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WRIT OF ATTACHMENT.

ATLANTIC COUNTY, ss.

The State of New Jersey to our Sheriff of our County of Atlantic, Greeting:  
 (Seal) We command you that you attach the rights and credits, moneys and effects, goods and chattels, lands and tenements 10 of James H. Crumbie wheresoever they may be found in your county, so that he be and appear before our Circuit Court to be holden at Mays Landing in and for said County of Atlantic, on the nineteenth day of April, next to answer Harry R. Young and Morris W. Katzen, partners trading as Harry R. Young and Morris W. Katzen, in an action upon contract to the damage of the said Harry R. Young and Morris W. Katzen, partners, trading &c., as aforesaid twenty thousand dollars as is said. And in 20 what manner you shall execute this, our writ, make appear to us at the day and place aforesaid, and have you then and there this writ.

Witness THEODORE W. SCHIMPF, Esquire, Judge of our said Circuit Court at Mays Landing aforesaid the 29th day of March, A. D. 1926.

WM. A. BLAIR,  
*Clerk.*

By IRA T. B. SMITH,  
*Spec. Dep. Clerk.* 30

U. G. STYRON,  
*Attorney.*

ATTACHMENT.

ATLANTIC COUNTY CIRCUIT COURT.

10 HARRY R. YOUNG and MORRIS W. KATZEN, partners }  
 trdg. &c., } Attachment.  
 v. }  
 JAMES R. CRUMBIE. }

20 Inventory and appraisement of all the real and personal estate of the defendant James R. Crumbie by me attached on Tuesday the 6th day of April, 1926, at 2.55 o'clock P. M. by virtue of the writ of attachment hereto annexed, made on the day and year aforesaid by me Frederick M. G. Weakley, special Deputy Sheriff of the County of Atlantic, with the aid of Gifford Scott, a discreet and impartial freeholder of the said County of Atlantic, to wit: All that certain tract of land and premises  
 30 situate in the City of Atlantic City, County of Atlantic and State of New Jersey. BEGINNING in the south line of Pacific Avenue 150 feet west of Georgia Avenue; thence west 50 feet extending in parallel lines of that width to the northerly line of the Boardwalk.

Total valuation two hundred and ninety-five thousand dollars.

Gifford Scott,  
Appraiser.

paid app. fee \$1.00.

HOWARD R. CLOUD,  
Sheriff.

FREDK. M. G. WEAKLEY,  
Special Deputy Sheriff.

Received March 29th, 1926, and recorded in the clerk's office of Atlantic County at Mays Landing, N. J., in book No. 2 of attachments, page 283.

WM. A. BLAIR,  
Clerk.

By IRA T. B. SMITH,  
Spec. Dep. Clerk.

Affi. filed Mar. 29, 1926, 9 A. M. writ issued Mar. 29, 1926. Writ returnable Apr. 19, 1926. Amt. in affi. \$15,000.

WM. A. BLAIR,  
Clerk.

Received March 29, 1926. Sheriff.

I hereby deputize and appoint Fredk. M. G. Weakley to serve the within writ witness my hand and seal this 6th day of April, 1926.

HOWARD R. CLOUD, (L. S.)  
Sheriff of Atlantic Co.

By virtue of the within writ, I did on the sixth day of April, 1926, in the presence of a credible person, attach the goods and chattels, lands and tenements, rights and credits of the defendants, as in the annexed inventory mentioned and described.

HOWARD R. CLOUD,  
*Sheriff.*

By FREDK. M. G. WEAKLEY,  
*Special Deputy Sheriff.*

10

Sheriff's fees	\$6.50
Appraiser fees	1.00
	-----
	\$7.50

20

Filed April 19, 1926 at 9 A. M.  
WM. A. BLAIR,  
*Clerk.*

30

AFFIDAVIT.

STATE OF NEW JERSEY, }  
ATLANTIC COUNTY, } ss.

MORRIS W. KATZEN, being duly sworn according to law, on his oath says that one Harry R. Young and deponent are partners engaged in the business of real estate agents and brokers, trading under the name and style of Harry R. Young and Morris W. Katzen; and deponent is the agent of said partnership on this behalf; that James H. Crumbie is not, to deponent's knowledge or belief, resident at this time in the State of New Jersey, and that he owes to said Harry R. Young and Morris W. Katzen, partners, trading as Harry R. Young and Morris W. Katzen the sum of fifteen thousand dollars, as nearly as this deponent can ascertain.

MORRIS W. KATZEN.

Sworn and subscribed before me this 25th day of March, 1926, at Atlantic City, N. J.

ISADORE SACKS,  
*M. C. C. of N. J.*

Filed March 29, 1926, at 9 A. M.  
WM. A. BLAIR,  
*Clerk.*

APPEARANCE.

ATLANTIC COUNTY CIRCUIT COURT.

10 HARRY R. YOUNG and MOR-  
 RIS W. KUTZEN, partners,  
 trading as HARRY R.  
 YOUNG and MORRIS W.  
 KUTZEN,  
 v.  
 JAMES R. CRUMBIE. } In Attachment.  
 Appearance.

The defendant's appearance is entered in the 20 above cause this 24th day of April, 1926.

LOUIS A. REPETTO,  
*Attorney of Defendant.*

Filed September 27, 1926, at 9 A. M.  
WM. A. BLAIR,  
*Clerk.*

NOTICE.

ATLANTIC COUNTY CIRCUIT COURT.

HARRY R. YOUNG and MOR-  
 RIS W. KUTZEN, partners,  
 trading as HARRY R.  
 YOUNG and MORRIS W.  
 KUTZEN,  
 v.  
 JAMES R. CRUMBIE. } In Attachment.  
 Notice. 10

You are hereby notified that I have entered an 20 appearance and will accept a complaint for the defendant at the suit of the plaintiff in the above entered cause, pursuant to the statute.

LOUIS A. REPETTO,  
*Attorney of Defendant.*

To U. G. Styron, Attorney of Plaintiff.

[ENDORSED]

Due and legal service acknowledged. 30  
U. G. Styron,  
Atty. of Plaintiff.

Filed September 27, 1926, at 9 A. M.  
WM. A. BLAIR,  
*Clerk.*

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

10 HARRY R. YOUNG, to the  
 use of HARRY R. YOUNG  
 and MORRIS W. KATZEN,  
 partners, trading as  
 HARRY R. YOUNG and  
 MORRIS W. KATZEN,  
*Plaintiff,*

v.

JAMES R. CRUMBIE,  
*Defendant.*

20

Complaint.

Plaintiff residing in Atlantic City, New Jersey, says that:

1. He is a member of a co-partnership styled as above, composed of himself and Morris W. Katzen, engaged in the business of real estate brokers in Atlantic City, New Jersey, licensed and authorized to transact said business in New Jersey.

30

2. On February 15, 1926, defendant authorized plaintiff by writing, to sell certain premises in Atlantic City aforesaid, described in said writing, at the price and upon the terms therein named, and agreed to pay plaintiff three per cent of the amount

of such price, which authorization in writing was then on said date delivered to plaintiff, and a copy thereof is hereunto annexed and marked, "Schedule A."

3. On March 15, 1926, plaintiff did sell said premises described in said authorization in writing for the price and upon the terms therein named, to a person ready, willing and able to purchase said premises for the sum of \$500,000, and who on said day and at said time offered to pay and tendered as a deposit, \$10,000 mentioned in and according to the terms of said writing.

10

4. Defendant thereupon became indebted to plaintiff in the sum of \$15,000, being three per cent. of said price or sum of \$500,000, and thereafter plaintiff demanded of defendant said sum of \$15,000; yet defendant disregarded his promise and agreement to pay plaintiff said sum of \$15,000, refused to pay the same contrary to the form and effect of said agreement and all other promises of undertaking.

20

Plaintiff demands as damages \$15,000, with lawful interest thereon.

U. G. STYRON,  
*Attorney of Plaintiff.*

(SCHEDULE "A.")

James H. Crumbie  
 Number Thirteen-Thirteen West Allegheny Avenue  
 Philadelphia, Penna., February 15th, 1926.

30

Mr. Harry R. Young,  
Atlantic City, New Jersey.

Dear Mr. Young:—

Upon representation by you that you have a party interested in the purchase of my Boardwalk prop-

erty in Atlantic City, I will agree to give you a thirty day option from this date to secure a purchaser for this property on the following terms and conditions:

Property situate on the Boardwalk midway between Georgia and Florida Avenues, Atlantic City, New Jersey, with a frontage of Fifty feet on the Boardwalk and running through of that width to Pacific Avenue.

Property to be \$500,000; \$100,000 cash, with a deposit of \$10,000 to be paid on or before March 16th, 1926; \$90,000 to be paid at time of settlement, which is to be on or before Sixty days after deposit is made, or on or before Ninety days from this date. Purchase Money Mortgage to be taken back for Five years at Six per cent. per annum of \$400,000.

I hereby agree to allow you a Commission of three per cent. as allowed by the Real Estate Board of Atlantic City, this commission to be paid only if sale is completed as provided above, and to be paid only at final settlement.

Unless an Agreement of Sale for the price and terms above mentioned is executed within thirty days from this date (February 15th, 1926), this option shall cease and determine, and all rights under this option shall become null and void.

Sincerely,  
James H. Crumbie

[ENDORSED]

Due and legal service acknowledged.  
Louis A. Repetto,  
Atty. of Defendant.

Filed September 27, 1926, at 9 A. M.  
WM. A. BLAIR,  
Clerk.

ANSWER.

ATLANTIC COUNTY CIRCUIT COURT.

HARRY R. YOUNG, to the use of HARRY R. YOUNG and MORRIS W. KATZEN, partners, trading as HARRY R. YOUNG and MORRIS W. KATZEN, <i>Plaintiff,</i>	}	In Attachment. Action at Law. Answer.	10
v.			
JAMES R. CRUMBIE, <i>Defendant.</i>	}		20

Defendant, James R. Crumbie, answering the complaint filed herein says that:

1. He has no information upon which to form a belief concerning the allegations of paragraph one (1) of said complaint and alleges that said allegations as therein contained are immaterial and irrelevant to this suit. If determined to be material and relevant then plaintiff requires proof thereof. 30

2. He admits that on February 15, 1925, he executed paper writing addressed to Harry R. Young, a copy of which is attached to plaintiff's complaint and marked "Schedule A." Defendant does not

admit the construction given to said writing as contained in paragraph 2 of said complaint.

3. He denies the allegations of paragraph three (3) of said complaint.

4. He denies the allegations of paragraph four (4) of said complaint.

10

## DEFENSES.

1. Said paper writing, copy of which is attached to plaintiff's complaint and marked "Schedule A," was addressed to Harry R. Young, for his personal benefit and not for the benefit of any partnership or other person or persons and any rights which said Harry R. Young may have thereunder are not assignable by him to any other person.

20 2. Said paper writing designated "Schedule A," as aforesaid, did not give said Harry R. Young any right to demand commission for the sale of property named therein except upon the condition that he, said Young, should affect a sale between defendant and the person who said Young represented he had interested in the purchase of said property at the time said paper writing was executed.

30 3. Said Harry R. Young was entitled to receive commission as agreed in said paper writing marked "Schedule A" only in the event that sale affected by said Young should be completed as provided therein and said commission was to be paid thereunder only at time of final settlement. Neither of said contingencies have happened to entitle said Harry R. Young to recover.

4. Said Harry R. Young did not so perform his part of said paper writing marked "Schedule A" as to entitle him to recover or receive any commission or other compensation from defendant.

LOUIS A. REPETTO,  
*Attorney for Defendant.*

—  
Filing out of time consented to. 10  
U. G. Styron,  
Atty. of Pltff.

—  
Filed February 10, 1927, at 9 A. M.  
WM. A. BLAIR,  
*Clerk.*

20

30

RULE FOR JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

10 HARRY R. YOUNG, to the  
 use of HARRY R. YOUNG  
 and MORRIS W. KATZEN,  
 partners, trading as  
 HARRY R. YOUNG and  
 MORRIS W. KATZEN,  
*Plaintiff,*  
 v.  
 JAMES R. CRUMBIE,  
*Defendant.*

Action at Law.  
 In Attachment.  
 Rule for Judgment.

20

This action having been tried before Judge William Frank Sooy, with a jury, in the presence of counsel of the respective parties, on February 23, 1927, and the jury having been directed to return a verdict in favor of the plaintiffs, for \$15,675.00 damages;

30 It is ordered that judgment final be entered in favor of the plaintiffs and against the defendant for the sum of \$15,675.00 and the plaintiffs' costs to be taxed.

On motion of

U. G. STYRON,  
*Attorney of Plaintiffs.*  
 W. F. SOOY,  
 C. C. J.

Filed and entered February 25, 1927,  
 at 9 A. M.

WM. A. BLAIR,  
*Clerk.*

JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.  
 January Term, 1927.

10

HARRY R. YOUNG, to the  
 use of HARRY R. YOUNG  
 and MORRIS W. KATZEN,  
 partners, trading as  
 HARRY R. YOUNG and  
 MORRIS W. KATZEN,  
*Plaintiff,*  
 v.  
 JAMES R. CRUMBIE,  
*Defendant.*

Action at Law.  
 On Verdict.  
 In Attachment.  
 U. G. Styron, Atty.

20

Judgment entered February 25, 1927, at 9 A. M.

Damages	\$15,675.00	
Costs	66.28	30
Total	\$15,741.28	

This action was tried before Judge W. F. Sooy, with a jury in the presence of counsel for the respective parties, on February 23, 1927.

The cause having been heard and submitted to the jury they returned their verdict by direction of the Court, in favor of the plaintiffs and against the defendant.

Whereupon, it is ordered that the plaintiffs, Harry R. Young to the use of Harry R. Young and Morris W. Katzen, partners, trading as Harry R. Young and Morris W. Katzen, recover of the defendant James R. Crumbie the sum of fifteen thousand six hundred seventy-five dollars, damages and sixty-six dollars and twenty-eight cents, costs of suit (\$15,741.28).

WILLIAM A. BLAIR,  
*Clerk.*

County Circuit Judgment Book No. 15, page 14.

NOTICE AND GROUNDS OF APPEAL.

ATLANTIC COUNTY CIRCUIT COURT.

HARRY R. YOUNG, to the use of HARRY R. YOUNG and MORRIS W. KATZEN, partners, trading as HARRY R. YOUNG and MORRIS W. KATZEN, <i>Plaintiff,</i>	}	Action at Law. In Attachment. Notice and Grounds of Appeal.	10
v.			
JAMES R. CRUMBIE, <i>Defendant.</i>			20

To U. G. Styron, Esq., Attorney of Plaintiff, or to whom it may concern:

Sir:

Please take notice that the defendant in the above entitled cause appeals to the Supreme Court of New Jersey from the whole of the judgment in this cause on the following grounds, to wit:

1. Because the Court ruled at the outset of the trial of this cause and during the argument on plaintiff's motion for direction of a verdict on defendant's opening to the jury that the right to sell granted to plaintiff by the contract in question was

not confined to the person plaintiff represented he had as a purchaser at the time said contract was executed.

2. Because the Court permitted witness, Harry R. Young, to answer the following question: "Who is Mr. Katzen?"

10 3. Because the Court refused to permit witness, Harry R. Young, to answer the following question on cross-examination: "Mr. Young, when you went to see Mr. Crumbie on the 16th of February, you told him that you had a buyer for this property, didn't you?"

20 4. Because the Court refused to permit witness, Harry R. Young, to answer the following question on cross-examination: "Now, then, after you had taken the matter up with Mr. Fox, do you know whether or not he had some plans drawn of the character of building which he desired to place on the property?"

30 5. Because the Court refused to permit witness, Harry R. Young, to answer the following question on cross-examination: "Did you continue by saying to Mr. Crumbie that he was to pay you fifteen thousand (\$15,000) dollars, if you made the sale and that as these other two men, referring to Mr. Tomlinson and Mr. D'Agostino, were to pay Mr. Crumbie ten thousand (\$10,000) dollars for the option—to you, rather, for the option, and that as the cash payment was to be one hundred thousand (\$100,000) dollars, you were going to let your twenty-five thousand (\$25,000) dollars ride for the one-fourth interest in the profits?"

6. Because the Court refused to permit witness, Harry R. Young, to answer the following question on cross-examination: "Didn't you endeavor to enter into arrangement with Mr. Crumbie at that time whereby you and Mr. Crumbie should enjoy the profits of the sale of the riparian rights separate and apart from the property landward?"

10 7. Because the Court permitted witness, Morris W. Katzen, to answer the following question: "Some time prior to the 16th of March, were you given instructions with relation to the option or the agency agreement that Mr. Young had with Mr. Crumbie?"

8. Because the Court permitted witness, Morris W. Katzen, to answer the following question: "And as a result of that, what did you do?"

20 9. Because the Court refused to strike from the records answer of witness, Morris W. Katzen, as follows: "Well, Mr. Satinov, and I went to Philadelphia for the purpose of entering into an agreement with Mr. Crumbie on the property."

10. Because the Court permitted witness, Morris W. Katzen, to answer the following question: "And what did you do after you got there?"

30 11. Because the Court permitted witness, Morris W. Katzen, to answer the following question: "State what was said?"

12. Because the Court refused to permit witness, Morris W. Katzen, to answer the following question on cross-examination: "You placed the matter in the hands of Mr. Styron, the attorney of record,

before Mr. Young returned from Cuba, did you not?"

13. Because the Court permitted witness, Louis Satinov, to answer the following question: "Did Mr. Katzen take up with you the matter of the purchase of property on the Boardwalk between Georgia and Florida Avenues in March, 1926, or February and March?"

10 14. Because the Court permitted witness, Louis Satinov, to testify to any part which he had in negotiations for purchase of property involved in this suit.

15. Because the Court permitted witness, Louis Satinov, to testify as he did during the trial of this cause.

20 16. Because the Court refused to permit witness, Louis Satinov, to answer the following question on cross-examination: "Now, did you know, Mr. Satinov, that this suit had been started before today?"

17. Because the Court refused to permit witness, Louis Satinov, to answer the following question: "You said a little while ago that you were still ready to buy the property at the same price if the riparian rights went with it, didn't you?"

30 18. Because the Court refused to grant the motion of defendant, James R. Crumbie, for a non-suit upon the ground that there was no proof that Harry R. Young, the plaintiff in this cause, was the efficient cause of the sale.

19. Because the Court refused to grant the mo-

tion of defendant, James R. Crumbie, for a non-suit upon the ground that there was no proof that plaintiff had produced a man ready, able and willing to buy defendant's property.

20. Because the Court refused to grant the motion of defendant, James R. Crumbie, for a non-suit upon the ground that plaintiff's right to recover rested upon the contingency stated in said contract, to wit, that the commission sued for was to be paid 10 only if the sale was completed as provided therein and to be paid only at final settlement.

21. Because the Court refused to grant the motion of defendant, James R. Crumbie, for a non-suit upon the ground that plaintiff under said agreement had no authority to sell said property to any other person than the person who was represented by him to defendant as the prospective purchaser at the time the agreement was made. 20

22. Because the Court refused to grant the motion of defendant, James R. Crumbie, for a non-suit upon the ground that it was apparent from the testimony that the prospective purchaser, Louis Satinov, was not ready and willing to buy property as described in said contract.

23. Because the Court refused to permit witness, Louis Satinov, to answer the following question on cross-examination: "On what bank was the certificate of deposit " 30

24. Because the Court refused to permit witness, James R. Crumbie, to answer the following question: "Will you relate to the Court the circumstances under which that agreement was executed?"

25. Because the Court refused to permit witness, James R. Crumbie, to answer the following question: "At the time that this contract was executed, was the name, Benjamin R. Fox, mentioned?"

26. Because the Court refused to permit witness, James R. Crumbie, to answer the following question: "I am speaking now of February 15th, after you had executed the agreement and given it to Mr. Young. Did Mr. Young say anything having refer-  
10 ence to Mr. Fox?"

27. Because the Court refused to permit letter marked Exhibit D1 for identification to be marked as an exhibit and a part of the evidence in this case.

28. Because the Court refused to permit witness, Benjamin R. Fox, to answer the following question:  
20 "What was the conversation which you had with Mr. Young?"

29. Because the Court granted plaintiff's motion for direction of a verdict.

30. Because the Court refused to grant defend-  
ant's motion for direction of a verdict.

LOUIS A. REPETTO,  
*Attorney of Defendant.*

[ENDORSED]

Due and legal service of the within notice is hereby acknowledged.

U. G. Styron,  
Atty. of Plaintiff.

Dated March 26, 1927.

Filed April 6, 1927, at 9 A. M.

WM. A. BLAIR,  
*Clerk.*

10

20

30

## TESTIMONY.

## ATLANTIC COUNTY CIRCUIT COURT.

---

10 HARRY R. YOUNG, to the use  
of etc.,  
                  against  
JAMES R. CRUMBIE,  
                  *Defendant.* } In Attachment.

---

20 The above entitled case was tried February 23, 1927,  
before HON. WILLIAM FRANK SOOY, Judge,  
and a jury.

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## APPEARANCES:

U. G. STYRON, ESQ., and MR. BOURGEOIS, for plain-  
tiff.

LOUIS A. REPETTO, and WM. ELMER BROWN, JR.,  
ESQ., for defendant.

---

30

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

(Mr. Brown opened the defendant's case to the  
jury.)

