

INDEX.

	PAGE
Notice of Appeal and Grounds, Filed December 28, 1926 .....	1
Rule for Judgment for Defendant, Filed November 15, 1926 .....	3
Judgment Record, Filed November 18, 1926 .....	3
Summons, Filed November 28, 1923 .....	4
Complaint, Filed November 28, 1923 .....	5
Note, Annexed to Complaint .....	6
Affidavit of Merits, Filed January 9, 1924 .....	8
Answer, Filed January 9, 1924 .....	9
Reply, Filed January 12, 1924 .....	11
Testimony .....	12
Motion for Direction of Verdict .....	50

PLAINTIFF'S WITNESSES:

William Will:	
Direct .....	12
Cross .....	21
(Recalled in Rebuttal)	
Direct .....	50
Alfred V. R. Doremus:	
Direct .....	32
Cross .....	33

DEFENDANT'S WITNESSES:

John Boyko:	
Direct .....	34
Cross .....	46
Re-direct .....	49

	PAGE
Adrian Balla :	
Direct .....	49
PLAINTIFF'S EXHIBITS:	
P-1—Promissory Note, dated Passaic, New Jersey, May 17, 1923, marked in evidence at page 13 .....	54
P-2—Voucher, to order of Wimple Auto Co., Inc., for \$1,484.61, dated May 24, 1923, marked in evidence at page 21 .....	55
P-3—Memorandum, marked in evidence at page 21 .....	56
P-4—Exemplified Copy of Certificate of Authority, marked in evidence at page 31	57
DEFENDANT'S EXHIBITS:	
D-1—Conditional Sales Contract, marked in evidence at page 42 .....	59
D-2—Motor Vehicle Bill of Sale, marked in evidence at page 39 .....	60

**PASSAIC COUNTY CIRCUIT COURT.**

COMMERCIAL CREDIT CORPORATION, a Corporation,  
Plaintiff,

—vs.—

JOHN BOYKO,

Defendant.

**Notice of Appeal and Grounds, Filed  
December 28, 1926.**

*To Feder & Rinzler, Esqs., Attorneys for De-  
fendant:*

TAKE NOTICE, that the plaintiff appeals from the whole of the judgment entered in this cause, to the Court of Errors & Appeals, the Court of last resort in all causes in New Jersey, on the following grounds:

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

2. That the Circuit Court erred in refusing to direct a verdict in favor of the plaintiff and against the defendant.

3. That the Circuit Court erred in ruling that:

“Counsel has pointed out that in the case at bar, there is some testimony that this contract or transaction took place in New York, and that the plaintiff corpora-

10

20

30

40

*Notice of Appeal and Grounds, Filed December 28th, 1926.*

10 tion was not doing business in this State for which it then had no certificate. But that is not the point that is involved in this decision, and I do not need to pass on the question of whether or not the transaction itself was done in the territory of New Jersey or in the territory of New York, but I base my decision wholly on Section 98 of the Corporation Act and direct a verdict for the defendant, on the ground that under that section the plaintiff corporation had no authority to bring suit at the time it did in this State."

20 4. That the Circuit Court erred in entering judgment for the defendant without the rendition of a verdict by the jury.

Dated, December 15th, 1926.

GREEN & GREEN,  
Attorneys for Plaintiff.

30 Due and legal service of within instrument and copy thereof acknowledged this 18th day of December, 1926.

FEDER & RINZLER,  
Attorneys of Defendant.

40

**Rule for Judgment for Defendant, Filed November 15, 1926.**

This action having been tried before Judge Newton H. Porter, with a jury, in the presence of counsel of the respective parties, on November 5th, A. D. 1926, and the jury having returned a verdict in favor of the defendant; 10

IT IS ORDERED, that judgment final be entered in favor of the defendant and against the plaintiff, Commercial Credit Corporation, a corporation, for the defendant's costs to be taxed.

On Motion of:

FEDER & RINZLER,  
Attorneys for Defendant.  
Entered November 15th, 1926. 20

**Judgment Record, Filed November 18, 1926.**

This action was tried before Judge Newton H. Porter, with a jury, in the presence of counsel of the respective parties, at the Passaic County Circuit Court, on November 5th, A. D. 1926.

The cause having been heard and submitted to the jury, they returned their verdict in favor of the defendant, John Boyko.

WHEREUPON, it is adjudged that the complaint of the plaintiff be dismissed and that the defendant, John Boyko, recover of the plaintiff, Commercial Credit Corporation, a corporation, his costs, which are taxed at the sum of Thirty-five dollars and sixty cents (\$35.60). 30

Judgment entered and signed November 18th, A. D. 1926, at 11:07 A. M. Action No. 8920, Docket J, page 29.

CLIFFORD L. NEWMAN, 40  
Judge.



Complaint, Filed November 28th, 1923.

installments amounting to \$652.46 became immediately due and payable, with interest from said date.

10 5. Said note provides for the payment of attorney's fees incurred in collecting any amount owing thereunder, and the additional sum of \$97.87 is due thereon, which represents the fee that the plaintiff will pay its attorney for collecting the same, besides costs, and which is a reasonable sum therefor, making the total amount due to plaintiff from defendant the sum of \$750.33.

Judgment will be claimed for the true sum of \$750.33, with interest and costs of suit.

20 HARRY GREEN,  
Attorney for Plaintiff.

NOTE, ANNEXED TO COMPLAINT.

Passaic, New Jersey, May 17th, 1923.

Undersigned promises to pay to the order of Wimple Auto Co., Inc., Nine Hundred Seventy-eight and 66/100 Dollars (\$978.66).

30 Payable at office of COMMERCIAL CREDIT CORPORATION, New York, N. Y., in 12 monthly installments of \$81.55 each, the first installment payable one month after date, balance of installments payable on even date of each succeeding month thereafter until this note is fully paid, with interest on each installment after its maturity at the highest lawful rate.

40 If any installment of this note is not paid when due, the entire amount unpaid hereon shall become due and payable forthwith at the election of the holder of this note.

Complaint, Filed November 28th, 1923.

Undersigned hereby irrevocably authorizes any attorney-at-law to appear in any court of record in the United States and waive issue and service of process and confess judgment against the Undersigned in favor of the holder hereof for such amount as may appear to be unpaid hereon after maturity, together with costs and expenses and an attorney's reasonable fee. 10

All benefits of valuation, appraisalment and exemption laws are hereby waived.

Presentment, demand, protest and notice of protest and non-payment are hereby waived.

Value Received.

P JOHN BOYKO  
(Seal)

By ..... 20  
26890

152 2  
Without Recourse

For value received pay to the order of  
COMMERCIAL CREDIT CORPORATION  
New York

D WIMPLE AUTO CO. INC. (Seal)  
By WILLIAM J. ALLEN, Mgr. 30

Pay to the order of  
METROPOLITAN TRUST CO.  
OF THE CITY OF N. Y.  
COMMERCIAL CREDIT CORP'N  
Formerly  
CONTINENTAL GUARANTY CORP.  
By—A. FRASER,  
Treas.

20c Documentary Stamps 40

**Affidavit of Merits, Filed January 9, 1924.**

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

10 I, JOHN BOYKO, being duly sworn, according to law, on my oath depose and say:

1. I am the defendant in the above stated action.

2. I believe that I have a just and legal defense to the action on the merits of the case.

JOHN BOYKO.

20 Sworn to and subscribed before me, this 21st day of December, 1923.

JACK RINZLER,  
Master in Chancery,  
of N. J.

I hereby consent to the filing of the within Affidavit of Merits as within time.

30 12/24/23.

HARRY GREEN,  
Attorney of Plaintiff.

40

**Answer, Filed January 9, 1924.**

Defendant, John Boyko, residing in the City of Passaic, in the County of Passaic, and State of New Jersey, answering the complaint filed in the above action, says that:

1. He denies each and every allegation contained in paragraphs one, two, three, four and five of the complaint. 10

FIRST SEPARATE DEFENSE:

The said alleged note was procured by fraud.

SECOND SEPARATE DEFENSE:

The said alleged note was procured by the fraudulent representations of the agents and servants of the plaintiff, and the concealment from the defendant of the true facts concerning the said instrument, and said plaintiff's agents and servants did not inform defendant of the nature of said instrument, and misrepresented the nature thereof to the defendant. 20

THIRD SEPARATE DEFENSE:

Said note was paid. 30

FOURTH SEPARATE DEFENSE:

There was no consideration for said note.

FIFTH SEPARATE DEFENSE:

The plaintiff is not a bona fide holder, for value, before maturity and without notice. 40

**Affidavit of Merits, Filed January 9, 1924.**

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

10 I, JOHN BOYKO, being duly sworn, according to  
law, on my oath depose and say:

1. I am the defendant in the above stated  
action.

2. I believe that I have a just and legal defense  
to the action on the merits of the case.

JOHN BOYKO.

20 Sworn to and subscribed before me, this  
21st day of December, 1923.

JACK RINZLER,  
Master in Chancery,  
of N. J.

I hereby consent to the filing of the within Affi-  
davit of Merits as within time.

30 12/24/23.

HARRY GREEN,  
Attorney of Plaintiff.

40

**Answer, Filed January 9, 1924.**

Defendant, John Boyko, residing in the City  
of Passaic, in the County of Passaic, and State  
of New Jersey, answering the complaint filed in  
the above action, says that:

1. He denies each and every allegation con- 10  
tained in paragraphs one, two, three, four and five  
of the complaint.

FIRST SEPARATE DEFENSE:

The said alleged note was procured by fraud.

SECOND SEPARATE DEFENSE:

The said alleged note was procured by the 20  
fraudulent representations of the agents and serv-  
ants of the plaintiff, and the concealment from  
the defendant of the true facts concerning the said  
instrument, and said plaintiff's agents and serv-  
ants did not inform defendant of the nature of  
said instrument, and misrepresented the nature  
thereof to the defendant.

THIRD SEPARATE DEFENSE:

Said note was paid. 30

FOURTH SEPARATE DEFENSE:

There was no consideration for said note.

FIFTH SEPARATE DEFENSE:

The plaintiff is not a bona fide holder, for value,  
before maturity and without notice. 40

*Answer, Filed January 9, 1924.*

SIXTH SEPARATE DEFENSE:

10 Said alleged note was procured by a fraudulent scheme and arrangement between the plaintiff, its agents and servants, and the Wimple Auto Co., Inc., its agents and servants, who fraudulently misrepresented the facts concerning the said instrument and misrepresented the nature, purport and effect thereof, and concealed from the defendant the nature of said instrument, and the purport, purpose and effect thereof.

SEVENTH SEPARATE DEFENSE:

20 The plaintiff is a foreign corporation and is not a banking, insurance, ferry or railroad corporation, and the said corporation, before transacting any business in this State, did not file in the office of the Secretary of State, a copy of its Charter, or Certificate of Incorporation, in the manner and as required by statute, and said corporation, contrary to the statute in such case made and provided, has failed to file with the Secretary of State, a statement in the manner and as required to do by said act.

30 EIGHTH SEPARATE DEFENSE:

40 The contract and the business transacted by said corporation, upon which this action is based, was made and transacted in this State, although the plaintiff did not comply with the statute in such case made and provided as hereinbefore alleged, by reason whereof this action cannot be maintained and should be dismissed. The defendant denies the existence of the plaintiff corporation, and alleges that the said corporation is not a foreign corporation, authorized to transact business

*Reply, Filed January 12, 1924.*

in this State, since it has failed to comply with the statute in such case made and provided, as hereinbefore alleged, although said contract, and the said business and a series of contracts were made and business matters transacted in this State, by reason whereof said suit is not maintainable and should be dismissed. 10

NINTH SEPARATE DEFENSE:

For the foregoing reasons, the defendant, at the time of the trial of this suit, or prior thereto on notice, will move to strike out the complaint and dismiss the action, such right being herewith expressly reserved.

FEDER & RINZLER,  
Attorneys of Defendant. 20

I hereby consent to the filing of the within answer as within time.

12/24/23.

HARRY GREEN,  
Attorney of Plaintiff.

**Reply, Filed January 12, 1924.**

Plaintiff, in reply to the answer filed by defendant, says that: 30

1. It denies each and every allegation contained in the first, second, third, fourth, fifth, sixth, seventh and eighth separate defenses.

At or before the trial of this action, plaintiff will move to strike out the answer on the ground that same is sham and frivolous, and filed only for the purpose of delay.

HARRY GREEN,  
Attorney for Plaintiff. 40

**Testimony.**

PASSAIC COUNTY CIRCUIT COURT.

Paterson, N. J., November 5, 1926.

10 Before—Hon. NEWTON H. PORTER, and a jury.

APPEARANCES:

For Plaintiff, HARRY GREEN, Esq., by David Green, Esq.

For Defendant, Messrs. FEDER & RINZLER.

A jury was called and sworn, and counsel for the respective parties opened to the jury.

20 WILLIAM WILL, sworn.

*Direct examination by Mr. Green:*

Q. Mr. Will, what is your official capacity with the Commercial Credit Corporation at the present time? A. Assistant treasurer.

Q. During the year 1923 what was your capacity? A. Cashier.

30 Q. Are you familiar with the notes that are purchased by the Commercial Credit Corporation and the promissory notes that are discounted and paper bought? A. Come under my supervision, yes.

Q. I show you what purports to be a promissory note. Is that the original note in the matter? A. It is.

40 Mr. Rinzler: We will admit that the signature to this paper was affixed to it as

*William Will—for Plaintiff—Direct.*

part of another paper that was attached to it and apparently torn off at the perforated top edge.

The Court: Very well.

(Paper marked Exhibit P1.)

Mr. Rinzler: The other part will go with it? 10

Mr. Green: This is an action on the note.

Mr. Rinzler: Have you the part that was torn off?

Mr. Green: Yes. I am offering the note in evidence, your Honor.

Q. Mr. Will, referring to your records could you tell us when that note was bought by you? A. May 24, 1923. 20

Q. How much has been paid on account of that note? A. Four instalments of \$81.55.

Q. What is the outstanding balance due? A. \$652.46.

Q. When was the last instalment applied on that account? A. September 28, 1923.

Q. Was the purchase of that note passed upon by you, Mr. Will? A. Why, the note is passed to our credit department and after they O. K. it comes to me to be paid and I issued a check on it. 30

Q. Before you pass on it it has to come through your hands? A. It does, yes.

Q. I show you a check under date of May 24, 1923. Is this the check that you gave in the purchase of that account, or was it given in the purchase of that account and other accounts? A. This covered two accounts. 40

*William Will—for Plaintiff—Direct.*

Q. But part of the check was on the Boyko account? A. On the Boyko account, yes.

Mr. Green: I would like to offer that in evidence.

10 Mr. Rinzler: I do not think it is yet admissible, your Honor.

The Court: Let it be marked for identification at this time.

(Paper marked P-2 for Identification.)

Q. I show you Exhibit marked P-2 for Identification; do you recognize your signature on that, Mr. Will? A. My signature?

20 Q. Yes. A. Yes, that is mine.

Q. That check was given in payment—

Mr. Rinzler: I object to it as leading.

The Court: Do not lead him.

Q. Will you tell us what that check was given in payment of? A. Well, that check was given in payment of this Boyko account and one other account.

30 Q. Will your records show that that check was given in part payment or in payment of the Boyko and another account? A. It will.

Mr. Green: I would like to offer it in evidence at this time.

40 Mr. Rinzler: I object at this time. There is no foundation laid for it. He says he must resort to some other records, if your Honor please. The records have not been proven yet. There is no showing of what part of that check went into this account.

*William Will—for Plaintiff—Direct.*

*By the Court:*

Q. Do you know by your records that this check was used for the payment of the Boyko account? A. I know that, yes, I do.

10 Q. How do you know that? A. The date of that check is May 24th, and in this particular folder that covers the Boyko account we have what we call a work sheet and as soon as we issue a check we stamp the date of the check on the work sheet and it is initialed by me before it goes out.

