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1914

NEW JERSEY  
COURT OF ERRORS AND APPEALS.

A. L. FEIGHAN,  
*Plaintiff and Appellant,*

vs.

JACOB SOBERS AND AARON  
SOBERS, trading as JACOB  
SOBERS & SON,  
*Defendants and Appellees.*

ON APPEAL FROM  
NEW JERSEY SU-  
PREME COURT.

PLAINTIFF'S BRIEF.

This is an appeal from an order of Justice Voorhees, setting aside the service of a summons and vacating a judgment entered in the Supreme Court. The appellant insists that the order vacating the judgment was erroneous,

First: Because the usual place of abode of Jacob Sobers, one of the defendants, was at Margate City, in the County of Atlantic and State of New Jersey, at the time of the service of the summons.

Second: Because the summons was served on the defendant, Jacob Sobers, at his usual place of abode, in Margate City, this State, with the person in charge thereof.

Third: Because the summons was served on the twenty-seventh day of January, nineteen hundred and ten, and judgment entered thereon, on February eighteenth, nineteen hundred and ten, and the rule to show cause why the service of the summons should not be set aside, and the judgment vacated, was not entered until the first day of August, nineteen hundred and eleven, and that by reason thereof, the defendant, Jacob Sobers, was in laches, and was not entitled to have the judgment vacated.

Fourth: The judgment was entered on February eighteenth, nineteen hundred and ten, and Jacob Sobers died July twenty-fourth, nineteen hundred and eleven, during all of which time he was a resident of the State of New Jersey, residing at Margate City, and did not take any proceedings to have the judgment vacated during his lifetime; that the rule to show cause was obtained on the application of his executor, who, after he had proven the will, began the proceedings to have the judgment vacated; that the laches of the defendant was a bar to the institution of proceedings to have the judgment vacated by the executor.

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#### **STATEMENT OF FACTS.**

The admitted facts are, that on the fourteenth day of December, nineteen hundred and nine, the plaintiff loaned to Jacob Sobers and Aaron Sobers at Philadelphia, five thousand dollars, and took from them a judgment note signed by both of the partners, Jacob and Aaron (pages 5 and 6). Judgment was entered thereon, on the twenty-second day of

December, nineteen hundred and nine, in the Court of Common Pleas, No. 4, of the County of Philadelphia, and thereafter suit was brought on an exemplified copy of the judgment, in the Supreme Court, and summons issued, with the declaration attached, to the Sheriff of the County of Atlantic, who deputized Philip G. Mitten, special deputy, to serve said papers, and his return is found on page 9, by which he returned "that he had served the defendants, Jacob and Aaron Sobers, trading as Jacob Sobers & Son, by delivering for each of them true copies of the annexed summons and narr, at their place of abode, at Margate City, Atlantic County, New Jersey, with Barbara Hoffman, housekeeper, in charge thereof." Judgment was entered by default, and the judgment was allowed to sleep until an attack was made upon it by the executor of Jacob Sobers, in August, nineteen hundred and eleven.

In the meantime, a deed for all the property that Jacob Sobers had in New Jersey, was placed on record, on June first, nineteen hundred and ten, purporting to be dated January twenty-first, nineteen hundred and eight, conveying all the property which the said Jacob Sobers had formerly owned in New Jersey, to Mary Ann Franz, a daughter of Jacob Sobers, and the wife of the executor.

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### **ARGUMENT.**

The learned Justice finds:

"Where a defendant has a general place of abode in this State, but closes it, and is absent from the State, service at such place of abode during such absence is invalid."

Jacob Sobers was unquestionably domiciled in Margate City, and that his domicile continued from the time he removed to New Jersey, in nineteen hundred and six, down to the time of his death, and his will was admitted to probate in Atlantic County, in this State. It cannot be questioned in New Jersey, but what the summons must be served upon the defendant at his usual place of abode, and that it might be possible for a person to have a usual place of abode in New Jersey for part of the year and elsewhere during the balance of the year. Our contention is, that when Jacob Sobers took his usual occasional trips to Pennsylvania, Cuba, Florida and other near points for a recreation, and for the purpose of escaping the severity of our climate, that he did not establish in any other place, a place of abode. While he was in the habit of going away during the winter season for the last few years of his life, he did not go to any particular place, he traveled, sometimes going to Florida, Cuba and other places, and the testimony of the housekeeper shows that he left Margate City during the holidays of nineteen hundred and nine (page 16, lines 16 and 19), and returned to Margate City the latter part of February, nineteen hundred and ten (page 19, line 29).

Jacob Bickley's testimony shows (page 21, lines 19 and 20), that Jacob Sobers was boarding at a boarding house in St. Petersburg, Florida, during a portion of the months of January and February, and that the witness and Sobers took occasional trips to other points. He maintained no winter place in Florida, or elsewhere, and if he had, a very different question might arise. It is not shown by the evidence that Jacob Sobers had any other place of abode, than Margate City.

We also contend that Mrs. Barbara Reeves (nee

Hoffman), was actually in charge of the dwelling house of Jacob Sobers, his usual place of abode, at the time of the service of the summons, and that the dwelling house was opened; that on the dining room table were dishes, apparently where a meal had recently been had; that the water was not turned off in the house. Of course, the defendant attempts to dispute these facts, and the testimony is quite conflicting. It is not disputed, however, that Mrs. Reeves was in charge of the house, she had the keys, she visited the house frequently, according to her own testimony, to see that everything was in proper order, and admits being at the house at the time of the service of the summons, but explains her presence by insisting that the Deputy Sheriff induced her to go there, which is flatly contradicted by both Mrs. Feighan and the Deputy Sheriff. We insist that the service was made upon the defendant, at his usual place of abode, and that the writ was delivered to the person in charge.

The learned Justice did not pass upon the laches of the defendant Sobers. Mrs. Reeves (page 19, line 19), says:

“A. Why, he returned, I think it was the last Saturday in February that year, because I had written on to him about this and he came. It worried him so that he didn't stay any longer. He came home then;”

for the purpose of looking into this matter. She testified that she had sent the papers to Aaron Sobers, and had written a letter to Jacob Sobers, and that she had consulted with Mr. Freas (page 18, line 10), about the papers, and that he had advised her what to do. One of the defendants, Aaron Sobers, a son of Jacob Sobers, testified (page 65, lines 2 to 11), that he had received these papers from

his father, who was in Florida, and yet, although he lived until July twenty-fourth, nineteen hundred and eleven, seventeen months, he did nothing to attack this judgment. He called at the place of business of his son and himself, at Nos. 1114-1116 Germantown Avenue, Philadelphia, and there, with his son, talked over the matter of the amount due Mrs. Feighan, and the son, at the request of his father, sent for Mrs. Feighan, and in the presence of Mrs. Feighan he said to the son, "Get together and pay it off." (Page 66, line 30; page 67, line 30.) He did nothing to attack this judgment.

We insist that the law is:

First: Relief against a judgment will be denied unless seasonably sought.

*16 Cyc., page 157.*

Second: Where a party unnecessarily delays to seek relief from an execution or sale, or allows the rights of a third party to intervene, the Court will not grant him equitable relief, after the time for his legal remedies has expired, except, in the case of showing injustice, as well as irregularities.

*17 Cyc., page 1283.*

Third: Whatever may be the form of relief to which defendant is entitled, he must move promptly to obtain it, and if he is guilty of gross laches, he loses all right thereto.

*3 Cyc., page 535.*

We insist strongly, that Jacob Sobers had an opportunity to make a similar application for a rule to show cause in his lifetime, when he would have had a fair opportunity to be heard upon every part

of his case, and the plaintiff would have had an opportunity of cross-examination. That the law is well established, that if a defendant sleeps upon his rights, and does not seek relief which he would be entitled to under the circumstances of the case, for so long a period as seventeen months, he, nor his executor, can have a judgment at law vacated, he is estopped by his conduct, and that this Court ought not at this time relieve his estate from difficulties which have arisen from his negligence.

The hardship of vacating this judgment must be apparent to every one. Plaintiff loaned the defendants, five thousand dollars in cash, and took from them a judgment note, upon which she afterwards entered judgment in Philadelphia, and brought suit thereon in New Jersey, and entered judgment by default. That the defendants owed this money has never been, or is not now, questioned, but the executor of the estate of one of the defendants, seeks upon a technicality, to have the judgment vacated, and if he is successful, a deed which was not placed upon record for over two years after its alleged date, conveys all the property which Jacob Sobers had, and that Mrs. Feighan will be defeated, and must lose all of her money.

It also appears by the exhibits (page 84, line 18), that after the executor had proven the will, he took out ancillary letters in Philadelphia, and applied to have the judgment entered in Philadelphia, opened, and he be permitted to defend. Such proceedings were had in Philadelphia, that the executor was allowed to have the judgment opened, for the purpose only, of a trial upon the merits, which trial was had, and a judgment was entered in favor of the plaintiff, and against the defendants, for a sum larger, the excess over the former judgment being the addi-

tional interest which had accrued. These proceedings in no way, affected the proceedings in New Jersey. It cannot work a hardship upon the estate of Jacob Sobers, for the reason that the executor has had his day in the courts of Philadelphia, and was defeated, in his efforts to have the Philadelphia judgment vacated.

It cannot be said to work a hardship upon Mary Ann Franz, because the deed which was put on record, on the first day of June, nineteen hundred and ten, after the entry of the judgment of the plaintiff, purports to bear date January twenty-first, nineteen hundred and eight, and is a deed from the defendant, Jacob Sobers, to his own daughter. There is no attempt to show any consideration for this deed, and the very fact that it was withheld from record for so long a time, to say the least, raises very suspicious circumstances. The executor offers no excuse for the conduct of Jacob Sobers, who remained silent so long, with full knowledge of the entry of these judgments, but he attempts to defeat Mrs. Feighan, for the sole benefit of saving his ~~mother's~~ <sup>my</sup> title to the property in question. There is absolutely no merit in the defendants' position, and counsel for the defendants strenuously resisted any effort to go into the merits, repeatedly objecting upon the ground that the only question before the Court was, whether the summons had been properly served in New Jersey.

We respectfully insist that this Court should hold that the laches of Jacob Sobers, is a bar to the application to vacate the judgment, on the part of the executor.

The learned Justice followed the case of *Mygatt vs. Coe*, that case was, however, very much different from the present one. In that case, the defendant

had sold his residence in New Jersey, and had gone to the State of New York and taken apartments, where he had a home or place of abode, where he could be located at all times. That case followed the earlier cases,

*Stout vs. Leonard*, 8 Vr., page 492,

in which case the Court said:

“Many persons have several residences, which they permanently retain, occupying one at one period of the year, and another at another period. Where such conditions exist a summons must be served at the dwelling house in which the defendant is living at the time when the service is made.”

In the case of *Mygatt vs. Coe*, the Chief Justice said:

“In the present case, whether the defendant Coe did or did not retain his residence in New Jersey, notwithstanding his removal with his family to New York, it is quite apparent that his dwelling house or usual place of abode at the time of the service of the summons was not the unoccupied residence of his stepmother at Englewood, from which he had removed two months previously, but the apartment house in New York, where he was at that time living with his family.”

In this connection, I desire to call the Court's attention to the fact, that the deed purporting to be made by Jacob Sobers to Mary Ann Franz, was dated January 21, 1908, and was not recorded until June 1, 1910, and that no effort has ever been made by Mrs. Franz to in any way attack this judgment, and relieve her property from the lien thereof, and

that she too is in laches, and is not entitled to have this judgment vacated.

The executor having had his day in the Philadelphia courts and having appeared and contested the suit, it would be a great hardship to again oblige the plaintiff to bring her suit in New Jersey. The defendant, the executor, could make no defense in a new suit, and the only result would be, that the plaintiff, Mrs. Feighan, would lose all.

We ask that the order setting aside the writ and vacating the judgment be dismissed, and for nothing holden.

H. H. VOORHEES,  
of Camden, N. J.  
JOSEPH HILL BRINTON,  
of Philadelphia Bar,  
*Attys. for Plaintiff and  
Appellant.*

NEW JERSEY  
COURT OF ERRORS AND APPEALS.

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A. L. FEIGHAN,  
*Plaintiff-Appellant,*

vs.

JACOB SOBERS and AARON  
SOBERS, partners, trad-  
ing, &c.,  
*Defendants-Appellees.*

ON APPEAL FROM THE  
SUPREME COURT.

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**BRIEF FOR APPELLEES.**

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The object of this appeal is to review the legality of an order of a Justice of the Supreme Court adjudging the service of process in the above entitled cause to be invalid and vacating the consequent judgment by default entered thereon.

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**STATEMENT OF FACTS.**

On January 14, 1910, an action was commenced in the Supreme Court of this State entitled as above. The foundation of this action was a judgment entered as on confession in favor of the same plaintiff against the same defendants in Court of Common

Pleas No. 4, of the County of Philadelphia, Pennsylvania, at the December Term, 1909. Summons in this action was tested January 14th and made returnable February 3, 1910, and declaration was served with the summons. On February 18, 1910, judgment for \$5,343.30 was entered against the defendants on default for failure to file an affidavit of merit. On July 24, 1911, Jacob Sobers, one of the defendants, died, leaving a will, of which one Charles Franz was appointed executor, and he having qualified, afterwards, on August 31, 1911, presented an affidavit to the Justice of the Supreme Court, who ordered that plaintiff show cause September 18, 1911, why the judgment should not be vacated, upon the ground that there had been no legal service of process upon the defendants. Testimony was taken upon this rule on both sides, and on July 21, 1913, the order to show cause was made absolute and an order setting aside the service of process and vacating the judgment was entered in the minutes of the court. (Case, page 87.) The opinion of the Supreme Court, printed with the case, shows that the learned Justice found as a fact that Jacob Sobers was not personally served with process in the action, and that at the time service of the process was made he had no usual place of abode in this State where legal service could be made upon him.

The ground of the attack upon the judgment was that there had been no service of process actual or legal upon the defendants in the action. In consequence of which, the Court never acquired jurisdiction over either of them, and the judgment was therefore a nullity.

**ARGUMENT.**

The four reasons assigned in the brief for the appellant for the reversal of the judgment of the Supreme Court really present but two questions. The first and second reasons challenge the correctness of the facts found by the Court below, and the third and fourth reasons invoke the doctrine of laches. We are unable to perceive either in the facts contained in the record or in the authorities cited on the brief, any ground upon which that doctrine can have the least application in this case or can aid the appellants under the circumstances disclosed by the evidence. As this question was not raised in the court below, but is raised for the first time on this appeal, we deem that the settled practice of this Court excuses the necessity of the extended discussion of the subject of laches as applied to this case, and pass to the questions raised by the first and second points upon appellees' brief.

The case discloses that the summons and declaration were delivered to one Mitten, specially deputized by the Sheriff to be served, and he returned the same with this endorsement: "Duly served with summons and narr, January 27, 1910, on Jacob Sobers and Aaron Sobers, trading as Jacob Sobers & Son, by delivering a copy for each of them at their place of abode in Margate City, Atlantic County, New Jersey, with Barbara Hoffman, housekeeper in charge thereof."

Nothing is better settled than that the service which confers jurisdiction must be made in accordance with the direction of the statute.

*Rogers vs. Jarman*, 3 N. J. L. 527.

The statute in force when this action was com-

menced, provided, "The first process..... shall be by summons, a copy whereof shall be served on the defendant in person.....or left at his usual place of abode."

*P. L. 1903, page 357, Sec. 52.*

There is no pretence that either of the defendants were in the State of New Jersey at the time this service was made, and notwithstanding the special Deputy Sheriff's return, that he served the writ by delivering a copy at the place of abode of the defendants in Margate City, his return is shown to be untrue, at least as to Aaron Sobers, who being called as a witness for the plaintiff testified (page 64), that he lived at 1776 Franklin Avenue, Philadelphia, Pennsylvania, and had lived in Philadelphia at least thirty-five years; that in December, 1909, and January, 1910, he lived at the same place and that no service was made upon him in this State.

The return of the officer is therefore untrue in so far as it asserts service in the manner therein set forth upon the defendant, Aaron Sobers, in view of the uncontradicted and unquestioned proof that he was not in Margate City and had no place of abode there.

As to the validity of the service upon Jacob Sobers, what the statute directs is, that the process be left at the "usual" place of abode of the defendant. What the officer said in his return as to the manner of service was that he left a copy with him at his "place of abode," in Margate City, &c. This does not show a compliance with the statute. "The usual place of abode" means the place where the defendant is actually living at the time when the service was made.

