40 Q. There is no additional insurance in there in that

Defendant's Witness, Samuel Glass, Re-cross

list? A. I couldn't tell you; I haven't got the policies in front of me.

Q. You have had them before this suit, have you not? A. Yes, I have.

Q. Two or three weeks ago? A. Yes.

Q. And made a comparison with your books? A. Yes.

10

Q. Did you find any additional insurance in that list? A. I didn't look for any; I compared the premiums due on those policies.

Q. They were correct, were they? A. They were not correct in the first instance, but they have since been corrected.

Q. They are correct now, are they not? A. Yes.

Q. There was an error of \$9, I believe—that has been corrected? A. Yes—something like that.

20

Q. All return premiums that you received while in the employ of the Protective Finance Corporation, you signed over to the Protective Finance Corporation without any word or question, did you not? A. Yes.

Q. And it is only since you left their employ that you have not turned them over? A. Yes.

Q. Why didn't you turn them over?

Objected to by Mr. Werksman.

Objection overruled.

30

Exception granted.

A. For the simple reason that after I called you and made that appointment, I had one of the persons named there in that list that called upon me at my office and demanded of me the return premium due—Mr. John H. Stead. I was under the impression they were being paid by the Protective Finance Corporation to the assured, and while I was with them, I knew they were, but now I find out different; the

40

Defendant's Witness, Samuel Glass, Re-cross

only remedy is to make the checks out to the order of the Protective Finance Corporation and the assured.

Q. Mr. Glass, under the terms of an agreement that you had with the Protective Finance Corporation while in their employ, you were permitted or
10 authorized to do business elsewhere—isn't that so?

Objected to by Mr. Werksman.

Objection overruled.

Exception granted.

Q. You did business outside of the business that you did for the Protective Finance Corporation, didn't you? A. Yes.

Q. And that had nothing to do with the Protective
20 Finance Corporation at all? A. No, sir; nothing at all.

Q. Do you or not remember that about the first day of July when you started on your duties with the Protective Finance Corporation receiving a paper—several papers together, from me in the office of the Protective Finance Corporation? A. I remember distinctly receiving from you the minute book—no papers.

30 Q. I mean papers pinned together as these (indicating) would be? A. I say no; absolutely no.

Q. And do you or not remember me requesting you to take the affidavits of the officers to those papers? A. No.

Q. And don't you remember taking their affidavits of any of the officers to any paper or papers? A. I don't know about just at that time, but I have taken them at times.

40 Q. You were a notary, were you not? A. Yes, I was. My commission as a notary was taken out on

Defendant's Witness, Samuel Glass, Re-cross

August 6th, so that on July 1st or 2nd, or 3rd I couldn't have taken any affidavits.

Q. In July weren't you a notary? A. No.

Q. Do you remember speaking to me, or me calling you up on the telephone while you were in the employ of the Protective Corporation one afternoon asking you to stay in the office a little later than usual—a little later than five o'clock, as I had some papers that I desired you to have? A. I do not. 10

Q. And you don't remember me bringing those papers over to the office of the Protective Finance Corporation and giving them to you? A. No.

Q. And none of the officers being present but you? A. No.

Q. Do you remember speaking with me and the officers, Schomer and Lentz, in the office of the company relative to these papers and the filing of them at Trenton? A. Not about filing any papers at Trenton. I remember some conversation about filing some certificate in New York State with Ehringer at which time I did see a set of papers for them, but never for New Jersey. Those are the only papers ever handed to me. 20

Q. That was in August? A. I don't remember when it was. 30

Q. It wasn't the first week in July? A. I don't remember when it was.

By the Court:

Q. You say before you left the employ of the Protective Finance Corporation, you paid to them the return premiums on cancelled policies? A. Yes.

Q. How often did you pay to them the return premiums? A. We settled our accounts up—what they owed me was deducted from what I owed them. 40

Plaintiff's Witness, Nathan Lentz, Direct

Q. When was that time—what time of the month?

A. Usually from the 20th to the 25th of each month.

Q. Relating to the business of the previous month?

A. Yes.

Q. And at that time you allowed the Protective Finance Corporation the return premiums? A. Yes.

10 Q. And also while you were in the employ of the corporation, you had made a practice of paying to them from time to time from the company fund return premiums to the policy holders? A. Yes; I knew the policy holders got the return premiums when I was there.

Rebuttal.

20

NATHAN LENTZ, a witness produced on rebuttal, in behalf of the plaintiff, being duly sworn according to law, upon his oath testified as follows:

Direct-examination by Mr. Vanecek:

Q. Mr. Lentz, you are an officer of the Protective Finance Corporation? A. Yes, sir.

30 Q. What officer are you? A. Secretary.

Q. Was Mr. Samuel Glass under your direct supervision while he was in the employ of the Protective Finance Corporation? A. Yes, sir.

Q. Do you or not remember of any papers ever being given to him by anyone when he was told to file the same in Trenton?

Objected to by Mr. Werksman.

Objection sustained.

40

Plaintiff's Witness, Nathan Lentz, Direct

Q. Were any papers ever left at the office of the Protective Finance Corporation to your knowledge to be sent to Trenton?

(Question withdrawn.)

Q. Was a statement filed in Trenton by your corporation in July of last year? A. Yes, sir; we gave it over to Mr. Glass to file in Trenton, because Mr. Glass demanded our signature, and I asked him what kind of a paper or statement it was, and he said it was to be filed in Trenton for our corporation. 10

Q. Did you sign the paper before Mr. Glass? A. Yes, sir.

Q. Who directed you where to sign it? A. Mr. Glass.

Q. Do you know how that paper got into your office, and by whom it was drawn? A. By you. 20

Q. It was brought to your office by me? A. Yes, sir.

Q. Then, what became of that paper after I brought it to your office, do you know? A. Mr. Glass was our bookkeeper and we thought that he probably sent it to Trenton. We didn't know that he didn't.

Q. Was there anything said to Mr. Glass as to what should be done with that paper by you and any other officer? A. I don't know. 30

Q. Just listen to my question—was Mr. Glass told by anyone what to do with that paper? A. Why, Mr. Glass told me himself the paper has got to be sent to Trenton for our corporation.

Q. Relative to the insurance return premium—do you know anything about any agreement or conversation had with Mr. Glass about the return premiums on cancelled policies? A. Yes. 40

Plaintiff's Witness, Nathan Lentz, Cross

Q. Were you there when that conversation took place? A. Yes.

The Court: You may rebut testimony, but that agreement was part of your original case.

CROSS-EXAMINATION by Mr. Werksman:

10

Q. This paper to be filed with the Secretary of State at Trenton you say was given to Mr. Glass when—what part of July? A. I don't remember just when it was.

Q. Mr. Schomer said it was the 1st or 2nd of July—is that correct? A. I don't know, but I remember it was handed over to Mr. Glass on his desk.

