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Notice and Grounds of Appeal.

New Jersey Supreme Court

RAYMOND P. THOMPSON,
Plaintiff,

vs.

JOHN G. PEPPLER,
Defendant.

10

Action at Law.
Notice and
Grounds of
Appeal.

To Henry W. Lewis, Esq., Attorney for Plaintiff: 20

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The complaint should have been dismissed, because it does not set forth a cause of action.

2. That the amended complaint discloses no cause of action.

3. It was error on the part of the Circuit Judge to allow the filing of the amended complaint after the case had been tried and the Court had reserved decision. 30

4. The letter dated January 26, 1915, upon which the suit is based, is not a valid contract.

5. Because there is no consideration for the promise made by defendant in the letter of January 26, 1915.

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Notice and Grounds of Appeal.

6. Because the consideration of defendant's promise, if there were any, was past consideration.

7. The contract of January 26, 1915, cannot be construed as a guarantee.

10 8. The Circuit Judge erred when it refused to admit the evidence offered by the defendant.

9. The Circuit Judge erred when it refused to admit in evidence, testimony of agency of the defendant for certain principals, in the transaction with the plaintiff.

10. The Court erred when it held the defendant liable on the contract, because the evidence tended to show that defendant acted as the agent of Page & Lyons.

20 11. Because the Circuit Court erred in rendering judgment for the plaintiff and against the defendant.

Dated April 3, 1917.

LEVITAN & LEVITAN,
Attorneys for Defendant.

Endorsed:

30 Due and sufficient service of within notice and grounds of appeal acknowledged this 9th day of April, 1917.

H. W. LEWIS,
Attorney of Plaintiff.

Summons.

(Filed July 13, 1916.)

(L. S.) THE STATE OF NEW JERSEY

TO JOHN G. PEPPLER:

YOU ARE SUMMONED to answer the annexed complaint of Raymond P. Thompson in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court at Trenton within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. (And see notice endorsed hereon.)

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WITNESS, WILLIAM S. GUMMERE, Chief Justice of our said Court, at Trenton, this twelfth day of July, nineteen hundred and sixteen.

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WILLIAM C. GEBHARDT,
Clerk.

H. W. LEWIS,
Attorney.

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Complaint.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

10	<p style="text-align: center;">RAYMOND P. THOMPSON, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN G. PEPPLER, Defendant.</p>	} Action at Law. Complaint.
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Plaintiff, residing at Pleasantville, County of Atlantic and State of New Jersey, says that:

20 1. On January 26, 1915, Frederic R. Page and Harold C. Lyon, trading as Page & Lyon, were indebted unto plaintiff in the sum of \$450.00 for services rendered in the completion of a tax map under a contract had by the said Page & Lyon with the Borough of Pleasantville, New Jersey, of date February 14, 1914.

30 2. At some time previous to the date first aforesaid, said Page & Lyon did assign said contract with the emoluments due or to become due thereon to John G. Pepler, the defendant, in consideration of which said Pepler did agree that he would collect such sum of emoluments due or to become due thereon, and that when collected he would pay therefrom to the plaintiff the sum of \$450.00 due to him as aforesaid; all of which said Pepler gave notice to plaintiff in writing of date January 26, 1915.

40 3. Afterwards, on or about July 19, 1915, said defendant collected the sum of \$1,146.03 due from

Complaint.

the Borough of Pleasantville on said contract assigned to him by Page & Lyon.

4. Defendant has not applied any part of the proceeds collected by him as aforesaid in payment of said indebtedness due plaintiff, but still retains the same, although payment thereof has frequently been demanded of him by plaintiff.

10

Plaintiff demands as damages \$450.00 with interest from July 19, 1915.

H. W. LEWIS,
Plaintiff's Attorney.

SCHEDULE:

The following is a copy of the notice mentioned in the within complaint:

20

West Hoboken, N. J.
January 26th, 1915.

Mr. R. P. Thompson,
Pleasantville, N. J.

Dear Sir:

Both your letter of recent date received. I did not answer them before this, because I could not get in touch with Messrs. Page & Lyons. I finally got hold of them and explained to them the situation to them, and they most willingly deposited with me sufficient money which, added to the \$1146.03 due from the Borough of Pleasantville, will be sufficient to pay both my claim and yours, so that, just as soon as I receive from the Borough of Pleasantville, the amount of the bill rendered by Messrs. Page & Lyons, I shall immediately send you check for \$450 in full settlement of your claim against Page & Lyons.

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Complaint.

If you have not already delivered the completed maps to said Borough, kindly do so, so that both of us will get our money at the earliest possible date date.

10 I am sorry that a misunderstanding has occurred between you and Messrs. Page & Lyons. I know Mr. Page several years, and he is entirely on the level, and it was his intention to pay you any deficiency arising out of your contract.

I am also writing to the Mayor & Council of Pleasantville, advising them that upon receipt of the \$1146.03 from them, I shall immediately pay you the 450 coming to you.

Trusting this arrangement now meets with your entire approval, I am

20 Yours Sincerely,

JOHN G. PEPPLER.

To the within-named Defendant:

30 In case the within summons and complaint are served upon you personally, then take notice that if you intend to make a defense to this action, you must file an affidavit of merits within ten days from the date of such service, and must file your answer within twenty days from the date of such service, and in default of filing such affidavit and answer, judgment will be entered against you. Lawful service upon a corporation is deemed personal service for the purpose of this notice (P. L. 1912, p. 394, Rule 56).

H. W. LEWIS,
Plaintiff's Attorney.

Answer.

NEW JERSEY SUPREME COURT,
ATLANTIC COUNTY.

RAYMOND P. THOMPSON,
Plaintiff,

VS.

JOHN G. PEPPLER,
Defendant.

Action at Law.
Answer.

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Defendant, residing in the Township of Weehawken, answering the complaint herein, says:

1. He denies the first paragraph of the complaint. 20

2. He denies the second paragraph of the complaint.

3. Defendant admits so much of paragraph three of the complaint which alleges that defendant collected \$1,146.03 from the Borough of Pleasantville, but denies the allegation that the contract was assigned to defendant by Page & Lyons.

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4. He denies the fourth paragraph.

For defense to said action this defendant says:

FIRST SEPARATE DEFENSE.

Defendant will object that the complaint discloses no cause of action. The letter indicated in the schedule fails to show any consideration moving from the plaintiff to the defendant for the alleged promise to pay the sum of \$450.

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Answer.

SECOND SEPARATE DEFENSE.

1. The defendant denies the truth of the matter contained in the complaint.

10 2. On the 25th day of March, 1914, one Frederick R. Page and Harold C. Lyons, being indebted to defendant in a certain sum of money, for a valid consideration assigned to defendant a certain payment of money to become due to them from the Borough of Pleasantville, Atlantic County, New Jersey, a copy of which assignment is hereto annexed and marked "Exhibit A."

20 3. That thereafter said Page & Lyons entered into a written contract with the plaintiff whereby the plaintiff was to do certain work for said Page & Lyons, for which services by plaintiff Page & Lyons were to pay the plaintiff a certain sum of money. At all times thereafter plaintiff continued in the employment of Page & Lyons, up to the time of the completion and delivery of the work.

THIRD SEPARATE DEFENSE.

30 The said alleged contract mentioned in the complaint in the schedule thereof was without any consideration moving from the plaintiff to the defendant.

LEVITAN & LEVITAN,
Attorneys for Defendant.

Answer.

Exhibit A.

KNOW ALL MEN BY THESE PRESENTS, that we, FREDERIC R. PAGE and HAROLD C. LYONS, having a place of business at #404 Jackson Av., Long Island City, County of Queens, City and State of New York, parties of the first part, in consideration of the sum of One dollar (\$1.00) and other good and valuable considerations, lawful money of the United States, to us in hand paid by JOHN G. PEPLER, whose business office is at the Commonwealth Trust Company, West Hoboken, New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, all of the sums or payments of money to become due us, the said Frederic R. Page and Harold C. Lyons, the said parties of the first part hereto, from the Borough of Pleasantville, Atlantic County, State of New Jersey, for the full and faithful performance of all of the work mentioned in a certain contract in writing, bearing date February 14th, 1914, entered into by and between the said Frederic R. Page and Harold C. Lyons and the Mayor and Council of the Borough of Pleasantville, Atlantic County, State of New Jersey, copy of which said agreement is hereto attached, by virtue of, and according to the terms of which said agreement, immediately upon the completion of the maps therein stated and the acceptance of the same by the Board of Equalization of Taxes, we, the said Frederic R. Page and Harold C. Lyons, are to receive from the said Borough of Pleasantville, the price of two hundred and ninety seven and 50/100 dollars (\$297.50)

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Answer.

per square mile of 640 acres, as said copy of said contract will more fully show and to which said attached copy further reference is hereby made.

10 TO HAVE AND TO HOLD the said sums or payments of money unto the said party of the second part hereto, his heirs, administrators, assigns or nominees forever and we, the said Frederic R. Page and Harold C. Lyons, hereby direct the said Mayor and Council of the Borough of Pleasantville, New Jersey, to cause all of the moneys and payments which will be due and accruing to us, from the said Borough of Pleasantville, by virtue of the said contract, to be paid to the said John G. Pepler, the said party of the second part hereto, in the manner above stated and we do hereby make, constitute and appoint the said party of the second part our true and lawful attorney, irrevocable in our name or otherwise, but at his proper cost and charges, to have, use and take all lawful ways and means for the recovery of the said money, and interest, if any; and in case of payment, to discharge the same as fully as we might or could do if these presents were not made.

