

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THOMAS STEPHEN,	}	
Defendant in Error,		
vs.		On Error to
CAMDEN & PHILADELPHIA SOAP		Supreme Court.
COMPANY,		
Plaintiff in Error.		

BRIEF FOR DEFENDANT IN ERROR.

This writ of error brings up for review the record of the trial of this cause, before Hon. Allen B. Endicott, at Camden County Circuit, resulting in a verdict for Stephen, an architect, for plans and specifications furnished the Camden & Philadelphia Soap Company, for the building of a proposed factory, in Camden, N. J.

This matter may be properly considered in a two-fold manner:—

1. With reference to the contract in writing, as revealed in the correspondence of the parties.
2. With regard to his right to recover on a quantum

meruit: (a) The facts tersely stated are that Stephen, an architect of unquestioned ability and skill, was employed to furnish plans and specifications for the proposed factory of the Soap Company; that, owing to the unsettled condition of the labor market, the building was delayed; that, Stephen was invited to go ahead, and take chances on settlement, until the building was well under way, final settlement, in any event, to be made, when building was finished; that Stephen proceeded with his work, with full knowledge of the Soap Company; that in the progress of the work, he was visited, at his office, by officers of the Soap Company who furnished suggestions, and advised changes to be embodied in said work; that those visits, changes and suggestions and the work being done by Stephen were fully known to all the officers and directors of the Soap Company, and that no suggestion to cease his labors were ever conveyed to Stephen; that the plans and specifications after several months' work and labor of Stephen and assistants were completed, and the same turned over to the Soap Company (page 33); that the factory was never built, but the scheme abandoned by the Soap Company; that on June 22, 1904, the Company wrote a letter to Stephen that it might purchase a building, but assured him that it would arrange with him for his compensation; that after repeated demands the Soap Company refused to pay; that, at the trial proof was offered as to the value of the services, and resulted in a verdict for Stephens for \$659.47.

I.

We do not urge the right to recover on a specific con-

tract in writing, but, a careful inspection of the correspondence leaves the mind in no doubt on that point.

The engagement is clear, the invitation to proceed with the work and acceptance are manifest, but the continuity of the service is broken by the Soap Company's failure to build.

Nevertheless the promise to compensate Stephen is expressed in its letter of June 22, 1904 (page 9).

II.

With regard to his right to recover on a quantum meruit surely there can be no doubt but that Stephen is entitled to the value of his services. In the light of our adjudications, the knowledge of a majority of the board of directors, confer full corporate authority upon the acts of the Company's officers.

"Where the directors of a corporation having notice of an unauthorized act performed on their behalf by one of their officers, remain silent and take no steps to disaffirm the act, they may generally be charged with the consequences of such act, on account of their acquiescence or ratification."

Clement vs. Young-McShea Amusement Co.,
60 Atlantic Reporter, 419.

In the case under consideration, Penrose Hirst and Maurice Hirst were respectively President and Second Vice President of the Soap Company, and were active in Stephen's office while the plans were in progress, giving advice, overseeing the work, suggesting changes, and furnishing ideas.

On pages 69 and 70, printed book, Penrose Hirst admitted that the officers and directors of the Company knew that the work was going on; and on page 70 et seq., that they made no objections to the work going on, and that they discussed the matter among themselves several times.

On pages 42 and 43 Penrose Hirst and Maurice Hirst promised to pay.

"If officers of a corporation openly exercise a power which presupposes a delegated authority for the purpose, and other corporate acts, show that the corporation must have contemplated the legal existence of such authority, the acts of such officers will be deemed rightful and the delegated authority will be presumed."

Railway Co. vs. Kekuk Bridge Co., 131 U. S. 371 to 382.

The directors of this Company had full knowledge of what Hirst was doing and neither protested nor interfered with his acts on behalf of this Company.

The plaintiff acted in good faith and was led by the conduct of the directors to rely upon the method in which they permitted their business to be conducted.

It is respectfully urged that the writ be dismissed.

HOWARD L. MILLER,
FRANCIS D. WEAVER,
Counsel for Defendant in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THOMAS STEPHEN,	}	
Defendant in Error,		
vs.		
CAMDEN & PHILADELPHIA SOAP		On Contract.
COMPANY,		
Plaintiff in Error.		

BRIEF FOR PLAINTIFF IN ERROR.

I.

The defendant in error says (43, 44, 45, 46), that his contract, whatever it was, was reduced to writing and is embodied in the letters written before November 19, 1903. On page 48, l. 22, he says the contract provided for two- and a-half per cent. on the plans and specifications, in the event of the building not going ahead. On page 49, l. 18 et seq., he is uncertain about the contract and thinks it calls for two- and a-half per cent. in the letters.

It thus becomes imperative to know what the actual contract between the parties was. The case (5 et seq.)

shows that counsel for plaintiff below rested his case at first on the letters, and afterwards put it on a quantum meruit. Mr. Stephen did a little gratuitous work for the defendant prior to April 14, 1903 (5). It was followed by the letter of May 12, 1903 (6, 7), in which he made blue prints for defendants use, and "with your permission I will now proceed with the plans, etc." The "verbal agreement" was reduced to writing. Besides he says in this letter: "I make you present of the details." This is important because afterwards Mr. Stephen was allowed to recover for the very details he had presented to the defendant.

This letter was followed (7) by one from the defendant below, dated May 19, 1903, in which it was distinctly stated that the defendant did not feel disposed to go ahead with the erection of the building on account of labor troubles, but if the plaintiff desired to go ahead with the plans and take chances for settlement until such time as the building was well started, when some method of settling, as the building progressed might be adopted, but the final settlement not to be made until the building was finished and turned over, when the final payment would be made, or will take the risk and wait until the building was finished. The letter further states that if this meets with your views, it will be entirely satisfactory to us, to have you go ahead with the plans just as soon as you feel disposed so to do. This letter was followed by one, dated May 20, 1903 (8), in which the plaintiff below says: "will state that I have decided to proceed with my portion of the work and that I accept your proposition to take the chances of the starting of the building being delayed on account of the labor trouble, provided you

will pay me in installments as asked for in my former letter of the 12th of May, 1903." Of course, the installments could not be paid until the building was started, but the building was never started, and the plaintiff below was notified (60, 73, 74) not to go ahead with the work, because the building would not be undertaken. Mr. Hirst says that no other contract than that contained in these three letters was ever entered into between the plaintiff and defendant. Morris Hirst (73) says that Mr. Stephen was told not to go on and that Mr. Stephen replied that he was willing to take his chances. Mr. Garwood (74) says that Mr. Stephen was directed not to proceed with the drawings, unless at his own risk. That the contract was contained in these three letters is admitted, as above pointed out, by Mr. Stephen himself, so that there can be no question about the matter. Note especially what Mr. Stephen said on page 50. Q. Weren't you expecting to put up this building? A. Yes. Q. And wasn't that the reason you made these plans? A. Yes, they said they were going to put it up. Q. And that is the reason you made these plans? A. Yes. That is, he made the plans on the expectation that the building was going up, but the first three letters stated that the building might not go up on account of labor trouble, so that the plaintiff must necessarily have known that he was taking chances.

The evidence shows that the different officers of the corporation were spoken to by Mr. Stephen and visited his place of business at different times with reference to some phases of the plans, but these facts are immaterial and can in nowise be so construed as to change the written contract contained in the letters. All the work

done under this contract occurred between April 14 and November 19, 1903 (21, 43). Therefore, it follows that the work done under the contract, contained in the three letters, was completed by November 19, 1903, and the matter was closed. On the 22nd of June, 1904, (9, 10), the president of the Company wrote a letter in which he stated that the building was either to be erected or one purchased, that in either case the plaintiff would be taken care of, and, if the defendant purchased a building the plaintiff's compensation would be arranged for. Besides this letter apprised the plaintiff that the defendant would not go ahead with the buildings. It was argued at the trial that this letter changed the contract heretofore ^{entered} into and bound the defendant to pay the plaintiff. The answer was that the contract and the work done thereunder were both completed, and that the president of the Company had no authority to make a new contract. The president of the Company and the other officers all swear to that effect and it stands uncontradicted. *Mausert vs. Christian Feigenspan*, 63 At. Rep., 610; *Titus vs. Caro Fulton R. R. Co.*, 8 Vr., 98; *Stokes vs. New Jersey Potter Co.*, 46 Vr., 237.

This letter, together with all the other letters following, plainly show, by inference, that the contract was contained in the first three letters and that no other was made. Especially the letter from the Company to the plaintiff (13), dated December 6, 1905, shows what the contract was. It says "we have decided not to build at present, and if we ever do, we will no doubt use the plans, possibly with some modification. You took the chance in going ahead with these plans, on your own shoulders, otherwise the plans would not have been made

at that time, they would have been deferred." The two letters by the plaintiff (18, 19) likewise plainly show that the contract was contained in the first three letters. The plaintiff says "I have never received word officially from you, whether you intend to build your proposed factory, which I made plans and specifications for. Will you please let me know by letter what you intend to do in the matter, as you are aware that the above work was done under considerable expense to me, and in good faith that the building would be erected. I feel as though I ought to receive some compensation for my labors." This letter could not have been written unless the contract contained in the first three letters had been entered into. In the next letter the plaintiff even makes a new proposition. This could not, and would not have been done had not the contract continued in the first three letters visited upon the plaintiff the consequence of the risk he took in making the plans and specifications. These latter letters were objected to (22, 23), and admitted by the Court.

It is respectfully submitted that this ruling was erroneous because the letters had the effect of importing into the case evidence tending to vary the written contract contained in the first three letters. Likewise it seems to me to have been error (25) to have allowed the plaintiff to tell the conversations he had with Mr. Maurice Hirst after the contract had been reduced to writing. Such conversations had the effect to vary a written contract. Likewise (30) it was erroneous to allow in the case the evidence there stated. Also (31) the learned Court allowed the witness to state, over objection, "I do not remember whether it was that time, or the next time I

saw him that he made a proposition to settle with me." A proposition of settlement is not evidence and the admission of the statement clearly prejudiced the defendant. Likewise (34) there is manifest error in the Court allowing the plaintiff to testify that he got bids from other parties on the buildings that were contained within this group (indicating). Whether the plaintiff let out his work, or attempted to do so, to others, was not a material matter, and plainly tended to injure the defendant.

On page 46 the plaintiff stated that the term "details" had a technical meaning and that the various papers, drawings, plans, offered in evidence (36) either were the details, or embodied the details. The offer of these exhibits was objected (36) to. They should have been excluded, or least a portion of them, because the plaintiff (7) in his letter of May 12, 1903, said "I make you a present of the details." Having made the defendant a present of the details, he was not entitled to compensation for the same. The learned Trial Judge allowed them to go the jury to show the value of the plaintiff's labor, notwithstanding, according to the contract, the plaintiff took chances in making them, and also made them a present to the defendant. If the contract was in writing, as it plainly was, the learned Trial Judge (38) was in error in allowing the plaintiff, over objection, to prove the number of hours that he put upon the plans and specifications. There was error also (40) in allowing, over objection, the plaintiff to state conversations he had with Mr. Hirst after December 1, 1905. Also (42, 43) the learned Trial Judge allowed the plaintiff to state that Mr. Hirst promised to pay the plaintiff for the work done. Doubtless this evidence defeated the defendant at the

trial. Mr. Hirst had no power to bind the Company, nor had he the power to vary the written contract. The statement alleged to have been made by Mr. Hirst was not in line of his authority (63).

II.

If this view of the case is correct, it follows that the learned Trial Judge was in error in refusing to non-suit and likewise in error (75) in refusing to direct a verdict.

III.

It is respectfully urged that it was error (70) to allow, over objection, Mr. Hirst to state whether or not the officers of the Company, including himself, made no objection to Mr. Stephen going on with his work. Such evidence had the effect, upon any theory of the case, to allow the jury to consider this negative attitude of the officers of the Company as evidence, and bind the Company. The defendant Company was in nowise benefited by the work done by Mr. Stephen. His plans and specifications never were and never can be of use to the defendant. Therefore, to rest the liability of the defendant upon the mere absence, on the part of its officers, ~~to~~ an objection to the plaintiff's doing the work seems to me to be prejudicial to the defendant. If Mr. Stephen choose to do the work, the mere failure of the officers of the Company to object to his doing the work is not evidence of liability.

IV.

On page 78, the learned Trial Judge was requested to charge: "The statements of the president of the defend-

ant Company to the plaintiff cannot bind the defendant unless such statements were authorized by the Company and there is positive and uncontradicted evidence that such statements were not authorized. If you so find, the plaintiff is not entitled to recover and your verdict should be for the defendant." This seems to be the law according to the authorities above referred to.

V.

The request to charge on the subject of damages (79), seems to me, should have been granted. In the letter of May 12, 1903, the plaintiff said "I am making you two blue print copies of the same for your own use." The evidence shows that this was done before even the pretense of a contract was entered into between the parties. Yet this very work the jury was allowed to take into consideration on the basis of a quantum ~~meruit~~^{meruit}. In the same letter the plaintiff says "I make you a present of the details." And these details the jury was permitted to make the defendant pay for by their verdict. Furthermore the plaintiff was told not to continue the plans and drawings. He did continue them and the jury was permitted, by their verdict, to make the defendant pay for the same.