Mr. Bourgeois: I conceive there is no defense  
in all this that Mr. Brown has said. This agree-  
ment speaks for itself, and all the evidence he pro-  
poses would be contrary to the case of Naumberg  
v. Young. The agreement speaks for itself.

Mr. Brown: It is our contention that the right  
to sell is limited to the person Mr. Young represented  
he had as a purchaser.

The Court: I do not think so. 10

Mr. Brown: Allow me an exception to that rul-  
ing?

The Court: Yes.

Mr. Brown: Our other contention is that this  
contract is addressed to Harry R. Young personally.  
He is the agent of the defendant in this case, and he 20  
has no right in law to delegate his authority to  
any one else, whether he be a partner or an employe  
or what not; that he had absolutely no right to dele-  
gate this authority as agent.

The Court: I will hold against you on that, too;  
because I think that he had a perfect right to take  
that in his own name and go in his office and ask  
any one of his employes to work up the deal for him.  
A partner is a partner to work up the deal with him. 30  
I will hold against you unless you have some cases  
that support your contention. Proceed.

Mr. Brown: I would like to say to your Honor,  
too, that it is up to them to show the purchaser was  
ready, able and willing to buy; but my contention

is that that is not the point, that their right to recover is limited by this agreement.

HARRY R. YOUNG, plaintiff, called as a witness in his own behalf, being sworn, was examined and testified as follows:

10 Direct examination.

By Mr. Bourgeois:

Q. Mr. Young, you live where?

A. Atlantic City.

Q. And you have lived here how long?

A. About twenty-five to thirty years.

Q. What is your business?

A. Real estate.

20 Q. On the 15th day of February, 1926, did you have some business dealings with Mr. Crumbie?

A. I did.

Q. Where?

A. In Philadelphia.

Q. I show you what purports to be an agency agreement bearing date Philadelphia, Pennsylvania, February 15, 1926, and ask you if you saw that agreement signed?

A. I did.

30 Q. By whom?

A. Mr. Crumbie.

Q. And it is addressed to whom?

A. Myself.

Mr. Bourgeois: I offer it.

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

Q. After you had received that agreement from Mr. Crumbie on the 15th of February, 1926, did you a few days after that receive a letter from him?

A. I did.

Q. I show you a letter dated Philadelphia, Pennsylvania, February 19, 1926, and ask you if that is the letter?

A. That is.

Mr. Bourgeois: I offer it in evidence.

10

(The paper offered is received in evidence and marked as an exhibit for the plaintiff P2.)

Q. Now, after securing this letter of February 15, 1926, authorizing you to sell the property, did you endeavor to make a sale of it?

A. I did.

Q. Did you go up to Mr. Crumbie in that endeavor and try to deal with him on a certain occasion?

20

A. On one occasion.

Q. And when was that with relation to the 15th of February, as nearly as you can state?

A. That was about one week prior to the 15th of March, within that week.

Q. That was prior to the 16th of March?

A. Yes.

Q. Did you meet Mr. Crumbie?

A. I did.

Q. Anybody with you?

30

A. No.

Q. Did you have any conversation with him?

A. Yes.

Q. Where?

A. At his home.

Q. And what conversation did you have with him? What did you say to him and what did he say to you?

A. I told him I had a buyer for the property; there were two gentlemen who wanted to buy it, and they wanted an agreement prepared and wanted to buy it in the name of a corporation; in other words, they didn't want to go on the bond and mortgage. Mr. Crumbie says: "We will go down and see my attorney." So we went in a taxicab down to Chestnut Street and went up and saw Mr. Crumbie's attorney.

10 Q. And who was that attorney?

A. I don't remember the gentleman's name just now. His attorney would not permit him to enter into any such transactions.

Q. What was the conversation? What did the attorney say to him in your presence?

A. He said that he would not permit Mr. Crumbie to enter into that contract unless there was a payment of \$10,000 put up either in a certified check, cash, or its equivalent.

20 Q. That was according to the agreement you had?

A. Yes.

Q. All right.

A. And that man who put up that money would sign an iron-bound contract and would sign a bond and mortgage.

Q. Yes.

A. And "If you haven't anybody that will do that, why, we are not prepared to carry out this contract, but if you have some one before the expiration of  
30 this contract we will be glad to do business with you."

Q. Now, after you were up there on that occasion, were you called out of town?

A. Yes. I had a large deal,—timber deal in Cuba —

Q. Never mind that. Was anything done by you

so as to continue the effort to sell this property of Mr. Crumbie's?

A. I spoke to Mr. Katzen about it. Of course Mr. Katzen knew all about it. He was my partner —

Mr. Brown: I object to the statement that he was his partner.

Q. Was it turned over to him to complete? 10

Mr. Brown: I move to strike from this record the statement that Mr. Katzen was his partner. It is a conclusion.

The Court: Strike out the latter part.

Q. You told—you left it to Mr. Katzen?

A. Yes.

Q. Who is Mr. Katzen?

A. Mr. Katzen was my partner 20

Mr. Brown: I object to that as a conclusion.

The Court: I will permit it, because in the first place, he answered before you objected; in the second place, a partnership may be proved by testimony. I presume one partner has a right to state a partnership.

Mr. Brown: Allow me an exception. I object on 30 the ground also that it is irrelevant. We are not dealing with a partnership. We are dealing with Mr. Young.

Q. How long had Mr. Katzen been a partner of yours?

A. About six years.

Q. And in what business?

A. Real estate.

Q. And had you sold other properties and divided the commissions?

A. Yes.

10 Mr. Brown: I object to that. I cannot see the relevancy of that testimony.

The Court: I cannot see the relevancy of the last question, either.

Q. Now, were you authorized to conduct a real estate or brokers' business in the State of New Jersey?

Mr. Brown: I object.

20 The Court: I think you have a perfect right to ask him if he was a licensed real estate broker.

Q. Were you?

A. Yes.

Q. And was Mr. Katzen a licensed real estate agent or broker?

A. Yes, sir, under the firm name.

Q. Then you dropped out?

A. Yes, sir.

30 Q. You went away?

A. Yes, sir.

Cross-examination.

By Mr. Brown:

Q. Mr. Young, when you went to see Mr. Crumbie on the 16th of February, you told him that you had a buyer for this property, didn't you?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

10

The Court: I will sustain the objection. I do not see that it makes a bit of difference what buyer he may have had in view, prior to the 15th day of February, because when the option agreement was given, it was a general option to Mr. Young to sell to anybody.

Mr. Brown: I ask an exception to that and point out that my purpose in asking the question was that I contend that in the very beginning of this agreement there is an ambiguity.

20

The Court: I do not think there is any ambiguity.

Q. Did you ever negotiate with Mr. Benjamin R. Fox for the sale of this property?

Mr. Bourgeois: I object. If it is after the agreement —

30

Mr. Brown: After the agreement.

Mr. Bourgeois: I don't object to that.

A. I did.

Q. And did you know that Mr. Fox had written a

letter to Mr. Crumbie referring to this agreement that has been offered in evidence and marked P1 after the agreement was made?

Mr. Bourgeois: Objected to as immaterial.

The Court: I will permit it, yes or no.

A. Yes.

10 Q. I show you letter dated February 16, 1926, signed Benjamin R. Fox, and ask you whether or not that is the letter Mr. Fox wrote, if you know?

A. Mr. Fox wrote that letter. I think I was present when he dictated it.

(The paper referred to is marked for identification for the defendant D1.)

20 Q. Now, then, after you had taken the matter up with Mr. Fox, do you know whether or not he had some plans drawn of the character of building which he desired to place on the property?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

The Court: What is the purpose?

30 Mr. Brown: In view of the fact that this letter is written to Mr. Crumbie, in view of the fact that the matter was still open with Mr. Fox, and my contention that the agreement had reference only to Mr. Fox as prospective purchaser and that he was confined in the agreement to that, I think this testimony is relevant.

The Court: I cannot see that it is admissible for

that purpose and I will overrule the question and sustain the objection.

Mr. Brown: Allow me an exception.

Q. Now, Mr. Young, after you had received the letter from Mr. Crumbie which is dated February 19, 1926, and offered in evidence here marked P2, you had some talk with Mr. Crumbie about the sale of this property, didn't you? 10

A. Afterward?

Q. Yes.

A. No.

Q. After the receipt of this letter of February 19th?

A. Not until a few days prior —

Q. To the expiration of the first agreement?

A. Yes.

Q. Then you did have some conversation with him after the receipt of this letter marked P2? 20

A. A few days prior to going away.

Q. Well, wasn't that after the receipt of this letter?

A. Yes.

Q. And Mr. Crumbie didn't say to you at that time that he was not going to sell the property under that agreement, did he?

A. No; he said —

Q. He didn't ask that you return the agreement to him at that time, did he? 30

A. No.

Q. Now, as a matter of fact, you were at Mr. Crumbie's house on March 11th, were you not?

A. I don't remember.

Q. Do you remember the day of the week? Was it on Tuesday?

A. I cannot say.

Q. Was it on Thursday, rather?

A. It was the week preceding the end of the option.

Q. When you saw Mr. Crumbie at that time, did you tell him that you didn't think that Mr. Fox was prepared to go on with the deal?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

10

The Court: I will permit it.

A. Yes, I think I did, but I am not positive.

Q. And it was then that you told him that you had two other men in Atlantic City that would be interested in buying this property?

A. Yes.

Q. And you said that their names were Mr. Tomlinson and Mr. D'Agostino?

20

A. Yes.  
Q. Did you tell him that one of these men was leaving Atlantic City the following Friday afternoon?

A. I may have.

Q. And was going to Cuba?

A. Yes.

Q. You asked Mr. Crumbie to take as a deposit a \$5000 uncertified check, didn't you?

A. I have been of the impression that it was ten, but since you have made that statement this morning, it might have been five.

30 Q. And did you when you offered that \$5000 check ask for an additional thirty days in which to pay the remaining \$5000 of the original deposit?

A. I just can't remember that.

Q. You have no recollection about that at all?

A. I don't just remember about that. I know the time was nearly up, and I may have asked for an extension.

Q. Did you tell Mr. Crumbie at that time that you had two checks of \$5000 each in your pocket?

A. I did not.

Q. And did you tell him that they were your checks?

A. I told him my buyers wanted an agreement.

Q. You didn't tell him they were your checks? 10

A. I didn't have any checks in my pocket; said I would give my own check.

Q. Did he ask you whether or not the checks were good, and you replied no, but these men would make them good?

A. No; but I said I would give my check but it would not be made good unless they gave me their money.

Q. And wasn't it at that time that Mr. Crumbie suggested that you go down to Mr. McCaughey's office, an attorney of Mr. Crumbie? 20

A. On that day he requested or suggested we go down to his attorney's office.

Q. Now, you are—you don't remember the name of the attorney?

A. I just don't recall. I remember the gentleman. I don't just remember the name.

Q. Was it Mr. McCaughey who sits here to my right? 30

A. It was that gentleman there, yes.

Q. Now, during the conversation which you had with Mr. Crumbie in Mr. McCaughey's office, do you remember making this statement to Mr. Crumbie: "Crumbie, you have been very good to me in this matter, and I am going to lay my cards face up on the table"—either at Mr. McCaughey's office

or at Mr. Crumbie's home did you make that statement?

A. I made that statement when I went to get the option and said Mr. Fox was my buyer.

Q. That was when you made that statement? You didn't make it on March 11th or thereabouts?

A. I don't remember making such a statement at that time.

Q. Did you continue by saying to Mr. Crumbie  
10 that he was to pay you \$15,000 if you made the sale and that as these other two men, referring to Mr. Tomlinson and Mr. D'Agostino, were to pay Mr. Crumbie \$10,000 for the option—to you, rather—for the option, and that as the cash payment was to be \$100,000 you were going to let your \$25,000 ride for the one-fourth interest in the profits?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

20 The Court: I will overrule the question and allow you an exception.

Mr. Brown: All right.

Q. During that conversation that you had with Mr. Crumbie in the week prior to the expiration of the 30-day period, did you have any negotiation with him having to do with the riparian rights in front of this  
30 property?

A. I asked him about that.

Q. Did that in any way enter into your negotiation at that time?

A. They were to go with the property.

Q. Didn't you endeavor to enter into an arrangement with Mr. Crumbie at that time whereby you and Mr. Crumbie should enjoy the profits of the

sale of the riparian rights separate and apart from the property landward?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

The Court: I will sustain the objection.

Mr. Brown: Exception.

Q. Now, when did you leave town, Mr. Young, at  
10 that period?

A. It was a few days before the expiration of that agreement.

Q. And you went to Cuba?

A. I went to Cuba on business.

Q. I didn't ask you what you went there for. You went to Cuba. Now, whom did you go with?

A. Mr. Tomlinson.

Q. And Mr. Tomlinson was the man about whom  
20 you had spoken to Mr. Crumbie?

A. Yes.

Q. And that is all you knew about this transaction until you returned to your office after that trip?

A. Except I had talked to Mr. Katzen.

Q. Except that you had talked to Mr. Katzen about it. That's all.

(Witness excused.)

MORRIS W. KATZEN, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

10 Q. You live in Atlantic City?

A. Yes, sir.

Q. And have lived here how long?

A. About seven years.

Q. What is your business?

A. Real estate.

Q. Alone or with some one?

A. With—I am at the present alone.

Q. Were you alone or in partnership with some one on the 15th of February, 1926?

20 A. I was partners with Mr. Harry R. Young.

Q. Some time prior to the 16th day of March, were you given instructions with relation to the option or the agency agreement that Mr. Young had with Mr. Crumbie?

Mr. Brown: I object. I maintain it is irrelevant and immaterial to this issue whether he had any instruction with reference to that agreement or not; because he had no part in it, and the rights granted  
30 to Mr. Young in that agreement could not be delegated to him or anybody else.

The Court: Objection overruled.

Mr. Brown: Exception.

A. Yes, sir.

Q. And as a result of that, what did you do?

Mr. Brown: Same objection.

The Court: Same ruling.

Mr. Brown: Exception.

A. I had been dealing with a Mr. Satinov and other people trying to sell them the property, and on  
10 the last day, Mr. Satinov finally agreed that he would take the property.

Mr. Brown: I object to what Mr. Satinov said.

The Court: Strike that part out.

The Witness: Well, Mr. Satinov and I went to Philadelphia for the purpose of entering into an agreement with Mr. Crumbie on the property. 20

Mr. Brown: I object. I think this witness ought to answer what they did and not what his purpose was.

The Court: I think he has a right to say he went to Philadelphia for the purpose of doing something. I will permit it and allow you an exception.

Q. What time did you go up?

A. We left on the bridge train. I think that was  
30 about ten o'clock in the morning.

Q. Where did you go after you reached Philadelphia?

A. We went right direct to Mr. Crumbie's home.

Q. What time did you get there?

A. Around twelve o'clock.

Q. And what did you do after you go there?

A. Why, we rapped at the door —

Mr. Brown: My objection goes to all this testimony.

The Court: I will allow it to go to all this testimony and grant you a general exception to it all.  
10 But I will permit the testimony.

A. (Continuing). And some one came to the door and we asked for Mr. Crumbie. We were told that Mr. Crumbie wasn't home, and we finally were invited into the house and we spok eto Mrs. Crumbie —

Q. Don't tell about that. What did you do after that? Then what did you do?

A. We went away.

Q. What for?

20 A. We went to look for Mr. Crumbie.

Q. And what did you do after that?

A. Well, we come back again in the afternoon.

Q. Did you find him then?

A. He wasn't home then yet.

Q. Then what did you do?

A. We went away again. We got back about five-thirty and we found him home then.

Q. Did you go in the house?

A. Yes, sir.

30 Q. Have a conversation with Mr. Crumbie?

A. Yes, sir.

Q. State what was said.

Mr. Brown: I object, if your Honor please, to that, upon the grounds heretofore stated.

The Court: I will permit it and allow you an exception.

Mr. Brown: Exception.

A. I told Mr. Crumbie that I was Mr. Katzen, partner of Harry R. Young, and Mr. Young had to go out of town and he left the matter in my hands. I told him that we were there ready to do business on the property. I introduced him to the buyer and then Mr. Satinov, the buyer, spoke to Mr. Crumbie and told him that he was there ready to make the deal and tendered him \$10,000. Mr. Crumbie refused 10 to take it.

Q. In check?

A. No, in cash. Mr. Crumbie refused to accept it, saying that he couldn't sell the property, he would not sell the property; and Mr. Satinov asked why he would not sell the property, and he stated that if he held the property another year he would get \$500,000 for it.

Q. And what else was said at that time? Was anything said about the clock, the time, or anything 20 of that sort?

A. Oh, Mr. Satinov asked Mr. Crumbie again why he would not sell the property. He said, "We are here ready to do business," and Mr. Crumbie said that he refused to sell the property and said, "Today it is six-fifteen o'clock." He looked at a little clock on a mantelpiece in the parlor. He said: "When I get on the witness stand I will say today at six-fifteen o'clock you tendered me the money and I refused to accept it." So we couldn't do anything further with 30 Mr. Crumbie and we went away.

Q. Did he assign any reason why he would not sell?

A. He said if he held the property another year he would get \$600,000 for it.

Q. And that was the only reason he assigned?

A. That was all he said.

Cross-examination.

By Mr. Brown:

Q. Mr. Katzen, you didn't know Mr. Crumbie at all prior to that meeting on the 16th of March, did you?

A. No.

10 Q. This was the last day of this option, wasn't it?

A. Yes, sir.

Q. And so far as you know, Mr. Crumbie didn't know you?

A. I didn't think he did; no.

Q. And do you know whether or not Mr. Crumbie knew the gentleman that was with you, Mr. Satinov?

A. I cannot say that.

Q. Well, did they act as if they were old friends?

A. No.

20 Q. Act as if they were strangers?

A. More or less, yes.

Q. Now, then, when you introduced yourself, you told Mr. Crumbie that you were a partner of Mr. Young?

A. Mr. Young.

Q. And Mr. Crumbie said: "I don't understand how that can be, because Mr. Young told me that he was incorporated?"

A. Mr. Crumbie never questioned that I was a partner of Mr. Young's.

30 Q. Then Mr. Crumbie didn't say that to you?

A. No, sir.

Q. And didn't you pull a paper out of your pocket which was a contract having to do with the sale of real estate and point out to Mr. Crumbie that there was a provision in there whereby you were to enjoy one-half of the commission to Mr. Young?

A. I tried to prove —

Q. Did you do that?

A. I pulled something out of my pocket. I don't remember what it was.

Q. What did you pull out of your pocket?

A. I don't remember exactly what it was.

Q. Wasn't it a contract for the sale of this estate?

A. I couldn't tell exactly that it was that.

Q. You have no recollection about what it was now? 10

A. I don't remember what it was, but I did try to —

Q. You have answered the question. When you showed this paper to Mr. Crumbie, didn't Mr. Crumbie say to you "That doesn't make you partners in every transaction?"

A. He never said that at all.

Q. He did not say that?

A. No, sir.

Q. Did he say to you if you were a partner of Mr. Young that you ought to have a general partnership agreement rather than to have a partnership agreement having to do with each individual transaction? 20

A. Never said that at all.

Q. Now, at what stage of the meeting was it that you introduced Mr. Satinov?

A. Why, after I introduced myself and told him that I was Mr. Young's partner.

Q. And Mr. Crumbie didn't question your right to appear there as the partner of Mr. Young? 30

A. No, sir.

Q. Did you have an agreement prepared between Mr. Satinov and Mr. Crumbie?

A. I did not. I wanted Mr. Crumbie to prepare that.

Q. Well, you didn't have any agreement prepared?

A. No; I did not.

Q. You realized that this was the last day of the option, didn't you?

A. Yes, sir.

Q. And that it was necessary for you to see him that day in order to get in under cover within the time?

A. I knew it was necessary for me to see him that day.

10 Q. Was anything said between you and Mr. Crumbie or between Mr. Crumbie and Mr. Satinov with reference to the details of the transaction, as to how much cash was to be paid or how much mortgage was to be given?

A. There was nothing said. Mr. Satinov understood that.

Q. I ask you was there anything said?

A. No, sir.

20 Mr. Brown: I ask that part of his answer be stricken.

The Court: Yes, what Mr. Satinov understood will be stricken.

Q. Now, what had been said by Mr. Satinov prior to the time that he produced the cash from his pocket?

30 A. I told Mr. Crumbie that he was there ready to make the deal on the property, and Mr. Crumbie says that he couldn't sell the property, and Mr. Satinov said, "If you don't want to accept it because it is too late in the day, just take this money and give me a receipt for it and draw up your agreement and we will be back tomorrow."

Q. Now, during the discussion, did Mr. Crumbie

say to you that Mr. Young had been there just a few days previous?

A. Did Mr. Crumbie say that?

Q. Yes.

A. No; didn't say anything like that.

Q. Didn't Mr. Crumbie say at the time when Mr. Young was there a few days previous that he had presented another proposition?

A. Never said anything like that at all.

Q. Did he say that he would not do anything in 10 reference to the matter until Mr. Young returned from Cuba?

A. I don't remember him saying that.

Q. And after this tender was made of this \$10,000, you both left the house, didn't you?

A. Yes, sir.

Q. Now, at the time this suit was brought, Mr. Young was not home, was he?

A. He was home, I think, the time the suit was brought, yes. 20

Q. You placed the matter in the hands of Mr. Styron, the attorney of record, before Mr. Young returned from Cuba, did you not?

Mr. Bourgeois: I object. That is irrelevant and immaterial.

The Court: I will overrule the question.

