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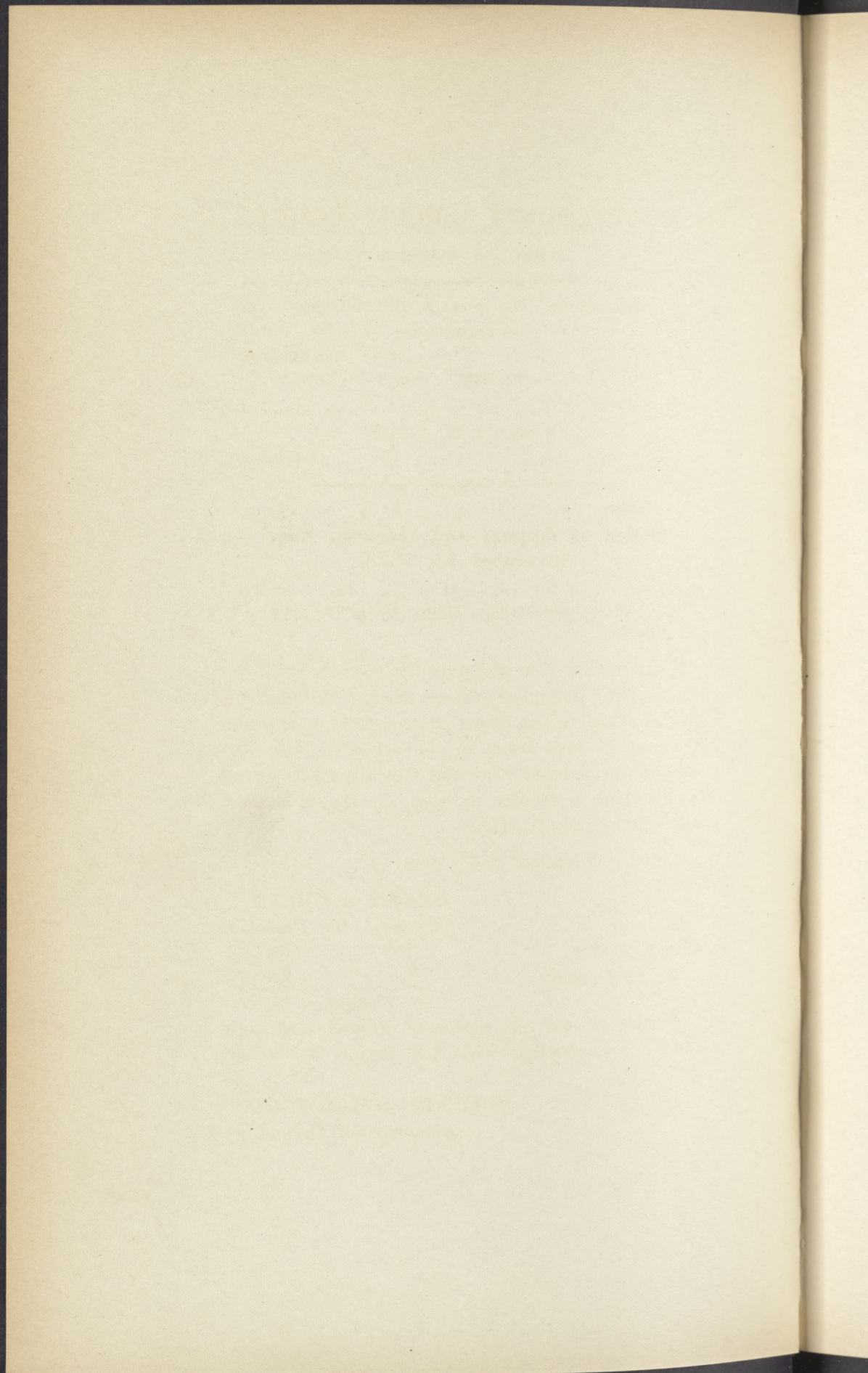
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ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION,
a corporation,

Plaintiff,

vs.

10

CLARENCE H. LANE,

Defendant.

**Notice of Appeal and Ground, Filed
November 13, 1928.**

*To Howard Isherwood, Esq., Attorney for De-
fendant:*

20

TAKE NOTICE, that the plaintiff appeals from the whole of the judgment entered against the plaintiff in this cause, to the Court of Errors and Appeals, the court of last resort in all causes in New Jersey, on the ground that the Circuit Court erred in directing a verdict in favor of the defendant and against the plaintiff.

Dated, November 5th, 1928.

GREEN & GREEN,
Attorneys for Plaintiff.

30

HARRY GREEN,
Of Counsel.

Service of written notice of appeal and copy thereof acknowledged this 7th day of November, 1928.

HOWARD ISHERWOOD,
Attorney for Defendant.

40

Judgment, Filed November 2, 1928.

ESSEX COUNTY CIRCUIT COURT.

45582

10

—————◆—————
 MERCHANTS' SECURITIES CORP.,

Plaintiff,

vs.

CLARENCE H. LANE,

Defendant.
 —————◆—————

Howard Isherwood, Atty. for Deft.:

20

This action was tried before Judge Worrall F. Mountain with a jury at the Essex Circuit Court on November 2, 1928.

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the defendant, Clarence H. Lane, and against the plaintiff, Merchants' Securities Corporation.

30

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and the defendant recover of the plaintiff costs which are taxed at Seventy-six dollars and fifty cents.

Judgment entered and signed November 2, 1928.

WILLIAM S. GUMMERE,
 Judge.

JOHN H. SCOTT.

Book 106, page 5.

40

Writ of Replevin, Filed March 15, 1928.

*The State of New Jersey, to the Sheriff of Essex
County, GREETING:*

We command you, that if Merchants' Securities Corporation, a corporation, shall make you secure, you cause to be taken and delivered to it, following goods and chattels, to wit: One (1) Chandler Sedan, Royal 8 Model, Serial No. 102198, Motor No. 102198, and equipment, which
took and unjustly detain as is said; and that you summon the said Clarence H. Lane to answer the annexed complaint of Merchants' Securities Corporation, in an action at law in the Essex County Circuit Court. And that you notify him that unless he files answer to said complaint with the Clerk of the Circuit Court, at Newark, within 20 days after service of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against him.

WITNESS, Nelson Y. Dungan, Esq., Judge of the said Circuit Court, at Newark, this 28th day of February, 1928.

JOHN H. SCOTT,
Clerk. 30

GREEN & GREEN,
Attorneys.

Sheriff's Return.

ESSEX COUNTY CIRCUIT COURT.

 MERCHANTS' SECURITIES CORPORATION,
 a corporation,

Plaintiff,

—vs.—

CLARENCE H. LANE,

Defendant.

10

20

By virtue of the above stated and hereto annexed writ to me directed, the plaintiff having made me secure, I did, on the 5th day of March, 1928, serve the hereto annexed writ personally upon Clarence H. Lane, and did at the same time take into my possession the goods and chattels herein named, and a claim of property in the said goods named therein being presented to me within 24 hours thereafter, I did deliver the same to the defendant claiming the same.

CONRAD DEUHLER,
 Sheriff.

By CHARLES F. HUMMEL,
 Special Deputy.

30

I hereby appoint and deputize Charles F. Hummel to serve the within writ.

WITNESS my hand and seal this 28th day of February, 1928.

CONRAD DEUHLER,
 Sheriff.

By ALFRED C. WALKER,
 Under Sheriff.

40

Sheriff's fees	\$5.78
	2.00
	<hr/>
	7.78

February 28, 1928.

Complaint, Filed March 15, 1928.

ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION, 10
 a corporation, Plaintiff,
 —vs.—
 CLARENCE H. LANE, Defendant.

Plaintiff, a corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, says that: 20

FIRST COUNT.

1. On February 7th, 1928, plaintiff was, and ever since has been, the owner, and entitled to immediate possession of the following goods and chattels, to wit: 30

One (1) Chandler Sedan, Royal 8 Model, Serial No. 102198, Motor No. 102198, and equipment.

2. On or about February 21st, 1928, at Newark, Essex County, New Jersey, defendant wrongfully took possession of said goods and chattels, wrongfully refused to deliver same to plaintiff, and wrongfully detained and still wrongfully detains the same. 40

Complaint.

SECOND COUNT.

1. Plaintiff repeats paragraph 1 of the First Count.

10 2. On or about February 21st, 1928, at Newark, Essex County, New Jersey, plaintiff demanded possession of said goods and chattels from the defendant, but the defendant wrongfully refused to deliver same to plaintiff, and wrongfully detained and still wrongfully detains the same.

THIRD COUNT.

20 1. Plaintiff repeats paragraph 1 of the First Count.

2. Before serving writ in this action, at Newark, Essex County, New Jersey, plaintiff served a written demand upon defendant for possession of said goods and chattels, but defendant wrongfully refused to deliver same to plaintiff, and wrongfully detained and still wrongfully detains the same.

30 Plaintiff demands immediate possession of said goods and chattels in the condition they were in on February 7th, 1928 (reasonable wear and tear excepted), or in case they cannot or are not returned to plaintiff, and in such condition, the sum of \$1,700.00 for their value.

40 Plaintiff also demands as special damages the sum of \$250.00 for attorneys' fees and disbursements in bringing this action, cost of replevin bond, and interest on value of said goods and chattels from the time of their wrongful detention,

Order to Show Cause.

for the wrongful detention thereof by defendant
from plaintiff.

GREEN & GREEN,
Attorneys for Plaintiff.

Order to Show Cause, Filed March 2, 1928.

10

ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION,
a corporation,

Plaintiff,

—vs.—

20

CLARENCE H. LANE,

Defendant.

Upon reading and filing the affidavit hereto
annexed, and it appearing that the defendant
herein is preventing the execution of a writ of
replevin issued out of and under the seal of this
Court, by concealing the goods and chattels therein
described:

30

It is, on this 1st day of March, 1928, on motion
of Green & Green, attorneys for plaintiff, ORDERED,
that the defendant, Clarence H. Lane, do show
cause before this Court, on the 10th day of March,
1928, at the Court House, Newark, New Jersey,
at 9:45 o'clock in the forenoon, or as soon there-
after as counsel can be heard, why the defendant,
Clarence H. Lane, should not be adjudged guilty
of contempt of the Essex County Circuit Court,
and imprisoned until he turn over to Charles
Hummel, Special Deputy Sheriff of Essex County,

40

Affidavit of Charles F. Hummel.

the goods and chattels described in writ of replevin issued out of this Court in the above entitled cause, in accordance with the mandate of this writ; and

10 IT IS FURTHER ORDERED, that a copy of this order and annexed affidavit (which may be certified as true copies by attorneys for plaintiff), be served upon defendant, Clarence H. Lane, within 5 days from the date hereof.

WM. A. SMITH,
Circuit Court Judge.

Affidavit, Filed March 2, 1928.

20 ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION,
a corporation,

Plaintiff,

—vs.—

CLARENCE H. LANE,

Defendant.

30

State of New Jersey,
County of Essex—ss.:

CHARLES F. HUMMEL, of full age, being duly sworn according to law, on his oath deposes and says, that:

1. He is a Special Deputy Sheriff of the County
40 of Essex.

Affidavit of Charles F. Hummel.

2. On the 28th day of February, 1928, a writ of replevin was issued out of the Essex County Circuit Court, delivered to him by the Sheriff of Essex County to be served, commanding him to cause to be replevied and delivered to Merchants' Securities Corporation, 1 Chandler Sedan, Royal 8 Model, Serial No. 102198, Motor No. 102198, and equipment, which Clarence H. Lane took and unjustly detained. 10

3. On the 28th day of February, 1928, he endeavored to execute said writ of replevin, by serving a copy thereof on the defendant, Clarence H. Lane, but said defendant refused to deliver said goods and chattels to him.

CHARLES F. HUMMEL. 20

Sworn and subscribed to before me this
29th day of February, 1928.

HAROLD FARKAS,
A Notary Public of N. J.

30

40

Order, Filed March 12, 1928.

ESSEX COUNTY CIRCUIT COURT.

Action at Law.

10 MERCHANTS' SECURITIES CORPORATION,
 a corporation,

Plaintiff,

—vs.—

CLARENCE H. LANE,

Defendant.

