

INDEX

	PAGE
Notice of Appeal .....	1
Appellee's Ground of Appeal (Reasons) in Supreme Court .....	2
Summons .....	5
Complaint .....	6
Affidavit of Merits .....	11
Answer and Counter-Claim .....	12
Reply and Answer to Counter-Claim .....	14
Petition to Examine Defendant After Issue Joined .....	15
Rule that the Defendant Appear and Be Ex- amined Before Trial .....	17
Judge's Summons .....	19
Notice to Produce .....	20
DEPOSITIONS:	
Alfred Lirio—Direct .....	23
Cross .....	33
Certificate .....	37
Rule to Amend Complaint .....	38

	PAGE
Amendment to Complaint by Addition of Count	39
Notice .....	41
Judgment Record .....	42
Judgment on Verdict of Jury .....	44
Testimony .....	46
Motion to Amend Complaint .....	47
Defendant's Exception .....	47, 48, 49
Motion to Strike Out Complaint on Book Account .....	48
Order that Plaintiff Shall Not Be Required to Produce Books of Account .....	49
 PLAINTIFF'S TESTIMONY:	
Charles F. Ravenel—Direct .....	50
Cross .....	54
John J. Ruddy—Direct .....	60
Cross .....	61
Edwin F. Miller—Direct .....	67
 DEFENDANT'S TESTIMONY:	
Alfred Lirio—Direct .....	67
Cross .....	83
Re-direct .....	102
Re-cross .....	105

Lewis Hadsell—Direct .....	107
Cross .....	109
Leonard Shone—Direct .....	113
Cross .....	115
Re-direct .....	116
Samuel G. Catchpole—Direct .....	117
Cross .....	120
Re-direct .....	125
Re-cross .....	127
 PLAINTIFF'S TESTIMONY IN REBUTTAL:	
John J. Ruddy—Direct .....	130
Cross .....	132
Re-direct .....	135
Re-cross .....	135
Charles F. Ravenel—Direct .....	137
 DEFENDANT'S TESTIMONY IN SUR REBUTTAL:	
Alfred Lirio—Direct .....	138
Motion to Strike Out Defense .....	139
Opinion of Court .....	142
Defendant's Exceptions .....	144
Exhibit P1, Salesman's Order .....	145
Exhibit P2, Salesman's Order .....	147
Exhibit P3, Trade Acceptance .....	151



[ENDORSED]

Service of the within notice of appeal, is hereby acknowledged, this 15th day of August, 1927.

Edwin F. Miller,  
Attorney of Plaintiff.

10

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GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

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20	AUTOGRAPHIC REGISTER Co., a corporation of the State of New Jersey, <i>Plaintiff-Respondent,</i> v. ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co., <i>Defendant-Appellant.</i>	Action at Law. Grounds of Appeal.
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The appellant states the following grounds of appeal:

30

1. The Court directed a verdict in favor of the plaintiff and against the defendant for the full amount of the claim; when the evidence in the case presented a jury question:

(a) As to whether or not the plaintiff had performed its contract with defendant.

(b) As to whether or not from the evidence submitted the defendant was entitled to damages, and in what amount, for breach of the warranty on the machines in question.

(c) As to the amount of damages, if any, the defendant was entitled to recover by reason of the failure, or partial failure of the consideration of the contract.

(d) As to what the agreement was between the plaintiff and the defendant at the time the trade acceptance was given as to when it was to become due. 10

(e) As to whom the plaintiff sold the goods in question, and to whom the credit was to be extended.

(f) As to whether or not the trade acceptance, which was signed in blank, had been properly filled out according to the agreement made at the time it was given.

2. The grounds upon which the Court directed a verdict, as set forth in his opinion, are erroneous and insufficient. 20

3. The statute concerning the sale of goods, gives the buyer a right to accept or keep the goods and maintain an action against the seller for damages for breach of warranty.

4. The Court directed a verdict in favor of the plaintiff and thereby deprived the defendant of a good and legal defense—viz., the breach of warranty on the sale of the machines, and the partial failure of the consideration of the contract. 30

5. At the close of the case, the evidence clearly

presented an issue triable by jury, and therefore the Court erred in directing a verdict.

6. As the pleadings stood at the time of the trial, the suit was upon a book account as well as upon a trade acceptance, and therefore the Court erred in making an order that the plaintiff would not be required to produce its books of account in proof of its claim.

10 7. In the action on the book account, the Court made an order that the plaintiff would not be required to produce its books of account in proof of its claim—notwithstanding there was a dispute as to whom the goods were sold, as to whom the credit was given, and as to the amount of the bill which was due from this defendant.

20 8. The Court at the time of the trial made an order amending the complaint in a material manner, adding a count which materially changed the nature of the suit, and refused to afford the defendant an opportunity to put in an answer to the amended complaint and prepare his defense.

30 9. The Court refused to grant the defendant's motion to dismiss the suit on the book account, after amending the complaint and changing the suit to an action on the trade acceptance; the suit on the book account being an improper suit as the trade acceptance was in existence at the time the suit on the book account was commenced.

10. The Court by directing a verdict has deprived the defendant of substantial rights to which he is justly and legally entitled.

CHARLES P. BREWER,  
*Attorney of Appellant.*

[ENDORSED]

Service of the within Grounds of Appeal, is hereby acknowledged this 30th day of August, 1927.

Edwin F. Miller,  
*Attorney of Plaintiff-Respondent.*

10

SUMMONS.

THE STATE OF NEW JERSEY, TO ALFRED LIRIO, TRADING AS LIRIO BASKET AND PAPER COMPANY:

You are summoned to answer the annexed complaint of Autographic Register (Seal) Co., a corporation of the State of New Jersey, in an action at law, in the Cumberland County Court of Common Pleas. 20

And take notice, that unless you file your answer to said complaint to the clerk of the Cumberland County Court of Common Pleas at Bridgeton within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, HERBERT C. BARTLETT, Judge of the Cumberland County Court of Common Pleas at Bridgeton, this twenty-ninth day of January, A. D. nineteen hundred and twenty-seven. 30

LEONIDAS H. HOGATE,  
*Clerk.*

EDWIN F. MILLER,  
*Attorney.*

## COMPLAINT.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

10	AUTOGRAPHIC REGISTER Co., a corporation of the State of New Jersey, <i>Plaintiff,</i>	Action at Law. Complaint.
	v. ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co., <i>Defendant.</i>	

20

## FIRST COUNT.

Plaintiff, a corporation of the State of New Jersey, having its principal place of business at Hoboken, New Jersey, says:

1. It sues for the price of goods sold and delivered to the defendant upon a book account of which a copy is attached hereto and the whole of which is due and unpaid.

2. Plaintiff demands as damages, the amount due thereon being four hundred and thirty-seven dollars and forty cents (\$437.40). Together with interest from May 1, 1926, to date of judgment.

## SECOND COUNT.

1. It being a manufacturer doing business at Hoboken, New Jersey, did on March 30, 1926, sell and deliver the defendant sundry goods under an agreement between the parties that plaintiff would charge defendant a reasonable price for the goods so sold.

2. The amount due on the account on May 1, 1926, charged in conformity with said agreement was, and still is four hundred and thirty-seven dollars and forty cents (\$437.40).

3. Defendant has not paid the same.

4. Plaintiff demands as damages, the sum of four hundred and thirty-seven dollars and forty cents (\$437.40) with interest from May 1, 1926, to date of judgment.

EDWIN F. MILLER,  
*Attorney of Plaintiff.*

20

30

To the within named Defendant:

Following is a copy of the book account mentioned in the within complaint:

	Autographic Register Co.	#158498	
	Hoboken, N. J.	3-30-26	
	Lirio Basket & Paper Co.		1-7-26
	Cor. N. J. & East Ave.,		
	Vineland, N. J.		
5	#2 S/A9 Filer #79640-79599-80708-79768-79737—7" Black Sold	60.00	\$300.00
10	5M 5½ x 8½ Sales Auto Fold Trip White		
	5 60M		28.00
12	#7 Rolls Carbon Shoup 70		8.40
			<hr/>
			336.40
	Less Allowance on 2 S/A @ 17.50 ea. to be returned		35.00
			<hr/>
			301.40
20	Via C. R. R. N. J. with Order 66166 Order Completed		301.40
			<hr/>
	Autographic Register Co.	#153499	
	Hoboken, N. J.	3-30-26	
	Lirio Basket & Paper Co.		1-7-26
	Cor. N. J. & East Ave.		
	Vineland, N. J.		
25M	5½ x 8½ Sales—Auto Fold Trip White		
	Blue Golden Rod Pink and Salmon	136.00	
			136.00
30	Job Ptd "Vineland Farmers Exchange, Inc." Via C. R. R. of N. J. with Order 66165—Order Completed		
	5M Sets Ptd on White #1—5000		
	5M Sets on Blue #5.001—10.000		
	5M Sets on Golden Rod #10.001—15.000		
	5M Sets on Pink #15.001—20.000		
	5M Sets on Salmon #20.0001—25.000		

Autographic Register Co.  
Hoboken, N. J.

November 10, 1926

In Account With Lirio Basket & Paper Co.,  
C. R. R. N. J. & East Ave.,  
Vineland, N. J.

Mar. 30	\$136.00
" 30	301.40

Total	\$437.40
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EDWIN F. MILLER, 10  
*Attorney of Plaintiff.*

Bridgeton, N. J., February 8, 1927.

I, John H. Evans, Sr., Sheriff of the County of Cumberland, do hereby constitute and appoint James Florentine my true and lawful deputy, for me and in my name to preserve the peace in and for the County of Cumberland. 20

Witness my hand and seal this 8th day of February, 1927.

JOHN H. EVANS, SR.,  
*Sheriff.*

Duly served within *summons* and complaint upon which named defendant Alfred Lirio personally at City Hall, Vineland, Cumberland County, New Jersey, this 8th day of February, 1927. 30

JOHN H. EVANS, SR.,  
*Sheriff.*

By Special Deputy,  
JAMES FLORENTINO.

Sheriff's fee \$4.50.

To the within named Defendant:

Take notice, that if the within summons and complaint be served upon you personally and you intend to make a defense, then you must file an affidavit of merits within ten days of such service and must file an answer within twenty days of such service; and that in default thereof, judgment will be entered against you. Lawful service on a corporation is deemed personal service.

EDWIN F. MILLER,  
Attorney of Plaintiff.

[ENDORSED]

Writ returned into court this 16th day of February, 1927.

L. H. Hogate,  
Clerk.

20

30

AFFIDAVIT OF MERITS.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

AUTOGRAPHIC REGISTER Co.,  
a corporation of New Jersey,

Plaintiff,

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER Co.,

Defendant.

Action at Law.  
Affidavit of Merits.

10

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

20

ALFRED LIRIO, being duly sworn on his oath says, that he is the defendant in the above stated cause, and that he believes that he has a just and legal defense to said action on the merits of the case.

ALFRED LIRIO.

Sworn and subscribed before me, this 4th day of February, 1927.

M. W. GIBSON,  
Notary Public of N. J.

(Seal)  
Filed Feb. 7, 1927.

L. H. HOGATE,  
County Clerk.

30

## ANSWER AND COUNTER-CLAIM.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

10	AUTOGRAPHIC REGISTER Co., a corporation of New Jersey,	}	Plaintiff,
	v.		
	ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co.,	}	Defendant.

Action at Law.  
Answer and Counter-  
Claim.

20

Defendant, Alfred Lirio, trading as Lirio Basket & Paper Company, of Vineland, Cumberland County, New Jersey, says that:

1. At the time of making the contract of sale of the goods referred to in plaintiff's complaint, plaintiff agreed with defendant to assemble, set up, adjust and place said machines in working order, before the purchase price thereof would become due and payable.

2. Plaintiff, at the time of making said contract with defendant, specifically guaranteed in writing, to make mechanical adjustments, with replacement of defective parts to said machines, without charge, for one year from the date of sale.

3. Plaintiff has never assembled, set up, adjusted nor placed said machines in working order, as it agreed to do, as aforesaid.

4. Defendant has many times requested plaintiff to perform its said contract with defendant, but plaintiff has failed and neglected so to do.

5. Defendant denies that he owes plaintiff anything, until plaintiff has performed its contract, as aforesaid. 10

By way of counter-claim against the plaintiff, defendant says that:

1. He repeats the statements in paragraphs 1 and 2 and 3 above.

2. In consequence and by reason of the failure of the plaintiff to perform its said contract of sale, defendant has been deprived of the use of said machines which are necessary in defendant's business. 20

3. In consequence and by reason of the failure of the plaintiff to perform its said contract of sale, and furnish defendant with said machines, assembled, set up, adjusted and placed in working order, so that defendant might use the same, defendant has been caused great expense to do the work that said machines would have performed.

Defendant counter-claims \$500.00 damages. 30

CHARLES P. BREWER,  
*Attorney for Defendant.*

Filed Feb. 17, 1927.

L. H. HOGATE,  
*County Clerk.*

REPLY AND ANSWER TO COUNTER-CLAIM.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

10 AUTOGRAPHIC REGISTER Co.,  
 a corporation of the  
 State of New Jersey, }  
*Plaintiff,* }  
 v. } Action at Law.  
 ALFRED LIRIO, trading as } Reply and Answer to  
 LIRIO BASKET & PAPER } Counter-Claim.  
 Co., }  
*Defendant.* }

20

REPLY.

The plaintiff denies all of the allegations in the answer, except such portions of the complaint as are admitted by the defendant.

ANSWER TO COUNTER-CLAIM.

30 The plaintiff denies the allegations in the counter-claim.

EDWIN F. MILLER,  
*Attorney of Plaintiff.*

Filed Mar. 1, 1927.  
L. H. HOGATE,  
*County Clerk.*

PETITION TO EXAMINE DEFENDANT AFTER ISSUE JOINED.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

AUTOGRAPHIC REGISTER Co., } 10  
 a corporation of the }  
 State of New Jersey, }  
*Plaintiff,* } Action at Law.  
 v. } Petition to Examine  
 ALFRED LIRIO, trading as } Defendant After Is-  
 LIRIO BASKET & PAPER } sue Joined.  
 Co., }  
*Defendant.* }

10

20

To Honorable Herbert C. Bartlett, Judge of the Court of Common Pleas of Cumberland County, respectfully shows unto to your Honor, Autographic Register Co., a corporation of the State of New Jersey, plaintiff in the above stated cause.

2. Plaintiff shows that on January 29, 1927, it entered an action, entitled as above, against the said Alfred Lirio therein, upon a book account for four hundred and thirty-seven dollars and forty cents (\$437.40) together with interest from May 1, 1926, to date of judgment. 30

16 *Petition to Examine Defendant After  
Issue Joined*

3. Plaintiff shows that the defendant filed an answer therein and counter-claimed damages in the sum of five hundred dollars (\$500).

4. Plaintiff says that the said counter-claim filed by the defendant above, against the plaintiff, is false and that he, the said defendant, has not plead the truth therein as required by the Practice Act and rules of this Court.

10 5. In order to show to the Court that the defendant has not plead the truth, it is necessary to examine the defendant, under oath before trial.

Your petitioner, therefore, prays that your Honor may make an order requiring the said defendant to appear before the Master in Chancery, in order to be examined as a witness at the instance of the plaintiff.

20 Petitioner says that issue has been joined in the above-stated cause.

And your petitioner will ever pray, &c.  
Dated March 14, 1927.

EDWIN F. MILLER,  
*Attorney of Petitioner.*

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

30 EDWIN F. MILLER, being duly sworn according to law, on his oath deposes and says that he has read the foregoing petition and that the same is true and correct.

EDWIN F. MILLER.

*Rule That Defendant Appear and Be  
Examined Before Trial* 17

Sworn to and subscribed before me this 17th day of March, 1927.

RUTH W. HARRIS,  
*A Notary Public of New  
Jersey.*

(Seal)  
Filed March 17, 1927.  
HERBERT C. BARTLETT,  
*Judge.*

Filed April 2, 1927.

L. H. HOGATE,  
*County Clerk.*

10

RULE THAT THE DEFENDANT APPEAR  
AND BE EXAMINED BEFORE TRIAL.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

20

AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
*Plaintiff,*

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
*Defendant.*

Action at Law.  
Rule that the defen-  
dant appear and be  
examined before  
trial.

30

Upon reading the verified petition of the plaintiff in the above-stated cause, praying that the defendant may be required to appear before a Master in

Chancery and be examined before trial:

It is on this 17th day of March, A. D. nineteen hundred and twenty-seven, ordered that the defendant, Alfred Lirio, trading as Lirio Basket & Paper Company, appear before Benjamin Stevens, one of the Masters in Chancery of New Jersey, on March 24th, 1927, at his office in the Borough of Vineland, County of Cumberland and State of New Jersey, at the hour of ten o'clock in the forenoon of said day, there to be examined as a witness at the instance of Autographic Register Co., a corporation of the State of New Jersey, on motion of

EDWIN F. MILLER,  
*Attorney of Plaintiff.*

HERBERT C. BARTLETT,  
*Judge.*

Filed Mch. 17, 1924.

HERBERT C. BARTLETT,  
*Judge.*

20 Filed April 2, 1927,  
L. H. HOGATE,  
*County Clerk.*

30

JUDGE'S SUMMONS.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
*Plaintiff,*  
v.  
ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
*Defendant.*

10

Action at Law.  
Judge's Summons.

20

*To Alfred Lirio, Defendant:*

On motion of the plaintiff, you are hereby notified that on the first day of April, next, at ten o'clock in the forenoon, at the Court House in the City of Bridgeton, I will hear any motions that may be made by either party in the above-stated cause, respecting the pleadings, issues, evidence or any other matter preliminary to, and in preparation for trial; and will make such order respecting the same as the parties respectfully may be entitled to.

30

Dated March 28th, 1927.

HERBERT C. BARTLETT,  
*Judge.*

[ENDORSED]

Service of the within is hereby acknowledged this 28th day of March, 1927.

Charles P. Brewer,  
Atty. Deft.

Filed April 2, 1927.

L. H. HOGATE,  
Clerk.

10

NOTICE TO PRODUCE.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

20

AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
Plaintiff,

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
Defendant.

Action at Law.  
Notice to Produce.

30

Sir:

You are hereby required to produce salesman's orders Nos. 685 and 872 for the bill of goods mentioned in the complaint, to Herbert C. Bartlett, Judge, at the Court House, Bridgeton, New Jersey,

on April 1, 1927, next, and produced by you before Benjamin Stevens, Master in Chancery, on March 24, 1927, on examination of Alfred Lirio.

EDWIN F. MILLER,  
Attorney of Plaintiff.

Dated March 28, 1927.

To Alfred Lirio, Esq., the  
above-named defendant,  
and Charles P. Brewer,  
Esq., his attorney.

10

[ENDORSED]

Service of the within is hereby acknowledged this 28th day of March, 1927.

Charles P. Brewer,  
Atty. Deft.

Filed April 2, 1927.

L. H. HOGATE,  
County Clerk.

20

30

## DEPOSITIONS.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

10	AUTOGRAPHIC REGISTER Co., a corporation of the State of New Jersey, <i>Plaintiff,</i>	Action at Law. Depositions.
	v.	
	ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co., <i>Defendant.</i>	

20

Examination of defendant, Alfred Lirio, trading as Lirio Basket & Paper Company, before trial, before me, Benjamin Stevens, a Master in Chancery of New Jersey, at my office, 623 Landis Avenue, Vineland, N. J., pursuant to an order of Herbert C. Bartlett, Esquire, Judge of said Court of Common Pleas, had on the twenty-fourth day of March, 1927, at two o'clock P. M., in the presence of Edwin F. Miller, Esquire, attorney of the plaintiff, and

30 Charles P. Brewer, Esquire, attorney of the defendant.

BENJAMIN STEVENS,  
*A Master in Chancery of  
 New Jersey.*

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

ALFRED LIRIO, the defendant, being duly sworn according to law, upon his oath says and deposes as follows:

By Mr. Miller:

Q. On January 7, 1926, did you trade as the Lirio 10  
Basket & Paper Company?

A. I was trading as the Lirio Basket & Paper Company, and also as president of the Vineland Farmers Exchange, Inc., a corporation of the State of New Jersey; I am sole proprietor of the Lirio Basket & Paper Company.

Q. On January 7, 1926, did you order a bill of goods from the Autographic Register Co., of Hoboken, N. J.?

A. Of what amount? 20

Q. \$437.40.

A. I did not.

Q. Did you order any goods from the Autographic Register Co., and if so, for what amount.

A. I purchased three, I don't know what you call them, registers I guess, 20,000 triplicate copies of paper for the same machines and 12 rolls of carbon to be delivered at a later date under the terms of agreement with certain guarantees amounting to \$265.40, with the understanding that the company 30 was to unpack the machines and set them up and put them in working condition.

Q. Were the machines ever unpacked?

A. About nine months later to the best of my knowledge.

Q. Who unpacked them?

A. The salesman who represented the company and sold me the order.

Q. Did you use any of the machines?

A. I did and they were not mechanically usable so I discontinued using them from time to time but finally continued to use them with great loss of system and inconvenience and finally had four of them tried out, all working unsatisfactory.

10 Q. These machines have three rolls of paper in them with a carbon between them, do they not?

A. They do not. The paper lays flat original, duplicate and triplicate, they are fed into the machine by pulling the lever.

Q. When did you start to use the first one?

A. To the best of my knowledge about nine months after the placing of the order.

Q. Do you know the amount of the first order which you placed with them?

A. In figures?

20 Q. Yes.

A. \$265.40.

Q. I show you a bill dated 3/30/1926, for \$136.00, and ask if you ever received that bill?

A. I believe that that bill represents part of the January 7th order; no, it does not, I will retract that.

Q. Well, what does it represent, do you know?

30 A. I believe it represents part of an order given by the Vineland Farmers Exchange, Inc., signed by Alfred Lirio, given by the Lirio Basket & Paper Co., also, signed by Alfred Lirio, president. It was a combination order.

(Mr. Miller offers in evidence sufficient bill of \$136.00 and same is marked Exhibit P1.)

Q. Mr. Miller offers for identification copy of bill, Autographic Register Co., to Lirio Paper & Basket Co., dated January 7, 1926, for the sum of \$301.40, marked Exhibit P2.

Q. Mr. Lirio, I show you a bill marked P2 for *indentification* and ask you if you ever received a bill like that from the Autographic Register Co.?

A. I don't remember of ever receiving a bill for that amount, or itemized as such, as this bill is not in accordance with the contract.

Q. What is the bill for? 10

A. The bill is for five No. 2 filer and 5,000 triplicate copies of paper for same, and 12 rolls of carbon.

Q. Anything else, Mr. Lirio?

A. We received this merchandise, being part of two orders, part for the Lirio Basket & Paper Company and part for the Vineland Farmers Exchange.

Mr. Miller offers bill in evidence. Marked P2 for *indentification*.) 20

Q. Is this one of the registers which he has here?

A. I think it was the fourth one we used.

Q. Where are the others, represented in the bill?

A. Four of them are at the office, one is at Leesburg, N. J.

Q. Are they in use?

A. Two of them we are trying to use, they last about three or four days and then we have to discontinue them and revive one of the machines that 30 has been previously used in order to continue our sales system which works great hardships on us.

Q. What do you mean by reviving one of these machines?

A. Taking all of the paper out of the machine and

starting the balance of the paper left in the machine through again, which causes loss in many cases owing to the fact that they are all numbered and by the copy being torn and not in numerical form is the hardship caused to our office help.

Q. How often do you have to do this?

A. According to the number of sheets used, it would happen in a day many sales were recorded but during the winter I would say about four days, I would like to show you.

10 Q. When did you receive these machines and the printing?

A. To the best of my knowledge part of them arrived in April, 1926, and May, 1926.

Q. After you received the machines and the printing did you ever tell the Autographic Register Co. that you would pay the bill?

A. It was understood with the salesman that it would be probably from six months to a year before we would put these machines into use and he said  
20 it would be all right with the company; the reason he insisted on the machines being in our possession and paper, was because there was great delay sometimes by their printing presses. I told that the Vineland Farmers Exchange, Inc., whom was to use these machines, would probably not need them for a year. He said his company would co-operate and if they were in need of any money to operate their business he would let me know and would take a settlement in form of a note providing I paid the carrying charges until such time that the corporation  
30 would sell enough stock to make the money available to pay for same. He said one of the proprietors would take some stock in the corporation at once; to mail him a form and the letters setting forth the prospect, for probably \$300.00, owing to the

fact that the Vineland Farmers Exchange was to own all of the machines and operate them at some future date.

