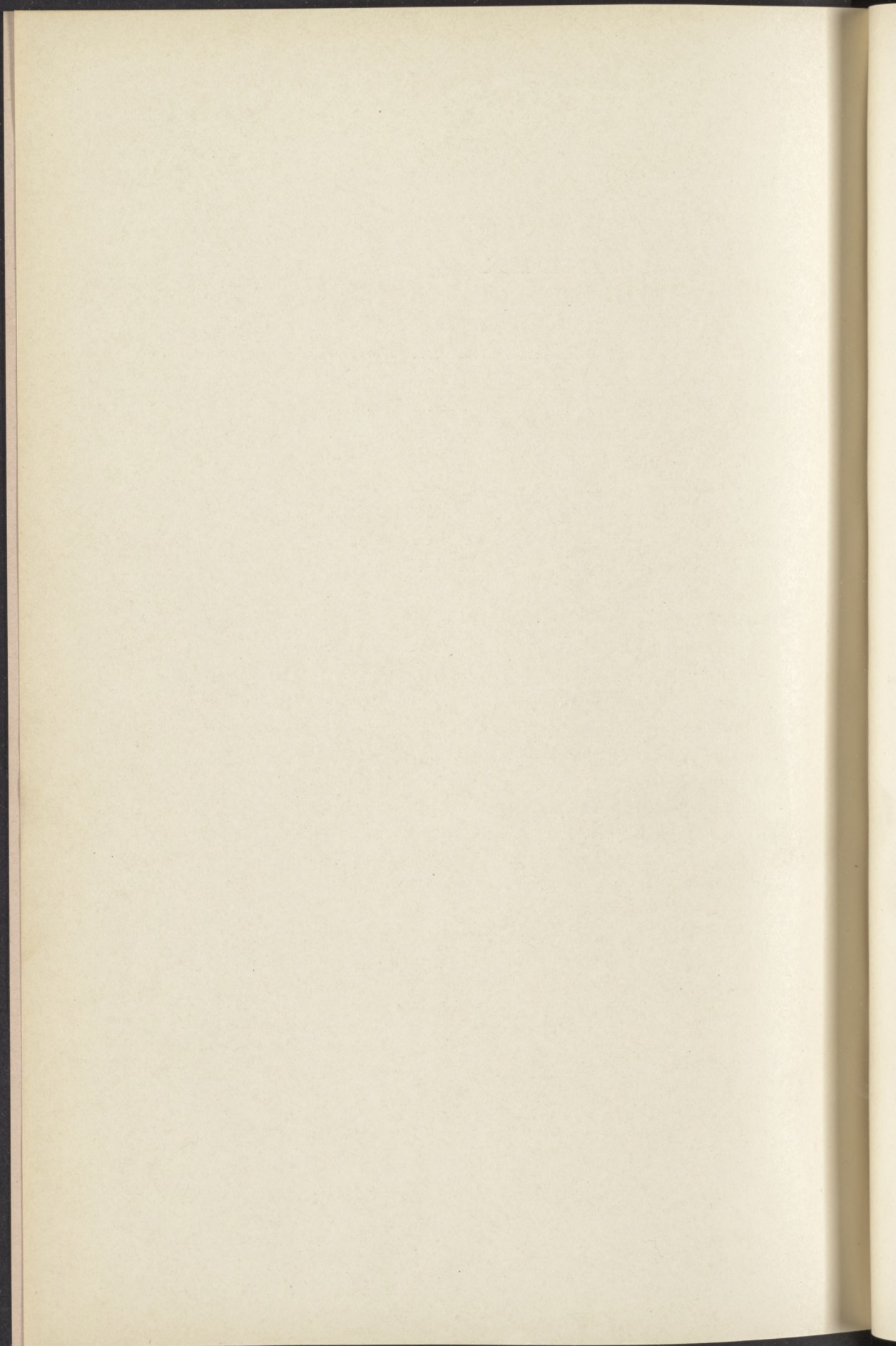


## INDEX

---

	PAGE
Summons, .....	1
Bill of Complaint, .....	2
Exhibit "A", .....	5
Affidavit—Clayton B. Roberts, .....	8
F. Stanley Kreps, .....	9
Answer of Clayton B. Roberts, .....	10
F. Stanley Kreps, .....	13
Reply, .....	15
Rule of Judgment, .....	16
Notice of Appeal, .....	17
Testimony, .....	19
Elizabeth B. Chapin, direct, .....	20
cross, .....	23
Clayton B. Roberts, direct, .....	25
F. Stanley Kreps, direct, .....	32
Defendant's Motion for Direction of Verdict, .....	35
Charge to the Jury, .....	36
Defendant's Requests to Charge, .....	38
Grounds of Appeal, .....	39



NEW JERSEY  
Court of Errors and Appeals

---

ELIZABETH B. CHAPIN (*nee* )  
Dimon),  
Plaintiff-Respondent,  
*vs.*  
CLAYTON B. ROBERTS ET AL.,  
Defendants-Appellants. }

SUMMONS.

(Filed June 7, 1926.)

THE STATE OF NEW JERSEY, to Clayton B. Roberts,  
in the alternative Clayton B. Roberts and F. Stanley Kreps, jointly, **10**  
[SEAL] erts and F. Stanley Kreps, jointly,  
and F. Stanley Kreps, individually:

You are summoned to answer the  
annexed complaint of Elizabeth B. Dimon, in an action  
at law in the Cape May County Circuit Court. And  
take notice that unless you file your answer to the said  
complaint with the Clerk of the Cape May County Cir-  
cuit Court, at Cape May Court House, New Jersey,  
within twenty days after service upon you of this writ  
and the annexed complaint, the plaintiff may proceed in **20**  
the suit and judgment may be entered against you.

Witness, Honorable Theodore W. Schimpf, Judge of the Cape May County Circuit Court, at Cape May Court House, New Jersey, this twenty-fourth day of May, nineteen hundred and twenty-six.

A. C. HILDRETH,  
*Clerk.*

COLE & COLE,  
Attorneys.

10

ELIZABETH B. DIMON,  
*Plaintiff,*

*vs.*

CLAYTON B. ROBERTS, and in  
the Alternative CLAYTON B.  
ROBERTS and F. STANLEY  
KREPS, Jointly, and F. STAN-  
LEY KREPS, Individually,  
*Defendants.*

} Action at Law.

20

COMPLAINT.

(Filed June 7, 1926.)

Elizabeth B. Dimon, the plaintiff in this cause, of the City of Ocean City, in the County of Cape May and State of New Jersey, says that:

**First Count.**

- 30 1. On April 1, 1926, plaintiff and defendant F. Stanley Kreps, entered into a written agreement for the sale and purchase of "Lots numbered 1705-1706-1707-1708-1709 and 1710 in Block No. 17-G, Plan of Lots of the Heart of the Gardens Development Company, situate on the southeasterly side of Inlet Road between Surf Road and Wesley Road." The duplicate original of which agreement is in plaintiff's hands ready to be produced,

and a copy is hereto made a part hereof and marked Exhibit "A."

2. The \$1,900 first payment referred to in said agreement was paid by plaintiff's check on Girard Trust Company, Philadelphia, Pa., dated March 27, 1926, to the order of Clayton B. Roberts, and was deposited by him to his credit in the Ocean City Title & Trust Company, Ocean City, N. J., and said check is in plaintiff's possession ready to be produced.

3. Before said agreement was executed or said check delivered, defendant Roberts represented to plaintiff that each of said lots was 35½ feet in width and at the same time presented a map of said lots showing them to be of said width. **10**

4. Plaintiff relied upon the truthfulness of the statement and the accuracy of the map and entered into the stated agreement.

5. Some days after the making of the agreement and the payment of said money plaintiff ascertained the truth to be, which she avers, that said lots are only thirty feet in front and upon receiving this information immediately notified said Roberts and also said Kreps that she rescinded the agreement because of the stated false representation asked for the return of the \$1,900 paid, and expressed a willingness to return said duplicate agreement. Both said Roberts and said Kreps refused to return said sum or any part thereof. **20**

Judgment will be claimed on this count for \$1,900 with interest from the 27th day of March, 1926.