It is respectfully submitted that the judgment should be reversed.

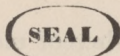
Respectfully submitted,

JOHN W. WESCOTT,

For the Defendant Below.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

NEW JERSEY, SS. :



The State of New Jersey to the
Supreme Court of Judicature of
said State, Greeting:

Forasmuch as in the record and proceedings, and also
in the giving of judgment in a certain plaint, which was
in our New Jersey Supreme Court, before you, between
Thomas Stephen, plaintiff, and The Camden & Phila- 10
delphia Soap Company, defendant, in a plea of an action
in contract, manifest error hath intervened, to the great
damage of the said The Camden & Philadelphia Soap
Company, as is said, and we being willing that the error,
if any there be, should, in due manner, be corrected, and
full and speedy justice done to the parties aforesaid in
this behalf, do command you that if judgment be there-
upon given and affirmed, then you distinctly and
openly send, under your seal, the record and proceedings 20
aforesaid, with all things touching the same, to our
Judges of our Court of Errors and Appeals in the last
resort in all causes, at Trenton, on the sixth day of
November, next, together with this writ, that the record
and proceedings aforesaid being inspected, we may cause
further to be done thereupon for correcting that error
what of right and according to law and custom of the
State of New Jersey, ought to be done.

Witness, William J. Magie, President Judge of our
Court of Errors and Appeals, at Trenton aforesaid, the 30
seventeenth day of October, in the year of our Lord, one
thosuannd nine hundred and six.

S. D. DICKINSON,

JOHN W. WESCOTT,

Clerk.

Attorney.

RETURN.

The answer of William S. Gummere, President Judge of the New Jersey Supreme Court:

The records and proceedings of the plea whereof mention is within named, with all things concerning the same to the Court of Errors and Appeals on the last resort in all cases, within specified, at the day and place
 10 within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

WILLIAM S. GUMMERE,
 Chief Justice.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY CIRCUIT.

THOMAS STEPHEN,

VS.

CAMDEN & PHILADELPHIA SOAP

COMPANY,

On Contract.

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SEPTEMBER TERM, 1906.

Appearances:

For the Plaintiff, HOWARD L. MILLER, ESQ.,
F. D. WEAVER, ESQ.

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For the Defendant, JOHN W. WESCOTT, ESQ.

Before ENDICOTT, J. and a Jury.

THOMAS STEPHEN, sworn.

By Mr. Weaver:

Q. Mr. Stephen, where do you live?

A. Merchantville, New Jersey.

Q. And what is your business or occupation?

A. Architect.

Q. How long have you been engaged in that profession?
10 sion?

A. About fifteen years.

Q. Where?

A. City of Camden.

Q. All that time?

A. Yes, sir.

Q. Are you a member of any association of architects?

A. Yes, sir, I am a member of the American Institute of Architects.

Q. Have you during your business career in the city
20 here, or professional career here, built any buildings of size.

A. A few.

Q. Can you state what buildings you built?

A. The Central Trust, Public Service Corporation Building, office building and warehouse, Burlington County Insane Asylum, Camden High School, Broadway School, Barber Memorial Industrial School, Roxanna, Alabama.

Q. What was the amount involved in the largest of
30 these buildings?

A. About \$125,000, I think that was the largest contract I had.

Q. Now, when did you first come in connection with the Camden & Philadelphia Soap Company or its officers?

Mr. Wescott: What is that question?

Q. When did you come in business relations first with the Camden & Philadelphia Soap Company or its officers?

A. Do you mean on this matter?

Q. Yes, in this matter.

A. Why, some time prior to April 14th, 1903.

Q. Now, had you done any work for them before that time?

A. Done a little gratuitous work in measuring their old building up on Main street, and made some calculations, and finally concluded not to alter the building, but build a new one at that time. 10

Q. And did you have any conversation with them before you entered into correspondence with them?

A. Yes, sir, Mr. Maurice Hirst; I had some conversation with him, the second vice-president, I believe, of the Company.

Q. What was the nature of that?

Mr. Wescott: I object to that on two grounds: First, counsel stated that this correspondence between these people constituted a contract. If that is so then any statements by way of conversation disappear from the case, and the letters control; you cannot recover on a written contract and explain it by parol which anteceded the contract. The other ground is that conversation with an officer of the corporation is not binding upon the corporation. Upon those two grounds I object to conversations between this witness and the officer of the corporation. 20 30

The Court: If this contract appears in the writings, certainly the objection is well taken.

(It is agreed between counsel that Penrose W. Hirst is

president and treasurer of the Camden & Philadelphia Soap Company, that Ralston S. Hirst is vice-president, Maurice DeW. Hirst is second vice-president, John L. Garwood is secretary, and Allen B. Field is assistant secretary.)

Mr. Weaver: I call on the other side to produce a letter written by Thomas Stephen to the Camden & Philadelphia Soap Company, dated May 12th, 1903.

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(Paper is produced and handed to counsel.)

Q. Mr. Stephen, will you look at that letter and see if you wrote that to the Camden & Philadelphia Soap Company?

A. Yes.

Q. It is your handwriting?

A. Yes.

Q. And what is attached to it?

A. The schedule of the American Institute of Arch-
20 itects.

Q. Was that sent at the same time?

A. Yes.

Mr. Weaver: Have you any objection to this going in?

Mr. Wescott: Not the slightest.

Said letters are offered in evidence and read to the jury as follows:

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Camden, N. J., May 12th, 1903.

To the Camden & Philadelphia Soap Company,

Gentlemen: Mr. Jessup has just brought up the tracing of the survey of your newly acquired property and I am making you two blue print copies of the same for

your own use; with your permission I will now proceed with the plans, etc., but I thought you would like to have my verbal agreement with your Mr. Maurice Hirst in writing, so I hereby agree to render complete architectural services including supervision and all the work usually done by an architect for the sum of 4 per cent. on the cost of the work (or $2\frac{1}{2}$ per cent. for the plans and specifications); as this is a special price I wish you to please do not let this get out in the public as I am getting 5 per cent. for similar work; the way I get over it, I make you present of the details, said commission to be 10
either paid in installments of 4 per cent. of the amount paid the contractor as the work progresses or as per enclosed schedule of the American Institute of Architects. Hoping to receive a written acceptance of the above and thanking you in advance for the same, I am,

Very respectfully yours,

THOMAS STEPHEN.

Camden, N. J., May 19th, 1903.

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(On the official letter head of the Camden & Philadelphia Soap Company.)

Thomas Stephen, Architect, Camden, N. J.,

Dear Sir: In replying to yours of the 12th inst., will respectfully say that your proposition to go ahead with the plans has been considered, but owing to the very unsettled condition of the labor market throughout the entire country we do not feel disposed to go ahead with the erection of the building, until the labor disturbance becomes more settled, so that we will have the assurance that when we start the building, we will be able to finish it without interruption on account of the labor trouble, and as per our telephone conversation with you, 30

if you desire to go ahead with the plans and take chances of the starting of the building being delayed and in waiting for our settlement with you, until such time as the building is well started, and as you suggested, at which time we can certainly agree on some method of settling as the building progresses, but the final settlement not to be made until the building is finished and turned over to us, when the final payment will be made for your services or will take the risk and wait until building is finished.

10 If this meets with your views, it will be entirely satisfactory to us, to have you go ahead with the plans just as soon as you feel disposed so to do.

Very truly yours,

THE CAMDEN & PHILADELPHIA SOAP COMPANY,
Penrose W. Hirst, Pres.

(Dic. P. W. H.)

20 Letter from Thomas Stephen to The Camden & Philadelphia Soap Company, dated May 20th, 1903.

Gentlemen: In answer to your esteemed favor of the 19th inst., will state that I have decided to proceed with my portion of the work and that I accept your proposition to take the chances of the starting of the building being delayed on account of the labor trouble.

Provided you will pay me in installments as asked for in my former letter of the 12th of May, 1903.

30 This morning I left drawing at the office of the P. R.R. engineer to determine about siding and expect answer to-morrow.

Respectfully yours,

THOMAS STEPHEN.

Q. I call your attention to a copy of a letter dated

New Jersey State Library

June 20th, 1904, on your letter head, and ask you if that is a copy of a letter which you sent to The Camden & Philadelphia Soap Company?

A. Yes, a duplicate.

Q. A carbon copy?

A. No, it is not a carbon copy; I took it out of my letter box.

By Mr. Wescott:

Q. Have you the original? 10

A. Yes, I can get it in a few minutes.

Q. Did you keep it?

A. Yes, kept it in my letter book, yes; then I had these written from my letter book.

Mr. Wescott: Then you had better produce them; you had better bring the letter book.

A. I have got the original,—or I haven't the original—I have a copy of the original. 20

By Mr. Weaver:

Q. Did you receive the letter I show you dated June 22nd, 1904, from the Camden & Philadelphia Soap Company?

A. Yes.

Mr. Wescott: I object to having that letter read until it is proved.

Mr. Weaver: No, this is a subsequent letter, Judge. 30

(Reading.) Thomas Stephen, Architect, Camden, N. J.

Dear Sir: Yours of the 20th inst. received, you are certainly entitled to consideration in answering your question; we will either erect our buildings or will pur-

chase one already erected; in either case you will be taken care of; if in purchasing a building erected we will arrange with you for your compensation.

You now understand with the present condition of the times and the slow, dull business we were justified in not going ahead with the new buildings.

Yours very truly,

THE CAMDEN & PHILADELPHIA SOAP COMPANY,
Penrose W. Hirst

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Mr. Weaver: The next is a letter from Stephen to Mr. Penrose W. Hirst, of the Camden & Philadelphia Soap Company, dated September 22nd, 1904.

(Reading.) Dear Sir: Not having heard from you since June 22nd, 1904, in relation to your proposed new factory, I am anxious to know if there are any new developments or any definite decisions arrived at regarding the same. Thanking you in advance for a reply, I am,

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Respectfully yours,

THOMAS STEPHEN.

The next is a letter from the Camden & Philadelphia Soap Company to Thomas Stephen, dated September 23rd, 1904.

Camden, N. J., Sept. 23rd, 1904.

Thomas Stephen, Camden, N. J.

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Dear Sir: Yours of the 22nd inst. received this date for Mr. Penrose W. Hirst. Mr. Hirst is now in the West but we expect him back some time next week. We cannot give you anything in relation to our new factory at this time; but we do not know what he will have in mind when he arrives home as there has been some

new developments since he arrived in Chicago and we do not know just how he will take care of them until he arrives. Very truly yours,

THE CAMDEN & PHILADELPHIA SOAP COMPANY.

Mr. Weaver: The next is a letter to The Camden & Philadelphia Soap Company from Thomas Stephen, dated August 7th, 1905. Do you object to that letter?

Mr. Wescott: Yes, we never received it.

Mr. Weaver: Well, we will hold that over until the arrival of the letter book. Now, I call for the production of the letter from Thomas Stephen to The Camden & Philadelphia Soap Company, dated September 1st, 1905. Do you object to that one? 10

Mr. Wescott: Yes, we object to any we have not received.

Mr. Weaver: The next is a letter from the Camden & Philadelphia Soap Company to Thomas Stephen, dated September 2nd, 1905. 20

(Reading.) Thomas Stephen, Camden, N. J.

Dear Sir: Yours of the 1st inst. received, also yours of later date; during the writer's absence from home; and since arriving home have been called away on three other occasions; so I have really had no time to read your previous letter. We have had our National Laundrymen's Association Convention on during this week and this is the only apology I can extend to you for the delay. Now the writer will take this matter up as early next week as possible. Monday being a holiday it may be along about Thursday before I can reach your letter. Trusting this will be entirely satisfactory, I remain, very truly yours, 30

PENROSE W. HIRST.

The next is a letter from Thomas W. Stephen to The Camden & Philadelphia Soap Company, dated October 14th, 1905.

Mr. Wescott: I object to that letter being read.

Mr. Weaver: I call on you for the letter dated November 20th, 1905, from Thomas Stephen to the Camden & Philadelphia Soap Company.

10 (Said letter is produced and read as follows:)

Gentlemen: I am still waiting for a reply to my letter to you dated August 7th, 1905. You wrote to me some time ago that you were behind with your mail and would answer in a few days; surely you have had time to consider this matter. I do not think you are treating me right, considering the expense and trouble which I have gone to in my efforts to try to please you and I insist on a reply to my letter at once. Respectfully yours,

THOMAS STEPHEN.

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Mr. Weaver: The next is a letter from The Camden & Philadelphia Soap Company, dated November 21st, 1905.

(Reading.) Thomas Stephen, Camden, N. J.

My Dear Mr. Stephen: Your favor of the 20th inst. to hand and contents noted. Father is away to-day but we expect him in the office again to-morrow, at which time the writer desires to assure you that the matter of which you write will be taken up, and you will be advised at once. The writer does not know what has occasioned
30 delay in this matter, but he will make it his business to see that you receive prompt attention. Trusting this will be satisfactory to you, we are, very truly yours,

THE CAMDEN & PHILADELPHIA SOAP COMPANY,
M. DeW. Hirst.