Mr. Brown: Exception. 30

Q. During the conversation that you had with Mr. Crumbie, was Mr. Fox's name mentioned?

A. No, sir.

Q. Were Mr. Tomlinson and Mr. D'Agostino referred to?

A. No, sir.

Q. Did Mr. Crumbie say that he was ready and willing to deal through Mr. Young but not through you?

A. He didn't say that.

Re-direct examination.

By Mr. Bourgeois:

10

Q. At that time did you have the option with you?

A. Yes, sir.

Q. Did you show it to him?

A. I don't think I did.

Q. Did he ask you to show it?

A. No, sir.

Q. Just assumed that you had it?

A. Yes.

20 Re-cross examination.

By Mr. Brown:

Q. You say he assumed that you had it?

A. I don't know what he assumed. He didn't say anything about it.

Q. He didn't know whether you had it or not?

A. No, sir.

Q. You didn't produce it?

30 A. Wasn't asked for.

Q. Did you tell him that you had it?

A. No, sir.

Q. He didn't know, as a matter of fact, whether you knew anything about the option so far as your conversation was concerned?

A. I don't know whether he did or not.

By Mr. Bourgeois:

Q. How much money did Mr. Satinov tender him?

A. \$10,000.

(Witness excused.)

LOUIS SATINOV, called as a witness on behalf of the 10 plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Did Mr. Katzen take up with you the matter of the purchase of property on the Boardwalk between Georgia and Florida Avenues in March, 1926, or Feb- 20 ruary and March?

Mr. Brown: I object. It makes no difference. Mr. Katzen had no authority whatever to negotiate for the sale of this property.

The Court: I will permit the question.

A. Yes.

Q. Did you agree to become the purchaser of that 30 property?

Mr. Brown: I want my objection to rest as to all the testimony.

The Court: Along that line.

Mr. Brown: Along that line.

The Court: Yes.

Mr. Brown: And an exception noted.

The Court: Yes.

A. I did.

10 Q. Now, what did you do in the effort to carry into effect that purchase?

A. Well, Mr. Katzen came in to me the last day, about the 15th, the day prior we went to Philadelphia, and I told him I am ready to purchase the property. I said—he said: “If you don’t, you are going to lose a big thing, a big buy.” I said, “Yes.” It was three o’clock in the afternoon. He said: “Now, let’s go to Philadelphia tomorrow then.”

20 “Well,” I said, “what shall I do, take a check along?”

Q. Did you go there the next day?

A. I did.

Q. On what train did you go up?

A. Ten o’clock bridge train, 9.55, something like that.

Q. What did you have with you, if anything, for the purpose of completing that sale?

A. Ten thousand dollars in cash.

Q. And did you see Mr. Crumbie?

30 A. I did.

Q. Finally?

A. Yes.

Q. Where?

A. At his house.

Q. What time of the day?

A. About half-past five or quarter to six. I don’t remember exactly.

Q. And what took place at that time between Mr. Crumbie and you and Mr. Katzen?

A. Why, Mr. Katzen introduced himself to Mr. Crumbie, pulled out his card, handed it to him and told him he was representing the firm of Young & Katzen, and then he told him after hard labor he succeeded in getting a purchaser for the property, introduced me to Mr. Crumbie. Mr. Crumbie says: “It is a fine time of the day to come here to buy property.” I says, “Mr. Crumbie, we tried to locate you here since twelve o’clock. Your wife told us you were in the drug store and we went over there looking for you and couldn’t find you. Then we called up the attorney. He said you might be at your office. We called up your attorney; told us you weren’t there. In fact, we left word at your attorney’s ‘call at the house when he comes in’. He said then—I said: ‘If it is a matter of this time of the day I will leave my money.’ I pulled out ten thousand dollars, started to count it over. I said, ‘I will leave your money with you here. Give me a receipt for it and I will come back tomorrow for the agreement.’ ‘No,’ he said, ‘I wouldn’t accept your money.’ He said, ‘I will testify in court that you have tendered me ten thousand dollars in cash. I want to hold the property for about a year, at least, and get a hundred thousand dollars more.’”

Q. And I suppose you wanted the \$100,000 and he wanted the \$100,000.

Mr. Brown: I don’t think that that is material.

Mr. Bourgeois: Withdraw that.

Q. Now, what other conversation was there there, if any?

A. Well, talking about this property, Mr. Crumbie and I. He said just exactly as I recited a few minutes ago. He said: "This is a fine time of the day —"

The Court: What else did he say?

A. Well, I don't remember.

10 Mr. Bourgeois: That is all. Cross-examine.

Cross-examination.

By Mr. Brown:

Q. You knew the location of this property, did you?

A. I did.

Q. Did you inspect it?

20 A. Very well, dozens of times.

Q. You had inspected it?

A. Dozens of times.

Q. What is its exact location?

A. Exact location?

Q. Yes.

A. Why, it is about a few doors—I don't remember exactly—from the new Crane Building, from the New Crane Building on the Boardwalk.

Q. What?

30 A. A few old shacks on the Boardwalk; the lot extends up to Pacific Avenue, probably six hundred feet in depth, as a matter of fact; but there is some houses in the center between Pacific and the Boardwalk; then another old frame shack. I believe it is called by the name of some hotel, on Pacific Avenue.

Q. How many feet in width?

A. Fifty.

Q. And how deep is it?

A. Extends way back to Pacific Avenue.

Q. What is the measurement of the depth?

A. Well, I believe it is about 550 or 600; something like that.

Q. Do you know how many feet—the description of this property begins from the Crane property?

Mr. Bourgeois: I object as irrelevant and immaterial. 10

A. I don't remember exactly. If you will let me have the book I will show it to you exactly.

Mr. Bourgeois: When there is an objection, don't answer.

Q. Now, you went there prepared to buy this property? 20

A. Beg pardon?

Q. You said you went there prepared to buy this property?

A. Yes, sir.

Q. You didn't know Mr. Crumbie at the time you went to his home, had never seen him or never met him before?

A. No, sir.

Q. And so far as you know, Mr. Crumbie didn't know you? 30

A. No. I don't believe he did.

Q. How much were you to pay for this property?

A. \$500,000; \$10,000 on signing the agreement.

Q. How much?

A. \$90,00 cash on settlement; the balance, \$400,000 mortgage.

Q. When was settlement to be?

A. Sixty days, to my best recollection; sixty to ninety days.

Q. When was it?

A. That has been a year ago, but I think it was sixty days; I couldn't remember exactly, but I believe it was sixty days' settlement.

Mr. Bourgeois: If your Honor pleases, doesn't the  
10 agreement speak for itself?

The Court: I will permit it.

Q. Now, you said you were to give back a purchase money mortgage of \$400,000?

A. Right.

Q. For how long was the mortgage to run?

Mr. Bourgeois: I object to that as irrelevant and  
20 immaterial.

The Court: I will permit it.

A. To the best of my recollection, five years.

Q. You don't know now?

A. I can't remember now.

Q. And what interest was the mortgage to bear?

A. Six per cent.

Q. Was the mortgage to carry any fire insurance?

30 Mr. Bourgeois: I object as irrelevant and imma-  
terial.

A. Yes, I think so; I couldn't remember those things.

Q. You don't remember?

A. No. The usual custom it is —

Q. Was the mortgage to have any tax clause inserted?

Mr. Bourgeois: I object. The agreement speaks for itself. What difference does it make whether this man knew or didn't know?

The Court: There isn't anything in the testimony which shows anything about the agreement yet. 10

Mr. Bourgeois: He went there and tendered this money under this option.

The Court: That does not appear.

Mr. Bourgeois: That is the only thing the man had to sell by. I don't know whether there is any testimony to that effect yet.

Q. Now, do you know whether or not there were  
20 any existing leases affecting the property?

Mr. Bourgeois: Objected to as irrelevant and im-  
material.

The Court: I am going to permit it. But I think you have gone pretty nearly as far as you should go.

A. I was willing —

Q. I ask you whether or not you knew there were  
30 existing leases affecting this property?

A. I believe Mr. Katzen did tell me that there were.

Q. You don't recall now whether or not he did?

A. I do not, sir; no.

Q. Do you know now many houses were on the property, how many buildings?

A. There is quite a number of them. I don't know exactly how many. I cannot remember now. I wasn't interested in the houses. I was interested in the lot. I didn't care how many houses there were.

Q. Now, during this conversation that you had with Mr. Crumbie, was Mr. Young's name mentioned at all?

10 A. Yes.

Q. In what connection was Mr. Young's name mentioned?

A. Mr. Katzen told him: "I am Mr. Young's partner," and he handed him the card.

Q. He handed him a card?

A. Yes, business card.

Q. Did you see the card?

A. No.

Q. You wouldn't recognize it if you saw it?

20 A. No.

Q. Was Mr. Young's name mentioned at any other time during the conversation?

A. Except he told him he was a partner of Mr. Young.

Q. Did Mr. Crumbie question Mr. Katzen's authority to deal in Mr. Young's absence?

A. Not to my recollection.

Q. Well, would you say that he did or didn't?

A. I don't remember.

30 Q. What is your best recollection?

A. I don't remember.

Q. You have no recollection at all?

A. Those things didn't interest me. I went there to buy the property. That was the only thing that interested me, nothing else.

Q. Now, what, if anything, did you say or do with reference to the business about which you went to

Mr. Crumbie's home before you tendered the \$10,000 in cash?

A. Well, I don't get that question clear.

Q. Now, what, if anything, did you say or do with reference to the business about which you went to Mr. Crumbie's home before you tendered the \$10,000 in cash?

A. Say to who?

Q. To anybody at Mr. Crumbie's home.

A. I was talking with Mr. Crumbie.

Q. Well, what did you say to him before you tendered the \$10,000?

A. Mr. Katzen introduced me to Mr. Crumbie as a buyer of the property. I first told him the "property was a little high, the price, but finally decided to take it at your terms." He said: "It's a fine time of the day to come and buy property." I said, "Well, now, as a matter —"

The Court: Is this all before you gave him or 20 offered him the \$10,000?

The Witness: Yes.

The Court: Go ahead, then.

A. (Continuing.) I says: "If it is a matter of time, I will leave my money here," pulled out \$10,000, started to count it out, and I said: "You can give me a receipt for it and I will come back tomorrow and draw up the agreement." 30

Q. You had no agreement drawn?

A. He said: "I will testify in the court that you have tendered me \$10,000 in cash, but I will not sell the property. I want to hold the property another year and get \$600,000, one hundred thousand more; \$600,000 instead of \$500,000."

Q. You had no agreement with you at that time ready to sign up, did you?

A. No, but I knew all the conditions.

Mr. Brown: I ask that be stricken out.

The Court: He said: "No." The rest may be stricken out.

10 Q. After you had made the tender of \$10,000, you immediately left, didn't you?

A. After that we left, yes.

Q. Now, did you know, Mr. Satinov, that this suit had been started before today?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

20 The Court: Objection sustained.

Mr. Brown: I want to show interest.

The Court: The mere fact that the suit was started does not show it, unless it is merely preliminary.

Mr. Brown: No, I am endeavoring by cross-examination to prove interest.

30 The Court: I do not see how that shows interest. I will overrule the question.

Mr. Brown: Exception.

Q. Do you have any interest in the result of this suit, Mr. Satinov?

A. None whatsoever.

Q. Have you any agreement whereby you are to share in the verdict if one is given?

A. I have nothing to do with that at all. I am interested in taking the property today if Mr. Crumbie is willing to give it to me on the same terms and conditions.

Q. You are willing to buy the property today?

A. Yes.

Q. Upon the same terms and conditions?

A. Yes.

Q. The property between—on the Boardwalk between Georgia and Florida Avenues, from the Boardwalk to Pacific?

A. Yes, with riparian rights, the same as was represented to me.

Mr. Brown: I make the statement now that Mr. Crumbie is willing to go through with the purchase of this property. 20

The Court: That has not anything to do with this case. They are now suing for commission.

Q. Mr. Satinov, were you there to buy the riparian rights—in other words, all the property oceanward of the Boardwalk as well as everything landward?

A. I was there to comply with Mr. Crumbie's conditions of sale.

Q. Now, was your proposition to buy the property 30 everything landward of the Boardwalk and everything oceanward of the Boardwalk?

A. Everything that Mr. Crumbie had, any interest Mr. Crumbie had in that property.

Q. And you would not take the property on his terms at that price without riparian rights?

A. I didn't say that. Any interest Mr. Crumbie had in that property I was willing to buy.

Q. Well, were you ready to buy it without the riparian rights?

Mr. Bourgeois: I object.

The Court: He was ready to buy on the terms and conditions. Now there is nothing that I see that  
10 describes the property at all except as Boardwalk property.

Mr. Bourgeois: It is "My Boardwalk property." It takes all he has.

The Court: I will permit the question.

Q. (Repeated by the stenographer.) Well, were you ready to buy it without the riparian rights?

20 A. I was ready to buy Mr. Crumbie's property, whatever he owned there.

Mr. Brown: Will you instruct the witness to answer that question?

The Court: I think that is an answer.

Q. Well, did you go there with the understanding that you were to buy the riparian rights with the  
30 landward portion of the property?

Mr. Bourgeois: I object.

The Court: I sustain that objection. He said he went there for the purpose of buying whatever interest Mr. Crumbie had, whatever his interest was.

Mr. Brown: But that is not sufficient.

The Court: I think it is sufficient.

Q. Now, will you describe, Mr. Satinov, the property that you went there to buy?

Mr. Bourgeois: I object to that as irrelevant and immaterial.  
10

The Court: He testified he went there for the purpose of buying whatever interest Mr. Crumbie had in the Boardwalk property, and that he tendered \$10,000 for that purpose, and Mr. Crumbie said, "I won't sell you my Boardwalk property." Now, then, it seems to me that ought to answer.

Q. (Repeated by the stenographer.) Now, will you describe, Mr. Satinov, the property that you  
20 went there to buy?

The Court: I will permit it again.

A. Well, now, to the best of my memory if you bring me the map of Atlantic City I can point it out to you exactly to the inch. I know where the property is. I pass there —

Q. Will you describe it?

The Court: Describe it again.  
30

A. Well, now, it is a few doors from the new Crane Building. It is fifty feet on the Boardwalk and runs to Pacific Avenue.

The Court: Now is that the property you were there to buy that day?

The Witness: Mr. Crumbie's property, which the record and the map has today. I looked it up before I went.

Q. You said a little while ago that you were still ready to buy the property at the same price if the riparian rights went with it, didn't you?

Mr. Bourgeois: I object to that as immaterial.

10 The Court: I will overrule it. I do not see the materiality.

Mr. Brown: Allow me an exception. And I want to point out on the record this point I have in mind in asking that question: that this witness went there ready to buy the property on the condition, however, that it carried with it the riparian rights, and I say that under the agreement on which this suit is  
20 brought, riparian rights are not included.

The Court: I am overruling this question because it is not relevant or material and because it was objected to. Last time it was not objected to, and you brought it out on cross-examination and we finally got down to a realization of that, at which point we stopped. Now I am not going to receive it.

Mr. Brown: Well, I have my exception.

30 The Court: You have your exception.

(Witness excused.)

PLAINTIFF RESTS.

DEFENDANT'S MOTION FOR NON-SUIT.

Mr. Brown: I ask for a non-suit, first, on the ground that there is no proof that Mr. Harry R. Young, the man with whom we had the contract, was the efficient cause of the sale. The proof is, on the contrary, that he had absolutely nothing whatever to do with it; that he had never come in contact with  
10 the prospective purchaser, Mr. Satinov; that he left or delegated all the authority, whatever he may have had, to this Mr. Katzen, supposedly his partner, and that whatever negotiations took place were had with Katzen.

Furthermore, on the ground that they have not shown that they produced a man ready, able and willing to buy, providing the Court rules that that is a necessary element. My contention is that the contingency upon which the right to recover commis-  
20 sions rests is that stated in the agreement, that the commission is to be paid only if the sale is completed as provided above, and to be paid only on final settlement.

I also again urge as a ground for non-suit the fact that Mr. Young under this agreement had no authority to sell to any other person other than the person who was represented by him to Mr. Crumbie as the prospective purchaser at the time the agreement  
30 was made.

Another ground for the motion to non-suit is the fact that it sufficiently appears in this case that the prospective purchaser, Mr. Satinov, appeared there for the purpose of buying a property of greater proportions than that which is set forth in the contract and there is nothing, as a matter of fact, in the

proof that indicates that Mr. Satinov even knew of this option or this contract at all.

Mr. Bourgeois: May I ask one question of Mr. Satinov?

The Court: Yes.

10 LOUIS SATINOV, recalled.

Re-examination.

By Mr. Bourgeois:

Q. You have testified that you tendered the \$10,000. Were you able financially to have raised the \$90,000 to make the next payment?

20 A. Yes, sir.

Re-cross examination.

By Mr. Brown:

Q. You say you were able. Did you have the \$90,000 then available?

A. Not in cash, but I had enough security.

Q. Had you made the arrangement for the securing of the \$90,000 in cash?

30 A. I had all the security.

Q. Had you made any arrangement to secure the \$90,000 in cash?

A. No.

Q. Did you know where you were to get this \$90,000 in cash?

A. Yes.

Q. How did you know that if you had not made the arrangement?

A. I have been dealing with the Atlantic City National Bank for the last seven years. I can get today any time \$200,000 or two hundred and fifty, as much as I need.

Q. Well, you had not asked the Atlantic City National Bank for this particular \$90,000 loan? 10

A. I didn't have to ask them. If they wouldn't give it, another bank will.

Q. So that in order to enable you to go through with this deal you had to borrow \$90,000?

A. I have sufficient security to borrow a hundred and fifty or two hundred thousand.

The Court: Answer the question.

The Witness: Yes.

20

Q. What?

A. Yes.

Q. What are the securities that you speak of, Mr. Satinov, that you were to use to get this \$90,000?

A. First mortgage on Atlantic City real estate.

Q. Do you know whether or not the bank would accept those securities?

A. I didn't care anything about it. If they wouldn't, other banks would.

Q. You took the chance, then, on them doing it? 30

A. No chance at all. I didn't take no chance whatsoever.

Q. Now, on what properties are these mortgages?

A. Indiana—well, now, at that time I had \$100,000 first mortgage on Indiana Avenue property, mortgages on Wildwood property, and in a dozen different locations, a dozen different properties.

Q. You had a dozen different mortgages on a dozen different properties?

A. Yes.

Q. All first mortgages?

A. First and second mortgages, yes.

Q. Were those mortgages in your own name, Mr. Satinov?

A. Beg pardon?

Q. Were those mortgages in your own name?

10 A. Louis Satinov, real estate mortgage, some in my name.

Q. Can you produce those mortgages?

A. I can produce bigger ones now, yes.

Q. Could you produce the mortgages that you had at that time?

A. I have sold the property which I am speaking of, the \$100,000 mortgage and taken back a first mortgage of \$285,000. I can produce that to you.

20 Q. This \$100,000 mortgage that you had on North Indiana Avenue, did you sell—do you still own it?

A. No; but I own \$285,000.

Q. Was it recorded?

A. Yes, sir.

Q. What became of it?

A. It was cancelled.

Q. Why?

A. Because I sold the property.

Q. Did you have a mortgage on the property that you owned?

30 A. Beg pardon?

Q. Did you get a mortgage on the property that you owned?

A. No, but I have given the Atlantic City National Bank a blanket mortgage on the property; in case I need money at any time, I can get it.

Q. That mortgage was in the Atlantic City National Bank?

A. Yes.

Q. And already pledged to them for security?

A. I didn't owe them, not at that time; because I paid them off.

Q. You didn't owe them anything at that time?

A. No. I can prove that.

Q. From what source did you get the \$10,000 that you tendered to Mr. Crumbie?

A. Atlantic City National Bank.

Q. Did you borrow it? 10

A. No, sir.

Q. Drew it out of your bank account on your check?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Where did you get it?

A. I left a certificate of deposit with them for \$10,000.

Q. Then you borrowed \$10,000 with the certificate 20 of deposit as security?

A. Well, you call it a borrowing. I don't know what you call it. But I left it as collateral for the \$10,000 cash. I don't know what you may call it.

Q. On what bank was the certificate of deposit?

The Court: I will overrule any further questions as to where he got his \$10,000.

Mr. Brown: Allow me an exception. 30

The Court: Now, Mr. Satinov, did you ever see Exhibit P1 before you went to Mr. Crumbie's house that day?

The Witness: Yes, your Honor.

The Court: You have read that?

The Witness: Yes, sir, and I was willing to comply with the terms.

Q. Where did you see it?

A. Mr. Katzen showed it to me in my office.

Q. When?

A. When he first proposed the property to me. It  
10 was a couple of weeks prior to going to Philadelphia  
and practically the last day he said: "Now, tomorrow  
is the last day. If you don't take advantage  
of this good buy, you are going to lose a lot of  
money —"

The Court: We had that before.

(Witness excused.)

20

Mr. Brown: Now, I address my motion to the  
same grounds, and I call your Honor's attention to  
the fact that the complaint rests their right of re-  
covery upon a purchaser who was ready, able and  
willing to buy, and I maintain that is not the con-  
tingency upon which their right to recover does rest,  
but upon the contingency that the sale be completed.

30 The Court: I will deny the motion because I think  
the plaintiffs under the testimony did produce a pur-  
chaser and that Mr. Crumbie refused to accept the  
tender of the purchase money; and if that is so, then  
Crumbie was not in position where he could defeat  
their rights by refusing if they did present a man  
who was ready, able and willing to purchase under  
the terms of the option agreement.

