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NEW JERSEY
Court of Errors and Appeals

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff-Respondent,
vs.
JOSEPH H. STONE AND HERMAN
STONE, PARTNERS, TRADING
AS STONE & COMPANY,
Defendants-Appellants.

10

On Appeal.

SUMMONS.

THE STATE OF NEW JERSEY: TO JOSEPH H. STONE AND 20
HERMAN STONE, PARTNERS, TRADING AS STONE &
COMPANY:

[L. S.] You are summoned to answer the an-
nexed complaint of Pillsbury Flour
Mills Company, a corporation, in an ac-
tion at law in the New Jersey Supreme
Court. And take notice that unless you
file your answer to said complaint with
the Clerk of the New Jersey Supreme
Court at Trenton, within twenty days after service upon
you of this writ and the annexed complaint, the plain- 30
tiff may proceed in the suit and judgment may be entered
against you.

Witness, William S. Gummere, Chief Justice of the
New Jersey Supreme Court, at Trenton, this tenth day
of July, A. D. nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

MARTIN P. DEVLIN,
Attorney.

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff,

vs.

10 JOSEPH H. STONE AND HER-
MAN STONE, PARTNERS, TRAD-
ING AS STONE & COMPANY,
Defendants.

Action at Law.

COMPLAINT.

Plaintiff, Pillsbury Flour Mills Company, a corpora-
tion duly licensed and existing under and by virtue of
the laws of the State of New Jersey, says:

First Count.

20 1. That on and after the date mentioned hereinbelow,
Joseph H. Stone and Herman Stone were partners, doing
business and trading as Stone & Company.

2. Plaintiff sues for the price of certain flour sold
and delivered to the defendants upon a book account, of
which a copy is attached hereto, and the whole of which
is due and unpaid.

Plaintiff demands as damages the amount due thereon,
being the sum of six thousand fifty-one dollars and fifty
cents (\$6,051.50), with interest thereon from June 8th,
1925.

Second Count.

30 1. That on and after the date mentioned hereinbelow,
Joseph H. Stone and Herman Stone were partners, doing
business and trading as Stone & Company.

2. Plaintiff, a corporation duly licensed and existing
under the laws of the State of New Jersey, doing busi-
ness in the State of New Jersey, did between April 23d,
1925, and June 8th, 1925, sell and deliver to the defend-
ants sundry goods, being certain flour manufactured and

sold by the plaintiff under an agreement between the said
parties that the plaintiff should charge defendants a rea-
sonable price for the goods sold and delivered.

3. The amount due on the account on June 8th, 1925,
charged in conformity with said agreement was and still
is, the sum of six thousand fifty-one dollars and fifty
cents (\$6,051.50).

4. Defendants have not paid the same.

Plaintiff demands as damages the sum of six thousand
fifty-one dollars and fifty cents (\$6,051.50), together 10
with interest thereon from the 8th day of June, 1925,
and costs of suit.

MARTIN P. DEVLIN,
Attorney of Plaintiff.

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

20

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff,

vs.

JOSEPH H. STONE AND HER-
MAN STONE, PARTNERS, TRAD-
ING AS STONE & COMPANY,
Defendants.

Action at Law.

ANSWER.

Defendant Joseph H. Stone, answering plaintiff's 30
complaint, says—

First Count:

1. Paragraphs 1 and 2 of the first count are denied.

Second Count:

1. Paragraphs 1 and 2 of the second count are denied.

JOHN L. HEHER,
Attorney of Defendant.

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff,

vs.

10 JOSEPH H. STONE AND HER-
MAN STONE, PARTNERS, TRAD-
ING AS STONE & COMPANY,
Defendants.

Action at Law.

POSTEA.

This case was tried before Judge Ralph W. E. Donges, with a jury at the Mercer County Circuit Court, on the 3d, 4th and 5th of November, 1926.

20 The jury rendered a general verdict against both defendants and in favor of the plaintiff for the sum of six thousand five hundred sixty-three dollars (\$6,563.00) and eighty-one (.81) cents, with costs of suit.

RALPH W. E. DONGES,
Judge of the Mercer County Circuit Court.

NEW JERSEY SUPREME COURT.

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff,

vs.

30 JOSEPH H. STONE AND HER-
MAN STONE, PARTNERS, TRAD-
ING AS STONE & COMPANY,
Defendants.

Action at Law.

ON POSTEA.

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendants for the

sum of six thousand five hundred sixty-three dollars and eighty-one cents, besides costs to be taxed *nisi*.

Entered November 10, 1926.

On motion of

MARTIN P. DEVLIN,
Attorney.

NEW JERSEY SUPREME COURT.

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff,

vs.

JOSEPH H. STONE AND HER-
MAN STONE, PARTNERS, TRAD-
ING AS STONE & COMPANY,
Defendants.

JUDGMENT.

Whereupon it is adjudged that the plaintiff, Pillsbury Flour Mills Company, a Corporation, do recover of the said defendants, Joseph H. Stone and Herman Stone, partners, trading as Stone & Company, the sum of six thousand five hundred and sixty-three dollars and eighty-one cents damages, together with its costs, which have been taxed at the sum of fifty-eight dollars, making in the whole the sum of six thousand six hundred twenty-one dollars and eighty-one cents.

Judgment entered November 10, 1926.

WM. S. GUMMERE, C. J.

NEW JERSEY SUPREME COURT.
MERCER COUNTY.

	PILLSBURY FLOUR MILLS COM- PANY, A CORPORATION, <i>Plaintiff,</i>	}	Action at Law.
	<i>vs.</i>		
10	JOSEPH H. STONE AND HER- MAN STONE, PARTNERS, TRAD- ING AS STONE & COMPANY, <i>Defendants.</i>	}	

NOTICE OF APPEAL.

Sis—Take notice that the defendant Joseph H. Stone
appeals to the Court of Errors and Appeals from the
whole of the Judgment entered in the above entitled
20 cause.

Yours, &c.,

JOHN L. HEHER,
Attorney of Defendant Joseph H. Stone.

TO MARTIN P. DEVLIN, Esq.,
Attorney of Plaintiff.

NEW JERSEY SUPREME COURT,
No. 1, Mercer Circuit,
October Term, 1926.

	PILLSBURY FLOUR MILLS COM- PANY, A CORPORATION, <i>Plaintiff,</i>	}	Action at Law.	10
	<i>vs.</i>			
	JOSEPH H. STONE AND HER- MAN STONE, PARTNERS, TRADING AS STONE & COM- PANY, <i>Defendants.</i>	}		

TESTIMONY

Transcript of shorthand notes of testimony, etc.,
taken in the above entitled cause on the trial thereof
before Hon. Ralph W. E. Donges, Circuit Court Judge,
and a jury, at the Court House, Trenton, New Jersey,
on Wednesday, November 3, 1926. 20

Appearances—Martin P. Devlin, for the Plaintiff; John
L. Heher, for the Defendant.

(Jury empaneled and sworn.)
(Counsel opened.)

Elmer D. Vanderhoof, sworn for the plaintiff.
Direct examination, by Mr. Devlin.

Q. Mr. Vanderhoof, where do you live?

A. I live in Maplewood, New Jersey. 30

Q. That is in Essex county?

A. Yes, sir.

Q. What is your occupation?

A. I am manager for the Pillsbury Flour Mills Com-
pany in New Jersey and part of New York State.

Q. Do you know the defendant, Mr. Stone?

A. Yes, sir.

Q. Do you know his brother?

Mr. Devlin—Is he here?

Mr. Heher—Yes.

Q. Do you know Herman Stone?

A. Yes, sir.

Q. Did you ever meet them—you have met them, haven't you?

A. Yes, sir.

Q. Do you remember your first meeting with them?

10 A. Yes, sir.

Q. Where was it at?

A. They came to my office in October, 1924; both of them; and stated they were in business together as partners and wanted to buy flour, and we at that meeting sold them a car of flour, the initial car of flour at that first meeting when they came to my office, and we continued selling them that way right along, so far as we knew.

20 Q. Tell us what conversation you had with both of these men at your office.

A. Why, they said they were operating as partners and that they wanted to buy flour for Trenton.

Q. Did they say what name they were working under?

A. Under the name of Stone & Company.

Q. And gave you both their names?

A. Yes, sir.

Q. As a result of that information did you do anything before you decided to sell them?

30 A. Yes, sir. They gave us some references; a couple of banks here in town.

Q. What banks were they?

A. Well, I do not remember. You have the letters there.

Q. I will show you a letter to refresh your memory. Is that one of them?

A. Yes, sir.

Q. The Hanover Trust Company?

A. The Hanover Trust Company.

Q. And in accordance with that you wrote to them, did you?

A. Yes, sir.

Q. Is that the letter you received from the Hanover Trust Company?

A. Yes, sir.

Mr. Devlin—I will have that marked.

(Paper referred to is marked *D-1* for identification.)

Q. And this letter is the reply you got? 10

A. Yes, sir.

(Mr. Devlin reads *P-1* for identification.)

Q. Now the other Stone mentioned there; who was the other Stone?

A. That was his father.

Q. Did he come with them?

A. No; he did not come with them.

Q. Now, you also wrote to the Mercer Trust Company, didn't you?

A. Yes, sir. 20

Q. And at their request?

A. Yes, sir.

Q. And you got this letter in reply?

A. Yes, sir.

(Paper referred to is marked *P-2* for identification.)

(Mr. Devlin reads *P-2* for identification.)

(Papers heretofore marked *P-1* for identification and *P-2* for identification are marked, respectively, *Exhibit P-1* and *Exhibit P-2*.)

Q. After you got those replies, dated on the twenty- 30 fifth of October, did you meet them again?

A. Yes, sir. They came to my office when I sold them that initial car of flour; they were both there together.

Q. I show you a paper. Will you state what it is?

A. Yes, sir; that is a contract of sale made on the thirtieth of October.

Q. That was after these letters were written?

A. Yes, sir.

Q. Whose signature is to that?

A. It is signed by Joseph H. Stone and Herman H. Stone, "Per Herman M. Stone."

Q. Were they both present when it was signed?

A. They were both present.

Q. That was a contract for what?

A. For a carload of flour.

Q. At that time did you converse with these men about their responsibilities, that is, their financial re-
10 sponsibilities?

A. Yes, sir.

Q. What was said, that you remember?

A. Well, they said that—Mr. Herman Stone said that he was not financially responsible, but his brother, Joseph, was; and he also said that his father intended putting some money into the concern. That was the reason we mentioned him in the letter.

Q. Did you see the father at all?

A. No, sir; I never met the father.

20 Q. But he said that?

A. Yes, sir.

Mr. Heher—Your Honor, I do not think this is pertinent at all to the issue in this case.

The Court—How is it material, Mr. Devlin? I understand there is no dispute that down to some time in January these two defendants were partners. I suppose the question really is whether or not upon the alleged dissolution of the partnership it was brought to the attention of this plaintiff.

30 Mr. Devlin—That is true, but at the same time, to meet the issue, I think it is necessary to lay the groundwork of the negotiations.

The Court—Well, go ahead.

Q. Did he give you a statement of the assets and what their liabilities were at that time?

A. Yes, sir.

Q. I show you two papers—

Mr. Devlin—Mark this contract *Exhibit P-3*. (Contract referred to is marked *Exhibit P-3*.)

Mr. Heher—I object to the use of any other papers unless those were really involved in the issue in this case.

The Court—Well, they are not offered yet. It is objected that this is immaterial to the issue, which is whether or not the partnership ceased to exist.

Mr. Devlin—I think it is material to the issue 10 in this respect: I think it is corroborative more or less of their conduct at the time they allege this partnership ceased to be. I think the negotiation of this transaction will affect the conduct at the period they claim the partnership ceased to be.

The Court—I suppose that might more properly be rebuttal then. I suppose, as a matter of fact upon the admissions a *prima facie* case might be made out. Go ahead and put in your proof. It seems to me that this is not material 20 at this time, as I view it. I will sustain the objection.

Mr. Devlin—What was the objection to, these two papers?

The Court—Yes.

Mr. Devlin—The initial contract is in.

The Court—Yes.

Mr. Devlin—I ask an exception to your Honor's ruling on these two papers.

Q. Now, you sold them flour right up until what date? 20

A. Up until June; up until—

Q. Perhaps I better give you these two bills and that will assist you in refreshing your memory, anyhow.

A. (Witness examines papers.)

Mr. Heher—Is that the account sued upon?

Mr. Devlin—Yes.

Q. Your company sold them flour up until when?

A. Up until—The date of the last bill was December third— No. I am wrong. It was June eighth. That was the date of the sale but not the date of the delivery.

Q. The last delivery?

A. Yes, sir; the last delivery.

Q. What was the date of your last sale?

A. The last sale was December third.

Q. What year?

A. 1925, it must be. It is not on here.

10 Q. Your last delivery, you say, was made in June, 1925?

A. Well, it was December, 1924, then.

Q. That is when the last order was taken?

A. Yes, sir.

Q. In December, 1924?

A. Yes, sir; that is the last sale we made.

Q. And delivery was made—

A. The last delivery was made on June 8, 1925. Mr. Cobb is more familiar with this part of the work than I

20 am.

Q. The amount of those bills is—

A. The full amount is \$6,056.18.

Mr. Devlin—I will offer these in evidence, the two together that form the account.

Mr. Heher—No objection.

(Two papers referred to and offered in evidence are marked, respectively, *Exhibit P-4* and *Exhibit P-5*.)

Q. Now, Mr. Vanderhoof, you are the manager of that establishment for the State of New Jersey?

A. Yes, sir.

30 Q. It is a large concern and you are one of the branches of it, in New Jersey?

A. Yes, sir.

Q. From the date that Mr. Stone and his brother came to you to get a line of credit and buy your flour down to the date of the last delivery, which was June 8, 1925, did you receive any notice, oral or written or

otherwise, of any dissolution in the partnership between those two men?

A. We did not.

Q. In your office in Newark who receives the mail?

A. Mr. Cobb.

Q. (Indicating) He is this gentleman here?

A. Yes, sir.

Mr. Heher—What is his name?

The Witness—Walter Cobb.

Q. What position does he occupy in the office? 10

A. He is credit manager and office manager.

Q. He receives the mail and opens it?

A. Yes, sir.

Q. And takes care of it?

A. Yes, sir.

Q. Had you ever received any mail from them indicating anything about a dissolution of the partnership preceding that last delivery?

A. No, sir; we never received any letter of any kind from Mr. Stone with regard to any dissolution whatsoever. 20

Q. Who is it in your business that has the authority to grant credit, extension of credit or change the terms of a contract?

A. Mr. Cobb.

Q. Is he the only person?

A. Except myself.

Q. You and Mr. Cobb are the only two persons who have the authority from your superiors to extend credit or change the terms of credit with anyone?

A. Yes, sir.

Q. That is, you are the two responsible individuals 30 of the business?

A. Yes, sir.

Mr. Devlin—Cross-examine.

Cross-examination, by Mr. Heher.

Q. How long have been with the Pillsbury Flour Mills Company?

A. Forty years.

Q. How long have you managed the New Jersey branch?

A. About three years.

Q. Didn't you tell Messrs. Joseph and Herman Stone when they came to interview you in Newark with reference to shipments of flour that you would first have to take the matter up through the credit department before you could ship any flour to them?

A. Yes, sir.

10 Q. I understood you to say on direct examination that that was not so, that you made the shipment first and then made these inquiries.

A. Oh, no. Those letters are dated on the twenty-fifth.

Q. How about having it go through the credit department?

A. Mr. Cobb was the credit man and it was up to him to say whether or not— Of course, at the time that we made this deal with Mr. Stone we were simply
20 a branch office working from New York; we worked through New York.

Q. The office was then new in Newark, was it?

A. Yes, sir. But since that time we have made an entirely separate office.

Q. Didn't they tell you at the time that they were about to engage in business as partners?

A. They said they were in business as partners; yes, sir.

Q. They did not say that they were then in business as partners, but that they were about to engage in
30 business as partners?

A. I can not recall the exact words. I know they were both there at that time.

Q. What are your duties there as manager of the New Jersey branch?

A. I am general manager of the branch, and my main duties are as sales manager. I watch the sales end and Mr. Cobb watches the credit end.

Q. Do you have authority to make sales to any person or persons whom you see fit?

A. Yes, sir.

Q. You can extend any credit you see fit?

A. I could, but we do not as a rule without authority from the main office in Buffalo if it involves any large amount.

Q. Any person who contemplates making purchases from your concern, his credit is passed upon by you or Mr. Cobb? 10

A. Mr. Cobb usually; yes, sir.

Q. So that the sale is thereafter made if it is satisfactory to you or Mr. Cobb?

A. Yes, sir.

Q. You say that you never received any notice of the dissolution of the partnership between these two brothers?

A. We did not.

Q. Are you sure of that?

A. Why surely I am. Of course, I am sure of it. 20

Q. Mr. Cobb, you say, received all the mail coming in the office?

A. He opened all the mail; yes, sir.

Q. Did you ever handle the mail originally when it came in the office?

A. No; never.

Q. Letters might come in the office that you would not see?

A. It is possible, but nothing of that nature would come in that I would not see.

Q. You say it is possible? 30

A. Yes, sir.

Q. From time to time there have been a number of cases that you have not seen a letter at all, or seen certain letters at all; isn't that so?

Mr. Devlin—Objected to unless you show that in this case— Anything is possible, and I think—

The Court—I suppose he is entitled to show what the practice in the office is and whether or not mail does come to the office which this witness does not see.

Mr. Devlin—That question is all right.

Q. Now, you say there is mail from time to time coming into the office which you do not see at all?

A. Yes, surely, because I am out some of the time.

Q. Who receives that mail when you do not see it?

10 A. Mr. Cobb.

Q. Is he the only one?

A. Yes, sir.

Q. How many employees have you in the office?

A. We have ten, I think.

Q. Are they all just clerks?

A. They are all clerks; yes, sir.

Q. Do some of those clerks handle the mail?

A. No, sir.

Q. Who receives the mail first when it comes into
20 the office?

A. The mailman usually comes in and lays it on Mr. Cobb's desk.

Q. You say, "Usually." Does he do that all the time?

A. Yes, ninety-nine times out of a hundred.

Q. What does he do the other time?

A. If Mr. Cobb happened to be out to lunch he would lay it on my desk.

Q. That is the only time he would lay it on your desk?

30 A. Yes, sir.

Q. He would not lay it on anyone else's desk?

A. No, sir.

Q. Does anyone else handle the mail outside of you and Mr. Cobb?

A. No, sir.

Q. Mr. Cobb gets it first?

A. Yes, sir.

Q. What does he do with it then?

A. He sorts it out and gives me what comes under my attention and the rest he takes care of himself.

Q. Are you the only two people that handle the mail after he opens it and sorts it out?

A. Yes, sir.

Q. Is there anyone else in the office that gets communications?

A. Oh, yes. We give it to the different departments where it belongs.

Q. What letters does he deliver to other departments
10 outside of yours and his?

A. For instance, we have a stock man there, and any letters referring to the stock after he has taken care of it we pass it on to the stock clerk; and we have an order clerk, and the orders we pass on to the order clerk, and so on.

Q. So in sorting the mail you and he are the only ones who receive it?

A. No.

Q. How long has Mr. Cobb been in the office? 20

A. Ever since it has been started.

Q. Three years ago?

A. Yes; and prior to that he was connected with the Pillsbury Flour Mills Company, the same as I was, for thirty years or more.

Mr. Heher—Have you a letter dated January 21, 1925? I gave notice to produce.

Mr. Devlin—You gave me notice to produce a certain letter written by Stone and Company to the plaintiff under date of January 22, 1925, concerning the matter in issue. 30

Mr. Heher—Yes.

Mr. Devlin—Now, we have testified to no letter being received at that date or touching this question. Now, any letter that you have got that corresponds with that—

The Court—Your answer is, then, that you have no such letter?

Mr. Devlin—We have no such letter.

Q. All right. I will show you this letter, Mr. Vanderhoof—

Mr. Devlin—I object to the copy being used at the present time—

Mr. Heher—I was going to have it marked for identification and ask—

Mr. Devlin—Until it is first established that it was—that its original was written and mailed.

The Court—I suppose he may show it to this witness and ask whether he ever got such a letter.

Mr. Devlin—There is no need of it because he has flatly answered that he got none.

The Court—I suppose he is entitled to cross-examine on it and get his recollection.

Mr. Devlin—I think his answer is a direct finality to the question. I ask an exception to your Honor's ruling.

The Court—Yes.

20 Q. I show you what purports to be a letter with the heading "Stone & Company" at the top, under date of January 22, 1925, addressed to the Pillsbury Flour Mills Company, to your attention—"To the attention of Mr. Vanderhoof,"—and ask you if you have ever seen the original of that.

A. (After examining paper.)—I have read the first paragraph. I do not think it is necessary to go further. We never received any such letter.

Mr. Devlin—Read the whole letter and take your time to read it and answer the question.

30 (Witness continues to examine paper.)

Q. What do you say?

A. We never received any such letter.

Q. Are you sure of that?

A. Yes, sir.

Q. You do not recognize anything in that letter as being familiar, or as having seen it before?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Q. You can say that positively to-day, that you never received—

A. I never saw any such letter.

Q. Is it possible that someone else might have received that letter?

A. The only one is Mr. Cobb.

Q. Mr. Cobb might have received it?

A. Yes, sir. He opens the mail.

Q. Who is Mr. Greenberg?

A. Mr. Greenberg was a salesman.

Q. Mr. Greenberg was a salesman at that time, in January, 1925?

A. Yes, sir.

Q. And he had been a salesman for how long prior to that?

A. Oh, about, I should say roughly, without looking it up, about a year before that.

Q. Did Mr. Greenberg sign contracts on behalf of the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. He went out to make sales of flour and in doing so he had the power and authority to sign contracts for the sale and delivery of flour for the company?

A. Subject to acceptance; yes, sir.

Q. Subject to whose acceptance?

A. To our acceptance. That is on all contracts.

Q. Do you mean subject to the acceptance of you and Mr. Cobb?

A. Yes, sir.

Q. Did Mr. Greenberg have any other authority or power?

A. No, sir.

Q. Did he have power to name prices for flour? Were there certain set prices of flour?

A. He was supposed to name the prices he received from us.

- Q. Did he have any latitude at all in changing those prices?
- A. No, sir.
- Q. Did he have power to grant credit in any way?
- A. No, sir.
- Q. That was referred to the company?
- A. Absolutely; yes, sir.
- Mr. Heher—May I have this letter marked for identification?
- 10 (Paper referred to is marked *D-1* for identification.)
- Q. Is Mr. Greenberg with your company now?
- A. No.
- Q. When did his relationship cease to exist?
- A. I do not know as I can tell without looking it up.
- Q. Well, about when?
- A. I should say it is a year ago.
- Q. During 1925 some time?
- A. Yes; I think it was in the fall of 1925; I think,
- 20 without looking it up; I do not remember, really.
- Q. Did Mr. Greenberg make certain visits to Trenton and Stone & Company?
- A. Yes, sir; he came down here every two weeks.
- Q. Do you recall if he made visits every two weeks in the months of December, 1924, and January and February, 1925, to Trenton?
- A. I should say so; yes, sir. He should have done it and I suppose he did.
- Q. It was his practice to do that?
- A. Yes, sir.
- 30 Q. You knew he had made a number of visits to Trenton?
- A. Yes, sir.
- Q. Do you know, too, that he talked with Stone & Company and Herman Stone?
- A. Probably; yes, sir.
- Q. Did he ever report any conversation he had with Herman Stone or Joseph Stone?
- A. No, sir.

- Q. Did he make any report at all about his transactions in Trenton?
- A. Only the way the rest of the men do—he reports his orders. He does not tell what conversation he has with them.
- Q. Was it his practice to report to you any change in the status of partnerships or corporations or any financial change of individuals?
- A. Yes, sir.
- Q. He would report that always to you? 10
- A. Yes, sir.
- Q. It was his duty on behalf of the company to report those things to the office?
- A. Yes, sir.
- Q. And if he knew of the dissolution of this partnership or if he had acquired that knowledge on his visits to Trenton it was his duty to report it to you or Mr. Cobb or to report it to the Newark office?
- A. Yes, sir.
- Q. You say it was his duty to observe the financial 20 change in conditions of individuals and partnerships and corporations when he was on the road making sales of flour?
- A. It was his duty; yes, sir. They do not always do those things, but it is their duty.
- Q. If he received notice of the dissolution of any partnership you considered that notice to the Pillsbury Flour Mills Company, did you not?
- The Court—I suppose that calls for a conclusion.
- Mr. Heher—All right. I will withdraw the 30 question.
- Q. Did you ever see any drafts accepted by Stone & Company for the delivery of flour during the time you had business relations with Stone & Company?
- A. No.
- Q. Who would receive those drafts?
- A. Mr. Cobb.

Q. What was your practice in having drafts accepted for sales of flour?

Mr. Devlin—I do not know as this gentleman can state it. He is not the financial man.

The Court—He may answer it if he can.

(Last question read.)

A. Well, our practice varies in that respect.

Q. I will ask in this particular case, if you know. Do you know whether or not your practice was to send
10 drafts direct to Stone & Company for acceptance and they would return them, accepted, to your company and you would thereupon deposit them in the Chase National Bank of New York?

A. I would rather Mr. Cobb would answer that question.

Q. Do you know that?

A. I know they paid by draft.

Q. Was that the practice, if you know?

A. Yes, sir; usually.

20 Q. And the drafts, you say, never came to your notice at all?

A. No; they never came to me.

Q. Who would handle those or send them out?

A. Mr. Cobb.

Q. He would send them out for acceptance direct to the purchaser of flour?

A. Yes, sir.

Q. You never handled any at all?

A. No, sir. That is not my part of the work.

30 Q. Was there anyone else handled drafts for acceptance besides Mr. Cobb?

A. No. They have all got to go through his hands first.

Mr. Heher—In this connection, your Honor, I asked for the production of two drafts. There are two drafts mentioned in the complaint in this way: the plaintiff asks for protest fees upon two drafts which were protested. They are en-

tered on the book account in the complaint, and I ask for the production of those two drafts.

Mr. Devlin—Have you got those drafts?

The Witness—Yes, sir. What was the date of the drafts?

Mr. Heher—I say in the notice the ones mentioned in the complaint.

The Witness—(Producing papers.) These are the two, I guess, Mr. Devlin. Those are the only two I had, and those are the ones Mr. Cobb
10 handed me the other day, and I thought he might be a little late was the reason I brought them down.

Q. I show you these two papers, apparently drafts drawn by Pillsbury Flour Mills Company against Stone & Company, one dated June 8, 1925, for \$2,682.50, and the other likewise drawn by Pillsbury Flour Mills Company against Stone & Company, under date of May 21, 1925, for \$2,304.50, and ask you when you saw these first.

A. I never saw them until the other day.

Q. How did you come to see them the other day?

A. Yesterday when Mr. Cobb handed them to me to bring down here. He said Mr. Devlin had asked for them, and as I was coming first I brought them along, in case he was late. Mr. Cobb had them in his files somewhere.

Q. You say that is the first you saw of those two papers?

A. Yes, sir.

Q. I understood you to say on direct examination
30 that at the time that Joseph Stone and Herman Stone came to your office in Newark with reference to the contemplated purchase of flour you told them you wanted them both to endorse drafts, did you not?

A. I do not think I said that.

Q. What did you say?

A. I did not take up the question of drafts with them; I never did. The question of drafts is handled in the credit end of the office.

Q. You mentioned Samuel Stone, Joseph Stone and Herman Stone in connection with the giving of credit, did you not?

A. I mentioned Samuel Stone in connection with those bank letters.

10 Q. Isn't it a fact that when you mentioned the question of credit when they were forming this partnership that you considered Samuel Stone, the father, as well as the two boys?

A. No, I do not think I said that.

Q. Who mentioned Samuel Stone's name first in the conversation between you and the two boys, in this conversation in Newark?

A. What do you mean?

20 Q. How did Samuel Stone's name come to be mentioned in the conversation between you and the two boys in Newark?

A. The boys spoke of their father as being a man of means and he was going to put some money into the business.

Q. Were you asked for credit outside of the two boys?

A. No. We were looking up their responsibility.

Q. Were you satisfied with their credit without the father's endorsement on these drafts?

A. Yes.

Q. So the father's endorsement was not necessary?

30 A. No, sir.

Q. Did you understand the two boys then would accept drafts when you sent them forward for acceptance in the future?

A. No. That is not ruleable in business.

Q. Did you understand both would accept drafts?

A. No, sir. Nothing was said about that, not in regard to who should sign the drafts. We do not care who signs them as long as they are paid.

Q. Isn't it a fact that you wanted both names as acceptors on those drafts to be sent in the future?

A. Not necessarily, no.

Q. Isn't it a fact that you were relying upon the credit of Joseph Stone as well as that of Herman Stone?

A. Yes, sir.

Q. And isn't it true that you as a business man of forty years would want the liability of those two men on those drafts by their signatures? Isn't that true?

A. That is not necessary. 10

Q. Didn't you know if you had one name on there you would be able to hold the other man?

A. No.

Mr. Devlin—I object to that.

Q. Do you want us to understand that you understood at the time these two boys talked to you first in Newark that the signature of one of them in accepting drafts which you sent them in the future would be sufficient?

A. Yes, sir. 20

Q. And you did not care which one of them accepted the drafts which were sent forward in the future?

A. Not if they were paid.

Q. Did you understand that Joseph Stone was perhaps more financially responsible than Herman Stone?

A. Yes, sir.

Q. And do you want us to understand you did not care who accepted them in the future?

A. It does not make any difference to us who accepts them as long as we are paid. All we want is our money.

30 Q. Mr. Vanderhoof, calling your attention to these two drafts again, the one dated June 8, 1925, and one dated May 21, 1925, and calling your attention to this particular draft, they are accepted in this fashion, "Stone & Company," and underneath, "H. M. Stone." In other words, Joseph Stone's name does not appear on there. Is it true that all the drafts you received were accepted that way?

A. I do not know.

Q. Would you regard this, from your business experience extending over so many years, as being sufficient to hold Joseph Stone as a partner in this business?

A. Yes, sir.

Q. You think it would?

A. Yes, sir.

Q. The question would never arise in your mind if you had an instance like this, with H. M. Stone on it
10 on behalf of Stone & Company, as to whether the signature of Joseph Stone was there?

Mr. Devlin—Objected to as argumentative.

The Court—Yes, I think it is.

Mr. Heher—That is all.

Re-direct examination, by Mr. Devlin.

Q. If you had received notice of any dissolution of this partnership on the date of January twenty-second, what effect would such notice have had on you in your
20 relations with these two people?

A. Why, knowing that H. M. Stone was not financially responsible, we certainly would not give him six thousand dollars worth of credit.

Q. You would have stopped the deliveries?

A. Why, surely.

Q. Until a new line of credit was made?

A. Yes, sir.

Q. Because you understood at that time, didn't you, that Joseph Stone was the financially substantial man of the two?

30 A. Yes, sir.

Q. And you knew that Herman Stone had nothing?

A. Yes, sir.

Q. Mail always that comes to your office first goes to Mr. Cobb?

A. Yes, sir.

Q. Does he, as far as you know, open it all?

A. Yes, sir.

Q. Then does he separate to each individual what mail he desires each to take care of?

A. Yes, sir.

Q. Is that the custom?

A. Yes, sir.

Q. If he got such a notice as that Mr. Heher has presented to you, to whom would that notice go?

A. Why, he would take action himself at once, as credit manager.

Q. And then he would give the rest of the office
10 orders to conform to what he wanted to do?

A. Surely.

Q. As the man responsible for the receipts for the goods that go out?

A. Yes, sir.

Mr. Devlin—That is all for the present. I will have these two drafts marked for identification.

Papers referred to are marked *D-2* for identification and *D-3* for indentification.

(At 12:15 o'clock in the afternoon a recess
20 was taken until 2:00 in the afternoon.)

Walter Cobb, sworn for the Plaintiff.

Direct examination, by Mr. Devlin.

Q. Mr. Cobb, where do you live?

A. 471 North Maple Avenue, East Orange.

Q. Essex County, New Jersey?

A. Essex County, New Jersey.

Q. What is your occupation?

A. Office manager.

Q. For whom?

A. For the Pillsbury Flour Mills Company.

Q. How long have you been acting in that capacity?
30

A. Since 1923.

Q. Acting in that position, how long have you had a department in New Jersey?

A. Well, we have had a sub-branch under the jurisdiction of New York in 1923, and we became a branch March 1, 1926.

Q. What are your duties in that position?

A. To look after the office, take care of the correspondence and handle the credit end of it.

Q. What do you mean by that?

A. I am called credit clerk.

Q. By that you mean you are the person who examines into the reliability of anyone who seeks to do business with you on credit, is that right?

A. Yes, sir.

10 Q. That means an examination of their resources and their liabilities, their capacity to pay for any obligations they incur?

A. Yes, sir.

Q. And you keep a checkup of the conditions of your creditors, or your customers? It is your duty to keep it, so as to fix your business accordingly, is that so?

A. Yes, sir.

Q. Are you the person that has the complete control of that branch of the business in New Jersey?

20 A. In Newark; yes, sir.

Q. And you are for this district?

A. Yes, sir.

Q. Has any one in your office authority to do that work in the line of credit beside you?

A. No, sir.

Q. You are the one who has sole authority?

A. Yes, sir.

Q. And your authority is not delegated to anyone else, is it?

A. No, sir.

30 Q. Any terms that you make with a customer in regard to credit you alone make?

A. I make them.

Q. And if any changes are made who makes them?

A. Buffalo.

Q. Through your superiors?

A. Yes, sir.

Q. And no change is made except through Buffalo?

A. Right.

Q. And if any change is made, even by Buffalo, it is made through you?

A. Yes, sir.

Q. I show you a paper marked *Exhibit P-3* and ask you what that is.

A. That is the confirmation of contract made between the Pillsbury Flour Mills Company and Joseph H. Stone and H. M. Stone.

Mr. Heher—Is that in the contract?

The Witness—That is in the heading. 10

Q. For what quantity of goods is it for?

A. For a carload.

Q. Then it is shipped at various times?

A. Yes, sir.

Q. According to the direction of your—

A. Of J. H. Stone and H. M. Stone.

Q. They direct you when to ship?

A. Right.

Q. And you ship according to the payments, that they are made according to the contract? 20

A. Yes, sir.

Q. Were you present when those papers—

A. Yes, sir; I signed it.

Q. You are the party who signed it?

A. Yes, sir; for the Pillsbury Flour Mills Company.

The Court—Let me see that.