20

30 IN WITNESS WHEREOF, we have hereunto set our hands and seals in duplicate, the 25th day of March in the year one thousand nine hundred fourteen (1914).

(signed) FREDERIC R. PAGE (L. S.)

(signed) HAROLD C. LYONS (L. S.)

Sealed and delivered
in the presence of

HENRY KOHLMAYER.

D. T. MEYER.

Reply.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

<p>RAYMOND P. THOMPSON, Pl'ff,</p> <p style="text-align: center;">vs.</p> <p>JOHN G. PEPPLER, Def't.</p>	}	<p>Action at Law. Reply.</p>	10
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Plaintiff denies the allegations as contained in the several defenses set forth in the answer.

H. W. LEWIS, Plaintiff's Attorney.	20
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Notice of Application to Amend.

(Filed January 13, 1917.)

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">RAYMOND P. THOMPSON, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN G. PEPLER, Defendant.</p>	} Action at Law. Notice of Application to Amend.
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*To Messrs. Levitan & Levitan,
Attorneys of Defendant.*

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Sirs:

Take notice of application before his Honor, Howard Carrow, Judge of Atlantic County Circuit Court, to whom the above stated cause has been referred, at chambers in the Law Building, Atlantic City, New Jersey, on Friday, the 19th instant, at the hour of 11 o'clock A. M., or as soon thereafter as counsel can be heard, for an order to amend the complaint in said cause so that the same may read as follows:

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“Plaintiff, residing in Pleasantville, County of Atlantic and State of New Jersey, says that:

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1. On January 26, 1915, Frederic R. Page and Harold C. Lyon, trading as Page & Lyon, were indebted unto plaintiff in the sum of \$450 for services rendered in the construction of a tax map under a contract had by said page & Lyon with the Borough of Pleasantville, New Jersey, of date February 14, 1914.

Notice of Application to Amend.

2. At some time previous to the date first aforesaid, said Page & Lyon did assign the emoluments due, or to become due on said contract, to John G. Pepler, the defendant; and in consideration on certain moneys paid to him by said Page & Lyon as mentioned in a letter of defendant to plaintiff of date January 26, 1915 (a copy of which is set forth in the annexed schedule as a part hereof), defendant proposed to plaintiff that he (plaintiff) complete and deliver said maps to said Borough of Pleasantville, and that he (the defendant) would collect the sum of \$1,146.03 due from said borough and pay to plaintiff the sum of \$450 due him as aforesaid. 10

3. Plaintiff in good faith accepted and acted upon such proposal, and delivered the said completed maps to said Borough of Pleasantville as requested. 20

4. Afterwards, on or about July 19, 1915, defendant collected the sum of \$1,146.03 from said Borough of Pleasantville, being the emoluments of the contract assigned to him by Page & Lyon as aforesaid.

5. Defendant has not paid plaintiff the sum due him as aforesaid, although payment thereof has frequently been demanded of defendant by plaintiff. Plaintiff demands as damages \$450 with interest from July 19, 1915. 30

H. W. LEWIS,
Plaintiff's Attorney.

Notice of Application to Amend.

The following is a copy of the letter mentioned in the complaint:

West Hoboken, N. J.
January 26th, 1915.

10 Mr. R. P. Thompson,
Pleasantville, N. J.

Dear Sir:

Both your letters of recent date received. I did not answer them before this, because I could not get in touch with Messrs. Page & Lyons. I finally got hold of them and explained the situation to them, and they most willingly deposited with me sufficient money which, added to the \$1146.03 due from the Borough of Pleasantville, will be sufficient to pay both my claim and yours, so that, just as soon as I receive from the Borough of Pleasantville the amount of the bill rendered by Messrs. Page & Lyons, I shall immediately send you a check for \$450 in full settlement of your claim against Page & Lyons.

20 If you have not already delivered the completed maps to said Borough, kindly do so, so that both of us will get our money at the earliest possible date.

30 I am sorry that a misunderstanding has occurred between you and Messrs. Page & Lyons. I know Mr. Page several years, and he is entirely on the level, and it was his intention to pay you any deficiency arising out of your contract.

I am also writing to the Mayor & Council of Pleasantville, advising that upon the receipt of the \$1146.03, I shall immediately pay you the 450 coming to you.

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Notice of Application to Amend.

Trusting this arrangement now meets your entire approval,

I am yours sincerely,

JOHN G. PEPPLER."

January 10th, 1917.

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Yours, etc.,

H. W. LEWIS,
Plaintiff's Attorney.

Order to Amend.

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(Filed January 20, 1917.)

NEW JERSEY SUPREME COURT.

RAYMOND P. THOMPSON,
Pl'ff,

vs.

JOHN G. PEPPLER,
Def't.

Action at Law.
Order to
Amend.

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This matter coming on to be heard upon notice duly served: It is on this 19th day of January, 1917, on motion of H. W. Lewis, attorney of plaintiff, ordered that the complaint in the above stated cause be and the same is hereby amended to read as follows:

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Order to Amend.

"Plaintiff, residing in Pleasantville, County of Atlantic and State of New Jersey, says that:

10 1. On January 26, 1915, Frederic R. Page and Harold C. Lyon, trading as Page & Lyon, were indebted unto plaintiff in the sum of \$450 for services rendered in the construction of a tax map under a contract had by said Page & Lyon with the Borough of Pleasantville, New Jersey, of date February 14, 1914.

20 2. At some time previous to the date first aforesaid, said Page & Lyon did assign the emoluments due, or to become due on said contract, to John G. Pepler, the defendant; and in consideration of certain moneys paid to him by said Page & Lyon as mentioned in a letter of defendant to plaintiff of date January 26, 1915 (a copy of which is set forth in the annexed schedule as a part hereof), defendant proposed to plaintiff that he (plaintiff) complete and deliver said maps to said Borough of Pleasantville, and that he (the defendant) would collect the sum of \$1,146.03 due from said borough and pay to plaintiff the sum of \$450 due him as aforesaid.

30 3. Plaintiff in good faith accepted and acted upon such proposal and delivered the said completed maps to the said Borough of Pleasantville as requested.

4. Afterwards, on or about July 19, 1915, defendant collected the sum of \$1,146.03 from said Borough of Pleasantville, being the emoluments of the contract assigned to him by Page & Lyon as aforesaid.

Order to Amend.

5. Defendant has not paid plaintiff the sum due him as aforesaid, although payment thereof has frequently been demanded of defendant by plaintiff.

Plaintiff demands as damages \$450 with interest from July 19, 1915.

H. D. LEWIS,
Plaintiff's Attorney.

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SCHEDULE:

The following is a copy of the letter mentioned in the complaint:

West Hoboken, N. J.
January 26th, 1915.

20

Mr. R. P. Thompson,
Pleasantville, N. J.

Dear Sir:

Both your letters of recent date received. I did not answer them before this, because I could not get in touch with Messrs. Page & Lyons. I finally got hold of them and explained the situation to them, and they most willingly deposited with me sufficient money which, added to the \$1146.03 due from the Borough of Pleasantville, will be sufficient to pay my claim and yours, so that, just as soon as I receive from the Borough of Pleasantville the amount of the bill rendered by Messrs. Page & Lyons, I shall immediately send you a check for \$450 in full settlement of your claim against Page & Lyons.

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Order to Amend.

If you have not already delivered the completed maps to the said Borough, kindly do so, so that both of us will get our money at the earliest possible date.

10 I am sorry that a misunderstanding has occurred between you and Messrs. Page & Lyons. I know Mr. Page several years, and he is entirely on the level, and it was his intention to pay you any deficiency arising out of your contract.

I am also writing to the Mayor & Council of Pleasantville, advising that upon the receipt of the \$1146.03, I shall immediately pay you the 450 coming to you.

Trusting this arrangement now meets with your entire approval,

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I am yours sincerely,

JOHN G. PEPPLER."

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Testimony.

NEW JERSEY SUPREME COURT,
ATLANTIC COUNTY.

<p style="text-align: center;">RAYMOND P. THOMPSON, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOHN G. PEPPLER, Defendant.</p>	}	<p style="text-align: right;">Action at Law.</p>	<p>10</p>
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Mays Landing, N. J., October 23, 1916.

TESTIMONY 20

Before Hon. HOWARD CARROW, Judge, without a jury.

APPEARANCES :

For the Plaintiff: HENRY W. LEWIS, Esq.
For the Defendant: MESSRS. LEVITAN & LEVITAN.

The Court: This case, as I understand it, is before the Court without a jury upon agreed facts. 30

Mr. Levitan: It is stipulated and agreed that Page & Lyons made a contract with the Borough of Pleasantville to furnish certain maps in accordance with contract which is offered in evidence and marked Exhibit P-1.

Page & Lyons, in order to finance the work under this contract Exhibit P-1, borrowed certain moneys from the defendant, John G. Peppler. To secure the payment of these moneys Page & Lyons as- 40

Proceedings on Trial.

signed to the defendant John G. Pepler the moneys to become due to them, Page & Lyons, from the Borough of Pleasantville. This assignment was made in writing and is offered in evidence and marked Exhibit P-2.

10 After the execution of the instrument P-2, Page & Lyons entered into an agreement with the plaintiff Thompson, which agreement is offered in evidence and marked Exhibit P-3.

After the execution of Exhibit P-3, the Borough of Pleasantville wrote a letter to the defendant Pepler wherein they recite that a demand was made for the production of the maps, which letter is offered in evidence and marked Exhibit P-4:

“OFFICE OF CITY CLERK OF PLEASANTVILLE.