Q. Did you ever agree, personally, to pay this bill?

A. To the best of my knowledge, the same salesman that sold me the machines rushed down from his office one day and told me the company was badly in need of funds and asked me if I would be kind enough to carry out the original verbal agreement and give him a note. After considerable  
10 discussion about the matter he said that a trade acceptance was what they really requested. I said, "How about the machines, they are not working right." He said, "I haven't much time, but will make temporary adjustment on them and see you as soon as possible and try to get the machines working right." He assured me that if I would favor him with that settlement previously stated at the time of purchase. I think I gave him two trade acceptances.  
20

Q. For what amounts?

A. He requested that I settle personally for the both invoices. The amounts were the amount of a statement that he had with him; I took his word for the amounts as I trusted him with being honest.

Q. Prior to that did you ever receive a statement from the company of these bills?

A. The salesman left a statement with me.

Q. Did you notice on the statement that the bills were charged to you, the Lirio Basket & Paper Co.?  
30

A. I did not take notice.

Q. Was the Vineland Farmers Exchange operating on January 6, 1926?

A. It was.

Q. I ask you if that is your signature? (Showing

witness a trade acceptance.)

A. It is my signature.

(Plaintiff offers in evidence trade acceptance which reads as follows:

Trade Acceptance, No..... Sept. 13, 1926. \$437.40  
 After Pay to the Order of Auto-  
 graphic Register Co., Hoboken, N. J., Four Hundred  
 and Thirty-seven and 40

10 100 Dollars.

The obligation of the Acceptor hereof arises out of the purchase of goods from the Drawer.

To Lirio Paper & Basket Co.,

Vineland, N. J.

Due Nov. 1, 1926.

John N. Lambert

Autographic Register Co.

Endorsed on the face: Accepted: Date Sept. 13, 1926

Payable at Tradesman Bank

Vineland, N. J.

20 Alfred Lirio, Prop.)

(Same is marked Exhibit P3.)

Q. Now, Mr. Lirio, I call your attention to the fact that this trade acceptance for \$437.40 is the exact amount of the two bills, is that correct, of the book accounts sued on?

A. The amounts of the bill is correct, I believe.

30 Q. You had had the goods for four or five months when you signed this trade acceptance, had you not?

A. I did, but they were not in use, it was understood and agreed upon, settlement would not have to be made until the machines were used and put in good shape.

Q. Then, there is no dispute as to the amount, is there?

A. Only the damages, if we are entitled to them, loss of time and other damages and the defective machines.

Q. Do you use these machines now?

A. To the best of my knowledge there are four of them that have been used, alternating one to the other when they get out of order, trying to keep two of them in use. We really need the whole five to carry out our system that was originally planned for their use.

10 Q. How much of the printing have you used since you have had the machines?

A. There seems to be six machines. However, these invoices only call for five. I believe we have used about 7,000 triplicate sheets and probably half were used to a disadvantage.

Q. Did you ever see any of these machines set up before you bought these?

20 A. The company previously sold me a cylinder roll of paper machine that was operating about 95% perfect and he assured me and guaranteed these new machines to work 100% better; that they have perfected this machine and guaranteed it.

Q. Is this the only machine on the market that makes the triplicate roll with the triplicate copy?

A. This is the only machine on the market that I have ever seen that does not have the triplicate roll, the paper is flat.

Q. Is this the only register that delivers bills and triplicates?

30 A. There are many makes of them, this is the only one that the paper is flat and not in rolls that I have ever seen or heard of.

Q. Do these other machines have the bills numbered in triplicate?

A. They do, but they are the cylinder machines

and they are not guaranteed. This is the only guaranteed machine.

Q. The other machines operate from the roll and these from flat paper, is that correct?

A. The machines involved in this suit all work with flat paper with the exception of one that they traded and exchanged with me.

Q. Well, the one that operates from the roll and the machine that he purchased do the same work, do they not?

10 A. Practically the same principle is involved in both machines.

Q. You never attempted to replace these machines with cylinder machines?

A. Only I told the salesman the day I signed the trade acceptance that he would probably have to bring back my old machine, cylinder type, if we didn't have any better success or if they didn't properly adjust them.

20 Q. Why didn't you buy cylinder machines on the market that would do the same work as this?

A. Because the representative from the Auto-graphic Register Co., whom I considered familiar with this type of machines, had guaranteed to me that this was the latest development and the most perfect operating machine ever patented and they would guarantee them as such.

Q. Well, Mr. Lirio, how can you say, under oath, that you have suffered \$500 damage?

30 A. Because I have had an auditor that cost me \$2.50 per hour, with additional office help trying to systematize the system that it would co-operate with these machines as part of the system and from time to time since early in December he has practically gotten to a point where he was about to adjust the machines on account of their defectiveness of not

properly producing the sales records which involve hundreds of dollars monthly—weekly. The greatest reason being that the original and duplicate copies come out of the top of the machine and the triplicate is supposed to be conveyed under lock and key to a chamber that is opened each morning by our cashier, sometimes seven or eight as many as ten original and duplicates would be recorded and the goods delivered without any record to ourselves not having the triplicate record means a total loss of the whole bill if it isn't discovered shortly after the transaction. I believe that \$1,000 would not cover our losses. 10

Q. What becomes of the original copy on printing?

A. In the case of an order being given the system that we have been trying to operate with, the original of cash sale is given as a receipt; on a charge sale for future delivery, it is sent with the merchandise to be paid on delivery; left as a receipt if charge sale it is supposed to be signed and returned. 20

Q. On the same procedure, what happens to the second sheet?

A. The second sheet or duplicate copy is the acknowledgment of the order in case of a delivery, and is given to the customer at the time order is taken or destroyed entirely on cash sale.

Q. The third copy goes in the locked box?

A. The triplicates conveyed into the safety chamber under lock and key as the safety of checking up all sales made that are written on business done with the use of the machine. 30

Q. Under your system you are supposed to have one sheet in the box and one sheet on the file, is that true, when it is completed?

A. Only on a charge sale.

Q. Now, you don't dispute the correctness on the charge but you do claim damages, is that not true?

A. I do not dispute the correctness of the correct bill and I do claim damages because we have sustained them.

Q. What do you mean by the correct bill, that is the amount of the trade acceptance, is that true?

A. I still admit that the amount of a correct bill.

Q. How much is that amount?

10 A. I don't believe that it could be determined at this time. As I took the company's representative's word for the amount of the trade acceptance as being the amount according to our contract, they do not just agree.

Q. In what amount do they not agree?

A. They do not agree in figures nor according to the agreement.

Q. How much is the difference between your figures and the figures they have?

20 A. \$265.40 to Lirio Basket & Paper Company; \$176 to Lirio Basket & Paper Company, for the Vineland Exchange Farmers Co., signed by Alfred Lirio, president of the corporation, making a difference of \$176 between the bill rendered and the bill as it should have been, however, Vineland Farmers Exchange should have been billed with this difference, which would make the total that is involved in the trade acceptance signed by myself, Alfred Lirio, at the request of the Autographic Register Company, as they were in need of funds, just \$4.00, to be ac-  
30 cording to the contract.

Q. Then the amount of the trade acceptance is \$4.00 less than the contracts which you hold in your hand and for which the bills sued were rendered?

A. Yes, there is \$4.00 difference in our favor.

Cross-examination.

By Mr. Brewer:

Q. Mr. Lirio, was there a contract of sale for the goods in question?

A. From the company to ourselves? There was a contract, guaranteed.

Q. What was the contract in regard to the payment of the purchase price?

A. The payment of these machines and equip- 10  
ment was to be deferred until such a time that the Vineland Farmers Exchange sold enough stock and obtained money to pay for them with reasonable assurance that it could be done within a year.

Q. Did they agree to set up and adjust and place said machines in working order before the purchase price should become due and payable.

Mr. Miller: I object, on the ground that the contract on the salesman's order No. 685 and No. 872 20  
speak for themselves.

A. They agreed to unpack and assemble and put the machines in operating conditions and keep them in operating conditions at all times and at the time that he requested a hurried settlement from me, that is the trade acceptance, he guaranteed to adjust the machines so that they would be permanently perfect in operating before the trade acceptance come due. 30

Q. Has the plaintiff ever adjusted or placed the machines in working order?

A. Two different times before the trade acceptance was given the company's representative attempted to make the machines to operate perfectly,

but it was only temporary, about two days, before they were out of order again; about three weeks ago a young man, claiming to be a representative of that company, called at my office and said that he was a service man from the Autographic Register Company. He said, "I am at your service." I told him the trouble that we have been having. He said, "Didn't the company's previous representative tell you that if the first three orders written in the morning were not taken out and the paper in the chamber made to lay flat that you would have this trouble?" I answered him, "No." He said that he should have, or the company should have, as these machines will jam the paper if this is not done, and you should be very careful each morning to carry out this system if you want to have any success with this machine.

Q. Did he admit that there was this defect in the machine?

A. He told me that the machine was defective so far as the paper jamming in the morning, and he showed me the reason why, and he said that this could not be overcome with any mechanical device and that I should have been informed and that every machine that they have sold would act in the same manner, a machine of that same type. I told him that the clerks do not have access to the key at seven o'clock in the morning so that would make it necessary for either myself or the cashier to give up possession of that key to some of the clerks which we didn't care to do as I held the cashier responsible.

Q. Is part of the bill on which you are being sued the bill of the Vineland Farmers Exchange, Inc.?

A. It is and was agreed and distinctly understood between the company's representative that they were to be billed separately.

Q. How much of the bill from which you have been sued is the bill of the Vineland Farmers Exchange, Inc.?

A. According to the contract, \$265.40, Lirio Basket & Paper Company, Alfred Lirio, proprietor, \$176 to be the Lirio Basket & Paper Company for the account of the Vineland Farmers Exchange, Inc., Alfred Lirio, proprietor, and president. My office and the corporation are in the same building is the reason for this.

Q. Has the plaintiff fulfilled this part of the agreement? 10

A. They have not. The machines were never satisfactory. The time of settlement was not according to the agreement and the co-operation both with the service and extended payment date was not carried out.

(The defendant produces two contracts for the goods in question and requests that they be marked for *indentification* and they are marked D1 and D2.) 20

By Mr. Miller:

Q. Now, Mr. Lirio, did you read these salesman's orders, which you call contracts, marked D1 and D2 for identification, No. 685 and No. 872, before they were signed?

A. I did not read them.

Q. I show you Exhibit D2 and ask you if that is your signature. 30

A. That is my signature.

Q. And I show you Exhibit D2 and ask you if that is your signature?

A. Exhibit No. 1 is a combination signature, my own and president of Vineland Farmers Exchange, and Exhibit No. 2 is my business signature.

Q. Does not Exhibit D1 and D2 both set *ofrth*,  
“sold to Lirio Basket & Paper Company?”

A. No. 1 sets forth and was agreed upon at the  
time of the purchase that it was absolutely a pur-  
chase for the Vineland Farmers Exchange; the  
printing on the paper was Vineland Farmers Ex-  
change, Inc.

Q. Did you know that the terms and conditions  
were that you were to settle 1%, ten days, or 30  
days net?

10 A. He said, “I’ll make the billage dates for the  
contract No. 1 deferred until May 1st and I won’t  
say which May 1st. So that the payment can be de-  
ferred until 1927 if it is necessary to do so while  
you are selling your stock as it was understood that  
these machines would not be in use for a long while.

Q. You signed a trade acceptance for the goods  
mentioned in these contracts, did you not?

20 A. I signed a trade acceptance as a favor to the  
company’s representative at his request for the very  
reason that they were short of money and they felt  
reasonably sure that they could get some financial  
relief through this method and co-operate with me  
until such a time that the money was available to  
meet the obligation and would adjust the machine to  
our entire satisfaction.

ALFRED LIRIO.

Sworn to and subscribed before me this twenty-  
fourth day of March, A. D. 1927.

30 BENJAMIN STEVENS,  
*A Master in Chancery of  
New Jersey.*

CERTIFICATE.

I, BENJAMIN STEVENS, a Master in Chancery of  
New Jersey, hereby certify that the foregoing depo-  
sition was made pursuant to an order of Herbert C.  
Bartlett, Esquire, Judge of the Cumberland County  
Court of Common Pleas, dated March 17, 1927; that  
said testimony was taken down on the typewriter  
directly from the lips of the witness by Lillian De 10  
Luca, in my immediate presence and hearing and  
that the foregoing transcript of testimony is cor-  
rect. All exhibits and papers marked for identifi-  
cation were returned to the respective attorneys.

BENJAMIN STEVENS,  
*A Master in Chancery of  
New Jersey.*

[ENDORSED]

[FEES]

Attendance Fee	\$6.00
Depositions, 50 Fols. @ 30¢	15.00
Swearing one Witness	.25
Marking Five Exhibits @ 15¢	.75

Total \$22.00

Benjamin Stevens,  
Master in Chancery.

Filed April 2, 1927.

L. H. HOGATE,  
*County Clerk.*

RULE TO AMEND COMPLAINT.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

10	AUTOGRAPHIC REGISTER Co., <i>Plaintiff,</i>	Action at Law. Rule to Amend Complaint.
	v.	
	ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co., <i>Defendant.</i>	

20 This matter being opened to the Court by Edwin F. Miller, attorney of the plaintiff, in the presence of Charles P. Brewer, attorney of the defendant, to whom notice had been given that the plaintiff desired to amend his complaint by inserting a third count therein; and it appearing to the Court, by the testimony of the defendant upon examination before trial, under oath, before Benjamin Stevens, a Master in Chancery, that a trade acceptance for the goods mentioned in the schedule annexed to the complaint was given, therefor

30 It is, on this 16th day of May, 1927, ordered that a third count declaring upon the trade acceptance given for the goods mentioned in the schedule mentioned in the schedule annexed be inserted in the complaint of the plaintiff.

HERBERT C. BARTLETT,  
*Judge.*

Filed 6/1/27.

AMENDMENT TO COMPLAINT BY ADDITION OF COUNT.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

10	AUTOGRAPHIC REGISTER Co., a corporation of the State of New Jersey, <i>Plaintiff,</i>	Action at Law. Amendment to Com- plaint by Addition of Count.
	v.	
	ALFRED LIRIO, trading as LIRIO BASKET & PAPER Co., <i>Defendant.</i>	

THIRD COUNT.

1. It sues for the amount of a trade acceptance, four hundred and thirty-seven dollars and forty cents (\$437.40), made by the defendant, Alfred Lirio, trading as Lirio Basket & Paper Company, to plaintiff; a copy of which is annexed hereto. Said trade acceptance was made in payment of the goods, 30 wares and merchandise sold and delivered by the plaintiff to the defendant, as mentioned in the first count and second count of the complaint.

2. Plaintiff still owns said trade acceptance. It has not been paid.

3. Plaintiff demands as damages, four hundred and thirty-seven dollars and forty cents (\$437.40), together with interest from November 1, 1926.

EDWIN F. MILLER,  
*Attorney of Plaintiff.*

10 *To the within named Defendant:*

Following is a copy of the trade acceptance mentioned in the third count of amended complaint:

Sept. 13, 1926. \$437.40  
After Pay to the Order  
of Autographic Register Co. Hoboken, N. J.  
Four Hundred and Thirty-seven and 40/100.....  
.....Dollars.

The obligation of the Acceptor hereof arises out  
20 of the purchase of goods from the Drawer.

To Lirio Paper & Basket Co.  
Vineland, N. J. John N. Lambert  
Due Nov. 1, 1926 Autographic Register Co.  
Accepted  
Date Sept. 13, 1926  
Payable at Tradesmans Bank,  
Vineland, N. J.  
Alfred Lirio, Prop.

EDWIN F. MILLER,  
*Attorney of Plaintiff.*

30  
Filed 6/1/27.

NOTICE.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

AUTOGRAPHIC REGISTER Co.,  
a corporation of the State of New Jersey,  
*Plaintiff,* 10  
v.  
ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
*Defendant.* } Action at Law.  
Notice.

*To Charles P. Brewer, Attorney of Defendant:* 20

Take notice, that at the trial of the above-stated cause, on May sixteenth, 1927, at the Court House in Bridgeton, at ten o'clock in the forenoon or as soon thereafter as the same may be heard, I will move to amend the complaint by the addition of a third count, a copy of which amendment is annexed hereto.

EDWIN F. MILLER,  
*Attorney of Plaintiff.* 30

[ENDORSED]

Service of the within notice acknowl-  
edged this 13th day of May, 1927.

Charles P. Brewer,  
Attorney of Defendant.

Filed 6/1/27.

10

JUDGMENT RECORD.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

20

AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
*Plaintiff,*

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
*Defendant.*

Action at Law.  
Judgment Record.

30

EDWIN F. MILLER, Attorney for plaintiff.  
CHARLES P. BREWER, Attorney for defendant.

This cause coming on to be heard this 1st day of  
June, A. D. 1927, before HON. HERBERT C. BARTLETT,  
Common Pleas Judge, the following persons were  
called and sworn as jurors to try the issue:

JURORS.

1. William Brown
2. Mrs. Oakford Ware
3. Wilbert Appleby
4. Edward Bright
5. J. Howard Carman
6. Charles Earlin
7. Harry Bacon
8. Hazel Mulford
9. Mary Breeden
10. Ella Shimp
11. Mabel Campbell
12. Harvey McKergin

10

The following persons were called and sworn as  
witnesses:

WITNESSES FOR PLAINTIFF.

1. Charles F. Ravenel
2. John J. Ruddy
3. Edwin F. Miller

(Rests)

John J. Ruddy, recalled  
Charles F. Ravenel, recalled

20

WITNESSES FOR DEFENDANT.

- |    |                               |    |
|----|-------------------------------|----|
| S. | 1. Alfred Lirio               | S. |
| S. | Recess until Monday, 10 A. M. |    |
| S. | 2. Lewis Hadsell              | S. |
|    | 3. Leonard Shone              | S. |
|    | 4. Samuel G. Catchpole        | S. |

(Rests)

Alfred Lirio, recalled  
(Rests)

30

(Motion by counsel to strike out the defense  
[counter-claim].)

(Recess until 1.15 P. M.)

(Motion above was allowed, the Court ordered the counter-claim struck out and directed the jury to find a verdict for the plaintiff for the sum of \$450.52.)

(The jury so found.)

Therefore, it is considered that the plaintiff recover of the defendant the sum of \$450.52 and its costs to be taxed.

10 Rule entered June 6, 1927, on motion of  
EDWIN F. MILLER,  
Attorney of Plaintiff.

JUDGMENT ON VERDICT OF JURY.

CUMBERLAND COUNTY COURT OF COMMON PLEAS.

20

AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
Plaintiff,

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,

30

Defendant.

Action at Law.  
Judgment on Verdict  
of Jury.

This cause was tried before HON. HERBERT C. BARTLETT, Common Pleas Judge, with a jury, on June 1st and 6th, 1927. The evidence having been

heard, the jury, on plaintiff's motion for that purpose and by direction of the Court, returned a verdict in favor of the plaintiff in the sum of four hundred and fifty dollars and fifty-two cents (\$450.52).

Whereupon, it is adjudged that the plaintiff recover of the defendant the sum of four \$450.52 hundred and fifty dollars and fifty-two 108.99 cents (\$450.52) and its costs, which are ———— taxed at one hundred eight dollars and \$559.51 ninety-nine cents (\$108.99), making in the 10 whole, the sum of five hundred fifty-nine dollars and fifty-one cents (\$559.51).

Judgment entered June 6, 1927.

20

30

## TESTIMONY.

CUMBERLAND COUNTY COURT OF COMMON  
PLEAS.

10 AUTOGRAPHIC REGISTER Co.,  
a corporation of the  
State of New Jersey,  
*Plaintiff,*

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
Co.,  
*Defendant.*

Action at Law.

20

Bridgeton, N. J., June First, 1927.

## TESTIMONY.

Before HON. HERBERT C. BARTLETT, Judge,  
and a jury.

30

## APPEARANCES:

For Plaintiff: EDWIN F. MILLER, ESQ.

For Defendant: CHARLES P. BREWER, ESQ.

## MOTION TO AMEND COMPLAINT.

Mr. Miller: Before the jury is sworn, I should like to amend the complaint by adding a third count. I served a notice on Mr. Brewer on the thirteenth day of May last that at the trial of the above-stated cause on May sixteenth, 1927, at the court house in Bridgeton, at ten o'clock in the forenoon or as soon thereafter as the same may be heard, I will move to amend the complaint by the addition of a third count, a copy of which amendment is annexed hereto. I served that on him, and if you will remember, we argued it before you at chambers in Vineland.

## DEFENDANT'S EXCEPTION.

Mr. Brewer: I would like to object to this amendment for the reason that it brings out an entirely new case. If the trade acceptance was in existence at the time the action was brought on this book account, the action on the book account would be improper. Therefore, the trade acceptance brings out, as I say, entirely new facts, which surprise the defendant and which makes it necessary for him to have time to answer the new cause of action.

The Court: Did I not make this order? What was the date of the argument?

Mr. Miller: It was in the evening of the sixteenth.

The Court: I thought I made the order at that time. In fact, I placed the case at the bottom of the

list in order to give you a chance to meet that. I will allow the amendment as of May sixteenth, 1927.

(Exception noted for defendant.)

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10 MOTION TO STRIKE OUT COMPLAINT  
ON BOOK ACCOUNT.

Mr. Brewer: I would like to make a motion that the suit on the book account be dismissed, it being an improper suit in the event that the trade acceptance was in existence, as it was, at the time the suit on the book account was brought.

20 The Court: I understand Mr. Miller's complaint is that that is one complaint. There is one count on the book account and one count on the trade acceptance. Is that correct?

Mr. Miller: That is the way I intend to try it.

The Court: I will overrule that motion.

---

DEFENDANT'S EXCEPTION.

30 (Exception noted for defendant.)

ORDER THAT PLAINTIFF SHALL NOT BE  
REQUIRED TO PRODUCE BOOKS  
OF ACCOUNT.

Mr. Brewer: As I understand it, there was an order made verbally in the case that the plaintiff would not be required to produce his books of account in proof of his book account. 10

The Court: That is right.

Mr. Brewer: I do not think there is any such order on file, but at this time I would like to take exception to that, if I may.

20 The Court: My ruling was that the account, as I recall, was admitted, and that there would be no evidence taken as to the amount due; the only evidence that would be received would be as to the damages to the defendant by reason of defective machines.

---

DEFENDANT'S EXCEPTION.

30 Mr. Brewer: I take exception to that ruling for the reason that the only proper way of proving a book account is by the production of the books of original entry in the case. There has been no admission by the defendant that the account is correct. On the other hand, it is shown by the testimony on the examination before trial that part of the bill was a bill

of the Vineland Farmers Exchange, Incorporated, and was not the bill of the defendant in this case.

(Exception noted for defendant.)

(Jury sworn at 2:20 P. M.)

10 CHARLES F. RAVENEL, sworn for plaintiff.

Direct examination.

By Mr. Miller:

Q. Mr. Ravenel, where do you reside?

A. Germantown, Philadelphia?

Q. On January twenty-ninth, 1926, for whom were you working?

A. Autographic Register Company.

20 Q. Are you still employed by them?

A. No, I am not.

Q. Do you know Mr. Alfred Lirio?

A. Yes, sir.

Q. At that time do you know where he had his place of business?

A. He had two places of business in Vineland; one on Landis Avenue, and one, I think they call it on East Avenue, near the railroad.

30 Q. For the Autographic Register Company did you solicit any business from him?

A. I had been doing business with Mr. Lirio for some time.

Q. On January twenty-ninth, 1926, did you have any business dealings with him?

A. I did.

Q. For the Autographic Register Company?

A. Yes, sir.

Q. Did you take his order for any autographic registers at that time?

A. To the best of my recollection I took his order on the seventh of January for certain equipment, which was supplemented some two or three weeks later by an additional order, all of which was really combined in one order.

Q. Are those copies of the orders which you took at that time?

A. They are carbon copies of the original orders. 10

Q. What do they call for, Mr. Ravenel?

A. The one taken on January seventh called for three model nine registers, which we call the file type; five thousand triplicate sales tickets for the Lirio Paper and Basket Company, and fifteen thousand receiving tickets for the Vineland Farmers Exchange Company, with twelve rolls of carbon, making a total of three hundred dollars, less an allowance of thirty-five dollars. Then on January twenty-ninth that order was supplemented by an additional 20 order for two additional machines and ten thousand sets of receiving records, also for the Vineland Farmers Exchange. These orders were taken from the Lirio Paper and Basket Company, the first one entirely for the Lirio Basket and Paper Company, and the second one charged to it for the account of the Vineland Farmers Exchange, charged to the Lirio Basket and Paper Company, signed, Alfred Lirio proprietor and president.