(Paper handed to the Court.)

Q. Do you know Herman Stone and Joseph Stone?

A. Yes, sir; I met them.

Q. You met them when this was signed? 30

A. Sure.

Q. What occurred before that was signed?

A. They were in the office and stated they were going into business, to do a wholesale flour business, and I met both J. H. and also H. M., and we talked it over and we talked over the finances.

Q. When you say "finances," what do you mean? Tell us just what was said, to the best of your recollection.

A. Mr. H. M. Stone was the party that did most of the talking, and he wanted credit. Well, they were brand new to us and we asked them if they had any money, and H. M. did not have any, but—

Q. That is Herman Stone?

A. Yes, sir.

10 Q. He hadn't any money?

A. No, sir.

Q. He told you that, did he.

A. Yes, sir. But his brother, J. H., had the money, and also his father was willing to put up money.

Q. That is they said the father would put up money?

A. Yes, sir.

Q. The father was not present, was he?

A. No, sir.

Q. Go ahead.

20 A. And I said, "Well, we will have to take it up with the Buffalo office. You make out a financial statement and we will forward it on to Buffalo for action." Now, there were figures prepared—

Q. Who prepared those figures?

A. H. M. Stone. We have a regular form to make out and—

Mr. Heher—I object to this on account of its immateriality and irrelevancy. The question arose when the preceding witness testified.

30 The Court—Yes, I suppose this is the same question, although there is nothing pending now. Go ahead. I will deal with anything that arises.

Q. I show you two papers together. Look at them and see if you identify them.

A. Yes, sir.

Q. Who gave you that paper?

A. They were sent in, to my recollection.

Mr. Heher—Now, I object, your Honor, unless counsel can state the relevancy of these papers in this issue.

Mr. Devlin—The purpose is just to show that Herman Stone had no financial standing and that this paper was sent in to show his brother's financial standing.

The Court—I take it that, up to this time at any rate, that is not disputed.

Mr. Devlin—Does your Honor rule against 10 the paper?

The Court—Yes.

Mr. Devlin—For the present I will ask an exception. It may be competent on rebuttal.

The Court—Yes.

Q. Now, after this paper you have there in your hand what other conversation did you have about that at that time?

A. Well, we talked over the future business relations we expected to have, how he was going to push 20 the flour for us and make it a success, if we would only grant the credit. We didn't know how large the business was going to turn out. And it went on for quite some time. We were at that time under the jurisdiction of New York—

Mr. Heher—I object to any comments.

The Court—Just answer the questions. Go ahead, Mr. Devlin.

Q. Did you enter into this contract here, dated the tenth month, thirtieth day— Before you entered into this contract they had you write to some banks in 30 Trenton, didn't they?

A. At that time they gave us references.

Q. To the Mercer Trust Company and Hanover Trust Company?

A. Yes, sir.

Q. I show you two papers, P-1 and P-2, and ask you if those are the papers you wrote, or did you receive those letters?

A. Yes, sir.

Q. It was after that that you entered into this contract, P-3?

A. These letters are before that contract.

Q. You continued to send flour under that contract until that particular order was filled?

Mr. Heher—I object to the question as leading.

The Court—He may answer. I take it there is no dispute. 10

Q. Now, I show you a copy of the account in this case, which is P-4 and P-5, and I ask you to tell me if you will when was the date of the last sale on that account, or last order?

A. May fifteenth—

Mr. Heher—That is objected to. This witness has not shown that he is competent to testify to anything contained in this paper.

Mr. Devlin—I will withdraw it.

Q. Are you familiar with that paper there? 20

A. Absolutely.

Q. Do you know the items on there, what they mean?

A. Yes, sir.

Q. It is kept in your office?

A. Yes, sir.

Q. And sent to me as your attorney?

A. Yes, sir.

Q. What is the date, from these records that you have got in evidence, of the last order or sale—not the delivery—of flour? 30

Mr. Heher—That is objected to, your Honor. I take it that this witness can not testify to anything contained in that paper unless he made the record of this book account. It is a suit upon a book account.

The Court—I understand that the account is not challenged. Are you able to say, without

reference to any notes when the last order was actually given, the date of it? Do you know.

The Witness—Well, I know because I have looked at the record.

Mr. Heher—The only admission as to the account was the amount. He is talking about dates now.

Mr. Devlin—The account is in evidence as it stands and all I ask him to do is to tell what it means. 10

The Court—These papers are in evidence?

Mr. Devlin—Yes.

Mr. Heher—They were offered with reference to the amount due on the account.

The Court—I suppose for whatever they prove. I think the last witness testified that the order was given on December eighth, if that is the date.

Mr. Devlin—December third; and the goods were delivered June eighth, the last of that order. 20

The Court—I think he may answer the question.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. Will you, by reference to that account there, which is in evidence, tell us when the last order was given to you?

A. May fifteenth, 1925.

Q. The last order for Goods?

A. Yes, sir— Do you mean the last purchase or the last order for the delivery of the goods? 30

Q. I do not mean the delivery. I mean the last order. See if I understand you right. When an order is given for a carload or two carloads of flour—

Mr. Heher—I object to counsel putting the words in the mouth of the witness.

The Court—Yes. You may ask the witness if he knows when the order was given. I do

not suppose that you can tell the witness what you want him to testify to.

Q. What dates were the orders given for the flour?

A. I could not tell from these papers here.

Q. You cannot tell?

A. Not from these papers; no, sir.

Q. Let me call your attention to something I want you to explain.

10 Mr. Heher—I object to pursuing that, your Honor. The witness has already said that he cannot tell.

The Court—I will hear the question.

Q. I call your attention to the first column, that is headed "Date. Sale."

A. Yes, sir.

Q. "Order number," "Invoice number," "Date," "Name and address," "Number of packages," "Weights," "Amount," "Total." What does the column, "Date of sale" mean?

20 A. It means the date we sold the goods and the man purchased them.

Q. Now, I call your attention to the last number of packages given here on p. 5. Do you see there on p. 5, do you see there "12/3" and "6/8/25. Date. Stone & Company. No. of Packages, 40; size, 98, Cot." and so forth. Now, will you tell me what that "12/3/24" means?

A. That means that this—

30 Mr. Heher—I object. The witness has already testified that he could not tell from these papers.

The Court—He may explain what it means on this exhibit.

The Witness—It means that these forty ninety-eights of Pillsbury's Best Cotton at that price was taken off of the contract on December third; and this is the number of the contract, 2323; 72 is the warehouse number ordering the

delivery, and this is the invoice number, 1401. It is the record we have to trace back the orders.

By the Court.

Q. Does that mean, then, that the order for this flour was given on the third day of December, 1924?

A. It was sold to him on that date.

Q. That was when the order was given, and he did not order delivery until later?

A. No.

10

By Mr. Devlin.

Q. You are confusing me with the words "order" and "sale." I am trying to get from you what date was the last order or sale of flour made. Not when it was delivered. When was the date of the contract, the date the contract was entered into for the last flour?

A. That was December 3d.

Q. Is that the latest date?—

A. No, sir.

20

Q. —on that?

Mr. Heher—I object and move that the testimony with reference to this contract be stricken out, unless the contract be produced.

The Court—I think that this testimony will have to stand.

Mr. Heher—Does the witness say the contract was in writing?

The Witness—It was in writing.

Mr. Heher—I ask that the testimony with reference to that be stricken out unless the contract 30 itself is produced.

The Court—The motion is overruled.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. I wish to call your attention—That "12/3" date of sale, is that in that contract?

A. Yes, sir.

Q. That is the twelfth month and third day?

- A. Yes, sir.
- Q. Now go to the one above that.
- A. Yes, sir.
- Q. Is that the same contract?
- A. Yes, sir.
- Q. How about this one, "5/15"?
- A. That is another contract. That is May fifteenth.
- Q. What year?
- A. 1925.
- 10 Q. What indicates it is 1925 and the other is 1924?
- A. There is the date here, May 15, 1925; and that "24" is here (indicating); December.
- Q. Now then go to the other one. What date is this?
- A. April 6, 1925.
- Q. And what is this?
- A. January 27, 1925.
- Q. Where did you get the year from?
- A. (Indicating.) From here.
- Q. Now from the date that you delivered the last
- 20 of these goods that you sue for did you receive any communication indicating to you or telling you that the partnership between Herman Stone and Joseph Stone had been dissolved?
- A. No, sir.
- Q. Whose duty is it to open the mail?
- A. It is my duty.
- Q. Do you open all the mail?
- A. Absolutely.
- Q. Had you received any letter from them at any time indicating or implying that they had dissolved partner-
- 30 ship?
- A. No, sir.
- Q. I show you a copy of a letter marked *D-1*, on cross-examination, and ask you to read that letter before I ask you any questions on it.
- A. (Witness examines paper.)
- Q. Now have you read the paper?
- A. Yes, sir.

Q. Did you ever receive an original of which this is supposed to be a copy, containing the language in that letter?

A. I did not.

Q. Had you received it on the date set out here, what action, if any, would you have taken?

Mr. Heher—That is objected to. He says he did not receive it.

The Court—I do not think that is competent, Mr. Devlin. 10

Mr. Devlin—Well, I think it is competent in this respect: This man's duty as credit man is to see that when goods are sold there is a reasonable probability of their being paid for. The testimony here has been that this man made particular and explicit inquiry and he at that time trusted these people after being assured—

The Court—You are asking this witness to state what he would have done in a case where he says the facts upon which and the circum- 20 stances upon which he would be called upon to act had never existed. That is speculative. I suppose you may show what, if the letter had been received, it would have been his duty to do.

Mr. Devlin I will accept that distinction.

Q. If that letter had been received what would have been your duty as credit man of this company?

Mr. Heher—I object to that. I do not see its relevancy or materiality, when he has testified he did not receive it.

The Court—I think he may answer it. 30

Mr. Heher—May I have an exception?

The Court—Yes.

A. I would have immediately taken it up with the Buffalo office, with our credit manager, and would have been advised by him.

Q. According to the custom of your business what would have been your duty after you got it?

A. We would have made different managements.
We would not deliver any more goods.

Q. To Stone & Company?

A. Yes, sir.

Q. Did Mr. Greenberg ever work for you?

A. Yes, sir.

Q. What was he?

A. Salesman.

Q. Had he or any other salesman any authority from
10 your office to change or make any terms of giving or
receiving any credit?

A. No, sir.

Q. You never gave such a man any authority?

A. No, sir.

Q. Nor to anyone else, did you?

A. No, sir.

Mr. Devlin—Cross-examine.

Cross-examination, by Mr. Heher.

20 Q. Mr. Cobb, you say that it was your duty in the
office to open any mail that came in; is that right?

A. Yes, sir.

Q. Did you have any other duties?

A. Yes, sir.

Q. What were your other duties?

A. To look after the credits and superintend the of-
fice, the running of the office, and handle the credits.

Q. Were you in an executive capacity in the office?

A. Yes, sir. I signed checks.

Q. On behalf of the Pillsbury Flour Mills Company?

30 A. Yes, sir.

Q. How long have you been in the office?

A. Well, I have been in the office since it opened up,
in 1923; and I have been with the company about thirty-
six years under different—

Q. With reference to the mail coming into the of-
fice, would you open it up on all occasions?

A. Yes, sir.

Q. Did Mr. Vanderhoof ever open the mail?

A. Very few exceptions.

Q. Well, he did, didn't he?

A. Absolutely.

Q. You, then, did not open it on all occasions, did
you?

A. When I am there, yes.

Q. I say you did not open the mail on all occa-
sions?

A. No, sir.

Q. In other words, Mr. Vanderhoof did sometimes? 10

A. Yes, sir.

Q. Did anyone else do it on other occasions?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. You say that you did not receive this letter which
is marked *D-1*, you looked at a moment ago, dated Jan-
uary twenty-second, signed "Stone & Company," ad-
dressed to Pillsbury Flour Mills Company? You look-
ed it over very carefully? 20

A. I did, sir.

Q. You read every word in it?

A. I did, sir.

Q. You can say now positively that you never re-
ceived any letter containing anything like there is in
this letter?

A. I can, sir.

Q. You are sure of that?

A. Absolutely.

Q. Did you ever receive notice of any trouble be-
tween the Stone boys? 30

A. No, sir.

Q. When did you first find that out, that there was
trouble between them?

A. When their drafts came in and were not honored.

Q. When was that?

A. Along in June, I think; May or June.

Q. Of what year?

A. Of 1925.

Q. You are not sure whether it was May or June?

A. No, because at that time we were running under the jurisdiction of New York.

Q. I am asking you when you received notice.

A. We handled it up to June, and I think it was around June fifth.

Q. How did you find out there was trouble between them?

A. Through the New York office.

10 Q. What was the information that you got?

A. That the drafts were not taken care of.

Q. Was that all that they told you?

A. Yes, sir.

Q. Had anybody told you before that time that they had dissolved the partnership?

A. No, sir.

Q. In connection with your duties in the office, if a notice came in or there were any stories of a dissolution of a partnership through any source, you would notify the Buffalo office immediately?

20 A. Yes, sir.

Q. In other words, that was your work in the office in case a notice came in with reference to a dissolution?

A. Yes, sir.

Q. You would immediately get in touch with the Buffalo office?

A. Yes, sir.

Q. And advise them of the dissolution of the partnership?

A. Yes, sir.

30 Q. Had you done that on other occasions; notified the Buffalo office about a dissolution?

A. I had; yes, sir.

Q. And Mr. Vanderhoof had, too, I suppose?

A. I presume so.

Q. Do you know?

A. No; I cannot say that I do.

Q. Mr. Greenberg was connected with your office, was he not?

A. Yes, sir.

Q. And he was out on the road continually, engaged in the sale of flour for your company?

A. Right.

Q. He would go from city to city in the course of his duties?

A. In his territory.

Q. Wouldn't that involve more than one city?

A. Yes, sir.

Q. His territory was the State of New Jersey? 10

A. Yes, but not all the towns.

Q. Trenton was included in his territory?

A. Yes, sir.

Q. You know, yourself, that he called here on a number of occasions in connection with the business of Stone & Company?

A. Yes, sir.

Q. Do you know that he signed any contracts on behalf of your company with Stone & Company for the delivery of flour? 20

A. Yes, sir.

Q. Had he the power to do that?

A. Yes, sir.

Q. Had he the power to do anything else for your company?

A. Collect.

Q. Collect bills while he was on the road?

A. Yes, sir.

Q. And sign contracts?

A. Yes, sir.

Q. Did he have anything to do in connection with the giving of credit? 30

A. No, sir.

Q. With regard to the prices, what was his authority?

A. To sell subject to acceptance.

Q. Would he receive the prices from your office in Newark?

A. Yes, sir.

Q. And he had those prices when he would go out on the road?

A. Yes, sir.

Q. Was it part of his work to report to the company at Newark the dissolution of any partnership which he observed while he was out on the road or of which he had notice?

A. Yes, sir.

Q. That was part of his work?

10 A. Right.

Q. And if he received notice or had notice of the dissolution of this partnership between the Stone boys it was his duty and part of his work to report it to your company at the Newark office?

A. Yes, sir.

Q. With reference to this contract, dated October 30, 1924, marked *Exhibit P-3*, will you look at that and say whether or not that is a contract made on October 30, 1924?

20 A. Yes, sir; it was.

Q. Will you state also the provision of that contract with reference to when the flour was to be delivered under that contract?

A. Yes, sir; prompt.

Q. What would that mean?

A. Fourteen days.

Q. With reference to any other contracts made between Stone & Company and the Pillsbury Flour Mills Company, what was the time of delivery?

A. It varied.

30 Q. Well, extending over what period of time?

A. Well, sixty days.

Q. What would you say some of them were?

A. Some went longer than sixty days.

Q. And this contract which you have in your hand has nothing to do with the other contracts which you have mentioned?

No, sir.

Q. Just the one made on October 30, 1924?

A. Yes, sir.

Q. You stated, I think, Mr. Cobb, that there was an order made on December 3, 1924. Is that right?

A. A contract.

Q. Did you say there was a contract made on December 3, 1924?

A. Yes, sir.

Q. Will you look at this and point out just where the statement or notation is that there was a contract made on December 3, 1924? 10

A. (Witness indicates.)

Q. Where is the year 1924?

A. It don't show on there, 1924, but here is the date of the invoice. This is the contract here, December third.

Q. Isn't it true that there is nothing on this paper in any part of it which states the year this contract was made, which you say was made December 3, 1924?

A. Not on that; no, sir.

Q. What did you mean when you said on direct 20 examination that you could not tell from these papers—when you used the expression in answer to a question of Mr. Devlin's that you could not tell from these papers? What did you mean that you could not tell?

A. The date of an order. If an order was given to us to-day for delivery the car would not be delivered until two or three weeks later. Now, that don't show on there, the date that we received the order. It shows on there the date of delivery and the date of the contract.

Q. What do you mean by "Order" and "Contract?"

A. "Order"—

Q. Is the order a contract?

A. No, sir.

Q. What is an order?

A. An order is to order out the flour; that is, as we make it. For instance, if a purchase is made, like to-day, this is what we call a contract. Now, that is marked for prompt shipment, and we get another order

and order the car immediately, and that is what we call an order. Now, Stone & Company may not order out at the same time as the contract is issued.

Q. Do you mean an order for delivery some time later?

A. Yes, sir.

Q. Did you consider this order which you say was made on December third a contract?

A. That was a contract. We have to take it off of
10 that contract.

Q. When did that call for delivery?

A. That I am not in a position to say.

Q. Isn't it a fact that you knew at that time the market was fluctuating with reference to flour and that you would not hold up shipments for any length of time?

A. No, sir.

Q. You do not want us to understand that on an order given December third, 1924, you made delivery
20 June 5, 1925, do you?

A. Yes, sir.

Q. Six months later?

A. Yes, sir.

Q. But do you know?

A. I know.

Q. How do you know in this particular case?

A. Because we owed the men more flour on that same
contract.

Q. Do you recall this particular contract?

A. Yes, sir.

Q. Did you handle it yourself?
20

A. Yes, sir.

Q. Do you say that the flour was shipped on June
5, 1925?

A. Some of it was.

Q. Did you see that it was shipped, yourself?

A. No. That is done at Minneapolis.

Q. You do not know, yourself, that the flour was
actually shipped on June 5, 1925?

A. No, sir.

Mr. Heher—I ask that the witness's testimony with reference to the statement that the flour was shipped on June fifth be stricken out.

The Court—I think he was asked to interpret what the date meant, not the fact the shipment was actually made. It may stand.

Q. I do not recall, Mr. Cobb, if you answered the question as to what you meant in saying to Mr. Devlin that you could not tell from these papers. What
10 did you mean when you said you could not tell from these papers? What can't you tell from the papers?

A. When the order comes in.

Q. And the order is the contract?

A. No; not necessarily. If we sell Stone & Company five hundred barrels of flour to come out in sixty days, we do not ship all the five hundred barrels out in sixty days.

Q. Are they bound to take the five hundred barrels
of flour?
20

A. Yes, sir.

Q. Then it is contract?

A. Yes, sir.

Q. What do you mean by an order as distinguished from a contract?

A. They won't order the five hundred barrels at one time; they will give us an order for a hundred barrels or twenty barrels, and later they will give an order for a couple of hundred barrels, and those orders apply against the contract, as in this instance, forty barrels one time and twenty barrels another time.
30

The Court—When you use the word "Order," you mean shipping order?

The Witness—Yes, sir.

Q. You say there is nothing from these papers that you can tell the year, as far as December third is concerned?

A. No, sir; not on there.

Q. There is nothing here, is there?

A. Not on there; no, sir.

Q. Mr. Cobb, I ask you to look at this statement again and call your attention to the dates. That is January twenty-seventh, isn't it, the first one?

A. Yes, sir.

Q. The second is April sixth?

A. Yes, sir.

Q. The third May fifteenth?

A. Yes, sir.

10 Q. The fourth and fifth are December third?

A. Yes, sir. May fifteenth was the contract of December third. There are different quantities of flour.

Q. Where did this flour on December third come from?

A. From our Trenton stock.

Q. You kept that flour in the Anchor Warehouse in Trenton?

A. Yes, sir.

20 Q. Is that where those two small installments came from, marked December third?

A. Yes, sir.

Q. One installment amounting to \$378 and one to \$189?

A. Yes. I guess you will find two or three more.

Q. All the other shipments came from Minneapolis, is that right?

A. From Buffalo.

Q. The previous shipments?

A. Yes, sir.

30 Q. You say there is a written contract for these two last items in here marked December third?

A. Yes, sir.

Q. There is a written contract signed by Stone & Company?

A. Yes, sir.

Q. You haven't that here?

A. No, sir.

Q. Will that contract contain the date it was made?

A. Yes, sir; December third.

Q. What did you mean when you said on direct examination that the last order was on May fifteenth? Will you look at this again? You said on direct examination in response to a question by Mr. Devlin that the last order was on May fifteenth.

A. Yes.

Q. What did you mean by that?

A. There is a sale on May fifteenth, sale and delivery on May fifteenth; he bought it on the market at that time.

10

Q. What did you mean by saying it was the last order?

A. The last sale, the last purchase.

Q. Do you want to change it now and say the last sale or purchase?

A. Yes, sir.

Q. You do not mean it was the last order?

A. No, sir.

Q. Why did you say it was the last order?

A. Well, we were mixed up on the order and the 20 purchase.

Q. Did you look through your correspondence files to find all the correspondence or papers in connection with this case before coming here?

A. Yes, sir.

Q. Did you look for any letter that you received?

A. All letters; yes, sir.

Q. What did you do in looking for letters?

A. Looked through our file.

Q. Did you look, yourself?

A. Yes, sir.

Q. You know the files in your office, do you? 30

A. Absolutely.

Q. Who does the filing?

A. We have a young lady, a stenographer, who attends to the filing.

Q. You have more than one who does the filing, don't you?

A. No; just the one. I file my own records, such as credit records.

Q. Well, the letters that come in the young lady files?

A. Yes, sir.

Q. Did you ask her to look it up and see whether there was a letter from Stone & Company?

A. Yes, I asked for the file with the "S's."

Q. And you went through the file yourself?

10 A. Yes, sir.

Q. Did you find any letter from Stone & Company?

A. No, sir.

Q. Did you know at the time you asked the girl to look it up that you had not received such a letter from Stone & Company?

A. No, sir.

Q. What were you looking for?

A. To get the account out.

Q. Who told you to do that?

20 A. When we started the case.

Q. Mr. Devlin asked you to look and see if you had in your files a letter from Stone & Company regarding the dissolution. Did he say Stone & Company claimed they had sent you a letter notifying you they had—notifying you of the dissolution of the partnership?

A. Well, recently.

Q. So that was the first you knew there was any claim on the part of Stone & Company that they had given you notice of the dissolution?

30 A. Yes, sir.

Q. When you looked through the files— That was several days ago, was it?

A. Oh, yes.

Q. And at that time you were looking for the letter notifying the company of the dissolution?

A. Looking for all letters.

Q. You were looking for that letter, weren't you?

A. Yes, sir.

Q. That was the particular letter you were looking for, wasn't it?

A. No. It did not have any date on it or anything.

Q. Mr. Devlin told you we claimed we had sent you notice of the dissolution by letter, and he told you to look particularly for that letter, did he not?

A. No; he did not.

Q. Did he tell you to look for the letter of dissolution?

A. I did not have any dealings with Mr. Devlin in regard to that at all. 10

Q. Who told you to look for the letter?

A. Mr. Vanderhoof.

Q. What did Mr. Vanderhoof tell you?

A. He told me to see if we had ever received a letter from Stone & Company relative to a dissolution of partnership.

Q. So you were looking for the letter of dissolution, weren't you?

A. Yes, sir.

Q. Did Mr. Vanderhoof ask you at that time whether you recalled such a letter? 20

A. I do not recall it.

Q. Do you mean to say that you and Mr. Vanderhoof did not have any conversation at that time about the receipt of the letter of dissolution from Stone & Company?

A. We did not.

Q. Did you and Mr. Vanderhoof talk at all about receiving notice of the dissolution from Mr. Stone before coming here to testify to it?

A. Yes, sir; we did. 30

Q. When? It was several days ago, wasn't it?

A. Yes, sir.

Q. And at that time you were looking for the letter?

A. No. We have had those letters in the file since the case was called last June, I think.

Q. At that time you were looking for the letter of dissolution?

A. At that time I was looking for it.

Q. At that time you knew what he claim of Stone & Company was, that they had notified you of the dissolution?

A. Yes, sir.

Q. Who told you that?

A. Mr. Vanderhoof.

Q. Before that you did not know what the claim of Stone & Company was, did you?

A. No, sir.

10 Q. Did you tell Mr. Vanderhoof when he asked you to look for the letter that you knew the company had not received one?

A. I presume I did.

Q. Well, did you?

A. I think I probably did in talking about the matter.

Q. That is something you would know right offhand?

A. Yes.

20 Q. Do you want us to understand that you did not tell Mr. Vanderhoof at the time he asked you to look for the letter that you had not received notice of the dissolution?

A. The chances are I did say it to him.

Q. Do you know whether you did or not?

A. I may have said it and maybe I didn't.

Q. That is a very important thing, isn't it, in your business, to look for notice of dissolution of partnerships?

Mr. Devlin—I object. The witness says it is nearly six months ago and he may have said it.

30 The Court—This present question I think is competent.

(Last question read.)

The Court—I think he may answer that.

A. Yes, sir.

Q. That is something that you would remember; right offhand you would remember that?

A. Yes, I would file it myself.

Q. And you are telling us now that you do not remember whether you told Mr. Vanderhoof, or not, as

soon as he told you to look for that letter—you do not remember whether you told him or not that you had not received notice of the dissolution?

A. I probably told him I did not receive it.

Q. You can not say what you told him, can you?

A. No, sir.

Q. And it was about June—

A. I think it was around June.

Q. It is just a little over about four months ago when you looked for that letter, isn't it? 10

A. Yes, sir.

Q. And you can not tell us now whether you told Mr. Vanderhoof that you had not received the letter of dissolution?

Mr. Devlin—I object to that as repetition.

The Court—I think he has answered that several times.

Q. Did you handle any drafts drawn by Pillsbury Flour Mills Company on Stone & Company?

A. No, sir. 20

Q. Mr. Vanderhoof says you did. That is not so, is it?

A. No, sir.

Q. Who did?

A. New York.

Q. Will you tell us the practice of your company in having drafts accepted by Stone & Company while you were doing business with them?

A. I don't know. That was done in New York.

Q. Did you ever handle any drafts drawn by your company on other people? 30

A. I do now, yes.

Q. When did you start doing it?

A. The first of March.

Q. You do that yourself now?

A. Yes, sir.

Q. You started in March of this year?

A. Yes, sir.

Q. Was there anyone in your office that handled them before that time?

A. No, sir.

Q. You are sure of that, aren't you?

A. Yes, sir.

Q. So that what Mr. Vanderhoof says, that you handled them while the Stone & Company transactions were going on, is not so?

A. No, sir.

10 Q. Did you ever see any draft accepted by Stone & Company and the two names, "Joseph Stone" and "Herman Stone" underneath?

A. No, sir.

Q. Did you ever see any draft with just the name of Herman Stone on it for Stone & Company?

A. Stone & Company. I do not know whether it is "Herman Stone" or "H. M. Stone."

Q. Where did you see that?

A. The two that I had here this morning.

20 Q. At the time Herman Stone and Joseph Stone came to your office in Newark you were present?

A. Yes, sir.

Q. And the understanding was between you and the Stone boys that they were to accept the drafts and their father, Samuel Stone, was to endorse them; is that right?

A. No; I did not understand it that way.

Q. What did they say?

30 A. Well, from our conversation we had at the time this order was signed, Mr. J. H. Stone had the money, as well as the father, and they were requested to have a statement made out showing the accounts. We gave them statement blanks for that purpose.

Q. Calling your attention to this contract, are these the signatures of Joseph Stone and Herman Stone? Did each one sign there.

A. No; that is signed by H. M. Stone. That signed by Joseph M. Stone and H. M. Stone.

Q. He signed the name of Joseph Stone?

A. Yes, sir.

Q. What was the discussion with reference to their father?

A. Well, he was quite wealthy or had a lot of property and he was going to put money in the business to help the boys.

Q. You were relying on the father's financial standing as well as the sons'?

A. Yes, sir.

Q. And the father was to endorse the drafts which 10 were sent through by your company for collection and payment?

A. Well, he might be called on.

Q. What was the father to do then? If you were relying on his financial standing what was he to do?

A. He was to furnish a statement as well as J. H.

Q. What was he to do with reference to the name of the party upon your drafts in order to hold him liable?

A. That was a matter for the Buffalo manager.

Q. You had nothing to do with that at all? 20

A. No, sir.

Q. You do not know whether the father was to endorse drafts or not?

A. No.

Q. Was it your understanding that the both boys were to accept drafts that came through?

A. Yes, sir.

Q. Calling your attention to these two drafts marked *Exhibit D-2* and *Exhibit D-3*, and calling your attention to the fact that there appears on here the acceptance of Herman Stone only; now, isn't that a disregard 30 of your understanding at the time the contract was made originally for the shipment of flour?

A. I do not know. I did not see these at all until recently.

Q. You just said it was your understanding and it was the agreement between the parties that both boys were to accept drafts.

A. Yes, sir.

Q. When those two drafts came through, accepted by Herman only, it was not in accordance with the agreement in the beginning, was it?

A. Evidently not.

Mr. Devlin—I object to that. This agreement is in evidence and it is a matter for the construction of the Court and jury.

The Court—No; I suppose you can not ask his opinion as to whether or not they are proper.

10 Q. I want to ask, Mr. Cobb, whether or not at all times during the continuance of the relationship between Stone & Company and Pillsbury Flour Mills Company both boys were to accept drafts.

Mr. Devlin—Objected to. It is a legal conclusion. A partnership implies that either one or both are responsible.

20 The Court—Yes; but this witness is asked whether or not there was any understanding or agreement made when credit was extended that drafts should be accepted by both. That he may answer.

(Last question read.)

The Court—You may answer it.

A. That was the understanding.

Q. At all times in the future, Mr. Cobb?

Mr. Devlin—I object.

The Court—I think it has been answered.

Q. Is Mr. Greenberg with your company now?

A. No, sir.

Q. Is he here to-day?

30 A. I do not know, sir.

Q. Was he directed to be here to-day?

A. Not to my knowledge.

Q. Well, you and Mr. Vanderhoof prepared this case for trial, did you not?

A. We left it in the hands of Mr. Devlin.

Q. Yes, but as far as preparing the testimony for this trial; getting ready for the trial?

A. That is all.

Q. Also getting the papers out?

A. Yes, sir.

Q. Did you try to locate Mr. Greenberg?

A. No, sir.

Q. Do you know where he is now?

A. No, sir.

Mr. Heher—I think that is all.

Redirect examination, by Mr. Devlin.

Q. Did you hear Greenberg's name mentioned in this 10 case until to-day?

A. No, sir.

Q. Until you heard Mr. Heher mention it?

A. No, sir.

Q. You did not hear it mentioned by me?

A. No, sir.

Q. Now, then, in regard to the notice. This paper is not dated; but I show you a paper signed by Mr. John Heher, a notice to produce, "Take notice that you 20 are required to produce at the trial of the above entitled action a certain letter written by Stone & Company to the plaintiff under date of January 22, 1925." Do you remember Mr. Vanderhoof speaking to you about that letter?

A. Yes, sir.

Mr. Devlin—Do you admit you served that on me at the last term of court?

Mr. Heher—I served you with two at the last trial, one calling for the production of the letter, the original letter, and the copy has been offered 30 in evidence, and the second one calling for the production of those two drafts. That was this last term, in June.

Mr. Devlin (Indicating)—Do you admit that that is the one you served on me?

Mr. Heher—Yes.

Mr. Devlin—And that I did not know anything about this letter until you served it, so far as our relations were concerned?

Mr. Heher—I do not know what you knew about the letter. You can speak for yourself.

Q. At the last term of court, when this case was about reached for trial, you received word from someone to search for a letter, if you had it, dated January 22, 1925, didn't you?

A. Yes, sir.

Q. Then you reported back that you could not find any such letter and none had been received?

10 A. I think we did; yes, sir.

Q. Then you were told to search for all correspondence and produce all correspondence?

A. Yes, sir.

Q. And you did?

A. Yes, sir.

Q. And you have it here in court?

A. Yes, sir.

Q. You never heard of that letter being sent to you until a few days before the date set for the trial of this
20 case at the last term of court, did you?

A. No, sir.

Q. You said on cross-examination, to Mr. Heher, that Mr. Stone gave you a written statement of his property. Which Stone gave you that statement?

A. H. M. It was made out in his handwriting.

Q. A statement of whose property was it?

A. Of J. H., and also Samuel.

Q. In his handwriting?

A. Well, it came in the office. I do not know whose handwriting it is in.

30 Mr. Heher—I do not know what the purpose of this is, your Honor, but it has been objected to and the objection sustained two or three times.

Mr. Devlin—Yes, but you opened the question on cross-examination yourself.

Now, I am going to offer the two statements—

Q. I show you two papers—

Mr. Heher—I said nothing about any financial statement, your Honor.

The Court—I do not recall.

(After discussion.)

The Court—I think I will stand by the record. It does not appear just now.

By Mr. Heher.

Q. You just told Mr. Devlin with reference to this notice which Mr. Devlin says was given about the time this case was to be reached last term, about June. Did you know then that Mr. Greenberg would be involved
10 in this case?

A. No, Sir.

Q. When did you first find out he would be involved in this case?

A. I did not know it.

Q. You answered the question of Mr. Devlin by saying you did not know Mr. Greenberg?

Mr. Devlin—He did not make any such answer to me. I object.

Q. What did you say about Mr. Greenberg?
20

A. Mr. Devlin asked me if Mr. Greenberg worked for us, and I said yes, he was our salesman.

The Court—I think you further said you never heard Mr. Greenberg's name mentioned in connection with the trial of this case until to-day.

The Witness—I do not think I have.

Q. You never hear his name mentioned before in connection with the trial?

A. No, sir.

Q. Did you notice his name on any of these contracts?

A. Yes, sir.
30

Q. Did you notice he signed contracts upon which you brought suit on behalf of the company?

A. I noticed the contracts but I haven't got the contracts with me now. Sometimes we made them at the office.

Q. Now, you know that Mr. Greenberg signed some of the contracts upon which you brought suit on behalf of the company?

A. Yes, sir.

Q. And you knew that before to-day, didn't you?

Mr. Devlin—I object. How is this material?

The Court—How is it material?