Mr. Brown: Allow me an exception.

The Court: Yes.

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DEFENDANT'S CASE.

JAMES R. CRUMBIE, the defendant, called as a wit-  
ness in his own behalf, being sworn, was examined 10  
and testified as follows:

Direct examination.

By Mr. Brown:

Q. Mr. Crumbie, you live in Philadelphia?

A. Yes, sir.

Q. You are the owner of property located on the  
Boardwalk between Georgia and Florida Avenues? 20

A. Yes, sir.

Q. Fifty-foot frontage running through to Pacific  
Avenue?

A. Yes, sir.

Q. And did you sign and execute an agreement  
which has been offered in evidence marked Exhibit  
P1?

A. I did.

Q. Will you relate to the Court the circumstances  
under which that agreement was executed? 30

Mr. Bourgeois: I object as irrelevant and imma-  
terial. It was done.

Mr. Brown: I am still pressing my contention  
that this agreement was made for the benefit of one  
individual and no other.

The Court: If that is the purpose I will overrule it and grant you an exception.

Mr. Brown: Exception.

Q. At the time that this contract was executed, was the name of Benjamin R. Fox mentioned?

Mr. Bourgeois: Objected to as irrelevant and im-  
10 material.

The Court: I sustain the objection, assuming it is for the same purpose and allow you an exception.

Mr. Brown: Exception.

Q. After the contract was executed, was Mr. Fox's name mentioned to you?

A. Yes, indeed.

20 Mr. Bourgeois: That is irrelevant, if your Honor please.

The Court: I will permit it.

Q. Now, in what connection and by whom was Mr. Fox's name mentioned after this agreement of February 15th was signed?

A. At the time Mr. Young came to see me at my home on March 11th, he said Mr. Fox was out of it  
30 at this time.

Q. I am speaking now of February 15th, after you had executed the agreement and given it to Mr. Young. Did Mr. Young say anything—

A. He did.

Q. —having reference to Mr. Fox?

Mr. Bourgeois: I object.

The Court: I sustain the objection, assuming it is for the same purpose.

Mr. Brown: Allow me an exception?

The Court: Yes.

Q. After the agreement was executed, did you  
receive this letter, D1, for identification from Mr.  
Fox? 10

A. Yes, sir.

Mr. Brown: I offer it in evidence.

Mr. Bourgeois: I object to it as irrelevant and immaterial.

The Court: I sustain the objection. 20

Mr. Brown: Exception.

Q. Now, after the agreement was signed and Mr. Young had left your home, when did you next hear from him with reference to this property described in the agreement?

A. I don't think I heard from him until March 11th. I think that was the first I heard from him afterward.

Q. Where did you see Mr. Young on that day? 30

A. At my home.

Q. Will you relate to the Court and jury the conversation which you had with Mr. Young at that time?

Mr. Bourgeois: If that only has reference to the sale that fell through, I object.

The Court: Yes, if that has reference to the sale to Tomlinson and D'Agostino, which it is admitted fell through, then I will sustain the objection.

Mr. Brown: It did not fall through, and negotiations were in the making at that time, and they had  
10 until midnight to close that deal.

The Court: I will permit it if you say that deal did not fall through and that you are going to produce evidence to that effect.

Q. (Repeated by the stenographer). Will you relate to the Court and jury the conversation which you had with Mr. Young at that time?

A. Mr. Young came to my house and said to me:  
20 "Crumbie, I think that Fox deal is all off. I have two other men, prominent men of Atlantic City, who will go through with it." He said: "I have in my pocket two checks of five thousand dollars each." I said: "Whose checks are they?" He said: "They are my checks." I said: "Are they good?" He said: "No, I will make them good." At first asking if I would take \$5000 at that time and \$5000 in thirty days, because Mr. Tomlinson was going to Cuba at that time and he wanted that time to consider the matter, I said: "No; but suppose you go  
30 down to see Mr. McCaughey, my lawyer." I went upstairs to get some papers to take down with me. I came down. He was sitting in a chair in my parlor. He said: "Crumbie, you have been awfully good to me. I am going to lay my cards on the table, face up." And he said: "The men, D'Agos-

tino and Tomlinson, will take this property. You are to put up \$15,000. They are to put up my ten. I am selling the option to them at ten thousand dollars. That is \$25,000. The down money is \$100,000. I will let my \$25,000 ride for a one-fourth of the price. Why don't you go in with me on that deal? Instead of the other men, why can't we make that money, instead of the other men?" I said: "That appeals to me. Come down and see my lawyer." I telephoned for a taxi, but at first called up  
10 McCaughey. He was in and I said: "I am going to bring Mr. Young down to see you." I went down there. He said: "What did you do, come down to settle that deal?" "Yes." "Have you got a certified check of \$10,000?" "No." "All we can do is take a certified check for \$10,000." He said the same thing again—he only had two checks for five thousand on his own bank and they were no good unless the other men made them good. The thing was dismissed then. We walked up to the door and  
20 the last thing he said was: "If nothing turns up of this we will be just as good friends," and I said: "Certainly."

The Court: There is nothing in that testimony there that shows there was any deal pending after they left.

Mr. Brown: But it will show when I come to the conversation.  
30

The Court: All right.

Q. Now, Mr. Crumbie, after that time, I understand you didn't see Mr. Young at all?

A. I did not.

The Court: Did you see Mr. Tomlinson or Mr. D'Agostino?

The Witness: Never have seen them.

Q. Now, then, on the last day of this option, March 16, 1926, did a Mr. Katzen come to your home?

A. He did.

Q. And what time of the day was it when you saw him?

A. Well, my custom in the morning is to go to bank —

Q. No, what time of the day?

A. About five-thirty or five-forty-five; something like that; in the evening.

Q. During the day were you home?

A. No, I was in town.

Q. Did you usher Mr. Katzen in the house after he made his presence known?

20 A. I came home and walked in and he was in just a second after me.

Q. Was anyone else with him?

A. Mr. Satinov was with him. He introduced me to Mr. Satinov.

(Recess till 1.30 P. M.)

AFTER RECESS.

JAMES R. CRUMBIE, recalled.

Direct examination (resumed).

By Mr. Brown:

Q. Mr. Crumbie, before going on further with the line of examination we were on when we adjourned for lunch, I want to go back to the conversation which you had with Mr. Young on March 11th, and ask you whether or not there was anything said by Mr. Young at that time with reference to the riparian rights adjoining this property?

A. Not at any time.

Q. At that time was anything said by Mr. "Young" with reference to the riparian rights adjoining this property?

A. He mentioned the fact about the deal between "Johnson" and D'Agostino. I said: "Well, come and see my lawyer." I went upstairs after the papers and came downstairs. He was sitting at the foot of the steps. He said: "Crumbie, you have been very good to me in this matter. I want to lay my cards face up on the table. I can get \$300,000 for your riparian grant from the National Advertisers. I can get \$15,000 from you and \$10,000 from the two men. That makes \$25,000, and \$100,000 cash payment makes it one-fourth—\$25,000 is my quarter of the price. Why don't you go in this deal with me and make that money instead of the other fellows?" "Well," I said, "let's go down to see my lawyer."

Q. Was that all of the conversation that you had

with him before you went down to see Mr. McCaughey?

A. All the way down in the taxi he spoke of the same thing, all over again. That was all there was to it.

Q. Was the same proposition discussed in Mr. McCaughey's office?

A. Yes, sir.

10 Q. What was the conversation which took place in Mr. McCaughey's office?

A. Well, he went over the same thing. Mr. McCaughey refused to let me have anything to do with that, because he was working on the case of Fox under my agreement.

Q. Then after you parted on that day, the next you heard of the transaction, as I understand it, was on March 16th, the last day of the option?

A. Yes, sir.

20 Q. I think you have testified that Mr. Katzen and Mr. Satinov came to your home?

A. Yes, sir.

Q. Now, will you relate to the Court and jury the conversation which was had with you in that conference?

30 A. Mr. Katzen and Mr. Satinov came in. Mr. Katzen introduced himself as partner of Mr. Young. I said: "I didn't know Harry Young had a partner." I said: "He told me on the first visit he was incorporated," and he did. "Well," he said, "I am a partner." In the meantime Satinov sat down and didn't say a word, sat on a couch there and he produced a paper —

Q. Who produced a paper?

A. Mr. Katzen did, and that was some sort of real estate deal on some other property and the last clause or next to the last clause stated that Mr.

Katzen and Mr. Young were to divide the commissions. I said: "That does not prove anything to me; just proves commission in that one case; doesn't prove partners in my mind. I never heard of you before." The last thing, I said: "Now, Mr. Young made a proposition to me. It looks good. I won't do a thing in this matter until Mr. Young returns from Cuba."

Q. After you had had the discussion with Mr. Katzen about the partnership of Mr. Young, what 10 next was said and what next took place?

A. Well, that is when he made the tender.

Q. Well, tell us about that, just what happened and what was said.

A. Satinov rose —

Q. Prior to this time had Satinov been introduced to you?

A. Just as he came in; yes, sir. Then he went right back and didn't say a word until he got up to make the tender. He produced a lot of money 20 in gold notes, with thousand-dollar bands on them. I said: "I will admit there is \$10,000 there."

Q. What did he say?

A. He said: "I make a legal tender of this money for this property under the agreement."

Q. I want to know everything Mr. Satinov said to you?

30 A. That was the whole discussion; that he was just making a legal tender, and I refused because I didn't have any business relations with him at all, and I said: "I don't recognize you, only Mr. Harry Young is the only one I had to deal with, not as an individual but as a corporation."

Q. Did Mr. Satinov discuss with you any of the terms of conditions of the sale?

A. Not a word.

Q. And did you have presented to you any agreement ready for your signature?

A. Nothing at all.

Q. What was the reason that you gave to Mr. Katzen and Mr. Satinov for refusing to take the money?

A. The reason was that I didn't know these gentlemen. I thought they were putting something over on Mr. —

10 Mr. Bourgeois: He asked you the reason you gave to them.

The Witness: That is the reason I gave them; because I didn't know them. That was the reason I gave to them.

Q. Tell us just what you said?

20 A. I said: "I don't know you, gentlemen. You may be putting something over on Mr. Young. I don't know. You tell me he is out of the country. I didn't know it until you told me." I said: "I have nothing to do with you, nothing at all. I won't take any money from you for any purpose."

Q. Did you say anything as to what would happen upon Mr. Young's return?

A. No, sir, except I would take it up with Mr. Young, which I would have if he turned up and gone through with it.

30 Q. Now, had Mr. Young prior to that time ever mentioned to you this Mr. Satinov?

A. Never.

Q. Did you know Mr. Satinov before he called at your home?

A. No, sir.

Q. Did you know anything about Mr. Satinov's ability to buy this property?

A. Never heard of him.

Q. Did you know Mr. Katzen prior to this conference —

A. Never heard of him.

Q. —in your home?

A. No, sir.

Q. Had never met him before?

A. Never met him.

Q. Were you refusing to make the agreement with Mr. Satinov because you wanted to hold the 10 property for more money?

A. No, sir. I didn't say anything about that at all. I said I wanted to see Mr. Young about it.

Q. Did you tell Mr. Satinov and Mr. Katzen that you would not go through with the deal; that you desired to hold the property another year so that you could get \$600,000 for it?

A. Absolutely, no.

Q. Would you have been willing to have sold the property upon the terms and conditions of this 20 agreement if Mr. Young had been present?

Mr. Bourgeois: I object.

The Court: Yes.

A. I certainly would.

Q. Are you still willing to sell the property in accordance with the terms and conditions of this agreement? 30

A. I certainly am.

Q. It appears, Mr. Crumbie, that you wrote a letter to Mr. Young on February 19th, referring to the sale of the Ludy property?

A. Yes, sir.

Q. Did you ever refuse to sell the property be-

cause of the fact that this property—the Ludy property—had been sold for the figure that you mentioned?

A. I was just speaking to Mr. Young in this letter of the fact that he was getting a cheap property; that my property was cheap in comparison with that property.

Q. Did you refuse, on March 16th, to sell the property because you thought it was worth more money?

10 A. I did not. I was under contract to sell it.

Q. Did Mr. Young ever tender to you any sum of money as a deposit on account of the purchase of this property?

A. Never, only in that one case. He said he had two checks in his pocket which were of no value unless they were made good.

Q. Did Mr. Young ever produce to you a prospective purchaser for this property who had tendered money to you on account of the deposit?

20 A. Never.

Q. Did Mr. Young ever make a demand upon you for the payment of these commissions before this suit was started?

A. He certainly did not.

Q. Do you know whether or not Mr. Young authorized the institution of this suit?

A. I do not, except —

30 Q. Did you have any conversation with Mr. Young some time last December, over the telephone, about this case?

A. Mr. Young called me up on the telephone a Sunday, I think it was the 19th or 21st. Wasn't it?

Q. I don't know the date.

A. It was somewhere around there; and wanted to know if I would see him on Tuesday next. I told him I would be home. I didn't want to see him,

but I said, "I will be home." He said: "All right. I will call you up when I come up." It was—it was foolish for me to deal with Mr. Young when we had our lawyers to do it, and I called up Mr. McCaughey and asked him if it was not unethical. He said it certainly was, "Have him call me at my office." I said: "Mr. Young, I will meet you at my lawyer's office any time you say. You are not a lawyer, never will be. This is a legal matter. The only time I want to talk with you is with my lawyer," and he 10 said he wouldn't do it.

Q. Did he ever say anything about this suit?

A. Never—oh, he said that he wanted to have a friendly talk with me; that he was out of town when the suit was started and he wanted to explain to me how it happened.

Cross-examination.

By Mr. Bourgeois:

20

Q. Do I understand you to say that in this letter of February 19th, that you wrote to Mr. Young, you simply wanted to show him what a cheap property he was getting?

A. I wanted to call his attention to the fact that my property was cheaper than this property, with no intention of ever refusing to go through with it.

Q. That was the only thought you had in mind?

A. Yes.

30 Q. To show him that you were giving them a good bargain?

A. Yes, sir.

Q. Now, assuming that that is true, I am wondering why you put in there: "I regret having given you that letter."

A. Doesn't that prove that I am giving a better bargain than the other property is?

Q. If your only object was to show him that he was getting a cheaper property or a cheap property, I don't see quite why you should have said: "I regret having given you that letter."

A. Wouldn't I regret at the same time, feeling that I had to go through with it because I was under contract?

10 Q. You wanted to show him what a cheap property he was getting, but at the same time you wanted him to understand if you could get out of it you were going to do it?

A. Nothing of the sort. "Regretting" does not mean that.

Q. What does this mean: "And will be very much pleased when the 16th of March arrives there has been no further action taken?"

20 A. I was just under that impression, that if they didn't go through with it I would be very much pleased because the property was worth all I was getting for it; but if they wanted to go through I would go through.

Q. Then you go on, "The next price will be \$600,000; \$150,000?"

A. Yes.

Q. And that was all in your mind on the theory that you wanted to show him what a cheap property he was getting?

30 A. Yes.

Q. I understood you to say that you would have sold the property if Mr. Young had come there?

A. Certainly would.

Q. In view of the fact that his partner came there and offered the money—told you he was his partner—and you refused, did you ever say to Mr.

Young: "If you want the property I will go through with it?"

A. I never saw him. The suit was started right away.

Q. Did you ever write to him?

A. No, indeed. Why should I write? He brought suit.

Q. You seem to have found him by correspondence at other times.

A. I never hunted him up. 10

Q. You didn't hunt him up this time?

A. No.

Q. But if you were willing to sell to him and the only objection was simply because Mr. Katzen had come instead of Mr. Young, why didn't you write to Mr. Young and say Mr. Katzen went there: "I didn't deal with him, but if you want the property I will sell it?"

A. Mr. Young was out of the country.

Q. Mr. Young was out of the country? 20

A. In Cuba somewhere. I couldn't reach him.

Q. Did you know where he was before?

A. In his office.

Q. You only assumed he was there.

A. Well, that is his office.

Q. Why couldn't you have written his office a second time?

A. Because I knew he was out of town.

Q. How did you know?

A. Mr. Katzen told me. 30

Q. You believed him?

A. I believed him.

Q. Why didn't you believe him when he told you he was a partner?

A. Because I never thought a corporation could have a partner.

Q. Suppose you didn't know he had a partner, if you believed him when he told you one thing, why didn't you believe him when he told you the other?

A. I didn't believe Mr. Katzen had any authority to close this deal through Mr. Young.

Q. You thought Mr. Katzen had not the authority to come there?

A. Surely. He had nothing to show me.

Q. And it wasn't because you didn't know whether  
10 he was Young's partner at all?

A. Why, surely it was. That is part of the whole thing.

Q. Then that is the only thing you had in mind?

A. I didn't know whether he was Young's partner, and I wouldn't deal with anybody unless it was Mr. Young personally.

Q. You never took it up with Mr. Young to find out about it at all?

A. Well, the suit was started immediately.

20 Q. The suit was started immediately?

A. Yes.

Q. When the suit was started, that was started in Mr. Young's name, wasn't it?

A. I believe so.

Q. And they said they demanded of you \$15,000?

A. They swore that they demanded it, which they never did.

Q. But the summons itself, the complaint says that they demanded of you \$15,000?

30 A. But they didn't demand it.

Q. What?

A. They didn't demand it of me at no time.

Q. Didn't you get a complaint served on you?

A. No; it was served on the house.

Q. Well, you got it?

A. Not personally.

Q. Well, that doesn't make any difference. You got it at your home?

A. Not at my house.

Q. But you got the service and you answered it, didn't you?

A. Yes.

Q. Well, now, wasn't that complaint a demand on you for the money?

A. After the suit, yes.

Q. Well, right at the beginning of the suit? 10

A. Yes. Never before that.

Q. Did you pay it?

A. It was only brought against me in the suit; didn't even ask me to pay it then, but they sued for it.

Q. Is it your notion if a man you owe some money doesn't demand it, that he can't get the money?

A. I claim I don't owe the money.

Q. Then it is not because you think that there was not any demand made such as you want, but you  
20 think you don't owe him anything?

A. He didn't bring me any customer.

Q. Didn't he?

A. No; he hasn't until this day.

Q. Do you deny that Mr. Katzen was Mr. Young's partner?

A. Certainly. I didn't know anything about it.

Q. Well, you don't know?

A. How are you incorporated?

Q. What is that? 30

A. On his window it says, "Harry R. Young, Incorporated." How can a corporation have a partner?

Q. Well, I suppose they might have a partner possibly. But if they can't, why did you take that in preference to Mr. Katzen's word?

A. Mr. Katzen's card said, "Associated with Harry R. Young."

Q. Suppose he was only a hireling of Harry Young; suppose Harry Young paid him \$4 a week for working for him and when he went away had said to him, "I want you to go and complete this deal with Mr. Crumbie," and he came up there and offered you the \$10,000, would you believe that was not Mr. Young acting?

10 A. No. My personal dealings were with Mr. Young only.

Q. If Mr. Katzen had come up there and said, "Mr. Crumbie, I am Mr. Young's office boy and he wanted me to come up and introduce Mr. Satinov to you, and we are here to tender the money under that option," would you have thought that was not Mr. Young acting?

A. Not unless Mr. Young told me so.

Q. Not unless Mr. Young told you so?

20 A. Yes.

Q. Well, when they come and they told you then, did you ever ask Mr. Young if it was true?

A. The option expired in the meantime.

Q. I didn't ask you anything about that. I ask you whether or not you asked him if it was true.

A. If what was true?

Q. The fact that he said that he was his partner?

A. I don't get that at all.

30 Q. Did you ever ask Mr. Young if it was true that Katzen was his, Young's, partner?

A. I haven't seen him since.

Q. Did you ever write to him to find out?

A. No; because he was suing me.

Q. Just as soon as the 16th day was gone, that was the end of the option; you dropped it, didn't you?

A. I told Mr. Katzen and Mr. Satinov that the suggestion Mr. Young made appealed to me. I was waiting for him to turn up to take it up with him and he never turned up.

Q. And you think this letter that you had where you say: "I will be very much pleased if when the 16th of March arrives there has been no further action taken"——

A. Yes.

Q. That is what you were pleased at? 10

A. I didn't say I wouldn't go through with it.

Q. You concluded there was no further action taken so far as you were concerned?

A. I told Mr. Katzen and Mr. Satinov—the last thing almost in my house—"When Mr. Young gets up here I will take it up with him later as to the other plan."

Q. But you would not sell to them?

A. No.

Q. You would not accept that tender? 20

A. No.

Q. You were going to rely on the fact that the option expired, but you were going to take up with Mr. Young——

A. Whatever he had to put up to me.

Q. On the theory that the next price would be \$600,000 and the cash \$150,000?

A. Not at all.

Q. What were you going to do, then?

A. I was in the contract with Mr. Young on a cer- 30  
tain thing. The other customers didn't make any difference to me—Mr. Young said to me at that meeting, on whatever the date was, 29th—11th—that he had been offered or could get \$300,000 cash for the riparian grant. That looked good to me. I went down to Harry McCaughey's office. He said;

“No, we are going to work on the Fox agreement,” and it was all stopped.

Q. That was all terminated?

A. So far as that thing was concerned, yes, between Harry McCaughey and I. Then, when we left, when these men come, I said: “Mr. Young made a proposition to me that appealed to me. When he comes back I will take it up with him and we will fight the thing out or go through with it.”