### Second Count.

**30**

1. All of the paragraphs of the first count for the sake of brevity are here repeated.

2. Said defendants Roberts and Kreps were jointly interested in the lots described in said agreement and in the sale thereof and in the proceeds of sale thereof. But this fact was not disclosed to plaintiff at the time and has

been learned by her since the execution of the agreement and the payment of the money.

Judgment will be claimed on this count for \$1,900 with interest from the 27th day of March, 1926.

### Third Count.

1. All of the paragraphs of the first count are for the sake of brevity here repeated.

10 2. At the time of the representations made by said Roberts and the delivery of said check he was the agent of said F. Stanley Kreps for the sale of said lots and the acceptance of said check. Said Roberts has since paid to said Kreps the said sum of \$1,900 or is obligated to do so.

Judgment will be claimed on this count for \$1,900 with interest from the 27th day of March, 1926.

COLE & COLE,  
*Attorneys of Plaintiff.*

20

---

### *To the Within Named Defendants:*

In case the within summons and complaint are served upon you personally, then take notice that if you intend to make a defense to this action, you must file an affidavit of merits within ten days from the date of the service hereof upon you, and that unless you file such affidavit, 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 an answer 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.

COLE & COLE,  
*Attorneys of Plaintiff.*

## EXHIBIT "A."

This agreement, made the first day of April, A. D. 1926, between F. Stanley Kreps, of the City of Ocean City, County of Cape May, and State of New Jersey, of the first part, hereinafter called the "Seller" and Elizabeth Dimon, of the City of Ocean City, County of Cape May, and State of New Jersey, of the second part, hereinafter called the "Buyer." Witnesseth, that the "Seller" agrees to sell and convey and the "Buyer" agrees to buy all those certain lot, tract or parcel of land and premises situate in the City of Ocean City, County of Cape May, and State of New Jersey, more particularly described as follows: Being lots numbered 1705-1706-1707-1708-1709 and 1710, in Block No. 17-G, Plan of Lots of the Heart of the Gardens Development Company, situate on the southeasterly side of Inlet Road between Surf Road and Wesley Road; for the price or sum of eighteen thousand six hundred (\$18,600) dollars, under and subject to the following terms and conditions: 1. A first payment of nineteen hundred (\$1,900.00) dollars, receipt of which is hereby acknowledged by the "Seller." 2. The balance of the purchase price shall be paid in the following manner; (a) First mortgage now on the property in the amount of forty-five hundred dollars (\$4,500.00). (b) The balance sum of twelve thousand two hundred (\$12,200) dollars to be paid in cash, at the time of final settlement, which shall be made at Clayton B. Roberts' office, 9th Central—, Ocean City, N. J., on May 27th, A. D. 1926, or the deposit made herewith, at the option of the "Seller" may be applied on account of the purchase price or be forfeited as liquidated damages to the "Seller," and not as a penalty, provided that the necessary title searches can be obtained from a reputable title and trust company by that date. Should there be any delay, not the fault of the "Buyer" in the procuring of such searches, the time

for the final settlement shall extend until such searches can be obtained.

3. The title to the premises shall be free and clear of all incumbrances, including municipal liens and assessments, except restrictions of Ocean City Association, reservations and restrictions the The Heart of the Gardens Development Company, Ocean City Gardens Co., and shall be a marketable title, and the "Seller" shall tender a special warranty deed conveying such title at  
**10** the time of the final settlement, or in the event that such title cannot be as above, then this deposit shall be returned to the "Buyer." 4. All adjustments shall be made as of May 27th, A. D. 1926, and possession shall be given the "Buyer" on settlement A. D. 192—. 5. The "Buyer" shall pay for searches and all other expenses, excepting the preparation of the deed and the necessary revenue stamps attached thereto, which shall be paid for by the "Seller." 6. This contract includes all fixtures and appurtenances permanently attached to the building  
**20** or buildings on the land herein described and also specifically the following items:— 7. This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. 8. Time is the essence of this agreement. In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

R. V. REILEY

CLAYTON B. ROBERTS

F. STANLEY KREPS (L. S.)

**30**

ELIZABETH B. DIMON (L. S.)

Personal service made, May 28th, 1926, upon F. Stanley Kreps, by showing him the original and leaving with him a copy thereof, at his office, Ocean City Title & Trust Bldg., Ocean City, N. J.

Sheriff's fees, \$8.12.

JAMES T. HOFFMAN,  
*Sheriff.*

Due and legal service of the within summons and Complaint, acknowledged this 28th day of May, 1926, for F. Stanley Kreps and Clayton B. Roberts.

KREPS & BELL,  
*Attorneys of Defendants.*

STATE OF NEW JERSEY, )  
COUNTY OF CAPE MAY, ) *ss.*

Personally appeared before me James T. Hoffman, 10 who being sworn, upon his oath deposes and saith that he is the Sheriff of the County of Cape May, State of New Jersey, and that as such Sheriff he served the annexed action at law, summons and complaint, personally on F. Stanley Kreps on the 28th day of May, A. D. 1926, by showing him the original and leaving him a copy thereof.

JAMES T. HOFFMAN,  
*Sheriff.*

Sworn and subscribed before me this 28th day of 20 May, A. D. 1926.

PHOEBE GRACE,  
*Deputy Surrogate.*

CAPE MAY COUNTY CIRCUIT COURT.

	ELIZABETH B. DIMON,	}	Action at Law.
	<i>Plaintiff,</i>		
	<i>vs.</i>		
	CLAYTON B. ROBERTS, and in	}	
	the Alternative CLAYTON B.		
10	ROBERTS and F. STANLEY		
	KREPS, Jointly, and F. STANLEY KREPS, Individually,		
	<i>Defendants.</i>		

AFFIDAVIT OF MERITS OF CLAYTON B. ROBERTS.

(Filed June 7, 1926.)

20 STATE OF NEW JERSEY, }  
 COUNTY OF CAPE MAY, } *ss.*

Clayton B. Roberts, of the City of Ocean City, County of Cape May and State of New Jersey, being duly sworn according to law, on his oath deposes and says that he is one of the defendants in the above entitled cause, and that he believes that he has a just and legal defense to said action on the merits of the case.

Sworn and subscribed to before me this fourth day of June, A. D. 1926.

RUTH V. REILEY (Off'l Seal).

30 Notary Public of New Jersey.

CLAYTON B. ROBERTS (L. S.)

New Jersey State Library



## CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,  
*Plaintiff.*

*vs.*

10 CLAYTON B. ROBERTS, and in  
the Alternative CLAYTON B.  
ROBERTS and F. STANLEY  
KREPS, Jointly, and F. STAN-  
LEY KREPS, Individually,  
*Defendants.* } Action at Law.

## ANSWER OF CLAYTON B. ROBERTS.

(Filed June 7, 1926.)

20 Clayton B. Roberts, one of the defendants in the  
above entitled cause, answers the complaint filed therein  
and says that:

**First Count.**

1. He admits paragraph 1 of the First Count of the  
Complaint, except that he denies that the Agreement  
was signed on April 1st, 1926, although it was actually  
dated on that day.

2. He admits the receipt of a check in the sum of  
nineteen hundred (\$1900.00) dollars referred to in  
the second paragraph of the First Count of the Com-  
30 plaint, but says that the said sum of nineteen hundred  
(\$1900.00) dollars was paid to F. Stanley Kreps, the  
owner of the property described in said Bill.

3. He denies paragraph three of the First Count.

4. He denies paragraph four of the First Count.

5. He denies paragraph five of the First Count.

the Complaint, except that he states that he has refused  
to return said sum of nineteen hundred (\$1900.00)

dollars or any part thereof, due to the fact that he does not consider himself indebted to the plaintiff.