20 This matter coming on to be heard on an Order
to Show Cause made herein on March 1, 1928, why
the defendant, Clarence H. Lane, should not be
adjudged guilty of contempt of the Essex County
Circuit Court, and imprisoned until he turn over
to Charles Hummel, Special Deputy Sheriff of
Essex County, the goods and chattels described
in writ of replevin issued out of this court in
the above entitled cause; and

30 It appearing that defendant desires to file claim
of property and bond with Sheriff of Essex County
and retain possession of the aforesaid mentioned
goods and chattels and good cause appearing;

It is on this 10th day of March, 1928, on motion
of Green & Green, attorneys for plaintiff, ORDERED,
that rule to show cause made herein on March, 1,
1928, be dismissed without costs and without pre-
judice upon defendant, Clarence H. Lane, deliver-
ing to Sheriff of Essex County claim of property
and surety bond for \$3,400.00; and

40 It is further ordered that the Sheriff of Essex

Answer and Counterclaim.

County be and he is hereby ordered to amend his return to show delivery to him of claim of property and bond.

WM. A. SMITH,
Circuit Court Judge.

We consent to the entry of the foregoing order. 10

GREEN & GREEN,
Attorneys for Plaintiff.

HOWARD ISHERWOOD,
Attorneys for Defendant.

**Answer and Counterclaim, Filed March
23, 1928.**

20

ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION,
a corporation,

Plaintiff,

—vs.—

CLARENCE H. LANE,

Defendant. 30

The defendant, Clarence H. Lane, residing at 465 Clifton Avenue, in the City of Newark, in the County of Essex, says that:

ANSWER TO FIRST COUNT.

1. He denies the truth of the allegations set forth in paragraphs 1 and 2.

40

Answer and Counterclaim.

ANSWER TO SECOND COUNT.

1. He denies the truth of the allegations set forth in paragraph 1.

10 2. He denies the truth of the allegations set forth in paragraph 2 except that on or about February 21st, 1928, at Newark, Essex County, New Jersey, plaintiff demanded possession of said goods and chattels.

ANSWER TO THIRD COUNT.

1. He denies the truth of the allegations set forth in paragraph 1.

20 2. He denies the truth of the allegations set forth in paragraph 2 except that before serving the writ in this action at Newark, Essex County, New Jersey, plaintiff served a written demand upon him for the possession of the goods and chattels.

BY WAY OF COUNTERCLAIM.

30 1. Defendant was on May 23, 1927, and still is the owner and entitled to the immediate possession of the goods and chattels described in the complaint.

Defendant demands possession of the said goods and chattels and \$2,000.00 damages.

HOWARD ISHERWOOD,
Attorney for Defendant.

Order, Filed April 4, 1928.

ESSEX COUNTY CIRCUIT COURT.

Action at Law.

MERCHANTS' SECURITIES CORPORATION, 10
 a corporation,
 Plaintiff,
 —vs.—
 CLARENCE H. LANE,
 Defendant.

It appearing that a counterclaim has been filed 20
 in the above entitled action, and it appearing that
 a counterclaim cannot properly be set up in an
 action of replevin:

It is, on this 3rd day of April, 1928, on motion
 of Green & Green, attorneys for plaintiff, ORDERED,
 that the said counterclaim be, and the same is
 hereby stricken out.

Let this rule be entered in the minutes.

WM. A. SMITH, 30
 Circuit Court Judge.

I consent to the entry of the foregoing order.

HOWARD ISHERWOOD,
 Attorney for Defendant.

Louis Zehnder—for Plaintiff—Direct.

concerning the automobiles they finance? A. Yes, sir.

Q. Are you familiar with the account of Nelson J. Chamberlain? A. Yes, sir.

Q. Do you have that account before you in that book? A. Yes, sir. 10

Mr. Isherwood: We admit the signature of Mr. Stefanelli. I do not know about Mr. Chamberlain's signature.

Q. Is this the original note involved in that suit? A. Yes, sir.

Mr. Green: I offer the note in evidence.

Mr. Isherwood: I object until it is proved to be his. 20

The Court: If you prove it I will admit it.

(Argument.)

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: I have not admitted it yet.

By the Court: 30

Q. Is this the original note? A. Yes, sir.

Mr. Green: I offer the note in evidence.

Q. Do you know the signature of Mr. Chamberlain? A. I couldn't say that I do.

Mr. Green: Mr. Chamberlain is in court. May I call him at this time?

The Court: You may. 40

NELSON J. CHAMBERLAIN sworn in behalf of the plaintiff.

Direct examination by Mr. Green:

10 Q. I show you a note under date of December 6, 1927 for \$1,487. Did you sign this note?
A. Yes, sir.

Q. I show you contract of conditional sale involving a Chandler sedan Royal No. 8, manufacturer's number 102198, serial and motor the same, between you and the Chandler Newark Company. Did you sign this contract? A. Yes, sir.

Mr. Green: I offer the contract and the note in evidence.

20 Mr. Isherwood: I object. In accordance with the laws of 1925, section 4, page 288 it says—your Honor might as well read it. The Chandler Newark Motors cannot give a bill of sale until such time as they obtain a certificate from the Commissioner of Motor Vehicles and it hasn't been shown that they are the dealer or manufacturer and if they are the dealer they must have the certificate, if they are a manufacturer it is different.

30 The Court: I do not see how that would prevent at this time the plaintiff from putting the contract in evidence. It might be an inquiry afterwards about the finding out whether they had further complied with the law.

40 Mr. Isherwood: Wouldn't it be necessary to show that they had authority to do it and that they complied with the law in executing the bill of sale?

L. Zehnder—for Plaintiff—Recalled—Direct.

The Court: No, I do not think so, as a condition precedent. Not between the purchaser and the seller. If that is your only objection I will admit the note and the bill of sale. Of course, you have the right to inquire on your cross examination either of this person or anyone else. 10

Mr. Isherwood: These people are from the Merchants' Securities Corporation and Mr. Chamberlain is not, and there is no one coming in here from the Newark Chandler Motors Company. I am barred then, I haven't any right to inquire after that bill of sale is allowed to go in under its present condition.

The Court: You could have found that out before by interrogatories. I will admit it in evidence. 20

Defendant's counsel prays for an exception to this ruling of the Court.

Exception noted as ground of appeal.

By the Court:

Q. You were the man who bought this, were you? A. Yes, sir. 30

(The note is marked Ex. P1 and the contract is marked Ex. P2.)

LOUIS ZEHNDER recalled in behalf of the plaintiff.

Direct examination by Mr. Green:

Q. I show you the original note Exhibit P1 in evidence and you say this is the note that 40

L. Zehnder—for Plaintiff—Recalled—Direct.

was bought from the Chandler Newark Motors Company? A. Yes, sir.

Q. What came along with that note, if anything? A. The conditional bill of sale.

Q. Is this the conditional sales agreement?

10 A. Yes, sir.

Q. That is Exhibit P2? A. Yes, sir.

By the Court:

Q. You are the cashier and bookkeeper of what company? A. The Merchants' Securities Corporation.

Mr. Green: The plaintiff, your Honor.

20 Q. Did you buy that note? A. Yes, sir.

Q. After the note you obtained this conditional bill of sale? A. Yes, sir.

Q. Did you get anything else? A. Generally the original bill of sale comes with it.

Q. Did you get the original bill of sale? A. Yes, sir.

Q. Where is it?

30 Mr. Green: I have it here, your Honor.

Q. How much was paid on account of the note, Exhibit P1? A. Paid by Mr. Chamberlain?

Q. Yes. A. \$123.91.

Q. When was that paid? A. That was paid on the 11th of January, 1928.

By Mr. Green:

40 Q. What was it? A. The first installment, \$123.91 on January 11, 1928.

Lewis Nolte—for Plaintiff—Direct.

Q. That pays for the installment which was due on January 6th? A. Yes, sir.

Q. On February 6, 1928, another installment of \$123.91 became due. Was that paid? A. No, sir, it is not.

Q. On this particular account was anything else paid? A. Not on this account, no, sir. 10

Q. How much is due at the present time? A. \$1,422.71 including interest.

Q. Give us the figure without interest? A. \$1,363.09.

By the Court:

Q. That was the amount due when this default was made? A. Yes, sir. 20

By Mr. Green:

Q. That default you say was February 6th? A. Yes, sir.

CROSS EXAMINATION WAIVED.

LEWIS NOLTE sworn in behalf of the plaintiff. 30

Direct examination by Mr. Green:

Q. On or about the 21st of February, 1928, did you have occasion to call on Mr. Lane, the defendant in this suit? A. I did, yes, sir.

Q. What was the occasion of the visit you made at that time? A. Why, I was instructed by the Merchants' Securities Corporation to go up there and serve a written demand for possession on him for the automobile. 40

Lewis Nolte—for Plaintiff—Direct.

Q. Did you serve the demand? A. Yes, sir.

Q. Did he deliver possession of the automobile to you? A. No, sir.

Q. Did you have occasion to examine the automobile? A. Yes, I did.

10 Q. In what condition was that automobile at that time when you saw it? A. At the time I saw the car it was in very good condition.

Q. You are familiar with the value of automobiles? A. Yes sir.

Q. Just what experience have you had in regard to buying and selling or appraising automobiles? A. I was the manager of the Used Car Department for the Hudson Motor Car Company for five years.

20 Q. What else have you done in regard to the appraisal of automobiles? A. Well, I have sold a great many and repossessed many.

Q. With regard to the automobiles you repossessed did you have occasion to fix the price on them for the resale? A. At times, yes.

Q. How many cars have you fixed the price on during your experience with automobiles? A. That would be impossible to say; up in the hundreds.

30 Q. Over one hundred? A. Yes, sir.

Q. Chandler cars were included in that group? A. Yes, sir.

Mr. Isherwood: I object as leading.

Q. You are familiar with the prices automobiles will bring in the market? A. Yes, I am.

Q. How much was this particular car worth when you saw it on February 1st?

Lewis Nolte—for Plaintiff—Direct.

Mr. Isherwood: May I cross examine at this point?

The Court: Yes.

By Mr. Isherwood:

Q. What is your business now? A. Constable. 10

Q. How long have you been a constable? A. About fourteen years.

Q. Since that time you have not been in the automobile business, have you? A. No, sir.

Q. You haven't repossessed any automobiles since that time, have you? A. Yes, sir.

Q. How many? A. Up in the hundreds.

Q. Since you have become a constable? A. Yes, sir.

Q. You have appraised them? A. I haven't appraised hundreds; I have repossessed hundreds. 20

Q. That means in your possession as constable, doesn't it? A. Yes.

Q. You are not interested in the value of that car at any time excepting to take possession of the car? A. At that particular time, yes.

Q. Then, you sell them at an auction sale, don't you as constable? A. Yes, sir.

Q. You do not then take the real value of the car that you sell under execution or conditional bill of sale or something of that kind? A. I am requested in a good many cases to put a value on the car for the finance company for whom I repossess the car. 30

Q. You haven't been in the automobile business for four years, though, have you? A. That's correct.

Q. When is the time you appraised a Chandler car last? A. When? 40

Lewis Nolte—for Plaintiff—Direct.

Q. Yes. A. The last time? I couldn't give you any particular date.

Q. How long ago, two years? A. No, a couple of months ago, possibly some later, I don't recall offhand, there are so many of them.

10 Q. So many Chandlers? A. Not Chandlers.

Q. I am talking of Chandler automobiles? A. It would be within the last two months.

Q. What is the time before that? A. Well, maybe the month prior to that month.

Q. A second-hand car or new one? A. Used cars.

Q. When before that? A. Well, probably the month before.

20 Q. You are not sure, are you? A. Well, I don't know. No, I am not sure.

Q. You do not want to swear to it, do you? A. I wouldn't want to swear to that. You mean I appraised a Chandler car? No.

Q. Or any other manufacture? A. Yes, I know the month before I did.

Q. Definitely? A. Yes, sir.

Q. Which month? A. September.

30 Q. When do you know definitely you appraised another one before September? A. That I couldn't say offhand.

Q. You do not know? A. No.

Q. You do not know when you ever appraised a Chandler before that do you? A. Before that, yes, but I couldn't say just when.

Q. How long before, two or three years? A. Oh, no, it wouldn't be that far back.

Q. About how far? A. Well, maybe a month prior.

40 Q. You are not sure? A. No, I am not positive.

Lewis Nolte—for Plaintiff—Direct.

Mr. Isherwood: I object to this witness testifying as an expert as to the value of that car. I do not think he is sufficiently qualified.

