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New Jersey Court of Errors and Appeals.

JOSEPH J. READ, Plaintiff In Error.	In Error To
vs.	Atlantic County
MARY A. RIDDLE, Defendant in error.	Circuit Court.

This is in action, in case, brought by Mary A. Riddle to recover from Joseph J. Read five hundred dollars paid him as the agent of Augusta M. Maison, on account of the purchase of a tract of land.

On or about the thirtieth day of March, 1883, Mrs. Maison representing herself to be the owner of eight lots of land in Atlantic City, N. J., entered into a written agreement with Mrs. Riddle to well and sufficiently convey the same to her on or before the 27th day of April, clear of encumbrances for $20,000.00. At the time of the making of this agreement, Mrs. Riddle paid Mr. Read five hundred dollars upon the contingency that a good title should be made to the land which the contract dealt with. He promised to repay the money if the title was not perfect. Mrs. Riddle and Mrs. Maison then had Jos. Thompson, Esq., examine the title. He informed them and Mr. Read of the result of his investigation, namely: That the fee was in the heirs of Peter B. Maison, and that Mrs. Maison had simply

her dower interest in the land. About six months afterwards Mrs. Maison and her children together with their husbands conveyed their three quarter interest to Mrs. Riddle for $16,000.00. The parties to this deed refused to recognize Mr. Read as their agent, and dealt through their attorney S. H. Grey, Esq. They further refused to recognize the $500.00 in Mr. Read's hands as part payment of the amount they were to receive. One of the heirs of Peter B. Maison (by a former wife) had sold his one quarter interest to John R. Wilson. Mrs. Riddle perfected her title by purchasing this interest for $3,250.00. Mrs. Riddle demanded of Read the five hundred dollars and he refused to pay it until Mrs. Maison should have paid him a commission. This suit was then brought to recover the five hundred dollars paid Read as aforesaid.

I. The first ground of appeal as stated in the assignment of errors is " that the Judge who tried said cause refused at the close of the defendant in error's case to non-suit the said defendant.

The undisputed testimony is that when Mrs. Riddle paid Read the five hundred dollars he assured her that she should have a good title, and that if the title was not perfect he would pay back to her the five hundred dollars. (See printed book, page 8, lines 12-28. Also page 14, lines 8-13.) The title was not perfect. Mrs. Maison had only a dower interest in the land. The title was in the heirs of Peter B. Maison. The heirs refused to recognize Mr. Read as their agent in the matter, as did also Mrs. Maison. (See Mrs. Riddle's testimony, page 9, lines 20-28. Also page 15, lines 4-6.) Mr. Read was, therefore, unable to secure a good title. Mrs. Riddle, months afterwards, purchased the land through the agency of S. H. Gray, Esq., and paid the entire consideration in this second contract of sale. (Printed book, page 17, line 20.) Mrs. Riddle then demanded of Mr. Read the return of the five hundred dollars, which was refused. The condition upon which Read was to return the $500.00, according to his promise, having occurred, it was his duty to repay the same, and Mrs. Riddle properly sustained an action against him.

II. The second reason assigned for appeal, is "that at the close of said case the said judge charged the jury to return a verdict for the defendant in error when he should have allowed the case to go to the jury."

The facts in this case are few and undisputed. The defence is this : Read witholds the $500.00 because as he alleges, Mrs. Maison owes him a commission for the sale of the land and for other services in relation to the land covering a period of several years.

The indebtedness of Mrs. Maison to Read cannot be considered in an action brought by Mrs. Riddle against Read.

The question is : Has Read a right to retain this money as against Mrs. Riddle. Not whether he has an absolute title as against *any* person, but whether his right thereto is equal to Mrs. Riddles right.

See 4th, Waits Action and Defences, 511.

~~Irving vs. Hamlin, 10 S. & R. (Penn.) 219.~~

Eagle Bank vs. Smith, 5 Conn., 71.

"The main principles by which to test the matter is whether in equity and good conscience, in view of the special facts in a case, the defendant is entitled to retain the money *as against the plaintiff.*"

4th, Waits Actions & D. Page 511, Sec., 1.

Lockwood vs. Kelsea, 41 N. H., 185.

Had Read effected this sale he would not be entitled to a commission because of the absence of authority in writing signed by the owners of the land stating the rate of commission on the dollar.

Revised statutes. Page 446, Sec., 10.,

If the alleged indebtedness of Mrs. Maison to Read is not properly the subject matter of a defence to an action brought against Read by Mrs. Riddle, then there was no question of fact for the jury to pass upon, and the court did not err in directing a verdict for the plaintiff below.

III. The third ground assigned for error is : "That the judgment appears to have been giving for the defendant in error

against the plaintiff in error; whereas, by the law of the land, said judgment ought to have been given for the said plaintiff in error against the said defendant in error.

Where money is deposited into the hands of a solicitor, agent or any third party, he is responsible for the return of it to the purchaser if the contract is not completed.

An action for money had and received will lie in favor of any person entitled thereto, for money in the hands of a bailee.

White vs. Franklin Bank, 22 Pick., 181.

Atlas Bank vs. Nahaut Bank, 3 Metc., 581.

Wilkinson vs. Godefroy, 9 Ad. & El., 536.

This action lies in favor of any person against another when the other has received money either from the plaintiff or a third person, under such circumstances, that in equity and good conscience he ought not to retain the same, and which, ex aequa et bono, belongs to the plaintiff.

Stewart vs. Sears, 119 Mass., 143.

Allen vs. Stenger, 74 Ill., 119.

Briggs vs. Boyd, 56 N. Y., 289.

It is not necessary that any privity of contract should be shown. It existed, however, between these parties.

Calais vs. Whidden, 64 Me., 249.

Maison vs, Waite, 17 Mass., 563.

4th, Waits A. & D., title, *Money Received.*

An agreement to sell land, not specifying the estate or interest of the vendor, is in contemplation of law an agreement to sell an estate in fee.

2d. Addison on Contracts, Page 24, Sec. 514.

The five hundred dollars which this suit is brought to recover was deposited with Read upon his promise to repay the same to Mrs. Riddle, if upon investigation it should appear that the title to the property was not perfect in Mrs. Maison. It was not then, nor has it since been applied as part payment of the $20,000.00. The happening of the event upon which it was to be so applied never occurred. On the contrary, the condition upon which it was to be returned to Mrs. Riddle did

occur, and he should have paid it back to Mrs. Riddle.

Printed Book, Page 14, Line 10 ; Page 8, 20–30.

Printed Book, Page 9, Line 1.

New Jersey Court of Errors and Appeals.

Joseph J. Read, Plaintiff in Error, vs. Mary A. Riddle, Defendant.	In Error to Atlantic County Circuit Court.

INDEX REFERENCE TO PLAINTIFF'S TESTIMONY.

THE CASE.

This is an action brought by Mary A. Riddle, plaintiff below, upon a written contract for sale of lands, to recover $500, part of the consideration paid to Joseph J. Read, agent of the vendor. The action is brought against Read, the agent. Plaintiff offered in evidence the written agreement of sale and her own testimony. A motion for non-suit was refused, and at the close of defendant's testimony the Court ordered a verdict for plaintiff.