10 Q. On this same agreement?

A. On the same agreement.

Q. Then why didn't you write to Mr. Young and ask him if those people were sent there?

A. I was waiting for him to come up.

Q. If you were going to sell your property on the same agreement for the same price, why were you delaying the thing? Why didn't you put the thing through and get the money?

A. Because Mr. Young offered me a better price  
20 for it, seven or eight hundred thousand dollars.

Q. That's right; that's right. \$600,000 and \$150,000 cash?

A. More than that.

Q. What?

A. More than that; because he said he could get \$350,000 for the riparian grant.

Q. Satinov was there with \$10,000, wanted to buy the property so he could make \$100,000, and you were there with the property that you thought that  
30 you would make more than \$100,000 on?

A. Through my agent, yes.

Q. And you would not sell because you thought you could make the hundred thousand?

A. I would not sell to Satinov at any price. I didn't know him.

Q. Do you know Mr. Fox?

A. I know his reputation.

Q. Do you know Mr. Fox?

A. I don't know him, no.

Q. Here is a letter, October 13, 1925. I suppose you read that to Mr. Young, didn't you?

A. That is my letter.

Mr. Bourgeois: Mark that for identification.

(The paper referred to is marked for identifica- 10  
tion, for the plaintiff, P3.)

Q. That contains a description of your property, doesn't it?

A. Yes, sir.

Q. Your Boardwalk property there between Florida and Georgia Avenues?

A. Yes.

(Witness excused.)

20

BENJAMIN R. FOX, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Brown:

30

Q. Your full name is Benjamin R. Fox?

A. My full name is Benjamin R. Fox.

Q. You live in Atlantic City?

A. West Atlantic City.

Q. Do you know Mr. Harry R. Young?

A. Very well.

Q. Are you acquainted with the property of Mr. James R. Crumbie on the Boardwalk, between Georgia and Florida Avenues?

A. Yes.

Q. Did you at some time in the past have conversation with Mr. Young with reference to the purchase of that property?

Mr. Bourgeois: I object to that as irrelevant and  
10 immaterial.

The Court: He may say yes or no.

A. Yes.

Q. Do you know whether or not it was subsequent to the 15th of February, 1926, when Mr. Crumbie made this so-called option with Mr. Young?

A. Yes.

20 Q. It was subsequent to that?

A. Yes.

Q. What was the conversation which you had with Mr. Young?

Mr. Bourgeois: I object to that as irrelevant and immaterial.

The Court: What is the purpose?

Mr. Brown: The purpose is to show that this  
30 contract was made for the benefit of Mr. Fox only, and that Mr. Fox through the negotiations he had with Mr. Young undertook to perfect this agreement and did certain things during this period of thirty days, which was represented to be the thirty-day option for him alone by Mr. Young, and that he had certain plans drawn looking toward the taking

up of this option, the plans being drawn for the purpose of determining the availability of that property for his plans, and that so far as he, Mr. Fox, was concerned, he was still in the deal and in position to take up that option up to the time it closed.

The Court: But that he didn't do anything toward taking up the option during the thirty-day period.

10

Mr. Brown: He communicated at the suggestion of Mr. Young with Mr. Crumbie to verify the information that he, Young, had given to Crumbie.

The Court: But he didn't exercise the option—

Mr. Brown: I want to show he didn't do that because of the fact that he was misinformed and misled by our agent.

20

The Court: I will overrule the offer.

Mr. Brown: Allow me an exception.

(Witness excused.)

HARRY M. McCAUGHEY, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

30

Direct examination.

By Mr. Brown:

Q. Mr. McCaughey, you are a resident of Philadelphia, are you?

A. Yes, sir.

Q. A practicing attorney of the State of Pennsylvania?

A. Yes, sir.

Q. On March 11th or thereabouts of 1926, did you have a conversation with Mr. Crumbie or Mr. Young—and Mr. Young, the plaintiff in this suit, having to do with this property on the Boardwalk here in Atlantic City?

10 A. Yes, sir.

Q. Can you give us your recollection of that conversation?

A. I remember a man coming in the office who was sitting on the witness stand, who stated his name was Mr. Young. I couldn't recognize him except as he appeared here today. Mr. Crumbie had been in communication with me in respect to the proposed sale of this piece of ground and had exhibited to me the option which he had prepared without consultation with me. He stated that Mr. Young wanted to confer with him and wanted him to assign an hour for appointment, which I did, and Mr. Crumbie brought them—Mr. Crumbie brought with him all the papers. There was a general discussion had with regard to the division of the property; that is the landward property as distinguished from the riparian rights.

Mr. Bourgeois: When was that?

30 The Court: On March 11th.

Mr. Bourgeois: All right.

A. (Continuing.) My recollection upon the question of the riparian rights is somewhat vague and

I won't express any opinion. I did, however, state to Mr. Crumbie in the presence and hearing of Mr. Young that the undertaking that he gave under date of February 17th created a definite obligation and that if Mr. Young would produce a purchaser whom Mr. Young stated to be a Mr. Fox, with a deposit of \$10,000—I advised Crumbie as a legal proposition he must discharge his obligation. And then the interview ended.

Q. Was there any tender made by Mr. Young at that time on behalf of any purchaser? 10

A. No. There was some discussion had about some \$5,000 check. Now, whether Young stated those checks were to be honored or not, I wouldn't say, but I am clear in my recollection that I charged Mr. Crumbie to observe his obligation as evidenced by the option agreement dated the 15th of February.

Q. Have you given us your entire recollection of that meeting?

A. Yes.

20

Cross-examination.

By Mr. Bourgeois:

Q. Mr. McCoy, I understand from you that you told Mr. Crumbie that he must observe the terms of this agreement of February 15, 1926?

A. I said that created a definite legal obligation.

Q. And whatever that obligation was, he must live up to it? 30

A. Exactly.

Mr. Bourgeois: That is all.

(Witness excused.)

DEFENDANT RESTS.

Mr. Bourgeois: I offer in evidence this letter. I think it is relevant because Mr. Brown brought up the question of what the description of that property was. Mr. Crumbie on the witness stand in reply to my question said it was a description of the property, and that was his Boardwalk property, and the option speaks of his Boardwalk property.

10 The Court: I do not think the letter has been connected up sufficiently with the contract.

Mr. Bourgeois: Allow me an exception.

DEFENDANT RESTS.

PLAINTIFF RESTS.

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20 PLAINTIFF'S MOTION FOR DIRECTION OF VERDICT.

Mr. Bourgeois: I move for a direction of verdict. I do not see any testimony in this case that raises an issue of fact on any material issue. (Citing cases from 96 Law; 82 Law 339; Volume 4, No. 9, New Jersey Advance Reports, p. 107; Volume 5, No. 4, New Jersey Advance Reports, p. 77; 78 New Jersey Law, 541; 128 Atlantic, 603; 3 Advance Reports, 30 881; Vol. 2, New Jersey Miscellaneous Reports, p. 353.)

Mr. Brown: I move for a direction of verdict in favor of the defendant, first, because they have not satisfied the law in proving that Harry R. Young produced a purchaser, ready, able and willing to

buy this property on the terms of the contract that has been introduced in evidence; that Young had no authority to delegate his contract of agency to another.

On the other ground that this contract was made for one prospective purchaser only, and that was Benjamin R. Fox, and it could not inure to the benefit of any other.

The Court: I will dispose of this motion now. I 10 will refuse the defendant's motion to direct a verdict. I am going to direct a verdict in favor of the plaintiff because it seems to me there is not any controverted fact that goes to the merits of the controversy. Exhibit P1, to my mind, gave Mr. Young the exclusive right to sell the defendant's property for a period of thirty days. There is not anything in that contract that in my minds designates Mr. Fox or any other individual as being the person who 20 could purchase it, but that under the terms of that Exhibit P1, Mr. Young had a right to procure any purchaser who would satisfy the conditions mentioned in the letter. It also seems to me that Mr. Young had a right to present a purchaser procured through the efforts of his office; that is through the efforts of his partner. The testimony is undisputed that Mr. Satinov was presented within the period limited by the authorization to sell and that Mr. Satinov was able, ready and willing to purchase 30 and tendered, in fact, the \$10,000 cash necessary to make the first payment. There is not any disputing evidence as to the ability of Mr. Satinov to carry the deal through. He says he was able. He showed part of his ability, at least, by tendering the \$10,000. His testimony is uncontradicted wherein he says he was there for the purpose of buying under that

option agreement or under Exhibit P1, and that he was willing to carry out that agreement in all its terms. I do not see anything at all that a jury could pass on in this case, and it seems to me, therefore, that it is proper that a direction should be given in favor of the plaintiff. Certainly their right to commissions cannot be defeated by the arbitrary act of the defendant, and the defendant testifies that he absolutely refused to convey the property in accordance with his option agreement merely because Mr. Katzen was not known to him. I do not think that is an excuse.

Ladies and gentlemen of the jury, I direct a verdict in behalf the plaintiff and against the defendant for \$15,675, which is \$15,000 plus \$675 interest from May 16, 1926. So that your verdict will be for \$15.675.

(The jury found as directed.)

Mr. Brown: Will your Honor allow me an exception to the refusal to grant the defendant's motion for direction and also an exception to the granting of the plaintiff's motion?

The Court: Yes.

Mr. Brown: Allow me to register an objection to the allowance of interest on this claim because it is not possible of computation.

The Court: You will have an exception.

OPINION.

NEW JERSEY SUPREME COURT.  
No. 49. May Term, 1927.

HARRY R. YOUNG, to the use  
of HARRY R. YOUNG and  
MORRIS W. KATZEN, part-  
ners, trading as HARRY  
R. YOUNG and MORRIS W.  
KATZEN,  
*Plaintiff-Respondent,*  
v.  
JAMES R. CRUMBIE,  
*Defendant-Appellant.*

*Opinion*

10

20

(Argued May 5, 1927. Decided November , 1927.)  
(On appeal from Atlantic County Circuit Court.)

For the appellant: LOUIS A. REPPETTO.  
For the respondent: U. G. STYRON.

Before GUMMERE, Chief Justice, and JUSTICES  
BLACK and LLOYD.

30

PER CURIAM:

Plaintiff obtained a judgment in the Atlantic Circuit Court for commissions claimed to have been earned under a written employment, the pertinent part of which reads:

"Dear Mr. Young:

Upon representation by you that you have a party interested in the purchase of my Boardwalk property in Atlantic City, I will agree to give you a thirty-day option from this date to secure a purchaser for this property on the following terms and conditions;

10 I hereby agree to allow you a commission of three per cent as allowed by the Real Estate Board of Atlantic City, this commission to be paid only if sale is completed as provided above, and to be paid only at final settlement."

The contract was dated February 15, 1926.

Whether Young had a party interested at the time does not appear, but shortly after making the agreement he called on Crumbie and told him he had a purchaser, but this came to nothing and Young went to Cuba, leaving the matter in the hands of Morris 20 Katzen, his partner. On the last day of the agreement Katzen took Louis Satinov to Crumbie as a purchaser, and the latter made formal tender of performance under its terms. This Crumbie refused, declaring that he did not know Katzen. The action was then brought by Young to the use of himself and Katzen, trading as partners, and on the trial a verdict was directed by the Court in favor of the plaintiff for \$15,000. To this ruling an exception was taken by the defendant.

30 (Copies sent to Mr. Young, Mr. Katzen and Louis Satinov 12/2/27.)

Among the grounds of appeal is one that the contract was personal to Young and that Crumbie was not obliged to deal with Katzen. We think the direc-

tion of a verdict was error. A broker or agent authorized to sell property or to procure a purchaser is ordinarily without authority to delegate his powers to another. (2 *Corp. Jur.* 686, and cases cited.) There is nothing in the case to indicate that it is an exception to the rule.

The judgment is reversed.

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JUDGMENT OF REVERSAL. 10

NEW JERSEY SUPREME COURT.

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HARRY R. YOUNG, to the use of HARRY R. YOUNG and MORRIS W. KATZEN, part- ners, trading as HARRY R. YOUNG and MORRIS KATZEN, <i>Plaintiff-Respondent,</i> v. JAMES R. CRUMBIE, <i>Defendant-Appellant.</i>	Action at Law. 20 On Appeal. Judgment of Reversal.
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This case having been duly argued before our Supreme Court at the May Term, 1927, and the Court having considered the same and being of the opinion that the judgment entered in the Atlantic County Circuit Court should be reversed for the reasons stated in the opinion filed herein: 30

It is thereupon ordered and adjudged that the

judgment of the Atlantic County Circuit Court, from which an appeal was taken in this cause, be and the same is hereby reversed with costs to the defendant-appellant, and said record is hereby remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered December 7, 1927. On motion of  
W. E. BROWN, JR.,  
Attorney for Defendant-Appellant.

10

NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

20 HARRY R. YOUNG, to the use  
of HARRY R. YOUNG and  
MORRIS W. KATZEN, part-  
ners, trading as HARRY  
R. YOUNG and MORRIS W.  
KATZEN,  
Plaintiffs-Appellants,  
v.  
JAMES R. CRUMBIE,  
Defendant-Respondent.

Action at Law.  
Notice and Grounds  
of Appeal.

30

To Elmer Brown, Esq., Attorney of Defendant-Respondent:

Please take notice, that the plaintiffs appeal to the New Jersey Court of Errors and Appeals, in the

last resort in all cases, from the whole of the judgment rendered by the Supreme Court, on the following ground, to wit:

Because the New Jersey Supreme Court erred in reversing the judgment of the Atlantic County Circuit Court in favor of the plaintiff, whereas it should have affirmed said judgment.

BOURGEOIS & COULOMB,  
Attorneys for Plaintiffs-Appellants.  
Dated December 23, 1927.

10

[ENDORSED.]

Service of the within notice and grounds of appeal is hereby duly acknowledged this 23d day of December, A. D. 1927.

Louis A. Repetto,  
Attorney of Defendant-Respondent.

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30

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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HARRY R. YOUNG, to the use of HARRY R. YOUNG and  
MORRIS W. KATZEN, Partners, trading as HARRY  
R. YOUNG and MORRIS W. KATZEN,  
*Plaintiff-Appellant,*

v.  
JAMES R. CRUMBIE,  
*Defendant-Respondent.*

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ACTION AT LAW.

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ON APPEAL.

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BRIEF OF PLAINTIFF-APPELLANT.

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This is an appeal from a judgment of the Supreme Court, reversing a judgment of the Atlantic County Circuit Court upon a verdict directed by that Court in favor of the plaintiff, in the sum of \$15,000.

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STATEMENT OF FACTS.

This suit is based upon a contract made between the defendant, Crumbie, and the plaintiff, Harry R.

Young (printed at p. 10 of State of Case), wherein Crumbie agreed to pay Young a commission of 3% upon the sale of Crumbie's property in Atlantic City. The agreement was in the form of an option, and reads as follows:

“JAMES H. CRUMBIE

Number Thirteen-Thirteen, West Allegheny  
Avenue

Philadelphia, Penna., February 15th, 1926.

Mr. Harry R. Young,  
Atlantic City, N. J.

Dear Mr. Young:

Upon representation by you that you have a party interested in the purchase of my Boardwalk property in Atlantic City, I will agree to give you a thirty-day option from this date to secure a purchaser for this property on the following terms and conditions:

Property situate on the Boardwalk midway between Georgia and Florida Avenues, Atlantic City, New Jersey, with a frontage of fifty feet on the Boardwalk and running through of that width to Pacific Avenue.

Property to be \$500,000; \$200,000 cash, with a deposit of \$10,000 to be paid on or before March 16th, 1926; \$90,000 to be paid at time of settlement, which is to be on or before sixty days after deposit is made, or on or before ninety days from this date. Purchase money mortgage to be taken back for five years at six per cent per annum of \$400,000.

I hereby agree to allow you a commission of three per cent as allowed by the Real Estate Board of Atlantic City, this commission to be paid only if sale is completed as provided above, and to be paid only at final settlement.

Unless an agreement of sale for the price and terms above mentioned is executed within thirty days from this date (February 15th, 1926), this option shall cease and determine, and all rights under this option shall become null and void.

Sincerely,  
JAMES H. CRUMBIE.”

Harry R. Young was the senior member of a partnership engaged in the real estate and brokerage business in the City of Atlantic City under the firm name of Harry R. Young Co., and conducted his business by way of a co-partnership known as Harry R. Young Company, in which co-partnership one Morris W. Katzen was interested and associated with Mr. Young in the conduct of the business.

At the time of the making of the above agreement, Mr. Young had in mind as a purchaser of the property one Benjamin R. Fox, but was unable to make an agreement with him. He then endeavored to make an agreement for the sale of the property with Thommessen and D'Agostino (p. 34, l. 10; p. 70, l. 20), two men engaged in the real estate business, also in Atlantic City, which was brought to the attention of Mr. Crumbie, who made no claim that the option was personal to Mr. Fox, or any other person, but who refused to go through with the sale to them, because these two men were unable to meet the terms of the sale as proposed by Mr. Crumbie, and nothing was done so far as they were concerned; but, a few days before the option expired (p. 39, l. 10) Mr. Young went on a trip to Cuba and left the matter in charge of Mr. Katzen, his partner, and instructed Mr. Katzen to do what he could to secure a purchaser for the property, ready, able and willing to meet the terms of the sale, as contained in the op-

tion. Mr. Katzen was able to interest a Mr. Satinov, a man of considerable means, who was ready, able and willing to purchase the property under the terms as set forth in the option. Mr. Katzen, on the last day of the option, to wit, March 16th, representing Mr. Young, in Mr. Young's absence, and not in any respect a separate or independent agent, went with Mr. Satinov to Mr. Crumbie's home (p. 39, l. 10) in Philadelphia, for the purpose of entering into an agreement for the purchase of the property. Testimony shows that Mr. Katzen introduced himself as a partner or associate of Mr. Young in the real estate and brokerage business in Atlantic City, and informed Mr. Crumbie that Mr. Satinov was there, ready, able and willing to purchase the property, upon the terms as set forth in the option (p. 74, l. 20). A tender of \$10,000 in cash was actually made by Mr. Satinov to Mr. Crumbie, as provided in the option, and Mr. Crumbie refused to accept it, assigning as a reason that he thought they were putting something over on Mr. Young (p. 76, l. 8 to l. 18). His language was:

"I thought they were putting something over on Mr. —"

Then following on:

"I said, 'I don't know you gentlemen. You may be putting something over on Mr. Young. I don't know.'"

No other reason for refusal was given.

The theory upon which the plaintiff's complaint was founded, the suit was tried and the verdict directed, was that the defendant, Crumbie, had engaged Young to procure a purchaser for the property, upon the terms mentioned in the option; that

Mr. Young had procured such a purchaser, who was ready, able and willing to purchase the property under the terms thereof, and within the time limited therein, and that, therefore, he was entitled to his commission amounting to \$15,000, being 3% on the gross amount of the sale. The verdict was directed by the trial Court because there were no controverted facts upon any of the material issues thus submitted.

The defendant, who was the appellant in the Supreme Court, assigned thirty grounds of appeal.

The Supreme Court reversed the judgment of the Circuit Court on the ground that the agreement was personal to Mr. Young and that Mr. Young could not delegate his authority to anyone else.

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#### ARGUMENT.

While the only ground of appeal in this court is that the Supreme Court erred in reversing the judgment of the Circuit Court, it will be convenient to argue these points under the same headings as they were argued by the parties in the Supreme Court.

#### I.

The defendant contended in the Court below that the agreement was personal to Mr. Young, and could not be assigned by him, nor could the authority therein given be delegated by Young, nor could anyone other than Young perform any duties or have any benefit under the option, and under this heading discussed grounds of appeal numbers two, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen.

This, it will be observed, is the point upon which

the Supreme Court decided and reversed the judgment of the Circuit Court.

There is no evidence in the case justifying the contention that the contract was either assigned or its duties performed by anyone who was not legally identified with Mr. Young. It is true that Mr. Katzen, in the absence of Mr. Young, actually procured Mr. Satinov and introduced him to Mr. Crumbie. Mr. Katzen, however, was not, strictly speaking, an agent for Young, but was associated with Young in the same real estate business, and was so closely identified with him in the conduct of the business as to be Young himself. There is no justification in law or in reason to say that Mr. Young could not accept the service of others associated with him in his business, to procure a purchaser for the sale of property, and to have such person introduce such purchaser to the owner, and that was all that was done in the present case. Testimony shows that Mr. Katzen was instructed by Mr. Young to take care of the matter while he was away. The option was to expire on the 16th day of March. Mr. Crumbie had indicated by his letter dated February 19th, 1926, and marked "Exhibit P2," that he desired a higher price for the property; that he had sold the property too cheaply, and that he hoped that nothing would be done under the option of March 16th, thus giving to Mr. Young every indication that unless the option was completed and strictly in accordance with its terms, that he, Mr. Crumbie, would be very glad, indeed. The letter reads as follows:

"Philadelphia, Penna., February 19th, 1926.

Mr. Harry R. Young,  
No. 54 S. South Carolina Avenue,  
Atlantic City, New Jersey.

Dear Mr. Young:

In view of the sale of the Ludy property, at

the corner of Pacific and Arkansas Avenues, I regret having given you that letter, and will be very much pleased if when the 16th of March arrives there has been no further action taken. The next price will be \$600,000, \$150,000 cash. Sincerely."

Under these circumstances, Mr. Young was justified in taking such measures as were at his command to procure a purchaser for the property, and did so by instructing those associated with him in his business to make every endeavor to procure such a purchaser.