Q. Do you think that Mr. Schomer is mistaken when he says it was the 1st or 2nd or 3rd of July? A. I don't know.

Q. How long had you been in business at the time—a week, two weeks, three weeks, or a month? A. I don't remember.

Q. But you are very positive about this paper? A. Yes.

Q. You don't read English very well, do you? A. I can read English, sure.

30 Q. Very well? A. Yes.

Q. There was a paper filed in New York State, too? A. So far as the other paper goes, I don't know.

Q. Was there a paper filed in New York State? A. I don't know. Of course, I was the secretary, and many papers were handed to me, but that particular paper to be sent to Trenton I know that was brought to me and Mr. Glass was told that this is a paper that has got to go to Trenton to file in New Jersey because our corporation is incorporated under the State of Delaware.

40

Plaintiff's Witness, Nathan Lentz, Cross

Q. Where did you get that paper from? A. From Mr. Vanecek. Mr. Glass himself said it has to go to be filed in Trenton.

Q. Did you or Mr. Schomer give the paper to Mr. Glass? A. Mr. Vanecek handed it over to his desk.

Q. When Mr. Vanecek gave it to Mr. Glass, was Mr. Schomer there? A. Yes. 10

Q. Why didn't Mr. Vanecek take your acknowledgment or affidavit right there and then—he was a lawyer? A. This was around six o'clock, and Mr. Vanecek said he was in a hurry, he has got to go home for supper.

Q. You knew that Mr. Glass was not a notary and therefore he couldn't take your affidavit, didn't you? A. I don't know anything about that.

Q. Don't you know that as a matter of fact Mr. Glass did not become a notary until sometime in August—August 6th? A. I don't know. 20

Q. Don't you know that Mr. Glass made application and told you that he was going to get a notary commission as it would help you in your business? A. No.

Q. Who took your affidavits before Mr. Glass became a notary?

Objected to by Mr. Vanecek. 30

Objection sustained.

Q. The only thing that you remember about the entire transaction is the fact that these papers were given to Mr. Glass, and that's all? A. Yes.

Q. And, are you positive about that? A. Yes.

Q. Everything else your mind and recollection is hazy about? A. Yes.

Q. How about the paper that went to New York? A. I signed that paper, too. 40

Plaintiff's Witness, William Vanecek, Cross

Q. Were those papers filed in New York? A. Yes.

Q. Who took your affidavit to the papers that were filed in New York? A. Mr. Glass, I think. I don't know for sure. Maybe it was Mr. Vanecek.

Q. You don't remember if they were filed or not?

A. I don't know for sure.

10

WILLIAM VANECEK, being duly sworn according to law, upon his oath testified as follows:

In the first part of July, 1921, before the 4th—I am sure of that, but I can't state the exact date, I brought into the office of the corporation, the paper to be signed by the officers of the Protective Finance Corporation and gave it to Mr. Glass to look over and to fill in the amount of stock the corporation had already issued, and with instructions that he should file it with the Secretary of State, and that is the last I saw of the paper until the next morning, I believe, when I went there and took the affidavits, and I was under the impression that it was filed.

20

CROSS-EXAMINATION by Mr. Werksman:

30

Q. Why didn't you file the papers yourself, as attorney for the Protective Finance Corporation? A. Because I was not getting paid for it.

Q. Were n't you paid for your services in drawing the paper? A. Yes.

Q. Did you prepare their minutes for them? A. Some.

Q. Weren't you paid for doing that? A. Not at all.

40

Q. For the work that you did do, you were paid for that? A. No, not at all.

Plaintiff's Witness, William Vanecek, Cross

Q. Weren't you paid for drawing the articles of incorporation? A. Yes.

Q. And for filing the articles of incorporation? A. Yes.

Q. Why didn't you file the paper at Trenton yourself? A. I wasn't getting paid for filing it.

Q. Why didn't you get paid for the filing charge? 10
A. Because I didn't file them. Mr. Glass was to do that. Mr. Schomer wanted to cut down expenses as much as possible.

Q. You say you are positive this occurred before the 4th of July, 1921? A. Yes, if I am not mistaken, it was on a Friday evening—late afternoon.

Q. Was it before the 4th of July? A. Yes; I think it was the 3rd of July.

Q. But you are positive it was before the 4th? A. 20
Yes.

Q. There can't be any doubt about that? A. No.

Q. Don't you know, as a matter of fact, that Mr. Glass did not sever his connections with the Peoples Bank and Trust Company until the 5th of July? A. No; I don't know that. I do know that Mr. Glass was in that office at least ten days before the 10th of July at different times.

Q. What were you doing there? A. That is my 30
business.

Q. Have you the articles of incorporation with you?
A. I have them, but not here with me. I also have a copy of the statement that I delivered to Mr. Glass in my office.

Defendant's Witness, Samuel Glass, Direct

SAMUEL GLASS recalled.

Direct-examination by Mr. Werksman:

Q. Mr. Glass, when did you leave the employ of the Peoples Bank and Trust Company?

10 The Court: That don't make any difference in this case. How is that material?

 Mr. Werksman: I want to show that Mr. Glass was not in the employ of the Protective Finance Corporation until after the 4th of July.

Q. When did you leave the employ of the Peoples Bank? A. I left the employ of the Peoples Bank and Trust Co., June 30th.

20 Q. When did you start your employment with the Protective Finance Corporation?

 The Court: He has already told you that.

 Mr. Vanecek: I offer in evidence a certificate from the office of the Secretary of State of New Jersey, showing that we filed in that office our certificate on the 25 day of November, 1922.

30 Said certificate referred to is admitted and marked Exhibit P1.

CASE CLOSED.

The Court: It seems from the testimony that there are return premiums on cancelled policies due in the sum of \$265.49 from Mr. Glass.

40 Some question has been raised whether it is legal for the Protective Finance Corporation to maintain this action. I have already decided that it is.

There is also some question whether this money is due the Protective Finance Corporation or the persons in whose names the policies were issued. There is a dispute between the plaintiff and the defendant on that question. But the testimony of the defendant himself on that question is, that before he left the employ of the plaintiff corporation he paid each month for the preceding month the return premiums to the Protective Finance Corporation. There is testimony to the effect that this was agreed upon that he should. That had been the practice during the term of defendant's employment with the corporation. That, in connection with the testimony of the plaintiff, puts a clear preponderance of evidence in favor of the plaintiff on that one disputed question. 10

Judgment will be for the plaintiff for \$265.49.

20

I, Sidney Turner, a stenographer duly appointed to report stenographically the evidence given before the Passaic District Court in the case of Protective Finance Corporation, a corporation, v. Samuel Glass, do hereby certify that the foregoing is a true and correct transcript of the evidence given on the sixth day of December, 1922, before the Honorable W. Carrington Cabell, Judge of the said Passaic District Court, in said matter. 30

In Witness Whereof, I have hereunto set my hand and seal this 20th day of December, 1922.

SIDNEY TURNER,
Stenographer.

40

Defendant's Exhibit D1

I, Frederick V. Watson, Acting Judge of the Passaic District Court, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of Protective Finance Corporation, a corporation, v. Samuel Glass, on December sixth, 1922, as certified by Sidney Turner, the stenographer
 10 appointed to report such evidence stenographically.