**Second Count.**

1. He denies all of the allegations in the first paragraph of the Second Count of the Complaint.

2. He denies the allegations in the second paragraph of the Second Count of the Complaint, and states that he had absolutely no interest whatsoever as an owner in said property jointly with F. Stanley Kreps. 10

**Third Count.**

1. He denies the allegations in the first paragraph of the Third Count of the Complaint.

2. He denies the allegations in the second paragraph of the Third Count of the Complaint, and says that he was not the agent of F. Stanley Kreps at the time he showed said property to the plaintiff, or at the time the check was received by him as a payment on account of the purchase price of said property. 20

**First Defense.**

1. This defendant further answers and says that he has known the said Elizabeth B. Dimon for three or four years last past, and that on a number of occasions she has called at his office for the purpose of asking his advice concerning purchasing of real estate, and as to the advisability of making certain purchases.

2. That on two or three different occasions, he has advised the plaintiff not to purchase at the time she contemplated, due to the fact that it was his opinion that the market was not right at those times, and that said plaintiff thanked this defendant for such information and advice, and advised him on each occasion that if at any time he had a property which he thought could be purchased as a good investment, that she would appreciate it if he would so advise her. 30

3. That this said defendant was advised by Richard H. Johnson that he owned the lots in question, which are situated in the Ocean City Gardens, Ocean City, New Jersey, and that he considered the same to be a bargain, as they were considerably below the market price.

4. That he then approached the said plaintiff relative to the purchasing of said property, and that she and this defendant went together to see the said property, and she advised him that if he considered it a good purchase,  
10 that she would buy the same.

5. That no representation as to the size of the lots was ever made, except that the defendant told said plaintiff that he was not sure whether they were thirty (30) or thirty-five (35) foot lots, but that it made no difference because she was getting them at a price which he considered to be right and which was below the market price.

6. That the said plaintiff then agreed to purchase said lots, and at that time this defendant was of the  
20 opinion that the said property was still owned by Richard H. Johnson, as he had been so advised but a few hours previous.

7. That said defendant then went to the office of Richard H. Johnson, where he was advised that said property had been sold to the said defendant F. Stanley Kreps about fifteen minutes previous, and that this defendant then went to the office of F. Stanley Kreps where he was advised that he could purchase said property at the same price which he had quoted to the plaintiff, except that he would have to have nineteen hundred  
24 (\$1,900.00) dollars cash deposit. That he then went outside and told the plaintiff of the change of ownership, which was unknown to him, and the necessity of the advance cash payment, and that the plaintiff without any further question gave to this defendant a check for nineteen hundred (\$1,900.00) dollars for the purchase of said property.

8. That this defendant is in no way indebted to the said plaintiff for said nineteen hundred (\$1,900.00) dollars, or any part thereof, he having made no misrepresentation of any kind, nature or description concerning the size of said lots.

KREPS & BELL,  
*Attorneys for Defendants.*

10

CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,  
*Plaintiff,*

*vs.*

CLAYTON B. ROBERTS, and in  
the Alternative CLAYTON B.  
ROBERTS and F. STANLEY  
KREPS, Jointly, and F. STAN-  
LEY KREPS, Individually.

*Defendants.*

Action at Law.

20

ANSWER OF F. STANLEY KREPS.

*(Filed June 7, 1926.)*

F. Stanley Kreps, one of the defendants in the above entitled cause, answers the complaint filed therein, and says that:

30

**First Count.**

1. He admits paragraph 1 of the First Count of the Complaint, except he says that the said Agreement was not signed on April 1st, 1926.

2. He neither admits nor denies the allegations in the second paragraph of the First Count of the Com-

plaint, and says that he has not sufficient knowledge with which to answer the same, except that the said Clayton B. Roberts did give to this defendant his check in the sum of nineteen hundred (\$1900.00) dollars as a deposit on account of the purchase price of the property described in said Bill of Complaint, which deposit was paid for the said plaintiff, Elizabeth B. Dimon.

3. This defendant neither admits nor denies the allegations in paragraph three of the First Count of the  
10 Complaint and says that he has not sufficient knowledge with which to answer the same.

4. This defendant neither admits nor denies the allegations in paragraph four of the First Count of the Complaint, and says that he has not sufficient knowledge with which to answer the same.

5. This defendant denies the allegations in paragraph five of the First Count of the Complaint, and especially does he deny that the said Elizabeth B. Dimon at any time advised him that she did not intend to complete  
20 her said contract, but that he received such information from the said Clayton B. Roberts who was her agent.

### Second Count.

This defendant makes the same answer to the first paragraph of the Second Count of the Complaint as were made to the allegations in the First Count.

2. This defendant denies that the said Clayton B. Roberts was in any way jointly interested with him in the ownership of the said property and says that such  
30 fact could not be disclosed to the plaintiff at the time that she agreed to purchase said property, because it was not true.

### Third Count.

This defendant makes the same answer to the first paragraph of the Third Count of the Complaint as were made to the allegations in the first paragraph of the Second Count.

2. This defendant denies that the said Clayton B. Roberts was his agent for the sale of said property, and says that at the time said property was shown to said plaintiff by the said Clayton B. Roberts, that the said F. Stanley Kreps did not own said property, but that said lots were purchased about fifteen minutes before the said Roberts came to the office of F. Stanley Kreps to purchase the same.

KREPS & BELL,  
*Attorneys of Defendants.* 10

---

CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,  
*Plaintiff,*  
*vs.*  
CLAYTON B. ROBERTS, and in  
the Alternative CLAYTON B.  
ROBERTS and F. STANLEY  
KREPS, Jointly, and F. STAN-  
LEY KREPS, Individually,  
*Defendants.* } Action at Law. 20

REPLY.

(Filed June 15, 1926.)

Plaintiff joins issue on the answer of the defendant Clayton B. Roberts.

ANSWER TO FIRST DEFENSE. 30

1. Plaintiff denies the averments in each and every paragraph of the First Defense.

COLE & COLE,  
*Attorneys of Plaintiff.*

## CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,  
*Plaintiff,*

*vs.*

CLAYTON B. ROBERTS, and in  
 the Alternative CLAYTON B.  
 ROBERTS and F. STANLEY  
 KREPS, Jointly, and F. STAN-  
**10** LEY KREPS, Individually,  
*Defendants.* } Action at Law.

## REPLY.

*(Filed June 15, 1926.)*

Plaintiff joins issue on the answer of the defendant  
 F. Stanley Kreps.

COLE & COLE,  
*Attorneys of Plaintiff.*

**20**

## CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. CHAPIN (For  
 merly Dimon),  
*Plaintiff,*

*vs.*

CLAYTON B. ROBERTS, and in  
 the Alternative CLAYTON B.  
 ROBERTS and F. STANLEY  
 KREPS, Jointly, and F. STAN-  
**30** LEY KREPS, Individually,  
*Defendants.* } Action at Law.

## RULE FOR JUDGMENT.

*(Filed September 22, 1928.)*

This cause came on to be heard before Judge Sooy  
 and a jury on the seventeenth day of September, 1928,

in the presence of C. L. Cole, of Cole & Cole, of counsel with plaintiff, and Robert Bell, of counsel with the defendants, and the jury returned a verdict in favor of the plaintiff against both defendants for the sum of twenty-one hundred ninety-seven dollars and fifty cents; it is thereupon ordered that judgment final be entered in favor of the plaintiff and against the defendants for the sum of twenty-one hundred ninety-seven dollars and fifty cents, besides costs.

On motion of

10

COLE & COLE,  
*Attorneys for Plaintiff.*

CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,  
*Plaintiff,*

*vs.*

CLAYTON B. ROBERTS, and in  
the Alternative CLAYTON B.  
ROBERTS and F. STANLEY  
KREPS, Jointly, and F. STAN-  
LEY KREPS, Individually,  
*Defendants.*

Action at Law.

20

NOTICE OF APPEAL OF F. STANLEY KREPS.

(Filed September 26, 1928.)

To Cole & Cole, Esqs., Attorneys of the Plaintiff, or  
to whom it may concern:

Please take notice, that F. Stanley Kreps, one of the  
defendants in the above entitled cause, appeals to the  
Court of Errors and Appeals, in a last resort in all  
causes in the State of New Jersey, from the whole of  
the judgment entered in this cause.

