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SUMMONS.

(Filed Aug. 15, 1927.)

THE STATE OF NEW JERSEY, SS: TO PRESTON P. 10
SWEETEN, DEFENDANT:

You are summoned to answer the annexed complaint of Liberty Title and (Seal) Trust Company, a Pennsylvania corporation, in an action at law in the New Jersey Supreme Court, and take notice that unless you file your answer to said complaint with the clerk of the Supreme Court, at Trenton, 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. 20

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our said Supreme Court, at Trenton, this 10th day of August, nineteen hundred and twenty-seven.

EDWARD J. KELLEHER,
Clerk.

BLEAKLY, STOCKWELL & BURLING,
Attorneys.

COMPLAINT.

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

10	LIBERTY TITLE & TRUST COMPANY,	} <i>Plaintiff,</i>	Action at Law. Complaint.
	v.	}	
	PRESTON P. SWEETEN, <i>Defendant.</i>		

20 The plaintiff, Liberty Title and Trust Company, a Pennsylvania corporation, with its principal office in the City and County of Philadelphia and State of Pennsylvania, aforesaid, says that:

30 1. On or about the 30th day of June, 1927, Sweeten Automobile Company, by James Sweeten, Jr., president, made, executed and delivered a promissory note to the order of themselves, payable at Liberty Title and Trust Company, Philadelphia, Pa., in the amount of \$15,000.00.

2. The said note, before maturity, was duly endorsed by said Sweeten Automobile Company, James Sweeten, Jr., president, by James Sweeten, Jr., individually, and by P. P. Sweeten, and plaintiff is the holder and owner of said note for value before maturity.

3. On the due date of said note, to wit, July 30, 1927, the plaintiff duly presented said note for payment but the same was not paid nor has any part ever since been paid. Said note was duly protested, the protest fees being \$2.08, and the whole amount of said note is now due and owing, together with protest fees and interest thereon from July 30, 1927. A copy of said note is attached hereto, made part hereof and marked Schedule A.

Plaintiff demands as damages the sum of \$15,000.00 together with interest thereon at the rate of six per cent from the 30th day of July, 1927, to date of judgment, together with costs of suit and protest fees in the amount of \$2.08, with interest thereon at the rate of six per cent from the 1st day of August, 1927, to the date of judgment.

BLEAKLY, STOCKWELL & BURLING,
Attorneys of Plaintiff.

20

SCHEDULE A.

\$15,000.00. Philadelphia, June 30, 1927.

Thirty days after date we promise to pay to the order of.....Ourselves.....

Fifteen Thousand and.....00/100 Dollars
at Liberty Title & Trust Co., Philadelphia, Pa.

Without defalcation. Value received.

No. 6670. SWEETEN AUTOMOBILE CO.,
James Sweeten, Jr., Pres. 30

[ENDORSED]

Sweeten Automobile Co.
James Sweeten, Jr., Pres.
James Sweeten, Jr.
P. P. Sweeten.

[ENDORSEMENT ON BACK OF SUMMONS AND COMPLAINT]

Service of a copy of the within summons and complaint is hereby acknowledged this 11th day of August, 1927, on behalf of P. P. Sweeten.

S. Rusling Leap,
Attorney for Defendant.

10

To the within named defendant:

Take notice that if the within summons and complaint be served upon you personally and you intend to make defense, then you must file 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 upon a corporation is deemed personal service.

20

Bleakly, Stockwell & Burling,
Attorneys.

30

DEMAND FOR SECURITY FOR COSTS.

(Filed August 25, 1927.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

Between
LIBERTY TITLE & TRUST
COMPANY,
Complainant,
and
PRESTON P. SWEETEN,
Defendant.)

Action at Law.
Demand for Security
for Costs.

10

*To Bleakly, Stockwell and Burling, Solicitors for
Liberty Title and Trust Company:*

20

Gentlemen:

Take notice that the plaintiff in the above-entitled cause is a non-resident, being a corporation of the State of Pennsylvania.

Security for costs is hereby demanded.

Dated August 13, 1927.

S. RUSLING LEAP,
Solicitor for Defendant.

[ENDORSEMENT ON BACK]

30

Due and legal service of the within demand for security for costs hereby acknowledged this 23rd day of August, 1927.

Bleakly, Stockwell & Burling,
Attorneys for Plaintiff.

NOTICE.

(Filed September 1, 1927.)

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY.

10

LIBERTY TITLE & TRUST COMPANY,	}	Action at Law. Notice.
<i>Plaintiff,</i>		
v.		
PRESTON P. SWEETEN, <i>Defendant.</i>	}	

20

To Preston Sweeten, and S. Rusling Leap, Attorney:

Take notice that in accordance with the demand, we have this day deposited with the clerk of the Supreme Court, the sum of \$100 to cover costs in this cause.

BLEAKLY, STOCKWELL & BURLING,
Attorneys for Plaintiff.

Dated Aug. 25, 1927.

30

[ENDORSEMENT ON BACK]

Service of a copy of the within notice
is hereby acknowledged.

S. Rusling Leap,
Attorney for Defendant.

ANSWER.

(Filed September 2, 1927.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

10

Between
 LIBERTY TITLE & TRUST
 COMPANY,
Complainant,
 and
 PRESTON P. SWEETEN,
Defendant.

Action at Law.
 Answer.

20

The defendant, Preston P. Sweeten, who resides at Pedricktown, Salem County, New Jersey, says that:

1. He admits that he endorsed a series of promissory notes for the Sweeten Automobile Company at the request of James Sweeten, Jr., but has no knowledge or information sufficient therewith to form a belief as to the date of making or date of execution or amount of said notes. 30

2. Repeats the answer to paragraph one in answer to two.

3. Denies the allegations in paragraph three and denies that the sum of \$15,000.00, together with interest and protest fees is due or that any other sum is so due on said note from this defendant to the plaintiff.

DEFENSES:

10 1. This defendant, being an accommodation endorser, did not receive notice of protest as required by provisions of the negotiable Instrument Act, in effect in the State of Pennsylvania and had no knowledge of the due date of said note.

2. Notice of protest was not sent to the place of residence of this defendant or place of business of this defendant.

20 S. RUSLING LEAP,
Attorney of Defendant,
Preston P. Sweeten.

[ENDORSEMENT ON BACK]

We consent to the filing of the within answer out of time.

30 Bleakly, Stockwell & Burling,
Attorneys of Plaintiff.
9-2-27.

AMENDED ANSWER.

(Filed September 21, 1927.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

10

Between
 LIBERTY TITLE & TRUST
 COMPANY,
Plaintiff,
 and
 PRESTON P. SWEETEN,
Defendant.

Action at Law.
Amended Answer.

20

The defendant, Preston P. Sweeten, who resides at Pedricktown, Salem County, New Jersey, says that:

1. He admits that he endorsed a series of promissory notes for the Sweeten Automobile Company at the request of James Sweeten, Jr., but has no knowledge or information sufficient wherewith to form a belief as to the date of making or date of execution or amount of said notes. 30
2. Repeats the answer to paragraph one in answer to two.

3. Denies the allegations in paragraph three and denies that the sum of \$15,000.000 together with interest and protest fees is due or that any other sum is so due on said note, from this defendant to the plaintiff.

DEFENSES:

1. This defendant being an accommodation endorser did not receive notice of dishonor or protest required by provisions of the Negotiable Instrument Act, in effect in the State of Pennsylvania and had no knowledge of the due date of said note.

2. Notice of dishonor or protest was not given in accordance with the provisions of the Negotiable Instrument Act, in effect in the State of Pennsylvania.

3. Defendant being entitled to notice of dishonor of the above note was discharged by failure of plaintiff to give such notice of dishonor or protest.

S. RUSLING LEAP,
Attorney for Defendant.

[ENDORSEMENT ON BACK]

30

Consent to the filing of the within amended answer is hereby given September 21, 1927.

Bleakly, Stockwell & Burling,
Attorneys of Plaintiff.

REPLY TO AMENDED ANSWER.

(Filed September 26, 1927.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

10

Between
LIBERTY TITLE & TRUST
COMPANY,
Plaintiff,
and
PRESTON P. SWEETEN,
Defendant.

Action at Law.
Reply to Amended
Answer.

20

Plaintiff, Liberty Title and Trust Company, joins
issue on the amended answer of the defendant.

BLEAKLY, STOCKWELL & BURLING,
Attorneys for Plaintiff.

30

We hereby consent to the above stipulation:

BLEAKLY, STOCKWELL & BURLING,
*Attorneys for Liberty Title &
Trust Company.*

S. RUSLING LEAP,
Attorney for Preston P. Sweeten.

10

POSTEA.

(Filed June 11, 1928.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

20

LIBERTY TITLE & TRUST
COMPANY,
Plaintiff,
v.
EDWARD C. WADDINGTON,
Trustee in Bankruptcy
for PRESTON P.
SWEETEN,
Defendant.

Action at Law.
Postea.

30

This case was tried before Honorable Frank B. Jess, with a jury, at the Salem Circuit, on June 4, 1928.

The jury rendered a general verdict against the defendant, Edward C. Waddington, trustee in bank-

ruptcy of Preston P. Sweeten, and in favor of the plaintiff for the sum of \$15,270.00.

FRANK B. JESS,
Judge.

STIPULATION.

10

(Filed July 7, 1928.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

	LIBERTY TITLE & TRUST	}	Action at Law.
	COMPANY,		
		}	Stipulation.
	<i>Plaintiff,</i>		
20	v.		
	PRESTON P. SWEETEN,	}	
	E. C. WADDINGTON,		
	Trustee,		
	<i>Defendant.</i>		

30 It appearing that plaintiff has deposited with the clerk of the Supreme Court the sum of one hundred dollars as security for costs, said deposit being made upon the demand of the defendant; and it further appearing that said cause has been determined in favor of the plaintiff.

It is, therefore, stipulated by and between counsel for plaintiff and counsel for defendant that the clerk of the Supreme Court may return to the plaintiff the said sum of one hundred dollars so deposited with

him as security for costs, without prejudice to the right of the defendant to appeal from said determination.

BLEAKLY, STOCKWELL & BURLING,
Attorneys for Plaintiff.
FRANK A. MATHEWS,
Attorney for Defendant.

10

NOTICE OF APPEAL AND GROUNDS.

(Filed March 26, 1929.)

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

20

LIBERTY TITLE & TRUST
COMPANY,
Plaintiff,
v.
PRESTON P. SWEETEN,
bankrupt, E. C. WAD-
DINGTON, trustee,
Defendant.

Action at Law.
Notice of Appeal and
Grounds.

30

*To Messrs. Bleakly, Stockwell & Burling, Attorneys
of the Plaintiff:*

Gentlemen:

Please take notice that the plaintiff in the above entitled cause 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 on the following ground, to wit:

I. Because the Supreme Court erred in giving the judgment for the plaintiff instead of the defendant, in that:

10 1. The learned trial Judge refused to grant the defendant's motion for non-suit at the conclusion of the plaintiff's case.

2. The learned trial Judge refused to direct a verdict for the defendant at the conclusion of the entire case.

20 3. That the learned trial Judge refused to charge, as requested by the defendant "that the burden of proof is on the plaintiff to show that they sent notice of protest to the defendant at his residence or place of business."

4. That the learned trial Judge refused to charge, as requested by the defendant "that the plaintiff must make diligent inquiry for address of defendant before they sent notice, and failure to make such inquiry and defendant not receiving notice releases the defendant."

30 5. That the learned trial Judge refused to charge, as requested by the defendant "if the jury believe that Preston P. Sweeten did not receive actual notice they must find for the defendant."

6. That the learned trial Judge charged the jury in part as follows: "Therefore, the jury might find that so far as the notary is concerned, he used

proper diligence to inform himself as to the proper post-office address of the defendant, Sweeten," without qualifying the same by reference to the question of whether or not the plaintiff itself used due diligence in informing the notary.

7. That the learned trial Judge charged the jury in part: "It would relieve him (the defendant) of liability unless proper efforts were made to send the notice to his post-office address or *to put it in such train of delivery that it would in the ordinary course reach him at his proper address.*" 10

8. That the learned trial Judge charged the jury in part: "But I have also pointed out that if that information was not communicated to the notary, then the question is whether the notary used proper diligence in ascertaining the address before he mailed the notice. And where a notary makes inquiry at the bank where paper is payable and receives information from the cashier or any other proper officer who would be likely to have such information as to the residence of the endorser, upon the faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligence." 20

9. That the charge of the learned trial Judge to the jury was generally erroneous, misleading and not in accordance with the law as applied to the facts of the case shown by the testimony. 30

10. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "Do you know whether or not any of those other notes that you endorsed were ever protested?"

11. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "What was the address on the envelopes which you received?"

12. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "Wasn't this present \$15,000 note being sued upon, a renewal note—a renewal of it that had been previously described and notice given?"

13. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "Have you a nephew, Edwin P. Sweeten?"

14. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "Did you ever get any mail addressed to Swedesboro, New Jersey, addressed to you at Swedesboro, but re-addressed to Pedricktown, New Jersey?"

15. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "As a matter of fact you are not sure even at this time of all the notes you have signed and endorsed?"

16. Because the learned trial Judge allowed the witness, Sweeten, to answer the question, "You have not kept a very close check on your affairs with your brother and the notes you endorsed?"

17. Because the learned trial Judge allowed the witness, Lampe, to answer the question, "Well, what character of notice is it? Is it a—what does it state?"

18. Because the learned trial Judge allowed the

witness, Lampe, to answer the question, "Have you any list or has anyone else here a list of the dates on which these various notes become due?"

19. Because the learned trial Judge allowed the witness, Lampe, to answer the question, "How many are there? Will you count them please?"

20. Because the learned trial Judge allowed the witness, Ritter, to answer the question, "Do you know whether or not any notices of that character were mailed to Preston P. Sweeten?" 10

21. Because the learned trial Judge allowed the witness, Spielman, to answer the question, "Mr. Spielman, I show you four notes, one dated July 20, 1927, in the amount of \$1150, payable three months after date, signed Sweeten Automobile Company, and endorsed by the Sweeten Automobile Company, James Sweeten, Jr., and P. P. Sweeten; also note in the amount of \$3750, dated July 28, 1927, payable ninety days after date and endorsed in the same manner; also note in the amount of \$1500, dated July 5, 1927, payable ninety days after date, endorsed Sweeten Automobile Company, James Sweeten, Jr., P. P. Sweeten, and also note in the amount of \$3750, dated May 31, 1927, payable three months after date, signed P. P. Sweeten, and endorsed James Sweeten—Sweeten Automobile Company, James Sweeten, Jr. I also show you the notarial certificate of protest attached thereto and ask you if you mailed notices of dishonor in connection with each of those notes to Preston P. Sweeten?" 20 30

22. Because the learned trial Judge allowed the witness, Spielman, to answer the question, "Take this \$3750 note, where was the notice mailed?"

23. Because the learned trial Judge allowed the witness, Wilson, to answer the question, "In the event that a letter was received in this post office addressed to Preston P. Sweeten, at Swedesboro, what would be the course of that letter for delivery?"

Respectfully,
FRANK A. MATHEWS, JR.,
Attorney of Defendant.

10

[ENDORSEMENT ON BACK]

Service of the within notice and grounds of appeal hereby acknowledged this 23rd day of March, 1929.

20

Bleakly, Stockwell & Burling,
Attorneys of Plaintiff.

30

TESTIMONY.

NEW JERSEY SUPREME COURT.
SALEM COUNTY.

LIBERTY TITLE & TRUST COMPANY,	}	10
<i>Plaintiff,</i>		
v.		
PRESTON P. SWEETEN, bankrupt, E. C. WAD- DINGTON, trustee,	}	Action at Law.
<i>Defendant.</i>		

Before HON. FRANK B. JESS, J., and a jury. 20

Salem, N. J., June 4, 1928.

APPEARANCES:

MESSRS. BLEAKLY, STOCKWELL & BURLING, by 30
 THOMAS F. SALTER, ESQ., for the plaintiff.
 FRANK A. MATHEWS, JR., ESQ., for the defendant.

(A jury was examined and sworn.)

Mr. Salter: With the Court's permission, ladies and gentlemen of the jury:

This is an action by the Liberty Title & Trust Company of Philadelphia against Preston P. Sweeten, the defendant. The defendant on the 30th day of June, 1927, endorsed a promissory note, which note was payable to the order—the note was signed
10 by the Sweeten Automobile Company, and was to the order of themselves in the amount of \$15,000. The note was payable thirty days after date, or on July 30th, 1927. When that note became due it was not paid, although due notice of dishonor and protest were given to the maker and to the endorsers. And this suit is—was instituted against the defendant, Preston P. Sweeten, to recover the \$15,000 which had been paid out in cash by the Liberty Title & Trust Company on Mr. Sweeten's endorsement. Mr. Sweeten subsequently has gone into
20 bankruptcy, and this suit has taken the character of a suit against the trustee in bankruptcy on the part of the Liberty Title & Trust Company for an opportunity to share in the estate of the bankrupt, Preston P. Sweeten, to the extent of this \$15,000. And we shall, therefore, ask you to return a verdict in favor of the plaintiff in the amount of \$15,000, with interest from the due date of the note, July 30, 1927, to the date of the bankrupt adjudication, which was November 17, 1927, the interest being \$270
30 plus the protest fee of \$2.08, making a total of \$15,272.08.