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Pleasantville, N. J., January 27, 1915.

Mr. John G. Pepler,
West Hoboken, N. J.

Dear Sir:

In answer to yours of the 26th, in regards to payment of bill of \$1,146.03 rendered by Messrs. Page & Lyons, would state: said bill will be paid as soon as tax maps are delivered to Pleasantville.

30

Tax maps are now in the hands of one R. P. Thompson, upon whom I served a demand on the 26th. Pleasantville wants the said maps and is ready to pay for the same when in the custody of the municipal officials.

This communication by authority of the Mayor and Common Council of Pleasantville.

Very truly yours,

NEHEMIAH ANDREWS,
City Clerk.”

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Proceedings on Trial.

The plaintiff Thompson completed his maps and after some correction delivered them to the Borough of Pleasantville. A considerable time thereafter the Borough of Pleasantville paid to the defendant John G. Pepler the sum of \$1,146.03.

Prior to the payment of the money by the Borough of Pleasantville to the defendant John G. Pepler, there was correspondence between Mr. Pepler and Mr. Thompson and in reply to one of these letters the defendant Pepler wrote the letter of January 26th, 1915, annexed to the complaint, which is the basis of this suit.

On the part of the defendant it is desired to offer in evidence the statement of facts which we ask to be marked D-1 for Identification, and three letters. Formal offer of statement of facts and the letters is made.

Mr. Lewis: The plaintiff objects to the offer of the statement and letters because they are irrelevant, the plaintiff having no knowledge of them and having no concern.

The Court: The Court will pass upon the admissibility of the evidence.

Mr. Levitan: I offer to prove by the statement of facts the following: Mr. John G. Pepler was first a creditor and then became agent for Page & Lyons in the handling of the proceeds due them, Page & Lyons, from the Borough of Pleasantville. He had instructions to pay the money to R. P. Thompson, that is, the amount due him. On those instructions he wrote R. P. Thompson as per the letter in the complaint. Later on the money was paid to John G. Pepler, but before he had an opportunity to pay plaintiff Thompson he was instructed to withhold the payment of the money and for that reason he did not pay the money to R. P. Thompson.

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Proceedings on Trial.

He is still holding that money for Page & Lyons, which is represented by partly being in cash and partly by note made by Page & Lyons to John G. Pepler.

10 John G. Pepler did not know Mr. R. P. Thompson until he had met him in court. He had acted as the agent for Page & Lyons at all times and even the letters were written at the instigation of Page & Lyons.

I also desire to offer the following letter:

“New York City, April 14th, 1915.

John G. Pepler, Esq.,

Dear Sir:

20 Enclosed notes and interest. Will write to the Mayor and City Clerk of Pleasantville again immediately. That civil engineer R. P. Thompson is to blame for this whole delay and we have good grounds for suing him. Either Mr. Lyons or myself will go to Pleasantville again immediately unless I find that the City is ready to pay.

Resp.

FREDERIC R. PAGE.”

30 Letter:

“New York City, April 12th, 1915.

John G. Pepler, Esq.,

Dear Sir:

40 Have not heard a word from Pleasantville, N. J., since we heard about one month ago that R. P. Thompson was correcting a mistake he had made on the plans. I wrote to him yesterday asking what

Proceedings on Trial.

action the City Council had taken and when the bill would be paid. If not settled and interest on notes is to be paid again, please let me know immediately, so it can be taken care of. If not paid and new notes are required, please let me know. Enclosed please find a filing card. If you have any work in my line or know of any, please let me know. 10

Respectfully yours,

FREDERIC R. PAGE."

"Long Island City, July 25th, 1914.

John G. Pepler, Esq.,

Dear Sir:

I wrote you from Pleasantville asking for extension of time on my notes. We have entered into a contract with the local engineer in Pleasantville to complete the maps for a fixed sum and he gives us a bond of five hundred dollars for the faithful performance of the work. He has a large number of maps and deeds made in the last thirty years and it was best to employ him to finish the work. 20

I have called you on the phone several times but I cannot find you at home. Kindly inform me if you give the extension on the notes until the work is completed and the Borough pays. 30

Most respectfully yours,

FREDERIC R. PAGE,
for Page & Lyons."

Mr. Lewis: The plaintiff objects to the introduction of the statement and letters on the ground of irrelevancy. 40

Proceedings on Trial.

The Court: The Court understands that you object to this entire offer and the Court will pass upon the legality of the proof.

Mr. Levitan: In case the Court excludes the offer of the proof just read, I then desire the Court to note my objection to such ruling on the record.

10 (Exception noted for defendant.)

Mr. Lewis: In the event of the admission of such testimony by the Court the plaintiff desires to introduce a telegram received by plaintiff from H. C. Lyons as follows: "R. P. Thompson your letter received. You are apparently unfamiliar with terms of your contract with us. Your contract is not completed and you are not entitled to payment until we have received money from Pleasantville. However anxious to finish job and will have Pepler guarantee your payment to-morrow. Get matter closed. Signed H. C. Lyons." Dated 1/24.

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Also a postal card of date 6/9/15, to wit: "Called on J. G. P. week or ten days ago. We have received nothing from P'ville. When he receives 1146 from P'ville he will remember you. Sent your letter to H. C. L. with instructions to answer. J. G. P. promised to notify us as soon as he received any thing from P. Am on street now so answer by postal. Surprised you have not received a letter from H. C. L. Yours F. R. P."

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It is admitted F. R. P. is F. R. Page.

Mr. Levitan: I object to the admission of this testimony on the following grounds: first, that it is hearsay as against this defendant, John G. Pepler; and secondly, that it is not binding upon John G. Pepler; third, that it is correspondence between a third party and the plaintiff and has no bearing upon the issue.

40 It is stipulated that the expense of typewriting the testimony is to be included and act with the cost of suit.

Exhibit P-1.

KNOW ALL MEN BY THESE PRESENTS, that we, FREDERIC R. PAGE and HAROLD C. LYONS, having a place of business at #404 Jackson Avenue, Long Island City, County of Queens, City and State of New York, parties of the first part, in consideration of the sum of One dollar (\$1) and other good and valuable considerations, lawful money of the United States, to us in hand paid by JOHN G. PEPPLER, whose business office is at the Commonwealth Trust Company, West Hoboken, New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, all of the sums or payments of money to become due us, the said Frederic R. Page and Harold C. Lyons, the said parties of the first part hereto, from the Borough of Pleasantville, Atlantic County, State of New Jersey, for the full and faithful performance of all of the work mentioned in a certain contract in writing, bearing date February 14th, 1914, entered into by and between the said Frederic R. Page and Harold C. Lyons and the Mayor and Council of the Borough of Pleasantville, Atlantic County, State of New Jersey, copy of which said agreement is hereto attached, by virtue of, and according to the terms of which said agreement, immediately upon the completion of the maps therein stated and the acceptance of the same by the Board of Equalization of Taxes, we, the said Frederic R. Page and Harold C. Lyons, are to receive from the said Borough of Pleasantville, the price of two hundred and ninety seven and 50/100s dollars (\$297.50) per square mile of 650 acres, as said copy of said contract will more fully show and to

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Exhibit P-1.

which said attached copy further reference is hereby made.

10 TO HAVE AND TO HOLD the said sums or payments of money unto the said party of the second part hereto, his heirs, administrators, assigns or nominees forever and we, the said Frederic R. Page and Harold C. Lyons, hereby direct the said Mayor and Council of the Borough of Pleasantville, New Jersey, to cause all of the monies and payments which will be due and accruing to us, from the said Borough of Pleasantville, by virtue of the said contract, to be paid to the said John G. Peppler, the said party of the second part hereto, in the manner above stated and we do hereby make, constitute and appoint the said party of the second part our true and lawful attorney, irrevocable in our name or otherwise, but at his proper cost and charges, to have, use and take all lawful ways and means for the recovery of the said money, and interest, if any; and in case of payment, to discharge the same as fully as we might or could do if these presents were not made.

20

30 IN WITNESS WHEREOF, we have hereunto set our hands and seals in duplicate, the 25th day of March, in the year one thousand nine hundred fourteen (1914).

FREDERIC R. PAGE (L. S.)
HAROLD C. LYONS (L. S.)

Sealed and delivered
in the presence of

HENRY KOHLMAYER.
D. T. MEYER.

Exhibit P-1.

AGREEMENT MADE THIS 14TH DAY OF FEBRUARY, 1914, between the Mayor and Council of the Borough of Pleasantville, Atlantic County, State of New Jersey, a municipal corporation, parties of the first part, and Frederic R. Page and Harold C. Lyons, having a place of business at #404 Jackson Avenue, Long Island City, County of Queens, City and State of New York, parties of the second part. 10

WHEREAS, the parties of the first part desire to have made a Tax Map of the Borough of Pleasantville.

NOW, THEREFORE, the said Mayor and Council of the Borough of Pleasantville, parties of the first part, and the said Frederic R. Page and Harold C. Lyons, parties of the second part, for and in consideration of One Dollar (1.00) in hand paid each to the other, and receipt of which is hereby acknowledged, do covenant, promise and agree each with the other as follows: 20

FIRST: The said parties of the second part, for and in consideration of the hereinafter mentioned payments, do covenant, promise and agree, excepting as hereinafter specified, to furnish all material, labor, tools, etc., necessary to fully complete as required by and specified by the Board of Equalization of Taxes of New Jersey, September 16th, 1913, a Tax Map of the Borough of Pleasantville, Atlantic County, State of New Jersey. 30

SECOND: The said parties of the second part further agree as follows:

1. All maps shall be prepared on sheets 36 inches by 24 inches wide, upon durable mounted paper, with plain border. 40

Exhibit P-1.