Mr. Heher—About producing Mr. Greenberg.
(After discussion.)

Mr. Heher—The purpose of my question now is to show Greenberg was the man who procured these contracts.

10 The Court—That is a matter of argument.

Q. You say you made no effort at all to procure Mr. Greenberg to attend this trial?

A. None whatever.

By Mr. Devlin.

Q. You did not know that Greenberg's name would in any manner be mentioned in this case?

The Court—Well, he said that before, that he did not know Greenberg would figure in any

20 way until to-day.

Q. Mr. Greenberg took orders for the flour; is that right?

A. He always took the contracts.

By the Court.

Q. Now, you distinguish between contracts and orders, do you not? What do you mean by a contract?

A. The contract is the sale made between the two parties.

Q. What is an order?

30 A. An order is the shipping order, I figure.

Q. When you say "Order" you do not mean an order of purchase but you mean a shipping order?

A. A shipping order.

By Mr. Devlin.

Q. Now, I want to know which of those Greenberg took, whether it was orders or contracts?

A. He took both. If he called on Mr. Stone here in Trenton he would sell Mr. Stone some flour and then take an order from Mr. Stone for a shipment on another contract, on a previous contract, shipping instructions on a previous contract.

Q. Is that what he took, shipping instructions?

A. Shipping instructions as well as making the sale.

Q. In making a sale would that mean a new contract?

A. Yes, sir.

10

Q. Then had Greenberg any power or right to change the terms on which he would make a new contract?

A. No, sir.

Q. Were any contracts made by Greenberg effective until accepted by the company?

A. No, sir.

Q. They had to have the approval of your company first?

A. Yes, sir.

Q. So if Greenberg made a contract with Stone & 20 Company or anyone else, whatever that contract was, it was not binding on anybody until ratified by your office?

A. That is right.

By Mr. Heher.

Q. Mr. Cobb, isn't it true that Mr. Greenberg would go out on the road and sign contracts on behalf of the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. I am calling your attention to this statement and 30 showing you the name of Mr. Greenberg on it in connection with every one of these transactions on that statement. What does that mean?

A. It means he is the salesman taking care of that territory.

Q. Do you mean to say he was the one who took the orders?

Mr. Devlin—I object. He should not base a question on a premise arising out of an answer.

The Court—He asked whether or not this man did not take orders, and that may be answered.

Q. Mr. Greenberg took orders for the Pillsbury Flour Mills Company?

A. Yes, sir.

10 Q. He had a contract signed at the time that he took the order, did he not?

A. Yes, sir.

Q. And he signed the contract on behalf of your company, didn't he?

A. Subject to our acceptance.

Q. Did it say that on your contract?

A. It was understood.

Q. The contract was entirely in writing, was it not?

A. Yes, sir.

20 Q. It did not say on the contract that the contract was subject to approval or ratification by your company upon delivery of the contract in the Newark office?

A. It did in printing.

Q. Did it upon the contract that Stone & Company signed?

A. Yes, in that contract.

Q. I call your attention to this contract. Look at it and point out just what you mean.

30 A. (Indicating) Here: "If twenty barrels or more of flour, or five tons or more of feed, are specified then this contract is not binding upon the seller until written confirmation by the seller is mailed."

Q. That is only in case there is a certain quantity?

A. Twenty barrels or more is a contract with us. Less than twenty barrels is not considered a contract.

Q. Mr. Greenberg would sign here, would he not, where you have signed this particular contract?

A. Yes, sir; he would sign here for the company.

Q. This contract that you signed had to be ratified or approved by the company, did it not?

A. Yes, sir.

Q. Who would approve or ratify the contract?

A. Mr. Vanderhoof.

Q. Do you mean to say you would have to submit it to Mr. Vanderhoof for ratification?

A. Mr. Vanderhoof made the sale and I drew up the agreement and signed it in the presence of Mr. Vanderhoof and Mr. Stone—both the Mr. Stones. 10

Q. I understood you to say that you had power, in view of your position in the office as credit man, to ratify contracts on behalf of the Pillsbury Flour Mills Company. Is that right or not?

A. Yes, I have; subject to confirmation.

Q. I am talking about you, yourself.

A. I have the credit end of it.

Q. When an order comes in you have the power of approving that contract yourself, have you not?

A. Yes, sir. 20

Q. Without any word from Mr. Vanderhoof at all?

A. Sure.

Q. Then why would Mr. Vanderhoof approve this contract which you made?

A. He sold the goods. I did not sell the goods; I was not the salesman.

Q. Your name appears on this contract?

A. Yes, for the company, because he directed me to mark up the sale for him.

Q. Why didn't he sign?

A. It was not necessary. I made it up and I signed 0 my name on there.

Mr. Heher—That is all.

By Mr. Devlin.

Q. Does Mr. Vanderhoof have to approve the prices?

A. Yes, sir.

Q. In this case did he have to approve the prices?

A. Yes, sir.

Mr. Devlin—We rest, with the offering of these two letters, the credit inquiries and this contract.

The Court—I think those are already marked as exhibits.

Mr. Devlin—And we will offer the accounts.

The Court—I think they are already in.
(Plaintiff rests.)

10 *Herman M. Stone*, one of the defendants, sworn.
Direct examination, by Mr. Heher.

Q. Your name is Herman Stone?

A. That is right.

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

A. Yes, sir.

Q. You are a brother of Joseph Stone here?

A. Yes, sir.

Q. What business is your brother engaged in at the present time?

20 A. Coal business.

Q. And he has been engaged in that business how long?

A. Seven or eight years.

Q. In Trenton?

A. Yes, sir.

Q. Do you recall, Mr. Stone, talking to your brother Joseph about engaging in the flour business?

A. Yes, sir.

Q. And at that time you contemplated the running of a wholesale flour business in Trenton and vicinity?

30 A. Yes, sir.

Q. Will you state to the Court and jury just what the conversation that you had with your brother was and what you did?

Mr. Devlin—Objected to. How is that material?

The Court—Objection sustained.

Q. You and your brother went to Newark, did you not?

A. Yes, sir.

Q. To the office of the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. With a view of engaging in the flour business?

A. Yes, sir.

Q. And while there you had a conversation with Mr. Vanderhoof, who sits here at the table?

A. Yes, sir.

Q. Who was present? 10

A. We were talking to Mr. Vanderhoof regarding—

Q. Who was there at the time?

A. Sitting at Mr. Vanderhoof's desk was Mr. Vanderhoof and my brother and myself.

Q. Was Mr. Cobb there?

A. He was at the next desk, the back desk to Mr. Vanderhoof's, and later on he took us over and introduced us to Mr. Cobb.

Q. Will you just state what the conversation was which took place between you and your brother and 20 Mr. Vanderhoof at that time?

A. I told Mr. Vanderhoof—I was doing the most of the talking and I told Mr. Vanderhoof that I had been occupied in the flour business in and around Trenton for a long time, representing different flour mills, and I had an idea of going into business for myself, as I had a wonderful clientele built up and I was selling some of the biggest bakers around Trenton and vicinity, and I thought it would be a wonderful opportunity to go into business for myself; and I told him I would like to take on the Pillsbury brand to handle in this territory, 30 as Pillsbury's was not being handled at that time in and around Trenton; and he said he was very interested in having someone represent them in Trenton as they had not been doing the business in Trenton that they used to do a few years back; and he asked me about my previous experience and I told him who I had been with and the business I had been doing for them, and I told him my brother Joe was in the coal business and to

help me out he would go ahead and become a partner in the business in which I would distribute to him a certain amount of the shares of the profits that he made or that I expected to make at the time, with the understanding he would help me with my endorsements by going to the bank with me in the first place, and he endorsed some paper in the Hanover Trust Company, and then he was to endorse my drafts so I could get flour from the Pillsbury Flour Mills Company; and they

10 said they would take up the matter about credits and they would advise me, and it was understood at that time—and I also told him about my father, that my father, I knew, would be glad to endorse the papers; and he said, "Well, if you and your brother will sign the drafts, accept the drafts, and then if your father endorses them we can come to some arrangement." And he said he would look it up.

Q. Then did he require three names on the drafts?

A. That is what he told me.

20 Q. What else was said?

A. Then he said he would advise me accordingly and we left. He asked us for bank references, and we gave him the bank references of the Hanover Trust Company and the Mercer Trust Company, and he said he would write to those banks and get our credit references, that is, my father's, my brother's and myself, from those banks.

Q. Did the Pillsbury Flour Company afterward ship you flour?

A. Yes, sir.

30 Q. You were trading then under what name?

A. The first orders that were placed— There were no Stone & Company at first. There was just Joseph H. Stone and Herman Stone; that is the way the first orders were signed, and it then developed into Stone & Company.

Q. Did you use that trade name?

A. Yes, sir.

Q. How soon after this conversation with Mr. Vanderhoof did you begin to receive flour?

A. Somewhere around the middle of November.

Q. The conversation took place about when?

A. Some time in October.

Q. Of what year?

A. In 1924.

Q. And in the early part of November you began to receive the flour.

A. Yes, sir. 10

Q. Do you recall drafts coming in for acceptance?

A. Yes, sir.

Q. In payment for the flour which you received?

A. Yes, sir.

Q. How many drafts did you receive before January twenty-first?

Mr. Devlin—Objected to as immaterial and irrelevant.

The Court—I think he may answer that.

Mr. Devlin—I ask an exception. 20

(Last question read.)

A. Two or three.

Q. Before January twenty-first?

A. Yes, sir.

Q. Of 1925?

A. Yes, sir.

Q. They were drawn how?

A. The first one was—

Mr. Devlin—Objected to as they will speak for themselves.

The Court—I suppose they do. 30

Mr. Heher—I might ask the witness right here if he attempted to look for them to see if he has been unable to find the drafts.

Mr. Devlin—How is it material? The defense is that they had a partnership and dissolved it on the twenty-second of January. What would matters preceding that, as far as a draft or anything else—

The Court—Unless it may be to show a change in the practice, in the course of procedure.

(After discussion.)

The Court—I think he may answer it.

Mr. Devlin—I ask an exception.

Q. Will you state how those drafts—

The Court—You were about to ask the witness whether or not those drafts were in existence.

Q. Have you been able to find those three drafts
10 which you mentioned which were drawn on the company by the Pillsbury Flour Mills Company, dated January 19th and 21st, 1925?

A. No.

Q. Have you made a search for those drafts?

A. Yes, sir.

Q. A thorough one?

A. Yes, sir.

Q. And you have not been able to find any of them at all?

20 A. No, sir.

Q. Have you been able to find any of your bank vouchers?

A. No; I have not.

By the Court.

Q. Have you looked for them?

A. I have looked for my drafts; yes, sir; but I could not find them.

By Mr. Heher.

30 Q. You were away part of the time, Mr. Stone?

A. Yes, sir.

Q. Down in Florida?

A. Yes, sir.

Q. Can you say why you cannot locate those drafts?

A. I took my file with all of my papers pertaining to all of my transactions when I was in business down to Florida with me when I went down there. I had them in a small letter file and left that in the place where I

was living. I put them in the corner of a closet and after I had been in that place about three months and was going to move out I went to look for my notes and everything that I had was gone.

Mr. Heher—I submit, the witness having shown—

The Court—Ask the question and I will deal with it.

Q. Will you state just how those three drafts were drawn? 10

A. The first draft was drawn to Joseph H. Stone and Herman M. Stone, the way the original contract was made out. It was signed on the lower left-hand corner "Joseph H. Stone" and "Herman M. Stone." On the back it was "Joseph H. Stone," "Herman M. Stone," and "Samuel H. Stone."

Q. Do you mean all three drafts?

A. No. That was the first draft. Then the second draft came through, I believe, as "Stone & Company" and under that it was signed, "Joseph H. Stone" and 20 "Herman M. Stone," and on the back were the signatures "Herman M. Stone," "Joseph H. Stone" and "Samuel H. Stone."

Q. Samuel H. Stone was your father?

A. Yes, sir.

Q. How about the third draft?

A. I do not believe there were three. There might have been only two; but if there were three the third was the same as the second.

Q. That is drawn on Stone & Company?

A. Yes, sir. 30

Q. And you and your brother Joseph accepted each one of those drafts?

A. Yes, sir.

Q. That is you each wrote your name on each one accepting it?

A. Yes, sir.

Q. And your father endorsed them?

A. Yes, sir.

Q. And they were paid by Stone & Company?

A. Yes, sir.

Q. The account was paid where?

A. In the Hanover Trust Company.

Q. Those drafts were charged to the account of Stone & Company in the Hanover Trust Company?

A. Yes, sir.

Q. Had you at that time a signature card in the Hanover Trust Company?

10 A. Yes, sir.

Q. The account required what signatures to withdraw funds from the bank?

A. Originally Joseph H. Stone and Herman M. Stone.

Q. That is your brother and yourself?

A. Yes, sir.

Q. Would the bank pay out the funds on one of your signatures?

Mr. Devlin—I object to that.

20 A. No, sir.

The Court—I do not suppose it is material. The thing we are interested in is whether or not there was any notice to this plaintiff of the dissolution or anything that would relieve the defendant, Joseph Stone, who admittedly was a partner, of his liability.

Q. Now, the partnership business continued between you and your brother, Joseph, up until what time?

A. On January nineteenth we drew up a dissolution paper.

30 Q. I show you a paper bearing date January 19, 1925, and ask you to look at it and say what it is.

A. It is a dissolution paper between myself and Joseph H. Stone, witnessed by a notary public.

Q. Dissolution of what?

A. Dissolution of partnership in the flour business.

Q. What led up to that?

The Court—Are we interested in that?

Mr. Heher—All right.

Q. Where was that paper drawn?

A. The original paper was drawn—I drew it up myself.

Q. Is that the original or a copy?

A. This must be the original. I made up two copies.

Q. Just look at the signatures on the second page, purporting to be the signatures of yourself and Joseph H. Stone. Are those the signatures of yourself and brother?

A. Yes, sir.

10

Q. And the signatures were made there in the presence of Mr. Bernstein?

A. Carl Bernstein, notary public.

Q. He witnessed your signatures?

A. Yes, sir.

Q. You say that is the dissolution agreement between yourself and your brother Joseph?

Mr. Devlin—I object. If there is a paper here let it be offered, if he wants to prove it, and we will see what it contains.

20

The Court—I suppose it speaks for itself.

Mr. Heher—All right.

Q. That paper was signed on what date?

A. January nineteenth, in the evening; it was a Monday night.

Q. 1925?

A. 1925.

Q. After that paper was signed what did you do?

A. The following morning I had a lot of business calls to make, and went down to South Jersey, which was my custom on Tuesdays.

30

By the Court.

Q. You are asked what you did.

A. I went down in South Jersey the following day, on the twentieth, and got back about three-thirty on the following day, on the twenty-first, and my brother and I went into the bank together and made arrangements—

By Mr. Heher.

Q. What bank?

A. The Hanover Trust Company. And made arrangements—that is, we told them we were dissolving partnership, and he wanted his name taken off all the papers we had at that time.

Q. Who did?

A. Joseph H. Stone. There were notes drawn up that day and his name taken off all of the notes and
10 the bank agreed to accept notes with my name on alone.

Mr. Devlin—I object to that.

Mr. Heher—It has to do with the fact that there was a dissolution of the partnership at the time we mention.

The Court—We are not interested in that. The thing we are interested in is whether or not there was any relieving of this other defendant of his liability.

Mr. Heher—I think we should show—

20 The Court—Not what you did at the bank.
Objection sustained.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. The account at the time you were in the bank was kept in the name of Stone & Company?

Mr. Devlin—I object to that.

The Court—Objection sustained.

Q. Was that account changed, Mr. Stone?

Mr. Devlin—Objected to.

The Court—Objection sustained.

30 Mr. Heher—May I have an exception?

The Court—Yes.

Q. Now, after this agreement was signed which you have in your hands what did you do with reference to the dissolution?

A. I wrote, on January twenty-second— First I notified the landlord who was right there, the man that rented the place there, and I wrote a letter to the only people we owed money to at that time. The only people

we were doing business with was the Pillsbury Flour Mills Company. I wrote the Pillsbury Flour Mills Company a letter on January twenty-second outlining the situation as it stood.

Q. I show you what purports to be a letter with the heading "Stone & Company," and signed "Stone & Company," addressed to the Pillsbury Flour Mills Company, under date of January 22, 1925, marked *Exhibit D-1*, and ask you what that is?

A. That is a copy of the letter that I sent to Mr. 10 Vanderhoof on January twenty-second.

Q. You addressed the letter how?

A. The same as it is here, "Pillsbury Flour Mills Company, 204 Frelinghuysen Avenue. Attention of Mr. Vanderhoof."

Q. Did you address the envelope in that fashion?

A. Yes, sir.

Q. You sent the letter how or where, where did you mail it?

A. My office was right around the corner from the 20 post office.

Q. Where was your office?

A. On Hanover Street, in the Hunt Building; and I returned from business about five or five-thirty and wrote the letter and as I was going home to supper I walked to the post office and dropped that letter in there myself in the post office box.

Q. Right in the post office?

A. Yes, sir.

Q. What class of mail did you send it?

A. There was a regular two-cent stamp on it. 30

Q. Ordinary mail?

A. Ordinary mail.

Q. You mailed it Monday, you say?

A. No, sir. The twenty-second, I think, was on Thursday.

Q. Monday was the time this agreement you said was signed?

A. Yes, sir.

Q. On the twenty-second you say this letter was sent out?

A. Yes, sir.

Q. The same day that it bears date?

A. Yes, sir.

Q. January twenty-second?

A. Yes, sir.

Q. And you say you took it to the post office yourself?

A. Yes, sir.

10 Q. Who wrote the letter?

A. I did.

Q. Can you operate the typewriter?

A. Yes, sir.

Q. You wrote that yourself on the typewriter?

A. Yes, sir.

Q. Was that letter returned to you?

A. No, sir.

Q. That is, the original which you mailed was never returned to you?

20 A. No, sir.

Q. Did it have your name on the outside?

A. On the outside. My name was on the outside of the— It was a large envelope, and there were some envelopes that I used that had Commander Flour Company on them, and my name was printed under the seal of "Commander Flour." It had a lion's head on it and my name was under it.

Q. After mailing that letter did anyone call to see you from the Pillsbury Flour Mills Company?

30 A. The following Monday or Tuesday Mr. Greenberg came to make his regular call.

Q. Who was Mr. Greenberg?

A. He was a representative of Pillsbury Flour Mills Company.

Q. Mr. Greenberg had called to see you before?

A. Yes, sir.

Q. You knew him?

A. Yes, sir.

Q. And he sold flour to you before this call that he made?

A. Yes, sir.

Q. On how many occasions?

A. I cannot remember. Possibly one or two.

Q. Did he sign contracts on those one or two occasions, on behalf of the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. Was the contract revoked on either occasion afterward by the Pillsbury Flour Mills Company? 10

A. On no occasion.

Q. Did the Pillsbury Flour Mills Company carry out every contract which he made with you?

Yes, sir.

Q. There was never any obstacle at all, was there, with any contracts that he signed?

A. No, sir.

Q. Did Mr. Greenberg have anything to do, when he had these contracts with you, in fixing prices?

Mr. Devlin—I object unless it can be shown 20 that Greenberg had that authority from the principal.

The Court—You are asking for a conclusion now, whether or not he did fix prices.

Q. Mr. Stone, did Mr. Greenberg at any time during his conversation with you with reference to the sale of flour change the price of flour?

Mr. Devlin—Objected to.

Mr. Heher—Your Honor, the witness has already testified the flour was delivered in accordance with the contract he signed. Now, if 30 there was any change of price during the negotiations it will show that he had the authority to do it and it was ratified by the company.

The Court—If the company had to ratify, as appears by the contract, then the power was in the company and not in Mr. Greenberg.

Mr. Heher—There has been testimony that Greenberg had no power to fix prices.

Mr. Devlin (after discussion)—Another objection to the question is, that unless the written contracts are produced here, no oral evidence can be given as to what they contain.

The Court—The testimony is that the contracts are uniformly like the one presented. I think it is not competent and the objection is sustained.

Q. Did Mr. Greenberg say anything to you about
10 extension of credit at any time?

Mr. Devlin—That is objected to also for the reason that they have not established that Mr. Greenberg had the power or authority to do any of those things, but on the contrary have established that he had not.

The Court—The testimony so far is that he had not. I suppose you have got to show he had authority.

Mr. Heher—I submit it is a question for the
20 jury as to whether or not he had power to do these things.

The Court—No, not if it required ratification. That obviously is evidence of the lack of authority.

(After discussion.)

The Court—The question is overruled.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. Mr. Stone, Mr. Greenberg signed contracts, you
30 said, on behalf of the company?

A. Yes, sir.

Q. He signed each one of those three that you mentioned?

A. Yes, sir.

Q. Did he sign other contracts too?

A. Yes, sir.

Q. Did he sign them right up until you ceased the conduct of the business?

A. Yes, sir.

Q. For the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. There was never any one of the contracts rejected or disapproved by the company?

A. No, sir.

Q. You always received the flour in accordance with the contract which he made?

A. Yes, sir.

Q. What did Mr. Greenberg say on this occasion
10 when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company on January 22, 1925?

Mr. Devlin—Objected to, for the reason, first, that it is hearsay—

The Court—I think that is enough reason in this regard. Objection sustained.

Q. What did Mr. Greenberg say on that same occasion with reference to the knowledge of the Pillsbury Flour Mills Company as to the dissolution of your
20 partnership?

Mr. Devlin—Objected to for the same reason.

The Court—Objection sustained.

Mr. Heher—If your Honor please, the testimony is already in the case, the testimony of Mr. Vanderhoof and Mr. Cobb, that Mr. Greenberg had the authority on the road to make contracts, subject to the approval of the company. And they go further and say that when he was on the road it was his duty and it was part of his work to observe the financial condition of
30 various individuals, partnerships and corporations, and to report to the company. It was his duty and part of his work to observe conditions and ascertain and report to the company if there was a change in the financial condition or status of a partnership.

(After discussion.)

The Court—I overruled the question that is now pending.

Mr. Heher—The other questions along the same line I suppose it will be a waste of time to ask. I suppose we might have it understood now that any question that may be asked as to statements that Greenberg made to this witness or made to the defendant Joseph Stone after the sending of this letter to the Newark office of the Pillsbury Flour Mills Company, to the effect that the company knew of the dissolution of the partnership between these two defendants—I might say that Greenberg not only made that statement to the two defendants, but to two or three disinterested people.

The Court—I think that would be clearly inadmissible.

Mr. Heher—I understand that we can not show by statements that this man Greenberg made after the sending of this letter on January twenty-second the knowledge of the plaintiff as to the dissolution of the partnership of these two men?

The Court—No. You can not prove by this witness that Greenberg told him that Cobb had heard Vanderhoof say that a letter had been received, or anything of that sort.

Mr. Heher—I want to show, your Honor—

The Court—I do not think anything could be accomplished by pursuing the matter further. I have already ruled that that can not be done.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. Mr. Stone, did your brother, Joseph Stone, have anything to do with the conduct of this flour business after the signing of this agreement on January nineteenth, the agreement you have before you there?

Mr. Devlin—I object to that as immaterial and irrelevant.

The Court—He may answer that.

Mr. Devlin—Exception.

The Court—Yes.

Q. Did your brother, Joseph Stone, have anything to do with you in the conduct of the flour business in Trenton or anywhere else after January 19, 1925?

A. No, sir.

Mr. Devlin—I object to the question.

The Court—Objection overruled.

Mr. Devlin—I ask an exception.

Q. Prior to the time that you signed this agreement, on January 19, 1925, did your brother, Joseph, call at your place of business?

A. Regularly.

Q. And did he call after the signing of the agreement?

Mr. Devlin—Objected to as irrelevant and immaterial.

The Court—He said he had nothing to do with it. Objection sustained.

Q. Now, I want to call your attention to this statement or bill which has been offered in evidence by the plaintiff, the Pillsbury Flour Mills Company, and call your attention particularly with reference to the last two items, and to the testimony of Mr. Cobb that the contracts for the delivery of those two items of December third, he says he thinks, in 1924—and ask you whether those two contracts were made on December 3, 1924, for delivery on June 5, 1925?

A. No, sir.

Q. Have you any particular knowledge as to those two items there?

A. No, but I know that flour contracts with Pillsbury Flour Mills Company had to be taken up within sixty days.

Q. Do you recall those two particular shipments of flour?

A. Yes, sir.

Q. Where did they come from?

A. From the warehouse.

Q. The Anchor Warehouse, in Trenton?

A. Yes, sir.

Q. Did the Pillsbury Flour Mills Company store flour there?

A. Yes, sir.

Q. They did at that time?

A. Yes, sir.

Q. What have you to say as to when the contract was made for those two shipments of flour from the Anchor Warehouse in Trenton?

Mr. Devlin—Objected to, unless it can be shown that he knows.

The Court—If he knows he may answer. Do you know?

The Witness—Yes, sir.

The Court—You may answer.

A. On those two items in particular I had a call from Mr. Jesse Barber, a baker here in town, for some Pillsbury's Best Flour. I did not have any on hand myself. I called up Mr. Cox, the manager of the warehouse, and told him I had to have some Pillsbury's Best Flour and Pillsbury's were storing some there and couldn't he call up Newark and see whether they would sell me some of the flour they had in the warehouse, and he called them up and he said "It is all right for you to have this flour." And they sent me a bill for it.

By the Court:

Q. When was that?

A. It was either the same day or the day previous to the delivery date.

Br. Mr. Heher:

Q. What is the delivery date shown on this bill?

A. One June fifth and one June eighth, 1925.

Q. You say you fix the time that it was either the day before or the same day?

A. Or the same day.

Q. So that would be either June fourth or June seventh?

A. Either June fourth or June seventh. It was on two different items, both at two different times.

Q. Were both of those deliveries made on the same day that this shows they were delivered?

A. Yes, as far as I remember, they were.

Q. Do you recall those two distinctly?

A. Yes, sir.

Q. Did you make both deliveries to Jesse Barber in Trenton?

Mr. Devlin—Objected to as immaterial.

A. Yes, sir.

The Court—I do not think it is material, but it may stand.

Q. Can you explain this date appearing in there, of December third?

A. No, sir.

Mr. Devlin—I object.

The Court—He says he can not.

Q. Are you positive that the contract for those two was not made on December 3, 1924?

Mr. Devlin—Objected to, because I think the contract itself is the proper evidence of that.

The Court—He may answer.

Mr. Devlin—I ask an exception.

A. I know that the contracts—

The Court—Just answer the question.

Q. Are you positive that the contract for those two last deliveries mentioned in the bill was not made on December 3, 1924?

A. Yes, sir.

(Adjourned until Thursday, November 4, 1926, at 10:15 o'clock in the forenoon.)

Trenton, N. J., November 4, 1926.

(Case resumed pursuant to adjournment.)

(Appearances as before noted.)

Herman M. Stone, one of the defendants, resumes the stand.

Direct examination continued, by Mr. Heher.

Q. Mr. Stone, calling your attention to the interview that you had with Mr. Vanderhoof at the time that you and your brother went to Newark about the arrangement for the purchase of the flour from the Pillsbury Flour Mills Company and had the conversation you testified to yesterday, do you recall anything which Mr. Vanderhoof said to you at the time, which was not
10 included in what you said yesterday? Have you since refreshed your memory?

A. As I remember, Mr. Vanderhoof said to me, after we had made our arrangements on the credit, that a representative of the Pillsbury Flour Mills Company would make regular calls on me in Trenton about every two or three weeks and would handle all the company business for him there.

Q. And after that was there any other representative
20 of the company called upon you except Mr. Greenberg?

A. No, sir.

Q. Do you recall anything else Mr. Vanderhoof said with reference to a representative of the company calling upon you, or Mr. Greenberg?

A. No, sir.

Mr. Heher—Your Honor, with this testimony in the case I renew my offer of yesterday of testimony from this witness to his conversation with Mr. Greenberg upon Mr. Greenberg's call upon this witness in Trenton after the sending
30 of this letter of January twenty-second, 1925, to the company at Newark, as to what Mr. Greenberg said of the company's knowledge of the dissolution of the partnership.

Mr. Devlin—I object to it.

The Court—Objection sustained.

Mr. Heher—May I have an exception?

The Court—Yes.

Q. Now, referring to the testimony of yesterday, of these two deliveries of which Mr. Cobb said there was an order on December 3, 1924, I ask you whether or not there was any written contract for those two deliveries.

A. No, sir.

Q. Will you state how you received them and under what terms of order that you received them?

A. I called up Mr. Cox, the manager of the Anchor Warehouse, where I kept my flour, and also the Pills-
10 bury Flour Mills Company kept their flour in storage, and I told Mr. Cox I had to have some Pillsbury's Best Flour and I did not have any of my own, and I said, "I know the Pillsbury Flour Mills Company have some Pillsbury's Best there, and I wish you would call up Newark and see if they won't let me have some of their Pillsbury's Best." Mr. Cox called up Newark—

Mr. Devlin—I object to this. It is purely hearsay evidence.

The Court—Yes. Objection sustained. **20**

Q. Well, you afterward received those two shipments of flour?

A. Yes, sir.

Q. Which are marked December 3, 1924, upon their bill?

A. Yes, sir.

Q. And which was delivered to Jesse Barber in Trenton?

A. Yes, sir.

Q. There was no written contract whatsoever for either one of those deliveries, was there?
30

A. No, sir.

Mr. Devlin—I object to that as leading.

The Court—It is but it is answered. It is a mere repetition anyway.

Q. Referring to the testimony yesterday of Mr. Cobb, about shipping order slips, did you ever sign any shipping order slip?

A. No, sir.

Q. Did you ever sign any written request as to when flour should be delivered to you from the Pillsbury Flour Mills Company?

Mr. Devlin—Objected to as irrelevant and immaterial.

The Court—I do not recall that Mr. Cobb said there were any written orders given. He said there were shipping orders given. I do not recall that he said they were in writing.

10 Mr. Heher—He referred to dates.

The Court—Yes, but I do not recall that he said they were in writing. He said they were the dates when the arrangements were made, but I have no recollection that he said they were in writing; so that I do not think, if this is offered to contradict it—I have no recollection of any testimony which it would contradict.

Mr. Heher—That was my recollection of it, that he said they were in writing.

20 The Court—No.

Mr. Heher—All right.

A. After you sent this letter to the Pillsbury Flour Mills Company on January 22, 1925, were there other drafts drawn by the Pillsbury Flour Mills Company for the delivery of flour?

A. After—

Q. After January 22, 1925, after you sent this letter to the Pillsbury Flour Mills Company?

A. Yes, sir.

30 Q. About how many drafts were drawn on Stone & Company?

Mr. Devlin—I object to that. I think it is immaterial and irrelevant, in the first place; and in the second place the drafts ought to be produced or identified.

The Court—I suppose they are the best evidence, but he may answer this question, as to how many there were.

Mr. Heher—The witness testified yesterday why he could not produce them; that he looked all over for his vouchers and could not find them.

The Court—He may answer the question. He is asked how many there were.

A. About eight or ten of them.

Q. And those eight or ten drafts ran over about what period of time?

A. About five or six months—No; they ran about four months. 10

Q. During what period of time?

A. Between January and about the middle of April, or the early part of May.

Q. Those drafts were drawn on Stone & Company?

A. Yes, sir.

Q. Who accepted them?

A. I accepted them myself?

Q. Did your brother, Joseph Stone, accept them?

Mr. Devlin—Objected to.

The Court—Objection overruled. 20

Mr. Devlin—Exception.

Q. Did your brother, Joseph Stone, accept any one of those drafts?

Mr. Devlin—Objected to.

The Court—Objection overruled.

Mr. Devlin—Exception.

The Court—He may answer it.

A. No, sir.

Q. Did your father, Samuel Stone, endorse any of those drafts?

A. No, sir. 30

Q. In other words, your name is the only one that appeared on them?

A. Yes, sir.

Mr. Devlin—I object to that question as immaterial and irrelevant.

The Court—Objection overruled.

Mr. Devlin—Exception.

Q. Those eight or ten drafts were all paid, were they not?

A. Yes, sir.

Q. Calling your attention to these two drafts which were mentioned yesterday, will you take a look at those two? One is marked *Exhibit D-2* and the other *Exhibit D-3*. That is your signature appearing on each one?

A. Yes, sir.

10 Q. As acceptor for Stone & Company?

A. Yes, sir.

Q. And the name of Joseph Stone does not appear on there at all?

A. No, sir.

Q. One bears what date?

A. June twenty-seventh— The date is June eighth, and the other is May 21, 1925.

Q. Does your father's name appear on there as an endorser, on either one?

20 Mr. Devlin—Objected to.

The Court—Objection sustained. They speak for themselves.

Mr. Heher—All right.

Q. Those drafts were not paid, Mr. Stone?

A. No, sir.

Q. This letter, which you say you sent on January 22, 1925, the ending is "Very truly yours, Stone & Company, by—" Who is that signed by?

A. By myself.

30 Q. Do you mean you wrote your name alongside of the word "By" on the original letter which you sent to the Pillsbury Flour Mills Company?

A. Yes, sir.

Mr. Heher—Cross-examine.

Cross-examination, by Mr. Devlin.

Q. How old are you?

A. Twenty-nine.

Q. How long have you been in business before you engaged with the Pillsbury Flour Mills Company?

A. For myself?

Q. I do not care who for. How long have you been doing business for anybody?

A. A few years.

Q. How many?

A. About four years.

Q. What kind of businesses have you been in?

A. I was a salesman.

Q. For whom?

A. For a flour company.

Q. What was the flour company's name?

A. Commander Flour Company.

Q. How long were you a salesman for them?

A. About a year and a half.

Q. Where was your territory?

A. Trenton.

Q. Who else did you work for?

A. For my brother.

Q. What did you do for him?

A. I was working around his office and selling for him.

Q. Selling what?

A. Coal.

Q. How long did you work for him?

A. About a year.

Q. Now, that is three years and a half. Who else did you work for in business?

Mr. Heher—I do not see that this has anything to do with the issue in this case. I object 30 to it.

The Court—I think it is reasonable cross-examination.

Q. Well, have you had any business education?

A. Not especially along lines of business, outside of selling.

Q. What school did you attend?

A. Trenton High School, and Western Reserve University, in Cleveland.

Q. How many years were you there?

A. Two years.

Q. You took a classical course?

A. A law course.

Q. Then you know something about law?

A. Theoretically.

Q. You got all that before you started in this flour
10 business, didn't you?

A. Yes, sir; I did.

Q. How old were you when you started in business, to work?

A. I could have been about twenty-four or twenty-five.

Q. You went and saw Mr. Vanderhoof with your brother about taking this Pillsbury agency here, and you talked with Mr. Vanderhoof, didn't you, about your financial standing and your ability to meet any obligations you entered into, didn't you?