In Witness Whereof, I have hereunto set my hand and seal this 20th day of December, 1922.

FREDERICK V. WATSON,
 Acting Judge of the
 Passaic District Court.

20

Defendant's Exhibit D1.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY, That I have examined the corporation records of this Department
 30 and fail to find any record of the incorporation of the PROTECTIVE FINANCE CORPORATION, either as a foreign or domestic corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official
 (Seal.) Seal, at Trenton, this twenty-first day of November, A. D., nineteen hundred and twenty-two.

40

THOMAS F. MARTIN,
 Secretary of State.

Specifications for Reversal.

NEW JERSEY SUPREME COURT.

PROTECTIVE FINANCE CORPORATION, a corporation, Plaintiff-Appellee,	}	
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vs.

SAMUEL GLASS, Defendant-Appellant.	}	
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10

The appellant urges the following reasons for reversal of the judgment rendered in the above-entitled action:

FIRST: The plaintiff failed to establish a *prima facie* case and there was insufficient evidence to support the finding of a judgment in favor of the plaintiff. 20

SECOND: The Court committed error in refusing to nonsuit when so moved to do, where it appeared that plaintiff-appellee was a foreign corporation, incorporated under the laws of Delaware, and where said corporation had not filed with our Secretary of State a certificate permitting it to do business within the confines of New Jersey. 30

THIRD: The Court committed error in holding that the plaintiff-appellee corporation complied with the law when it filed its certificate with the Secretary of State subsequent to the series of transactions had by and between the plaintiff-appellee and defendant-appellant.

FOURTH: The Court erred in holding that it would be necessary to construe the Laws of Delaware 40

Specifications for Reversal

with regard to the filing of any such certificate as required by our Corporation Act.

10 FIFTH: The Court erred in refusing to nonsuit when the uncontradicted evidence disclosed that the plaintiff-appellee had been transacting business with the defendant-appellant for a period of about one year, and during that period of time had not filed its certificate permitting it to do business within the State of New Jersey.

20 SIXTH: The Court erred in refusing to nonsuit in view of the fact that the evidence in the case showed that the defendant-appellant was an agent for a disclosed principal or principals, namely divers insurance companies, and that the contract or agree-
ment was entered into between the plaintiff corpora-
tion and the defendant with the knowledge that the said defendant-appellant was acting in behalf of his principal and therefore no suit may be had as against him.

30 SEVENTH: The Court erred in permitting certain testimony to be offered showing letters from the insurance company, which were objected to as being purely hearsay.

SEVENTH: The Court erred in refusing the motion to nonsuit.

EIGHTH: The Court erred in rendering judgment in favor of the plaintiff and against the defendant.

WEINBERGER & WEINBERGER,
Atty's for Defendant-Appellant.

Opinion of Supreme Court.

(Filed May 22nd, 1923.)

NEW JERSEY SUPREME COURT,

FEBRUARY TERM 1923.

PROTECTIVE	FINANCE	CORPORA-	}
	TION,	Appellee,	
	v.		
SAMUEL GLASS,	Appellant.		

10

Argued February 20, 1923: Decided May , 1923.

20

In causes tried in the district courts, where the court has appointed a stenographer to transcribe the proceedings at the trial pursuant to the Act of 1905, p. 259 (C. S. 1957, pl., 13 b) the certification of the stenographic transcript for use as the state of the case on appeal can be made only by the judge that actually tried the cause.

Motion to dismiss appeal.

Argued February Term 1923, before:

30

Justices Parker, Bergen and Minturn.

For the Appellant, Weinberger & Weinberger.

For the Appellee, Edward F. Merrey and William R. Van Ecek.

The opinion of the Court was delivered by

PARKER, J.:

Motion is made to dismiss this appeal on the ground that the stenographic transcript of the pro-

40

Opinion

ceedings at the trial was not certified by the trial judge within the time provided by law. Unless it be properly certified within fifteen days after the judgment, the appeal must be dismissed. *Ervin v. Wholfert*, 76 N. J. L. 430; *Berstecher v. Caruso*, 89 N. J. L. 426; *Galligan v. Gonzales*, N. J. L. *id.* ;
 10 116 Atl. 486, 118 Atl. 211.

The answer made is that, though the transcript was not certified by the judge that tried the cause, it was certified in due time by another district court judge sitting temporarily for the trial judge, pursuant to Section 19 of the District Court act, and that such certificate is sufficient under the statute of 1905 (P. L. p. 259; C. S. 1957).

We cannot accede to this view. At common law
 20 a review in error of trial rulings could be had only on a bill of exceptions sealed by the trial judge; and although the later use of a stenographer at the trial resulted in practice in a general reliance on the stenographic transcript as correctly exhibiting what occurred at the trial, it was never legally authoritative and the exceptions had to be sealed as before. By the Practice Act of 1912 "bills of exceptions" were
 30 abolished, but even this did not give the stenographic transcript an authoritative status, as is shown in *Connolly v. Public Service Rwy. Co.*, 94 N. J. L. 157, 160, where the certificate of the trial judge was called for by the court to settle a dispute as to what he had actually said to the jury. This was, of course, in line with the general rule that the appellate court will treat as conclusive the certificate of the lower court as to what occurred before it. 4 C. J. 512 *et seq.*; see *Frisch v. Warnke*, 85 N. J. L. 456, 457; *Pinkney v. Ayres*, 21 *id.* 694; *Paterson etc. R. R. Co. v. Ackerman*, 24 *id.* 535; *Meirs v. Bussom*, 57 *id.* 383.
 40

Opinion

The District Court act permits the parties, or their attorneys, in a case where no stenographer has been appointed to stipulate a state of the case for appeal but when they cannot agree, the case must, of course, be settled by the judge, and in that event only the judge that tried the cause could settle the state of the case for appeal. *Tenement House Board v. Schlechter*, 83 N. J. L. 88, 90. 10

In cases where there is a stenographer, the language of the statute plainly indicates that the trial judge is to certify the state of the case. When application is made to the judge of a district court to appoint a stenographer to transcribe the proceedings, etc., "it shall be the duty of the said judge to designate a stenographer * * * and if an appeal be taken * * * the transcript of said proceedings and testimony 20 made by said stenographer, shall be certified by said judge as the state of the case," etc. C. S. 1957-8. The manifest intent is that the transcript shall be certified by the "said" judge, not any other judge temporarily imported into the court under Section 19, with no knowledge of the case, and who naturally is in no position to certify that the transcript is in effect a faithful minute of what took place at the trial, or indeed that it has any authenticity whatever. As 30 was said of the "entire record of proceedings at the trial" returned under Section 136 of the Criminal Procedure Act, such record "certainly must, in some way, be authenticated, and we see no other satisfactory way than by that (the trial) court's certificate." *Ryan v. State*, 60 N. J. L. 552, at p. 554. And so, under the statute now considered, this court has already said that "the statute gives no authority for any state of the case thus composed (*i. e.*, stenographer's tran- 40

Opinion

script) except it be certified by the judge who tried the cause." *Speiser v. North Jersey Street Rwy. Co.*, 73 N. J. L. 413, 414.