30

Respectfully yours,

KREPS & BELL,  
*Attorneys of Defendant F. Stanley Kreps.*

Due and legal service of the within notice acknowledged the twenty-fifth day of September, 1928.

COLE & COLE,  
*Attorneys of Plaintiff.*

---

STATE OF NEW JERSEY,

10

## COUNTY OF CAPE MAY.

I, A. C. Hildreth, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, do hereby certify that the foregoing are true and correct copies of the Summons and Complaint, Affidavit of Merits, Affidavit of Merits, Answer, Answer, Reply, Reply, Rule for Judgment and Notice of Appeal, in the case of Elizabeth B. Dimon, plaintiff, vs. Clayton B. Roberts, and in the alternative Clayton B. Roberts and F. Stanley Kreps, jointly and F. Stanley Kreps, individually, defendants, as filed in the Clerk's office of the County of Cape May.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this twenty-eighth day of September, A. D. nineteen hundred and twenty-eight.

(Seal)

A. C. HILDRETH,  
*Clerk.*

CAPE MAY COUNTY CIRCUIT COURT.

ELIZABETH B. DIMON,	}	Action at Law.
<i>Plaintiff,</i>		
<i>vs.</i>		
CLAYTON B. ROBERTS, and in	}	
the Alternative CLAYTON B.		
ROBERTS, ET AL.,		
<i>Defendants.</i>		<b>10</b>

TESTIMONY.

Appearances—*For the Plaintiff*, COLE & COLE, ESQS.;  
*for the defendant*, KREPS & BELL, ESQS.

The above entitled case was tried September 17, 1928,  
before Honorable William Frank Sooy, Judge, and a  
Jury.

Mr. Cole opened the plaintiff's case to the jury.

Mr. Bell—There is no allegation in the complaint that  
Mr. Roberts was the agent of Mr. Kreps. **20**

The Court—The allegation is that Mr. Roberts was  
the agent of Mr. Kreps. I think you failed to say that  
in your opening. Your complaint alleges that he was  
the agent, and I will refuse the motion.

Mr. Bell—May I have an exception?

The Court—Yes.

Mr. Bell opened the defendant's case to the jury.

Mr. Cole—I offer the agreement.

(The paper offered is received in evidence and  
marked as an exhibit for the plaintiff, P-1.)

Mr. Cole—I offer the check of Dimon to Roberts, **30**  
March 27, 1926, for \$1,900.

(The paper offered is received in evidence and  
marked as an exhibit for the plaintiff, P-2.)

*Elizabeth D. Chapin*, called as a witness on behalf of  
the plaintiff, being sworn, was examined and testified  
as follows:

Direct examination, by Mr. Cole:

Q. Have you married since the suit was brought?

A. Yes, sir, Judge Cole.

Q. You were Elizabeth Dimon at the time the suit was brought?

A. Yes, Judge Cole.

Q. What is your name now?

A. Elizabeth Dimon Chapin.

Q. You know Mr. Roberts?

10 A. I do.

Q. Do you know Mr. Kreps?

A. I do by sight.

Q. Will you tell us first what, if anything, Mr. Roberts said to you concerning the size of the lots referred to in this agreement?

Mr. Bell—I object, your Honor, to that testimony as far as Mr. Kreps is concerned, because the agreement speaks for itself.

20 The Court—I will admit the testimony at the present time. Whether it binds Mr. Kreps is a matter for after-determination.

A. Mr. Roberts said they were 35-foot lots. That was what made them desirable.

Q. At that time did he present a map?

A. He did.

Q. What did the map show?

A. The map showed thirty-five feet, and he said "These are the lots. I will show them to you."

Q. What became of the map?

A. He kept it.

20 Q. Didn't give it to you?

Mr. Cole—Will you produce the map?

Mr. Roberts—I forgot to bring it, Judge Cole.

Q. Did there come a time when you learned that these lots were not thirty-five feet wide?

A. There did, Judge Cole.

Q. Was that before or after you had signed the agreement?

A. One month later, before I gave him the check; April twenty-seventh I learned.

Q. By the way, what was the date that he told you these lots were thirty-five feet wide?

A. March twenty-seventh.

Q. That is the same day you gave him the check?

A. The day I gave him the check.

Q. When you learned that these lots were only thirty-feet wide did you get in touch with him or his office?

A. I did.

10

Q. With whom first?

A. When I came home from school at noon I went around to his office. He wasn't there. His salesman was there, Mr. Jamison, and I said: "Mr. Jamison, I am terribly worried. These lots that Mr. Roberts sold me were thirty-five feet, I am told now are only thirty-feet." He said: "Well, Miss Dimon, I will see." He got up and went over to the wall map hanging over Mr. Roberts' desk and looked on that wall map and said: "They were only thirty feet."

20

Q. Did you later talk with Mr. Roberts?

A. I did, Judge Cole.

Q. How long was it after you talked with the man in his office before you talked with him?

A. A few hours later.

Q. Did you meet him face to face or take it up by phone?

A. I left word for him to come and see me at first. He didn't show up. So I called him up on the phone.

Q. State the conversation.

A. I said, "Mr. Roberts, I have been terribly worried. I have been called on the phone and have been told the lots are only thirty feet, and you know you sold them at thirty-five." He said, "Sure; that's right." I said, "What is right?" He said, "Why thirty feet, that is what I told you."

30

Q. Did you then undertake to rescind this agreement?

A. I did, Judge Cole. I sent him a special delivery registered letter.

Q. Will you produce the letter?

A. I haven't the letter.

Mr. Cole—Will you produce the letter?

Mr. Bell—Which one?

Mr. Cole—Well, there are three. If you will produce the three, one April 28th, one May first, and one May 21st, I think.

10 Mr. Bell—We don't have them. We don't deny them.

Mr. Cole—Recision is admitted?

Mr. Bell—Yes, we admit it.

Q. Now, did you receive this letter from Mr. Roberts?

A. Yes, Judge Cole, I did.

Mr. Cole—I offer that, dated May first, 1926.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-5.)

20 (Stenographer's note: No exhibits marked P-3 and P-4.)

Mr. Bell—I object to the admission so far as binding Mr. Kreps is concerned. They are letters by Mr. Roberts.

The Court—They do not at this time bind Mr. Kreps.

Q. This letter says that he, Mr. Roberts, told you not to go by the map. Did he tell you that?

A. He did not.

30 Mr. Cole—I offer the letter of May 12th, 1926, from Roberts to Dimon.

Mr. Bell—I object to this letter. I think it is immaterial to the case.

The Court—I will permit it.

Mr. Bell—Exception.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P-6.)

Q. Miss Chapin, when Mr. Roberts told you, as you claim, that these lots were thirty-five feet in width, did you believe that?

A. I certainly did.

Q. Did that statement by him that they were thirty-five feet lots induce you to make the purchase?

A. That was why I bought them.

Q. Would you have bought them had they been only thirty feet wide?

A. I would not. You cannot build on thirty-foot 10 lots.

Mr. Cole—Cross-examine.

Cross-examination, by Mr. Bell.

Q. Mrs. Dimon, have you ever bought any other real estate in Ocean City?

Mr. Cole—I object.

The Court—I will sustain the objection and allow an exception.

Q. Miss Dimon, when did you first go to see Mr. 20 Roberts concerning the purchase of the property?

A. I went to see him the morning of the day we came to get me to buy these lots.

Q. You went into his office?

A. I told him I would like to buy a couple of lots when he had some that were below the market price and would be a good buy.

Q. What time was that on this day?

A. It was on the morning, March 27th—March 27th was Saturday and it was in the morning.

Q. Was it nine or ten o'clock? 30

A. I don't remember what time. It was in the morning.

Q. But it was previous to the time he came to you to tell you about these lots; is that true?

A. Yes.

Q. What did he tell you when he came with this offer or to show you this property? What were your conversations with him at that time?

Mr. Cole—I object. That is not cross-examination unless it relates to the question of the width of the lots. Everything is admitted except the controversy over this thirty-five feet.

The Court—I will permit the question.

10 Q. (Repeated by the Stenographer.) What did he tell you when he came with this offer or to show you this property? What were your conversations with him at that time?