20 A. Yes, sir.

Q. And you told Mr. Vanderhoof you were worth nothing; isn't that true?

A. No, sir.

Q. Or Mr. Cobb?

A. No, sir.

Q. Did you tell him you were worth any property?

A. No, sir. I told him I did not have any property.

Q. Did you tell him you had anything else besides the property you considered of value?

30 A. I had got credit at the bank.

Q. And you had no money?

A. I had a little money.

Q. How much?

A. A thousand or fifteen hundred dollars.

Q. Then you knew something about the flour business before you took this job, didn't you?

A. Yes, sir.

Q. And Mr. Vanderhoof asked you about what property you could show, what your rating was, didn't he?

A. We went into that very little.

Mr. Heher—I object.

Q. You answer that question yes or no. If you didn't do it, all right; and if you did it, all right; but don't tell me what you went into unless I ask it. You were asked how much property or what security you and your brother had for the establishing of a line of credit?

10

Mr. Heher—That is objected to.

The Court—Objection overruled.

Mr. Heher—I do not see how it is material at all.

Mr. Devlin—The Court has ruled.

The Court—I think it is.

(Last question read.)

A. No, sir.

Q. You were not asked?

A. Not that question.

20

Q. What were you asked, relating to what security you and your brother could give?

A. There was no security, excepting before I was leaving—

Q. I did not ask you that. I asked you what questions were asked.

A. Mr. Vanderhoof said to me before I was leaving that day, "I would like you to get up, if possible a statement of your's and your father's and your brother's accounts." That is all that was said.

Q. And you did?

A. Yes, sir.

Q. Did you get that up?

A. I believe I did.

Q. And you submitted it?

A. Yes, sir.

Q. I show you two papers and ask you if they are in your handwriting?

A. Yes, sir.

30

Q. Did you get them up?

A. Yes, sir.

Q. Look at the other?

A. Yes, sir.

Q. You will notice that on these two papers you do not list yourself as worth any property.

A. I also gave a statement—

Mr. Heher—Just a minute.

Q. Answer the question as it is put, now, please.

10 Mr. Heher—I object to the question. I do not see that it has anything to do whatsoever with the issue in this case. There is no foundation laid for such a question.

The Court—I think so. The witness said that he had some property, some money in the bank, a thousand or fifteen hundred dollars. Go ahead.

Mr. Heher—May I have an exception?

The Court—Yes.

20 (Previous question read, as follows: "You will notice that on these two papers you do not list yourself as worth any property.")

A. My paper is not here.

Q. Wait. On these two papers, you are not on there, are you?

A. No. These are individually, of Joseph Stone and Samuel H. Stone.

Q. But you delivered them, did you?

A. I delivered three of them.

30 Q. Now, on the one you delivered, what did it contain?

A. It had on there the small amount of money that I was worth.

Q. How much was that?

A. I cannot just remember at this time. If they produced the other paper I could tell you exactly.

Q. We will produce it in time. I am asking you about what was in this paper you said you gave relating to yourself.

A. About fifteen hundred dollars.

Mr. Heher—I object for this reason, your Honor: The paper speaks for itself. I do not think there is any foundation for asking such a question as counsel now puts.

The Court—The answer may stand.

Q. Was that all that was on it?

A. Yes, sir.

Q. That was all?

A. Yes, sir. 10

Q. Now, your brother Joseph is worth the property set out here in this statement, isn't he—or was—at that time?

A. Yes, sir.

Q. He knew you made that statement, didn't he?

A. Yes, sir.

Q. And he helped you make it up, didn't he?

A. Yes, sir.

Q. Who helped you to make up your father's statement? 20

A. My father.

Q. He helped you to make it up; is that right?

A. Yes, sir.

Q. Your brother, I think, shows thirteen thousand seven hundred—

Mr. Heher—I object to any reference to these papers whatsoever.

Mr. Devlin—Wait until I finish the question.

The Court—Counsel may finish the question.

Go ahead.

Q. I call your attention to this column here (indicating), eleven thousand nine hundred and thirteen thousand seven hundred and gfty. Are those separate items? 30

Mr. Heher—The question is objected to.

The Court—How is this material?

Mr. Devlin—I just want this paper explained.

The Court—How is it material?

Mr. Devlin—I think it is material to the question of this alleged notice of dissolution.

The Court—I do not see its materiality. Objection sustained.

Mr. Devlin—I ask an exception.

The Court—Yes.

Q. Well, the figures in these papers are correct, aren't they?

A. Yes, sir.

Mr. Devlin—I will offer these two papers—

Mr. Heher—The offer is objected to.

10 Mr. Devlin— —in evidence and have them marked P-6 and P-7.

The Court—You offer them in evidence?

Mr. Devlin—Yes, sir.

The Court—And you object to them?

Mr. Heher—I object to the offer.

The Court—Objection sustained.

Mr. Devlin—I will ask an exception.

Q. Now, Mr. Stone, it was on the strength of these statements that credit was given to you and your brother?
20 er?

Mr. Heher—That is objected to.

The Court—I take it, Mr. Devlin, that it is admitted that credit was extended, in the first instance, at any rate, upon the strength of the financial worth of Joseph Stone and the father, or at least of Joseph Stone. That is admitted.

Mr. Devlin—The Court takes that assumption?

The Court—I think that is admitted in the case.

Mr. Heher—That is your own testimony.

30 The Court—I take it that what the defendants' now assert is that in the course of dealings this defendant had established a credit, but that in the first instance his credit was not sufficient; so that I take it there is no dispute, and that is the reason I think these statements are not material. I take it that there is no dispute that it was upon the brother's credit if not the brother's and father's that credit was allowed.

Mr. Devlin—I do not want to reargue the question your Honor has ruled on. If you would like to hear me again—

The Court—No. I think my mind is settled on that, Mr. Devlin.

Mr. Devlin—Well, then, I will not reargue it. There was a paper here of the dissolution of partnership, used yesterday. Has it been offered in evidence?

Mr. Heher—It has not. 10

Mr. Devlin—Then I think it ought to be put in if it is used at all.

The Court—Well, it can not be used unless it is in.

Mr. Devlin—Because I want to cross-examine on it perhaps.

Mr. Heher—It is not in evidence yet.

Mr. Devlin—Then I want to look at it.

Mr. Heher—All right.

(Mr. Devlin examines paper.) 20

Mr. Heher—I have no objection. You can go ahead and use it if you want to.

Q. This dissolution of partnership that you drew—who drew that?

A. I did.

Q. You had enough legal education to do that, did you?

A. No. I got a book of forms.

Q. Well, you knew enough to get a book of forms to do it?

A. Yes, sir. 30

Q. Why isn't it fastened?

A. Why isn't it fastened?

Q. Yes.

A. There is no reason why it is not fastened, excepting just because it wasn't; it was never thought of.

Mr. Heher—I think it is fastened.

The Witness—It has this clip on there. There were two copies of it made.

Mr. Devlin—I do not consider that fastened.
You can take one of them off any time.

Q. Who witnessed that?

A. A notary public, Mr. Carl Bernstein.

Q. Have you got him here as a witness?

A. Yes, sir.

Q. What date was it executed on?

A. On the nineteenth of January.

Q. And then after doing that you sent out this letter
10 that you call a notice?

A. Yes, sir.

Q. That was drawn on the nineteenth day of January, and what you call the notice is dated the twenty-second day of January?

A. Yes, sir.

Q. Three days after?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

20 Q. Who got up this letter?

A. I did.

Q. Why didn't you first get your creditors in, you and your brother, and pay your debts and then dissolve your partnership?

A. There is no reason why.

Q. You say there isn't?

A. There is no reason.

Q. When you dissolved this partnership what were you worth?

A. Myself?

30 Q. Yes.

A. I wasn't worth much more than I was originally, excepting that I had built up a good enough bank credit which would carry me on through.

Q. How much do you think you were worth? I want to know how much you were worth at the time.

Mr. Heher—Objected to as immaterial.

The Court—Objection overruled.

Q. How much were you worth at the time, the nineteenth day of January, when you dissolved and assumed all the debts in this business, how much were you worth at that time?

A. I was worth a little bit more than I originally was; possibly between fifteen hundred and two thousand dollars.

Q. Where was that money?

A. In accounts outstanding and stock on hand.

Q. It was in flour stock? 10

A. Yes, sir.

Q. The price of that fluctuated, didn't it?

A. All the time; yes, sir.

Q. One day you might be worth quite some less or more than another day; is that true?

A. Yes, sir.

Q. How much flour did you have?

A. Well, I had borrowed considerable money from the banks—

Q. How much flour did you have? 20

A. I do not remember.

Q. Have you no records of it?

A. All of my records have been lost. The warehouse could produce those records.

Q. Do you know how much other things you had beside that?

A. What do you mean by "other things?"

Q. Other property, at the time you dissolved this partnership?

A. Accounts outstanding.

Q. What were they? 30

A. I can not recall at this time.

Q. Do you mean to tell me you can not tell who owed you money?

A. Not at this time. This is two years ago.

Q. Yes, but this case has been on here for nearly two years. Haven't you found out in this time how much money people owed you at that time?

A. Well, that was changing every day or every week, the money that was outstanding.

Q. The people who owed debts to you, don't you know anything about that?

A. Absolutely; I know all about it.

Q. Then can't you tell us approximately how much money was owing to you at that time?

A. I can tell within possibly some figure.

Q. Well, now, tell us within your figure.

10 A. About three or four thousand dollars.

Q. About three or four thousand dollars was owing to you?

A. Yes, sir.

Q. Now can you tell me about the value of the flour you at that time had?

A. About a thousand or fifteen hundred dollars worth.

Q. Where did you keep that flour?

A. At the Anchor Warehouse.

Q. Then you could find the value of that easily?

20 A. Yes, sir.

Q. Did you find the value since then?

A. No, sir. I did not think I would be asked for it.

Q. What other property were you worth at that time? Beside that?

A. Some cash in the bank.

Q. How much?

A. I do not remember. I could get that from the bank.

Q. What bank was it in?

A. The Hanover Trust Company.

30 Q. I would like you to produce your bank balance this afternoon for that time.

A. All right, sir.

Q. Now, you say you were owed three or four thousand dollars. Name some of the people who owed it to you, and how much it was.

A. I can not remember. I told you that it was a hazy idea I had how much money was owing to me; and the

people were paying every week or ten days or three weeks and I can not tell you that.

Q. You had this case to meet and you dissolved this partnership, and at that time do you mean to tell us that you and your brother did not go over how much money was owing and how much you owed?

A. No, sir.

Q. Do you mean to say your brother got out of this business in a nice, easy way and he let you take the load?

10 A. Not in a nice, easy way. We had a fight about it and he said, "I want to drop out of it entirely and I want to be relieved of everything, and if you want to handle it what we have made you can have for I want to get out of it."

Q. He was handing you all the trouble?

A. At that time it was a big benefit to me.

Q. Yet you had a fight and he was conferring a benefit on you?

A. He wanted to get out.

20 Q. Didn't he want to get out to avoid paying the debts you had incurred?

A. I had been making money at that time.

(Last question read.)

The Witness—No, sir.

Q. He did not?

A. No, sir.

Q. And he left it to you to do all the negotiating and give the notice of dissolution, didn't he? He left that to you?

A. Why, no; he was with me.

30 Q. But I notice that you wrote these letters.

A. Absolutely, because I was the one that was going to stay in the business.

Q. Now, can you name some of those people that owed you three or four thousand dollars at that date?

A. I can tell you a lot of my accounts. I don't know what they owed me.

Q. You did not make up a list for your brother, did you?

A. No, sir; he was not interested.

Q. When you got this notice up who did you mail that to?

A. The Pillsbury Flour Mills Company, the same as it is on there, "Pillsbury Flour Mills Company, 204 Frelinghuysen Avenue, Newark, N. J." And in the lower left-hand corner I had "Attention of Mr. Van-
10 derhoof."

Q. Did you send that notice to anyone else?

A. I dropped that letter in the box.

Q. Where?

A. At the Post Office.

Q. Did you register it?

A. No, sir.

Q. Why didn't you?

A. I did not think it was necessary.

Q. You did not think it was necessary to register an
20 important letter to a company like that?

A. No, sir.

Q. You do not think so?

A. No, sir.

Q. At that time do you know how much money you owed these people?

A. On the one account less than two thousand dollars. It was the one draft I think I owed them.

Q. Do you know how much you got after that into their debt?

A. I bought about thirty-five thousand dollars after
30 that.

Q. And you are six thousand dollars in their debt now?

A. Yes, sir.

Q. That is, this partnership is?

A. Well—

Q. Now, I understood you to say on direct examination that the Pillsbury Flour Mills Company were your only creditors?

A. Yes, sir.

Q. Is that true?

A. Yes, sir; outside of the banks.

Q. Did they get a notice?

A. I saw them personally.

Q. They did not get any notice, eh?

A. I saw them personally.

The Court—Just answer the question.

Q. When I ask you a question I would like an answer, and I do not want answers to something I do
10 not ask.

(Previous questions and answers read.)

The Court—You are asked whether they got a notice.

The Witness—Not a written notice.

Q. Did they get a copy of this notice?

A. No.

Q. Did anyone else get a copy of that notice?

A. No, sir.

Q. Only the Pillsbury Flour Mills Company? 20

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. You say the Pillsbury Company and the bank were your only creditors?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir.

Q. You say you drew flour belonging to the Pillsbury Flour Mills Company from the Anchor Warehouse?
30

A. Yes, sir.

Q. And you also had flour there, didn't you?

A. Yes, sir.

Q. Of your own?

A. Yes, sir.

Q. Did you give the Anchor Warehouse any notice of this dissolution of partnership?

A. Not a written notice.

Q. I mean a written notice, like that (indicating), when I speak of a notice.

A. Not a written notice; no, sir.

Q. They were your creditors at that time, weren't they?

A. The Anchor Warehouse a creditor of ours?

Q. Yes. You owed them money for storage at that time when you dissolved this partnership. Isn't that right? The nineteenth day of January, 1925?

10 A. I might— Yes, a few dollars. I don't know what time I paid them up to.

Q. I am asking whether or not you did.

A. I do not remember.

Q. Did you keep any books?

A. Absolutely.

Q. Where are they?

A. I explained yesterday that I do not know what happened to all of my records.

Q. You lost them all?

20 A. Yes, sir.

Q. When did you lose your records?

A. Last winter.

Q. What time last winter?

A. It was through the winter, when I was living down in Florida.

Q. What month?

A. It was the early part of this year. I moved— It was between November and March.

Q. When did you lose these records in Florida? Tell me that.

30 A. Between November and March some time.

Q. Of what year?

A. Of 1925 and 1926.

Q. (Indicating.) How is it you did not lose these too?

A. They were in Mr. Heher's keeping.

Q. Is that the reason?

A. Yes, sir.

Q. Do you know that Mr. Heher communicated with me a number of times about this case and he could not try it because he did not have the records?

Mr. Heher—That is objected to.

Q. At your request?

A. No, sir.

Mr. Heher—I might say that at the beginning counsel did not annex an itemized statement of this account at all to his complaint and he said he would furnish that to me later, and it did come 10 along some time later. I told him I wanted that before I could prepare the answer.

The Court—There is nothing pending now.

Q. Are you married?

A. No, sir.

Q. Where do you live, when you are at home?

A. Now?

Q. No; at that time, 1925?

A. I was living at my brother's house, and then I was living with my father. 20

Q. You made your home between the two?

A. At first I did, and then when I got in conflict with my brother I went and lived with my father.

Q. Your father lives on West State Street?

A. No, sir; Ellsworth Avenue.

Q. Where does your brother live?

A. On Greenwood Avenue.

Q. Who went to Florida with you?

A. I went alone.

Q. Did you go for pleasure?

A. No, sir. 30

Q. What for?

A. I went down there to work.

Q. What need did you have for these records you brought along with you?

A. I wanted to have them with me for safekeeping.

Q. Whose home were you in when you left to go to Florida?

A. At that time I was living by myself. I was rooming.

Q. Where at?

A. On State Street here, with two other fellows.

Q. Why didn't you put those records in your father's home or a safe deposit vault?

A. Well, at that time—I don't know. I just took them with me.

Q. Who did you live with in Florida?

10 A. I lived by myself.

Q. What were these records in?

A. In a letter file.

Q. How did the letter file come to be lost? Was it stolen or destroyed or what?

A. I don't know.

Q. Was it taken out of your house?

A. It was just lost some place. Whether the maid in cleaning up the floor threw it out with other papers, or what she did with it, I don't know.

20 Q. Do you think it was laying on the floor in your room?

A. I had it on the floor in the closet.

Q. In a regular letter file?

A. Yes, sir.

Q. When did you quit business entirely?

A. Around July; sometime in July.

Q. What year?

A. 1925.

Q. When you quit business did you remain here?

A. For about a month.

30 Q. Before you quit business how much flour did you have on hand, just before you quit?

A. I made up an itemized account of the flour I had on hand; that is, I made up an account which I gave to Mr. Boscarell, an attorney in town, and he wrote a letter when I was about to go out of business to the Pillsbury Flour Mills Company—

Q. Please answer the question. How much flour did you have on hand at that time?

A. I do not remember.

Q. You do not know?

A. No.

Q. What were you going to say about Boscarell?

A. I asked Boscarell to write a letter to the Pillsbury Flour Mills Company and tell them what my condition was at that time; that due to the fluctuation in the market and other conditions that a couple of men had gone broke and stuck me for about fourteen or fifteen hundred dollars; and he wrote them a letter to see if they couldn't come to some kind of settlement with what I had on hand at that time, and Mr. Boscarell wrote a letter— Do you want me to tell the story?

10

Q. No; that is enough. Now, you say Mr. Boscarell wrote a letter?

A. Yes, sir.

Q. Are you sure about that? Didn't you write a letter to the Pillsbury Flour Mills Company at that time?

A. I took it up with Mr. Boscarell.

Q. I didn't ask you that.

20

A. I do not remember writing a letter.

Q. I ask you if you did or did not write a letter to the Pillsbury Flour Mills Company at that time or near it.

A. I don't remember.

Q. You do not remember?

A. No, sir.

Q. Why did you turn the matter over to Boscarell?

A. I wanted him to try to make a settlement with them.

Q. Is he a business man?

30

A. Boscarell is a lawyer.

Q. And you thought a lawyer could make a settlement for you?

A. Yes, sir.

Q. If you wrote a letter to the company at that time, did you make a copy of it?

A. I most likely did.

Q. Have you got a copy of it?

A. If I did write it, it was in my file with the letters, but I do not remember it.

Q. Mr. Heher did not get that letter, did he?

A. No, sir.

Q. Are these the only papers and letters you gave Mr. Heher in this case (indicating)?

A. At that time he asked me for the papers of dissolution and also any notice I gave to the Pillsbury Flour Mills Company.

10 Q. And he did not get any more from you than that?

A. No, sir.

Q. And all the other papers but these two are lost?

A. I think so.

Q. So far as you know?

A. Yes, sir.

Q. When you quit this business what did you go into.

A. I did not do anything for about a month after that.

Q. Then what did you do?

20 A. I went down to Florida.

Q. What did you do there?

A. Started to sell real estate.

Q. Is that what you went there for?

A. Yes, sir.

Q. To sell real estate?

A. Yes, sir.

Q. How long did you work at that?

A. I worked at that until the third of November, selling real estate.

Q. And since then what have you been doing?

30 A. I went in the building supply business in Florida. That is, I was working for a building supply company.

Q. When you went to Florida you went right to work selling real estate, didn't you?

A. Yes, sir.

Q. Shortly after you went there?

A. About three or four days afterward.

Q. And I suppose you were quite busy?

A. I was busy trying to sell.

Q. Yes, on your feet all the time. How much flour did you have on hand when you quit, of the Pillsbury Flour Mills Company, do you know—or about that time?

A. I do not remember.

Q. You sold a lot of flour before you quit, didn't you?

A. Yes, sir.

Q. And you sold it under the market price in order to raise money, didn't you? 10

Mr. Heher—Your Honor, I object. Counsel is going very far afield.

The Court—I think he may answer this.

A. Some of it I did.

Q. You sold it under the market price to get money?

A. Yes, sir.

Q. And you did not use that money to pay the Pillsbury Flour Mills Company, did you?

A. I agreed at one time to make a settlement and they refused. I paid the bank. 20

Mr. Heher—Your Honor, there is no dispute about the fact he did not pay Pillsbury. This witness admits that he owes the amount the plaintiff claims in this case.

The Court—There is nothing pending now.

Q. Didn't you sell the flour for less money to retailers in Trenton than you agreed to pay Pillsbury Flour Mills Company for it?

Mr. Heher—Objected to.

The Court—Objection overruled.

A. Why, surely; because I bought flour at a higher price than the market was at that time. 30

Q. You admit that, do you?

A. Yes, sir. I had been selling for months under what I had paid for my flour.

Q. When did you go to Florida? Do you remember?

A. In the latter part of August.

Q. Did you send this letter, dated July 27, 1925, from Stone & Company to Pillsbury Flour Mills Company, and you didn't sign it, but just wrote in type-writing "Stone & Company?"

A. I don't know. If you will let me see the letter I will let you know.

Q. Is that your letterhead?

A. Yes, sir.

Q. "Stone & Company, Flour Merchants. Office 219
10 East Hanover Street, Trenton, N. J."

A. Yes, sir.

Q. Did you write any letter around the end of June to the Pillsbury Flour Mills Company?

A. I might have. I do not remember. I was all excited and nervous at that time when this was, being all of the markets were dropping.

Q. I suppose you were sick.

A. I was sick at that time here; very much so.

Q. You went to Florida and started right in to work,
20 though, didn't you?

A. Yes; I had to. I was broke.

Q. Were you physically sick?

A. I think at that time I had been in an automobile accident, around that time. Was that 1925? Yes; I had fractured a rib in an automobile accident.

Q. Are you sure about that?

A. Yes, sir. My insurance company will verify that.

Q. What doctor did you attend?

A. I went to see the insurance company doctor, a
30 doctor out here on West State Street; and then there was a report—

Q. What is the name of the doctor?

A. I do not remember the name—wait a minute. Dr. McGuire, I think it is. He was the doctor for, I think, the Hartford Insurance Company.

Q. Now, think it over.

A. I think his name was Dr. McGuire; and I went to see Dr. Goldberg on East State Street, who I was sent to see by the Aetna Insurance Company. I saw

two of them. I was hurt in the subway in Philadelphia and the people there told me to see a doctor in this town.

Q. Tell me what date you were in that accident.

A. I believe it was some time in June; around June, some time.

Q. When did you go to Florida?

A. In August.

Q. Do you know how late it was in June you had that accident? 10

A. No, sir.

Q. Were you doctored for anything else than a fractured rib?

A. It was not fractured. It was a bruised rib; it was a severely bruised rib.

Q. You were not very much injured, were you?

A. Yes, sir; I was very much injured.

Q. You are sure it was about the end of June?

A. It was around June some time. I do not remember the exact date. 20

Q. Now, you just wrote this letter—read it and see if you wrote that and did not sign your name to it.

Mr. Heher—Just a moment before you answer that question. I object to any reference to this letter at all. There is no foundation for it laid, in the first place. I take it that the plaintiff should have laid the foundation before he could ask this witness any question about this letter. This witness is not a witness for the plaintiff.

The Court—No. This is one of the defendants. 30

Mr. Heher—Yes, sir; that is what I say.

The Court—I suppose there is no better way to lay a foundation than to ask a person who may have written a letter whether he did in fact write it.

(Witness examines paper.)

A. I believe I did write this.

Q. Did you write that letter?

A. Yes, sir.

Q. Why didn't you sign your name to it?

A. It must have been a miss-slip. I always signed my letters. I could deny it—

Q. I did not ask you what you could do. I asked you what you did.

A. I did write the letter; yes, sir.

Q. "I am leaving on Monday and will return in about four weeks. Mr. Boscarell has authority to act
10 for me and will do everything possible to assist you. Sometime in the near future I will drop in and see you and explain everything, but my condition will not permit it at this time."

A. That is right.

Q. Now, did you leave on Monday?

A. Yes, sir.

Q. Did you come back in four weeks?

A. Yes, sir.

Q. Where were you?

20 A. I was down at a farm in Cream Ridge, New Jersey.

Q. Haven't you just testified you did not go to Florida until August?

A. No, but I went to a farm down here in Cream Ridge, New Jersey, to recuperate.

Q. Was it a fractured rib that took you there?

A. Yes, sir.

Q. What did you do on the farm to ease your fractured rib?

A. I was just laying around.

30 Q. You could have laid around just as well up here, couldn't you?

A. Not very well; no, sir.

Q. You do not think so?

A. I do not think so.

Q. Are the facts that you wrote in this letter at that time true?

A. Yes, sir.

Mr. Devlin—I will read it to the jury if the Court will allow me.

The Court—I will.

(Mr. Devlin reads letter referred to.)

Mr. Devlin—I will offer this letter for identification.

(Paper referred to is marked *Exhibit P-3* for identification.)

Q. When you wrote this letter to the Pillsbury Flour Mills Company you had no assets, did you? 10

A. Yes, sir.

Q. What were they?

A. There were some accounts outstanding, money in the bank and stock on hand and the Pillsbury Flour Mills Company refused to take it, saying they wanted their money or nothing.

Q. Isn't it a fact that the Pillsbury Flour Mills Company came here and found you hadn't anything to give and had sold their flour, that you bought from them, for below the price that you agreed to pay them for
20 it? Isn't that true?

A. Because I bought it on a higher market—

Q. Answer yes or no. Is that true?

A. Is what true?

Q. Didn't you sell their flour that you had on hand at below the price that you agreed to pay them for it?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Then you had no assets on hand? 20

A. Yes, sir; I had.

Q. When you wrote that letter?

A. I had.

Q. Didn't you sell every bit of flour you had to get money?

A. Not at the time of that letter.

Q. On June twenty-seventh what flour did you have and where did you have it?

A. I had flour on hand in the warehouse.

Q. In the Anchor Warehouse?

A. Yes, sir.

Q. How much was it?

A. I do not remember.

Q. You lost that record too?

A. The warehouse has that record.

A. Mr. Boscarell may have it now.

Q. Did you ever consult Mr. Boscarell before this
10 case was brought?

A. Yes, sir.

Q. He is a lawyer, isn't he?

A. Yes, sir.

Q. Did you think it was worth while to consult him
if you were prepared for this case?

A. No, I did not think it was necessary.

Q. Isn't it true that the only flour that was in the
Anchor Warehouse was flour that they were holding
for a claim they had against you for storage?

20 A. No, sir.

Q. Isn't that true?

A. No, sir.

Q. Do you know Mr. Cox?

A. Yes, sir.

Q. You know he is here, don't you?

A. Yes, sir.

Q. Where are you working at now?

A. New York City.

Q. What are you doing?

A. Selling.

30 Q. What?

A. Advertising signs—

Q. You are an advertising solicitor, is that it?

A. No, sir. I am—

Mr. Heher—I object to these questions. I do
not see that they have anything to do with this
case.

The Court—I think he may answer it.

The Witness— —with the F. W. Hunter Com-
pany.

Mr. Devlin—That is all.

Redirect examination, by Mr. Heher.

Q. Mr. Devlin asked you about sending out notice
to creditors of Stone & Company at the time of this
dissolution in January, 1925.

A. Yes, sir.

Q. You said that you sent this written notice to Pills- 10
bury Flour Mills Company and you notified the banks
personally?

A. Yes, sir.

Q. Did you owe any other money?

A. I might have owed some to the warehouse at the
time.

Q. Outside of these few dollars which you say you
owed to the warehouse for storage—

Mr. Devlin—I object to the question because
he has not been able to show what he owed the 20
warehouse.

Mr. Heher—He said a few dollars.

The Court—I think he said in answer to a
question from you that if he owed the warehouse
anything it was a small amount.

Mr. Devlin—I will withdraw the objection.

Q. So that there was no creditor to whom you could
send notice outside of these people you have mentioned?

A. No, sir.

Q. At the time this agreement of dissolution was
signed, on January 19, 1925, did you and your brother 30
owe the money, that is, trading as Stone & Company?

A. Just one draft to Pillsbury Flour Mills Company.

Q. For one delivery of flour?

A. Yes, sir. It was less than two thousand dollars.

Q. And that is the time that you and your brother
agreed to dissolve the partnership and at the time this
agreement was signed, on January 19, 1925.

A. Yes, sir.

Q. You just owed Pillsbury Flour Mills Company for that one delivery of flour?

A. Yes, sir.

Q. You did not owe any other money at all?

A. To the banks.

Q. Well, outside of the banks?

A. That is all.

Q. Did your brother, Joseph Stone, ever receive anything in the way of money or property from the business of Stone & Company?

Mr. Devlin—Objected to as immaterial and irrelevant.

The Court—I think he may answer that.

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. Your brother accepted these two or three drafts in conjunction with you for Stone & Company, and he never received anything at all whatsoever from the business, did he?

A. No, sir.

Mr. Heher—That is all.

Recross examination, by Mr. Devlin.

Q. Your brother went to Newark with you when you opened this business, and you and your brother were partners in it then when you opened it. That is right, isn't it?

A. Yes, sir.

Q. And you traded under the name of Stone & Company?

A. That was a later thought.

Q. Well, you traded under that name anyway?

A. Yes, sir.

Q. Didn't you have some desk calendars made when you were selling flour, you and your brother?

A. Yes, sir—What is the question?

(Last question read.)

The Witness—No, sir.

Q. You did not?

A. No, sir.

Q. Was there any advertising matter put out by you?

A. By me, myself?

Q. By the company.

A. By the company, yes.

Q. What were they?

A. Some calendars.

Q. Desk calendars?

A. Yes, sir.

Q. Who did you buy them from?

A. A fellow that had an office with me, by the name of Peter Tennello.

Q. When did you buy them?

A. It was around April or May, I guess; when I was by myself.

The Court—Of what year?

The Witness—Of 1925.

Q. You never paid for them, did you?

A. No, sir.

Q. They were a creditor, too, weren't they?

A. They were a creditor to me, but they were not a creditor at the time of the dissolution.

Q. They were bought after that, were they?

A. Yes, sir; about three or four months after that.

Q. The bill was made to Stone & Company, wasn't it, in this case?

A. Yes, sir.

Q. Did you ever advertise in the newspaper that your partnership had dissolved?

A. No, sir.

Q. Why not?

A. I did not, because I had given notice to everybody that was doing business with, and I did not think it was necessary to make a public notification.

Q. And yet you carried the same business name, Stone & Company, after you dissolved, as you say, as you did before the dissolution?

Mr. Heher—I object. That is argumentative.

The Court—I suppose it is not a question.

Mr. Devlin—I will withdraw it.

Q. Notwithstanding the fact that you carried the same business name when you were partners that you did carry after the dissolution of the partnership, you did not think it was necessary to tell the public that the people who made up the company of Stone & Company had changed?

A. We had never gotten up any partnership agreements.

Q. Answer the question. Did you think or did you not think it necessary to tell the public that the people who made up the partnership of Stone & Company had changed hands?

A. I did not think it necessary.

Q. And yet you got a high school education?

A. Yes, sir.

Q. And you got two years of a law education?

A. Yes, sir.

Mr. Devlin—That is all.

By Mr. Heher.

Q. The draft which you mentioned as unpaid at the time this dissolution agreement was signed, in January, 1925, was that afterward paid?

A. That was paid; yes, a couple of days after the dissolution.

Q. So that so far as your brother, Joseph Stone, was concerned the flour that was purchased during the short period of time he was a partner was all paid for?

A. Yes, sir.

Joseph Ringkamp, sworn for the defendants.

Direct examination, by Mr. Heher.

Q. What is your occupation?

A. Receiving and paying teller at the Hanover Trust Company.

Q. In Trenton?

A. Yes, sir.

Q. That is located at the corner of Perry and Broad streets?

A. Yes, sir.

Q. You have been there a number of years?

A. About three or three and a half.

Q. Do you know Joseph Stone, the gentleman who sits here at the table?

A. Yes, sir.

Q. And also his brother, Herman Stone, who was just on the witness-stand?

A. Yes, sir.

Q. You have known them for some time past, have you not?

A. Yes, sir.

Q. And they dealt with the Hanover Trust Company in the keeping of an account in the name of Stone & Company?

A. Yes, sir.

Q. Do you recall how funds were withdrawn from that account, that is, upon what signatures?

Mr. Devlin—I object to that as immaterial and irrelevant.

The Court—How is it material, Mr. Heher?

Mr. Heher—If your Honor please, I think the question is very important in this case. The first question is whether or not there was a dissolution of the partnership; the second involves the giving of notice to the plaintiff.

(After discussion.)

The Court—I suppose the thing we are interested in is whether the plaintiff ever was put upon notice that when this account was created it was dealing with Herman Stone alone and not with Joseph Stone. I suppose that is the question we are interested in.

(After further discussion.)

The Court—I do not think this is competent and the objection will be sustained.

Mr. Heher—May I have an exception?

The Court—Yes.

Mr. Heher—That is all.

Mr. Devlin—No questions.

Pasquale Dalosio, sworn for the defendants.

Direct examination, by Mr. Heher.

10 Q. What is your occupation?

A. At present paying and receiving tell in the savings department.

Q. In the Hanover Trust Company?

A. Yes, sir.

Q. You have been there for several years, working in the bank?

A. Yes, sir; almost three years.

Q. Do you know Herman Stone?

A. Yes, sir.

20 Q. And his brother, Joseph Stone?

A. Yes, sir.

Q. You have known them for some time?

A. Yes, sir.

Q. In the month of January, 1925, what was your duty or occupation in the bank then?

A. Bookkeeper, sir.

Q. Did you have charge of the account with Stone & Company at that time?

A. Yes, sir.

30 Q. How were funds withdrawn, that is, upon what signatures were funds withdrawn from the account prior to that time and afterward?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

Q. That is, after January, 1925, how were funds withdrawn from the account, and upon what signatures?

Mr. Devlin—Objected to.

The Court—Objection sustained.

Mr. Heher—May I have an exception?

The Court—Yes.

Mr. Heher—That is all.

(No cross-examination.)

Leonard K. Cox, sworn for the defendants.

Direct examination, by Mr. Heher.