10 The transcript in the present case was not so certified. What happened was that as the fifteen days were about to expire, appellant's attorney went to the court room on a day with the transcript, and found the trial judge had gone out of town and another judge, an entire stranger to the case, was sitting, and procured his certificate. This, for the reasons given above, was ineffective; and for lack of a proper certificate in due time, the appeal must be dismissed.

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Rule to Dismiss.

NEW JERSEY SUPREME COURT,

FEBRUARY TERM 1923.

PROTECTIVE	FINANCE	CORPORA-	}	10
	TION,			
		Appellee,		
	vs.			
	SAMUEL GLASS,		}	
	Appellant.			

The appellant having filed an appeal from a judgment in the Passaic District Court and the appellee having moved to dismiss this appeal on the ground that the stenographic transcript of the proceedings at the trial had not been certified by the trial judge, within the time provided by law: 20

And it appearing that such stenographic transcript of the proceedings was not certified by such trial judge within the time provided by law, it is hereby Ordered that the appeal be dismissed, with costs.

Dated May 25th, 1923.

Entered May 25, 1923.

On motion of

Edward F. Merrey, Attorney of Appellee.

A true copy.

Edward J. Kelleher,
Clerk.

Notes to the Reader

The following notes are intended to explain the

various points in the text.

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The author has endeavored to present a full and complete account of the various points in the text. It is hoped that the reader will find this account satisfactory. The author has also endeavored to present a full and complete account of the various points in the text. It is hoped that the reader will find this account satisfactory.

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New Jersey Court of Errors and Appeals

Protective Finance Corpora-
tion, a corporation,

Plaintiff-Appellee,

vs.

Samuel Glass,

Defendant-Appellant.

On appeal from
Supreme Court

Brief of Edward F. Merrey and William R. Vanecek, of Counsel with Plaintiff-Appellee

STATEMENT

This suit was brought by the plaintiff in the Passaic District Court to recover the sum of \$265.49.

The plaintiff was engaged in the business of financing the purchase of automobiles. In order to protect itself, plaintiff caused policies of liability insurance to be issued upon all of the automobiles which it financed. The defendant was an employee of plaintiff and was also the agent of several insurance companies, which had issued policies to plaintiff.

Upon the cancellation of the policies, defendant collected certain moneys as return premiums which should have been turned over to the plaintiff but which he refused to turn over.

Judgment was rendered against defendant in the District Court for the amount claimed and he appealed to the Supreme Court.

The plaintiff-appellee moved to dismiss the appeal on the ground that the stenographic proceedings at the trial was not certified by the trial judge within the time provided by law. That is, within fifteen days after the judgment.

The case was tried in the Passaic District Court by W. Carrington Cabell, the Judge of said Court, without a jury on December 6th, 1922. (Case page 9.) The transcript was certified December 20th, 1922, by Frederick V. Watson, who signed as acting Judge of the Passaic District Court. (Case page 44.) How Judge Watson came to certify the transcript appears in the opinion of the Supreme Court.

“What happened in the present case was that as the fifteen days was about to expire, appellant’s attorney went to the Court room on a day with the transcript, and found the trial judge had gone out of town, and another judge, an entire stranger to the case, was sitting and procured his certificate.” Case page 50.

This finding was based on an oral stipulation made between counsel at the argument in the Supreme Court, but not printed in the case.

The statute providing for the certificate of the transcript by the District Court Judge is **P. L. 1916, page 385**, reading as follows:

“Wherever either party to any action in any District Court in this State, now pending either in such District Court, or on appeal, or in any action which shall be hereafter brought in any such District Court,

shall have made application to the judge thereof for the appointment of a stenographer to transcribe the proceedings at the trial of the said action and take down the testimony therein, and the said judge shall have designated a stenographer to act as aforesaid in said action, at the expense of the party so applying, and an appeal shall have been taken from the judgment in said action, and the transcript of said proceedings and said testimony, made by said stenographer, shall have been certified by said Judge as the State of the case to be used on the hearing of said appeal, the party so appealing shall file such state of the case, with the Clerk of the Supreme Court on or before the opening day of the next term of said Supreme Court following the date of filing said appeal."

While the Supreme Court did not pass upon the merits of the case, counsel for appellant raises on this appeal all points raised by appellant in its attempted appeal from the District Court and while we do not believe those questions can properly be raised now, we have answered his argument in the event that this court desires to consider the appeal on its merits.

Eight reasons were given below for the reversal of the judgment.

The first reason is a general one and will be discussed later. The second, third, fourth and fifth

reasons seem to contain the main contention of the defendant.

It appears that the plaintiff was Delaware corporation and only filed its certificate of permission to do business within New Jersey shortly before the commencement of this suit. (See page 42, Exhibit P-1.)

The business in question, was transacted before the corporation obtained a certificate from the Secretary of State, giving it permission to do business in New Jersey.

There was evidence that the failure to obtain this permission was caused by the neglect of the defendant. Witnesses testified that the proper certificate was given to him with instruction to file the same with the Secretary of State and that he failed to do so. (See case page 26, lines 1 to 14.)

The statute reads as follows:

Section 97, 98, 100 and 101—General Corporation Act.

97. Every foreign corporation, except banking, insurance, ferry and railroad corporation, before transacting any business in this state, shall file in the office of the Secretary of State a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this state, and designating its principal office in this State and an agent who shall

be a domestic corporation or a natural person of full age actually resident in this State, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement the secretary of state shall issue to such corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this State, and he shall keep a record of all such certificates issued.

98. Until such corporations so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; provided, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

100. Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this state, without having first obtained authority therefor, as hereinbefore provided, shall for each offense forfeit to the state the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the state.

101. When by the laws of any other state

or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this state, doing business in such other state or nation, or upon their agents therein, than the laws of this state impose upon their corporations or agents doing business in this state, so long as such laws continue in force in such foreign state or nation, the same taxes, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other state or nation doing business within this state, and upon their agents here; provided, that nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other states or nations transacting business in the state.

The sixth reason is based upon the ground that the plaintiff should have sued the various insurance companies.

The seventh reason is that the court erred in permitting certain testimony to be admitted, but if it was an error, it was not harmful inasmuch as the defendant himself supplied sufficient evidence on the point in question in his defense.

The other two reasons are merely formal.

ARGUMENT

1.

THE APPEAL IS DEFECTIVE AS NO REASON IS ASSIGNED TOUCHING THE GROUND UPON WHICH THE SUPREME COURT DISMISSED THE APPEAL FROM THE DISTRICT COURT.

2.

THE SUPREME COURT FOUND THAT THE APPEAL FROM THE DISTRICT COURT WAS NOT PERFECTED IN THE MANNER PROVIDED BY STATUTE. THIS WAS A FINDING OF FACT OR AT LEAST OF MIXED LAW AND FACT AND IS NOT REVIEWABLE.

3.