*Mygatt vs. Coe, 65 N. J. L., page 510.*

Service by leaving the process at the place where defendant is actually living at the time is good service, though he be temporarily absent therefrom. While on the other hand, "place of abode," is a much broader term and in no sense implies residence, but means any place where one may happen to abide, wait or stay at which no service other than personal service is a compliance with the statute. By the return itself, it appears the process was not served in the manner prescribed by the statute unless the proofs show that the place at which the process was left was in fact, though not in name, the usual place of abode of the defendant within the meaning of the statutory enactment. Jacob Sobers was in Florida on January 27, 1910, when the service in this case was attempted to be made. That fact is not disputed. The evidence shows, up to 1906, he lived in Margate City in a house he owned there, during the entire year, with one, Barbara Hoffman, as his housekeeper, and he apparently lived alone, save for the housekeeper. In December, 1906, he went South for the winter, and from that time until his death, he spent a portion of each year in the South, and usually left for Florida thereafter in November or December, and returned in March or April, thus escaping the rigors of the Northern winters. In November, 1909, as was customary with him, Mr. Sobers left Margate City about the middle of November, and after spending two or three weeks in Philadelphia, left there for Florida. Jacob H. Bickley (21), saw him at St. Petersburg, Florida, nearly every day between January 15th, and the early part of February, 1910, and left him there when he, the witness, returned to Philadelphia, and there can be no doubt that on January 27, 1910, the date of the service in this case, Mr. Sobers was in

Florida. Before leaving Margate City, in November, Mr. Sobers closed and boarded up his house, turned off the water to prevent freezing in the pipes, and left the key to the house with Barbara Hoffman, afterwards Barbara Reeves, she having afterwards married one Charles Reeves. Mr. Sobers' house was on Monmouth (formerly Baltic) Avenue, No. 16, and was unoccupied during the period of his absence, which included the date process in this case was served. (See testimony of Albert Freas, page 14; Barbara Reeves, direct, pages 15 and 16; Charles Reeves, direct, pages 23 and 24; Albert Hackney, direct, page 61, and Jacob Jernee, page 69.) The testimony of these witnesses to the effect that the house, No. 16 Baltic or Monmouth Avenue, spoken of as Mr. Sobers' house, where summons was left, was closed and unoccupied at the time, is positive and explicit. Some of them assisted in putting up storm doors and shutters, turning off the water and preparing the house to remain closed for the winter. The only testimony tending to contradict this and to show that the house was open and the premises occupied, was that of the plaintiff, Feighan, and that of the officer who served the process, who is the brother of the plaintiff.

Mrs. Feighan, under the very suggestive and leading examination of counsel, testified in substance (direct examination, pages 44, 47), that she remembered going to the Sobers' "residence" in Margate City when the summons was served, that she didn't know the number but knew where the house was. "Mr. Mitten and I went on the porch and the house-keeper, Miss Hoffman, came to us. I said I would like to see the house, we walked in. We went in the house and I looked around to see if my value was there. I was very much disappointed at the looks

of the place. Somebody had just eaten breakfast, dirty dishes on the table, the water was running; I do not know whether there was a fire in the stove or not. It was very warm in there. The windows were all open. Every appearance of being occupied. There wasn't any storm doors to be seen. Shutters wide open." Again (cross-examination, page 47):

"Q. Where did you first go when you arrived at Margate?

A. Right up to the porch of Mr. Sobers' house.

Q. That is located where?

A. I can't tell you the street. I just know where to go to find it——"

(Page 49):

"Q. Who is the Deputy Sheriff that served the papers?

A. Mr. Mitten.

Q. Any relation of yours?

A. Brother."

Mr. Mitten testified (direct, page 55):

"Q. Do you know where Mr. Sobers' house is on Baltic Avenue?

A. Well, as far as I know, the place that I served the summons. Mrs. Feighan said it was the home. I went up on the porch and tried the door and it looked to me as though it had been tenanted \* \* \* \* the house had the appearance of being occupied."

Cross-examination (page 57):

"Q. Are you in a position to say whether you went to No. 7 or No. 16?

A. Oh, no, that is the only house I went to.

Q. Which?

A. No. 16, isn't it? The one Mrs. Feighan knew as the house."

and on page 78, Mr. Mitten testified, on cross-examination, that he didn't know where Barbara Hoffman lived, and that Mrs. Feighan told him where she lived, while Mrs. Feighan, in her cross-examination (page 48), referring to the same occasion, swore she didn't know where Mrs. Hoffman lived and was positive she had asked no one.

Albert Hackney says (page 60), that he saw Mr. Mitten and Mrs. Feighan together in Margate City in January, 1910, and on that occasion Mr. Mitten asked him where Miss Hoffman lived, and he directed them to her gate, she was then living at No. 7 Monmouth, formerly Baltic Avenue; Jacob Jernee testified that in January, 1910, he was boarding with Barbara Hoffman at No. 7 Monmouth, formerly Baltic Avenue, on the day when the summons was served, Mr. Mitten and Mrs. Feighan called at the house and asked the witness, who was in the yard sawing wood, if Mrs. Barbara Reeves was in and witness called her to the door. After some conversation the three, Mrs. Feighan, Mr. Mitten and Barbara Reeves, went over to Mr. Sobers' house, and witness followed them. None of the witnesses, who swear that No. 16, the Sobers house, was closed and unoccupied, have any interest in the suit or in the parties to it, nor have they any inducement to color or misstate the facts, while on the other hand, the only contradictory testimony comes from the plaintiff herself, and from Mitten, the officer, who is a near relative, and their testimony is inconsistent, not only with that of the others, but with that of each other.

There can be no doubt that the conditions they at-

tempted to describe as indicating occupancy of the Sobers house, were really conditions existing at the Barbara Hoffman home, for the details of which they drew on their imagination.

Now, as to the manner of service. The officer returned that he served, etc., by delivering a copy for him at his place of abode in Margate City, etc., with Barbara Hoffman, housekeeper in charge thereof. Barbara Hoffman was not, and according to the uncontradicted evidence, had not been Jacob Sobers' housekeeper since 1907. The only way she could be said to have been in charge of Jacob Sobers' house was in having had delivered to her the key to the property while it was closed and unoccupied and its owner absent, and in precisely the same manner she can be said to have been in charge of the property of Mr. Freas and Mr. Bickley, both of whom, while absent from home, left their keys with her. This was exactly the situation in *Mygatt vs. Coe, supra*, where service of a summons upon one Smullen, an employee of the defendant, left in charge of the house which had been occupied by the defendant and his family, but was unoccupied at the time, was set aside and held to be illegal.

Barbara Hoffman was not in the employ of Jacob Sobers and save casually was not on the premises when the service was made, having gone there at the solicitation of the plaintiff to let her see the house. As an act of courtesy she yielded to the persuasion of Mrs. Feighan to let her look at the property, and in this she is corroborated by Jacob Jernee and by Mrs. Feighan herself.

Evidently the service parties were instructed or otherwise impressed with the fact that the summons would have to be served on some one in Jacob Sobers' house, for Mitten, the Sheriff's officer, gives

the following account of what he did on that occasion (58):

“Q. For whom did you ask when you arrived there?

A. I didn't ask for nobody. This woman came in, at least she was on the porch. I was told to serve it on anybody that was in there. This woman walked in with us, or at least she walked in first. We walked in, and in the front room I just handed her the papers.

Q. What did you say?

A. I just handed them to her; said I was directed by the Sheriff to serve these papers on her. They were in an envelope, legal envelope.

Q. You had never seen this lady before?

A. Never.

Q. From whom did you get your information that she was the housekeeper for Mr. Sobers?

A. Mrs. Feighan.

Q. And you talked to no other person about the matter?

A. No.

Q. And all the information that you got at the time of the service was the information you got from Mrs. Feighan?

A. That was all. Just simply that she was the housekeeper and there wasn't any more conversation about it at all.”

This officer by his own account performed his official duties by going to a house that Mrs. Feighan told him was Mr. Sobers' home and serving the papers on a person he found there whom Mrs.

Feighan told him was Mr. Sobers' housekeeper, and whom he "imagined was in charge," without inquiring for Mr. Sobers or seeking any other information whatsoever.

The source of Mrs. Feighan's knowledge of Barbara Hoffman's relation to Mr. Sobers as disclosed by her (46), was that she was pointed out to the witness at the Trenton Fair about twelve years before, with old Mr. Sobers. It is true that Mrs. Feighan says (45), that Mrs. Hoffman, or Reeves, said she was "the housekeeper," but the latter denies any such statement and Mr. Mitten who was present when the alleged conversation occurred does not mention it and says all his information came from Mrs. Feighan. That Mrs. Feighan asked the question is unlikely in view of her answer to the next preceding question, which was:

"Q. How did you know that she was the housekeeper?"

A. O, I knew her, I had seen her before."

At the time the summons was served Jacob Sobers had no usual place of abode in this State within the meaning of the statute.

From the testimony it appears that from 1906 to 1909 he spent the time from December to March in Florida, or Cuba, where he went to benefit his health and that he was in Florida at the time the summons in this case was served, having left New Jersey about the middle of November, 1909, and not returning until March following. His usual place of abode for four months of each year was, therefore, without the State, the remaining eight months he passed in Margate City. During the time he was in the South, in the winter, Mr. Sobers lived in a boarding house, according to the witness Bickley,

and the portion of the year he spent in Margate City he maintained no home of his own. For the last four or five years that preceded his death he boarded with Mrs. Hoffman sometimes at her home and sometimes, when that happened to be rented for the summer, in his own house. He paid board to her as would any stranger and there were other boarders. His relations to Barbara Hoffman and his status as a boarder in her home are not varied by the circumstance that he owned the premises upon which she sometimes conducted her business of boarding house keeper. He had ceased some three or four years before to maintain a household as its head because he was in poor health and did not wish, as Mrs. Hoffman expressed it, to be bothered with household cares, and from that time until his death she, Mrs. Hoffman, instead of keeping house for Mr. Sobers took him to board.

In *Mygatt vs. Coe, supra*, the Court held, "that the statute does not direct service to be made at the 'residence' of the defendant, but at his 'dwelling house or usual place of abode,' which is a much more restricted term."

In *Baldwin vs. Flagg*, 43 N. J. L. 495, the question was whether the conditions were present upon which a writ of attachment lawfully issue. It was held that "a residence or place of abode in this State of a temporary or permanent character, at which a summons might lawfully be served, is the condition of which process of attachment cannot be issued. If a debtor has not, at the time the writ of attachment is issued, such a place of abode that a summons could be served at it, he is a non-resident within the meaning of the statute, and may be proceeded against by attachment."

The defendant in this case had been in the habit

of living eight months in New Jersey, and of boarding four months in New York City. In November, 1880, he left his New Jersey house and boarded in New York. He was living there when the writ of attachment was issued March 25, 1881. The furniture had been left in the New Jersey house, and in charge of a man who lived in the house. The Court decided that the defendant had not, at the time this writ was issued, an actual residence, a place of abode, in this State within the meaning of the statute.

In *Conover vs. Beckett*, 38 N. J. Eq., page 389, the Court said: "From the fall of 1871 to May, 1872, (the attachment was issued April 10, 1902), Joseph Lloyd lived in the City of New York. In his affidavit he says he was, when the writ was issued, temporarily residing in New York with his family. None of his family was in this State. His house, in which he resided when living here, was in the occupation of a tenant. There was no place here where, nor any person in this State on whom, service of process could be made for him. He was therefore liable to be sued by attachment."

In *Stout vs. Leonard*, 37 N. J. L. 492, the Court of Errors and Appeals, reversing the Supreme Court, held that "A debtor having a residence in this State, and also a residence elsewhere is liable to be sued by attachment, if, at the time, he is not in this State, and does not dwell or have his usual place of abode here."

In this case the defendant had two houses, one in New Jersey, the other in New York. He was in the habit of spending the summer in New Jersey. His business was in the City of New York, but he voted in New Jersey. He had removed from New Jersey thirteen days before the issuing of the writ, leaving

his adopted son, his mother-in-law and his farmer in charge of his New Jersey house.

In *Coles vs. Blythe*, 69 N. J. L. 203, reversed *ibid.* 666, a Justice of the Supreme Court held on the following facts that no summons could have been lawfully served. The defendant was out of the State and had been for five or six weeks and his furnished house in Atlantic City was occupied during the time by his wife's aunt and her husband, Mr. and Mrs. Hoffman, who kept house there. The defendant continued to pay the rent monthly, as he had always done, although on one or two occasions Mrs. Hoffman carried the money for the rent to the agent, but it was furnished to her by the defendant. The defendant's family consisted of himself, his wife and two young children, with his wife and younger child the defendant left Atlantic City in the latter part of September or the early part of October, 1901, and went to Camden, the husband having work in Philadelphia. They remained in Camden about two weeks, boarding with a relative of the wife's and then went to Philadelphia and boarded there, the defendant until about January, 1902, and his wife leaving a few weeks earlier, and returning again to Atlantic City. The house remained open, with the defendant's furniture there, and Mr. and Mrs. Hoffman living there, when the defendant went to Camden he left the eldest child in Atlantic City with his parents and Mr. and Mrs. Hoffman. The wife of the defendant came back to Atlantic City occasionally and stopped at his house sometimes remaining over night there, but the Justice held that this fact did not make the house the dwelling house or usual place of abode of the defendant so that a summons could have been lawfully served upon the defendant by leaving it there, "but that, under such circumstances an attachment may issue."

On certiorari the Supreme Court reversing the Circuit, made absolute the order to show cause why the attachment should not be set aside, and was in turn reversed on error by the Court of Errors and Appeals sustaining the attachment on the foregoing facts.

The statute authorizing and regulating the issuing of attachments and the directing the issuing of writs of summons and the manner of service thereof are in *pari materia* and must be construed as mutually exclusive. Where a summons may be lawfully served a writ of attachment will not lie where the facts are such that an attachment is authorized a summons cannot be legally served.

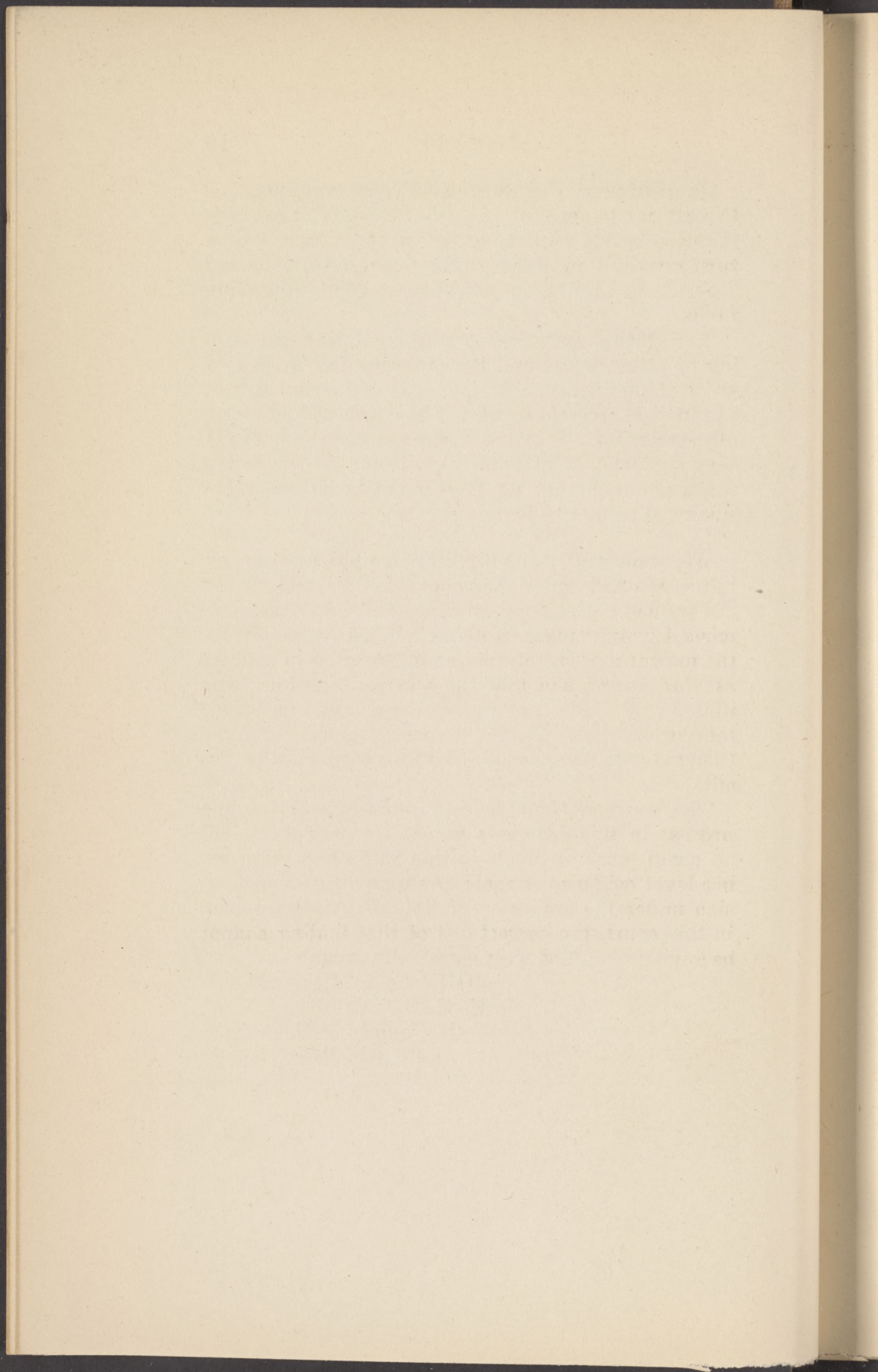
We respectfully submit that in view of that adjudication and under the process in this case, Jacob Sobers had not at the date of the service of the summons a usual "place of abode" in this State within the meaning of the statute as interpreted in *Mygatt vs. Coe, supra*, and that the service, therefore, was illegal and was properly set aside and judgment therein vacated, and that the action of the Supreme Court should be affirmed. And we respectfully submit.