2. Maps shall generally be drawn to the following scales:

City or Urban districts	1 inch to 50 feet.
Suburban districts	1 inch to 100 feet.
Rural districts	1 inch to 200 feet.

10 3. All maps for City and Suburban territory are to show street lines, streams, lot and plot boundaries, railroads, names and widths of streets, as well as of roads and alleys, widths and depths of rectangular plots, dimensions of irregular lots and plots. Sub-divisions are to be designated by blocks, lots and plots, each numbered properly. Area of acreage plots to be shown in acres and thousandths.

20 4. On maps of rural districts are to be shown all highways, rivers, streams, canals, railroads, together with their names. All property boundaries are to be shown. The area of each parcel of land is to be shown in acres and hundredths, together with the names of the owners. The sub-divisions shall be sections and plots properly numbered.

30 5. All maps shall show location of such features as active mines, quarries, and clay pits; also cemeteries, public parks, and State, County and Municipal Institutions, such as Court houses, municipal buildings, school houses, asylums and prisons, and any other property actually exempt from taxation. The approximate outlines of tidal and fresh water, marsh land, timber land and agricultural or farm lands shall be shown.

40 6. Where fire or lighting have been established, or where any territory has been set off for which a special tax rate has been authorized in addition to the regular tax rate in that taxing district, the boundaries of these districts are to be shown on the "key map" and on each individual detail sheet

Exhibit P-1.

where such special districts occur, by conspicuous dash line.

7. Error in survey are not to exceed the following:

Chaining city and suburban territory, 1/10 of 1%.

Chaining rural districts, flat country, 1/4 of 1%.

Chaining rural districts, rough and difficult country, 1/2 of 1%. 10

All traverse lines to be closed with error of closure not to exceed two minutes at any closure point.

8. All maps, when completed, are to be bound in atlas form, with covers of loose-leaf type. A "key map" showing to small scale the locations, outlines and number of each sheet, shall be provided. 20

9. All maps, at lower right hand corner, shall contain the names of the district and county, date, scale, name and address of surveyor. 20

10. Block and section numbers shall be placed at or near the center of each block or section in prominent figures; lot or plot numbers shall be shown in smaller and lighter figures. Street and highway lines shall be drawn in solid black lines about 1/25 of an inch in thickness; property lines shall be in solid black lines but of less thickness. 30
Boundaries of taxing districts are to be shown by prominent dash and double dotted lines. All lines and lettering are to be made with black water-proof ink.

11. The sheets shall be so plotted that the upper border lines lies to the northward, with upper and lower borders extending in easterly and westerly directions, as nearly as practicable. 40

Exhibit P-1.

12. Each map shall have a plain serviceable meridian not less than five inches long, with north and south lines corresponding to the true meridian, and the variation between the true and magnetic meridians shown as existing at the date of survey.

10 13. The system of defining and numbering blocks, lots, sections, and plots shall be approved by the Board of Equalization of Taxes.

14. All new maps submitted to the Board of Equalization of Taxes for approval shall clearly show in pencil all the courses and measured distances of all traverse lines used in constructing the map. These lines shall later be erased.

20 15. After final approval of all maps by the Board of Equalization of Taxes of Trenton, who will return them after inspecting and retaining a blue-print copy for their files.

THIRD: The said parties of the second part further agree to pay promptly for all labor and material used by them in connection with the work.

30 FOURTH: The said parties of the second part further agree to start the work within a reasonable time and to use such force as will enable them to complete the same on or before June 1, 1914, as required by the Board of Equalization of Taxes.

40 FIFTH: For and in consideration of the full and faithful performance of the foregoing by the said parties of the second part, the said Mayor and Council of the Borough of Pleasantville, the said parties of the first part, do hereby covenant and agree to pay to the said party of the second part, immediately upon the completion of the maps and the acceptance of the same by the Board of Equal-

Exhibit P-1.

ization of Taxes, the price of Two Hundred and ninety-seven and 50/100 Dollars (\$297.50) per square mile of 640 acres.

SIXTH: The said parties of the first part further agree to furnish to the said parties of the second part, without cost to the said parties of the second part, free and convenient access to all records, maps, plans, tax lists, deeds, etc., of the Borough of Pleasantville, and the said parties of the first part further agree to give any information in their possession which will enable the said parties of the second part to conveniently and properly perform their work.

10

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals this fourteenth day of February, one thousand nine hundred and fourteen.

20

THE BOROUGH OF PLEASANTVILLE,
CHARLES J. ADAMS.

Attest

Witness Andrews
Borough Clerk.

FREDERIC R. PAGE,
HAROLD C. LYONS.

30

Attest for Frederic R. Page
and Harold C. Lyons.

A true copy.—H. C. L.

40

Exhibit P-2.

AGREEMENT entered into, this twenty-fifth day of March, 1914, by and between Frederick R. Page and Harold C. Lyons, doing business under the co-partnership name of PAGE & LYONS, having an office at No. 404 Jackson Avenue, Long Island City, N. Y., parties of the first part, and JOHN G. PEPPLER, of Weehawken, New Jersey, party of the second part, to wit:

WHEREAS, the said parties of the first part did, on the 14th day of February, 1914, enter into a written contract with the Borough of Pleasantville, Atlantic County, New Jersey, to furnish all material, labor, tools, etc., necessary to fully complete, as required by and specified by the Board of Equalization of Taxes of New Jersey, September 16th, 1913, a tax map of the Borough of Pleasantville aforesaid, copy of which said agreement with the said Borough of Pleasantville is hereto attached and to which further reference is hereby made; and

WHEREAS, for the full and faithful performance of all of the said work mentioned in said contract by said parties of the first part to this agreement, the Mayor and Council of the Borough of Pleasantville, do covenant and agree to pay to the said Frederick R. Page and Harold C. Lyons, immediately upon the completion of the maps and the acceptance of the same by the Board of Equalization of Taxes, the price of two hundred and ninety seven and 50/100th Dollars (\$297.50) per square mile of 640 acres, according to the terms of said contract hereto attached, and

WHEREAS, the said parties of the first part to this agreement are in need of immediate funds in the shape of pay rolls, etc., and other incidental expenses for the performance of the said surveying

Exhibit P-2.

and work in full, as specified in said contract, on or before June 1st, 1914, as required by the Board of Equalization of Taxes,

NOW THEREFFORE, the said party of the second part hereto, hereby agrees to loan said parties of the first part the sum of eight hundred twenty five (\$825.00) dollars, in three installments, upon the following conditions, to wit: 10

1st Installment.—Three hundred twenty five (\$325) dollars, at the time of the signing of this agreement, receipt of which said installment is hereby acknowledged. The term for which said first installment is made, is four months, and the evidence of said indebtedness, in addition to this agreement, shall be a promissory note for three hundred twenty five (\$325) dollars, with interest, dated West Hoboken, N. J., March 25th, 1914, payable to the order of the said John G. Pepler, four months from date thereof, at Commonwealth Trust Company, West Hoboken, N. J., said note to be endorsed individually by the said Frederic R. Page and the said Harold C. Lyons. 20

2nd Installment.—Two hundred fifty (\$250) dollars, said second installment loan to be made on or about April 25th, 1914, as required by said parties of the second part and upon three (3) days written notice to said party of the second part. The term for which said second installment loan is made, is three (3) months, and the evidence of said indebtedness, in addition to this agreement, shall be a promissory note for two hundred fifty (\$250) dollars, with interest, dated West Hoboken, N. J., payable to the order of John G. Pepler, three months from date thereof, at Commonwealth 30 40

Exhibit P-2.

Trust Company, West Hoboken, N. J., said second note to be endorsed individually by said Frederic R. Page and said Harold C. Lyons.

10 *3rd Installment.*—Two hundred fifty (\$250) dollars, said third installment loan to be made on or about May 25th, 1914, as required by said parties of the second part and upon three (3) days written notice to said party of the second part. The term for which said third installment loan is made, is two (2) months, and the evidence of said indebtedness, in addition to this agreement, shall be a promissory note for two hundred fifty (\$250) dollars, with interest, dated West Hoboken, N. J., payable to the order of John G. Pepler, two months from date thereof, at Commonwealth Trust Com-
20 pany, West Hoboken, N. J., said third note to be endorsed individually by said Frederic R. Page and said Harold C. Lyons, it being the intention, by this agreement, to have all of the three above described notes, fall due on or about the same time.