Q. That is your record? A. That is my record.

Q. So without the record you could not identify the check, could you? A. No, sir.

The Court: Objection sustained. 20

*By Mr. Green:*

Q. Mr. Will, I show you some writing on this check. Is that writing in your own hand? A. Yes.

30 Q. Does that notice show what account was covered by that check? A. Yes. I put that on there so I would know in case I had to testify, just what account it covered. That is in the Boyko account and the Allen account.

Mr. Rinzler: Put that on?

The Witness: Put that on just today so as to have it for Court.

Mr. Rinzler: Today?

The Witness: Yes, sir.

40 Q. In putting that on you confirmed it from your records, didn't you? A. Yes, I checked up my records to make sure, so I would be able

*William Will—for Plaintiff—Direct.*

to testify in Court it covered those two particular accounts.

10 The Court: No question but what he examined his records. The objection that counsel makes is that the record should be produced.

Mr. Green: Well, we have the record here.

The Court: I supposed you had. I wondered why you did not produce it.

20 Q. Will you refer to your record, Mr. Will, and will you check that up to show and tell the Court and jury whether that record will show that the check was given in payment of the Boyko account and another account? A. Well, this is the work sheet that goes on this Boyko account. See, we stamp the sheet paid to show—

Mr. Rinzler: Who is "we"?

30 The Witness: Who is we? That is done in the cashier's department. I initialed the stamp there to show it was paid; before I signed the check I put my initials on it also. That is the work sheet that goes in that folder.

*By the Court:*

Q. What does \$489 mean on that, do you know?  
A. Not offhanded.

Q. What does \$1,345 mean on this? A. I couldn't tell you offhand unless I see it, your Honor.

40 Mr. Rinzler: Don't refer to your record now.

*William Will—for Plaintiff—Direct.*

Q. No, no; I am asking you. There seems to be bills receivable, an entry \$978.66? A. That is the amount of the note.

Q. Is it? A. Yes, that is the amount of the note.

10 Q. Well, then, what does \$2,997 mean, \$1,080 mean and \$861.71 mean? You don't know off-hand? A. No, sir; I will have to look at the records. We have so many I couldn't tell you.

Q. You examined this before you came here; you checked this up with the check; you have compared it and you say this has reference to that check? That is the record? A. Yes, that is right.

20 Q. Now, you can't tell me anything about it until you first look at it? A. I would like to make sure before I make any statement on it. One minute. The amount of the note, the other would be the carrying charges and so forth, the amount we paid the Wimple Auto people.

Q. Is there anything on here to show that you paid anything to the Wimple Auto people? A. That is where we put that paid stamp. That shows we issued a check on that particular day and here is the check to show it.

30 Q. No; is there anything on this that contains the Wimple Automobile Company's name? A. Maybe on top.

Q. You don't recall? A. No, sir. That is just the work sheet. We have a voucher that goes with the check, if I knew you wanted it I would have brought it. That would give the transaction.

Q. This check is one made to the Wimple Auto Company for \$1,484.61? A. That is right.

40 Q. Is there \$1,484.61 anywheres on this paper? A. No, sir; because that check, that was two different checks on that, that we bought. We get

*William Will—for Plaintiff—Direct.*

several accounts in one deal and we send them one check for a certain number of accounts.

10 Q. How can you identify this paper then as being a part of the items that are covered by this check? A. Well, I know. On May 24th I checked up the records.

Q. Only because of the date? A. No, sir; I mean that we issued the check covering two items to the Wimple Auto Company on May 24th.

Q. How do you know that this had anything to do with the Wimple Auto Company? A. Because I know that the particular account belonged with this John Boyko account, and that John Boyko and another man total up the amount of the check.

20 Q. Oh, that is the way you get it? A. Yes; we have what we call a voucher. This is a voucher check.

Q. In other words, Boyko's name is not on here, the Wimple Auto Company's name is not on here, nor the amount of the check that you gave to the Wimple Auto Company is not on here? A. That is just a work sheet.

Q. Are they? A. No, sir; that is just a work sheet, that is not the right record.

30 Mr. Green: Does your Honor refuse to let that go in?

Mr. Rinzler: I object to it.

The Court: You have not proven it yet. In view of counsel's objecting to this record going in because of its apparent lack of materiality I will sustain the objection.

40 Q. Mr. Will, do you have any other record to which you could refer which would link up and

*William Will—for Plaintiff—Direct.*

show that this draft was given in payment of the Boyko account and another account to the Wimple Auto? A. No; the original cash voucher you haven't got in court here. We issue a cash voucher and a check at the same time and it gives the note numbers of the accounts that go to make up that check. Unless you have that in your papers I couldn't tell you that. 10

*By the Court:*

Q. You have no record here at all? Don't you keep a ledger account? A. We have. That is in the office.

Q. What does that show? A. It shows—

Mr. Rinzler: He hasn't them here. 20

Q. What does it show? A. That shows the note numbers and the purchaser's name and everything else, and those items tie up with the amount of the check. This happened to be two accounts that make up that check, and we haven't got that.

*By Mr. Green:*

Q. Will your collection card show that this check was given or will it tend to link up this account? A. The collection card shows a check was issued on May 24, 1923. 30

*By the Court:*

Q. To whom? A. To the Wimple Auto Company.

Q. What else does it show? A. And it gives the purchaser's name, John Boyko, and the 40

*William Will—for Plaintiff—Direct.*

amount of the note and the amount of payment to be made.

Q. Where is the notation on this that the check was made out? A. Up in the upper lefthand corner is the date.

10 Q. 5-24-23? A. Yes.

Q. What was that amount? A. That is the date we purchased the note. The date we purchased the note we issued a check.

Q. Is there anything on here which indicates how much you paid for the note? A. No, sir, we don't put that on there.

The Court: You might show that to Mr. Rinzler.

20 (Mr. Rinzler examines card.)

Mr. Rinzler: I submit, if your Honor please, there is nothing on this check, even taken in connection with this card, which would show the relationship of this card to a material point in this case.

30 The Court: The witness has testified that the date identifies it with the check; that the amount is not given there, but that he testifies that it is the check that was given and referred to that account. It so, I think it is admissible and it will be allowed.

Mr. Rinzler: It would be a matter of whatever weight it is for the jury?

The Court: Certainly.

The Witness: Your Honor, here we have the account number. This corresponded with the note paid. On here we have the amount of the note, \$978 at the bottom.

40

*William Will—for Plaintiff—Cross.*

(Paper marked Exhibit P-2.)

The Court: The witness now calls my attention to what he did not call attention to before, that there is a number on here that corresponds with the note number and the amount \$978.66 here is the amount of the note. You may offer that in evidence in conjunction with the other, if you wish, for what it may be worth. 10

(Paper marked Exhibit P-3.)

*By Mr. Green:*

Q. When that note was purchased by you did you have any notice of any defect or informity in the note? A. None whatever. 20

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

The Court: I will allow it.

*Cross examination by Mr. Rinzler:*

Q. You are quite experienced in the nature of the business that you have been doing for your company the Commercial Credit Corporation? A. Yes. 30

Q. By the way, that is a New York corporation, is it? A. That is right.

Q. In connection with your duties at the office you now hold and your previous office that you held, all told you have been working for your company transacting business of a similar nature in New Jersey for how long? A. I have been with the company over eight years. 40

*William Will—for Plaintiff—Cross.*

Q. During all that time this Commercial Credit Corporation has been doing business constantly in New Jersey? A. Yes.

Q. Having done a great many transactions of business in New Jersey, hasn't it? A. It has.

10 Q. Similar contracts? A. Yes, it has.

Q. And similar transactions? A. That is right.

Q. You know of them personally? A. Yes, sir.

Q. You know that that has been done probably hundreds of times in eight years past? A. That is right.

Q. Would cover a period say dating back previous to 1920? A. 1917.

Q. From 1917 continuously? A. Over eight years.

20 Q. I think you stated this was a New York corporation? A. Affiliated under the Banking Laws of the State of New York.

Q. A New York corporation? A. That is right.

Q. Your company has done a great deal of business with the Wimple Auto Company, haven't you? A. Has done considerable, yes.

30 Q. You know that this note, Exhibit P-1, is torn off at the perforated edge from another portion of a paper that was attached to it, don't you? A. Yes, that is right.

Q. That is not here, is it? A. I don't know. I haven't it.

Q. The lower part is what is the note? A. That is right.

Q. But there was a portion, probably eight times as wide as this, that is, from top to bottom? A. No; just goes about to here, that is about all.

Q. That was torn off? A. That is right.

40 Q. You never spoke to Mr. Boyko before this transaction? A. Never met him.

*William Will—for Plaintiff—Cross.*

Q. Came into the hands of yourself for the company, did it? A. No.

Q. In fact, you never communicated with him at all until after the note came into your possession? A. No.

10 Q. You didn't find out the kind of a transaction it was, did you? A. No; it is not a matter under my jurisdiction.

Q. Did anybody do it in your company as far as you know? A. The credit department.

Q. Were you there? A. I was not in the credit department.

Q. You don't know what was done, do you? A. No.

20 Q. Now, when you finally made a demand of Mr. Boyko, you were told that this was a fraud, weren't you? Yes or no. A. I don't know; that was taken by the legal department.

Q. That would belong to someone in the legal department? A. Yes.

Q. Didn't you learn from your lawyers then this was claimed to be a fraud? A. That didn't interest me.

30 Mr. Green: I object to the type of cross examination, your Honor. I think the cross examination should be limited to the amount due on the note and how the note came into the hands of the Commercial Credit Corporation.

The Court: You asked whether he had any notice of any infirmity of this note. That opened the door. I will allow it.

40 Q. Did you know that this was an automobile trade-in? A. Yes, I knew that.

*William Will—for Plaintiff—Cross.*

Q. Did you inquire about the circumstances surrounding it? A. No.

Q. Did you care about that? A. It didn't come under my jurisdiction.

Q. Did you make any inquiry about it at all?

10 A. I did not, personally, no.

Q. Who paid you those four instalments. Mr. Will? A. I imagine Boyko paid—

Q. Not what you imagine, I want to know who paid them to you? A. Boyko.

Q. Why, you are the assistant treasurer, aren't you? A. I am.

Q. By what means of payment did he pay that to you? A. I can't tell that.

20 Q. I want you to tell us from your records if you cannot tell from your memory. A. I can't tell from my records right here.

Q. Point out to me in the record the fact of when you received the payment from Mr. Boyko.

A. It shows the payment.

Q. Point out to me on that record that John Boyko, the defendant in this case, paid you even a penny on this account? A. I can't tell you that from those records.

30 Q. This record does not connect up John Boyko with the payment of even a penny on this account, does it? A. Shows we received four payments.

Q. I asked you whether it connects up John Boyko with paying even a penny? Does it; yes or no? A. It is according to the way you look at it.

The Court: No; it is according to what it says. What does it say?

40 The Witness: That shows two payments were paid by John Boyko.

*William Will—for Plaintiff—Cross.*

The Court: Where are they?

The Witness: Shows "Paid by maker"—paid by M, stands for maker, and D by dealer.

Q. How was that paid? A. It doesn't show there. There is the two, June 23rd and August 9th. 10

Q. It doesn't show who paid the other two then; that is not marked M? A. Shows paid by D.

Q. Where? A. Right here; D is dealer and M is maker.

Q. How was paid, by check or cash or money order or by draft? A. The record here wouldn't show it. 20

Q. Haven't you any record that would show it? A. Have to look up our deposit ticket for that.

Q. Have you any record that will show that Mr. John Boyko made a payment? A. I haven't got any.

Q. Have you got anything in that file amongst your records connecting him up with making a payment? A. No, I have nothing.

30 Q. Have you a letter showing that he agreed to pay it or showing he made a payment to you? A. We have a letter. We have the contract.

Q. A letter from Mr. John Boyko? A. There is none in the file.

Q. Nothing at all, have you? A. None in my file.

Q. You have taken the whole file that relates to your case? A. I have some, unless the attorneys have some.

40 Q. If he has anything in the room that will

*William Will—for Plaintiff—Cross.*

show Mr. Boyko remitted it to you I would like to see it. A. It is up to him.

Mr. Rinzler: Have you, Mr. Green?

Mr. Green: No; I have no letter from Boyko.

Q. You have none. You have no corresponding with Mr. Boyko, have you, from him? A. I haven't anything.

Q. I mean you in behalf of your company? A. No, none in the file.

Q. The company has none as far as you know, because you have the file here? A. That is right.

Q. What is meant by the term "Repurchase agreement" on this card that you have offered in evidence with the note? A. That is a certain contract that we have if the party falls down in the payment we can fall back on the dealer.

Q. Fall back on the dealer. Did you ever talk to Lester about this account? A. I did not.

Q. Ever talk to Wimple about the account? A. I did not.

Q. Both of those men were affiliated with the Wimple Auto Company, weren't they? A. Yes.

Q. After this case was put in the hands of the attorneys, Green & Green, whom did they communicate with about the matter? A. Our legal department.

Q. Well, they are the legal department, aren't they? A. No; we have a legal department that handles these things between our company and the outside attorneys.

Q. Didn't they tell the legal department what our defense was to the case? A. They did.

Q. Didn't we call to their attention—

*William Will—for Plaintiff—Cross.*

Mr. Green: I object to what took place between the attorney and the legal department of the Commercial Credit Corporation.

The Court: If he knows he can tell.

A. I don't know. 10

Q. Well, you were subpoenaed to be a witness here, weren't you? A. I was told only yesterday to come up to court.

Q. You didn't know before this you were going to be a witness here? A. No.

Q. Hadn't the slightest idea? A. No.

Q. Who else could have been produced as a witness to prove the account, if not you? A. No one.

Q. Didn't you expect to be a witness here, Mr. Will; yes or no? A. No, I did not. 20

Q. Even though you were the only individual that the company could produce to prove this account you did not expect to be called as a witness before yesterday, did you? A. Not until yesterday.

Q. Now you knew of course that there was another paper attached to this note that is torn off at the time you got it, didn't you? A. That is right. 30

Q. Did you inquire about it; yes or no? A. Why, yes.

Q. Did you, yes or no? A. No, I did not.

Q. Have you got it here? A. I haven't got it.

Q. Have you it here? A. I haven't got it.

Q. Then you have not the whole paper here, have you? A. The attorney may have it.

Q. Have you? A. I haven't got it.

Q. Will you call on your attorney to present it if he has it? A. That is up to him. 40

*William Will—for Plaintiff—Cross.*

Q. Have you it, Mr. Green?

Mr. Green: Yes.

Mr. Rinzler: May I see it?

Mr. Green: Certainly. (Produces paper  
and hands to Mr. Rinzler.)

10

Q. Is this the paper that was attached to it?

A. It is.

Q. You did not care about that at all at the time you got the note Exhibit P-1, did you? A. Sure I did.

Q. Well, did you have it before you? A. At the time I issued the check I had both papers before me.

20

Q. I thought you said a moment ago that when the note came into your possession when you bought it it was torn off from the rest of the sheet and you didn't have it before you? A. That is torn off by me when I O. K.'d the check. One is a note and one is the conditional sale contract. The reason we tear that off is because we send the notes down to the trustee, which we put up as collateral.

30

Q. This paper you just handed me which was attached to the note and which is now torn from it, does it show that the car for which the note Exhibit P-1 was given was traded in for another car to Boyko? A. Will you repeat that?

40

Q. Does this paper which was torn off from the perforated edge from the note P-1 show at all that it had any reference to an automobile traded in one car for another with an additional cash consideration? A. You mean does this particular paper show that we got a trade-in on the other car?