Q. Mr. Cox, what is your present occupation or business?

A. Superintendent of the Anchor Warehouse, in Trenton. 10

Q. Was that your official position prior to January, 1925?

A. Yes, sir.

Q. As well as afterward?

A. Yes, sir.

Q. Do you know Joseph Stone, who sits here at the table?

A. Yes, sir.

Q. And his brother, Herman Stone?

A. Yes, sir. 20

Q. You had known them for some time prior to January, 1925?

A. Yes, sir.

Q. They stored flour in your warehouse under the name of Stone & Company?

A. Yes, sir.

Q. And you understood they were partners?

Mr. Devlin—I object to what he understood.

The Court—Objection sustained.

Q. Did Joseph Stone call there during any certain period of time with reference to the company, that is 30 to Stone & Company, or the delivery of flour?

A. At various times.

Q. Up until what time?

A. About the month of January, 1925; about the middle of January.

Q. Did he call after that?

Mr. Devlin—Objected to as immaterial and irrelevant.

The Court—I think that is the same question.
Objection sustained.

Mr. Heher—All right.

Q. You say that Joseph Stone called up to the middle of January, 1925?

Mr. Devlin—I object.

The Court—Yes. That has been answered.

Q. Did you know Mr. Greenberg?

A. Yes, sir.

10 Q. He was a representative of the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. And he called at the warehouse on numerous occasions, did he not?

A. Yes, sir.

Q. Did Mr. Greenberg have any conversation with you after January 19, 1925, concerning the relationship or the financial standing of the partnership of Stone & Company?

20 Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection sustained.

Mr. Heher—Exception.

Q. Did Mr. Greenberg say in any conversation with you, after January 19, 1925, anything about the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection sustained.

30 Mr. Heher—Exception.

Q. I want to call your attention to this statement which has been offered in evidence by the Pillsbury Flour Mills Company, referring to *Exhibit P-4*, a statement of the Pillsbury Flour Mills Company for this account sued upon. There are two items on here to which I wish to call your attention, one apparently under date of, as it is here, "12/3," apparently meaning December third, with the name "Greenberg" alongside of it.

"Name and address: Stone & Company," the amount, \$378; and the next one underneath there, marked the same thing, "12/3" and the name "Greenberg." "Name and address: Stone & Company, Trenton, N. J." The amount, \$189. Will you look at those two, Mr. Cox, and see if you can recall anything about either one of those?

Mr. Devlin—I object to the question as incompetent, irrelevant and immaterial.

The Court—I suppose he may look at them 10 and say whether or not he has any recollection about those shipments.

Mr. Devlin—I do not mind him looking at them, but if you take the question preceding it, that is the one I object to; it was not to looking at it. There was rather a lengthy introduction before he got to that.

The Court—It does not call for any statement of fact. It is just whether or not he recalls anything about them, Yes or No. 20

A. The \$378 and the \$189 items?

Q. Yes.

A. Yes.

Q. Will you state, as far as you know, when the order was given or how the order was given for the purchase of those two orders?

Mr. Devlin—Objected to as immaterial.

The Court—I think I will permit that.

Mr. Devlin—I ask an exception.

The Court—Yes.

Q. Will you state the circumstances under which the 30 order was given for those two purchases of flour?

Mr. Devlin—If you know.

A. Mr. Herman Stone came into my office—

Q. Was Joseph Stone with him?

A. No, sir. Herman Stone came into my office and said that he wanted to withdraw some Pillsbury's Best Flour.

Q. When was that?

A. About December, 1924. I told him I could not release it without permission from the Pillsbury Flour Mills Company's office.

Mr. Devlin—I object to this as incompetent, irrelevant and immaterial.

The Court—Yes.

Q. Will you state, if you can, as to when each delivery was made, that is, each one of these two deliveries?

Mr. Devlin—Objected to.

10 The Court—He is asked if he knows when these particular lots of flour were withdrawn.

A. Not exactly.

Q. You do not know?

A. Not exactly.

Q. Do you know the month?

A. December. I would not swear to the day.

Q. Do you recall that Herman Stone was short of flour at that time?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

20 The Court—Objection sustained.

Q. These were really small lots of flour, were they not?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection sustained.

Q. Did you have any conversation at that time with Mr. Vanderhoof, of the Pillsbury Flour Mills Company in Newark, about Stone & Company?

Mr. Devlin—Objected to for the reason that such a conversation, if any, was not put to Mr. Vanderhoof on the witness stand.

30 The Court—I suppose it might be in denial. The witness Vanderhoof said he never heard anything about a dissolution of partnership, and I suppose— But if there is any objection on that score, Mr. Heher, you may lay the foundation by recalling the witness and asking him, if you want to.

Mr. Devlin—Yes. I want him to lay his foundation.

Elmer D. Vanderhoof, recalled for further cross-examination.

By Mr. Heher:

Q. Mr. Vanderhoof, do you recall having a conversation with Mr. Cox with reference to the relationship of Stone & Company after the month of January, 1925?

Mr. Devlin—Objected to, except he fixes the circumstances, the time and place, to enable this man to refresh his memory. 10

The Court—He may answer the question.

Mr. Devlin—I ask an exception.

The Court—Yes.

(Last question read.)

A. Up to what period?

Q. Did you have any conversation with him after January, 1925, over the telephone?

A. Do you mean up to June or July or August or September, or when? 20

Q. Yes.

A. What is the question? What date?

Q. Up to June eighth?

A. No, sir; I did not.

Q. When did you have a conversation with him?

A. When I came down here to see Mr. Devlin and put it in his hands I stopped and saw Mr. Cox.

Q. Why were you so particular in asking me?

A. Because I did not know whether you meant September or January or February.

Q. It is true that you wanted to make sure as to the period of time I was asking you with reference to this conversation? 30

A. Yes, sir; because I might say "Yes" to that and it might mean anything.

Q. You had other conversations with him, did you?

A. I had one conversation with Mr. Cox, at the time I came to see Mr. Devlin with reference to putting it in Mr. Devlin's hands.

Q. When did you come to see Mr. Devlin at the time you just mentioned?

A. I do not remember the exact date.

Q. Can you tell us the month?

A. No. I do not remember exactly—

Q. Can you tell us the year?

The Court—Let him answer, Mr. Heher.

Q. Can you tell us the year?

A. May I look at this—

10 The Court—If there is anything to refresh your recollection about it, you may.

The Witness—(After examining papers.) It was some time after June eighth; exactly when I do not know.

Q. Some time after the last date appearing upon that statement?

A. Yes, sir.

Q. You do not know when it was?

A. No, sir; I do not know.

20 Q. You want us to understand that when you came to see Mr. Devlin was the first time you talked with Mr. Cox about the relationship or the dissolution of Stone & Company?

A. Yes, sir.

Q. Did you know then, when you talked with Mr. Devlin, that there had been a dissolution of the partnership?

A. No.

Q. From whom did you find it out?

A. I do not know it yet. I have never been notified.

30 Q. Did Mr. Devlin ever tell you that there had been a dissolution of the partnership?

A. No.

Q. Now, isn't it a fact that this case was on the list for trial at the May term of this court, in May of this year, and Mr. Devlin in the preparation of your case told you that we claimed that there had been a dissolution of the partnership, and he asked you to look in your files in your office in Newark to find whether or

not you had received a letter, because I had given him notice to produce the original letter, and he told you to look in your files, and you told Mr. Cobb to look?

A. Mr. Cobb said so yesterday.

Q. You told him to look in the files. Didn't you know then that we claimed there had been a dissolution of this partnership?

Mr. Devlin—Objected to. How could any one answer that?

The Court—I suppose the question is whether 10 or not this witness did not know within the last few months that the defendants claimed there was a dissolution.

Mr. Devlin—There is no argument about that.

Mr. Heher—Let the witness answer.

The Court—I suppose the witness may answer that question, whether he did not know a few months ago when he was advised by you that there was a claim of dissolution.

Mr. Devlin—If your Honor will permit me, 20 that is not a proper question, because I did not know until this case was almost ready for trial that this question was involved. I did not go into—

Mr. Heher—You knew it the last term.

The Court—The question is whether the witness knew. He may answer that. Do you understand the question?

A. The question, as I understand it, is that you want to know whether I ever knew—

Q. No. You knew that the case was on the list for 30 trial at the May Term of this year.

A. Yes, sir.

Q. You were then making preparations for trial because it looked as if the case would be ready for trial shortly?

A. Yes, sir.

Q. You were in communication with Mr. Devlin then about preparation of this case?

A. Yes, sir.

Q. What did he tell you about the nature of the defense of Stone & Company or of these two boys?

A. He told me at that time to see if I could find any letters or papers from Stone & Company and produce everything that there was.

Q. Letters or papers about what?

A. Any letters or papers we had in our possession, and also a statement of the account.

10 Q. Letters or papers about what?

A. Anything that we had in our possession.

Q. Have you brought the entire file here?

A. We have brought everything we had.

Q. Did he tell you what to look for particularly in the file?

A. Subsequently he told us to see if we had a—

Q. Now—

The Court—Wait.

20 The Witness—Subsequently he asked us to see if we had a letter notifying us of the partnership dissolution, to ask Mr. Cobb if he ever received any such letter.

Q. He told you in the meantime to look in your files, in what month?

A. I do not know the month.

Mr. Devlin—Now, I object. This witness was brought here to lay the foundation to ask Mr. Cox a question.

The Court—Well, if there is anything else which has not been developed I will permit it.

30 Mr. Devlin—He has had his opportunity of cross-examination.

The Court—I will permit it, Mr. Devlin.

Mr. Devlin—I ask an exception.

The Court—Yes.

Q. When you first got word, at that time did you get word from Mr. Devlin to look in your files?

The Court—I think that was all gone into yesterday, Mr. Heher.

Mr. Heher—No; I do not think so.

The Court—Oh, yes, it was.

Mr. Heher—Well, he has just made another statement, your Honor.

The Court—Well, let us get along. I assume Mr. Devlin told his client whatever he knew.

Leonard K. Cox resumes the stand.

Direct examination continued, by Mr. Heher.

10

Q. Mr. Cox, can you state the conversation, or when the conversation was which you had with Mr. Vanderhoof after January 19, 1925?

Mr. Devlin—Objected to unless now he uses the foundation that he has built. He has laid his foundation and he has got to use it. The conversation that took place, if any, was after June eighth.

The Court—No; he is not limited to that. He may contradict that.

20

Mr. Devlin—I do not think so. I think the only way this conversation can be of any value to him is for him to build on the foundation that he has laid with Mr. Vanderhoof.

The Court—He is not bound by Mr. Vanderhoof's statement that he never had any conversation with this witness about a material question in this case prior to the time Vanderhoof said he had the conversation.

Mr. Devlin—I ask an exception.

The Court—Yes. Go ahead.

30

Q. Can you fix the time you had the conversation with Mr. Vanderhoof with reference to the delivery of flour to Stone & Company after January 19, 1925?

Mr. Devlin—Objected to as immaterial.

The Court—Objection overruled.

Mr. Devlin—We ask an exception.

The Court—Yes. Answer the question.

(Last question read.)

A. No; I cannot.

Q. Do you recall having a conversation with Mr. Vanderhoof with reference to the delivery of flour to Herman Stone?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection overruled.

Mr. Devlin—We ask an exception.

The Court—Note an exception.

- 10 A. It seems to me that, since Mr. Heher has refreshed my memory, that I called Newark on the phone one day to get the delivery of about three-quarters of a carload of Pillsbury's Best in ninety-eights.

By the Court.

Q. You are asked when, if you had any conversation, it was.

A. Around May, 1925.

Q. Was it with Mr. Vanderhoof?

- 20 A. With the Newark office. I would not say whether it was Mr. Vanderhoof.

Q. You are asked whether you had a conversation with Mr. Vanderhoof.

A. I cannot say.

Mr. Devlin—I move to strike it out.

The Court—Strike it out.

By Mr. Heher.

Q. Do you know whether or not it was with Mr. Cobb?

- 3 A. I cannot say.

Q. You do not know who it was within the office?

A. No.

Q. Do you know whether or not it was with reference to the delivery of flour to Herman Stone?

Mr. Devlin—Objected to.

The Court—Objection sustained.

Mr. Heher—That is all.

Mr. Devlin—No questions. I want you to remain, Mr. Cox, because I may have to use you as a witness myself. I cannot use you now.

Joseph H. Stone, one of the defendants, sworn.

Direct examination, by Mr. Heher.

Q. Mr. Stone, you are the remaining defendant in this case?

A. Yes, sir.

Q. You are engaged in what business in Trenton? 10

A. I am an officer in the Anthracite Manufacturing Company, on Brunswick Avenue. I have charge of the sales and am vice-president of the company.

Q. You have charge of sales of coal?

A. We sell anthracite coal, bituminous, manufacture brickettes, handle charcoal, and the general fuel line.

Q. You have been engaged in that business for how long?

A. Well, I was taken in as a member of the firm only about six months ago. Prior to that I had been a 20 jobber. I was the Anthracite Manufacturing Company's distributor for their product. I had my own equipment and went around the stores and around the city of Trenton and suburbs, and six months ago I was asked to join the firm and I turned my business into the company and to-day I hold the office of vice-president and have charge of sales in our whole general line, coal and brickettes. I have been in this kind of business for eleven years.

Q. Do you recall you and your brother Herman going to the office of the Pillsbury Flour Mills Company in Newark?

A. Yes, sir. About the latter part of October my brother, Herman—

Q. What year?

A. 1924—my brother Herman, who was then a salesman for the Commander Flour Company, stated to me that if he could handle flour outright he could make more money than he could if he sold flour—

Mr. Devlin—Objected to.

The Court—Objection sustained.

Q. You had a talk with Mr. Vanderhoof in the Newark office?

A. Yes, sir; Herman and I went to Newark.

Q. What was the agreement between you as to who would accept and endorse drafts to be forwarded in the future for the shipment of flour?

Mr. Devlin—Objected to as leading.

10 The Court—Is there any dispute on that point?

Mr. Heher—If counsel will admit the agreement was at that time that Joseph Stone and Herman Stone would accept the drafts in the future and the father, Samuel Stone, was to endorse the drafts.

The Court—My recollection of Mr. Cobb's testimony is that he said it did not matter whether they had one or more names, as long as they were paid.

20 Mr. Heher—I am speaking with reference to the agreement.

Q. Will you state what the agreement was with reference to who was to accept and endorse drafts to be forwarded in the future?

Mr. Devlin—Objected to as leading. If he tells what was said and what was done this Court will tell what the agreement was.

The Court—He may answer the question.

Mr. Devlin—I ask an exception.

30 The Court—Yes.

A. Herman Stone and I called—

The Court—Answer the question.

The Witness—Mr. Vanderhoof wanted to know on what basis we would have credit for this flour. He asked Herman Stone what he was worth and what I was worth and what Samuel H. Stone was worth—that is my father—and he said he would take it up with the

Credit Bureau of the Pillsbury Flour Mills Company and advise us later. A few days later we got a communication from the Pillsbury Flour Mills Company that they would accept our credit provided the three signatures appeared on all the drafts, Herman M. Stone and J. H. Stone, as makers of the draft, and Samuel Stone endorser on the back. And up until January 19, 1925, there were two or three cars came through that were ordered—

10

Mr. Devlin—Objected to.

The Court—That is not responsive.

Q. Up until January 19, 1925, how many drafts came through for acceptance by Stone & Company?

A. I am almost sure there were three.

Mr. Devlin—Objected to, unless he knows.

The Court—The answer may stand.

Q. And those drafts were drawn on Stone & Company?

Mr. Devlin—Objected to as leading.

20

The Court—He may answer it.

A. "Stone & Company. H. M. Stone. J. H. Stone" on the right-hand corner of the bottom of those drafts, and on the reverse side Samuel H. Stone endorsed it. That was the understanding with the Pillsbury Flour Mills Company as the basis for credit.

Q. Did you and your brother accept each one of those three drafts?

A. Yes, sir.

Q. Your name and your brother's name appeared on each one of them?

30

A. Yes, sir.

Q. And your father endorsed each one?

A. Yes, sir.

Q. Those drafts were all paid, were they not?

A. Yes, sir.

Mr. Devlin—I object. These questions are frightfully leading.

The Court—There is no dispute about that.

The Witness—Yes, those drafts were paid.

Q. They were all paid?

A. Yes, sir.

Q. Did you have any active participation in the partnership whatever?

Mr. Devlin—Objected to as immaterial and irrelevant.

The Court—How is it material?

10 Mr. Heher—Well, it is not very important.

Q. Did you ever receive anything in the way of money or property from the company, from the business?

Mr. Devlin—Objected to as incompetent, immaterial and irrelevant.

The Court—Objection sustained.

Q. Your brother conducted this flour business in Trenton, along with you, up until what time?

A. January 19, 1925.

20 Q. What happened on January 19, 1925?

A. We had quite a—

The Court—What happened then?

The Witness—We dissolved partnership.

Q. I show you a paper. Did you sign any paper at that time?

A. I did.

Q. What was that paper?

A. A dissolution agreement.

Q. Of what?

A. Of the partnership.

30 Q. The partnership which existed between you and your brother?

A. Between Herman Stone and myself.

Q. I show you a paper purporting to be an agreement under date of January 19, 1925, bearing the names of Herman M. Stone and Joseph H. Stone, witnessed by Samuel Bernstein, and ask you to look at that paper and see if that is your signature on there.

A. Yes, sir.

Q. Is that the agreement of dissolution which you have just referred to?

A. Yes, sir.

Q. You and your brother, Herman, agreed to dissolve the partnership on that day, is that right?

A. Yes, sir.

Mr. Devlin—Objected to as leading.

The Court—I think the answer may stand.

Q. Where was this agreement written, which you have just looked at? 10

A. At Mr. Bernstein's office. Stone & Company had desk room with this man Bernstein. There was a desk in his office that we used to occupy as one desk up to the time of the partnership, and Mr. Bernstein had his insurance business in the same part of the office.

Q. Did you have anything to do with the partnership after the signing of that agreement?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—Objection sustained. 20

Q. Did you do anything else with reference to the partnership after the signing of this agreement?

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—I suppose it would be, Mr. Heher, unless it is brought to the notice of the plaintiff.

Mr. Heher—I want to show what he did.

The Court—I suppose unless it is brought to the attention of the plaintiff it is not material.

Objection sustained.

Q. Mr. Stone, did you give any notice, or cause to be given, any notice to the plaintiff, Pillsbury Flour Mills Company, with reference to the dissolution of the partnership on January nineteenth? 30

Mr. Devlin—Objected to.

The Court—He may answer that.

Mr. Devlin—Exception.

A. Yes, sir.

Mr. Devlin—My objection is to "Cause notice." It is his duty to give notice and not to "cause" it.

The Court—It may stand.

Mr. Devlin—I ask an exception.

The Court—Yes.

Q. What did you do in the way of giving notice to the Pillsbury Flour Mills Company with regard to the dissolution of the partnership?

10 A. I was present when this letter was written by my brother Herman on his typewriter; I was present in Mr. Bernstein's office.

Q. You have seen that letter before, marked *Exhibit D-1*?

A. Yes, sir. I was present when this letter was typewritten by my brother.

Q. That is a copy of the letter?

A. May I read it, to be absolutely sure?

Q. Yes.

20 A. (After examining paper.) That is the letter.

Q. Were you present when that letter was written?

A. Yes, sir.

Q. Who wrote it?

A. Herman.

Q. On what date?

A. January twenty-second, I believe.

Q. The date that it bears?

A. Yes, sir; three days later.

Q. What did Herman do with the letter, if you know?

30 A. My car was parked on State street. The Hunt Building is right to the rear of the Post Office. My car was parked on East State street, and we walked out of the office and I went to get my car and he went to the Post Office and mailed it.

Mr. Devlin—I move to strike that out.

By the Court:

Q. Did you see him mail it?

A. Yes, sir.

Q. You saw him put it in the box?

A. Absolutely. I was with him.

By Mr. Heher:

Q. You went with him to the Post Office?

A. Yes, sir.

Q. He had other mail beside this.

Q. And he put this letter in among the other mail?

A. Yes, sir.

Q. And it all in the Post Office at one time?

10

A. Yes, sir.

Mr. Devlin—Objected to as leading.

The Court—Yes, that is leading.

Q. Do you know whether or not that letter was returned from the Pillsbury Flour Mills Company?

A. I do not know whether it was returned. It was sent.

Q. You say that the envelope was addressed how?

A. "Pillsbury Flour Mills Company, Newark, N. J."

Q. At this address that is given here?

20

A. I presume so; yes, sir.

Mr. Devlin—Mr. Heher may as well testify in this case himself.

The Court—Ask the questions in a manner that is proper and let the witness testify.

Q. Mr. Stone, are you sure that this letter here is a copy of the one that was sent?

Mr. Devlin—Objected to.

The Court—I think the witness has already testified what he knew about it.

Q. Mr. Stone, did you accept any drafts drawn by Pillsbury Flour Mills Company after January 19, 1925?

30

Mr. Devlin—Objected to as leading.

A. No, sir.

The Court—Do not answer when there is an objection. Objection overruled.

Mr. Devlin—I ask an exception.

The Witness—May I answer it?

Q. Yes.

A. No, sir; I never endorsed a—

Q. No. Did you accept any draft with Herman Stone, on behalf of Stone and Company?

A. No, sir.

Q. You say that there were three drafts which came through for acceptance prior to January 19, 1925?

A. Yes, sir.

Q. Do you know how many drafts came through for acceptance after that date?

10 A. I do not know. I hadn't anything to do with the company after that date.

Q. I show you two drafts which are here and have been offered in evidence, one marked *Exhibit D-2* and the other *Exhibit D-3*, one dated May 21, 1925, and the other June 8, 1925, and ask you if you have seen either one of those drafts before.

A. (After examining papers.) I never seen those.

Q. Does your name appear on either one of them?

The Court—They speak for themselves.

20 Mr. Heher—All right.

Q. Now, Mr. Stone, calling your attention to the two last items on this account, upon this statement of account, and calling your attention to the testimony of Mr. Cobb that it appears to him from this statement that these two last items, one for the sum of \$378 and the other \$189, were ordered on December 3, 1924, from the Pillsbury Flour Mills Company, what have you to say as to that?

A. Up until January—

The Court—No.

30 Q. Well, were those two items ordered from the Pillsbury Flour Mills Company on December 3, 1924, while you were a member of partnership?

A. I do not recall an order of this kind.

Q. Would you say there was any order of that kind on December 3, 1924?

Mr. Devlin—Objected to.

The Court—He says he does not recall it. That is his answer, I suppose.

Q. If there had been an order of that kind on December 3, 1924, would you have known about it?

A. I would.

Mr. Devlin—Wait. Objected to. That is supposing a condition that does not exist.

The Court—I suppose, in effect, the answer is that he had knowledge of the orders given. It may stand.

Q. Did you have knowledge of all orders given for flour from the Pillsbury Flour Mills Company? 10

A. Yes, sir.

Q. And you say you do not know anything about these two items here?

A. Everything that was—

The Court—Answer the question.

The Witness—I do not recall anything—
“12/3/24—” May I add this?

The Court—No. Do not add anything.

Q. You cannot recall anything about these two?

A. Well, everything that was bought— 20

The Court—Answer the question.

The Witness—Not this particular one.

Q. You cannot recall either one of those two?

The Court—Well, he said he did not.

A. No, I do not recall anything about this order.

Q. Were you a member of the partnership on December 3, 1924?

A. Yes, sir.

Mr. Heher—I think that is all.

(At 12:30 o'clock in the afternoon a recess was taken until 2:00 o'clock in the afternoon.) 30

Q. I do not know whether I asked you this question or not this morning. Referring to the letter which you say was mailed to Pillsbury Flour Mills Company by Stone & Company, under date of January 22, 1925, *Exhibit D-1*, by whom was it signed?

A. H. M. Stone.

Q. Where did he sign?

A. Underneath "Stone & Company."

Q. The word "By" is there, underneath "Stone & Company?"

A. Yes, sir.

Q. Where did he sign the reference to the word "By?"

A. Right alongside of the "By," underneath, "H. M. Stone."

Q. Did you see him sign it?

10 A. Yes, sir.

Cross-examination, by Mr. Devlin.

Q. How old are you?

A. Thirty-five.

Q. Where have you lived all your life?

A. I have lived in Trenton for about twenty-nine years.

Q. When did you leave school?

A. When I was about twenty years old.

20 Q. What school did you go to?

A. I graduated at Trenton High School and went three years to Rutgers College, and I took an engineering course there.

Q. How old were you when you came out of college?

A. About twenty years old.

Q. What occupation did you follow?

A. At the time I left school my father was in the hotel business and I helped him temporarily.

Q. Where was he in the hotel business?

A. On Perry street, Trenton, and—

30 Q. Do you mean the saloon business?

A. Yes, sir; but it was temporarily until I found some business to go into.

Q. How long did you help your father in the saloon business?

A. From 1912 to 1915.

Q. Then what did you go into?

A. I went into this business.

Q. What business?

A. I was handling coke. I bought out the Burke Coke Company in 1915.

Q. How long did you remain in that business?

A. I sold—I sold coke in 1915 until 1918, when the Anthracite Manufacturing Company on Brunswick avenue started up their plant. Then I became its distributor for this territory.

Q. How long did you remain in that business?

A. I am still at it.

Q. You had quite some business experience, then? 10

A. Oh, yes.

Q. And you remained at that business until you went in with your brother into this flour business?

A. No. I was still running my own business while this flour business was going on.

Q. And you joined your brother, while running that business, in this flour business?

A. Yes, sir; independently of my other business.

Q. Until the date of January nineteenth. By this dissolution of partnership that you signed did you receive any money from your brother? 20

A. Absolutely not.

Q. Nothing?

A. Nothing.

Q. And your brother was to assume all the debts and obligations?

A. Yes, sir.

Q. That is right?

A. Absolutely.

Q. And he was to get the benefit of all the debts that were owing to the business? 30

A. Yes.

Q. In other words, you handed him the business?

A. Yes.

Q. He was to get all the income and to meet all the bills and he was to take over the whole thing and you were to get nothing?

A. Yes, sir.

Q. When you joined with your brother, or went over with your brother to see Mr. Vanderhoof, your brother had nothing but some money in bank, you say?

A. Yes, sir.

Q. He had no real estate, did he?

A. No.

Q. You told Mr. Vanderhoof that, or your brother did in your presence?

A. Yes.

10 Q. And you had your brother make a list of what property you owned, is that right?

A. Yes.

Q. Were you present when that list was made?

A. I am pretty sure I was; yes, sir.

Q. And the real estate valuation you gave as owning 1007 Greenwood avenue, at that time worth \$12,000 and a mortgage of \$4,500—

20 Mr. Heher—I object. The same question arises again about the use of this statement. The question is whether or not there was a dissolution and whether notice was given to the Pillsbury Flour Mills Company.

Mr. Devlin—I think this is part of the conversation that took place in the making of this agreement with Vanderhoof's company.

The Court—I think it is not material, as I see it, Mr. Devlin.

30 Mr. Devlin—And a further reason is that this man now has testified that he apparently handed over this entire partnership to his brother by this act of dissolution and I think that makes it material in that respect; that under this initial partnership and initial arrangement with Pillsbury Flour Mills Company that this man's financial standing was the main factor in the line of credit being granted, and he takes and hands over the partnership, knowing that it was on his credit this thing was done, and not taking

any steps himself to see he was free of the liability arising to him— I think it is material.

The Court—I think not. Objection sustained.

Mr. Devlin—I ask an exception to that ruling.

Q. Now, did you give or have your brother give for you the approximate value of property that you owned at \$14,000?

Mr. Heher—That is objected to for the same reason.

The Court—I think that is in the same ruling. 10 Objection sustained.

Mr. Devlin—I ask an exception to that ruling.

Q. Did you see the statement before your brother signed it?

Mr. Heher—I object to that for the same reason.

The Court—He may state that.

A. Yes, I did.

Q. And you really helped him make it up, didn't you?

A. Yes. 20

Q. Your father also gave a statement of his assets?

A. Yes.

Q. Were you present?

A. Yes, sir.

Q. And the statement of those assets showed an approximate value of \$75,000?

Mr. Heher—I object to that question for the same reason.

The Court—Objection sustained.

Mr. Devlin—I ask an exception. Now, your Honor, again I will offer these two statements 30 in evidence—given to Vanderhoof at that time.

Mr. Heher—I object to that.

The Court—Objection sustained.

Mr. Devlin—May I have these marked for identification? The statement of Joseph H. Stone.

(Marked P-4 for identification.)

Mr. Devlin—And the statement of Samuel H. Stone (marked P-5 for identification.)

Mr. Devlin—And I ask an exception to the refusal to admit them?

The Court—Yes.

Q. And these articles of dissolution, who drew them?

A. My brother.

Q. Alone?

A. Yes, sir; he said he could get a copy from some
10 legal manual and draw up a regular form.

Q. Have you a copy of this?

A. Yes, sir.

Q. Have you got it with you?

A. I have it home, in my safe.

Q. You did not bring it with you?

A. No, sir. Mr. Heher had one copy and I did not
think it was necessary to have it. I can get it for you
in ten minutes.

Q. That is all right. Who was the witness to that?

A. Carl Bernstein, a notary public.
20

Q. Why did you have him as a witness?

A. As I stated this morning, he has an office— In
other words, we had a desk—

Q. No. Answer the question. Why did you have
him as a witness?

A. Because he was a neighbor in the adjoining office
and he was handy.

Q. Was that the only reason?

A. Yes.

Q. Is he here?

A. Yes, sir.
30

Q. Did you have any talk with your brother before
this dissolution agreement was drawn up?

A. Sure, we had a conversation. We had an argu-
ment.

Q. You had an argument?

A. Yes, sir.

Q. Do you mean you were on bad terms? Is that it?

A. Yes, sir, over the way he conducted the business.

Q. Are you on bad terms yet?

A. No; we are brothers, and time has smoothed
that over.

Q. He has not sat at the table with you in this case.
Has that any significance?

A. No; not that I know of.

Q. Are you still on bad terms?

A. No. I haven't the same feeling toward him now
that I had previous. 10

Q. Is there any significance in the fact that he does
not sit at this table with you or with your counsel?

A. Not that I know of. Mr. Heher called me to the
table.

Q. I notice he has not sat here with you?

A. No; he has not.

Q. You, then, had your brother get up this letter?

A. Yes, sir.

Q. Just keep that letter in your hand and look at it.

Now, looking at that, when you made this dissolution
of partnership you knew, didn't you, that you were
likely to be questioned about the liabilities of this busi-
ness? 20

A. Yes. There was one outstanding draft—

Q. Answer that question please. You knew at that
time that you were the only one of the two brothers
that had property likely to answer for these liabilities,
didn't you?

A. Yes, sir.

Q. You knew that, didn't you?

A. Yes, sir. 30

Q. Now, knowing that, why didn't you, before you
agreed to this dissolution, have your creditors notified
and arrangements made with them so that you would
be safe when the dissolution of the partnership hap-
pened?

A. I made them afterwards, after this dissolution.

Q. I know that, but I am asking why you didn't do
it before.

A. The argument came up on the afternoon of this day, the nineteenth, and then and there, after a wordy conversation, a wordy argument, then and there we decided to dissolve.

Q. And you had that argument about the way your brother was running the business?

A. Yes, sir.

Q. He was not running the business, in your judgment, to the best interests of both of you, was he?

10 A. That is right.

Q. And you being a man of property and he not being a man of property, you felt that you were being unduly endangered, isn't that true?

A. Yes, sir.

Q. Now, knowing that, before you agreed to dissolve, why didn't you have some meeting and arrangement with your creditors so as to make your property safe from their claims?

A. The arrangements were made afterward.

20 Q. I am asking you why you did not do it before.

A. Well, it was drawn the same day of the argument.

Q. By that dissolution you hand over all the property to your brother, in that paper, that is right, isn't it?

A. Yes.

Q. You took whatever rights you had in the partnership property and handed them over to your brother?

A. Yes, sir.

Q. And then you say that you made the arrangements about the creditors afterward?

A. Yes, a day or two later.

30 Q. Now, I am asking why you did not make the arrangements before you handed over all the property of the partnership to your brother.

A. Well, it did not make any difference in my mind whether it was made before or immediately after.

Q. Is that your best answer to that question?

A. Yes.

Q. And you are a man who has had three years of college education?

A. I never had any partnership experience before.

Q. You knew that when you went to Newark that Mr. Vanderhoof and the other gentleman questioned your property interests before they would agree to give you a line of credit, didn't you?

A. Yes, sir.

Q. And you knew the effect of that inquiry was that these gentlemen expected to hold your property responsible for any leaks that might occur?

A. Not necessarily. 10

Q. Well, did you or did you not know it?

A. In the case of—

Q. Answer the question Yes or No.

A. In the case of the Pillsbury Flour Mills Company—

The Court—Just answer the question.

(Previous question read, as follows:

“Q. And you knew the effect of that inquiry was that these gentlemen expected to hold your property responsible for any leaks that might occur?”) 20

The Witness—Well, we were going to—

The Court—Just answer the question.

The Witness—Yes; it would have some effect.

Q. And, knowing that, do you want this court to understand that you first handed over all your right in the partnership and then arranged about the creditors afterward? Is that true?

A. Yes, sir.

Q. Now, taking up this letter, who signed that letter?

A. H. M. Stone. Herman M. Stone. 30

Q. That is your brother?

A. Yes, sir.

Q. You did not sign it?

A. No, sir.

Q. You are sure about that?

A. Absolutely.

Q. When it was signed what time of day did you take it, or your brother take it, to the mail?

A. It was between half past five and six.

Q. Where was your office at that time?

A. The office of the Flour Company was at 219 East Hanover Street, in the Hunt Building.

Q. And when you left the office who brought it to the mail office?

A. H. M. Stone, my brother.

Q. Did he bring it alone?

A. He had it in his pocket together with two or three
10 other letters.

Q. Did he go alone?

A. No; he was with me.

Q. With you?

A. Yes, sir.

Q. Where did he mail it?

A. At the Post Office.

Q. Were you with him?

A. Yes, sir.

Q. Was there any mail box between you and the
20 Post Office?

A. Not that I know of.

Q. I suppose in your business experience you have mailed a good deal of communications, haven't you?

A. Yes, sir.

Q. Did you consider the letter that you were mailing then, that evening, of any importance?

A. Yes.

Q. You considered it a very important letter, didn't you?

A. Well, it was important; yes, sir.

30 Q. You considered that was the letter that was to free you from any future liability on any obligations that might arise in this business?

A. Respecting the Pillsbury Flour Mills Company.

Q. Well, it is the Pillsbury Flour Mills Company we are talking about. You mailed it to them. You considered the letter was so important that it was to free you from any future liability that might arise from that Stone & Company business?