A. He said he had something that was exceptionally good; that he had something that was a wonderful buy; that these lots were thirty-five feet.

Q. And did you go up to view the property?

A. He took me in his car.

Q. Did he tell you at that time—who was the owner of these lots?

20 A. I don't remember.

Mr. Cole—Objected to.

Q. You don't remember?

A. I don't remember the owner.

Q. When you came back from viewing the lots, didn't Mr. Roberts take you to the Trust Company Building?

A. Didn't take me anywhere. He left me in his car on Asbury Avenue in front of Staton's Store.

The Court—In front of who's store?

A. Staton's dry goods store.

30 Q. Mrs. Chapin, did you have any other transactions with Mr. Roberts?

Mr. Cole—Objected to.

A. No.

The Court—I will sustain the objection.

Q. Had you known him previous to this morning?

A. No.

Q. Had you ever asked him to invest any money for you?

Mr. Cole—Objected to.

The Court—I do not see that it makes any difference. The question here is was this representation made? However, she said no.

Q. Now, Mrs. Chapin, when did you receive the agreement from Mr. Roberts?

A. April first.

Q. April first?

10

A. There were no signatures on them whatever.

Q. Did he send a letter to you at that time with the agreement?

A. I don't remember. There was either a note or request to please sign at once and return them to him.

Q. Did he say anything to you about the amount of money he was making?

Mr. Cole—I object. I don't think it is material what he was making.

The Court—It seems to me the whole question 20  
and the only question is—

Q. When you got the agreements did you read them before you signed them?

Mr. Cole—I object.

The Court—She is bound by them whether she did or not.

Mr. Cole—Exactly.

Mr. Bell—That is all.

(Witness excused.)

30

---

Clayton B. Roberts, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination, by Mr. Cole.

Q. Showing you P-2 I ask you whether that check went to your credit?

A. It did.

Q. And you witnessed Mr. Kreps' signature to the agreement, did you not?

A. I did.

Q. Who drew the agreement?

A. I did.

Q. Where did Mr. Kreps sign it?

A. If I remember correctly, in his office.

Q. Did you turn over to him the \$1,900 represented  
10 by this check?

A. I did.

Q. That is the amount named as the down money in the agreement?

A. It is.

Q. You turned it over to him?

A. Yes.

Mr. Cole—Cross-examine.

Mr. Bell—No questions.

(Witness excused.)

20 (Plaintiff rests.)

---

(In Chambers.)

#### DEFENDANT'S MOTION FOR NON-SUIT.

30 Mr. Bell—I move for a non-suit as to F. Stanley Kreps, one of the defendants here. There has absolutely no testimony been given as to the fact that Mr. Roberts was acting as agent for Mr. Kreps, and, further, if he was an agent of any kind, that he was authorized to make any representations as to this property. The agreement is in evidence and it is certainly binding as to the parties, and I think especially in view of the case in 102 New Jersey Law, page 85, *Crescent Ring Company v. The Travelers Indemnity*

*Company*, which held that an innocent vendor cannot be sued for the fraud of his agent in effecting a sale when he knows nothing about it. I think that case certainly governs this case. (Citing also 96 N. J. L., page 75); affirmed in 97 N. J. L., page 324.)

The Court—I will deny the motion and grant an exception.

Mr. Bell—Exception.

10

*Clayton B. Roberts*, recalled as a witness on behalf of the defendant, having been sworn, was examined and testified as follows:

Direct examination, by Mr. Bell.

Q. Mr. Roberts, what is your business?

A. Real estate and insurance.

Q. Where?

A. Ocean City, New Jersey.

Q. Do you know the plaintiff Mrs. Chapin in this transaction?

20

A. I do.

Q. Did she come to see you about a purchase around about April 1, 1926?

A. She did.

Q. What was the conversation that took place at that time she came to see you?

Mr. Cole—Objected to unless it is limited to the question of the representation.

The Court—I suppose it is preliminary to what happened when they went out to the lot.

Mr. Cole—Exception.

30

A. She came to me and said she would like to buy something that I would recommend for her to buy and turn over at a profit.

Q. And what did you tell her?

A. I told her the first time I found something I would get in communication with her.

Q. When did you find something that you thought might interest her?

A. Sitting in the restaurant one noon eating lunch.

Q. How did you happen to learn about this property?

Mr. Cole—Objected to.

The Court—It does not make a bit of difference.

Q. What did you do after you found the property you thought she might be interested in?

10 A. Went and saw her and told her about it and showed it to her.

Q. What did you tell her at the time you took her to see the property?

A. I told her that I had come across some lots in the Gardens that I considered very cheap. I took her up and showed her the lots.

Q. Did you show her a map?

A. I did.

Q. Where did you show her a map?

20 A. Up in the gardens. I took the map out of my office and took it with me along with the lot numbers.

Q. What did you tell her, if anything, concerning the width of these lots?

A. The map shows that the lots are  $35\frac{1}{2}$  feet in width. I told her that I didn't think the size of the lots—I told her that I didn't know the size of the lots as these lots were owned by the "Heart of the Gardens" and they had remapped the whole "Heart of the Gardens" and I didn't know the exact dimension of it; but I also said, "If these lots are  $35\frac{1}{2}$  feet as the map shows, 30 they are an exceptionally good buy, and if they are only thirty feet or less than thirty-five feet—" I don't remember saying thirty feet at all; have never said that. I said that I did not—I said, "I don't care what they are, they are a good buy and are cheaper than anything else that can be bought in this neighborhood.

Q. After you showed her the lots what did you do?

A. I came down to the office of Richard H. Johnson, the owner of the lots and told him that I had sold—

Mr. Cole—I object to what he told Mr. Johnson. We weren't there.

Q. Well, just say what you did, not what you told him.

A. I came down to the owner of the lots and told the owner of the lots that I sold them.

Q. Then what did you do after that? **10**

A. Well, he told me he had sold the lots from the time he was talking with me.

Q. Did he tell you—

Mr. Cole—I ask that be stricken. It is all hearsay and I do not see how it can bind us.

The Court—I do not see how she can be bound by what somebody else told him.

Q. Did Miss Dimon tell you whether she would take these lots after you had shown them to her?

A. She agreed to purchase them? **20**

Q. At what figure?

A. What that agreement is, eighteen thousand some hundred dollars.

Q. The agreement calls for eighteen thousand six hundred.

A. That was the figure.

Q. And did she agree to purchase them?

A. Yes.

Q. What did you tell her that you would do when she told you she would purchase them?

A. I told her that I would go see the owner of the **30** lots.

Q. Did you later see the owner?

A. I did.

Q. Did he agree to sell at that figure?

A. He did.

Q. Did you then prepare an agreement of sale?

A. I did.

Q. What did you do with the agreement of sale after you prepared it?

A. I mailed it to her for her signature, instructed her to sign it and return it to me, in duplicate copies as I recall.

Q. At that time did you disclose to her how much you were going to make in this transaction?

10 Mr. Cole—I object on the ground that it is wholly irrelevant as to what he told her as to what he was to make. She was not interested in that.

The Court—As I understand it, there is no question or claim under the count that says there was a joint enterprise between Roberts and Kreps.

Mr. Cole—I am not concerned about that now. We are not concerned as to what this witness told Mrs. Chapin, as to whether he told Mrs. Chapin what he was going to make out of it.

20 The Court—If you are relying on the second count that there was a joint enterprise—

Mr. Cole—We are relying on the proof.

The Court—Your proof does not support your second count.

Mr. Cole—If the proof does not support it surely we have a right to object to the proof.

The Court—Unless the second count is eliminated from the complaint I will permit it.

Mr. Cole—Your Honor will allow me an exception?

30 The Court—Yes.

Q. (Repeated by the Stenographer.) At that time did you disclose to her how much you were going to make in this transaction?

A. I did.

Q. And what did you tell her that amount was?

A. Four hundred dollars.

Q. And did you tell her how much Mr. Kreps was making out of the transaction?

A. I did.

Q. How much was that?

A. Four hundred dollars.

Q. Were these lots listed in your office?

A. They were not.

Q. Did you know who the owner of the lots was at the time you took Miss Dimon to see them?

Mr. Cole—Objected to.