30 As collateral security for the payment of all of said three installment notes, or any two of them or any one of them, or any note given as a renewal of said note or notes, or any unpaid portion of said loan or loans, or any note or notes given for or as renewal or renewals for, any unpaid portion of said loan or loans or unpaid balances, or as security for the payment of any further advances, not specified in the herein contract, by said party of the second part, to said parties of the first part, or any renewal or renewals thereof, said parties of the first part hereby agree to assign, by a written assignment of even date herewith, and to be executed and delivered simultaneously with the execution and delivery of this agreement, of all the sums
40 of money or payments to become due to said Fred-

Exhibit P-2.

eric R. Page and Harold C. Lyons, the said parties of the first part hereto, from the said Borough of Pleasantville, by virtue of the full and faithful performance of the work, etc., performed by the said Frederic R. Page and Harold C. Lyons, constituting the said co-partnership, "Page & Lyons," as per said contract entered into by them with the said Borough of Pleasantville, New Jersey. 10

Upon the payment by the said Borough of Pleasantville, to said John G. Peppler, of the sums of money or payment or payments hereby assigned, the said John G. Peppler, the said party of the second part hereto, shall deduct the amount of said loan with interest, to date, together with other expenses he may have incurred in connection with this loan, turning over the balance, if any, to said "Page & Lyons," said parties of the first part hereto. If, at the time of maturity of said notes for the security of which said assignment is given, said John G. Peppler has not received from the said Borough of Pleasantville, sufficient money to pay the said loans hereby made or to be made, in full, the said parties of the first part hereby agree to pay any deficiency immediately, be the same the whole or any part of said loan or loans due. 20

Should the said John G. Peppler, at any time, sell or discount the said note or notes, he may transfer the said collateral to said purchaser or transferee, and the said John G. Peppler shall, in that event, be forever released from any liability with regard to the said collateral deposited as security for the notes or loans above specified. 30

The said parties of the first part hereto, simultaneously with the execution of this agreement, file a written statement bearing date March 9th, 1914, of the assets and liabilities of Harold C. Lyons and Frederic R. Page, said statement signed by said 40

Exhibit P-2.

Harold C. Lyons and Frederic R. Page, showing total assets of \$20,700.76 and total liabilities of \$700, the truth of which said statement is also one of the conditions on which above installment loans are made.

10 The said parties of the first part hereto hereby agree to accept the said loans as per the terms and conditions above specified, and to repay the same as per all the conditions above stated and the said party of the second part hereto, hereby agrees to make said installment loans aggregating \$825 in amount and legal interest thereon, as above stated and as per the terms and conditions above specified.

20 IN WITNESS WHEREOF, the said parties of the first and second parts hereto, have hereunto set their hands and seals in triplicate, at West Hoboken, N. J., this 25th day of March, 1914.

PAGE AND LYONS

FREDERIC R. PAGE (L. S.)

HAROLD C. LYONS (L. S.)

Signed, sealed and delivered
in the presence of

30 HENRY KOHLMAYER.
D. T. MEYER.

JOHN G. PEPPLER (L. S.)

HENRY KOHLMAYER.

Exhibit P-2.

AGREEMENT MADE THIS 14TH DAY OF FEBRUARY, 1914, between the Mayor and Council of the Borough of Pleasantville, Atlantic County, State of New Jersey, a municipal corporation, parties of the first part, and Frederic R. Page and Harold C. Lyons, having a place of business at #404 Jackson Avenue, Long Island City, County of Queens, City and State of New York, parties of the second part. 10

WHEREAS, the parties of the first part desire to have made a Tax Map of the Borough of Pleasantville.

NOW, THEREFORE, the said Mayor and Council of the Borough of Pleasantville, parties of the first part, and the said Frederic R. Page and Harold C. Lyons, parties of the second part, for and in consideration of One Dollar (1.00) in hand paid each to the other, and receipt of which is hereby acknowledged, do covenant, promise and agree each with the other as follows: 20

FIRST: The said parties of the second part, for and in consideration of the hereinafter mentioned payments, do covenant, promise and agree, excepting as hereinafter specified, to furnish all material, labor, tools, etc., necessary to fully complete as required by and specified by the Board of Equalization of Taxes of New Jersey, September 16th, 1913, a Tax Map of the Borough of Pleasantville, Atlantic County, State of New Jersey. 30

SECOND: The said parties of the second part further agree as follows:

1. All maps shall be prepared on sheets 36 inches by 24 inches wide, upon durable mounted paper, with plain border. 40

Exhibit P-2.

2. Maps shall generally be drawn to the following scales:

City or Urban districts	1 inch to 50 feet.
Suburban districts	1 inch to 100 feet.
Rural districts	1 inch to 200 feet.

10 3. All maps for City and Suburban territory are to show street lines, streams, lot and plot boundaries, railroads, names and widths of streets, as well as of roads and alleys, widths and depths of rectangular plots, dimensions of irregular lots and plots. Sub-divisions are to be designated by blocks, lots and plots, each numbered properly. Area of acreage plots to be shown in acres and thousandths.

20 4. On maps of rural districts are to be shown all highways, rivers, streams, canals, railroads, together with their names. All property boundaries are to be shown. The area of each parcel of land is to be shown in acres and hundredths, together with the names of the owners. The sub-divisions shall be sections and plots properly numbered.

30 5. All maps shall show location of such features as active mines, quarries, and clay pits; also cemeteries, public parks, and State, County and Municipal Institutions, such as Court houses, municipal buildings, school houses, asylums and prisons, and any other property actually exempt from taxation. The approximate outlines of tidal and fresh water, marsh land, timber land and agricultural or farm lands shall be shown.

40 6. Where fire or lighting have been established or where any territory has been set off for which a special tax rate has been authorized in addition to the regular tax rate in that taxing district, the boundaries of these districts are to be shown on the "key map" and on each individual detail sheet

Exhibit P-2.

where such special districts occur, by conspicuous dash line.

7. Error in survey are not to exceed the following:

Chaining city and suburban territory, 1/10 of 1%.

Chaining rural districts, flat country, 1/4 of 1%.

Chaining rural districts, rough and difficult country, 1/2 of 1%.

10

All traverse lines to be closed with error of closure not to exceed two minutes at any closure point.

8. All maps, when completed, are to be bound in atlas form, with covers of loose-leaf type. A "key map" showing to small scale the locations, outlines and number of each sheet, shall be provided.

9. All maps, at lower right hand corner, shall contain the names of the district and county, date, scale, name and address of surveyor.

20

10. Block and section numbers shall be placed at or near the center of each block or section in prominent figures; lot or plot numbers shall be shown in smaller and lighter figures. Street and highway lines shall be drawn in solid black lines about 1/25 of an inch in thickness; property lines shall be in solid black lines but of less thickness. Boundaries of taxing districts are to be shown by prominent dash and double dotted lines. All lines and lettering are to be made with black waterproof ink.

30

11. The sheets shall be so plotted that the upper border lines lies to the northward, with upper and lower borders extending in easterly and westerly directions, as nearly as practicable.

12. Each map shall have a plain serviceable meridian not less than five inches long, with north

40

Exhibit P-2.

and south lines corresponding to the true meridian, and the variation between the true and magnetic meridians shown as existing at the date of survey.

13. The system of defining and numbering blocks, lots, sections, and plots shall be approved by the Board of Equalization of Taxes.

10

14. All new maps submitted to the Board of Equalization of Taxes for approval shall clearly show in pencil all the courses and measured distances of all traverse lines used in constructing the map. These lines shall later be erased.

15. After final approval of all maps by the Board of Equalization of Taxes of Trenton, who will return them after inspecting and retaining a blue-print copy for their files.

20

THIRD: The said parties of the second part further agree to pay promptly for all labor and material used by them in connection with the work.

FOURTH: The said parties of the second part further agree to start the work within a reasonable time and to use such force as will enable them to complete the same on or before June 1, 1914, as required by the Board of Equalization of Taxes.

30

FIFTH: For and in consideration of the full and faithful performance of the foregoing by the said parties of the second part, the said Mayor and Council of the Borough of Pleasantville, the said parties of the first part, do hereby covenant and agree to pay to the said party of the second part, immediately upon the completion of the maps and the acceptance of the same by the Board of Equalization of Taxes, the price of Two Hundred and ninety-seven and 50/100 Dollars (\$297.50) per square mile of 640 acres.

40

Exhibit P-2.

SIXTH: The said parties of the first part further agree to furnish to the said parties of the second part, without cost to the said parties of the second part, free and convenient access to all records, maps, plans, tax lists, deeds, etc., of the Borough of Pleasantville, and the said parties of the first part further agree to give any information in their possession which will enable the said parties of the second part to conveniently and properly perform their work. 10

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals this fourteenth day of February, one thousand nine hundred and fourteen.

THE BOROUGH OF PLEASANTVILLE,
CHARLES J. ADAMS. 20

Attest

Witness Andrews
Borough Clerk.

FREDERIC R. PAGE,
HAROLD C. LYONS.

Attest for Frederic R. Page
and Harold C. Lyons. 30

A true copy.—H. C. L.

Exhibit P-3.

AGREEMENT made in triplicate entered into this twentieth day of July, 1914, by and between Fred-
eric R. Page and Harold C. Lyons, doing business
under the co-partnership name of Page and Lyons,
having an office at 404 Jackson Avenue, Long Island
City, New York, parties of the first part, and Ray-
mond P. Thompson, of the City of Pleasantville,
Atlantic County, New Jersey, party of the second
part, to wit:

Whereas, the said party of the first part did on
the fourteenth day of February, 1914, enter into
a written contract with the Borough of Pleasant-
ville, Atlantic County, New Jersey, to furnish all
material, labor, tools, etc., necessary to fully com-
plete as required by and specified by the Board of
Equalization of Taxes of New Jersey, a Tax Map
of the Borough of Pleasantville, aforesaid, a copy
of which said agreement with the said Borough of
Pleasantville is hereto attached and to which fur-
ther reference is hereby made, and

Whereas, the said Borough of Pleasantville did
on the fifteenth day of June, 1914, grant a three
months extension of time in which to complete the
said contract, and

Whereas, for the full and faithful performance of
all the said work mentioned in the said contract
by said parties of the first part to this agreement,
the Mayor and Council of the Borough of Pleasant-
ville, do covenant and agree to pay to the said Fred-
eric R. Page and Harold C. Lyons, immediately
upon the completion of the maps and the acceptance
of the same by the Board of Equalization of Taxes,
the price of two hundred ninety seven and fifty
one hundredths dollars (\$297.50) per square mile
of six hundred and forty acres, according to the
terms of said contract hereto attached, and

Exhibit P-3.