THE APPEAL TO THE SUPREME COURT WAS NOT PERFECTED AND SHOULD HAVE BEEN DISMISSED BECAUSE THE TRANSCRIPT WAS NOT CERTIFIED BY THE TRIAL JUDGE.

Clearly it was the intent of the statute that the stenographer's transcript should be certified by the trial judge and no other.

Nothing need be said in support of this view beyond what is said in the opinion of the Supreme Court.

If the appellant has any complaint to make because of the situation in which he finds himself,

he should address that complaint to the Legislature which perhaps has allowed too short a time to perfect the appeal. The appellant would have been in as bad a case if the stenographer was dilatory or incompetent or had lost his notes.

If the appeal is properly before this Court and the decision of the Supreme Court may be reviewed here and if the Supreme Court was in error in dismissing the appeal from the District Court on the ground that the appeal was not perfected; then

4-A

THE PLAINTIFF COULD MAINTAIN THIS ACTION NOTWITHSTANDING THE DELAY IN OBTAINING A CERTIFICATE THAT IT WAS AUTHORIZED TO DO BUSINESS IN NEW JERSEY.

This question seems to have been carefully considered and properly decided by the District Court Judge.

In *Wolf vs. Lancaster*, 70 N. J. Law, page 201, it was held that a Pennsylvania Corporation could not maintain an action for goods sold in this state before receiving a certificate to do business in this state.

This decision was based upon the Section 101 of our Corporation Act, which imposes a retaliatory penalty.

It appears from the case cited in the opinion (*Delaware River Quarry Co. vs. Bethlehem Co.*,

53 Atlantic, page 533) that Pennsylvania applies this penalty upon foreign corporations. By the provisions of section 101, Pennsylvania corporations are under the same disability in New Jersey.

No claim was made that New Jersey corporations are under any such disability in Delaware. The District Court in answer to a request for non-suit said (Case page 23).

“It does not appear that there is any such regulation under the laws of Delaware.”

No evidence was offered as to the law of Delaware and therefore the retaliatory provisions of our statute were not effective. It would seem that a New Jersey corporation under like conditions could maintain its action in Delaware. **Model Heating Co. vs. Maganty, 81 Atlantic, page 394.**

Since section 101 cannot be invoked the question is presented as to the effect of section 98. This section provides:

“**Until** such corporations so transacting business shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state.”

This provision is plain and leaves no doubt of the intention of the legislature to permit suit to be maintained notwithstanding that the business was carried on before the foreign corporation obtained the necessary certificate.

The statutes of the different states regulating foreign corporations, vary and there are numerous decisions upon them.

The text book writers have treated the question quite at length. The following quotations are in point.

Morawetz on Private Corporations (2d Ed.) p. 665:

“The object of the various statutes providing that foreign corporations, before transacting business, shall comply with specified conditions, such as filing copies of their charters, making statements of their financial conditions, appointing agents upon whom process can be served, etc., is to protect parties dealing with these companies from imposition, and to secure convenient means of obtaining jurisdiction in the local courts. These statutes place foreign corporations in the same position as domestic corporations, in the particulars provided for. It is clearly not the primary purpose of the legislature, in passing these statutes to render the contract and dealings of corporations which have not complied with the statutes void and unenforceable. Hence, where the Legislature has not expressly declared that this result shall follow from a failure to comply with the statute, the courts ought not to imply such a result, unless this be necessary in order to obtain the primary object for which the statute was passed.”

Morawetz on Private Corporations (2nd Ed.) p. 665.

“The modern doctrine is coming to this: That one who enters into a contract is, when sued by the corporation upon such contract, estopped to deny that the corporation had power to make the contract. The obvious reason of the rule is, that such a person ought not to be allowed to oppose such a dishonest defense to a bargain which is fair so far as he is concerned. The rule of public policy which aims to keep corporations within the limits of their chartered powers, yields to the justice of the particular case; and the wrong which the corporation had done to the public, by transcending its powers, is left to be redressed in a public prosecution against the corporation.”

Thompson on Corporations, p. 5247.

Where a contract made in a state by a foreign corporation is void, either by express provision of the statute or under the construction placed upon it by the courts in the particular jurisdiction, because of the failure of the corporation to comply with the statutory requirements before entering into the contract, subsequent compliance with the statute will not enable the corporation to maintain an action thereon. Where a statute does not render void a contract made in a state by a foreign corporation before it has complied with the conditions imposed for doing business therein, but denies the right of a corporation to commence or maintain any action thereon in the courts of the state, whether compliance with the statutory requirements subsequent to the making of the contract will enable the corporation to enforce such

contracts therein depends upon the terms of the statute properly construed. Some statutes by their terms merely suspend the right to enforce contracts made in the state until compliance has been made. Thus compliance with the statutory requirements subsequent to the making of a contract in the state has been held to enable a foreign corporation to maintain an action thereon in the courts of the state where the statute merely denied the right to enforce such contracts "until" compliance; "so long as" there was a failure to comply, "unless it shall have complied," "unless it shall have first complied," "without first" complying, "without" complying, while unregistered, or "without alleging and proving" compliance.

14 A. C. J., p. 1302.

In note 21 to above numerous cases are cited to substantiate the text. See:

Model Heating Co. vs. Magantic, 81 Atlantic, 394.

Strasbaugh vs. Steward Can Co., 96 Atl., 863.

4-B

THE DEFENDANT WAS NOT AN AGENT FOR A DISCLOSED PRINCIPAL.

There were only two reasons given to the District Court in the request for a non-suit. The first has been considered under point I. The second was that defendant was an agent for a disclosed principal or principals. The court found as a fact defendant to pay the money (case page 25, lines 33

that there was an undertaking on the part of de-
etc.) and there was evidence upon which to base
this finding.

The defendant was actually in possession of the
money sued for (case page 30).

The defendant admits the correctness of the
amount claimed (case page 32).

The defendant promised to pay the amount so
claimed (case page 12).

The defendant had many other transactions of
a similar kind with plaintiff and it was his custom
to pay all returned premiums to the plaintiff (case
page 28 and 32).

The District Court was right in refusing to non-
suit on this ground.

4-C

THE DISTRICT COURT WAS NOT IN ER- ROR IN ADMITTING TESTIMONY.

The seventh reason (that is the first reason
marked seven) is based on the admission of certain
testimony showing letters from an insurance com-
pany.

The reason does not clearly specify the evidence
objected to. On page 13, an objection was taken to
a question of this kind, the question was allowed
but not answered. The defendant was not hurt by
an unanswered question. On page 21 an objection
was taken and over-ruled. The objection was taken
after answer given. The question was not opened
to objection. The answer was more than respon-

sive. The part objected to was the statement by the witness that he had letters from an insurance company. A mere statement of this kind did not injure the defendant, as no attempt was made to use the letters nor to reply on the facts shown by them.

These facts were immediately admitted (case page 21), with the exception of one item. Later all the amounts claimed by plaintiff were admitted to be accurate (pages 29 and 30).

IV.