Mr. Heher—I object to the question. It is immaterial what he thought.

The Court—I think he may answer that.

A. That together with the fact that I had to sign the voucher— These drafts had to be signed by both.

Q. We will come to that later.

A. Yes, I considered it important.

Q. And you felt they ought to get it?

A. Yes.

Q. Then why didn't you register it? 10

A. Well, I don't know why.

Q. And yet you have sent out mail for many years.

You are now thirty-five years old?

A. Yes, sir.

Q. And you have been a business man since 1915?

A. Yes, sir.

Q. And you want this Court to understand that you allowed an important letter like that, that meant so much to you, to go out without having the proof positive by registering it that it got to the person to whom it
20 was directed, is that right?

Mr. Heher—I object. This is a lot of repetition of the same thing.

The Court—I suppose he has said what he did, and I imagine the consequences are a matter for argument.

Mr. Devlin—Do you overrule it?

The Court—Yes.

Mr. Devlin—I will ask an exception.

Q. At the time you dissolved this partnership what were the debts of the partnership if you know? 20

A. There was an outstanding note to the Hanover Trust Company for \$2,750, with H. M. Stone and myself as makers and Samuel H. Stone as endorser.

Q. What were the liabilities?

A. The \$2,750 note to the Hanover Trust Company.

Q. What else?

A. The current account in the Anchor Warehouse. We paid them every month. There was a small insur-

ance bill on flour that we kept in storage, and there was a draft due in two or three days from this date of the dissolution.

Q. What else?

A. That was all.

Q. What was the account in the Anchor Warehouse?

A. It ran so much a barrel; we paid ten cents a barrel; I think it would be about twenty or twenty-five dollars.

10 Q. What was the amount of the insurance?

A. We had the stock of flour insured.

Q. What was the amount?

A. About seventy-five or eighty dollars.

Q. Who was the person that trusted you with the insurance?

A. The Provident Insurance Company.

Q. Who else did you owe to?

A. The insurance and the warehouse and the note in the bank and one car, a draft due in two or three days from then. That was all.

20 Q. Who did you send that notice to?

A. Which notice?

Q. That is there (indicating). Who did you send that to?

A. Just to the Pillsbury Flour Mills Company.

Q. Why not to the others?

A. I went personally to the others.

Q. You did?

A. Yes, sir.

Q. Who did you see?

A. I saw Mr. Connolly, the treasurer of the Hanover Trust Company, and explained the circumstances.

Q. Who did you see in the insurance company?

A. Mr. Bernstein.

Q. He was the man who signed the partnership dissolution, was he?

A. Yes, sir. It all took place in his office.

Q. Who did you see in the Anchor Warehouse?

A. Mr. Cox.

Q. Do you remember what date you saw him on?

A. Mr. Cox?

Q. Yes.

A. A day or two after the dissolution; either the twentieth or the twenty-first.

Q. Before or after the notice went out that your brother sent?

A. After the notice.

Q. How long had you been doing business before you dissolved? 10

A. Do you mean the flour business?

Q. Yes.

A. Two and a half months; from the first of November until January nineteenth.

Q. And your trade name was Stone & Company, wasn't it?

A. We traded under that name.

Q. Was it registered in the county clerk's office?

A. No, sir; not that I know of.

Q. Did you know that it was a crime in New Jersey 20 for individuals to do business under a firm name without registering it in the county clerk's office of this county?

Mr. Heher—That is objected to. He should be asked what he did. It is not a question of whether or not he knew it was a crime.

The Court—I think he may answer this.

A. No; I did not know it was a crime. I assumed that—

Q. You have answered the question. Why didn't you advertise on January 19, 1925, that Herman Stone 30 and Joseph Stone, trading under the name of Stone & Company, had dissolved partnership and that Herman Stone assumed all the liabilities?

Mr. Heher—That question is objected to for this reason: it was not necessary to advertise in the newspaper or anywhere else in so far as the Pillsbury Flour Mills Company was con-

cerned. All he was required to do was to give them notice, and the question is immaterial.

The Court—Yes. However, I think he may answer the question.

A. I did not think it was necessary, because all the creditors, three or four, all the creditors were notified either by letter or personally.

Q. And you did not think it necessary?

A. No, sir.

10 Q. Did you consult any lawyer?

A. I did not.

Q. Did you consult any lawyer as to how you could dissolve this partnership with reasonable safety to you and your property?

A. I wish I had.

Q. I did not ask you that. Please answer yes or no.

A. No; I did not.

Q. And yet you had been a business man for about seven or eight years, had you?

20 Mr. Heher—He said that.

Q. Do you know how much money was owing to Pillsbury Flour Mills Company at that time?

A. At the time of the dissolution?

Q. Yes.

A. For one car. It ran at that time eighteen hundred dollars or so.

Mr. Devlin—That is all.

Redirect examination, by Mr. Heher.

30 Q. Was that car paid for afterward, Mr. Stone; this car you have just mentioned, amounting to about eighteen hundred dollars?

A. Yes, sir.

Q. It was paid in full afterward?

A. Yes, sir; a couple of days after the nineteenth.

Q. Did you know that your brother Herman made a trip to Florida at the time that he has testified to?

A. Yes, sir.

Q. And was down there for some time?

A. Yes.

Q. Do you know what part of Florida he was in—
Mr. Devlin—Objected to.

The Court—I do not think it is material.

Mr. Heher—Counsel seemed to doubt the fact that he was in Florida.

The Court—I do not think it is material.

Q. At the time this agreement of dissolution was signed, on January 19, 1925, this draft amounting to about eighteen hundred dollars was the only item unpaid
of the Pillsbury Flour Mills Company at that time, was
it not? 10

A. Yes, sir.

Q. And that is the one you say was paid afterward?

A. Yes, sir.

Q. Referring to these two items upon the statement of account under date of December 3d, Mr. Cobb says he thinks 1924, the last two items on this statement, did you sign any written contract for the delivery of those two orders? 20

Mr. Devlin—Objected to as incompetent, irrelevant and immaterial.

The Court—I do not suppose it is redirect examination. I think you went over that.

Mr. Heher—Yes. Well, I guess we did.

Carl Bernstein, sworn for the defendants.

Direct examination, by Mr. Heher.

Q. What is your business?

A. Insurance.

Q. In Trenton? 30

A. Yes, sir.

Q. Where at?

A. 219 East Hanover Street.

Q. Is that the Hunt Building?

A. Yes, sir.

Q. You have an office there about how long?

A. Five years.

Q. Did you engage in the real estate and insurance business?

A. Just insurance.

Q. Fire insurance?

A. All forms.

Q. Do you know Herman and Joseph Stone, the defendants?

A. Yes, sir.

Q. Do you recall seeing both of them about January 10 twenty-second last year, 1925, in your office or in their office?

A. Yes, sir.

Q. Which did you see them in?

A. It was a portion of a suite I occupied. They rented office space from me.

Q. They rented office space from you at that time in the Hunt Building?

A. Yes, sir.

Q. Were you all in the same office or were they in 20 an adjoining office?

A. No; they were in their office, in an adjoining office.

Q. Did they sub-let from you?

A. Yes, sir.

Q. They were there up to January, conducting a flour business?

A. Yes, sir.

Q. And Herman Stone was there all the time in the office or in and out of the office, conducting this business?

A. Yes, sir.

30 Q. Now, I show you this copy of a letter with the heading, "Stone & Company," addressed to Pillsbury Flour Mills Company, under date of January 22, 1925, marked *Exhibit D-1*, and ask you if you saw the original of that letter at that time?

A. I did.

Q. Did you see the letter written?

Mr. Devlin—Objected to. What is the materiality of it?

The Court—How is it material?

Mr. Heher—The plaintiff takes the position in this case that the letter was never written and never sent, and never received.

Mr. Devlin—Even if we do, how does this help any?

Mr. Heher—This is corroboration of the testimony offered by the defendants that this letter was actually prepared at the time the defendants say.

10

The Court—I think he may answer this.

Mr. Devlin—Will you hear me?

The Court—Yes.

Mr. Devlin—There is no objection to his testifying the letter was written, but the evidence is that these two men mailed it themselves.

The Court—I think he may answer this.

Mr. Devlin—I ask an exception.

The Court—Yes.

Q. Did you see this letter written?

20

A. I did.

Q. Who wrote the letter?

A. Herman Stone.

Q. Did he operate the typewriter himself?

A. He did.

Q. Did you see him sign the letter?

A. No; I can not say I did.

Q. Did you see him put the letter in the envelope?

A. Yes, sir.

Q. Well, which one did it?

A. Herman.

Q. Did you see him take the letter out of the office? 30

A. I was walking with him when he mailed it.

Q. That is, after putting it in the envelope he took it out to be mailed—

Mr. Devlin—Objected to as leading.

The Court—Yes. That is leading.

Q. Where did he walk to?

A. To the Post Office.

Q. Now, calling your attention to this agreement of dissolution dated January 19, 1925, with the signatures of Herman M. Stone and Joseph H. Stone, I ask you if you witnessed their signatures?

A. I did.

Q. Is that your signature on there?

A. Yes, sir.

Q. As the witness to their signatures?

A. Yes, sir.

10 Q. You signed it at the time?

A. I signed it right after they signed it.

Q. Who prepared this agreement?

A. Herman Stone.

Q. Did he prepare it in the office?

A. He did.

Q. Did he use the typewriter?

Mr. Devlin—Objected to.

A. He did.

Mr. Devlin—It is leading and immaterial.

20 The Court—Yes.

Q. Was this agreement prepared in your presence?

Mr. Devlin—Objected to.

The Court—He may answer.

A. It was.

Q. Written by whom?

A. Herman Stone.

Q. How long afterward was it signed?

A. About fifteen or twenty minutes after it was written.

30 Q. Did the Stone brothers leave the office before it was signed?

A. No, sir.

Q. Those signatures or names appearing on there, of Joseph Stone and Herman Stone, were they written by each one respectively?

A. Yes, sir.

Q. You were a Notary Public at that time, were you not?

A. I was.

Mr. Heher—Cross-examine.

Cross-examination, by Mr. Devlin.

Q. What is your business?

A. Insurance.

Q. General insurance?

A. Yes, sir.

Q. I notice you have got a notarial seal on there.

Why is that there?

A. So they could read my signature. It is unreadable as it is, and by using the seal they could tell whose name it was.

10

Q. Is that the only reason?

A. Yes, sir.

Q. I agree with you on that. I could not read it. Then you put the notarial seal on so they could read it?

A. Yes, sir.

Q. What is there about this letter that you have testified to here that you see to particularly remember?

Why is it you remember it? I think its date is January 22, 1925. What is there about this that causes you to remember this letter?

20

A. I heard the argument, what was going on, and they decided in my presence that they were to dissolve and that they were going to write this letter, and the letter was given to me to read and see what I thought of it.

The Court—When the dissolution was effected?

The Witness—After.

Q. But didn't the argument go on before the dissolution?

A. The same day.

30

Q. Then do you know what date this dissolution was written on?

A. January nineteenth.

Q. Why is it you remember that?

A. I kept a record of it.

Q. Where?

A. When I witness or take any affidavits I keep a record in my office.

Q. Have you got that record with you?

A. No, sir; they were all destroyed by fire in our office on January second of this year.

Q. Did you lose your records in this case too?

A. Why, the fire must have lost them; I didn't personally.

Q. After losing your records—you lost them this year, a year after?

A. January second.

10 Q. Then you have not had a chance to consult them since this thing?

A. No.

Q. Then how is it you remember this date?

A. I remember it practically the same as any of the others remember it.

Q. You do a lot of work as a notary, don't you?

A. I do.

Q. And you do, I suppose, a fair insurance business; is that right?

20 A. Yes, sir.

Q. What is there about this date, the nineteenth of January, that makes it stand out so prominently to you that you remember this thing?

A. Because there was an insurance bill due me and I requested that I be paid on that day.

Q. The nineteenth?

A. Of January.

Q. What was there particularly about this bill, or any other bill, that impressed you about this date?

A. That is the only bill they owed me at that time.

30 Q. What about the date when you demanded the payment? What is there that impressed the date on your mind when you demanded the payment?

A. The date the dissolution was made up.

Q. How did you get the date of the dissolution when you lost your records?

A. I did not say that I lost all of my insurance records in the office. I say a portion of our records were destroyed.

Q. Was the portion relating to this transaction destroyed?

A. The portion relating to these other transactions that were in my desk.

Q. Relating to what?

A. To the notarial book that I kept a record of.

Q. Was that in your desk?

A. Yes, sir.

Q. Have you got it here with you?

A. No. It was destroyed by fire.

10

Q. You haven't got the date since last January?

A. No, but I have the ledger record of the insurance when it was paid.

Q. When did you consult that?

A. The same day it was drawn up and I opened the ledger.

Q. Have you consulted it since then?

A. I have, yes.

Q. When?

A. May of this year, when I was to come here.

20

Q. For what purpose did you consult it?

A. I was asked to be here as a witness to testify that I witnessed the dissolution papers.

Q. How is it you remember the letter?

A. I remember the time I was with them when they mailed the letter.

Q. You walked with them but you did not go to the Post Office with them?

A. I did.

Q. Did you go inside?

A. I did.

30

Q. Did you hear Herman and Joseph Stone testify?

A. I did.

Q. You heard them testify that they alone were together?

Mr. Heher—They did not say there were alone.

The Court—I think it is not a proper inquiry anyway. I do not think it is a proper form of question.

Mr. Devlin—I will ask an exception to that. I have not asked his opinion on their testimony. I would not do that.

The Court—Note an exception.

Q. How do you remember the twenty-second? Now, you remember the nineteenth. You did not witness the letter, did you?

A. I do not say I remember the twenty-second. I remember it was several days. I could not say whether
10 it was the twenty-second or twenty-third or twenty-first.

Q. Could you tell what day of the week it was?

A. I could not.

Q. Could you tell what day of the week the nineteenth was?

A. I could not.

Q. Who has talked to you about this case, if anybody?

A. No one.

20 Q. No one has talked to you about it?

A. No, sir.

Q. Has any one told you what you were expected to testify to when you got up here?

A. No, sir.

Q. As you walked to the post office with these men what did you talk about?

A. Nothing.

Q. Had you any business in the post office?

A. Yes, sir. Mr. Joseph Stone was taking me home, and he asked me to walk over with him and he would
20 take me home in his car.

Q. He did not ask you over for the purpose of making you a witness, did he?

A. No, sir.

Q. When were you paid the insurance bill they owed you, the date the dissolution agreement was drawn?

A. I think it was on that day or a day or so later; I could not remember offhand. I have the record in the office.

Mr. Devlin—That is all.

Mr. Heher—I offer in evidence the agreement of dissolution, under date of January 19, 1925. (Marked *Exhibit D-1*.)

Mr. Heher—This letter, headed "Stone & Company," addressed to Pillsbury Flour Mills Company, under date of January 22, 1925.

Mr. Devlin—I will object to that letter and state my reasons more fully later, but I object to the letter because it is not a proper notice of
10 dissolution.

The Court—Objection overruled.

Mr. Devlin—I will not ask the Court to rule on that until later.

The Court—The letter will be admitted.

Mr. Devlin—Subject to the Court's later ruling, if it cares to reverse itself?

The Court—Well, subject to any ruling on any motion you may make.

Mr. Devlin—That is what I mean.

20

(Letter referred to is marked *Exhibit D-2*)

Mr. Heher—Now I offer for identification this card, under date of January 21, 1925, referred to in the testimony of Mr. Ringkamp.

Mr. Devlin—I object to that.

The Court—Objection sustained.

Mr. Heher—Just mark that for identification.

(Card referred to is marked *D-4* for identification.)

Mr. Heher—We rest.

Mr. Devlin—I ask the Court to open the case
20 of the defendants. I would like to ask Mr. Herman Stone one or two questions.

The Court—Let him resume the stand.

Mr. Heher—Do you call him as your own witness?

The Court—No. For further cross-examination.

Mr. Devlin—For further cross-examination.

Herman M. Stone, one of the defendants, recalled for further cross-examination.

By Mr. Devlin.

Q. When did you decide—what date—to quit business?

A. On the nineteenth—

Mr. Heher—This subject has been gone into very thoroughly, your Honor, and I do not think it is further cross-examination at all.

10 The Court—He may answer it.

The Witness—We decided on the dissolution—

Q. No. You, alone?

A. On the nineteenth.

Q. Of what?

A. January, 1925.

Q. No. When did you decide to quit and go out of the business yourself, what day and what month?

A. Some time in June, the latter part of June.

20 Q. Could you tell me was it early in June or the middle of June?

A. It was the last part of June.

Q. The last ten days in June or the last fifteen days in June?

A. The last few days in June; at the time I wrote that letter to the Pillsbury Flour Company, which is the twenty-seventh of June.

Q. Didn't you decide a day or two before that?

A. No, sir.

30 Q. What was the financial and business condition of Stone & Company on June first?

Mr. Heher—I do not see how that is material in the case at all, your Honor. I object to it.

The Court—He may answer it.

A. I cannot say exactly.

Q. Was it bad?

A. Yes.

Q. Things were going bad?

A. Things were going bad.

Q. You saw it was a case of quit?

A. No, sir.

Q. Well, how bad was it?

A. I bought flour at a high market—

Q. I did not ask you that.

A. I cannot answer it in one word.

Q. I am asking how bad was the business?

A. It was just bad; it was slightly bad.

Q. And it kept getting worse, didn't it?

A. Well, it finally did finish out worse.

10

Q. On the first of June you say business was bad. Now, from then until you wrote that letter did it keep going worse?

A. The market kept on dropping.

Q. You registered the name in the county clerk's office some time. Can you remember when you registered it?

Mr. Heher—Your Honor, is that cross-examination?

The Court—I think it is.

20

Q. Did you ever register the name?

A. Yes, sir.

Q. When?

A. Some time in June?

Q. Do you remember what time?

A. The early part of June.

Q. And that registration—

The Court—June of 1925?

The Witness—June of 1925; yes, sir.

Q. At that time you registered in the county clerk's office that the firm of Stone & Company consisted of Herman Stone?

A. That is right.

Q. Why did you register that then?

A. It was just at that time that I heard it was necessary for a company operating under a different name to register, and it was only at that time when I went down that same day to register.

Q. Who gave you that information?

A. It just came about through a general conversation through one of the attorneys of some one. It just came to my attention directly or indirectly.

Q. You haven't any idea the attorney who told you that?

A. No; I have not. It just came to me.

Q. Did some attorney tell you?

A. I do not remember who told me.

Q. Now, I asked you, when you were on the witness stand before, to produce your bank book and show your balance this afternoon. Have you got the bank book with you?

A. I have not but I got my records from the Hanover Trust Company.

Q. I do not want the bank book.

A. No. My bank book was in the records, but I have the exact record from the Hanover Trust Company. You asked for the balance.

Q. I asked for the bank book.

Q. I do not want the records, I want the bank book. The Witness—No, sir; I haven't the bank book, but I have the balance right from the bank.

Mr. Devlin—That is all.

Mr. Heher—That is all. We rest.

Elmer D. Vanderhoof, recalled for the Plaintiff in rebuttal.

Direct examination, by Mr. Devlin.

Q. Mr. Vanderhoof, to refresh your memory I show you the two statements, one given of Joseph H. Stone, and the other of Samuel H. Stone, marked respectively P-4 and P-5 for identification. Do you remember the time when you received those statements?

Mr. Heher—That is objected to—

The Court—It is preliminary, I take it.

Mr. Devlin—Yes, sir.

A. Yes, sir.

Q. It was dated—

Mr. Heher—I object to that as leading.

Q. It was dated before you had given any credit to this company, was it?

A. Yes, sir.

Q. Now, at that time did you receive a statement in writing from Herman Stone?

A. No, sir.

Mr. Heher—That is objected to because it is immaterial.

The Court—It is contradiction upon a material point. The defendant Herman Stone said he gave a statement. Now, this witness says he did not.

Q. Did you at any time, from that date to this, receive a written statement from Herman Stone as to his resources and liabilities?

A. I did not.

Mr. Heher—That is immaterial. I ask the question and answer be stricken out.

The Court—The motion is denied.

Q. And it was on the strength of those two statements—

Mr. Heher—That is objected to as leading.

Q.—that you extended credit to Stone & Company?

A. Yes, sir.

Mr. Devlin—Cross-examine.

Mr. Heher—No questions.

Mr. Devlin—I now resume my offer of P-4 and P-5 for identification in evidence.

Mr. Heher—Objected to for the same reasons given before.

The Court—Objection sustained.

Mr. Devlin—I will ask an exception. I would like to make a motion in this case.

The Court—Do you rest?

Mr. Devlin—We rest.

Mr. Heher—I offer these two drafts in evidence.

Mr. Devlin—I object to those drafts.

Mr. Heher—They are marked *D-2* and *D-3*, respectively, for identification.

The Court—I thought they had been offered heretofore.

Mr. Devlin—I do not think they were offered. They were marked for identification.

The Court—They will be received.

Mr. Devlin—I ask an exception.

(Papers referred to are marked, respectively, 10 *Exhibit D-3* and *Exhibit D-4*.)

CHARGE.

THE COURT (DONGES, J.), MEMBERS OF THE JURY:

Some facts in this case are admitted. It is admitted that the two defendants, Herman Stone and Joseph Stone, engaged in a partnership for the sale of flour, and that as such partners they obtained credit from the 20 plaintiff. It is admitted that that credit was extended upon the showing of financial responsibility of the defendant Joseph Stone and, possibly, of his father. It is admitted that the other defendant had very little if any financial responsibility at the time that this relation was established between the plaintiff and defendants. It is admitted that flour was shipped and payments made upon drafts.

The real question in this case is whether by the act of the defendants the plaintiff was apprised that Joseph Stone was no longer a partner in the flour business 30 with his brother and that any future shipments of flour would be upon the credit and responsibility and obligation to pay of Herman Stone alone.

That is the real question, whether this plaintiff had knowledge brought to it by these defendants or one of them that thereafter and before these shipments were made and before this debt was incurred Joseph Stone would not be responsible for any further shipments and

that the plaintiff must look to Herman Stone alone, because if the plaintiff had such knowledge and it shipped it to Herman Stone upon the express understanding that he alone would be responsible for it and pay for it they cannot expect another person to pay for it.

These defendants, admittedly, were partners, and a partner cannot relieve himself of liability by withdrawing from a partnership and not apprising persons who have a right to expect that he is liable for the firm's debts that he is no longer liable, either in the manner 10 provided for by the statute or by actual notice to a creditor or a prospective creditor that he no longer can be looked to as a member of that firm and a person responsible for its debts.

Under our law any one of a group of partners has a right to bind the partnership and all of the partners in matters affecting partnership business. The acceptance by one of these partners, if they were at that time partners, of a draft, would bind the other or bind all of 20 the partners if there were more than two in the partnership, just as fully and completely as if all had actually accepted the draft and signed it. In other words, when one engages in a partnership and holds himself out as a partner he is liable for all the debts of the partnership, not merely a part, but he makes himself liable for all of the debts, whether he actually participates in the transaction or not. Any one of the partners performing a partnership business can bind all of the partners. And to be relieved, after one has held himself out as a partner, he must proceed either in accordance with the terms 30 of the statute—and admittedly in this case that was not done—or give actual notice to persons who may extend credit upon the strength of the situation created by him in holding himself out as a partner, that he is no longer a partner and no longer to be looked to as a responsible person in the affairs of that partnership.

So that we really come down to the question in this case, as I view it, whether or not actual notice was given to this plaintiff that Joseph Stone had withdrawn from

this business and would not thereafter and prior to the time when this debt was contracted be responsible for the partnership debts.

If the plaintiff had that—and it could be given to a corporation only by notice to the person who was authorized to deal with the corporation—if that notice was given, then the plaintiff had actual notice, actual knowledge, that Joseph Stone was out of the partnership. If the person who could act and was authorized
10 to act for the corporation in that regard did not have notice of it then Joseph Stone would be liable for debts, because, as I said before, a person who holds himself out and creates by his conduct a situation where persons have a right to expect that they are dealing with him must take pains to see that they are likewise apprised that no longer can they look to him for the payment of bills, and that his interest has ceased.

So that the real question is, Was notice given of the withdrawal of Joseph Stone. If there never was a
20 dissolution, Joseph Stone is liable still, even if he had given notice that there was a dissolution. If they had a perfect understanding that as between them they were no longer partners, to make it binding as against a creditor who had by a course of conduct, in this case express statements, a right to rely upon the financial worth and responsibility of both of these defendants, there could be no relief unless they actually were notified, either by the statutory method or by actual notice, that the partnership no longer existed. If they were not partners, if there was a dissolution, did the plaintiff
30 by its authorized officers or agents have notice of it, so that when this arrangement or these arrangements were made or when this transaction arose, did they know or ought they to have known that they must look to one defendant alone and not to both?

Admittedly the plaintiff is entitled to a judgment for the amount of the claim, with interest, against Herman Stone. It is for you to say under the facts and the law as I have expressed it to you whether the plaintiff is

entitled to a judgment against one or both. If entitled to a judgment against both it will be for the full amount with interest, against both defendants, and you will compute as part of your verdict the interest that is due to this date upon the amount claimed as the principal debt.

You may retire.

(Court and counsel confer.)

The Court—If, ladies and gentlemen, there is any part of this claim that antedates the date of dissolution,
10 which is fixed by the defendants as some time in January, if you find that the dissolution took place, and that the defendant Joseph Stone is to be relieved, by reason of a notice, of any liability, if any of this claim was incurred prior to the date of that dissolution, even if there was notice, Joseph Stone would be liable for that in any event. As to the whole claim the question really revolves around the dissolution and notice.

You may retire.

20

EXHIBIT D-1.

Indebenture made the 19th day of January, in the year nineteen hundred and twenty-five, between Herman M. Stone of Trenton, of the one part, and Joseph H. Stone of Trenton, of the other part.

Whereas the said parties have for some time carried
30 on the business known as Stone & Company, at Trenton, and whereas the said partners are possessed, as part of their partnership, certain stocks of flour, outstanding accounts, and other effects; and whereas it has been agreed between the said partners that the said partnership shall stand dissolved as from the 19th day of January, and it has been agreed that as from that day the said business shall belong to and carried on by the

said Herman M. Stone, the continuing partner, solely, and that the share and interest of the said Joseph H. Stone, the retiring partner, in the assets and good will of the said partnership shall be assigned and made over to the said continuing partner, on his taking upon himself the whole of the debts and liabilities of the said partnership which were outstanding on the said 19th day of January: Now, this indenture witnesseth, that in pursuance of the said agreement in this behalf, they

10 the said parties do hereby declare that the said partnership between them shall be considered as determined and stand dissolved as from the said day of January; and that in pursuance of the said agreement, and in consideration of the premises and of the sum of one dollar paid by the said continuing partner to the said retiring partner, he doth hereby assign and transfer unto the said continuing partner, his executors, administrators and assigns, all the part or share and interest whatsoever of him, the said retiring partner, and in all

20 the singular and premises hereinbefore mentioned or referred to; to hold all the said premises unto the said continuing partner, his executors, administrators, and assigns absolutely. And each of them doth hereby release and forever discharge the other of them, his heirs, executors, administrators and assigns, from all actions, proceedings, claims and demands whatsoever which such respective releasing party, or his heirs, executors, administrators, or assigns, now has or hereafter might have had against the other of them, his heirs, executors, administrators, or assigns, on account

30 of the said partnership, or anything relating thereto, but so nevertheless that this present release shall not prejudice or affect any of the covenants, agreements or provisions herein contained, or the rights or remedies of the said respective parties, their heirs, executors, administrators or assigns, hereunder.

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

HERMAN M. STONE
Party of the First Part

[SEAL]

JOSEPH H. STONE
Party of the Second Part

Signed, sealed and delivered in the presence of
KARL BERNSTEIN.

10

EXHIBIT D-2.

STONE AND COMPANY
Flour Merchants
219 E. Hanover St.
Trenton, N. J.

January 22, 1925

Pillsbury Flour Mills Co.
204 Frelinghuysen Ave.
Newark, N. J.

20

Attention Mr. Vanderhoof.

Gentlemen:

Due to a disagreement between Joseph H. Stone and the writer his brother, the partnership that has existed between them has been mutually dissolved. We have drawn up papers to that effect, and we are hereby notifying you, in which I have assumed all of the responsibilities and obligations of the company, as well as all of the assets, which include money outstanding, cash on hand and stock on hand.

30

I trust that this will have no bearing with you, and that the very mutual business relations that have heretofore existed between us will continue as in the past in spite of the fact that he will no longer be responsible for any dealings of this company. As you know the business has been running along very nicely, and build-

ing up so that it is making money, and he has contributed practically nothing in either time or money it is foolish for me to continue having him for a partner. My father came between us and made him realize that inasmuch as my brother had a business of his own, he should let me have this one for myself. He finally agreed with the understanding that he should immediately be relieved of all obligations to the Hanover Trust Company, and that he would not be further responsible.

10 The bank agreed after listening to our story to eliminate his name from all papers belonging to us, as they had full confidence in me.

I will be in Newark within the course of the next few days when I will take up this matter in full detail with you.

Trusting that the very satisfactory arrangements that have gone on heretofore will not in any way be hampered because of the dropping out of my brother, and assuring you of my cooperation, I am

20 Very truly yours,
STONE AND COMPANY
by

STATEMENT.

New York, N. Y., June 30th, 1925.

PILLSBURY FLOUR MILLS COMPANY.
123 Produce Exchange.

20 Stone & Co.,
Trenton,
N. J.
Make all checks payable to the company.

.....
April 23. Mdse. \$2,682.50
May 5. 2,304.50
15. 497.50

June 5.	378.00
8.	189.00
	\$6,051.50

Upon a request for a Bill of Particulars the following account was furnished by the plaintiff:

Invoice				10
PILLSBURY FLOUR MILLS COMPANY				
New York, N. Y. Branch, 123 Product Exchange Bldg.				
Date	Date	Name and	Total	
Sale	Delivery	Address		
1/27 Greenberg	4/23/25	Stone & Co. Trenton, N. J.	2682 50	
4/6 Greenberg	5/5/25	Stone & Co. Trenton, N. J.	2304 50	
5/15 Greenberg	5/15/25	Stone & Co. Trenton, N. J.	497 50	20
12/3 Greenberg	6/5/25	Stone & Co. Trenton, N. J.	378 00	
12/3 Greenberg	6/8/25	Stone & Co. Trenton, N. J.	189 00	
7/7		Protest Fees on Trade Acceptance	2 34	
6/30		Protest Fees on Trade Acceptance	2 34	
			6056 18	20

Service of copy of the within account is hereby acknowledged this 6th day of March, 1926.

Attorney of Defendants.

Following were marked for identification on the part of the defendant:

D-4, IDENTIFICATION.

NAME OF CORPORATION, FIRM OR INDIVIDUAL

10

For HANOVER TRUST COMPANY, Trenton, N. J.

Below please find duly authorized signatures, which you will recognize in payment of funds or the transaction of other business on our account. Yours truly,

Stone and Company
Herman M. Stone
Address 219 E. Hanover St.
Date 1/21/25 Business Flour

20 Introduced by

Jan. 21, 1925

On and after this date, H. M. Stone shall be the only signature required on checks and other obligations of Stone & Co., J. H. Stone, retiring from the above business.

H. M. STONE
J. H. STONE

Witness—Jos Ringkamp.

30 STONE & CO.

NAME OF CORPORATION, FIRM OR INDIVIDUAL

For HANOVER TRUST COMPANY, Trenton, N. J.

Below please find duly authorized signatures, which you will recognize in payment of funds or the transaction of other business on our account. Yours truly,

Stone and Company
H. M. Stone

Address J. H. Stone P O Box 449
Date N. Y. & Olden Ave. Business Flour Merchants
Introduced by

NOV 13 1924

NEW JERSEY COURT OF ERRORS AND APPEALS. 10

PILLSBURY FLOUR MILLS COMPANY, A CORPORATION,
Plaintiff-Respondent,
vs.

JOSEPH H. STONE AND HERMAN STONE, PARTNERS, TRADING AS STONE & COMPANY,
Defendants-Appellants,

On Appeal from Supreme Court.

20

GROUND OF APPEAL.

The appellant Joseph H. Stone hereby assigns the following grounds for reversing the judgment of the court below:

1. The orders of December 3d, for flour, in the sum of \$378, and \$189, respectively, were in writing, and the court permitted, over objection, the witness Cobb to testify as to what the dates of the orders were, without producing the writing.

2. The following question, propounded to Herman Stone, was overruled—

Q. Did Mr. Greenberg say anything to you about extension of credit at any time?

The said question being asked for the purpose of proving that the plaintiff had actual and imputed knowledge and notice of the dissolution of the defendants' firm, and to corroborate the sending of the notice of the dissolution to plaintiff.

3. The following question, propounded to Herman Stone, was overruled—

Q. What did Mr. Greenberg say on this occasion when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company, on January 22, 1925?

The said question being propounded to the defendant Herman Stone, for the purpose of showing that Green-
10 berg, as plaintiff's agent, had knowledge and notice of the dissolution of the defendants' firm, and to corroborate the sending of the notice of dissolution to plaintiff, which knowledge and notice were imputed to plaintiff.

4. The court overruled the following question, propounded to said Herman Stone—

Q. What did Mr. Greenberg say on that same occasion with reference to the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?

20 The said question being asked to prove the knowledge and notice to the plaintiff of the dissolution of the firm of defendants, and the receipt of the letter containing notice of the dissolution of defendants' firm.

5. The court overruled the offer on the part of the defendants to prove that Mr. Greenberg, as the agent of the plaintiff, had knowledge of the dissolution of the partnership of defendants.

6. The court permitted the witness Walter Cobb to answer, over objection, the following question—

30 Q. What is the date, from these records that you have got in evidence, of the last order or sale—not the delivery—of flour?

The objection being based upon the theory that the written records or papers should speak for themselves.

7. The court permitted the witness Walter Cobb to answer, over objection, the following question—

Q. If that letter had been received, what would have been your duty as credit man of this company?

The objection being based upon the theory that such question was incompetent, irrelevant and immaterial.

8. The court overruled the following question, propounded to the witness Leonard K. Cox—

Q. Did Mr. Greenberg have any conversation with you after January 19, 1925, concerning the relationship or the financial standing of the partnership of Stone & Company?

9. The court overruled the following question, propounded to the said Leonard K. Cox— 10

Q. Did Mr. Greenberg say, in any conversation with you, after January 19, 1925, anything about the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?