The Supreme Court having found that at the time process in this case was served Jacob Sobers had no usual place of abode in this State and there being legal evidence capable of supporting its conclusion under the authority of *Cole vs. Blythe, supra*, in this court, the correctness of that finding cannot be reviewed. And we respectfully submit.

JOHN F. X. RIES and

U. G. STYRON,

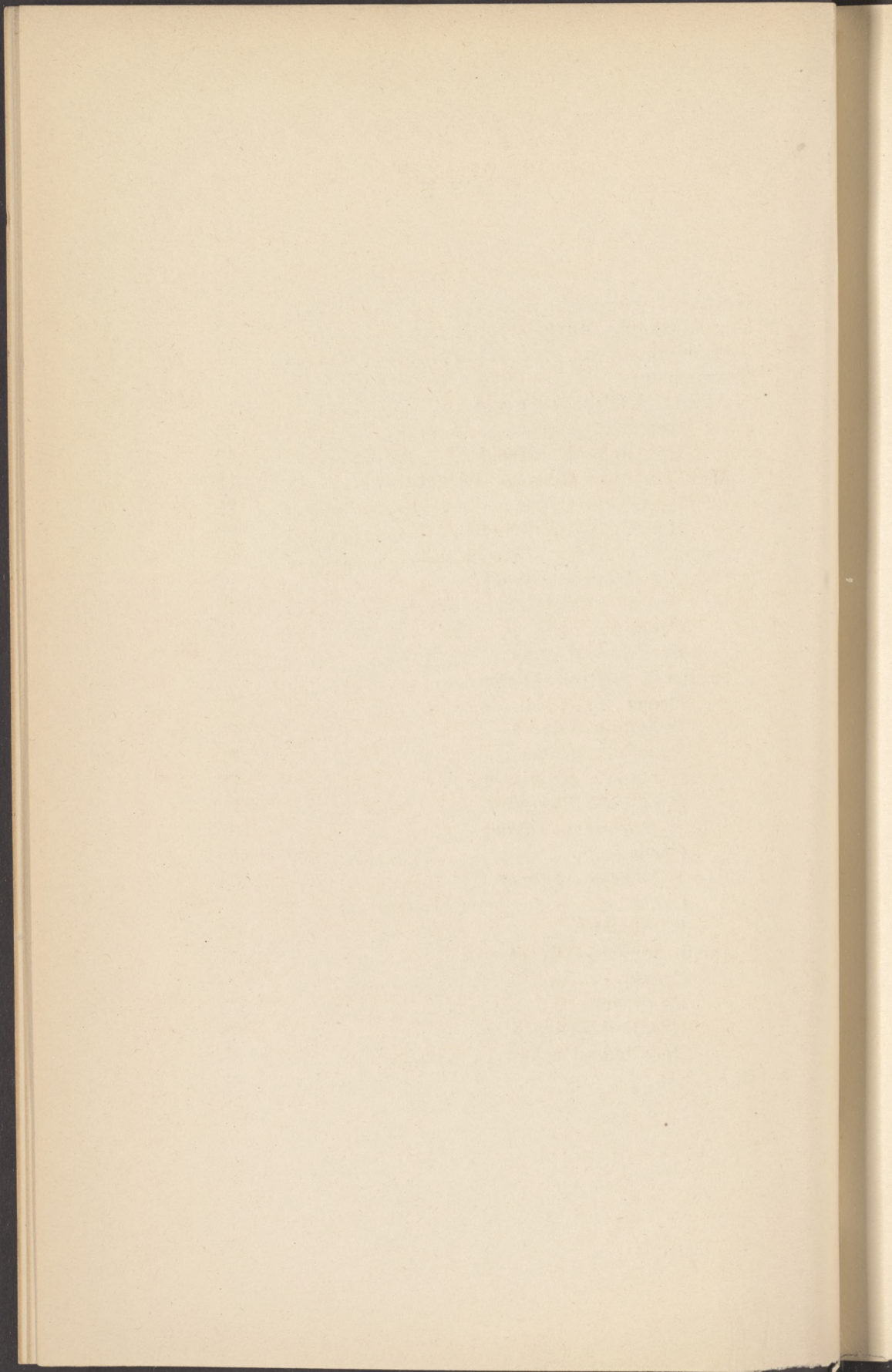
*Of Counsel with Defendants-Appellees.*



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NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

A. L. FEIGHAN,

*Plaintiff,*

vs.

JACOB SOBERS & AARON  
SOBERS, trading as Jacob  
Sobers & Son,

*Defendant.*

ON CONTRACT.  
NOTICE OF APPEAL.

10

*To John F. X. Ries and U. G. Styron, Esqs., Attorneys of Defendant:*

20

Sirs:

TAKE NOTICE, that the plaintiff appeals from the whole of the judgment of the Supreme Court of the State of New Jersey, entered in this cause, in and by which it was ordered that the judgment heretofore entered be set aside, with costs to the prosecutor, to the Court of Errors and Appeals of New Jersey:

(1) Because the Court erred in finding that the service upon the defendant, Jacob Sobers, was not made at the usual place of abode. 30

(2) Because the Court erred in finding that the summons was not served as indicated by the statute of this State, in such cases made and provided.

(3) Because the summons was served upon Jacob Sobers, at his usual place of abode.

(4) Because the finding of the Court is erroneous upon the facts as established to the Court.

H. H. VOORHEES,  
*Attorney for Plaintiff.*

10

---

[ENDORSED]

New Jersey Supreme Court.

---

A. L. Feighan,  
Plaintiff,

vs.

Jacob Sobers and Aaron Sobers,  
trading as Jacob Sobers & Son,  
Defendants.

20

---

On Contract.  
Notice of Appeal.

---

H. H. VOORHEES,  
*Att'y of Plaintiff,*  
Camden, N. J.

30

Service of a copy of the within notice is hereby acknowledged this fourteenth day of November, A. D. 1913.

JOHN F. X. RIES,  
*Attorney for Defendant.*

**SUMMONS AND NARR.**

(Filed February 14, 1910.)

NEW JERSEY, ss.:

THE STATE OF NEW JERSEY to the Sher-  
[SEAL] iff of the County of Atlantic,  
GREETING:

We command you to summon Jacob Sobers and 10  
Aaron Sobers, trading as Jacob Sobers & Son, to be  
and appear before the Supreme Court of the State  
of New Jersey, to be held at Trenton, in and for said  
State, on the third day of February next, to answer  
unto A. L. Feighan in an action upon contract,  
wherein the plaintiff demands ten thousand dollars,  
and have you then and there this writ.

Witness, the Honorable William S. Gummere, Es-  
quire, Chief Justice, at Trenton, aforesaid, this  
fourteenth day of January, A. D. nineteen hundred 20  
and ten.

WM. RIKER, JR.,  
*Clerk.*

H. H. VOORHEES,  
*Attorney.*

---

NEW JERSEY SUPREME COURT  
Of the Third Day of February, A. D. Nineteen 30  
Hundred and Ten.

---

ATLANTIC COUNTY, ss.:

A. L. Feighan complains of the defendants, Jacob  
Sobers and Aaron Sobers, trading as Jacob Sobers

& Son, of an action upon contract that they render unto the said plaintiff the sum of ten thousand dollars, which to him the said defendants owe, and from him unjustly detain, to wit: That heretofore, to wit: On the twenty-second day of December, nineteen hundred and nine, in the Court of Common Pleas No. 4, a court of record in and for the County of Philadelphia, State of Pennsylvania, by the consideration and judgment of the said Court recovered  
10 against Jacob Sobers and Aaron Sobers, trading as Jacob Sobers & Son; that the said Jacob Sobers and Aaron Sobers, the defendants named in the said judgment, and the defendants named in this suit, are the same persons, for the sum of ten thousand dollars above demanded, which in and by the said Court were adjudged to the said plaintiff for his damages which he had sustained, as well by reason of the non-performance by the said defendants of certain promises and undertakings then lately made by the said  
20 defendants to the said plaintiff, by reason of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said defendants were convicted, as by the record and proceedings thereof remaining in the said court more fully appears, which said judgment still remains in full force and effect, not reversed, satisfied or otherwise vacated. Whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendants,  
30 Jacob Sobers and Aaron Sobers the sum of ten thousand dollars above demanded.

Yet the said defendant, although often requested, have not as yet paid to the said plaintiff the said sum of ten thousand dollars above demanded, or any part thereof, but the same to pay hath hitherto wholly failed and refused, and still do fail and re-

fuse, to the damage of the said plaintiff ten thousand dollars, and thereupon he brings his suit.

H. H. VOORHEES,  
*Attorney of Plaintiff.*

Notice to the defendants:

The following is a bill of particulars of the demand and a copy of the judgment rendered in the Common Pleas Court No. 4 of Philadelphia, Pennsylvania, on December twenty-second, nineteen hundred and nine, whereupon the annexed declaration is founded. 10

COPY OF JUDGMENT NOTE.

\$5000.

Philada Dec 14 1909.

One day .....after date we promise to pay 20  
to the order of A. L. Feighan  
Five thousand.....xx-100 dollars,  
without defalcation, value received, with interest.

And further we do hereby authorize and empower any attorney of any Court of Record of Pennsylvania, or elsewhere, to appear for and to enter judgment against us for the above sum, with or without declaration, with costs of suit, release of errors, without stay of execution, and with five per cent. added for collecting fees: and we also waive the right of inquisition on any real estate that may be levied upon to collect this note, and do hereby voluntarily condemn the same, and authorize the prothonotary to enter upon the fi. fa. our said voluntary condemnation, and we further agree that the said real estate may be sold on a fi. fa. and we hereby 30

waive and release all relief from any and all appraisalment.

JACOB SOBERS  
AARON SOBERS.  
trading as Jacob Sobers  
and Son.

Witness: ELEANOR L. JAQUETT

10

---

COPY OF JUDGMENT.

---

A. L. Feighan,	}	C. P. No. 4.
vs.		December Term, 1909.
20 Jacob Sobers and Aaron Sobers, trading as Jacob Sobers & Son.		No. 1803.

---

Assessment of Damages.

Real debt,	\$5000.00
Interest from December 15, 1909,	6.67
30 Commission for collection, 5%,	250.00
Total,	\$5256.67

J. H. BRINTON,  
*Attorney for Plaintiff.*

I assess damages as above.

S. B. BOYD, *Pro Prothy.*

Judgment Index.

Deft.	Pltff.	Court.	Term.	No.	Atty.	Date.	
						1909,	
Sobers	A. L.						
Jacob	Feighan	4	D-'09	1803	D. S.	Dec.	
					B.	22	
Sobers	do						
Aaron		"	"	"	"		
Amount.							10
\$5000.							
\$5000.							

Costs.

Philadelphia County, \$4.50  
 Exemplification, 3.00

Judgment will be demanded for the sum of five thousand two hundred and sixty-one dollars and seventeen cents with interest from the twenty-second day of December, nineteen hundred and nine, to date of judgment, together with costs of suit. 20

H. H. VOORHEES,  
*Attorney for Plaintiff.*

To the within named defendant:

In case the within summons and declaration are served (in case of an individual) upon you personally, or if a corporation organized under the laws of the State of New Jersey, personally upon the president or other head officer or agent in charge of its principal office in this State, or if a foreign corporation personally upon any officer, director or registered or authorized agent of such corporation, then take notice that if you, said defendant, intend to make a defence to this action, you must file an affidavit of merits within ten days from the date of the service hereof, and that unless you file such af- 30

fidavit, judgment by default will be entered against you at the end of said ten days; and that, in case you file said affidavit, unless you file a plea or demurrer within twenty days from the date of service hereof upon you, judgment by default will in such case be entered against you at the end of said twenty days.

- 10 In case the within summons and declaration are served by the leaving of a copy at the dwelling house or place of abode of the person so intended to be served, then take notice that unless you appear and file a plea or demurrer within twenty days after the date of service hereof upon you, judgment will be entered against you.

H. H. VOORHEES,  
*Attorney.*

- 20 I hereby depute and appoint Phillip G. Mitten to serve the within summons and narr. on Jacob Sobers and Aaron Sobers, trading as Jacob Sobers and Son. Witness my hand and seal this twenty-sixth day of January, A. D. 1910.

ENOCH L. JOHNSON, [SEAL]  
*Sheriff.*

- 30 Duly served within summons and narr. January 27th, 1910, on Jacob Sobers and Aaron Sobers, trading as Jacob Sobers and Son, by delivering a copy for each of them at their place of abode in Margate City, Atlantic County, New Jersey, with Barbara Hoffman, housekeeper in charge thereof.

ENOCH L. JOHNSON, *Sheriff,*  
By PHILIP G. MITTEN,  
*Special Deputy Sheriff.*

Sheriff's fees \$5.22.

NEW JERSEY SUPREME COURT.

A. L. Feighan,

vs.

Jacob Sobers and Aaron  
Sobers, trading as Jacob  
Sobers & Son.

On Contract.

10

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

PHILIP G. MITTEN, Special Deputy Sheriff of the  
County of Atlantic, being duly sworn according to  
law, on his oath saith that on the twenty-seventh day  
of January, nineteen hundred and ten, he served on  
the defendants, Jacob Sobers and Aaron Sobers,  
trading as Jacob Sobers & Son, by delivering for  
each of them true copies of the annexed summons  
and narr. at their place of abode in Margate City,  
Atlantic County, New Jersey, with Barbara Hoff-  
man, housekeeper in charge thereof.

20

PHILIP G. MITTEN,  
*Special Deputy Sheriff.* 80

Sworn and subscribed to before me this fifth day  
of February, A. D. 1910.

[SEAL]

MELVIN A. ABBOTT,  
*Notary Public of N. J.*

*Summons and Narr.*

[ENDORSED]

New Jersey Supreme Court.

A. L. Feighan,

Plaintiff,

vs.

Jacob Sobers and Aaron Sobers,  
trading as Jacob Sobers &  
Son,

Defendants.

Summons and Narr.

Ret'ble Feb. 3rd, 1910.

H. H. VOORHEES,

*Attorney,*

207 Market Street,

Camden, N. J.

Filed Feb. 14, 1910.

WM. RIKER, JR.,

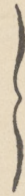
*Clerk.*

**JUDGMENT.**

A. L. FEIGHAN,

vs.

JACOB SOBERS, et al., trad-  
ing, &c.



ON CONTRACT.

—————

**10**

Judgment entered February 18, 1910.

Amount of damages, \$5,314.11

Costs:

Attorneys, 24.02

Clerk, 2.93

Court, 1.90

Als., 5.42

—————  
\$5,348.38 **20**

WM. RIKER, JR.,  
*Clerk.*

## NEW JERSEY SUPREME COURT.

A. L. FEIGHAN,

vs.

JACOB SOBERS & AARON  
SOBERS, trading as Jacob  
Sobers & Son.ON CONTRACT.  
ON RULE TO SHOW  
CAUSE.

10

Testimony of witnesses taken in the above entitled matter on Monday, the third day of June, 1912, at two o'clock in the afternoon, before OLIVER T. ROGERS, Supreme Court Commissioner, at his offices, 418-419 Bartlett Building, Atlantic City, N. J.

20

PRESENT:

U. G. STYRON, Esq., and JOHN F. X. RIES, Esq., representing the Defendants.

C. W. MYROSE, stenographer, first sworn.

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

ALBERT M. FREAS, SWORN.

By Mr. Styron:

Q. Mr. Freas, where do you live?

A. Margate City, New Jersey.

Q. How long have you lived there?

A. Since October fourth, 1906.

Q. Were you living there in January of 1910?

A. I was.

Q. Did you know Jacob Sobers in his lifetime?

A. I knew Mr. Sobers may be twenty years.

Q. Has he a house at Margate City?

A. He has. He had until he deeded it over to his daughter.

Q. Do you know when that was?

10

A. I was present on the afternoon when Mr. Leek, a commissioner of deeds, drew the deed and took the acknowledgment. It was sometime in January, 1908.

Q. I show you what purports to be a deed, dated January 21st, 1908, made by Jacob Sobers to Mary Ann Franz, recorded June 1st, 1910, in the Atlantic County Clerk's office, in Book 435 of Deeds, page 29, etc., and ask you if that is the deed?