Whereas, the said party of the first part have partially performed the said contract, and

Whereas, the said party of the first part desire the services and knowledge of the said party of the second part, the said Raymond P. Thompson, for the completion of the said contract,

10

Now therefore, the said party of the second part hereto agrees to fully complete the said contract of the said parties of the first part and the said Borough of Pleasantville, and to do all the things hereinafter agreed upon, in consideration of the hereinafter mentioned payments.

Further, the said party of the second part agrees to furnish the said parties of the first part with a bond in the amount of five hundred dollars (\$500.00) of the American Surety Co., or other Company satisfactory to the parties of the first part, as a guarantee of the completion of the said contract by the said party of the second part.

20

The said parties of the first part agree to pay to the said party of the second part upon the completion of the said contract to the satisfaction of the Board of Equalization of Taxes, aforesaid and the receipt by the said parties of the first part of the heretofore specified payment from the said Mayor and Council of Pleasantville, the sum of four hundred fifty dollars (\$450.00).

30

Further, the said parties of the first part agree to furnish to the said party of the second part all notes, maps, plans, note-books, and other data, and all furniture now belonging to them and in their possession at Pleasantville relative to the said Tax Map, and

Further, the said parties of the second part agrees to return the said note-books and said furniture upon the completion of this agreement, and

40

Exhibit P-3.

Further, the said party of the second part agrees to furnish the said party of the first part with two sets of blue-print copies of the final map at the price not to exceed three cents per square foot, which prices are to be paid by the said parties of the first part, and

- 10 Further, the said party of the second part agrees to place on each and every copy of the maps approved by the Board of Equalization aforesaid, the name Page and Lyons, Surveyors, Long Island City, New York,

In witness whereof the said parties hereto have hereunto set their hands and affixed their seals this twentieth day of July, one thousand nine hundred and fourteen.

20

FREDERIC R. PAGE.
HAROLD C. LYONS.

Witness:

JOHN H. GEHRKEN.

RAYMOND P. THOMPSON.

R. R. THOMPSON.

30

ARGEEMENT MADE THIS 14TH DAY OF FEBRUARY, 1914, between the Mayor and Council of the Borough of Pleasantville, Atlantic County, State of New Jersey, a municipal corporation, parties of the first part, and Frederic R. Page and Harold C. Lyons, having a place of business at #404 Jackson Avenue, Long Island City, County of Queens, City and State of New York, parties of the second part.

40

Exhibit P-3.

WHEREAS, the parties of the first part desire to have made a Tax Map of the Borough of Pleasantville,

NOW THEREFORE, the said Mayor and Council of the Borough of Pleasantville, parties of the first part, and the said Frederic R. Page and Harold C. Lyons, parties of the second part, for and in consideration of One Dollar (1.00) in hand paid each to the other, and receipt of which is hereby acknowledged, do covenant, promise and agree with the other as follows:

FIRST: The said parties of the second part, for and in consideration of the hereinafter mentioned payments, do covenant, promise and agree, excepting as hereinafter specified, to furnish all material, labor, tools, etc., necessary to fully complete as required by and specified by the Board of Equalization of Taxes of New Jersey, September 16th, 1913, a Tax Map of the Borough of Pleasantville, Atlantic County, State of New Jersey.

SECOND: The said parties of the second part further agree as follows:

1. All maps shall be prepared on sheets 36 inches by 24 inches wide, upon durable mounted paper, with plain border.

2. Maps shall generally be drawn to the following scales:

City or Urban districts	1 inch to 50 feet.
Suburban districts	1 inch to 100 feet.
Rural districts	1 inch to 200 feet.

3. All maps for City and Suburban territory are to show street lines, streams, lot and plot boundaries, railroads, names and widths of streets, as

Exhibit P-3.

well as of roads and alleys, widths and depths of rectangular plots, dimensions of irregular lots and plots. Sub-divisions are to be designated by blocks, lots and plots, each numbered properly. Area of acreage plots are to be shown in acres and thousandths.

10 4. On maps of rural districts are to be shown all highways, rivers, streams, canals, railroads, together with their names. All property boundaries are to be shown. The area of each parcel of land is to be shown in acres and hundredths, together with the names of the owners. The sub-divisions shall be sections and plots properly numbered.

20 5. All maps shall show location of such features as active mines, quarries, and clay pits; also cemeteries, public parks, and State, County and Municipal Institutions, such as Court houses, municipal buildings, school houses, asylums and prisons, and any other property actually exempt from taxation. The approximate outlines of tidal and fresh water, marsh land, timber land and agricultural or farm lands shall be shown.

30 6. When fire or lighting districts have been established, or where any territory has been set off for which a special tax rate has been authorized in addition to the regular tax rate in that taxing district, the boundaries of these districts are to be shown on the "Key Map" and on each individual detail sheet where such special districts occur by conspicuous dash line.

40 7. Errors in survey are not to exceed the following:
 Chaining City and Suburban territory, 1/10 of 1%.
 Chaining rural districts, flat country, 1/4 of 1%.
 Chaining rural districts, rough and difficult country, 1/2 of 1%.

Exhibit P-3.

All traverse lines to be closed with error of closure not to exceed two minutes at any closure point.

8. All maps, when completed are to be bound in atlas form, with covers of loose-leaf type. A "Key Map" showing to small scale the locations, outlines, and number of each sheet, shall be provided. 10

9. All maps, at lower right hand corner, shall contain the names of the district and county, date, scale, name and address of surveyor.

10. Block and section numbers shall be placed at or near the center of each lot or section in prominent figures; lot or plot numbers shall be shown in smaller and lighter figures. Street and highway lines shall be drawn in solid black lines about 1/25 of an inch in thickness; property lines shall be in solid black lines but of less thickness. Boundaries of taxing districts are to be shown by prominent dash and double dotted lines. All lines and lettering are to be made with black water-proof ink. 20

11. The sheets shall be so plotted that the upper border lines lie to the northward, with upper and lower borders extending in easterly and westerly directions, as nearly as practicable.

12. Each map shall have a plain serviceable meridian not less than five inches long with north and south lines corresponding to the true meridian, and the variation between the true and magnetic meridians shown as existing at the date of survey. 30

13. The system of defining and numbering blocks, lots, section and plots shall be approved by the Board of Equalization of Taxes.

14. All new maps submitted to the Board of Equalization of Taxes for approval shall clearly 40

Exhibit P-3.

show in pencil all the courses and measured distances of all traverse lines used in constructing the map. These lines shall later be erased.

10 15. After final approval of all maps by the Board of Equalization of Taxes of Trenton, who will return them after inspecting and retaining a blue-print copy for their files.

THIRD: The said parties of the second part agree to pay promptly for all labor and material used by them in connection with the work.

20 FOURTH: The said parties of the second part further agree to start the work within a reasonable time and to use such force as will enable them to complete the same on or before June 1, 1914, as required by the Board of Equalization of Taxes.

30 FIFTH: For and in consideration of the full and faithful performance of the foregoing by the said parties of the second part, the said Mayor and Council of the Borough of Pleasantville, the said parties of the first part, do hereby covenant and agree to pay to the said parties of the second part, immediately upon completion of the maps and the acceptance of the same by the Board of Equalization of Taxes, the price of Two hundred and ninety-seven and 50/100 Dollars (\$297.50) per square mile of 640 acres.

40 SIXTH: The said parties of the first part further agree to furnish to the said parties of the second part, free and convenient access to all records, maps, plans, tax lists, deeds, etc., of the Borough of Pleasantville, and the said parties of first part further agree to give any information in their possession which will enable the said parties of the

Exhibit P-3.

second part to conveniently and properly perform their work.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals this fourteenth day of February, one thousand nine hundred and fourteen.

10

THE BOROUGH OF PLEASANTVILLE,
CHARLES J. ADAMS.

Attest

Witness Andrews
Borough Clerk.

FREDERIC R. PAGE.
HAROLD C. LYONS.

20

Attest for Frederic R. Page
and Harold C. Lyons.

Exhibit P-4.

OFFICE OF
CITY CLERK OF PLEASANTVILLE

Pleasantville, N. J., January 27th, 1915. 30

Mr. John G. Pepler,
West Hoboken, N. J.

Dear Sir:

In answer to yours of the 26th, in regards to payment of bill of \$1,146.03 rendered by Messrs. Page and Lyons, would state: said bill will be paid so soon as tax maps are delivered to Pleasantville.

40

Exhibit P-4.

Tax maps are now in the hands of one R. P. Thompson, upon who I served a demand on the 26th. Pleasantville wants the said maps and is ready to pay for the same when in the custody of the municipal officials.

10 This communication by authority of the Mayor and Common Council of Pleasantville.

Very truly yours,

NEHEMIAH ANDREWS,
City Clerk.

NA/B.

Exhibit D-1.

John G. Pepler.

20

I was first a creditor and then I became agent for Page & Lyons in the handling of the proceeds due them from the boro of Pleasantville.

I had instructions to pay the money to R. P. Thompson, that is the amount due him. On those instructions I wrote R. P. Thompson as per the letter in the complaint.

30 Later on the money was paid me, but before I had an opportunity to pay it to Thompson I was instructed to withhold the payment of the money and for that reason I did not pay the money to R. P. Thompson. I am still holding the money for Page & Lyons which is represented by part cash and part note made by Page & Lyons.

I did not know Mr. R. P. Thompson until I had met him in court.