*William Will—for Plaintiff—Cross.*

Q. Yes; there was a trade-in between the Wimple Company and Boyko? A. No, it does not.

Q. Does it show or mention the name of Andrew Boller there? A. No.

Q. It does not, does it? All this shows is an out-and-out sale of the car by the Wimple Auto Company to Mr. Boyko; that is right? A. That is right.

10

Q. That is all it shows? A. That is right.

Mr. Rinzler: I suppose you wish this in evidence too; it is attached to the note.

Mr. Green: You can offer it if you wish.

Mr. Rinzler: I am going to move that the note be expunged from the record unless this paper, which it now appears was attached to it, goes with it in evidence as their exhibit. I cannot offer anything on their case.

20

The Court: You can have it marked for identification and offer it later, if you want it in.

Mr. Rinzler: If your Honor please, I move at this time that the note P-1 be expunged from the record, it appearing from their own testimony that the paper upon which the note part appears is not the whole paper; that it was torn off from the paper which the witness can produce, and that was the whole paper.

30

The Court: Motion denied.

Mr. Rinzler: I ask an exception.

The Court: You may have it. I do not understand it was the whole paper, but it was attached by perforations, indicating they were two separate papers.

40

*William Will—for Plaintiff—Cross.*

Mr. Rinzler: They were one paper torn off.

The Court: Yes; one paper at one time, but it was intended that they be separated, otherwise the perforations would not have been there.

10

(Paper marked D-1 for Identification.)

*By the Court:*

Q. Mr. Will, who is the owner of this note now?

A. We are.

Q. You mean the Credit Company? A. Commercial Credit Corporation.

Q. Who has been the owner of it? A. We have from the time we bought it from Wimple Auto.

20

Q. Always been the owner of it? A. Yes, sir.

Q. What is this endorsement on this paper, "To the order of Metropolitan Trust Company of New York"? A. They are our trustees, your Honor, and we deposit the note with the trustees, and we have to endorse it over to them.

Q. In other words you parted with the ownership, didn't you? A. Well, we still have it, but we just left it down there as collateral from which we borrow money. We borrow money from this particular bank.

30

Q. So that endorsement was not for the purpose of transferring the ownership, but just the custody, and because they were trustees; is that right? A. That is right.

Q. Very well.

Mr. Green: At this time I would like to offer in evidence the certificate of the Secretary of State.

40

The Court: That is all?

*William Will—for Plaintiff—Cross.*

Mr. Rinzler: If you will present the one I hold, which is an exemplified copy—yours is an abbreviated form.

Mr. Green: I have one under date of February 25, 1926.

Mr. Rinzler: February 25, 1926? Well, I have one that relates to the time when suit was commenced and previous thereto. That is not an exemplified copy.

10

Mr. Green: A certified copy from the Secretary of State is admissible in evidence.

The Court: What objection have you to the more complete copy?

Mr. Green: If that will show—

Mr. Rinzler: It comes from the Secretary of State and it is an exemplified copy under the hand and seal of the Secretary of State of the State of New Jersey.

20

Mr. Green: Yes.

The Court: They both show the same thing, except one is dated.

(Paper marked Exhibit P-4.)

Mr. Green: Mr. Will, the only relation you have with the Wimple Auto Company—

30

The Court: Just a moment. You did not ask this witness what this paper was, and you do not need to do that. What is this paper?

Mr. Rinzler: This document, if your Honor please, is a paper issued under the hand and seal, certified under the hand and seal of the Secretary of State and under

40

*Alfred V. R. Doremus—for Plaintiff—Direct.*

the hand and seal of the Governor of the State of New Jersey, the then Governor George S. Silzer—it is an exemplified statement showing the Commercial Credit Corporation, and that is the plaintiff in this case—

10 Mr. Green: Yes.

Mr. Rinzler: —is a foreign corporation organized under the laws of the State of New York; that a certificate of authority was issued to the Commercial Credit Corporation, a New York corporation, authorizing said corporation to transact business in the State of New Jersey; said certificate of authority having been issued on July 22, 1924. That is correct, isn't it?

20 Mr. Green: Yes.

The Court: Let it be received. I understand there is no objection to it?

Mr. Green: No, there is no objection.

(Paper marked Exhibit P-4.)

ALFRED V. R. DOREMUS, SWORN.

30 *Direct examination by Mr. Green:*

Q. Mr. Doremus, you were connected with the Wimple Auto Company, Inc.? A. Yes.

Q. In what capacity? A. I acted as secretary for them and kept some of their records.

Q. I show you a draft of the Commercial Credit Corporation, payable to Wimple Auto Company, Inc., marked Exhibit P-2. Was that received by you? A. Yes, sir.

40

*Alfred V. R. Doremus—for Plaintiff—Cross*

Q. And that endorsement on the back is yours?

A. Is in my handwriting, yes.

*Cross examination by Mr. Rinzler:*

Q. All you know is that you received the check which is shown to you? A. It was just given to me for deposit. 10

Q. For deposit? A. Yes.

Q. Given to you by whom? A. Well, I couldn't say that now, it is so far back.

Q. Wimple Auto Company is no longer in existence, is it? A. No.

Q. Do you know where Mr. Lester is, the financial manager?

Mr. Green: I object to any further questions outside of the draft. 20

The Court: Objection sustained.

Mr. Rinzler: As my own witness?

The Court: As improper cross examination.

Mr. Rinzler: I will ask the question of him as my own witness.

The Court: Ask it when the time comes.

Mr. Rinzler: Just one question. I did not want to keep him.

The Court: All right. There is no objection. 30

Q. Is Mr. Lester, who is the financial manager of the Wimple Company, anywhere available that you know of? A. No.

Q. Is Mr. Wimple anywhere available? A. Which one?

Q. Mr. Herman Wimple, who is an officer of the company? A. No.

PLAINTIFF RESTS.

40

## DEFENDANT'S TESTIMONY.

JOHN BOYKO, SWORN.

*Direct examination by Mr. Rinzler:*

10 Q. Mr. Boyko, you are a fireman? A. Yes, sir.

Q. Connected with the City Fire Department of Passaic? A. Yes, sir.

Q. Been a fireman for how many years? A. Why, for about seven years.

Q. Living in Passaic for how many years? A. All my life.

Q. How many years is that? A. Why, 32.

Q. Boyko, you signed the paper marked in evidence P-1, didn't you? A. What paper is that?

20 Q. It was this paper, referring to Exhibit P-1? A. Yes, I signed it, but it was a bigger paper than this.

Q. Where were you when you were first asked to sign this paper with the bigger paper attached? A. Headquarters.

Q. Fire headquarters? A. Fire headquarters.

Q. That is in the Municipal Building at the corner of Prospect Street and Howe Avenue, Passaic? A. Yes, sir.

30 Q. Where was the Wimple Auto Company located at that time? A. Right across the street.

Q. On Howe Avenue? A. Yes, sir.

Q. Who came to call you first? A. Herman Wimple came over to call me.

Q. What did you say to him? A. He came over and asked me, asked me to come over and sign some papers.

40 Q. What did you answer? A. I told him, "What papers?" I says, I can't leave headquarters; I will be over tomorrow." Well, he

*John Boyko—for Defendant—Direct.*

says, "It will only take you a minute, and I will tell one of the fellows to let you know in case the fire alarm comes in." I said, "I can't leave headquarters."

10 Q. Did you run over? A. After a while I ran over, and he handed me the papers, and I asked him, "What papers are these, Herman?" And he says to me, "Why, your touring car, the touring car you gave us, Mr. Hopkins—" he is a clerk in—

Q. Well, he is the sergeant at arms of the Passaic District Court? A. Yes.

20 Q. He was buying the touring car that you were turning in as part of the price for the car that you were buying from the Wimple Auto Company? A. Yes; and he tells me, "Here is the paper. You have this car, of course?" I said "Sure".

Q. You mean the touring car? A. Yes, I said, "You ought to know that; it was bought from you." Well, he says "You paid up everything?" I said, "I sure did." He says, "Sign these papers. We want to give Mr. Hopkins the car and get the license to-day."

30 Q. Now he represented to you that the paper that you were signing was to enable him to get his license on the touring car? A. Exactly.

Q. That they are transferring the touring car? A. My touring car.

Q. And that Hopkins was buying it? A. Yes.

Q. The touring car you were trading in as part of the price to the Wimple Auto Company? A. Yes; they allowed me \$700 on it.

40 Q. How much cash did you pay the Wimple Auto Company in addition to the automobile that you traded in on this exchange? A. \$400.

*John Boyko—for Defendant—Direct.*

Q. What kind of a car did the Wimple Auto sell you on that? A. It wasn't the Wimple Auto selling to me. I understand Mr. Boller was selling. Boller owned this car and he was there at the time.

10 Q. He owned it? A. Yes.

Q. He gave you the bill of sale for it? A. That is it.

Mr. Green: I object to any testimony as to Boller or anybody outside of the maker of the note. I do not think it is relevant.

The Court: This is the defense, which is fraud, and it is relevant.

Mr. Green: There is no linking it up with the Commercial Credit Company.

20 The Court: I will allow it.

Mr. Green: I ask an exception.

*By the Court:*

Q. Who was Mr. Boller? A. Mr. Boller, your Honor, was the fellow that owned the car before I bought it.

*By Mr. Rinzler:*

30 Q. You mean the touring car? A. Yes, the coupe. The coupe, understand, Mr. Boller owned the coupe. I was buying this coupe of Mr. Boller.

Q. In other words you were buying a coupe car and trading in your touring car for it? A. Yes.

Q. You owned the touring car? A. Yes.

40 Q. You were trading that in and paying some cash in exchange? A. For the coupe.

*John Boyko—for Defendant—Direct.*

Q. For Mr. Boller's Coupe? A. Yes.

Q. Mr. Boller was selling you the coupe? A. Yes.

Q. The transaction going through the offices of the Wimple Auto Company? A. Yes, sir.

Q. That was the company that originally financed your touring car? A. Yes, sir. 10

Q. Did you pay for the coupe the whole price? A. They wanted \$1,100 for it and I gave them— Mr. Boller was there and I asked him whether it was his, and he says yes, and I said, "How much will you give for the touring car?" He says "\$700." I says, "If I give you \$400 will you take it?" He says, "Yes." I gave him a touring car and \$400 cash. Mr. Boller was there when I gave it to him. 20

Q. And did you pay for this coupe in full? A. Yes, sir.

*By the Court:*

Q. Did you give him a bill of sale for your touring car? A. Yes, sir.

Q. When? A. At the time I made the transaction.

Q. Well, then, why did you sign the other papers? A. Why, this here was signed later, your Honor. 30

Q. Yes. A. This here was signed a couple of days after.

Q. You thought it was a bill of sale, didn't you? A. No, sir. I didn't exactly think it was a bill of sale.

Q. What did you think it was? A. Why, I thought they wanted to let me sign a paper that this touring car was clear from payments to the 40

*John Boyko—for Defendant—Direct.*

finance company. That is what I understand it.

Q. Did you read it? A. I didn't have no time. I work and I was not allowed to leave headquarters. I didn't want to sign it and I told him I would be around to-morrow, and he said Mr.

10 Hopkins is—

Q. You did sign it? A. Yes, sir.

Q. How many places? A. I don't know. I think it is one or two.

Q. And you saw without reading that this was— A. There was nothing on, your Honor. There was nothing on there at the time I signed it.

Q. What do you mean? A. It was not filled in; just the prints.

Q. You signed it in blank? A. Yes.

20 Q. Do you do that regularly? A. No, sir; I done that the first time with Mr. Wimple, and I wired that place and they haven't paid me to-day. I believed them above that; I thought they were nice—

Q. Who is Mr. Boller? A. Mr. Boller owned this car and I bought—

Q. What connection has he with the Wimple Auto Company? A. Why, he was buying another car, your Honor. He was buying a Chalmers.

30 Q. He was not connected with it? A. No, sir.

Q. Just a customer of theirs? A. Yes, sir.

*By Mr. Rinzler:*

Q. The Wimple Auto Company was transacting this trade in for Mr. Boller? A. Yes, sir.

*By the Court:*

Q. Who did you pay the \$400 to? A. I paid \$400 to Lester, the general manager of the Wimple  
40 Auto Company.

*John Boyko—for Defendant—Direct.*

Q. What did he have to do with it? A. They were selling this Mr. Boller another car. Mr. Boller wanted to sell this car; it wasn't big enough, as he told me, and he wanted to take a Chalmers, and that is why they were trying to put the deal through, so Mr. Boller would take  
10 the Chalmers.

Q. Then it was a complicated affair? A. I guess it was. I have had more trouble with this—

Q. Well, don't tell us about that.

*By Mr. Rinzler:*

Q. Boller was there? A. Yes, sir.

Q. He was satisfied with the arrangement? A. Yes, he was satisfied.

Q. You parted with the whole money? A. He even signed a bill of sale afterwards. Yes.  
20

Q. Is this the bill of sale he gave you at the time the transaction when your money was turned over on your car? A. Yes, that is it.

Mr. Rinzler: I offer the bill of sale and assignment in evidence.

Mr. Green: I object to the bill of sale until it is proved and until it is shown  
30 that the bill of sale is connected up with the Commercial Credit Corporation.

Mr. Rinzler: It is the transaction involved in our defense.

The Court: I will allow it.

Mr. Green: I ask an exception.

(Paper marked Exhibit D-2.)

Q. You did not know this was a note then when you signed it? A. No, sir.  
40

*John Boyko—for Defendant—Direct.*

Q. You say it was not filled in? A. No, sir.

Q. And the paper that was torn off from it since then was also not filled in? A. No, sir.

Q. It was just a whole printed statement? A. That is all.

10 Q. Had you known it was a note would you have signed it? A. I never would.

Mr. Green: I object to that as leading.  
The Court: I will allow it.

Q. Were you told it was a note? A. No, sir.

Q. Did you have any intention of signing a note? A. No, sir.

20 Q. Would you have signed it if you knew it was a note? A. I never would. If I had signed it I would have got paid for it.

Q. You say you left your duty and were not supposed to do it? A. Yes, sir.

Q. And they said if there was a fire alarm they would call you? A. Yes.

Q. Were you in the place more than a fraction of a minute? A. I just went there and signed and right back again, because I was not supposed to leave headquarters.

30 Q. Did you ever pay the money to the Commercial Credit Company on this account? A. No, sir.

Q. Sure? A. Certainly.

Q. Positive? A. Positive. If they can show me they will get the balance.

Mr. Green: I object to that statement.

The Court: Objection sustained. Strike out the latter part as not responsive.

*John Boyko—for Defendant—Direct.*

Q. The fact is, sir, that you did not make a single payment of money or a payment of any money whatsoever to the Commercial Credit Corporation? A. Never made it.

Q. When they notified you later on that they wanted some money from you what did you do? 10  
A. They notified me once and I went up to the Wimple Auto Company, I asked them what the trouble was, I said, "What do you call this stuff," and Wimple says, "Why, what is the matter?" I says, "Look here," and I handed that stuff to him. Then the Commercial Credit Company sent me a letter, I believe it was.

Q. Demanding the money? A. Yes, sir.

Q. You handed it to them? A. Yes, sir. I said, "If you don't straighten this out I am going over 20  
to see a lawyer right away."

*By the Court:*

Q. What did they say? A. They said, "We will fix things up." They took everything over and they were supposed to take it up. Then I didn't hear anything until they went bankrupt; they came and closed the house up, and next day I get a note from the Commercial Credit Com- 30  
pany that—

Q. That is the next day? A. The next day; I came home and there was a note at the house.

Q. Then you turned the matter over to me? A. Yes.

Q. Is that the reason why you don't want to pay any part of it? A. That is the reason I won't pay anything.

Mr. Green: I object to that as leading. 40

*John Boyko—for Defendant—Direct.*

The Court: I think it is an objectionable question. Stricken out.