A. That is the deed.

20

Q. And this deed was executed in your presence?

A. It was executed in my presence.

Q. And this deed describes the property that he then owned?

A. It does.

Q. What is the number of that property?

A. I couldn't tell you just the number. I know exactly the description of it and all, but I couldn't tell you the number.

Q. How close is it to your own house?

30

A. It is only a stone's throw. I live on Jackson Avenue, and that property is 50 feet by 125 on Baltic. It is only a stone's throw.

Q. From where you live?

A. From where I live.

Q. Are you able to say whether or not Jacob

Sobers was in Margate City on the 26th of January, 1910?

A. I couldn't say.

Q. Do you know whether or not he was there that winter at all?

A. Mr. Sobers was away that winter, because the house was closed; the house was locked up.

Q. Did you have occasion to pass and repass the house during that month of January?

10 A. Yes.

Q. And you know of your own knowledge that the house was unoccupied?

A. The house was unoccupied.

Q. During the month of January?

A. During the month of January.

Q. And about the 26th of January of the year 1910?

A. It was closed that winter, I know; I couldn't give the date exactly.

20 Q. Did you see Mr. Sobers in town at all during that month?

A. I never saw Mr. Sobers until he returned from the South.

Q. That was when?

A. It may have been some time in February, as near as I could judge.

Q. The early part or the latter part of February?

A. I heard he had returned from the South and he was in Philadelphia and he would be down to  
30 Margate City as soon as he rested. That may be in the latter part of February, as near as I can remember.

Q. But you do remember noticing that the house was closed and unoccupied during that month?

A. The house was closed and it was unoccupied.

Q. Mr. Freas, you are a commissioner of Margate City, aren't you?

A. I am.

Q. Under the new commission form of government there?

A. Yes, sir.

ALBERT M. FREAS.

Sworn and subscribed before me this 3rd day of June, 1912.

OLIVER T. ROGERS,  
*Supreme Court Commissioner* 10  
*of New Jersey.*

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

MRS. BARBARA REEVES, SWORN.

By Mr. Styron:

20

Q. Mrs. Reeves, did you know Jacob Sobers in his lifetime?

A. I did.

Q. How long had you known him?

A. Well, I knowed him for about twenty years.

Q. Did you know Aaron Sobers?

A. I do; that is his son.

Q. He is living, is he not?

A. He is, to the best of my knowledge.

30

Q. Do you know whether or not Jacob Sobers was in Margate City on the 27th of January, 1910?

A. No, sir, he was not; he was in Florida.

Q. He was not in Margate City at that time?

A. No, sir.

Q. Did he have a house in Margate City?

A. Yes, sir.

Q. Where was it?

A. It was number 16 Baltic Avenue. It is called Monmouth Avenue now; they changed the name of the street.

Q. Was it his custom to live in Margate City the year around or only at certain times of the year?

A. Well, up to 1906 he lived there the year around, and then his health got so poor he couldn't stand  
10 the cold, and he used to go South in the winter.

Q. He did that after 1906, did he?

A. Nineteen hundred and six was the first time he went, and after that he went every winter.

Q. If you know, about what time would he leave in the fall or winter?

A. Well, he would leave somewhere around the holidays. I couldn't just tell you the dates.

Q. He would remain away until when?

A. Until about March.

20 Q. That was his custom each year?

A. Yes, sir.

Q. You know that during the whole month of January, 1910, he was not in Margate City?

A. No, sir; he was not.

Q. Was his house occupied?

A. No, sir, it was closed up tight.

Q. No one in it at all?

A. No, no one in it. Shutters were all closed and everything and what hadn't shutters on was nailed

30 up.

Q. Did any one have access to the house?

A. I had the key to the house.

Q. Where did you live at that time?

A. I lived in number 7 Baltic Avenue, across on the corner of Baltic and Jackson Avenue.

Q. Were you housekeeping?

A. Yes, sir; was keeping house in my own house.

Q. Were you at that time in the employ of Mr. Sobers?

A. No, sir; I wasn't.

Q. Were you his housekeeper?

A. No, sir, I wasn't; hadn't been for several years previous. He used to board with me then when he come down.

Q. How did you come to have the key?

A. Well, it was his custom to leave it with me so as to, in fine weather, air the house out sometimes, or in case anything happened so I could get into it, the same as Mr. Freas or Mr. Bickley would leave me their keys when they would go away. 10

Q. In January, 1910, what was your name?

A. Barbara Hoffman.

Q. You have been married since that time?

A. I was married last July.

Q. Do you recall whether or not some papers were served on you in January of 1910? 20

A. Yes, sir, there were.

Q. Will you state the circumstances under which they were served, and who served them?

A. This Mrs. Feighan and Mr. Mitten, I didn't know who they were at the time when they came there to my house, and the lady she coaxed and coaxed me to take her over there and let her see Mr. Sobers' house. I told her the house was neither for sale or for rent, Mr. Sobers wasn't there himself, that he was in Florida, and she kept on coaxing, and she said she had come so far wouldn't I be kind enough to let her look at it. I felt there was no harm in it, and I took the key and went over and let her look at it. 30

Q. Then what happened?

A. She looked around in the rooms downstairs,

and it didn't seem to suit her, and just as she was putting her foot on the stairs to go up, she said she guessed she wouldn't go up, she had seen enough of it, and Mr. Mitten he come and handed me a paper. He said, "While I am here I might as well hand you this." With that they went right out. I didn't know what they were at the time he handed them to me.

Q. What did you do with the papers?

10 A. I took them over to Mr. Freas, and he explained to me what they were and told me that I had better send them to his son, because the time was too short to send them to Mr. Sobers so he could do anything with them.

Q. Who was his son?

A. This Aaron Sobers.

Q. Where did he live?

A. He lived at 1766 Frankford Avenue, but his place of business is 1416 Germantown Avenue. I  
20 think that is the number. If I recollect it right.

Q. Can you say whether or not he had any residence in Margate City at that time?

A. He never had.

Q. You were not his housekeeper, were you?

A. No, sir, I was not.

Q. Do you know whether he had a family?

A. He has a wife and son and daughter.

Q. And they live in Philadelphia?

A. Yes, sir; live at 1766 Frankford Avenue.

30 Q. At the time this paper was served on you, neither Jacob Sobers nor Aaron Sobers had a place of abode in Margate City, did they?

A. No, sir; Mr. Sobers was in Florida and Aaron Sobers lived in Philadelphia.

Q. And you were not the housekeeper of either of them?

A. No, sir, I was not.

Q. I show you what purports to be a copy of the summons and declaration in the Supreme Court in a case where A. L. Feighan is plaintiff and Jacob Sobers and Aaron Sobers, trading as Jacob Sobers & Son, are defendants, the summons returnable February third, 1910, H. H. Voorhees, attorney, marked filed February 14th, 1910, William Riker, Jr., Clerk, containing a return by Enoch L. Johnson, Sheriff, by Philip G. Mitten, Special Deputy Sheriff, together with the affidavit of Philip C. Mitten, Special Deputy Sheriff, and I ask you if those resemble the papers that were served on you at the time, if you recall them. The first page was not on at the time you were served? 10

A. No, I don't recollect the first page, but I think it is.

Q. That looks like the paper that was served on you?

A. Yes, sir. 20

(Paper offered in evidence and marked Exhibit D1.)

Q. Mrs. Reeves, when did Jacob Sobers return from the South?

A. Why, he returned, I think it was the last Saturday in February that year, because I had written on to him about this and he came. It worried him so that he didn't stay any longer. He came home then. 30

Q. That is of 1910?

A. Yes, sir.

BARBARA REEVES.

Sworn and subscribed before me this third day of June, 1912.

OLIVER T. ROGERS,  
*Supreme Court Commissioner  
of New Jersey.*

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

JACOB H. BICKLEY, SWORN.

By Mr. Styron:

Q. Mr. Bickley, where were you in January of 1910?

A. Well, the first part of January I was in Philadelphia. I left on the midnight train at West Philadelphia Station of the Pennsylvania Railroad on the night of the 14th of January. I landed in Washington that day. I left there on the nine o'clock, as near as I can remember, it might have been a little after nine something, or eight something, train to go to St. Petersburg, Florida. I judge I arrived there on the 15th at eight o'clock, the next day.

Q. Then you were in St. Petersburg, Florida, on the 15th of January?

30 A. To the best of my knowledge, yes, sir. I left on the 14th. I wouldn't want to say how long it took me to go there, but I think I rode all night, all the next day and landed there at eight o'clock the next day.

Q. You left Philadelphia to go to Florida?

A. On the 14th.

Q. And you reached Florida?

A. I reached Florida, I think on the 15th day of January.

Q. How long did you stay in Florida?

A. Well, to the best of my knowledge, I stayed there until about the first of February, it may have been a few days after.

Q. Were you there on the 26th or 27th of January?

A. I was there.

10

Q. Did you know Jacob Sobers in his lifetime?

A. Well, yes, I knowed him for about 15 years, maybe a little over.

Q. Do you remember whether or not you saw Jacob Sobers at any time between the 15th of January and the time in February when you left Florida?

A. I seen Mr. Sobers every day, pretty near, I was in St. Petersburg.

Q. Where was he at the time you saw him?

A. Well, I went around to his boarding house. I couldn't just exactly say the name of the street now.

Q. I mean what State was he in?

A. Florida.

Q. Was he there during all the time you were in Florida?

A. He was, sir. Well, we took one or two trips, little excursions, together, but he was staying there all the time, kept his boarding house all the time.

Q. You are prepared to say he was not in the State of New Jersey during that time, are you?

30

A. I do.

Q. Who left Florida first on the return trip, you or he?

A. I did.

Q. And that was when?

A. Well, that was some place around the first of

February. Might have been a little after; I couldn't exactly answer, as to that.

Q. But it was some day in February?

A. Yes, sir.

Q. That you are positive of?

A. Yes, sir.

Q. And you left him in Florida?

A. I left him in St. Petersburg.

Q. Do you know Aaron Sobers?

10 A. I know him, yes, sir.

Q. Do you know whether or not he lived in Margate City in 1910?

A. Who, Aaron Sobers?

Q. Yes.

A. No, sir, I never knew him to live in Margate City at no time.

Q. Do you know where he does live?

A. I couldn't just exactly tell you the number, but he lives on Frankford Road in Philadelphia.

20 Q. You do know that he lives in the City of Philadelphia, do you?

A. Yes, sir.

Q. Do you know that he lived there during January of 1910?

A. So far as I know of, yes, sir; I don't think he ever moved.

JACOB H. BICKLEY.

30 Sworn and subscribed before me this 3rd day of June, 1912.

OLIVER T. ROGERS,  
*Supreme Court Comr. of N. J.*

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

CHARLES REEVES, SWORN.

By Mr. Styron:

Q. Mr. Reeves, where do you live?

A. Margate City.

Q. How long have you lived in Margate City? 10

A. Well, I have lived there about two years, steady, but I have been there often. Been going down there quite a while.

Q. Did you visit Margate City during the year 1910?

A. Yes.

Q. During January of that year?

A. Yes, sir, I was frequently down there.

Q. Did you know Jacob Sobers in his lifetime?

A. Yes, sir. 20

Q. Did you know where he lived?

A. Yes, sir.

Q. What was the number of the house that he owned there?

A. Sixteen.

Q. Sixteen where?

A. Monmouth Avenue, it is called now; used to be Baltic.

Q. Can you say whether or not he was in Margate City during January of 1910? 30

A. He wasn't there, I don't think.

Q. Do you know whether the house, 16 Monmouth Avenue, was occupied or closed?

A. Closed.

Q. During the whole month?

A. Oh, yes. I closed it up for him, that is, the storm doors.

Q. That was when?

A. I don't just know the dates, you know, but I closed it up, for he was going away, you know, and she moved over, in her house.

Q. That was some time before the 27th of January?

A. Well, I don't know just what time it was. He went away to Florida and I closed the house up, put the shutters in, you know.

10 Q. Was he in town at that time, at the time you closed it?

A. I closed it before he went away. He was about going away, and she went over in her house.

Q. Do you mean on the same day that he went away?

A. Well, I don't know as he went away right away. We closed it up along in the fall or along in the winter there just before he went away, but I don't know just the dates, you know. I can't re-

20 member when it was. But the house was closed.

Q. What did you do—lock the doors?

A. He locked his own doors and I put in the dead lights and like of that around the windows where there wasn't shutters, fixed that up. Shut up practically everything that I know of.

Q. After the house was closed, who had the key?

A. Why he left it with my wife. We wasn't married at that time.

Q. But you passed the house frequently?

30 A. Well, I was down at her place, you know.

Q. She lived right close, did she not?

A. Just across the street, number 7.

Q. Do you feel confident or not that in the latter part of January, say the 26th and 27th, that Sobers has gone away for the winter?

A. Yes, sir.

Q. That you are certain about?

A. Yes, sir.

CHARLES REEVES.

Sworn and subscribed before me this 3rd day of June, 1912.

OLIVER T. ROGERS,  
*Supreme Court Comr. of N. J.*

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Further depositions of witnesses taken in the above entitled matter on Thursday, the eleventh day of July, 1912, at 3 o'clock in the afternoon, before OLIVER T. ROGERS, Supreme Court Commissioner, at his offices, 418-419 Bartlett Building, Atlantic City, N. J.

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PRESENT:

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H. H. VOORHEES, Esq., representing the Plaintiff.  
U. G. STYRON, Esq., and JOHN F. X. RIES, Esq., representing the Defendants.

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IT IS AGREED that the testimony shall be taken stenographically, reduced to typewriting, and that the signatures of the various witnesses be waived.

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MRS. BARBARA REEVES, recalled.

Cross-examination.

By Mr. Voorhees:

Q. What is your full name?

A. Barbara Reeves, formerly Barbara Hoffman.

Q. Where do you live?

A. In Margate City.

Q. The street and number, please.

A. I live on the corner of Jackson and Monmouth Avenue.

Q. Is that what was known as number 7 Baltic Avenue formerly?

A. Yes, sir, that is the number.

Q. Your maiden name was Barbara Hoffman?

10 A. Yes, sir.

Q. How long have you lived in Margate City?

A. For about eighteen or twenty years.

Q. Always at this one place?

A. No, sir.

Q. What other house did you live in in Margate City?

A. Well, I lived at Mr. Sobers' house.

Q. Mr. Jacob Sobers?

A. Yes, sir.

20 Q. What was the number of his house?

A. No. 16 Baltic Avenue, or Monmouth Avenue, rather; it used to be Baltic Avenue.

Q. Did you live in any other houses other than those two you have just mentioned?

A. I have.

Q. In Margate City?

A. Yes, sir.

Q. What other house did you live in?

A. I have lived at the Beauford House.

30 Q. Who owned that property?

A. Mr. Stewart.

Q. How long did you live there?

A. About three years and a half.

Q. Were you employed there?

A. I was.

Q. Was that a boarding house?

- A. It was a hotel.
- Q. Did you live there during the winter and summer both?
- A. Yes, sir.
- Q. What years was that?
- A. That was about 18 years ago.
- Q. When did you first become acquainted with Jacob Sobers?
- A. I became acquainted with him while I was at this Beauford House. He used to come to a club house next door. 10
- Q. That is about 18 years ago?
- A. Yes, sir.
- Q. And you knew him from that time down to the time of his death?
- A. Yes, sir.
- Q. Were you ever employed by Jacob Sobers?
- A. I have been until a few years ago.
- Q. As his housekeeper?
- A. I was employed by him as his housekeeper until a few years ago, when he boarded with me then. 20
- Q. Did you keep house for him at 1766 Frankford Avenue, Philadelphia?
- A. I did.
- Q. How long did you keep house for him there?
- A. I kept house for him there until he come down to Margate City; that was the following spring.
- Q. When did he come down to Margate City, what year? 30
- A. I think it was in 1897.
- Q. Eighteen hundred and ninety-seven?
- A. Eighteen hundred and ninety-seven or 1898; I don't just recollect.
- Q. How many years were you employed as his housekeeper in Philadelphia?

A. I was employed no year there, for he moved down very shortly afterwards.

Q. And were you his housekeeper in Margate City when you first came from Philadelphia?

A. Yes, sir.

Q. And what was the number of the house that you lived in in Margate City?

A. No. 16 Baltic Avenue, or Monmouth Avenue, I should say.

10 Q. Did Mr. Sobers build that house?

A. He put an addition onto it.

Q. Did he own the property?

A. Yes, sir.

Q. From 1897, the time you came down to No. 16 Baltic Avenue, how long after that did you act as housekeeper for Mr. Sobers?