I had acted as the agent for Page & Lyons at all times and even the letters were written at their instigation.

40

Memorandum.

NEW JERSEY SUPREME COURT,

ATLANTIC COUNTY.

 RAYMOND P. THOMPSON,
 Plaintiff,

vs.

 JOHN G. PEPPLER,
 Defendant.

Memo.

10

For Plaintiff Henry W. Lewis.

For Defendant: Levitan & Levitan.

CARROW, J.:

20

The complaint as amended shows a legal cause of action. The motion to dismiss is therefore denied.

The stipulated facts support the complaint and they may be thus summarized: Page and Lyons had a contract with the Borough of Pleasantville for the furnishing of certain maps to said municipality and being in need of funds to properly perform said contract they borrowed the necessary funds from defendant, who took an assignment of the money that was to grow due on said contract. Then Page and Lyons made a sub-contract with plaintiff for the doing of some part of the work called for by the original contract. Plaintiff entered upon the performance of his contract but, becoming apprehensive about his money, he balked on the job and then in order for defendant to get his money out of the transaction he wrote the plaintiff this letter:

30

40

Memorandum.

"West Hoboken, N. J.

January 26th, 1915.

Mr. R. P. Thompson,
Pleasantville, N. J.

Dear Sir:

10

Both your letters of recent date received. I did not answer them before this, because I could not get in touch with Messrs. Page & Lyons. I finally got hold of them and explained the situation to them, and they most willingly deposited with me sufficient money which, added to the \$1146.03 due from the Borough of Pleasantville, will be sufficient to pay my claim and yours, so that, just as soon as I receive from the Borough of Pleasantville the amount of the bill rendered by Messrs. Page & Lyons, I shall immediately send you a check for \$450 in full settlement of your claim against Page & Lyons.

20

If you have not already delivered the completed maps to the said Borough, kindly do so, so that both of us will get our money at the earliest possible date.

30

I am sorry that a misunderstanding has occurred between you and Messrs. Page & Lyons. I know Mr. Page several years, and he is entirely on the level, and it was his intention to pay you any deficiency arising out of your contract.

I am also writing to the Mayor & Council of Pleasantville, advising that upon the receipt of the \$1146.03, I shall immediately pay you the 450 coming to you.

40

Trusting this arrangement now meets your entire approval,

I am yours sincerely,

JOHN G. PEPPLER."

Memorandum.

When the foregoing letter was sent to plaintiff he was, as I have remarked, holding his work up; for, on the following day, that is, on January 27th, 1915, the clerk of Pleasantville wrote defendant as follows:

“Office of City Clerk of Pleasantville. 10

Pleasantville, N. J., January 27th, 1915.

Mr. John G. Pepler,
West Hoboken, N. J.

Dear Sir:

In answer to yours of the 26th, in regards to payment of bill of \$1,146.03 rendered by Messrs. Page and Lyons, would state: said bill will be paid as soon as tax maps are delivered to Pleasantville. 20

Tax maps are now in the hands of one R. P. Thompson, upon who I served a demand on the 26th. Pleasantville wants the said maps and is ready to pay for the same when in the custody of the municipal officials.

This communication by authority of the Mayor and Common Council of Pleasantville.

Very truly yours, 30

NEHEMIAH ANDREWS,
City Clerk.”

Plaintiff upon the strength of defendant's letter finished his work and made delivery thereof in accordance with his contract and defendant got the proceeds of the Page & Lyons contract from the City of Pleasantville.

Now defendant repudiates his promise upon the theory that it was made without consideration, but 40

Memorandum.

his letter plainly shows express consideration. He says: "If you have not already delivered the completed maps to the said Borough, kindly do so, so that both of us will get our money at the earliest possible date."

10 Defendant also refuses payment upon the ground that he was only acting as agent for Page & Lyons in the transaction with plaintiff and an offer of some proof was made supposedly tending to support this defense, but such a defense is obviously untenable in this case. Therefore, said offer is excluded. So is plaintiff's offer of counter proof touching this new phase of the case likewise excluded.

Plaintiff is entitled to judgment for \$450, with interest when computed.

20 Full exceptions are noted for defendant to these rulings.

30

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95/10

New Jersey Court of Errors and Appeals

RAYMOND P. THOMPSON,
Plaintiff-Respondent,

vs.

JOHN G. PEPPLER,
Defendant-Appellant.

ON APPEAL.

Points for Pl'ff-Resp't.

10

I.

AS TO AMENDMENT OF COMPLAINT:

The amendment permitted after trial was legally permissible and proper. 76 L. 282; 40 L. 601.

There was no change contemplated as to the status of the parties so as to introduce an entirely different controversy, the meritorious question being whether any action lies in favor of plaintiff as against the defendant for the recovery of the moneys claimed in the complaint, and if there be any, plaintiff is properly permitted to amend at any stage—even in the appellate court. 20

76 L. 282; 43 L. 430; 40 L. 601.

The statute quoted in appellant's brief expressly confirms the then existing powers of the courts to amend instead of taking same away. 30

II.

AS TO THE CONTRACTUAL STATUS OF THE LETTER:

Respondent not having been paid for his work thereon and circumstances causing him to become apprehensive, was withholding the tax maps when appellant wrote in his letter requesting their delivery to the city of Pleasantville so that he (appellant) could collect \$1146.03 to become due from the city when the maps were finished and delivered, and as a consideration for such delivery appellant expressly agreed in the letter to pay \$450 due respondent for his work. The maps were completed and delivered to the city in accord with the request, and although appellant collected the money due therefor from the city, the benefit he was seeking and wherefor his promise was made, he refused to pay respondent as agreed. As between them, there was no obligation on the part of respondent to deliver the maps until paid and the delivery thereof was upon the strength of appellant's promise.

The bare statement of the facts displays the contractual relationship, viz.: "If you do so and so, I will pay you so much."

III.

AS TO THE CONSIDERATION SUPPORTING THE PROMISE:

In addition to the delivery of the completed maps above referred to, appellant's promise to pay respondent is supported by the further consideration, as admitted in his letter, that appellant had received moneys from Page and Lyon for such payment.

Page & Lyon were the respondent's original obligors for his work done on the maps, and it is well settled that it isn't essential that the consideration actually move from appellant to respondent to support a promise to pay, but it may move from respondent's original obligors to the appellant as well.

20 L. 337; 20 Cyc. 1415; 37 *Vermont* 391.

IV.

AS TO PAST CONSIDERATION:

10

While respondent had contracted to do the work for Page & Lyon, he was under no obligation to deliver the maps at anyone's behest until his money was forthcoming, in fact as stated by the trial judge, "becoming apprehensive as to his money, he balked on the job", (Case 51, l. 36), and it was upon the strength of appellant's promise that he delivered the maps not to Page & Lyon, but, as requested by appellant in the letter, to the city of Pleasantville. This delivery, as the letter from the city clerk (Case, p. 20, l. 20, &c.) shows was made after the appellant's letter was written.

20

V.

AS TO AGENCY AND ADMISSIBILITY OF EVIDENCE THEREOF:

Testimony as to respondent being agent of Page & Lyon in this transaction was properly refused. Respondent is relying upon appellant's expressly assumed obligation to pay as stated in his letter. The terms and conditions imposed to secure such payment were wholly complied with by respondent.

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9

He not having shown to have been present at, participating in or consenting to, any agreements or arrangements as may have been made between appellant and Page & Lyon, upon no theory could respondent be bound by such testimony relating to such an agency, if established, *and it being from the alleged agent himself.*

10 Respondent was induced by appellant's promise to give up to his detriment whatever hold he might have on the moneys unpaid by the city of Pleasantville, as well as his claim against Page & Lyon, his original obligors, and look to the respondent as he has by the institution of this suit. Having so induced respondent to act, it is an elementary ^{principle} both of the law and of ethics, that appellant will not be permitted to screen himself as against the respondent interested as he is, by the effort to set up that he (the appellant) was acting not for himself but as an agent only.

31 Cyc. 1234; 109 N. Y. Supp. 134.

20 It is respectfully submitted that the judgment be affirmed.

H. W. LEWIS,
Atty. of Pl'ff-Resp't.

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95

New Jersey Court of Errors and
Appeals

RAYMOND P. THOMPSON,
Plaintiff-Respondent,

vs.

JOHN G. PEPPLER,
Defendant-Appellant.

On Appeal.

APPELLANT'S BRIEF.

Briefly the facts in this case are as follows:

This is an appeal from the Supreme Court,
Atlantic Circuit. The suit is upon contract and
the plaintiff's claim is based upon the following
letter:

"West Hoboken, N. J.,

January 26th, 1915.

Mr. R. P. Thompson,
Pleasantville, N. J.

Dear Sir:

Both your letters of recent date received.
I did not answer them before this, because I
could not get in touch with Messrs. Page &
Lyons. I finally got hold of them and ex-
plained the situation to them, and they most

willingly deposited with me sufficient money which, added to the \$1146.03 due from the Borough of Pleasantville, will be sufficient to pay both my claim and yours, so that, just as soon as I receive from the Borough of Pleasantville the amount of the bill rendered by Messrs. Page & Lyons, I shall immediately send you a check for \$450 in full settlement of your claim against Page & Lyons.

If you have not already delivered the completed maps to said Borough, kindly do so, so that both of us will get our money at the earliest possible date.

I am sorry that a misunderstanding has occurred between you and Messrs. Page & Lyons. I know Mr. Page several years, and he is entirely on the level, and it was his intention to pay you any deficiency arising out of your contract.