We need consider only plaintiff's case, which is this: That she entered into a contract for the purchase of the lands in question with Mrs. Maison, through Joseph J. Read, agent; that the price agreed upon was $20,000, $500 of which was to be paid upon signing agreement; that Mr. Read promised her that "if the land had not a clear title" this $500 should be returned to her; that the agreement was reduced to writing, signed by plaintiff as purchaser, and by Mrs. Maison as vendor; that the $500 part consideration mentioned in agreement was paid to Read, agent of vendor; that in ten days or so after this, plaintiff, without any communication with Read, employed S. H. Grey, Esq., as counsel to complete the title for her; that she only paid vendor $19,250 of the purchase money, including Mrs. Maison's dower (The deeds she produces shows a payment of $19,500); that she then demanded of Read the $500 paid him on signing the contract of sale; that his answer was that he held it subject to settlement with his principal. This suit was then brought.

The Court below held that, as a matter of law, plaintiff must have judgment against defendant. It is this ruling we have to consider.

Plaintiff having made the written agreement part of her case, as the best proof of the contract under which

the $500 was paid, and as the basis of her rights to recover, we learn from it who were the **parties** to the contract, upon what the money was paid and its legal status. Briefly stated, the **parties** were **plaintiff** and a **Mrs. Maison**; the subject was the purchase of lands for $20,000, and the $500 was the first payment to vendors on account. Read was **agent** of the vendors, and the $500 was paid to Read for his principal.

1. Under this state of facts, a fatal bar to recovery by plaintiff against Read is, that there is an entire lack of **privity** between them.

Colvin vs. Holdbrook, 2 Courst., 126.
Stephens vs. Babcock, 3 B. & Ad., 354.
Baron vs. Husband, 4 B. & Ad., 611.
Bamford vs. Shuttleworth, 11 Ad. & El., 926.
Elliott vs. Swartwent, 10 Peters, 137.
Stephens vs. Bacon, 2 Haldt., 1.
Chitty on Contracts.
Wharton Com. on Agency, § 517.

It can not be claimed that this was money paid through mistake; plaintiff swears that afterwards she paid **to the vendors** $19,250 for same land. If any part of this is a repayment of the $500 just paid vendors through Read, the mistake was in making this second payment of it. If the $19,250 00 does not include the $500 thus paid, then it has been treated as part of the $20,000 and is properly in vendor's hands, or in the hands of the agent who acted for them in making sale. Read was recognized by plaintiff as agent who made the sale; the money was paid to him as such. As to the purchaser it was part payment to the vendor. If now plaintiff has subsequent dealings with vendors (agent's principal) and ignors this part payment, it confers no right of action against agent, who continues to hold it as he received it, viz: subject to an accounting with his principal alone.

No subsequent change of agents could alter the status of money already received by an agent; nor could it defeat his right to payment for services rendered, or his lien on the funds in his hands for such services.

Sheppard ats. Hedden, 5 Dutch., 334.
Vreeland vs. Vetterlien, 4 Vroom, 247.
Derrickson vs. Quinby, 14 Vroom, 373.
Cooley vs. Barcroft, 14 Vroom, 363.

2. Another legal principle would suffer violence if the plaintiff can successfully sue an **agent** who has received money for a **disclosed principle**, viz: that as to such principal this judgment would be **res inter alios arcta.**

An agent having received $500 for vendor, part payment on a written contract signed by his principal, is liable to be sued for it by his principal. In such a suit, it would be no answer that one Mary A. Riddle had recovered a judgment against him for that same amount.

Broom's Legal Max., "res inter, &c.," cases cited.
Stephens vs. Bacon, 2 Halst., 1.
Wharton Com. on Agency, § 517.

In the language of Dr. Wharton: "Wherever an agent is estopped from disputing the principal's title to the fund, then the agent cannot be compelled to pay it back to the third party."

Wharton Com. on Agency, § 517.

The law being as stated, it is evident that no action is maintainable against Read as **agent** for **vendor under the contract of sale.** If plaintiff is to recover against him at all it must be from him in some other character. But can plaintiff deal with him and recognize him in one character, that of **agent** for **vendor,** and then insist that he shall stand suit in a different capacity? That was what was done below.

The Court based its disposition of the case entirely upon Mr. Read's **promise** to return the money ($500) " if a certain thing was not done," (see Charge of Court, page 28, line 9), thus making of him an original contractor. The entire case thus turns on the legal effect of this alleged promise of Read. The testimony upon this point is on page 8. The written contract is on page 32, 33. From this latter it appears that the $500 was a payment on account made to vendor upon the signing of the written agreement. It was part of the **consideration** moving **vendor** to the contract to **sell.** It was paid to vendor through Read, agent, but we look in vain for any consideration moving to Read.

The $500 having been the moving consideration to the makers of the contract of sale had exhausted itself as a consideration. It could not be also a legal consideration moving some other person to do some other thing. Nay more, it could not as it merely passed through agent, in his representative character, have created a contractor out of him, contracting independently of his principal, upon the same consideration which he was receiving to transmit purely in his fiduciary capacity.

The **test** to be applied is this: **Could Read** maintain an action in his own name against **plaintiff** for any breach of her contract? It is obvious that he could not. Where an **agent** has **disclosed his principal** and the transaction stands in the **names of the principals,** an **agent** has **no** right of action. The disclosure of the principals destroys all semblance of privity as to the agent. Thenceforward the principals alone can sue and be sued.

But it is not necessary to dwell upon these defects in the legal requirements of an actionable promise. The rule of law that a written instrument shall not be varied by prior or contemporaneous parole promises must control this case.

Before referring finally to the absence of any independent contract on Read's part, it would be interesting to know, if such a contract as is claimed by plaintiff had existed, how that would help plaintiff's case, in view of the facts presented by herself.

The contract claimed is this, that plaintiff paid $500 on account of the property described in the contract of sale, and that if "that land had not a good title" her $500 was to be refunded to her. This contract must receive the reasonable construction that the $500 is to be returned if the sale fell through, i. e, if plaintiff did not take the land because of some defect in title; but obviously, if Read is to be held on this sort of a contract, plaintiff must first have afforded him an opportunity of complying with his alleged undertaking; he must be informed of objections to the title, &c.

But plaintiff, by her own account, never afforded him the slightest opportunity but at once, within ten days she thinks, and, without a word of notice to Read, employed counsel who did what Read was to have been permitted to do. That the title was inherently unacceptable to her is not pretended; plaintiff has accepted it and paid the purchase money over Read's head. But from her testimony it appears that she left unpaid about $750 of the contract price. So seldom do vendors throw off so large a sum after the price is agreed to, and a purchaser bound by written contract, that this $750 withheld by plaintiff looks wonderfully like a counsel fee, and the $500 already paid and considered as part payment to vendors.