The defendant, in his brief in the Supreme Court, cited a number of cases in apparent support of the proposition that the authority conferred by the option could not be delegated. We submit that the cases are not in point. They all concern contracts where the agent had the authority to *sell the property*, which is an entirely different authority from that conferred upon one to procure a purchaser for the sale of the property.

In the case of an authority to sell the property, the agent is vested with discretion not only in the selection of the proposed purchaser, but also with respect to the terms, etc., upon which the sale is to be made, whereas, in the case of one procuring a purchaser to buy the property upon terms fixed by the owner, all the broker need do is produce a person ready, able and willing to purchase in accordance with the terms imposed by the owner of the property. There is no judgment or discretion involved in the procurement of such a purchaser. The function is purely ministerial or mechanical. It is to procure someone who is able to meet the requirements set forth in the agreement, and whom the

owner has undertaken to accept as a purchaser, if produced.

It is absurd to say that in such an employment as is evidenced by the option above referred to, that the person so engaged must perform every detail of the service personally, and cannot engage his office staff or those associated with him in performing any of the services required to be performed in procuring a purchaser, able, ready and willing to purchase under the terms of the agreement. The object of the owner has been accomplished, a purchaser has been secured under his own terms. To reject such a purchaser because he is in fact procured or produced by an employe or an associate in business of the broker named in the agreement, and not personally by the person so named, would be to carry the principle "*Delegata potestas non potest delegari*" to an extreme, not justified by the authorities either in this State or elsewhere.

In the case of *Ryer v. Turkel* (75 L. 677), the Court of Errors and Appeals held that where the act to be done is ministerial, the agent may employ another to do it, and in such case the act is as well performed by the sub-agent as by the agent.

The case of *Ryer v. Turkel* is directly in point.

It is difficult to understand how the Supreme Court overlooked this case, which was cited in plaintiff's brief, in the Supreme Court. In this case, the authority was as follows:

"Adolph M. Turkel and Annie Turkel  
To Thomas A. Ryer.

Commissions, two and a half per cent on ninety-five hundred dollars, \$237.50.

Mr. A. M. Turkel, Address, 305 Railroad Ave.

I hereby authorize Thomas A. Ryer to sell or exchange the premises described on the other

side of this card, at the price and upon the terms hereon named, and hereby agree to pay him two and one-half per cent of the gross amount of the sale, the amount in no case to be less than twenty-five dollars.

A. M. TURKEL,  
Owner.

Witness:

CHARLES L. CAST."

In the District Court, there was a judgment in favor of the plaintiff, Ryer. The defendant removed the case to the Supreme Court by writ of certiorari, and the judgment of the District Court was affirmed. It was then removed by writ of error into the Court of Errors. The opinion was delivered by Judge Green. Commenting upon this feature of the case, Judge Green said (page 684, section 3 [a]):

"It may indeed be true that, under the maxim, *delegata potestas non potest delegari*, an agent or broker whose employment involves any exercise of judgment or discretion may not transfer to another the right and power to discharge his own duty. *Cl. & S. Ag.*, § 342; *Dwelling House Insurance Co. v. Snyder*, 30 *Vroom* 18, 20 (1896). Nevertheless, when an act to be done is ministerial or mechanical only, the agent may employ another to do it, and, in such case, the act is as well performed by the sub-agent as by the agent. *Cl. & S. Ag.*, § 345 D; *Titus, et al. v. Cairo and Fulton Railroad Co.*, 17 *Vroom* 393, 418 (1884).

The finding of the trial Court was that Older was an employe of Ryer and acting for him, and there was nothing whatever to show that Older's part in procuring a purchaser was other

than ministerial, or that Ryer had attempted to divest himself of his functions or of his responsibility to Turkel, his principal. No legal error is perceived in the case below so far as this branch of the inquiry is concerned."

In the present case, Young did not divest himself of any authority whatsoever. It was for him and his firm, that Katzen, his partner, procured the purchaser and introduced him to Mr. Crumbie. Neither Mr. Young nor Katzen had any discretion in the matter. They were to procure a purchaser, who was ready, willing and able to perform the terms of the contract as required by Mr. Crumbie. This was purely a ministerial or mechanical act, and as held by the Court of Errors and Appeals is not within the maxim.

In the case at hand, the procuring of a purchaser was purely ministerial, since all the terms of the sale had been determined by Mr. Crumbie, the owner. In this case, however, Katzen was not, strictly, an agent, but a partner of Mr. Young in their real estate business.

The Supreme Court, in its opinion, said that ordinarily an agent or broker for the sale of real estate was without power to delegate this authority, and apparently relied upon a statement of the law contained in 2 C. J. 686, to the effect that:

"A broker or agent authorized to sell property or to procure a purchaser is *ordinarily* without authority to delegate his powers to another."  
(Italics ours.)

Most, if not all of the cases cited in the note under this text, are cases in which the plaintiff was not the agent engaged by the owner, but was the agent em-

ployed by the broker, and were cases in which the authority was not to produce a purchaser under terms fixed by the owner but where the agent was, in fact, an agent to sell and not an agent to procure a purchaser.

The cases cited, which the writer has had an opportunity to examine, are the following:

*Grosscup v. Downey* (65 A. 930 Md.);

*Ark-Bromley v. Aday* (70 Ark. 351, 68 S. W. 32);

*Kan.-Topliff v. Shadwell* (64 Kan. 884, 67 p. 545);

*Hanback v. Corrigan* (7 Kan. A. 479, 54 p. 129);

*Ky.-Floyd v. Mackey* (112 Ky. 646, 66 S. W. 518, 23 Ky. L. 2030).

None of these cases in our opinion support the proposition that an agent to procure a purchaser cannot employ the services of another *a fortiori*; that he cannot make use of his associates or employes in procuring such a purchaser.

We submit that the judgment of the Supreme Court cannot be supported upon the proposition of law that an agent to procure a purchaser cannot delegate his authority nor upon the proposition of fact that in the present case, there was such a delegation.

In conclusion, upon this point, we contend (1) that under the case of *Ryer v. Turkel*, *supra*, a broker employed to procure a purchaser upon terms fixed by the owner, may employ another to procure such a purchaser; (2) that under the present case, the use by Mr. Young of his partner to procure his purchaser was not a delegation of authority.

## II.

The defendant's second proposition argued in the Supreme Court was that the commission was not earned, unless the purchaser was the person referred to in the option (p. 9, State of Case), in the following language:

"Upon representation by you that you have a party interested in the purchase of my Boardwalk property, in Atlantic City, &c."

It is contended by the defendant that the purchaser which Young represented he had was one Benjamin R. Fox, and that the only person to whom Crumbie was obliged to sell the property was Benjamin R. Fox. We submit that there is absolutely no language in the option which justifies this contention. We might suggest that had this been the contention of Crumbie, it should have been made clearly, so to appear. It, however, is not even conjectural in the present instance. The option might be said to have been given upon the representation that Mr. Young did have a purchaser in mind, but there is not a line in the option which would even suggest that the sale was to be confined to this purchaser, nor was the conduct of the owner at any time based upon any such contention. For instance, it appears that a few days before the expiration of the option, Mr. Young told Crumbie that Mr. Fox was out of the deal and had endeavored to make an agreement with Crumbie for the sale of the property to Thommessen & D'Agostino. The deal could not be arranged because these men were unable to meet the terms of the agreement. Crumbie did not, however, reject them as possibilities, because they were not the persons vaguely referred to in the op-

tion, and on the last day of the option when Mr. Katzen introduced Satinov to Crumbie, and Crumbie refused to go forward and perform, he never at any time suggested that the agreement was limited to Mr. Fox or any other individual.

The option is perfectly plain and straight-forward in all its terms, and required no explanation. It could not possibly make any difference who the purchaser was that Mr. Young had represented he had. The option provides, after the recital above referred to:

"I will give you thirty-day option from this date to secure a purchaser for this property, on the following terms and conditions."

It will be observed that Mr. Crumbie does not say: "I will give you a thirty-day option to secure the purchaser above referred to or to secure the purchaser whom you represent you have," but to secure a *purchaser*. The option clearly shows that he never had in mind that the sale was to be limited to *the purchaser* that Mr. Young represented he had when the option was executed. It may be, that had Mr. Young had no purchaser for the property that Crumbie could have escaped from his option by alleging that it had been induced by a false representation as to material fact. That element, however, is not in this case, as Mr. Young admitted he had a prospective purchaser in the person of Mr. Fox.

Under this point, the defendant complains that testimony should have been admitted to explain the meaning of the phrase: "Upon representation by you that you have a party interested in the purchase, &c."

We respectfully submit that the phrase needed no explanation. It was sufficient in itself. It stated a

fact. What the defendant really attempted to do was to show by oral evidence, not the identity of the purchaser interested, but that the sale of the property was to be limited to such a person, an explanation which would change the entire aspect of the contract and make an entirely different contract than the one he actually made.

We submit that he is barred from so doing by a rule of evidence in support of which it is only necessary to cite the case of *Naumberg v. Young* (44 N. J. L. 351).

### III.

The third point argued by the defendant in the Court below was based upon the proposition that the commission was only earned if the sale was completed and payable only upon final settlement; that no sale was completed, and no final settlement was had, and, therefore, no commission was earned.

It is true that the option provides that the commission was to become due and payable only upon sale and at and upon final settlement. We submit that the cases and authorities do not support the defendant's contention. Even some of the cases that he cites are contrary to the position which he takes. Had the defendant in this case accepted the purchaser procured by the plaintiff, Young, and the party was unable or unwilling to go forward with the sale, the principle propounded by the defendant would have applied, because in such case, the failure to go through with the settlement would be due not to any fault of the defendant, but to the purchaser, and under the terms of the agreement, notwithstanding that he had been accepted by the defendant, the

commission would not have become due until final settlement.

In the present case, however, the failure to consummate the sale was due to the refusal of the defendant, Crumbie, to accept a purchaser procured by the plaintiff, Young, and who was ready, able and willing to perform the terms of the sale as set forth in the option.

It is a familiar rule of law, that a person cannot take advantage of his wrong, nor can a person refuse to perform the terms of a contract which he had undertaken to perform, and so defeat the other party thereto from recovering thereon. (*Vickers v. Electrozone Com. Co.*, 67 L. 665.)

The language of the option is:

"I hereby agree to allow you a commission of three per cent as allowed by the Real Estate Board of Atlantic City, this commission to be paid only if sale is completed, as provided above, and to be paid at final settlement."

The clear import of this language is that if Young procured a purchaser, willing and able to purchase upon the terms fixed by Crumbie, that his commission would then be earned, and would be payable at the final settlement; the word "only" indicating that Crumbie did not wish to pay any portion of the commission except when the final settlement was made, and the words "to be paid only at final settlement" did not import that the commission was not to be paid in any event, but only that it was to be paid in full upon the final settlement.

In the case of *Taylor & Rose, Inc. v. Buonincontri* (128 Atl. 603; 101 N. J. L. 278), the Court held:

"Under vendee's contract for commission, in consideration of broker's negotiating purchase

of property, payment to be at time of passing consideration for contract was broker's negotiating sale, and words 'at time of passing title' merely indicated time when commission was payable, and, where broker negotiated purchase, but vendee refused to accept title, broker was entitled to commission."

In the case of *Moran v. Resnick* (131 Atl. 912; 4 N. J. Misc. Rep. 107), the Court held:

"Where the evidence is clear that the owner of property gave a broker an exclusive option on property for a limited time the broker is entitled to his commission, where the property was sold within a stated time."

In the case of *Lehrhoff v. Schwartzky* (125 Atl. Rep. 496; 2 Mis. Rep. 353), the agreement provided that the commission was to be paid to Lehrhoff on the date of the closing the title to the premises. The title did not pass on the day fixed, because there were some imperfections in the title, and the vendor refused to convey, though the vendee then and there tendered to the vendor the purchase price of the property, as agreed upon. The contention made by the defendant owner was that the commissions were not to be paid unless the title to the property had actually passed from the prospective vendor to the prospective vendee. This argument is based upon these words in the commission contract:

"Amount to be paid to the above Louis Lehrhoff and Jacob Steinberg on the date of closing title to said premises."

The Supreme Court said:

"We think the Court adopted a construction consonant with sound sense in holding that the

words imported that the commissions should be paid on the day set for closing the title, and that the payment of commissions was not made dependent upon actual passing of title to the property. This ruling was in line with the decisions by this Court in *Rauchwanger v. Katzin* (82 N. J. L. 339)."

In the case of *Rauchwanger v. Katzin* (82 N. J. L. 339), in which the language concerning the commission was as follows:

"I, the undersigned, Morris Katzin, do hereby authorize Harry Rauchwanger and Moses Arnowitz to act as our agents and procure a purchaser of our property No. 72 Montgomery Street, and do hereby agree to pay them as services for their commissions two and one-half per cent commission on the purchase price, should same property be sold through efforts or with their aid, and to be paid on the day of settlement."

The District Court found that the plaintiffs found a purchaser ready and willing to purchase the property, at a price satisfactory to the defendant. The defendant's wife refused to sign, and defendant complained, as a defense, that day of settlement was never reached or fixed and, therefore, he was not liable. The Court said:

"The facts plainly evince that the plaintiffs performed their part of the contract by procuring a purchaser ready and willing to take title, and, therefore, under the well-settled rules of law were entitled to recover the commissions provided for in the contract."

*Crowley v. Myers* (40 Vr. 245).

The Court, commenting upon the case of *Hinds v. Henry* (36 N. J. L. 328), said:

“The rule thus enunciated was not intended to work injustice by putting it within the power of the vendor, after the agent had fulfilled his part of the contract, to postpone indefinitely the day of settlement and thereby deprive the agent of the fruits of his labor and enable the vendor to profit by his own malfeasance.”

In the case of *Klipper v. Schlossberg* (96 N. J. L. 397), which was an action for commissions upon a contract which provided that he would pay commission for perfecting the sale, and the sale was not concluded, and where the agent procured a purchaser able and willing to purchase, and where the title was not passed, the Court said:

“When he (the broker) had effectuated that status his work was at an end, and the sphere of activity of the vendor to make good his proposal began. For the result of that effort the broker is not responsible, and his legal rights cannot in any wise be affected, unless he has specifically so contracted.”

In this case, there was no special contract that prevents the broker from recovering.

In the present case, there is no legal justification for the defendant's refusal to enter into an agreement with Satinov. At the trial he only urged two reasons for failing to do so.

(1) That the contract itself was personal to Young and he was not bound or obliged to recognize any of Young's employes or associates in business.

(2) That the contract of sale was limited to the

person referred to by Young, as the purchaser which he had in mind.

In neither of these points was there substantial legal reason for the failure to perform the contract. The theory upon which the cases above cited rest is that there must be a substantial legal reason for the refusal to perform such a contract as is here presented. It was because there was no such legal reason in the present case that the Court directed a verdict in favor of the plaintiff for the full amount of the commission.

#### IV.

The fourth point argued by the defendant in the Court below was based upon the proposition that the plaintiff, Harry R. Young, had not procured a person ready, able and willing to purchase the property upon the terms of sale as set forth in the option. This point is absolutely without substance either in fact or in law. He proceeds upon the notion that the proposed purchaser, Satinov, limited his offer to a purchase of the property with riparian rights, where as the property referred to in the option was exclusive of riparian rights. A reading of Satinov's and Katzen's testimony will show that there was no such limitation. Mr. Satinov declared that he tendered himself, ready, able and willing to purchase the property referred to in the option (p. 57, l. 28). His testimony, both on direct and cross-examination, is clear and explicit on this point. He was familiar with the property, he knew it, and in the course of his testimony, he described it, and in an answer to question by the Court said that that was the prop-

erty, namely, the property mentioned in the option, that he was there to buy that day (p. 59, State of Case). The confusion that defendant's counsel caused is due to the fact that he had asked the proposed purchaser whether he was then, namely, at the time of the trial, ready, able and willing to purchase the property. The purchaser, Satinov, had already answered this question on direct examination, and said that he was ready to do so, provided he could get the riparian rights. This, of course, had reference to his position at the time of the trial, after this present course of action had already arisen and matured, and it would have made no difference to Mr. Young's position had Mr. Satinov declared he was ready, able and willing to buy the property at that time, at all. Furthermore, so far as the answering of the question was concerned, there was no legal harm done, as an answer was, already in on the direct examination.

We submit, however, that it is irrelevant and immaterial as to the conditions upon which Mr. Satinov might have purchased the property at the time of the trial of this cause.

During the course of the trial, the witness, Satinov, declared any number of times that he was there to buy the property, as set forth in Mr. Crumbie's proposition of sale. The defendant's counsel tried to confuse him by cross-examination until the Court finally interposed (p. 59, l. 10), and overruled counsel's question, which we submit had been answered several times in the course of the trial.

#### V.

The fifth point argued by the defendant in the Court below was that the jury should have been

permitted to decide whether the defendant, Crumbie, was justified in refusing to deal with Katzen. We submit that the defendant's proposition on this phase of the case is without merit. There was nothing for a jury to determine. The testimony shows that Mr. Katzen, in fact, was a partner of Mr. Young, and had been entrusted by Mr. Young to procure a purchaser of the property, if possible, before the option expired. Mr. Crumbie knew that Mr. Katzen was associated with Mr. Young. He testified (p. 84, l. 1) that Mr. Katzen's card said "associated with Harry R. Young."

It is admitted that he represented to Mr. Crumbie that he was associated with Mr. Young and was acting for Mr. Young, and that he had procured a purchaser who was able, ready and willing to perform the terms of the contract of sale, which Mr. Crumbie had made with Mr. Young. It was, as all the parties knew, the last day of the option. The jury could not legally have found that Mr. Crumbie was justified in refusing to contract with the purchaser which Mr. Katzen had procured or introduced upon the alleged ground that he, Crumbie, did not know whether Katzen represented Young or not, when in truth and in fact, Katzen did represent Young.

Was there anything in the case which justified Mr. Crumbie's doubt as to Katzen's relation with Young? We submit that there was not. No one but Young or someone close to him could have known of these terms or that the day in question was the last day upon which the option could be fulfilled.

Furthermore, if Crumbie had any real doubt, he could have readily protected himself by providing that the contract with Satinov was made upon the

representation that he was, in fact, procured by Mr. Young.

To permit a jury to vindicate defendant's action would be, in fact, permitting them to find that Crumbie was justified in believing that the statement made by Katzen was untrue, whereas, as a matter of fact, it was true.

It is impossible to conceive a theory upon which a defense could rest based upon the idea of a belief in the untruthfulness of the statement, when the statement was, in reality, an absolute truth. If the theory upon which the Supreme Court decided this case is a correct one, namely: that Mr. Young could not delegate his authority and had, in fact, delegated it, then it would make no difference whether Crumbie believed or did not believe Katzen's statement. He would, as a matter of law, have been justified in refusing to accept a purchaser not procured or introduced by Mr. Young.

If, on the other hand, as we contend, the Supreme Court erred in its application of the maxim to the facts of this case, then it was not necessary that Mr. Crumbie should believe that Mr. Katzen was the representative of Mr. Young. He was bound, in the first instance, at least, to accept the purchaser introduced to him by the representative of Young. If Crumbie had been honest and sincere in his pretense that he wanted to protect Young, he could have readily done so by providing in his agreement with Satinov that it was entered into upon the assurance that Satinov was Young's client. A telephone call to Mr. Young's office, in Atlantic City, would have shown conclusively that Katzen was a partner of Young. Crumbie made no outside inquiry as to Katzen's relationship with Young, nor did he suggest to Katzen that he desired any inquiry to be made.

The truth of the matter is that Mr. Crumbie desired to get out of this contract. He knew it was the last day. He knew or believed that the purchaser introduced by Katzen, was, in reality, Young's purchaser. He believed Katzen's statement that Young was out of the country (p. 81, ll. 19-32). He thus knew that Young could not personally produce a purchaser on what was the last day of the option, and he attempted to evade his obligation to Mr. Young by pretending to disbelieve Katzen's statement, the statement, which, as we have said, was absolutely and wholly the truth.

It is interesting to note in this connection that in the conversation which took place between Katzen, Crumbie and Satinov, on the last day of the option, that Crumbie nowhere says that he really disbelieved Mr. Katzen. The furthest extent to which he goes is that he had no knowledge.

We submit that Crumbie's real or pretended lack of knowledge as to the true situation cannot constitute a legal excuse for refusing to rely upon statements, which, in fact, were true.

## VI.

The sixth point argued by the defendant below was that certain questions put to Young, on cross-examination, were overruled by the trial Court. These questions (p. 36, ll. 9-34) had to do with alleged conversations respecting the terms upon which Crumbie might sell to Thommessen and D'Agostino, whom Mr. Young had tried to interest in the purchase of the property. It was Crumbie's pretense that knowing that Mr. Young was trying to consummate a sale with Thommessen and

D'Agostino, he was justified in refusing to deal with Young's representative in an attempted sale to someone else. He admitted the fact that neither Young nor any representative of Young called upon him with any purchaser after said alleged conversations, and until the last day of the contract, would have satisfied any reasonable person when the attempted negotiations with Thommessen and D'Agostino were off. As a matter of fact, Mr. Crumbie, himself, refused to accept Thommessen and D'Agostino because they could not comply with the terms of the option. The testimony, if permitted, would have shown merely and it was only intended to show, an attempted negotiation for the sale of the property to some other purchasers, and upon different terms. Mr. Crumbie was permitted to testify as to this whole situation and fully.