By the Court:

10

Q. Did you know anything about the buying and selling and market for second-hand Chandlers on March 5, 1928? A. Yes, I was familiar with conditions at that time? About that particular car, I mean, not of all cars, but of the value of a Chandler of this type, whatever it is?

Mr. Green: Royal Eight sedan.

Q. Were you familiar with the value of that second-hand car at that time? A. Yes, sir. 20

Q. You knew what this Royal Eight model was, the year and the condition it was in? A. Yes, sir.

The Court: You may testify.

Defendant's Counsel: Exception.

By Mr. Green:

Q. How much was this car worth? A. At that time I saw the car I appraised it, I figured it was worth sixteen to seventeen hundred dollars. 30

Q. How much did that car cost new? A. That car cost new \$2490.

Mr. Isherwood: I object.

The Court: That is in the bill of sale here.

Q. When did you go up there? A. On the 21st of February. I can tell you in just a minute. On February 21st, 1928. 40

Lewis Nolte—for Plaintiff—Direct.

Q. 1928? A. Yes, sir.

Q. Whom did you see there? A. Mr. Lane.

Q. Who else? A. Well, there were two or three other people at the dinner table.

Q. Did you see Mrs. Lane? Stand up, Mrs.
10 Lane.

(A lady arises in the audience.)

A. That I do not recall.

Q. Do you recall seeing this car? A. Yes, I do.

Q. Didn't you have an argument with Mr. Lane at the time because the car was not in the garage?

A. No, sir.

Q. You saw the car in the garage that night?

A. No, sir, I did not.

20 Q. When did you see it? A. I saw the car prior to then.

Q. How long prior to that? A. I should say two or three days.

Q. Whom did you see when you went up there to see the car on those two or three times? A. You mean at Mr. Lane's house?

Q. Yes. A. I hadn't been to Mr. Lane's house.

Q. Where was the car? A. At Mr. Chamberlain's house; in front of Mr. Chamberlain's house.

30 Q. When was this? A. That was prior.

Q. Prior to when? A. To going up to Mr. Lane's house.

Q. Why did you go down there?

Mr. Green: I object to why he went down there. There is nothing that was brought out on direct examination for counsel to go into the reason why he went down to a certain house.

Lewis Nolte—for Plaintiff—Direct.

The Court: The testimony is that he went down and saw this car.

I will admit it.

Q. Where was it you went down to see the car? A. To Mr. Chamberlain's house.

Q. What date was it? A. A few days prior, but I can't recall the date. I didn't see the car at all up at Mr. Lane's house.

Q. You went up to serve the demand at that time? A. That's correct.

Q. How many days was it prior to the time you went down to see the car at Chamberlain's place when you went up to serve the demand on Mr. Lane? A. About two or three days, I couldn't say offhand, but about two or three days.

Q. Why did you go down to Mr. Chamberlain's at that time to see the car? A. I was sent down there by the Merchants' Securities Corporation.

Q. For what purpose?

Mr. Green: I object. I do not see why on cross examination why that can go in. The purpose of a man going down to another man's house to see a car. I only asked him if he served a demand and what the car was worth.

The Court: If he bases his opinion on what the car was worth upon examination of the sight of it some time or other, I think that is within the bounds of cross examination under inquiry. How he happened to come down and look at the car at that time.

Q. Where was the car at that time? A. At Mr. Chamberlain's house.

Ernest F. Stefanelli—for Plaintiff—Direct.

Q. Where? A. I think it was Thomas Street, I don't recall offhand, wherever he lived at that time.

Q. Don't you know? A. Just a minute, I don't know.

10 Q. Where was the car? A. In front of the house.

Q. What time of day or night was it? A. It was between five and six.

Q. Between five and six? A. Yes.

Q. In the evening? A. Yes, sir.

Q. You said it was in what month? A. February.

20 Q. What did you do, just look at it, or what did you do? A. Yes, I looked the car over at the time.

Q. What do you mean, what did you do? A. I just looked the car over.

Q. Don't you know what you did? A. I did not, no, sir.

Q. You didn't look at it, you mean? A. Yes, that's all.

30 Mr. Green: I offer in evidence copy of written demand for possession served upon the defendant Clarence H. Lane.

(Same is marked Ex. P3.)

ERNEST F. STEFANELLI, sworn in behalf of the plaintiff.

Direct examination by Mr. Green:

40 Q. You are familiar with Chandler cars, are you not? A. Yes, sir.

Motion for Nonsuit.

Q. How long have you been connected with the Chandler Company? A. 1925, when they first started in.

Q. You are familiar with the prices they are sold for on the market? A. I am.

Mr. Green: Do you object to the qualifications? 10

Mr. Isherwood: No, I am satisfied now.

Q. You had occasion to see this car sometime in February of this year? A. Yes, I have.

Q. How much would you say the car was worth? A. In February?

Q. Yes. A. About \$1500.

Q. That would be the price that car could bring on the resale, is that it? A. Yes, sir. 20

CROSS EXAMINATION WAIVED.

PLAINTIFF RESTS.

Mr. Isherwood: I respectfully move for a nonsuit on the ground they have not shown authority under Section 4 of the Statute of 1925, page 288.

The Court: That is an amendment to the Motors Laws Act, not the Conditional Sales Act. 30

Motion denied.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

CLARENCE H. LANE, defendant, sworn in his own behalf.

Direct examination by Mr. Isherwood:

10 Q. You are the defendant in this case, are you? A. I am.

Q. Did you purchase the car from the Chandler-Newark Motors, Inc.? A. Yes, sir.

Q. Did you receive a bill of sale? A. I did.

Q. I show you this paper and I ask you what that is? A. That is a bill of sale which was given me when I paid for the car.

Q. What did that call for, what kind of a car? A. Royal Eight Chandler.

20 *By the Court:*

Q. Serial No. what?

Mr. Isherwood: 102198, and engine 102198.

By Mr. Isherwood:

30 Q. This bill of sale is dated May 23, 1927? A. Yes, sir.

Mr. Green: I admit the authority of Miss McNeeley to act as assistant secretary for the Chandler-Newark Motors.

Mr. Isherwood: I offer the bill of sale in evidence.

Mr. Green: I object to it on the ground tht the law states that before a dealer has a right to issue a bill of sale he must first

40

Clarence H. Lane—Defendant—Direct.

obtain a certificate from the Department of Motor Vehicles.

The Court: That is the same objection that was made before, the same objection he made to you offering it.

Mr. Green: He objected to the conditional sale agreement going into evidence and this offer is the bill of sale and not the conditional sale agreement. 10

The Court: Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Bill of sale is marked Ex. D1.)

Q. On this bill of sale did you obtain a license to run the car? A. Yes, sir, I did. 20

Q. What year? A. 1927.

Q. Is that a copy of the license you received from the State of New Jersey? A. Yes, sir.

Mr. Isherwood: I offer the license in evidence.

Mr. Green: I do not object, but I do not see how it is admissible. 30

Q. Did you get one from the State of New Jersey for 1928? A. Yes, sir.

Q. Have you it? A. Yes, sir.

Mr. Isherwood: I offer it in evidence.

Mr. Green: I object to the admission of the license for 1928 because it was obtained on February 21st, the day our demand was served.

The Court: I will admit it. 40

Clarence H. Lane—Defendant—Direct.

(License for 1928 is marked Ex. D3.)
(Plaintiff's counsel prays an exception to
this ruling of the Court.)

(Exception noted as ground of appeal.)

10

The Court: The purpose of admitting
the registration license is that the statute
which you gentlemen have referred to
which is chapter 89 of the laws of 1925,
provides that in all sales or purchases of
a motor vehicle directly from the manu-
facturer or through an agent or agency
authorized dealer of such manufacturer
there should be issued to the purchaser
a manufacturer's bill of sale, which bill
of sale shall contain the manufacturer's
number and the engine or motor number
of the motor vehicle so sold. Then it
states, "Provided, however, before any
dealer shall be authorized to issue either
original or duplicate bills of sale they
shall first obtain a permit from the De-
partment of Motor Vehicles." If I go
to buy a Chevrolet car do I have to in-
quire of the Chevrolet people whether they
have complied with the law as laid down
to them by the Commissioner of Motor
Vehicles? This registration is granted by
the Commissioner of Motor Vehicles only
when a driver follows out the statute and
in doing that he has to submit to the
Commissioner of Motor Vehicles or his
agent a chain of title and if that is sat-
isfactory he gets his card registered, and
if it is not he does not; that is the reason
I admit this card.

20

30

40

Clarence H. Lane—Defendant—Cross.

Cross examination by Mr. Green:

Q. When did you last have the car in 1927?

A. I think it was some time in December.

Mr. Isherwood: He had possession then. He had possession of it up until February, 1928. 10

The Witness: I misunderstood your question.

By the Court:

Q. When did you get the car in 1927, when was it delivered to you? The bill of sale was dated May 23rd. A. That is when I got it.

Q. Have you had it ever since? A. Yes, sir. 20

Mr. Isherwood: Until it was taken away from the Sheriff?

A. That is what I got mixed up on.

By Mr. Green:

Q. Did you have the use of that car every day during December, 1927? A. No, I took it to the Newark Chandler Motors Company. 30

Q. What day? A. I don't remember.

Q. Was it in November? A. No, I think December.

Q. What part of December? A. It must have been somewhere in the middle of December because I was down at the shore working on a boat.

Q. Was it in the middle of December? A. In December some time, I don't know just when. 40

Clarence H. Lane—Defendant—Cross.

Q. Was it the beginning, middle or latter part?
A. I can't recall.

Q. If I were to tell you that it was the middle of December, would you say that was so? A. No, because I can't recall just when it was in
10 December.

Q. Did you have possession of the car during the month of January, 1928? A. Yes, sir.

Q. You had possession? A. Yes, sir.

Q. When did you obtain possession during the month of January? A. I never released possession of it.

The Court: You mean by possession, physical possession?

20 Q. Physical possession and use.

By the Court:

Q. Did you have it in your garage? A. No, I left it at the Newark Chandler Motors Company.

Q. How long did you leave it there? A. I took it there in December to have some work done; it was a new car; the valves were sticking.

30 Q. You took it there to be repaired? A. Yes, sir.

Q. You left it? A. Yes, sir, and I went back to the seashore and used my other car. They asked me if I was in a hurry and I said, "No," so I left it there and I came back in the latter part of December to get my car and Mr. W. E. Carton said that it was not ready, so I went back to the shore again.

40 Mr. Green: I object as to that and ask that it be stricken out, that testimony.

Clarence H. Lane—Defendant—Cross.

By the Court:

Q. We are interested in how this car left your possession and got back to these people. That is part of our inquiry.

Mr. Green: Yes. 10

The Court: He produced a bill of sale for this car which antedated yours. He was in possession of it and gave it to the Newark Chandler Motor Company to have it repaired and apparently while it was being repaired they were trying to sell it.

By Mr. Green:

Q. Did you have physical possession of that car during any part of the month of January, 1928? A. Yes, I contend I had possession of it until I found out it was sold. 20

The Court: Strike that out.

By the Court:

Q. Did you have possession of the car? A. Yes, sir, it was at the Chandler place. 30

By Mr. Green:

Q. When did you first obtain possession of the motor vehicle in 1928, physical possession?

A. I got possession of it the day I went down to Mr. Smith's office.

Q. Which was when, February 21st? A. Somewhere after that time.

Q. And that was the first day you obtained the registration card for 1928? A. Yes, sir. 40

Clarence H. Lane—Defendant—Cross.

Q. On February 21st? A. Yes, sir.

Q. From whose possession did you get the car?

A. Mr. Chamberlain gave it to me.

Q. During the year 1927 did you have occasion to order a new car from the Newark Chandler Motors? A. During 1927?

Q. Besides this particular car? A. Yes. I did not order a new car, no.

Q. A new car was ordered for you? A. A new car was ordered for me, yes.

Q. Long after the ordering of the new car you turned in the Chandler car involved in this replevin action, did you not? A. No, sir, not on that car.

Q. Did you or did you not trade in the car that you found in Chamberlain's possession to the Newark Chandler Motors Company? A. No, sir.

Q. As part of the purchase price on a new car? A. No, sir, I did not.

Q. Did you or did you not order a Chandler car for which this particular car involved in this suit was to be used as part of the purchase price? A. No, sir.