10

The Court—I will sustain the objection. I don't see that it makes a bit of difference. He afterwards found out Mr. Kreps was. There is no question about that.

Q. Mr. Roberts, how long have you known Miss Dimon?

A. I should say three or four years.

Q. Have you known her intimately during that time?

A. I lived at the same hotel that she did.

Q. And she spoke to you on numerous occasions about real estate? 20

Mr. Cole—Objected to.

The Court—The proposition is that there really was a representation made that these lots were thirty-five feet front or else there was not. Now, if there was, one thing happened. If there was not another thing happened. I will sustain the objection and allow an exception.

Mr. Bell—Exception.

Q. Mr. Roberts, at the time you showed Miss Dimon the map you have testified that you told her that you weren't sure whether the lots had been replotted or not and that there might have been a variance in the width—are you positive that you told her that at that time? 30

A. I told her I knew they had been replotted, but I didn't know the size of the lots.

Q. I believe your testimony is to the effect that you told her the lots were a good buy even regardless of the

size; that is, you knew they were no less than thirty feet; is that true?

A. I think that is true.

Cross-examination, by Mr. Cole.

Q. Why were you interested in telling Mrs. Chapin how much money you were making out of the transaction?

A. I will answer that question. I will have to go back a little bit.

10 Q. No, you must have had some reason. That is, I assume you did. Why did you tell her that?

The Court—Oh, I will permit the witness to answer that question.

Q. Why did you tell her that, if you remember? If you don't, say so.

A. Yes, I remember.

Q. Go ahead. Now answer this one. Why did you tell her how much Mr. Kreps was making out of it?

A. Because the lots had been sold a half hour to Mr. Kreps before she purchased them, and I didn't want her to think I was coming in there, in the transaction profit.

Q. In other words, you were afraid she might think you were making too much money out of it?

A. Yes.

Q. How did that interest her so far as Mr. Kreps was concerned? Why did you tell her about Mr. Kreps' profit also?

A. Because Mr. Kreps was the buyer in this transaction in the meantime?

Mr. Cole—That is all.

30 (Witness excused.)

*F. Stanley Kreps*, called as a witness in his own behalf, being examined, testified as follows:

Direct examination, by Mr. Bell.

Q. Mr. Kreps, you were the owner of the lots in question in controversy about April first, 1926?

A. I had an agreement to purchase them, yes.

Q. On or about the time this agreement was signed did you know Miss Dimon?

A. No, I did not.

Q. When was the first—what was the first information you had that Miss Dimon wanted to purchase these lots?

A. When Mr. Roberts told me. The day the contract was signed or dated; I don't remember.

Q. What was the conversation at that time?

A. With me?

10

Q. With Mr. Roberts?

A. Mr. Roberts told me that he had a party, a Miss Dimon who wanted to buy these lots and he wanted to know what I would take for them. I told Mr. Roberts I had just purchased them about fifteen minutes before that time from Mr. Johnson and that I would take a profit. What profit I told him at that time I don't know. But we finally agreed and I entered into a contract with Miss Dimon to sell them for the figure set forth in the contract which is \$800 more than I paid for them.

20

Q. Had you listed the lots with Mr. Roberts for sale?

A. I had not.

Q. Had you ever had any conversation with him previous to that conversation you have just stated?

A. I had not; never talked to him about it.

Q. You never saw or had any dealings in this transaction with Miss Dimon?

A. No, none whatever. I only knew Miss Dimon by sight.

Q. When did you first hear that Miss Dimon was dissatisfied with her contract?

30

Mr. Cole—Objected to as being immaterial. Recision is admitted.

The Court—I do not see that it is material at all because, as Mr. Cole says, you admit the recision of the contract or attempted recision.

Q. Mr. Kreps, the contract you signed with Miss Dimon calls for a delivery of what ground?

Mr. Cole—I object. The contract speaks.

The Court—The contract speaks for itself, and it is now admitted in the case that the lots were thirty feet.

Q. At the time Mr. Roberts came to you and offered you a price on these lots, did you tell him anything as to the size of the lots?

A. I did not.

10 Q. Made no statement of any kind as to what the sizes were?

A. Absolutely none; made no statement whatever to Mr. Roberts about the size.

Mr. Bell—That is all.

Mr. Cole—That is all; no questions.

By Mr. Bell.

Q. Mr. Kreps, at the time these lots were sold did you authorize Mr. Roberts to act for you?

A. I did not.

20 Q. Did you authorize him to make any representations concerning these lots acting as your agent?

A. I did not; didn't know that he had done it.

Q. At the time the agreement was signed—or do you know whether Mrs. Chapin had viewed these premises prior to Mr. Roberts coming to you?

A. I do not.

Mr. Bell—That is all.

Cross-examination, by Mr. Cole.

Q. You paid him a commission?

A. Beg pardon?

A. You paid him a commission?

30 A. I paid Mr. Roberts \$200.

Q. Commission?

A. Yes, on account of commission.

Mr. Cole—That is all.

(Witness excused.)

*Richard H. Johnson*, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

Direct examination, by Mr. Bell.

Q. Mr. Johnson, where do you reside?

A. Ocean City.

Q. And were you the owner of the lots mentioned in this contract on or about April 1, 1926?

Mr. Cole—Objected to as immaterial and irrelevant. 10

The Court—There is no dispute as to who was the owner on that day; there is no dispute that he was the owner on that day and about fifteen minutes before this transaction had sold to Mr. Kreps.

Mr. Bell—I will withdraw the witness.

(Witness excused.)

---

Defendant rests. 20

---

Plaintiff rests.

---

DEFENDANT'S MOTION FOR DIRECTION OF  
VERDICT.

Mr. Bell—I would like to renew the motion for a direction of verdict on the same ground as offered on the motion for a non-suit. 30

The Court—Same ruling.

Mr. Bell—Exception.

(Counsel summed up for the respective parties.)

COURT'S CHARGE TO THE JURY.

Sooy, J.: Members of the Jury. The issues as framed by the pleadings in this case and the testimony submitted in support of the pleadings is a very narrow one.

The plaintiff says that the defendant Roberts induced her to enter into a contract for the purchase of a certain lot from Mr. Kreps by reason of a false representation on the part of Mr. Roberts as to the size of the lots which she, the plaintiff, intended to purchase.

She says that Mr. Roberts took her to the scene or on the ground where these grounds were, pointed out on the map the lots in question and represented them as being thirty-five feet in width; that that representation was false and untrue and that after she discovered it was false and untrue she rescinded the contract and asked for her money back.

20 She also says that she relied on that false representation and that she purchased in faith of that false representation, and would not have purchased them had she known the true facts.

The defendant, Mr. Roberts, on the contrary says that at the time he showed these lots to the plaintiff he told her that the map he had there represented the lots as being thirty-five feet or thirty-five feet one-half inch, something of that kind (you will remember the testimony), that he did not know the dimensions of the lots, but he did know that they had been replotted and whether they were thirty-five feet in width or thirty feet in width, he was not sure; but that he thought it was a good purchase, no matter what the dimensions were.

30 The claim of the plaintiff, therefore, resolves itself into an allegation of fraudulent representation on the part of Mr. Roberts and I charge you that the burden of proving that the representations that the plaintiff alleges were made were in fact made, that they were

false, and that she relied on them to her detriment, is on the plaintiff.

Fraud is never presumed. The burden of proving fraud is on the plaintiff.

If the plaintiff has convinced you by the greater weight of the believable evidence the alleged fraudulent representations were made and that they were fraudulent and that the plaintiff relied on them to her detriment, she is entitled to recover the sum that she has paid on account of the contract, to wit, nineteen hundred dollars with interest from the twenty-seventh day of March, 1926. **10**

She would be entitled to recover that from the defendant, Mr. Kreps, because the proposition of law is that where a person acts for another who accepts the proofs of his fraud the latter must be deemed to have adopted the method employed, as he cannot even though innocent receive the benefits and at the same time disclaim responsibility for the means by which they were acquired. **20**

So that if you find that the plaintiff has proved her case as I have indicated by the greater weight of the believable evidence, Mr. Kreps would be liable because he cannot although innocent himself, receive the benefits of the contract and at the same time disclaim responsibility for the means by which they were acquired.