Mr. Mathews: If the Court please, ladies and gentlemen of the jury:

The facts as outlined to you by Mr. Salter are substantially correct. But the defendant in this case, as he has said, is Judge Waddington, who is

the trustee in bankruptcy for Mr. Preston P. Sweeten. Mr. Sweeten, however, in endorsing this note was what is known in the law as an accommodation endorser. The note was made by the Sweeten Automobile Company, a corporation, endorsed by that corporation through its president, endorsed by Mr. James Sweeten, and then endorsed for accommodation by Mr. Preston P. Sweeten. Now where that situation exists the law requires that the accommodation endorser who has received no—none 10 of the proceeds of this note—the proceeds of the note went to the Sweeten Automobile Company, and Mr. Preston P. Sweeten was merely the accommodation endorser, getting no money at all under those circumstances. And the law requires that under those circumstances due notice in a certain way must be given to the accommodation endorsers. And our contention is and I think we can prove to you that the the due notice required by this law was not given Mr. Preston P. Sweeten, and if we show you 20 those facts we shall ask for a verdict of no cause of action at your hands.

FREDERICK MOOSBRUGGER, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

30

By Mr. Salter:

Q. Mr. Moosbrugger, where do you live?

A. Glenside, Pennsylvania.

Q. And are you connected with the Liberty Title and Trust Company, the plaintiff in this suit?

A. Yes, sir.

Q. And what is your position?

A. Treasurer.

Q. I show you a note dated June 30, 1927, in the amount of \$15,000, payable thirty days after date, signed Sweeten Automobile Company, James Sweeten, Jr.; endorsed Sweeten Automobile Company, James Sweeten, Jr.; James Sweeten, Jr., again, and then endorsed P. P. Sweeten, and ask
10 you if the Liberty Title & Trust Compy is the holder and owner of that note?

A. Yes, sir.

Mr. Salter: Now I understand, Mr. Mathews, that you admit that signature is Preston P. Sweeten's?

Mr. Mathews: Yes.

Mr. Salter: All right.
20

Q. And will you please state, Mr. Moosbrugger, the amount due on this note?

A. Fifteen thousand dollars and interest from the due date.

Q. Fifteen thousand dollars and interest from the due date until the date of adjudication in bankruptcy?

A. Yes, sir.

Q. And the interest is how much?

A. \$270 and the protest fees.
30

Q. How much is the protest fees?

A. \$2.08.

Q. Making a total of how much?

A. \$15,272.08.

Mr. Salter: Cross-examine.

Mr. Mathews: That is all; no questions.

J. EDGAR SPIELMAN, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Salter:

Q. Mr. Spielman, where do you live? 10

A. 967 Allengrove Street, Philadelphia.

Q. And what is your business?

A. I am a notary public and I am also an assistant in the law office of Graham & Gilfillan in Philadelphia.

Q. I show you note dated June 30, 1927, in the amount of \$15,000, and ask you if you ever saw that note before.

Mr. Mathews: Look at the note. 20

Q. The note is endorsed "P. P. Sweeten." Did you ever see it before?

A. Looks very much like the one I protested on August 1st, although I would like to check from these notes.

Q. I have here the original certificate of protest which is signed J. Edgar Spielman, Notary Public, Pennsylvania, and ask you if that is the certificate of protest that you signed?

A. Yes, sir; that is. 30

Q. And that certificate has a copy of the note thereon, has it not?

A. Yes sir; that is correct.

Q. Now, will you—did you mail the certificate of protest to P. P. Sweeten at Swedesboro, New Jersey?

A. Yes, sir, I did; that is to say, I mailed a notice of the protest. The certificate certifies as to the mailing of the notice.

Q. Now to what persons did you mail a notice?

A. I mailed them to the maker and the other endorsers. The Sweeten Automobile Company is the maker and the—and I think one of the other Sweetens were also maker, or endorsers.

Q. With respect to Preston P. Sweeten, where
10 did you send a notice?

A. Swedesboro, New Jersey.

Q. Did you send it to any other place?

A. Not —

Q. Look at the notice.

A. Yes, sir, I also mailed a notice to his office.

Mr. Mathews: What is that he is referring to?

The Witness: P. P. Sweeten.

20

Mr. Mathews: What are you referring to?

The Witness: Protest—that is certificate of protest.

Mr. Mathews: Is that your signature?

The Witness: Yes, sir; that is.

30

Mr. Mathews: Did you make this out?

The Witness: Yes, sir.

Mr. Mathews: At the time this took place?

The Witness: Yes, sir. I do typewriting and I made it out that same day.

(The question was read by the stenographer as follows: "Q. Did you send it to any other place?")

The Witness: In the City Center Building, Philadelphia.

Q. From whom did you get the address to which you mailed those notices?

A. I either got it from Mr. Ritter, who has charge of the Note Department of the Liberty Trust Company, or his assistant, Mr. Lampe, I am not sure just — 10

Q. Do you know whether or not Preston P. Sweeten had an office in the City Center Building, Philadelphia?

A. I don't know except I remember as to that Mr. Moosbrugger, who was just on the stand, told me to send these notices not only to the address which I had been given, but also to the City Center Building. 20

Q. Did this envelope have a return address on it?

A. It did.

Q. Was that envelope ever returned to you?

A. No, sir, it was not.

Q. Did you ever see it again?

A. No, sir.

Q. Did you mail this notice personally yourself?

A. Yes, sir; we have a mail chute outside the office door and I mailed that myself.

Q. I understand you mailed it and typed it and prepared the whole matter yourself? 30

A. Yes, sir, and presented it for payment.

Q. I see.

Mr. Salter: Cross-examine.

Cross-examination.

By Mr. Mathews:

Q. You say the only information you had with regard to the office of the City Center Building was what you received from Mr. Moosbrugger?

A. Yes, and it—there was just another thing as far as the information was concerned—I think this
10 was one of the series of notes——

Q. I am asking you just to answer the question. Was it from Mr. Moosbrugger that you received your information with regard to sending the notice of protest of this note to the City Center Building?

A. Yes, sir.

Q. You of your own personal knowledge didn't know whether Mr. Sweeten had an office in the— Mr. Preston P. Sweeten had an office in the building?

A. No. I sent notices in April there.

20 Q. I am not asking you that. I am asking you if you of your own knowledge—you knew Mr. Preston P. Sweeten?

A. No, sir.

Q. Did you also know of your own knowledge that Mr. Preston P. Sweeten resided at Swedesboro?

A. No, sir.

Q. And that information you also received from Moosbrugger?

A. No, sir; I said I got that information either
30 from Mr. Ritter or Mr. Lampe, one of the two, I am not sure which.

Q. One of the two?

A. Yes, sir.

The Court: Who were they?

The Witness: Mr. Ritter, I don't know exactly

his position except I am the official notary for the Liberty Title, and then he gives me addresses. I think he is the manager of the note department, and Mr. Lampe is his assistant. They are in court here, your Honor.

Mr. Mathews: That is all.

Mr. Salter: That is all. Plaintiff rests.

PLAINTIFF RESTS

10

Mr. Mathews: I make a motion for a non-suit. It has not been proven here this notice was sent to either the business address or the residence of Mr. Sweeten, which the act distinctly requires, one or the other. It has not been proven this is either the residence or business address of Mr. Sweeten. And, as a matter of fact, it was not either. And therefore I move for a non-suit. 20

Mr. Salter: I understand upon proof of the amount due upon the note and the production of the notary's certificate and testimony that the notice has been mailed, that is prima facie proof of the matters contained therein, and the burden is not on the plaintiff to show or prove that the address to which the notice was mailed was the post office nearest the defendant's residence or his business address, or the place where he sojourned. In a case of 87 Atlantic, page 431, which is a Pennsylvania case, and the note in question was signed in Pennsylvania, that seemed to be the law in that state, that the production of the certificate is prima facie evidence, and the burden is not on the plaintiff to 30

show that the notice was mailed to the defendant's residence.

10 Mr. Mathews: If your Honor please, the certificate is not evidential, has not been offered in evidence and is not evidential under our statute. It is not before your Honor. There is not the slightest bit of testimony before you to show where this man lived or where his business was. And furthermore, as I understand the law under the cases, unless it is proven what the law in Pennsylvania is, the law in New Jersey would naturally govern. That has not been proven.

Mr. Salter: I neglected to offer that certificate in evidence. I desire to do so at this time.

20 Mr. Mathews: I object to it on the ground it is inadmissible under Section 21 of Volume 2 of the Compiled Statutes, page 2227.

The Court: Get that for me, will you, please?

Mr. Mathews: Yes, sir.

30 The Court: The certificate of the notary is not attached to the pleading. The Evidence Act requires that it may be admitted if it be attached to the pleading, and there is no denial in the answer. But you have the testimony of the notary himself that he mailed this to Swedesboro and also to an address of the defendant which was given to him by one of the officers of the bank. Get me Volume 3, please. I want to get the Negotiable Instrument Act. I will deny the motion.

Mr. Mathews: Your Honor will allow me an exception?

The Court: Allow an exception.

Mr. Salter: May that be marked in evidence, your Honor?

The Court: Which?

Mr. Salter: That certificate of protest. 10

The Court: I am not admitting the certificate of protest.

Mr. Salter: I would like to have an exception to your Honor's refusal to admit that.

The Court: I am basing the denial of the motion on the testimony of the notary who mailed the notices, his testimony in open court. 20

PRESTON P. SWEETEN, one of the defendants, called as a witness in his own behalf, being sworn, was examined and testified as follows:

Direct examination: 30

By Mr. Mathews:

Q. Mr. Sweeten, did you—can you hear me?

A. I understood what you said, but I cannot hear you. Could I have the questions typewritten? I cannot hear.

The Court: Well, if he can't hear, of course some means will have to be taken to communicate what you wish to ask.

Mr. Waddington: He can read your lips partly.

The Witness: Perhaps I understand what you say about that.

- 10 Q. Did you ever receive a notice of the non-payment of that note?
A. No, sir, I did not.
Q. On June 30, 1927, where did you reside—where did you live?
A. Pedricktown.
Q. And on July 30, 1927, where did you live?
A. Same place; Pedricktown.
Q. How long have you lived at Pedricktown?
A. All my life.
- 20 Q. Do you still live there?
A. Yes.
Q. Live there continuously?
A. Yes.
Q. Did you ever have a place of business outside of Pedricktown?
A. None whatever.
Q. Did you ever have a place of business at the City Center Building in Philadelphia?
A. How is that?
- 30 Q. Did you ever have a place of business at the City Center Building in Philadelphia?
A. No, sir.
Q. Did you ever call or visit the Liberty Title & Trust Company of Philadelphia? Were you ever at that bank?
A. What about that?
Q. Were you ever at the bank, the Liberty Title

& Trust Company in Philadelphia? Were you ever there?

A. Was I ever there?

Q. Yes.

A. No. I been by the place but never been in the building.

Q. Never been in the building at all. Did you ever know or talk to any of the officers of that bank?

A. Couldn't just get that.

Q. Did you know any of the officers of that bank, 10 the Liberty Title & Trust Company, any of the officers?

A. Ever in any of the offices?

Q. Ever meet or know any of the officers?

A. No.

Q. Never had any conversation with any of the officers?

A. None whatever.

Q. Or anyone connected with it? Or anyone connected with the bank? Did you ever have any con- 20 versation with anyone connected with the bank?

A. Did I ever have any conversation with any of the officials of the company?

Q. Yes.

A. None whatever.

Q. Or anybody connected with it?

A. None whatever.

Q. Where do you receive your mail, Mr. Sweeten?

A. Receive my mail?

Q. Yes.

A. Pedricktown. I am getting along pretty 30 good; better than I expected.

Q. That your signature, Mr. Sweeten (showing paper to witness)?

A. What do you want to know?

Q. Is that your signature?

A. Yes, sir.

- Q. And is this also your signature?
 A. Yes, sir, that is my signature?
 Q. Were those statements given to the Liberty Title & Trust Company, do you know? Were those financial statements given to the Liberty Title & Trust Company, to your knowledge?
 A. Did I give a—how is that?
 Q. Where did these statements go from you?
 A. This is—that one I had something to do with.
 10 This one I had nothing to do with.
 Q. You signed it?
 A. I signed it but—that was—that was—see, this is filled in here by somebody else after I signed it.
 Q. Which part is that, the part in ink down here?
 A. I said after I signed it, I meant this was filled in after I signed this in blank. I didn't fill this in myself.
 Q. All right.

20 Mr. Mathews: That is all.

Cross-examination.

By Mr. Salter:

- Q. Did your brother fill in this statement?
 A. What did you say? Did my brother fill out that statement? He did.
 Q. You endorsed a large number of notes for your brother, did you not?
 30 A. How is that?
 Q. You endorsed a large number of notes?
 A. Did I endorse notes for my brother?
 Q. Yes.
 A. Yes.
 Q. Do you know whether or not any of those other notes that you endorsed were ever protested?

Mr. Mathews: I object as immaterial and irrelevant.

The Court: Why?

Mr. Mathews: What has that to do with it?

The Court: Suppose they were protested and suppose he got notice of protest.

Mr. Mathews: You mean if he actually received notice?

The Court: I will overrule the objection.

Mr. Mathews: Allow me an exception.

The Court: Yes.

(The question was repeated by the stenographer as follows: "Q. Do you know whether or not any of those other notes that you endorsed were ever protested?")

Q. Do you know whether or not any of those other notes which you endorsed were ever protested?

A. I am sorry I cannot understand you.

Q. Do you know whether or not any of those other notes were ever protested?

A. No.

Q. Did you ever —

The Court: What was the answer? Does he know?

Mr. Salter: He said no:

Mr. Mathews: He shook his head. I don't know what that meant.

The Court: What was he saying "no" to?

The Witness: Whether any of the notes were protested, is that what you said?

Q. Yes.

A. No, I didn't know it. I never knew there was
10 any protest?

Q. Did you ever receive any notices of dishonor or protest?

A. Well, I possibly may have done that, I can't remember; I can't remember that. I may have done that, I may have received some notices of the due date of the notes. I may have done that, but I can't remember positively about that.

Q. Do you know to what addresses those notices
20 were mailed—do you know to what addresses those
notices were mailed which you say you have received?

A. Did I know whether the notes were paid or what? I didn't get that, I guess.

Q. Can you tell me where the notices which you received were addressed?

(Witness does not hear.)

Q. What was the address on the envelope which
30 you received?

(Witness does not hear.)

The Court: You better write it out.

(The last question was written by the stenographer and handed to the witness.)

The Witness: Well, I—I suppose if I received any of those addresses—

The Court: Read the question from the record.

The Witness: “What was the address on the envelopes which you received.”

Mr. Mathews: Objection and exception.

10

A. If I received any it was addressed to Pedricktown; if I received any they were addressed to Pedricktown.

Q. You don't remember what the address was? You don't remember the address?

A. Whose address?

Q. (Written by counsel and handed to witness.) You don't remember the address?

A. Don't remember what address? The address of the letters that I was supposed to receive? 20

Q. That is right.

A. Why, they were addressed to Pedricktown, of course, I say, if I received any.

Q. I know, but do you remember?

A. I can't remember whether I got any from your bank or not, or anything of the kind, but if I received them, they was addressed to Pedricktown?

Q. (Written) You are pretty well known about this part of New Jersey?

30

Mr. Mathews: I object to that as immaterial and irrelevant.

The Court: Objection overruled.

Mr. Mathews: Allow me an exception.

The Court: Yes.

A. Yes.

Q. You conduct a general store in Pedricktown or did conduct one?

A. I did until about a year and a half ago.

Q. (Written by counsel.) Wasn't this present fifteen thousand-dollar note being sued upon a renewal note—a renewal of one that had been previously dishonored and notice given?

Mr. Mathews: I will object to that for the same reason.

The Court: Objection overruled and exception.

A. I don't just understand it.

Q. Maybe I didn't write —

A. "Wasn't the present fifteen note being sued —"

Q. (Counsel writes.) Sued upon —

A. Sued upon —

Q. (Counsel writes.) A renewal?

A. I positively don't call to mind anything of that character.

Q. Have you a nephew, Edwin P. Sweeten?

Mr. Mathews: Objected to as immaterial and irrelevant.

30

The Court: Objection overruled.

Mr. Mathews: Exception. I don't know what it is all about.

The Court: I suppose —

Mr. Mathews: I would like a general objection.

The Court: I suppose it is about the question, that goes to the question of whether or not he received notice or what his address was.

Mr. Salter: If your Honor please, I intend to show notices of previous notes were mailed to Swedesboro, also mailed to Pedricktown; they were never returned, and I have the post office authorities here to testify as to where the letter did go. 10

The Court: You may proceed.

Q. (Written by counsel.) Where does he live?

A. He lives near Swedesbore.

Q. (Written by counsel.) Does he live on a farm?

A. He does live on a farm. 20

The Court: Who is it?

Mr. Salter: This is his nephew, Edwin P. Sweeten, lives on a farm near Swedesboro.

Mr. Mathews: In order to get the record clear, might I just enter a general objection to this line of testimony unless it is for the sole purpose to show that Mr. Sweeten received actual notice during— within the period contemplated by the Act. 30

Mr. Salter: That is the purpose of the testimony, to show he actually received notice.

Q. (Written by counsel.) What is that farm called?

A. I don't know; got no name.

Q. Is it called Porches Mill Farm?

A. Yes, there is a farm there, but he didn't live there.

Q. (Written by counsel.) Did you ever get any mail addressed to Swedesboro—addressed to you at Swedesboro but re-addressed to Pedricktown, New Jersey?

10 Mr. Mathews: Same objection, if you Honor please.

The Court: Same ruling.