Mr. Weaver: Now, I call for the production of a letter from Thomas Stephen, dated December 1st, 1905.

(Said letter is produced and read as follows:)

Gentlemen: On November 21st I received a letter from your Company stating that Mr. Penrose W. Hirst would be in next day when the matter of compensating me for services rendered would be taken up by him. I am still waiting for you to do me justice in this matter.

Respectfully yours,

THOMAS STEPHEN.

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Mr. Weaver: The next is a letter from The Camden & Philadelphia Soap Company, dated December 6th, 1905.

(Reading.) Mr. Thomas Stephen, Camden, N. J.

Dear Sir: Yours of December 1st received, while the writer was out of the city; and his time is very much taken up between Camden and New York; and your letter was delayed on account of pressure of business on his arrival home from his trip, otherwise your letter would have been taken up sooner. Now, we hardly know what we can add to what we have already said in a previous letter, in reference to the plans on the new building. You will remember what we said in that letter, and which you no doubt have by you and can look over. We have decided not to build at present, and if we ever do, we will no doubt use the plans, possibly with some modification. You took the chances in going ahead with these plans, on your own shoulders, otherwise the plans would not have been made at that time, they would have been deferred.

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Yours very truly,

THE CAMDEN & PHILADELPHIA SOAP COMPANY,
P. W. Hirst.

Q. Now, Mr. Stephen, as a result of your talk with one of the officers of The Camden & Philadelphia Soap Company, on or about May 12th, 1903, or prior thereto, and as a result of your letter dated May 12th, 1903, and the other correspondence, did you do any work on behalf of The Camden & Philadelphia Soap Company?

10 Mr. Wescott: That question is objected to, if your Honor please, and probably will require some considerable explanation to show the propriety and force of the objection.

Mr. Weaver: I will modify the question to this extent—I will leave out the words “and other correspondence.”

(Question repeated as amended.)

(Objected to; question withdrawn.)

20 Q. Mr. Stephen, as a result of your conversation with the officers, or one of the officers of The Camden & Philadelphia Soap Company, on or about May 12th, 1903, and as a result of the letter dated May 12th, 1903, the letter dated May 15th, 1903, and the letter dated May 19th, 1903, also the letter dated May 20th, 1903, did you do any work on behalf of The Camden & Philadelphia Soap Company.

(Objected to.)

30 The Court: Why not just ask him what work he did; now, I suppose that would not be objectionable.

Mr. Wescott: Yes, for this reason. The two objections to this question are first that “as a result of conversation on or about the time of the writing of the letter” impregnates the question with a fault, because if this

contract was a written contract, then what work was done must have been done as a result of a written contract or according to a written contract, and not as a result of and according to oral antecedent explanations.

Mr. Weaver: I will withdraw the question.

Q. Now, Mr. Stephen, I will ask you as a result of the letters dated May 12th, 1903, May 15th, 1903, by you and the letter of the Camden & Philadelphia Soap Company, dated May 19th, 1903, and the letter by you dated May 20th, 1903, did you do any work on behalf of the Camden & Philadelphia Soap Company? 10

(Objected to.)

The Court: The objection is sustained. I do not think you ought to ask the witness under what authority he did it. That is the question that is being mooted here now for the Court and Jury to decide. I think you may show what correspondence took place, &c., and then show what he did. 20

Q. Well, Mr. Stephen, did you do any work for The Camden & Philadelphia Soap Company on or about and after the 12th day of May, 1903?

Mr. Wescott: That is objected to; you see that opens a wide door. He might have done a thousand pieces of work that bear no relation at all to the matter in controversy here. If he did any work it should be limited to the scope of a contract in writing. They stand here upon a written contract growing out of these letters. Now, whatever work was done must have been done within the limits of that contract; but if the question is modified and the witness is asked if he did any work at all under this contract, I shall object to that also and state the grounds of the objection, which I think are valid. 30

The Court: Your claim as I understand is that there was no contract here?

Mr. Wescott: There was no contract at all?

The Court: Under which there was any work done and you want the legal question decided first?

Mr. Wescott: Surely, this correspondence does not disclose any contract at all. On the contrary, it discloses
10 just the opposite of a contract.

The Court: Is the correspondence all in evidence now?

Mr. Weaver. No, there are three letters.

The Court: I think we might as well deal with the legal aspect before we go into the contract to see if there is correspondence here from which a contract might be drawn?

20 Mr. Wescott: If counsel rely upon these excluded letters which are not in evidence, whether they should be admitted or not is a preliminary question which should be first settled.

The Court: Have they been offered.

Mr. Wescott: Counsel called my attention to them. I object to them on the ground that we have not received such letters.

30 Mr. Weaver: I call on the other side for the production of the letters.

Mr. Wescott: Well, we have produced all the letters we have or have received. If you say we have received other letters, it is incumbent upon you to prove that fact. We say we did not.

Mr. Weaver: The only point is if you insist on waiting for the copy.

The Court: I understand the objection is not to the form of proof of the preparation of the letter, but that it was not received.

Mr. Weaver: Of course we cannot prove that. All we will prove is that such a letter was sent and that is as far as we can go. Of course we will further prove that they have acknowledged receipt of the letter. 10

Q. Mr. Stephen, will you look at your letter book and see if you have a copy of a letter dated June 20th, 1904, to The Camden & Philadelphia Soap Company?

A. I have.

Q. Did you send such a letter to The Camden & Philadelphia Soap Company?

A. I did.

Q. Is that a copy of the letter?

A. That is the copy, yes, sir. 20

Mr. Wescott: I object to its admission on that proof. The proof that a person has written a letter and put it in his copy book and sent it is not proof that the person addressed received the letter. There must be some proof that that letter came to us.

Mr. Weaver: As a further proof that the parties received the letter, I will call your Honor's attention to the letter already offered in evidence, dated June 22nd, 1904, by The Camden & Philadelphia Soap Company, in which they say, "Yours of the 20th inst. is received." 30

The Court: "Yours of the 20th" is the one that you are now offering?

Mr. Weaver: That is the one I am now offering.

Mr. Wescott: (After argument.) I will admit these letters anyhow, to save time. Now all the letters are in evidence and from these letters, I say there is no contract in evidence here.

Mr. Weaver: The first letter is dated June 20th, 1904, from Thomas Stephen:

10 Mr. Penrose Hirst:

Dear Sir: I have never received word officially from you whether you intend to build your proposed factory which I made plans and specifications for. The last time I saw Mr. Maurice Hirst, he said you were contemplating altering another building, will you please let me know by letter what you intend to do in the matter, as you are aware that the above work was done under considerable expense to me and in good faith that the building would be erected I feel as though I ought to receive
20 some compensation for my labors. I have not bothered you before awaiting your decision and to allow you time to come to definite conclusions, I am, sir,

Very respectfully yours,

THOMAS STEPHEN.

Now, the next is dated August 7th; that is the next letter that was held over from Mr. Stephen:

30 Gentlemen: I believe it was sometime in May, 1903, that I first commenced to work on the plans of your proposed buildings and I have been patiently waiting ever since for you to take some action in the matter; of course it is needless for me to elaborate on the fact that it cost me considerable money to develop the plans and specifications for this proposed plant, because gentlemen

calling at my offices from time to time could see that for yourselves. Now, at the suggestion of your Mr. Maurice Hirst (given some time ago) I have concluded to make you the following proposition which I hope you will conclude to be reasonable. According to my office diary kept by one of my assistants it cost me to develop said plans and specifications \$470.72, no charge has been made for professional services, nothing charged for except for labor and expense attached and I ask you at this date to be so kind as to mail me a check for said amount and I will deduct the same from my commission when you conclude to erect the buildings. Thanking you in advance for the above, I am,

10

Respectfully yours,

THOMAS STEPHEN.

Mr. Weaver: Now, if the Court please, I offer that correspondence in evidence.

The Court: I understand there is no objection to the correspondence.

20

Mr. Wescott: No.

(Said correspondence is marked together in one package Exhibit P. 1 for plaintiff.)

Q. Now, I ask the witness if on or about May, 1903, he did any work on behalf of The Camden & Philadelphia Soap Company?

30

Mr. Wescott: That I object to.

The Court: We will now consider the legal phase of the question first before we go on, and I will hear your motion why the plaintiff should not be called.

Mr. Weaver: If your Honor please, we do not now say that there is a written contract for this work, but we offer these letters in evidence as evidence that work was done at that time by Mr. Stephen, and we will show that subsequently there was an express promise to pay for the service rendered—that of course we have not come to yet—under which arises an implied contract.

10 Mr. Wescott: Then I move for the exclusion of these letters. Counsel in his opening said he would show a written contract by virtue of the correspondence and I supposed that was the position he was going to stand on. His correspondence is in evidence and now counsel admits that that position is unsound and says he does not stand upon the written contract but proposes to prove a parol contract, namely, that services were rendered for which this corporation agreed to pay. That being his position now, these letters bear no relation to the proposed oral contract and cannot be part of it. You cannot have a written contract and an oral contract and
20 recover on both; you must recover on one or the other. Counsel expressly says now that he does not propose to recover on any written contract but he does propose now to show an oral contract and show services rendered under that oral contract for which this defendant is liable. That being the case I move to exclude from the evidence as immaterial the correspondence offered and admitted by the defendant. Of course it was admitted by the defendant on the understanding that it constituted the
30 contract which was the basis of this suit.

The Court: The motion will be held in abeyance and further testimony may be put in.

Q. Mr. Stephen, did you on or about the 12th day of

May, 1903, do any work for The Camden & Philadelphia Soap Company?

A. I did.

Q. What did you do?

A. Made plans and specifications for a group of buildings?

Q. Are these the plans?

A. Yes, sir, they are the plans, tracings.

Q. And are these the blue prints of the plans?

A. Yes.

Q. And also the specifications for the building?

A. Yes.

Q. I will call your attention to the other bundle of papers over there. Are they blue prints in connection with this building?

A. Yes, sir.

Q. And made at that time?

A. Yes, sir, finished some time in November, I think.

By Mr. Wescott:

Q. They were made when?

A. Made between April 14th and November 19th, 1903.

By Mr. Weaver:

Q. Now, Mr. Stephen, will you state to the jury fully what the character of this work was, the kind of a building, and the necessary work that you put on the plans and specifications?

Mr. Wescott: I object to that question because I do not see its meaning.

(Question repeated.)

The Court: It is allowed.

A. It consisted of a group of buildings for the manufacture of soap and starch and a laundry. I think if I had the plans I could explain it to the jury much better.

Q. Where was the building to be located?

A. Located on Pine street near Haddon avenue, Camden, New Jersey.

Q. Now, state the character of the work that you did.

A. This, gentlemen, is a block plant; this shows a railroad siding coming in at this corner. These buildings were supposed to be built on a triangular plot of ground. This showed the position of the warehouses and shipping department (indicating); this is the cold storage (indicating); this was the main factory (indicating); this was five stories and a basement; this was the boiler house, the wagon shed, stable, and then this was a group of buildings for the manufacture of starch (indicating). The whole of the work was delineated on twenty-two different drawings.

Q. Now, were there blue prints made of all those drawings.

A. Yes.

Q. And are these a copy of the plans and specifications? (handing witness papers).

A. A copy of the specifications.

Q. I should say specifications.

A. Yes, twenty-two pages close written type-writing.

Mr. Weaver: Now, if your Honor please, I want to offer in evidence the plans, the blue prints and copy of the specifications, together with the blue prints on the other table, which were made for this work.

Mr. Wescott: I object to those being offered until there is a contract proven here of some sort.

The Court: I will admit them.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. Mr. Stephen, during the progress of this work, did you have any conversations with any of the officers of the Company and with whom?

(Objected to.)

10

The Court: It is allowed.

(Question repeated.)

A. Yes, sir.

Q. With whom?

(Objected to; objection overruled.)

A. Mr. Maurice Hirst and Mr. Penrose Hirst.

Q. Now, when did those conversations take place? 20

Mr. Wescott: I object to that because he has already stated it was between April 14th, 1903, and November 19th, 1903.

The Court: It is allowed.

A. That is when the drawings were made; that is when we commenced the work on the drawings.

Mr. Wescott: You said it was when the work was 30 done.

The Witness: Yes.

Q. Now, after the work was done, did you have any

conversation with the officers of the Company, and if so with whom?

Mr. Wescott: That is objected to on this ground: The original question which justified your Honor in allowing this examination to go so far as it has was this: "Did you on or about the 14th day of April, 1903, do some work for this defendant?" That question was answered affirmatively. Now, that implies that there was a contract. Then the Court allowed him to go on and state what the work was, and during his statement in respect to that matter he said the work was done between the 14th of April and the 19th of November, 1903, and if there was a contract by which that work was done it was a contract prior to that time of course; it must have been, or else it was a mere voluntary service on the part of this plaintiff. There must have been some inducing contract to ever get him to do that work. Now, if that is so, and it must be so legally, any subsequent conversation would be inadmissible, because it would not relate to this contract at all. He cannot make a new contract by a subsequent conversation and recover on that. I want to know what contract they propose to put their foot on to recover. They have said under oath first that they propose to recover on a written contract, and they now admit that there is no written contract, and so they say they will recover on a parol contract. You will observe that the evidence to establish the written contract was evidence which arose between the 14th day of April and the 19th of November, 1903.