CONCLUSION

While there are nine reasons given for reversal, only the three points discussed are open for argument as these were the only questions presented to the District Court. Non-suit was requested on two grounds considered above in points 1 and 2 and an objection taken to evidence considered under point 3. No request was made to enter judgment for defendant.

The defendant in his testimony raised a question as to whether the money claimed by plaintiff and which was admittedly in his hands, was due to plaintiff or some other persons. In the reasons for reversal, this question is not specifically raised and perhaps is abandoned. No formal objection was made so as to bring the matter before this Court.

The District Court Judge considered this question (case page 42) and seems to have decided it as one of fact.

There was evidence on which to base this finding
and so is not the subject of review in this Court.

The appeal should be dismissed.

Respectfully submitted,
Edward F. Merrey,
William R. Vanecek,
of counsel.

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NEW JERSEY COURT OF ERRORS AND APPEALS

PROTECTIVE FINANCE CORPORA-
TION (a corporation of Dela-
ware),

Plaintiff-Appellee,

vs.

SAMUEL GLASS,
Defendant-Appellant.

On Contract,
on Appeal
from New
Jersey
Supreme
Court.

BRIEF ON BEHALF OF DEFENDANT-APPEL- LANT.

Defendant appeals from the dismissal of an appeal by the Supreme Court and also from an affirmance of a judgment rendered against him in the Passaic District Court, Judge W. Carrington Cabell sitting without a jury. The appeal was dismissed because the Supreme Court held that the certification of the stenographic transcript for use as the state of the case on appeal can be made only by the judge who actually tried the case. The action is predicated on the theory that defendant, as agent for several insurance companies, contracted with the plaintiff corporation to issue its policies to the plaintiff corporation covering the divers automobiles financed by the plaintiff corporation.

The proof shows that the plaintiff corporation was a corporation organized under the laws of Delaware and it is an admitted fact in this case that the plaintiff

corporation did not file a certificate with the Secretary of State of the State of New Jersey permitting it to do business in said state until a few days previous to the commencement of the cause of action which was December 6th, 1922. It is further admitted that the items claimed to be due the plaintiff-appellee as listed under Schedule "A" attached to state of demand, had been contracted for prior to the institution of the suit in question.

The second point that the defendant-appellant will urge, is that the plaintiff-appellee contracted with the defendant-appellant, as agent for disclosed principal, and that as agent for a disclosed principal the said defendant-appellant could not be sued in his individual name and that if any action at all inured to the benefit of the plaintiff-appellee, such action should have been maintained and instituted against the principals of the appellant.

The third reason urged by the defendant-appellant will be the admission of certain evidence over the objection of counsel for defendant-appellant.

POINT I.

The Supreme Court erred in dismissing the appeal and affirming the judgment of the Passaic District Court because of the failure of the appellant to have the Judge who actually tried the case certify the stenographic transcript for use as the state of the case on appeal.

This, we maintain, is not sound law because assuming that the judge who originally tried this case had died or could not, because of illness, have been present within the statutory period, and where as in this case, counsel has been diligent and has presented the steno-

graphic record as required by statute within the prescribed time, and due to no fault on his part, and because of the failure of the judge to sit and properly sign orders, we maintain the Court erred in dismissing the appeal. Here, as the facts show, the judge was out of town and he had delegated another judge to sit and try causes and to usurp any powers which he may have had. The act specifically conferred upon the acting judge the same powers as the Court would have had had he been sitting. We maintain that it is not the judge who has the power. We maintain it is the Court and the Court is composed of any person who is actually delegated with power.

It is absolutely fundamental that if the judge had died during the time between the date on which this case was tried and fifteen days thereafter, that necessarily some acting judge, with power, would have had to sign the state of the case; or supposing that the judge who had actually tried the case, on the day following had left for Europe and before the stenographer had transcribed his testimony. Would the Court say that it was incumbent upon the appellant in this case or in any other case to go to Europe to locate the said judge? In the instant case, the attorney for the defendant-appellant presented himself with the stenographic record within the time prescribed by statute and with the presence of the attorney for the appellee. An order was then made by the acting judge to extend the time for the filing of the stenographic record, this by and with the consent of the attorney for the plaintiff-appellee. It is only upon reflection that the thought occurred that there might be some question about the power of the acting judge to extend the time and it was with this point in view that a trip was made to Ridgewood to have the acting judge certify the record, this all within the time prescribed by statute, so that your Honors cannot say,

with any force, that counsel had failed to be diligent in the prosecution of the appeal but has done everything in reason that can be required of him, and to construe a statute that the certification can only be had by the said trial judge is absolutely fallacious.

Citing:

Pamphlet Laws 1898, page 560.

POINT II.

Plaintiff-appellee as a foreign corporation, not having its certificate to transact business with the Secretary of State, could not maintain the action they instituted by it.

It appears in this case, without any dispute, that the plaintiff-appellee incorporated under the laws of Delaware in July of 1921, and that it opened its office and only office in the City of Passaic, New Jersey, and operated from this point and transacted its business down to the commencement of the present action, to wit, December 6th, 1922.

It is also an admitted fact in this case that the items appearing (Case, page 5), same being the schedule attached to state of demand, had been contracted by the plaintiff-appellee with the defendant-appellant prior to the issuance of the summons (Case, pages 15 and 16). It is also an admitted fact in this case that the transactions referred to in Schedule "A" attached to state of demand, constituted a series of acts covering a period of time from the date of its incorporation down to the date of the commencement of suit (Case, page 16).

Under this posture of affairs, we contend that the plaintiff-appellee could not maintain its action in view

of 2 *Compiled Statutes*, pages 1657-1658 and 1659, Sections 97, 98, 100. Section 98 reads as follows:

“Until such corporation so transacting business in this state shall have obtained such certificate of the Secretary of State it shall not maintain any action in this state upon any contract made by it in this state provided that nothing herein shall prevent the enforcement of any contract made prior to the 14th day of March, One thousand eight hundred ninety-five.”

Section 97 states that a foreign corporation, with a few exceptions therein stated which do not apply to the plaintiff-appellee, shall file in the office of the Secretary of State, a copy of its charter or certificate of incorporation attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business, where it is to transact in this state, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, and provisions therein stated.

Our courts have been called upon to construe Section 98, in the following cases:

Goldmark vs. Metal Co., 65 Law 341.
Groel vs. Electric Co., 69 Equity 397.
Lehigh Structural Steel Co. vs. Atlantic Smelting Co., et als., 111 Atl. 376.
Faxon vs. Lovett Co., 60 Law 128.
Delaware & Hudson Canal Co. vs. Mahlenbrock, 63 Law 281.
Wolf vs. Lancaster, 70 Law 201.
Delaware River Quarry Co. vs. Bethlehem Co., 53 Atl. (Pa.) 533.

In *Wolf vs. Lancaster*, 70 Law page 201, this Court held that a foreign corporation, under Pamphlet Laws

1896, page 307, cannot maintain an action for goods sold in this state before receiving a certificate to do business in this state, citing *Delaware River Quarry Co. vs. Bethlehem Co.*, 53 Atl. 533. In the Pennsylvania case, *supra*, the Court says, on page 534:

“Registration made after the business is completed will not restore the remedy. The subsequent act of the foreign corporation in filing a statement with the Secretary of the Commonwealth could not vitalize that which was dead.”