10. The court overruled the following questions, propounded to the defendant Joseph H. Stone—

Q. Did you have anything to do with the partnership after the signing of that agreement?

Q. Did you do anything else, with reference to the partnership, after the signing of this agree- 20 ment?

11. The court permitted the witness Walter Cobb, over objection, to answer the following question—

Q. Now, I call your attention to the last number of packages given here on p. 5. Do you see there on p. 5, do you see there "12/3" and "6/8/25. Date. Stone & Company. No. of packages, 40; size, 98 Cot." and so forth. Now, will you tell me what that "12/3/24" means?

12. The court refused to strike out the testimony of the said Walter Cobb as to the contents of the contract, 20 in writing, as to the order and sale which was alleged to have been made on December 3d, the objection there to being based upon the ground that the contract itself should have been produced.

13. The court overruled the following question, propounded to Joseph Ringkamp—

Q. Do you recall how funds were withdrawn from that account, that is, upon what signatures?

14. The court overruled the following questions, propounded to Pasquale Dalosio—

Q. How were funds withdrawn, that is upon what signatures were funds withdrawn, prior to that time and afterward?

Q. That is, after January, 1925, how were funds withdrawn from the account, and upon what signatures?

AARON V. DAWES,

JOHN L. HEHER,

Attorneys of Defendants-Appellants.

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20

EXHIBIT D-3.

New York City, N. Y., June 8, 1925

To Stone and Company Trenton, N. J.

On June 27th, 1925 Pay to the order of Pillsbury Flour Mills Co.

Two Thousand Six Hundred Eight Two and 50/100 Dollars (\$2682.50)

Accepted at Trenton, N. J., on June 8th, 1925

Payable at Hanover Trust Co.

Stone and Company

H. M. Stone

Pillsbury Flour Mills Company

By C. W. Kraeyer

[ENDORSED]

Pillsbury Flour Mills Company

C. W. Kraeyer

EXHIBIT D-4.

Trenton, N. J., May 21, 1925.

To Stone and Company Trenton, N. J.

On June 26, 1925 Pay to the order of Pillsbury Flour Mills Co.

Two Thousand Three Hundred Four 50/100 Dollars (\$2304.50)

Accepted at Trenton, N. J., on May 21, 1925

Payable at Hanover Trust Company

Stone and Company

Herman M. Stone

Pillsbury Flour Mills Company

By C. W. Kraeyer

[ENDORSED]

Pillsbury Flour Mills Company

C. W. Kraeyer

EXHIBIT P-3.

Contract No. 2073 Office Newark Date 10/30/24, 19..
 PILLSBURY FLOUR MILLS COMPANY, Minne-
 apolis, Minn., agrees to sell

and.....Jos. H Stone & H M Stone.....

AddressTrenton N Jagree (s) to buy
 at the prices specified below, the following described
 commodities on the following terms and on the terms
 and conditions printed below, AND ON THE BACK
 HEREOF, which are hereby agreed to and made a part
 of this contract.

Time of Shipment withinPrompt.....
 Unless otherwise specified, time of shipment is to be
 within thirty (30) days from date of contract.

Buyer's request, if any, for shipment within above
 periodat once.....

.....Package assortment.....

Anchor Warehouse Switch

F. O. B.Trenton.... Destination....Trenton..

Ship from....Mill..... Via.....Penn R.R.....

Terms of Payment...15 day Trade Acceptance.....

Draft throughHanover Trust Co.....Bank

Quantity Bbls. Flour Tons Feed	Packages		BRAND	Price Flour Per Bbl. Feed Per Ton	Basis
	Size	Kind			
40	98	Cotton	X X X X Pat	8 10	
80	98	"	B B Pat	7 95	
75	98	"	Oven Pride	7 65	
15	98	"	White Rye	7 20	
40	98	"	Kanakec	7 40	

It is understood and agreed that there are no agree-
 ments, conditions, representations or warranties, oral or
 otherwise, except as herein stated, and that no agent or
 representative of the Seller has authority to modify the
 printed terms of this contract; and that there shall be
 no cancellation of this contract except as herein pro-
 vided for, and no assignment of this contract.

If twenty (20) barrels or more of flour or five (5)
 tons or more of feed are specified above, this Contract
 is not binding upon the Seller until written confirmation
 by the Seller is mailed or telegraphed to the Buyer at
 the latter's address above given.

PILLSBURY FLOUR MILLS COMPANY (Seller)

By...W. Cobb

...Jos. H Stone & H M Stone...(Buyer)

By...Herman M. Stone.....

NEW JERSEY
Court of Errors and Appeals

PILLSBURY FLOUR MILLS COM-
PANY, A CORPORATION,
Plaintiff-Respondent,

vs.

JOSEPH H. STONE AND HERMAN
STONE, PARTNERS, TRADING AS
STONE & COMPANY,
Defendants-Appellants.

On Appeal from
Supreme Court.

BRIEF FOR APPELLANT JOSEPH H. STONE.

Plaintiff recovered judgment in the Supreme Court against Joseph H. Stone and Herman Stone, for \$6,621.81, for flour alleged to have been sold and delivered to them, as partners, after January 19, 1925, Herman Stone not contesting the action, and not having filed any answer to the claim. The defense of Joseph H. Stone was that this partnership has been dissolved on January 19, 1925, and that the plaintiff had notice and knowledge of the dissolution. The plaintiff had, prior to the sale of the flour in suit, dealt with the defendant firm, and knew who composed the partnership. On January 19, 1925, the partners actually dissolved their partnership (see "*Exhibit D-1,*" p. 163, Articles of Dissolution) and Joseph H. Stone, who will hereafter be spoken of as the defendant, withdrew from the partnership, and Herman Stone continued to conduct the business. On January 22, 1925, notice was mailed to the plaintiff, postage prepaid, advising it of the dissolu-

tion of the partnership, and that Herman Stone would continue the business (see *Exhibit D-2*, p 165). This letter was signed by Herman Stone (State of the case, p. 84, lines 25 to 32). The mailing of this letter was in accordance with the provisions of The Uniform Partnership Act (Laws of 1919, p. 481-at 482, Section (3), Sub-section (2), (b), (2 Cum. Supp. 2660, 150-84), which reads as follows:

"A person has notice of a fact within the meaning of this Act, when the person who claims the benefit of the notice (b) delivers through the mail, or by other means of communication, a written statement of the fact, etc."

The plaintiff, however, denied receiving this letter, which was mailed January 22, 1925 (State of the Case, p. 71, line 10, etc.). The denial of the plaintiff was largely based upon the absence of this letter from the letter files of the plaintiff (p. 49, lines 10 to 20, State of the Case). To prove actual notice and knowledge of the dissolution of the firm to the plaintiff, the defendant first established the agency of one Greenberg as a representative of the plaintiff, to keep in touch with its customers and their financial affairs, and to report thereon to the plaintiff. The practice and duties of this agent were to call every two weeks in Trenton, on the defendant and other customers, for orders, and for information concerning the financial affairs of the plaintiff's customers.

On the 27th day of January of the same year, five days after the mailing of the notice to the plaintiff, Greenberg called on Herman Stone, and discussed with him the dissolution of the firm, and received on that date an order for flour, which forms part of the basis of this suit. The evidence abundantly shows that the duties of this agent were to inform himself and report to the home office dissolutions or change of status of firms, or in financial conditions of its customers.

Case, pp. 19, 20, 21; p. 40, line 37; pp. 41, 42; p. 72, line 27; pp. 73, 74, 75, 76; p. 80; p. 116, line 8.

The questions which related to what this agent Greenberg said, on January 27th, to the defendant, Herman Stone, and while he was actually engaged in the business of the plaintiff, were overruled. The questions propounded related directly to the agent's declarations of his own and of the plaintiff's knowledge of the dissolution of the partnership. The Uniform Partnership Act (Laws of 1919, p. 493, Section 35,) reads as follows:

"After dissolution, a partner can bind the partnership, except as provided in paragraph 3, by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction had extended credit to the partnership, prior to dissolution, and had no knowledge or notice of the dissolution."

The evidence thus excluded, if it had been admitted, would have amounted to admissions by this agent of the plaintiff, of the receipt by plaintiff of the letter mailed January 22, 1925, and of the plaintiff's knowledge or notice of the dissolution of the firm. The evidence further disclosed the fact that it was agreed and understood in the first instance, when plaintiff's agent and the defendants discussed credit with plaintiff, that drafts were to accompany the flour, and were to be accepted by the partnership, and were to be endorsed by their father, Samuel Stone, which agreement was carried out up until the dissolution of the partnership (State of the Case, p. 53, line 32, p. 54, lines 1, etc., p. 63, line 20, p. 64, 67, 82, 83 and 84), but that after the dissolution of the firm, neither the name of Joseph H. Stone, nor his father, was on any of the drafts. All the items in suit were contracted after the dissolution of the partnership.

There was some dispute as to when two small items, amounting to \$378 and \$189, respectively, were contracted, but Herman Stone testified (p. 78), that these items were contracted on June 5th and 8th, 1925, after the dissolution of the firm.

The defendant further offered to prove that after January 19, 1925, partnership accounts in the banks in

which the partnership had done business were changed, so that the name of Joseph H. Stone was no longer necessary as maker of checks, or acceptor of drafts, etc. This offer was also rejected, although the plaintiff indicated throughout the case that it believed there had been no dissolution. This evidence was legitimate, as the court charged the jury (p. 162, line 20) that "If there never was a dissolution, Joseph Stone is liable still, even if he had given notice that there was a dissolution." Furthermore, the court charged the jury that to relieve the defendant of responsibility, the plaintiff must have knowledge that Joseph H. Stone would not be responsible, and that the plaintiff must look to Herman Stone alone, because if the plaintiff had such knowledge, and it shipped to Herman Stone upon the express understanding that he alone would be responsible, they cannot expect another person to pay for it. The charge was misleading, requiring an express understanding of non-liability of the defendant.

The Grounds of Appeal are found on page 169, State of the Case, and those which are relied upon are as follows:

2. The following question, propounded to Herman Stone was overruled:

Q. "Did Mr. Greenberg say anything to you about extension of credit at any time?"

The said question being asked for the purpose of proving that the plaintiff had actual and imputed knowledge and notice of the dissolution of the defendant's firm, and to corroborate the sending of the notice of the dissolution to plaintiff.

3. The following question, propounded to Herman Stone, was overruled:

Q. "What did Mr. Greenberg say on this occasion when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company, on January 22, 1925?"

The said question being propounded to the defendant Herman Stone, for the purpose of showing that Green-

berg, as plaintiff's agent, had knowledge and notice of the dissolution of the defendant's firm, and to corroborate the sending of the notice of dissolution to plaintiff, which knowledge and notice were imputed to plaintiff.

4. The court overruled the following question, propounded to said Herman Stone:

Q. "What did Mr. Greenberg say on that same occasion with reference to the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?"

The said question being asked to prove the knowledge and notice to the plaintiff of the dissolution of the firm of defendants, and the receipt of the letter containing notice of the dissolution of defendants' firm.

5. The court overruled the offer on the part of the defendants to prove that Mr. Greenberg, as the agent of the plaintiff, had knowledge of the dissolution of the partnership of defendants.

8. The court overruled the following question, propounded to the witness Leonard K. Cox:

Q. "Did Mr. Greenberg have any conversation with you after January 19, 1925, concerning the relationship or the financial standing of the partnership of Stone & Company?"

9. The court overruled the following question, propounded to the said Leonard K. Cox:

Q. "Did Mr. Greenberg say, in any conversation with you, after January 19, 1925, anything about the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?"

10. The court overruled the following questions, propounded to the defendant Joseph H. Stone:

Q. "Did you have anything to do with the partnership after the signing of that agreement?"

Q. "Did you do anything else, with reference to the partnership, after the signing of this agreement?"

11. The court permitted the witness Walter Cobb, over objection, to answer the following question:

Q. "Now, I call your attention to the last number of packages given here on p. 5. Do you see there on p. 5, do you see there '12/3' and '6/8/25. Date. Stone & Company. No. of packages, 40; size 98 Cot.' and so forth? Now, will you tell me what that '12/3/24' means?"

13. The court overruled the following question, propounded to Joseph Ringkamp:

Q. "Do you recall how funds were withdrawn from that account, that is, upon what signatures?"

14. The court overruled the following questions, propounded to Pasquale Dalosio:

Q. "How were funds withdrawn, that is upon what signatures were funds withdrawn, prior to that time and afterward?"

Q. "That is, after January, 1925, how were funds withdrawn from the account, and upon what signatures?"

I.

Grounds of Appeal Nos. 2, 3, 4 and 5, relate to the declarations of the agent Greenberg, while discharging his agential duties, and his conversations with other people, relative to his knowledge of the dissolution.

The questions propounded which were overruled, are (p. 75, line 10, etc.):

Q. "What did Mr. Greenberg say on this occasion when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company on January 22, 1925?"

Mr. Devlin—Objected to, for the reason, first, that it is hearsay—

The Court—I think that is enough reason in this regard. Objection sustained.

Q. "What did Mr. Greenberg say on that same occasion with reference to the knowledge of the

Pillsbury Flour Mills Company as to the dissolution of your partnership?"

Mr. Devlin—Objected to for the same reason.

The Court—Objection sustained.

Mr. Heher—If your Honor please, the testimony is already in the case, the testimony of Mr. Vanderhoof and Mr. Cobb, that Mr. Greenberg had the authority on the road to make contracts, subject to the approval of the company. And they go further and say that when he was on the road it was his duty and it was part of his work to observe the financial condition of various individuals, partnerships and corporations, and to report to the company. It was his duty and part of his work to observe conditions and ascertain and report to the company if there was a change in the financial condition or status of a partnership.

(After discussion.)

The Court—I overruled the question that is now pending.

Mr. Heher—The other questions along the same line I suppose it will be a waste of time to ask. I suppose we might have it understood now that any question that may be asked as to statements that Greenberg made to this witness or made to the defendant Joseph Stone after the sending of this letter to the Newark office of the Pillsbury Flour Mills Company, to the effect that the company knew of the dissolution of the partnership between these two defendants—I might say that Greenberg not only made that statement to the two defendants, but to two or three disinterested people.

The Court—I think that would be clearly inadmissible.

Mr. Heher—I understand that we can not show by statements that this man Greenberg made after the sending of this letter on January twenty-second the knowledge of the plaintiff as

to the dissolution of the partnership of these two men?

The Court—No. You can not prove by this witness that Greenberg told him that Cobb had heard Vanderhoof say that a letter had been received, or anything of that sort.

Mr. Heher—I want to show, your Honor—

The Court—I do not think anything could be accomplished by pursuing the matter further. I have already ruled that that can not be done.

Mr. Heher—May I have an exception?

The Court—Yes.

Mr. Heher—Later said, after further testimony (p. 80, line 25)—Your Honor, with this testimony in the case I renew my offer of yesterday of testimony from this witness to his conversation with Mr. Greenberg upon Mr. Greenberg's call upon this witness in Trenton after the sending of this letter of January twenty-second, 1925, to the company at Newark, as to what Mr. Greenberg said of the company's knowledge of the dissolution of the partnership.

Mr. Devlin—I object to it.

The Court—Objection sustained.

Mr. Heher—May I have an exception?

The Court—Yes.

The agent Greenberg was the plaintiff's agent to inform himself of the dissolution of firms, and of any change in credit of the plaintiff's customers, and his duty was to report to the home office.

Mr. Stone testified (p. 80, line 14, etc.), "Mr. Vanderhoof said to me, after we had made our arrangements on the credit, that a representative of the Pillsbury Flour Mills Company would make regular calls on me in Trenton about every two or three weeks, and would handle all the company business for him there, and there was no other representative except Mr. Greenberg who called upon the defendant firm."

Vanderhoof was the manager of the company in New Jersey, and part of New York State, and he testified on page 21, line 7, as to Greenberg, as follows:

Q. "Was it his practice to report to you any change in the status of partnerships or corporations, or any financial change of individuals?"

A. "Yes, sir."

Q. "He would report that always to you?"

A. "Yes, sir."

Q. "It was his duty on behalf of the company to report those things to the office?"

A. "Yes, sir."

Q. "And if he knew of the dissolution of this partnership or if he had acquired that knowledge on his visits to Trenton, it was his duty to report it to you or Mr. Cobb or to report it to the Newark office?"

A. "Yes, sir."

Q. "You say it was his duty to observe the financial change in conditions of individuals and partnerships and corporations when he was on the road making sales of flour?"

A. "It was his duty; yes, sir. They do not always do those things, but it is their duty."

Walter Cobb, office manager of the plaintiff, testified on page 27, line 28, as follows:

Q. "What is your occupation?"

A. "Office manager for the Pillsbury Flour Mills Co."

He further testified on page 41, that Mr. Greenberg had certain territory which included Trenton; that he had power to sign contracts for the delivery of flour; and on page 42, line 40, thus:

Q. "Was it part of his work to report to the company at Newark the dissolution of any partnership which he observed while he was out on the road, or of which he had notice?"

A. "Yes, sir."

Q. "That was part of his work?"

A. "Right."

Q. "And if he received notice or had notice of the dissolution of this partnership between the Stone boys, it was his duty and part of his work to report it to your company at the Newark office?"

A. "Yes, sir."

Mr. Vanderhoof, further testified on page 20, line 21, as follow:

Q. "Did Mr. Greenberg make certain visits to Trenton and Stone & Company?"

A. "Yes, sir, he came down every two weeks."

Q. "Do you recall if he made visits every two weeks in the months of December, 1924, and January and February, 1925, to Trenton?"

A. "I should say so; yes, sir. He should have done it and I suppose he did."

Q. "It was his practice to do that?"

A. "Yes, sir."

Q. "You knew he had made a number of visits to Trenton?"

A. "Yes, sir."

Q. "Do you know, too, that he talked with Stone & Company and Herman Stone?"

A. "Probably; yes, sir."

Walter Cobb, on page 40, line 38, further testified:

Q. "Mr. Greenberg was connected with your office, was he not?"

A. "Yes, sir."

Q. "And he was out on the road continually, engaged in the sale of flour for your company?"

A. "Right."

Q. "He would go from city to city in the course of his duties?"

A. "In his territory."

Q. "Wouldn't that involve more than one city?"

A. "Yes, sir."

Q. "His territory was the State of New Jersey?"

A. "Yes, but not all the towns."

Q. "Trenton was included in his territory?"

A. "Yes, sir."

Q. "You know, yourself, that he called here on a number of occasions in connection with the business of Stone & Company?"

A. "Yes, sir."

Q. "Do you know that he signed any contracts on behalf of your company with Stone & Company for the delivery of flour?"

A. "Yes, sir."

The defendant, Herman Stone, testified on page 74, line 29, as follows:

Q. "Mr. Stone, Mr. Greenberg signed contracts, you said, on behalf of the company?"

A. "Yes, sir."

Q. "He signed each one of those three that you mentioned?"

A. "Yes, sir."

Q. "Did he sign other contracts too?"

A. "Yes, sir."

Q. "Did he sign them right up until you ceased the conduct of the business?"

A. "Yes, sir."

Q. "For the Pillsbury Flour Mills Company?"

A. "Yes, sir."

Q. "There was never any one of the contracts rejected or disapproved by the company?"

A. "No, sir."

Q. "You always received the flour in accordance with the contract which he made?"

A. "Yes, sir."

This evidence clearly establishes the representative and agential character of Greenberg. He was held out to the defendants "as a person who handles all the company's business with this firm." He was then on this visit transacting the business of the company. He took the order for flour under date of January 27, 1925. Vanderhoof also said, "he should have called in January every two weeks, and I suppose he did."

Mr. Herman Stone further testified (p. 72, line 27), that on the following Monday or Tuesday, after the mailing of the letter, Greenberg came to make his regular call. It thus appears in evidence that on this bi-weekly call, the first after the letter was sent, that Greenberg called, took the order and discussed the financial affairs of the defendant, and the dissolution of the firm. Greenberg's declarations on this occasion, when he took the order for flour, were admissible in evidence as admissions by the plaintiff, and as revealing his own knowledge, and his knowledge was the knowledge of the plaintiff.

The practice of the plaintiff was to have written contracts for the sale of flour, and these written contracts were not produced at the trial, but it is clearly inferable that at Greenberg's first regular call, he discussed the dissolution and took the order, because Mr. Stone says it was on the first visit after the mailing of the letter.

Section 35, Uniform Partnership Act (p. 493), provides:

"That after dissolution, a partner can bind the partnership if the partner had extended credit to the partnership prior to the dissolution and had no knowledge or notice of the dissolution."

Greenberg was transacting business for the plaintiff at the time he made the declarations, for he took the order for flour on that occasion. *Agricultural Insurance Co. v. Potts*, 55 N. J. L., p. 158, sustains this proposition. Mrs. Potts had insured her property with the plaintiff, and her policy required notice if other insurance was afterwards effected. Other insurance was effected, and notice thereof was given to Wright & Marsh, local agents of the plaintiff, at Princeton. They promised to notify their principal, the insurance company, as to whether they would consent to such additional insurance. A fire occurred, and the insurance company contested the liability on the ground that this additional insurance was put on without its knowledge or consent. To prove such notice or knowledge, the

general agent of the company visited the plaintiff after the fire, "upon the business of the defendant, and endeavored to adjust her loss, and he said on behalf of the company he was representing that the insurance company had notified the agent to cancel the policy, but it had been neglected."

The court said (on page 161):

"By this declaration the defendant's agent imparted pertinent information touching matters to the consideration of which he had invited the plaintiff. It was made in the supposed interest of his principal and was part of the *res gestae*. A statement made by a general agent of a corporation, in the course of his employment, as to a fact within his official knowledge touching the status of a matter entrusted to him, is admissible in evidence on behalf of the party with whom the corporation was dealing. From this declaration of the defendant's general manager, it was competent for a jury to *infer that actual notice had been received* by the defendant of some state of affairs respecting plaintiff's risk, that justified, in defendant's opinion, a cancellation of her policy; and inasmuch as the only fact of this nature of which the case gives any indication, is that communicated by the plaintiff to Wright & Marsh, a further inference might be that the local agents had forwarded the information received by them to the company as they promised plaintiff they would do, and that the company, taking the view of the risk intimated by Wright & Marsh to the plaintiff, had decided upon the cancellation of her policy, and that Wright & Marsh were the agents to cancel the policy in question. At all events, the evidence referred to, if not free from ambiguity standing alone, when taken in connection with the rest of the plaintiff's testimony, was competent proof to go to the jury for the purpose of establishing the following facts:

First: That the company had actual knowledge of the condition of the plaintiff's insurance and of her submission of the matter to the local agents who forwarded the information.

Second: That the defendant recognized the duty of acting decisively upon the facts thus submitted and had actually made its decision.

Third: That the defendant had entrusted the execution of the decision thus reached to Wright & Marsh. That Wright & Marsh did nothing toward carrying into execution this decision of the company during the months that preceded the fire, is an admitted fact, and it must, I think, be likewise admitted that the plaintiff was damaged by reason of their negligence. All of the evidence points conclusively to the fact that it was the settled purpose and constant practice of the plaintiff to keep her dwelling fully insured."

That there is no distinction between a general agent and any other agent as to the binding force of declarations or admissions, if he is within the scope of his agency and performing his duties as agent, is clear from the decision in *Ashmore v. Penna. Steam Towing Co.*, 38 N. J. L., p. 13, in which Chief Justice Beasley discussed the proposition whether a general agent had any greater powers than a special agent as to the binding effects of admissions when discharging the duties of the agency, and he said (at page 15):

"With regard to the law of evidence, I think there should be no difference whatever between the binding effect of the admission of a general and a special agent. In both cases alike the rule should be that the admission to be evidence was made in pursuance of the power conferred. In this particular there is no difference between the acts and the words of the agent; with respect to the first, he must be authorized to speak them. In each set of instances, it is a question of authority. Upon the basis of this rule, then, the authority of the general agent to bind his principal by

his statements, would be broader than that of the special agent, in the ratio of the transcendence of the power of the former over that of the latter, but the right of each to speak for his principal would rest on the same grounds, that is his authority to conduct the business confided to him. All statements made in the conduct of such business are evidence against the principal; all others are inadmissible, because they are unauthorized. By considering the words of the agent in the light of acts—verbal acts—the subject will be cleared of all obscurity, and there will be no more difficulty in deciding when such words are admissible, than there is in concluding what acts of the agent can be proved.

There is another phase of this case, and that is if this agent had present in his mind knowledge of the defendants' dissolution when he took the order for flour on January 27, 1925, such knowledge was imputable to the plaintiff and if the defendant knew that Greenberg, the plaintiff's agent, had knowledge of the dissolution of the partnership, the plaintiff is bound by the Greenberg knowledge. See *Sooy v. State*, 41 N. J. L., 394 at 400, where the rule is laid down that whenever the principal, if acting in the matter for himself, would have acquired knowledge, such knowledge would be chargeable to the principal.

Two cases are cited in the Sooy case as illustrating the conditions under which the knowledge of the agent is imputed to his principal. *Dresser v. Norwood*, 17 C. B. N. S. 466, was as follows:

"A. placed timber in the hands of H., a factor for sale, on a *del credere* commission. B. bought it through the agency of C., a broker who (as H. was aware) had prior knowledge of the fact that the timber was the property of A., and that H. was selling as factor only. C.'s knowledge of the relative position of A. and H. was not communicated to B., who made the purchase bona fide.

see also
 Doyle v. Lofb
 96 N.J. L. 516 d 51
 Smith v. D. d. Solr Co
 64 Eq (1920) 770
 Hurd v. Bowling
 43 A.L.R. 742
 152 Tenn. 535
 Chapman v. Erie
 55 N.J. 579 d 5

Held: In an action of A. against B. for price of timber, that B. was affected with the knowledge of his broker, and therefore could not set off against the price of the timber, a debt due him from H."

Pollock C. B. said:

"We think that in a commercial transaction of this description, when the agent of the buyer purchases on behalf of his principal, goods of the factor of the seller, the agent having present to his mind at the time of the purchase a knowledge that the goods he is buying are not the goods of the factor, though sold in the factor's name, the knowledge of the agent, however acquired, is the knowledge of the principal. It is conceded that if at the time of the sale, the factor of the seller had expressly told the agent of the buyer that the goods were not his property, but the property of the principal, it would not have been a case for set-off. But why should the factor tell the buyer's agent that which he was well aware that the agent already knew. But we are not to be understood that we mean to admit that the case would have been any different if the factor was ignorant that the knowledge of that fact was present in the mind of the buyer's agent, provided it really was present.

So in *Hart v. Farmers and Mechanics Bank*, 33 *Vt.* 255, cited in the *Sooy* case, 258 at 270, it is said: "If notice of this claim "still remains in the mind of the attorney, it surely did not need to be repeated by the other party to become notice to the defendant."

Willard v. Denise, 50 *N. J. Eq.* 482, holds that a principal is charged with knowledge possessed by his agent if the agent acted for the principal in a matter in which such knowledge is pertinent. The Court of Appeals said:

"To bring about this result, two things must concur, viz., the possession by the agent of the pertinent information and his personal partici-

pation in respect thereto on behalf of his corporation."

In *Gaspard v. 14th Street Store*, 143 *App. Div. (N. Y.)* 402, it was held that a principal is charged with notice or knowledge acquired by his agent outside of his employment and while acting for another principal, provided that the agent had such notice or knowledge in his mind when carrying out a particular transaction for his principal.

It is therefore submitted that the knowledge of the agent, Greenberg, which was present to his mind when these transactions were negotiated, was the knowledge of the plaintiff in this suit.

See, also, *American Surety Co. v. Conway*, 88 *N. J. Eq.* 370, at 375.

There was error in overruling the questions contained in the Eighth and Ninth Grounds of Appeal, page 171, to the effect thus:

Q. "Did Mr. Greenberg have any conversation with you after January 19, 1925, concerning the relationship or the financial standing of the partnership of Stone & Company?"

Q. "Did Mr. Greenberg say, in any conversation with you, after January 19, 1925, anything about the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?"

We call attention to the fact that when the offer was made (page 76) to the court to have it understood that any question asked as to statements made after the sending of the letter to the Newark office of the plaintiff to the effect that the company knew of the dissolution of the partnership from statements made by Greenberg, and from statements made to outside people by him, the court said: "I think that would be clearly inadmissible." The next morning (page 80), Mr. Heher renewed his offer to prove these conversations had taken place. The evidence was objected to, the objection sustained, and an exception allowed.

We think these questions were admissible from the extent of the cross-examination of the witness Herman Stone. The purpose of the excluded questions was to show knowledge of the agent, Greenberg, and the further fact that the plaintiff company, through its manager and assistant manager in Newark, also had knowledge that a dissolution of the partnership had occurred, and that they would thereafter look to the continuing partner, Herman Stone, for the payment of merchandise. Further, Greenberg's declarations that he had knowledge at the time of these transactions, at any time on his bi-weekly trips to Trenton, in the month of January, 1925, would, under the doctrine in the Sooy case, and the remaining cases herein cited, be the knowledge of the principal.

II.

The court erred in overruling the following questions set forth in the thirteenth and fourteenth Grounds of Appeal:

Q. "Do you recall how funds were withdrawn from that account, that is, upon what signatures?"

Q. "How were funds withdrawn, that is, upon what signatures were funds withdrawn, prior to that time and afterwards?"

Q. "That is, after January, 1925, how were funds withdrawn from the account, and upon what signatures?"

(See Case, p. 70; p. 112, line 35; pp. 113, 114, 115.)

It is plain that at the trial, the question of the dissolution of defendants' firm as having taken place, was raised by the plaintiff. This is made obvious, we submit, from the following questions propounded to Herman Stone, who was not even a contesting defendant:

Q. "Why didn't you first get your creditors in, you and your brother, and pay your debts and then dissolve your partnership?" (Case, p. 92, line 22.)

A. "There is no reason why."

Q. "You say there isn't?"

A. "There is no reason."

Q. "When you dissolved this partnership what were you worth?"

A. "Myself?"

Q. "Yes."

A. "I wasn't worth much more than I was originally, excepting that I had built up a good enough bank credit which would carry me through."

Q. "How much do you think you were worth? I want to know how much you were worth at the time."

Mr. Heher—Objected to as immaterial.

The Court—Objection overruled.

Q. "How much were you worth at the time, the 19th day of January, when you dissolved and assumed all the debts in this business, how much were you worth at that time?" (Case, p. 93, line 1, &c.)

A. "I was worth a little bit more than I originally was possibly between \$1,500 and \$2,000."

Q. "Where was that money?"

A. "In accounts outstanding and stock on hand."

Q. "It was in flour stock?"

A. "Yes, sir."

Q. "The price of that fluctuated, didn't it?"

A. "All the time; yes, sir."

Q. "This dissolution of partnership that you drew—who drew that?" (Case, p. 91, line 23.)

A. "I did."

Q. "You had enough legal education to do that, did you?"

A. "No. I got a book of forms."

Q. "Well, you knew enough to get a book of forms to do it?"

A. "Yes, sir."

Q. "Why isn't it fastened?"

A. "Why isn't it fastened?"

Q. "Yes."

A. "There is no reason why it is not fastened, excepting just because it wasn't, it was never thought of."

Mr. Heher—I think it is fastened.

Witness—It has this clip on there. There were two copies of it made.

Mr. Devlin—I do not understand that fastened. You can take one of them off any time.

Q. "Who witnessed that?"

A. "A notary public, Carl Bernstein."

Q. Have you got him here as a witness?"

A. "Yes, sir."

Q. "What date was it executed on?"

A. "On the 19th of January."

See, also, Case, p. 103, line 1, &c., where counsel was permitted, over objection, to ask Herman Stone a number of questions upon the point that he had sold flour, just before he ceased to conduct the business and long after the dissolution, below the market price, and did not use the money thus received to pay plaintiff the amount of its account.

Questions propounded to Herman Stone (Case, p. 68, line 8) as to the change in the signature card in the bank, after the dissolution, were overruled, and the court said:

"I do not suppose it is material. The thing we are interested in is *whether or not there was any notice to this plaintiff of the dissolution or anything that would relieve the defendant Joseph Stone who admittedly was a partner, of his liability.*"

The court, in the charge, said (Case, p. 162, line 28):

"If they (the defendants) were not partners, *if there was a dissolution*, did the plaintiff by its authorized officers or agents have *notice* of it, so that when this arrangement or these arrangements were made, or when this transaction arose, did they know or ought they to have known that

they must look to one defendant alone and not to both?"

The court further said in the charge (Case, p. 163, line 9):

"If, ladies and gentlemen, there is any part of this claim that antedates the date of dissolution, which is fixed by the defendants as some time in January, *if you find that the dissolution took place*, and that the defendant Joseph Stone is to be relieved, by reason of a notice, of any liability, if any of this claim was incurred prior to the date of that dissolution, even if there was notice, Joseph Stone would be liable for that in any event. *As to the whole claim the question really revolves around the dissolution and notice.*"

The court further instructed the jury (Case, p. 161, line 30) that the defendant Joseph Stone, to relieve himself of liability as a partner, must comply with the Partnership Act, "and admittedly in this case that was not done." That instruction was highly prejudicial to the defendant, and led the minds of the jurors far afield from the real issue.

The court further said, in the charge (Case, p. 162, line 18):

"*So that the real question is, was notice given of the withdrawal of Joseph Stone? If there never was a dissolution, Joseph Stone is liable still, even if he had given notice that there was a dissolution.*"

The questions which were overruled by the court, we submit, would adduce testimony of corroborative value to show that immediately after the execution of the dissolution agreement, and at the time the letter was sent to plaintiff, that the members of the late firm did those things which naturally follow a bona fide dissolution of partnership, that is, they gave notice to the bank that the late partnership funds were thereafter to be withdrawn upon the name of the continuing partner, for the reason that the partnership had been dissolved.

Counsel was permitted, on cross-examination of Herman Stone, over objection to ask questions in a wide latitude as to the assets and liabilities of the defendants and their father. (Case, pp. 87, 88 and 89.) We submit that this was prejudicial, and should have been excluded from the case. The cross-examination of Herman Stone, as shown by the questions hereinbefore quoted, created prejudice or unfavorable impressions against the contesting defendant upon irrelevant matters.

We respectfully submit that the judgment should be reversed as to the appellant Joseph H. Stone.

JOHN L. HEHER,
AARON V. DAWES,

Attorneys for Defendant-Appellant Joseph H. Stone.

New Jersey Court of Errors and Appeals

PILLSBURY FLOUR MILLS COMPANY, A CORPORATION,
Plaintiff-Respondent,

vs.