This becomes more certain as to the $500, by the fact that the consideration of the two deeds from the Maisons to plaintiff called for exactly $19,500, leaving just $500.

It is the vendors who have the right of suit against Read for the $500 received for them. Such an action would be subject to Read's offset for services—services which cover a period of several years and resulted in a

saving of $8,000 to vendors. Such being the meritorious offset, subject to the lien for which Read holds this part of the purchase money, it is clear that he can be sued for the fund only in an action having as parties the principals to whom he owes an accounting. As to all others his lien remains upon the entire fund.

To give plaintiff's case the most favorable aspect it only amounts to this, that Read not representing all the vendors, the $500 paid to him was payment on account to those whom he did represent. If this be true then it was certainly error for plaintiff to pay this sum over a second time in settling with those whose agent she had once acknowledged him to be. Read as agent has a lien on this fund, and no one can sue him for the fund excepting the person or persons for whom he received it, and against whom he has an offset. This lien is irrespective of whether contract was completed through Read's instrumentality or otherwise.

Chitty on Contracts, 547.
Wilkinson vs. Martin, 8 Car. & P., 584.
Murray v. Carrie, 7 Car. & P., 4.
Sheppard ads. Hedden, 5 Dutch., 334.
Vreeland vs. Vetterlien, 4 Vroom., 247.
Derrickson vs. Quinby, 14 Vroom., 373.
Cooley vs. Barcroft, 14 Vroom, 363.

It is proper here to point out an error of fact in the Court's charge, viz: page 27, line 6. This statement is entirely unwarranted by the testimony. On the contrary the question addressed to this point, page 26, line 1, was ruled out by the Court and remained unanswered.

So that if the written contract could be varied so as to permit the operation of the parole promise relied upon by plaintiff, it must fail to support plaintiff's recovery. But under the rule of law plaintiff having adduced the written contract cannot be permitted to so vary it. The

evidence is, that plaintiff saw Mrs. Maison, agreed upon the terms and was referred to Mr. Read; that the promise relied upon by the Court was then made; that the agreement was then finally closed; that it was reduced to writing and signed by plaintiff and by Mrs. Maison. In this agreement the $500 is specifically mentioned and its object and purposes defined.

There is no ambiguity. The agreement is fatally silent upon the point relied upon by the Court. The $500 was paid pursuant to the written agreement which thus provided for its payment and defined its object. This Court cannot engraft into this agreement any promises or conditions in regard to this $500 not made by the parties themselves, and embodied in their contract of sale. Yet only by so doing can the position of the Court below be sustained.

GARRISON & FRENCH,
Of Counsel with plaintiff in error.

New Jersey Court of Errors and Appeals.

JOSEPH J. READ, Plaintiff in Error, vs. MARY A. RIDDLE, Defendant in Error.	IN ERROR TO ATLANTIC COUNTY CIRCUIT COURT.

WRIT OF ERROR.

NEW JERSEY, ss. The State of New Jersey to Alfred Reed, Esquire, Judge of our Circuit [L. S.] Court, at May's Landing, in and for the county of Atlantic, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, Greeting:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain cause which was in our said Circuit Court before you, between Mary A. Riddle, plaintiff, and Joseph J. Read, defendant, as is said, manifest error hath intervened, to the great damage of the said Joseph J. Read, as is said; we being willing that the said errors, if any there be, should in due

manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if the judgment be thereon given, then without delay you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things concerning the same, to our Court of Errors and Appeals in the last resort in all causes as heretofore, on the tenth day of October next, at Trenton, together with this our writ, that the record and proceedings aforesaid being inspected, we may further cause to be done therein what of right and according to law ought to be done.

Witness the Honorable Theodore Runyon, our Chancellor and President Judge of our said Court of Errors and Appeals in the last resort in all causes as heretofore, at Trenton, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-five.

HENRY C. KELSEY,
Clerk.

GARRISON & FRENCH,
Attys.

The answer of Alfred Reed, Judge of the Circuit Court of the county of Atlantic, above named:

The records and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

ALFRED REED,
Judge.

JUDGMENT RECORD.

Atlantic County Circuit Court of the twenty-second day of January, in the year of our Lord one thousand eight hundred and eighty-five.

ATLANTIC COUNTY, ss.

Joseph J. Read, the defendant in this suit, was summoned to answer Mary A. Riddle, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff, by Thompson & Endicott, her attorneys, complains: For that whereas, the defendant heretofore, to wit: on the first day of December, in the year of our Lord one thousand eight hundred and eighty-four, at Camden, to wit: at Mays Landing, in the county of Atlantic, was indebted to the plaintiff in the sum of one thousand dollars, for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendant, at his request; and in one thousand dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the defendant, at his request; and in one thousand dollars for so much money by the plaintiff before that time lent and advanced to the defendant, at his request; and in one thousand dollars for so much money by the plaintiff before that time paid for the use of the defendant, at his request; and in one thousand dollars for so much money by the defendant before that time had and received for the use of the plaintiff; and in one thousand dollars for interest upon, and for the forbearance by the plaintiff to the defendant, at his request, of divers large sums of money before that time due and owing from the defendant to the plaintiff; and in one thousand dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them; and being so indebted, the defendant, in consideration thereof, then and there

promised the plaintiff to pay her the said several sums of money on request. Yet the defendant has disregarded his said several promises, and has not paid the said several sums of money, nor any of them, nor any part thereof, although often requested so to do, but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff one thousand dollars, and therefore she brings her suit, &c.

THOMPSON & ENDICOTT,
Attorneys for Plaintiff.

Notice is hereby given that this action is brought to recover the sum of five hundred dollars, being the amount paid by the said plaintiff to the said defendant as the agent of one Mary Maison, and for the plaintiff's use, on a certain agreement made by the said plaintiff with the said Augusta M. Maison on account of the purchase of a certain tract of land, which sale was never completed because the said Augusta M. Maison was not the owner of said land, as the said plaintiff was informed by the said defendant and believed to be true at the time said money was paid.

Judgment will be claimed for five hundred dollars, with interest from April 26, 1883, until judgment final.

THOMPSON & ENDICOTT,
Attys. of Pltff.

And the said defendant, by Garrison & French, his attorneys, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country, &c.

GARRISON & FRENCH,
Attorneys for Defendant.

STATE OF NEW JERSEY, CAMDEN COUNTY, ss.

JOSEPH J. READ being duly sworn, on his oath says: That he is the defendant named in the foregoing plea; that the same is not intended for the purpose of delay, and that he verily believes that he hath a just and legal defence to the said action on the merits of the case.

JOSEPH J. READ.

Sworn and subscribed before me this twenty-sixth day of August, A. D. 1885.

THOMAS E. FRENCH,
M. C. C.