Q. Did you after May, 1927, buy or order a Chandler car from the Chandler Motors Corporation? A. If you let me answer that the right way I can explain it to you. I had two Royal Eights—I don't want anyone to get mixed up on this—the first Royal Eight I got superseded this one. I bought it, I only owned it; I don't think quite a month, and Mr. W. E. Carton asked me if I would let him have that car, because he had sold a car exactly like mine and could not get one for two weeks and after he wanted to know whether I would let him have my car to make this delivery, which I did.

Clarence H. Lane—Defendant—Cross.

Q. That is the car involved in the suit? A. No, sir, that was another car.

Q. During what month was that? A. I don't remember just exactly what month it was.

Q. November or December? A. Oh, no.

Q. Before that? A. Yes.

10

By Mr. Isherwood:

Q. This deal was prior to the day you got the bill of sale for this car? A. Yes, sir.

By Mr. Green:

Q. We are not interested in that. After May when you bought this car, until the month of December did you, or did you not, order another car from the Chandler Newark Motors? A. No, sir.

20

Q. Do you know Mrs. Kievit? Did you at any time tell her that you traded a car in to the Chandler Newark Motors as part of the purchase price of a new car and because you did not get a new car that you retained the bill of sale and refused to deliver it until you got the new car? A. I did no such thing. I do not know what interest Mrs. Kievit had in the car.

30

Q. Did you tell Mr. Carton that you turned this car in as a trade in and retained the bill of sale until you got the new car which you ordered? A. I never have seen Mr. Carton until just this minute; I never met him in my life.

Q. He was employed in the Chandler Newark Motors of Newark? A. Yes, sir.

Q. Do you know in what capacity? A. I think he was salesman.

40

Clarence H. Lane—Defendant—Cross.

Q. He knew your car? A. He knew my car.

Q. Did you yourself continue to request Carton for the new car which you ordered? A. No.

10 Q. Did you or did you not tell him that car was turned in as a trade-in car? A. No, sir, my business was all with his brother, I never said a word to anyone in the Chandler Motors Company.

The Court: If it was turned in, produce the bill of sale from this man to the company.

Mr. Green: This man retained the bill of sale.

The Court: Then, he did not give up his possession of the car, if he retained it.

20 Mr. Green: Yes.
(Argument.)

Q. Do you recall a conversation with Chamberlain wherein you told him the reason you wanted the car back was because you did not receive a new car which you ordered? A. No, I did not.

30 Q. From the Chandler Newark Motors Company? A. No, I had no such conversation with Mr. Chamberlain.

By the Court:

Q. Did you ever give anyone the bill of sale for this car? A. No, sir, I did not, nor no order to sell it either.

40 Q. Did you tell Mr. Nolte the same thing that you told the others, that you traded the car in to the Chandler Newark Motors Company? A. Who is Mr. Nolte?

Clarence H. Lane—Defendant—Re-direct.

Q. Who is Mr. Nolte? The constable who was on the stand? A. No, in fact, when he came up to try and take my car away from me I told him that I had paid for it.

Q. You did not tell him anything about that? A. No, the only thing I told him was that I had paid for it when he came up to take my car. I wasn't a friend of his. 10

Mr. Green: I move that that be stricken out.

Q. Did you have occasion to tell the same thing to Mr. Schmidt? A. No, sir.

Re-direct examination by Mr. Isherwood: 20

Q. What was the conversation with Mr. Schmidt in the presence of Mr. Chamberlain about the car? A. When I went over to see Mr. Carton I produced the bill of sale to Mr. Chamberlain and I said, "Will you go over to Mr. Schmidt with me? I bought this car from the Chandler Company and they financed it for me."

Mr. Green: I object to any conversation with Chamberlain alone. 30

The Court: Sustain the objection.

A. I went over to Mr. Schmidt's office with Mr. Chamberlain.

Q. Do you know Mr. Schmidt? A. Yes, sir.

Mr. Isherwood: Do you admit that he is the president of the Merchants' Security Corporation?

Mr. Green: Yes. 40

Clarence H. Lane—Defendant—Re-direct.

Q. What was the conversation? A. I showed Mr. Schmidt my bill of sale and Mr. Schmidt asked the lady to get out the other bill of sale and they compared the two on the desk.

10 *By the Court:*

Q. What bill of sale is that? A. The bill of sale they have in evidence.

By Mr. Isherwood:

Q. And your bill of sale? A. Yes, and Mr. Schmidt had a bill of sale.

20 Q. You both claimed the same car? A. Yes, sir.
Q. Tell us what happened? A. Mr. Schmidt looked the two bills of sale over and he said, "Done again." And he said to Mr. Chamberlain, "I think you will have to turn the car over to Mr. Lane, that is the easiest matter to pursue", and Mr. Chamberlain and I went out of his office and I went up to the Chandler Motor Company and got the car back from him from the bankrupt proceeding.

30 Mr. Green: I ask that that be stricken out on the ground that what the man did after he left the office is immaterial.

The Court: I will strike it out.

Q. Did you go with Mr. Chamberlain then to get the car? A. Yes, sir.

40 Mr. Green: I do not think that is proper. I make the same objection on the ground that what he did with Mr. Chamberlain is not admissible or binding on us in any way.

Clarence H. Lane—Defendant—Re-direct.

A. You asked me how I got possession of the car.

The Court: I will admit it.

Q. What did you do with Mr. Chamberlain after you left Mr. Chamberlain's office? A. The first thing I did I went over to the Chandler Com- 10
pany.

Q. What did you do about the car? A. I went down with Mr. Chamberlain in his car and he turned my car over to me at his home.

Q. This is a Royal Eight car? A. Yes, sir.

Q. That is mentioned in the bill of sale? A. Yes, sir.

Q. Then, you took possession and where did you go with it, did you take it home? A. I took it home. 20

Q. You have had it in your possession up until the time it was taken away from you by the sheriff? A. It never was taken away by the sheriff.

Q. Wasn't it replevined? A. Yes, sir.

Q. Did you ever let anyone have that bill of sale? A. No, sir.

Q. In the Chandler Company? A. No, sir, I never did, and I was never asked for it. 30

Q. Did the Finance Company or the Newark Motors Company ever have possession of the bill of sale after they delivered it to you in May, 1927? A. No, sir, they did not.

DEFENDANT RESTS.

Mr. Green: May I make a motion for the direction of a verdict reserving the right to call a witness in rebuttal? 40

Henrietta Kievit—for Plaintiff—Rebuttal—Direct.

The Court: No, sir, you may not. After you move for the direction of a verdict you are through with your case.

10 HENRIETTA KIEVIT sworn in behalf of the plaintiff in rebuttal.

Direct examination by Mr. Green:

Q. Do you know Mr. Lane, the gentleman who was on the stand? A. Yes, sir.

Q. When did you first have occasion to speak with Mr. Lane? A. On February 20th, or 21st, 1928?

20 The Court: This has to be rebuttal. You have to have her contradict something.

Mr. Green: I will do that, but I want to show—

The Court: You cannot do it that way, you must say, "Did Mr. Lane at such and such a time come in and say this to you?"

30 Mr. Green: That is not the only thing we are limited to on rebuttal. I believe that we can show that he placed the car in there on the floor for sale and I will show by the witness that the car was on the floor for sale, and Mr. Lane admitted that it was on the floor for sale.

The Court: Proceed with your case.

Q. On February 20th, and February 21st? A. Yes, sir.

40 Q. Where was it? A. In the garage where Mr. Chamberlain had his car in.

Henrietta Kievit—for Plaintiff—Rebuttal—Direct.

Q. Did Mr. Lane mention anything to you about trading this particular car into the Chandler Company? A. I asked Mr. Lane how he came to own the car and he said that the car was his and he had ordered a new Chandler and he had not been told until he saw in the paper, or his wife did that the Chandler Company had gone into bankruptcy, and he went over to the Chandler Company and asked him if his car was still there and some workman by the name of Ernest, or mechanic, told him that the car had been sold to some man by the name of Chamberlain who worked for the Prudential, but he did not know his address. 10

Q. That was all said in Mr. Chamberlain's garage? A. Yes, sir. 20

Q. Did you have occasion to go with Mr. Chamberlain when he bought the car? A. Yes, sir.

Q. Where was the car? A. The car was in—

Mr. Isherwood: I object.

The Court: How is that material?

Mr. Green: Can't we show that this defendant is estopped from setting up the title?

The Court: I do not see how you can. Why don't you put the bill of sale in evidence? 30

Mr. Green: I do not need the bill of sale.

The Court: How can you get away from the statute? Why do you say you do not need the bill of sale? Here is a man who takes his car down and says to the Chandler people, "Sell it for me, and when you sell 40

N. J. Chamberlain—for Pltff.—Rebuttal—Direct.

it apply the proceeds against another car.”
He has title until he hands it over to them
and when he does that he has to follow the
statute.

Proceed with your case.

10

Q. (Question read.) A. A room directly back
of the main office, what I would call the place
where there were second-hand cars for sale.

The Court: Is this proper rebuttal?

Q. You went along with Mr. Chamberlain when
he bought the car? A. Yes, sir.

20 Q. From whom? A. A gentleman by the name
of Phillipi and a gentleman by the name of Mr.
Conliss was there.

Q. That was on the floor of the Chandler Com-
pany’s place of business? A. Yes, sir.

Q. This is a large storeroom? A. I suppose
so, because there were several other cars there
for sale, but not in the work shop.

Q. Did you notice the registration plates on
the automobile when it was bought? A. Yes, there
was a dealer’s license on the automobile.

30 Q. How was the car sold to Mr. Chamberlain?
A. As a demonstration.

NELSON J. CHAMBERLAIN recalled in behalf of
the plaintiff in rebuttal.

Direct examination by Mr. Green:

40 Q. You bought the car involved in this suit
from the Chandler Motors Corporation of Newark?
A. Yes, sir.

N. J. Chamberlain—for Pltff.—Rebuttal—Direct.

Q. When?

Mr. Isherwood: I object to that question on the ground that the bill of sale speaks for itself.

The Court: Sustain the objection.

Plaintiff's Counsel prays an exception to this ruling of the Court.

10

Exception noted as ground of appeal.

Q. Where did you find the car when you bought it? A. Just behind the showroom in the used car department.

Q. Of the Chandler Motors Company? A. Yes, sir.

Q. How was that car sold to you? A. As a demonstrator's car.

20

Q. When did you first see Mr. Lane and where did you see him? A. He called up the office where I am employed on February 20th, 1928.

Q. What sort of a conversation did you have with Mr. Lane? A. He told me he had the bill of sale and I had his car.

Q. Yes. A. And he asked me if I would come over with him and see Mr. Schmidt and on the way over I asked him how he happened to have the car in the Chandler place and he said he had turned that car in in part payment for a new car which he had ordered, but that he had been away, and when he came home he found out that they were in bankruptcy and went over to get his car back.

30

Q. He particularly told you that he traded that car in for a new car? A. Positively.

Q. Did he again repeat that at any time? A. Yes, he repeated it to Mr. Schmidt.

40

N. J. Chamberlain—for Pltff.—Rebuttal—Direct.

Q. When you went in to buy that car were you led to believe that the Chandler Company did not have the authority to sell it?

Mr. Isherwood: I object to that.

10 A. No, sir.

The Court: I will admit the answer. You may have an exception.

Exception noted as ground of appeal.

20 Q. Were you told by anybody at any time prior to the time you bought the automobile from the Chandler Newark Motors Corporation that the Chandler Company did not have the right to sell the automobile?

Mr. Isherwood: I object.

The Court: I will admit it.

A. No, sir.

By the Court:

Q. Did you get a manufacturer's bill of sale?

30 A. Did I?

Q. Yes, or did you only get the one which is in evidence? A. No, sir, I did not get any personal bill of sale, the finance corporation got it; I did not pay cash, it was financed.

Q. You paid the Merchants' Security Corporation a certain amount on account of this note you signed, did you not? A. Yes, sir.

Q. You have not paid anything except—

40 Mr. Isherwood: I object to that as not binding on this defendant.

William Schmidt—for Pltff.—Rebuttal—Direct.

The Court: That has nothing to do with the title.

Mr. Green: I just wanted to show the value.

Q. You are still responsible on this note, are you not? A. Yes, sir. 10

Q. Of \$1,400?

Mr. Isherwood: That is objected to on the ground it is a legal responsibility.

WILLIAM SCHMIDT, recalled in behalf of the plaintiff, in rebuttal.