Q. What were the terms? 30

A. On the first order, April first, stating one per cent ten days; and on the second order, May first, stating one per cent ten days, net thirty.

Mr. Miller: I offer them both in evidence.

Mr. Brewer: They are my papers.

Mr. Miller: You don't want to suppress them, do you?

Mr. Brewer: I don't think it is the proper way.

The Court: I thought it was already settled in this case that the defendant was indebted to this company in the sum of four hundred and thirty-seven  
10 dollars and forty cents, and that the only question we were to try was on his claim that the machines were defective and were not set up properly.

Mr. Miller: He takes exception to that.

The Court: All right. Then you can go into this question of where the order went.

(Papers marked Exhibits P1 and P2.)

20

Q. Was that order delivered to Mr. Lirio?

A. Yes. About the first or second of April I received what we call a service-in ticket from the office, showing that the delivery had been made on March thirtieth, which was my instruction—that is, in the ordinary routine of business it was my instruction to call in Vineland on my next trip and set up the equipment if it wasn't already set up.

Q. Did you set up any of the machines at that  
30 time?

A. Shortly thereafter. I can't recall the date.

Q. Did you set them all up?

A. No. I set two machines up comparatively early, sometime possibly April or May.

Q. Why didn't you set up the other machines?

A. Because the Vineland Farmers Exchange was

not operating fully and Mr. Lirio didn't want them set up yet. They were there and packed up and they were really better being packed up in boxes than they would be open unused.

Q. Did you ask Mr. Lirio at that time to pay the bill?

A. I don't think I did at that time. That would be a little too early.

Q. Subsequently did you ever go back there?

A. Oh, yes. I should say on an average of once a month I made Vineland. Sometimes a little oftener  
10 than that.

Q. Did you see the machines operating?

A. I did.

Q. Was there any complaint on his part?

A. Occasionally there was a little complaint of minor adjustments which I adjusted while I was there. Usually had a fault in loading or some minor thing that was easily corrected.

Q. In September did you call on him?

A. I did.

20

Q. For what?

A. For the purpose of securing payment of the account.

Q. What did he tell you at that time?

A. Well, I had made several calls prior to that I had made calls in June and in July, asking him to make payment, and he had promised in July that he would make a substantial payment around the first of August, which was not forthcoming, and the credit department of the company had written me a  
30 rather strong letter to get some kind of settlement, and about the thirteenth of September I went down and he gave me a trade acceptance for the full amount of the account.

Q. I show you a trade acceptance which reads as follows: "September thirteenth, 1926, \$437.40.

after date pay to the order of Autographic Register Company, Hoboken, New Jersey, four hundred and thirty-seven dollars and forty cents. The obligation of the acceptor hereof arises out of the purchase of goods from the drawer; directed to the Lirio Paper and Basket Company, Vineland, New Jersey, due November first, 1926, signed Autographic Register Company, John M. Lambert," and on the face of it is written and printed in red ink, "Accepted September thirteenth, 1926. Payable at Tradesmen's Bank, Vineland, New Jersey, Alfred Lirio, proprietor," and I ask you is that the trade acceptance which Mr. —

A. Yes.

(Paper offered in evidence and marked Exhibit P3.)

Q. Do you know if that trade acceptance has ever been paid?

20 A. I do not.

Cross-examination.

By Mr. Brewer:

Q. What position did you hold with the plaintiff company?

A. I was salesman covering southern New Jersey.

Q. Sales manager?

30 A. No. Salesman. District salesman for the territory.

Q. You were authorized as salesman to make agreements for the company for the sale of your machines, were you?

A. In accordance with their printed contracts and agreements.

Q. You state that when you went to see Mr. Lirio he had two places of business, one on Landis Avenue and one on North East Avenue. Were both of those places of business Mr. Lirio's personal offices?

A. When I first started doing the business with Mr. Lirio, it was on Landis Avenue. Subsequently, when he opened East Avenue, I always saw him there, although it was always my understanding that the East Avenue place continued as a branch of the other establishment.

Q. Didn't you know that the place on North East Avenue was the store and office of the Vineland Farmers Exchange, Incorporated, a stock company?

A. Oh, yes, as well as Mr. Lirio's office. I always found him there. I never found him anywhere else.

Q. You took it to be his personal office because you always found him there; is that it?

A. Yes.

Q. That is the reason that you took it to be his personal office, because you always found him there?

A. That is right.

Q. In fact you don't know whether it was or not, do you?

A. Yes, I would say I would know. I think where you would find a man doing business would be his office.

Q. He doesn't do business any other place except his own office? Did you also know that Mr. Lirio was the president of the Vineland Farmers Exchange, Incorporated?

A. Yes.

Q. As president of that corporation he would naturally be at the office of the stock corporation at times, would he not?

A. Certainly.

Q. Then from those facts why did you assume it was his personal office on North East Avenue?

A. I don't see what connection that has.

Q. Please answer the question.

(Question repeated.)

A. Because the Lirio Paper and Basket Company register and forms were in use there also. That is, the register that I set up for the Lirio Basket and Paper Company was set up there and in operation, two of them.

Q. At the time of this sale on January seventh, 1926, you sold, you say, three registers to the Lirio Basket and Paper Company?

A. Correct.

Q. And also insets which were to be printed with the name of the Lirio Basket and Paper Company; is that correct?

A. One set for the Lirio Basket and Paper Company and two sets for the Farmers Exchange.

Q. There were two separate printings of slips, were there not?

A. Yes. Just what we call a heading change.

Q. Three weeks later you sold two registers to the Vineland Farmers Exchange, Incorporated, did you not?

A. No. Sold two registers to the Lirio Paper and Basket Company for the account of the Vineland Farmers Exchange. The credit department of the Autographic Register Company didn't know the Vineland Farmers Exchange, but they did know the Lirio Paper and Basket.

Q. Did you not at the time of taking this order agree that this bill for the two registers sold to the Vineland Farmers Exchange, Incorporated, should be paid upon the said corporation securing enough

money from the sale of stock and from the business that it did, to pay it?

A. No, sir.

Q. You mean to state that there was a definite time set for the payment of that bill of the Vineland Farmers Exchange?

A. The agreement was the usual one with a new organization starting, that we were authorized to make, and that was that we could give a dating ahead. Bear in mind that this order was taken in January. Delivery was to be made as soon as possible. The bill was not to be dated until the first of May, and there was to be thirty days dating after the first of May, and those terms are so stated on the copy of the order that has been offered in evidence.

Q. Then you took into consideration that you were dealing with a new organization?

A. Oh, yes.

Q. The Vineland Farmers Exchange?

A. Yes.

Q. Didn't you receive frequent complaints from Mr. Lirio and from the Vineland Farmers Exchange, Incorporated, that these machines were not working properly?

A. No, sir.

Q. Did you never receive such complaints?

A. The only time any complaints were ever made were on my usual, regular visits, which possibly averaged once a month, and there might be a minor complaint that Mr. Lirio would make to me and I would adjust whatever little adjustment was necessary, and the machines were always operating when I left.

Q. How many times did you adjust them?

A. I should judge three or four times altogether.

Q. You say you only set up two of the machines?

A. Originally.

Q. Did you set up the others?

A. Subsequently, I set up the others.

Q. When did you set them up?

A. I don't recall exactly, whether it was just prior to or just after the date of the trade acceptance, but it was somewhere, I should say, in September or October.

Q. At the time this trade acceptance was given by Mr. Lirio was not the agreement made with you that that trade acceptance should not become due until  
10 these machines were working, set up, adjusted and working in proper order?

A. No.

Q. And put in use?

A. No.

Q. There was no such agreement.

A. No such agreement at all.

Q. What was the agreement when the trade acceptance was made?

A. The agreement was that it would be paid No-  
20 vember first.

Q. Why, then, in that case—I call your attention to the trade acceptance. Why was the trade acceptance left blank? Why didn't you say two months after date pay to the order?

A. Because that should have been—I left here and here and this signature to be signed by an authorized officer of the Autographic Register Company. I wasn't authorized to sign any paper of this type. I did put in the date it was due, November first, 1926,  
30 and I left this blank.

Q. If you put in the date when it was due, November first, 1926, that is, two months after date, why didn't you put in "two months after date?"

A. It would be less than two months. It would be a matter of forty some odd days. I left that for our auditor to do up in Hoboken, and he apparently

failed to do that.

Q. At the time this trade acceptance was signed by the Lirio Paper and Basket Company, it wasn't complete, was it?

A. No.

Q. It hadn't been signed?

A. No. The Autographic Register Company's treasurer signed that subsequently.

Q. Signed in blank. It was accepted in blank?

A. Accepted for the Autographic Register Com-  
10 pany.

Q. Of course, you only received complaints of these machines which were given to you personally, didn't you?

A. Yes.

Q. The complaints that he made to the office wouldn't reach you, would they?

A. They would under the normal course of events, of there had been any.

Q. But they didn't reach you?

A. They didn't reach me. 20

Q. Isn't there another salesman on this circuit?

A. There was not at the time I was there. I had the territory exclusively.

Q. Wasn't there another salesman on it up to the time of the giving of the trade acceptance?

A. For a short time I was transferred to cover the Harrisburg section, for a while, and during that period another man took this territory for a short time.

Q. Then there was another man? 30

A. Yes, just for that period.

Q. What was this other man's name?

A. I couldn't tell you. I don't remember.

Q. You don't know whether he received any complaints about these machines or not?

A. No, I couldn't tell you that.

By Mr. Miller:

Q. You didn't sell those machines or the printing to the Vineland Farmers Exchange, did you?

A. No, sir.

Q. You sold them to Mr. Lirio?

A. Sold to Mr. Lirio.

Q. And that trade acceptance was given in satisfaction for the sale of the registers and the printing in January, 1926?

10 A. Correct.

By Mr. Brewer:

Q. These orders which have been marked P1 and P2, contain a guaranty, do they not, of the machines?

A. Yes, sir.

Q. That guaranty is supposed to be kept by the company, it is not?

20 A. Yes, sir.

JOHN J. RUDDY, sworn for plaintiff.

Direct examination.

By Mr. Miller:

Q. Mr. Ruddy, what is your business?

30 A. I am district manager for the Autographic Register Company, Pennsylvania and South Jersey.

Q. Do you know if the Autographic Register Company owns this trade acceptance?

A. They do.

Q. Do you know whether it has been paid or not?

A. No, sir, it has not.

Q. And is still due?

A. Still due.

Cross-examination.

By Mr. Brewer:

Q. How do you know it hasn't been paid?

A. I have instructions and information from the home office that it has not been paid.

Mr. Brewer: I move that evidence be struck out as hearsay evidence. 10

The Court: I take it that he has ascertained that it was not paid and that is the effect of his testimony. He ascertained through his office that it was not paid, or in some way connected with his company. I shall admit it over your objection.

(Exception noted for defendant.)

20

Q. Who gave you this information?

A. The credit department.

Q. Who in the credit department gave you this information?

A. Without reference to the correspondence I could not tell you the name.

Q. You don't know?

A. Without referring to the correspondence.

Q. Have you the correspondence with you?

A. I don't know whether I have that with me. It may be in the Philadelphia office and I may have it with me. 30

Q. You don't know of your own knowledge, then, who it was?

A. I know that there is such a letter in existence, that the trade acceptance has not been met.

Q. Then you obtained your information that the trade acceptance had not been met merely from a letter which you had received; is that correct?

A. That is right. Over a signature. A letter written over a signature.

The Court: He cannot testify to the contents of that letter or what it stated, but he can go as far  
10 as he has gone. He has received through his office information that this was not paid. I will admit that.

Mr. Brewer: I move that answer be stricken out for the reason that information received by him from a letter not produced here in Court is not proper and relevant and admissible testimony.

The Court: That is overruled.

20 (Exception noted for defendant.)

Q. Wouldn't it be possible that Mr. Lirio had paid something on account of that trade acceptance?

A. If it has, it hasn't come to my knowledge.

Q. It is possible that he may have done so, though?

A. I couldn't say.

Q. You don't know?

A. I wouldn't answer that question.

Q. Then you don't know whether that trade accep-  
30 tance, the full amount, is at this time due?

A. If it please you, I am giving you the information that I have.

Q. Just answer my questions, please.

(Question repeated.)

The Court: The question is, do you know is that due or not.

A. Your Honor, to save time, I would just like to answer it in my own language, rather than yes or no.

The Court: You must answer his questions.

A. I do not know at this particular moment if the trade acceptance has been met. 10

Q. Do you know that this trade acceptance is a trade acceptance signed by Mr. Lirio? Did you ever see it before?

A. I have seen the trade acceptance before, but I do not know Mr. Lirio's signature. I can only read what is on there.

Q. When did you see this trade acceptance before?

A. I saw it —

Q. After it had been accepted? 20

A. Naturally.

Q. Did you see that it was accepted before it was filled in?

A. No, I can't say that I did.

Q. You didn't see it until after it was filled in?

A. To simplify matters I didn't see that trade acceptance until some forty-five or sixty days ago.

Q. You say you are the district manager. Did you not receive complaints from the Lirio Basket and Paper Company that these machines were not work- 30  
ing properly?

A. In what form?

(Question repeated.)

A. No, neither verbal nor written.

Q. You are not at the home office of the company?

A. No; Philadelphia office.

Q. Any complaints would be made to the home office?

A. No, not as a rule. We have some three thousand customers throughout the territory, and fully ninety-nine per cent of them will, in case of question of any kind, additional supplies, renewal supplies, new equipment, will always get in touch with us, so if there are any complaints at the home office, it is the exception.

Q. What was the name of your salesman that was on this circuit subsequent to Mr. Ravenel?

A. Can you tell me the dates you refer to?

Q. When Mr. Ravenel was transferred to the Pennsylvania district.

A. I am rather inclined to believe that Mr. Ravenel is in error as to somebody or another salesman operating in South Jersey while he operated for a short period in Harrisburg and vicinity. I did have a man in the South Jersey territory after Mr. Ravenel severed his relations with our company, and that man was in the territory about between three and four months ago, and I did receive a complaint through him approximately forty-five to sixty days ago, something as to the workings of the equipment, but that complaint was received after the suit had been started.

Q. What was the name of this man?

A. Eckleman.

Q. These complaints you say were received forty to sixty days ago?

A. This complaint. Not "these." This complaint was received around forty-five to sixty days ago.

Q. When you testified just a few minutes ago that you never received any complaints, either written or verbal, you were mistaken, were you not?

A. No, I wasn't. I am assuming you meant complaints either direct to me or to the Philadelphia office. That is the way I interpreted your question.

Q. I didn't mean it that way. I meant complaints made by the defendant to your company.

A. The complaint, if you consider it as such, was made to a representative about forty-five days ago, and that is after the suit was started, which is understandable.

Q. Didn't you receive some complaints before that? 10

A. None to my knowledge, either verbal or written.

Q. This man Eckleman you have just testified was put on this circuit about three months ago, did you not?

A. Around three to four months ago.

Q. Wasn't it about that time that you received complaints?

A. I said I received the complaint about forty-five to sixty days ago. 20

Q. How do you fix the time?

A. Mr. Eckleman is now in New York and left here about three weeks ago, and it was just about three or four weeks prior to that that I received—was in conversation with Mr. Eckleman. He came up and said that he had visited and heard through Lirio Paper and Basket that we had started suit.

Q. When you got these complaints did you pay any attention to them? Did you go down and visit them? 30

A. There was no need of my going down and visiting them, for Mr. Eckleman told me the complaint was not justified and there was nothing seriously wrong.

Mr. Brewer: I object to what Mr. Eckleman stated. I move to strike it out.

The Court: I sustain the objection.

A. There was no need for me to go, as the report I received was to the effect that the adjustment was made, whatever it had to be, at the time that Mr. Eckleman called.

Q. Did Mr. Eckleman ever make any adjustments?

10 A. According to his report there was nothing serious or radically wrong with the equipment.

Mr. Brewer: I move that be stricken.

The Court: Strike that out.

(Question repeated.)

A. I do not know.

20 Q. Wasn't it your business as district manager of this territory to see that your customers were properly looked after?

A. The only way I can intelligently answer your question is by again referring to the report that Mr. Eckleman would give me.

Mr. Miller: Mr. Brewer, do you admit that the trade acceptance has not been paid?

30 Mr. Brewer: I don't admit anything.

EDWIN F. MILLER, sworn for plaintiff.

The Witness: I am the attorney of the Autographic Register Company, the plaintiff in this suit. After issue was joined I obtained a rule to examine Mr. Lirio under oath, and the Judge made an order requiring Mr. Lirio to appear before Benjamin Stevens, a Master in Chancery, and be examined. He appeared and I examined him under oath, and under oath he admitted that that was his signature, the signature represented on Exhibit P3. He admitted it was the exact amount of the bill less four dollars, and under oath he stated he had not paid the same, and that there was no dispute as to the amount and that the only matter involved was his damages. I swear that the Autographic Register Company still owns the trade acceptance and it has not been paid. 10

(No cross-examination.)

20

PLAINTIFF RESTS.

DEFENDANT'S TESTIMONY.

ALFRED LIRIO, the defendant, sworn.

Direct examination.

30

By Mr. Brewer:

Q. Mr. Lirio, where do you reside?

A. Vineland, New Jersey.

Q. What is your business?

A. Well, the Lirio Paper and Basket Company was the title that my business is registered under here in the County of Cumberland, my former business, and I am the president of the Vineland Farmers Exchange, Incorporated, a stock company that was organized to some day take over the Lirio Basket and Paper Company. I am president —

Q. Well, what is your business, I asked.

A. Dealing in agricultural supplies.

10 Q. Are you a married man?

A. I am.

Q. Have you a family?

A. I have.

Q. How many in your family?

Mr. Miller: I object. I admit he has a very large family, nice, beautiful children, lovely wife and a good home.

20 The Court: I sustain the objection.

Q. Did you on or about January sixth, 1926, have some dealings with the Autographic Register Company?

A. January sixth of what year?

Q. 1926.

A. I ordered some machines and supplies from them.

Q. You bought some machines, you say, from them?

30 A. Ordered some.

Q. How many machines did you buy?

( A. I just don't remember. I know that I bought about five machines. I had two for myself and three for the Vineland Farmers Exchange, and supplies, if I am not mistaken. Either that or vice versa. By supplies I mean fillers for the machines.

Mr. Brewer: I will correct that date as 1925. It is January seventh, 1925.

Q. Witness is shown Exhibit P1 and is asked is that the order that you gave the plaintiff company at that time?

A. That is a duplicate of the order.

Q. What was this order for?

A. It was for machines known in our business as recording registers, to record sales, credit and cash sales in the business, and for paper to be used inside 10 of those registers, and for carbon paper to be used inside of them.

Q. Just how do these machines work? Will you explain to the jury?

A. Work rotten.

Q. I mean how do they work mechanically.

The Court: What he wants to know first is what was the scheme or theory of the machine. 20

Q. I will ask you, is this one of the machines or two of the machines—

A. They are two of the machines.

Q. —that were purchased?

A. Yes.

The Court: Witness identifies two machines as two of the machines purchased of the plaintiff company. 30

Mr. Brewer: I offer them in evidence.

(Two machines marked Exhibits D1 and D2.)

Q. Will you just explain to the Court and jury how these machines work, how they are operated?

A. How they are intended to operate when working perfectly?

Q. That is what I mean.

By the Court:

Q. What are they to do, record sales made by you and give the customer a bill? Is that the idea?

A. Judge, your Honor, that machine records the—well, I would consider that a day book in my  
10 business. The records made in those machines which you will find inside of some of them will run anywhere from five cents to a thousand dollars, and from these sheets the triplicate copy used to be our day book, but the machines got so that they operated so bad that our losses from charges going into the register were so great that we had to stop the use of the third copy altogether, the one that is under lock and key, and we used the original, just used two  
20 copies, but that didn't work out satisfactorily.

Q. The plan was to record your sales that were made each day?

A. Record our sales.

By Mr. Brewer:

Q. This is practically your bookkeeping system, was it not?

A. It was.

Q. Your credit system?

A. It was.

Q. You have not explained to the jury just how these machines work.

A. In making a charge sale the salesman will write down the party's name on the original copy which is before him. Underneath that there is a carbon piece of paper and what we call a duplicate

copy. Under that duplicate copy there is another carbon and then there is a triplicate copy. The man writes out the farmer's name, whoever he may be, and what he has purchased. If he happens to be standing by and is taking the material home with him, he must sign for it before he can take it away, and then they pull the lever down and one copy goes in here, supposed to be under lock and key, and two copies slide out here, and the duplicate copy is given to that customer, and the original that he  
10 signed for, which is delivery of the goods, acceptance of the goods, we keep that for reference so that if he should dispute ever getting it we have got his signature on there that he did get it. Now, if that same party doesn't take the material home with him on his truck or wagon, and it must be delivered, of course, then it is different. The original and the duplicate are put in the file, and when the order of goods is delivered the original and duplicate are sent out with the truck driver. If that truck driver  
20 or clerk happens to be crooked or careless and the machine is jammed in here, the paper is jammed so that he knows that the third isn't coming out, he can go out with an order and it is nothing for five or six hundred dollars worth of our material to go on a truck, and if he gets cash, which many of the farmers pay cash—they don't have checks; very few of them give us checks; they pay us money—he can stick that in his pocket.

Mr. Miller: I object to that. That is a conclusion  
30 on his part, what he could do or might do.

The Court: He is explaining now the scheme.

A. And there is no way I can check him up on that, because he has taken with him the original and

duplicate, and the third one never comes over in here and there may be ten or fifteen of the triplicate copies that have never crawled up when the lever was pulled.

By the Court:

Q. The third copy goes into the box there? That is under lock and key and you have that to check up your driver by, don't you?

10 A. Yes, that is the way it is supposed to be. Check up all of our sales. This is the manner in which some of them have come out. They have curled up that way.

Q. That is one of the objections you make to the machine, that they didn't work smooth and the bills didn't come out properly?

A. This is torn in half. Of course, when they don't come out at all, that is when the great damage is done.

20 Q. And you say that in this machine they didn't come out all the time?

A. None of the machines—we have tried them all now. None of the machines have worked perfectly twenty-four hours since we have had them.

By Mr. Brewer:

Q. Are each one of these slips numbered?

A. They certainly are.

30 Q. So that is several numbers are missing, it shows you immediately that there is something wrong, does it not?

A. Yes. If I am there—I don't want everybody employed down there to have the key to that lock. There must be some way to check.

Q. Does that machine that you have there now operate properly?

A. No. That is why I have taken it off.

Q. Is that the way that that machine—

A. I walked into the office, I think it was last Friday night—I can pretty near tell by the date of the last slip here, May twentieth.

Q. 1927?

A. Yes. You can see the party's name on there, R. Martino, and there is a condition that happens. The salesman and sales manager can easily tell you 10 what does that. I will explain that to you in a moment. The machine it a mechanical failure. They are supposed to slide in there, one on top of the other, and by them folding in one by one that way it offers a resistance on the third copy when they get bunched up in there, and when that third copy tries to slide in there, that is what starts the jamming of the third copy. It is mechanically imperfect. I will tell you while I am speaking of the machine what 20 the representative of that company told me that has taken the place of Mr. Ravenel. A very accommodating man. He said, "Mr. Lirio, didn't Mr. Ravenel tell you that every morning you must take this machine apart and take out several copies in order that you get the bent copies out of the machine here and get them working smoothly before you start?" He said, "If you don't do that every morning 25 your machine will go bad on you." He said, "Didn't he tell you that?" I said, "He never told me that." He said, "Well, he should have told you that." Then 30 I said, "The machine isn't right." I said, "I can't be here every morning to start the machines off." "Well," he says, "I don't care about that." He said, "Well, it isn't very much trouble," but I told him I had clerks that I didn't feel that I should leave the key with, and that I felt that that was my safety

valve for the knowledge that everything was going right, it was used to check up on the whole organization. Well, he said, "Of course, if that is the case, that is different, but," he says, "Mr. Ravenel should have told you that unless you do that every morning you will have that trouble with the machine, or if one of your machines should stand for ten or twelve hours"—we have several of these machines, you can see by the orders there, and they are used in places where sometimes we don't touch the machine for 10 hours, two days, three days,—in that case the machine is sure to jam, and I can't stay there with the machines all day long, and I know that some of the employees that have worked for me have taken advantage of the condition and I have lost money owing to that fact.