From Crumbie's testimony (p. 70, l. 19, and p. 71, l. 23), it appears that on March 11th, five days before the expiration of the option, Mr. Young attempted to enter into some deal with Mr. Crumbie for the sale of the property to Thommessen and D'Agostino upon terms differing somewhat from those contained in the option.

In fact, Mr. Crumbie testified that these negotiations had all been terminated upon his lawyer's advice (p. 86, ll. 3-9).

#### VII.

The seventh point argued by the defendant in the Supreme Court was based upon the proposition that the Court should have granted a direction in favor of the defendant. He suggests and we concur with him that the arguments upon this point are

necessarily involved in a discussion of the preceding points.

It is respectfully submitted that the judgment of the Supreme Court should be reversed, and the judgment of the Atlantic County Circuit Court affirmed.

BOURGEOIS & COULOMB,

*Attorneys of Plaintiff-Appellant.*

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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HARRY R. YOUNG, to the use of HARRY R. YOUNG and  
MORRIS W. KATZEN, Partners, trading as HARRY  
R. YOUNG and MORRIS W. KATZEN,  
*Plaintiff-Appellant,*

v.  
JAMES H. CRUMBIE,  
*Defendant-Respondent.*

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ACTION AT LAW.

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IN ATTACHMENT.

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ON APPEAL.

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BRIEF OF DEFENDANT-RESPONDENT.

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FACTS.

This case was instituted in the Atlantic County Circuit Court on a writ of attachment, issued against the property of James H. Crumbie, as an absent debtor. Said defendant entered appearance and accepted service of complaint.

The suit was based upon a contract, a copy of which was attached to the complaint (see State of Case, page 9), and marked in evidence as Exhibit P1. (See State of Case, page 26.)

Plaintiff claimed the right to recover the sum of fifteen thousand (\$15,000) dollars commission due him by virtue of the terms of said contract, because he claimed to have procured a buyer for defendant's property, at the price of five hundred thousand (\$500,000) dollars, and upon the terms set forth in said contract. The testimony disclosed that said contract was executed by defendant and delivered to plaintiff on February fifteenth, nineteen hundred and twenty-six, and it limited the agency of said Young to a period of thirty days from that date.

Plaintiff Young testified that after obtaining said agreement he endeavored to make a sale of the property. (See State of Case, page 27, lines 15 to 18.) Thereafter, and about one week prior to March sixteenth, the end of the thirty-day period, plaintiff Young said he called upon Mr. Crumbie, the defendant, to discuss the sale of this property to two gentlemen, prospective buyers. (See State of Case, page 27, line 19, to page 28, line 10.) No agreement of sale resulted from that discussion, because said prospective purchasers were not prepared to purchase said property upon the terms mentioned in the contract hereinbefore referred to. (See testimony, State of Case, page 28.) The two prospective purchasers were a Mr. Tomlinson and a Mr. D'Agostino. (State of Case, page 34, line 18.)

After the said interview, Plaintiff Young, testified that the whole matter was turned over to a Mr. Morris Katzen, whom plaintiff claimed was his partner. (See testimony, pages 29 and 30.) After so doing Plaintiff Young left Atlantic City for a trip to Cuba with Mr. Tomlinson, who was one of the two

prospective purchasers hereinbefore referred to. (State of Case, page 37, lines 10 to 22.)

Witness Morris W. Katzen testified that on the last day of the thirty-day period, he procured one Mr. Satinov, as a prospective purchaser of said property (State of Case, page 39, line 9), and on that day he and the said Satinov went to Philadelphia to call upon defendant, Crumbie, for the purpose of entering into agreement of purchase. (State of Case, page 39, line 18.)

Witness Katzen further said that after he had introduced Mr. Satinov, the prospective buyer, to Mr. Crumbie, the defendant, and told him that they were there ready to make the deal, and tendered the payment of ten thousand (\$10,000) dollars, as a deposit on account of the purchase price, Mr. Crumbie refused to accept it, saying that he could not and would not sell the property. (State of Case, page 41, lines 3 to 36.)

Louis Satinov, the prospective purchaser, testified that when he and Katzen called on Crumbie, Mr. Katzen introduced himself by handing his business card to Mr. Crumbie, and said that he was representing the firm of Young and Katzen (State of Case, page 49, line 3), and then proceeded to detail the circumstances of that meeting, substantially to the same effect as Katzen had testified thereto.

Mr. Crumbie, the defendant, testified that after he had delivered said contract to Young, the plaintiff, he did not again see Young until March eleventh, following. (See State of Case, page 69, line 27.) Crumbie did testify, however, that during that interim he had received a letter from Mr. Fox about the property. (State of Case, page 69, line 10.)

Defendant Crumbie further testified that when Young called on him on March eleventh, he, Young, said that Mr. Fox was no longer to be considered as

a prospective purchaser. (State of Case, page 68, line 28.) Then, Mr. Young proceeded to explain to Crumbie a deal which he had arranged with Tomlinson and D'Agostino, which was not accepted, because the purchasers were not prepared to buy on the terms fixed by said contract. (State of Case, page 70, line 19, to page 71, line 23.) That interview ended by Young indicating to Crumbie that he would endeavor to further negotiate with Tomlinson and D'Agostino to complete the deal in accordance with said contract. Young's final words to Crumbie were "If nothing turns up of this we will be just as good friends." (State of Case, page 71, line 21.)

Crumbie further testified that he did not see Young nor the prospective purchasers, Tomlinson and D'Agostino, at any time thereafter and before the expiration of the term of said contract. (State of Case, page 71, line 34, to page 72, line 4.) Crumbie did not see anyone in reference to the sale of said property thereafter until the last day of the option period, and about five-thirty in the afternoon of that day (State of Case, page 72, lines 6 to 15), which was the occasion when Katzen and Satinov called upon him. Mr. Crumbie recites the circumstances of his meeting with Katzen and Satinov in testimony to be found on pages 74 and 75 and 76 of the State of the Case. Mr. Crumbie had not known nor been introduced to either Mr. Katzen or Mr. Satinov prior to that meeting, nor had Mr. Young ever mentioned Mr. Satinov to him, Crumbie, as a prospective purchaser. (State of Case, page 76, line 4, to page 77, line 8.)

Mr. Crumbie further testified that he refused to enter into agreement with Satinov for the reason that he did not know either Katzen or Satinov; that he did not know Mr. Young had a partner, and on the contrary had been told by Mr. Young that his,

Young's business, was incorporated (State of Case, page 74, lines 25 to 32): that Mr. Young had made a proposition to him, Crumbie, and that for that reason he would not do anything in the matter until Mr. Young returned from Cuba (State of Case, page 75, lines 5 to 8); that he, Crumbie, was not required to deal with any one other than Young individually (State of Case, page 75, line 31); that he would not be a party to assisting in "putting something over on Mr. Young" (State of Case, page 76, line 19), and that he reserved the right to deal with Mr. Young personally upon his return. (State of Case, page 86, lines 4 to 10.)

Young admitted in his testimony that he had taken no part in, nor did he have any knowledge of the Satinov transaction until after he had returned from Cuba, which was long after the option period had expired. (State of Case, page 37, line 23.)

This suit is based upon the deal negotiated with Satinov by Katzen, with which Young took no part personally.

At the end of the trial, the Court directed a verdict in favor of the plaintiff. (State of Case, pages 92, 93 and 94.)

Upon appeal to the Supreme Court the judgment of the trial Court was reversed. (Opinion printed on page 95 of the State of the Case.)

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#### ARGUMENT.

Defendant herein, on appeal to the Supreme Court, set up thirty grounds or reasons for reversal, all of which were argued under group headings. The same plan will be followed here. These headings are

mainly in the language of the various defenses which were set up in the answer filed in the Court below by respondent.

## I.

THE SO-CALLED CONTRACT OR PAPER WRITING UPON WHICH THIS SUIT IS BASED, WAS ADDRESSED TO HARRY R. YOUNG FOR HIS PERSONAL BENEFIT AND NOT FOR THE BENEFIT OF ANY PARTNERSHIP OR OTHER PERSON OR PERSONS, AND ANY RIGHTS WHICH SAID HARRY R. YOUNG MAY HAVE THEREUNDER ARE NOT ASSIGNABLE, NOR CAN THE AUTHORITY GIVEN TO HIM BE DELEGATED BY HIM TO ANY OTHER PERSON.

Under this heading may be grouped grounds of appeal numbers two, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen.

A reference to the contract (State of Case, pages 9 and 10) will disclose that the said paper writing is addressed as follows: "Mr. Harry R. Young, Atlantic City, New Jersey, Dear Mr. Young," then the contract proceeds as follows: "Upon representation *by you that you* have a party interested in the purchase of my Boardwalk property in Atlantic City, I will agree *to give you* a thirty-day option," etc. It is submitted, from a reading of this instrument itself, it is plain and evident that Mr. Crumbie, the defendant below and the respondent here, intended to confine the authority of agency to Mr. Young personally, and it is proper to infer from the contract itself, that it was because of the confidence and regard which Mr. Crumbie had in the personal

qualifications and ability of Mr. Young, that he, Crumbie, intended to confine the authority which he was then giving to Mr. Young, and to no other person.

A real estate agent or broker is generally regarded as having been selected because of presumed special skill and discretion, and because of the confidence reposed in him by the owner of the property.

See 43 L. R. A. (N. S.) 786, note.

The Supreme Court in its opinion (State of Case, page 95), said:

"A broker or agent authorized *to sell property or to procure a purchaser* is ordinarily without authority to delegate his powers to another. (2 Corp. Jur. 686, and cases cited.) There is nothing in the case to indicate that it is an exception to the rule."

It is submitted that the above is a correct statement of the law and is wholly applicable to this case.

The full text in 2 C. J. 685 reads as follows:

"The general rule is that an agent in whom is reposed trust or confidence, or who is required to exercise discretion or judgment, may not intrust the performance of his duties to another without the consent of his principal, and, *since nearly all acts of agency involve discretion, and the very selection as agent ordinarily implies personal confidence in the agent chosen*, it follows that one clothed with authority to act for a principal must ordinarily perform the act himself, and cannot without the principal's consent delegate it to another; or, as is frequently stated, an agent cannot delegate powers calling for the exercise of discretion, skill or judgment, or to do acts that are not merely, clerical, mechanical, or ministerial in their nature."

And on page 686 it is said:

“This rule avails for the advantage of the principal and not of the agent.”

Appellant relies strongly in his brief upon opinion expressed by Mr. Justice Green, speaking for this court, in the case of *Ryer v. Turkel*, 75 N. J. L. 677, as follows:

“It may indeed be true that, under the maxim, *delegata potestas non potest delegari*, an agent or broker whose employment involves any exercise of judgment or discretion may not transfer to another the right and power to discharge his own duty. Cl. & S. Ag. 8342; *Dwelling House Insurance Co. v. Snyder*, 30 Vroom, 18 and 20 (1896). Nevertheless, and when an act to be done is ministerial or mechanical only, the agent may employ another to do it, and, in such case, the act is as well performed by the sub-agent as by the agent. Cl. & S. Ag. 345 d; *Titus et al. v. Cairo and Fulton Railroad Co.*, 17 Vroom, 393, 418, (1884).

“The finding of the trial Court was that Older was an employe of Ryer and acting for him, and *there was nothing whatever to show that Older's part in procuring a purchaser was other than ministerial, or that Ryer had attempted to divest himself of his functions or of his responsibility to Turkel, his principal.*”

Appellant insists that this case is “directly in point.” Respondent denies that the finding in that case is controlling here. The statement of the law is correct but the result reached there is not applicable here. The Court, in *Ryer v. Turkel*, found, among other things, that there was nothing to show “that Ryer had attempted to divest himself of his

functions or of his responsibility to Turkel, his principal.” In the case at bar the evidence discloses that Young, the agent, did divest himself of both his functions and responsibility when he went to Cuba after turning the agency contract over to Katzen with the suggestion that he see what he could do with it. Young then and there “washed his hands” of it, had nothing whatever to do with the transaction upon which the claim of right to recover here is based, and in fact knew nothing of it nor of the institution of this suit until his return from Cuba. He, Young, did not even take the pains to tell Crumbie of his trip to Cuba and that he was leaving the matter in Katzen's charge; nor had he even taken the precaution to advise Crumbie that Katzen even existed or had any connection of any sort with him. All this is ample and sufficient to differentiate the case of *Ryer v. Turkel* from the case at bar.

In *Titus & Scudder v. Cairo and Fulton R. R. Co.*, 46 N. J. L. 393, at page 418, Mr. Justice Depue, speaking for the Supreme Court, said:

“The charge of the trial Judge that ‘it is a maxim of the law that delegated power cannot be delegated; the delegate cannot delegate; he may use others in the accomplishment of particular transactions which he directs, but he cannot grant to the discretion of others that which was entrusted to his discretion,’ was correct as applied to this case. Except where a known usage of trade justifies, or necessity requires, the employment of sub-agents, an agent whose powers and duties involve personal trust and confidence and the exercise of judgment and discretion, cannot, without authority from his principal, delegate to another the confidence and discretion reposed in him. Having, by his own judgment and discretion, determined what

should be done, he may authorize another to perform the ministerial acts necessary to carry into effect the purposes of his employment, but he cannot turn his principal's business over to the judgment and discretion of another, and bind the principal by the acts and conduct of the latter."

This case proceeded upon the theory that plaintiff, Young, was entitled to recover commissions as the agent of Crumbie, based upon a sale of Crumbie's property to Louis Satinov. It is admitted by plaintiff, Young, that he did nothing in an effort to bring the said Satinov and Crumbie together; he had never discussed the proposition with Satinov; he, in fact, knew nothing about the so-called Satinov deal until long after the agency term given by the contract had expired. As has hereinbefore been pointed out, Young testified that about a week before the term of agency expired he left Atlantic City for a trip to Cuba, and that when he left he turned the contract over to Katzen, whom he claimed to be his partner, and instructed him to see what he could do towards selling the property. That was the last that Young personally did as Crumbie's agent.

Plaintiff insisted at the time of trial that he had a right to turn the contract over to Katzen, and that even though he, Young, had nothing whatever to do with the finding of the buyer, that if Katzen was the efficient cause of securing a buyer, he, Young, could claim the benefit thereof and demand the payment of commission to him.

Crumbie insisted that he was not under obligation to Young, unless he, Young, was the efficient cause of finding a buyer, and that he, Crumbie, was under no obligation to deal with or through any agent other than Young, so that, first, we are confronted with

the general law as cited above, that the agent whose employment involves any exercise of judgment or discretion, may not transfer to another the right and power to discharge his own duty.

It is true that the Court pointed out an exception to this rule, which was that when an act to be done is merely ministerial or mechanical, the agent may employ another to do it. It is, however, submitted that the agency created by the contract in question called upon Young to perform more than a mere ministerial or mechanical act or duty. If Crumbie had had no objection to the giving of an agency to real estate brokers in general, he certainly would not have addressed his contract to Mr. Young personally.

In a note appearing at the bottom of page 796 of Vol. 43 of *Lawyers' Reports, Annotated, New Series*, it is said:

"The general rule is that an agent in whom is reposed trust or confidence, or who is required to exercise discretion or judgment, may not intrust the performance of his duty to another without the consent of the principal; he must ordinarily perform the act himself. 31 Cyc. 1425.

And, as said in *Tynan v. Dullnig*, Tex. Civ. App., 25 S. W. 465, the vocation of the real estate broker is generally deemed to be a high, honorable and responsible one, and one in which much prudence, discretion, judgment and knowledge of business and human nature are required, and it involves something higher than the mere exercise of clerical or ministerial duties."

The author then proceeds to state the general rule as follows:

"A real estate agent or broker is generally

regarded as having been selected because of presumed special skill and discretion, and because of the confidence reposed in him by the owner of the property, and, accordingly, such agent or broker, unless expressly or impliedly so authorized, is generally held to be without power to substitute another agent for himself, or to delegate his authority, so far as it is discretionary to another. *Delegatus non potest delegare.*" (Numerous cases are cited.)

In *Groscup v. Downey*, 105 Md. 273, 65 Atl. 930, it was held that an agent in charge of property and with authority to sell the same, had no authority as such to employ another person to procure a purchaser for it.

In *Bromley v. Aday*, 70 Arkansas 351, it was held that an agent authorized to sell real estate cannot delegate his authority to a sub-agent, as he must have been regarded by his principal as having a special fitness for the responsibility imposed upon him.

In *Floyd v. Mackey*, 112 Ky. 646, it was held that an agent to sell land had no power to delegate his authority to his son, and that the principal was not bound by the sale made by the son.

See also *Fairchild v. King*, 102 Cal. 320, 36 Pac. 649, and *Hodkinson v. McNeal*, 165 Mo. A. 91.

Appellant tries, in his brief, to draw some distinction here because he says "Mr. Katzen was not, strictly speaking, an agent for Young, but was associated with Young in the same real estate business, and was so closely identified with him in the conduct of the business as to be Young himself." This may be termed "a distinction without a difference." The mere fact that Katzen was a partner or employe of Young's does not change the general rule. Suppose Young, instead of turning the

matter over to Katzen, had done the same with any other real estate agent with whom he, Young, had made a working arrangement for the occasion. Can it be said that, if so done without the knowledge or approbation of Crumbie, that he, Crumbie, would have been under obligation to deal either with or through the stranger upon the mere assurance by the so-called stranger that he was associated with Young? Such a rule would take away all protection from the principal.

Appellant, in his brief, further contends that many of the cases cited in respondent's brief are not in point because "they all concern contracts where the agent had authority *to sell the property*, which is entirely different authority from that conferred upon one *to procure a purchaser* for the sale of the property." This, too, is "a distinction without a difference."

In the opinion of this Court in *Resky v. Meyer*, 98 N. J. L. 168, 171, it is said:

"It has been uniformly held that the words 'sell' and 'sale' as applied to the relation between the owner of land and a real estate broker working to secure a purchaser of the land, import no more than the act of bringing the owner and purchaser together on terms satisfactory to both, or procuring a purchaser able, ready, and willing to buy on the terms fixed by the seller, so that, for example, the broker cannot, without special authority, bind the owner by a contract of sale in his name."

So also in *Lindley v. Keim*, 54 N. J. Eq. 418, 423, it was said:

"The mere employment of an ordinary real estate broker to effect a sale of a parcel of land, even though the price and terms be prescribed,

does not amount to giving present authority to such broker to conclude a binding contract for the same. Moreover, such authority is not usually to be inferred from the use by the principal and broker in that connection of the terms 'for sale' or 'to sell' and the like. Those words in that connection usually mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms."

This general argument on this point applies to the grounds of appeal grouped hereunder, as follows:

Ground number two is based upon an objection to a question asked witness, Young, "Who is Mr. Katzen?" This was objected to first on the ground that the response thereto would call for a conclusion, and in addition thereto, the further ground that the question was addressed to irrelevant matter, in that the question of the partnership was not involved in the suit, for the reason that the contract was personal to Young, and no one could claim any benefits thereunder other than him. If the contention of the respondent is correct, to wit, that the authority and power which he gave to Young could not be delegated to Katzen, then, it was harmful error for the Court to have ruled that the question was relevant to the issue.

Ground of appeal number seven is based upon the objection to a question put to witness, Katzen, as follows: "Some time prior to the sixteenth day of March, were you given instructions with relation to the option or the agency agreement that Mr. Young had with Mr. Crumbie?" (See State of Case, page 38, line 21.)

Ground of appeal number eight is based upon an objection to a question put to witness, Katzen, as

follows: "And as a result of that, what did you do?" (State of Case, page 39, line 1.)

Ground of appeal number nine is based upon the Court's refusal to strike statement of witness, Katzen, as follows: "Well, Mr. Satinov and I went to Philadelphia for the purpose of entering into an agreement with Mr. Crumbie on the property." (State of Case, page 39, line 18.)

Ground of appeal number ten is based on objection to question put to witness, Katzen, as follows: "And what did you do after you got there?" (State of Case, page 40, line 2.)

Ground of appeal number eleven is based upon objection to question put to witness, Katzen, as follows: "State what was said." (State of Case, page 40, line 31.)

The objections to questions set forth under grounds of appeal numbers seven to eleven above, were made for the same reasons as advanced in objecting to questions stated under ground of appeal number two and again as to this, it is urged that if respondent's contention that the authority given to Young could not be delegated is sound, then the examination of the witness, Katzen, as above set forth, was irrelevant to the issue in this case, and the Court in permitting the witness to answer those questions committed error where it was harmful to the respondent's interest.

Ground of appeal number twelve is based upon the refusal of the Court to permit witness, Katzen, to answer the following question on cross-examination, "You placed the matter in the hands of Mr. Styron, the attorney of record, before Mr. Young returned from Cuba, did you not?" (State of Case, page 45, line 21.) In this connection, it is submitted that the Court was in error in permitting the direct examination of this witness without the right of de-

fendant, who is the respondent here, to break down the effect of that examination, as would have been done by the answer to this question, particularly in view of the fact that it would tend to show first, that Katzen was exercising an authority which had been delegated to him by Young; that he was acting not under the direction of Young, who was Crumbie's agent, but in accordance with his own judgment and interest in the matter; and that what Katzen had done was not known to Young, nor did he, Young, have any connection with Katzen's actions. The Court should have permitted the witness to answer this question, because it would have been evidence in support of this legal contention that Young had no right in law to delegate his authority. It is urged, therefore, that the Court's refusal in this respect was error.