JOSEPH H. STONE AND HERMAN STONE, PARTNERS, TRADING AS STONE & COMPANY,
Defendants-Appellants.

On Appeal.

10

BRIEF OF MARTIN P. DEVLIN, ATTORNEY AND COUNSEL OF PLAINTIFF- RESPONDENT.

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The plaintiff, Pillsbury Flour Mills Company, a corporation, sued the defendants, Joseph H. Stone and Herman Stone, partners, trading as Stone & Company, and recovered a judgment against them for the sum of \$6,563.81 at the October term of the Mercer County Supreme Circuit Court, on November 5, 1926.

To this suit the defendant, Herman Stone, did not answer, but the other defendant, Joseph H. Stone, did answer and defended on the ground that he was not a partner at the time the indebtedness was incurred. Herman Stone was the partner who had no property, and Joseph H. Stone was the man of property who defended on the ground that there was no partnership, and that he

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was not liable in any manner for the amount of money. The facts testified to are as follows:

PLAINTIFF'S FACTS.

10 The plaintiff, a company with branch office located in the City of Newark, New Jersey, received a visit from the two defendants, Joseph H. Stone and Herman Stone, in October, 1924. (Testimony of Elmer D. Vanderhoof, State of the Case, p. 8, line 12.) The defendants stated that they were about to go into business in the City of Trenton, selling flour. Mr. Vanderhoof and Mr. Cobb, acting for the plaintiff, inquired into the financial responsibility of the defendants. The defendant, Herman Stone, said he was not financially responsible (State of the Case, p. 10, line 14), but that his brother, Joseph H. Stone, was, and he also said that his father intended putting some money into the concern. He, Joseph H. Stone, gave a statement of the assets and liabilities.

20 After Mr. Vanderhoof had made some inquiries as to the standing of Joseph H. Stone and Herman Stone in the City of Trenton, Herman Stone and Joseph H. Stone signed a contract, under date of October 30, 1925, for a carload of flour, which was later shipped to them as ordered by installment. Sales of the same were made at various times and deliveries were made up until the latter part of June, 1925.

30 Mr. Greenberg, a traveling salesman of the plaintiff (State of the Case, p. 19, lines 20 to 30) had power to sign contracts subject to acceptance by Mr. Vanderhoof and Mr. Cobb. No one had absolute authority to sign contracts and determine prices except Mr. Vanderhoof and Mr. Cobb. (See State of the Case, pages 41 and 59.)

The business of Stone & Company continued without any interruption, so far as the knowledge of the plaintiff was concerned, until defendants became indebted to the

plaintiff for the sum of \$6,051.50, which time was about the end of June, 1925.

Two drafts, one under date of May 21, 1925, for \$2,304.50, and one under date of June 8, 1925, for \$2,682.50, were dishonored, which led the plaintiff to investigate and as a result suit was commenced by the plaintiff against both defendants as partners for the sum of \$6,051.50.

Herman Stone, defendant, who had no property, did not file any answer, but the other defendant, Joseph H. Stone, the man of property of the two partners, filed an answer denying every allegation made by the plaintiff. 10

DEFENDANT'S FACTS.

Testimony of the defendant in the case was that on January 19, 1925 (a little over two and a half months from the date of the forming of the partnership), they dissolved partnership. In the dissolution the defendant, Herman Stone, assumed all the assets and liabilities of the partnership (State of the Case, p. 163). Three days after Herman Stone, the partner who had no property, assumed the business, he alleges he sent a letter to the Pillsbury Flour Company marked, "attention of Mr. Vanderhoof," announcing the dissolution of the partnership, and stating he carried the responsibility for the business and that he would be in Newark in a few days and would take the matter up in detail, but he never went to Newark. This letter was alleged to have been signed only by Herman Stone, not by Joseph H. Stone, the man of property. This letter was not received by the plaintiff and the men who were in charge of the entire office (State of the Case, p. 18, line 20, to 28, and p. 36, lines 25 to 30). 20

The defendant partner, Joseph H. Stone, testified that he was thirty-five years old, and a graduate of the Trenton High School, and also took an engineering course at Rutgers College, New Jersey, for three years. He 30

worked in the saloon business and later went in the Anthracite Manufacturing Company Coal business (State of the Case, p. 135) in 1915. He said he saw his brother, Herman Stone, mail this letter, copy of which was offered in evidence, at 5:00 or 5:30 in the evening of the 22d day of January, 1925, in the Post Office in Trenton.

The defendant partner, Herman Stone (State of the Case, p. 62) stated that he was twenty-nine years old, was a graduate of the Trenton High School and Western Reserve University, where he took a law course; that he was a salesman for a flour company, Commander Flour Company, for a year and a half, and also worked for his brother, Joseph H. Stone, selling coal. He stated that he mailed the letter of January 22d, 1925, to the Pillsbury Flour Mills at 5:00 or 5:30 in the evening of that day, at the Post Office in Trenton (State of the Case, p. 71). Said he sent out only one letter, announcing the dissolution, which was to the plaintiff, the only large creditor. When questioned as to his records as to his business transactions, he said all had been lost or burned and he was unable to tell how much money he owed, or whom he owed it to (State of the Case, p. 93). He said that his brother, Joseph H. Stone, stated he would not ask for any of the profits made during the time they were partners (State of the Case, p. 95). He did not think it necessary to register the notice of dissolution of the partnership. Stated that after the dissolution of the partnership, he sold the plaintiff's unpaid-for flour below cost and used the money for his own private purposes (State of the Case, pages 102 and 103). Said he was hurt in June and went to Florida in August, turning over his affairs to an attorney by the name of Boscarell, of the City of Trenton.

The other defendant, Joseph H. Stone (State of the Case, p. 125) stated that he was a graduate of the Trenton High School, and had been in the coal business. Stated he had an argument with his brother, Herman Stone, about the running of the flour business and they

were on bad terms at the time of the dissolution, and he handed over all the business to his brother. Admitted he did not sign the letter alleged to have been sent to the plaintiff notifying him of the dissolution of the partnership, and did not mail the letter but entrusted it to his brother, Herman Stone. It was admitted that the alleged dissolution of partnership was never advertised in the newspaper.

It was admitted by the defendants that the business of Stone & Company was never registered in the County Clerk's office until the end of June, 1925, so as to indicate who were the persons trading by that name, when Herman Stone, the remaining partner, had sold all his assets and was going out of business.

The facts of the case would infer the defendants had rigged up a scheme by which they were to establish their credit with the plaintiff corporation, and after the credit was established the partner who was responsible in property would secretly withdraw from the partnership, and the non-responsible member of the partnership, Herman Stone, would continue the business and take the plaintiff's flour and sell it on the market below what it cost him to purchase it, and dissipate the proceeds of the sale. In other words, the conduct of the defendants points to a fraud well planned and perpetrated on the plaintiff.

Defendants claimed the partnership was dissolved on January 19th, 1925, by Herman Stone taking over the partnership, and that on January 22d, 1925, a letter signed only by Herman Stone, was mailed, by ordinary mail, to the plaintiff, notifying him of the dissolution. This letter the plaintiff claims he never received. The defendants base their appeal on the fact that the court excluded the testimony that Mr. Greenberg, salesman of the plaintiff, made statements to the defendants and to others after the time the alleged letter was sent, that the plaintiff had told him, Greenberg, that the plaintiff company received

the letter of January 22d, 1925, announcing the dissolution of the partnership.

Defendants say in their brief that the denial of the plaintiff receiving the letter announcing dissolution of the partnership, which letter was dated January 22, 1925, was based on the absence of the letter file of the plaintiff. This is an erroneous statement of fact. It was based on the fact that there was no such letter ever received, and the further circumstances that if such letter had been received new arrangements would immediately have been made by the plaintiff with defendants, or credit would have entirely ceased, because of the fact that the one who took over the business was the partner who had no property whatever. Also the defendants assume that Greenberg, plaintiff's agent, conducted the business entirely. This is also erroneous. All Greenberg ever did was to take orders for delivery, and make contracts for sale, which had to be approved and accepted by the people in the Newark Office (State of the Case, p. 75, lines 20-30).

Evidence on which the appeal is founded taken from the State of the Case, pages 73, 74, 75 and 76:

"Q. Did Mr. Greenberg have anything to do, when he had these contracts with you, in fixing prices?"

Mr. Devlin—I object unless it can be shown that Greenberg had that authority from the principal.

The Court—You are asking for a conclusion now, whether or not he did fix prices.

Q. Mr. Stone, did Mr. Greenberg at any time during his conversation with you with reference to the sale of flour change the price of flour?"

Mr. Devlin—Objected to.

Mr. Heher—Your Honor, the witness has already testified the flour was delivered in accordance with the contract he signed. Now, if there

was any change of price during the negotiations it will show that he had the authority to do it and it was ratified by the company.

The Court—If the company had to ratify, as appears by the contract, then the power was in the company and not in Mr. Greenberg.

Mr. Heher—There has been testimony that Greenberg had no power to fix prices.

Mr. Devlin (after discussion)—Another objection to the question is, that unless the written contracts are produced here, no oral evidence can be given as to what they contain.

The Court—The testimony is that the contracts are uniformly like the one presented. I think it is not competent and the objection is sustained.

Q. Did Mr. Greenberg say anything to you about extension of credit at any time?"

Mr. Devlin—That is objected to also for the reason that they have not established that Mr. Greenberg had the power of authority to do any of those things, but on the contrary have established that he had not.

The Court—The testimony so far is that he had not. I suppose you have got to show he had authority.

Mr. Heher—I submit it is a question for the jury as to whether or not he had power to do these things.

The Court—No, not if it required ratification. That obviously is evidence of the lack of authority.

(After discussion.)

The Court—The question is overruled.

Mr. Heher—May I have an exception?"

The Court—Yes.

Q. Mr. Stone, Mr. Greenberg signed contracts, you said, on behalf of the company?"

A. Yes, sir.

Q. He signed each one of those three that you mentioned?

A. Yes, sir.

Q. Did he sign other contracts too?

A. Yes, sir.

Q. Did he sign them right up until you ceased the conduct of the business?

A. Yes, sir.

10 Q. For the Pillsbury Flour Mills Company?

A. Yes, sir.

Q. There was never any one of the contracts rejected or disapproved by the company?

A. No, sir.

Q. You always received the flour in accordance with the contract which he made?

A. Yes, sir.

20 Q. What did Mr. Greenberg say on this occasion when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company on January 22, 1925?

Mr. Devlin—Objected to, for the reason, first, that it is hearsay—

The Court—I think that is enough reason in this regard. Objection sustained.

30 Q. What did Mr. Greenberg say on that same occasion with reference to the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?

Mr. Devlin—Objected to for the same reason.

The Court—Objection sustained.

Mr. Heher—If your Honor please, the testimony is already in the case, the testimony of Mr. Vanderhoof and Mr. Cobb, that Mr. Greenberg had the authority on the road to make contracts, subject to the approval of the company. And

they go further and say that when he was on the road it was his duty and it was part of his work to observe the financial condition of various individuals, partnerships and corporations, and to report to the company. It was his duty and part of his work to observe conditions and ascertain and report to the company if there was a change in the financial condition or status of a partnership.

(After discussion.)

The Court—I overruled the question that is 10 now pending.

Mr. Heher—The other questions along the same line I suppose it will be a waste of time to ask. I suppose we might have it understood now that any question that may be asked as to statements that Greenberg made to this witness or made to the defendant Joseph Stone after the sending of this letter to the Newark office of the Pillsbury Flour Mills Company, to the effect that the company knew of the dissolution of the partnership 20 between these two defendants—I might say that Greenberg not only made that statement to the two defendants, but to two or three disinterested people.

The Court—I think that would be clearly inadmissible.

Mr. Heher—I understand that we cannot show by statements that this man Greenberg made after the sending of this letter on January twenty-second the knowledge of the plaintiff as to the dis- 30 solution of the partnership of these two men?

The Court—No. You cannot prove by this witness that Greenberg told him that Cobb had heard Vanderhoof say that a letter had been received, or anything of that sort.

Mr. Heher—I want to show, your Honor—

The Court—I do not think anything could be

accomplished by pursuing the matter further. I have already ruled that that cannot be done.

Mr. Heher—May I have an exception?"

There is a distinction here between what is an order and what is a contract of sale. We quote evidence from State of Case, page 43, line 30.

"Q. What do you mean by an order as distinguished from a contract?"

10 A. They won't order the five hundred barrels at one time; they will give us an order for a hundred barrels or twenty barrels, and later they will give an order for a couple of hundred barrels, and those orders apply against the contract, as in this instance, forty barrels one time and twenty barrels another time.

The Court—When you use the word 'Order,' you mean shipping order?"

The Witness—Yes, sir."

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20 GROUND OF APPEAL ASSIGNED BY DEFENDANT.

The appellant Joseph H. Stone hereby assigns the following grounds for reversing the judgment of the court below:

1. The orders of December 3d, for flour, in the sum of \$378 and \$189, respectively, were in writing, and the court permitted, over objection, the witness Cobb to testify as to what the dates of the orders were, without producing the writing.

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2. The following question, propounded to Herman Stone, was overruled:

Q. Did Mr. Greenberg say anything to you about extension of credit at any time?"

The said question being asked for the purpose of proving that the plaintiff had actual and imputed knowledge

and notice of the dissolution of the defendants' firm, and to corroborate the sending of the notice of the dissolution to plaintiff.

3. The following question, propounded to Herman Stone, was overruled:

Q. What did Mr. Greenberg say on this occasion when you say that he called shortly after the sending of this letter to Newark by you to the Pillsbury Flour Mills Company, on January 22, 1925?"

10

The said question being propounded to the defendant, Herman Stone, for the purpose of showing that Greenberg, as plaintiff's agent, had knowledge and notice of the dissolution of the defendants' firm, and to corroborate the sending of the notice of dissolution to plaintiff, which knowledge and notice were imputed to plaintiff.

4. The court overruled the following question, propounded to said Herman Stone:

Q. What did Mr. Greenberg say on that same occasion with reference to the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?"

20

The said question being asked to prove the knowledge and notice to the plaintiff of the dissolution of the firm of defendants, and the receipt of the letter containing notice of the dissolution of defendants' firm.

5. The court overruled the offer on the part of the defendants to prove that Mr. Greenberg, as the agent of the plaintiff, had knowledge of the dissolution of the partnership of defendants.

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6. The court permitted the witness Walter Cobb to answer, over objection, the following question:

Q. What is the date, from these records that you have got in evidence, of the last order or sale—not the delivery—of flour?"

The objection being based upon the theory that the written records or papers should speak for themselves.

7. The court permitted the witness Walter Cobb to answer, over objection, the following question:

Q. If that letter had been received, what would have been your duty as credit man of this company?

The objection being based upon the theory that such question was incompetent, irrelevant and immaterial.

8. The court overruled the following question, propounded to the witness Leonard K. Cox:

10 Q. Did Mr. Greenberg have any conversation with you after January 19, 1925, concerning the relationship or the financial standing of the partnership of Stone & Company?

9. The court overruled the following question, propounded to the said Leonard K. Cox:

Q. Did Mr. Greenberg say, in any conversation with you, after January 19, 1925, anything about the knowledge of the Pillsbury Flour Mills Company as to the dissolution of this partnership?

20 10. The court overruled the following questions, propounded to the defendant Joseph H. Stone:

Q. Did you have anything to do with the partnership after the signing of that agreement?

Q. Did you do anything else, with reference to the partnership, after the signing of this agreement?

11. The court permitted the witness Walter Cobb, over objection, to answer the following question:

30 Q. Now, I call your attention to the last number of packages given here on p. 5. Do you see there, on p. 5, do you see there "12-3" and 6-8-25. Date. Stone & Company. No. of packages, 40; size, 98 Cot." and so forth. Now, will you tell me what that "12-3-24" means?

12. The court refused to strike out the testimony of the said Walter Cobb as to the contents of the contract, in writing, as to the order and sale which was alleged to have

been made on December 3d, the objection thereto being based upon the ground that the contract itself should have been produced.

13. The court overruled the following question, propounded to Joseph Ringkamp:

Q. Do you recall how funds were withdrawn from that account; that is, upon what signatures?

14. The court overruled the following questions, propounded to Pasquale Dalosio:

Q. How were funds withdrawn; that is, upon 10 what signatures were funds withdrawn, prior to that time and afterward?

Q. That is, after January, 1925, how were funds withdrawn from the account, and upon what signatures?

There were no exceptions taken to any of the law charged by the court.

The defendants rely on Nos. 2, 3, 4, 5, 8, 11 and 14 of Grounds of Appeal. 20

Grounds Nos. 2, 3, 4 and 5 relate to the declarations of the agent, Greenberg, relative to the knowledge of the plaintiff of the dissolution of the partnership. The partnership was dissolved on the 19th of January, 1925, and the alleged letter was written and mailed on the 22d of January, 1925. The alleged declarations of the salesman, Greenberg, were made after these events occurred.

The defendants, in their Brief, try to give the impression that Greenberg received information from them, or that they were desirous to tell what they had told Greenberg. The evidence in the case, and the record sustains 30 it, is that what the defendants wanted to do was to produce witnesses to testify to statements of Greenberg, which statements would show the plaintiffs had received the Notice of Dissolution. It must be remembered that Greenberg was a salesman without power to make a valid contract unless approved by the office of the plaintiff in

Newark. Greenberg was not there to make declarations on acts that were passed which involved his principal. He was there only to solicit orders for flour.

The cases offered by the defendant have no application to the facts in this case. The first case offered is *Agricultural Insurance Co. v. Potts*, 55 N. J. L. 158. That was a case where the plaintiff, Potts, took a policy of insurance from the agent of the Insurance Company, with the stipulation that if any other insurance was made
10 on the property the policy would be null and void, unless the consent of the insurance company was given to the same. Plaintiff insured the property and put on extra insurance and made an application to the agent and told him that she had insured the property. The agent said he would let her know in a few days, but neither the agent nor the insurance company ever communicated further with the plaintiff until a fire took place. Marsh, of the firm of Wright & Marsh, agents of the insurance company, took the witness stand to testify to the customs of
20 the company. Mr. Patterson, the general agent of the corporation, visited the plaintiff after the fire and endeavored to adjust the loss and said that they had notified the agent to cancel the policy, but it had been neglected. This was a plain case where a principal entrusted a duty to an agent and the agent failed to perform, and the principal was held properly liable. This case does not determine the question of what was told to the agent, but the plain fact that the defendant imposed the duty on the agent and the agent failed to perform, and the plaintiff suffered
30 damages and the company was held liable.

The case of *Ashmore v. Penna. Steam Towing and Trans. Co.*, 38 N. J. L. 14, is flat against the defendant has no application to the facts of the case. The evidence ruled out in that case was where several witnesses testified the general agent of the defendant told them after the accident that he knew of the snag that caused the accident before the happening.

The case of *Willard v. Denise*, 50 N. J. E. 482, has no application to the facts of the case at bar.

The same can be said of the case of *American Surety Co. v. Conway*, 88 N. J. Eq. 370.

The true position of the defendant is that he wanted to prove by witnesses that a salesman of the plaintiff made statements of facts alleged to be within the knowledge of the plaintiff, which was that plaintiff received notice of dissolution which occurred previous to the alleged conversation of the salesman agent with the witnesses of the
10 defendant.

The defendant alleged he notified the plaintiff in writing of the dissolution of the partnership on the 22d day of January, 1925. Now, can statements made by Mr. Greenberg, salesman of the plaintiff, to the defendants and other parties, in relation to plaintiff's knowledge of the dissolution after the date on which notice of said dissolution was given to plaintiff, be used as evidence against
20 plaintiff, and the plaintiff be bound thereby?

We submit the ruling of the court below was correct. 20
Wigmore on Evidence, Second Edition, Vol. 2, Section 1078, p. 586:

"The principle upon which the declarations or representations of an agent, within the scope of his authority, are permitted to be proved, is, that such declarations, as well as his acts, are considered and treated as the declarations of his principal. What is so done by an agent, is done by the principal through him, as his mere instrument. So
30 whatever is said by an agent, either in the making of a contract for his principal, or at the time, and accompanying the performance of any act, within the scope of his authority, having relation to, and connected with, and in the course of the particular contract or transaction in which he is then engaged, is, in legal effect, said by his principal, and admissible in evidence; not merely because it is the

declaration or admission of an agent, but on the ground that, being made at the time of and accompanying the contract or transaction, it is treated as the declaration or admission of the principal, constituting a part of the 'res gestae,' a part of the contract or transaction, and as binding upon him as if in fact made by himself. But declarations or admissions by an agent, of his own authority, and not accompanying the making of a contract, or the doing of an act, in behalf of his principal, nor made at the time he is engaged in the transaction to which they refer, are not binding upon his principal, not being part of the 'res gestae,' and are not admissible in evidence, but come within the general rule of law, excluding hearsay evidence; being but an account or statement by an agent of what has passed or been done or omitted to be done—not a part of the transaction, but only statements or admissions respecting it."

- 20 *Fairlie v. Hastings*, 10 Ves. Jr. 123. The defendant, Hastings, borrowed a sum of money of the plaintiff. Defendant, Hastings, executed a bond which, it was agreed, should remain with defendant, Hastings' agent, Caunto Baboo, until all the money had been advanced by plaintiff to Hastings. Plaintiff advanced all the money in instalments, and upon the payment of the last instalment called upon the defendant, Hastings, for delivery of the bond. The defendant, Hastings, never delivered the bond to the plaintiff. The agent, Baboo, had told the plaintiff on several occasions that he, the agent, had delivered the bond back to Hastings. The plaintiff to prove that Hastings was in possession of the bond, endeavored to introduce statements made to him by Hastings' agent, Baboo, that he, Baboo, delivered the bond to the defendant Hastings. The Court held that these declarations should be excluded
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on the ground that the same were pure hearsay and not binding upon the principal.

Steamboat Co. v. Flanagan, 41 N. J. L. 115.

The plaintiff, Flanagan, testified that a day or two after the horse had been landed from the boat he went down and told the clerk of the boat that the horse had been hurt in landing, and offered to show the reply of the clerk for the purpose of establishing the alleged negligence. The Court below admitted the evidence over objection of defendant. The Supreme Court reversed the decision and held that:

"1. The declarations of a steamboat clerk, made after the delivery of goods, are not competent to charge the steamboat company with negligence in their transportation."

Ashmore v. Penna. Steam Towing and Trans. Co., 38 N. J. L. 13. To prove the fact of knowledge of the condition causing the injury, plaintiff attempted by several witnesses to prove that the general agent said that he knew of the snag that caused the accident before the happening of the accident upon which suit was commenced. The Court below admitted those statements. The Court above reversed the Court below, and excluded these declarations because they were mere narrations and conversations having a reference to, but no effect in, the discharge of the delegated duty, and the Court held:

"1. Statements made by a general agent, in order to be evidence against his principal, must have been made in the course of the business entrusted to him.

2. This rule excludes all statements or narrations of such agent, which, although relating to the business of the principal, were not made in execution of the agency."

Blackman v. West Jersey and Seashore R. R. Co., 68 N. J. L. 1. In this case the plaintiff, testifying for herself, stated that her fall was caused by the sudden

starting of the car while she was on the running board, and further, that when the conductor came to her and helped her up, he said to her, "It is too bad, are you hurt?" and she said, "I signaled you to let me get off and you answered me." And he said, "I know I did, but I forgot you. It is entirely my fault." The Court below admitted the testimony, and the Court above reversed the decision and made the distinction between the *res gestae* and statements made after the act.

10 "1. Declarations are admissible, as part of the *res gestae*, only when they are concomitant with the main fact under consideration, and are so connected with it as to illustrate its character.

2. Only such words as are spoken, or such acts are done, by an agent, in the execution of his agency, are admissible in evidence against his principal."

Geyer v. Geyer, 75 N. J. E. 124:

20 "5. The son having acquired the fee-simple title applied for a loan on mortgage on the property in question to the mortgagee defendant M. M. committed the transaction of the business on her part to the solicitors who had acted as the solicitors of the son in his acquirement of his father's life estate. There was no proof that M., the mortgagee, had any actual knowledge of the son's fraud upon his father, but an attempt was made on the part of the complainant to charge her with notice of the transaction for the reason that the solicitors whom she employed knew about it.—

30 HELD, this is carrying the doctrine of notice to an agent to an extreme to which the decisions do not now go."

Center Garage Co. v. Columbia Insurance Co., 96 N. J. L. 456. The Center Garage Company sold an automobile to one Dodds. The purchase price was \$1,500.00. Two hundred dollars was paid on account and

the balance in instalments, the title of the machine to remain with the Center Garage Company until payment in full. The defendant, Columbia Insurance Co., insured the machine for \$1,500.00 for benefit of vendor and vendee as their interest might appear. After this, Dodds was driving the automobile and had an accident in which it was totally destroyed. Plaintiff, Center Garage Co., sued the Insurance Company for the loss. The policy had a provision that if the automobile was used for carrying passengers for compensation at the time of the accident the policy would be null and void. The case went to trial. For the purpose of proving that the terms of the policy were violated the Insurance Company called Dodds, the purchaser of the car, to show that after the accident he made a written statement that at the time of the accident he was using the car for hacking purposes. At the trial he denied the statement, although his signature was attached to it, and said that he was using the car for his own private purpose, which was going to the store to get milk for his baby. The Insurance Company called Mr. Clark, who wrote the statement in which Dodds declared he was using the car for carrying passengers from Bloomingdale to Pompton Lakes. The Court below directed a verdict for the plaintiff. The defendant contended that the question should have gone to the jury as to whether or not Dodds' testimony should or should not receive credit. The Court of Appeals held that the written statement was a piece of evidence entirely without probative force so far as plaintiff was concerned, for Dodds was not its agent or representative, either actually or apparently authorized to bind it by admissions made by him after the accident. The case was reversed as to the method of proving damages, but on this question the Court held:

10 "1. A statement which admits facts destructive of the plaintiff's claim, made by a person other than the plaintiff himself, after the alleged

cause of action has arisen, is not evidential against him, unless the party making it was his agent or representative authorized to bind him by such admission."

Sooy Ads. State, 41 N. J. L. 394, Court of Errors and Appeals. This case was a suit by the State on a bond of Sooy, formerly State Treasurer, and his sureties. The defendant tried to introduce evidence of members of the Legislature and members of the Committee of the House, 10 who were "on the Committee" with power to examine the condition of the State Treasury, and the managements of the same. This Committee had reported that the bond was sufficient and they advised its approval, and stated "their pressing duties unfit members in this house, and the great amount of work required, has decided it to determine not to undertake to ascertain the present condition of the state treasury." Then defendant asked the witness if he knew of the character and condition of the State Treasurer, and also if he knew of 20 irregularities of the State Treasurer. The questions were overruled by the Court below. The Court of Appeals sustained the overruling of the questions for the reason that a member of the Legislature even as a member of the Committee, was not an agent of the State, and that also another reason that the notice must come to the agent where he is concerned for the principal and in the course of the same transaction, and if he had notice only by some other transaction foreign to the business in hand this will not affect the principal.

30 On pages 400 and 401 the doctrine is elaborately discussed. At page 401 the Court said:

"I do not perceive why third parties should acquire any unexpected rights against the principal from the mere knowledge of an agent not communicated to him, even supposing the agent's duty to his principal required the disclosure to him of that knowledge."

The Court also held:

"7. In a matter wherein the legislature properly acts as agent of the state, notice to the members of the legislature individually is not notice to the state; such notice, to bind the state, must be given to one of the legislative branches in organized session.

To the same effect is *Huebner v. Erie R. R. Co.*, 69 N. J. L. 327, a case where after an accident a man went to investigate the circumstances for the plaintiff, and called at the office of the superintendent of the defendant, asked to see the parts of the machinery. The superintendent said, "They are not here." The visitor replied, "I believe they are." The clerk was called and asked if the parts were there and he answered, "Yes, sir," and produced them. This testimony was admitted by the Court below as binding the principal. The Court of Appeals overruled the Court below because there was no evidence that the railroad people who made the statements to the witnesses were authorized to make statements on behalf of the Railroad Company in that regard, and held there was no evidence to show that the superintendent or the clerk had authority to act for the Railroad Company, and further that before such declarations could be evidence they must constitute a part of the *res gestae* in the course of the employment about the matter in question. They must accompany the doing of the act, and must be within the scope of the delegated authority.

"A principal is bound by the acts and concomitant declarations of an agent touching such 30 matters only as are within the scope of his general employment, or have been specially entrusted to his agency by the principal. Acts and declarations not falling within this rule are not within the exception to the rule excluding hearsay testimony."

West Jersey Traction Co. vs. Camden Horse R.R. Co., 5 N.J.E. 163. Court of Errors and Appeals.

Nash vs. Perth Amboy, N.J. Adv. Rep. Vol. 5, No. 4 1393. Date Oct. 22, 1927. Court of Errors and Appeals.

In the case of *King v. Atlantic City Gas and Water Co.*, 70 N. J. L., p. 679, the facts were that at the trial the plaintiff wanted to show that the water heater installed by the defendant was wrongly installed, and had defects. They put on testimony to show that they called the attention of the company after the accident, and that the company sent an employee to examine the heater, and the employee after examination said it was defective, and said he couldn't tell what was the matter, but he would
10 report to the company. The Court of Appeals held evidence was not admissible or binding on the defendant, and the employee was not sent for the purpose of making statements.

"1. Where a person authorizes another to speak for him he may be confronted by testimony as to what was said by his representative within the scope of his authority; but where the employment is purely mechanical the master is not chargeable with what his employe may choose to say while at work for him.

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2. In a suit against a master for damages caused by the furnishing of a defective appliance, testimony that a servant, who after the accident had been sent to repair such appliance, or to ascertain and report its condition to his employer, said that something was wrong with the appliance, is irrelevant, hearsay and inadmissible."

Hayes v. Jersey City, &c., Ry. Co., 73 N. J. L. 642. The question was put to Van Sciver, the driver of the
30 wagon of the defendant, "Didn't you go into the hotel where he was and say, 'Mortimer, don't blame me; it was soft wood.'" and also another question, "Do you remember Van Sciver and Hayes having a conversation as to the quality of the wood?" The Court of Appeals overruled both questions because it was an attempt to make the admissions of an agent, not made in the execution of his agency, binding upon his principal.

Hill v. Adams Express Co., 74 N. J. L. 338. In this case plaintiff offered to prove the receipt of a box by the Express Company by offering a Bill of Lading alleged to have been given by the Express Company to Hill, through the third party as his messenger. There was no proof of the authenticity of the Bill of Lading, except Hill received it from his own agent. There was also conversation offered between Hill and some person at the Express office to show that the Bill of Lading was delivered to Hill's messenger. Plaintiff, Hill, offered Mr. Scull
10 as a witness who gave a report of a conversation between himself and an alleged employee of the Express Company, which conversation was after the shipment of the box, and in which the employee of the company admitted the loss of the box. The Court below admitted it as testimony in the case. Defendant appealed. The Supreme Court reversed the Court below and held:

"4. A principal is bound by the admissions of an agent only when such admissions are within the scope of the agent's employment or are otherwise authorized by the principal." 20

Corkran & Meloney v. Taylor, 77 N. J. L. 195. In this case the Court overruled the question when the witness was asked what statements were made to him by Mr. Thompson as to the compression of the machine. Mr. Thompson was an employee of the plaintiff who had worked on the machine, but it was not shown that he was employed to make statements on behalf of the plaintiff. On appeal, the Supreme Court sustained the
30 Court below and held:

"2. Evidence of admissions or declarations by an employe of one of the parties was properly overruled, it not being made to appear that the making of such statements was within the scope of such employe's employment."

Yoshimi & Co. v. U. S. Express Co., 78 N. J. L. 281. In this case there was testimony that a box of goods

had been delivered to the defendant, the goods were mislaid or stolen, and never delivered to the consignee. The non-delivery was attempted to be proved by the plaintiff by a conversation one of the plaintiffs had with the local agent of the Express Company, and admissions made by such agent of the Express Company as to the condition of the box. Such evidence was admitted by the Court below. The Supreme Court reversed the Court below for the reason that the mere fact that a man was in charge of the defendant's office would not make him the agent of the defendant for all purposes, nor was there any proof that the scope of his agency extended to anything that occurred in the Chicago office.

10 "1. The mere declaration of a person that he is agent for a party to a suit is not evidential against such party.

2. The admissions of an agent bind a principal only when within the scope of the agency or when they are authorized by the principal."

20 In answer to Reasons 8 and 9, two questions which were overruled by the Judge, both of which were asked a Mr. Cox, a warehouseman not connected with plaintiff. These questions were overruled and came under the ruling of the decisions previously quoted in this Brief by the plaintiff.

In answer to the 13th and 14 Grounds of Appeal, would say these questions were submitted to Joseph Ringcamp and Pasquale Dalosio, officers of the Hanover Trust Company, where the defendants banked their funds.

30 They could have no bearing on the case unless it was to show a part of a well prepared scheme to defraud the plaintiff by notifying the bank, and not the plaintiff, of their dissolution, while they were buying the flour of plaintiff and selling it under cost and using the proceeds for their own benefit.

The question in this case is not what the conduct of the defendants was with the banking company where

they did business, but what was their conduct toward the plaintiff in regard to whether or not the plaintiff received the proper notice of the dissolution of the partnership at the proper time.

Again the defendants, in their Brief, note that the Court in its charge to the jury said that if there never was a dissolution Joseph H. Stone is still liable. This is an excerpt from the charge, but reading the charge before and after this excerpt it will be found that the charge was a proper statement of the law as to the facts. 10 However, no exception was taken to any part of the charge and the defendants cannot claim anything by that.

We submit there is no error by the Court below as claimed by the defendants under Reasons 8, 9, 13 and 14, and if there was any error it is not such as to warrant a reversal.

Under Pamphlet Laws, 1912, p. 382, section 27:

27. "Reversal or new trial on merits. No judgment shall be reversed, or new trial granted, on the ground of misdirection, or the improper admission or exclusion of evidence, or for error as to matter of pleading or procedure, unless, after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party. 20

I quote some New Jersey cases where this section is applied. *Wicks Bros. v. Lamp Co.*, 85 N. J. L. 322; *Murphy v. Marrone*, 86 N. J. L. 663; *Connolly v. Public Service Railway Co.*, 94 N. J. L. 157; *Maagget v. A. Brawer Silk Co.*, 95 N. J. L. 72, New Jersey Supreme Court; *Bussy v. Hatch*, 95 N. J. L. 56, New Jersey Supreme Court. 30

We submit the judgment below should be sustained and the appeal dismissed.

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the Plaintiff-Respondent.*