Q. Now, as a result of these machines not working properly, what did it become necessary for you to do in your business?

A. Well, I thought there was something wrong 20 with things around there, and I had an outside man come in to see if he couldn't systematize and audit things and bring them in condition whereby we could do business in a businesslike way, and I went out and hired an account.

Q. Hired an accountant, an auditor?

A. I did.

Q. Now, Mr. Lirio, I show you Exhibit P2 and ask you is that the order which was given by the Vineland Farmers Exchange, Incorporated?

A. When I gave this order to Mr. Ravenel I told 30 him that the Vineland Farmers Exchange was going to operate, and I told him the conditions, the different divisions, and he insisted that I place an order with him at that time for the Vineland Farmers Exchange, Incorporated, which I refused to do. He said to me, "You don't have to worry about the

payment of it; I just want you to get your order in so that they will be here in time for you to operate them with your Exchange," and I told him no. He later came back and persuaded me. I don't know what conditions were set forth. He kind of hurried me on and I said, "Well, go ahead; send me down the machines for the Vineland Farmers Exchange, and the paper."

Q. The paper was to be printed with the Vineland Farmers Exchange name?

A. Yes, there is the paper. 10

Q. Was this bill to be charged to the Vineland Farmers Exchange?

A. It was understood that way, distinctly understood that way.

Q. Did he agree to that?

A. He did with our conversation, but I don't know whether he done this intentionally up on top, "Lirio Basket and Paper Company," or how that happened to be there. I guess it was his own suggestions.

Q. I call your attention to the fact that that order 20 which you hold in your hand is dated January twenty-ninth, 1926, nearly a year later than the first order. Was the purchase nearly a year later or was it three weeks of the same year?

A. I wouldn't want to say. I don't remember. It seems to me he run me pretty hard for this order here, and it seemed to me that it would be—I don't remember.

Q. Then the year there, the date, is an error, is it?

A. I wouldn't want to say. It seems to me they 30 were all very close together.

Q. How many machines were there altogether?

A. Well, there are two machines here that were supposed to be used by the Vineland Farmers Exchange, purchased by them, and three to the Lirio Basket and Paper Company, which were to be turned

over to the Exchange, which he understood, at a certain time.

Q. Has any one of these machines ever worked properly?

A. There hasn't been one of them that has worked properly one full twenty-four-hour day, or business day, I would say. Not one of them.

Q. In the month of September, 1926, Mr. Ravenel has testified that he came to your place of business and received from you a trade acceptance. Is that

10 correct?

A. Yes, he did.

Q. Was that trade acceptance filled out at the time you signed it?

A. To the best of my knowledge, there wasn't a mark on that trade acceptance when I signed it. Blank.

Q. What was the agreement at the time you signed that trade acceptance in blank as to when it would become payable?

20 A. Well, this is what he said to me in obtaining the trade acceptance: He said they needed some money and he didn't know whether they could use it or not, but it would be a great accommodation, would help him greatly with the house if I would give him some kind of a settlement that could be used, that they were badly short of funds, although he knew we weren't using the machines and he had agreed with me that I was not to pay for these machines until they were operating perfectly and in

30 use, he said that they were pushing him pretty hard and if I wouldn't please accommodate him, which I did, of course. We always found him very accommodating. When I asked him to adjust the machines or something when he came in, he always smoothed things over nice, told me that the stiffness of the machines would wear off in time, in a short time, and

it would be all right, and I didn't see any reason why I shouldn't settle, give him a settlement that would help his company, if they needed it, and I fully intended to pay for those machines if the machines would have behaved and operated right.

Q. Then the agreement was that they were to be placed in working condition and to operate perfectly before that trade acceptance became due. Was that the understanding?

A. He said they would never embarrass me with that trade acceptance. 10

Q. Was there any agreement then as to becoming due November first, 1926—

A. No.

Q. —as they have filled in there?

A. No.

Q. Then that was filled in after you had signed it, contrary to your agreement, was it?

A. Yes, because I knew that I didn't intend to pay for it November first or any time in the very near future, unless the machines were put in condition. I knew that at the time I gave it to him. However, I depended upon him personally to see that everything was all right. I was under the impression that he could make the machines operate perfectly, which I know now can't be done, or I knew shortly afterwards couldn't be done. 20

Q. What complaints did you make to the company in regard to the machines operating properly?

A. Well, as you know, I am in business myself, and my complaints come in through my field men and service men, and when the pressure is put on by that kind of a complaint it is worthy of our immediate attention. Each time I spoke to him about the machines not operating properly and he adjusted them and he said that would work out of them all 30

right after while, and I told him that the boys had—

Q. Did they work after he had adjusted them?

A. Why, they would work for a few hours.

Q. And then they got out of gear again?

A. Got out of gear again, and I believe that every one they have manufactured and are in use in the United States—

10 Mr. Miller: I object to that.

The Court: I will sustain the objection. You object to the part about other machines?

Mr. Miller: Yes.

Q. According to their agreement made with you at the time of these orders, they guaranteed to keep the machines in repair, did they not?

20 A. Guaranteed them to be in perfect condition and keep them in repair, if I am not mistaken.

Q. By reason of these machines not operating properly you say you were obliged to secure the services of an accountant, an auditor. Approximately how much has that cost you for the services of that auditor?

A. Well, it cost me considerably over a thousand dollars for his services.

30 By the Court:

Q. Services just growing out of the defects in these machines?

A. Judge, your Honor, I insisted on these machines being kept as part of our system and office equipment, owing to the fact that there is so much delivery done in our business, and when the auditor

came to me several times, we have very near—I pretty near fired him from the job, owing to the fact that he insisted that these machines could not remain in our system and he render perfect figures to me, that he had tried and he was very patient, and finally one day he told me, "There is no use," he said, "You can't"—

Mr. Miller: Do you think that is proper, for him to testify to what someone else said not now present?

10

The Court: No. He can go this far, that the auditor was dissatisfied with the machine. I will strike out what the auditor said.

A. This auditor cost me two dollars and fifty cents an hour.

Q. You say the total was one thousand dollars?

20 A. Considerably over a thousand. I don't know the exact amount, of course. He started in early in December, and he is trying to keep the system up that is in there with the machines operating, but I guess he is pretty well disgusted.

Mr. Miller: I object to that and ask that it be stricken out.

The Court: Strike that out.

By Mr. Brewer:

30 Q. As a result of his audit did he find any discrepancy in your accounts?

A. He has found many of them; hundreds of them.

The Court: Are those discrepancies the result of the machine or by the person putting the figures down.

A. The results of the machine not properly operating, Judge, your Honor.

Q. Witness is shown a box of bill heads and is asked are those some of the bill heads that were ordered by you:

A. Yes.

Q. For whom were they?

A. They were for the Lirio Basket and Paper Company.

10 Mr. Brewer: I offer those in evidence.

(Papers marked Exhibit D3.)

Q. Witness is shown another box of bill heads and the witness is asked are they the bill heads that were ordered by the Vineland Farmers Exchange?

A. Yes, they were printed especially for the Vineland Farmers Exchange.

20 Q. Printed with the Vineland Farmers Exchange name?

A. Yes; for the Leesburg, N. J., manufacturing plant.

Mr. Brewer: I offer those in evidence.

(Papers marked Exhibit D4.)

Q. The Vineland Farmers Exchange has a plant at Leesburg, New Jersey?

30 A. Yes.

Q. One of these machines is placed in that plant, is it?

A. It is.

Q. Can you give us any estimate, Mr. Lirio, of actual cash loss from these machines not operating properly?

A. Well, the greatest cash loss that I have sustained has been through the payment of this auditor that has been in there. The last time that I had this same job done before having these registers, I paid a Philadelphia firm three hundred and fifty dollars and they done it in a very short time. This time it has cost me considerably over a thousand dollars, it is costing me over a thousand dollars, and it should have been done for much less than my previous work, because they installed the system before for 10 three hundred and fifty dollars, and this only required just a little fixing up and auditing. It should have been done for a very small amount of money, I will say a hundred or hundred and fifty dollars, but it can't be done at any price.

Q. There were slips found missing, were there not?

A. There was.

Q. May not some of those slips have been lost sales? 20

Mr. Miller: I object to that unless he proves it.

The Court: Yes, you must prove it. You cannot speculate on that. Can you do that?

A. I lost sales on account of the slips?

Q. No. Lost charge accounts, I mean to say.

A. I know that we have lost charge accounts, many of them, owing to the condition of the machines. 30

Q. But as to the amounts—

Mr. Miller: I ask that be stricken out unless he proves the losses by the names of the persons and the amounts.

The Court: But as to the amounts that were actually lost can you give any specific answer?

A. Not without going back to my ledger.

Mr. Miller: Then I ask that the answer and the question be stricken out.

The Court: Yes, it will have to be stricken out unless he can show some actual damage by a lost account.

Q. Mr. Lirio, Mr. Ruddy when he was on the stand testified that the only complaint that he had received as district manager of the Pennsylvania and South Jersey departments was received from a man by the name of Eckleman forty-five to sixty days ago. Is that the only complaint you ever made of these machines?

20 A. No. I have made complaints to this gentleman out here, Ravenel, and some time in December, late in December or about January, early in January, a young man that I believe must be this fellow here—he didn't give his name—came in the office and made himself known as a representative and service man from that corporation, and asked me if I wanted to buy any registers. I said, "No, I have got enough of them, I don't want to buy any registers; who do you represent?" and he said he represented these people, and I told him the trouble we were having, and he never made any attempt to put his finger on one of the machines. He just said, "He should have told you that the machines will not operate unless taken apart and adjusted every morning, or if they have been standing several hours." He said, "He should have told you that." I said, "Tell it to Sweeney; I am not going to take the machines apart every morn-

ing." I said, "They can take them apart up there if they want." So he left without touching a machine. "I will report that," he said, "to headquarters."

Q. Are the machines in their present condition of any use to you?

A. They are absolutely worthless.

Q. Do you offer to deliver them up to the plaintiff?

A. Beg pardon?

Q. I say do you offer to deliver them up to the plaintiff; give them back?

A. I do.

Mr. Miller: When?

Mr. Brewer: Right now.

Cross-examination.

By Mr. Miller:

Q. Mr. Lirio, I show you these orders. These orders were given you at the time you placed the order with the Autographic Register Company?

A. I think one was given to me each time.

Q. You signed these?

A. That is my signature as proprietor and president, and that is me personal.

Q. You read these when they were handed to you and before you signed them, did you not?

A. Why I don't believe I did. I trusted the fellow.

Q. You just signed offhand?

A. Yes.

Q. Didn't you notice that these were sold to you trading as the Lirio Basket and Paper Company and it stated that on the top, "Sold to Lirio Basket and Paper Company?" Didn't you read that?

A. It is most likely that I signed it before he ever finished the writing of the order, because I have done that before.

Q. Didn't you read on there when they were to be billed to you and how it was to be paid? Didn't you read that?

A. I don't remember that I did.

Q. Didn't you read that this was charged to you for account of the Vineland Farmers Exchange?

10) A. I don't just remember how that was, only that he and I both understood that that order was for the Vineland Farmers Exchange.

Q. I know, but you signed it to be charged to you, did you not?

A. To me and the Vineland Farmers Exchange, as its president.

Q. Doesn't it say opposite "Lirio," "Proprietor and President?"

A. "Proprietor and President."

20) Q. Yes, but it doesn't say, "Sold to Lirio Basket and Paper Company," right there?

A. For account.

Q. For account of the Vineland Farmers Exchange?

A. I am no expert.

Q. You are an awfully careless man, are you not?

A. It says, "For the account of the Vineland Farmers Exchange." I took it for granted that that means for the account of the Exchange.

30) Q. Now, Mr. Lirio, along in March these machines came, did they not, together with the printing?

A. I don't know that. I have carloads of stuff come in there every day and I never see it.

Q. When did you start to use these things?

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

Q. Didn't you hear this gentleman say that he came down in June and put two of them up for you?

A. Well, that don't say we used them.

Q. Didn't he say that you said you wouldn't want the balance until some other time?

A. If I am not mistaken, we began to use one of them at that time.

Q. You used one a while. Didn't they send you a bill for all of this stuff, charge you with it?

A. They may have, but we had an understanding between us that the Vineland Farmers Exchange was going to pay the whole bill from the sale of 10 stock.

Q. But it was sold to you. Doesn't it say one per cent thirty days? Doesn't it say May first, one per cent ten, net thirty days, and didn't the other one say April first, one per cent ten, net?

A. To be frank about it, the man was going to be paid the money to pay for these machines from one of the people representing the firm. He was to take three hundred dollars worth of stock in the company.

Q. He was to take stock for this? 20

A. Yes.

Q. But the poor man didn't have any more sense than to bill you for the machines, did he? This man came down in June or July, which was it—and set up one of these machines—he says one and you say two.

A. I say we used one of the machines.

Q. Did you pay the bill which was sent you for these five machines and all of this printing? Did you pay it? 30

A. Wasn't supposed to, according to our agreement.

Q. Then you didn't pay it, did you? This gentleman would come into your office once a month or so and look these things over, wouldn't he?

A. If he did, I didn't know it, because I am not there all the time.

Q. Didn't you see him when he came in there?

A. Once in a while I would see him.

Q. Didn't he have the machines straightened up for you?

A. As he says, he repaired them three or four or five times.

Q. And then along in September he rushed in one day and he said he would like to have a settlement of this account, didn't he?

10 A. No, he said he would like to have some money or its equivalent.

Q. What did you tell him?

A. Told him that I didn't feel that I should pay for the machines, as we had entered into an agreement that they shouldn't be paid for until they were in use, and he said, "How about if you give me a trade acceptance? Perhaps they can use it as collateral or something up there." He said, "They are up against it." I had no objection and I gave it to

20 him.

Q. They were out of luck; is that it? They were in hard luck?

A. Well, he made it appear that they were.

Q. So they were to discount this thing and get some money on it; isn't that the idea?

A. That I don't know.

Q. Well, you just said that they needed money or something they could use. Isn't that true, that they were to get something they could put in the

30 bank?

A. Well, I imagine so.

Q. So then you said, "Yes I will give you something that will fix you up all right," didn't you?

A. No, I didn't. Isn't that their own form there?

Q. Yes. Did he have it all ready for you or did he make it out right there? What did he have? Then you said you would give him something?

A. How is that?

Q. You say he said they were out of luck. You said he wanted the cash or its equivalent.

A. Said they could use money

Q. And you didn't have any money, did you, so you gave him a trade acceptance?

A. I didn't have any money for the machines, because they weren't in proper shape, and that was the agreement, that they weren't to be paid for.

Q. I thought you said you didn't have any money at the time. So then he flashed this on you, didn't he, Fred? 10

A. Well, to the best of my knowledge, I signed a blank for him and it was to be submitted to his company to see if they could use it.

Q. Well, that is your signature on there, isn't it, Fred?

A. Yes, that is my signature.

Q. And this trade acceptance was signed by you after it was directed to you, for four hundred and thirty-seven dollars and forty cents; isn't that so? 20

A. Yes.

Q. Now, Mr. Lirio, isn't that four hundred and thirty-seven dollars and forty cents the exact amount of the bill for the registers and the printing, with the exception of four dollars; isn't it?

A. I believe that it was intended to be for the amount of this —

Q. For the registers?

A. For the registers and carbon paper, and so forth. 30

Q. And you agreed to pay the bill, didn't you?

A. How is that?

Q. When you signed this, then you agreed to pay the bill, didn't you?

A. Well, I can't hardly say that I agreed to pay the bill, because I don't feel that the bill would be-

come due until they made the machines right. He agreed with me that these machines would be put in good working shape.

Q. What was this for, Mr. Lirio? What did you give them this for?

A. That was an accommodation to the man.

Q. Wasn't it in satisfaction of the back account?

A. Well, I can't say that it was, because the man told me that his firm needed some money and it may have been that if the machines didn't work right the thing would be avoided and I would get credit for part of it.

Q. According to your agreement—the bill was long overdue according to the billing to you, wasn't it?

A. We agreed upon that bill becoming long overdue.

Q. It was overdue, wasn't it?

A. When the machines were ordered it was agreed upon.

(Recess taken until Monday, June 6, 1927.)

30

Bridgeton, N. J., Monday, June 6, 1927.

(Trial of the cause resumed at ten A. M.)

ALFRED LIRIO, resumed

10

Cross-examination, continued.

By Mr. Miller:

Q. Mr. Lirio, how much money was there involved for printing in the order which you signed?

A. One item, fifty-six dollars.

Q. You mean that was for your personal use, fifty-six dollars?

A. That was the order that I signed which involved the Vineland Farmers Exchange printing altogether.

Q. Didn't the whole amount of the printing amount to one hundred and thirty-six dollars? I show you a bill and ask you if you ever received a bill like that.

A. I don't ever remember receiving a bill, a separate bill, for any printing. I don't ever remember seeing such an invoice.

Q. Does not the bill show one hundred and thirty-six dollars for 25,000 five and a half by eight and a half sales autofold trip, white, blue, golden rod, pink and salmon, amounting to one hundred and thirty-six dollars?

A. This bill shows that amount.

Q. Doesn't the order show that, too?

A. The order shows one hundred and sixty-eight dollars worth.

30

Q. Maybe that included five thousand five and a half by eight and a half sales autofold trip, white. Those have your individual name printed on them, didn't they, for the five thousand I am referring to?

A. By deducting that it leaves one hundred and forty dollars. There must be some carbon paper charged up in there along with it.

10 Q. So there is a discrepancy of four dollars. One hundred and thirty-six dollars is the amount of the bill for the printing, is it not?

A. For both the Vineland Farmers Exchange and Lirio Basket and Paper Company.

Q. There were five filers sold you at sixty dollars apiece. Those are the filers like this, five of them?

A. There was five of them ordered according to these slips here. Part intended for the Exchange and part for the paper company.

20 Q. They allowed you thirty-five dollars for some old filers, did they not?

A. Yes.

Q. So you add one hundred and thirty-six dollars to three hundred and one dollars and forty cents and that makes the exact amount of the trade acceptance, does it not?

A. The amount of the contract was four hundred and forty-one dollars and forty cents.

Q. What is the amount of the trade acceptance?

30 A. The amount filled in the trade acceptance is four hundred and thirty-seven dollars and forty cents.

Q. So that makes it four dollars less, does it not, than the bill?

A. Yes.

Q. Now, Mr. Lirio, you heard Mr. Ravenel testify, did you not?

A. I heard him testify.

Q. You heard him testify that the machines had been delivered to you and he came down in June, 1926, and set them up, two of them; is that correct?

A. Well, I don't remember when he did set them up. He set them up two or three different times. He insisted on setting them up but I thought it would be better not to set them up until we were ready to use them, as he knew.

Q. He set two of them up, did he not?

A. I don't remember. I believe he set up one or 10 two.

Q. Well, he testified he did. Did he testify correctly?

A. If he testified so, perhaps he done it.

Q. When they were set up what forms were used in the machines?

A. The forms—the paper, you mean?

Q. Yes.

A. Why, I believe the paper that was shipped by the company. 20

Q. Was it the blue paper or the pink paper or the white paper?

A. It seems to me that we used the white paper in one and the blue paper in the other.

Q. The white paper was for the Lirio Basket and Paper Company, was it not?

A. It was.

Q. And the blue paper was for the Vineland Farmers Exchange?

A. Yes. 30

Q. And after he set them up did you start in and use the machines?

A. We used them.

Q. How did they operate?

A. Why, they gave us a little bit of trouble immediately, the first day, but I didn't think anything

of it, because I had great faith in the man being able to make the machines operate perfectly.

Q. In July did they operate perfectly?

A. They never operated perfectly; never.

Q. In what way?

A. Well, the third copy seemed to be the copy that gave us the trouble. Some times it would come half way out and cut off, and that would throw everything following it, throw them all off, the number, and sometimes it would stick and tear off so that it wouldn't come out at all, causing sometimes twenty copies or more to be missing in the sealed box of the third copy. We couldn't tell, because the first and second copy would always come out.

Q. Well, you always had the second copy, anyway. It came right out of the machine when the order was written?

A. On top of the machine, yes.

Q. So you had that for your bill, didn't you? The customer had one and what became of the second?

A. The customer was given at all times, whether it was a cash or credit sale, the second copy.

Q. Then you kept the first copy. That came out of the machine for your file, so you could look at it?

A. That was the delivery slip, Mr. Miller.

Q. Well, what became of the delivery slip?

A. Well, the delivery slip, if a man paid cash, was receipted and given to him, and if he didn't pay cash he had to sign it and it was returned to us so as to eliminate any dispute that he did not receive the goods in time to come.

Q. Then you always had out of the machine a copy for your books, didn't you?

A. If we would have got the third copy, yes.

Q. Now came September, and Mr. Ravenel came to you and you gave him a trade acceptance for these

goods, signed by you did you not, the trade acceptance which has been offered in evidence?

A. Yes, I gave him a trade acceptance signed in blank because he told me the firm needed some money and I wanted to cooperate with him. I had faith in the man being able to make those machines operate all along. I thought probably there was some little thing they could probably straighten out.

Q. Well, you used the machines in August and September, did you not?

A. We had to use the machines only just for delivery slips. We couldn't use them any more as an accurate day book.

Q. You couldn't?

A. No. We haven't all along.

Q. After you found that out you used them in November, didn't you?

A. Just for delivery.

Q. And in December you used them?

A. We are using them today.

Q. Do you mean to say that if a man went to your office and made a cash purchase this morning, that he would receive one of these slips?

A. If there was an itemized bill he would.

Q. How many machines are you using this morning in your office?

A. With the exception of these two machines here and one in the car—we have been alternating these machines while the mechanic has been straightening out one of the machines so we could just transfer one machine that has been adjusted by our mechanic to take the place of the other so that we would have something to make a delivery slip with.

Q. So, Mr. Lirio, you notice that this dating is one per cent off for ten days. Did you ever notice that?

A. Well, I didn't pay any attention to it.

Q. And it is net thirty days after delivery. And the testimony is that this stuff was delivered in March. Now, at the end of thirty days did you pay this bill?

A. It wasn't supposed to be paid at that time.

Q. It says net thirty days?

A. Well, that wasn't —

Q. Then if you didn't pay the bill you made the first breach in the contract, didn't you?

10 A. From a technical standpoint perhaps the bills show that they were dated at that time, but Mr. Ravenel knows that it was arranged to be paid for at a later date when they were used.

Q. Now then, in September you gave him the trade acceptance because they needed money. Did you pay the trade acceptance when it fell due?

A. I did not.

Q. Then you made another breach in the contract, didn't you?

20 A. I suppose, if that is what you call it.

Q. So you made the breach in the contract to begin with. Now, Mr. Lirio, you formed the Vineland Farmers Exchange, did you not?

A. I did.

Q. And these goods were bought for their account and charged to you, were they not?

30 A. I explained to the man representing the company, Mr. Ravenel, that all the machines were for the Vineland Farmers Exchange with the exception of two, I think, and that they would be purchased at some later date by the exchange. A part of them were actually purchased for the Vineland— by the Vineland Farmers Exchange, but I notice that the bills don't show it that way, but that was the understanding that we had.

Q. Yes, but you signed an order, "Sold to Alfred Lirio, trading as the Lirio Basket and Paper Com-

pany," didn't you, and then afterwards you gave a trade acceptance in which you individually promised to pay the bill, didn't you?

A. I would have paid it if the machines had been right. I gave it just as sincerely as any other transaction I have ever entered into.

Q. How many of these machines are used by the Vineland Farmers Exchange?

A. They are all being used by the Vineland Farmers Exchange today. 10

Q. All of them?

A. And have been since January first.

Q. So you don't use the printing with your name on it any longer?

A. Not any more.

Q. How many machines did you use for your individual business before that time, before January first?

A. One machine.

Q. This machine makes three copies, does it? 20

A. It is supposed to make three copies, Mr. Miller.

Q. The original is for whom?

A. The original is—I wish you would put that question a little differently, because sometimes the original is a delivery slip and sometimes it is a receipt.

Q. I will make it more clear. When the customer comes in and gives you an order, you write on this with a lead pencil, do you not?