I am also writing to the Mayor & Council of Pleasantville, advising that upon the receipt of the \$1146.03, I shall immediately pay you the 450 coming to you.

Trusting this arrangement now meets your entire approval,

I am yours sincerely,

JOHN G. PEPPLER."

(P. 14, Case.)

The case was tried without a jury on stipulated facts (p. 19, Case).

There are three issues involved in the case:

- (1) The alleged error of the trial Court in permitting the filing of an amended complaint.
- (2) Is the letter a contract?
- (3) The alleged error of the Trial Court in the exclusion of evidence offered.

POINT ONE.

The amendment to the complaint should not have been allowed, and the complaint should have been dismissed.

It is well settled under the present practice, that Courts allow amendments freely. But the power to allow amendments should not be abused.

In the case at bar, appellant contended that the original complaint upon which the suit is founded, did not set forth a cause of action. This defense was raised in the answer (p. 7, Case), and was one of the preliminary questions for the Trial Court to pass upon. The case was tried on the 23rd day of October, 1916, and the Trial Court reserved decision. While the Trial Court was considering the case; on the 19th day of January, 1917, the Trial Court allowed an amendment of the complaint, setting forth a cause of action.

This action on the part of the Trial Court, it is respectfully urged, was error. The statute applicable to amendments is as follows (*Public Laws of 1912*, p. 382, Sec. 24):

“In addition to the present powers of amendment, the court may, upon terms, permit, *before or at the trial*, the statement of a new or different cause of action in the complaint or counterclaim.”

The statute expressly provides for amendment *before or at the trial*, but makes *no* provision for amendment *after* the trial.

POINT TWO.**The letter is not a valid contract.**

A contract can either be unilateral or bilateral.

In a unilateral contract, there is an exchange of an act for a promise. In a bilateral contract, there is an exchange of a promise for a promise. In this case we have neither.

We have just the mere naked statement of the defendant, Pepler, to pay money, without any reciprocal promise on the plaintiff's part, or any act or performance, the benefit of which would accrue to the defendant-appellant.

The first paragraph of the letter, after the preliminary explanation, recites that Page & Lyon deposited money with the defendant, which, when added to the \$1,146.03, will be sufficient to pay claims, both to the defendant and plaintiff. The next sentence has the promise upon which, apparently, plaintiff places his ground for recovery, to wit, "I shall immediately send you check for \$450 in full settlement of your claim against Page & Lyon." Nothing else appears in the letter that can be made part of the agreement, except perhaps the last paragraph, where Pepler, the defendant, repeats himself, and says that he is writing to the Mayor and Council of Pleasantville, etc. A statement such as appears in this letter cannot be spelled into a contract.

In *Atlantic Pebble Co. v. Lehigh Valley R. R. Co.*, 98 *Atl.*, page 410, decided by the Court of Appeals, Mr. Justice WHITE says, on page 411:

"The doctrine of a purely executory contract, where the reciprocal promises depend upon each other for support, is, of course, ele

mentary. Cases in this state are *Buckingham v. Ludlum*, 40 N. J. Eq., 348, 7 Atl., 851, and *U. & G. Rubber Co. v. Conrad*, 80 N. J. Law, 286, 78 Atl., 203, Ann. Cas., 1912A, 412. The trouble is sometimes to determine what are and what are not such promises."

At page 412, bottom :

"The distinguishing principle may possibly be stated to be that where the promise has for its subject-matter something which by the terms of the contract is left to depend for its very existence upon the future election of the promisor, it will not form a valid consideration for an executory contract, but, etc. * * *"

It will be observed in *Atlantic Pebble Co. v. Lehigh Valley R. R. Co.*, that there the contract was a valid one, to wit, as Mr. Justice WHITE says, on page 412 :

"If you will ship a cargo of pebbles to Philadelphia and reship them exclusively over our lines as sold, we will furnish you free storage."

Thus embarrassing two mutual promises: Shipment of pebbles on the one side, and furnishing the free storage on the other.

In the case at bar, however, the promisor clearly had the future election of doing that which is the very essence of the contract, to wit, the payment of \$450, because he says, "I shall immediately pay you the \$450 coming to you." The promisor did not bind himself to do any act, he simply left it

to his own future election to pay or not to pay the money.

There is present here only the promise on one side, to wit, the payment of money. The other promise to do the act essential to complete the contract, is missing.

It is respectfully urged, therefore, that the promise was not a contract.

POINT THREE.

There is no consideration for the promise made by the defendant.

The common law doctrine of consideration is defined and outlined in 9 *Cyc.*, page 309, as follows:

“B. Necessity of Consideration.—1. In General. At common law every contract not under seal requires a consideration to support it, that is, as shown in the above definition, some benefit to the promisor, or some loss or detriment to the promisee. It has been laid down by the highest judicial tribunal of England that although it is undoubtedly true that every man is by the law of nature bound to fulfil his engagements, it is equally true that the law supplies no means nor affords any remedy to compel the performance of an agreement made without sufficient consideration. Such an agreement is *nudum pactum ex quo non oritur actio.*”

See also *Anson on Contracts*, page 74.

Consideration has been defined and clearly explained by Vice-Chancellor PITNEY in the case of *Drake v. Lanning*, reported in 49 *Eq.*, p. 452, where

the Vice-Chancellor says, on page 458, last paragraph:

“The law governing contracts of this class is well settled in this state. * * * like all other enforceable contracts, it must be founded on a sufficient consideration, either of benefit to the one party or of detriment to the other, or of both combined. I can conceive of no ground upon reason or upon principle, and can find no authority for any exception in this respect, in favor of this class of contracts.”

It is true that in the case cited, the question arose in the Court of Chancery upon a cross bill for specific performance of a contract, to make testamentary disposition of property. But the principle of consideration in contracts elucidated by the learned Vice-Chancellor applies to any case, and particularly to the case at bar; because in this case, defendant is alleged to have promised money, and in the *Lanning* case, the defendant promised to make a particular bequest in his will.

In *Tulane v. Clifton*, reported in 47 *Eq.*, page 351, Chancellor MCGILL says on page 353, about the middle of the page:

“It is clear that Mr. Tulane’s promise was not made binding upon him by a sufficient consideration.

His promise and intent, then, standing alone, unsupported by a consideration, or not put in technical form to raise a conclusive presumption of consideration, was not sufficient, in the law, to discharge the interest debt.”

POINT FOUR.

The contract is void, being founded on past consideration.

Assuming that the letter is a contract, it cannot be enforced, because the consideration, if there is any, would be past consideration; that is, Thompson was already under obligation to do that work for Page & Lyon, and in fact Mr. Pepler so states in the letter, "and it was his intention to pay you any deficiency arising out of your contract"; besides other reference in the first paragraph, viz.: "in full settlement of your claim against Page & Lyon."

The fact is undisputed, that the work was done a long time before this letter was written, since Pepler states in his letter, 2nd paragraph, "If you have not already delivered the completed maps to said borough, etc." Thus indicating that the work was entirely completed, even up to the actual delivery of the maps.

Therefore Thompson being already under obligations to Page & Lyon, to deliver the maps, we cannot make this act, or his promise to do this act, consideration, moving to Pepler for Pepler's promise to pay the \$450.

Thompson did absolutely nothing for Pepler which he was not already under obligations to do for Page & Lyon, and it is therefore respectfully submitted that the promise of defendant, Pepler, was made without any consideration moving to appellant, but to Page & Lyon, and was past consideration as against Pepler.

POINT FIVE.

The letter cannot be construed as a guaranty.

Assuming that the respondent will contend that appellant is in the position of a grantor; this cannot be sustained, for the simple reason (which is very often lost sight of), that a contract of guaranty or suretyship must first be analyzed upon the same legal principles as any ordinary contract, requiring parties, assent, consideration, etc.; and then in addition to that, the Statute of Frauds requires it also to be in writing.

The mere fact that this alleged contract is written does not obviate the necessity of showing that it contains all the other elements of the contract. If a guaranty were a specialty, proof of consideration would not be necessary; but a contract of guaranty being a simple parol contract, proof of consideration is necessary. *Pike v. Van Reipen*, 57 *Law*, page 290. This contract lacking consideration, it cannot be construed as a guaranty.

POINT SIX.

The testimony offered by the plaintiff is admissible in evidence.

Defendant, in his second defense, alleged the assignment, and also the continued indebtedness by Page & Lyon, to the plaintiff. This defense is equivalent to the fact that the plaintiff does not owe the money. Therefore it is proper for the defendant to show and prove, under the defense, any fact legally tending to show that he does not owe any money. An agent who deals as such, assumes no personal responsibility, and therefore in this

case, it was perfectly proper for the defendant to prove and try to establish the fact that he was acting as agent for Page & Lyon, and the testimony offered merely tended to prove that, and therefore should have been admitted. This practice is so well settled that it needs no authorities to support it.

POINT SEVEN.

The defendant cannot be held on this contract, because it is shown that he acted as the agent of his principals, Page & Lyon.

The first paragraph of the letter establishes that fact. The third paragraph also has some bearing on the subject.

The stipulation which was offered in evidence and which is the testimony in this case, established the fact of agency beyond any question. The defendant therefore cannot be held accountable individually when the plaintiff knew that he acted with the defendant as agent. This fact of agency, taken in conjunction with the argument raised on the lack of consideration of the contract, establishes the defendant's case, and the judgment of the Supreme Court should be reversed.

Respectfully submitted,

LEVITAN & LEVITAN,
Attorneys for Appellant.

ABRAHAM LEVITAN,
Of Counsel.