Therefore, on motion of Thompson & Endicott, attorneys for the plaintiff, it is ordered, that the trial of the above cause do now come on, and that the Sheriff return the venire facias, to him directed and delivered in this cause; whereupon the Sheriff did make return of a panel of a jury who were sworn to try the cause. The evidence being closed and the counsel of the respective parties having summed up the case, and by instruction from the Court, and by their foreman, say the said defendant, Joseph J. Read, did undertake and promise in manner and form as the said plaintiff hath above thereof complained, and they do assess the damages, which the said plaintiff hath sustained by reason of the non-performance of the said promises and undertakings of the said defendant, in the said plaintiff's declaration mentioned, at five hundred and twenty-two dollars and fifty cents over and above her costs to be taxed. Therefore it is considered that the said Mary A. Riddle do recover against the said Joseph J. Read the sum of five hundred and twenty-two dollars and fifty cents damages in form aforesaid assessed and also the further sum of for her costs and charges by her about her suit in this behalf

expended and by the Court now here adjudged of increase to the said plaintiff, and with her assent, which said damages, costs and charges in the whole amount to the sum of and the defendant in mercy, &c.

Judgment signed and ordered to be entered according to law, this eleventh day of September, A. D. eighteen hundred and eighty-five, (1885.)

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

I, L. A. DOWN, Clerk of the Circuit Court of the county aforesaid, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same is found of record in my office, at May's Landing, in Book No. 5 of Judgments.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court and county, at May's Landing, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and eighty-five (1885).

[L. S.]

L. A. DOWN,
Clerk.

BILL OF EXCEPTIONS.

ATLANTIC COUNTY CIRCUIT COURT.

MARY A. RIDDLE,
vs.
JOSEPH J. READ,
} IN ASSUMPSIT.

Be it remembered, that on the eleventh day of September, eighteen hundred and eighty-five, at a Circuit Court holden at May's Landing, in and for the county of At-

lantic, before his Honor Alfred Reed, one of the Justices of the Supreme Court of judicature of the State of New Jersey, and Judge of said Circuit Court, the issue joined in the above stated cause between the said parties (pro ut the pleadings) came on to be tried by a jury for that purpose duly empaneled, and whereupon the attorney of the plaintiff, to maintain the issue on his part, called and examined the plaintiff as a witness in her own behalf, as follows, viz:

MARY A. RIDDLE, plaintiff, affirmed and examined.

By Mr. Endicott:

Ques. Where do you reside?

Ans. At Atlantic City, N. J.

Ques. Do you know Augusta M. Maison, of Philadelphia?

Ans. I do.

Ques. Did you enter into a contract with her for the purchase of some land at Atlantic City?

Ans. Yes, sir; I did.

Ques. What was to be the price of that tract?

Ans. $20,000.

Ques. What was to be the amount of the first payment?

Ans. $6,000.

Ques. Are you sure the first payment was to be $6,000?

Ans. $6,000, but we gave $500 to secure it—

Ques. Through whom did you make this purchase? Through Mrs. Maison or her agent?

Ans. Mrs. Maison referred me to her agent, Mr. Joseph J. Read.

Ques. Was the contract made with him as agent of Mrs. Maison?

Ans. I called to see Mr. Read.

Ques. Relate the circumstances in your own way?

Ans. And purchased the tract of him; took a check along to give to him, but told him I would rather he would come to my house in Atlantic City.

Ques. Did you make him a payment of $500 on account?

Ans. Not that day.

Ques. Did you afterwards?

Ans. Mr. Read came to my house at Atlantic City and I made him a payment of $500, and before doing so asked him if he had a clear title.

Ques. What was his reply?

Ans. That if it had not a clear title if I paid him the money he would return it to me?

Ques. Did you afterwards pay it?

Ans. I paid the money. Before paying the money I asked for the deed. I said, "Where is the deed?" He said, "Well, there is no deed; all I have is this,"—a small map he had on paper. The deed was burned on Front above Race, in Mr. Theodore Wilson's basket factory.

Ques. That was his reply to your inquiry for the deed?

Ans. Yes, sir. Then I had quite a good deal of talk about that having a clear title. I was a little suspicious on account of there being no deed, and made him promise me that the money should be returned. I had a distinct understanding that if the title was not clear that he would return me the $500.

Ques. Did Mrs. Maison afterwards convey the land to you?

Ans. Yes, sir.

Ques. Did Mrs. Maison?

Ans. Yes, sir. Not Mrs. Maison; she wasn't the owner.

Ques. Why did she not?

Ans. Because it didn't belong to her. It belonged to her husband's heirs.

Ques. Did she so state to you?

Ans. No, not to me—

(Objected to as incompetent.)

The witness: I never saw Mrs. Maison afterwards.

Ques. Did Mr. Read ever say to you why he could not effect this sale?

Ans. I called there a number of times to get back my money, and his excuse always was, he always said he would give it back to me; he would give me back my money "when Mrs. Maison pays me my commission."

Ques. That was the reason assigned for not giving the five hundred dollars; that Mrs. Maison was indebted to him?

Ans. Each time; yes, sir.

Ques. Did you afterwards purchase the property?

Ans. I afterwards purchased the property of Peter Maison's heirs.

Ques. Through the agency of whom?

Ans. S. H. Grey, Camden.

Ques. Did the heirs refuse to acknowledge Mr. Read as agent in the matter?

Ans. Yes, sir.

Ques. Did Mrs. Maison afterwards refuse to acknowledge Mr. Read as her agent?

Ques. Yes; through her son-in-law.

Cross-examined.

By Mr. Garrison:

Ques. When was it you first met Mr. Read in regard to this transaction?

Ans. It was in the spring of 1883 when I first saw him. I think it was in March.

Ques. Did you go to his office and see him about it?

Ans. I went to his office.

Ques. In March, 1883?

Ans. Yes, sir.

Ques. What was the date at which you made him this payment of $500 on account?

Ans. As near as I can recollect it was the latter part of March or April, I have really forgotten which.

Ques. Where were you living in the meanwhile?

Ans. Atlantic City.

Ques. What was the amount you agreed to give for the property?

Ans. $20,000.

Ques. In the time which intervened between the first time you met him in March and the time you paid him the check, did you consult counsel in regard to this property—Mr. Thompson, for instance?

Ans. I had not.

Ques. Is it your recollection that you consulted him after you had made the bargain?

Ans. I never consulted Mr. Thompson until after I had purchased the property.

Ques. Until after you had paid the $500?

Ans. Yes, sir. Then I gave it into his hands to make searches for me after I had paid the $500. That was the understanding. I am in the habit of buying that way or giving so much and having the search made afterwards.

Ques. Who were the heirs of Peter Maison, of whom you speak; give the names?

Ans. I never saw but one, Mr. Churchman, Second below Market.

Ques. Did you ever see any of the others?

Ans. Yes, sir; I have seen them; I saw his wife.

Ques. His wife was the heir, I suppose?

Ans. Yes, sir.

Ques. They spoke to you in regard to this property when you bought it?

Ans. I never saw any of them except Mrs. Maison; she represented herself as being the owner without her children—said she owned it entirely herself.

Ques. Did you see Mr. Churchman in regard to this matter before you purchased it?

Ans. Before this time of purchasing it, before I purchased it of Mr. Read?

Ques. Yes?

Ans. Never.

Ques. You never saw Mr. Churchman at all?