A. Yes. 30

Q. And that is the original, isn't it?

A. Yes.

Q. Then it makes two carbon copies?

A. That is right.

Q. What do you call them?

A. Duplicate and triplicate.

Q. As a matter of fact, it is marked on the bill, isn't it, whether it is a duplicate or triplicate?

A. I think so.

Q. Who gets the original?

A. If it is an order, the truck driver gets the original and the duplicate together.

Q. He delivers the duplicate to the customer?

A. Delivers the merchandise to the customer.

Q. And gives him the duplicate?

10 A. The duplicate.

Q. He makes him sign the original and brings that back?

A. Yes.

Q. So you have always got the original in your possession?

A. Not if he pays.

Q. Not if he pays cash?

A. Not if he pays the driver.

20 Q. Doesn't the driver bring back then the duplicate?

A. He brings back the money.

Q. Do you mean to say the customer keeps both?

A. We just destroy the second copy. That does not belong to anyone only the man that has given the order. Sometimes he may take it with him right there, the duplicate of the order.

Q. You destroy it?

30 A. The second copy. It belongs to the party. If he don't want it we throw it away, because it is intended to be his. If he can get hold of the original copy signed by our truck driver or anyone and receipted, that is the end of the transaction right there. We have nothing to show that he owes us the bill any more.

Q. Suppose a man bought a bill of goods, you would have an original, a duplicate and a triplicate, and you sent the driver out with it. He would take

the duplicate and he would sign the original, wouldn't he? If he paid cash what would then become of the duplicate and what would become of the original?

A. Give it all to him.

Q. You give it all to him?

A. Yes, because the second copy belongs to him on delivery and the original copy is the one that he would have to sign. If he didn't sign and return it as not paid, it would be his permanent receipt. That 10 is a bill.

Q. Did you sell your business to the Vineland Farmers Exchange?

Mr. Brewer: I don't see how that is relevant in this case.

The Court: One of your defenses is that part of this bill should be charged to that company. I will 20 permit it.

(Exception noted for plaintiff.)

(Question repeated.)

The Court: Can you answer that shortly? Have you sold it or have you not? Not whether you are going to or not, but has it been done.

30 Q. Have I sold the business since this transaction first started?

The Court: At any time up to this day have you sold your Lirio Basket and Paper Company to the Vineland Farmers Exchange?

A. Under the terms of an agreement, the Vine-

land Farmers Exchange is to take over the Lirio Basket and Paper Company in proportion according to the arrangements laid out by our attorney from time to time. Some time ago they took over one little part of it, for instance, some of the real estate, and gave me credit for it. Another time they have taken over something else, but they have not as yet taken me all over, the whole organization. The real estate has not been all taken over.

10 Q. Were these machines transferred over to them by you?

A. I believe that the portion that was billed, that I was under the impression was part of the Vineland Farmers Exchange, have always been part of the Vineland Farmers Exchange through our books. From the first when they came in, the paper and the machines, the obligation was assumed by the Vineland Exchange. I feel reasonably sure that they were. The balance of them were taken over and I was given credit for them on January first, the ones that were charged to the Lirio Basket and Paper Company. To the best of my knowledge, I think that is right.

20 Q. You sold them two machines or one machine? Two machines that were billed to you, you sold to the Vineland Farmers Exchange?

A. They were turned over to the Vineland Farmers Exchange.

A. They were turned over to the Vineland Farmers Exchange.

Q. You were to get money for them?

30 A. No, they weren't sold. They were turned over with whatever—the obligation was turned over. Not any money passed or anything.

Q. You received stock or something for them?

A. Haven't received anything. I will in time when the thing is complete.

Q. So now as the thing stands, the Vineland Far-

mers Exchange since January first owns all of these machines, five of them?

Mr. Brewer: I object to it as irrelevant.

The Court: Their claim is that the machines not being any good, he transferred them. I will permit it.

(Exception noted for plaintiff.)

10

(Question repeated.)

A. They have assumed the obligation to take the machines over that were sold to me, good or bad, along with the —

Q. Three of these machines are in operation this morning in the office of the Vineland Farmers Exchange?

A. Two. One in Vineland and one in Leesburg. 20

Q. And two here?

A. There is one down in the car.

Q. Now, Mr. Lirio, you operated one of these machines for yourself, didn't you?

A. I did.

Q. As the Lirio Basket and Paper Company. Where did you operate that machine?

A. When?

Q. When and where?

A. In the office of the Lirio Basket and Paper Company. 30

Q. You testified a few minutes ago that you had expended one thousand dollars for auditing the books. Was that expended to audit your books, personal books?

A. I said that it cost me over a thousand dollars.

Q. For your personal books?

A. Well —

Q. For this one machine that was operated?

A. To have a system put in there that would be practical to operate under.

Q. You mean a system to be used for the Vineland Farmers Exchange?

A. A system to be used by the Vineland Farmers Exchange and to use these machines.

10 Q. Yes, but did you give a thousand dollars to anybody to give you a system for your own personal use, the Lirio Basket and Paper Company?

A. I guaranteed to pay the bill personally, for whatever it cost.

Mr. Miller: I object to that and ask it be stricken out.

The Court: Yes, strike that out.

20 (Question repeated.)

A. I think I said it cost me over a thousand dollars to have the system installed.

Q. That was for the Vineland Farmers Exchange wasn't it?

A. It was for the Vineland Farmers Exchange.

Q. How much for your own personal use, Mr. Lirio?

30 A. I told you that under the terms of an agreement that I was to pay the bill myself, owing to the fact that these machines were involved. It is being charged to my account.

Q. That thousand dollars is to be paid by the Vineland Farmers Exchange, isn't it?

A. To be paid by Alfred Lirio personally.

Q. When was that done?

A. I think I made those arrangements in December, early in December, 1926.

Q. So you took these machines that were rotten, as you say, and paid one thousand dollars for a system so these machines could be operated thereon; is that correct?

A. I have always felt that these machines, with probably some factory adjustment, could be made to operate. It seems to me that they ought to be able to make them operate. I didn't have any trick in mind to stick the Vineland Farmers Exchange. 10

Q. Do you think, Mr. Lirio, that any factory would be justified in coming down and adjusting these machines when you wouldn't pay the bill?

A. I should think that would be a good reason for them to come down and adjust them.

Q. Did you complain when you signed the trade acceptance to Mr. Ravenel?

A. I did, and right there that day he went out and done something to one of the machines but it didn't last for two hours before it jammed. I think that day I took the machine apart myself and I found that the carbon paper had stuck on the third triplicate copy and carried the two top ones out, and I found the carbon paper sticking to the triplicate. 20

Q. Do the machines in the office of the Vineland Farmers Exchange look like that over there, as they are around the office?

A. I have seen that condition not less than fifty times when we carried the machine out and brought one in that had been prepared to take its place. 30

Q. There is a compartment in these machines, Mr. Lirio, in which the third copy is kept under lock and key?

A. There is.

Q. And if the bills in the compartment are dis-

arranged and taken out of numerical order, it causes the machine to jam, does it not?

A. No. It has nothing to do with the operating of the machine. That is after the operation.

Re-direct examination.

By Mr. Brewer:

10 Q. Mr. Lirio, you have testified on cross examination that your mechanic was continually making adjustments to these machines. Did that cost you any money?

A. I haven't any itemized bill of it.

Q. I say was that an expense to you?

A. It has been a great expense, because he costs me a lot of money, his time does.

Q. Are these machines that appear here in court just as they came out of the office?

20 A. Absolutely, with the exception of what I done here before the Court that day.

Mr. Brewer: I would like to offer this machine in evidence.

(Machine marked Exhibit D5.)

30 Mr. Brewer: I ask the plaintiff for the production of a letter written by Mr. Lirio on September eighteenth, 1926, addressed to the Autographic Register Company at Hoboken, New Jersey, in regard to these machines and in regard to the trade acceptance.

Mr. Miller: We haven't the letter.

The Court: Show him the copy you want to introduce.

Q. Is this a copy of the letter you wrote to the Autographic Register Company, the plaintiff in this case, on the eighteenth of September?

A. I dictated that letter.

Q. Was it mailed to them?

A. That I can't swear to. I never see the mail when it goes out, but I haven't heard of anything 10 ever slipping up like that. It is the regular form of business. I always dictate, sometimes twenty-five or thirty letters, and they are supposed to be mailed along with other business.

Mr. Brewer: I offer the copy in evidence.

Mr. Miller: Will you swear that it was mailed?

A. I can't swear it was mailed, because I don't 20 attend to that part of it.

The Court: If it was mailed it is properly admissible. If it was not mailed, of course, it is not.

A. Judge, I couldn't swear that any of the letters were ever mailed that I have dictated.

The Court: Do you have here any witness who does mail your letters? 30

A. No. Anyone is liable to take the mail out.

(Copy of letter marked D6 for identification).

Q. Wasn't that letter sent out in the general course of mail, as all your letters are?

A. Yes, supposed to have gone out in the mail, the same as all our mail, any letter or order.

Mr. Miller: If he will swear it was mailed, I do not object to the letter.

The Court: You see, if he dictated the letter and gave it to a party to mail, the theory is that it was mailed.

10

A. I will swear to that, that the theory is that it was mailed.

The Court: I will admit it.

(Copy of letter marked Exhibit D6.)

Q. Now, Mr. Lirio, in regard to these orders that were signed, was it ever agreed between you and the plaintiff that it was to become due May first and one per cent discount ten, net thirty days?

20

Mr. Miller: I object to the question because the order speaks for itself.

The Court: I sustain the objection.

Mr. Brewer: This is not a contract. This is simply the order blank that was signed at the time of the order. The contract was what was agreed upon at the time the order was given as to what it should be and what the machines should do.

30

The Court: The order blank has a certain stipulation in it. We must go by that.

Q. What was your contract in regard to the payment of these machines?

A. When I used them. When the Vineland Farmers Exchange used them which we were supposed to use at some future date. We didn't know when. Just as soon as it was necessary for each department to have their machines.

Q. Now, when you signed this trade acceptance in blank, did you authorize the plaintiff company to fill in down here where it says, "Due," the words "November first, 1926?"

10

A. Never authorized them only I signed it blank. They said they could use it as collateral. That is what the representative told me, and if I would only give it to them it would help them.

Q. When was that trade acceptance to become due?

A. No special time. Whenever everything was satisfactory and the machines were in good shape and the Exchange raised the money to pay it through the sale of some stock. That was the arrangement that was made with Mr. Ravenel. As I stated before, he was going to get Mr. Perry, I think —

20

Q. According to your agreement made with the plaintiff company, has this trade acceptance ever become due?

A. It has not become due, in my opinion.

Re-cross examination.

30

By Mr. Miller:

Q. Now, Mr. Lirio, you said when he called he said that the Autographic Register Company needed money. When Mr. Ravenel called with this trade

acceptance you stated he said that his company needed money. Didn't you testify to that?

A. Yes.

Q. And he wanted a trade acceptance, didn't he?

A. Yes.

Q. What did he want to do with the trade acceptance?

A. He said they could use it for collateral.

10 Q. Now, Mr. Lirio, you are a business man. You know that no paper is good without it has a due date on it some time. Isn't that true?

A. No, Mr. Miller, that is not true.

Q. Well, why would he want it if it didn't have a due date on it, for collateral?

A. An order signed can be deposited in some banks by some manufacturers and they can obtain credit on an order. They don't have to have the trade acceptance.

20 Q. It would have to be payable some time, wouldn't it?

A. Well, that some time was arranged verbally between Mr. Ravenel and I.

Q. A moment ago you testified that this money was due when the machines were set up. He set up two in June, didn't he, and wanted to set up the rest, so he said.

30 A. Oh, he wanted to set them up, but we didn't have use for the machines and they weren't to be paid for until they were in operation and working right.

Q. This was filled in for the amount, wasn't it?

A. Mr. Miller, it was absolutely blank when I signed it.

Q. It was?

A. Yes, sir.

Q. Now, Mr. Lirio, you signed this in red ink,

didn't you, and isn't the red ink written right over the top of the black ink?

A. Positively not.

Q. Look at it. You haven't looked at it. Look at it and see if it doesn't look that way, that the red ink was written over the black ink.

A. It was positively blank when I signed it.

Q. Nothing on it at all?

A. Absolutely blank. Mr. Brewer, can I show that 10 book there where the record shows it was given out blank.

Mr. Brewer: No, that won't be necessary.

LEWIS HADSELL, sworn for defendant.

Direct examination. 20

By Mr. Brewer:

Q. Mr. Hadsell, where do you reside?

A. Landis Township, Vineland.

Q. Are you an officer of the Vineland Farmers Exchange, Incorporated?

A. I am.

Q. What office do you hold?

A. Secretary and treasurer.

Q. On or about January twenty-ninth, 1926, did 30 your company order from the plaintiff in this case two registers and printed matter?

A. We did.

Mr. Miller: I object to that. The order speaks for itself.

The Court: He has answered it. I will let it stand.

Q. I show you Exhibit P2 and ask you is that a copy of the order your company gave for the machines in question.

A. It is.

Mr. Miller: I object to that. I move the answer be stricken out. It speaks for itself.

The Court: Here are the written orders. I cannot go outside of those, Mr. Brewer.

Mr. Brewer: They claim that is not the order of the Vineland Farmers Exchange.

The Court: Yes, but if we are going to question every order that is given there will be no end to litigation. I will sustain the objection.

Q. Did your company receive two of these machines in question?

A. We did.

Q. What agreement was there as to the payment for these machines?

Mr. Miller: I object to it unless he tells with whom.

The Court: Can you tell with whom the agreement was made, Mr. Hadsell?

A. Mr. Lirio.

The Court: I will permit that.

(Question repeated.)

A. I couldn't say, on account of Mr. Lirio had the whole contract and order, took care of that end of it.

Q. Did your company receive two of the machines?

A. We did.

Q. Did they operate satisfactorily?

A. Never have. The machines speak for themselves when you look at them.

Q. Did you have any trouble with the accounts that came out of these machines?

A. We have.

Q. Just what was that trouble?

A. The triplicate copy in that machine is the only thing that you can check your accounts with. Your duplicate and your original copies go out with the truck driver and they are supposed to bring the original back and leave the duplicate with the customer. The triplicate is supposed to be in that compartment, but hardly ever is in there because it jams. How can a machine be perfect when it jams like that one did on that desk there?

Q. Did any of these minor adjustments that have been testified to work?

A. Worked for a few minutes until it gets outside.

Q. Only worked for a few minutes?

A. Yes, sir.

Cross-examination.

By Mr. Miller:

Q. Mr. Hadsell, when did this trouble start? From the day they were set up?

A. From the day they were set up.

Q. You were employed by the Vineland Farmers Exchange?

A. I am.

Q. How long have you been employed by them?

A. Ever since they were incorporated in 1925.

Q. Mr. Hadsell, three of these machines are in use this morning in the office of the Vineland Farmers Exchange?

10 A. Three machines are not in use this morning.

Q. How many are in use?

A. Two are in use.

Q. You are running a terrible risk.

A. We are.

The Court: Do these two work satisfactorily, which you are using?

20 A. Judge, your Honor, they work probably for three or four copies and then maybe we will have three or four copies jam. Then you will have to adjust it and then three or four copies may work all right and then three or four copies may jam. Maybe one will work all right. It is nothing perfect. No dependence can be put in that machine, because it can't work perfect all the time. The representative says that it is a faulty operation. We have had him there and he had tried to make them work right and he would adjust for a few minutes and when he goes  
30 out it is on the blink again. If the machines were working perfectly—

Q. Are you talking about Mr. Ravenel here?

A. Yes, sir.

Q. He hasn't been there since when?

A. Well, he hasn't been there since—to my knowledge, since last Fall. I don't know whether he was there when I was out.

Q. He is the only representative you know, isn't he? Mr. Ravenel is the only representative you know?

A. They had another man on the territory. I don't know what his name is. Mr. Ravenel was transferred to Pennsylvania, I think it was.

Q. What position do you hold in the company?

A. Secretary and treasurer.

Q. Mr. Lirio says that you have spent a thousand dollars laying out a system for these machines. Is that true? He paid a thousand dollars for laying out a system for these machines. Is that so? 10

A. I don't understand what you mean by laying out a system for these machines.

(Question repeated.)

The Court: The question is did Mr. Lirio pay that amount or has the Farmers Exchange paid that amount or has someone paid it? The testimony is that it has cost a thousand dollars to lay out a system so these machines can operate. Mr. Miller's question, as I understand it is, did Mr. Lirio spend that. That is your question? 20

Mr. Miller: Yes.

A. We spent a thousand dollars.

The Court: Whom do you mean by "we?" 30

A. The Lirio Basket and Paper Company, and the Vineland Farmers Exchange has taken over that since January first.

Q. How much has the Vineland Farmers Exchange paid?

A. I can't give it to you offhand.

Q. When did they pay it?

A. Since last December.

Q. To how many people and when?

A. How many people?

Q. Yes.

A. I can't give you that data without the books.

Q. You knew he was spending the money as an officer of the company?

A. I did.

10 Q. When these machines worked rotten from the beginning, so you say?

A. I don't understand that question.

(Question repeated.)

A. I do.

Q. Who was paid this sum of money?

A. Who was paid?

Q. Yes.

20 A. The auditor. Part of it.

Q. Who is he?

Mr. Brewer: We will produce him.

The Court: What is the name of the auditor to whom the thousand dollars was paid?

A. S. G. Catchpole.

30 The Court: Where does he live?

A. Vineland, New Jersey; Landis Township.

Q. So in December you started to lay out the system for the Vineland Farmers Exchange, didn't you?

A. I don't get that, lay out the system.

The Court: You see, Mr. Lirio testified that he had to lay out a system to operate in connection with these machines and it cost him a thousand dollars to do it.

Q. And you have testified since December this money was paid.

A. I wouldn't say lay out a system. I would say checking the machines that are already in there.

10

By the Court:

Q. A system to check up these machines?

A. That is the idea. Not laying out a system, because that wouldn't have anything to do with the machines. The check up, was what it was.

Q. In other words, he devised a system to check up the machines?

A. That is why I asked what that question was so many times, because I didn't like that word.

20

LEONARD SHONE, sworn for defendant.

Direct examination.

By Mr. Brewer:

Q. Where do you reside, Mr. Shone?

30

A. Leesburg.

Q. What is your business?

A. Manager of a basket factory.

Q. Who is the owner of the basket factory?

A. Vineland Farmers Exchange.

Q. Have you had one of these machines in question in your office?

A. I have.

Q. Has it worked satisfactorily?

A. It has not.

Q. In what way has it not worked satisfactorily?

A. Well, the triplicate there, it doesn't push it out as it should. It doubles it up and cuts it off.

Q. By reason of that have you had trouble with your accounts in Leesburg?

A. Couldn't help but have if you didn't go over  
10 it.

Q. Did you depend on this machine to keep your accounts of the Leesburg factory?

A. I surely did.

Q. And by reason of the failure of this machine to work did your accounts become involved?

A. Well, of course, they didn't exactly become involved with me, because I have a chance—every time I made a slip I have a chance to see whether the other slip is there to correspond with it, which I had  
20 to turn in the office on Saturday, and if I hadn't paid attention, and strict attention, to it, it would have got me in bad. Sure it would.

Q. Did the company have to leave the machine unlocked for you so that you could get into the compartment?

A. Sure. I wouldn't have knowed nothing about my accounts if they hadn't.

Q. Then there was no safeguard on the machine, as it is supposed to have —

30 A. Not a bit.

Q. —from the employees of the office?

A. No, sir.

Cross-examination.

By Mr. Miller:

Q. How long have you been employed there, Mr. Shone?

A. I have been employed with the Vineland Farmers Exchange a year and six months.

Q. Do you remember when this machine was placed in your office? 10

A. The first of January.

Q. You didn't have one in before that?

A. No.

Q. You have had no trouble with your accounts, though, actual trouble, have you?

A. I haven't had any positive trouble, because I have paid attention to the machine. If I hadn't, I would have had.

Q. As far as you are concerned, there is no mix-up on your accounts? 20

A. A lot of mix-ups. It is a nuisance.

Q. Your accounts have been mixed up?

A. They haven't been mixed up.

Q. Because you pay attention?

A. I pay attention to the machine.

Q. Your accounts, so far as the Leesburg end is concerned are all right?

A. It wouldn't have been if I hadn't tore whole slips out of this machine.

Q. Is there one of these machines in there? 30

A. Yes, sir.

Q. This minute.

A. One of the machines in my office right now.

Q. Operating right now?

A. No, because I am not there.

Q. If you were there it would be operating, wouldn't it?

A. Yes.

Re-direct examination.

By Mr. Brewer:

Q. Mr. Shone, how many times have you brought that machine that was down in your office in Vineland and exchanged it for another one?

10 A. Three different times.

Q. You had to keep exchanging them in order to get them to work at all?

A. From two to three times a week regular I tear that machine all apart, tear the old copies out of it, all doubled up, and put new ones back in again and go on and keep my original number which I have to turn in to the office so they will know what become of the copy.

20 Q. And in doing that you lose a number of the slips, which are numbered numerically?

A. That is it, and if I didn't take this number that is all torn to pieces to the Vineland office, they wouldn't know what became of this number.

By Mr. Miller:

Q. You haven't lost anything in your place. Your accounts are straight this morning, are they not? I say your accounts are straight, as far as you know, right now?

30 A. I have kept my accounts straight:

Q. You have to adjust this machine once in a while, anyhow, don't you?

A. I do. If I didn't, it wouldn't work.

By Mr. Brewer:

Q. Mr. Shone, do you know of your own knowledge

that there has been no tampering with this machine by the other employees in your office?

A. I do.

Q. You do know that?

A. Yes, sir. I carry the key right in my own pocket and nobody goes in there only when I go in there.

SAMUEL G. CATCHPOLE, sworn for defendant. 10

Direct examination.

By Mr. Brewser:

Q. Mr. Catchpole, what is your business?

A. Systematizer; business systematizer.

Q. You are also an accountant and auditor?

A. Yes, sir. 20

Q. How long have you been in that business?

A. Thirty-five years.

Q. Thirty-five years?

A. Yes, sir, on and off.

Q. What do you receive for your services?

A. Two dollars and a half an hour.

Q. Have you been doing business for Mr. Lirio, the defendant in this case?

A. Yes, sir.

Q. Are you also doing business for a number of other merchants throughout the County of Cumberland? 30

A. Yes, sir.

Q. In what condition did you find the accounts of Mr. Lirio, the defendant in this case, which came forth from these machines in question?

A. There was no way to have an auditor's check

on them from that locked copy. They would become jammed and missing.

Q. Did you try to operate the machine?

A. No,

Q. What was your opinion as to the system that this machine produced?

A. I liked the idea very much as I used it before in Cleveland, but with this particular machine I condemned it soon after I engaged with Mr. Lirio, on account of the trouble that they had with it and I couldn't check.

Q. Did you advise Mr. Lirio in regard to the operation of these machines?

A. Several times.

Q. What did you advise him?

A. Throw it out.

Q. Have you had experience with this machine in other localities?

A. Not this particular machine. The Dayton machine I have had. I have used it to great advantage.

Q. Have you been successful in the audits of those other machines?

A. I have been.

Q. How long have you been working on these accounts?

A. Since December first, but that was for all of Mr. Lirio's interests.

Q. Will you just tell the Court and jury what it has cost Mr. Lirio for your services by reason of these machines not operating properly?

A. I put in four hundred and thirty-two hours,

Mr. Miller: He said, as I understood it, from December first, 1926?

A. Yes.

(Question repeated.)

The Court: As I understand that question, it is what has cost Mr. Lirio by reason of the defective operation of these machines. What have you charged him? Not to make out a general system or a new system, but these machines, the loss that they have occasioned him.

10

Mr. Brewer: I might put the question differently.

Q. What have you received for your services to date from Mr. Lirio?

Mr. Miller: Personally?

Mr. Brewer: I said from Mr. Lirio.

Mr. Miller: I object to the form of the question. he should say either personally or as an officer of the company.

20

The Court: You might add that, personally or as an officer of the company.

A. Ten hundred and eighty dollars since December first.

Q. About what part of that ten hundred and eighty dollars was caused by the defective operation of these machines, if you can tell us?

30

A. I should think I could have saved half of my time if I had had everything to suit.

Q. In other words, if these machines had properly operated and the accounts had been proper in shape

it would have cost Mr. Lirio five hundred dollars less money?

A. I should think so.

Q. In your check up of the accounts from these machines did you find any of the billheads missing?

A. Several. I had the bookkeeper repeatedly take a check so that I could have a check numerically and also alphabetically, and there would be copies missing, and that destroyed the auditor's copy. I sug-

10 gested to Mr. Lirio that he give me the keys for those, or have them himself, I would go around to the different places and check them off, but that check has been destroyed by the machine not working properly.