The Court: Suppose that subsequent arrangement was a promise to pay, wouldn't that be competent then?

Mr. Wescott: There is a promise to pay implied in any contract by implication. Of course if it is put on

that ground that there was a mere repetition of a contract, a promise to pay specifically, I will have no objection to it, but the question is so general it permits any conversation at all.

The Court: He may answer.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge. 10

(Question repeated.)

A. I had conversations with Mr. Maurice Hirst several times; I met him on the street and asked him about compensation.

Mr. Wescott: Wait, don't tell us what it was.

Mr. Weaver: When was this, about?

A. I cannot remember the date. The letters would help me to remember the date if I had them. (After examining Exhibit P. 1.) It was some time after December 6th, 1905. I don't just remember the date, the exact day. It was after that. 20

Q. That was with whom?

Mr. Wescott: Some time after when?

The Witness: December 6th, 1905.

Mr. Weaver: And who was that with? 30

The Witness: First with Mr. Maurice Hirst; he said that his father—

Mr. Wescott: Wait, don't tell us what he said.

Q. And did you have any conversation with Mr. Penrose Hirst.

A. I did.

Q. Beside Mr. Maurice Hirst you talked with Mr. Penrose Hirst?

A. Both, yes.

Q. Now, state first what Mr. Maurice Hirst said to you in regard to the work that you had done for this Company?

10

(Objected to.)

The Court: What office did he hold—what relation to the Company?

Mr. Weaver: He was vice-president.

20

Mr. Wescott: I object to it on the ground that a conversation between this gentleman and an officer of this Company on the street, a mere casual conversation cannot make a contract which would bind this defendant any more than any other agent of the Company. This officer is a mere agent of the Company, and a corporation cannot be bound by irresponsible statements of officers.

The Court: I do not think the testimony is competent at this time; whether counsel can make it competent or not remains to be seen. Is this a corporation or a Company?

30

Mr. Wescott: It is a corporation.

The Court: I do not think you have made this testimony competent yet.

Mr. Weaver: It has been admitted here that this man is an officer of the Company.

The Court: Yes, but that of itself is not sufficient. I think you would have to show some rule, by-law or resolution of the corporation which should authorize him to act or that by a course of dealing he has represented the Company or they have sanctioned his acts. Until that is done I cannot accept the testimony.

Mr. Wescott: Another difficulty with that is this: The testimony now is that this work was done for this Company between May and November, 1903, and that is away down in 1905.

10

The Court: I understand that is an effort to show ratification, which naturally would be after the work was done.

Mr. Weaver: You must bear in mind that these letters here all show how these parties dealt with this transaction. They sent repeated letters signed—and it is not denied that they were the officers of this Company—they were dealing with this man all the time as officers of the Company and inducing him to make these plans. Having occupied such a position it seems to me that any conversation they may have had about this work after the work was done is perfectly competent here now. If through the course of the transaction he has held himself out to be an officer of the Company, and as appears in this case he has signed repeated letters and has ordered this work done, subsequent conversations on his part with the defendant will entitle the jury to pass on the validity or legal effect of such conversation.

20

The Court: From the letters which you have offered in evidence does it appear that this particular officer has been active?

30

Mr. Weaver: More than one-half of the letters he signed.

Mr. Wescott: These letters as they now stand in the case are evidential of something, of course. Some of them purport to be written by the president of this Company, and that is a written declaration of the president of the Company, and may be evidence to establish a contract; but counsel has admitted that there is no contract in writing arising out of these letters. If that is so then there must be a contract arising out of the word of mouth, and to make an oral contract binding a corporation there must be some act on the part of that corporation authorizing the agent to make such a contract.

The Court: (To Mr. Weaver.) I think you had better make your offer of proof a matter of record here before the Court so I may know what it is.

Mr. Weaver: I propose to prove by this witness that about the date he mentions here in 1905 this witness met the vice-president in his office and at other places and he stated to him that they had now concluded to abandon the work on this building, that they proposed to abandon it entirely and not complete the building and that thereupon this man was entitled to compensation and they would pay for his work. I not only propose to prove that this was said by the vice-president, but Mr. Penrose Hirst, the president, said he was entitled to compensation for the amount of work he had done for them, but that the building would be abandoned and not built and he would be paid for his work. One of the letters says they would pay him for the work under those circumstances; I merely want to follow up the letter with all the proof. That letter is in evidence.

Mr. Wescott: That is a letter on the official head of this defendant Company dated October 2nd, 1904, long after this work was done and the contract arose on which

they now stand (reading letter); it is a dictated letter and even if it had any effect cannot bind this corporation unless it has corporate sanction, because the president cannot even write a letter binding the corporation to pay for the services which are pretended to have been rendered years before and which services are sought to be paid for long afterward by a dictated statement of the president. It is the same principle exactly as the inability of the president to bind the corporation without authority from that corporation. There is nothing in the terms of the letter to bind them; the letter don't state what this work refers to; it simply contemplates the possibility of putting up a building when these plans which had already been made as a present to the Company would be used and if they were used he would be compensated. 10

The Court: I will allow the question.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly 20

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. He said that it was the intention of the Company to pay me for my services and I should go and see his father, Mr. Penrose Hirst.

Q. Did he say anything about the building itself?

(Objected to.)

The Court: I will strike that answer out. 30

Mr. Weaver: Do you sustain the objection?

The Court: I allowed the question first, but it appeared when the answer was given it was incompetent.

Certainly this man could not speak of the intention of the corporation. It is manifested by no overt act.

(Exception noted for the plaintiff.)

Q. Now, did he say what the Company intended to do about the proposed building?

10 Mr. Wescott: I object to that on the grounds, first it is a leading question in the sense that it is so suggestive that it is improper, and in the next place what this officer said cannot be binding upon this corporation.

The Court: I will take the testimony; I am anxious that it shall all appear upon the record. You may note an exception.

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

20

A. He said that the Company finally abandoned the idea of erecting the building.

Q. Now, when did that conversation take place, about, and where?

A. Some time after I received this last letter from Mr. Penrose Hirst, December 5th, I think it is.

Mr. Wescott: When was that?

30 The Witness: Some time after December 6th, 1905.

Q. Now, did you have any other conversation with Mr. Maurice Hirst and where in regard to this work?

Mr. Wescott: That is objected to on the ground already stated.

The Court: You may answer the question. First, now, when and where?

A. After he told me that I went and saw the president, Mr. Penrose Hirst.

Q. No, I say, did you have any other conversation with him, Mr. Maurice Hirst?

A. Not after that; I think that is the last time I spoke to him on the subject.

Q. Then whom did you go to see?

A. The president, Mr. Penrose Hirst.

10

Q. What did he state to you about the contemplated work?

(Objected to on the same ground; objection overruled.)

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. He said the Company finally decided not to erect the building at all. 20

Q. And at the time did he say anything to you about compensation?

(Objected to as leading.)

(Question allowed.)

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT, 30
Circuit Court Judge.

A. I don't remember whether it was that time or the next time I saw him that he made a proposition for settlement to me.

Mr. Wescott: I object to that on the ground that propositions of settlement are not admissible in any case.

Q. Well, did you see him again after that?

A. No, I wrote to him and told him—

The Court: No, don't tell what you wrote.

Q. Now, did you see Mr. Maurice Hirst at your office about that time?

10 A. No, not at that time.

Q. Well, did you see him on the street about that time?

A. No, I don't know as I have; I saw him on the street but had no conversation with him.

Q. (Handing witness paper.) Now, will you state to the jury what this paper is?

A. This is a sketch that—

Mr. Wescott: Won't it speak for itself?

20

The Witness: That is a sketch of a mixer by Mr. Maurice Hirst, one of the details.

Q. How did you get it?

A. Mr. Maurice Hirst brought it to the office.

Q. Whom did you get that from?

A. Mr. Maurice Hirst.

Q. And how did he come to give it to you?

A. He wanted that detail embodied in the plans, a sort of mixing apparatus.

30 Q. And did you do that work at his request?

A. Yes.

Q. Is it embodied in the plans?

A. Yes, sir.

Q. Now, is that your work, Mr. Stephen? (Handing witness paper.)

A. No, Mr. Maurice Hirst submitted that. That was showing the arrangement, one of the arrangements of the office, one of the schemes of arranging the offices in the interior of the building.

Q. And was that embodied in the work?

A. Not exactly like that; it was changed from that.

Q. At whose suggestion was it changed?

A. Mr. Hirst's, Mr. Maurice Hirst.

Q. Mr. Stephen, I show you a receipt for a boiler, or two blue prints of a pair of boilers, signed by the Camden & Philadelphia Soap Company. How did you get that? 10

A. Mr. Maurice Hirst brought the blue prints to my office so I could have the size of the boiler, so I could have the proper sized boiler house to suit the boilers which they had selected.

Q. And did they get the blue prints?

A. Yes, sir, this is a receipt for the blue prints

Q. Have they got them now?

A. I don't know whether they have them now or not.

Q. They were sent to them, were they? 20

A. Yes, they called for them.

Q. Mr. Stephen, I call your attention to another paper; please explain to the jury what that is.

A. This is the fixtures, the laundry fixtures to be put on the fourth floor of the building and the loads of each apparatus so that I could obtain the amount of load that would be put on the fourth floor so as to figure the strain on the timbers.

Q. Where did you get that from?

A. Mr. Maurice Hirst. 30

Q. And did you do any work on that account?

A. Oh, yes, that is embodied in the plans?

Q. Now, where did you get this paper?

A. Mr. Maurice Hirst brought that; that is the size

of the wagons, &c., so I could obtain the size of the wagon shed and horse stable.

Q. Mr. Stephen, did you notify any builders to make estimates on this work?

(Objected to as immaterial; question withdrawn.)

Q. Did you have any correspondence with other parties in regard to having estimates made on these plans and specifications?

10

Mr. Wescott: I object to that on the ground that you cannot bind the defendant?

The Court: For what purpose is this testimony offered?

Mr. Weaver: To show the amount of labor that he expended in this matter?

20

The Court: I will allow it.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. I don't remember the bid, but after the plans and specifications were made at the request of Mr. Maurice Hirst I got a bid from Turner & Stuart on the buildings that are confined within this group (indicating.)

30

Mr. Wescott: I object to that also on the ground that it is not the subject matter of the suit.

The Court: I do not think that is an answer to the question; the answer may be stricken out.

(Question repeated.)

A. Not as a whole, no.

Q. Did the Company or Mr. Maurice Hirst or Mr. Penrose request that you get any specifications, or at least any estimates on the plans and specifications?

A. No, they were very urgent to have—

(Objected to.)

The Court: The question is answered; do not volunteer anything. 10

Q. Now, did you receive any estimates yourself on the contract price of this building and if so what was the amount?

A. I did not receive any estimates as a whole, no, sir, only in part.

Q. Did The Camden & Philadelphia Soap Company, to your knowledge?

A. Not to my knowledge.

Q. Now, did Mr. Hirst, or either one of them present you a letter from a contractor who wished to make an estimate on the building? 20

A. Yes, sir.

Q. (Handing witness paper.) And I will ask you if that is the letter Mr. Penrose Hirst presented to you?

A. Yes, sir, that is the letter.

Q. Now, what did he tell you to do with regard to it?

A. I beg pardon, but I think it is written on the bottom. Shall I read this?

Q. Yes. 30

A. "Friend Stephen, Retain—

(Objected to.)

Q. Is that his handwriting?

A. I cannot swear to it; it was sent to me by letter.

Q. You received that from whom?

A. Received it from The Camden & Philadelphia Soap Company in their letter.

Q. When?

A. After July 20th, 1903.

Mr. Weaver: I want to offer that letter in evidence.

(Objected to.)

10

The Court: The offer is refused.

(Exception noted for the plaintiff.)

Mr. Weaver: Now, these other papers I wish to offer in evidence, which he has just spoken about.

Mr. Wescott: I object to them, they are tracings, &c.

Mr. Weaver: Which the president told him to embody
20 in his plans.

Mr. Wescott: Which an officer of the Company took to him, he says, and which he did then embody in his plans.

The Court: Well, I will admit them.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly

ALLEN B. ENDICOTT,

30

Circuit Court Judge.

Q. Mr. Stephen, what amount of work in hours and time did you put in on these plans and specifications?

(Objected to; question allowed.)

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. Can I get that from my ledger? On the front page of my ledger it is all written out.

The Court: You may answer that when you come back. We will take our recess now.

10

(At this point a recess was taken until 1.30 P. M.)

Trial of the cause resumed at 1.30 P. M. in the presence of counsel for the respective parties.

THOMAS STEPHEN, resumed.

By Mr. Weaver:

20

(The letters and correspondence heretofore offered are marked together Exhibit P. 1.)

(Former question repeated.)

Q. Have you got a book of original entry there?

A. Yes.

Q. Does that show an account of the hours and time that you have put in on the work?

A. Yes, sir.

30

Q. Is it indicated there every day?

A. Every day that I worked on it.

Q. Did you make up a schedule from that book of the number of hours you put in?

A. Yes, sir.

Q. Have you got it in your hand?

A. Yes, sir.

Q. And is that the book of original entry there?

A. Yes, sir.

Q. How many hours did you put in on this work?

(Objected to on the same ground as before; objection overruled.)