Ans. Never; never saw anybody but Mrs. Maison; it was not necessary; she said she owned it herself.

Ques. When did you first find out that Mrs. Maison was not the sole owner of the property?

Ans. Through my counsel.

Ques. When was it you first found out?

Ans. About two weeks after I had given this matter into his hands, ten days or two weeks.

Ques. That is, after you paid the $500 to Mr. Read?

Ans. Yes, sir.

Ques. You found out then that Mrs. Maison had the dower right but the heirs of Peter Maison the title?

Ans. (No answer.)

Ques. Did you go on and buy the property of them after all?

Ans. Yes, sir.

Ques. Who is the owner of it now?

Ans. It belongs to the Chelsea Beach Company.

Ques. You were acting as their agent to buy it?

Ans. No, sir.

Ques. Of whom did you take title eventually; who made your deed?

Ans. I purchased the dower.
Ques. Of whom did you purchase the dower?
Ans. Of Mr. Grey.
Ques. Mr. Grey could not be a widow?
Ans. I purchased it through him.
Ques. Who was the widow?
Ans. Mrs. Augusta Maison.
Ques. The same person you agreed to pay in the first place?
Ans. Yes, sir.
Ques. How much did you give her for her dower?
Ans. I don't know.
Ques. How old is Mrs. Maison?
Ans. About seventy I presume.
Ques. Who were the other heirs?
Ans. Her children.
Qus. How many did she have?
Ans. She had two daughters.
Ques. Did you get the property in one deed or by different papers?
Ans. I bought it in two different parts.
Ques. Mrs. Maison's was one?
Ans. Yes, sir; and her children's.
Ques. Did they sign the same paper with her?
Ans. Yes, sir.
Ques. Who were those children?
Ans. Mr. and Mrs. Churchman and Mr. and Mrs. Koons, as far as I can remember.
Ques. You got the other paper of the other heir?
Ans. There was one-fourth.
Ques. There was another heir?
Ans. Yes, sir.
Ques. How much did you give for the whole property?
Ans. I gave $19,250.
Ques. You made $250 by not going on with your ne-

gotiation through Mr. Read? You had agreed to give him $250 more than that?

Ans. No, sir.

Ques. You had not agreed to give $20,000?

Ans. It cost more than the difference.

Ques. What amount of money did you agree to pay for this property at the time you negotiated with Mr. Read?

Ans. $20,000.

Ques. What amount did you pay for it? How much did you pay to the heirs?

Ans. $19,250. One of the heirs sold out to me. I paid $16,000 for three-quarters.

Ques. Had you ever made any offers to Mrs. Maison personally for this property before she directed you to Mr. Read?

Ans. Yes, sir.

Ques. What occurred between you and Mrs. Maison at the time? What did you say to her in regard to this property? What were you willing to give?

Ans. She said she wouldn't sell it for less than $20,000, which, after visiting her two or three times, I agreed to give.

Ques. I have your testimony to the effect that Mr. Read told you at the time you would have a clear title to this property when you paid the $20,000?

Ans. No; I didn't say that.

Ques. When were you to get a clear title?

Ans. He didn't say anything about the price; just took my five hundred dollars.

Ques. Under your agreement with him when were you to get a good title?

Ans. Right away.

Ques. Before you paid for it?

Ans. As soon as we had our money.

Ques. On getting that how much money were you to have to get title?

Ans. $6,000.

Ques. How was the balance to be secured?

Ans. By mortgage.

Ques. When you paid $6,000 and gave the mortgage it was to be a perfect title?

Ans. A perfect title. This $500 was received as a retainer to secure the property at the time, to be returned when our attorney made searches. If the title wasn't clear that money was to be returned to me.

Ques. Mr. Read said to you that he wouldn't keep your money if you didn't get title to the property?

Ans. Yes, sir.

Ques. Did you have to go back to Mr. Read and tell him you wanted him to finish this thing he had undertaken?

Ans. No; I didn't think he had anything to do with it.

Ques. You never went back to him until after Mr. Grey got the title?

Ans. Yes; I went back for my money a number of times.

Ques. You never gave Mr. Read a chance to finish the business?

Ans. I had no right to. The heirs wrote to me——

Ques. After Mr. Read told you he would get you a perfect title, did you ever give him a chance to get you that title? I understand you to say you did not. Is that correct?

Ans. Certainly not. I didn't recognize Mr. Read in the matter at all.

Ques. When you came to get the dower from Mrs. Maison did you go to Mr. Read and ask him to go on with the business he had undertaken and get the dower for you?

Ans. Certainly not.

Ques. When you settled with Mrs. Maison did you keep out of her part the five hundred dollars on account of what you had paid her through her agent?

Ans. I had a conversation with Mr. Read. He told me the matter had been taken out of his hands. That was before I went to Mr. Grey.

Ques. My question is as to the amount of money. In making the settlement with Mrs. Maison did you say, "I have already paid you $500 on account"?

Ans. No, sir. I have never seen Mrs. Maison since, I think. Of course we asked for our $500.

Ques. Was it allowed to you in that sale?

Ans. I shall have to think about that.

Ques. At the time you paid the $19,250 was any demand made in that settlement with the Maisons and the heirs of Peter Maison of the $500 you had paid to Mr. Read?

Ans. Never any account taken, nor never allowed in the $500.

Ques. Did you make a demand?

Ans. I have always done so.

Ques. You have always understood they should credit you with $500?

Ans. Yes, always.

Ques. You said you had paid $500?

Ans. Yes, sir.

Ques. On this matter through your agent?

Ans. Yes, sir.

Ques. And through the transaction——

Ans. Through the transaction I have always tried to get them to recognize that $500.

Ques. Have you paid them all they claimed?

Ans. No, I didn't, at first.

Ques. Did you hold back any amount of money for this $500?

Ans. Yes, sir.

Ques. How long did you do this?

Ans. Mr. Read knew I was——

Ques. Did you hold back the money, the $500? Did you refuse to pay it over twice?

Ans. I refused a great many times, but they wouldn't listen to it.

Ques. How was it in regard to that?

Ans. I haven't my $500. I haven't been paid.

Ques. Have you held back, and do you still hold back, $500 from the purchase money of this property?

Ans. I do not.

Ques. What amount of money did you hold back?

Ans. None. There is a mortgage on record. Nothing held back.

Ques. In making your payment to the Maisons you did not take into account at all this $500 you had first paid to Mr. Read?

Ans. I tried to. When I went to purchase this of Mr. Grey I spoke of this $500 many times. I spoke to him and tried to keep it back. Then I spoke of the commission to Mr. Read and said I thought they were to give him a commission. They said, no, he hadn't sold the property. I was buying it for the Company; I had sold it, so he was not entitled to any commission.

Ques. Was the deed made directly to you or to the Company?

Ans. The deed was made to me.

Ques. Then you made the deed over to the Company?

Ans. Yes, sir. It was only a short time I sold it to them. The Company hadn't organized at that time.