Q. What about these minor adjustments of the machines? Do they do any good to the machines?

A. For a little while, but I consider they are major adjustments.

20 Q. You mean that there are major adjustments necessary?

A. Yes. The mechanic seems to be at the machines every once in a while.

Q. In other words, the machine is mechanically no good; is that the idea?

A. It doesn't work to suit me or to suit the business.

Cross-examination.

30 By Mr. Miller:

Q. Now, Mr. Catchpole, do you know how to operate one of these machines?

A. No.

Q. Did you ever see a machine like that before?

A. No, I haven't, not just like this one. I have seen the Dayton machine and have operated them.

Q. So you don't know anything about how to adjust it?

A. No.

Q. Nor how to operate it, do you?

A. No.

Q. Did you ever operate the machines?

A. No, I didn't; not one of these.

Q. Did you ever examine it to see how it was built?

A. No, except they showed me the recess for the auditor's copy and I thought well of it. 10

Q. Not knowing anything about the machine, you said they were major defects?

A. Beg pardon?

Q. You said they were major defects?

A. I looked for the results. That is how I judged the machine.

Q. You say that these should come out of the box numerically, the triplicate should come out of the box numerically. Suppose someone took them away. 20

A. They couldn't. They couldn't take my copy because it was under lock and key.

Q. Somebody could take it, couldn't they?

A. Unless they had the key.

Q. How many keys are there to this box?

A. I don't know.

Q. If a man had a key he could go in there and take one away, couldn't he?

A. Sure.

Q. There would be something in there unless it was taken away, wouldn't there? 30

A. Yes.

Q. Well, there was always something there for you? You would find all of these slips for the sales, wouldn't you?

A. They were jammed up and then they would have to take and throw them away.

Q. Throw them away?

A. Yes.

Q. After they were written on?

A. They were destroyed. I have seen them so destroyed I couldn't —

Q. You could decipher what had been done, couldn't you? You could examine that triplicate and see what had been done?

10 A. That wasn't my business.

The Court: Could you get the figures from these torn slips?

A. No. You see, I would leave that to the bookkeeper. I didn't treat the work; I just diagnosed it. I would only go in a few hours every now and then and see that everything was working.

20 Q. Do you post into the ledger from these triplicates, or does somebody else do the posting?

A. The bookkeeper.

Q. Then you don't know actually what happened if the bookkeeper does the posting?

A. I do, because I checked them.

Q. You checked the charge with the duplicates which they have?

A. With the trial balance.

Q. You go over these triplicates, then, and every once in a while there is one missing?

A. Several times.

30 Q. He is using these machines this minute?

A. Beg pardon?

Q. The company is using the machines this very moment?

A. They are using one in their office and one at Leesburg.

Q. Right now?

A. I suppose.

Q. So you don't know anything about the mechanical part of the machine?

A. Only the results.

Q. You don't know how to adjust it and you never operated it and you don't do the posting yourself. The man that has posted from this triplicate could have lost the triplicate, couldn't he? The man that posts could lose the triplicate, couldn't he?

A. Yes.

10 Q. And you wouldn't know it? Isn't that so? 10

A. I would have that third copy of it that was working correctly. I would have it myself.

Q. Yes, but they take them out and they post every day and they could lose it and you wouldn't know it. You would know it wasn't there, but you wouldn't know what became of it?

A. No.

20 Q. Now, on a cash sale both copies are thrown away. That is the duplicate and the triplicate. Are they thrown away? 20

A. For a cash sale that goes through the cash register.

Q. It goes through the machine, though, doesn't it?

A. Well, they take a recapitulation every day of the items so as to analyze them.

Q. You take a charge like that, wouldn't that show in the machine at all?

A. Yes, they run that through, but mostly always it goes through the cash machine. 30

Q. If that goes through the cash machine you don't go altogether by this, do you?

A. Cash. This is principally for charges.

Q. This is principally for charges? So you have to depend on something else besides these machines, don't you? Depend on the cash register and depend on this, too?

A. Yes.

Q. Well, the cash register might not be correct.

A. But it is. We have no trouble. We can balance that every day.

Q. This might be correct, too, but if they destroyed the triplicates, or did not hand out the triplicates, or if the bookkeeper separates the triplicates you wouldn't know what became of them, would you?

10 A. I have seen that jam many and many a time when I have been there.

Q. I know, but they are using it now?

A. Yes.

Q. Contrary to your advice? Contrary to your advice they are using this machine this very moment?

A. Yes.

Q. Who pays you? Does the Vineland Farmers Exchange pay you?

20 A. It is practically Mr. Lirio.

Q. Never mind practically. Who has been paying you all this money? The Vineland Farmers Exchange? How do you get paid? By check?

A. Yes.

Q. Whose check?

A. The Vineland Farmers Exchange.

Q. They have paid you all this money, haven't they?

A. What I have had, yes.

30 Q. What you have had has been paid by the Vineland Farmers Exchange? So you have never received one cent from Mr. Lirio personally, his personal check, have you?

A. I don't recall.

Re-direct examination.

By Mr. Brewser:

Q. What was your agreement? With whom was your agreement made as to——

A. Mr. Lirio.

Mr. Miller: I object to that.

10

The Court: I will admit it.

Q. Who do you look to for the payment, Mr. Catchpole?

Mr. Miller: I object to that. He has testified he has been paid by the Vineland Farmers Exchange. Where are your damages to Mr. Lirio?

Mr. Brewer: It makes no difference by whom it has been paid. It is a question of with whom he made the agreement, who is responsible for it. Somebody else might voluntarily pay it, but who is liable for it, with whom did he make the agreement? 20

The Court: That makes no difference that I can see. He says he has been paid by the Vineland Farmers Exchange. If you want to show some agreement between Mr. Lirio and them, all right. This man has been paid. 30

Q. You made an agreement with Mr. Lirio?

A. Yes, sir.

Q. What was that agreement?

A. To fix up the books and the terms.

Q. How much was he to pay you for it?

A. Two and a half an hour.

Q. There is still some part of the money coming to you, is there not?

A. Yes, sir.

Q. How much of that is coming to you still?

A. About three hundred dollars.

Q. And that part of it the Vineland Farmers Exchange haven't paid you, have they?

A. No.

10 Q. Did you attempt to devise some scheme whereby the faulty operation of this machine might be overcome?

A. No.

Q. In the operation of this machine isn't every transaction, whether it is a cash or whether it is a charge, supposed to be registered by the triplicate copy which goes in under lock and key?

A. It should be.

Q. There should be a record there in the machine of every transaction, cash, charge or any other?

20 A. There should be.

Q. Weren't some of these copies absolutely destroyed by the machine itself?

A. Yes.

Q. How many of these copies were destroyed by the machine itself?

A. I have no idea, but I know in two or three times that I have asked the bookkeeper to check them up, she has perhaps had twenty or thirty missing, sometimes less.

30

Mr. Miller: I object to that.

The Court: Strike out the answer.

(Question repeated.)

The Court: That is, of your own knowledge, not

what somebody has told you, but what you know personally.

A. I can't tell you how many, but I know several times in the office I have seen them tear them out and they were all scrap paper and you couldn't decipher anything from them and they have thrown them into the waste paper basket.

Q. As the papers came out of this machine they were so destroyed that you couldn't tell anything 10 about them, could you?

A. That is it.

Re-cross examination.

By Mr. Miller:

Q. You have seen them tear them out, the copy out? Which copy?

A. The whole three. The whole three would be 20 punched.

Q. And throw them in the waste paper basket?

A. Yes.

Q. Didn't you as the auditor of this company try to find out what was on those slips when they were thrown into the waste paper basket?

A. The previous ones is the ones I was after. These that they threw out were try-outs.

Q. They weren't actual sales?

A. Yes, we would find there were several of the 30 others that hadn't been copied.

Q. Didn't you get the numbers of those that were destroyed?

A. Yes, we got the numbers, but we couldn't locate them.

Q. I know, but the numbers of the ones that were

destroyed, didn't you write them down in a memorandum so it wouldn't interfere with your system?

A. In several cases they did.

Q. Did you?

A. No, I didn't.

Q. Why didn't you?

A. I left that to the bookkeeper. I was teaching them and checking things up.

Q. How many times did she do this unbeknownst to you?

A. I don't know, I am sure.

Q. That might have scrambled up your system, might not it?

A. No, it didn't, because I was waiting for a first class machine.

Q. You have been paid all but three hundred dollars, and the seven hundred dollars has been paid by the Vineland Farmers Exchange. Don't you look to the Farmers Exchange for the balance of that money?

A. I looked to Mr. Lirio for all of it.

Q. Personally, or for the Exchange? You want to be careful.

A. Mr. Lirio engaged me.

Q. He did? Engaged you for what?

A. Putting the system in —

Q. For himself?

A. — and treating it. For the Vineland Farmers Exchange and the Lirio Basket and the Leeburg Basket.

Q. Didn't you know you were working for the Farmers Exchange?

A. Yes, I do, and for Mr. Lirio, as well.

DEFENDANT RESTS.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

Mr. Miller: May we have the privilege of looking over one of these machines? In the presence of the Court we want to look them over.

The Court: Right here, now, in the presence of the jury? 10

Mr. Miller: That is what we want to do.

The Court: Surely.

Mr. Brewer: These machines as they are are in just the condition they came out of the office. We would not want them mixed up at all.

Mr. Miller: We want to show that they work perfectly. 20

The Court: They want to test them out to see whether they work. I will let them do that. That is what we want to know.

Mr. Brewer: Here are the machines, and the jury can decide that.

The Court: I will give them a chance to operate these right now and explain them. 30

JOHN J. RUDDY, recalled.

(Mr. Ruddy operated the various machines and made the following statement:)

The Witness: These aren't in numerical order now, your Honor. I did that purposely, these tickets here I wanted to show you that if you take them  
 10 out of numerical order, as I have done, the machine will not operate and the very condition that is brought about here will check itself instantly. The machine will not operate, as I tell you. I have taken out four copies, taken our four more, threw them out of numerical order, so as to bring about the very condition that they testify to and if the forms are out  
 20 of numerical order the machine will not operate. It can't. They say they can lose sales, but they absolutely cannot. When the forms are out of numerical order, which they say has happened, if you endeavor to operate the machine it won't operate. I can do the same thing with that one. The reason why this machine is jammed here, the tickets this minute are out of numerical order. 8088, 8087, 8086. That is the reason they are jammed.

By the Court:

Q. If they don't put these numbers in to correspond, the machine jams?  
 30

A. Yes.

Q. And if the numbers go in the way they should, the machine works and can't jam?

A. Yes. I will show you what I actually witnessed in Mr. Lirio's establishment myself. I have the purchase here. I made this purchase unbeknown to him. The machine worked perfectly. I will show

you what I saw them a few minutes later do. The proper way to operate the machine is to bring the handle over. Here is how to break the machine. I will show you what they do. This machine needs no help. I am going to throw this machine out of working order and this is what I actually saw them do down there, hold their hand in front of the ticket. In the desire to complete the sale quick and get the ticket and get it off, they will hold their hand there, and there goes a set of tickets inside. I showed you a moment ago if you throw them out of numerical order, the machine won't operate. If you touch the tickets, which they do—I watched Mr. Lirio myself do it—they take this off and grab the ticket, and that is what will happen if you touch the ticket. If you want to look at the other one, I will be glad to do it. This one here happens to have a broken part on it and this is the first one in my experience to see with a broken part. I will show you another little feature about the equipment  
 10 here to show you that. The theory is that you write on here whatever it may be, the date, the order, the address. I will bring this out a distance and I will show you something else, your Honor. I deliberately pull these tickets out of alignment. You will notice I have thrown those two forms out of alignment, which means it is out of alignment with the tripli-  
 20 cate copy inside. I take the handle forward and the machine says it is automatically wrong and brings it back into place immediately. It has got to be right. Now, another thing about it—the other one is in the box. There it is laying right there in the box. Here is another proof as to the functioning of the machines. I have got my original and duplicate tickets out of the machine to do with as I want, give them to the customer, post in the ledger, but I haven't cut off the third ticket inside,  
 30

and you can't operate that register until you cut that third ticket off. That handle won't go back into place. Mr. Lirio or any of his employees can't send it back into place until they cut off that record, so he is bound to get it. When I bring that down, your record is cut off inside. If you want to do the same thing with the other one, I will be pleased to do it.

10 Mr. Miller: Let us have another copy.

A. Let Mr. Lirio work it. He is here.

Cross-examination.

By Mr. Brewer:

Q. So you are the district manager of this company, are you?

20 A. That is right.

Q. You went down to Mr. Lirio's office, I understand?

A. That is right.

Q. You knew when you went down there that these machines didn't operate properly, didn't you?

A. I did not.

Q. You didn't? Then what was your purpose in going down to Mr. Lirio's office?

30 A. I will be very pleased to tell you. We had started suit against Mr. Lirio, and I came down to visit our counsel, Mr. Miller, and I also had occasion to go to Atlantic City the same day, and Mr.— I don't know whether it was Mr. Miller or myself that suggested, but I did not know just where Mr. Lirio's plant was, and I said, "I am going to need some gas; I might stop in there and get some and see if everything is working all right as of this

date," and I did. I stopped in and bought some gas

Q. Did you introduce yourself?

A. Excuse me until I answer the question.

The Court: Let him finish his answer.

A. I stopped in there and made the purchase and purposely asked for a receipt, watched them write it up, watched them pull the lever, I wanted to see the ticket come out, saw them grab it and tear it off and everything was fine. I stood around a moment. Mr. Lirio came along. At that time I didn't know it was Mr. Lirio, which I now know. He came along, wrote out a sale very speedily, pulled the handle over, gave out a ticket, everything was fine and dandy. Just at that time I was walking out. Another party was with me, and Mr. Lirio said, "You taken care of?" I said, "Fine," and we went on our way. 10 20

Q. When you went down there to Mr. Lirio's office you knew that these machines were not operating properly, didn't you?

A. I did not.

Q. You didn't?

A. No, sir.

Q. Then why did you testify on the stand that you were notified by the agent after this suit was brought that Mr. Lirio's machines were not operating properly? 30

A. I didn't testify that the machines were not operating properly. I testified that I had heard or had reported to me from our representative that Mr. Lirio had rendered some complaint to him, but he left the equipment in proper functioning order or proper working order.

Q. That is it. Then you knew that according to Mr. Lirio they weren't working properly?

A. I knew no such a thing.

Q. You went down there as manager of this company and instead of introducing yourself as the manager of this company and coming out like a man and asking him if you could make some adjustments, you went down there as a spy. That was the idea, was it?

10 A. If you care to term it as a spy, you are privileged to use your own judgment, but I am not entering into a suit or—just a minute. Let me answer.

The Court: Mr. Brewer, let him finish his answer.

Mr. Brewer: I would like him to answer my questions not argue on them. I would like a direct answer to my question and not sermons here. I would  
20 like to have him answer what I ask him and not go into a long talk on the subject.

The Court: Go ahead and finish your answer.

A. When we start suit against a customer, and fortunately we don't have to start many, we do not allow our representatives, whether district managers or otherwise, to become involved in the matter once we have started suit, for fear of disrupting what has already taken place, and that is the  
30 reason —

Q. You wouldn't even make an adjustment to the machine?

A. There was no adjustment necessary.

Q. There was never any adjustment necessary?

A. At the time I made this purchase represented by this receipt there was no adjustment necessary.

Q. You saw that one check go through the machine, did you?

A. I saw this one and the one that followed it.

Q. And that was all?

A. And that was all.

Q. You didn't tell Mr. Lirio that you were manager of the company and that if there was anything that was wrong with the machine you would like to adjust it, make it right?

A. Mr. Lirio knew where to find — 10

Q. Please answer my question.

A. No.

The Court: Did you tell him you were the manager and connected with the company?

A. Of course not, no.

Re-direct examination. 20

By Mr. Miller:

Q. Mr. Ruddy, I told you that that machine was functioning, didn't I?

A. That is right.

Q. You were surprised?

A. Yes.

Q. And you went out to see if it was so?

A. Yes. 30

By Mr. Brewer:

Q. You were surprised that the machine was functioning right, were you?

A. With the complaints that we had heard through the deposition.

Q. You had heard complaints, then?

A. Through a deposition.

Q. You have testified that when you went out there you didn't know there was anything wrong with these machines. You just testified to this jury five minutes ago.

A. I didn't testify in the light that you endeavor to bring out. When I went out there, to the best of my knowledge there was no trouble with the machines. The reason why Mr. Lirio refused to pay  
10 the bill in accordance with the —

Q. Never mind that.

A. I must answer, your Honor.

The Court: Go ahead.

A. The reason why Mr. Lirio didn't pay the bill according to the depositions, was because he was having trouble with them. That is a matter of record, so it speaks for itself.  
20

The Court: You got your knowledge from the depositions taken before trial?

A. You are right, your Honor.

Q. You knew he was having trouble and you expected to find trouble and you were surprised when you went out there and saw this one ticket go through the machine that it worked, weren't you? You were surprised?

30 A. I didn't know he was having trouble and I was surprised to know that he would make a complaint.

Q. If you knew that he was having trouble with these machines and you were the manager of the company, why didn't you make yourself known to him and say, "Mr. Lirio, if you are having trouble with the machines I would be glad to adjust them for you?"

A. I answered that to the best of my ability about three minutes ago.

(One of the machine slips to which the witness testified was offered in evidence and marked Exhibit D7.)

CHARLES F. RAVENEL, recalled.

10

Direct examination.

By Mr. Miller:

Q. I show you this trade acceptance. You heard Mr. Lirio testify?

A. I did.

Q. He says the amount in there was blank. Was that blank in there?  
20

A. No, the amount was written in. Everything was written in there except the company's signature.

The Court: Was the due date in?

A. The due date was in. Everything in there in my writing was in before he signed, outside of the company's signature, which I am not authorized to sign.  
30

(No cross-examination.)

DEENDANT'S TESTIMONY  
IN SUR-REBUTTAL.

ALFRED LIRIO, recalled.

Direct examination.

10 By Mr. Brewer:

Q. You heard Mr. Ravenel just testify that that trade acceptance was all filled in except the signature. Is that correct or incorrect?

A. I signed it blank when I signed it.

The Court: He has already testified to it.

20 Q. It was absolutely blank?

A. Absolutely blank.

(No cross-examination.)

TESTIMONY CLOSED.

30

MOTION TO STRIKE OUT DEFENSE.

Mr. Miller: I make a motion to strike out the defense in this case, and I call your Honor's attention to a case in 61 N. J. L., which holds that if, in a case of this kind, the defendant, having knowledge of the imperfection of any machine, should continue to use it, and use it up to this day, then in that case he cannot counter-claim. The testimony in this case is that he says the machines worked poorly from the start. The testimony is on the defendant's part that he complained about the machines to Mr. Ravenel, and notwithstanding that, he gave a trade acceptance payable November first, and then, notwithstanding that, he continued to use the machines, and the proof is in this case that they are in use at this very time. In that case, having knowledge of any defect which he says he had, then, of course, he could not set up any counter-claim against our complaint and he must rely on failure of consideration. That seems to be the case.

Mr. Brewer: I do not think there is any question whatever but what a counter-claim can be filed in a case of this kind for damages which are the result of the failure of consideration for the contract. The contract was made, warranty made that these machines would work properly, and that the money was not to become due until they did work properly. They never worked properly and the foundation of the defendant's business was undermined and he was obliged to secure an expert accountant and auditor to dig him out, all as the result of the improper operation of the machine, which was guaranteed to work properly, and which they guaranteed

to make work properly, and there is absolutely no question in my mind but what a counter-claim is absolutely proper.

The Court: What have you to say as to Mr. Miller's charge that after you contended the machines were not working properly, you continued to use them and you are using them today? What is your answer to that?

10

Mr. Brewer: We made frequent complaints to the company and to the men, and they kept promising and promising to fix them, and, not only that, but they said, your bill will not become due until we do put them in working order. Mr. Lirio used them and kept on using them in hopes. They were the only thing he had to depend on. He started with them and he was in hopes the company would perform their contract, which they never did.

20

The Court: I can see where he might have used them down to the beginning of the suit under, as he testified, a promise to make them good, but after suit brought I can hardly understand why he continued to use them. He knew they were suing him.

(Recess taken until 1.15 P. M.)

30

(Afternoon session, 1.15 P. M.)

Mr. Brewer: I would like to say just a word. That case I glanced over at noon, and it appears to be authority for the proposition that the defendant may have accepted the machine, but it does not hold that there is no right on the part of the defendant

to put in a set-off or counter-claim for the damage that he has sustained by reason of the failure of the machines to work. I cannot see how that is a parallel case at all. Here in this case the company told us the machines would work and kept asserting that they would work, and that they would fix them, and they claim that they worked but we did not know how to do it, yet they did not show us how to operate them, and certainly we should have the right to have the jury pass upon whether the plaintiff has performed its contract in this matter.

10

Mr. Miller: We are not suing the company. We are suing Mr. Alfred Lirio and his testimony is that he had knowledge from the time the machines were first set up that they did not work perfectly, that they did not do the work. In other words, to use his language, they were rotten. What did he do? He went on and gave us a trade acceptance and he says all of this money was expended by the company, not by him. His own witness says that from December until the day of the date when the suit was started he has got those machines in use and he could not charge us with any damage when he is using the machines. If he is entitled to anything, he is entitled to take off the value of the machines, but no damages for operating them. That is what I am driving at.

20

Mr. Brewer: The recoupment is for failure of consideration in the contract.

30

Mr. Miller: You do not recoup. You set up some damages which were never incurred by your client after he had knowledge, as he says.

The Court: Mr. Miller, in case the counter-claim

is stricken out, what claim, if any, has Mr. Brewer against your purchase price?

Mr. Miller: Of course, I don't agree with him. There should be a judgment entered against his client for one hundred and seventy dollars for the paper which he got. There is no question about that. If the machines did not work properly, of course, maybe our damages might be diminished somewhat on the value of the machines, but we are bound to recover. We say the machines were perfect. He says they did not operate perfectly. We have demonstrated they work perfectly.

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OPINION OF COURT.

The Court: I feel that he has waived that by continuing to use them. Here is the way I view the case: The bills for these machines are dated, one January 7th, 1925, and one January 29th, 1926, were placed under an order of Mr. Lirio for the Lirio Basket and Paper Company, one bill alone to them and one to the Lirio Basket and Paper Company for account of the Vineland Farmers Exchange. I feel that all of the machines were sold to the Lirio Basket and Paper Company, and that the Farmers Exchange does not enter into this controversy. On September 13th, 1926, Mr. Lirio accepted a trade acceptance, setting forth the amount of the claim, four hundred and thirty-seven dollars and forty cents. Ordinarily that would have waived any claim he had for the defective operation of these machines. In other words, if they were not operating satisfactorily, he should have refused to sign a trade acceptance some nine

months after the last machines were sold to him, but his story was that he signed it because the company needed money and, furthermore, they said that they would make the machines good. That might have been an inducement for him to accept this at that time, but after this, in January, 1927, this suit was brought and he continued to use these machines. I then feel that he had notice that the company was going to hold him for the amount of the bill, and then it was his duty to have discarded the use of the machines at once and state, "We hold them subject to your order." In other words, rescinded the contract. But the testimony is that he continued to use them, and I feel that he waived his right at that time to challenge the defects in these machines. I will, therefore, direct a verdict in favor of the plaintiff—how much is the amount you claim, Mr. Miller?

Mr. Miller: The amount of the trade acceptance plus interest.

The Court: Four hundred and thirty-seven dollars and forty cents?

Mr. Miller: I ask for the direction of a verdict for the full amount plus interest. It is just six months' interest, thirteen dollars and twelve cents.

The Court: That is four hundred and fifty dollars and fifty-two cents. I will direct that you bring in a verdict in that amount for the plaintiff.

DEFENDANT'S EXCEPTIONS.