Direct examination by Mr. Green: 20

Q. Do you know Mr. Lane? A. Do I know Mr. Lane?

Q. Yes. A. I am acquainted with Mr. Lane.

Q. You had occasion to see him at your office? A. I did.

Q. Did Mr. Lane tell you that he traded the car in to the Chandler Motor Corporation of Newark?

A. He did.

Q. For a new car? A. Yes, sir. 30

Q. Tell us the exact words he used, if you recall.

A. Might I explain the circumstances of Mr. Lane coming in?

Q. Yes.

Mr. Isherwood: I object.

The Court: No, this is rebuttal. You just answer the question, Mr. Schmidt.

A. I asked Mr. Lane, I said, "Tell me the par- 40

William Schmidt—for Pltff.—Rebuttal—Direct.

ticalars of the case”, because he had a bill of sale in his possession, and we had a bill of sale in our possession which was given to Mr. Chamberlain, who bought the automobile.

10 *By the Court:*

Q. Was this before you had issued your bill of sale when you knew this? A. No, sir.

Q. Afterwards? A. Yes.

Q. You found he had a bill of sale and you had one? A. Correct.

Q. His was not assigned to anyone, it was still in his possession? A. That I couldn't say.

20 Q. You did not examine it very carefully, did you? A. I was interested mainly in the numbers of the automobile whether they corresponded. I might have looked over it.

Q. You know on a bill of sale that the assignment follows the bill of sale, if any there are? A. Not always, they sometimes have an individual assignment not attached to the bill of sale.

30 Q. All right. A. So, I said, “Tell me about this case”, and he said, “I took this car down to the Chandler people to sell for me in as much as I had agreed to purchase a new Royal Eight”, or some new car, and “I took this car down to the Chandler Motors Corporation for them to sell, and apply the proceeds to the new car. When I found out they had gone into receivership or bankruptcy, I immediately went down to find out what had happened and my car was gone. They told me it was sold to a man named Chamberlain, so I did not know what to tell them. I am in sort of a quandary about the matter, it looked as if it was mixed up”. I said, “Chamberlain, you
40

William F. Carton—for Pltff.—Rebuttal—Direct.

had better see your lawyer", and with that they left our office.

Q. But Mr. Lane did tell you that the car was traded in for a new car? A. Oh, yes, there is no question about that. He told me distinctly that it was traded in by the Chandler people to sell for his account. 10

Q. He did not tell you that they had sold it for his account and that he had given the purchaser the bill of sale, did he? He told you he had left it there? A. Yes, left it in possession of the Chandler Company to sell for his account.

Cross examination by Mr. Isherwood:

Q. You saw his bill of sale there that day, didn't you? A. I did. 20

Q. You told Chamberlain, "You had better turn the car over to him"? A. No, sir, I did not.

Q. You didn't tell him that? A. No, I couldn't tell him that, because I wasn't sure what to do, I said, "I think you have sort of mean mess here, and it looks to me as if Mr. Lane"——

Q. Owned the car? A. Yes, owned the car, but I might say this, "up to this time I was under the impression that this car"—— 30

Mr. Isherwood: I object.

The Court: We do not want that.

WILLIAM F. CARTON, sworn in behalf of the plaintiff in rebuttal:

Direct examination by Mr. Green:

Q. What was your capacity with the Chandler Newark Motors Corporation? A. Used car salesman. 40

William F. Carton—for Pltff.—Rebuttal—Cross.

Q. You knew the car involved in this suit? A. I did.

Q. That car was on your floor? A. Used car floor, yes.

Q. For sale? A. Yes, sir.

10 Q. And it was sold? A. Yes, sir.

Q. To whom? A. I never met the gentleman. Mr. Chamberlain. The first time I saw him was here.

Q. Do you know how that car was placed with the Chandler Company? A. I understood it was placed there for sale.

Mr. Isherwood: I object to what he understood.

20 The Court: The question is what he knows.

Q. Do you know how the car was placed there? A. For sale.

Q. For sale? A. Yes, sir.

Q. Do you know by whom it was placed, or from whom it was placed there for sale? A. I wasn't there when the car came in, but I knew who owned the car.

Q. Who did own the car? A. Mr. Lane.

30 Q. You do know that the car was placed there for sale? A. Yes, sir.

Q. You also know that it was sold? A. Yes, sir.

Q. Did you or did you not know that Mr. Lane ordered a new car, 1928 model from the Chandler Newark Motors Corporation? A. I believe he did.

Q. You knew he did? A. Yes.

Cross examination by Mr. Isherwood:

40 Q. How do you know it was placed in there by

E. Stefanelli—for Dfdt.—Sur-rebuttal—Direct.

Lane for sale? A. Well, there was a used car list made up of all used cars and prices.

Q. Did Mr. Lane ever tell you that it was placed in there by him for sale? A. Yes, sir.

Q. Yes. A. Yes, sir.

Q. When? A. Some time around the latter part of November or December. 10

Q. November, 1927? A. Yes.

Q. He ordered a new car? A. Not off me, no, sir.

Q. How do you know he ordered a new car then? A. Because I was told that he traded in this car for a new car.

Q. Who told you that? A. I don't get the number now.

Q. As a matter of fact you never talked to Mr. Lane about the car, did you? A. About which car? 20

Q. About this car that you say was put in there for sale? A. Well, there was nothing for me to talk about on that particular car.

PLAINTIFF RESTS.

ERNEST STEFANELLI, recalled in behalf of the defendant in rebuttal. 30

Direct examination by Mr. Isherwood:

Q. You are in charge of the Service Department of the Chandler Newark Motor Corporation? A. I was.

Q. Do you remember Lane's car coming into the garage there? A. It came into the garage.

Q. Describe the buildings up there, the difference 40

E. Stefanelli—for Dfdt.—Sur-rebuttal—Cross.

in the service station from the Chandler Newark Motors Corporation? A. The Service Corporation, the entrance was on Dey Street, the new and used car was 279 Central Avenue, but there was an entrance from Central Avenue into the Dey Street building.

10 Q. Do you remember Lane bringing his car there? A. Yes, sir.

Q. Did he have a talk with you why it was brought there? A. When it was first brought in he came in for a valve grinding job and the paint had to be touched and when the valve grinding job was done the car was touched and the porter washed the car and it went out, and when it came back from the paint shop it went to the used car department.

20 Q. Was the car sold, do you know? A. Yes, it was.

Q. Did you have the keys for the car, do you remember? A. Mr. Chamberlain came over there and he was asked for the keys and I had them made up.

Q. The keys to the car were not left there by Mr. Lane, were they? A. No, he did not leave them with me.

30 Q. You were the manager of the service department, weren't you? A. Yes, sir.

Q. The car was brought into the service department? A. Yes, sir.

Cross examination by Mr. Green:

Q. Did you hear around the place of business that car was traded in for a new car?

Mr. Isherwood: I object.

40

The Court: Sustain the objection.

C. H. Lane—Defendant—Sur-rebuttal—Direct.

Q. Do you know whether or not at any time that car was traded in for a new car?

Mr. Isherwood: I object.

A. I knew it was sold.

Q. But do you know whether Mr. Lane ordered a new car? A. No, I do not. 10

CLARENCE H. LANE, defendant, recalled in rebuttal.

Direct examination by Mr. Isherwood:

Q. Did you ever tell Mr. W. E. Carton here (indicating) who was on the stand, that this car of yours was put in there for sale? A. No, sir, I did not. 20

Q. Did you ever talk to him about this car in question? A. No, sir.

Q. Did you ever have any conversation with him about the car? A. Not about that car, no.

Q. Did you talk to Mr. Schmidt at his office about the fact that this car was turned in for sale? A. No, sir.

Q. You heard his conversation here in court, as he related it. Did you have any such conversation with him? A. No, I did not, or I wouldn't have got the car if I did. 30

Q. You went away from his office and got the car from Mr. Chamberlain? A. Well, I went with Mr. Chamberlain to get it.

Q. You heard Mr. Chamberlain testify to the fact that the car was turned in to be sold. You heard him testify so? A. Yes, sir.

Q. Did you ever tell him that? A. No, sir, I did not. 40

C. H. Lane—Defendant—Sur-rebuttal—Direct.

Q. Mrs. Kievit, you heard her testimony? A. Yes, sir.

Q. Did you ever tell her that your car was turned in to the Newark Chandler Motors Company for sale? A. No, sir.

10 Q. On account of the purchase price of a new car? A. No, sir.

Q. Did you ever tell anyone else whom I haven't mentioned specifically that you turned this car into the Newark Chandler Motors Company for sale? A. No sir, I did not; I didn't turn it in for sale.

Q. When you took your car over what department did you take it into? A. I took it into the Service Department.

20 Q. Whom did you see there? A. Mr. Steffanelli.

Q. Who was just on the stand? A. Yes, sir.

By the Court:

Q. Did you keep the keys for the car? A. I kept the keys to the car; I always have the keys to the car.

CROSS EXAMINATION WAIVED.

30

DEFENDANT RESTS.

Mr. Green: May I offer the certificate of the Motor Vehicle Department showing that the Chandler Newark Motors does not have the right to issue a bill of sale?

Mr. Isherwood: No objection.

(Same is marked Ex. P4.)

40 Mr. Isherwood: I respectfully move for the

Motion for the Direction of a Verdict.

direction of a verdict on the ground that according to all the evidence put in this defendant has a prior title to this car. I do not care how the car was left there, the evidence is on the defense that it was left there for the purpose of repairs and the defendant's story is substantiated by the story of the man who was in the Service Department when it was brought in there for certain repairs and that he knew afterwards the car was sold. Mr. Lane's testimony is that this bill of sale has always been in his possession and there is no testimony on the part of the plaintiff that the bill of sale was ever out of his possession and they have simply taken this car to the Newark Chandler Motors and sold it and fooled Mr. Chamberlain and Mr. Schmidt, and it would seem to me that they have their action against the Newark Chandler Motors Company, and the evidence that is before the court would warrant the direction of a verdict.

(Argument.)

The Court: To give you the most favorable benefit of the testimony, suppose a man takes his car down to, for instance, the Chandler Company, retains the bill of sale and says to the Chandler people, "Put this on the floor of your display room, and sell it for me." They take the car and sell it to a man named Chamberlain, that is, when they sell it to Chamberlain they give Chamberlain a bill of sale from themselves. How does that deprive the real owner of the car; he hasn't given any bill of sale; but still has the bill of sale and the statute provides that the cars named have to have a chain of title.

Motion for the Direction of a Verdict.

Mr. Green: That is true.

The Court: Now, how did the Chandler Company ever get title to this car. Tell me that.

Mr. Green: Why, the Chandler Company was acting for Mr. Lane at the time.

10 The Court: If I ask you to sell my real property, and you do not get title to it, you are my agent to sell it.

Mr. Green: That is a different thing.

(Argument.)

20 The Court: I cannot see any reason at all why a direction of a verdict should not be directed against the plaintiff. I am assuming, of course, for the benefit of argument, something that is questionable, that is, as to whether Mr. Lane took this car down to be repaired and kept the keys and the Chandler man admits he kept the keys and made a new set to give to Chamberlain. I am assuming that at the time they put this on the floor and sold it and gave a bill of sale without the proper chain of title they gave their own bill of sale for a second-hand car and the statute provides that when you sell a car you cannot only have the manufacturer's original bill of sale, but the others, 30 and I cannot see how you can break that chain by saying this is an original bill of sale and therefore, different than anything else that can be imagined.

Mr. Green: A demonstrator is a new car. That is the testimony in the case that it was a demonstrator, not a used car.

The Court: I do not know the difference in that.

40 Mr. Green: There is all the difference in the world.

Direction of a Verdict.

The Court: We have no testimony as to that.

Mr. Green: We have the testimony that the car was sold as a demonstrator, and therefore, it is not a used car.

The Court: I will read that case which you have referred to me.

(Argument.)

10

The Court: Gentlemen of the jury, I direct that you bring in a verdict in favor of the defendant for the possession of this automobile in question and the plaintiff may have an exception to my directing a verdict.

Mr. Green: May I ask your Honor the ground for directing a verdict?