A. For about 10 years.

Q. Then where did you go?

A. Well, I went into my own house.

20 Q. Which house is that?

A. No. 7.

Q. Baltic Avenue?

A. Yes, sir.

Q. Who built that house?

A. Why, I had it built.

Q. Did you build it yourself?

A. Yes, sir.

Q. When was that built?

A. In 1903.

30 Q. Did you act as housekeeper for Mr. Sobers after 1903?

A. Yes, sir.

Q. At No. 16 Baltic Avenue?

A. Yes, sir.

Q. In the summer of 1910 weren't you acting for him as his housekeeper?

A. No, sir, I was not. He was boarding with me.

Q. At what place?

A. He was at his own house and I went over there to take care of him, but I wasn't acting as his housekeeper.

Q. In 1909 did you act as his housekeeper?

A. No, sir, I didn't.

Q. Were you then living over at No. 9 Baltic Avenue?

A. In the summer, no, sir. I lived over at his house. 10

Q. Well, you lived at his house, No. 16 Baltic Avenue, all the summers, did you not?

A. Yes, sir.

Q. And kept house for him there?

A. I did not keep house for him. He boarded with me. He simply wanted me to come over there to be there with him to take care of him if he was sick.

Q. But you lived over there during the summer 20 season?

A. Yes, sir. I had other boarders.

Q. You had other boarders beside Mr. Sobers?

A. Yes, sir.

Q. How big a house is that?

A. It is a six room house with an attic and summer kitchen.

Q. Was Mr. Sobers there during the summer and fall of 1910?

A. Yes, sir. 30

Q. What time did he go to Florida?

A. In 1909?

Q. Nineteen hundred and ten.

A. He didn't go in 1910. The last time he went was in December, 1909.

Q. The last time he went was in December, 1909?

A. Yes, sir.

Q. And did he live or board with you at his house the summer and fall of 1909?

A. Yes, sir, he did.

Q. And left in December to go to Florida?

A. Yes, sir; he went up to Philadelphia before that.

Q. But he was on his way to Florida?

A. He went to Florida in December.

10 Q. And he came back in March?

A. Yes, sir.

Q. And during the time that he was absent in Florida, you had the keys to the house, didn't you?

A. Yes, sir; he left them there.

Q. Had charge of the property for him?

A. I didn't have charge of the property. He simply left the keys there.

Q. Who did have charge of the property?

A. No one. The house was closed up.

20 Q. If any one had charge of it, you did, because you had the keys?

(Objected to.)

Q. I say, if anybody had charge of the property, you did?

A. I didn't have charge of it. He simply left the keys there because he didn't want to take them along with him so he would lose them.

30 Q. Lose the keys?

A. Yes, sir.

Q. You went over there once in a while to see if the property was all right, didn't you?

A. No, I did not, because the shutters in the house was all closed up. There was no need to look after it.

Q. What day of the month did Mr. Sobers start for Florida?

A. That I couldn't say what day, because I wasn't up in Philadelphia when he left.

Q. Well, when you were in Philadelphia, who got his meals for him?

A. I wasn't in Philadelphia.

Q. You were not?

A. No, sir.

Q. What time did he leave when he went to Philadelphia on his way to Florida, what time of the month?

10

A. He went up there several weeks ahead of the time he left for Florida, to see his doctor, and stayed up there.

Q. Can you give me the time that he went to Philadelphia?

A. He went up there about the middle of October; no; November, I mean.

Q. He told you he was going to Philadelphia to see his doctor?

A. Yes, sir.

20

Q. And he also told you he was going on to Florida?

A. Yes, sir.

Q. What did he say to you when he gave you the keys?

A. He didn't say anything. He hung them on the nail where he always kept them when he was there.

Q. Well, you had been with him and had charge of his house for a number of years previous to that, hadn't you?

30

A. Only up to the time I stopped keeping house for him.

Q. When did you stop keeping house for him?

A. Well, about three or four years ago; I couldn't just say what year.

Q. Why did you stop keeping house for him?

A. Because he didn't want to be bothered with household cares.

Q. And then, instead of keeping house for him, you took him to board; is that the idea?

A. Yes, sir, I did.

Q. But you were both in the same house just the same as you were before?

A. Some of the time; not always.

Q. Did Mr. Sobers have a grandson?

10. A. Yes, sir.

Q. What is his name?

A. Jacob Jernee.

Q. How old is he?

A. He must be about 18 or 19 years old, isn't he?

Q. And did he also live with his grandfather?

A. He boarded with me.

Q. Boarded with you?

A. Yes, sir.

20. Q. And when you were keeping house for Mr. Sobers, he was living then with his grandfather?

A. No, sir, he still boarded with me. He paid me his board.

Q. And did Mr. Sobers pay you board, too?

A. Yes, Mr. Sobers paid me his board, too.

Q. But when you kept house for him, then he paid you; is that right?

A. He hasn't paid me any wages for years.

Q. For how long?

A. For some years.

30. Q. When did he stop paying you wages?

A. I couldn't just tell you the time.

Q. Well, about how long?

A. I guess it is all of five or six years.

Q. In 1907, when you went to work for him, he paid you wages, did he not?

A. In 1907?

Q. Eighteen hundred and ninety-seven.

A. Yes, sir, he paid me wages then.

Q. He paid you wages for several years after that?

A. Yes, sir.

Q. Why did he stop paying you wages?

A. Well, he wanted to save up his money so as he could go to Florida.

Q. What did you say to him because he didn't pay you any wages?

A. I took other boarders so as to make something 10 out of it for myself.

Q. Then, as I understand, you and he came to an understanding that you were to take boarders and then he wasn't to pay you any more salary; is that it?

A. He paid me his board, too.

Q. And did he pay his grandson's board?

A. No, sir; his grandson worked and paid his own board.

Q. Where is the grandson now?

A. As near as I know, the last I heard of him, he 20 was in Norfolk, Virginia.

Q. Was he boarding with you in January of 1910?

A. Yes, sir, he was.

Q. At No. 16 Baltic Avenue, or No. 9?

A. At No. 7.

Q. Wasn't he living in No. 16?

A. No, sir, he wasn't.

Q. Didn't he live in there after his grandfather went to Philadelphia?

A. No, sir, he did not. The house was closed up. 30

Q. Was the water turned off?

A. The water was turned off, too.

Q. Are you quite sure about that?

A. I am positive.

Q. Who turned it off?

A. Mr. Sobers turned it off himself.

- Q. Do you mean senior?
- A. Yes, sir, before he went away, before he left the house.
- Q. Who put the storm doors on?
- A. My Husband, Mr. Reeves.
- Q. Are there shutters to the windows on this house?
- A. Yes, sir.
- Q. And were they closed, too?
- 10 A. They were all closed.
- Q. Are you quite sure about that?
- A. I am positive.
- Q. How far is it from 16 Baltic Avenue to No. 7 Baltic Avenue, just across the street?
- A. Yes, sir, catacornered across the street.
- Q. Mr. Sobers for three or four years prior to his death was in the habit of going to Florida for two or three months in the middle of the winter, wasn't he?
- 20 A. Yes, sir.
- Q. And he left the property in your charge while he was away?
- A. Didn't leave the property in my charge at all.
- Q. In whose charge did he leave it?
- A. In no one's. The house was closed up.
- Q. You always had the key when he was away?
- A. He just simply hung the key on the nail.
- Q. He was always welcome in your house, wasn't he?
- 30 A. He always paid his board, the same as any stranger.
- Q. He built No. 7 Baltic Avenue for you, didn't he?
- A. He just oversaw the building; that is all.
- Q. He paid for it, didn't he?
- A. No, sir, he did not.

Q. Do I understand you to say that Mr. Sobers did not build that house and did not pay for it?

A. No, sir; I gave it out by contract and had it done; he simply overlooked the work.

Q. Mr. Sobers did?

A. Yes, sir.

Q. How many times did Mr. Sobers go to Florida to your knowledge, in the winter time?

A. He went every winter from 1906 to 1909. One winter he went to Cuba. 10

Q. Did you go with him when he went to Cuba?

A. No, sir, I did not.

Q. Did you go with him at any time when he went to Florida?

A. I did the first time he went.

Q. How long did you remain in Florida with him?

A. About six weeks from the time we left until we come home.

Q. Do you know Mrs. Feighan, the lady sitting here? 20

A. I have seen her once or twice; a couple of times.

Q. When did you first see her?

A. When she and Mr. Mitton come to my house to ask me to go over there and open the house so she could see it.

Q. When was that?

A. That was in January of 1909.

Q. Did you take them over and show them the house? 30

A. She coaxed and coaxed me. I didn't want to, and I told her that the house was neither for sale nor rent, and she said wouldn't I be kind enough to take her over and let her see it as she had come so far, and would like to see it.

Q. Did she say the reason she wanted to see it?

A. No, she did not.

Q. Well, didn't you think it strange that somebody should come there, a stranger to you, and ask you to see a house without giving you a reason for it?

A. Well, there is a lady had written twice before that and wanted to know—asked Mr. Sobers what he would take for the property.

Q. I know, but you kept boarders there in the summer time, didn't you?

10 A. Yes.

Q. And didn't you think it strange that somebody should ask you to go over there and show them the property?

A. Well, it come so quick I didn't think anything about it.

Q. I know, but you say they coaxed and coaxed you.

A. Well, so she did.

20 Q. Well, what was the reason that you took them over there?

A. Just because I wanted to be kind, that is all. Treat her as one woman would another.

Q. Didn't you ask them what they wanted to see it for?

A. No, I didn't.

Q. Why didn't you? Why didn't you ask them before you took them over, what they wanted to see the house for?

A. Well, I didn't think to ask her.

30 Q. It was Mr. Sobers' house, wasn't it?

A. Yes, sir.

Q. Had he told you when he went away to let anybody see the house that came along?

A. No, he didn't.

Q. Well, you have been with Mr. Sobers since 1897, either as his housekeeper or else he boarded with you; is that correct?

- A. Yes, sir.
- Q. Up until the time he died?
- A. Yes, sir.
- Q. You were with him when he died, weren't you?
- A. I was.
- Q. Where did he die?
- A. In the parlor downstairs.
- Q. In which house?
- A. No. 16.
- Q. And can you recall the date of his death? 10
- A. Yes, sir; 24th of July.
- Q. Nineteen —
- A. Nineteen hundred and eleven.
- Q. Were you keeping boarders there at that time?
- A. Yes, sir.
- Q. How much board did Mr. Sobers pay you?
- A. He paid me five dollars a week.
- Q. How much wages did he give you when you worked for him as housekeeper?
- A. Three dollars a week. 20
- Q. When you went to Florida, you and he went together?
- A. The first time he went, he was very sick and he wasn't able to go alone.
- Q. Are you quite sure that Mr. Sobers turned the water off himself before he went to Philadelphia?
- A. Yes, sir.
- Q. Don't you have to notify the water company and don't they turn the water off down here?
- A. No, sir; we turn it off in the house under the 30 sink.
- Q. When Mr. Mitton gave you the paper on that day, what did you do with the paper?
- A. He gave me two.
- Q. Two papers? What did you do with them?
- A. I showed them to Mr. Freas; I didn't know what they were.

Q. Who is Mr. Freas?

A. I showed them to Mr. Freas and he advised me to have them registered and send them to Mr. Sobers' son up in Philadelphia.

Q. Did you do that?

A. I did.

Q. Didn't you send them to Mr. Sobers in Florida?

A. No, sir, I did not, for the time was too short when they were returnable, to get them to him and  
10 have him act on them.

Q. You wrote to him about them?

A. I did.

Q. Write the same day or the next day?

A. Same day I sent them.

Q. The same day you got them, you mean?

A. No, it was the next day I sent them, for this was in the afternoon.

Q. The next day you wrote to Mr. Sobers in Florida that you had received these papers and that  
20 you had sent them to his son in Philadelphia?

A. Yes, sir.

Q. Did you tell Mr. Sobers in Florida what the papers were in the letter you wrote to him?

A. I described it to him as near as I could.

Q. Mr. Freas had told you what they were?

A. Yes, sir.

Q. Who is Mr. Freas?

A. This gentleman sitting there.

30 By Mr. Styron:

Q. Mrs. Reeves, was it January, 1909, or January of 1910 that these papers were served on you?

A. They were served in January, 1910.

Q. Then you were mistaken a while ago when you said 1909, weren't you?

A. No; he went away in December, 1909, and these papers were served in January, 1910.

Q. That is the next month after he went to Florida?

A. Yes, sir.

Q. How long ago was it that you went with Mr. Sobers to Florida?

A. In 1906.

Q. What was the condition of his health at that time?

A. His health?

10

Q. Yes.

A. He had been very sick, not expected to live, and his health was so poor he wanted me to go with him to take care of him.

Q. And you went with him to take care of him because of his illness?

A. Yes, sir; he was afraid to trust himself for fear something would happen to him to go alone.

Q. Now, the son to whom you sent the papers in Philadelphia—what was his name?

20

A. Aaron Sobers.

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ALBERT M. FREAS, recalled.

Cross-examination.

By Mr. Voorhees:

30

Q. Mr. Freas, how long did you know Jacob Sobers in his lifetime?

A. A number of years.

Q. Did you know him when he first came down to Margate City?

A. I saw him, but I wasn't acquainted with him. He was a member of the Independence Club.

Q. He always lived at No. 16 Baltic Avenue?

A. He didn't always live there. He spent some of his time over at the Independence Club before he bought that property at No. 16 Baltic Avenue.

Q. Well, for the last 12 or 15 years, that is where he lived?

A. He has lived there for a long time.

10 Q. Well, 10 or 12 years, anyhow, you would say?

A. I know he lived there in 1897.

Q. And lived there up until the time of his death?

A. He did; yes, he lived there up until the time of his death.

Q. And have you known Mrs. Reeves, it is now, during that same length of time?

A. That same length of time.

Q. You are no relation to either Mrs. Reeves or Mr. Sobers, are you?

20 A. None whatever.

Q. What is your business?

A. I am a Commissioner down at Margate City. I follow nothing else; I am retired.

Q. During the time that you have known both Mr. Sobers and Miss Hoffman, as it was then, Mrs. Reeves now, they lived together in the one house down there?

A. No, they didn't live together in the same house during the time I was acquainted with them.

30 Q. Well, I don't mean every day, but I mean generally speaking.

A. Mrs. Reeves has her own home and lived in it during the time Mr. Sobers was away from Margate City.

Q. Well, how long has he been away from Margate City? He was only away a month or two in the winter time?

A. Sometimes he would be in Philadelphia during the greater part of the winter, at his daughter's house.

Q. And would Mrs. Reeves then go over across the street to her house every time he went away?

A. She lived in her own house.

Q. Did she rent her house in the summer time?

A. No; she rented her house one winter. Yes, she rented her house in the summer time.

Q. Then she would be over at No. 16 in the summer time? 10

A. Yes.

Q. Well, when Mr. Sobers came to Margate City, he always went to either one or the other of those houses, didn't he?

A. Well, now, so I can correct myself in my previous testimony, Mrs. Reeves didn't always rent her house. She rented her house, but not always. That house wasn't always rented for the simple reason that she lived in it a greater part of the time. 20

(Question repeated.)

A. Yes.

Q. He would either go to No. 7 or No. 16 Baltic Avenue?

A. Yes.

Q. Which ever place Mrs. Reeves happened to be?

A. When Mr. Sobers' house was closed, he would board with Mrs. Reeves in her house. 30

Q. Then when she was over at No. 16, he would come there and live there?

A. Because he had a house there, that house wasn't always opened when Mr. Sobers was in Margate City.

Q. I didn't ask you that.

(Question repeated.)

A. When she was there?

Q. Yes.

A. Yes.

Q. She has always had charge of No. 16 Baltic Avenue, either as housekeeper for Mr. Sobers or as the proprietor of the boarding house there herself?

A. I don't know.

10 Q. Well, you live in the neighborhood, don't you?

A. I do.

Q. And you have had an opportunity to observe that Mrs. Reeves was living at No. 16 or at No. 7 Baltic Avenue, haven't you?

A. I invariably looked at all the houses around there.

Q. And you are not able to say for the last ten years whether or not Mrs. Reeves did not have charge of No. 16 Baltic Avenue?

20 A. I don't know. I couldn't say.

Q. Well, she was the only lady around the house, so far as you ever saw, wasn't she?

A. No, sir.

Q. In charge, I mean?

A. No, sir.

Q. Who ever was there in charge outside of Mrs. Reeves?

30 A. His niece and his daughter, Mrs. Franz, would be there. I couldn't tell who had charge of the house. I was merely a neighbor. There were several ladies about the house.

Q. You know that Mrs. Reeves was in charge, don't you?

A. I couldn't say; I wouldn't know; I wasn't acquainted with the family enough to go into details as to who had charge of the house.