Mr. Brewer: Counsel for the defendant excepts to the direction of a verdict for the plaintiff. The plaintiff in this case made a warranty and guaranty that the machines in question would be set up, adjusted and made to operate in a perfect manner, as has been brought out in the testimony. It has been shown that the machines never did operate and never did work in a satisfactory manner. The defendant is entitled to have the question of the non-performance of the agreement made between the plaintiff and defendant decided by a jury. The defendant holds that the question of the failure of consideration for this agreement and the damages sustained by reason of the non-performance of the agreement by the plaintiff should be decided by a jury, and that the question of whether or not the plaintiff warranted these machines to work in a proper manner is also a question to be decided by a jury. A jury should have the right to say what the damages were for the failure or partial failure of the consideration for this agreement. The plaintiff promised to put the machines in order and adjust them, and so kept on promising to do so, but failed to perform. The trade acceptance was signed totally in blank and was given with the understanding that before it became due the machines were to be put in working order, in condition for proper use. The machines were never put in proper condition and working order, and, therefore, according to the evidence, the trade acceptance never became due.

(Which exception is hereby noted.)

EXHIBIT P1.  
SALESMAN'S ORDER  
AUTOGRAPHIC REGISTER COMPANY

"Shouperior"  
(Trade-mark)

HOBOKEN, N. J. Jan. 7 1925 NO. 872  
SOLD TO Lirio Paper & Basket Co.  
FULL ADDRESS C. R. R. N. J. & East Ave.  
SHIP TO Vineland, N. J.

SHIP VIA 6 1-27 m. DATE SHIP Soon as can  
If You Specify Freight Our Traffic Dep't. will Route Shipment  
the Most Convenient and Cheapest Way for You  
Billing Instructions pl. 1-1%-10.

Quan.	Style	Size	How Used	Color, Grade	Finish, Etc.	Price	Amount
3	#9 Filer	#2	Trip			60.00	180.00
5 M	Sales "Lirio"	5 1/2 x 8 1/2	"	wh.	Arco	5.60	28.00
15 M	Reg. "Vine-land"	5 1/2 x 8 1/2	"				28.00
				5M "	"	5.60	M
				5M Bl.	"	5.90	
				5M G.R.	"	5.90	56.00
12	Carbon	8"	2 ply	Shoup.	.70		8.40

less allowance on 2 S./A. 17.50 ea. 300.40  
Ter. No. Customer's Order No. 35.00

Salesman  
Ravenel

Please ship the above in accordance with your usual terms and conditions which are on the reverse side of customer's copy.

Signed Lirio Bros. Paper Co.  
By Alfred Lirio, Prop.  
Matrix Numbers

Proof Type Send to  
Yes Change Mr. Lirio

PRINTING SPECIFICATIONS

Total M.	No. to Roll	Total Forms	Length	Paper
		Rolls	Full Throw	Diameter Tubes
60 M	Auto-Fold	Hd	8½	5½ #2 Filer

	Kind of Paper		Punch Holes	Print on Back	Serial Numbers	Start With	Stop At	Red Numbers
	Wanted	Color Grade						
1	White	Arco Blk.	2¾ Hd	X	1	5000		X
2	"	"	"	X	"	"	"	X
3	"	"	"	X	"	"	"	X
10	5 M ea.	"	Vineland Farmers Exch.	"	"	15000	"	X
	White	"	"	"	"	"	"	X
	Blue & Gold. Rd.	"	"	"	"	"	"	X

Form-SA-206

Unless specified we will use our own discretion as to color of consecutive numbers. Whenever possible it is preferable to allow our traffic dep't. to route shipment. Owing to various reasons production dep't. will decide upon the number of forms in a roll. CUSTOMER'S COPY—A typewritten acknowledgment will be sent embodying complete details.

(BACK OF SHEET)  
TERMS AND CONDITIONS

- 20 1% Ten Days or Thirty Days Net. F. O. B. Hoboken, N. J. All orders taken subject to acceptance by the Autographic Register Company at the Home Office, Hoboken, N. J. Orders as accepted and acknowledged are not subject to cancellation. No allowance for transportation. Any claims for damaged material, or possible incorrect filling of this order, must be presented in writing within 10 days after receipt of goods. We shall do our utmost to ship on the day wanted. If delayed for causes beyond our control we cannot guarantee delivery dates. Quantity of printed matter ordered is subject to an increase or decrease of 10% according to paper stock and press run required. On all shipments, our responsibility ceases after delivery to carrier in good order.

30

GUARANTEE  
SHOUPALIGNER MODELS  
(Manifolders and Recorders)

Any "Shoupaligner" model furnished on this order is designed solely for use with supplies manufactured by us, and the owner shall be entitled to all the benefits of our GUARANTEE SERVICE. When used with any supplies other than those furnished by us, we shall not be responsible for the proper operation of any "Shoupaligner" model, for inspection, or for any of the other specific benefits of our GUARANTEE SERVICE.

We specifically guarantee all "Shoupaligner" model registers as follows:

- 1. To make mechanical adjustments, with replacement of defective parts, without charge for two years from date of sale.
- 2. Subsequently to give a general repair and overhaul, and replace worn or broken parts at the factory, at cost plus transportation each way.
- 3. To make periodic inspections as necessary and when requested.
- 4. On exchange for a larger width "Shoupaligner" model on the first renewal order of supplies therefor, an allowance of 50% the original purchase price will be made.
- 5. This guarantee does not include exchanging old "Shoupaligner" model registers for new registers without payment of the usual charge for such exchanges.
- 6. This covers all guarantees, implied or expressed, as to repairs, service or exchanges, and no variation thereof shall be binding on the Company unless in writing from the Home Office and signed by an officer of the Company.

10

AUTOGRAPHIC REGISTER Co.  
Hoboken, N. J.

SA-213-7-15-2

EXHIBIT P2.

20

AUTOGRAPHIC REGISTER COMPANY  
SALESMAN'S ORDER

"Shouperior"  
(Trade-mark)

Orders as Accepted and Acknowledged  
are Not Subject to Cancellation  
HOBOKEN, N. J. Jan. 29 1926

SOLD TO Lirio Paper & Basket Co.  
FULL ADDRESS for a/c Vineland Farmers Exchange  
SHIP TO Vineland N. J.

AT 6-1-27 m.  
SHIP VIA C. R. R. N. J. DATE SHIP (With order #872)  
If You Specify Freight Our Traffic Dep't. Will Route Shipment  
the Most Convenient and Cheapest Way for You

30

Billing Instructions May 1—1%—10-net 30  
Color, Grade

Quan.	Style	Size	How Used	Finish, Etc.	Price	Amount
2	#9 Filer	2			60.00	120.00
10 M.	Recg. Record	5½x8½	Tripl.	5M. Pink Arco	5.60M	56.00
				5M. Salmon Arco		

(Copy same as order 872)

Ter. No. Customer's Order No.  
80  
Salesman  
Ravenel

Please ship the above in accordance with your usual terms and conditions which are on the reverse side of customer's copy.  
Signed Alfred Lirio, Prop.-Pres.  
By

Proof Type Send to Matrix Numbers  
Change

PRINTING SPECIFICATIONS

10

Total M.	No. to Roll	Total Forms	Length	Diameter	Paper tubes
		Rolls	Full Throw		
30 M	Auto-Fold	Hd,	8 1/2	5 1/2	#2 Filer
	Kind of Paper				
	Wanted	Punch Holes	Print	Serial Numbers	Red Num-erals
	Color Grade	Ink C-C	Position	Back	Start With Stop At
1	Pink	Arco	Bk. 2 3/4	Top	X 15001 20,000
2	"	"	"	"	X " "
3	"	"	"	"	X " "
1	Salmon	"	"	"	X 20001 25000
2	"	"	"	"	X " "
3	"	"	"	"	X " "

20

Form-SA-206  
Unless specified we will use our own discretion as to color of consecutive numbers. Whenever possible it is preferable to allow our traffic dep't. to route shipment. Owing to various reasons production dep't. will decide upon the number of forms in a roll.  
CUSTOMER'S COPY—A typewritten acknowledgment will be sent embodying complete details.

(BACK OF SHEET)  
(Back of Sheet exact Duplicate of Back of Exhibit P.1)

30

EXHIBIT D3.

Agricultural 6-1-27M  
Supplies Manufacturers  
LIRIO BASKET & PAPER CO.  
Office  
C. R. R. N. J. & East Ave.  
Vineland, N. J.  
Bell Phone 261.

10

Date 192

M  
Address  
Order No. Forwarded by  
Quantity Description of Articles Amount

No. 2001 Folio Total

ALL CLAIMS SHOULD BE REPORTED IMMEDIATELY  
[ 1 ] Received by 20

ORIGINAL  
66166 Shouperior System Autographic Register Co.,  
N. Y. & Hoboken.

30

EXHIBIT D4.

Agricultural Supplies 6-1-27 M  
Manufacturers

PACKERS & SHIPPERS  
OF

10 VINELAND FARMERS' EXCHANGE, INC.

Division No.....  
Office

C. R. R. N. J. & East Ave.  
Vineland, N. J.  
Bell Phone 261

Plant  
Leesburg, N. J.

Date 192

20 M  
Address  
Order No. Forwarded by  
Quantity Description of Articles Amount

No. 20003 Folio Total

ALL CLAIMS SHOULD BE REPORTED IMMEDIATELY

[ 1 ] Received by

ORIGINAL

66166 Shouperior System Autographic Register Co.,  
N. Y. & Hoboken.

30

EXHIBIT P3.

Trade Acceptance.

6/1/27  
M.

"Sept. 13, 1926. \$437.40

.....After..... Pay to the order 10  
of Autographic Register Co. Hoboken, N. J.  
Four hundred and thirty seven and 40/100 Dollars.  
The obligation of the acceptor hereof arises out of  
the purchase of goods from the Drawer.

John N. Lambert

Autographic Register Co.

To Lirio Paper & Basket Co.

Vineland, N. J.

Due Nov. 1, 1926

Accepted

20

Date Sept. 13, 1926

Payable at Tradesmens Bank,

Vineland, N. J.

Alfred Lirio,

Prop."

30

## EXHIBIT D6.

DEFENDANT'S LETTER TO PLAINTIFF  
6-6-27 M Sept. 18, 1926.

Autographic Register Company,  
Hoboken, New Jersey.  
Attention C. F. Ravenel

10 Dear Sir:

We have not heard what disposition you have made of the trade acceptance given you Sept. 13th as it was signed blank as you requested. I feel that you should enlighten me at once what has become of same.

20 I will be compelled to return these registers unless they can be made to operate 100% perfect as the accuracy of my accounts depend entirely upon these machines and as you know there is to be one used for each department. Each time that you have adjusted them a short time after they seemed to be out of adjustment after a few copies were put through the machines.

I would be pleased to see you at your earliest convenience as all of the arrangements have been made with you and I am sure that you will take care of me.

30

Yours very truly,

AL

## OPINION.

(Filed Feb. 6, 1928.)

NEW JERSEY SUPREME COURT.  
No. 92, October Term, 1927.

10  
 \_\_\_\_\_  
 AUTOGRAPHIC REGISTER  
 COMPANY,  
*Plaintiff-Appellee,*  
 v.  
 ALFRED LIRIO, trading as  
 LIRIO BASKET AND PAPER  
 COMPANY,  
*Defendant-Appella* 20

Submitted October 14, 1927; decided January 5, 1928.

Appeal from Common Pleas Court—Cumberland  
County.

30  
 \_\_\_\_\_  
 Before JUSTICES PARKER, MINTURN and CAMPBELL.

\_\_\_\_\_

For appellant, CHARLES P. BREWER.  
For appellee, EDWIN F. MILLER.

*Per Curiam:*

This is an appeal from a judgment in favor of plaintiff below entered upon a verdict directed by the learned trial Judge.

The action was brought to recover the selling price of certain cash register machines and equipment.

The complaint was originally in two counts; one declaring upon book account and the other for the price and value of goods sold and delivered.

10 At the opening of the trial, and upon notice previously given, the complaint was amended by adding a third count declaring upon a trade acceptance.

It is upon this count that appellee seems to have stood at the trial although the defense went in several directions.

It was upon the theory that recovery was sought upon the trade acceptance that the trial Court directed the verdict.

20 As we find that there was error in such direction we are not passing upon the other questions raised.

There was testimony that this trade acceptance was fully executed at the time of its delivery and was unconditional in its terms. There was also testimony that at the time of delivery it was in blank except for the signature of appellant and was delivered to the appellee purely as an accommodation to it and upon the agreement that it would not become due and payable unless and until the machines in question were made to operate satisfactorily.

30 There was, therefore, a question for solution by the jury. If the trade acceptance was, as contended for by the appellee, complete at the time of delivery or if not complete but subsequently was completed as agreed upon and was unconditional, then appellee was entitled to recover, but, upon the other hand, if it was not complete at delivery and was filled out

in a manner not authorized and it was conditional, as asserted by appellant, and such condition had not been met, then appellee was not entitled to have a recovery thereon.

For this reason, therefore, the judgment below is reversed, with costs.

## NOTICE OF ARGUMENT. 10

(Filed Sept. 20, 1928.)

## NEW JERSEY COURT OF ERRORS AND APPEALS.

AUTOGRAPHIC REGISTER  
COMPANY, a corporation  
of the State of New  
Jersey,

*Plaintiff-Appellant,*

v.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
COMPANY,

*Defendant-Appellee.*

On Appeal.  
Notice of Argument.

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30

SIR:

Take notice of the argument of the issue joined in this cause before the Court of Errors and Appeals of New Jersey, to be held at the State House in the City of Trenton, in the State of New Jersey, on the

third Tuesday in October, nineteen hundred and twenty-eight, at eleven o'clock in the forenoon of said day or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

EDWIN F. MILLER,  
*Attorney of Appellant.*

10

[ENDORSED.]

Dated September 19, 1928.  
To Charles P. Brewer, Esq.,  
Attorney of Appellee.

20

Service of a copy of the within notice of argument acknowledged this nineteenth day of September, 1928.

Charles P. Brewer,  
Attorney of Appellee and  
Defendant Below.

30

GROUND'S OF APPEAL.

(Filed July 2, 1928.)

NEW JERSEY SUPREME COURT.

AUTOGRAPHIC REGISTER  
COMPANY, a corporation  
of the State of New  
Jersey,  
*Plaintiff-Appellant,*  
v.  
ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER  
COMPANY,  
*Defendant-Appellee.*

Action at Law.  
Notice of Appeal.  
Grounds of Appeal.

10

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*To Charles P. Brewer, Esquire, Attorney of Defendant-Appellee:*

Take notice, that the plaintiff-appellant, Autographic Register Co., a corporation of the State of New Jersey, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause, upon the following grounds:

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1. That the Supreme Court erred in reversing the judgment of the Cumberland County Court of Common Pleas, whereas it should have sustained judg-

ment in favor of the plaintiff and against the defendant; and in this there was error.

2. That the Supreme Court reversed the judgment of the Cumberland County Court of Common Pleas upon the ground that the plaintiff-appellant declared upon the trade acceptance mentioned in the complaint alone, whereas the record shows that the plaintiff-appellant declared also upon the book account for which the trade acceptance was given, as well, and never abandoned any count in the complaint; and further, that there was no dispute between the plaintiff-appellant and the defendant-appellee as to the amount sued for; and in this there was error.

3. That the trial Judge in the court below properly directed the verdict because the defendant-appellee did not in his pleadings recoup any loss for the value of the registers or printing; that the defendant-appellee claimed special damages that he did not prove; and in this there was error.

4. That the Supreme Court reversed the judgment of the Cumberland County Court of Common Pleas when the Judge properly directed the verdict, as all of the evidence was that the defendant-appellee had accepted the registers mentioned in the complaint and did not prove any damages, as alleged in his defense; and in this there was error.

5. That the Supreme Court erred when it reversed the judgment of the Cumberland County Court of Common Pleas when the direction of the verdict by the Judge was proper, as there was no evidence on the part of the defendant-appellee disproving: (a)

The amount sued upon; (b) That Mr. Lirio, the defendant-appellee, was the proper party sued; (c) That demand for payment was made when due and not made by the defendant-appellee; (d) That the defendant-appellee accepted the goods; he transferred the goods to the Vineland Farmers' Exchange, a corporation; and further, the autographic registers and printing were in constant use from the time installed, down to the date of the trial; (e) That the defendant-appellee never offered to rescind the contract or return the goods; and further, (f) that there was no evidence showing any damage that the defendant-appellee had sustained, so that a jury could calculate the same.

EDWIN F. MILLER,  
Attorney of Plaintiff-  
Appellant.

20

[ENDORSED.]

Service of the within notice of appeal and grounds is hereby acknowledged this 30th day of June, 1928.

Charles P. Brewer,  
Attorney of Defendant-  
Appellee.

30

# COURT OF ERRORS AND APPEALS

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AUTOGRAPHIC REGISTER COMPANY

*Plaintiff-Appellant.*

vs.

ALFRED LIRIO, trading as

LIRIO BASKET & PAPER COMPANY

*Defendant-Appellee*

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ACTION AT LAW ON APPEAL

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## BRIEF OF THE PLAINTIFF-APPELLANT

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1. On January 7, 1926, Alfred Lirio, individually, trading as Lirio Basket & Paper Company, ordered five (5) No. 9 Filers (Autographic Registers) totalling \$300.00, less a credit of \$35.00 for old machines returned, and printing for use with the same, amounting to \$176.40, total sum \$440.00, to be paid thirty days after delivery. (See Exhibits "P1 and P2," Pages 145-147-56-68-69 State of the Case. Admitted also in Answer and Counterclaim P. 12 and 13).

2. On March 30, 1926, five Autographic registers, together with the printing to go with the same, were delivered to the Defendant-Appellee Lirio, trading as Lirio Basket & Paper Company (P. 52 State of the Case).

3. In April or May, 1926, two of the registers were set up in operation and used in Defendant-Appellee's office (P. 52-53), and Mr. Ravenel, Salesman, called once a month to service the registers (P.53).

4. In June and July, 1926, Ravenel, Salesman of Plaintiff-Appellant, called upon Mr. Lirio and requested payment for the bill for the registers and printing, then past due and owing. (P. 53 State of the Case and see Exhibits "P 1 and P 2."). The Defendant-Appellee Lirio did not pay the same and promised to pay the bill in August, 1926, which promise was not kept (P. 53), thereby he made a breach in his contract (P. 94).

5. On September 13, 1926, over nine months after the date of the order above mentioned and five months after the machines were in use by the Defendant-Appellee Lirio (P. 52-53), he, Lirio, gave the Plaintiff-Appellant, Autographic Register Company, a trade acceptance in the sum of \$437.40 (Exhibit "P 3" Page 151 State of the Case) in full payment of the order, then past due (P. 28-85-86-87). The trade acceptance was due November 1, 1926, and Alfred Lirio, trading as Lirio Basket & Paper Company, would not honor the same, and

it is still due and unpaid (P. 29-94), thereby Lirio, Defendant-Appellee made another breach in his contract (P. 94).

6. The Vineland Farmers' Exchange is a corporation of the State of New Jersey (P. 68) and Mr. Alfred Lirio is its President (P. 58). On March 30, 1926, the Autographic Registers were delivered (P. 52) and at that time Alfred Lirio, individually, trading as Lirio Basket & Paper Company, and the Vineland Farmers' Exchange, a corporation he had formed to take over his business, occupied the same office. (P. 55-56). Three of the machines and the printing that went with them were immediately turned over to the Vineland Farmers' Exchange, the corporation, by Alfred Lirio, the Defendant-Appellee, and two of them were retained, with printing, by Alfred Lirio, Defendant-Appellee (P. 98-99). Early in December, 1926, three months after the trade acceptance for \$437.40 had been given Plaintiff-Appellant by Lirio, and one month after its dishonor, Lirio, as President of the Vineland Farmers' Exchange and for it, the said corporation, installed a system of bookkeeping, using the Autographic registers and the printing that went with them. (P. 100-101). On January 1, 1927, Lirio turned over the remaining two Autographic registers he had retained, to the Vineland Farmers' Exchange, for value (P. 98-99) and so, all of the machines were then owned by the Vineland Farmers' Exchange (P. 95-98-99) and Mr. Lirio had nothing further as an individual

## POINTS

### I.

THE SUPREME COURT ERRED IN REVERSING THE JUDGMENT OF THE CUMBERLAND COUNTY COURT OF COMMON PLEAS WHEN IT SHOULD HAVE SUSTAINED JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT.

(Covering 1st, 2nd and 5th ground of Appeal).

### II.

THE DEFENDANT DID NOT IN HIS PLEADINGS RECOUP ANY LOSS FOR THE VALUE OF THE REGISTERS OR PRINTING; THE DEFENDANT-APPELLEE CLAIMS SPECIAL DAMAGES HE DID NOT PROVE.

(Covering 3rd ground of Appeal).

### III.

THE DEFENDANT DID NOT RESCIND THE CONTRACT AND MADE ALL OF THE BREACHES IN THE SAME AND ACCEPTED THE GOODS.

(Covering 4th ground of Appeal. P. 5 in Book).

### I.

THE SUPREME COURT ERRED IN REVERSING THE JUDGMENT OF THE CUMBERLAND COUNTY COURT OF COMMON PLEAS WHEN IT SHOULD HAVE SUSTAINED JUDGMENT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT.

(Covering 1st, 2nd and 5th ground of Appeal)

The Judge properly directed the verdict as all of the evidence was that the defendant had accepted the registers and did not prove any damage as alleged in his defense. There was no evidence controverting:

1. The amount sued upon.
2. That Mr. Lirio was the proper party sued; he never denied it; the orders and trade acceptance, Answer and counterclaim filed proves it.
3. That demand for payment was made when due and not met by the defendant, who thereby made a breach in his contract.
4. That the defendant accepted the goods; the trade acceptance proves it; he transferred all the goods to the corporation and further, the Auto-graphic registers were in constant use from the time installed down to the date of trial.
5. That the defendant never offered to rescind the contract or return the goods; he sold them.

6. That there was no evidence showing any damage the defendant had sustained. The money was paid by the Vineland Farmers' Exchange for laying out a system for the goods sued for taken over by it from Lirio nine months after delivery to him.

7. That payment has not been made.

Then what was there for any jury to decide and pass upon?

The defendant in error in his brief below complained because the original action, the suit, was brought upon the book account and afterwards the Judge, upon notice, allowed the Plaintiff-Appellant to amend the pleadings by inserting a Count declaring upon the trade acceptance. He says he is surprised when the Judge made an order that no proof was necessary on the part of the plaintiff, showing the amount due and owing. (P. 49). This is founded upon the defendant's own testimony, in his examination before trial, (P. 28-29).

There was nothing for a jury to decide and pass upon; it could only speculate as to the damages.

The defendant in error in his brief, below complained because in the original action, the suit, was brought upon the book account and afterwards the Judge, upon notice, allowed the Plaintiff-Appellant to amend the pleadings by inserting a Count declaring upon the trade acceptance. He said below he was surprised when the Judge made an order that no proof was necessary on the part of the plaintiff,

showing the amount due and owing upon the book account (P. 49). This is founded upon the defendant's own testimony, in his examination before trial, (P. 28-29).

Q. "There is no defense to the amount, is there?"

A. "Only the damages, if we are entitled to them; loss of time and other damages in the defective machines."

In some states the Courts hold in a situation like this, the declaration should be upon the book account. Some Courts hold where the note is given in satisfaction of a book account, the plaintiff should declare on the same and in other Courts, it is held that the plaintiff should declare upon the note alone.

Ruling Case Law, Vol. 23 Tit. Sales,  
Section 273 P. 1448.

If plaintiff had brought suit alone on the book account, then defendant would have defended on the ground that it should have been brought on the trade acceptance—and if suit had been brought on the trade acceptance alone, defendant would have defended suit should have been brought on the book account. As it is, he has been accommodated both ways and therefore, should not complain.

Plaintiff-Appellant insists that the Supreme Court erred when in the opinion, it stated that the trade acceptance was delivered to the Appellee purely as an accommodation to it. This could not

be. It was given for consideration. Accommodation notes are made without consideration. Bouvier's Law Dictionary defines an accommodation paper as follows: "Promissory notes or bills of exchange made, accepted or endorsed without any consideration therefore." (Also see *Thom vs Kibbee*, 62 Law, P. 753).

The trade acceptance was for the same amount as the bill, so it could not have been an accommodation paper.

Be that as it may, according to a late decision in *Charles Berger vs Darminio* in *New Jersey Advance Reports*, September 22, 1928, P. 875, Justice Katzenbach in his opinion says: "The suit is between the maker and payee of the note and the defendant is entitled, therefore, to make the same defenses as if the suit was brought upon the book account." This case is the same as the case above cited, the difference being that this case has been tried, whereas the case of *Berger vs Darminio*, above cited, has not been presented in open Court.