Mr. Rinzler: I now offer in evidence, your Honor, the part that was torn off from the note at the perforated edge.

10 The Court: Let it be received and marked.

(Paper marked Exhibit D-1.)

20 Mr. Rinzler: May I call to your Honor and the jury's attention that this bill of sale which was marked in evidence is a bill of sale issued originally by the Garfield Auto Company to Adrian Boller for the Maxwell coupe he testified to, and subsequently the purchaser Adrian Boller signed this bill of sale in writing on the inner side of it to the defendant John Boyko on May 16, 1923, and it is witnessed by two witnesses and acknowledged on the same day before a Notary Public.

*By the Court:*

30 Q. What kind of a car did you buy? A. A coupe, sir.

Q. What kind of a coupe? A. Maxwell coupe, sir.

Q. What year? A. Why, I couldn't tell you just now what year it was.

Q. Did it have a locking device on it? A. Yes, I think it had.

40 Q. What kind? A. Why, I forget the name of it. I forget the name of it, Judge. I think it was a Simplex or something like that, I think it was.

*John Boyko—for Defendant—Direct.*

Q. All right. A. Because I had three cars.

Q. How old were you at that time, 1923? A. About 27 years old.

Q. How old are you now? A. Thirty-one or thirty-two, going on thirty-two.

10 Q. Your mathematics are bad. Did you tell him how old you were at that time? A. No, sir; they didn't ask me.

Q. Did they fill any part of this paper in? A. No, sir.

Q. Exhibit D-1? A. Is that the piece that is torn off?

Q. Yes? A. No, sir; they didn't fill anything while I was there.

20 Q. So when you signed it you signed it in two places? A. Yes, sir.

Q. Or three? A. Two places, I think.

Q. Well, there is one on the front? A. I think it is two.

Q. That is your signature? A. Yes, sir.

Q. Here is one on the back? A. Yes, that is mine.

Q. And here is the one on the bottom? A. Yes, that is three.

30 Q. There was no writing at all? A. No writing at all on the three.

Q. Where was this, down below? A. I think—yes, sir, it was all on the bottom, I think that is just the way it is.

Q. This says you are 29 years of age. How would they get that? A. I bought cars from them before, Judge. I bought the touring car from them.

Q. You were 29 then? A. Well, I guess I was 28 or 29, something like that.

40 Q. Then where did you live at that time? A.

*John Boyko—for Defendant—Direct.*

Why, I lived at 28 Burgess Place, sir. You know, Judge, I wired that—

Q. That is what it says here, too? A. I bought a car from them before. I wired that—

10 Q. How long had you been a fireman at that time? A. Why, about four or five years, three or four.

Q. This says five years. How did they know that? A. Right across the place.

20 Q. Had they been in the place for five years across the street? A. I guess they had been around there for quite a while. They had been around that corner and a block away on the opposite corner. I bought the car from them before. I bought two, in fact, Judge. I never had no trouble—

Q. Who was the chief of the firemen at that time? A. Chief Bowker, sir.

Q. Who was captain? A. The captain was either Captain Shay or Captain Bowen.

Q. Ever hear of Captain Turner? A. No, sir; he was a captain of detectives; he is no fireman.

Q. But these are references, aren't they? A. I guess they are.

30 Q. Did you give them references? A. No, I did not give them no references at that time.

Q. Do you know a George Mapes? A. No, sir, I don't know him, sir.

Q. Living in Prospect Street, Passaic? A. No, sir; I don't know either one of the two.

Q. Do you know Chief Bowker? A. I know Chief Bowker, yes.

Q. You know Captain Turner? A. Yes.

Q. Did you give them these names? A. No, sir.

40 Q. For references? A. No, sir; didn't give them anything.

*John Boyko—for Defendant—Direct.*

Q. You didn't tell them you were a fireman for five years? A. No, sir.

Q. Didn't tell them you were living at 28 Burgess Place? A. They had that.

Q. You didn't tell them? A. No, sir.

10 Q. You didn't tell them you were 29? A. No, sir.

Q. Didn't tell them you had two dependents? A. No, sir.

Q. Didn't tell them you were married? A. No, sir.

Q. Didn't tell them you had no checking account? A. No; I didn't tell them anything about a check account.

20 Q. You didn't tell them you owned no real estate? A. No, sir.

Q. Didn't tell them you were an electrician? A. Why, I wired their place.

Q. You didn't tell them that? A. No, sir; I didn't tell them, sir.

Q. I guess that is what e-l-e-c-t-r-i-c-i-o-n means? A. Yes, sir. They owe me for that job yet, Judge; they owe me \$55 for that job yet.

Q. Proceed?

*By Mr. Rinzler:*

30

Q. Mr. Boyko, you say you had previously bought a car from them? A. Yes, sir.

Q. And all of the information about your age and whom you had given them as references, they already had that data? A. They probably got it from this other.

Q. On this occasion you gave them no such information at all? A. No, sir, not on that transaction.

40

*John Boyko—for Defendant—Cross.*

Q. It was a cash transaction? A. That is all. That was cash, yes, sir.

Q. You say when you previously bought a car it was on the financial arrangement? A. Yes, sir; and it was paid for. I paid up.

10 Q. By the way, what did you do before you became a fireman, for a living? A. I was in the Navy.

Q. How long were you in the Navy? A. About seven years.

Q. Before you went to the Navy, what did you do? A. Why, putting corners on paper boxes.

Q. In a factory? A. Yes, sir.

Q. Ever in business? A. No, sir.

20 Q. Then you were in the Navy for seven years? A. Yes, and I was put in the electrical school and went for a year to the Brooklyn Navy Yard electric school, and that is where I learned my electrical training.

Q. Been a fireman since that? A. Yes, sir.

Q. All told, how many years do you know the Wimple Auto Company to have been in existence around the Fire Department? A. Since I was in the Fire Department.

30 Q. Since when? A. Say since 1918.

*Cross examination by Mr. Green:*

Q. Mr. Boyko, you say that you bought other cars on a conditional sale contract? A. Yes.

Q. You have seen a conditional sale contract before then, haven't you? A. Yes, I have seen a conditional contract.

40 Q. You have seen it on numerous occasions? A. Yes, but it was a different type.

*John Boyko—for Defendant—Cross.*

Q. Just a minute. You have also seen a bill of sale on an automobile? A. Yes, sir.

Q. Well, even though you have been working in the paper box factory and been in the Navy and in the Fire Department, you are able to read and write? A. Yes, sir. 10

Q. If you look at a paper that shows in heavy type "Conditional sale contract" you can read that, can't you? A. I sure could, but there was nothing on there at the time.

Q. There was nothing on at all? A. You mean printed?

Q. The printing? A. Yes.

Q. You saw that said conditional sale contract? A. No, I never took notice.

Q. You had an opportunity? A. I wouldn't 20 say I had an opportunity; I was there for a second; I ran over and ran back. If the Chief finds out I leave the post while I am on duty I suppose I will get something.

Q. How long have you been a fireman? A. About six or seven years.

Q. You know you are not allowed to leave your post, are you? A. Certainly.

Q. The leaving of your post, that was a breach of your trust, wasn't it? A. Well, I wouldn't 30 say exactly. It is right across the corner, and I don't see where—

Q. You are not supposed to go out during the time?

Mr. Rinzler: I object to it as irrelevant.

A. We hang around that place; that is, the front of the building, not across. 40

*John Boyko—for Defendant—Cross.*

Q. But you did violate the rules in going out to transact some business?

Mr. Rinzler: I object.

10 A. I will say in one way, yes.

Q. How long did you say you were over there?

A. Why, I don't know. I couldn't see—I couldn't stay a half a minute; I don't think a half a minute.

Q. How many times were you asked to write your name in a half a minute? A. Well, whatever you see there.

Q. When anybody puts a piece of paper in front of you do you sign your name and do not look at it? A. Well, no; no, I don't.

Mr. Rinzler: I object.

The Court: I will allow it.

A. If I got the time I would look it over.

Q. Is it your practice if you have not the time to scribble your name in in a hurry? A. Not exactly. I had dealt with these people before and bought a car from them before and put in this wiring—as I said before—and they always seemed good to me, I never expected anything like that to turn up.

Q. In regard to the contract here, you signed your name here? A. Yes.

Q. Did you look above at all? A. Did not look above at all.

Q. Was there anything to cover up the part above? A. No, I wouldn't say.

Q. There was nothing to cover? A. I never took notice; I wouldn't say there was something to cover.

*Adrian Balla—for Defendant—Direct.*

Q. If you had looked you would have seen there was something there? A. Yes, sure.

Q. You did not look? A. Exactly, because I did not have the time.

Q. You did not have the time, and that is your only excuse? A. That is all.

*Re-direct examination by Mr. Rinzler:*

Q. You believed and trusted in these people when they told you to sign? A. Why, sure.

Mr. Green: I object.

The Court: You have already shown that.

Q. That is all?

ADRIAN BALLA, SWORN.

*Direct examination by Mr. Rinzler:*

Q. Where do you live? A. 334 River Road, Garfield.

Q. This is a bill of sale for this Maxwell coupe when you bought it from the Wimple Auto Company, isn't it? A. Yes, sir.

Q. That is your signature assigning the bill of sale? A. Yes.

Q. That is all.

No cross examination.

DEFENDANT RESTS.

## PLAINTIFF'S TESTIMONY IN REBUTTAL.

WILLIAM WILL, recalled.

*Direct examination by Mr. Green:*

10 Q. Mr. Will, is the Wimple Auto Company or any other automobile dealer your agent for the collection of moneys or any duty? A. They are not.

Mr. Rinzler: I object to this as not rebuttal and it is not the proper way of proving it.

The Court: I do not think it is proper rebuttal, but I will allow it.

No cross examination.

20

BOTH SIDES REST.

---

MOTION FOR A DIRECTION OF VERDICT.

Mr. Rinzler: If your Honor please, I move for a direction of verdict in favor of the defendant, and I do not want your Honor to consider my motion unreliable solely because I did not move  
30 for a non-suit; my object was more trustworthy in not moving for a non-suit, and I did it because I wanted you to have the benefit of the final culmination of the case rather than leaving it open for further litigation. I move for a direction of verdict in favor of the defendant upon these grounds, sir. Your Honor is no doubt familiar with the statute which says that no corporation, foreign corporation, shall maintain any business or engage in or transact any business in New Jer-  
40

*Motion for a Direction of Verdict.*

sey unless and until it shall first become authorized by a proper certificate issued. After they file a certain statement in the office of the Secretary of State of New Jersey they become authorized to transact business in New Jersey, and until that time any such transaction is void. 10

Now the evidence shows, if your Honor please, that the plaintiff was a foreign corporation engaged in the financing business, that it did not file in the office of the Secretary of State in the manner required by the statute, the corporation Act, any such statement, and was not authorized to transact business in New Jersey until July the 22nd, 1924, some considerable time after the suit was started. Now the statute says no suit shall be maintained until they file such a certificate. 20  
Until they filed that certificate, until July 22nd, 1924, they had no right whatsoever to bring this action, and therefore, having engaged in many transactions in New Jersey for the eight years previous, the transactions are void, and they were not legally allowed to bring an action in New Jersey on that transaction until they were authorized to transact business in New Jersey. The paper shows, if your Honor please, that suit was started on November 19th, 1923; they were not  
30 authorized to transact business until July 2nd, 1924, and for that reason I am entitled to have my motion for direction of verdict granted. I base my motion, if your Honor please, upon the further reason that we have shown fraud in this transaction, and I submit that we have shown this fraud, which is uncontradicted and undenied on the record as it stands before your Honor now. (Citing Eaton & Gilbert on Commercial Paper.)

Mr. Green: On the second point of fraud, your 40

*Motion for a Direction of Verdict.*

Honor, I would like to ask for a direction of verdict, on the ground that we have shown that we are an innocent purchaser for value without notice before maturity. We bought the note on May 24th, seven days after it was made; we paid a valuable consideration, and there is absolutely no testimony in the case to show that the Wimple Auto Company was our agent or the fact that fraud was brought home to us.

The Court: On the defendant's motion for a directed verdict two grounds were alleged, first, that the corporation was not qualified to maintain an action in this State, which action was begun prior to July, 1924, at which time it secured a certificate from the proper authorities authorizing it to do business in this State; secondly, that there was fraud in the inception of the contract.

On the first point I hold that there should be a directed verdict under Section 98 of the General Corporation Act of New Jersey, which says that no action can be maintained by a foreign corporation until it has complied with the Act by getting a proper certificate. That such a certificate was not procured, and it seems to me that under the clear language of that Act the action may not be even commenced until such a certificate is secured. Counsel has pointed out that in the case at bar there is some testimony that this contract or transaction took place in New York, and that the plaintiff corporation was not doing business in this State for which it then had no certificate. But that is not the point that is involved in this decision, and I do not need to pass on the question of whether or not the transaction itself was done in the territory of New Jersey or in the territory of New York, but I base my decision

*Motion for a Direction of Verdict.*

wholly on Section 98 of the Corporation Act and direct a verdict for the defendant on the ground that under that section the plaintiff corporation had no authority to bring suit at the time it did in this State; and the decision being on that point, there is no ruling on the second ground urged for a directed verdict.

Mr. Green: Your Honor, may I have an exception to the ruling of your Honor directing a verdict in favor of the defendant?

The Court: Certainly.

Mr. Green: May I also have an exception to the ruling of your Honor in failing to direct a verdict in favor of the plaintiff?

The Court: Yes.

Mr. Green: May I also have an exception to the ruling of your Honor that even though the testimony was that the note was negotiated in New York, notwithstanding that, Section 98 of the Corporation Act applied, and that the plaintiff is not allowed to proceed with the suit?

The Court: You may.

**Plaintiff's Exhibit P-1.**

(Note)

Passaic, New Jersey, May 17th, 1923

10 Undersigned promises to pay to the order of Wimple Auto Co., Inc., Nine Hundred Seventy-eight and 66/100 Dollars (\$978.66). Payable at the office of Commercial Credit Corporation, New York, N. Y., in 12 monthly installments of \$81.55 each, the first installment payable one month after date, balance of installments payable on even date of each succeeding month thereafter until this note is fully paid, with interest on each installment after its maturity at the highest law-  
20 ful rate.

If any installment of this note is not paid when due, the entire amount unpaid hereon shall become due and payable forthwith at the election of the holder of this note.

Undersigned hereby irrevocably authorizes any attorney-at-law to appear in any court of record in the United States and waive issue and service of process and confess judgment against the Undersigned in favor of the holder hereof for such  
30 amount as may appear to be unpaid hereon after maturity, together with costs and expenses and an attorney's reasonable fee, and to release all errors and waive all right of appeal.

All benefits of valuation, appraisal and exemption laws are hereby waived.

Presentment, demand, protest and non-payment are hereby waived.

JOHN BOYKO (Seal)

40

*Plaintiff's Exhibit P-2.*

Endorsements as follows:

Without Recourse

For value received pay to the order of  
COMMERCIAL CREDIT CORPORATION  
NEW YORK

10

WIMPLE AUTO CO., INC.  
Name illegible

Pay to the order of  
Metropolitan Trust Co. of the  
City of N. Y.

Commercial Credit Corporation  
formerly  
Continental Guaranty Corporation

20

By A. FRAUR,  
Treas.

(Twenty cents in cancelled stamps.)

**Plaintiff's Exhibit P-2.**

30

(Voucher)

COMMERCIAL CREDIT CORPORATION  
New York

Bank No. 73530

Voucher No., 84700; Date, 5 24 23; Check No.,  
73530; Pay to the order of Wimple Auto Co., Inc.;  
Amount, 1,484.61.

40

*Plaintiff's Exhibit P-3.*

One thousand four hundred eighty-four Dollars  
Sixty-one Cents.