And the Court properly held that if he cannot open his case without showing that he has broken the law, the Court will not assist him whatever his claims in justice may be upon the defendant.

Swan vs. Scott, 11 Serg. & R. 164.

The right of a state to enact legislation to regulate a foreign corporation doing business within its confines, is well settled by a long line of decisions and when such a regulation has been imposed upon a foreign corporation it then becomes part of the public policy of this state to see to it that this corporation, before maintaining any suit in this state or asking the assistance of our courts, be compelled to comply with the provisions contained in our corporation acts. Surely if Sections 97 and 98 mean anything at all, they surely intend that a foreign corporation shall not be permitted to come into our courts and pray for relief or assistance without first having complied with the law. If this be so and if the legislative intent be given the effect intended, the plaintiff-appellee could not have maintained its present action and the Court should have nonsuited plaintiff-appellee when so moved to do by counsel.

In *Goldmark vs. Magnolia Metal Co.*, 65 Law 341 at page 350, late Justice Depue said:

"This legislation prescribes the conditions under which foreign corporations comprised within the statute shall be allowed to transact business in this state. They are therefore corporations not recognized by this state and are disqualified from claiming that the business carried on by them in this state is legally transacted."

Counsel is mindful of the fact that there are a line of decisions in our state which hold that a foreign corporation may transact business in this state but they all turn on the point that the transaction in question was a single isolated case and therefore did not come within the inhibition in Section 98. A reading of these cases will conclusively show that if there had been a series of transactions or acts, the cases would have been decided the other way.

Lehigh Structural Steel vs. Atlantic Smelting Co., 111 Atl. 376 at pages 382 and 383.

The inhibition contained under the laws of Delaware to a foreign corporation prohibits foreign corporations from doing business in this state through or by branch officers, agents or representatives located in this state until certified, under penalty of a misdemeanor, etc.

Revised Code, page 1007, Section 2101.

In *American Copying Co. vs. Eureka Bazaar*, 9 L. R. A. (new series) page 1176, the Court, in construing the statute of that state which is identical with that of ours, held that the action may not be maintained even though a certificate had been filed with the Secretary of State subsequent to the work having been done or the contracts having been made.

In 19 *Cyc. Law & Procedure*, at page 1292, the learned author says:

"Such a corporation does business in the state in violation of the statute and through the business so done a contract accrues to it which would otherwise be enforceable in the courts of the state. A corporation cannot because of the statutory prohibition, maintain an action upon such contract in the courts of the state."

The learned author cites New Jersey as supporting this view. This view has also been adopted by the New Jersey Supreme Court in the case of *Miller vs. Ammon*, 145 U. S. 421. This view is supported in the case of *South Amboy Terra Cotta Co. vs. Poerschke*, 45 Misc. 358, 90 N. Y. Supp. 333 and in the case of *Welsbach Co. vs. Norwich Gas & Electric Co.*, 96 App. Div. 52, 89 N. Y. Supp. 284.

It is quite apparent that it was the intention of the legislature to protect the citizens of this state in enacting the above legislation for if foreign corporations may operate within our confines and do business here without complying with Section 98 of our corporation act, our citizens would at no time have any redress against them, for service of no kind could be effected and our citizens would be left at the mercy of these foreign corporations if this provision were not enforced by the courts of our state. It is the duty of the court to give effect to the intention of the legislature as far as practicable and such intention should be ascertained from the words used in the statute and the subject-matter to which it relates. The words of this act are certainly mandatory. If this effect were not given to Section 98, the same would be a mere nullity and would not in any way express the intention of the legislature and our courts would not be giving credence and efficacy to that which the legislature has enacted into the public policy of our state.

In this case there can be no hardship to the plaintiff-appellee in denying its right to maintain an action

for the reason that it has maintained its offices and is maintaining its offices in the City of Passaic and State of New Jersey, the only office known to the corporation transacting business daily as a foreign corporation and such corporation should be made to comply with the provisions of our corporation act if it is desirous of transacting business in our state, and its failure to do so should result in a denial of the remedy sought. It is not sufficient if it be urged that a subsequent compliance with the statute would cure or vitalize that which the statute has declared could not be maintained.

Wolf vs. Lancaster, 70 Law page 201.
Delaware River Quarry & Construction Co.
vs. Bethlehem Co., 53 Atl. (Pa.) 533.
Diamond Glue Co. vs. U. S. Glue Co., 187 U.
 S. 611.
Tar vs. Western Loan & Savings Co., 21 L. R.
 A. (new series) page 707 and cases cited.

A collection of cases on this subject will be found in the note to 5 *Amer. & Eng. Encyc. of Law*, 71, title—business, and 8 *id.*, 346, title—foreign corporations; 6 *Thomp. Corp.*, Section 7936, etc., and the rule is learnedly stated in *Groel vs. Electric Co.*, in 69 Eq. page 397, at page 412, where learned Vice Chancellor said:

“It being entirely within the powers of each state to exclude foreign corporations or to admit them within its borders upon condition each state has the right to prescribe a mode of service of process upon foreign corporations which will subject them to the jurisdiction of its Courts,” etc.

The Court erred, we contend, in stating that the defendant-appellant was in no position to interpose the defense that the plaintiff-appellee had not filed a certificate with the Secretary of State, when the same was due to the negligence of the said Samuel Glass.

Assuming for present purposes that a certain paper was presented to Mr. Glass for filing, and that through his omission or neglect this paper was not filed, can the corporation be heard to say, "We are excused from compliance with the law, because of the omission on the part of our agent in doing that which he was directed to do." This position, we contend, is untenable, and will find no support in the eyes of the law.

Nowhere in the case does it appear that a fraud had been perpetrated upon the corporation by Mr. Samuel Glass, and an omission or oversight on the part of an agent or employee does not excuse the agent's principal from a strict compliance with the law.

For the reasons above stated we respectfully urge that the Court committed error in refusing to nonsuit the plaintiff-appellee when so moved to do by counsel for defendant-appellant.

POINT III.

Defendant was acting for a disclosed principal and this fact was made known to plaintiff-appellee during the course of negotiations with defendant-appellant.

The Court erred in refusing the motion for a nonsuit on the ground that it appeared in the evidence that the defendant-appellant contracted with the plaintiff-appellee as agent for the American Central Insurance Company of St. Louis, American Automobile Insurance Company of St. Louis, Mutual Life Insurance Company, Ocean Accident and Guaranty Corporation, California Insurance Company and the Missouri State Life Insurance Company (Case, page 27, and Case, page 16, lines 20 to 25). It is elementary that where one deals with an agent for a disclosed principal and

that as a direct result of the negotiations entered into between the agent and the contracting person there be a breach or a cause of action inuring to the benefit of a third person, any action that he might have would be as against the principal.