The Court: I have stated it several times. The case you cited to me was a case where a company in Morristown held all these cars under a conditional bill of sale. The proof in this case is, and I am giving you the benefit of the proofs most favorable to the plaintiff, that Lane, we will say, took this car to the Chandler people and said to them, "I want you to sell this car for me, and put it in your showroom." If he did say that, and we will assume he did for the purpose of argument—and Lane at that time he did that had a bill of sale for the car,—he is the owner of the car, it belongs to him and he does not divest himself of any title when he hands it over to these people to sell it; he merely makes these people his agents to sell the car and, if subsequently—Lane has had this car from May, 1927, to December and has been using it during that time; it is a second-hand car—and subsequently they take this car which has been used for that length of time and dispose of it to a man named

20

30

40

Direction of a Verdict.

Chamberlain by a conditional bill of sale. Chamberlain is apparently satisfied with the bill of sale which is given to him and which has been put in evidence and thinks he needs no further knowledge of the title in this company to sell the second-hand car; who owned the car and who made it second-hand, apparently never occurred to Chamberlain; no inquiry was made as to its prior history or where it came from, although the laws of this State require that when a car is sold by the manufacturer its bill of sale must be given and that thereafter when the same car is sold the original bill of sale must be assigned, and the statute provides how it should be done for the protection of purchasers of cars. In other words, when you buy a car you practically get a chain of title, and if you buy it in any other way you take it at your own risk. Chamberlain, as far as I remember the testimony, received a conditional bill of sale from the Chandler Company for the second-hand car, and was not disturbed as to the prior history of this car or its title or anything else, but was satisfied to accept what he got. Of course, it is apparent that the plaintiff in this case was defrauded; it is apparent that Chamberlain was defrauded, but that is not the issue before us. The issue is as to who owned this car in February, 1928.

Mr. Green: May I note, for the purposes of the record, that your Honor has referred to the car as a used car and the record shows that the car is a demonstrator and the plaintiff contends that a demonstrator is not a used car within the provisions of the Motor Vehicle Act.

40 Exception noted as ground of appeal.

Exhibit P-1.

SCHEDULE OF PAYMENTS.

\$123.91	1 month after date	
\$123.91	2 months after date	
\$123.91	3 months after date	
\$123.91	4 months after date	10
\$123.92	5 months after date	
\$123.92	6 months after date	
\$123.92	7 months after date	
\$123.92	8 months after date	
\$123.92	9 months after date	
\$123.92	10 months after date	
\$123.92	11 months after date	
\$123.92	12 months after date	

\$1487.00 Newark New Jersey Dec. 6 1927 20
For Value Received the Undersigned Promises to

Pay to BEARER

in installments set forth in the margin hereof,
Fourteen Hundred Eighty-seven and 00/100 Dol-
lars at the office of MERCHANTS' SECURITIES COR-
PORATION, 60 Park Place, Newark, N. J., value
received.

Upon default in the payment of any installment 30
the entire balance of this note shall become im-
mediately due. If this note is placed in the hands
of an attorney for collection, the undersigned
agrees to pay the attorney's fee.

NELSON J. CHAMBERLAIN,
94 Miller St., Newark, NJ

Note No. 5170

Exhibit P-1.

(Reverse side.)

10 For value received, we, and each and all of the
 endorsers hereon, jointly and severally guarantee
 payment of principal and interest of the within
 note, as and when the same shall become due, and
 of any extension thereof in whole or in part, to-
 20 gether with costs of collection, including reason-
 able attorney's fees, in case payment shall not be
 made at maturity, accepting all its provisions,
 authorizing the maker, without notice to us or
 either of us, to obtain an extension or extensions
 in whole or in part, and waiving presentment for
 payment, demand, protest and notice of protest
 and non-payment; also agreeing that in case of
 30 non-payment of principal or interest when due,
 such arrearage may be offset by application of
 any amount or amounts, whole or in part, which
 may be due any of us from the holder of such
 note and suit may be brought by the holder of
 this note against any one or more or all of us, at
 the option of said holder, whether such suit has
 been commenced against the maker or not, and
 that in any such suit, the maker may be joined
 with one or more or all of us, at the option of the
 holder; hereby waiving all exemptions and rights
 accrued or which may accrue by reason of enter-
 ing the Military or Naval Service, or other service
 of the United States or any State, under any
 Federal or State statute now in effect or at any
 time hereafter becoming effective.

INDORSERS SIGN BELOW

.....
 40

Exhibit P-2.

(Always make in Duplicate and have both Original and Duplicate Signed, forward both with note properly executed to MERCHANTS' SECURITIES CORPORATION)

CONDITIONAL SALE CONTRACT 10

(Form No. 2—Without Recourse As To Dealer)

Newark, N. J. Dec. 6, 1927

Nelson J. Chamberlain, 94 Miller St. Newark, N. J. hereinafter called "Purchaser"

Chandler Newark Motors Inc. 239 Central Ave., Nk. hereinafter called "Seller."

Purchaser hereby acknowledges receipt and acceptance of the following described Motor Vehicle in good condition, after thorough examination, which purchaser agrees to buy and Seller agrees to sell on the following terms and conditions: 20

Make—Chandler. Type of Body—Sedan. Year and Model—Royal. Manufacturer's Serial Number—102198. Motor Number—Same. Name of Locking Device—Trans.

	COST	30
Total Cash Price	\$2057.00	
Financing Charge	190.00	
	\$2247.00	
*Total Time Price		

PAYMENTS

Amount Paid on or before delivery	\$ 760.00	
Balance (Amount of Note Here)	1487.00	40

Exhibit P-2.

\$123.91—4 mos.,
123.92—8 mos.,

	\$2247.00
*Total Time Price	

10 *These Amounts Should Agree Exactly

20 Title to said Motor Vehicle shall remain in Seller until the balance due is fully paid in cash, and if the Purchaser resides in the State of New Jersey, it is hereby agreed that immediately upon completion of payments there will be delivered to Purchaser a regular bill of sale in conformity with Chapter 168, P. L. 1919, New Jersey Statutes; that bill of sale thus to be delivered to the Purchaser in conformity with Chapter 168, P. L. 1919, shall be the original bill of sale with all assignments of subsequent ownership noted thereon.

30 Purchaser shall not keep said vehicle at any place other than the County and State in which it is now located, and shall not mortgage, rent, lease, assign, encumber or dispose of said vehicle or this contract or any interest therein, or permit any lien to be acquired on said vehicle. Purchaser shall not use or permit said vehicle to be used for transporting intoxicating liquor. Upon default in the payment of any installment of the note hereto annexed which represents the balance due or if said vehicle shall be seized or levied upon under any judicial process or for the enforcement of a garage lien or if said vehicle shall be damaged or stolen, or upon breach of any condition or covenant contained herein, then the entire unpaid balance of said note shall become immediately due

40

Exhibit P-2.

and the Seller shall be entitled to immediate possession of said vehicle, and purchaser agrees to promptly surrender it in good condition to Seller; and Seller may, without any previous notice or demand, enter any premises where said vehicle may be and take possession thereof, and Purchaser shall save harmless Seller and his agents from liability resulting from such repossession. In the event of possession Seller may retain the vehicle, together with any and all amounts paid thereon, which shall be considered the reasonable value of the use and depreciation of said vehicle and purchaser shall pay the cost of necessary repairs. If the vehicle shall be repossessed or an attorney be retained to collect the amount due under this contract, or the annexed note, Purchaser shall pay all costs of repossession and reasonable attorney's fees. Purchaser, to induce the purchase of this contract and the annexed note, expressly warrants and represents to any successor in interest of present Seller, that he is over the age of twenty-one years; that he has read the whole of this contract; that same constitutes the whole of his agreement with the Seller; that there are no warranties to him expressed or implied; that the Seller has the legal title to the vehicle and that the signatures to this contract and the annexed note have not been obtained by fraud or misrepresentation, and as against any successor in interest of the present seller, the Buyer hereby waives any and all defenses that he might have against the present seller and agrees to pay unconditionally the full amount due under this contract.

IN WITNESS WHEREOF, the parties hereto have

Exhibit P-2.

set their hands and affixed their seals to this contract.

CHANDLER NEWARK MOTORS INC.,

By HELEN McNEELY,

Asst. Sec'y

10

Witnesses:

(1) ERNEST STEFANELLY

(2) W. F. CARTON

(Seal)

PURCHASER'S STATEMENT

20

(Please answer all questions and fill in all blanks)

City Newark State New Jersey

Date Dec. 6, 1927

To the "Seller" (Dealer) named in the contract on reverse side hereof.

30

For the purpose of securing credit from you in the purchase of the Motor Vehicle mentioned in the contract on the reverse side hereof, and in order that you may sell to or discount with Merchants' Securities Corporation, the note mentioned herein, undersigned makes the following representations: Individual [] Partnership [] Corporation []

(Check proper square)

40 Residence Address: 95 Miller St., Newark, New Jersey.

Exhibit P-2.

Previous Address: 111 Avon Ave., Newark, N. J.
 Business Address: Prudential Ins. Co., Newark,
 N. J.

Position: Special Clerk. How long? 18 yrs.

Married? Yes. Age: 38. Number of depend-
 ents: None. Monthly Income: \$350.00.

Name of Nearest Relative (not living with
 you): B. K. Chamberlain, Father.

Business references: Chalmers Godley Co. Ad-
 dress: Broad St., Newark. B. Kantor, Address:
 Market St., Newark.

Car will be garaged at 94 Miller St., Newark.

Undersigned will pay said note irrespective of
 any imperfections in the Motor Vehicle or any
 breach of alleged representations. You and/or
 Merchants' Securities Corporation are authorized
 to correct patent errors in said contract and other
 papers executed by undersigned in connection
 therewith.

NELSON J. CHAMBERLAIN.

Important

Exhibit P-3.

Newark, New Jersey, 30
 February 21, 1928.

Mr. Clarence H. Lane,
 465 Clifton Avenue,
 Newark, N. J.

We hereby demand of you the following goods
 and chattels, which are our property, to wit:

One (1) Chandler Sedan, Royal 8 Model,
 Serial No. 102198, Motor No. 102198, and
 equipment. 40

Exhibit P-4.

Unless you deliver the same forthwith, we shall commence legal proceedings against you to recover possession of the same.

10

MERCHANTS' SECURITIES
CORPORATION,
By: GREEN & GREEN, Attys.,
60 Park Place,
Newark, N. J.

Exhibit P-4.

STATE OF NEW JERSEY

20

DEPARTMENT OF MOTOR VEHICLE
REGISTRATION AND REGULATION

I, William L. Dill, Commissioner of Motor Vehicles, of the State of New Jersey, do hereby certify that a very careful search of the records on file in this office, fails to reveal the issuance of a dealers' permit to issue Bills of Sale, pursuant to Chapter 89 of the Laws of 1925, in the name of the Chandler-Newark Motors, Incorporated, of Newark, New Jersey.

30

IN TESTIMONY WHEREOF: I have hereunto set my hand and affixed my Official Seal, at Trenton, this thirtieth day of October, A. D., 1928.

(Seal)

WM. L. DILL,
Commissioner of Motor Vehicles.

40

Exhibit D-1.

KNOW ALL THESE MEN BY THESE PRESENTS: That Chandler Newark Motors, Inc., of the City of Newark in the County of Essex and State of New Jersey, party of the first part, in consideration of the sum of one or more dollars, paid by C. H. Lane of the City of Newark in the County of Essex and State of New Jersey, party of the second part, has bargained, sold, granted and conveyed and by these presents does bargain, sell, grant and convey unto the said party of the second part heirs, executors, administrators and assigns, (type of car) Sedan, (make of car) Chandler, (model) Royal 8, (engine No.) 102198, Serial No. 102198, to have and hold the same unto the said party of the second part, heirs, executors, administrators and assigns forever, and Chandler Newark Motors, Inc., do for themselves, heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part his executors, administrators and assigns against all and every person or persons whomsoever.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this twenty-third day of May, one thousand nine hundred and twenty-seven.

CHANDLER NEWARK MOTORS, INC.,
HELEN MCNEELY (Seal)

Signed sealed and delivered
in the presence of

E. C. DONOVAN
J. F. SHEA

Exhibit D-1.

State of New Jersey,
County of Essex—ss.:

10 BE IT REMEMBERED, That on this 23rd day of
May, 1927, before me a Notary Public of the State
of New Jersey, personally appeared Helen Mc-
Neely, Asst. Sec'y Chandler Newark Motors, Inc.,
, who, I am satisfied, the
seller mentioned in the within instrument,
and I having personally made known to
the contents thereof did thereupon ac-
knowledge that signed, sealed and delivered
the same as voluntary act and deed for
the uses and purposes therein expressed.