So you see, this case resolves itself down to a mere question of fact, the burden of proving which is on the plaintiff, as I have said before.

If your verdict is for the plaintiff you will say nineteen hundred dollars plus interest that you will have to figure from the twenty-seventh day of March, 1926, and that you will simply add to the verdict and bring in one total sum, not nineteen hundred dollars with interest at six per cent., but nineteen hundred dollars plus the interest that you figure. **30**

I refuse to charge the requests to charge for the defendant for two reasons: first, because it came after the

argument had practically finished, and secondly it contains in it an element which is not in this case at the present time.

Mr. Kreps—I ask an exception.

(The jury retired.)

Mr. Kreps—I ask an exception to the Court's charge that judgment if entered for the plaintiff can only be entered against the defendant Kreps and not the defendant Roberts.

10

---

#### DEFENDANT'S REQUESTS TO CHARGE.

20 Fraud which would warrant purchaser of land to recover from broker amount of deposit on the sale of real estate must be intentional and designed to deceive and not an honest mistake concerning which the plaintiff was in a position to practically inform himself as well as the defendant.

*Feldman v. Holpin*, 96 N. J. L. 75, affirmed  
97 N. J. L. 324.

*Crescent Ring Co. v. Travelers Indemnity Co.*,  
102 N. J. L. 85.

An innocent vendor cannot be sued for the fraud of his agent in effecting a sale.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ELIZABETH B. CHAPIN ( <i>nee</i> DIMON), <i>Plaintiff-Respondent,</i>	}	Action at Law.
<i>vs.</i>		
CLAYTON B. ROBERTS ET AL., <i>Defendants-Appellants.</i>		

10

GROUNDS OF APPEAL.

(*Filed* )

*To Cole & Cole, Attorneys of the Plaintiff:*

The following are the grounds of appeal in the above entitled cause:

1. The Court erred in admitting Exhibit P-6 over objection of counsel.
2. The Court erred in denying the motion for non-suit on behalf of F. Stanley Kreps. 20
3. The Court erred in denying a directed verdict for the defendant, F. Stanley Kreps.
4. The Court erred in charging the jury that a judgment, if entered for the plaintiff, can only be entered against the defendant F. Stanley Kreps, and not against the defendant Clayton B. Roberts.
5. The Court erred in denying the request of the defendant, F. Stanley Kreps, to charge the jury that fraud which would warrant a purchaser of land to recover from a broker the amount of deposit on the sale of real estate, must be intentional, and designed to deceive, and not an honest mistake concerning which the plaintiff was in a position to practically inform himself, as well as the defendant. 30

6. The Court erred in refusing the request of the defendant, F. Stanley Kreps, to charge the jury that an innocent vendor cannot be sued for the fraud of his agent in effecting a sale.

F. STANLEY KREPS,  
*Solicitor of the Defendant-  
Appellant F. Stanley Kreps.*

53  
1

## New Jersey Court of Errors and Appeals

---

ELIZABETH B. CHAPIN (nee Dimon),  
*Plaintiff-Respondent,*

v.

CLAYTON B. ROBERTS, *et al.,*  
*Defendants-Appellants.*

---

ON APPEAL FROM CAPE MAY COUNTY CIRCUIT COURT.

---

RESPONDENT'S BRIEF.

---

STATEMENT.

The action is to recover the down money paid as provided in a contract in writing between F. Stanley Kreps, seller and Elizabeth Dimon (now Chapin), buyer, a copy of which contract is Exhibit "A" to the complaint. The action is against both Kreps and one Roberts. The claim is that Roberts made certain representations to the respondent touching the size of the lots described in the agreement, upon which reliance was had in making the down payment. Later, it was discovered that the lots were smaller than represented and rescission was made and suit brought, as stated. Respondent gave her check to

the order of Roberts, who thereafter prepared an agreement in the office of Kreps who executed the agreement and who received the down money, less the commission paid Roberts. The theory of the case is that by reason of the false representation made by Roberts (and which the jury found was made), that respondent had a legal right to rescind and sue both Roberts and Kreps for the down money. Only Kreps appeals.

---

ARGUMENT.

CERTAIN GROUNDS OF APPEAL ARE NOT  
AVAILABLE TO APPELLANT.

1. The admission in evidence of Exhibit P6. This exhibit is not printed. In any event, it was admissible against Roberts. Whether it could have been harmful to Kreps, is not made to appear because it is not before the Court. No request was made to limit its effect as against Kreps.

2. The motion for non-suit loses its significance, in view of the fact that defendant proceeded with his defense, and under the well recognized rule, lost the benefit of his motion.

3. It does not appear by the record that the Court informed the jury that a judgment could be entered only against Kreps. The fact is that the judgment is against both, and therefore this ground of appeal shows its utter harmlessness.

4. The Court's refusal to charge the requests of defendants was grounded upon two reasons. First,

because it came after the argument had practically finished. Second, they contained an element which was not in the case. Under well established practice, the Court was justified in refusing to consider the request which came after the argument had begun.

There is, therefore, left for consideration only one ground of appeal, to wit, the Court's refusal to direct a verdict for the defendants.

The following cases seem dispositive:

*Reitman v. Fiorillo*, 76 N. J. Law, page 815;

*Kavky v. Harris*, 132 Atlantic 750;

*VanBuren v. Fine*, 139 Atlantic 486.

There was plenary evidence for the jury upon the question of the relation of principal and agent between Kreps and Roberts. The undisputed facts are that Kreps owned the land and that he executed the agreement at the request of Roberts. Roberts made the representation found by the jury to be false, and Kreps paid Roberts a commission. (See bottom of page 34, State of Case.)

In this posture, it would have been error for the Court to have withdrawn the case from the jury. The judgment is founded upon a verdict of the jury upon disputed facts, there is no legal error and it should be affirmed.

Respectfully submitted,

COLE & COLE,

*Attorneys of Respondent.*

Report of a Day

The morning after the storm had passed  
the sun shone brightly on the water which  
was now calm and blue. The wind was  
light and pleasant and the water was  
smooth and clear. The wind was light and  
pleasant and the water was smooth and clear.

The afternoon was spent in the  
garden and the children were very  
happy. The children were very happy  
and the garden was very beautiful.  
The children were very happy and the  
garden was very beautiful. The children  
were very happy and the garden was  
very beautiful.

The evening was spent in the  
parlor and the children were very  
happy. The children were very happy  
and the parlor was very beautiful.  
The children were very happy and the  
parlor was very beautiful. The children  
were very happy and the parlor was  
very beautiful.

The night was spent in the  
bedroom and the children were very  
happy. The children were very happy  
and the bedroom was very beautiful.  
The children were very happy and the  
bedroom was very beautiful. The children  
were very happy and the bedroom was  
very beautiful.

NEW JERSEY  
Court of Errors and Appeals

ELIZABETH B. CHAPIN,  
(nee Dimon)  
*Plaintiff-Respondent,*  
*vs.*  
CLAYTON B. ROBERTS, et al,  
*Defendants-Appellants.*

}

Brief of Appellant F. Stanley Kreps

FACTS

This is an action brought by Elizabeth B. Chapin against Clayton B. Roberts, agent, and F. Stanley Kreps, owner, to recover a deposit of nineteen hundred (\$1,900.00) dollars paid on account of the purchase price of certain lands in the City of Ocean City, New Jersey, which the said F. Stanley Kreps agreed to sell to the said Elizabeth B. Chapin by agreement dated April 1, 1926; the action is based upon the alleged fraud and misrepresentation on the part of the agent, it being contended by the respondent that Roberts advised her that the lots described in the agreement of sale had a width of 35 feet, whereas, as a matter of fact, said lots were only 30 feet in width.