## II.

THE DEFENDANT DID NOT IN HIS PLEADINGS RECOUP ANY LOSS FOR THE VALUE OF THE REGISTERS OR PRINTING; THE DEFENDANT-APPELLEE CLAIMS SPECIAL DAMAGES HE DID NOT PROVE.

(Covering 3rd ground of Appeal).

1. The defense is not for the diminution in the value of the machines or printing, but that "In consequence and by reason of the failure of the plaintiff to perform said contract of sale and furnish the defendant with said machines, assembled, set up, adjusted and placed in working order, so that the defendant might use the same, the defendant has been caused great expense to do the work the machines would have performed." (See answer, P. 14).

2. All of the testimony in the case produced by the defendant, is expense incurred by the Vineland Farmers' Exchange, the corporation to whom the machines had been sold by Lirio. No where in the testimony does it appear that the defendant expended any money whatsoever or incurred a loss. Moreover, according to the testimony, he was not entitled to recover any special damage, as appears by his own testimony, even if he had expended money.

3. Counsel calls attention to the Court, that so far as Alfred Lirio is concerned, he has not suffered

## III.

THE DEFENDANT DID NOT RESCIND THE CONTRACT AND MADE ALL OF THE BREACHES IN THE SAME AND ACCEPTED THE GOODS.

(Covering 4th ground of Appeal. P. 5 in book).

1. The bill was due thirty days after delivery and the testimony is the goods were delivered the latter part of March or the first of April, 1926 and was payable thirty days after that date, so about May 1, 1926, the total amount of the bill was due. Mr. Lirio never paid the bill, although importuned in June, July, August and September, when he gave the trade acceptance. Quoting from Mechem on Sales, Par. 1143:

In the section just cited, the author, quoting from Lord Blackburn in the case therein referred to, says:

"The rule of law, as I always understood it, is that where there is a contract in which there are two parties, each side having to do something, if you see that the failure to perform one part of it goes to the root of the contract, goes to the foundation of the whole, it is a good defense to say, "I am not going on to perform my part of it when that which is the root of the whole and the substantial consideration for my performance is defeated by your misconduct."

So therefore, notwithstanding the breach in the first instance, the plaintiff continued to service the machines until December 1, 1926, and it was not a burden upon the plaintiff to service the machines after the breaches in the contract by the defendant, who did not pay his bill and which was long overdue.

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In conclusion, plaintiff calls attention that the Court below overlooked the fact that the Common Pleas Court had made an order that the plaintiff did not have to prove its book account. The Court below also stated that the defenses at the trial went in several directions, which it did for the reason that the Judge of the Common Pleas had made the order above stated and the Supreme Court did not pass upon the other questions raised.

All the case involved is whether or not the defendant is entitled to damages. Plaintiff insists damages cannot be assessed in favor of the defendant without speculating what they should be, as the state of the case reveals and therefore, insists that the judgment of the Common Pleas should be re-affirmed.

Respectfully submitted,

EDWIN F. MILLER

Of counsel with Plaintiff-Appellant.

**New Jersey Court of Errors and Appeals**

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AUTOGRAPHIC REGISTER COMPANY

*Plaintiff-Appellant,*

vs.

ALFRED LIRIO, trading as

LIRIO BASKET & PAPER COMPANY,

*Defendant-Appellee.*

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ACTION AT LAW

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ON APPEAL FROM SUPREME COURT

---

**BRIEF OF DEFENDANT-APPELLEE.**

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As stated in the opinion of the Supreme Court, on Page 154 State of Case, the judgment of the Court of Common Pleas, on a directed verdict in favor of the plaintiff, was reversed for the reason that the questions presented as to the time when the trade acceptance became due, and as to the conditions under which it was given, were questions of fact for the jury.

There was testimony on the part of the defendant, that at the time of delivery the trade acceptance was in blank except for the signature of the defendant, and that it was delivered to the plaintiff purely as an accommodation to it and would not become due and payable unless and until the machines in question were made to operate satisfactorily.

State of Case. Page 33 lines 22 to 30.  
and page 76.-77.-105.

There was presented on the part of the plaintiff, some testimony to the contrary.

There was, therefore, a question of fact for solution by the jury, decisive of the whole case; for if the trade acceptance was not complete at delivery and was filled out in a manner not authorized, and was conditional, and such condition had not been met, then plaintiff was not entitled to have a recovery thereon.

This point being decisive of the whole case, defendant-appellee respectfully insists that the Supreme Court made no error in reversing the judgment of the Cumberland County Court of Common Pleas.

The other points made by plaintiff-appellee in the brief used in the Supreme Court, hereto annexed.

Respectfully submitted,

CHARLES P. BREWER

*Of Counsel with Defendant-Appellee.*

NEW JERSEY SUPREME COURT.

AUTOGRAPHIA REGISTER CO.,  
a corporation of New Jersey,  
*Plaintiff-Respondent,*

vs.

ALFRED LIRIO, trading as  
LIRIO BASKET & PAPER CO.  
*Defendant-Appellant.*

ACTION AT LAW

ON APPEAL FROM CUMBERLAND COUNTY  
COURT OF COMMON PLEAS

BRIEF OF DEFENDANT-APPELLANT.

This is an action at law against Alfred Lirio, trading as Lirio Basket & Paper Company, on a book account, as well as (after amendment) on a trade acceptance, for the price of five book-keeping machines and bill heads therefor.

Two of said machines and a part of the bill heads were purchased by the Vineland Farmers Exchange, a corporation of New Jersey, of which Alfred Lirio is president.

The suit was brought on a book-account, and the Court, notwithstanding there was a disputed question of fact as to whom the credit was extended, and as to who purchased the machines and paper, made an order that the plaintiff would not be required to produce its original books of entry in proof of the book account; to which order an exception was allowed.

The plaintiff subsequently, at the time of the trial, was permitted to amend its complaint by adding a count on a trade acceptance.

The plaintiff at the time of the sale, made certain agreements, guarantees and warranties on said machines, which it failed to keep and perform.

The defendant gave the plaintiff a trade acceptance signed in blank upon the expressed condition that the trade acceptance was not to become due until the said machines were put in proper working order and the plaintiff's warranty performed.

The plaintiff, without authority, filled out the trade acceptance to become due November 1, 1926,

a definite date, and failed to perform its agreement and warranty.

The defense in the case was failure or partial failure of the consideration of the contract, and failure on the part of the plaintiff to perform its contract of warranty.

The evidence in the case presents a disputed case of fact.

At the close of the case upon a motion made by plaintiff to strike out the defense, the trial judge directed a verdict for the plaintiff against the defendant, Alfred Lirio, trading as Lirio Basket & Paper Co., for the full amount of the claim.

## POINTS

1. The Court directed a verdict in favor of the plaintiff and against the defendant for the full amount of the claim; when the evidence in the case presented a jury question:

As to whom the plaintiff sold the goods in question, and to whom the credit was given.

As to what the agreement was between the plaintiff and the defendant at the time the trade acceptance was given as to when it was to become due.

As to whether or not the trade acceptance, which was signed in blank, had been properly filled out according to the agreement made at the time it was given.

As to whether or not the plaintiff had performed its contract with defendant.

As to whether or not from the evidence submitted the defendant was entitled to damages, and in what amount, for breach of the warranty on the machines in question.

As to the amount of damages, if any, the defendant was entitled to recover by reason of the failure, or partial failure of the consideration of the contract.

2. The grounds upon which the Court directed a verdict, as set forth in his opinion, are erroneous and insufficient.

3. The Statute concerning the Sale of Goods, gives the buyer a right to accept or keep the goods and maintain an action against the seller for damages for breach of warranty.

4. The Court directed a verdict in favor of the plaintiff and thereby deprived the defendant of a good and legal defence,—viz: the breach of warranty on the sale of the machines, and the partial failure of the consideration of the contract.

5. As the pleadings stood at the time of the trial, the suit was upon a book account, as well as upon a trade acceptance, and therefore the Court erred in making an order that the plaintiff would not be required to produce its books of account in proof of its claim.

6. In the original action on the book account, the Court made an order that the plaintiff would not be required to produce its books of account in proof of its claim,—notwithstanding there was a dispute as to whom the goods were sold, as to whom the credit was given, and as to the amount of the bill which was due from this defendant.

7. The Court at the time of the trial made an order amending the complaint in a material manner, adding a count which materially changed the nature of the suit, and refused to afford the defendant an opportunity to put in an answer to the amended complaint and prepare his defence.

8. The Court refused to grant the defendants motion to dismiss the suit on the book account, after amending the complaint and changing the suit to an action on the trade acceptance; the suit on the book account being an improper suit as the trade acceptance was in existence at the time the suit on the book account was commenced.

9. The Court by directing a verdict has deprived the defendant of substantial rights to which he is justly and legally entitled.

## ARGUMENT

The Court erred in directing a verdict in favor of the plaintiff and against the defendant for the full amount of the claim, when the evidence in the case presented an issue triable by jury.

In the first place there is a question of fact as to whom the goods were sold, and to whom the credit was given.

The only proper way of proving a book account is by the books of original entry, which show not only the amount due, but also show to whom the goods were sold and the credit given.

These facts can not be proved by the testimony of witnesses without the production of said books.

This being a suit on a book account, as well as (after amendment) on a trade acceptance in the hands of the original party thereto, the defendant had the legal right to demand that the books of original entry be produced to prove the account, and to show to whom the credit was given.

The order of the Court deprived the defendant of this legal right; to which order an exception was allowed. Record page 49.

The preponderance of evidence is to the effect that part of the account was the bill of another party, viz: Vineland Farmer's Exchange.

See Record Page 23.

- “ “ 25. line 10 to 20.
- “ “ 34. line 30 to 36.
- “ “ 35. line 1 to 10.
- “ “ 36. line 1 to 7.
- “ “ 74. line 30 to 36.
- “ “ 75. line 1 to 20.
- “ “ 94. line 27 to 36.
- “ “ 80. line 12 to 22.
- “ “ 107. line 20 to 36.
- “ “ 108. line 21 to 26.
- “ “ 109. line 6 to 10.

The printed bill heads, Record page 150.

Exhibit P. 2. Record page 147.,—which is evidence that the bill was to be charged to the account of Vineland Farmers Exchange.

The admission of plaintiff that the agreement with Vineland Farmers Exchange was the usual one with a new organization starting,—that plaintiff took into consideration that it was dealing with a new organization, viz. Vineland Farmers Exchange. Record page 57.

The original books of entry were not produced, and there was no witness who testified on the part of the plaintiff who had any knowledge of the accounts of the plaintiff company.

The two witnesses produced by plaintiff, one of whom was not at the time of trial in the employ of plaintiff corporation, could not even testify of

their own knowledge as to whether or not the account had been paid. Record page 61-62 and 63 line 9 and 10. Defendant was allowed exceptions which are duly noted on Record pages 61-62.

There is a question of fact as to whether or not the trade acceptance, which was signed in blank, had been properly filled out according to the agreement made at the time it was given; and what the agreement was as to when the trade acceptance was to become due.

The preponderance of evidence is to the effect that the trade acceptance was signed in blank, with no due date specified therein. Record Exhibit P. 3., page 151. line 10.—“————— After—————”

Plaintiff's witness admitted that these blanks were left to be filled in by an authorized officer of plaintiff company. Record page 58. line 21 to 30. Page 59. line 1 to 10. Page 152. Page 76. line 12. to 17. Page 77. Page 105. line 8 to 30. and Page 138.

The evidence on the part of the defendant shows that the agreement was that the trade acceptance was not to become due until the machines were placed in proper working condition, and made satisfactory to defendant. Record page 33. line 22. to 30. and pages 76-77-105.

This point is substantiated to an extent by the fact that the trade acceptance was never filled out in the proper place as to when it would become due. Record page 151. Page 58. line 21 to 30.

Plaintiff, contrary to authority, endorsed on said trade acceptance a due date "Nov. 1, 1926."

The Negotiable Instrument Act, Comp. Statutes page 3736. Par. 14. distinctly sets forth that in order that such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given. Accordingly the plaintiff could not enforce the trade acceptance against the defendant.

The guarantee or warranty made on all machines sold by plaintiff company appears on the Record page 146. and 147. See also Page 29., lines 18 to 24.

In this case there were further terms and agreements entered into in regard to the performance of the machines and as to the time of payment therefor. See defendant's testimony beginning on Record page 23.

The preponderance of evidence is to the effect that plaintiff did not perform its agreements. Every witness on the part of the defendant testified to the defective operation of the machines.

There is evidence that defendant made many complaints to plaintiff as to the defective operation of the machines, and threatened to return them unless they were made to operate properly, but the plaintiff never placed the machines in proper working order. Record page 152. also pages 73-79-82-91 line 34 to 36,—92-109-110-114-115-116-120-122. Plaintiff admits that one of the machines has a broken part, Record page 131. line 17 to 20.—this part was never replaced as plaintiff agreed to do.

The evidence shows that the manager of plaintiff corporation came to the defendant's place of business, and instead of making himself known and taking up the matter of the repairs to the machines with defendant, he simply came as a SPY, and never attempted to straighten out the matter. Record page 134. This incident clearly shows the attitude of plaintiff corporation.

John J. Rudy, district manager of plaintiff corporation, testified to certain facts, and then on cross-examination contradicted himself. On Page 131 of the Record, he testified that he watched Mr. Lirio (on the occasion of his spying visit) operate the machine and it did not operate properly because of the way Mr. Lirio handled it,—and on page 133. he states that he saw Mr. Lirio operate the machine and everything was "fine and dandy."

This same witness was asked (Record page 133.) "When you went down there to Mr. Lirio's office you knew that these machines were not operating properly, didn't you?" "A. I did not." "Q. You didn't?" "A. No, sir." Then on Page 135 and 136. he contradicts himself,—he says he was surprised that the machines were functioning right,—and admits that he had received complaints as to their defective operation.

It was for the jury to decide from all this evidence, whether or not the defendant was entitled to damages and in what amount, for the failure or partial failure of the consideration of the contract; and for the breach of warranty.

In directing a verdict the trial judge failed to give the defendant the benefit of any defence. On the authority of *Woodward vs. Emmons* 61 N. J. L. 281, the defendant is entitled to such defence.

The Court directed a verdict on the authority of *Woodward vs. Emmons* 61 N. J. L. 281, which was the case cited by plaintiff on his motion to strike out the defence,—stating that if the defendant had discarded the use of the machines at the time suit was brought and recinded the contract, defendant could then have challenged the defects in the machines, but as he continued to use them

after suit was brought he waived his right at that time to challenge the defects in the machines.

The case of *Woodward vs. Emmons* appears to counsel, to hold quite the contrary, viz: that if after testing the machines and discovering defects which cause dissatisfaction, a vendee continues to use them for the purpose of convenience and profit such use constitutes an acceptance,—thus under this decision the defendant might be barred from doing what the Court suggested,—recinding the contract and returning the machines at the time suit was brought.

The case of *Woodward vs. Emmons* sustains the defendant's contention that defendant has a right to a defence of partial failure of consideration, and to counterclaim damages for breach of warranty.

See also—*Bouker vs. Randles*, 31 N. J. L. 335.  
*Wyckoff vs. Runyon*, 33 N. J. L. 107.  
*Hirsch vs. Verschur*, 93 N. J. L. 277.

Counsel for plaintiff, in making his motion to strike out defence,—Record page 139. and 141., admits that defendant may have a defence of partial failure of consideration. He further admits on page 142., that plaintiff's claim might be diminished somewhat on the value of the machines,—in other words it was a case for the jury to decide.

The Statute concerning the Sale of Goods,— gives the buyer a right to accept or keep the goods and to maintain an action against the seller for damages for breach of warranty.

Sale of Goods  
4 Comp. Statutes 4663., Sec. 69.

The plaintiff claims that the defendant admitted the amount of the bill was correct. He only admitted that the amount of the bill was in conformance with what the plaintiff agreed to charge for its machines, if the machines were as warranted. Defendant denied that the bill for all of these machines should have been charged to him, as the amount of credit extended to him was only \$265.40, but as the machines were not as represented to be (Record page 29. line 18. to 23.) he denied that even this amount was due plaintiff.

The defendant testified that by reason of the defective operation of said machines, his accounts became so mixed and confused that he was obliged to secure the services of an auditor or expert accountant to straighten them out. Record page 30., line 29 to 31.

This auditor, Samuel G. Catchpole, a man of thirty-five years experience in the business, testified that Alfred Lirio hired him and agreed to pay him

for his services (Record page 125-126), that the bill for his services amounted to about \$1000., and that he could have completed his audit in one-half the time, and at one half the expense, if the machines in question had properly operated. (Record page 119-120). The auditor testified to the defective operation of the machines.

As to points 6.-7.-8., defendant submits that the Court erred in his action on these motions, and counsel refers to his exceptions thereon. Record pages 47-48 and 49.

The defendant has been deprived of substantial rights to which he is justly and legally entitled; and defendant respectfully insists that the judgment under review should be reversed and a venire de novo awarded.

Respectfully submitted,

CHARLES P. BREWER,

*Of Counsel with Defendant-  
Appellant.*

**NEW JERSEY SUPREME COURT.**

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**AUTOGRAPHIC REGISTER CO.,**  
a corporation of New Jersey,  
Plaintiff-Respondent,

vs.

**ALFRED LIRIO, trading as**  
**LIRIO BASKET & PAPER CO.,**  
Defendant-Appellant.

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Action at Law

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On appeal from Cumberland County Court  
of Common Pleas.

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**Supplemental Brief of Defendant-Appellant.**

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The facts as stated in the brief of plaintiff-respondent are disputed, and are not supported by the evidence.

Only a part of the goods were ordered by Alfred Lirio, individually, viz. three (3) registers, and a part of the printed bill heads. Exhibit P. 1. Re-

cord 145., according to its date was given Jan. 7, 1925, by Lirio Basket & Paper Co. Exhibit P. 2., Record 147., according to its date was given Jan. 29, 1926, "for a/c Vineland Farmers' Exchange," and was signed by Alfred Lirio, president of the corporation.

As shown by Exhibit D. 3., Record 149., the printing on the first order was Lirio Basket & Paper Co., and the printing on the second order Exhibit D. 4., Record 150. was Vineland Farmers' Exchange, Inc. On Record 57. plaintiff admits the agreement with the Vineland Farmers' Exchange was the usual one with a new organization starting. The evidence of Lewis Hadsell, Secy. and Treas. of Vineland Farmers' Exchange,—Record 107.,—shows the second order was given by said corporation, and on page 109 this witness testifies that said corporation received two of the registers.

Plaintiff's salesman, Mr. Ravenel, admits that he made **little** adjustments only three or four times. Record 57., and the evidence of the defendant that the machines would work for only a short time after these **little** adjustments, is supported by the evidence of Lewis Hadsell, Secy, & Treas. of the Vineland Farmers' Exchange,—Record 109.

The defendant did not promise to pay the bill in August 1926., Record 87. lines 7-8-9.

Plaintiff admits,—Record 53.,—that defendant was not asked to pay in May 1926, because "That would be a little too early."

It is undoubtedly a jury question as to when the account became due, if it has ever become due according to the contracts made by plaintiff?

The plaintiff in his brief alleges that the trade acceptance was due Nov. 1, 1926,—this is a question for a jury to decide, as to when it became due, if due at all.

There is no such evidence that the Vineland Farmers' Exchange was formed for the purpose of taking over the business of defendant. This is not a fact. This corporation is a stock company of the farmers residing on the Vineland tract.

Plaintiff further states in its brief that three of the machines and the printed bill heads that went with them, were immediately turned over to Vineland Farmers' Exchange. These three machines were ordered by and received in the first place by said corporation.

The further statement is made that the remaining two machines were turned over to said corporation for value. Defendant denied he received any value for them, he testified Record 98., line 30., that the obligation was turned over. Counsel for defendant does not see how this is relevant or material to the question now to be decided.

The Auditor, Samuel G. Catchpole, was hired by the defendant, not to install a book-keeping system for Vineland Farmers' Exchange, as stated in plaintiff's brief, but for the purpose of checking up and straightening out defendant's accounts which had become involved through the use of these defective machines. Record 112. line 36 and page 113.

Plaintiff states no offers were made to return the machines. Counsel refers the Court to the letter, Record 152.

Counsel for plaintiff-respondent makes three points in his brief.

**As to Point 1.**

The answer and counter-claim certainly recoup loss for the value of the registers. The defendant is being sued for the purchase price of the machines, and in answer he sets up that said machines were defective and not according to contract and warranty, and that he does not owe plaintiff said amount until plaintiff has performed its contract.

Whereas, the form of this pleading is possibly not in as finished form or style as it might have been, it is nevertheless sufficient to answer the purpose.

Plaintiff claims there was no evidence of damage,—and that the machines were perfect. On this point the Court has but to refer to the evidence of each and every witness produced on the part of defendant,—which clearly shows the defective operation of the machines, and the failure of plaintiff to perform its contract and warranty.

The question as to whether or not there was any special damage proved is a jury question.

Counsel makes quite a point of the fact that part of the Auditor's bill was paid by a check of Vineland Farmers' Exchange. The testimony of the Auditor, Record 125. line 30. and top of page 126., clearly shows that the Auditor made his agreement with defendant, that he looked to the defendant for the payment of his bill, and that the defendant was the one liable for the payment of the

bill. The fact that the check that was paid to the Auditor on account of the bill, was a check of Vineland Farmers' Exchange, does not prove that Vineland Farmers' Exchange paid part of the bill,—the check may have been for money due defendant from the Vineland Farmers' Exchange.

The fact that defendant never rescinded the contract, does not prevent him from recouping damages.

The section of the Sale of Goods Act referred to by counsel for plaintiff, only refers to cases where the seller has had no notice or complaints from the purchaser. In the present case the defendant made many complaints to the plaintiff of the defective operation of the machines. Plaintiff admits receiving complaints on the average of once a month, and alleges that he made minor adjustments three or four times altogether. Record 57. lines 25 to 36. This section of the Act does not apply in this case.

There is no evidence that defendant sold his two machines to Vineland Farmers' Exchange. He testified that he turned over the obligation for the two machines he purchased to Vineland Farmers' Exchange, but that he did not receive any value therefor. The fact that he turned over this obligation for these two machines, does not relieve him from his obligation to pay plaintiff for these two machines, so much as they are worth, and as to how much they are worth is a jury question.

**As to Point 2.**

Reference is again made to the Sale of Goods Act, Section 69., (a) and (b),—which distinctly

give the buyer a right to accept or keep the goods and set up against the seller the breach of warranty.

The defendant was not obliged to rescind the contract.

Defendant denies that he made all the breaches in the contract, as stated in plaintiff's brief.

The quotation from Lord Blackburn, on page 5. of plaintiff's brief, supports defendant's case—in that the failure of plaintiff to furnish machines as agreed, and to perform its warranty, goes to the root of the contract, and it is a good defense for the defendant to say,—“I am not going on to perform my part of it when that which is the root of the whole and the substantial consideration for my performance is defeated by your misconduct.”

The total amount of the bill was not due May 1, 1926, as stated in plaintiff's brief. Plaintiff's own witness Record 52. and 53. admits he did not ask defendant to pay in the month of May 1926, because “That would be a little too early.” This statement of plaintiff shows that there was not a definite day set when this account would become due.

### As to Point 3.

Counsel for plaintiff, in his brief middle of page 7., admits,—“It is true that if there is a jury question anywhere in this case, the Judge has committed an error.”

Counsel for defendant respectfully insists that there are a number of important jury questions,—as set forth in his brief,—and that therefore the Judge erred in directing a verdict.

If this Court decides that by reason of the giving of the trade acceptance, the defendant became personally liable for the whole bill, then, there are still important jury questions to be decided, as to what the agreement was at the time of giving the trade acceptance as to when it was to become due; and as to whether or not the trade acceptance was filled up according to the authority given at the time it was signed in blank. The defendant insists that it was not so filled up, and if this be so, then, under the Negotiable Instrument Act, Comp. Statutes page 3736. Par. 14., the plaintiff could not enforce the trade acceptance against the defendant.

Counsel for plaintiff-respondent closes his brief by stating that if this judgment is not sustained that a great injustice will be done.

Counsel for defendant-appellant asks, will a great injustice be done to plaintiff to have its claim,—if it is a legitimate claim,—submitted to a jury of twelve good and lawful men?

On the other hand, a great injustice will be done to defendant, if he is deprived of his just and lawful right to have his case submitted to a jury of twelve good and lawful men.

Respectfully submitted,

CHARLES P. BREWER,

Of Counsel with Defendant-  
Appellant.