COMMERCIAL CREDIT CORPORATION

Name illegible  
Treasurer  
Secretary

10

To

Irving National Bank,  
New York, N. Y. 1-67

Countersigned (on side)

(Name illegible)

Cashier

Endorsement as follows:

20

Wimple Auto Co., Inc. (in writing)

**Plaintiff's Exhibit P-3.**

Credit Dept. received—3 o'clock, May 23, 1923  
(rubber stamp).

Credit Dept. passed—4 o'clock, May 23, 1923  
(rubber stamp).

Discount Dept. received—Continental Guaranty  
Corp.; out 9:45, 23 (rubber stamp).

30

Re-purchase agreement with insurance—Paid  
May 24, 1923, Continental Guaranty Corp., New  
York (rubber stamp).

Bills receivable, \$978.

Date of maturity, 5/17/24.

Discount figured by W. H. P.

Ins. A (\$1080), \$29.97.

Bills purchased ..... \$861.71

Disct. retained ..... 116.95

40

Total ..... \$978.66

**Plaintiff's Exhibit P-4.**

(Exemplified copy of Certificate of Authority.)

STATE OF NEW JERSEY,  
DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the  
State of New Jersey, DO HEREBY CERTIFY that 10  
COMMERCIAL CREDIT CORPORATION, a Corporation  
organized under the laws of the State of New  
York, has complied with all the requirements of  
an act entitled "An Act concerning Corporations,  
(Revision of 1896)," and that the business of  
said corporation to be carried on within the State  
of New Jersey is such as may be lawfully carried  
on by corporations incorporated under the laws  
of this State for similar business. 20

IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed my Official Seal at Trenton,  
this Twenty-second day of July, A. D. 1924. 20

THOMAS F. MARTIN,  
Secretary of State.

(Seal)

STATE OF NEW JERSEY,  
DEPARTMENT OF STATE. 30

I, THOMAS F. MARTIN, Secretary of State of  
the State of New Jersey, DO HEREBY CERTIFY that  
the foregoing is a true copy of Certificate of  
Authority issued to the COMMERCIAL CREDIT COR-  
PORATION, a New York corporation, authorizing  
said corporation to transact business in this  
State, as the same is taken from and compared  
with the original. Issued July 22nd, 1924, and  
now remaining on file and of record in my office. 40

Plaintiff's Exhibit P-4.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Eleventh day of August, A. D. 1924.

THOMAS F. MARTIN,  
Secretary of State.

10 (Seal)

STATE OF NEW JERSEY.

I, the Governor of the State of New Jersey, DO HEREBY CERTIFY that Thomas F. Martin, Esquire, who hath signed the annexed Certificate, and whose Official Seal is thereto annexed, was, at the doing thereof, and now is, SECRETARY OF STATE of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations, that the said signature is in the proper handwriting of the said THOMAS F. MARTIN, and the seal his seal of office, and that the said Certificate is in due form of law and by the proper officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the GREAT SEAL of the STATE of OF NEW JERSEY to be hereunto affixed at the City of Trenton, in said State, this Eleventh day of August, in the year of our Lord one thousand nine hundred and twenty-four.

GEO. S. SILZER,  
Governor.

By the Governor,  
THOMAS F. MARTIN,  
Secretary of State.

40 (Seal)

D E

CO

Commercial  
Credit  
Corporation  
Form G.A. 1

Joh  
W

Purchaser hereby acknowledges examination, which Purchaser a

MAKE	Type of Body
Maxwell	Coupe

List Price (F.O.B. Factory) \_\_\_\_\_  
 Freight and Tax \_\_\_\_\_  
 Extra Equipment (Itemize) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Total Cash Price \_\_\_\_\_  
 Financing Charge \_\_\_\_\_  
 \*Total Time Price \_\_\_\_\_

Do not use this form if Dealer or Purchaser is located in Pennsylvania.

Title to said Motor Vehicle and other obligations are discharged upon request of this contract upon request of this contract, or the renewal notice to Purchaser. The location of said Motor Vehicle shall be the County and State of this contract or any interest in this contract shall be void and voiding liquor contrary to law. Purchaser shall keep said Motor Vehicle until fully paid. If Purchaser should fail to pay on said note until fully paid, any execution, attachment or lien on said Motor Vehicle and all other claims for damage may be found, and may entitle Seller to retain the Motor Vehicle; or said Motor Vehicle; or said Motor Vehicle to Purchaser, and Seller shall be paid to Purchaser; and in doing hereby confess judgment. This agreement constitutes the entire contract, and said Motor Vehicle is the essence of this agreement. The remedies hereunder are cumulative. This agreement shall apply to Purchaser and Seller.

IN WITNESS WHEREOF

WITNESSES:  
 [Signature]  
 [Signature]

10

20

30

40

Plaintiff's Exhibit P-4.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Eleventh day of August, A. D. 1924.

THOMAS F. MARTIN, Secretary of State.

10 (Seal)

STATE OF NEW JERSEY.

I, the Governor of the State of New Jersey, DO HEREBY CERTIFY that Thomas F. Martin, Esquire, who hath signed the annexed Certificate, and whose Official Seal is thereto annexed, was, at the doing thereof, and now is, SECRETARY OF STATE of the State of New Jersey, duly appointed, commissioned and sworn, and that full faith and credit are to be given to his official attestations, that the said signature is in the proper handwriting of the said THOMAS F. MARTIN, and the seal his seal of office, and that the said Certificate is in due form of law and by the proper officer.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the GREAT SEAL of the STATE of OF NEW JERSEY to be hereunto affixed at the City of Trenton, in said State, this Eleventh day of August, in the year of our Lord one thousand nine hundred and twenty-four.

GEO. S. SILZER, Governor.

By the Governor, THOMAS F. MARTIN, Secretary of State.

40 (Seal)

Commercial Credit Corporation Form G.A. 1

CONDITIONAL SALE CONTRACT

Passaic N.J. May 17 1923 (Date)

John Boyko hereinafter called Purchaser (PRINT Purchaser's name to make sure of correct spelling)

Wimple Auto Co Inc hereinafter called Seller. (Dealer's Name, Street, City, State)

Purchaser hereby acknowledges delivery and acceptance of the following described Motor Vehicle in its present condition, after thorough examination, which Purchaser agrees to buy and Seller agrees to sell on the following terms and conditions:

Table with columns: MAKE, Type of Body, Year and Model, Manufacturer's Serial Number, Motor Number, Name of Locking Device, If truck tons capacity. Includes sub-tables for COST and PAYMENTS.

Title to said Motor Vehicle shall remain in Seller until all amounts due hereunder are fully paid in cash, and when paid and all other obligations are discharged by Purchaser, Seller shall give to Purchaser an absolute bill of sale or other evidence of satisfaction of this contract upon request, which if necessary shall be filed or recorded by Purchaser.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals to this contract. Wimple Auto Co Inc (Seal) By [Signature] (Official Title) John Boyko (Seal) (Purchaser sign here)

Purchaser sign here if Motor Vehicle is actually in your possession, but do not sign here unless you have actually received Motor Vehicle, since by doing so you might place yourself in the position of being a party to a fraud.

02542

IN TESTIM  
my hand and  
this Eleventh

10 (Seal)

ST

I, the Govern  
HEREBY CERTI  
who hath sig  
whose Official  
doing thereof  
20 of the State  
missioned an  
credit are to  
that the said  
writing of the  
seal his seal o  
is in due form

IN TESTIMO  
my hand and  
30 of OF NEW J  
City of Trent  
of August, in  
nine hundred

By the Govern  
THOMAS F. M  
Secretar

40 (Seal)

DEFEND

PUR

(Plea

City Passaic St

To the "Seller" named in the contract on rever

For the purpose of securing credit from  
reverse side hereof, and in order that you n  
therein undersigned makes the following re

Residence Address 28 Burgess Pl  
Street and No.

Previous Address 28 Burgess

Business Address Fire Headquarters  
Street and No.

Employed by City of Passaic

If in business for self, in what business engaged?

Married? Yes Age? 29

Carry savings account Number None with

Carry checking account with

Business references See My  
Chief Bowker  
Capt Turner

Do you owe any past due debts? No

Give particulars

Description and location of Real Estate or Personal  
Description None

Check the source or sources of revenue from which

Cash on  Hand Salary  Con

What other sources? Electric

Car will be used for Pleasure  Business  Pa

(Check proper square)

Remarks

Undersigned will pay said note irrespe

sentations. You and / or Commercial C

other papers executed by undersigned in

FOR VALUE RECEIVED, Undersig

New York, N. Y., his, its or their right,

Vehicle referred to therein. Commercial

and other papers executed, endorsed or

WITNESS, the signature and seal of

10

20

30

40

IN TEST  
my hand a  
this Eleven

10 (Seal)

I, the Go  
HEREBY CE  
who hath  
whose Office  
doing there  
20 of the Stat  
missioned  
credit are  
that the se  
writing of  
seal his seal  
is in due f

IN TEST  
my hand an  
30 of OF NEW  
City of Tre  
of August,  
nine hundre

By the Go  
THOMAS F.  
Secre  
40 (Seal)

DEFENDANT'S EXHIBIT D1.(back)

PURCHASER'S STATEMENT.

(Please answer all questions and fill in all blanks)

City Passaic State New Jersey Date May 17 1923

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

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 Commercial Credit Corporation the note mentioned therein undersigned makes the following representations: Individual  Partnership  Corporation

Residence Address 25 Burgers Pl Passaic Passaic NJ  
(Check proper square.)

Previous Address 28 Burgers Pl Passaic  
(If less than two years at present address)

Business Address Fire Headquarters  
City of Passaic City Passaic County Passaic State NJ

Employed by City of Passaic Position Fireman How long? 5 yrs

If in business for self, in what business engaged? None How long? None

Married? Yes Age? 29 Number of dependents? 2 Monthly income, \$ None

Carry savings account Number None with None Bank None Branch None

Carry checking account with None Bank None Branch None

Business references Dep Mayor Prospect St Passaic NJ  
Chief Bowker Fire Headquarters  
Capt Turner Police Headquarters

Do you owe any past due debts? No Total, \$ None Have you ever been sued? No

Give particulars. Description and location of Real Estate or Personal Property owned by and in name of undersigned.

Description Location Cash Value Owning on Same  
None

Check the source or sources of revenue from which you expect to make payments:  
Cash on  Hand  Salary  Commissions  Professional fees  Expected profits of business  Other Sources

What other sources? Electrician on day off

Car will be used for Pleasure  Business  Passenger hire   
(Check proper square)

Remarks

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

P. John Boyle  
(Purchaser)

DEALER'S ASSIGNMENT

FOR VALUE RECEIVED, Undersigned does hereby sell, assign and transfer to Commercial Credit Corporation, New York, N. Y., his, its or their right, title and interest in and to the contract on the reverse side hereof and the Motor Vehicle referred to therein. Commercial Credit Corporation is hereby authorized to correct patent errors in said contract and other papers executed, endorsed or assigned by Undersigned in connection therewith.

WITNESS, the signature and seal of Undersigned at Passaic NJ Date May 17 1923

D. Wampler Co Inc (Seal)

By H H Wampler D M  
Official Title

IN T  
my han  
this Ele

10 (Seal)

I, the  
HEREBY  
who ha  
whose O  
doing th  
20 of the S  
missione  
credit an  
that the  
writing  
seal his  
is in du

IN TE  
my hand  
30 of OF N  
City of  
of Augus  
nine hur

By the  
THOMAS  
Se  
40 (Seal)

Defendant's Exhibit D-1.

(Reprint.)

CONDITIONAL SALES CONTRACT.

10

20

30

40

**Defendant's Exhibit D-2.**

(Reprint.)

MOTOR VEHICLE BILL OF SALE.

10

20

30

40


(ASSIGNMENT OF BILL OF SALE BY INDIVIDUAL OR PARTNERSHIP)

I (we) Adrian Balla of  
the Larfield [city or town], County of Bergen  
and State of New Jersey, for and in consideration of the sum of  
one (1) Dollars,  
to me (us) in hand paid, do hereby sell, assign, transfer and set over unto  
John Boyko of Passaic [city or town]  
in the County of Passaic and State of New Jersey  
the said motor vehicle described in the attached Bill of Sale.

In Witness Whereof I (we) have hereunto set my (our) hand and seal  
this 16th day of May, 1923

WITNESS:  
[Two Witnesses Required.]

M. D. Winpl  
State of New Jersey,  
County of Passaic } ss.

+ Adrian Balla 

Be it Remembered that on this 16th day of May, 1923,  
before me a Notary Public personally appeared

Adrian Balla  
who, I am satisfied (is a member of the partnership of)

(which) is the assignor in the foregoing Assignment, and I having personally made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed (and as the voluntary act and deed of said partnership) for the uses and purposes therein expressed. [Strike out all words in brackets if from individual]

A. V. P. Doremus  
Notary Public

(ASSIGNMENT OF BILL OF SALE BY INDIVIDUAL OR PARTNERSHIP)

I (We) of  
the [city or town], County of  
and State of, for and in consideration of the sum of  
Dollars,  
to me (us) in hand paid, do hereby sell, assign, transfer and set over unto  
of [city or town]  
in the County of and State of  
the said motor vehicle described in the attached Bill of Sale.

In Witness Whereof I (we) have hereunto set my (our) hand and seal  
this day of , 19

WITNESS:  
[Two Witnesses Required.]

State of New Jersey, } ss.  
County of

Be it Remembered that on this day of , 19  
before me a personally appeared

who, I am satisfied (is a member of the partnership of)

(which) is the assignor in the foregoing Assignment, and I having personally made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed (and as the voluntary act and deed of said partnership) for the uses and purposes therein expressed. [Strike out all words in brackets if from individual]

Trans. license June 19, 1923  
Reg. No. 20905X 6110889

DEFENDANT'S EXHIBIT D2.

Know all Men by these Presents:

That Wimple Auto Co Inc. [person or partnership making the sale]

of Passaic in the county of Passaic

and State of New Jersey party of the first part, for and in consideration of

the sum of One (1) Dollars,

paid by Adrian Balla [purchaser]

of Garfield in the County of Bergen

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, his heirs, executors, administrators, (successors) and assigns, (Strike out "heirs, executors, administrators" if sale is to a corporation. Strike out "successors" if sale is to individual or partnership).

Maxwell Coupe 25 Serial No 379711 Motor No. 408204

To have and to hold, the same unto the said party of the second part, his heirs, executors, administrators, (successors) and assigns, forever. (Strike out "heirs, executors, administrators" if sale is to a Corporation. Strike out "successors" if sale is to individual or partnership).

And said Herman Wimple of Wimple Auto Co. Inc. [party making the sale]

do es for himself (or themselves) his (or their) 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 heirs, executors, administrators, (successors) and assigns against all and every person or persons whatsoever.

In Witness Whereof, I have hereunto set my (our) hand and seal this 5th day of May, One Thousand Nine Hundred and Twenty Three

Signed, Sealed and Delivered in the Presence of

Wimple Auto Co Inc Herman Wimple

State of New Jersey, County of Passaic ss.:

Be it Remembered that on this 5th day of May, 1923, before me a Notary Public, New Jersey, personally appeared Herman Wimple,

who, I am satisfied (is a member of the partnership of) is General Manager of Wimple Auto Co., Inc. (which) is the seller in the foregoing Bill of Sale, and I having personally made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed (and as the voluntary act and deed of said partnership) for the uses and purposes therein expressed.

Robert H. Davidson Notary Public, New Jersey

DEFENDANT'S EXHIBIT D2.

NOV FEB 1 1927

New Jersey Court of Errors and Appeals.

Action at Law on Appeal from Passaic County Circuit Court.

COMMERCIAL CREDIT CORPORATION, a corporation, Plaintiff-Appellant,

vs. JOHN BOYKO, Defendant-Respondent.