The defense to the action was that there was no misrepresentation on the part of the agent, and that there was not a representation that the lots had a frontage of 35 feet, but that the agent was not sure of the exact frontage of the lots. Further, that the said Roberts, at the time he made any representations concerning the property, was not acting as the agent of this appellant, F. Stanley Kreps, and did not even know that the said Kreps was the owner of the lots at the times that the representations were made, and as a matter of fact, the said Kreps only purchased said lots about fifteen minutes before Roberts, who was acting as the agent of the respondent, made the proposition to purchase the property.

That at the trial, the court charged the jury that their judgment, if was found for the plaintiff, should be against the defendant, F. Stanley Kreps, and not against the defendant, Roberts, and an exception was taken to this ruling.

**An Innocent Vendor Cannot be Sued for the  
Fraud of His Agent in Effecting a Sale,  
When He Knows Nothing Concerning the  
Alleged Fraud or Misrepresentations.**

It is admitted that the defendant Kreps knew absolutely nothing of the representations made by Roberts to the purchaser, and under the circumstances, it is argued that this defendant is not liable for the return of the deposit under the rulings in the case of *Crescent Ring Company vs. Travellers Indemnity Company*, No. 102 New Jersey Law, page No. 85. *Joseph Feldman vs. William H. Halpin*, No. 96 New Jersey Law, page No. 75; affirmed in 97 New Jersey Law, page No. 324.

Fraud which would Warrant Purchaser of Land to Recover from Broker Amount of Deposit, on the Sale of Real Estate must be Intentional and Designed to Deceive, and not an Honest Mistake Concerning which the Plaintiff was in a Position to Practically inform Himself, as well as the Defendant.

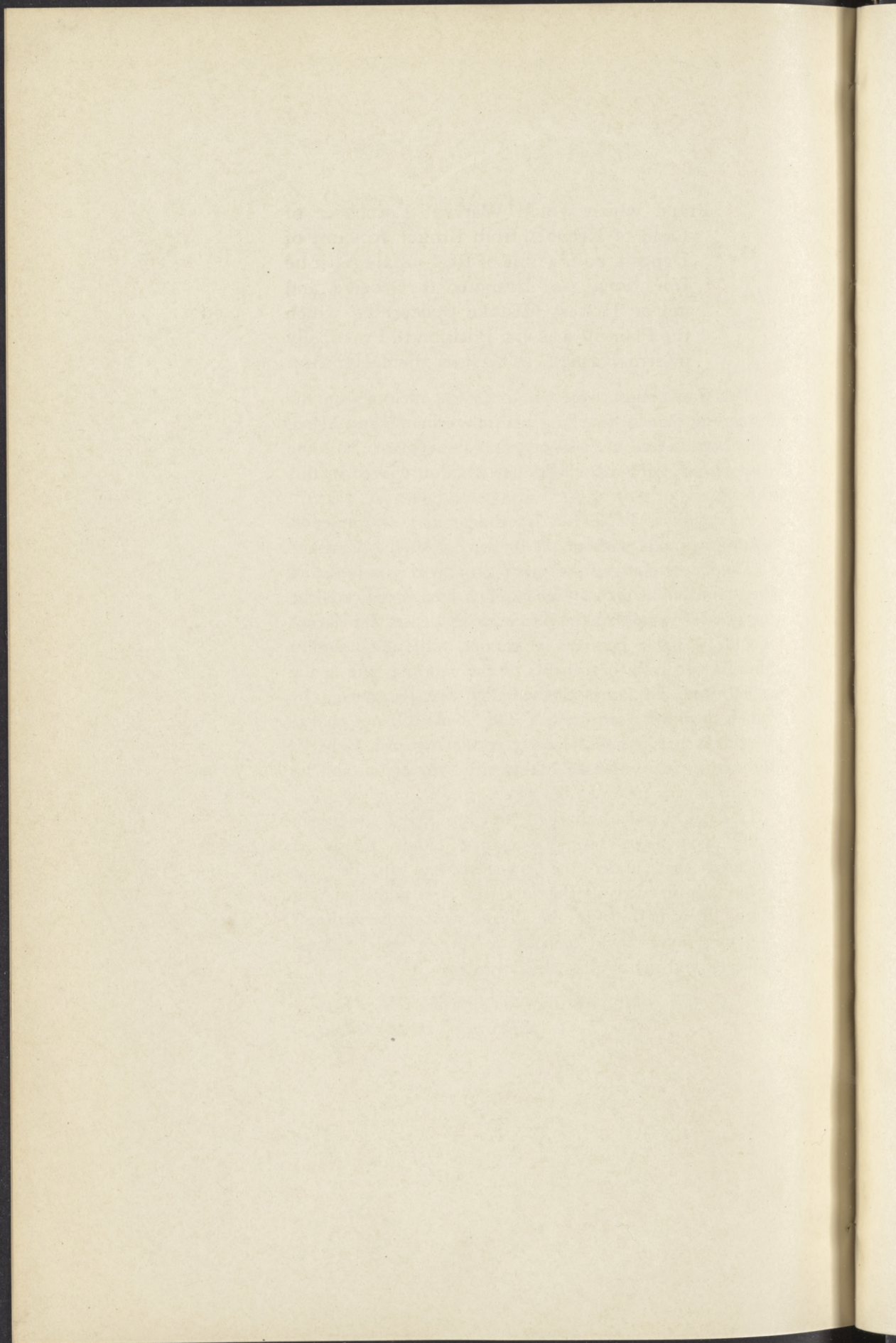
The Court was requested to charge the jury on the foregoing principal of law laid down in the two above stated cases, and refused to grant the request; it is the contention of this appellant that the Court erred in this refusal.

An agent is liable for fraudulent acts or misrepresentations made without the knowledge of the principal.

The Court charged the jury "So that if you find that the plaintiff has proved her case, as I have indicated by the greater weight of the believable evidence, Mr. Kreps would be liable because he cannot, although innocent himself, received the benefits of the contract, and at the same time, disclaim responsibility for the means by which they were acquired." The Court did not charge the jury that it could find a verdict against Roberts, the agent; it is contended that this was error, and an exception was taken to the rule.

If the Court had charged the jury that a judgment could have been brought against either Kreps or Roberts, that under the circumstances of the case (especially in view of the fact that it is admitted that Kreps knew nothing of the alleged misrepresentations) the jury may have brought a verdict only against Roberts, and not against this appellant.

F. STANLEY KREPS,  
*Solicitor of the Appellant.*



CAPE MAY CIRCUIT COURT.

---

ELIZABETH B. CHAPIN (FOR-  
MERLY DIMON),  
*Plaintiff.*

*vs.*

CLAYTON B. ROBERTS AND F.  
STANLEY KREPS,  
*Defendants.*

} At Law.

JUDGMENT ON VERDICT OF JURY

---

Judgment on verdict of jury, rendered in open court, in an action at law, is hereby entered in favor of Elizabeth B. Chapin (formerly Dimon), plaintiff, and against Clayton B. Roberts and F. Stanley Kreps, defendants, in the sum of two thousand one hundred ninety-seven dollars and sixty-seven cents (\$2,197.67) damages, and eighty dollars and fifty-six cents (\$80.56) costs; amounting in all to the sum of two thousand two hundred seventy-eight dollars and twenty-three cents (\$2,278.23).

Entered September 22, 1928, at 9 A. M.

W. FRANK SOOY,  
*Judge.*

COLE & COLE,  
*Attorney for Plaintiff.*

STATE OF NEW JERSEY,

COUNTY OF CAPE MAY.

I, A. C. Hildreth, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, do hereby certify that the foregoing is a true and correct copy of judgment, Elizabeth B. Chapin (formerly Dimon), plaintiff, vs. Clayton B. Roberts and F. Stanley Kreps, defendants, as recorded, on the twenty-second day of September, A. D. 1928, in the Clerk's office of the County of Cape May, in Book G of Judgments, Circuit Court, at page 133.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said [SEAL] Court, at Cape May Court House, this twenty-third day of March, A. D. nineteen hundred and twenty-nine.

A. C. HILDRETH,  
*Clerk.*