Ques. When you had this conversation with Mr. Read and asked him to pay back the $500 he said he was willing to pay back the balance after the commission was settled?

Ans. No, he kept the five hundred dollars. He seemed to think—

Ques. You said he was always willing to pay back the $500 when the commission was paid?

Ans. He meant Mrs. Maison. I said, "you have no right to keep my money to get the commission from another party."

Ques. He was willing to pay back the $500 when Mrs. Maison paid the commission?

Ans. He always said he would return my money.

Ques. When the commission was allowed him. That is what you said?

Ans. He told me to wait; "I want my commission from them and I will pay you your $500."

By Mr. Endicott:

Ques. How much did you pay to Peter Maison's heirs for the tract?

Ans. For the whole tract? Do you mean all of the heirs—the wife?

Ques. Yes, and the widow.

Ans. $19,250.

Ques. You purchased the entire interest?

Ans. I paid $16,000 for a three-quarters interest to Mrs. Maison and her children, and I paid $3,250 to the other heir, which was a great deal less. That one-quarter I got for less than the three-quarters that Mr. Read represented.

Ques. How much did you pay Mr. Maison's heirs?

Ans. Peter Maison's heirs, $16,000.

Plaintiff offers in evidence deed from Augusta M. Maison, et al., to Mary A. Riddle, dated November 30, 1883, recorded in Book No. 101 of Deeds, page 399.

Date of record Nov. 28 1884

consideration 10000

Also deed of William N. Maison and wife to John R. Wilson, dated July 10, 1883, recorded in Book of Deeds No. 93, page 424.

Date of record
Nov. 28. 1884

Also deed of John R. Wilson to Mary A. Riddle, recorded in Books of Deeds No. 102, page 108, dated November 9, 1883. Consideration $3500.

Also contract for sale of land between Augusta N. Maison, vendor, and Mary A. Riddle, vendee.

Pro ut the same.

Whereupon the plaintiff rests his cause.

Counsel for defendant moves for a non-suit.

Motion refused.

To which refusal of the Judge to grant said motion for a non-suit the said defendant did then and there except, and tendered this his bill of exceptions and prayed that the same might be sealed, which is done accordingly.

ALFRED REED, [L. S.]
Judge.

And the defendant, to maintain and prove the issue on his part, offered evidence as follows:

JOSEPH J. READ, sworn and examined.

By Mr. Garrison:

Ques. What is your business?
Ans. I am a real estate man.
Ques. How long have you been in that business?
Ans. Ever since 1867.
Ques. Have you any special knowledge of Atlantic City properties?
Ans. Yes, sir.
Ques. Have you ever resided at Atlantic City?

Ans. I generally have been at former years—resided there in the summer time.

Ques. When did you first know this Maison property?

Ans. I think it was in about 1875 or 1878, somewheres along about that.

Ques. What relation have you had with the property?

Ans. Mr. Churchman, the son-in-law of Mrs. Maison, called upon me to go down and look at the property; it belonged to Mrs. Maison.

Ques. When was this?

Ans. About 1875 or 1878, somewheres near that neighborhood, that they had an offer for the property of $12,000, and wanted my opinion whether or not they had better sell it. I went down there and I was two days examining the property and inquiring all around—

Ques. What did you report?

Ans. I reported that the property was mine I would not sell it; that the improvement was going down that way and I thought they would get a bigger price in a few years.

Ques. Did they take your advice?

Ans. Yes, sir.

Ques. When did you next know this property?

Ans. In 1883, I was called on again by the same party.

Ques. By the son-in-law?

Ans. Yes, sir.

Ques. He married one of the heirs?

Ans. Yes, sir.

Ques. What resulted from your interview? Did you succeed in selling the property?

Ans. I went down and examined the property again and they told me they were offered or could get $20,000 for it.

Ques. Did you succeed in making a sale of this property?

Ans. I did.

Ques. To whom did you make the sale?

Ans. To Mrs. Riddle and Mrs. Porch. I think Mrs. Riddle was the main person I had business with.

Ques. The two ladies?

Ans. Yes, sir.

Ques. You have heard Mrs. Riddle's testimony?

Ans. Yes, sir.

Ques. As to what she agreed to give?

Ans. Yes, sir.

Ques. Did she state it correctly?

Ans. $20,000.

Ques. How much had you paid?

Ans. I think $6,000 in cash and the balance to be put in a mortgage.

Ques. What sort of a title were you to give them?

Ans. Mrs. Maison was to give the title she had; she give me the map of the property, and I think the deed was burnt up in the Front street fire a good many years ago, and it was all they had to go by and by the tax.

Ques. After Mrs. Riddle paid $500—when did you first know somebody else had got this title?

Ans. I didn't know anything about it before that. When she wanted to know about the title I referred her to Mr. Thompson.

Ques. She went to Mr. Thompson.

Ans. Yes, sir; I recommended her to go there.

Ques. How do you know?

Ans. Mrs. Riddle had engaged Mr. Thompson to draw her title in case the bargain went through. I told her that Mr. Thompson was an honorable gentlemen and put her right in the matter; I told her if she would call and see him at the hotel—she and her son called with her.

Ques. Did she tell you?

Ans. Yes, sir.

Ques. Whom are you speaking of?

Ans. Mrs. Maison and her sister called.

Ques. Do you mean Mrs. Maison ?

Ans. Mrs. Maison and her sister called.

Ques. Are you not wrong about the names; you mean this lady here ?

Ans. No; Mrs. Maison went down to see about the title and she told me that Mr. Thompson told her there would be no difficulty about the title at all, but that one of the heirs was missing.

Ques. It was not this lady that went to Mr. Thompson ?

Ans. She had been there.

Ques. You mean that Mrs. Maison went to Mr. Thompson ?

Ans. Yes, sir.

Ques. When was the first time after you had sold this property to Mrs. Riddle that you knew that somebody else had come in and fixed up the title for them.

Ans. It was a short time afterwards; maybe about three or four months, as near as I come at it.

Ques. Had they ever come to you and tendered the balance of the $6,000 ?

Ans. No, sir.

Ques. Had Mrs. Riddle, or anybody for her, come to you and asked you to get up the title ?

Ans. No, sir.

Ques. The matter lay in that way, waiting ?

Ans. Yes, sir.

Ques. Had you seen her at all about the title in the meanwhile ?

Ans. No, sir.

Ques. When did you next see her after learning the title was being made by somebody else ?

Ans. I guess in six or eight months.

Ques. What took place then ?

Ans. He said the heirs were going to make a sale, and Mrs. Maison had nothing to do with it further than her dower.

Ques. That is the first time she spoke to you about this sale?

Ans. Yes, sir.

Ques. Was any demand made on you for $500?

Ans. No, sir; she said there was $500. I told her that was my commission.

Ques. What services have you done with reference to this property?

Ans. My services were $300.

Ques. That is for what sort of services?

Ans. For going down there and talking with Mrs. Riddle——.

Ques. (Interrupting.) And making this sale?