Mr. Mathews: Exception.

A. No. No. I positively cannot call anything to mind like that.

20 Q. (Written by counsel.) You absolutely deny that you ever received notice of protest of the note in question?

A. I positively do.

Q. (Written by counsel.) Could you not have overlooked this notice?

A. No, not if it come before me; never would have been overlooked.

Q. (Written by counsel.) Who opens your mail?

A. I do. I do.

30 The Court: We will interrupt the examination now until one-thirty. Court will recess until one-thirty.

(Recess to 1:30 o'clock P. M.)

AFTER RECESS.

Mr. Salter: If your Honor please, this note was not offered in evidence, so I would like to offer it and have it marked. Mr. Mathews has no objection.

(Note offered is received in evidence and marked Exhibit P1.)

The Court: Are you through with your cross-examination? 10

Mr. Salter: I just have two or three more questions to ask.

PRESTON P. SWEETEN resumed the stand.

20

Cross-examination (continued).

By Mr. Salter:

Q. (Written by counsel.) You have signed many notes and statements for your brother?

A. "You have signed many notes and statements for your brother?"

Q. Yes.

A. I signed a few statements and a few notes.

30

Q. (Written by counsel and handed to witness.) As a matter of fact, you are not sure even at this date of all the notes you have signed and endorsed?

A. "As a matter of fact, you are not sure even at this date of all the notes you have signed and endorsed?"

Mr. Mathews: I would like to renew my objection.

The Court: Same ruling.

Mr. Mathews: Exception.

A. (Continued.) No.

Q. (Written by counsel and handed to witness.)

10 You have not kept a very close check on your affairs with your brother and the notes you endorsed?

Mr. Mathews: Objected to on the same ground, if your Honor please.

The Court: Overruled, and exception.

Mr. Mathews: Exception.

20 A. No.

Q. (Written by counsel.) Have you kept any account of the notes you have endorsed?

A. No.

Q. (Written by counsel.) Are you director in any bank or banks?

Mr. Mathews: Objected to as immaterial and irrelevant.

30 The Court: Objection sustained.

Mr. Salter: I think that is all. I would like to take an exception to your Honor's overruling that question.

The Court: Very well.

Mr. Mathews: I have just one question.

Re-direct examination.

By Mr. Mathews:

Q. Did you ever have a place of business at Swedesboro, New Jersey?

A. No.

Mr. Mathews: That is all. Is Mr. Moosbrugger here?

10

FREDERICK MOOSBRUGGER, recalled as a witness on behalf of the defense, testified as follows:

Direct examination.

20

By Mr. Mathews:

Q. Mr. Moosbrugger, I show you a financial statement dated the first day of June, 1925, signed by Preston P. Sweeten, and ask you if that was on file at your institution?

A. Yes, sir.

Q. Do you recall when it was filed with you?

A. Either on the first of June, 1925, or shortly after?

30

Mr. Mathews: I would like to offer this in evidence, if your Honor please, and have it marked.

(Paper offered was received in evidence and marked D1.)

Q. I show you another financial statement signed by Preston P. Sweeten, and dated January 1st, 1927, and ask you if that was also filed with your institution?

A. That was filed with our institution.

Q. About what time, do you recall, if you do recall?

A. Shortly after the first of January.

10 Mr. Mathews: I would like to offer this in evidence.

The Court: It may be marked.

(The paper offered is received in evidence and marked Exhibit D2.)

Q. At the time this note was due and not paid, were these two financial statements on file with your
20 institution?

A. Yes, sir.

Q. That is, Exhibits D1 and D2?

A. Yes, sir.

Q. Mr. Moosbrugger, to whom was the proceeds of this note credited?

A. Sweeten Automobile Company.

Q. Mr. P. P. Sweeten, Mr. Preston P. Sweeten never received any of the proceeds, so far as you
know?

30 A. No, sir.

Q. Not from your bank?

A. No, sir.

Mr. Mathews: That is all.

Cross-examination.

By Mr. Salter:

Q. Mr. Moosbrugger, you would not have loaned this money, would you, if Mr. P. P. Sweeten's endorsement had not been on the note?

A. We would not.

Q. It was on his financial statement that you loaned the \$15,000? 10

A. Showing he had a worth of approximately one hundred thousand dollars.

Q. Oh, you were not satisfied with his ——

A. We would never ——

Mr. Mathews: I object to the form of the question.

The Court: Objection sustained.

Q. Did you require Mr. Preston P. Sweeten's endorsement on the note before you would part with the money? 20

Mr. Mathews: I object as improper cross-examination.

Mr. Salter: I think that is proper.

Mr. Mathews: The question is to whom the proceeds of the note were credited. 30

The Court: The objection will be sustained.

Mr. Salter: I think that is all.

EDWIN P. SWEETEN, called as a witness on behalf of the defense, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Mathews:

- 10 Q. Mr. Sweeten, where do you live?
A. Swedesboro, New Jersey.
Q. And are you the son of Mr. James Sweeten?
A. Yes, sir.
Q. Who is also an endorser on this note?
A. Yes, sir.
Q. And he is the brother of Mr. Preston P. Sweeten, is he not?
A. Yes, sir.
- 20 Q. At Swedesboro did you receive from the post office notices of protest of notes signed by your father and the Sweeten Automobile Company and also endorsed by Preston P. Sweeten?
A. I have received letters from banks, but whether they were note protests or not I don't know.
Q. Were any of them protests of notes which were due?
A. I cannot tell; I didn't open them.
Q. You didn't open them?
A. No.
- 30 Q. What did you do with all mail which came to your place at Swedesboro addressed to Preston P. Sweeten?
A. I turned them over to my father.
Q. And your father is James Sweeten?
A. Yes, sir.
Q. But you did receive, as I understand from you, a number of communications?

A. Yes, sir.

Q. Addressed to Mr. Preston P. Sweeten?

A. Yes, sir, from Philadelphia banks.

Mr. Mathews: Cross-examine.

Cross-examination.

By Mr. Salter:

Q. You live on this Porches Mill Farm, Mr. Sweeten?

10

A. Yes, sir.

Q. You said that you have received notices from a Philadelphia bank. Do you know what bank you received those notices from?

A. The bank in question was —

Q. And do you know whether it was this bank or the Aldine Trust Company?

20

Mr. Mathews: He did not state.

A. I remember the letterhead.

The Court: What was the letterhead?

The Witness: Liberty Title & Trust Company.

Q. Have you any idea how many of those notices you received?

A. No, sir. Several.

30

Q. Is this farm that you live on, is that owned by you or by Preston P. Sweeten?

A. By me.

Q. By you?

A. Yes, sir.

Q. All mail that you received for Preston P.

Sweeten you said that you turned over to your father?

A. Yes, sir.

Q. You didn't turn it over to Mr. Preston Sweeten?

A. No, sir.

Q. You are sure you never took any of the letters over to him?

A. Absolutely not.

10 Q. Has Mr. Preston Sweeten ever resided on the farm on which you now live?

A. No, sir.

Q. How long have you lived there?

A. Three years.

Q. You are sure you never opened any of these letters?

A. No, sir.

20 Q. Didn't you state to some one that went down to your farm to serve a subpoena that you opened these letters and just promiscuously—and just threw them aside, didn't bother with them at all?

A. No, sir; not to the best of my knowledge.

Q. As a matter of fact, didn't you forward some of these letters to Preston P. Sweeten and others to your father?

A. No, sir.

Q. Why did you forward letters to your father that were addressed to Preston P. Sweeten?

30 A. I didn't forward them to him. I gave them to him, when he came down over the week-ends. He used to come down every Saturday.

Q. Why did you give them to him?

A. Because I knew my uncle had endorsed notes for my father.

Q. And you thought it would not be necessary that Mr. Preston Sweeten should get that notice, if there was any?

Mr. Mathews: What difference does it make what he thought?

Mr. Salter: Is that question overruled, your Honor?

The Court: Well, if there is an objection.

Mr. Mathews: Yes, sir; I object.

Mr. Salter: I would like to have an exception.

10

Q. Do you know whether or not your father was your uncle's agent for receiving these notices?

A. I don't know.

Mr. Mathews: I object.

Mr. Salter: I asked him whether he knew whether or not —

20

The Court: Well, that would be purely a conclusion.

Mr. Salter: I think that is all.

The Court: That is all.

Mr. Mathews: I would just like to recall Mr. Preston P. Sweeten for just a few questions.

30

PRESTON P. SWEETEN, recalled.

Direct examination.

By Mr. Mathews:

Q. (Written by counsel.) The first question is, did you on July 30, 1927, have a Bell telephone?

10 Mr. Salter: I object as leading. Why don't you ask him —

The Court: Well, did you or did you not, I suppose. I will overrule the objection. I think it is harmless.

A. Yes.

20 Q. The second question is were you or were you not on that day listed as a subscriber in the directory of the Bell Telephone Company?

A. Yes.

Q. Now the next question is at what place did that listing show you to be located?

A. Pedricktown.

Mr. Mathews: That is all. Cross-examine.

Mr. Salter: No questions.

30 Mr. Mathews: That is all. That is our case. I would like to renew my motion for a direction of verdict for the defendant.

Mr. Salter: I have some rebuttal.

HAROLD LAMPE, called as a witness on behalf of the plaintiff, in rebuttal, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Salter:

Q. Mr. Lampe, you are employed in the Liberty Title & Trust Company? 10

A. Yes, sir.

Q. And in what capacity?

A. Assistant note clerk.

Q. What are your duties as assistant note clerk?

A. Why, when the notes fall due, ten days prior to due date, sending notice to the maker and endorser.

Q. And what is the purport of that notice?

A. Well, it signifies that the maker is responsible for the note, also the endorser. 20

Q. Well, what character of notice is it? Is it a— what does it state?

Mr. Mathews: If your Honor please, I would like to make an objection unless the question is confined to the notice in this particular case.

Mr. Salter: If your Honor please, I intend to endeavor to show a number of notices mailed in the same fashion as the present notice of dishonor was mailed, and they were never returned and never came back to the Liberty Title & Trust Company, and these are not notices of dishonor. These are simply notice of note becoming due at a later date. There were a series of these notices mailed 30

and they were never returned; mailed in the same manner in which the instant notice was mailed.

Mr. Mathews: I don't see how that makes any difference unless it appears that the notice was sent to the proper place. If that were done, then this might be clearly relevant. But unless that appears it seems to me it is objectionable.

10 The Court: I overrule the objection.

Mr. Mathews: Allow me an exception.

The Court: Yes.

Mr. Salter: Will you repeat the question?

(The question was repeated by the stenographer as follows:

20 "Q. Well, what character of notice is it? Is it a—what does it state?").

A. The notice states that we, Liberty Title and Trust Company, hold a note signed by so and so, falling due on such and such a date.

Q. I see. Now, how many of those notices did you mail?

A. We mailed a notice of every note that fell due. That is—

30 Q. Have you any idea how many notes there were?

A. Well, there were a series of notes, thirty days each.

Q. Can you give us an idea how many there were? Were there a half a dozen or a dozen?

A. At least half a dozen. About eight to ten, I would say.

The Court: Referring now to the notes of which you claim this was one?

Mr. Salter: No, this is a notice of the note falling due at a later date, not the particular notice in question. That was mailed by the notary, Mr. Spielman.

Mr. Mathews: I object on the second ground as occurring after this transaction, as irrelevant and immaterial, and in the third place I hardly see how it is rebuttal. 10

Q. Have you any list or has anyone else here a list of the dates on which these various notes became due?

Mr. Mathews: Allow me an exception.

The Court: Go ahead; you may answer. 20

(The question was repeated by the stenographer as follows:

“Q. Have you any list or has anyone else here a list of the dates on which these various notes became due?”)

A. Yes, sir.

Q. Where is that list? 30

A. Mr. Ritter has that list.

Q. Do you know whether or not that is the list of the notes?

A. Yes, sir, that is the list of the notes.

Q. How many are there? Will you count them, please?

Mr. Mathews: I object, if your Honor please, on the same ground, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Mathews: And upon the further ground it appears to be a record of that company and is not the proper form, and the ground has not been properly laid for this testimony. He is apparently re-
10 freshening his memory from a—

Mr. Salter: The original books are in use in the bank today, and if you want us to I can prove those—this list was taken right from the books.

Mr. Mathews: If you are going to prove it, why don't you prove it right?

Q. How many notes are there?

20 A. There are sixteen.

Q. Where were those notices mailed that you mailed?

A. They were mailed to Swedesboro.

Q. Did you ever receive any of them back?

A. No, sir.

Mr. Salter: That is all.

Cross-examination.

30 By Mr. Mathews:

Q. Mr. Lampe, you mean you personally never received any of them back; is that correct?

A. No, sir; none were received.

Q. Now the notices that you sent out, weren't they to the makers of the notes only?

A. No, sir; maker and endorser.

Q. You sent the notices out to the makers and endorsers?

A. Yes, sir.

Q. How long have you been doing that?

A. I have been doing that for two years.

Q. Then you were doing it at the time that this particular note was protested?

A. Yes, sir.

Q. But you didn't send the notice in this particular case, did you? 10

A. Yes, sir.

Q. Oh, you did?

A. Yes, sir.

Q. Then Mr. Spielman's testimony here this morning is incorrect, is it?

Mr. Salter: That was the notice of dishonor that Mr. Spielman—

The Court: Not the notice of protest, Mr. Mathews. 20

Q. The notice prior to the time the note came due?

A. Yes, sir.

Q. Oh, you sent the notices out prior to the time the note came due?

A. Yes, sir.

Mr. Mathews: That is all. 30

The Court: Just a moment. Is this the gentleman that Mr.—the first witness, the notary referred to as having given him information?

Mr. Mathews: This is one of them, yes, sir.

The Court: Do you wish to inquire about that?

Re-direct examination.

By Mr. Salter:

Q. Where did you get your information that Mr. Preston P. Sweeten lived in Swedesboro?

10 Mr. Mathews: Now, if your Honor please, I don't know whether that is quite the proper form of the question. I will object to it on the ground it is improper.

Mr. Salter: It is a direct question. There is nothing leading about it.

Mr. Mathews: I don't think it is rebuttal. I object to it on that ground.

20 Mr. Salter: You deny that you received—

The Court: Yes, I think it is rebuttal, because the presumption is that, according to the plaintiff's case, the letters or notice of protest was mailed.

Mr. Mathews: Yes, but mailed to Swedesboro, and we have not denied that.

30 The Court: That is right, mailed to Swedesboro. Now I suppose that therefore may become a question of fact as to whether the notice was properly addressed or whether it was received.

The Court: The defendant says he did not receive it. I am proceeding on the theory that it is permissible to show what diligence was used, on what information the act of the notary was based

in sending the notices he did to Swedesboro. Anything upon that issue I think is competent.

Mr. Mathews: Your Honor will allow me an exception.

The Court: Yes.

Mr. Salter: Repeat that question.

(The question was read by the stenographer as follows: 10

“Q. Where did you get your information that Mr. Preston P. Sweeten lived in Swedesboro?”).

A. From Mr. James Sweeten.

The Court: Who was he? Who was Mr. James Sweeten?

The Witness: The maker of the note. 20

Q. And the brother of the defendant in this case?
A. Brother, yes.

Mr. Salter: I think that is all.

Cross-examination.

By Mr. Mathews:

Q. Mr. James Sweeten was also an endorser on this note, wasn't he? 30

A. Yes, sir.

Q. And he was also an official of the Sweeten Automobile Company, wasn't he?

A. Yes, sir.

Q. And the Sweeten Automobile Company were the people who received the proceeds of this note, weren't they?

A. Yes, sir.

Q. Well, do you know whether or not they received the proceeds?

A. Yes, sir, they did.

10

GEORGE J. RITTER, called as a witness on behalf of the plaintiff, in rebuttal, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Salter:

Q. You are in the employ of the Liberty Title
20 and Trust Company?

A. Yes, sir.

Q. Now what are your duties in connection with sending out notices as to when the various notes become due?

A. I generally verify the date with the note clerk.

Q. You go over them and verify them with Mr. Lampe?

A. Yes, sir.

Q. Do you make a general practice of doing that
30 all the time?

A. Yes, sir, as a rule, unless I happen to be away on a vacation or something.

Q. Do you know whether or not any notices of that character were mailed to Preston B. Sweeten?

Mr. Mathews: I want to renew my objection to this question on the same ground.

The Court: You may have an exception.

Mr. Mathews: Exception.

A. How is that?

(The question was repeated by the stenographer.)

A. Yes, sir.

Q. Did that in the regular course, then? 10

A. Yes, sir.

Q. Do you know whether or not any of these notices were ever returned to you?

A. None whatever.

Q. Besides sending the notices to the—to Swedesboro, were they sent to any other place?

A. Yes, sir.

Q. Where?

A. Mr. James P. Sweeten, Jr., and the Sweeten Automobile Company, City Center Building, also P. P. Sweeten, care of the City Center Building. 20

Q. None of these notices sent to P. P. Sweeten at the City Center Building were returned?

A. None whatever.

Q. Do you know whether or not any notice was sent respecting the \$15,000 note which was due on April 8, 1927, of which the present note was a renewal?

A. Whether any notice was sent on the renewal note? 30

Q. No, on the original note.

A. The notice was sent, yes, sir, on the original note there was a notice sent.

Q. Now, then, after you sent that notice, the note in particular was renewed by the present note?

A. Yes, sir.

Mr. Salter: That is all.

Mr. Mathews: No questions.