Q. Well, when his daughter came down, she only came down on a visit, didn't she?

A. She came down on a visit. For how long I couldn't say. It is according to what length of time —

Q. I didn't ask you how long. I say when she came, she came to visit her father.

A. She came to visit her father, yes.

Q. You don't know who had charge of No. 16 Baltic Avenue when Mr. Sobers went to Florida, do you?

A. I don't know.

Q. You never saw anybody around there when he was away, except Mrs. Reeves, did you?

A. I never saw Mrs. Reeves at the house during Mr. Sobers' absence.

Q. Well, she might have been there?

A. I couldn't say what might have been.

By Mr. Styron:

20

Q. Mr. Freas, you don't pretend to say anybody had charge of that house during the absence of Mr. Sobers in Florida, do you?

A. Well, if I don't be ruled out in this testimony, I was listening a while ago. It has been the custom of people in Margate City when they go away from their places, to leave the keys with Mrs. Reeves. When I went away I handed my keys over. She hadn't anything to do with my house.

30

Mr. Voorhees: I object to that as not responsive to the question.

(Question repeated.)

A. No, I don't.

Q. Do you know whether or not Mrs. Reeves had the keys to other houses in the vicinity during the time they were closed?

A. I do.

Q. Do you know of any one who left their keys with her during the time of their absence and while their house was closed?

A. I do.

Q. Name such a person.

10 A. Mr. Bickley and myself.

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

MRS. ANNIE L. FEIGHAN, SWORN.

Direct examination.

20

By Mr. Voorhees:

Q. Where do you live, Mrs. Feighan?

A. Philadelphia, 1944 Diamond.

Q. Did you know Jacob Sobers in his lifetime?

A. Yes.

Q. Did you know Aaron Sobers also, his son?

A. Yes.

30 Q. Two or three years ago you obtained a judgment, did you not, against Mr. Jacob Sobers in the Court of Common Pleas in Philadelphia?

A. Yes.

Q. You are the plaintiff in the suit brought in New Jersey against Jacob Sobers, are you not?

A. Yes, sir.

Q. Do you remember going to Mr. Sobers' resi-

dence in Margate City with Mr. Mitton, the gentleman who is sitting here?

A. Yes.

Q. When the papers, summons and declaration in this case, were served on Mrs. Reeves who was formerly Barbara Hoffman?

A. Yes.

Q. Did you know where the residence was before you went down there?

A. Yes.

Q. Did you go to No. 16 Baltic Avenue?

A. I don't know the number; I knew where the house was.

10

Mr. Styron: I object to that form of examination. The witness is an intelligent witness. Let her state what she did.

Q. When you arrived at the house of Mr. Sobers, who did you see there?

20

A. Mr. Mitton and I were on the porch and the housekeeper, Miss Hoffman, came to us. I said I would like to see the house. We walked in.

Q. How did you know that she was the housekeeper?

A. Oh, I knew her. I had seen her before.

Q. Well, did she tell you so?

A. I asked her and she said she was the housekeeper.

Q. And did Mr. Mitton serve these papers on her there in the house?

30

A. Yes.

Q. What did she say at that time, if anything?

A. I don't remember what remark she made.

Q. Mrs. Reeves has testified that you went to her house, No. 7 Baltic Avenue, and coaxed her to take

you over and show you Mr. Sobers' house. What have you to say as to that statement?

A. I did no coaxing.

Q. Well, just state what happened when you got down there, as nearly as you can recall it.

A. Well, we went in the house and I looked around to see if my value was there. I was very much disappointed at the looks of the place. Somebody had just eaten breakfast, dirty dishes on the table, the water was running. I don't know whether there was a fire in the stove or not. It was very warm in there. The windows were all open.

Q. Did it have the appearance of being occupied?

A. Every appearance of being occupied. There wasn't any storm doors to be seen. Shutters wide open.

Mr. Styron: I ask to have that stricken out. There has been no question as to storm doors.

20

Q. Were the shutters closed?

A. No; they were open.

Q. How long had you known Miss Barbara Hoffman, now Mrs. Reeves?

A. Well, she was pointed out to me at the Trenton Fair about twelve years ago, with old Mr. Sobers.

Q. Jacob Sobers, do you mean?

A. Not the Trenton Fair. What is it up near—what fairs is given up near Easton? Is that the

30 Trenton Fair?

Q. Allentown?

A. Allentown Fair.

Q. You mean Allentown Fair, then, instead of Trenton?

A. Allentown Fair.

Q. When you testified a moment ago that you

looked around the house to see if the value was there, what did you mean by that?

A. Why, my money at stake.

Q. Miss Hoffman or Mrs. Reeves, on whom those papers were served by Mr. Mitton, is the lady who is sitting here, is it not?

A. Yes.

Cross-examination.

By Mr. Styron:

10

Q. What day of the week was it that you went to Margate with Mr. Mitton?

A. That I don't remember.

Q. What time of day was it?

A. Well, I judge it was around two o'clock.

Q. Where did you first go when you arrived at Margate?

A. Right up to the porch of Mr. Sobers' home. 20

Q. That is located where?

A. I can't tell you the street. I know just where to go find it.

Q. How many times had you seen that house before?

A. Twice.

Q. Weren't you fairly familiar with the house?

A. No; there has been lots of alterations up there.

Q. With respect to that particular house, have there been alterations?

30

A. No. Around that house.

Q. Did you observe any alterations from the time that you had seen it formerly?

A. Around the house, lots of them.

Q. What did you notice particularly?

A. Well, the old gentleman told me he had built two houses.

Q. I am asking what you saw.

A. Those two new houses, one for the housekeeper and one for Mr. Bickley.

Q. Did you know where Miss Hoffman lived?

A. No.

Q. You didn't know where she lived?

A. No.

Q. Do you remember asking any one where she lived?

10 A. No.

Q. Do you say that you did not ask any one where she lived?

A. No.

Q. You do not say that?

A. No.

Q. You might have done so, I suppose?

A. No.

Q. Did you or didn't you?

A. No.

20 Q. You did not?

A. No.

Q. That you are sure of?

A. Positive.

Q. You don't remember meeting a young man and asking him where Miss Hoffman lived?

A. No.

Q. Why did you go with the Sheriff to see this property?

A. Because I was interested.

30 Q. To what extent?

A. Financially.

Q. You didn't know but what that judgment would be paid, did you, when you got it?

A. Oh, yes, there was quite a lot of fuss about it before I went.

Q. You knew it would not be?

A. I knew there was going to be trouble.

Q. Who is the deputy sheriff that served that paper?

A. Mr. Mitton.

Q. Any relation of yours?

A. Brother.

Q. What made you think there was going to be trouble?

A. Because I couldn't collect my interest.

Q. From whom?

10

A. The firm.

Q. You had a judgment in Philadelphia, didn't you, at that time?

A. Mr. Sobers was in Philadelphia half the time, too.

(Question repeated.)

A. Yes.

Q. You had no trouble with that, did you?

20

A. It is the one judgment.

Q. You had the judgment, did you not?

A. Yes.

Q. How did you anticipate you were going to have any trouble with your judgment down here?

A. Wasn't getting any interest.

Q. You had no judgment here, had you?

A. The party was here that was interested.

Q. What party?

A. Part of the firm.

30

Q. What part of the firm?

A. Jacob Sobers.

Q. He wasn't here at that time, was he?

A. I didn't know that.

Q. Didn't you know he was not here when you came down?

A. No.

Q. How long had you known Mr. Sobers?

A. I guess I had known him ten years.

Q. Didn't you know he went to Florida in the winter?

A. No.

Q. Hadn't any one informed you he was away at that time?

A. No.

10 Q. Did you ask for him when you went to his house?

A. No.

Q. Why didn't you ask for him?

A. Housekeeper told me he was away.

Q. How did she come to tell you that?

A. In the dining room.

Q. Dining room of where?

A. She said she was there alone. Of his home.

Q. You didn't ask for him when you went there?

20 A. Oh, yes, I asked if the old gentleman was about.

Q. Then you were mistaken a few moments ago when you said you didn't ask for him?

A. Well, perhaps I was.

Q. Did the housekeeper say where he was at the time?

A. Yes.

Q. Where did she say?

A. Florida.

30 Q. When you speak of the housekeeper, whom do you mean?

A. Mrs. Reeves, isn't it? This lady here.

Q. How do you know that Mrs. Reeves that you have just indicated, is the housekeeper?

A. Well, she said she was; represented herself as such.

Q. She told you at that time she was the house-keeper?

A. Yes.

Q. For Mr. Sobers?

A. Yes.

Q. Have you ever had occasion to commence a suit before against any one?

A. No.

Q. And your only reason for going with the Sheriff's officer at this time was that you wanted to view the property that you thought you might have to sell for your money? 10

A. Yes.

Q. What was the money due you for?

(Objected to.)

A. Judgment note.

Q. Who executed the judgment note?

20

(Objected to.)

A. Mr. Aaron Sobers —

Mr. Voorhees: It must be apparent to you that that is improper, inasmuch as the judgment was of record. You cannot go back of that.

Q. Can you say whether or not Mr. Jacob Sobers had been a party to the note on which your foreign judgment was based? 30

Mr. Voorhees: I object to that. The records are all here, and they will speak for themselves.

(Question repeated.)

A. Will I answer that question, Mr. Voorhees?

Mr. Voorhees: I object to that because it has not any bearing upon the case, and because it is so framed as to be difficult of answer.

Mr. Styron: If the witness cannot answer it, she can say so and I will reframe it.

**10** Mr. Voorhees: You can do the best you can at it

A. Was he a party to the note?

(Question repeated.)

A. Yes.

Q. Did he personally sign the note?

(Objected to.)

**20**

A. No.

Q. By whom was it signed?

Mr. Voorhees: That is objected to because it has no bearing at all upon this case, and I shall instruct the witness to refuse to answer any more questions of that character.

**30** Mr. Styron: I shall ask the Commissioner to certify the refusal of the witness and the instruction of counsel.

Mr. Voorhees: He may apply to the Court for instructions, but I will not permit the witness to answer any questions that have no bearing upon this case. Now you may proceed and ask her.

Q. Now, Mrs. Feighan, how much did you loan to that firm?

Mr. Voorhees: I object and instruct the witness not to answer, by advice of counsel.

Q. Do you refuse to answer, on the advice of counsel?

A. Certainly.

Q. To whom did you loan the money represented by the note? 10

Mr. Voorhees: Same objection and same instructions. I object because the subject-matter of the suit pending is a foreign judgment, and the questions which are being asked by counsel now would not be relevant at the trial of that cause, and therefore are not proper at this time on a rule to open the judgment.

20

Q. Do you know whether or not Mr. Jacob Sobers knew of the making of that note?

A. Yes.

Q. Did he know?

A. Will I answer that?

Mr. Voorhees: Yes, you may answer.

A. Did he know?

Q. Yes.

A. Yes.

Q. How do you know that?

A. How do I know the old gentleman —

Q. That the old gentleman knew that.

A. Well, I was in the office during an interview with him and his son.

30

Q. Where?

A. Eleven hundred and fourteen Germantown Avenue.

Q. That was when?

Mr. Voorhees: I object to this line of questioning.

Q. That was when?

A. I don't remember the date.

10 Q. What year was it?

A. Nineteen hundred and ten.

Q. Was that in the summer or the winter?

A. I don't remember.

Q. Do you remember whether it was cold or warm weather?

A. It might have been April.

Q. April of what year?

A. I don't know whether it was nine or ten.

Q. Don't know whether it was 1909 or 1910?

20 A. No.

Q. Well, what was said about it?

Mr. Voorhees: I object to this.

(Question repeated.)

Q. Referring to the note.

30 Mr. Voorhees: You can answer it, if you know or remember.

A. Answer that question?

Mr. Voorhees: If you remember.

A. Why, that, "We will pay it," if I would give them a little time.

- Q. Who said that?  
A. The old gentleman, Mr. Jacob.  
Q. That was in April, either of 1909 or 1910?  
A. Yes; I am not positive of those dates.  
Q. Well, you think it was April, you say?  
A. Yes, it was in the spring.  
Q. And you don't remember which year it was?  
A. No.  
Q. How did you happen to be in the office at that  
time? 10  
A. Oh, I am often in the office.  
Q. On business matters?  
A. Yes.

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

PHILIP G. MITTON, SWORN. 20

Direct examination.

By Mr. Voorhees:

- Q. Where do you live, Mr. Mitton?  
A. Hotel Dunlop.  
Q. What is your business?  
A. Assistant Building Inspector of Atlantic City.  
Q. Do you remember of being deputized by the  
Sheriff in January of 1910 to serve a summons and  
declaration on Jacob Sobers? 30  
A. Yes, sir.  
Q. Do you know where Mr. Sobers' home is on  
Baltic Avenue?  
A. Well, as far as I know, the place that I served  
the summons. Mrs. Feighan said it was the home.

Q. Did she accompany you when you went down there?

A. Yes, sir.

Q. Did you see anybody at that house?

A. Well, I went up on the porch and tried the door and it looked to me as though it had been tenanted. I tried the door and it was open, and I just stepped inside a little way and came out again, and I saw this lady; she was on the porch.

10 Q. Referring now to Mrs. Reeves, formerly Miss Hoffman?

A. Mrs. Hoffman, yes, sir.

Q. Did you go in the house?

A. After this lady was on the porch we went in, yes, sir. I didn't go in the first time when I opened the door. I just stepped about one foot in the door.

Q. Did the house have the appearance of being occupied?

A. Yes, sir.

20 Q. Did you ask if Mr. Sobers was there?

A. No, sir, I didn't.

Q. Who did you serve the papers on?

A. This lady.

Q. Was she in charge of the property there?

A. Evidently. She was there. I should imagine she was in charge. There wasn't anybody else around there but her.

Q. Was that the first time that you saw Miss Hoffman or Mrs. Reeves?

30 A. Yes, sir.

Q. When you saw her on the porch?

A. Yes, sir.

Q. Were the shutters closed on the house?

A. No, sir, they were open.

Q. And are you able to state from what you saw there whether the house was being then occupied?

A. Looked very much as though it was, yes, sir. I would say that it had been occupied at that time.

Cross-examination.

By Mr. Styron:

Q. What time of day was it that you went to Margate that day?

A. Why, I judge it was around about, well, noon; 10 around one or two o'clock, I should think.

Q. And how long had you had those papers in your possession for service?

A. From the time it took me to get from Jackson Avenue in Atlantic City to the house at Margate.

Q. Well, where were the papers delivered to you by the Sheriff?

A. On the corner of Jackson Avenue and Atlantic, this side of the street.

Q. Where did you meet Mrs. Feighan that day? 20

A. At the train here at Tennessee and Atlantic Avenue.

Q. And you came there from here? You received the papers at Jackson Avenue and came to the train and met Mrs. Feighan?

A. No. Mrs. Feighan came and I met her at Tennessee and Atlantic Avenue and then we met Sheriff Johnson.

Q. By pre-arrangement with the Sheriff?

A. Yes.

Q. When you went to Margate, where did you go? 30

A. Right over to this house.

Q. Where was that house that you went to?

A. I am almost as foreign on that as Mrs. Feighan. They say it is Monmouth—Baltic Avenue.

Q. Are you in a position to say whether you went to No. 7 or No. 16?

A. Oh, no, that is the only house I went to.

Q. Which?

A. No. 16, isn't it? The one that Mrs. Feighan knew as the house. I don't know the numbers, but that is the only house we went to.

Q. And you say there was no storm door to that house?

A. No, sir.

Q. And the shutters were not closed?

10 A. Shutters were open.

Q. And it had all the appearance of being occupied?

A. At the time, yes. Very much so.

Q. For whom did you ask when you arrived there?

A. I didn't ask for nobody. This woman came in, at least, she was on the porch. I was told to serve it on anybody that was in there. This woman walked in with us, or at least she walked in first. We walked in, and in the front room I just handed  
20 her the papers.

Q. What did you say?

A. I just handed them to her; said I was directed by the Sheriff to serve those papers on her. They were in an envelope, legal envelope.

Q. You had never seen this lady before?

A. Never.

Q. From whom did you get your information that she was the housekeeper for Mr. Sobers?

A. Mrs. Feighan.

30 Q. You got it from her?

A. Yes, sir.

Q. And you talked to no other person about the matter?

A. No.

Q. And all the information that you got at the time of the service was the information you got from Mrs. Feighan?

A. That was all, just simply that she was the housekeeper and there wasn't any more conversation about it at all.

Q. When you speak of Jackson Avenue, did you mean Jackson Avenue in Atlantic City or Margate City?

A. In Atlantic City.

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10

Mr. Voorhees: I offer in evidence exemplified copy of a judgment wherein A. L. Feighan is plaintiff and Aaron Sobers and Charles Franz, Junior, ancillary executor of the estate of Jacob Sobers, deceased, is substituted defendant, Common Pleas Number Four of Philadelphia County, as of December Term, 1909.

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

ALBERT HACKNEY, SWORN.

Direct examination.