Ground of appeal number thirteen is based upon the objection to the question put to witness, Satinov, as follows: "Did Mr. Katzen take up with you the matter of the purchase of property on the Boardwalk between Georgia and Florida Avenues in March, 1926, or February and March?" (State of Case, page 47, line 18.)

Ground of appeal number fourteen is based upon objection made to the Court's permission given witness, Louis Satinov, to testify to any part which he had in negotiations for purchase of property involved in this suit.

Ground of appeal number fifteen is based upon the Court's permission given to witness, Louis Satinov, to testify as he did during the trial of this cause.

Exception to the testimony of Satinov on which grounds of appeal numbers fourteen and fifteen are based, is to be found in State of the Case, page 47, lines 18 to page 48, line 7. The testimony of witness, Louis Satinov, is to be found on pages 47, 48, 49 and 50 of the State of the Case.

It is submitted that for the reasons hereinbefore stated, all of this testimony, and particularly the testimony elicited by the question mentioned in ground of appeal number thirteen, is irrelevant to this issue.

Ground of appeal number sixteen is based upon the Court's refusal to permit witness, Satinov, to answer the following question on cross-examination, "Now, did you know, Mr. Satinov, that this suit had been started before today?" (State of Case, page 56, line 13.) Admitting, for the sake of this argument, that all of the previous testimony of witness, Satinov, was properly admitted, it was error for the Court to preclude defendant, who is the appellant here, from showing interest and bias on the part of the witness. If it could have been shown by the answer to this question, that the witness, Satinov, had not only a knowledge of the institution of the suit, but was partially, at least, responsible for starting it, it is submitted, that this circumstance would have shown such interest or bias of the witness as to have affected his credibility.

## II.

THE PLAINTIFF, HARRY R. YOUNG, COULD NOT DEMAND THE PAYMENT TO HIM OF ANY COMMISSION FOR THE SALE OF THE PROPERTY NAMED IN SAID CONTRACT EXCEPT UPON THE CONDITION THAT HE, SAID YOUNG, SHOULD EFFECT A SALE BETWEEN DEFENDANT CRUMBIE AND THE PERSON WHO SAID YOUNG REPRESENTED HE HAD INTERESTED IN THE PURCHASE AT THE TIME SAID PAPER WRITING WAS EXECUTED.

Under this general heading may be grouped grounds of appeal numbers one, three, four, twenty-

one, twenty-four, twenty-five, twenty-six, twenty-seven and twenty-eight.

At the very beginning of said paper writing or contract, the following statement appears, "Upon representation by you that you have a party interested in the purchase of my Boardwalk property in Atlantic City," etc. This statement indicates the very consideration or influence under which Crumbie was induced to enter into the contract in question. It is indicative of a very material representation that had been made by Young to Crumbie. It infers at least that if it had not been for the representation that Young had made to the effect that he, Young, had at that time a purchaser for such property, Crumbie would not have entered into said contract. The full meaning and purport of said statement is, however, ambiguous, and under these circumstances, it is submitted, that the defendant had the legal right to make inquiry of the witnesses into the meaning of that statement. Our Courts have said, as was held in *Ryer v. Turkel*, 75 N. J. L. 677:

"It is to be accepted as settled law that, as between the parties themselves, oral evidence is not admissible to contradict a written agreement. *Leslie v. Leslie*, 5 Dick. Ch. Rep. 155, 160, 161 (1892), and *Bandholz v. Judge*, 37 Vroom, 80, 85 (1901), are recent illustrations of the rule in equity and at law. Nevertheless, the rule does not, in a proper case, forbid the throwing of light upon the meaning of the written agreement, evidence of the circumstances of the parties to it, or of their conduct after its execution, or of the condition of its subject-matter. *Axford v. Meeks*, 30 Id. 502, 503 (1896); *Naughton v. Elliott*, 2 Robb. 259, 297 (1904)."

It was urged that said statement at the beginning of the contract warranted the allegation that the sale of said property by Young was confined to the person whom he had represented at the time of the making of said contract to be the prospective purchaser. That prospective purchaser was one Benjamin R. Fox, whom defendant offered as a witness (State of the Case, page 87), and whom the Court refused to permit to testify to any material fact. At the very beginning of the trial, and before any testimony had been taken, the Court ruled that the right to sell was not limited to the person Mr. Young represented he had as the purchaser. (State of the Case, page 25, lines 1 to 16.) This ruling is the basis for ground of appeal number one.

The Court refused to permit Young to answer the following question on cross-examination, "Mr. Young, when you went to see Mr. Crumbie on the sixteenth of February, you told him that you had a buyer for this property, didn't you?" (State of Case, page 31, line 5.) This is the basis for ground of appeal number three.

The Court refused to permit witness, Young, to answer the following question on cross-examination, "Now, then, after you had taken the matter up with Mr. Fox, do you know whether or not he had some plans drawn of the character of building which he desired to place on the property?" (State of Case, page 32, line 19.) This is the basis for ground of appeal number four.

A motion was made in behalf of defendant for a non-suit, upon the ground that plaintiff under said agreement had no authority to sell said property to any other person than the person who was represented by him to defendant as the prospective purchaser at the time the agreement was made. (State

of Case, page 61, lines 25 to 30.) This is the basis for ground of appeal number twenty-one.

The Court refused to permit witness, Crumbie, to answer the following question: "Will you relate to the Court the circumstances under which that agreement was executed?" (State of Case, page 29.) This is the basis of ground of appeal number twenty-four.

The Court refused to permit witness, Crumbie, to testify as follows: "At the time that this contract was executed, was the name of Benjamin R. Fox mentioned?" (State of Case, page 68, line 6.) This is the basis of ground of appeal number twenty-five.

The Court refused to permit witness, Crumbie, to answer the following question: "I am speaking now of February fifteenth, after you had executed the agreement and given it to Mr. Young. Did Mr. Young say anything having reference to Mr. Fox?" (State of Case, page 68, line 31.) This is the basis of ground of appeal number twenty-six.

The Court refused to admit a letter received by him from Mr. Fox which had been previously marked for identification. (State of Case, page 69, line 10.) This letter had been previously identified by witness, Young, you had said it was dictated in his presence. (State of Case, page 3, lines 10 to 15.) The Court's refusal to admit this letter is the basis for ground of appeal number twenty-seven.

The Court refused to permit witness, Fox, to answer the following question: "What was the conversation which you had with Mr. Young?" (State of Case, page 88, line 21.) This is the basis for ground of appeal number twenty-eight.

For the reasons hereinabove stated, it is urged that all of the Court's rulings on the matters grouped under this heading, were erroneous. The defendant should have been permitted to have cleared up the

ambiguity which existed in the contract, both by showing what representation had been made by Young, and by showing what had been the conduct of the parties after the execution of the contract in reference thereto. Having explained the ambiguity, it is submitted, that the ruling of the Court should have ruled that the contract was confined to that person as the prospective purchaser, unless it had been amplified by subsequent agreement or conduct of the parties.

### III.

THE PLAINTIFF, HARRY R. YOUNG, WAS ENTITLED TO RECEIVE THE COMMISSION PROVIDED FOR IN SAID CONTRACT ONLY IF SALE WAS COMPLETED, AS PROVIDED THEREIN, AND SAID COMMISSION WAS TO BE PAID THEREUNDER ONLY AT TIME OF FINAL SETTLEMENT.

Ground of appeal number twenty is the only one that can be classified under this heading, and that is: "Because the Court refused to grant the motion of defendant, James R. Crumbie, for a non-suit, upon the ground that plaintiff's right to recover rested upon the contingency stated in said contract, to wit, that the commission sued for was to be paid only if the sale was completed, as provided therein, and to be paid only at final settlement."

The paragraph wherein the contract contains this provision, reads as follows: "I hereby agree to allow you a commission of three per cent as allowed by the Real Estate Board of Atlantic City; *this commission to be paid only if sale is completed as provided above, and to be paid only at final settlement.*"

It is conceded, that the general rule is that the right of the broker to commissions is complete when he has procured a purchaser, ready, able and willing to conclude a bargain on the terms which the broker was authorized to sell. On the other hand, our Courts have repeatedly held that this general rule may be changed by special agreement between the principal and agent. An early and leading case on this subject is that of *Hinds v. Henry*, 36 N. J. L. 328. Mr. Justice Depue, speaking for the Supreme Court in that case, said:

"The broker may also, by special agreement with his principal, so contract as to make his compensation dependent on a contingency which his efforts cannot control, even though it relate to the acts of his principal. A contract of that character is binding, and no action can be maintained until the contingency has arisen. *Bull v. Price*, 7 Bing. 237; *Alder v. Boyle*, 4 C. B. 635; *Moffat v. Laurie*, 15 C. B. 583; *Tombs v. Alexander*, 101 Mass. 255; *Walker v. Tirrell*, *Ib.* 257."

In *Rauchwanger v. Katzin*, 82 N. J. L. 339, it was said:

"Where the parties have by special agreement fixed their rights and liabilities, they must be bound by the terms of the contract."

In the case of *Leschziner v. Bauman*, 83 N. J. L. 744, the doctrine laid down in *Hinds v. Henry*, was cited with approval, and Mr. Justice Minturn, speaking for the Court there, said:

"The doctrine of that case has provided the rule of conduct and adjudication in this State for nearly forty years."

See also *Stevenson Co. v. Oppenheimer*, 91 N. J. L. 480; *Dickerson v. Walters*, 100 N. J. L. 65; *Rose, Inc., v. Buonincontri*, 3 N. J. Adv. R. 881.

In *Duffy and Thomas, Inc. v. Miller*, 5 N. J. Mic. Rep. 77, the Court said:

"It seems to us that if a broker enters into a contract which makes his commission contingent upon the actual passing of the title to the property, and not upon his finding a purchaser ready, able and willing to take the property at the price satisfactory to the owner, that he must be held to be bound by the terms of the contract."

And, again in *Lehrhoff v. Schwartzky*, 2 N. J. Mic. Rep. 353, it was said:

"Undoubtedly, a vendor may protect himself against paying commissions until an actual sale of the property has been made by the passing of title by using words to that effect, but even then it might be questionable whether he could properly escape liability if he capriciously refused to carry out his bargain."

It is submitted that in the case at bar, the plaintiff and defendant, as principal and agent, made a special agreement by which compensation to the agent was dependent on a contingency, and that contingency was that the commission was to be paid "only if sale is completed as provided above." We are aware that in this State, it has been held that the word "sale" has been construed to mean that the sale was complete if the agent found a purchaser upon satisfactory terms. Such a doctrine was declared in the case of *Freeman v. Van Wagenen*, 90 N. J. L. 360. This point is also declared in *Klipper v. Schlossberg*, 96 N. J. L. 397, and there it was held in defining the word "sale:"

“It becomes manifest, therefore, the word ‘sale’ in all these instances where the parties did not expressly otherwise stipulate, consisted in the bringing together of the vendor and a person able and willing to purchase upon the terms proposed.”

In the contract in question, however, the parties themselves have construed their meaning by saying that the commission was to be paid only “if sale is completed,” and by completion, it is apparent that they meant a final settlement under agreement to buy. This construction of the contract is borne out by the provision that the commission was to be paid only at final settlement, in other words, it is apparent that the parties intended by their contract that there should be no obligation on the part of the principal, Crumbie, to pay the commission to the agent, Young, unless such agreement as should be made for the sale of said property, was completely performed.

The plaintiff’s case, as set forth in the complaint filed by him, is based upon the theory that he had produced a purchaser, ready, willing, and able to purchase, but upon this theory, it is submitted, he was not entitled to succeed, and if the plaintiff was entitled to succeed at all, it could only be upon the theory that a conveyance of the property had been made upon the terms expressed in the contract. Of course, if the completion of the sale or conveyance was defeated through some fault of the defendant, Crumbie, then it may be said that Young was entitled to recover, and this, then, raises another question, namely, was Crumbie justified in refusing to make an agreement and complete a sale with Satinov.

It is submitted, that he, Crumbie, was under no such obligation, for the reason that the negotiations for the sale had not been made by his agent, Young; the prospective purchaser had not been introduced by Young to Crumbie; Crumbie did not know Katzen, to whom Young had delegated his authority; so far as Crumbie knew, Young was then further negotiating with Tomlinson and D’Agostino for the sale of said property; and Crumbie had been so misled by the representations and actions of Young, having to do with the prospective sale of said property, that he, Young, cannot benefit by Crumbie’s failure to recognize Katzen and the purchaser produced by him. Under such circumstances, it cannot be said that Crumbie was at fault, and that he had intentionally defeated the right of Young to collect and recover a commission. If there is any penalty to be imposed for the refusal of Crumbie to deal with Katzen and Satinov, it should be chargeable to Young rather than to Crumbie.

#### IV.

THE PLAINTIFF, HARRY R. YOUNG, DID NOT SO PERFORM HIS PART OF SAID CONTRACT AS TO ENTITLE HIM TO RECOVER OR RECEIVE ANY COMMISSION OR OTHER COMPENSATION FROM DEFENDANT.

Under this heading may be grouped grounds of appeal numbers seventeen, eighteen, nineteen, twenty-two and twenty-three.

Assuming that plaintiff’s right to recover does depend upon his production of a purchaser, ready, able and willing to buy, it is submitted, that in this case he did not fulfill that prerequisite.

The prospective purchaser, Louis Satinov, testified that he went with Katzen to see Crumbie, ready, able and willing to buy on the same terms and conditions as had been represented to him, which had to do with the sale of the property on the Boardwalk between Georgia and Florida Avenues, from the Boardwalk to Pacific Avenue "with riparian rights." (State of Case, page 57, line 16.)

The agreement described the property as follows:

"Property situate on the Boardwalk midway between Georgia and Florida Avenues, Atlantic City, New Jersey, with a frontage of fifty feet on the Boardwalk, and running through all that width to Pacific Avenue."

The contract not only did not mention that riparian rights were included, but, as a matter of fact, by its very language, so described and bounded the property as to exclude riparian rights.

The question which was asked witness, Satinov, on cross-examination, and to which the Court refused to permit the witness to answer, as set forth in ground of appeal number seventeen, was asked during cross-examination concerning what the witness, Satinov, was ready and willing to buy, and to have excluded that testimony as the Court did (see State of Case, page 60) was error.

The grounds of appeal numbers eighteen, nineteen and twenty-two, all are based upon the refusal of the Court to grant defendant's motion for non-suit, on the ground that plaintiff had not shown that he had produced a purchaser, ready and willing to buy. It is submitted, that this motion should have prevailed because, as is hereinbefore stated, said Satinov was not willing to purchase said property unless it carried with it riparian rights, and these were not included within the boundary of land described in said contract.

Ground of appeal number twenty-three is based upon the Court's refusal to permit witness, Satinov, to answer the following question on cross-examination, "On what bank was the certificate of deposit?" It is submitted that the defendant had a right to examine said Satinov, who was the prospective purchaser upon his ability to purchase the property. The question referred to was propounded for the purpose of determining the ability of Satinov to perform the agreement completely, and it is urged that the Court erred in not permitting the answer to the question.

#### V.

#### THE COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR THE DIRECTION OF A VERDICT.

The reason advanced for this direction was that there was no testimony in the case that raised an issue of fact on any material issue.

It is urged that there was one very important and material issue of fact, and that was the question whether defendant, Crumbie, was justified in refusing to deal with and make sale to Satinov. Plaintiff insisted at the trial that defendant's refusal was based upon a capricious motive. In fact, they introduced testimony which was to the effect that he, Crumbie, would not sell the property because he was of the opinion that if he held it another year he would get six hundred thousand dollars for it. (State of Case, page 41, line 33.) They further endeavored to bear out this contention, and introduced in evidence a letter, which defendant, Crumbie, wrote to plaintiff, Young, under date of February nineteenth,

nineteen hundred and twenty-six, and which was marked Exhibit P2. (State of Case, page 27, line 10.) In view of the fact that the printing of this exhibit has been inadvertently omitted from the State of the Case, it is copied in full, as follows:

“Philadelphia, Penna., February 19th, 1926.

Mr. Harry R. Young,  
No. 54 S. South Carolina Avenue,  
Atlantic City, New Jersey.

Dear Mr. Young:—

In view of the sale of the Ludy property, at the Corner of Pacific and Arkansas Avenues, I regret having given you that letter, and will be very much pleased if when the 16th of March arrives there has been no further action taken. The next price will be \$600,000, \$150,000 cash.  
Sincerely,”

The Court's attention is called to the fact that Young at no time testified that Crumbie had refused to deal with him because of the views expressed in the letter above. On the contrary, Young and Crumbie had discussed the prospective sale of said property to Tomlinson and D'Agostino about three weeks after said letter was written. It was Katzen and Satinov, who, in their testimony, injected the story that Crumbie wanted to hold the property for a greater price.

Witness, Louis Satinov, testified to the effect that Crumbie refused to sell, saying that he wanted to hold the property for about a year, at least, and get a hundred thousand dollars more. (State of Case, page 49, line 25.)

The defendant, Crumbie, denied that he had refused to sell the property because he thought it was worth more money. (State of Case, page 78, lines 8 to 10, inclusive.) He further testified that he did

not refuse to sell the property because of the fact that the Ludy property had been sold for a figure that he mentioned in his letter, Exhibit P2, and explained that he was speaking to Mr. Young in that letter of the fact that he was getting a cheap property, and that his, Crumbie's property was cheap in comparison with the Ludy property. (State of Case, page 77, line 35, to page 78, line 7, inclusive.) As has been hereinbefore pointed out, Crumbie further testified that he refused to make sale to Satinov because his agent, Young, had had no part in the negotiations therefor; he did not know either Katzen or Satinov; he reserved the right to deal with or through Young personally; he had a deal then pending through Young which was still open; he did not want to be a party to putting anything over on Young; and that Young had no right to delegate the authority given to him.

All of this testimony submitted by both parties to the suit, therefore, raised a very important and material issue of fact. Assuming, for the sake of this argument only, that Young would be entitled to recover commissions for production of Satinov as purchaser by Katzen, then if it had been submitted to the jury, and the jury had determined that Crumbie had refused to sell because he thought he could get a greater price at a later time, the jury would have been justified in returning its verdict in favor of the plaintiff. If, on the other hand, the jury had determined that Crumbie had not refused for that reason but that he had been honest in his refusal to deal except with or through Young, and that Young had been responsible for putting him in that frame of mind, then the jury would have been justified in returning its verdict in favor of the defendant.

## VI.

The fifth and sixth grounds of appeal are sufficient to warrant a reversal in this case, because they are based upon the refusal of the Court to permit the witness, Young, to answer certain questions put to him on cross-examination, which, if answered, would tend to support defendant's contention that Young had presented to Crumbie a prospective arrangement which was open at the time of the Katzen and Satinov interview, and that he, Young, had, therefore, put defendant, Crumbie, in a frame of mind which prompted him to refuse to make sale to Satinov. The questions referred to and which the witness was not permitted to answer, are found on page 36 of the State of the Case, at lines 9 to 34, respectively.

It was also error for the Court to refuse to permit the answers to these questions, for the reason that they may have elicited answers which would have contradicted the plaintiff's contention that defendant was not in good faith when he refused to make the sale to Satinov, and all of this was, therefore, harmful error.

## VII.

IT WAS ERROR FOR THE COURT TO REFUSE TO GRANT DEFENDANT'S MOTION FOR A DIRECTION OF A VERDICT.

The reasons advanced on this motion were as follows:

1. Because plaintiff, Harry R. Young, had not proven that he had produced a purchaser, ready, able and willing to buy the property in question on

the terms of the contract, that had been introduced in evidence.

2. Because plaintiff, Young, had no authority to delegate his contract of agency to another.

3. That the contract in question was made for the benefit of one prospective purchaser only, and that it could not inure to the benefit of any other. (See State of Case, page 92, line 32, to page 93, line 8, inclusive.)

All of these points have been previously argued in this brief, and it will serve no better purpose to repeat them here. It is no less insistently urged, however, that to have refused the motion on these grounds was error.

The Court disposed of both plaintiff's and defendant's motions for direction by refusing defendant's motion and granting plaintiff's motion, as will appear by reference to State of Case, page 93, line 10, and the Court gave as his reasons for so doing the following:

1. Because there was no controverted fact that went to the merits of the controversy.

2. Because there was nothing in the contract that designated Mr. Fox or any other individual as the person who could purchase the property, but, on the contrary, Young had a right to procure any purchaser who would satisfy the conditions thereof.

3. Because Mr. Young had a right under the contract to present a purchaser procured from the efforts of his office; that is, through the efforts of his partner.

4. Because Mr. Satinov was presented as the prospective purchaser within the period limited by the authorization to sell, and he, Mr. Satinov, was able, ready and willing to purchase.

5. Because the refusal of defendant, Crumbie, to convey the property to Satinov was an arbitrary act on his part and for that reason the plaintiff's right to commissions could not be defeated.

All of these reasons advanced by the Court have been sufficiently answered heretofore in this brief, and it should not be necessary even to again insist that the conclusions upon which the Court granted plaintiff's motion were not justified, either in fact or in law.

It is, therefore, respectfully and earnestly submitted, that for the reasons stated herein, the judgment of the Supreme Court reversing the judgment of the trial Court should not be disturbed.

LOUIS A. REPETTO,

*Attorney for Defendant-Respondent.*

WILLIAM ELMER BROWN, JR.,

*Of Counsel.*