10 Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. 105 hours myself, R. Wetherill Bosworth 322½ hours, and John B. Nap 545½ hours.

Q. Who are those two men whose names you have mentioned?

A. My assistants.

20 Q. What material did you furnish for this work?

A. Well, there was four rolls of blue print paper and fifteen yards tracing cloth.

Q. Now, what is the price of the blue print paper?

A. \$9.60.

Q. Is that a reasonable price for it?

A. That is what I paid for it.

Q. How about the tracing paper?

A. \$5.25.

Q. Is that what you paid for it?

30 A. Yes.

Q. Now, Mr. Stephen, what is a reasonable price per hour for your own time in doing this work?

A. \$1.50.

Q. What does that amount to?

A. \$157.50.

Q. Now, a reasonable price for the time your first man put in on the work?

A. 75 cents an hour.

Q. And a reasonable price for the time your second man put in on the work?

A. 45 cents.

Q. Have you figured out what that all amounts to?

A. Yes, sir.

Q. How much does it amount to?

A. \$659.47. 10

Q. Now, Mr. Stephen, during the course of this work were you called upon and given suggestions over these drawings by any officer of the Company?

A. Yes, sir.

(Objected to.)

The Court: He can say who it was and when.

Q. Did you say yes? 20

A. I said yes.

Q. Who were the officers,—who were the persons?

A. The first was Mr. Penrose Hirst; I made a block plan. He was standing right by my side when I made the first block plan, and he seemed to be pleased with it.

Q. Now, how many times have you seen him in regard to this work during the last three years?

A. I can't just remember how many times.

Q. Well, approximate it, how many?

A. Possibly five times, about five times. 30

Q. Did you see Mr. Maurice Hirst?

A. Yes, sir.

Q. How many times did you see him during that period?

A. Pretty near every day during the time I was

working on the work; he would stop in the office and urge me along with it, encourage me.

Q. Did you see any other person who represented themselves as coming from the Company?

(Objected to.)

A. No, I don't remember anybody else.

Q. Now, did you during this time go to the office of the Company at any time?

10 A. No, they came to see me.

Q. Now, I call your attention to your letter dated December 1st, 1905, and ask you if after you wrote that letter you went to see Mr. Penrose Hirst in regard to his intention about the building?

Mr. Wescott: I object to that on the ground that it is immaterial.

20 The Court: I will take the testimony; note an exception.

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. It says, "On November 21st I received a letter from your Company stating—

Q. No, I asked you if you went to see him.

30 A. I cannot remember that.

Q. Did you see him anywhere after that?

A. Oh, yes, I saw Mr. Penrose Hirst several times.

Q. What did he state to you about the building?

(Objected to as immaterial and already testified to.)

The Court: Didn't he testify this morning that they were not going to put up the building? Is that what you were after?

Mr. Weaver: Yes.

The Court: He testified that this morning.

Mr. Weaver: I understand, this is another instance, another time. This is after the date of the letter I called his attention to. 10

The Court: Is this another occasion beside that which you testified this morning before adjournment?

The Witness: Mr. Penrose Hirst only told me once that he was not going to put up the building, he decided finally. That was toward the end.

Q. What did he say to you at that time?

The Court: Didn't you tell that this morning, what Mr. Penrose Hirst said to you? 20

The Witness. I don't remember whether I did or not; I think I did.

Q. He said he wasn't going to do it?

A. Yes, he wasn't going to put up the building.

The Court: Yes, you told that.

Q. You say you only saw him once about this operation here? 30

A. Oh, no, I saw him about five times, I think it was about five.

Q. Did he say to you more than once he was not going to put up the building?

A. No, I don't think he did; that was toward the end of the game.

Q. Well, now, state the conversation you had with him at that time fully.

(Objected to.)

The Court: It is overruled; it has been testified to.

Q. Well, now, you say you saw Mr. Maurice Hirst a
10 number of times?

A. Yes, sir, quite a number.

Q. Did you see him more than once?

A. Oh, my, I saw him—

Q. I mean about the building?

A. Oh, yes, various times.

Q. What did he state to you about their intention about the building?

(Objected to as immaterial.)

20 The Court: It is overruled.

Q. What did he state the Company intended to do then about the matter?

Mr. Wescott: I object; you cannot prove the intention of the Company in that way.

30 The Court: It is overruled; he has testified they were not going to erect the building if that is what you are after.

Q. Mr. Stephen, did Mr. Penrose Hirst or Mr. Maurice Hirst, or either of them, at any time say they would pay you for this work?

A. They did.

Mr. Wescott: I object; you cannot bind this defendant that way. No officer of a Company has a right by its mere say-so to devote the proceeds of the corporation to somebody.

The Court: I will take the testimony and you may deal with its effect afterward.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly

ALLEN B. ENDICOTT, 10
Circuit Court Judge.

Q. When was that, Mr. Stephen?

A. That was after they told me they decided not to erect the building.

Q. Now, which one made that statement to you?

A. Both.

Cross-examination.

By Mr. Wescott:

Q. You have already testified that the work that you did was done between the 14th of April, 1903, and the 19th of November, 1903,—that is correct, isn't it? 20

A. Between April 14th, 1903, and November 19th, 1903, that is right.

Q. So whatever work you did was done at that time?

A. Between those two dates.

Q. Did you have any contract with this Company before the 19th of November, 1903? Don't look at the papers, young man. 30

A. Well, I can't answer you, if you won't let me look at the papers I can't answer you.

Q. Go ahead and look at the papers.

A. May 12th was the first correspondence I had with this Company.

Q. Did you have any contract with this Company before the 19th of November, 1903?

A. We had a verbal agreement over the 'phone, yes, confirmed by this letter.

Q. Did you have any contract with this Company before November 19th, 1903,—yes or no?

A. Before what?

Q. Before the 19th of November, 1903?

A. Yes, we had a contract with them.

10 Q. Now, was that contract in writing?

A. Partly so.

Q. Where is the writing?

A. These letters.

Q. The letters?

A. Yes.

Q. And if the contract was partly in writing the other part was oral, was it?

A. Yes.

Q. And was made before November 19th, 1903?

20 A. Yes.

Q. Now, who made that contract with you, the oral part of it?

A. Maurice Hirst.

Q. Where?

A. At my office.

Q. When?

A. Prior to May 12th.

Q. Prior to May 12th, 1903?

A. Yes.

30 Q. Then you had commenced this work without any contract according to that?

A. No, I hadn't commenced it.

Q. Well, you commenced it on the 14th of April. If you had your first contract in May following then you did part of the work without any contract at all, didn't you?

A. I had a verbal agreement prior to May 12th. I done it under authority of the verbal agreement.

Q. You had a verbal agreement prior to when?

A. May 12th.

Q. May 1st?

A. May 12th.

Q. Well, how long prior to May 12th?

A. I can't tell you that.

Q. Was it before April 14th?

A. I referred to it in this letter of May 12th.

10

Q. Was it before April 14th? If you will drop those letters and listen to me we will get along better.

A. I can answer you more truthfully if I refer to the letters.

Q. Then it is a question of relative truthfulness, is it?

A. Yes, I won't lie knowingly.

Q. Didn't you do some work before you had any contract at all?

A. I don't think so; no, I had a verbal agreement.

Q. When was that verbal agreement?

20

A. I can't tell you exactly when it was; some time prior to May 12th.

Q. What was that verbal agreement?

A. It is embodied in this letter.

Q. The verbal agreement is the same as in the letter?

A. Yes.

Q. So that the only agreement you had then was a verbal agreement and the letters, and you say the verbal agreement is embodied in the letter?

A. Yes, and promises from time to time I had from the Company also.

30

Q. So that the only contract you had then is in these letters?

A. The letter and agreement, the verbal agreement.

Q. Well, the verbal agreement was reduced to the letters, wasn't it, stated in the letters?

A. I can't remember that.

Q. Haven't you just said that it was?

A. Well—

Q. If you said it was you meant it, didn't you?

A. I meant what I said, yes.

Q. Then you say that the verbal agreement was the same as in the letter?

10 A. To the best of my recollection, yes.

Q. And there was never any other agreement?

A. Not as I remember.

Q. Does the term "details" have a technical meaning?

A. Details are full sized drawings of the various parts.

Q. I say, does the term "details" have a technical meaning in your profession?

A. Yes, sir.

Q. Do the details mean drawings in all parts?

A. No, it means full sized drawings.

20 Q. Full sized drawings?

A. Of the various parts, yes.

Q. That is what details mean?

A. Yes.

Q. Are the details embodied in these papers that you have offered in evidence?

A. Some of them are.

Q. Where are the rest of the details?

A. I guess we have got them all there, all that is required, all we intended to make.

30 Q. Those papers there constitute the details of your work?

A. That is the principal part, yes, sir.

Q. The principal part of the details?

A. Yes.

Q. And the rest of them, you don't know where they are?

A. They are not necessary; I made all that was necessary for practical work.

Q. Of course this proposed building was never put up?

A. No, sir.

Q. So that the plans are no use to anybody?

A. I don't know, I can't say that.

Q. Well, what use are they if the building was never put up; never will be put up?

10

A. Nobody knows what will happen in the future, Judge.

Q. We will assume then that the building is never going to be put up,—if it is never to be put up the plans are no use to anybody?

A. I won't assume that.

Q. Well, assume it for the purpose of argument. Assume that the building is never going to be put up.

A. No, I won't do that because they have in their possession a set of plans.

20

Q. You think they may put up the building?

A. It is a possibility.

Q. Wasn't it your contract in writing that you were to be paid when the building was put up?

A. With the explicit understanding that it was to be put up.

Q. Wasn't it the contract in writing that you were to be paid when the building was put up, was it, or wasn't it?

A. My understanding with the Company was—

30

Q. No, not your understanding; I am asking you about what you say was the contract, which was the letter. Don't the letters state you were to be paid when the building was put up?

A. No, sir.

Q. They don't?

A. No, sir.

Q. Did you ever present a bill to this defendant for your work?

A. I wrote a letter to them.

Q. Did you ever present them a bill?

A. Not a regular form, no, sir.

Q. Why not?

A. Well, because they were not disposed to settle my
10 claim.

Q. Settle it?

A. Yes, pay it, pay for it.

Q. Now, if you had done your work under a contract to be paid why didn't you submit a bill to these people?

A. I submitted a bill through my attorneys.

Q. Why didn't you submit it to the defendant?

A. Because they refused to pay me an adequate amount.

Q. An adequate amount?

A. Yes.
20

Q. Did your contract provide what your pay was to be?

A. Not in the event of its not going ahead, no, I don't think so, $2\frac{1}{2}$ per cent. for the plans and specifications then.

Q. That is what your contract provided?

A. Yes, sir.

Q. Then why didn't you submit a bill to them for your $2\frac{1}{2}$ per cent.?

A. Because I saw Mr. Hirst was not disposed to settle
30 this bill.

Q. Couldn't you have sent a bill to them without finding out whether he was disposed to settle it? In your business affairs generally when you enter into a contract as an architect to put up a building, don't you,

when you do your work, submit a bill according to your contract?

A. Yes, sir.

Q. Why didn't you do it in this case?

A. Because the owners refused to make any settlement with me.

Q. How did you know before you presented the bill?

A. They refused to make an adequate settlement.

Q. If the contract was $2\frac{1}{2}$ per cent. it wasn't a question of adequacy, was it, it was a question of $2\frac{1}{2}$ 10 per cent. and all you had to do was to make your bill out for $2\frac{1}{2}$ per cent. and send it to them?

A. Mr. Hirst made a—

Q. No, didn't you?

A. Mr. Hirst made a suggestion to me to settle my claim and it was not an adequate suggestion, then I turned around and my attorneys submitted a bill.

A. Yes, I know. Isn't it now the truth that you did not have a contract at all with these people for specific pay, isn't that the truth? 20

A. No, I don't think so.

Q. And isn't that the reason you never submitted them a bill?

A. I think it calls for $2\frac{1}{2}$ per cent. in these letters.

Q. Then why didn't you submit a bill for $2\frac{1}{2}$ per cent.?

A. I did through my attorney.

Q. Why not to these people? Your attorney was not to pay the bill, was he?

A. No, he submitted it to them. 30

Q. He did submit it?

A. Yes.

Q. Are you sure of that?

A. He said so, and I believe him.

Q. Well, we haven't seen it yet. Why didn't you

submit a bill, now, if this was an honest transaction between man and man—

A. It certainly is an honest transaction, I am the injured party here. It certainly is an honest transaction on my part; I done my work.

Q. Now, let me ask you the question again: Isn't it the truth that you didn't have any contract with these people at all? Isn't that the truth?

A. I don't look upon it that way. I look upon it I
10 had a contract with them.

Q. I know you look upon it so now, but isn't it the truth—

A. I always did; you don't suppose I would go ahead and waste my time and money if I didn't think I had a contract.

Q. Weren't you expecting to put up this building?

A. Yes.

Q. And wasn't that the reason you made these plans?

A. Yes, they said they were going to put it up.

20 Q. And that is the reason you made the plans?

A. Yes.

Q. After you made your plans why didn't you make out your bill of $2\frac{1}{2}$ per cent. for making these plans and send it to these men?