Ans. And making this sale; in fact she offered to give me $200 herself——

Ques. That has nothing to do with this business. At the time you sold the property to Mrs. Riddle whom do I understand you represented in making the sale?

Ans. I represented Mrs. Maison.

Ques. And through Mr. Churchman whom did you represent?

Ans. When I first saw Mr. Churchman he said, you go and see Mrs. Maison, that's my mother-in-law, and she will give you instructions what to do.

Ques. Was it by the concurrence of these owners?

Ans. Yes, sir.

Ques. Had they known some years you were employed about this property?

Ans. Yes, sir.

Ques. They came to you since 1875?

Ans. Yes, sir; since 1875.

Cross-examined.

By Mr. Endicott:

Ques. Whose agent were you in the sale of this property?

Ans. Mrs. Maison's.

Ques. In whom did you understand the title to be at that time?

Ans. Mrs. Maison.

Ques. You did not know that the heirs of Peter Maison were the real owners?

Ans. No, I did not.

Ques. When did you first discover that?

Ans. No more than from what Mrs. Riddle told me; that's all I knew about it.

Ques. When did you first discover that the title was not in Mrs. Maison?

Ans. I had not discovered it to be any more than what Mrs. Riddle told me.

Ques. When did she tell you?

Ans. I think six or eight months after.

Ques. After the payment of the $500?

Ans. Yes, sir.

Ques. Then you did not know and do not know now that the title was in the heirs of Peter Maison, except from what information you got from Mrs. Maison?

Ans. From Mrs. Riddle; that's all I know about it.

Ques. That is the only information you have about that affair?

Ans. Yes, sir; I never knew it any other way. The property at one time stood in the name of Mr. Lewis. Mr. Maison had transferred it to Mr. Lewis, I think, for some indebtedness, and then it was tranferred back to Mr. Maison again.

Ques. Do you remember soon after the payment of $500, Mr. Thompson informing you the title was in the heirs of Peter Maison.

Ans. Yes, sir; I recollect something about that.

Ques. Do you remember his visiting Mrs. Augusta Maison with you and informing her that she was not the owner of this property?

Ans. Yes, sir.

Ques. Can you remember now when that was, how soon after this contract was made.

Ans. No, sir; I can't say. I think it was sometime in the summer or spring maybe. I didn't put the dates down and I can't recollect it.

Ques. Did not you and Mr. Maison both then acknowledge to Mr. Thompson you could not make this sale?

Ans. No, sir; I don't recollect that part of it.

Ques. The first knowledge you have of the title being in Mrs. Maison was when Mr. Thompson informed you?

Ans. Mr. Thompson and Mrs. Riddle told there was some difficulty about it.

Ques. Why was it you did not complete the sale of this land?

Ans. Mr. Grey had taken it out of our hands altogether and was working it up for the heirs.

Ques. One of the heirs first came to you about the sale before you had an interview with Mrs. Maison?

Ans. Yes, sir; the agent put it in my hands for sale.

Ques. Why did not the heirs effect the sale through you?

Ans. Because they wanted to cut out my commission; that's about all I know of it.

Ques. Then you did not complete the sale because you could not deliver the goods?

Ans. I could deliver it as far as I was concerned and all we had to do was to bring the parties together. The property belonged to Mrs. Maison; the property belonged to her. Mrs. Riddle had bought out one of the heirs, which she wanted to ignore altogether; then they turned around and said the other two children should have the other parts. She bought the property at $19,250. I sold it at $20,000.

Ques. Did Mrs. Maison hold a mortgage on this property?

Ans. I don't know how she held it; it did belong to Mr. Lewis at one time and Mr. Lewis transferred it back to her.

Ques. Did she show you the papers in the presence of Mr. Thompson and inform you of this mortgage?

Ans. She had no papers.

Ques. Did not she inform you of this mortgage in the presence of Mr. Thompson?

Ans. I don't recollect; I don't know what mortgage you are alluding to?

Ques. The Lewis mortgage?

Ans. She had no papers; she gave me all the papers she had, to give them to Mrs. Riddle or Mr. Thompson; that was the tax papers and the map of the property. She said that's all she had, and she was three or four days hunting that up; she didn't know where she placed it. At last she found it in the Fidelity and I took them to know if there was any mortgage—

Ques. Do you know how many heirs there were?

Ans. Three, I believe, from what I can understand; I know there was a son by the first wife and two daughters by the other; I don't know any others.

Recess.

Ques. You say your commission was $300?

Ans. My expenses; I charged for my trouble.

Ques. Did you ever make any contract with Mrs. Maison as to what your commission would be?

(Objected to as irrelevant. Question withdrawn.)

Whereupon the defendant rested his cause, and the plaintiff, to further maintain the issue on her part, offered evidence in rebuttal as follows:

MRS. MARY RIDDLE, re-called:

By Mr. Endicott:

Ques. You have already stated that you attempted the purchase of this property through Mr. Read as the agent for Mrs. Augusta Maison. Why was it that the purchase was afterwards consummated through the agency of Mr. Grey?

(Objected to as not rebuttal. Objection sustained.)

It is admitted that Mr. Read is a subscribing witness to the contract.

Evidence closed.

Mr. Garrison: I ask your Honor to charge the jury in the first place, that the sum of $500 in controversy was paid to Mr. Read, as agent for those persons whom he represented, as part of the purchase of this tract of land from them by Mrs. Riddle; that if the sale went through and Mrs. Riddle did take, through those persons whom Mr. Read represented, the title which they had to sell at a price in excess of $500, that he was entitled to his equitable lien out of this property before paying over the balance of it to the persons whom he represented; that the promise on the part of Mr. Read that if this thing fell through, that he would return the money to Mrs. Riddle was without consideration; that if held that it had a consideration, that the construction of the resulting contract was that if Mrs. Riddle did not buy the titles that he represented, and on which she had paid this $500 on account, she should have it back.

Further, that if one of the conditions was that when Mrs. Riddle got through buying the property she should have a perfect title, that she must first notify Mr. Read of any defect she found in the title before claiming that he had so failed to get her a perfect title; that it would affect the payment she had already made on account. If she failed to notify him, and by her own act placed it

out of his power to perfect her title, then the $500 must be considered as her part payment on account of the purchase that did go through, and which she had bound herself with Mr. Read to make. Also, that if Mrs. Riddle, knowing she had paid $500 on account, permitted Mr. Read to let this matter go out of his hands without securing another means of payment for his services until after she had completed the purchase of title over his head, by making this purchase for specific purposes, she is estopped by her own conduct from claiming it back from him, when by her conduct she kept silent until it was too late, and then she, for the first time, drew his attention to the fact that she had not kept her bargain with him but had bought the property over him.

CHARGE OF THE COURT.

Gentlemen of the Jury:

The case as it stands is an action on the part of Mrs. Riddle to recover from Mr. Read $500, a part payment on the contract, which you have seen, by Mrs. Maison on the one part and Mrs. Riddle on the other, by which Mrs. Maison was to convey a tract of land for $20,000, the payments to be made in a certain way. $500 was placed in the hands of Mr. Read. At the time that Mrs. Riddle passed this money into Mr. Read's hands, Mr. Read said that she should have a good title, and if the title was not perfect he would repay the money to Mrs. Riddle.