BRIEF OF PLAINTIFF-APPELLANT.

Statement.

This is an appeal by the plaintiff from the judgment, on a directed verdict, of the Passaic County Circuit Court, rendered in an action on a promissory note in favor of the defendant, and against the plaintiff, by the Court, sitting with a jury.

Facts.

On May 17, 1923, defendant agreed to buy an automobile from the Wimple Auto Co., for \$1,468, and executed a conditional sales contract to said Wimple Auto Co., wherein he agreed to pay \$489.34 in cash, on or before delivery, and the balance of \$978.66 in twelve equal monthly installments of \$81.55 each, according to the tenor of promissory note signed by defendant at the same time (Case, p. 59, Exhibit D-1, p. 54; Exhibit P-1).

110 FEB. T. 1927

### New Jersey Court of Errors and Appeals.

Action at Law on Appeal from Passaic County  
Circuit Court.

COMMERCIAL CREDIT CORPORATION, a corporation,  
*Plaintiff-Appellant,*

vs.

JOHN BOYKO,  
*Defendant-Respondent.*

#### BRIEF OF PLAINTIFF-APPELLANT.

##### Statement.

This is an appeal by the plaintiff from the judgment, on a directed verdict, of the Passaic County Circuit Court, rendered in an action on a promissory note in favor of the defendant, and against the plaintiff, by the Court, sitting with a jury.

##### Facts.

On May 17, 1923, defendant agreed to buy an automobile from the Wimple Auto Co., for \$1,468, and executed a conditional sales contract to said Wimple Auto Co., wherein he agreed to pay \$489.34 in cash, on or before delivery, and the balance of \$978.66 in twelve equal monthly installments of \$81.55 each, according to the tenor of promissory note signed by defendant at the same time (Case, p. 59, Exhibit D-1, p. 54; Exhibit P-1).

New Jersey State Library

DEFENDANT'S EXHIBIT D-2

A2216

The W. H. Shurts Co., Law Blank Publishers,  
280-284 Plane Street, Newark, N. J.

**Know all men by these Presents:**

That **Wimple Auto Co. Inc.** [person or partnership making the sale]

of **Passaic** [City or Town] in the county of **Passaic**

and State of **New Jersey** party of the first part, for and in consideration of

the sum of **One ( 1 )** Dollars,

D2  
K

On or about May 24, 1923, said Wimple Auto Co. sold said contract and note to plaintiff in due course.

The defendant admitted signing contract in several places, and note (Case, p. 34, ll. 20-25), but claimed that same were signed by him in blank, and that he was in a hurry at the time, and that he did not read or carefully examine them, although he was in a position to do so (Case, p. 47, ll. 10-27).

Commercial Credit Corporation, the plaintiff, is a corporation existing under the banking laws of the State of New York. The present suit was commenced on November 19, 1923, and subsequently, on July 22nd, 1924, plaintiff obtained certificate from Secretary of State of New Jersey to do business in this State as a foreign corporation (Case, pp. 57-58; Exhibit P-4).

Defendant, in his answer, set up, by way of defense, that note was secured by fraudulent representations of the agents and servants of the plaintiff, that there was no consideration for note, that plaintiff was not a *bona fide* holder for value, before maturity and without notice, and that plaintiff was a foreign corporation not licensed to transact business in the State of New Jersey.

There was no testimony whatsoever on part of the defendant which showed an agency relationship between plaintiff and Wimple Auto Co., or that any knowledge or notice was brought home to plaintiff of fraud practice upon the defendant, or of any fraudulent representations.

The testimony of plaintiff was to the effect that it purchased note for value, before maturity, without notice of any defect, and that the Wimple Auto Co. was not its agent for any purpose.

Although it was called to the Court's attention that note was bought in New York (Case, p. 52,

ll. 30-35), notwithstanding, on motion of defendant, a verdict in favor of the defendant was directed, on the ground that plaintiff had not complied with Section 98 of our Corporation Act, which reads as follows:

"Until said corporation so transacting business in this state shall have obtained said certificate of the Secretary of State, it shall not maintain any action in this state, upon any contract made by it in this state."

Although the Court held that there should be a verdict in favor of the defendant, the jury was not directed to bring in said verdict, and same was not pronounced by open voice in open court.

Although no verdict was brought in by the jury, a judgment for costs in the sum of \$35.60 was entered in favor of the defendant, and against the plaintiff.

### *Grounds of Appeal.*

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

2. That the Circuit Court erred in refusing to direct a verdict in favor of the plaintiff and against the defendant.

3. That the Circuit Court erred in ruling that:

"Counsel has pointed out that in the case at bar, there is some testimony that this contract or transaction took place in New York, and that the plaintiff corporation was not doing business in this state, for which it then had no certificate. But that is not the point that is involved in this decision, and I do not need to pass on the question

of whether or not the transaction itself was done in the territory of New Jersey or in the territory of New York, but I base my decision wholly on Section 98 of the Corporation Act, and direct a verdict for the defendant, on the ground that under that section the plaintiff corporation had no authority to bring suit at the time it did in this state."

4. That the Circuit Court erred in entering judgment for the defendant without the rendition of a verdict by the jury.

### POINT ONE.

**Plaintiff was entitled to maintain this action, as it had already obtained certificate of the Secretary of State.**

This point deals with appeal ground No. 1.

Section 98 of our General Corporation Act (Revision of 1896) reads as follows:

"Until such corporation so transacting business in this state shall have obtained said certificate of the Secretary of State, it shall not maintain any action in this state, upon any contract made by it in this state."

The construction placed upon the word "maintain" by the trial Court is to "commence" or "begin" (Case, p. 52, ll. 29-30).

Webster's New International Dictionary, 1925 Edition, defines it as follows:

"To hold or keep in any particular state or condition, especially in a state of effi-

ciency or validity; to support, sustain, or uphold; *to keep up*; not to suffer, to fail or decline; as, to maintain a certain degree of heat in a furnace; to maintain a fence or railroad; to maintain the digestive process or powers of the stomach; to maintain a legal action.

*To continue* or persevere in or with; *to carry on*; as, to maintain an attack; to maintain a correspondence.

To bear the expense of; to support; *to keep up*; to supply with what is needed; as, to maintain one's life."

A careful reading of said definitions will show that the actual meaning placed upon the word is, "to continue", "to keep up", and not "to commence", or "begin", as held by the trial Court.

In Ruling Case Law, it is said:

"A number of cases, indeed, go to the extent of holding that even under statutes forbidding foreign corporations to maintain actions on contract made within the state until they have complied with the terms prescribed by the statute, a contract made within the state by non-complying corporations may be enforced in the courts of the state upon the corporation's compliance with the statute, even though such compliance does not take place until after the bringing of the suit" (12 R. C. L., p. 59).

Justice Lloyd, speaking for the Supreme Court, in *Protective Finance Corporation v. Glass*, 100 N. J. L. 885, at page 87, says:

"Consideration of the legislation would seem to disclose a purpose on the part of the Legislature to interdict the transaction of business in this state, unless upon the

procuring of the necessary certificate from the Secretary of State, and to impose a penalty for its violation. *It is to be noted, however, that this penalty is the only penalty, and is to be recovered at the suit of the Attorney-General. This is as far as the Statute goes in penalizing the offender. The next apparent intention is to suspend the right of action upon such transactions until the certificate is secured.* There are numerous statutes in the various states of the Union of similar nature, a number of them existing before the enactment of the legislation in question. In some states, the right of action is barred entirely; *in others, as in this state, the right of action is suspended, and the judicial interpretation placed upon the latter class has been to withhold the right to sue only and until the necessary certificate had been obtained, holding that a different construction would open an avenue of easy escape to the dishonest debtor, and produce in many cases a harsh result, especially where the default may be due to oversight and neglect, rather than intentional wrong.* The cases bearing upon the subject will be found collated in C. J. 14 A. 1302, 1303. (Italics ours.)

Plaintiff-appellant on this substantial ground urges that the Circuit Court erred, and that the judgment should be reversed.

## POINT TWO.

**The contract upon which this suit was commenced was made in the State of New York, and as a result, our Corporation Act did not apply.**

It will be noted, that in appeal ground No. 3, the trial Court ruled otherwise, in which respect we contend the trial court erred.

The provision of the Corporation Act, Section 98, relative to suits by foreign corporations, does not apply to contracts made outside of this State, *Hildreth Granite Co. v. Hudson Freeholders*, 87 N. J. Eq. 316; also see *Lehigh Structural Steel Company, et al. v. Atlantic Smelting and Refining Works, et al.*, 92 N. J. Eq. 131.

“When an order is signed by the vendee in this State, and then transmitted to the foreign corporation of another State, for acceptance or rejection, and is there accepted, the contract for such action is consummated in the foreign State, and does not constitute doing business here, *Wood & Selick v. American Grocery Co.*, 96 N. J. L. 216.”

The testimony clearly shows that note, Exhibit P-1 (Case, p. 54), and conditional sales contract, Exhibit D-1 (Case, p. 59), were sent to the offices of Commercial Credit Corporation, New York, and after being passed upon by their Credit Department, a check in payment thereof was issued in New York, and sent to the Wimple Auto Co., Inc., in Passaic.

Although it was called to the Court's attention (Case, p. 52, l. 27) that there was testimony to the effect that contract was consummated in the State of New York, notwithstanding, the Court disregarded said testimony, and based decision wholly on Section 98 of the Corporation Act, holding that it makes no difference, and directed a verdict for the defendant.

### POINT THREE.

**Wimple Auto Co. was not the agent of the plaintiff, for any purpose, and no defense of fraud as to it can be imputed as to the plaintiff.**

Under this head, we will discuss the second ground of appeal. There is no evidence in this case of agency, or that knowledge or notice of fraud, if any, was brought home to this plaintiff. This Court, in *Rice v. Barrington*, 75 N. J. L. 806, at page 807, said:

"\* \* \* Proof of circumstances calculated merely to arouse suspicion will not defeat recovery on a negotiable note taken for value before maturity. *Bad faith, i. e., fraud, not merely suspicious circumstances, must be brought home to a holder for value whose rights accrued before maturity, in order to defeat his recovery on a negotiable note upon the ground of fraud in its inception or between the parties to it, Hamilton v. Vought, 5 Vroom 187; Read v. Abbott, 16 Id. 303; Aldrich v. Peckham, 43 Id. 711, and the cases there cited.*" (Italics ours.)

Besides, defendant was chargeable with notice of assignment of contract to plaintiff. See contract, Exhibit D-1 (Case, p. 59), and also note (Case, p. 54), *Commercial Credit Corporation v. Coover, E. & A.*, 3 N. J. Adv. Rep. 992.

### POINT FOUR.

**The judgment for the defendant is a nullity, as same is not based upon a verdict openly pronounced by the jury in court.**

"On the first point, I hold that there should be a directed verdict under Section 98 of our General Corporation Act of New Jersey \* \* \*" (Case, p. 52, l. 22).

The trial Court, although holding that there should be a verdict directed in favor of the defendant, failed to direct said verdict, and excused the jury before they had been sworn and a verdict pronounced by them in open court.

Our Supreme Court, in *Johnson v. Depuy*, 2 N. J. L. 165, speaking by Chief Justice Kirkpatrick, says:

"It appears from the return of the justice, that the jury wrote down their verdict and delivered the writing to the justice instead of openly pronouncing their verdict. We have no such practice. It would be subject to great abuses. We know of no lawful verdict but that which is pronounced by open voice, in open court \* \* \*" (italics ours).

Also see

*Sokolowski v. Olkowski*, 3 N. J. Adv.  
Rep. 1605, 1606.

*The appellant therefore respectfully submits that the trial Court erred in the respects pointed out, and that for the reasons hereinbefore set forth, the judgment should be reversed.*

Respectfully submitted,

GREEN & GREEN,  
*Attorneys for Plaintiff-Appellant.*

HARRY GREEN, Counsellor-at-Law,  
*Of Counsel.*

110  
110 FEB. T. 1927

## New Jersey Court of Errors and Appeals

COMMERCIAL CREDIT CORPORATION,  
a corporation,  
Plaintiff-Appellant,

vs.

JOHN BOYKO,  
Defendant-Appellee.

Action at Law.  
Plaintiff's Appeal  
From Passaic  
Circuit.

### BRIEF FOR DEFENDANT-APPELLEE.

#### Statement of Facts.

Plaintiff appeals from the judgment entered in the Passaic Circuit on a verdict for the defendant directed by the trial judge sitting with a jury on November 5th, 1926.

The suit was on a printed form note, made payable at the office of Commercial Credit Corporation, in twelve monthly installments of \$81.55 each, aggregating \$978.66, and endorsed to its order by the payee, Wimple Auto Co. (Case, pp. 6 and 7, and Case, p. 54, Exhibit P-1).

The note was merely the lower portion of a larger document consisting of several parts, to wit, a printed form conditional sale contract (Exhibit D-1, p. 59), in the left hand corner of which was printed, "Commercial Credit Corporation, Form G-A-1", below which, divided only by perforations, was the printed form note. On the back of the conditional sale contract was a printed purchaser's statement, and below that a printed dealer's assignment to the Commercial Credit Corporation.

The plaintiff was engaged in the automobile financing business. Its claim was that the Wimple Auto Company sold an automobile to the defendant upon the installment plan, and that in accordance therewith the dealer and the purchaser entered into a conditional sale contract, and that the defendant signed the purchaser's statement, conditional sale contract, and the note which is attached thereto; that the plaintiff financed this transaction; and accordingly received an assignment of the note and the conditional sale contract.

The defense was two-fold: *First*, it denied the existence of the plaintiff as a corporation of the State of New Jersey, in that, although it engaged in a series of many transactions in this State, including the one in question, it was not authorized to transact any business in this State, but did so illegally, and did not become authorized to transact business in this State or to maintain any action in this State until after this suit was commenced, and answer<sup>AND</sup> reply filed; and *second*, that there was fraud in the inception of the transaction; that the entire conditional sale contract and the note which was attached thereto, were signed in blank by the defendant, as a result of the fraudulent representation of the representatives of the Wimple Auto Company, who acted as the agents of the Commercial Credit Corporation in this transaction; that the plaintiff had knowledge of the fraud; that the fraud was perpetrated by the plaintiff's agents, and that, therefore, it was not a *bona fide* holder of the note for value and without notice of the infirmities of the note.

At the close of the case, plaintiff moved for a direction of a verdict; the motion was properly denied.

Defendant moved for a direction of a verdict upon the grounds above stated; the motion was granted.

## THE LAW.

### AS TO FIRST GROUND OF APPEAL.

#### **The trial court properly directed a verdict in favor of the defendant.**

The evidence adduced by the *plaintiff* established facts which preclude it from maintaining this action.

The note, upon which the action is brought, a copy of which is annexed to the complaint (Case, pp. 6 and 7, and which is marked Exhibit P-1, Case, p. 54) was made and dated in Passaic, New Jersey, and endorsed by the Wimple Auto Company, the payee, at its place of business in Passaic, New Jersey.

The conditional sale contract, of which the note was a part, was likewise dated and executed in Passaic, at the office of the Wimple Auto Company, and at the same address an assignment thereof was made to the plaintiff and delivered to it (Case, p. 58).

The dealer's assignment at the foot of the purchaser's statement attached to the conditional sale contract, in part, reads: "Witness, the signature and seal of Undersigned at Passaic, N. J., May 17, 1923".

The conditional sales contract and the purchaser's statement in several places expressly refer to the note, Exhibit P-1.

The testimony of plaintiff's witness, William Will, shows that the plaintiff is a foreign (New

York) corporation; that he has been employed by the plaintiff, transacting business of a similar nature for over eight years (Case, p. 21, ls. 30-40); that during all that time the Commercial Credit Corporation has constantly been doing business in New Jersey, engaging in many transactions in this State of a similar kind and nature as the one at bar, and that he knows of them personally; that there probably have been hundreds of such transactions in the past eight years, dating back since 1917; that the plaintiff has done considerable business with the Wimple Auto Company (Case, p. 22, ls. 1-30).