J. EDGAR SPIELMAN, recalled on behalf of the plaintiff, in rebuttal, testified as follows:

10 Direct examination.

By Mr. Salter:

Q. Mr. Spielman, I show you four notes, one dated July 20, 1927, in the amount of \$1150, payable three months after date, signed Sweeten Automobile Company, and endorsed by the Sweeten Automobile Company, James Sweeten, Jr., and P. P. Sweeten; also note in the amount of \$3750, dated 20 July 28, 1927, payable ninety days after date, and endorsed in the same manner; also note in the amount of \$1500 dated July 5, 1927, payable ninety days after date, endorsed Sweeten Automobile Company, James Sweeten, Jr., P. P. Sweeten; and also note in the amount of \$3750, dated May 31, 1927, payable three months after date, signed P. P. Sweeten and endorsed James Sweeten—Sweeten Automobile Company, James Sweeten, Jr. I also show you the notarial certificates of protest attached thereto and ask you if you mailed notices of dis- 30 honor in connection with each of those notes to Preston P. Sweeten?

Mr. Mathews: I object, if your Honor please, upon the ground that as to the issue in this case it is irrelevant and immaterial, and on the further ground it is not rebuttal.

The Court: Objection overruled.

Mr. Mathews: Allow me an exception.

The Court: Allow an exception.

A. Yes, sir, I mailed notices to P. P. Sweeten in each instance.

Q. Now on each one of those notes where was the notice mailed?

10

A. The—these speak for themselves. But I know this, that the ones—

Q. Take this \$3750 note, where was the notice mailed?

A. It was mailed—that was after August first and that was mailed to—

Mr. Mathews: After August first what year?

The Witness: 1927.

20

Mr. Mathews: Well, I object to it on the ground it took place after this note in the suit became due.

Mr. Salter: If your Honor please, the note—the notice was eventually mailed also to Swedesboro here and the note was never returned, and such is the case in each one of them.

The Court: I will overrule the objection and allow an exception.

30

Mr. Mathews: Exception.

Q. Where is this notice mailed?

A. There were three notices, one to P. P. Sweeten in the City Center Building; another to P. P.

Sweeten at Swedesboro, New Jersey, and another to P. P. Sweeten at Pedricktown.

Q. Pedricktown?

A. Yes, sir.

Q. Now this next one. Was that mailed to the same places?

A. That was likewise mailed to all three places

Q. This is—

10 A. That was mailed to all three places.

Q. Now this one here.

A. That was mailed to all three places.

Q. You never received any of those letters back again?

A. Absolutely none.

Mr. Salter: All right. I would like to offer these in evidence, if your Honor please.

20 Mr. Mathews: I object upon the same ground, if your Honor please, as before.

The Court: Objection overruled.

Mr. Mathews: Exception.

(Papers offered received in evidence and marked Exhibits P2, P3, P4 and P5.)

Mr. Salter: That is all.

30 Cross-examination.

By Mr. Mathews:

Q. Mr. Spielman, I think you stated that one of these—the notice was sent to Pedricktown, did you not, in one instance?

A. Yes, but there was a——

Q. Yes or no, was the notice sent to Pedricktown on one of them?

A. Sent to Pedricktown and Swedesboro.

Q. Which one was that?

A. That was—that is the one.

Q. This one here?

A. Yes.

Q. That is Exhibit P2, is that correct?

A. Yes, sir.

10

Q. Now where did you get the information to send this notice of the protest of that note to Pedricktown?

A. Why, I think Mr. Charles S. Krumrine, the vice-president of the Liberty Trust Company, had had this matter up and there had been some statement made that this man—there was a question where he lived, so to send it to both places.

Q. I see. Then there was some question at that time?

20

A. But this is after that other note.

Q. This is subsequent?

A. Yes.

Q. By that time the company realized there was some question as to where Mr. Sweeten actually lived; is that correct?

A. Well, I can't answer that because——

Q. In any event, you received notice to send it to both places, to be sure; didn't you?

A. Yes, sir.

30

Q. You did not then rely upon sending it to Swedesboro, as before?

A. No.

Q. Do you know why, if none of these protest notices which had been sent out before were returned, it was necessary to send one to Pedricktown also?

A. Only, as I have said, because some question was raised about it.

Q. And that was Mr. Krumrine, the vice-president of the Liberty Title & Trust Company?

A. Yes, that is right.

Mr. Mathews: That is all.

Mr. Salter: That is all.

10

CHARLES H. WILSON, called as a witness on behalf of the plaintiff, in rebuttal, being sworn, was examined and testified as follows:

Direct examination.

By Mr. Salter:

20

Q. Mr. Wilson, you are the postmaster at Swedesboro, New Jersey?

A. I am.

Q. In the event that a letter was received in your post office addressed to Preston P. Sweeten at Swedesboro, what would be the course of that letter for delivery?

30

Mr. Mathews: I object to that as hypothetical question—what might have been, if it were.

Mr. Salter: If your Honor please, I think this witness can testify as to the—the manner of delivery of letters received in his office. This letter was mailed and sent to Swedesboro. It was never returned. Therefore in the usual course it must have been delivered some place, and I think he can

state where that letter would have been delivered, or what would have been the course of the letter; whether or not he would have delivered it in Swedesboro, whether or not he would have re-addressed it, or returned it to the sender.

Mr. Mathews: What he would have done.

The Court: I will overrule the objection.

10

Mr. Mathews: Allow me an exception.

The Court: Yes.

(The question was read by the stenographer as follows: "Q. In the event that a letter was received in your post office address to Preston P. Sweeten at Swedesboro, what would be the course of that letter for delivery?")

20

A. Well, we hand all letters to the carrier, and then it is returned back to the desk we forward it to the person, if we know them; if not, forward back to sender.

Q. How long have you known Preston P. Sweeten?

A. I have known him for several years.

Q. How long have you lived in Swedesboro?

A. All my life.

Q. Can you give us an estimate just how long you have known Mr. Preston P. Sweeten?

30

A. I should say in the neighborhood of twenty years.

Q. You knew he lived in Pedricktown?

A. Yes, sir.

Q. Have you ever re-addressed any letters to Preston P. Sweeten which have been received in the Swedesboro post office?

A. Not to the best of my knowledge.

Q. You don't recall any?

A. No, sir.

Q. About how many letters do you re-address in the course of a day?

A. Anywhere from twenty-five to fifty.

Q. I see. You say you don't remember whether or not you have re-addressed any letters to Preston P. Sweeten?

10 A. No, sir.

Q. In the last year or year and a half?

A. No, sir.

Q. Is there anyone else in your post office that would do that work besides you?

A. Yes, the clerk, and she always looks over them before they are sent out.

Q. Is the clerk here today?

A. No, sir.

20 Mr. Salter: That is all.

Cross-examination.

By Mr. Mathews:

Q. Mr. Wilson, how long have you been post-master?

A. Ever since December 14, 1926.

30 Q. December 14, 1926. As I understand your testimony, you would have or did re-address these letters if they came back from the carrier?

A. Yes, sir.

Q. In other words, if the carrier did not deliver them and brought them back to you, you would have re-addressed them; is that the situation?

A. Yes, sir.

Mr. Mathews: That is all.

Mr. Salter: That is all.

JOHN COODEN, called as a witness on behalf of the plaintiff, in rebuttal, being sworn, was examined and testified as follows:

Direct examination.

10

By Mr. Salter:

Q. Where are you employed, Mr. Cooden?

A. R. F. D. carrier of the Swedesboro office.

Q. Yes; post office?

A. Yes, sir.

Q. Do you have the route on which the Porches Mill Farm is situated?

A. I do.

20

Q. Have you delivered any letters or returned any letters back to the post office that have been addressed to Preston P. Sweeten at Swedesboro?

A. Not that I remember of.

Q. You say you don't remember delivering any letters to the Porches Mill Farm addressed to Preston P. Sweeten?

A. No, I don't. I may have delivered them, but it is the case—I don't remember in particular.

30

Q. Do you ever remember deliveing any letters addressed to Preston P. Sweeten into the hands of his nephew, Edwin P. Sweeten?

A. No.

Q. You do not?

A. But it was a case I took all Sweeten's mail that they gave me down to this box. See?

Q. Down to his box?

A. Down to Edwin P. Sweeten's box.

Q. That is all.

A. Just who they might be for I couldn't say.

Mr. Salter: That is all.

Mr. Mathews: That is all.

10

Mr. Salter: We rest, if your Honor please.

Mr. Mathews: If your Honor please, I would like to move for the direction of verdict for the defendant, upon the ground first that there has been absolutely no proof whatever of any actual notice having been given to Preston P. Sweeten during the time which the Act requires. And, secondly, that there is absolutely no testimony in the case to show
20 that the notice of non-payment of this note was sent either to the residence or to the place of business of Mr. Preston P. Sweeten. And upon the further ground that the uncontroverted facts in the case show absolutely clearly that no attempt is made by the plaintiff in this case to send these letters to the proper address. Now, the testimony shows that they were all sent to Swedesboro, and the only reason that they give for sending these notices to Swedesboro is the fact that the maker of these notes
30 told them to send them there. They had in their possession at the time this note was protested two financial statements, one as of the first day of January, 1927, or a few months preceding the protest of this note, which shows clearly and distinctly that both the business address and the residence of this defendant were at Pedricktown. They had one prior to that which showed the same thing. The de-

fendant has testified that he was a subscriber to the Bell Telephone. His name was listed in the directory at Pedricktown, where they could have found him by simply looking at the telephone directory, where this man lived. But they didn't choose to do this. They chose to mail it to a place where it seems to me they had no legal authority to. There is no testimony in this case showing James Sweeten was the agent of Preston P. Sweeten, but on the 10 contrary they have two signed statements by Preston P. Sweeten in their files and in their knowledge at the time this note was protested, and they chose to send it to some place in which he had no connection, and that place is undeniably a place at which Mr. Sweeten had neither a place of business or a residence, and I submit to your Honor that it is absolutely clear that not only no reasonable diligence was exercised by these people in ascertaining his address, but that quite the contrary was the case 20—absolute negligence, because they had in their possession the exact knowledge which they should have had in order to forward these protests.

As I understand the situation, where the holder of a note has in its possession the information showing the business address or residence address of the defendant, that is, the endorser, they are bound to send it to that address, and they cannot go out and take some other address upon hearsay evidence or something of that sort, and if they do, they do it 30 at their peril.

Now, this notice was never received by Mr. Sweeten—uncontradicted—and apparently never any possibility of its having been delivered to him under the facts of the case; and for those reasons I respectfully ask that a direction of verdict in favor of the defendant be given.

Mr. Salter: If your Honor please, the testimony in this case has shown that there were a series of transactions between James Sweeten, the brother of this defendant, and Preston P. Sweeten, for some time prior to the bringing suit in this case and the entry of this defense; notes had been signed and endorsed and statements given and renewal notes filed and so on. Notes had been sent right along.

10 There had never been any objection from anyone. The notices were never returned, and so far as the Liberty Title and Trust Company knew those notices were delivered. And it was not until suit was brought upon this note upon refusal to pay that this technical defense of non-notice was interposed.

Now, I think under the facts in this case that this is a jury question as to whether or not Preston P. Sweeten or his agent or somebody on his behalf received those notices. His brother seems to have

20 acted for him. The Testimony shows the notices were mailed to this City Center Building in Philadelphia where all the transactions had come from. James Sweeten resided in Philadelphia. And furthermore, the notarial certificate having—that is, the notice having been properly—that is, having been mailed and never having been returned, and having been addressed to Swedesboro, where the defendant is certainly well known and every one in Swedesboro and in this part of South Jersey knows who

30 Preston P. Sweeten is—and I think this is a question for the jury to determine whether or not Preston P. Sweeten actually did receive that notice or whether, like so many of his other transactions in which he did not seem to keep very much track of the manner in which his transactions with his brother were carried on, he has not overlooked that. He undoubtedly received these notices and has just

probably laid them aside and has not paid any attention to them. And I think under the evidence in this case we are entitled to have the jury pass upon it.

The Court: I am inclined to think that under the evidence in this case I am bound to submit the question to the jury. It does appear, as Mr. Mathews has pointed out, that at the time this notice of protest was mailed, that the plaintiff bank had in its possession a financial statement on which the residence of the defendant Preston P. Sweeten was given as Pedricktown. As I understand the law, the notary who sends the notice is required to use reasonable diligence in ascertaining the post office address of the party to be notified, and that it has been held, I think, that where he makes inquiry of the officers of the bank holding the paper, that he discharges the duty of reasonable diligence in that respect. The evidence shows that the notary who sent the notice of protest in the mail inquired at the bank and was given two addresses—Swedesboro and the City Center Building of Philadelphia, as I recall the testimony. And on the information thus acquired he mailed the notices to the defendants at those addresses. 10 20

I think that the question whether notice was received which, of course, is absolutely denied by the defendant, and whether the attempt to give the notice was sufficient in the circumstances and under the law to comply with the requirements in that respect, are questions of fact to be decided by the jury. I will therefore deny the motion for the direction of verdict. 30

Mr. Mathews: And allow me an exception.

72 *Motion for Direction of Verdict for
 Defendant*

The Court: And allow an exception.

Mr. Salter: Do you want an opening, Mr. Mathews?

Mr. Mathews: I wish you would, please.

(Mr. Salter opened the case to the jury on behalf
10 of the plaintiff.)

(Mr. Mathews summed up the case to the jury on
behalf of the defendants.)

(Mr. Salter summed up the case to the jury on
behalf of the plaintiff.)

20

30

COURT'S CHARGE TO THE JURY

JESS, J.:

Ladies and gentlemen of the jury: This suit is brought by Liberty Title and Trust Company, a Pennsylvania corporation, against Preston P. Sweeten, to recover the amount of a promissory note. This note was dated at Philadelphia on June 30, 1927, and was for the sum of \$15,000, payable thirty days after date at the Liberty Title and Trust Company, Philadelphia. The maker of the note was Sweeten Automobile Company, James Sweeten, Jr., President, and the note was endorsed by the Sweeten Automobile Company, James Sweeten, Jr., President, James Sweeten, Jr., and P. P. Sweeten. 10

The suit is against P. P. Sweeten as an endorser and the suit is based upon the theory that as an endorser Mr. Sweeten is liable in the amount of the note. 20

There seems to be no question that the plaintiff, the Liberty Title and Trust Company, is a holder in due course of this note, and is entitled to recover from Mr. Sweeten as endorser, unless there was failure to comply with the requirements of the statute as to notice of dishonor.

Now the law provides that: "Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each endorser. Any drawer or endorser to whom such notice is not given is discharged." 30

In this case the note upon which the defendant, Mr. Sweeten, was an endorser was not paid. The note was protested for non-payment by a notary public. Notice was attempted apparently, accord-

ing to the testimony, to be given to Mr. Sweeten, the endorser and present defendant.

Now there is another provision of the law which I will read to you concerning this matter of giving notice which is pertinent here:

“Where a party has added an address to his signature, notice of dishonor must be sent to that address.”

10 An address was added to the signature. Then the law goes on:

“But if he has not given such address, then notice must be sent as follows: Either to the post office address nearest to his place of residence or to the post office where he is accustomed to receive his letters, or if he lives in one place and have his place of business in another, notice must be sent to either place. Or if he is sojourning in another place, notice may be sent to the place where he is sojourning.”

20 Our courts have held that it is not absolutely essential in order to hold one as an endorser of a promissory note that he shall receive, actually receive notice of protest. But for the protection of an endorser the law has provided that notice shall be sent to him. If notice is sent to the endorser in an envelope properly addressed, he then, the endorser, is liable even though he should not actually receive that notice, so that in this case if the evidence established as a fact that the notice in question had
30 been sent to Mr. Sweeten, addressed to Pedricktown, where his residence appears to be and where his post office address presumably is, then there would be no question whatever, as this case stands, if that were in it, that he would be liable in this suit.

The only reason the Court is submitting to you, ladies and gentlemen, the question as to whether he is liable in this case is because, as the Court views it, of the question as to whether there was a proper

compliance with the statute or such a compliance as under the statute and under the decisions of our higher courts would be sufficient to fix liability upon the endorser.

Now the evidence, as I recall it, is this, and of course if I should misstate it or my recollection of it should not accord with yours, you are to rely absolutely upon your own memory as to what the testimony is, but I think substantially I am safe in saying that the testimony shows that a notice of protest was mailed addressed, that is, so far as the name is concerned, to Mr. Sweeten. That there is no dispute as to that. Admittedly the envelope containing that notice was addressed to Swedesboro, New Jersey, whereas Mr. Sweeten, according to the uncontradicted testimony, lives at Pedricktown. 10

Mr. Spielman, the notary who testified as to the mailing of the notice, stated that he addressed the notice to Swedesboro, also to what I recall the testimony stated was the City Center Building in Philadelphia; that in writing those addresses he relied upon information given to him by the officers of the bank, of whom he made the inquiry as to the post office address of the defendant. 20

Now so far as the notary is concerned, he used proper diligence, proper measures to inform himself as to the address of this defendant. It does appear that at that time the bank had in its files certain statements made by Mr. Sweeten, which showed his address to be Pedricktown, but there is no evidence that that information or that fact was disclosed to the notary. Therefore, the jury might find that so far as the notary is concerned, he used proper diligence to inform himself as to the proper post office address of the defendant Sweeten. 30

There is a denial, of course, by Mr. Sweeten that he ever received this notice of protest, and that de-

nial, of course, is entitled to your full consideration. There is, however, evidence in the case which might, if you see fit, justify you, I think, in finding that Mr. Sweeten might be mistaken, because there is evidence that other letters were sent to that same address and were not returned. There is evidence from which you might find that in the case of such letters addressed to the defendant, Preston P. Sweeten, at Swedesboro, the letters were turned over to Mr. Sweeten's brother by his son, who, as I understand the testimony, received the letters. Of course that would not of itself necessarily prove that the letter ever—or the protest ever reached Mr. Sweeten, but it is a circumstance to be considered by the jury in determining whether as a matter of fact Mr. Sweeten ever had actual notice of the protest for non-payment of the note in question.