By Mr. Styron:

Q. Mr. Hackney, where do you live?

30

A. Three Jackson Avenue, Margate City, New Jersey.

Q. How near Baltic is that?

A. Right on the corner.

Q. Do you know Mrs. Reeves, Barbara Reeves?

A. Well, yes, sir.

- Q. How near to her house do you live?  
A. Right across the street.
- Q. Do you remember seeing this lady one time, Mrs. Feighan?  
A. Yes, sir. Well, she was introduced to me as Miss Mitton at the time.
- Q. By whom?  
A. Mr. Mitton; Phil Mitton himself.
- Q. Do you know Mr. Philip Mitton?  
10 A. Yes, sir.
- Q. Did you know him prior to the occasion that you refer to?  
A. What do you mean?  
Q. Mr. Philip Mitton. Did you know him before that time?  
A. Yes, sir.
- Q. Well, when was the time that you saw Miss Mitton or Mrs. Feighan, as it is in this case, and Mr. Mitton together?  
20 A. What do you mean—time of the year?  
Q. Yes.  
A. Well, I should judge it was somewheres around January.
- Q. How long ago was that?  
A. Why, that was in 1910, I think; the first of 1910.
- Q. Won't you state the circumstances under which you saw those folks and what was said by them to you and by you to them?  
30 A. Why, I directed them over to Mrs. Hoffman's. Mr. Mitton asked me where Mrs. Hoffman lived, formerly Mrs. Reeves, or Mrs. Reeves, formerly Mrs. Hoffman, and I directed them to the gate and told them and then went back and started to put sheathing boards on our house we were building at the time.

Q. The gate of whose house?

A. Mrs. Hoffman's.

Q. Did you go over with them or direct them?

A. Just directed them to the gate.

Q. What was the number of Miss Hoffman's house?

A. No. 7 Jackson and Baltic Avenue; Monmouth, formerly Baltic.

Q. Do you know whether or not they entered the house?

10

A. I couldn't exactly say.

Q. You didn't notice that?

A. No, sir.

Q. Was Miss Hoffman living in her own house at that time?

A. Yes, sir; Mr. Sobers had went to Florida and she had closed up the house and come over to her own house.

Q. You frequently saw Mr. Sobers' house, did you not?

20

A. Yes, sir.

Q. During that period?

A. Yes, sir.

Q. And about that time?

A. Yes, sir.

Q. What was the number of his house?

A. No. 16 Baltic Avenue; it is now Monmouth.

Q. Was the house boarded up?

A. Yes, sir, it was closed up tight. Storm doors and shutters all shut just as tight as you could get them.

30

Q. Did you see either of those persons later the same day?

A. No, sir, I didn't see them.

Q. That was the last you saw of them after you directed them?

A. That was the last I saw of them.

Cross-examination.

By Mr. Voorhees:

Q. Didn't Miss Hoffman run a boarding house at No. 16 Baltic Avenue?

A. I couldn't tell you that.

Q. Didn't she live there?

10 A. Well, she lived there while Mr. Sobers was there, and when he would go away she would move over in her own house.

Q. He was only away for a month or two in Florida, wasn't he?

A. I couldn't tell you that.

Q. Well, did Mrs. Reeves or Miss Hoffman take boarders there to your knowledge?

A. I couldn't tell you that, even.

Q. Did she keep house for Mr. Sobers?

A. Well, as far as I know of, she did.

20 Q. They both lived there together?

A. Yes, sir, as far as I know of.

Q. Don't you know they did?

A. Well, I couldn't exactly say.

Q. They went in the same house, didn't they?

A. They were both in the same house when they was there, I guess.

Q. There was nobody else there, was there?

A. Well, I couldn't tell you that, even, because I never went there that much to find out.

30 Q. You knew that Mrs. Reeves had charge of the house there, didn't you?

A. Well, while Mr. Sobers was there.

Q. Yes.

A. So far.

Q. She had charge of it when he was away, didn't she?

A. I couldn't tell you that.

By Mr. Styron:

Q. You do know, however, that Mr. Sobers' house wasn't occupied at that time?

A. It wasn't occupied. It was closed up tight as a jug.

Q. And you do know that Mrs. Reeves lived in her own house?

10

A. Her own house, No. 7 Jackson and Baltic Avenue, now Monmouth.

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I hereby certify that the foregoing is the testimony taken before me in the above stated cause.

OLIVER T. ROGERS,  
*Supreme Court Commissioner.*

20

Further depositions taken in the above matter this sixteenth day of August, nineteen hundred and twelve, at the office of H. H. Voorhees, No. 207 Market Street, Camden, New Jersey, before FREDERICK A. REX, Supreme Court Commissioner, pursuant to agreement between counsel, and signatures of witnesses waived.

10

PRESENT:

H. H. VOORHEES, Esq., representing the Plaintiff.  
U. G. STYRON, Esq., and JOHN F. X. RIES, Esq., representing the Defendants.

20 AARON SOBERS, a witness produced on the part of the plaintiff, being duly sworn according to law, was examined and testified as follows:

By Mr. Voorhees:

Q. Where do you live, Mr. Sobers?

A. Seventeen hundred and seventy-six Franklin Avenue, Philadelphia, Pennsylvania.

Q. How long have you lived in Philadelphia?

A. About fifty-five years, or say fifty-seven.

30 Q. What was your father's name?

A. Jacob.

Q. You are one of the defendants in this suit?

A. Yes.

Q. Do you recall of a suit being brought against your father and yourself by a Mrs. A. L. Feighan, about January, nineteen hundred and ten, in New Jersey?

- A. Yes.
- Q. Did you receive the summons and declaration which were issued in that suit?
- A. Yes, sir.
- Q. From whom did you receive it and when?
- A. From Florida, the forepart of February.
- Q. What year?
- A. In nineteen ten.
- Q. From whom did you receive it?
- A. From my father. 10
- Q. Did you afterwards see your father in reference to this suit?

Mr. Styron: I object to this question, that it is irrelevant to this inquiry, whether or not there was legal service on the defendant in the State of New Jersey.

By Mr. Voorhees:

- Q. Did you afterwards see your father in reference to this matter in the forepart of March of that year? 20
- A. Yes.

Cross-examination.

By Mr. Styron:

- Q. Where do you live? 30
- A. Philadelphia.
- Q. Where in Philadelphia?
- A. Seventeen hundred and seventy-six Franklin Avenue.
- Q. Did you live there in December of nineteen hundred and nine, and January of nineteen ten?

A. Yes.

Q. Were you in the State of New Jersey at that time?

A. That I cannot answer.

Q. Do you not know whether you were or not?

A. No.

Q. Will you admit on the record that there was no service—was there any service on you of these papers within the State of New Jersey?

10 A. No, sir.

Q. There were not?

Mr. Styron: I object to any testimony from this witness that is in relation to service of process in this State.

Re-direct examination.

By Mr. Voorhees:

20

Q. After you received the papers in this case from your father did he afterwards call on you and have a conversation with you?

A. He did.

Mr. Styron: I object to that question, on the ground that it is improper under the statute that one of the parties to this suit is incompetent and that he has not been sworn or offered himself as a

30 witness.

Q. When did he call, what year?

A. In the forepart of nineteen hundred and ten.

Q. Where was it that you saw your father in reference to this matter?

A. First, he came home and then he came down to

the shop or office—to the office, 1114 and 1116 Germantown Avenue.

Q. What business was carried on there?

A. Iron railing works.

Q. Was Mrs. Feighan there at that interview?

A. My father told me to call for her. I called for Mrs. Feighan to come there and we talked the matter over.

Q. What was said at that interview by your father as to the indebtedness of Mrs. Feighan to you and your father in the presence of yourself and Mrs. Feighan? 10

Mr. Styron: That question is objected to, because it calls for conversations had with the party to the action, and it is therefore incompetent under the statute, and for the further reason that it is leading.

Q. Give what your father said at that time.

A. Get together and pay it off. 20

Q. How do you know, Mr. Sobers, that you received these papers in this suit from your father in Florida?

A. From the envelope.

Q. Did it contain a letter from your father?

A. There was a letter there, but it only said a few words, he could not write himself.

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30

JACOB JERNEE, a witness produced on the part of the defendant, being duly sworn according to law, was examined and testified as follows:

By Mr. Styron:

Q. Mr. Jernee, where were you living in January of nineteen hundred and ten?

A. I was living with Mrs. Barbara Hoffman, Jackson Avenue and Monmouth, formerly Baltic Avenue. The house is No. 7.

Q. Who lived at that house?

A. Mrs. Barbara Reeves and Frank VanHider.

Q. Was Barbara Reeves married?

A. She was married then at that time.

Q. What was she doing?

A. She was keeping a boarding house.

10 Q. Were you a boarder there?

A. Yes, sir.

Q. Do you remember, do you know Mr. Philip Mitten?

A. Yes, sir.

Q. Do you know Mrs. Feighan?

A. Yes, sir.

Q. Do you remember seeing them at that time?

A. Yes, sir.

20 Q. State the circumstances under which you saw them.

A. I was there in the yard sawing wood, and Mrs. Feighan came to the yard and asked me if Mrs. Barbara Reeves was in—I said yes, and I called Barbara to the door.

Q. Who was with Mrs. Feighan, if any one?

A. Mr. Philip Mitten—and she came down to see Mr. Sobers' house, which was for sale or rent—Barbara said that the house was not for sale or rent, and she said she came so far, that she would like to see.

30 Q. Who said that—Mrs. Feighan?

A. Mrs. Feighan—she came so far, that she would like to see it, and she would not like to be disappointed, and she coaxed Barbara to let her see it, and Barbara went and got the key, went over and let her look at it, and I went over in back of them, and stood on the porch, and they went in—they were

not in very long and they came out, and Barbara had the papers, and she did not know what they were.

(Counsel said finish up what took place at that time. Proceed, Mr. Jernee.)

And she did not know what the papers were, so she said she was going to Mr. Freas, and so she did, and Mr. Freas told her what they were. I was in the house when she came back—she sent the papers to uncle Aaron, in Philadelphia, and sent word to Jacob Sobers in Florida. That's all I know so far. **10**

Q. Were you standing on the porch, when the others were inside?

A. Yes, sir.

Q. Who was it went inside?

A. Mr. Philip Mitten, Mrs. Barbara Hoffman and Mrs. Feighan.

Q. Were you able to hear any of the conversation which took place? **20**

A. No, sir, I was not.

Q. You know nothing that went on inside?

A. No, sir, I do not know.

Q. Was Mr. Jacob Sobers in Margate City at that time?

A. No, sir, he was not.

Q. Where was he?

A. He was in Florida.

Q. Was his residence in Margate City occupied or unoccupied? **30**

A. Unoccupied.

Q. Was it closed?

A. Yes, sir, and I helped to close it, Charlie Reeves, Jacob Sobers and myself.

Q. What was done in the closing of it?

A. I put on the storm doors, storm windows, I carried them and Charlie Reeves nailed them on, and I helped to turn the water off, put rags around it so it won't freeze, and crawled under the house.

Q. Do you know whether or not Mrs. Feighan and Mr. Mitten entered Barbara Hoffman's house?

A. They did not.

Q. Are you related in any way to the late Jacob Sobers and the present Aaron Sobers?

10 A. Yes, sir.

Q. In what way?

A. I am a nephew.

Q. A nephew to Jacob Sobers?

A. No, to Aaron Sobers.

Cross-examination.

By Mr. Voorhees:

20 Q. What were you doing at Margate City at that time?

A. Why at that time I was working that day, I was driving a horse and cart.

Q. And boarding with whom?

A. Mrs. Barbara Hoffman, formerly Miss Reeves.

Q. You know where Mr. Jacob Sobers' home is, do you?

A. Yes, sir.

Q. Did you ever live there?

30 A. In the summer time.

Q. Whom did you board with there?

A. Mrs. Barbara Reeves.

Q. And how long did you board with her there?

A. From April to September, latter part of September.

Q. How did you come to go to Margate City?

A. Why my mother died, and I went there.

Q. How did you come to board with Mrs. Hoffman?

A. Why I asked Mrs. Hoffman if I could board there.

Q. When did you first become acquainted with Mrs. Hoffman?

A. When my mother was living, when we went down on vacations.

Q. What was Mrs. Hoffman doing there, when you 10  
went down on vacations?

A. Why she had a boarding house.

Q. Where did she keep that boarding house?

A. She kept that boarding house, it was at Jackson Avenue and Monmouth, No. 7.

Q. Whose house was that.

A. Barbara Hoffman's house.

Q. Did you ever see Mr. Jacob Sobers there?

A. Yes, sir, I saw him there.

Q. Did you ever see her cross the street to his 20  
house?

A. Yes, sir.

Q. Did you ever board over there, cross the street to his house?

A. Yes, sir.

Q. Did you ever board at Mrs. Hoffman's house in the summer time?

A. Yes, sir.

Q. What summer?

A. The last four summers.

Q. Was Jacob Sobers' house closed during that 30  
last four summers?

A. No, sir.

Q. Who occupied that house?

A. Mrs. Barbara Hoffman.

Q. Did she run both houses?

A. No, sir.

Q. She did not run them. In other words she did not, she was just the boarding mistress.

Q. In which house did you live in?

A. I lived in No. 7 Baltic and Monmouth Avenues, in the winter time, and in the summer time, I lived at No. 16 Monmouth Avenue.

Q. You have just said that you boarded in summer time at Mrs. Barbara Hoffman's house?

10 A. Yes, sir.

Q. Which is Mrs. Barbara Hoffman's house?

A. The one on the corner of Baltic and Monmouth Avenues.

Q. Now, which one did you live in in the summer time?

A. I lived in Jacob Sobers' house then.

Q. Who had charge of it?

20 A. I can't tell you that. I know my grandfather paid board, and we paid board. She must run it or something. We did not go into the circumstances that far, it was none of my business.

Q. To your knowledge, how long had Mrs. Barbara Hoffman been the housekeeper for your grandfather?

30 Mr. Styron: I object, on the ground that the witness was not asked to give any testimony in his direct examination, that any relation of housekeeper existed between Barbara Hoffman and Jacob Sobers, and that question therefore is not proper cross-examination.

Q. Now, can you answer that question?

A. What question is that?

(Question repeated.)

A. Never to my knowledge.

Q. Did you ever know that she kept house for him in Philadelphia?

Mr. Styron: I object, because that question is already answered.

Q. Can you answer that?

A. Don't know.

Q. Do you know how long she kept boarders in Jacob Sobers' house? **10**

A. As long as I have been there.

Q. And during that time, do you know whether or not she was employed by Jacob Sobers, at that time?

A. She was not.

Q. At that time?

A. No, sir.

Q. You are quite sure about this?

A. Yes, sir.

Q. With whom did you talk over before you came over here today, as to what kind of testimony you would give? **20**

A. With Mr. Ries.

Q. And what was the reason that you gave the answer to your first question—that long answer?

A. No, sir, the reason that I gave that, because I knowed it myself, and saw it myself, and all the rest.

Q. What were you doing in the yard, on the day in question?

A. I was cutting wood. **30**

Q. How much board did you pay?

A. Five dollars a week.

Q. Why did you go over to the Jacob Sobers' house, when they went over?

A. Just went over to see, that was all.

Q. To see what?

- A. Something told me that something was going on.
- Q. And that was the reason for your going over?
- A. Yes, sir.
- Q. You had no business over there, no particular business?
- A. I think I have a business to walk on my grandfather's property better than anybody else.
- Q. Where was the key to your grandfather's property?
- 10 A. In Mrs. Barbara Hoffman's house.
- Q. Now, do you want to state who had charge of your grandfather's house, when he was in Florida?
- A. Nobody had charge of his house, when he was in Florida.
- Q. Did your grandfather always stay when he came to Margate City, with Mrs. Hoffman?
- A. Yes, sir.
- Q. And for how many years did he continue doing
- 20 this?
- A. Ever since I have been there.
- Q. And how long is that?
- A. Six years.
- Q. How old are you?
- A. Nineteen years old.
- Q. What is your business?
- A. Engineer.
- Q. What kind of an engineer?
- A. Gasoline engineer.
- 30 Q. Where are you working?
- A. Norfolk, Virginia.
- Q. You are a gasoline engineer?
- A. Yes, sir.
- Q. Where do you live—Margate City?
- A. I left Margate City in nineteen hundred and eleven, the middle of February.

Q. Before or after your grandfather's death?

A. Before.

Q. Your grandfather always paid board to Mrs. Hoffman?

A. Yes, sir.

Q. Did she pay any rent to him for the use of his house?

A. I don't know.

Q. She occupied it, didn't she?

A. Yes, sir.

10

By Mr. Styron:

Q. Mr. Jernee, counsel asked you with whom you talked, as to what kind of testimony you would give?

A. Nobody.

Q. And your answer was Mr. Ries?

Q. Did Mr. Ries suggest to you the kind of testimony that you would give?

A. Did not.

20

Q. What was it he said to you about it?

A. Why he read over the sentences to me, to see if I knowed that this things happened at that time.

Q. Did he ask you what took place at the time of the service?

A. No, sir.

Q. Did he ask you whether or not you remembered what took place at the time?

A. No, sir, he did not.

Q. What I want to know from you, and what I want an answer to, is what did Mr. Ries say to you, and you to him, in the conversation that you have just spoken of.