*All of the documents were executed, signed and endorsed at Passaic, New Jersey. Every part of the transaction took place in New Jersey on May 17th, 1923. At that time the plaintiff was a foreign corporation with no authority to transact business in New Jersey, but repeatedly engaged in this and similar transactions in this State in direct contravention of the statute.*

The summons was tested on November 19th, 1923 (Case, p. 4); the complaint was filed November 28th, 1923 (Case, p. 5); on January 9th, 1924, an affidavit of merits, with consent of counsel for the plaintiff, was filed as within time (Case, p. 8); and on the same day, defendant filed an answer to the plaintiff's complaint, with consent of plaintiff's counsel to the filing of the same as within time (Case, p. 9); and on January 12th, 1924, plaintiff filed a reply to the answer (Case, p. 11).

*Plaintiff had no authority to transact business in this State, or to maintain any action upon any such transaction until July 22nd, 1924, over eight months AFTER the suit was commenced.*

The General Corporation Act of this State provides:

Section 96: "Foreign corporations doing business in this State shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations."

Section 97. "Every foreign corporation, except banking, insurance, ferry and railroad corporations, *before* transacting any business in this state, shall file in the office of the secretary of state a copy of its charter or certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in the manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this State, and designating its principal office in this state and an agent who shall be a domestic corporation or a natural person of full age actually resident in this state, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; *upon the filing of such copy and statement* the secretary of state shall issue to such corporation a certificate that it is authorized to transact business in this state, and that the business is such as may be lawfully transacted by corporations of this state, and he shall keep a record of all such certificates issued."

Section 98 reads:

*"Until such corporation so transacting business in this state shall have obtained said certificate of the secretary of state, it shall not maintain any action in this state, upon any contract made by it in this state; provided, that nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five."*

As we have already shown, all the documentary evidence conclusively shows that the whole

transaction upon which the plaintiff's action was based, took place in New Jersey. There were in all probably hundreds of similar transactions and contracts which the plaintiff made in this state in direct violation of our Laws and without any authority so to do. The certificate to do business in this state was not granted until eight months after the suit was commenced, after an answer was filed denying the existence of the corporation and denying its right to maintain the action. Plaintiff had no right to maintain the action unless it FIRST obtained a certificate to do business in New Jersey.

The mere fact that a certificate to do business in this state was granted to the plaintiff *after* the suit was commenced and issue joined, does not entitle the plaintiff to maintain the action.

Plaintiff argues in its brief that the trial judge in dealing with its motion for the direction of a verdict indicated that *plaintiff* points out that there is some evidence that the transaction took place in the State of New York. It should be noted that the trial judge did not state that there was any evidence that the transaction took place in New York State, but that he merely said that plaintiff's counsel says that there is some evidence to that effect. The fact is that there is no such evidence. The exact language of the court is: "*Counsel* has pointed out that in the case at bar there is some testimony that this contract or transaction took place in New York." We repeat that the fact is that there was no evidence that the contract or transaction took place in New York. All of the evidence pointed to the fact that the entire contract and transaction took place in New Jersey.

An appellate court is not concerned with the opinion of the trial judge. An appeal does not

lie from an opinion. It can only lie from a judgment or from the action of a trial court. If the action of the trial court was right, the opinion of the judge is immaterial.

*McIlvain vs. Mt. Holly National Bank,*  
129 Atl. 871.

All the authorities, which our investigation has developed, are to the effect that no action can be maintained by a foreign corporation under a statute similar to ours, unless the corporation *first* becomes authorized to do business in this state, and that a certificate to do business issued *after* the commencement of a suit is of no avail.

In *Day vs. Stokes*, affirmed by this court in 129 Atl. 331, for the reasons stated in the opinion of Vice Chancellor Fielder, this learned jurist said:

\* \* \* "His defenses are that the agreement was negotiated, consummated, and executed in this state before the corporation was authorized, as required by section 97 of our Corporation Act (2 Comp. St. 1910, p. 1657), to transact business in this state; that the stock consideration to be paid under said agreement has not been issued to him; that the corporation subsequently canceled the agreement; and that the corporation is in laches in instituting this action.

(1) The corporation ratified and accepted the agreement at a meeting of its directors held in this state October 9, 1920, and the certificate of the secretary of state of New Jersey, that the corporation was authorized to transact business in this state, was issued December 8, 1920. The bill of complaint was filed March 16, 1922. Section 98 of the Corporation Act (page 1658) bars a foreign corporation from maintaining any action upon a contract made in this state, 'until such corporation so transacting business shall have ob-

tained said certificate of the secretary of state.' *Such certificate having been obtained PRIOR to the filing of the bill of complaint, this action may be maintained, notwithstanding the provisions of sections 97 and 100 of the Corporation Act (pages 1657, 1659).'*" (Italics ours.)

It should be observed that the decision in the case of *Day vs. Stokes, supra*, entitling the corporation to maintain its action in this state was based *solely* upon the fact that the certificate to do business was granted to the foreign corporation *PRIOR to the filing of the bill of complaint, i.e., PRIOR to the COMMENCEMENT of the action.* It is apparent that if the certificate to do business in that case had been granted *after the filing of the bill of complaint*, that the action could not be legally maintained.

In *Protective Finance Corporation vs. Glass*, 125 Atl. 879, in construing Section 98 of our Corporation Act, *supra*, our Supreme Court held:

"The next apparent intention is to suspend the right of action upon such transactions until the certificate is secured. There are numerous statutes in the various states of the union of similar nature, a number of them existing before the enactment of the legislation in question. In some states the right of action is barred entirely; in others, as in this state, *the right of action is suspended*, and the judicial interpretation placed upon the latter class *has been to withhold the right to sue* only and *until* the necessary certificate had been obtained" \* \* \*.

\* \* \* "Thus regarding the statute, section 98 will not be extended beyond its plain terms and natural meaning. *These are that, until the offending corporation shall bring itself within the jurisdiction of our courts by filing the necessary statement, appointing an agent*

*for the service of process, and obtaining from the secretary of state, a certificate authorizing it to do business, all right of action on its contracts shall be suspended.'*" (Italics ours.)

The Supreme Court in the *Protective Finance, supra*, case points out that until the certificate to do business in this state is granted, the right of a foreign corporation *to sue* is suspended; and that *all right of action on its contracts shall be suspended.*

In the case at bar, *all right of action* on the part of the plaintiff, and *its right to sue* was suspended until July 22nd, 1924, the date when the certificate was issued to it authorizing the company to transact business in this State. The action, however, was commenced in November, 1923, eight whole months *before* it had the right *to sue*, and at a time *when all right to sue and all right of action was suspended.*

Governed by the reasoning and the holding in the decisions of our state, and following the plain meaning and language of the statute, and bearing in mind the manifest intent of the Legislature, it necessarily follows that by obtaining a certificate to do business in this state, eight months after the suit was brought, the plaintiff did not become entitled to maintain this action; that *it had no right of action and no right to sue* until July 22nd, 1924.

The courts of several of our sister states, in dealing with a statute similar to our Corporation Act, have held that the granting of a certificate to do business after the commencement of the action does not remove the bar or entitle a foreign corporation to maintain a suit which was commenced before the certificate was granted.

In *Amalgamated Zinc & Lead Company vs. Bay State Zinc Mining Company*, 221 Mo. 7, 120 S. W. 31, 23 L. R. A. (N. S.) 492, the Missouri Supreme Court held:

"1. A foreign corporation which has engaged in mining within the state without complying with its laws, which compliance is a statutory prerequisite of the right to maintain an action in the state courts, cannot secure the right to maintain a suit instituted to restrain interference with its mine by complying with the local law after its institution."

In the opinion, the Supreme Court in that case said:

"1. There are two questions presented by this record: (1) Can plaintiff, a foreign corporation, without license to do business in this state, but having actually been resident in the state, and transacting its charter business therein for some years, be permitted to bring an action in our courts, and, after having so brought the action, be permitted to maintain and prosecute it, by taking out the required license before trial? And (2) if it can thus give itself a status or standing in our courts, can it further enforce contracts which it has made and which are to be fully performed in this state? Of these questions in their order.

We are inclined to think that both contentions must be answered in the negative.  
\* \* \*"

In the case just cited, the plaintiff was a corporation organized under the Laws of the State of New Jersey.

*It should be noted that Section 100 of our Corporation Act makes it unlawful to transact business in this state without having first obtained the authority therefor in the manner prescribed by the act.*

In New York the same view has been adopted and pursued.

"The New York statute reads as follows: 'No action shall be maintained, or recovery had in any of the courts in this state, by such foreign corporation, without obtaining a receipt for the license fee hereby imposed, within thirteen months after beginning such business within the state, or if, at the time this section takes effect, such a corporation has been engaged in business within this state for more than twelve months without obtaining such receipt, within thirty days after such tax is due.' Another law provides that the license fee to be paid by foreign corporations shall be fixed by the comptroller. Under this statute, it was held, in *Halsey v. Henry Jewett Dramatic Co.* 114 App. Div. 420, 99 N. Y. Supp. 1122, where, by a supplemental answer, the defendant alleged that the action was commenced over a year before the license fee was paid and the receipt obtained, that the plaintiff, having failed to comply with the requirements of the statute BEFORE the COMMENCEMENT of the action, was not entitled to recover. The court said: 'The language of Section 181 of the tax law is that every foreign corporation not excepted, authorized to do business under the general corporation law, shall pay a license fee within the time prescribed, or else it shall not MAINTAIN any action in the courts of the state. The answers demurred to allege that this fee had not been paid when the action was COMMENCED; and, if that be true, then the action cannot be maintained. The fact that the fee was paid after the action was commenced does not change the situation. The plaintiff had no right to bring the action, and having brought it without right, he cannot, notwithstanding the payment of the fee thereafter made, continue and maintain an action which he in the first instance had no right to bring.'"

Although this decision was reversed in the Court of Appeals (190 N. Y. Supp. 231, 83 N. E. 25), *the reversal was upon a question of pleading and not upon the merits of the question above discussed.*

*National Fertilizer Company vs. Fall River etc. Savings Bank*, 82 N. Y. 671, 14 L. R. A. (N. S.) 561.

It is important to note that the New York Statute is exactly the same as ours, and that it was held that the fact that the certificate to do business was obtained during the pendency of the action did not entitle the corporation to proceed with that suit; the gist of the decision being that the certificate to do business must be obtained before the suit is commenced.

In *American Copying Company vs. Eureka Bazaar*, 108 N. W. 15, the South Dakota Supreme Court held:

“Compliance by a foreign corporation with the laws of the state after securing a contract and commencing an action to enforce it will not enable it to maintain the action, where the statute provides that no action shall be commenced or maintained in the state courts by such corporation on any contract made by it in the state, unless it shall have fully complied with the provisions of the statute.”

In *South Amboy Terra Cotta Co. v. Poerschke*, 45 Misc. 358, 90 N. Y. Supp. 333, it was held:

“A foreign corporation doing business in New York, and having a regular place of business there, at which its directors met, and its books and most of its money were kept, and at which contracts and payments were made, cannot maintain a suit on a contract made in New York prior to a compliance with the general corporation law (Laws 1892,

Chap. 687, Sec. 15, p. 1805, as amended by Laws 1901, p. 1326, Chap. 538) declaring that no foreign corporation shall maintain any action on any contract made in the state, unless, before making it, it shall have procured a certificate from the secretary of state; and the fact that it obtained the certificate before the commencement of the suit was insufficient.” Citing *Welsbach Co. v. Norwich Gas & Electric Co.*, 96 App. Div. 52, 89 N. Y. Supp. 28.

In *J. R. Watkins Medical Co. vs. Martin*, 132 Ark. 108, 200 S. W. 283, 2 A. L. R. 1230, the Arkansas Supreme Court held:

“A contract by a foreign corporation before complying with the laws entitling it to do business in the state is not void, but may be enforced if the statutes are complied with before institution of the action.”

In *Wolf v. Lancaster*, 70 N. J. L. 201, 56 Atl. 172 (Supreme Court), the syllabus reads:

“1. P. L. 1896, p. 307, Sec. 97, provides that every foreign corporation, before transacting business, shall file a copy of its charter, etc., whereupon the Secretary of State shall issue a certificate authorizing it to do business; and section 101 provides that, when another state imposes any greater penalties on corporations of New Jersey than the laws of New Jersey impose upon corporations of that state, the same penalties shall be imposed on corporations of such other state doing business in New Jersey. Held, that a corporation of Pennsylvania cannot maintain an action for goods sold before it obtained its certificate, it appearing that under the law of Pennsylvania a foreign corporation may not maintain an action on a contract where it has not complied with the Pennsylvania statute requiring foreign corporations to file a statement, etc.”

The opinion of the court in the case just cited points out that the certificate of the foreign corporation to do business in New Jersey was granted by the Secretary of State on November 7, 1902. The court held:

“The brewing company is a foreign corporation, and cannot maintain an action for sales made before November 7, 1902. P. L. 1896, pp. 307, 308, sections 97, 100, 101. Section 101 imposes the same penalties as apply in Pennsylvania, where the brewing company is incorporated. *Del. Riv. Quarry Co. v. Bethlehem Co. (Pa.)* 53 Atl. 533. The brewing company cannot maintain an action for its claim, and therefore cannot maintain this rule.”

In Cook on Corporation, Sec. 696-700, under the heading “Foreign Corporations—Their Right to Do Business—The Various States—Restrictions Thereon,” the editor says at page 1677:

“A requirement that a foreign corporation shall duly execute a power of attorney appointing an agent upon whom service of process may be made, or obtain a certificate from a state officer, is valid. *The corporation is usually forbidden to contract or sue in the state BEFORE complying with it.*”

To the same effect is:

“Under Laws 1899, sec. 68, providing that a foreign corporation doing business in the state without first complying therewith cannot maintain an action on any contract or demand growing out of such unlawful business, *a compliance* after the making of the contract or *after the commencement of the action* thereon cannot remove the bar of the statute.”

*G. Heilman Brewing Co. v. Piemeisl*, 88 N. W. 441, 85 Minn. 121,

and:

“A foreign corporation, which has failed to comply with Rev. Civ. Code, sec. 883, requiring such a corporation to file in the office of the Secretary of State an authenticated copy of its charter as a condition of doing business in the state or maintaining actions in its courts, *cannot sue* in the courts of the state *until it does comply with it.*”

*Bishop & Babcock vs. Schleuning*, 104 N. W. 854.

“In Comp. St. p. 610 (Minn.), providing that where one's death is caused by the wrongful act or omission of another the personal representatives of the former may *maintain* an action against the latter if the former might have maintained an action, had he lived, for an injury caused by the same act or omission; ‘*maintain*’ means *commence, institute, or begin* an action. The word ‘*maintain*’ is used as synonymous with the existence of a cause of action. In its ordinary and general use the word ‘*maintain*’ means to hold, preserve or keep in any particular state or condition; to support; to sustain; not to suffer to fail or decline.”

*Boutiller vs. The Milwaukee*, 8 Minn. 97, 101 (Gil. 72, 76).

“Within the meaning of Civ. Code, sec. 2468, (Cal.) providing that persons transacting business under a designation not showing the names of the persons interested as partners therein shall not ‘*maintain*’ any action or contracts made in their partnership name until they filed the certificate prescribed by section 2466, or made publication of it four weeks, the *commencement* of an action is a part of the maintaining of it, *and such action*

*cannot be commenced until the certificate has been filed."*

*Byers vs. Bourret*, 28 Pac. 61, 64 Cal. 73.