20

R. F. BROWN,
Notary Public of N. J.

30

40

Exhibit D-2.

This Certificate issued as a (Transfer) of original

PASSENGER VEHICLE REGISTRATION No. E-11731

Issued to Clarence H. Lane

Street Address 465 Clifton Ave.

City or Town Newark, N. J.

10

DESCRIPTION OF VEHICLE

Name: Chandler. Year: 1927. Serial No.:
102198. Model: Royal 8. Engine No.: Same.
No. Cyl.: 8. Body type: Sedan. H. P. (S. A. E.):
32. Body color: Blue. Fee: \$1.00.

Certificate No. 49174.

X—This registration expires December 31, 1921.
Lane, C. H.

20

This certificate must be carried by the person
operating the car at all times.

This is a certificate of Registration only and
does not license the registrant to operate a motor
vehicle.

Stamp—Void after Dec. 31, 1927
1927

STATE OF NEW JERSEY

30

DEPARTMENT OF MOTOR VEHICLES

In pursuance of "An Act defining motor vehicles
and providing for the registration of the same and
the licensing of the drivers thereof; fixing rules
regulating the use and speed of motor vehicles,
fixing the amount of license and registration fees;
prescribing and regulating process and the service
thereof and proceedings for the violation of the

40

Exhibit D-3.

provisions of the act and penalties for said violations." Approved April 8, 1921.

IN TESTIMONY WHEREOF, I have set my hand and my seal of office the 23rd day of May, A. D. 1927.

10

Signed WM. L. DILL,
Commissioner of Motor Vehicles.

Stamp—John H. Friend, 96 Washington St.,
Newark, N. J.
Agent.

(Seal of The Department of Motor Vehicles.)
(Over)

20

Exhibit D-3.

PASSENGER VEHICLE REGISTRATION

E. No. 18671

This Registration Expires December 31, 1928

Issued to Clarence H. Lane.
Street Address: 465 Clifton Ave.
City or Town: Newark, N. J.

30 Name of Car: Chandler. Year: 1927. Serial
No.: 102198. Model: Royal 8. Engine No.: Same.
No. Cyl.: 8. Body Type: Sedan. H. P. (S. A. E.)
32. Body Color: Blue. Fee: \$16.00.

This certificate must be carried by the person operating the car at all times.

This is a certificate of Registration only and does not license the registrant to operate a motor vehicle.

Lane, C. H.

40

Stamp—Void after Dec. 31, 1928
1928

Exhibit D-3.

STATE OF NEW JERSEY

DEPARTMENT OF MOTOR VEHICLES

In pursuance of "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof, and proceedings for the violation of the provisions of the act and penalties for said violations." Approved April 8, 1921. 10

IN TESTIMONY WHEREOF, I have set my hand and my seal of office the 21st day of February, A. D. 1928. 20

Signed: WM. L. DILL,
Commissioner of Motor Vehicles.

Stamp—John H. Friend, 96 Washington St.,
Newark, N. J.

Agent.

(Seal of the Department of Motor Vehicles.)
(Over)

30

40

66 FEB. 1. 1929

New Jersey Court of Errors and Appeals.

MERCHANTS' SECURITIES CORPORATION, a corporation,
Plaintiff-Appellant,

vs.

CLARENCE H. LANE,
Defendant-Respondent.

Action at Law,

On Appeal from
Essex County
Circuit Court.

BRIEF OF PLAINTIFF-APPELLANT MERCHANTS' SECURITIES CORPORATION.

Statement.

This is an appeal by the plaintiff, Merchants' Securities Corporation, from a judgment of the Essex County Circuit Court, based upon verdict directed by the Court in favor of the defendant-respondent, and against the plaintiff-appellant, in a replevin action for possession of an automobile.

Facts.

On December 6th, 1927, one Nelson J. Chamberlain (hereinafter referred to as "Purchaser"), agreed to buy a Chandler Royal Sedan, Motor No. 102198, Serial No. 102198, and equipment, from Chandler-Newark Motors, Inc. (hereinafter referred to as "Motors Company"), for \$2,247.00, and executed a conditional sale contract to said Motors Company, reserving title to motor vehicle

in said Motors Company, and wherein he agreed to pay \$760.00 in cash on or before delivery, and balance of \$1,487.00 in 12 equal monthly installments of \$123.91 each, according to the tenor of promissory note signed by said Purchaser at the same time (Case, p. 57, Ex. P-1; Case, p. 59, Ex. P-2). On the same day, said Motors Company sold the contract and note to Merchants' Securities Corporation (hereinafter referred to as "plaintiff") (Case, p. 18, ll. 1-30).

The Purchaser paid the first installment, but defaulted in installment due February 6th, 1928, and installments thereafter (Case, pp. 18, 19). As a result, the entire unpaid balance on note and contract became due and payable, and plaintiff became entitled to immediate possession of motor vehicle. *General Motors Acceptance Corp. v. Smith*, 101 N. J. L. 154; *Commercial Credit Corporation v. Coover*, 101 N. J. L. 530.

On or about February 21st, 1928, plaintiff learned that motor vehicle was in the possession of defendant, Lane, and it immediately thereafter dispatched representative to serve a written demand for possession upon Lane, which demand was served on said date (Case, p. 19, ll. 32-40; Case, p. 20, ll. 1-5).

As defendant failed to deliver motor vehicle, plaintiff commenced this action in replevin. Defendant refused to deliver possession of motor vehicle to the Sheriff of Essex County, as a result of which an order was made for the defendant to show cause why he should not be adjudged guilty of contempt of the Essex County Circuit Court for failure to turn over motor vehicle to the deputy sheriff. Subsequently thereafter, order to show cause was dismissed, upon defendant's delivering claim of property to Sheriff,

and surety bond for \$3,400.00 (Case, pp. 7-11). Defendant thereafter filed an answer and counterclaim, which counterclaim was subsequently struck out by consent of defendant (Case, p. 13).

Defendant testified that on May 23rd, 1928, he purchased motor vehicle involved in this suit from the Chandler-Newark Motors, Inc., and obtained a bill of sale emanating from said Motors Company under the same date. Said bill of sale was admitted in evidence over plaintiff's objection, plaintiff objecting on the ground that said Motors Company had no right to issue an original bill of sale, because it had failed to obtain a dealer's permit to issue bills of sale, pursuant to Chapter 89, Laws of 1925 (Case, p. 28, ll. 35-40, and p. 29, ll. 1-15; Case, p. 64, Ex. P-4). The applicability of this statute was admitted by defendant's attorney, who objected to admission of conditional sale agreement by plaintiff (Case, p. 16, ll. 20-30), as follows:

"Mr. Isherwood: I object. In accordance with the laws of 1925, section 4, page 288, it says—your Honor might as well read it. The Chandler-Newark Motors cannot give a bill of sale until such time as they obtain a certificate from the Commissioner of Motor Vehicles and it hasn't been shown that they are the dealer or manufacturer and if they are the dealer they must have the certificate, if they are a manufacturer it is different."

Defendant further testified that he placed the car with said Motors Company in December, 1927, supposedly for repairs, and did not again obtain possession thereof until February 21st, 1928, when it was delivered to him by Purchaser.

Plaintiff, to controvert the above, proved by the

testimony of Mr. Chamberlain, Mrs. Kievit, Mr. Schmidt, and Mr. Carton, that Lane told them that he ordered a new car from the Chandler-Newark Motors, Inc., and traded in car involved in this suit to said Motors Company, but retained bill of sale above mentioned, to admission of which plaintiff objected. Subsequently, upon learning that the Motors Company had become bankrupt, and as new car had not been delivered to him, he then, for the first time, looked for this car, which was in possession of Chamberlain (Case, p. 41, ll. 1-18; Case, p. 43, ll. 20-36; Case, p. 45, ll. 28-40; Case, p. 46, ll. 26-40; Case, p. 47, ll. 1-17; Case, p. 48, ll. 29-30).

Plaintiff adduced proof that defendant traded in motor vehicle to the Motors Company, or that Motors Company was acting for defendant in the sale of said motor vehicle.

On this set of facts, which were disputed, defendant made an application for direction of verdict (Case, p. 53, ll. 1-25), and the Court directed a verdict in favor of the defendant, Clarence H. Lane, and against the plaintiff (Case, p. 55, ll. 10-16).

Ground of Appeal.

The Circuit Court erred in directing a verdict in favor of the defendant and against the plaintiff.

POINT ONE.

Plaintiff was the owner of the automobile by virtue of the transfer to it of the note and conditional sale contract.

Plaintiff was the owner of said automobile by virtue of the purchase of note and conditional sale contract (3 R. C. L., p. 189), and was entitled to immediate possession by virtue of default in payments. *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154; *Commercial Credit Corporation v. Coover*, 101 N. J. L. 530.

POINT TWO.

Defendant failed to prove title to motor vehicle, as he did not have the necessary documentary title required by law.

In order to establish ownership in a motor vehicle, it must be shown that the Act of 1919, page 357, and supplements thereto, has been complied with. *Security Credit Corporation v. Whiting Motor Co.*, 98 N. J. L. 45.

The 1925 amendment to said law, being Chapter 89, page 287, provides as follows:

"In all sales or purchases of a motor vehicle directly from the manufacturer or through an agent or agency or authorized dealer of such manufacturer there shall be issued to the purchaser a manufacturer's bill of sale, which bill of sale shall contain the manufacturer's number on the engine or motor of the motor vehicle so sold; provided, however, that before any dealer shall be authorized to issue these original

*or duplicate bills of sale they shall first obtain a permit from the Department of Motor Vehicles. * * ** (Italics ours.)

Plaintiff proved, and defendant's counsel admitted, that no such authority had been obtained from the Motor Vehicle Department, and certification from the Motor Vehicle Department showing that dealer's permit had not been issued was received in evidence and marked Plaintiff's Exhibit P-4 (Case, p. 64).

POINT THREE.

Plaintiff and Chamberlain were innocent purchasers for value without notice.

Case *sub judice* is somewhat similar to *Halliwell v. Trans-States Finance Corporation*, 98 N. J. L. 133.

The facts of this case are that The Herman Bartsch Automotive Corporation sold to one Guilio Ruggiero, under a conditional sale contract, an auto truck to be paid for in a series of notes, title remaining in the seller until the notes were paid. The conditional sale contract was filed in the proper office in the county in which the truck was kept, and on the same day, the bill of sale was assigned to the defendant. Ruggiero did not get immediate possession of the truck, and when delivery was tendered, he sent it back to the company who sold it to Halliwell, who lived in another county, where there was no encumbrance recorded against the truck. Defendant thereupon seized the truck in such adjoining county, and plaintiff brought replevin. The Court held that he was an innocent purchaser for value without notice.

Chancellor Walker, speaking for the Court of Errors & Appeals, at page 134, bottom, states as follows:

“The Bartsch corporation did not notify Halliwell that there was a bill of sale to Ruggiero outstanding on this truck, and Halliwell bought from a dealer who had possession and an apparent right to sell. There was no encumbrance against the truck recorded in Essex County, where the transaction between the Bartsch corporation and Halliwell took place, and there was no apparent impediment to its making title to Halliwell, which was done. He was therefore an innocent purchaser for value without notice. *Miller v. Cushman*, 38 Vt. 593. See also, *Danbury v. Robinson*, 14 N. J. Eq. 213; *Phelps v. Morrison*, 25 Id. 538, and *Behn v. National Bank of New Jersey*, 65 N. J. L. 591, on the question generally of *bona fide* purchaser for value without notice.”

Are not the facts in our case similar to the above? Chamberlain went to the Motors Company, the largest sales agency in Essex County selling Chandler cars, and purchased a Chandler car. Said car was represented to him as a demonstrator, which, in automobile parlance, is a car owned by the dealer, and which has been slightly used by said dealer in its business, for the purpose of demonstrating same to its customers. The defendant, Lane, traded car in for a new car, which was never delivered to him. To bear out plaintiff's contention, reference to testimony of Mr. Nolte (Case, p. 23, ll. 31-32) shows that car, when new, sold for \$2,490.00, whereas plaintiff agreed to pay a total cash price of \$2,057.00, excluding financing charge (Case, p. 59, Ex. P-2).

Due to Lane's act, the Motors Company was

placed in a position where it could sell the Chandler car to Chamberlain, who is still liable on his note, and besides, transfer conditional sale contract to plaintiff.