I have said or did say, I think, at the outset that the failure to receive actual notice would not necessarily relieve the defendant of liability. It would relieve him of liability unless proper efforts were made to send the notice to his post office address or to put it in such train of delivery that it would in the ordinary course reach him at his proper address. You see the law provides that "where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage of the mail."

In this case it appears, however, that there was not a miscarriage of the mail, but that the letter was not addressed to the post office where Mr. Sweeten, according to the testimony in the case, was in the habit of receiving his mail.

Now I have before referred to the fact that the bank, according to the testimony, had in its possession, at the time the note in question was protested,

information which disclosed the post office address of Mr. Sweeten. But I have also pointed out that if that information was not communicated to the notary, then the question is whether the notary used proper diligence in ascertaining the address before he mailed the notice. And where a notary makes inquiry at the bank where paper is payable and receives information from the cashier or any other proper officer who would be likely to have such information as to the residence of the endorser, upon the faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligence. 10

The theory of the plaintiff's case appears to be, as the Court understands it, that the defendant Sweeten, while the notice was not addressed to him at Pedricktown, nevertheless did receive actual notice of the protest. That question is submitted to you, ladies and gentlemen, to decide upon the full consideration of all the evidence in the case. 20

If you find against the plaintiff on that claim, then your verdict should be for the defendant. If you find for the plaintiff, then your verdict should be a verdict in favor of the plaintiff for the full amount of the note—are you claiming interest?

Mr. Salter: Yes, your Honor, to the date of the adjudication.

The Court: From what date? 30

Mr. Salter: From July 30, 1927, to November 17, 1927. From July 30th —

The Court: That is the due date of the note.

Mr. Salter: That is right, 1927, until the date of the adjudication in bankruptcy.

The Court: When was that?

Mr. Salter: November 17, 1927.

The Court: Ladies and gentlemen, if you should find for the plaintiff, your verdict would be for the
10 face of the note, \$15,000, together with interest from July 30, 1927, until November 17, 1927.

If your verdict is in favor of the defendant, it will be a verdict that the plaintiff has no cause of action.

The requests to charge submitted on behalf of the defendant were submitted before the argument of counsel began, and the requests are refused except as they may be covered in the instructions given.

The requests on behalf of the plaintiff were sub-
20 mitted after the argument had started, and I have really not had the opportunity carefully enough to consider them to be in a position to charge them, and therefore they are not charged except as they may be covered in the instructions given to the jury in the general charge.

You, ladies and gentlemen, may now retire to consider your verdict.

Mr. Mathews: If your Honor please, before the
30 jury retire— (Confers with the Court at the bench.)

The Court: Upon request of counsel for the defendant I call your attention to another pertinent provision of the law. And it is for you to say whether this provision is applicable to the facts as disclosed by the evidence in the case. This relates to the time for giving notice where the parties re-

side in different places, and that is the situation here, one party residing in Philadelphia and the other party in New Jersey.

“Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: If sent by mail it must be deposited in the post office in time to go by mail the day following the day of dishonor or if there be no mail at a convenient hour on that day, by the next mail thereafter.”

10

That is the only provision that is pertinent.

Mr. Mathews: Yes, but the thing is that the actual notice must be within a certain time.

The Court. And of course if there was actual notice it must have been within the time specified within the Act.

You may retire.

20

Mr. Mathews: I take exception to that part of the Court's charge in which he stated “so far as the notary was concerned, he used proper methods of informing himself as to the address of this defendant.” And in the further charge of the Court, that “therefore the jury might find so far as the notary is concerned, he used proper diligence to inform himself as to the proper address of the defendant Sweeten,” without qualifying same by referring to the question of whether or not the plaintiff itself used due diligence in informing the notary.

30

And exception to that part of the Court's charge in which he said that it was sufficient for the plaintiff “to put it in such train of delivery that it would

in the ordinary course reach him (the defendant) at his proper address."

Further exception to that part of the Court's charge in which he says "if that information was not communicated to the notary, the question is whether the notary used proper diligence in ascertaining the address before he mailed the notice, and where the notary makes inquiry at the bank where a paper is payable and receives information from the cashier
10 or any other of the proper officers, who would be likely to have such information, as to the residence of the endorser, upon the faith of which the notary addresses the protest, the jury are justified in finding that he used due diligence."

And a general exception.

And exception to the refusal of the Court to charge the three requests of the defendant.

The Court: In this case of Liberty Title and
20 Trust Company against Preston P. Sweeten, the court will remain in session until the jury shall return with its verdict, and in the absence of the trial Judge, the clerk is authorized and directed to take and record the verdict as rendered.

PLAINTIFF'S REQUESTS TO CHARGE.

30 No. 1. If you find that notice of dishonor and protest was sent to the defendant, Preston P. Sweeten, by letters addressed to him at Swedesboro, N. J., and at City Center Building, Philadelphia, Pa., containing a return address on the envelope, and that said letter was not returned to the Notary Public who protested the note in question, then you may

find that the notice of protest was received by the defendant, Preston P. Sweeten, and your verdict should therefore be for the plaintiff, for the full amount due upon the note.

No. 2. If you find that the defendant, Preston P. Sweeten, was accustomed to receive his letters at City Centre Building, Philadelphia, Pa., then your verdict should be for the plaintiff.

No. 3. If you find that other letters were mailed 10
by the plaintiff to the defendant, Preston P. Sweeten, at Swedesboro, N. J., containing return addresses, and that said letters were not returned to the plaintiff, then you are justified in concluding that the defendant, Preston P. Sweeten, was, as a matter of law, accustomed to receive his letters at that post office.

No. 4. If you find that the defendant, Preston P. Sweeten, received letters addressed to him at 20
Swedesboro Postoffice and that said letters were duly delivered by the Postoffice authorities, then your verdict should be for the plaintiff.

DEFENDANT'S REQUESTS TO CHARGE.

No. 1. That the burden of proof is on the plaintiff to show that they sent notice of protest to the defendant at his residence or place of business.

No. 2. That the plaintiff must make diligent inquiry for address of defendant before they sent notice, and failure to make such inquiry and defendant not receiving notice releases the defendant. 30

No. 3. If the jury believe that Preston P. Sweeten did not receive actual notice, they must find for the defendant.

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EXHIBIT D1.

CONFIDENTIAL STATEMENT MADE TO
LIBERTY TITLE AND TRUST COMPANY
Showing Financial Condition as of 1st day of June
1925

Name P. P. Sweeten
Business Address Pedricktown, N. J. 10
Home Address Pedricktown, N. J.
Kind of Business General Store

Special Notice—This Statement must be signed
and every item filled in, writing “none” where nec-
essary.

ASSETS

Cash on Hand and in Bank	3,000	
Notes Receivable (good) due from Custom- ers	9,000	20
Accounts Receivable (good) due from Cus- tomers	18,000	
Merchandise (Finished) (Valued at Cost)	45,000	
Merchandise (Unfinished) (Valued at Cost)		
Raw Material (Valued at Cost)		
Stocks, Bonds, etc. (as per schedule on page 2)	15,500	
Furniture and Fixtures		
Real Estate Owned (as per schedule on page 2)	10,000	30
Machinery and Equipment	3,500	
Horses and Wagons		
Other Assets:— (List Singly)		
Total	<hr/> 104,000	

LIABILITIES

	Notes Payable (for Merchandise)	None
	Notes Payable (to Banks)	None
	Notes Payable (to Individuals)	None
	Collateral Loans (Secured by Stocks, Bonds, etc.)	None
	Accounts Payable	1,500
10	Mortgages Payable (as per schedule on page 2)	None
	Chattel Mortgages or Machinery Leases	None
	Other Liabilities:— (List Singly) As detailed below	
	Total Liabilities	1,500
	Net Worth	102,500
		<hr/>
	Total	104,000
20	Contingent Liability	
	Total Amount of Notes Receivable which have been Discounted and not Included in Assets Enumerated Above \$ None	
	Total Amount of Exchanged Paper (if any) \$ None	
	Total Amount of Accommodation Endorsements (if any) \$20,000 not including \$5000 of 6/6/25 to Co.	
30	Total Amount Assigned or Pledged of Above Ac- counts Receivable \$ None	
	Total Amount of Any Other of the Above Assets Pledged or Assigned \$ None	
	Insurance:—On Merchandise \$40,000 On Buildings and Machinery \$8500.	
	Regular Times of Taking Inventory Jany. Basis of Inventory Value	

FINANCIAL STATEMENT (Concluded)

State if Inventory in this Statement is Actual or Estimated Actual

If Actual (What Date Taken) Jany. 25 If Estimated (By Whom)

Are Books Regularly Audited by Certified Public Accountant? No

If so (Last Date) By Whom

Other Bank Accounts (Where Kept)

Pedricktown

10

Schedule of Stock, Bonds, Etc., Owned:—

(Description)	(Market Value)
Farm Mortgages	\$12,000
P. R. R. Stocks 90 Shs.	\$ 3,800

Total \$

Schedule of Real Estate Owned and Mortgages Payable:—

(Location and Description)	(Market (When Value) Mortgage) Due)
Miscellaneous:	20
R. E. in	
Pedricktown	

Miscellaneous:

R. E. in

Pedricktown

The foregoing is a true statement of the financial condition of the undersigned given the Liberty Title and Trust Company for the purpose of procuring a line of credit from time to time, in accommodation or business paper.

The undersigned agrees to promptly notify said Liberty Title and Trust Company of any material changes in said financial statement, which would tend to reduce the pecuniary responsibility of the undersigned as set forth therein.

(Sign Name Here) P. P. Sweeten

Date Signed 6/5/25

SPECIAL NOTICE—This Statement must be

signed and every item filled in, writing "none" where necessary.

EXHIBIT D2.

CONFIDENTIAL STATEMENT MADE TO
LIBERTY TITLE AND TRUST COMPANY

10

Showing Financial Condition as of 1st day of January 1927

Name P. P. Sweeten,

Business Address Pedricktown, N. J.

Home Address Same

Kind of Business General Store

Special Notice—This Statement must be signed and every item filled in, writing "none" where necessary.

20

ASSETS

	Cash on Hand and in Bank	4,000.00
	Notes Receivable (good) due from Customers	5,000.00
	Accounts Receivable (good) due from Customers	5,000.00
	Merchandise (Finished) (Valued at Cost)	38,500.00
	Merchandise (Unfinished) (Valued at Cost)	
	Raw Material (Valued at Cost)	
30	Stocks, Bonds, etc. (as per schedule on page 2)	10,000.00
	Furniture and Fixtures	500.00
	Real Estate Owned (as per schedule on page 2)	45,000.00
	Machinery and Equipment	
	Horses and Wagons	

Other Assets:—	
(List Singly)	
Bank Stocks, etc.	15,000.00
	<hr/>
Total	\$123,000.00

LIABILITIES

Notes Payable (for Merchandise)	None	10
Notes Payable (to Banks)	“	
Notes Payable (to Individuals)	“	
Collateral Loans		
(Secured by Stocks, Bonds, etc.)	“	
Accounts Payable	“	
Mortgages Payable		
(as per schedule on page 2)	“	
Chattel Mortgages or Machinery Leases	“	
Other Liabilities:—		20
(List Singly)		
	None	
Total Liabilities		
Net Worth		

	Total	None
Contingent Liability		
Total Amount of Notes Receivable which have been Discounted and not Included in Assets Enumerated Above \$5,000.00		30
Total Amount of Exchanged Paper (if any) \$None		
Total Amount of Accommodation Endorsements (if any) \$25,000.00 except Corn Exchange as explained below:		
Total Amount Assigned or Pledged of Above Ac- counts Receivable \$ None		

Total Amount of Any Other of the Above Assets
 Pledged or Assigned Bank Stock etc. \$15,000.00
 Real Estate 35,000.00

Together with 114 N. Juniper St. to Cover Loans
 in net amt. of about 37,000.00 at Corn Exchange
 Bank. Jas. Sweeten, Jr. 114 N. Juniper St. ap-
 praised by E. G. Cross at 32,500, and is mtg.
 for \$10,000. P. J.

- Insurance:—On Merchandise \$27,000.00
 10 On Buildings and Machinery \$25,000.00
 Regular Times of Taking Inventory Yearly
 Basis of Inventory Cash

FINANCIAL STATEMENT (Concluded)

State if Inventory in this Statement is Actual or
 Estimated Actual

If Actual (What Date Taken) January 1, 1927.

If Estimated (By Whom)

Are Books Regularly Audited by Certified Public
 Accountant? No

- 20 If so (Last Date) By Whom
 Other Bank Accounts (Where Kept) First National,
 Pedricktown, New Jersey.

Schedule of Stocks, Bonds, etc., owned:—

- | | (Description) | (Market Value) |
|----|--|----------------|
| | 50 Nat Hardware Stores 7% Pfd. | |
| | 5 Swedesboro Trust Co. | |
| | 10 Cornwell State Bank | |
| | 5 Salem Co. Trust Co. | |
| | 10 Woodstown Nat. Bk. | |
| 30 | 5 Woodbury Trust Co. | |
| | 5 Farmers & Mech. Nat. Bk. Woodbury, N. J. | |

\$3400 Liberties

Schedule of Real Estate Owned and Mortgages Pay-
 able:—

- | (Location and
Description) | (Market (Amount (When
Value) Mortgage) Due) |
|-------------------------------|--|
|-------------------------------|--|

Store Property,			
Pedricktown, N. J.	\$35,000.00	\$	None
3 houses			
Pedricktown, N. J.	\$10,000.00	\$	“
Total	\$	\$	

The foregoing is a true statement of the financial condition of the undersigned given the Liberty Title and Trust Company for the purpose of procuring a line of credit from time to time, in accommodation or business paper.

10

The undersigned agrees to promptly notify said Liberty Title and Trust Company of any material changes in said financial statement, which would tend to reduce the pecuniary responsibility of the undersigned as set forth therein.

(Sign Name Here) P. P. Sweeten

Date Signed 2/9/27

SPECIAL NOTICE—This Statement must be signed and every item filled in, writing “none” where necessary.

20

EXHIBIT P1.

June 4/28

Int. 80.00

\$15,000.00/100

Philadelphia, Jun 30 1927 19

15,080—

30

Thirty Days after date we promise to pay to the order of Ourselves Fifteen Thousand 00/100 Dollars at Liberty Title & Trust Co., Phila., Pa. without defalcation. Value received with Int. @ 6%.

SWEETEN AUTOMOBILE CO.

James Sweeten, Jr.

Commercial Paper Purchased
No. 6670 Due 8/1/27

(Rubber Stamp)

Original written instrument
produced, inspected and re-
turned.

TLG

Referee in Bankruptcy.

10

[ENDORSED]

Sweeten Automobile Co.
James Sweeten, Jr.,
President
James Sweeten, Jr.
P. P. Sweeten

20

PROTEST

UNITED STATES OF AMERICA

30 \$15,000.00/100. Philadelphia, Jun. 30, 1927.

Thirty Days after date we promise to pay to the
order of Ourselves FIFTEEN THOUSAND 00/100
DOLLARS at Liberty Title & Trust Co., Phila., Pa.
without defalcation. Value received.

SWEETEN AUTOMOBILE CO.,
James Sweeten, Jr., Pres.

[ENDORSED]

SWEETEN AUTOMOBILE CO.

James Sweeten, Jr., Pres.,

James Sweeten, Jr.,

P. P. Sweeten.

(Rubber Stamp)

Original written instrument
produced, inspected and re- 10
turned.

TLG

Referee in Bankruptcy

BE IT KNOWN, That on the day of the date here-
of, at the request of Liberty Title and Trust Com-
pany, Broad and Arch Streets, Philadelphia, the
holder of the original promissory note of which a
true copy is above written I, THE UNDER- 20
SIGNED, Notary Public for the Commonwealth of
Pennsylvania by lawful authority duly commissioned
and sworn, residing in the City of Philadelphia dur-
ing the usual hours of business for such purposes,
went to Liberty Title and Trust Company, Broad
and Arch Streets, the place designated for presen-
tation and payment, and demanded the payment
thereof, which was refused, and answer made No
provision made for payment.

WHEREUPON, I, the said Notary, at the request
aforesaid, HAVE PROTESTED, and do hereby 30
solemnly PROTEST, against all persons and every
party concerned therein, whether as Maker, Drawer,
Drawee, Acceptor, Payer, Endorser, Guarantee,
Surety, or otherwise howsoever against whom it is
proper to protest, for all Exchange, Re-exchange,
Costs, Damages and Interest, suffered and to be suf-

ferred for want of payment thereof:—Of which demand and refusal I duly notify the MAKER, Sweeten Automobile Co., by written notice mailed to its office, City Center Building, Philadelphia, Pa. and the ENDORSERS, Sweeten Automobile Co., James Sweeten, Jr. and P. P. Sweeten, by written notices sent to each of them at their office, City Center Building, Phila., as well as a notice mailed to P. P. Sweeten, at Swedesboro, N. J.