In *Burbank vs. Inhabitants of Auburn*, 31 Me. 590, 51 under an act providing that no action shall hereafter be maintained against any city for injury by reason of a defective highway or bridge, etc., it was held that the word "maintain" means "brought", and refers to actions *to be maintained* or *brought* and not to actions instituted before the passage of the act.

"Men both in and out of the profession of law often speak of maintaining an action, having reference to one yet to be instituted."

Pardee, J. in *Smith vs. Lyon*, 44 Conn. 175, 178.

And it is in this sense that the term is used in the statute providing that no action shall be maintained against any railroad company unless written notice of the claim shall have been given to defendant within four months after the alleged negligence.

*Gumpfer vs. Waterbury Traction Co.*, 36 Atl. 806, 68 Conn. 424.

In *Kinsey & Co. v. Ohio Southern R. Co.*, 3 O. C. D. 249, 250, "maintain" as used in 95 Ohio Laws, 357, sec., providing that the partnership should not maintain an action upon any contract made with it in their partnership name until having first filed the certificate and made the publication required in the statute, applies to the *institution* of an action as well as to its continuance; and hence the right to *bring* an action is prohibited unless the certificate has been filed and the publication thereof has been completed.

And in a case similar to the one just quoted, "maintain" an action is held to be synonymous with "bring" or "commence" and is not used only in the sense to carry forward. The Court said that <sup>the</sup> word "maintain" means to *begin* and prosecute the action to final judgment. Hence no action could be commenced until the conditions precedent were performed.

*New Carbole Bank vs. Brown*, 75 O. C. D. 94, 95.

At page 5 of its brief, appellant quotes an excerpt which it states is found in 12 Ruling Case Law, p. 59; the correct page is 86. Appellant, conceding that that statement constitutes only the minority view and is contra the great weight of authority, refrains from making any reference to the preceding part of the same paragraph, which is found at page 85, and reads:

"In a number of states it is held that a constitutional or statutory provision prohibiting foreign corporations to do business within the state until they have complied with certain requirements does not render a contract made within the state by a noncomplying corporation wholly void, but merely suspends the right of the corporation to enforce the contract until after it has complied with the statutory requirements, and that a compliance with the statute subsequent to the making of a contract within the state, *but prior to the commencement of an action for a breach of such contract*, is a compliance with the statute at such a time as enables the corporation to maintain the action." Citing many cases from various jurisdictions.

It should be noted, therefore, that the great mass of cases and the weight of authority conforms to the view that compliance with the statute

subsequent to the commencement of the suit is ineffectual and of no avail. The quotation from Ruling Case Law and the many cases cited in the foot notes, make it clear that compliance with the statute is entirely of no avail unless it occurs PRIOR to the commencement of the action.

Among the many cases cited in the foot notes of 12 Ruling Case Law, p. 85, we find: *Western Electrical Co. v. Pickett*, 51 Colo. 415, 118 Pac. 988, 38 L. R. A. (N. S.) 702, where at page 705 bottom, the opinion reads:

"It does not state that any contracts so made shall be absolutely void, but it does state, positively, that no such delinquent corporation shall *prosecute* or defend in any suit until the act is so complied with, and we think, as here used, the word 'prosecute' includes the institution of the suit. The Standard Dictionary defines 'prosecute': '*To bring suit against, in a court, for redress of wrong or punishment of crime; carry on a judicial proceeding against, as to prosecute a criminal; to seek to enforce or obtain as a claim or right, by legal process; to begin and carry on a legal proceeding.*' Webster defines 'prosecute': '*To seek to obtain by legal process; the institution and carrying on of a suit in a court of law or equity.*' The Universal Dictionary defines 'prosecution': '*The instituting and carrying on of a suit in a court of law or equity to obtain some right, or redress and punish an injury or wrong.*' In *Hickox v. Elliott* (C. C.), 10 Sawy. 415, 22 Fed. 19, the word 'prosecute', as there employed in a Civil Procedure, was held to be used in the sense of '*commence*'.

"With these definitions in mind, and the sense in which the word appears to be used in these sections, it seems to us that no other construction can be placed on the word 'prosecute' than to construe it as a prohibition against the *bringing* of an action; FOR

THE BRINGING OF AN ACTION IS CERTAINLY ONE OF THE NECESSARY STEPS IN ITS PROSECUTION. This conclusion appears to be supported by the great weight of authority. *Merchants' Mut. Ins. Co. v. Lacroix*, 35 Tex. 249, 14 Am. Rep. 370; *G. Heileman Brewing Co. v. Peimeisl*, 85 Minn. 121, 88 N. W. 441; *J. Walter Thompson Co. v. Whitehed*, 185 Ill. 454, 76 Am. St. Rep. 51, 56 N. E. 1106; *Cary-Lombard Lumber Co. v. Thomas*, 92 Tenn. 587, 22 S. W. 743; *Ehrhardt v. Robertson Bros.*, 78 Mo. App. 404; *American Copying Co. v. Eureka Bazaar*, 20 S. D. 526, 9 L. R. A. (N. S.) 1176, 108 N. W. 15. *To hold otherwise*, and give it the construction urged on behalf of the plaintiff, would invite and foster the very evil it was intended to prevent. It would enable any foreign corporation, not only to do business in this state in defiance of our laws, but also to prosecute its suits for the enforcement of such business until some party perchance pleaded its noncompliance in an action brought by it to enforce a demand against him; then it would comply with the act, proceed with the action, and have its validity recognized from its inception and during the entire time it was prosecuting it, in the face of a positive prohibitory act to the contrary. Such a construction is contrary to the letter and spirit of the statute, and, if adopted by the court, would directly tend to defeat the public policy sought to be enforced by its enactment. The most efficient way to compel obedience to this statute is to enforce it as it reads, and not amend it by judicial construction, so as to enable foreign corporations to avoid the consequences of a noncompliance with its terms by complying after the penalties have been incurred.

"(2) *Compliance after the commencement of an action will not remove the bar of the statute, so as to give effect and recognize the validity of the action from its inception up to the time the statute was complied with.* *J. Walter Thompson Co. v. Whitehed*, 185 Ill.

454, 76 Am. St. Rep. 51, 56 N. E. 1106; Cary-Lombard Lumber Co. v. Thomas, 92 Tenn. 587, 22 S. W. 743; Ehrhardt v. Robertson Bros. 78 Mo. App. 404; Tri-State Amusement Co. v. Forest Park Highlands Amusement Co., 192 Mo. 404, 4 L. R. A. (N. S.) 688, 111 Am. St. Rep. 511, 90 S. W. 1020, 4 Ann. Cas. 808; G. Heileman Brewing Co. v. Peimeisl, 85 Minn. 121, 88 N. W. 441."

The Colorado Supreme Court, in its opinion, quotes at great length from the decision in *J. Walter Thompson Co. v. Whitehed*, supra, where the principles involved were the same under consideration in *Western Electrical Co. v. Pickett*, supra, and the same reasoning and rule of law was adopted.

What we have briefly said is the sum and substance of that quotation. The opinion then continues (38 L. R. A. (N. S.) at p. 706):

\* \* \* "in other words, its attempted institution of the suit, when the laws of this state provide specifically that it shall have no right to prosecute any suit until the fees are paid, is the institution of no suit at all."

The statute under consideration in the case just cited reads:

"No corporation \* \* \* of any foreign state or kingdom \* \* \* shall \* \* \* prosecute or defend in any suit, in this state, until it shall have received from the secretary of state a certificate setting forth that full payment has been made by such corporation."

We perceive no difference between the language "maintain any action" and the words "prosecute any action". If to "prosecute" any action relates to and includes the instituting, bringing or commencement of the action, then the words "maintain" any action must have the same meaning.

## AS TO PLAINTIFF'S POINT II.

(THIRD GROUND OF APPEAL.)

Under Point II, appellant contends that the contract upon which this suit was commenced was made in the State of New York. We have already pointed out in this brief that there is not a scintilla of evidence that the contract was made in New York. All of the evidence is that the whole contract, the entire transaction, was made in New Jersey.

It is important to note that appellant does not point out a single bit of testimony to the effect that the contract was made in New York.

In the last paragraph on page 7 of its brief, appellant says, "The testimony clearly shows that note, Exhibit P-1 (Case, p. 54), and conditional sales contract Exhibit D-1 (Case, p. 59), were sent to the offices of Commercial Credit Corporation, New York, and after being passed upon by their Credit Department, a check in payment thereof was issued in New York, and sent to the Wimple Auto Co., Inc., in Passaic." This is a gross misquotation of the testimony. THERE IS NO SUCH EVIDENCE. There is no testimony on Case, p. 54; there is merely a copy of the note, Exhibit P-1; and on Case, p. 59, there is no testimony; that page merely shows Exhibit D-1, which is the conditional sale contract, the purchaser's statement and the assignment thereof.

Counsel does not point out a word of testimony anywhere in the state of the case from which there is any suggestion, statement, or inference that the contract was made in New York.

At the top of page 8 of its brief, counsel say that it was called to the Court's attention that there was testimony to the effect that the contract was consummated in the State of New York. In

the argument on the motion for a direction of a verdict, counsel for the *plaintiff* may have *stated* to the trial judge that there is some evidence that the contract was made in New York, but counsel's statement surely does not constitute any testimony on the subject. He does not point out who testified to that effect or where the testimony can be found. *The fact is that there is no such testimony or evidence.* A reading of the state of the case from cover to cover will not disclose *any* evidence showing that the contract was made in New York, or that any part or it took place anywhere outside of New Jersey.

#### AS TO PLAINTIFF'S POINT III.

**There was fraud in the inception of the contract, of which fact the plaintiff, acting through the Wimple Auto Company, had actual notice.**

The method employed by automobile financing companies in negotiating transactions of a similar nature is a matter of common knowledge.

It should be observed that all of the documents signed by the defendant were printed forms furnished by the plaintiff. The conditional sale contract, the purchaser's statement and the note were on one document, the purchaser's statement being on the back of the conditional sale contract, and the note being at the foot of the conditional sale contract, divided by a perforation. The note, in its printed form, was made payable at the office of Commercial Credit Corporation. The conditional sale contract in its printed form, bore the name "Commercial Credit Corporation Form G-A.1" in the left hand corner thereof. The con-

ditional sale contract in several places refers to the note upon which the suit is based, and makes certain references with respect to the assignment of the contract and the note. The purchaser's statement is a printed form and also makes reference to the Commercial Credit Corporation, and in part reads: "To the 'Seller' named in the contract on reverse side hereof. 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 Commercial Credit Corporation the note mentioned therein undersigned makes the following representations"; and the last paragraph thereof reads: "Undersigned will pay said note irrespective of any imperfections in the Motor Vehicle or any breach of alleged representations. You and/or Commercial Credit Corporation are authorized to correct patent errors in said contract and other papers executed by undersigned in connection therewith."

The conditional sale contract makes reference to the note and the respective installments in which it is made payable. The dealer's assignment, which was part of the whole document, Exhibit D-1, reads: "For Value Received, Undersigned does hereby sell, assign and transfer to Commercial Credit Corporation, New York, N. Y., his, its or their right, title and interest in and to the contract on the reverse side hereof and the Motor Vehicle referred to therein. Commercial Credit Corporation is hereby authorized to correct patent errors in said contract and other papers executed, endorsed or assigned by Undersigned in connection therewith."

The whole scheme or plan of the transaction, all of the documentary evidence, the whole case shows that the Commercial Credit Corporation

prints the form of Conditional sale contract, note, purchaser's statement and the dealer's assignment. All these documents were furnished by it to the various automobile dealers; the dealer acted on behalf of the finance company. The whole transaction took place at the same time, to wit, May 17th, 1923. All of the documents, including the assignment are dated the same time and place. The arrangement between the automobile dealer and the finance company is that the dealer should take care of the transaction for itself and the finance company as between the dealer and the purchaser. The dealer acts for the finance corporation, as well as for itself. The dealer is the agent of the finance corporation. The knowledge of the dealer and its representatives, as agents of the finance corporation, is notice to the finance corporation.

The fraud perpetrated by the Wimple Auto Company in procuring the defendant to execute the note (and the other document in blank) in ignorance of the fact that it was a note, under the representation that it was merely a paper enabling him to effectuate an automobile trade-in that he made for which he paid in cash, was a fraud perpetrated by the agents of the plaintiff, which precludes the plaintiff from recovering on the note (Case, pp. 34-40 and p. 43).

The defendant testified that Mr. Herman Wimple, of the Wimple Auto Company, represented to him that the paper which he was signing was to enable the person who purchased the automobile which he was trading-in to obtain a license; that he did not read the note; that he had no opportunity to read the note; that he was in a great hurry because he had left the Fire Department of the City of Passaic where he was employed, and was assured that it was unnecessary

for him to read the note. He said that if he had known that the instrument was a note that he would not have signed it. In that situation, fraud was a complete defense to the action.

#### AS TO PLAINTIFF'S POINT IV.

(FOURTH GROUND OF APPEAL.)

Under this head, appellant, in its brief, contends that although the trial judge directed the jury to return a verdict, that in fact the jury did not announce its verdict by voice in open court, and that, therefore, the judgment entered or the directed verdict is a nullity. *Appellant cites no authority to sustain that contention.*

This point seems without reason. Where a trial judge directs the jury to return a verdict for the plaintiff or defendant, the announcement of the verdict by the jury is a mere matter of form and not of substance. It, therefore, should make no difference if the jury did not by voice announce the verdict in open court.

Appellant cites *Johnson v. Depuy*, 2 N. J. L. 165 (it should be 152). That case is not in point, because there the trial judge did not direct a verdict against either party. It may be that where a trial judge submits a case to the jury, that the proper method of rendering a verdict would be for the jury to announce its verdict. We submit, however, that where the verdict is merely a matter of form, as a directed verdict, that it is unnecessary for the jury to announce the verdict.

Appellant also cites *Sockolowski v. Olkowski*, 3 N. J. Adv. Rep. 1605, 1606. That case is not in point. In that case the clerk of a district court, waiting to receive the verdict of a jury, undertook, pursuant to instructions from the judge by

telephone, to refuse the verdict as tendered, and required the jury to reconsider and find a different verdict. The Supreme Court held that this was error requiring a reversal. In that case, the court did not direct a verdict. The point raised at bar was not involved there.

It is unimportant that the jury did not expressly announce the verdict for the further reason that an appeal does not lie from a verdict. An appeal can only lie from a judgment. If plaintiff appeals from the judgment that is one thing, but if it appeals from a verdict, it has no standing and the appeal should be dismissed. A verdict is not such a finality from which an appeal lies.

**CONCLUSION.**

For the foregoing reasons, we respectfully submit that the trial court committed no error, and that the trial judge properly directed a verdict for the defendant, and that, therefore, the judgment should be affirmed.

Respectfully submitted,

FEDER & RINZLER,  
*Attorneys of Defendants-Appellees.*

FEDER & RINZLER,  
*of Counsel.*

**INDEX.**

	PAGE
Notice of Appeal .....	1
Grounds of Appeal .....	2
Summons .....	4
Complaint .....	5
Schedule A .....	9
Answer .....	11
Case .....	13
Motion for Nonsuit .....	53
Motion for Direction of a Verdict .....	106
Requests to Charge .....	113
Charge .....	113

**TESTIMONY FOR PLAINTIFF.**

<b>Alfred J. Grosso:</b>	
Direct .....	14
Cross .....	15
Redirect .....	18
Recalled Direct .....	49
Cross .....	50
<b>Willard G. Wilkinson:</b>	
Direct .....	18
Special Cross .....	20
Cross .....	37
Redirect .....	48, 52
Recalled Direct .....	52
Cross .....	52

**TESTIMONY FOR DEFENDANTS.**

<b>Charles F. Robbins:</b>	
Direct .....	51
Cross .....	57
Redirect .....	58