A. I did through my attorney.

Q. It is the first time in your professional experience, isn't it?

A. Yes, the first time—

Q. That you never sent a bill for your services?

30 A. Yes, the first time I was ever in court, that is, to have a case.

Q. Now, then, one thing further: Didn't you go to these people after you found that the building was not going to be put up and ask them to pay you for making these details, these detail plans?

A. No.

Q. Didn't you?

A. No, not the details.

Q. What did you ask them for?

A. I asked them for payment for the services rendered on these plans and specifications.

Q. Very well, all right; now, is there anything in your contract that you were to be paid, anything in the letters to the effect that you were to be paid for these plans and specifications?

10

A. Yes, sir.

Q. Is that what you relied on when you went to them?

A. Yes, sir.

Q. So that when you went to these people you had in your mind what the letter said about these plans and specifications?

A. Yes.

Q. And that was all, wasn't it?

A. No.

20

Q. What else had you in mind?

A. The vice-president said they would pay me for my services.

Q. What else had you in mind?

A. I had that in my mind.

Q. What was it?

A. The vice-president told me I would be paid for my services.

Q. Outside of this contract that you speak of?

A. Yes.

30

Q. Very well, then, if the vice-president told you you would be paid for your services outside of the contract testified to, why didn't you submit a bill to them for that?

A. I did through my attorney.

Q. And what was the bill that you submitted to them through your attorney—how much was that?

A. $2\frac{1}{2}$ per cent. on estimated cost of \$48,750.90, making my commission \$1,218.77.

Q. Is that the bill that you submitted to your attorney?

A. Yes, sir.

Q. \$1,218.77?

A. Yes, sir.

10 Q. Now, when did you submit that bill to your attorney?

A. June 1st.

Q. June 1st of this year?

A. Yes, sir.

Q. Why didn't you submit it to this defendant after November 19th, 1903, when the work was done?

A. Because I was waiting for them to start the building.

20 Q. Well, now, you found out in 1905, didn't you, that they were not going to start the building?

A. They made up their mind ultimately that they were not going to erect the building.

(Question repeated.)

A. Yes, I waited all that time for a settlement.

Q. Why didn't you submit a bill to them then?

A. Possibly I was too lenient; I was giving them an opportunity—

Q. To come up and pay that amount of money?

30 A. No, giving them an opportunity to get it started. I was waiting, giving them all the time necessary.

Q. In your letter of August 7th, 1905, which was a letter addressed to this defendant, you say this, I believe: "It was some time in May, 1903, that I first commenced to work on the plans of your proposed buildings and I

have been patiently waiting ever since for you to take some action in the matter; of course it is needless for me to elaborate on the fact that it cost me considerable money to develop the plans and specifications for this proposed plant, because gentlemen calling at my office from time to time could see that for yourselves. Now at the suggestion of your Mr. Maurice Hirst (given some time ago) I have concluded to make you the following proposition which I hope you will conclude to be reasonable. According to my office diary kept by one of my assistants it cost me to develop said plans and specifications \$470.72, no charge has been made for professional services, nothing charged for except for labor and expense attached and I ask you at this date to be so kind as to mail me a check for said amount and I will deduct the same from my commission when you conclude to erect the buildings." What did you mean by that letter?

A. I meant just what it says.

Q. Just what it says?

A. Yes. I can't use any plainer language.

Q. Why didn't you send them a bill for the whole services at that time?

A. Because I was expecting them to erect the building.

Q. But you had heard long before this that the building was not to be erected?

A. No, not until after that.

Q. Not until after this August 7th, 1905?

A. Not until after that.

30

RICHARD WETHERALL BOSWORTH, sworn.

By Mr. Weaver:

Q. Mr. Bosworth, what is your business?

A. Architect and engineer.

Q. Who do you work for at the present time?

A. Thomas Stephen, of Camden.

Q. How long have you worked for him, about how long?

A. As nearly as I can recollect about seven years; six or seven years, I don't remember exactly.

Q. Who did you work for before you worked for him?

A. Worked for Wilson Bros., at Philadelphia, John J. Dull, of Philadelphia, Wilson Ayer, of Philadelphia, John
10 T. Windrum, of Philadelphia, and Frank Miles Day.

Q. Are they all prominent architects of Philadelphia?

A. They are all prominent architects except possibly Mr. Dull, who is more celebrated as an artist recently than an architect.

Q. Are you graduated from any school of architecture or engineering or any other school?

A. I have a certificate from the Drexel Institute, Professor Howard S. Rogers, for a course in architectural engineering. Besides that I have taken a special course
20 under him and studied at the Drexel Institute, took a course in architecture.

Q. Are you familiar with this work before you here?

A. I am; I was head draughtsman at the time the drawings were made.

Q. How long about did it take to complete that work?

A. Well, I kept no exact time; the exact time is embodied in the diary of the office.

Q. Now, during that time and during the last two or
30 three years, have you seen Mr. Penrose Hirst or Mr. Maurice Hirst in the office?

A. That is, during the time the work was in progress?

Q. Yes.

A. Yes, Mr. Maurice Hirst and Mr. Penrose Hirst were both in the office.

Q. Many times?

A. Mr. Maurice Hirst was in a great number of times; sometimes nearly every day. I don't recollect just how many times; Mr. Penrose Hirst was in several times. Beside that they had an expert in, if I remember rightly,—I don't know whether it was on starch machinery, some kind of machinery. Then they had a laundry expert, I believe he was an expert, Mr. Tagen; I believe he was of Buffalo.

Q. Have you any knowledge of what a reasonable price would be per hour for architect's services and the services of his assistants,—what is the proper charge to make by the architect? 10

A. Well, the fairest charge is based on a percentage of the cost of the building.

Q. Well, where a charge of that kind is not made, would a charge of \$1.50 an hour for the architect's time and services be excessive?

A. In a building of that character?

Q. Would it be excessive or reasonable? 20

A. I think that would be very reasonable.

Q. How about 75 cents an hour for your own services?

A. Well, that is reasonable.

Q. And 50 cents an hour for the assistant?

A. That is also reasonable.

Q. 45 cents an hour?

A. 50 cents an hour would be reasonable. The young man at present has charge of about \$300,000 worth of work in Wilkesbarre, Pennsylvania, has full charge of it.

Q. Is that the young man who assisted you? 30

A. That is the young man that assisted me in the preparation of the drawings.

Q. Was Mr. Penrose Hirst in the building, in your place, while these drawings were going on?

A. He was.

Q. Did he direct Mr. Stephen in the work—I mean direct him?

A. In regard to details and going over the drawings he did.

No cross-examination.

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PLAINTIFF RESTS.

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Mr. Wescott: I move that the plaintiff be non-suited in this case, if your Honor please. I base the motion upon the evidence of the plaintiff given in chief and partly in his cross-examination, wherein he expressly said three or four times that his contract consisted of the letters and an oral understanding and that that oral understanding was finally embodied in the letter and that there was no other contract between them. Now, the plaintiff having sworn to that several times it drives us to an examination of these letters. The first letter is dated May 12th, 1903—that was the beginning of this work. The work ended the 19th of November following. All work that was done by this man was done during those months. I will read this letter (reading). Now, that is the proposition; he says that is the oral proposition reduced to writing. In that proposition he makes them a present of the drawings. Now, that is the first letter. The response to that letter is here (reading). Now, that was the answer to his proposition, which was to do the whole thing; make plans and specifications, superintend the work and do all that an architect should do for $2\frac{1}{2}$ per cent. for the plans and speci-

cations, to be paid as the contractor is paid. Their answer to that is that owing to the labor trouble they are not disposed to go on, but they say, "If you desire to go ahead with the plans and take chances" and depend for your pay upon the construction of the building and your final pay upon the completion of the construction of the building you may go ahead with plans and specifications. Now, I want to read his answer to that, dated May 20th (reading). So that the whole thing comes down to this, whether or not that is a meeting of their minds so as to form a contract, whether or not this defendant agreed to the proposition contained in the letter of May 20th, in which this plaintiff said he would go ahead provided they would pay him in instalments as asked for in the letter of May 12th, 1903. There is no answer to that, so that these three letters which the plaintiff says contained the full contract contained three distinct propositions, and there is no meeting of the minds on any one of them. This provision, providing that he be paid in instalments was never accepted by the defendant, and that is the end of it. Now, it turns out in the examination of the plaintiff that he early learned that this building was not to be undertaken at all. Then a long time elapsed. In the meantime he presents no bill at all for his services to this defendant Company, but he does go to them and try to get them to make him some compensation for the services he had performed under what he said was the contract between them. There was evidently an attempt to get together on that. He submitted a bill for some four hundred and some dollars. He has testified on the stand here that his services now were worth six hundred and some dollars. He testified he sent a bill to his attorney to be sent to the defendant, and his attorney told him he had sent it to the defendant and he believed he had for twelve hundred and some

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dollars. Now, there is the situation. Now, the question I have to ask is, how can any verdict be hoped to be held if it could be gotten on that evidence? You cannot assume that because this plaintiff did some work that this defendant is obliged to pay him for it.

The Court: There is testimony to show that certain officers of this Company gave instructions as to these drawings and watched their progress and then promised to pay.

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Mr. Wescott: That is true; nevertheless you have got to stand on the contract the plaintiff makes. Counsel has said in the first place that the contract was in writing and in the second place he said it was a quantum meruit. It does not make any difference what counsel says; you are bound by the evidence in the record. It does not make any difference if these officers went there a million times while this man was working on these plans, this corporation cannot be bound to pay for their visits. If
20 this corporation is to be bound at all it must be upon the contract and the contract, the plaintiff says, is these three letters. Then again, the very thing that he claims pay for here now he gave these defendants. He actually made some of the blue prints before there was any contract at all between them, before there was any interview in relation to a contract. Then in his letter he says because the price was 4 per cent. he would get over it by making them a present of the details. What did he mean by the details? Just what he said, these papers;
30 it was these very papers he made them a present of that the officers saw him working upon according to his testimony. But that does not make a contract, nor does it oblige these defendants to pay for these details. These plans are useless; they are of no value. This defendant never received any value from this man. The work he

did he did at his own risk without any contract; it was never submitted to this defendant; the defendant was not profited by it, and there is no law which will compel the defendant to pay for it.

The Court: (After further argument.) I will refuse this motion at this time. It may be renewed at the conclusion of the case, if you choose, Judge Wescott.

THE CASE FOR THE DEFENDANT.

10

PENROSE W. HIRST, sworn.

By Mr. Wescott:

Q. Mr. Hirst, are you the president of this defendant Company?

A. Yes, sir.

Q. And live here in Camden?

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A. Yes, sir.

Q. And have lived here how long?

A. 45 years, about.

Q. Do you know Mr. Stephen?

A. Yes, sir.

Q. The plaintiff?

A. Yes.

Q. Did you have any contract—did your Company have any contract with Mr. Stephen about doing architectural work other than as contained in the letters of May 12th, 1903, May 19th, 1903, and May 20th, 1903?

30

A. No, sir.

Q. Mr. Hirst, did you inform Mr. Stephen right after these letters that the building was not to be put up?

A. Yes, sir.

Q. What did you tell him at that time?

The Court: "Right after these letters"—won't you be a little more specific as to time, Judge?

Mr. Wescott: Yes, May 12th, May 20th and May 19th.

A. 1903.

Q. After those letters were written, did you inform him that the building would not be put up?

10 A. I can't tell you just exactly what time it was, but I know I informed him.

Q. You did inform him?

A. I informed him, yes.

Q. What did you tell him in reference to the making of these plans at that time?

A. We had a general conversation about it.

Q. Leave out the general conversation now.

20 A. I won't say anything only just so you will understand it. The general conversation wound up if he went ahead on his own proposition, which he said he would take the risk, he might go ahead with it, but it was on his risk, that we might never put it up on account of the building and labor trouble.

Q. What did he say in response to that?

A. He said it would go ahead. We have the documents for that. He said he would go ahead with it, he would take the risk.

Q. After that did he ever send you a bill for his services?

30 A. No, sir.

Q. Did he ever send the Company that you heard of any such bill?

A. I never saw any bill.

Q. When was it, about, that he first came to you about compensation?

A. Why, that was just prior to this suit?

Q. And that was in June, wasn't it, June of this year?

A. No, this suit, just prior to this suit. The suit is only two or three weeks ago.

Q. A short time ago, was it?

A. A very short time ago.

Q. Where did he see you?

A. In my office.

Q. What was the conversation between you and him then?

A. He came up to see me if I wouldn't pay him something. 10

Q. No, just give us the conversation; don't tell us what he came to see you about. Tell us what he said and what you said.