McCauley vs. Ridgewood Trust Co., 81 N. J. L. page 86, at page 88, this Court said:

"This count therefore comes within the rule that when a person acts and contracts avowedly as the agent of another who is known as the principal, his acts and contracts within the scope of his authority are the acts and contracts of the principal and involve no personal liability on the part of the agent."

Colloty vs. Schuman, 44 Vroom 92.

Hauenstein vs. Ruhid, *id.* 98.

The uncontradicted proof in this case clearly shows that it was the intention of the parties hereto that the return of all the premiums that might be due and owing to plaintiff-appellee should be forthcoming from the several principals from the defendant-appellant represented as agent, and in whose behalf the contract for the return of the premiums was made (Case, page 27, and Case, page 16, lines 20 to 25).

On page 16, Samuel Schomer, the president of the plaintiff-appellee, was asked:

"Q. And all this business was done through Mr. Samuel Glass, as agent, was it not? A. Insurance business, yes.

"Q. And Mr. Glass would represent what company? A. He represented lots of them.

"Q. Name some of the companies he represented—can you? A. The American Central Insurance Company."

It is quite obvious, therefore, from the foregoing, that the plaintiff-appellee looked for payment not from Mr. Samuel Glass, but from the principals whom he, Samuel Glass, represented.

The question is to be determined in each case by the intention of the parties ascertained in accordance with settled rules of construction and in view of all the language of the contract.

Solomon vs. New Jersey Indemnity Company,
110 Atl. 815.

Phelps vs. Weber, 84 N. J. L. 630.

Sadler vs. Young, 78 N. J. L. 594.

Kean vs. Davis, 21 N. J. L. 683.

The deduction to be drawn from the long list of adjudicated cases clearly seems to be that where the principal is disclosed by the agent, and the parties contract with the idea in mind of looking to the principal for compensation or responsibility, then, in that event, the agent is absolved from any civil liability and in the event of a breach or cause of action inuring to the benefit of a third party, then such action must be brought as against the principal and not as against the agent.

For the reasons above urged, we respectfully submit that the judgment of the Supreme Court and of the Passaic District Court be reversed and for nothing holden and a *venire de novo* issue.

Respectfully submitted,

WEINBERGER & WEINBERGER,

Attorneys for Defendant-Appellant.

JOSEPH J. WEINBERGER,

HARRY H. WEINBERGER and

IRVING L. WERKSMAN,

Of Counsel.

NEW JERSEY COURT OF ERRORS AND
APPEALS

.....

Protective Finance Corporation
(a corporation of Delaware),

Plaintiff-Appellee,

-VS-

Samuel Glass,

Defendant-Appellant.

.....
ON APPEAL FROM NEW JERSEY SUPREME
COURT,

POINTS UPON WHICH DEFENDANT APPELLANT RELIES

.....

Weinberger & Weinberger, Esqs.,
Attorneys of Defendant-Appellant,
Peoples Bank Bldg., Passaic,
N. J.

LAW OFFICES OF
WEINBERGER AND WEINBERGER
PEOPLES BANK BUILDING
PASSAIC, N. J.

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Protective Finance Corpor-
ation (a corporation of
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Plaintiff-Appellee,

-vs-

Samuel Glass,

Defendant-Appellant.

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ON APPEAL FROM NEW
JERSEY SUPREME COURT

POINTS UPON WHICH DEFEND-
ANT APPELLANT RELIES

1. Section 19 of the District Court Act, Pamphlet laws 1898, page 560. The Supreme Court erred in dismissing the appeal of the appellant because the state of the case was not certified by the trial judge who tried the case.

2. The Supreme Court erred in affirming the judgment of the Court Below in that the Honorable W. Carrington Cabell erred in denying motion for nonsuit when it appeared that the plaintiff appellee was a foreign corporation, transacting business in the State of New Jersey, and that said corporation had not filed its certificate permitting it to transact business in the State of New Jersey, and that said corporation had not filed its certificate permitting it to transact business in the State of New Jersey, in accordance with 2 Compiled Statutes, Sections 97, 98 and 100.

Goldmark vs. Metal Co. 65 Law 341;
Groehl vs. Electric Co. 69 Equity 397;

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Lehigh Structural Steel Co. vs. Atlantic Smelting
Co. et als. 111 Atl. 376;
Faxon vs. Lovett Co. 60 Law 128;
Delaware & Hudson Canal Co. vs. Mahlenbrock, 63
Law 281;
Wolf vs. Lancaster, 70 Law 201;
Delaware River Quarry Co. vs. Bethlehem Co. 53 Atl.
(Pa.) 533.

3. The Supreme Court erred in affirm-
ing the judgment of the Passaic District Court in that the
Court erred in failing to non-suit plaintiff-appellee when so
moved to do by the defendant-appellant, on the ground that
it was disclosed during the course of the trial that these
several transactions were had with the defendant appellant
as agent for a disclosed principal, and there was no original
undertaking on the part of the defendant appellant to repay
any unearned premiums, and that under this posture of
affairs the action should be brought as against the disclosed
principals rather than as against the agent, who, in this
case, is the defendant-appellant.

McCauley vs. Ridgewood Trust Co. 81 N. J. L. 86;
Collopy vs. Schuman, 44 Vroom 92;
Hauenstein vs. Ruhid, 44 Vroom 98;
Solomon vs. New Jersey Indemnity Co. 110 Atl. 815;
Phelps vs. Weber, 84 N. J. L. 630;
Sadler vs. Young, 78 N. J. L. 594;
Kean vs. Davis, 21 N. J. L. 683.

W. B. B. B. B.

Attorneys of defendant-
appellant.

THE STATE OF NEW YORK
IN SENATE
January 10, 1901.
REPORT
OF THE
COMMISSIONER OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
MAY 10, 1899.

The Commissioner of the Land Office has the honor to acknowledge the receipt of the report of the Board of Land Commissioners, dated January 10, 1901, and to transmit herewith the same to the Senate. The report of the Board of Land Commissioners is a valuable contribution to the knowledge of the land resources of the State, and it is hoped that it will be of service to the Legislature in its consideration of the land question.

The Board of Land Commissioners has also the honor to acknowledge the receipt of the report of the Board of Surveyors, dated January 10, 1901, and to transmit herewith the same to the Senate. The report of the Board of Surveyors is a valuable contribution to the knowledge of the land resources of the State, and it is hoped that it will be of service to the Legislature in its consideration of the land question.

The Board of Land Commissioners has also the honor to acknowledge the receipt of the report of the Board of Assessors, dated January 10, 1901, and to transmit herewith the same to the Senate. The report of the Board of Assessors is a valuable contribution to the knowledge of the land resources of the State, and it is hoped that it will be of service to the Legislature in its consideration of the land question.

The Board of Land Commissioners has also the honor to acknowledge the receipt of the report of the Board of Taxpayers, dated January 10, 1901, and to transmit herewith the same to the Senate. The report of the Board of Taxpayers is a valuable contribution to the knowledge of the land resources of the State, and it is hoped that it will be of service to the Legislature in its consideration of the land question.