10 **THUS DONE AND PROTESTED** at Philadelphia aforesaid the 1st day of August 1927.

J. Edgar Spielman,
Notary Public

(Seal)

Commission Expires, 1/20/30.

I hereby certify that I am not a Stockholder, Director or Officer of the within named corporation

J. Edgar Spielman

20

—
PROTEST
of
PROMISSORY NOTE
made by
SWEETEN AUTOMOBILE CO.,
for \$15,000
END
JAMES SWEETEN JR. and
P. P. SWEETEN.

30

Pro.	2.00
Ex.	.08
	\$2.08

EXHIBIT P2.

56.25

\$3750.00/100

Phila. Pa July 28 1927.

Ninety days after date we promise to pay to the order of Ourselves Thirty seven Hundred Dollars Fifty 00/ Dollars Payable at Liberty Title & Trust Co. Without defalcation, for value received 10
Sweeten Automobile Co.
James Sweeten, Jr.

Commercial Paper Purchased
No. 6760 Due 10/26/27

(Rubber Stamp)

Original written instrument produced, inspected and returned.

TLG

Referee in Bankruptcy 20

[ENDORSED]

Sweeten Automobile Co.

James Sweeten, Jr.

Pres.

James Sweeten, Jr.

P. P. Sweeten

30

Sweeten Automobile Co.

James Sweeten, Jr., Pres.

New Jersey Supreme Court,

Judgment entered hereon,

Nov. 18, 1927

Edward J. Kelleher

Clerk

PROTEST

UNITED STATES OF AMERICA

\$3750.00. Phila., Pa., July 28, 1927.

Ninety days after date we promise to pay to the
 order of Ourselves THIRTY SEVEN HUNDRED
 10 FIFTY 00/100 DOLLARS, Payable at Liberty Title
 and Trust Co., Without defalcation, value received.
 SWEETEN AUTOMOBILE CO.,
 JAMES SWEETEN JR., Pres.

[ENDORSED]

20 SWEETEN AUTOMOBILE CO.,
 James Sweeten, Jr., Pres.,
 JAMES SWEETEN, JR.
 P. P. SWEETEN,
 SWEETEN AUTOMOBILE CO.,
 James Sweeten Jr., Pres.,
 (Rubber Stamp)

Original written instrument
 produced, inspected and re-
 turned.

TLG

30 Referee in Bankruptcy

BE IT KNOWN, That on the day of the date
 hereof, at the request Liberty Title and Trust Co.,
 Broad and Arch Sts., Phila., of the holder of the
 original promissory note of which a true copy is
 above written. I, the undersigned, a Notary Public
 for the Commonwealth of Pennsylvania, by lawful

authority duly commissioned and sworn, residing in the Philadelphia during the usual hours of business for such purposes presented the same at Banking Floor Liberty Title and Trust Co., Broad and Arch Sts., Phila., Pa. and demanded the payment thereof, which was refused and answer made no provision had been made for payment.

Whereupon, I, the said Notary, at the request aforesaid, HAVE PROTESTED, and do hereby solemnly PROTEST against all persons and every party concerned therein, whether as Maker, Drawer, Drawee, Acceptors, Payer, Endorser, Guarantee, Surety or otherwise howsoever against whom it is proper to protest, for all Exchange, Re-exchange Costs, Damages and Interest, suffered and to be suffered for want of thereof: Of which demand and refusal I duly notify the maker, Sweeten Automobile Co., by written notice to its office City Center Bldg., Phila. and endorsers, Sweeten Automobile Co. to its said office, James Sweeten Jr., to City Center Bldg., and 1730 DeLancey St. and to P. P. Sweeten to Pedricktown N. J. and Swedesboro, N. J. THIS DONE at Philadelphia the 26th day of October 1927.

J. Edgar Spielman,

(Seal)

Notary Public.

Commission expires, 1/20/30.

I hereby certify that I am not a Stockholder, Director or Clerk in the Corporation for which I hereby act as Notary Public.

(Seal)

J. Edgar Spielman

30

PROTEST
OF
PROMMISSORY NOTE OF
SWEETEN AUTOMOBILE CO.,
For \$3750.

END
SWEETEN AUTOMOBILE CO.,
JAMES SWEETEN JR., and
P. P. SWEETEN

10	Pro.	\$2.06
	Ex.	.04
		<hr/>
		\$2.10

EXHIBIT P3.

20 17.25
\$1150.00/100 Phila. Pa. July 20 1927
Three Months after date we promise to pay to
the order of Ourselves Eleven Hundred Fifty 00/
Dollars Payable at Liberty Title & Trust Co. With-
out defalcation, for value received
Sweeten Automobile Co.
James Sweeten, Jr.
Pres.

30 Commercial Paper Purchased
No. 6737 Due 10/20/27
(Rubber Stamp)
Original written instrument
produced, inspected and re-
turned.
TLG
Referee in Bankruptcy.

[ENDORSED]

Sweeten Automobile Co.
James Sweeten Jr, Pres.
James Sweeten, Jr.
P. P. Sweeten
New Jersey Supreme Court,
Judgment entered hereon,
Nov. 18, 1927. 10
Edward J. Kelleher
Clerk

PROTEST

UNITED STATES OF AMERICA

\$1150.00/100. Phila., Pa., July 20, 1927.
Three months after date we promise to pay to 20
the order of Ourselves ELEVEN HUNDRED
FIFTY 00/100 DOLLARS, Payable at Liberty Title
& Trust Co., Without defalcation, for value re-
ceived.

Sweeten Automobile Co.,
James Sweeten Jr., Pres.

[ENDORSED] 30

Sweeten Automobile Co.,
James Sweeten Jr., Pres.,
James Sweeten Jr.,
P. P. Sweeten.
(Rubber Stamp)
Original written instrument

produced, inspected and returned.

TLG

Referee in Bankruptcy.

BE IT KNOWN, That on the day of the date hereof, at the request Liberty Title and Trust Company, Broad and Arch Sts., Phila., Pa., of the holder of the original promissory note of which a true copy is
 10 above written. I, the undersigned, a Notary Public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the City of Philadelphia during the usual hours of business for such purposes presented the same at Banking Floor, Liberty Title and Trust Co., Phila., Pa. and demanded the payment thereof, which was refused and answer made that no provision had been made for payment,

Whereupon, I, the said Notary, at the request
 20 aforesaid, HAVE PROTESTED, and do hereby solemnly PROTEST against all persons and every party concerned therein, whether as Maker, Drawer, Drawee, Acceptors, Payer, Endorser, Guarantee, Surety or otherwise howsoever against whom it is proper to protest, for all Exchange, Re-exchange Costs, Damages and Interest, suffered and to be suffered for want of payment thereof: Of which demand and refusal I duly notify the Sweeten Automobile Co., by written notice sent to it at City Center
 30 Bldg., Phila., James Sweeten, Jr., by written notice sent to him at 1730 DeLancey St., and P. P. Sweeten by notices sent to him at Pedricktown, N. J. and to Swedesboro, New Jersey.

THUS DONE AND PROTESTED at Philadelphia the Twentieth day of October 1927.

J. Edgar Spielman,
 Notary Public.

(Seal)

Commission Expires, 1/20/30.

I hereby certify that I am not a Stockholder, Director or Officer of the within named corporation
J. Edgar Spielman

PROTEST
OF

PROMISSORY NOTE Made by 10
Sweeten Automobile Co.,
For \$1150.00

END
SWEETEN AUTOMOBILE CO.,
JAMES SWEETEN JR., and
P. P. SWEETEN.

Pro. \$2.06
Ex.

J. EDGAR SPIELMAN, 20
15th Floor
Liberty Trust Bldg.
Philadelphia, Pa.

EXHIBIT P4.

56.25 30

\$3750.00

Phila. Pa. 5/31 1927

Three Month after date I promise to pay to the order of Sweeten Automobile Co. Thirty seven Hundred Fifty 00/100 Dollars at Liberty Title & Trust Co. without defalcation. Value received.

P. P. Sweeten

Commercial Paper Purchased
No. 6572 Due 8/31/27

(Rubber Stamp)

Original written instrument
produced, inspected and re-
turned.

TLG

Referee in Bankruptcy

10

[ENDORSED]

Sweeten Automobile Co.
James Sweeten, Jr., Pres.
James Sweeten Jr.
New Jersey Supreme Court,
Judgment entered hereon,
Oct. 15, 1927
Edward J. Kelleher

20

Clerk.

PROTEST

UNITED STATES OF AMERICA

30 \$3750.00 Phila. Pa. 5/31, 1927.
Three Months after date I promise to pay to the
order of Sweeten Automobile Co. Thirty-seven Hun-
dred Fifty 00/100 Dollars at Liberty Title & Trust
Co., Without defalcation. Value received. Com-
mercial Paper Purchased.
No. 6572 Due 8/31/27

P. P. Sweeten

[ENDORSED]

Sweeten Automobile Co.
James Sweeten, Jr. Pres.
James Sweeten, Jr.

(Rubber Stamp)

Original written instrument
produced, inspected and re-
turned.

TLG

10

Referee in Bankruptcy

BE IT KNOWN, That on the day of the date hereof, at the request The Liberty Title and Trust Company, of the holder of the original promissory note of which a true copy is above written. I, the undersigned, a Notary Public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the City of Philadelphia, during the usual hours of business for such purposes presented the same at The Liberty Title and Trust Company and demanded the payment thereof, which was refused and answer made "No provision made for payment." 20

Whereupon, I, the said Notary, at the request aforesaid, HAVE PROTESTED, and do hereby solemnly PROTEST against all persons and every party concerned therein, whether as Maker, Drawer, Drawee, Acceptors, Payer, Endorser, Guarantee, Surety or otherwise howsoever against whom it is proper to protest, for all Exchange, Re-exchange Costs, Damages and Interest, suffered and to be suffered for want of payment thereof: Of which demand and refusal I duly notify the endorsers. 30

THUS DONE AND PROTESTED at Philadelphia the Thirty-first day of August 1927.

A. J. Seidenbush,
Notary Public.

(Seal)

My commission expires March 6, 1931.

I hereby certify that I am not a stockholder, director or clerk in the Corporation for which I hereby act as Notary Public.

PROTEST
OF

10

P. P. SWEETEN

For \$3750.—

END

Sweeten Automobile Co.

James Sweeten, Jr. Pres., and

James Sweeten, Jr.

Pro. \$2.00

Ex. .08

 \$2.08

20

EXHIBIT P5.

22.50

\$1500.00/100

Phila. Pa. Jul 5-1927 192

Ninety Days after date we promise to pay to the order of Ourselves Fifteen Hundred 00/100 Dollars Payable at Liberty Title & Trust Co. Without defalcation, for value received.

30

SWEETEN AUTOMOBILE CO.

James Sweeten, Jr.,

President.

Commercial Paper Purchased

No. 6678. Due 10/3/27

(Rubber Stamp)

Original written instrument

produced, inspected and re-
turned.

TLG
Referee in Bankruptcy

[ENDORSED]

SWEETEN AUTOMOBILE CO. 10
James Sweeten, Jr.,
President.
James Sweeten, Jr.,
P. P. Sweeten
Pedricktown N. J.
New Jersey Supreme Court,
Judgment entered hereon,
Nov. 5, 1927
Edward J. Kelleher, 20
Clerk.

PROTEST

UNITED STATES OF AMERICA

\$1500.00/100. Philadelphia, Pa., July 5, 1927. 30
Ninety days after date we promise to pay to the
order of Ourselves Fifteen hundred Dollars, pay-
able at Liberty Title and Trust Company, Without
defalcation, for value received.

SWEETEN AUTOMOBILE CO.,
James Sweeten Jr.,
President.

[ENDORSED]

Sweeten Automobile Co.,
 James Sweeten Jr., Pres.,
 James Sweeten Jr.,
 P. P. Sweeten.

(Rubber Stamp)

10

Original written instrument
 produced, inspected and re-
 turned.

TLG

Referee in Bankruptcy.

BE IT KNOWN, That on the day of the date hereof, at the request Liberty Title and Trust Company, Broad and Arch Sts., Phila., Pa. of the holder of the original promissory note of which a true copy is above written. I, the undersigned, a Notary Public for the Commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the City of Philadelphia during the usual hours of business for such purposes presented the same at Banking Floor, Liberty Title and Trust Company, Phila., and demanded the payment thereof, which was refused and answer made no provision made for payment.

Whereupon, I, the said Notary, at the request aforesaid, HAVE PROTESTED, and do hereby solemnly PROTEST against all persons and every party concerned therein, whether as Maker, Drawer, Drawee, Acceptors, Payer, Endorser, Guarantee, Surety or otherwise howsoever against whom it is proper to protest, for all Exchange, Re-exchange Costs, Damages and Interest, suffered and to be suffered for want of payment thereof: Of which demand and refusal I duly notify the Sweeten Auto-

mobile Co. maker, James Sweeten Jr. Sweeten Automobile Co. and P. P. Sweeten, endorsers., the company, James Sweeten Jr. and P. P. Sweeten by notices to City Center Bldg. Phila. and the latter by notices also to Swedesboro and Pedricktown, N. J.

THUS DONE AND PROTESTED at the Third day of October 1927.

J. Edgar Spielman,
Notary Public.

(Seal)

Commission Expires, 1/20/30

10

I hereby certify that I am not a Stockholder, Director or Officer of the within named corporation.

J. Edgar Spielman

PROTEST
OF

SWEETEN AUTOMOBILE CO.,
For \$1500

20

END

SWEETEN AUTOMOBILE CO.,
JAMES SWEETEN JR., and
P. P. SWEETEN,

Pro. \$2.06

Ex. .10

\$2.16

30

J. EDGAR SPIELMAN,
15th Floor
Liberty Trust Bldg.
Philadelphia, Pa.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

LIBERTY TITLE & TRUST COMPANY,
Plaintiff-Appellee,

v.

PRESTON P. SWEETEN, bankrupt; E. C. WADDINGTON,
trustee,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL.

BRIEF FOR DEFENDANT-APPELLANT.

This is an appeal from a judgment entered in the Supreme Court, Salem County, tried before Judge Jess and a jury. The jury rendered a verdict against the defendant on which the judgment was entered.

The action was brought upon a note of \$15,000.00 held by the Liberty Title & Trust Company, on which Preston P. Sweeten, bankrupt, was an endorser. The defense was on the ground that no notice of

dishonor or non-payment of said note had ever been properly sent to the defendant or had ever been received by him. The issue was, therefore, a very narrow one and the points in this brief are concerned solely with the introduction of evidence, the refusal of the learned trial Judge to non-suit the plaintiff, his refusal to direct a verdict for the defendant and exceptions to the charge.

I.

Grounds numbers 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are all concerned with exceptions taken to the admission of evidence and to save time can all be summed up in a general way.

For the convenience of the Court the separate grounds and the page and line number in the State of the Case in which this testimony appears are listed below:

- Ground 13: S. C. page 38, line 27.
- Ground 14: S. C. page 40, line 58.
- Ground 15: S. C. page 41, lines 31-33.
- Ground 16: S. C. page 42, lines 10 and 11.
- Ground 17: S. C. page 51, lines 22 and 23.
- Ground 18: S. C. page 53, lines 13-15.
- Ground 19: S. C. page 53, lines 35 and 36.
- Ground 20: S. C. page 58, lines 33 and 34.
- Ground 21: S. C. page 60, lines 14-32.
- Ground 22: S. C. page 61, lines 13 and 14.
- Ground 23: S. C. page 64, lines 23-26.

The main point of the defendant as to the introduction of this testimony is that it is all immaterial, impertinent and irrelevant to the issue. Most of it concerns the question of having sent notices out on other notes on which the bankrupt was an

endorser, and the defendant contends that the sending of other notices is no proof of any kind so far as the notice in this particular case is concerned. The question involved is whether or not Preston P. Sweeten, the endorser, who is herein referred to as the bankrupt, either had sent to him a notice of dishonor of the note in accordance with the statute or whether he received actual notice thereof as required by the statute, and testimony of this character was not only entirely irrelevant to the issue, but had a tendency to prejudice the minds of the jury to the effect that if other notices had been sent that this particular one must have been sent in accordance with the law.

The case seems to have been tried upon two theories, which were considerably intermingled and confused, *i. e.* (1) that due notice was sent in accordance with the statute, and (2) that defendant received actual notice in accordance with the statute.

The burden to show that notice was duly sent or actual notice received is upon the plaintiff.

Martinis v. Johnson, 21 N. J. L. 239;

Richardson v. Kulp, 81 N. J. L. 123;

Jordan v. Reed, 77 N. J. L. 584.

The testimony to which objection is made by the defendant could possibly have no bearing upon either one of these phases as it certainly did not tend to show that notice of the dishonor of this particular note was sent in accordance with the statute and it could not legally be offered to show the receipt of actual notice by the defendant inasmuch as actual receipt of other notices on other notes is no proof that notice of this particular note was received in the time required by the statute. All the testimony could do, and what we think it ac-

tually did do, was to influence the jury to jump to the conclusion that if the bankrupt received notice of other notes which were due, then he must have received notice of this particular note.

II.

Ground No. 1 is that the learned trial Judge refused to grant defendant's motion for non-suit at the conclusion of the plaintiff's case.

The burden of proof showing that due notice was sent or actually received in accordance with the statute is upon the plaintiff.

Martinis v. Johnson, supra;

Richardson v. Kulp, supra;

Jordan v. Reed, supra.