Blashfield's Cyclopedia of Automobile Law, Vol. 3, at page 2462, provides as follows:

"An agreement under which a motor car is placed with a consignee on commission, providing that, if he is unable to sell the car, he will pay a specified price and take title, and that title shall remain with the consignor as security for his note for the price, does not require a purchaser from the consignee to ascertain whether he pays the consignor, and title remains in the consignor only on a failure of the consignee to sell;²¹ and, where an automobile dealer, in whose hands is placed a used automobile for sale, receives the full cash price therefor, the owner's remedy for the agent's failure to turn over such sum is against the agent, and he cannot recover the price from an innocent purchaser²²." ²¹*Automobile & Cycle Co. of America v. Motor Finance Co.*, 138 N. Y. S. 1016, 79 Misc. Rep. 37; ²²*Stevenson v. MacCallum-Donahoe Finance Co.*, 118 Wash. 683, 204 Pacific 775.

POINT FOUR.

Defendant's transaction with the Chandler-Newark Motors, Inc., was either a security arrangement or the Motors Company was acting as agent for the defendant.

The testimony of plaintiff's witnesses was that Lane admitted to them that he traded car in to the Motors Company for a new car, and retained his bill of sale until the new car was delivered

to him. A new car was not delivered, and during the month of February, several months after leaving the car, he first made an effort to locate the car, and obtain same from Chamberlain, who then had it. Does not this at least raise an inference for a jury to pass upon?

Lane denies the above, but readily admits speaking to both Mr. Schmidt and Mr. Chamberlain.

If the jury found from the evidence that defendant, Lane, traded motor vehicle in to Motors Company as part payment on account of the purchase price of a new motor vehicle, and retained the bill of sale until he received the motor vehicle, then as a matter of law, this was a security arrangement, and/or a chattel mortgage transaction, or a conditional sale. If a chattel mortgage transaction, no chattel mortgage was executed as required by law, and if a conditional sale, the reservation of property is void, because the contract was not filed, and because of the provisions of Section 9, P. L. 1919, page 463, Lane having consented to resale.

In any event, if the jury found that defendant authorized the Motors Company to sell his car, then the Motors Company was acting as agent for defendant, and defendant is now estopped from setting up title as against innocent purchasers.

Under the undisputed facts in this case, the Court should have directed a verdict for the plaintiff, because the plaintiff proved its right to possession under the conditional sale contract, and defendant did not legally prove title in himself or a superior right to possession as against plaintiff, because his bill of sale was not in conformity with the Motor Vehicle Bill of Sale Act, *supra*, and should not have been received in evi-

dence; but, in any event, jury questions were raised concerning the question of plaintiff and/or Chamberlain being innocent purchasers and the question of defendant being estopped by his conduct in giving automobile to Motors Company for trade-in on purchase of new automobile, and thereby creating this situation at bar, and the question of defendant waiving title and/or his seller's lien, etc., and the case should have gone to the jury on these factual issues, under proper instructions from the Court, and the Court should not have directed verdict against the plaintiff.

CONCLUSION.

The appellant therefore respectfully submits that the trial Court erred in directing a verdict in favor of the defendant and against the plaintiff, and in not submitting the case to the jury, and that for the reasons hereinabove set forth, the judgment should be reversed and a venire de novo awarded.

Respectfully submitted,

GREEN & GREEN,
Attorneys for Plaintiff-Appellant.

HARRY GREEN,
Of Counsel.

New Jersey Court of Errors and Appeals

MERCHANTS' SECURITIES COR- PORATION, a corporation, <i>Plaintiff-Appellant,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		<i>On Appeal from Essex County Circuit Court.</i>
CLARENCE H. LANE, <i>Defendant-Respondent.</i>	}	

BRIEF OF DEFENDANT-RESPONDENT.

Facts.

The salient facts in this case, stated in chronological order, are as follows:

On May 23, 1927, defendant Lane purchased the automobile in question, a Chandler Royal 8 Sedan, from Chandler Newark Motors, Inc. and secured a bill of sale for the same (Exhibit D. 1, Case, p. 65) and obtained his license for this car on the same day (Exhibit D. 2, Case, pp. 67-68). Later in the year he took the car back to the Chandler agency. As to his reason the testimony is conflicting. He states that it was for the repairs (Case, p. 32, ll. 25-30) and is corroborated by the manager of the service department (Case, p. 50, ll. 15-16); witnesses produced by plaintiff testified to statements by him that he returned the car for sale and exchange (Case, p. 41, l. 9; p. 43, ll. 31-40; p. 45, ll. 28-30; p. 46, ll. 28-32), which statements defendant denies (Case, p. 51, ll. 18-40).

On December 6, 1927 the Chandler Newark Motors, Inc., sold the car to one Chamberlain under a conditional sales contract (Exhibit P. 2, Case, p. 59), which was apparently assigned

to the plaintiff (Case, p. 18, ll. 7-8, ll. 21-22); the note given in part payment was apparently made direct to the plaintiff finance company (Exhibit P. 1, Case, pp. 57-58). Thereafter defendant obtained possession of the car and held such at the time of institution of replevin proceedings (Case, p. 33, ll. 37-38).

Chandler Newark Motors, Inc. had failed to obtain a dealer's permit to issue the original bill of sale as provided by Chapter 89 of the Laws of 1925.

I.

Defendant had the prior and superior title to the automobile, and did nothing to estop him from asserting and exercising his rights of ownership.

He secured an original bill of sale and his car licenses for the years 1927 and 1928 (Exhibits D. 1, D. 2 and D. 3, Case, pp. 65-69). It transpires that the selling agency had not obtained a permit from the Commissioner of Motor Vehicles in accordance with the 1925 amendment; but this requirement, we respectfully submit, was waived by the Motor Vehicle Commissioner, when, upon the production of the bill of sale, his authorized agent in his name issued the car license (Case, p. 29, ll. 21-25). These documents the trial court admitted in evidence, and although an exception was taken by the plaintiff to the admission of the bill of sale (Case, p. 29, ll. 15-18) the alleged error has not been urged as a ground of appeal to this court.

Defendant subsequently took the car back to the agency, as he says, for repairs. But whether it was for repairs or sale, as has been urged, we submit, is immaterial. He kept his bill of sale

and keys (Case, p. 36, ll. 33, 34; p. 39, ll. 27-28; p. 50, ll. 27-29; p. 52, ll. 25-27); very shortly thereafter the agency sold the car to Chamberlain, for the conditional sales agreement was executed on December 6th. That fraud was practiced by the sales agency is apparent; that explains the excuses made to defendant for the failure to have the car ready for redelivery to him (Case, p. 32, ll. 31-38). But not one scintilla of evidence that defendant was a party to the fraud or had any intimation or knowledge of it.

In appellant's brief contention is made that defendant's transaction, when he took the car back, was either an agency or a "security" arrangement. Neither contention, we submit, is valid. Even if it is assumed, for purposes of argument, that the car was taken back for sale, and the Motors Company created defendant's agent for that purpose, we know of no cases, and none are cited in that brief, whereby the agent thereby had the authority to execute a conditional bill of sale or an assignment of one. As to the so-called security arrangement, that theory not only has no foundation in the record, but is absolutely absurd.

Criticism of the defendant's course of action in this case has, then, been directed to two incidents, one, his failure to ascertain that the sales agency had no permit from the Motor Vehicle Commissioner, the other, in taking the car back to that agency. If either is vital, he is made to suffer substantially. But was this conduct reprehensible or in the least different from that pursued by thousands of automobile owners all over this country? The approval of the Motor Vehicle Commissioner, as evidenced by the issuance of a license on the production of a bill of sale, is very generally, and rightly so, regarded as the

sanction by the State of New Jersey of the right to own and use that car. It is a matter of common knowledge that sales agencies operate service departments where repairs are and can be made, and that they invite and urge their customers, particularly purchasers of new cars, to bring them back to be serviced, very often without cost. If such a customer desires to make sale or exchange, what is unnatural about taking it back for that purpose to the agency through which it was purchased? But is such a return with nothing more—as in this case, no delivery of bill of sale or keys, no sale price fixed or amount of allowance for an exchange—to be construed as a waiver of his rights as against any person who, through the agent's fraud or negligence, secures its possession and can show some consideration, however meagre, therefor?

II.

Plaintiff's title was not only inferior to defendant's, but it and also its rights were not perfectly established and asserted.

In the first place, it is significant that no assignment of the conditional sales agreement was introduced in evidence. Reliance was placed altogether upon incidental oral proofs (Case, p. 18, ll. 6-7).

In the second place, plaintiff did not consider this conditional sales contract to be sufficient protection. It secured also an original bill of sale, which at the trial was in the possession of its attorney (Case, p. 18, ll. 26-30), who neglected to offer it in evidence. The reason is quite obvious. Such bill of sale issued as it must have been by Chandler Newark Motors, Inc.

would have been open to the objection, which, in counsel's mind, so seriously affects its validity.

Thirdly, although on the authority of *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154, 127 Atl. 179 cited in appellant's brief, a conditional sales vendee is relieved from the obligations, imposed upon an owner by Chapter 168 of the Laws of 1919, (P. L. 1919, p. 357) to secure a manufacturer's (original) bill of sale and any intermediate assignments, yet that case does not relieve him from the obligation to comply with the provisions in the Conditional Sales Act which requires him, for his own protection, to file that document in the county registry office (P. L. 1919, p. 461). Such was done in the last-mentioned case. Nothing appears in the record now under review to indicate that this particular conditional sales contract was so filed. Hence no constructive notice was given. Nor can the claim of actual notice be maintained; for, however conflicting in detail the testimony be as to the substance of the conversation between the parties when they compared their bills of sale, the result was that plaintiff through its president Schmidt consented to the delivery of the car to defendant Lane (Case, p. 38, ll. 20-24; ll. 34-35).

Fourthly, the automobile sold to Chamberlain was a used car. Plaintiff's witnesses admit this but say it was a "demonstrator's" car (Case, p. 27, ll. 16-20; p. 43, ll. 13-20). For an explanation of the meaning of this term we are indebted to counsel (Case, p. 54, ll. 34-37). The testimony is silent on the subject.

III.

The direction of a verdict for the defendant was proper.

No salient facts were in dispute to raise a jury question. Plaintiff's counsel subscribes to this statement both by his conduct at the trial when he made a motion for such direction (Case, p. 39, ll. 38-40), which the Court refused to consider under the reservation made, and in his brief, where he says in the last paragraph on page 9, that the Court should have directed a verdict for the plaintiff.

The only dispute of moment in the case was as to whether defendant took the car back to the agency for repairs or for sale, and in neither case under the facts as submitted did defendant divest himself of his ownership or vest any authority in the agency to deal with the car as its own.

The Court had admitted plaintiff's documents, which showed in him a perfect and superior title.

Of the cases cited in appellant's brief *Halliwel v. Trans-States Finance Corporation*, 98 N. J. L. 133 was determined on the fact that the conditional sales contract was not filed in the county of the plaintiff's residence, which presumably was the place where the sale and delivery were made; here the conditional sales contract was not filed at all.

The General Motors Acceptance Corporation case has been considered *supra*; the excerpt from Blashfield's *Cyclopedia of Automobile Law* sets up an altogether different state of facts.

In both of the other cases cited, namely *Commercial Credit Corporation v. Coover*, 101 N. J.

L. 530, 129 Atl. 187 and *Security Credit Corporation v. Whiting*, 98 N. J. L. 45, 118 Atl. 695, it is significant that a direction of a verdict was held to be the proper course. In both of these cases, too, as to certain incidents the testimony was conflicting. In the Coover case, this court held that the trial court erred in not directing a verdict for the plaintiff in an action brought by the assignee of a conditional sales contract against the owner, where a few days after the assignment and without notice other than that contained in the contract itself, the purchaser (owner) paid the dealer the balance of the consideration and had received therefor his absolute bill of sale; and in the Whiting case a direction of a verdict for defendant was sustained, the Court finding that the introduction of testimony attempting to set up an estoppel against the defendant did not raise a jury question. There, as here, the plaintiff's title was clouded by the fraud of the agent.

The judgment of the Circuit Court, we respectfully submit, should be affirmed.

Respectfully submitted,

HOWARD ISHERWOOD,
Attorney for and of Counsel with
Defendant-Respondent.