A. This now is the question as I understand it: When he came he asked me for some money in payment.

Q. When he came to see you about compensation then or payment tell us the conversation.

A. He said he needed money. We went over the same conversation then that we did before, that he took the chances himself. 20

Q. He said that?

A. I said that to him, and in the general conversation I said to him like this: "I don't want you to lose any money; I feel that you are entitled to something for your work," and I offered him \$200 as compensation, and he wouldn't take that, said he wouldn't take it. Then I offered him \$50 more and he said he would see his lawyer. I said, "Oh, you have a lawyer, have you?" He said, "Yes." "Well," I said, "that is all right; we can get one too, if it comes to that." 30

Q. Did you in that conversation say anything to him about his having done these drawings at his own risk?

A. Oh, yes, during that time.

Q. What did he say on that subject?

A. Well, he evaded that.

Q. He admitted it?

A. He evaded it.

Q. Now, when he was making these drawings, it has been testified that you many times went to his office and superintended the drawings. What is your recollection about that?

10 A. Well, I very rarely went there unless he sent for me. I think I went there two or three times without his sending for me; I am sure not any more than that.

Q. Were you there more than two or three times?

A. Not of my own accord.

Q. How many times were you there all together?

A. I cannot tell you that; that is impossible to tell that because whenever I was sent to come down and see him I would go down.

Q. Were you ever authorized by the defendant corporation to make any other agreement with this plaintiff
20 than the agreement stated in these three letters?

A. No, sir.

Q. Were you ever authorized by this corporation in any way to pay him money?

(Objected to.)

A. No, sir.

Q. Were you authorized by the corporation to pay him the \$250?

A. No, I was not.

30 Q. Is the building going to be put up at all?

A. No, sir.

Cross-examination.

By Mr. Miller:

Q. You say you were not authorized by the Company?

A. No, sir.

Q. You were going to pay this \$250 out of your own pocket?

A. I never considered that.

Q. Whose money would you have used if you had paid it?

A. Well, I suppose the Company would have paid it.

Q. You would have authority to use the Company's money?

A. How is that? 10

Q. Would you have authority to use the Company's money?

A. That depends altogether on circumstances.

Q. Well, now, what are the circumstances? What is your relation to the Company, Mr. Hirst, first?

A. President.

Q. What is your relation with the Company?

A. President.

Q. Now, is there any one in the Company that has more power than you? 20

A. No.

(Objected to; question overruled.)

(Question withdrawn.)

Mr. Wescott: I ask to have the answer stricken out.

The Court: The question is overruled.

Q. What do you do? 30

A. Why, I manage the general business.

Q. Of what?

A. Of our business.

Q. Well, what does that include?

A. That is manufacturing laundry supplies.

Q. Well, who over-sees your work?

Mr. Wescott: I object to that as immaterial.

The Court: I do not suppose it is cross-examination, either.

Mr. Miller: I want to develop the fact that this gentleman is running the Company and he has full authority to do any of its acts. We have a perfect right to interrogate Mr. Hirst. From the fact that no one over-sees that particular feature of the work, it is plainly evident he has that authority.

The Court: The question is overruled.

Q. Mr. Hirst, in the matter of buying and selling, what do you do for the Company?

Mr. Wescott: I object to that; it bears no conceivable relation to this case. If I understand counsel on the other side, the object is to show that Mr. Hirst held himself out to the world to employ architects. He says the business of this Company is to make soap or soap supplies, something of that sort; he has the general management of that business, but that does not in any wise tend to show he has authority to employ architects or is so held out to the world. I object to it for that reason.

Mr. Miller: This is the very gentleman that appeared in all these transactions, one of the officers who did the very things. It is certainly proper for us to determine the extent of his authority in performing these acts, and it is certainly proper to show what he does and has done showing relations here.

The Court: I have doubts as to its competency, but if you desire to put it in, you may.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. You have a board of directors?

A. Yes, sir.

Mr. Wescott: I object to that as immaterial and not the way to prove it.

10

The Court: I will not strike it out; proceed.

Q. How often do they meet?

A. Whenever it is necessary to have a meeting.

Q. In May, 1903, from then until November of the same year, how frequently did your board of directors meet?

A. I cannot answer that question.

Q. Well, have you any knowledge at all?

A. No, sir.

20

Q. Did they meet at all?

A. Oh, we must have had some meetings.

Q. Now, Mr. Hirst, what is your daily occupation with reference to this Company—what do you do?

A. Well, I generally attend to the correspondence, do some of the buying, look after the manufacturing interests, and keep in touch with the salesmen.

Q. You are a general agent of the Company with full power to act?

30

(Objected to.)

The Court: That is a conclusion; it is overruled.

Q. I call your attention, Mr. Hirst, to a letter under date of May 19th, 1903. What did you mean by this—

"You will take the risk and wait until the building is finished?" What was the idea about that?

Mr. Wescott: I object; the letter speaks for itself, and you cannot change the letter by importing the interpretation of a witness into it. The letter must speak for itself.

The Court: The language seems plain; I do not see on what principle I should allow him to construe it.

10

Q. I call your attention to the letter under date of November 21st, 1905—"Your favor of the 20th inst. at hand and contents noted. Father is away to-day but we expect him in the office again to-morrow at which time the writer desires to assure you"—No, that is not the one. It is the letter under date of June 22nd, 1904. What are your initials, Mr. Hirst?

A. P. W.

Q. P. W. H.?

20

A. Yes.

Q. Letter addressed to Mr. Stephen: "Yours of the 20th received, you are certainly entitled to consideration in answering your question; we will either erect our buildings or will purchase one already erected; in either case you will be taken care of; if in purchasing a building erected we will arrange with you for your compensation." That letter was dictated by you?

A. Are my initials there?

Q. Yes.

30

A. That is all right.

Q. Now, was this letter dictated by you?

A. Yes.

Q. Did you have authority to send that letter?

A. I suppose as much authority as I would have to send any other kind of letter.

Q. Did you have authority to send that letter? You certainly know.

A. Yes, in a general way, I had, sure; I had authority, so would any of the rest of our officers.

Q. And when you sent that letter you were in a position to follow it up with doing exactly what you said you would do?

A. That was a general reply to the whole arrangement about his taking his chances. The whole thing hinged on his taking his chances.

10

Q. And any arrangement you had made in pursuance with that letter would have been authorized?

A. We hadn't made any arrangements with him.

Q. If you had made any.

Mr. Wescott: I object to that as purely speculative.

The Court: I think that must be overruled.

(Exception noted for the plaintiff.)

Q. Now, Mr. Hirst, what was your idea in going to the office of Mr. Stephen?

20

A. That is so far back I can't tell you what the idea was.

Q. See if I can refresh your mind. Was it to pay a social visit?

A. Yes, I have known him for many years, often paid him social visits.

Q. You recall he sent for you most times you went there?

A. That is right; I didn't go there often unless he sent for me.

30

Q. You recall the fact he sent for you?

A. I know he sent for me some times.

Q. You don't recall why you went there?

A. Of course I went there to see him, about his drawing these plans.

Q. What did you do in connection with that when you arrived at his office?

A. I can't tell you a thing about it.

Q. Did you see the plans?

A. Oh, yes, I saw him working on the plans.

Q. What took place? Did you indicate any changes to him while you were there?

10 A. I can't tell you whether I did or not.

Q. You might have done so?

A. I might or might not; couldn't tell you anything about it.

Q. Had you the authority to do that?

A. Well, I would only have authority on consultation, the same as any of our other officers; we always consulted each other.

Q. Consulted who?

A. Our officers.

20 Q. And they are whom?

A. What?

Q. I say, who are they?

A. Mr. Garwood and my two sons.

Q. And did you always consult with the officers after you had left the office as to the particular work you had gone over?

A. If Mr. Stephen wanted to know anything we consulted about it before giving the information.

30 Q. You went there twice yourself without his sending for you?

A. I don't know how many times; I said two or three; I don't know.

Q. Why did you go then?

A. What, myself?

Q. Yes.

A. I presume I went down with the boys, or was going down town and stopped in to see him.

Q. For what purpose?

A. Nothing at all except to look over his work.

Q. What work? This work?

A. Any work he was doing.

Q. What did you do on those occasions?

A. I don't know; I couldn't tell you.

Q. Your memory is a little indistinct on that?

A. That is so far back, you know.

10

Q. What did the boy do while he was there?

A. You will have to ask him that.

Q. You were there, weren't you?

A. Sometimes we were.

Q. When you were there, what did he do?

A. He did give details at Mr. Stephen's request.

Q. And you heard those details gone over?

A. Of course I must have heard them if I was there.

Q. Did you at any time or did any of the officers of your Company ever tell Mr. Stephen that he was not to be paid for this work? 20

A. Never told him anything about that.

Q. Who are the other officers of this Company in addition to your son and yourself?

A. Ralston S. Hirst, Maurice DeW. Hirst, John L. Garwood.

Q. Do you take an active interest in the running of the business?

A. Sure.

Q. Did they know this work was going on?

30

A. Sure.

(Objected to.)

By the Court:

Q. Who are these men?

A. They are the officers.

Q. Are they directors?

A. Yes.

By Mr. Miller:

Q. Did they ever object to this work going on?

Mr. Wescott: I object; this witness cannot know what these people did, whether they objected or not, and
10 whether they did or not is immaterial.

The Court: I am not certain about that. I have some doubt whether these questions are proper on cross-examination unless he considers the witness as now called by himself.

Mr. Miller: Well, we are doing that; I was just going to suggest that, your Honor.

The Court: I will allow that testimony to stand.
20

Whereupon the defendant, by its Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. And they were directors and officers between May of 1904, and December of 1904?

A. Yes.

The Court: I understand you are now making this
30 witness your own, as though called by you?

Mr. Miller: Yes.

Q. Did they ever object to this work going on?

A. No, because Mr. Stephen did it at his own risk.

Q. And did these constitute the full board of directors of your Company?

A. With one exception, that is Mr. Field, of Chicago.

Q. Did Mr. Field know anything about this.

A. Yes, he knew about it; he was there.

Q. Did he in any way interfere with this work?

A. He was only here once; he only made a visit once.

Q. Did he in any way interfere with this work?

A. No, he didn't know anything about it.

10

By the Court:

Q. How many directors were there?

A. Five; Mr. A. B. Field, of Chicago; he takes care of our Chicago business, our manager out there.

By Mr. Miller:

Q. Mr. Hirst, the directors had several meetings over this contemplated building?

A. No, the directors have not had several meetings.

Q. You discussed it lots of times, the building of this? 20

A. We did among ourselves, yes.

Q. And it resulted in this work being done in the manner indicated, these plans being drawn, &c.?

A. Yes, sir, at his risk.

Q. And at that time the only thing that deterred you—

Mr. Wescott: (To the witness.) Just notice the questions you are answering, please. 30

Q. And at that time you intended to build this mill or plant if the labor questions were removed—is that right?

A. That is what stopped it.

Q. But at the time Mr. Stephen was employed to make these plans, you did not then know you were never going to build a plant, did you?

A. No, sir.

Q. And it was not until some time long afterward that he was informed that you did not intend to build this mill—is that right?

A. I can't tell you how long that was; I don't know.

Q. And the board of directors knew fully of these plans and what was going on with relation to the building of that plant—is that right?

A. Of course the officers did; they know all about it.

Q. And the directors?

A. Well, they were the directors; I answered that question.

By Mr. Wescott:

Q. Did the corporation give you any authority to write this letter of the 20th of June?

20 A. No, sir.

Q. In which you spoke of this man's being paid, something to that effect?

A. No.

Q. In which you spoke of the plaintiff's being taken care of,—that letter—they didn't give you authority to write that letter?

A. No, sir.

Q. You said to Mr. Miller probably unwittingly that the board of directors knew all about about this business and took part in it.

30

(Objected to as leading.)

Q. What did the board of directors officially do about this thing?

The Court: He may tell that, what the board did officially.

Q. Anything?

A. No, sir.

MAURICE DEW. HIRST, sworn.

By Mr. Wescott:

Q. Where do you live? 10

A. Camden.

Q. Are you an officer of this defendant corporation?

A. I am.

Q. Do you know Mr. Stephen?

A. Yes.

Q. Did you hear any one tell him not to go on with this building?

A. I did.

Q. Did you hear what Mr. Stephen said in reply? 20

A. I did.

Q. Well, what was it?

A. Said he was willing to take the chance of the building starting.

Q. Was there ever any action taken by the board of directors about this matter one way or the other?

A. No, sir.

The Court: Do I understand by that last answer that you refer to the whole matter, that there never was any action by the board touching any part of this whole matter? 30

A. Not any official action, no, sir.

No cross-examination.

JOHN L. GARWOOD, sworn.

By Mr. Wescott:

Q. Where do you live?

A. 521 Mickle street, Camden.

Q. Are you an officer of this defendant Company?

A. Yes, sir.

Q. Did you hear Mr. Stephen directed not to proceed with these drawings?

10 A. Yes, directed not to do so unless it would be at his own risk.

Q. Did you hear what he said in reply?

A. I don't remember what he said in reply, but I overheard that conversation because it took place directly in front of me, directly in front of my desk. I don't know what occurred before or after that, but I remember that in particular.

Q. And where was this conversation?

20 A. At our office.

Q. In Camden?

A. Yes, sir.

Q. And who was present?

A. Mr. Maurice Hirst and Mr. P. W. Hirst and Mr. Stephen and myself.

Q. Did the corporation ever give either of the Mr. Hirsts' official authority to do anything about these plans from the beginning to now?