To charge an endorser, there must be strict evidence of demand in due time and in manner prescribed by law, and of notice to the endorser.

Martinis v. Johnson, supra (p. 244).

The Uniform Negotiable Instruments Act adopted in this State provides in Section 89 as follows:

“Except as herein otherwise provided when a negotiable instrument has been dishonored by non-acceptance or non-payment notice of dishonor must be given to the drawer and to each endorser, and any drawer or endorser to whom such notice is not given is discharged.”

Section 90 provides:

“The notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay

to the holder and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.”

Section 91 provides:

“Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.”

Section 96 provides:

“The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.”

Section 102 provides:

“Notice may be given as soon as this instrument is dishonored, and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.”

Section 103 provides:

“Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

(2) If given at the residence, it must be given before the usual hours of rest on the day following.

(3) If sent by mail, it must be deposited in

the post office in time to reach him in the usual course on the day following.”

Section 104 provides:

“Where the person giving and the person to receive notice reside in different places, then notice must be given within the following times:

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail if it had been deposited in the post office within the time specified in the last sub-division.”

Section 105 provides:

“Where notice of dishonor is duly addressed and deposited in the post office the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.”

Section 108 provides:

“Where a party has added an address to his signature, notice of dishonor must be sent to that address, but if he had not given such address, then the notice must be sent as follows:

(1) Either to the post office nearest to his place of residence or to the post office where he is accustomed to receive his letters; or

(2) If he live in one place and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice

may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section."

The only testimony as to the sending of this notice was that of the witness, J. Edgar Spielman (S. C. pages 25-29). There is no testimony that the notice was sent to the residence of the bankrupt or to his place of business; all that we have is that a notice was sent to Swedesboro, New Jersey, and one sent to the City Centre Building, Philadelphia, Pennsylvania.

While the witness, Spielman, said (S. C. page 26, line 15), "Yes, sir, I also mailed a notice to his office," and adds (S. C. page 27, lines 4-5, after the stenographer had repeated the question), "In the City Centre Building, Philadelphia," still, on his direct examination in answer to the question as to whether or not the bankrupt had an office in the said City Centre Building, Philadelphia, he states (S. C. page 27, lines 16-20), "I don't know, except I remember as to that Mr. Moosbrugger, who was just on the stand, told me to send these notices not only to the address which he had given me, but also to the City Centre Building."

Furthermore, on cross-examination (S. C. page 28), he states that he did not know of his own knowledge either where Preston P. Sweeten resided or had his place of business, but that he received this information from men who were officers of or connected with the plaintiff bank.

There is absolutely no testimony as to when the notice was sent. The only testimony we have that approaches this point is that after being shown the

note in question, the witness states (S. C. page 25, lines 24-26), "Looks very much like the one I protested on August 1st, although I would like to check from these notes." S. C. page 26, lines 1-2, he states, "Yes, sir, I did; that is to say, I mailed a notice of the protest. The certificate certifies as to the mailing of the notice."

Therefore, the only semblance of testimony we have with regard to sending this notice is that there was some kind of a notice sent some time. He says he protested the note on August 1st, whether it was 1927 or some other time we do not know, and furthermore, that he mailed a notice of protest—when he does not say and we do not know. We are left to our own conclusions as to when the notice was mailed and the defendant contends that these things cannot be left to conclusion, but are part of proof of the plaintiff's case, and there is no definite statement of any kind whatsoever that proper notice of dishonor was mailed to the bankrupt at any particular time.

There is absolutely no testimony of any kind in the plaintiff's main case that either the bankrupt resides or that anybody told the notary that he resided in the City of Philadelphia, at which place the plaintiff is located, and consequently, by no possible stretch of the imagination could this matter fall within the provisions of 103.

The next point is that Section 96 provides that notice may be in writing or merely oral, but there is no attempt to show any oral notice in this case. Furthermore, the section says: "The notice may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment." There is absolutely no proof at all as to what this notice contained. The only testimony we have is that

stated above (S. C. page 26, lines 1-2). The witness says: "I mailed a notice of the protest." Even if we are to assume that the notice of protest is the same as a notice of dishonor we are left entirely to assume that the notary gave a notice sufficiently identifying this particular instrument and indicating that it had been dishonored by non-payment.

It seems fundamental that the statement of the witness that he sent a notice of protest without proving what is in the notice is a mere conclusion of law; otherwise, the defendant would be bound by the sending of any kind of a notice that the notary assumed to be one complying with the statute.

The defendant, therefore, contends that the plaintiff should have been non-suited for any one or all of the following reasons:

1. That there was no proof that any notice of dishonor such as required by the statute was sent.
2. That there was no proof that any notice of dishonor such as required by the statute was sent within the time required by the statute.
3. That there is no proof to show that the notice was sent to either the residence or place of business of the bankrupt.

A discussion of this last point will be included in the argument against the refusal of the learned trial Judge to direct a verdict for the defendant.

III.

Ground No. 2 is that the learned trial Judge refused to direct a verdict for the defendant at the

conclusion of the entire case. The defendant contends that this verdict should have been directed for the same reasons set forth in sub-section II hereinabove.

The first two points have been discussed at length in that sub-section and will not be referred to here, but are relied upon for reasons why a verdict for the defendant should have been directed.

As to the fourth point, that there was no notice sent to either the residence or the place of business of the bankrupt, the later testimony put in by the plaintiff, a great deal of which was over the objection of the defendant, was solely to the effect that other notices of dishonor of other notes were sent to Swedesboro and the City Centre Building and never came back to the plaintiff's officers. There were apparently a number of other notes which the bankrupt had endorsed of a similar character on which notices of protest had been sent to Swedesboro and the City Centre Building by the plaintiff. Counsel for the defendant objected to the introduction of such testimony on the ground that the same was totally irrelevant, but the testimony was allowed over his objection. But an examination of it shows that it goes no further than to show that notices on other notes were sent to these addresses and never came back. The plaintiff called the postmaster at Swedesboro in an apparent attempt to show the course that a letter addressed to the bankrupt at Swedesboro would have taken, and this testimony was allowed over the objection of the defendant, but went no further than to show that the practice was to hand letters to the carrier and if it were returned back to the post office they would then re-address the letter to the addressee, if they knew him, and if not, transmit the letter back to the sender; and the postmaster stated that to the

best of his knowledge he had never re-addressed any letters to Preston P. Sweeten which had been received at the Swedesboro post office (S. C. page 66, line 1).

The plaintiff then called the mail carrier on the route at Swedesboro on which a farm of James Sweeten, Jr., a brother of the bankrupt and president of the Sweeten Automobile Company, was located. He testified that he did not remember delivering any letters to this address (known as the Porches Hill Farm) addressed to the bankrupt (S. C. page 67, lines 28-29), but further testified (S. C. page 67, lines 36-37) that he took all of Sweeten's mail down to his box. This is the sum and substance of the testimony of the plaintiff. The defendant showed an absolute denial by the bankrupt of ever having received notice of the protest of this note; showed further that some letters from the Liberty Title & Trust Company had been delivered to Edwin P. Sweeten, a nephew of the bankrupt, and he in turn had delivered them over to his father, James Sweeten, Jr., the president of the Sweeten Automobile Company, which was the maker of this particular note and which received the proceeds thereof. The defendant further established the fact, as shown by Exhibits D1 and D2, that financial statements had been filed by the bankrupt with the plaintiff at the time or about the time this note was discounted and that such financial statements showed on their face that the residence of the bankrupt was at Pedricktown, New Jersey, and the defendant further showed that the bankrupt had been listed in the Bell Telephone Directory for a number of years past and was so listed at the time this note fell due, and that such listing showed his residence at Pedricktown (S. C. page 50).

The Court in refusing to direct a verdict for the

defendant, stated that it did appear that at the time this notice of protest was mailed (whenever that was) the plaintiff bank had in its possession a financial statement, on which the residence of the bankrupt was shown as Pedricktown and held that the question of whether the notice was received and whether the attempt to give the notice was sufficient under the law, were questions of fact to be decided by the jury. And yet it is always the duty of the owner of a note to use reasonable diligence to discover the true residence so that proper information can be given, if the one secondarily liable is to be held; and, if facts are made known tending to put him on his guard, then due investigation must be had to find the truth.

In re Marwitz's Estate, 133 Atl. 220.

This is a Pennsylvania case, but the doctrine enunciated is certainly in accordance with the law in this State under the Negotiable Instruments Act.

Furthermore, in the same case the Court says that the holder of a note is bound by the information which he has or should have obtained, and cannot excuse his default by reason of the ignorance of the notary who actually protests. * * * If, however, a wrong address has been given and the failure to receive notice is shown, the official act is without validity and the Court says this has been held under circumstances similar to those appearing here in a State where the Uniform Negotiable Instruments Act is in force, when the certificate set forth that a notice of protest had been deposited in the mails, postage prepaid, addressed to an individual, but failed to indicate the city to which it was forwarded and cites *Peoples' Bank and Trust Company v. Allen*, 94 N. J. L. 355. This, then, clearly

shows, as hereafter argued, that the notary in sending the notice of dishonor of a promissory note must of necessity act as the agent of the holder or whatever interested party instructs him to send the notice.

On the question of the receipt of actual notice, section 108, *supra*, provides that where notice is actually received by the party *within the time specified in this act*, it will be sufficient, though not sent in accordance with the requirements of this section. The notice, then, if actually received, must have been received in the time within which a notice properly deposited in the mail would have reached the endorser in due course and yet the learned trial Judge allowed the jury to pass upon this question when the only testimony they had before them was that other notices had been sent by the plaintiff to the defendant addressed to Swedesboro and had not come back and the defendant, himself, traced some of these letters a little further, showing that they went to Edwin P. Sweeten, a nephew of the bankrupt, who in turn turned them over to his father, James Sweeten, Jr. Where they went after that nobody knows. Whether this particular notice was one of them nobody knows, and yet the jury was allowed to conjecture upon such testimony as that and allowed to assume that in some way James Sweeten, Jr., or whoever received these letters at Swedesboro, turned them over to the bankrupt and that this particular notice was one of such letters, and furthermore, that such notice was turned over to the bankrupt immediately upon its receipt, all of which must have been found in order to comply with the requirements of the statute. It seems to us that we have never seen a jury allowed to stretch its imagination to such an extent as this before and we cannot conceive that such can be the law. There

is nothing more raised than a mere possibility of conjecture that in some way not shown by the testimony by some circumstances undisclosed somebody unknown gave the bankrupt something which might possibly have been a notice of dishonor of this note in some way not shown, in proper form and which might be guessed to have been mailed in proper time. In other words, there was no definite testimony as to when the notice was sent, what it contained, who received it and when they received it and whether they delivered it to the bankrupt within the time limited, but the jury was allowed to simply conjecture upon the possibility that all these facts might have existed. Is this the strict proof demanded by *Martinis v. Johnson, supra*?

The second theory upon which the learned trial Judge allowed the case to go to the jury was that they might find that the notice had been properly mailed (regardless of the lack of proof of time of sending and contents of the notice) inasmuch as the notary giving the notice had made inquiry at the bank at which the paper was payable for the address to which to send this notice. Apparently, the Court based its action upon the theory originally enunciated in the case of *Herbert v. Servin*, 41 N. J. L. page 225, and the apparent following of that case in this court, to wit: in the case of *Second National Bank of Hoboken, New Jersey, v. Smith*, 91 N. J. L. 531, and upon the trial Court's own following of that case in the case of *First National Bank of Belmar v. Carpenter*, 130 Atl. 435 (not reported in the State reports).

Counsel does not desire to presume to insist upon this Court overruling its decision in the case of *Bank v. Smith, supra*, nor do we think it necessary to do so in the decision of the case at bar. We think that the first two points relied upon are sufficient,

but at the same time counsel feels there is a duty devolving upon him to respectfully suggest that possibly there may have been a slight misapplication of the doctrine of *Herbert v. Servin* in the case of *Bank v. Smith*.

A careful examination of the case of *Herbert v. Servin* serves to disclose that there was a sound rule laid down that a notary in protesting a negotiable instrument will be assumed to have exercised due diligence in ascertaining the residence of the endorser if he makes inquiry at the bank where the paper is payable, and upon the faith of the information which he receives, addresses the notice of protest to that address. It will be particularly noticed that in *Herbert v. Servin* the holder of the note was an independent third party and not the bank itself at which the paper was payable.

What is the position of the notary who sent the notice to the bankrupt, an endorser in this case? Unquestionably he did so as the agent of the holder. No other theory is reasonably tenable under the provision of the Negotiable Instruments Act and the general theory of commercial paper. Consequently, the diligence required is that of the holder, either personally or *per alia*, and if the holder, himself, were to make the inquiry at the bank where the paper was payable and send the notice he would be equally justified in relying upon the information given and equally considered to have exercised due diligence. Such is the rule in *Herbert v. Servin* as we understand it. What then happens to such a doctrine when the holder and the bank at which the paper is payable are one and the same? Upon the face of the decision of the case of *Bank v. Smith* it would seem that no distinction has been made. This would seem to us inconceivable, because the net result of it would be to say that the holder's own

agent could inquire from the holder himself as to the residence of the endorser, receive erroneous information through the neglect of the holder himself, and then have the Court hold that he exercised due diligence, behind which the holder can rely, when the holder himself had given the erroneous information; or, in other words, it simply allows the holder to take advantage of his own negligence by saying that his agent had inquired of the proper place to ascertain the information and, therefore, had used due diligence regardless of the fact that the information obtained was wrong.

If this were an action against the notary for negligence the notary might be in position to set up this claim, but how can the holder, who is the principal involved, and on whose behalf the notary acted, set up the fact that it, through its own agent, gave itself information which it knew or ought to have known to be incorrect? It seems to us that if that is the decision in *Bank v. Smith*, then the doctrine of *Herbert v. Servin* has been painfully distorted and this Court should go no further in strengthening the law in this State on this point, but rather take this opportunity to declare that the doctrine of *Herbert v. Servin* has no application where the holder for whom the notary acts and the bank at which the paper is payable is one and the same. We are naturally desirous of clarifying as far as possible the law in this State and not confusing it further and, therefore, counsel has felt obliged to bring this matter to the Court's attention so that, if upon careful consideration, the Court feels that the doctrine of *Herbert v. Servin* has been wrongly applied in the case of *Bank v. Smith* it may now say so and overrule the latter case, thereby clarifying the law. Perhaps if it does not do so the net result of the law in this State will be as

stated above, to wit: that the holder may rely on the diligence of the notary in inquiring of itself where the notice shall be sent, and it does not make a bit of difference what kind of information the bank, as the place at which the paper is payable, gives to itself, as the holder, through the notary.

Take for instance the present case. The bank at which the paper was payable is the holder and the plaintiff in this case. It had on its files papers, to wit: at least two financial statements of the bankrupt showing his address to be at Pedricktown. It had no information whatsoever of any business address in the City Centre Building in Philadelphia. The maker, Sweeten Automobile Company, had offices in that building and Edwin P. Sweeten, the nephew of the bankrupt and the son of James Sweeten, Jr., the president of the Sweeten Automobile Company, had a residence at Swedesboro. The plaintiff, therefore, through the notary as its agent, chose to send these notices to the place of business and place of residence of James Sweeten, Jr., who was the president of the Sweeten Automobile Company, which was the maker of the note, and was also an endorser thereon himself.

Mailing a notice to an endorser of a promissory note in the maker's care at a place which is neither his residence nor place of business or sojourn, in the absence of proof of any effort to ascertain either is insufficient.

E. I. Dupont de Nemour Powder Co. v. Rooney, 117 N. Y. S. 220.

Where a card with the name and address of the endorser was left by the holder of a note at the bank to which it was delivered for collection and notice was sent to an erroneous name in care of the

holder who was absent from the address at the time, it was held that notice was not properly given.

Howard v. Van Gieson, 61 N. Y. S. 349.

A notice of protest never received by an endorser, but mailed to him at a place where he did not reside or have a place of business or get his mail, although he owned the houses and his sons did business there, is insufficient to charge him as endorser.

Philip, etc., Ebling Brewing Co. v. Reinheimer, 66 N. Y. S. 458.

And at the same time the plaintiff had the correct address of the bankrupt in its files and could have also ascertained it from the Bell Telephone Directory and yet chose to do neither.

Suppose that the plaintiff in this case had chosen to send the notice of dishonor itself instead of having the notary send it. Could it then have justified itself in sending the notice to Swedesboro or any other place it chose to do so instead of to the place required by the Negotiable Instruments Act? Scarcely, because this is the very thing that the act intends to control, *i. e.*, that the notice must be sent to the place of business or residence of the endorser if ascertainable. Is its position changed for the better because instead of sending the notice itself it chose the notary as agent and gave him the wrong information instead of using it itself? As stated above, the notary in sending the notice out simply acts as the agent of the holder and it is quite palpable that the plaintiff cannot better its position by employing an agent to do something for it instead of doing it itself. This would be making a farce of the law and a farce of the rights of an endorser under the Negotiable Instruments Act.

Naturally, it is the due diligence of the notary which is normally the question and not the due diligence of the bank at which the paper is payable, *provided that the bank where the paper is payable is not at the same time the holder.*

In short, had the plaintiff as the holder of the note, sent this notice to Swedesboro when it had absolutely no information or any basis for sending it there, it would have been held that the notice was not sent in accordance with the statute, and the only reason that the question is here presented to this Court is that instead of doing it itself it employed an agent, the notary, to send the notice out, which agent received the information from the plaintiff. There is no ministerial duty upon a notary who protests a note to send notices of dishonor other than as the agent for the holder or some other party interested. Section 90 of the act says:

“That the notice may be given by or on behalf of the holder or by or on behalf of any party to the instrument who might be compelled to pay it to the holder and who upon taking it up would have a right of reimbursement from the party to whom the notice was given.”