30

A. He asked me where did Barbara Reeves live at in the winter time. I told him No. 7 Jackson Avenue and Monmouth, formerly Baltic, that is all.

Q. Did Mr. Ries go over the details of the matter with you, and ask you for your recollection concerning it?

A. No, sir, he never did.

Q. Did you tell him what you recollected about them?

A. Yes, sir.

Q. And what you told him at that time is the same or different as to what you have just testified to?

10 A. I just told him where Barbara Hoffman lived, corner Jackson Avenue and Monmouth, formerly Baltic.

Q. Did Mr. Ries ever suggest to you, that you were to testify differently from your understanding of the facts or recollections of them?

A. No, sir.

Q. And the testimony that you have given here is your recollections of the facts as they occurred?

A. Yes, sir.

20

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PHILIP G. MITTON, being recalled.

By Mr. Voorhees:

Q. Mr. Mitton, do you know a boy by the name of Albert Hackney?

A. Yes, sir.

30 Q. And how long have you known him?

A. I judge I have known him about six or seven years, something like that.

Q. How old a boy is he?

A. I judge about seventeen, I do not think that he is more than that.

Q. He testified in this case at Atlantic City, that

on the day you served the papers on Mrs. Hoffman in this case, that he saw you and Mrs. Feighan together, and had a conversation with you. What have you to say as to that?

A. I didn't see him at all.

Q. On that day?

A. No, sir.

Q. It has been testified here this morning by a witness by the name of Jacob Jernee, that on the day you served the papers on Mrs. Hoffman, that you and Mrs. Feighan called at the home of Barbara Hoffman, at No. 7 Baltic Avenue. What have you to say as to that? **10**

A. Nothing of the kind. I didn't see him at all, so I couldn't have any conversation with him.

Q. On that day did you or Mrs. Feighan or either of you go to Mrs. Barbara Hoffman's house, No. 7 Baltic Avenue, or Monmouth, as it is now?

A. Did we go over? No, sir.

Q. While you were at the house of Jacob Sobers, at the time you served these papers, was Mr. Jernee there at that time? **20**

A. No, sir, there was nobody there when I first got on the porch—the door was opened, and I stepped inside just, and I opened the door, and then came right out, and Mrs. Hoffman was standing on the porch.

Q. Who else was there, if anybody?

A. Nobody except Mrs. Hoffman, Mrs. Feighan and myself. **30**

Cross-examination.

By Mr. Styron:

Q. Mr. Mitton, where did you hand these papers to Mrs. Hoffman, on the porch or in the house?

A. In the house.

Q. And what room in the house?

A. In the front room.

Q. Now, how can you say that Mr. Jernee could not have been on the porch at the time when you served these papers, while you were in the house?

A. Did not know that. I did not see a soul there when I went out.

10 Q. Could he not have followed after you, and been on the porch while you were in, without you seeing him?

A. That might be, I went inside.

Q. Then you don't mean to say that he wasn't there?

A. Well, I didn't see anybody there.

Q. Did you know which was Jacob Sobers' house when you were there?

Q. And you didn't know where Barbara Hoffman lived, did you?

20 A. No, sir.

Q. And did Mrs. Feighan tell you that also, where Barbara Hoffman lived?

Q. I say did Mrs. Feighan tell you that too?

A. Yes, sir.

Re-direct examination.

By Mr. Voorhees:

30 Q. Do you know now where Mrs. Hoffman lives?

A. No, sir.

Q. Did you know the lady when you saw her—now do you?

A. Yes, sir.

Q. Where did you meet her?

A. At Mr. Jacob Sobers' house, the property that I served the papers in.

Q. Mr. Mitton, Mr. Jernee has testified that the Jacob Sobers house, where you served the papers, at the time you served the papers, then was closed and the shutters was on. What have you to say as to that?

A. The house was opened, and looked as though it had been recently occupied.

Q. Describe the circumstances as near as you can.

Mr. Styron: I object to that, because he has been 10  
examined on the same subject and exhausted.

A. The house was opened, there was dishes on the table, and looked as though there had been a meal served. The windows were also opened.

Q. Do you mean windows or shutters?

A. Shutters, and comfortably warm.

Cross-examination.

By Mr. Styron:

20

Q. What room did you visit?

A. The front rooms, from the front door to the back door.

Q. Now, you approached the house you say, and found the door opened, and when did you first see Mrs. Hoffman on the porch?

A. On the porch?

Q. Yes, sir.

30

Q. Did you knock or how did you attract her attention?

A. I did open the door, and then closed it, and as I turned around, Mrs. Hoffman was on the porch.

Q. How did she get on the porch?

A. I don't know.

Q. Well, what was next done?

A. We went in the house.

Q. And where did you go in the house?

A. On the first floor, walked back to the kitchen, back to the front room, and then I served the papers on Mrs. Hoffman in the front room.

Q. You were in the front room, went back to the kitchen, and then came back to the front room, and served the papers on Mrs. Hoffman?

10 A. Yes, sir.

Q. Why did you go to the kitchen?

A. No particular reason that I know of, more to look how the house looked.

Q. What interest did you have in how the house looked?

A. No interest, any more than the interest of Mrs. Feighan.

Q. Weren't you there as a deputy sheriff, to serve a writ?

20 A. Yes, sir.

Q. And did you know that you had no business in any part of the house, other than for the performance of your duty in the service of the court writs?

A. I came out of the house immediately after serving the writ.

Q. But I am asking you why you went to the kitchen before serving the writ?

A. No particular reason.

30 Q. Where was Mrs. Feighan while you were going to the kitchen?

A. Well, now I can't exactly say, I think she was right with us, I think Mrs. Hoffman, Mrs. Feighan and I walked as far as the kitchen.

Q. Did you go into the house, and go to the kitchen without telling Mrs. Hoffman why, and the one with you?

A. I don't know exactly.

Q. Did you make some explanation when you entered the house as to why you were there?

A. I don't think I did.

Q. But you went in and went to the kitchen, without giving Mrs. Hoffman any explanation of why you were there?

A. I don't think so.

Q. You don't know her, do you?

A. No, sir.

10

Q. How many rooms on the first floor?

A. I think there is only two, I think so, I am not positive. I think there is a front room and kitchen, I think that's what it is.

Q. How many windows in the front room?

A. I think there is only two in the front.

Q. And they are located how?

A. On the porch. I think, the door is on the right side of the house, and that there is two windows on the front.

20

Q. Did you notice the side window in the front room?

A. No, sir.

Q. Do you know whether or not there is one there?

A. No, sir.

Q. How many windows did you notice in the kitchen?

A. I didn't notice.

Q. You say the house was warm?

A. Comfortably warm.

Q. Where did the heat come from?

A. I didn't examine.

30

Q. Did you notice whether or not there was a stove in the kitchen?

A. I do not remember that, I remember the table being set. I did not look around to see anything else.

Q. Did you go over to see what was there because of your interest in Mrs. Feighan?

A. No, sir.

Q. Then you did not go over for that purpose?

A. No, I went there to serve these papers.

Q. In the kitchen?

A. No, in the front room.

Q. You went to the kitchen?

10 A. I went to the kitchen, but I don't know why I went there, no particular reason at all.

Q. Didn't you say a few minutes ago you went back there because you were seeing in behalf of Mrs. Feighan?

A. Did I say that?

Q. I asked you if you said that?

A. I think I said that.

Q. Then you did have an interest in going back?

A. Yes.

20 Q. And you do now recall that you had an interest in going back?

A. Yes.

Q. And still you do not recall what you saw there, other than that there was a table spread and it looked as though a meal had been recently served?

A. Yes, sir.

Q. You are pretty sure that there is only two rooms there?

A. I am not positive.

30 A. I am most sure that there is only two. It has been so long since I have been there, that I don't just recall the number of rooms—the first time I was ever in the house.

Q. But didn't your interest in Mrs. Feighan extend the impression on your memory what you saw while you were there?

A. No, I can't say that.

Q. How was the front room furnished?

A. I think there was a table in the centre of the room. I handed the papers to Mrs. Hoffman, and she was leaning against this table. In fact the both of us were at the table when I handed the papers to her.

Q. Then you were at that time inside, in what room?

A. Front room.

10

Q. Now, assuming that there was a middle room in that house, did you enter that room?

A. If there was a middle room, I would have to enter it, I suppose.

Q. Now, you recall, and see if there was a middle room in that house.

A. I cannot be positive, I don't remember that.

Q. Didn't your interest lead you to recall what you observed there, in that middle room?

A. I don't remember a middle room.

20

Q. And you, of course, don't know whether it had any windows, if there was one?

A. No, sir.

Q. And you can't say whether or not that they were boarded up?

A. No, sir.

Q. Now, don't you know as a matter of fact, Mr. Mitton, that you have through the middle room to get into the kitchen?

A. That I don't remember of a middle room, I 30 don't remember.

Q. Did you notice the water running also in the kitchen?

A. I think the water was running.

Q. Now, you can't say for positive?

A. No, I can't say for positive.

MRS. A. L. FEIGHAN, being recalled.

By Mr. Voorhees:

Q. Mrs. Feighan, on the date when the papers were served by Mr. Mitton in this case, did you see and have a conversation with a boy by the name of Albert Hackney?

A. No.

10 Q. Do you know Jacob Jernee?

A. No.

Q. You saw him on the witness stand a few minutes ago?

A. Yes.

Q. Did you ever see him before?

A. No.

20 (Counsel for Mrs. Feighan offers in evidence an exemplified copy of the records of proceedings in the Court of Common Pleas No. 4 of the County of Philadelphia, State of Pennsylvania, as of December Term, 1909, No. 1803, in the case wherein A. L. Feighan is plaintiff, Jacob Sobers and Aaron Sobers, trading as Jacob Sobers and Son, are defendants, and Charles Franz, Jr., ancillary executor of Jacob Sobers, deceased, substitute defendant.)

(Anything that that recites goes in.)

30 (Marked Exhibit P1.)

Mr. Styron: That is objected to on the ground that it is argumentative, and goes to the merits of the case, and has no tendency to prove or disprove the matter which is now the subject of this inquiry, which is, whether or not there was legal service on

the defendant in the State of New Jersey, and on the further ground that it exemplifies a judgment which is variant from the judgment sued on.

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JACOB JERNEE, recalled.

By Mr. Styron:

Q. Mr. Jernee, what kind of a house is that which has been called the Jacob Sobers house?

A. Well, middle "L."

Q. And how is it located with respect to street corners?

A. The street corners?

Q. Yes.

Q. Is it on the corner of a street or in the middle of the block?

A. It is a good distance from Jackson Avenue, and it is about forty feet, I don't know the name of the other avenue. It is around there somewhere.

Q. And streets, if extended, would not locate the house on the corner, would it?

A. No, sir.

Q. And how many rooms in that house?

A. Three downstairs, and a shed, two upstairs and the garret—you can make three rooms out of it.

Q. There are three rooms downstairs?

A. There are.

Q. Is it possible to reach the kitchen without passing through from the middle room?

A. Yes, sir.

Q. Without passing through?

A. No, you have to pass through the dining room.

10

20

30

Q. In other words, you cannot go from the front room to the kitchen without passing through the dining room?

A. No, you cannot.

Q. Are there windows in the dining room?

A. Yes, sir.

Q. How many?

A. I can't say how many—I think four.

10 Q. Were these windows covered at the time of the service of these papers?

Mr. Voorhees: I object to this, this matter has already been thrashed out.

Q. You spoke of the windows being barred up, did you not in your early examination?

A. Yes, sir.

Q. And did your testimony include the dining room windows?

20 A. Everything all over the house.

Cross-examination.

By Mr. Voorhees:

Q. How many bed rooms in this house, furnished bed rooms?

30 A. Furnished bed rooms, five furnished bed rooms in this house, three on the second floor, and two in the garret.

FREDK. A. REX,  
*Supreme Court Commissioner.*

RULE, ETC.

A. L. FEIGHAN,

*Plaintiff,*

vs.

JACOB SOBERS & AARON  
SOBERS, trading as Jacob  
Sobers & Son,

*Defendants.*

ON CONTRACT. 10  
ON RULE TO SHOW  
CAUSE.  
RULE, ETC.

The rule to show cause heretofore allowed in the 20  
above entitled action, why the judgment entered  
therein should not as to Jacob Sobers, one of the de-  
fendants therein, be set aside and vacated, coming  
on to be argued by Harrison H. Voorhees and  
Joseph H. Brinton, of counsel with the plaintiff, and  
John F. X. Ries and U. G. Styron, of counsel with  
Charles Franz, executor and of the defendant,  
Jacob Sobers, deceased, prosecuting said rule, and  
the Court having read the deposition taken with the  
said rule and returned therewith and duly consid- 30  
ered the arguments of the respective counsel afore-  
said, and it appearing by the said depositions and  
other evidence that there was no sufficient or legal  
service of process in said action upon said defend-  
ant, Jacob Sobers, within the State of New Jersey  
that the judgment entered therein is invalid.

It is thereupon on the twenty-first day of July, 1913, ORDERED that the service of the process as to the said Jacob Sobers be set aside and that the judgment entered therein be vacated; and it is further ORDERED that the above-named plaintiff pay the costs of the said prosecution of said rule to be taxed.

Entered July 21, 1913.

On motion of

JOHN F. X. RIES,

U. G. STYRON,

*Of Counsel.*

*Opinion*

**OPINION.**

FEIGHAN vs. SOBERS, et al.

(SUPREME COURT OF NEW JERSEY. JULY 2, 1913.)

(*Syllabus by the Court.*)

PROCESS (§ 78\*)—SERVICE—VALIDITY.

Where a defendant has a general place of abode in this state, but closes it, and is absent from the state, service at such usual place of abode during such absence is invalid.

(Ed. Note.—For other cases, see Process, Cent. Dig. § 90; Dec. Dig. § 78.\*)

Action by A. L. Feighan against Jacob Sobers and another, etc. Judgment for plaintiff, and, the defendant named dying, his executor obtained rule to show cause why the judgment should not be set aside. The rule should be made absolute to the end that the judgment be set aside.

Harrison H. Voorhees, of Camden, and Joseph H. Brinton, of Philadelphia, Pa., for plaintiff. U. G. Styron and John F. X. Ries, both of Atlantic City, for defendants.

VOORHEES, J. The plaintiffs who had obtained a judgment in Philadelphia, in 1909, brought an action upon the record thereof in the State of New Jersey. Jacob and Aaron Sobers were the defendants. The summons and declaration contained a return that they were duly summoned "by delivering a copy to each of them at their place of abode in Margate City, with Barbara Hoffman, housekeeper in charge thereof." Judgment was entered in February, 1910. Jacob Sobers died on the 24th of July, 1911, and his executor obtained this rule to show cause which was made in August, 1911.

### Opinion

The question to be decided hereunder is the validity of the service made upon Jacob Sobers. Aaron Sobers appears not to object. It is said that Jacob was unquestionably domiciled in Margate City, and it is asserted that being domiciled there, and having his housekeeper in charge of his house, which was alleged to have been then open, due service was properly made by leaving the process with such housekeeper. The defendants deny either actual or legal service of process upon this defendant, and in consequence claim the acquired judgment is without validity. It is said that the service must be made in conformity with the directions of the statute (*Rogers vs. Sermen*, 3 N. J. Law, 527), and that the statute in force at the time was that first process should be a summons, "a copy whereof shall be served upon the defendant in person or left at his usual place of abode" (1903, p. 537, § 52). Neither of the defendants was in New Jersey at the time.

Laying aside the service upon Aaron, inasmuch as it is not contested, we examine the validity of that made upon Jacob. The statute directs that it shall be made at the "usual place of abode," not at his "place of abode." The case of *Mygatt vs. Coe*, 63 N. J. Law, 510, 44 Atl. 198, held distinctly that the dwelling house or usual place of abode within the meaning of this act is the place where the defendant is actually living at the time when the service was made. There is no contention that Jacob was living at this place. It was his custom, from 1906 on, for him to spend the winters in Florida, and in November or December, he left for the South and did not return until March or April. In November, 1909, according to this custom, he left about the middle of November, spent two or three weeks in Philadelphia, and then left for Florida. Before leaving, he

### Opinion

closed his house at Margate City, turning off the water to prevent its freezing in the pipes, leaving the key with Barbara Hoffman. The house appears to have been unoccupied. The return by the officer of the manner of the service was that he was serving at his place of abode, but at that time it is clear from the depositions that Jacob had no usual place of abode in this state within the meaning of the statute above quoted.

We are of opinion that the principles adduced in *Mygatt vs. Coe, supra*, are relative to the case in hand; that Jacob was not served as indicated by our statute, and the rule should be made absolute to the end that the judgment be set aside, with costs to the prosecutor.