The $500 was paid upon the contract and was to be held by Mr. Read upon the contingency that a good title should be made to the tract which the contract dealt with, Mr. Read at that time representing Mrs. Maison.

Mr. Read had some conversation with the husband of one of the heirs, but was not himself instrumental in get-

ting a good title to the land. Apparently a good title was made by the intervention of another party. According to her testimony, which is undisputed, Mrs. Riddle paid the entire consideration in a second contract of sale which was entered into by all the owners of the tract of land, in pursuance of which a deed was made to her.

Now, gentlemen, upon that state of the facts, which appear to be uncontradicted in the case, it seems to me that when it appears that Mr. Read promised to return the money, if a certain thing was not done; that is, a good title made, and it further appears that he was not in a position to make a good title, and did not intervene to have a good title made, the condition upon which he was to return it, according to his promise, occurred and he was therefore to repay it.

A great deal has been said by counsel about the right of Mr. Read to commissions; that this money was paid for the interest which Mrs. Maison had, and that Mrs. Riddle obtained her title, and therefore Mr. Read's right to commissions from her cannot be defeated by an action to recover this money.

The question is not whether Mrs. Maison is responsible to Mr. Read for the commissions. If she put the property into his hands and afterwards she put the property into the hands of Mr. Grey to sell, and Mr. Grey sold it, she cannot deprive Mr. Read of his commissions, nor is it a question arising in a case where Mrs. Riddle owes commissions, and the defendant can say I have a right to set up my commission against any suit you may bring for it. If this state of facts appeared it would make a different case. If it appeared that $500 was paid to Mr. Read and these parties had come to Mrs. Riddle and said we do not want to pay Mr. Read commission, let us deal through Mr. Grey, and for the purpose of defeating Mr. Read had joined in an arrangement with them to have the title conveyed through Mr. Grey, and then had paid and

received the entire consideration money for the mere purpose of getting a right of action against Mr. Read himself, in which his right to commissions could not be set off—if that state of facts appeared, I would charge that there is a good defence in this case, but there is nothing to show that. Mrs. Riddle says she was compelled to pay that amount to get a good title, because she could only get a good title, because she could only get it through Mr. Grey, and they, the heirs, would not recognize Mr. Read as agent. In that posture of affairs it seems to me the only thing is the question of the right of recovery on the part of the plaintiff. It is a question of law and I will give the defendant the right to review it. I do not know of any other question for you, and I will charge you to return a verdict for the plaintiff.

To which charge of the Court the defendant prayed a bill of exceptions, which was sealed accordingly.

ALFRED REED, [L. s.]
Judge.

Verdict in accordance with the instructions of the Court for $522.50.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOSEPH J. READ, Plaintiff in Error, vs. MARY A. RIDDLE, Defendant in Error.	ERROR TO ATLANTIC CIRCUIT COURT. ASSIGNMENT OF ERRORS.

Afterwards, to wit: on the tenth day of October, in the year of our Lord one thousand eight hundred and eighty-five, in the Court of Errors and Appeals in the last resort in all causes as heretofore, comes the said Joseph J. Read, by Garrison & French, his attorneys, and says that in the record and proceedings aforesaid, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit: First, that the judge who tried said cause refused at the close of the defendant in error's case to non-suit the said defendant; and second, there is manifest error in this, to wit: that at the close of said case the said judge charged the jury to return a verdict for the defendant in error when he should have allowed the case to go to the jury.

Third, that the judgment aforesaid, by the record aforesaid, appears to have been given for the defendant in error against the plaintiff in error; whereas, by the law of the land, said judgment ought to have been given for the said plaintiff in error against the said defendant in error.

And the said Joseph J. Read prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, set aside and for nothing holden, and that he may be re-

stored to all things which he has lost by occasion of said judgment, &c.

GARRISON & FRENCH,
Attys. for and of Counsel with Plaintiff in Error.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOSEPH J. READ, Plaintiff in Error, vs. MARY A. RIDDLE, Defendant in Error.	}	ERROR TO ATLANTIC CIRCUIT COURT. JOINDER IN ERROR.

And hereupon afterwards, to wit: on the tenth day of October, in the year of our Lord one thousand eight hundred and eighty-five, the said Mary A. Riddle, by Thompson & Endicott, her attorneys, comes into Court and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and they pray here, that the Court may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

THOMPSON & ENDICOTT,
Att'ys and of Counsel with Defendant in Error.

EXHIBIT 4 OF PLAINTIFF.

Agreement made day of
A. D. eighteen hundred and
Between
of the first part, and
of the second part.

Witnesseth, that the said party of the first part for the consideration of twenty thousand dollars, to be paid as herein mentioned, doth promise and agree, to and with the said party of the second part, that she will well and sufficiently convey to the said party of the second part heirs and assigns, on or before the twenty-seventh day of April, clear of all encumbrance, all that tract or piece of land situate in the city of Atlantic, county of Atlantic, State of New Jersey, comprising eight lots of land, dimensions: No. 4 to B. 177 feet on Arctic avenue, 428 feet on Augusta avenue. No. 3 to B. 177 feet on Arctic avenue, 550 feet on Augusta avenue, 177 feet on Atlantic avenue. No. 2 to B. 177 feet on Atlantic avenue, 550 feet on Augusta avenue, 177 feet on Pacific avenue. No. 1 to B. 177 feet on Pacific avenue and 186 fee on Augusta avenue, running to low water line with a front on said line of 177 feet. No. 5 to B. 48 feet on Pacific avenue, 189 feet on Augusta avenue, running to low water line with a front on said line of 48 feet. No. 6 to B. 48 feet on Atlantic avenue, by 550 feet on Augusta avenue. No. 7 to B. 48 feet on Arctic avenue by 550 feet on Augusta avenue. For further information see plan of tract and survey made by J. Lewis Rowand, the same in the possession of Joseph J. Read, 113 Market street, Camden, N. J.

And the said party of the second part for heirs, executors and administrators, doth

covenant, promise and agree to and with the said party of the first part, that shall and will, on executing the said conveyance, pay or cause to be paid to the said party of the first part, her heirs or assigns, the said sum of twenty thousand dollars, as and for the purchase money of the said tract or piece of land above mentioned, as follows: Five hundred upon the signing of this agreement, fifty-five hundred dollars upon the execution of the deed, and the balance, fourteen thousand dollars, to be and remain on a mortgage for two years with a privilege of three years at 6 per cent. per annum, including meadow land.

And for the due performance of all and singular the covenants and agreements aforesaid, the said parties to these presents do bind themselves, their heirs, executors and administrators, each to the other, his executors, administrators and assigns, in the sum of

dollars, firmly by these presents, the said sum to be considered as liquidated damages.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

AUGUSTA M. MAISON, [L. S.]
MARY A. RIDDLE, [L. S.]

Sealed and delivered in presence of
JOSEPH J. READ.