It does not appear from the testimony that Spielman, who was simply a notary public, had anything to do with this note as a party in interest, but simply protested it and sent his notices as the agent of the holder.

A careful examination of the entire case shows that there is not the slightest bit of disputed testimony. Testimony on both sides was uncontradicted and unchallenged. The following comes nearest to being in dispute:

The bankrupt states on cross-examination (S. C. page 36, lines 11-17) as follows: "Q. Did you ever receive any notices of dishonor or protest? A. Well, I possibly may have done that, I can't remember; I can't remember that. I may have done that, I may have received some notices of the due date of the notes. I may have done that, but I can't remember positively about that."

And then he was allowed to answer over counsel's objection the question as to the address on these letters which he received and he answers (S. C. page 37, lines 22-23 and lines 24-26) that all notices which he received, if he received any, were addressed to Pedricktown, and furthermore, when the witness, Spielman, was recalled, he testified that after August 1st, 1927, he mailed notices of dishonor of notes to the bankrupt at three places, to wit: Swedesboro, New Jersey, City Centre Building, Philadelphia, and Pedricktown, New Jersey (S. C. page 61, lines 35-36; pages 62, lines 1-2, &c.), that the reason for sending these notices to Pedricktown was that Mr. Charles S. Krumrine, vice-president of the plaintiff, had this matter up and there was a question as to where the bankrupt lived and then he told him to send it to both places (S. C. page 63, lines 11-18).

But a careful examination of the testimony shows that the bankrupt's statement of the receipt of such notice is quite compatible with the further testimony of the plaintiff that after this note was dishonored then they started sending notices to Pedricktown. There is, therefore, absolutely no testimony that the bankrupt received any letters addressed to Swedesboro.

IV.

Ground No. 3 is an exception taken to the refusal of the learned trial Judge to charge a request of the defendant as set forth. This, counsel contends, should have been charged in accordance with the cases of *Martinis v. Johnson, supra*; *Richardson v. Kulp, supra*; *Jordan v. Reed, supra*.

The 4th ground is that the learned trial Judge refused to charge a request of the defendant as set forth. This, counsel contends, should have been charged by the Court upon authority of the cases above cited and of the provisions of the Negotiable Instruments Act hereinabove quoted.

Ground No. 5 is that the learned trial Judge refused to charge a request of the defendant as set forth. This, counsel contends, should have been charged inasmuch as the trial Court allowed the case to go to the jury, because it was undeniably shown that notice was not sent to either the residence or place of business of the bankrupt and if the case was to go to the jury at all it was solely upon the theory that the bankrupt received actual notice as required by the statute.

Ground No. 6 is that the learned trial Judge erroneously charged the jury in part as set forth in said ground.

A sufficiently comprehensive discussion of this point is set forth in Section III hereof.

Ground No. 7 is that the learned trial Judge erroneously charged the jury in part as set forth in said ground. Defendant contends that this was erroneous in that it led the jury to the impression that the plaintiff, or its agent, the notary, could have sent this notice in any way, at any time, by

any train of delivery that would reach the bankrupt at his proper address, and particularly when there was absolutely no testimony to show any such circumstance as this.

Ground No. 8 is that the learned trial Judge erroneously charged the jury in part as set forth in said ground. Counsel contends that this was erroneous because, as argued under Section III, it was a mis-application of the theory of the doctrine enunciated in *Herbert v. Servin*, and ignored the fact that the holder itself was the place where the paper was payable.

Ground No. 9 is that the charge of the learned trial Judge to the jury was generally erroneously misleading and not in accordance with the law as applied to the facts of the case shown by the testimony. This is a general exception to the charge and is summed up by the arguments upon the other points involved so as to show that the charge of the Court in this case was entirely misleading and allowed the jury to find a verdict against the defendant under circumstances which were not shown to exist by the testimony and were not in accordance with the law as set forth above.

The defendant, therefore, respectfully submits that the plaintiff should have been non-suited at the conclusion of its case, and failing that, that a verdict should have been directed by the learned trial Judge in favor of the defendant at the conclusion of the trial of the entire case, and that the case went to the jury with irrelevant testimony and upon erroneous instructions, both prejudicial to the rights of the defendant as set forth above.

Respectfully submitted,

FRANK A. MATHEWS, JR.,
*Attorney for and of Counsel
with Defendant.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

LIBERTY TITLE & TRUST COMPANY,
Plaintiff-Appellee,

v.

PRESTON P. SWEETEN, bankrupt; E. C. WADDINGTON,
trustee,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL.

BRIEF FOR PLAINTIFF-APPELLEE.

This appeal brings up a judgment entered in the Supreme Court (the Salem Circuit), tried before Judge Jess and a jury. Suit was on a promissory note endorsed by Preston P. Sweeten, who later went into bankruptcy, and his trustee, E. C. Waddington, Esquire, is defendant in this suit as trustee for Preston P. Sweeten.

The signature of Preston P. Sweeten was not denied and no point was raised against the liability

of the defendant except defendant's contention that notice of dishonor and protest was not given to the endorser, Preston P. Sweeten.

The motions for non-suit and for direction of verdict made by counsel for the defendant were both denied and the case went to the jury, upon the charge of the Court, and the jury found for the plaintiff.

While defendant in his brief groups his points under the following four headings:

1. Admission of improper evidence for plaintiff.
2. Failure to non-suit plaintiff.
3. Failure to direct a verdict in favor of defendant.
4. That trial Judge failed to charge a specific request of the defendant.

Yet, all of the subject-matter of said alleged errors should be grouped and will be presented herein as follows:

I. DID THE NOTARY PUBLIC PROTESTING THE NOTE AND GIVING THE NOTICE USE DUE DILIGENCE IN INFORMING HIMSELF AS TO THE ADDRESS OF THE ENDORSER, PRESTON P. SWEETEN?

II. WAS THERE EVIDENCE TO GO TO THE JURY THAT THE NOTE IN QUESTION WAS PROTESTED AND THAT NOTICE THEREOF WAS MAILED BY THE NOTARY PUBLIC IN ACCORDANCE WITH THE NEGOTIABLE INSTRUMENTS ACT?

III. WAS THERE EVIDENCE TO GO TO THE JURY THAT THE ENDORSER, PRESTON P. SWEETEN, ACTUALLY RECEIVED SUCH NOTICE OF DISHONOR?

IV. WAS THERE ANY ERROR IN THE COURT'S REFUSAL TO NON-SUIT OR TO DIRECT A VERDICT?

I.

The notary, Spielman, testified that he obtained the post-office address of Preston P. Sweeten to which the notice was to be sent, from the officer of the bank who had charge of the note department of the Liberty Title and Trust Company, plaintiff, or from his assistant, Mr. Lampe (pp. 27-28). This address was Swedesboro, New Jersey. He also got from Mr. Moosbrugger, the treasurer of the plaintiff bank (p. 24), instructions to mail a notice to Preston P. Sweeten also in the City Center Building, Philadelphia, Pa. (p. 28).

Preston P. Sweeten, defendant, never at any time met the officers of the plaintiff bank and was never in their banking house (Preston P. Sweeten, pp. 32 and 33). The note in question was discounted by the brother, James P. Sweeten, who was an official of the Sweeten Automobile Company, the maker of the note, and was also an endorser on the note (p. 57). The proceeds of the note went to Sweeten Automobile Co. (p. 58). James P. Sweeten, the official of the automobile company, being the brother of the defendant endorser, gave to Harold Lampe, the bank official, the address of Preston P. Sweeten (p. 57), at Swedesboro, N. J.

We, therefore, have it clearly established, that the defendant, Preston P. Sweeten, never visited the bank and never met any of its officers; but that

it was his brother, James P. Sweeten, who discounted the note at the bank for the benefit of the Sweeten Automobile Company, of which he was an official, and gave the officials of the bank the address of the endorser, Preston P. Sweeten, as Swedesboro, New Jersey. The officer of the bank then, in giving information to the notary public, on request of the latter, gave the Swedesboro address as that of the endorser, in accordance with the information he had thus received.

Under the authorities, due diligence was shown in the notary public in ascertaining the address of the endorser. *Second National Bank of Hoboken v. Smith*, 91 N. J. L. 532. This Court said, at page 534:

“Where a notary makes inquiry at the bank where paper is payable, and receives information from the cashier as to the residence of the endorser, upon faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligence.”

In the cited case

“The notary who made the protest presented the note to the teller of the plaintiff bank, where it was payable, and received word that it was not good and then inquired of the assistant cashier where the endorser lived and was told that he was dead, etc.”

The plaintiff bank in the cited case was in precisely the position of the plaintiff bank in the present case. In each instance, the note was owned by the particular bank at which the note was made payable. In the present case, not only was due diligence shown by the notary in making the inquiry, but the evidence discloses that the bank official in

giving the information exercised good faith in giving out that information, because the address which he gave was the very address of the endorser which had been given to him by the person who dealt with the bank and discounted the note.

Counsel for the defendant has argued in his brief, in effect, that a mistake by an official of the bank at which the note was payable, in giving the address of the endorser to the notary, would relieve the endorser. We find no law to support this contention. It is distinctly contrary to the doctrine laid down by this Court of Errors and Appeals in the case cited above. But even if counsel's contention should be correct, yet we have the uncontested statement of the official of the bank at which the note was payable that the address which he gave to the notary was the very address which had been given to the bank by the party dealing with the bank. Not only so, but the evidence discloses that this was only one of several notes, with like signatures, and held by the same bank, as to all of which notices were sent to the endorser, Preston P. Sweeten, at the Swedesboro address, and none of those notices were returned undelivered.

On this point, therefore, we believe the defendant's contention is entirely unsupported.

II.

WAS THERE EVIDENCE TO GO TO THE JURY THAT THE NOTE IN QUESTION WAS PROTESTED AND THAT NOTICE THEREOF WAS MAILED BY THE NOTARY PUBLIC IN ACCORDANCE WITH THE NEGOTIABLE INSTRUMENTS ACT?

Section 108 of the Negotiable Instruments Act provides:

“Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

I. Either to the post-office nearest to his place of residence, *or to the post-office where he is accustomed to receive his letters*; or

II. If he live in one place, and have his place of business in another, notice may be sent to either place; or

III. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.”

There was no address of the endorser placed on the note. As already shown, the brother who dealt with the bank and discounted the note gave as the endorser's address, “Swedesboro, New Jersey.” Furthermore, the notices as to this and other notes were sent to Swedesboro, New Jersey, and were never returned undelivered.

A series of notes, falling due each thirty days, was endorsed by Sweeten. These notes were renewed from time to time and were sixteen in number (Lampe, p. 62). Notices as to each one of these sixteen notes, both original and renewals, were mailed to Preston P. Sweeten, at Swedesboro, New Jersey, and none of these notices were returned (Lampe, pp. 51-54).

Therefore, as to the particular note on which suit is brought, it is established that the note was presented for payment, protested and notice of pro-

test mailed by the notary to Swedesboro, New Jersey, the post-office address of Preston P. Sweeten, as given to the bank at the time the original note was discounted (Spielman, pp. 25-26). Notice of protest of this note was also mailed to the defendant, addressed to City Center Building, Philadelphia, Pa., in accordance with the instructions of an officer of a bank. This was not returned (pp. 26-27).

In addition thereto, as we have already shown under Point I of this brief, the address, "Swedesboro, New Jersey," was obtained by the notary in good faith from the officer of the bank at which the note was made payable and that officer of the bank obtained that address from the man who brought the note to the bank for discount. This amounts to a compliance with that section of the Negotiable Instruments Act, Section 108, Sub-section 1, reading as follows:

"or to the post-office where he is accustomed to receive his letters."

There was ample evidence, therefore, to go before the jury on the question of compliance by the notary with the terms of the statute respecting the giving of notice to the endorser.

III.

WAS THERE EVIDENCE TO GO TO THE JURY THAT THE ENDORSER, PRESTON P. SWEETEN, ACTUALLY RECEIVED SUCH NOTICE OF PROTEST FROM THE NOTARY PUBLIC?

We believe that there was sufficient evidence, even apart from the other issues in the case, to take the case to the jury on this issue. As already shown

in this brief, the notice of protest was addressed to Preston P. Sweeten, the endorser, at Swedesboro, New Jersey. The envelope enclosing the notice had a return address upon it and that envelope, with the enclosure, was not returned to the sender. The address, Swedesboro, N. J., was the address given to the plaintiff bank at the time the note was discounted. Not only so, but Preston P. Sweeten himself will not deny receiving notices from the plaintiff with respect to these notes. While he will not admit that he received any notice of protest, yet he says (p. 36, lines 10, &c.):

“Q. Did you ever receive any notices of dishonor or protest?

A. Well, I possibly may have done that, I can't remember; I can't remember that. I may have done that, I may have received some notices of the due date of the notes. I may have done that, but I can't remember positively about that.”

The postmaster, Charles H. Wilson, at Swedesboro, N. J., said that he knew Preston P. Sweeten well and for a period of twenty years (Wilson, p. 65). This postmaster does not recall re-addressing any letters of Preston P. Sweeten to Pedricktown (pp. 65-66).

Inasmuch as it is shown that notice of the due date of each note and of each renewal was sent to Preston P. Sweeten, the endorser, at Swedesboro, as well as the notice of protest of this particular note, we must infer that the letters so addressed were actually delivered, because they were not returned. We are entitled to infer that they were delivered by the post-office either to Preston P. Sweeten in person or to someone authorized by him to receive them. The defendant called as his wit-

ness, Edwin P. Sweeten, a nephew, and this witness testified that he had obtained from the Swedesboro post-office some letters addressed to Preston P. Sweeten, and that these or some of them were from Philadelphia banks and some from Liberty Title & Trust Company (E. P. Sweeten, pp. 46-47). This witness says that he turned the mail of Preston P. Sweeten he thus received over to his father. He does not say what his father did with that mail. He did not say that his father retained it. We are entitled to infer that having received the mail of Preston P. Sweeten from the post-office at Swedesboro, he was authorized by Preston P. Sweeten so to do and that delivery thereof was made, either through the nephew or through the brother, James Sweeten, especially in view of the statement of Preston P. Sweeten himself that he

“may have received some notices of the due date of the notes, etc.” (p. 36).

The only way for defendant, Sweeten, to have obtained those notices was by receiving the mail which was addressed to him at Swedesboro, N. J. The circumstances we have above outlined, established by the testimony, entitled the jury to consider and decide whether or not defendant, Sweeten, actually received the notice of protest of this note.

IV.

WAS THERE ANY ERROR IN THE COURT'S REFUSAL TO DIRECT A VERDICT OR TO GRANT DEFENDANT'S MOTION FOR NON-SUIT?

As to the motion to direct a verdict:

We have endeavored to show in the preceding

pages of this brief that there was ample evidence to take this case to the jury.

As to defendant's motion to non-suit:

The sole ground of that motion was that no notice of protest was sent to either the business address or the residence of the defendant, Sweeten (p. 29, l. 15). We believe there was proper evidence before the Court at the conclusion of plaintiff's case to take to the jury the question of whether or not a notice of protest was mailed to the defendant in accordance with the terms of the statute. Not only so, but that testimony was amplified in the further development of the case. Not only was the defendant not entitled to have his motion granted at the time it was made, but he was in no way harmed by the refusal of that motion and permitting the case to continue to the point of defendant's motion to direct a verdict for defendant, which was likewise refused.

V.

Defendant, at pages 2 and 3, sets forth certain exceptions which, according to defendant's brief relate to the admissibility of evidence claimed by defendant to be

“immaterial, impertinent and irrelevant to the issue.”

They refer particularly to testimony relating to notices sent on notes on which the bankrupt was endorser other than the particular notes sued on. That testimony, as we view the case, was admissible in connection with the other testimony introduced, as tending to show what was the

“post-office where he is accustomed to receive his letters.”

That question was an essential one, to be decided by the jury and the jury were entitled to consider that testimony with other facts brought out in the case in determining whether or not Swedesboro, New Jersey, was the address at which defendant was accustomed to receive his mail.

Furthermore, it will be recalled that the address Swedesboro, New Jersey, was the address given to the bank at the time the note was discounted by the person, to wit, the brother of the defendant, who brought the note in for discount and who dealt with the bank. The instruction so given was carried out by the bank and notices of the due date of the notes were sent to that address and defendant, Preston P. Sweeten, himself will not deny the receipt of such notices. All of which shows that not only was the address, to which the notices were sent, the place where Sweeten was accustomed to receive his mail, but, as well, the place to which the bank was instructed to send these notices at the time the notes were discounted.

We consider the testimony not only pertinent but in no wise prejudicial to the rights of the defendant in the trial.

We respectfully submit that there was no error in submitting the case to the jury. The defendant was liable on this particular note. There is no denial of the fact that he signed the note. The bank discounted the note on the strength of his endorsement. The defendant seeks to escape liability solely on a technical claim that the notice of protest was not mailed to him as required by law. Under our authorities, it was not even necessary that he should

actually receive the notice, provided that the notice was mailed by the notary in accordance with the provisions of the statute.

We feel that there was ample evidence before the jury to show that this was done and believe that the judgment of the lower Court should be affirmed.

BLEAKLY, STOCKWELL & BURLING,
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