A. No, sir.

30 Q. What office do you hold with the Company?

A. Secretary.

No Cross-examination.

DEFENDANT RESTS.

BOTH SIDES REST.

Mr. Wescott: I ask your Honor to direct a verdict in this case or else non-suit the case, as you think you ought to do on the grounds already presented somewhat fully. They have simply been strengthened by the defense. That Mr. Stephen was directed by the very men who got him to make these plans to discontinue them is an admitted fact in the case, for Mr. Stephen is not called back to contradict that fact in any way, so the fact remains established in the case by three witnesses, that Mr. Stephen was directed to desist from making 10 these plans or if he made them he would make them at his own risk, and he said he chose to make them at his own risk and he would go on. Another point is that these three officers of the Company show conclusively that there never was any corporate act taken about this matter at all. The directors never got together; there was no one authorized by the corporation to do this thing, and the two Messrs. Hirst who at different times on the street and other places had some conversation 20 with this man and went over to his office while he was working on these plans had no official authority to bind the Company, or to write the letters which they dictated and they did not bind this Company. Therefore I say there should be either a non-suit or a direction.

The Court: Both motions are refused. You may note an exception.

Whereupon the defendant, by its Counsel, prays a bill of exceptions, which is allowed and sealed accordingly 30
 ALLEN B. ENDICOTT,
 Circuit Court Judge.

At this point an adjournment was had until Thursday morning, September 20th, 1906, at 10.15 A. M.

Camden, N. J., September 20th, 1906.

Trial of the case resumed at 10.15 A. M. in the presence of counsel for the respective parties.

CHARGE OF THE COURT.

ENDICOTT, J.

- 10 Gentlemen: If from the testimony which you have heard in this case you believe that the defendant corporation authorized the plaintiff, Mr. Stephen, to prepare these plans and specifications and that the officers were acting within the authority conferred upon them by the corporation; or if you believe that he began this work under the instruction of some officer of the Company and you conclude from the testimony that the directors knew he was doing that work, that they advised him how it should be done and that they made suggestions
- 20 as to what should be embodied in the plans and visited his office and saw him progressing with the work—if, I say, you believe that state of facts existed, you would be justified in concluding that the corporation had employed him and therefore must pay to the plaintiff what these services were reasonably worth, not 4 per cent. on the cost of the proposed building, because the building was not constructed and he therefore did not supervise its construction. His compensation, if allowed at all, should be simply for the work which he did in preparing these
- 30 plans and specifications. If, however, you believe as testified to by the defendant that he was told that he must proceed with this work, if at all, at his own risk, and that he was not to be paid unless the building was constructed then, if you believe that was the agreement there can be no recovery in this case, because the building was

not constructed. So you see your verdict will depend upon which version of this case you accept as being correct, that of the plaintiff or that of the defendants. I am asked to charge you by counsel for the defense and I do charge you:

1. Before a verdict can be found against the defendant you must find that the defendant made a binding and valid contract with the plaintiff.

Requests 2, 3, 4 and 5 are refused. You may retire, gentlemen. Let the exhibits be handed to the foreman. 10

DEFENDANT'S EXCEPTIONS.

The defendant, by its counsel, prays an exception to the refusal of the Court to charge defendant's second request as follows: 2. The plaintiff swore that the only contract he had with the defendant was contained in the letters dated May 12th, May 19th, and May 20th, of 1903. I charge you as a matter of law that no contract arises
10 from those letters and that therefore there was no contract between the parties.

And a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

The defendant, by its counsel, prays an exception to the refusal of the Court to charge defendant's third request as follows: The statements of the president of the
20 defendant Company to the plaintiff cannot bind the defendant unless such statements were authorized by the Company and there is positive and uncontradicted evidence that such statements were not authorized. If you so find, the plaintiff is not entitled to recover and your verdict would be for the defendant.

And a bill of exceptions is allowed and sealed accordingly.

30 ALLEN B. ENDICOTT,
Circuit Court Judge.

The defendant, by its counsel, prays an exception to the refusal of the Court to charge defendant's fourth request as follows: 4. On the subject of damages I

charge you: (1) that in the letter of May 12th, 1903, the plaintiff says, "I am making you two blue print copies of the same for your own use." This is before any contract was entered into of any sort. Therefore that work must be deducted from any allowance made the plaintiff; (2) in the same letter he says "the way I get over it, I make you present of the details." The plaintiff testified that the details were in the papers, plans and specifications, offered in evidence. You cannot allow him either for the labor or time in making the details so presented to the defendant. And if the details constitute all the drawings and plans, as they seem to, the plaintiff is not entitled to recover; (3) it is uncontradicted by the plaintiff that he was told not to continue the plans and drawings, because the building would not be built and that, if he did so, it would be at his own risk, and that he said he would continue at his own risk. This being the uncontradicted evidence you are bound by it and must, in making up a verdict for the plaintiff, disallow him for all work and time after he was told to desist.

10

20

And a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

The defendant, by its counsel, prays an exception to the refusal of the Court to charge defendant's fifth request as follows: 5. Under all the evidence your verdict must be for the defendant.

30

And a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

NEW JERSEY SUPREME COURT.

THOMAS STEPHEN, VS. CAMDEN & PHILADELPHIA SOAP 10 COMPANY,	}	On Contract. On Postea. Francis D. Weaver, Attorney.
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As yet of the twenty-third day of June, A. D. nineteen hundred and six.

Witness, WILLIAM S. GUMMERE, Chief Justice.

WILLIAM RIKER, JR., Clerk.

CAMDEN COUNTY, SS.:

- 20 The Camden & Philadelphia Soap Company, the defendant in this suit was summoned to answer unto Thomas Stephen, the plaintiff therein, in an action upon contract; and thereupon the said plaintiff by Francis D. Weaver, his attorney, complains for that whereas the said The Camden & Philadelphia Soap Company, on the first day of June in the year of our Lord one thousand nine hundred and six, in the County of Camden aforesaid, was indebted to the plaintiff in two thousand and four hundred dollars, for the price and value of goods sold and
- 30 delivered by the plaintiff to the defendant at its request; and in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at its request; and in the like sum of money for the price and value of work done, and materials for the same provided by the plaintiff for the defendant at its request;

and in the like sum of money for money lent by the plaintiff to the defendant at its request; and in the like sum of money for money had and received by the defendant for the use of the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at its request; and in the like sum of money for interest due from the defendant to the plaintiff for the plaintiff having forborne moneys due from the defendant to the plaintiff at the defendant's request, for a long time then elapsed; and in the like sum of money for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and the defendant afterwards (to wit), on the day and year last aforesaid, in the county aforesaid, in consideration of the premises, respectively promised to pay the said several last mentioned moneys respectively to the plaintiff on request; yet the defendant disregarded its promises, and has not paid any of the said moneys, or any part thereof, to the plaintiff's damage two thousand four hundred dollars, and thereupon he brings his suit, &c.

10

20

NOTICE TO DEFENDANT:

The following is a bill of the particulars of the demand and copy of the account whereupon the annexed declaration is founded:

THE CAMDEN & PHILADELPHIA SOAP COMPANY,
TO THOMAS STEPHEN, DR.

June 1st, 1906.—To price of work and labor and cost of materials in making plans and specifications for proposed building for said Company. Estimated cost of building \$48,750.90

30

Services as above at $2\frac{1}{2}$ per cent. . . . \$1,218.77

Judgment will be claimed for above sum of \$1,218.77 together with interest thereon from June 1st, 1906, and costs of suit.

And the said defendant, by John W. Wescott, its attorney, comes and defends the wrong and injury, when, etc., and says that it did not promise in manner and form as the said plaintiff hath in his declaration alleged against it, and of this it puts itself upon the country, &c.

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden, in and for the County of Camden, on the second
 10 Tuesday of September, in the year of our Lord one thousand nine hundred and six, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the twenty-fifth day of September, A. D. nineteen hundred and six, before our said Supreme Court at Trenton, comes the said plaintiff by his attorney aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at Cam-
 20 den, in and for the County of Camden, before his Honor, Allen B. Endicott, one of the Judges of the Circuit Court, assigned to hear Supreme Court issues, in the County aforesaid, on the nineteenth day of September, in the year of our Lord one thousand nine hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury, between the parties aforesaid, in the plea aforesaid, being summoned, also
 30 come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their respective oaths, that the said defendant, The Camden & Philadelphia Soap Company, did undertake and promise in manner and form as the said plaintiff, Thomas Stephen, hath in his said declaration alleged;

and they assess the damages of the said plaintiff, by reason of the not performing said promises and undertakings, over and above the costs and charges by him about his suit in this behalf expended, at the sum of six hundred and fifty-nine dollars and forty-seven cents, and for those costs and charges six cents.

Therefore it is considered that the said plaintiff do recover against the said defendant said damages by the jury in form aforesaid found to be six hundred and fifty-nine dollars and forty-seven cents, and also forty-one dollars and ninety-nine cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff, and with his assent, which said damages, costs and charges in the whole amount to seven hundred and one dollars and forty-six cents. 10

Judgment signed this twenty-fifth day of September, A. D. nineteen hundred and six.

WILLIAM S. GUMMERE,

C. J. 20

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this seventeenth day of October, A. D. nineteen hundred and six.

[SEAL]

WM. RIKER, JR.,

Clerk. 30

NEW JERSEY COURT OF ERRORS AND
APPEALS.

	THOMAS STEPHEN,		
	Defendant in Error,	}	On Contract.
	vs.		
10	CAMDEN & PHILADELPHIA SOAP	}	Assignment
	COMPANY,		
	Plaintiff in Error.		of Error.

And now on this day the plaintiff in error assigns the following causes of error:

20 1. Because the Trial Judge allowed the following question: "Now after it was done, did you have any conversation with the officers of the Company, and if so, with whom?"

2. Because the Trial Judge allowed the plaintiff to answer the following question: "Now state first what Mr. Maurice Hirst said to you in regard to the work you had done for this Company."

30 3. Because the Trial Judge allowed the plaintiff to answer the following question: "Now, did he say what the Company intended to do about the proposed building?"

4. Because the Trial Judge allowed the plaintiff to answer the following question: "What did he state to you about the contemplated work?"

5. Because the Trial Judge allowed the plaintiff to answer the following question: "And at that time, did he say anything to you about compensation?"

6. Because the Trial Judge allowed the plaintiff to answer the following question: "Did you have any correspondence with other parties in regard to having estimates made on these plans and specifications?"

7. Because the Trial Judge allowed the plaintiff to offer in evidence the tracings and other papers. 10

8. Because the Trial Judge allowed the plaintiff to answer the following question: "Mr. Stephen, what amount of work in hours and time did you put in on these plans and specifications?"

9. Because the Trial Judge allowed the plaintiff to answer the following question: "How many hours did you put in on this work?"

10. Because the Trial Judge allowed the plaintiff to answer the following question: "Now, I call your attention to your letter, dated December 1st, 1905, and ask you that if after you wrote this letter you went to see Mr. Penrose Hirst in regard to the building?" 20

11. Because the Trial Judge allowed the following question to be answered: "Mr. Stephen, did Mr. Penrose Hirst or Mr. Maurice Hirst, or either of them, at any time say they would pay for this work?" 30

12. Because the Trial Judge refused to non-suit the plaintiff at the close of this case.

13. Because the Trial Judge allowed the following question to be answered, to wit: "Mr. Hirst in the

matter of buying and selling, what do you do for the Company?"

14. Because the Trial Judge allowed the following question to be answered, to wit: "Did they ever object to this work going on?"

10 15. Because the Trial Judge refused, at the close of the whole case, to non-suit the plaintiff, and because also, the Trial Judge at the close of the whole case, refused to direct a verdict for the plaintiff.

16. Because the Trial Judge refused to charge as law requests two, three, four and five in behalf of the plaintiff.

JOHN W. WESCOTT,
Attorney for Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THOMAS STEPHEN,	}		
Defendant in Error,			
vs.		In Error.	10
CAMDEN & PHILADELPHIA SOAP		Joinder in Error.	
COMPANY,			
Plaintiff in Error.	)		

And afterwards, on this day, the said Thomas Stephen, by Francis D. Weaver, his attorney, comes into Court and says that there is error, either in the record and proceedings aforesaid, or in giving of judgment aforesaid, and prays here that the Court may proceed to examine, as well the records and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, &c. 20

FRANCIS D. WEAVER,
Attorney for Defendant in Error.

NEW JERSEY COURT OF ERRORS AND

APPEALS

THOMAS STEPHENSON,

Defendant in Error,

Caroline A. Philadelphia Hotel,

Plaintiff in Error.

And afterwards on this day, the said Thomas Stephen-
son, by Francis M. Weaver, his attorney, comes into Court
and says that there is error, either in the record and pro-
ceedings aforesaid, or in giving of judgment aforesaid,
and asks here that the Court may proceed to examine
as well the record and proceedings aforesaid, as the
matters aforesaid assigned for error, and that the judg-
ment aforesaid be annulled, or other relief, may in all
things be afforded, &c.

Francis M. Weaver,

Attorney for Defendant in Error.

