INDEX.

IN REBUTTAL:

Plaintiff's Witness:

EXHIBITS:

Plaintiff's:

Defendant's:

Notice and Grounds of Appeal.

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the entire judgment entered in this cause on the following ground:

1. The court below admitted as evidence over appellant's objection and marked "Exhibit D-4" cards containing accounts claimed as credits by the respondents.

2. The court below refused on appellant's motion to strike out the testimony of one John A Gerrow and the testimony of one Max Ruby testifying to a so-called "second agreement" alleged to have been made between the parties hereto under which the respondent claimed a deduction in the amount due to the appellant.

3. The court below refused to admit in evidence a letter offered by appellant dated July 31st, 1922, written by Haverford Cycle Company to one Max Sladkin.

4. The court below refused to direct the jury to render a verdict for the appellant for the amount proved to be due to her from the respondent on the three promissory notes due July 1, 1923, August 1, 1923, and September 1, 1923, and marked Exhibit P-1, P-2 and P-3.

INSLEY, VREELAND & DECKER,
Attorneys for Appellant.
WILLIAM E. DECKER,
of Counsel.

Complaint.

Plaintiff, located in the District of Wyncote, in the State of Pennsylvania, says:

FIRST: She sues for the amount of a promissory note for Nine hundred Dollars ($900.00) made by the defendant, Max Ruby, to the order of the Haverford Cycle Company and by the said Haverford Cycle Company subsequently endorsed to plaintiff, a copy of which note is hereto annexed and which note was payable by the terms thereof July 1st, 1923.

Said note is now the property of plaintiff and is unpaid.

Plaintiff demands as damages the sum of Nine hundred Dollars ($900.00) with interest from the 1st day of December, 1921.

SECOND: She sues for the amount of a promissory note for Nine hundred sixty-nine and 48/100 Dollars ($969.48) made by the defendant, Max Ruby, to the order of the Haverford Cycle Company and by the said Haverford Cycle Company subsequently endorsed to plaintiff, a copy of which note is hereto annexed and which note was payable by the terms thereof August 1st, 1923.

Said note is now the property of plaintiff and is unpaid.

Plaintiff demands as damages the sum of Nine hundred and sixty-nine and 48/100 Dollars ($969.48) with interest from the 1st day of December, 1921.

THIRD: She sues for the amount of a promissory note for Nine hundred Dollars ($900.00) made by

the defendant, Max Ruby, to the order of the Haverford Cycle Company and by the said Haverford Cycle Company subsequently indorsed to plaintiff, a copy of which note is hereto annexed and which note was payable by the terms thereof September 1st, 1923.

Said note is now the property of plaintiff and is unpaid.

Plaintiff demands as damages the sum of Nine hundred Dollars ($900.00) with interest from the 1st day of January, 1922,

FOURTH: On the 1st day of December, 1921, defendant made his promissory note due the 1st day of April, 1923, which note bore interest at the rate of 6% and was paid in installments between the 2nd day of May, 1923, and the 3rd day of July, 1923, but the interest thereon, amounting to Eighty-five and 50/100 Dollars ($85.50), was not paid.

Plaintiff demands as damages the sum of Eighty-five and 50/100 Dollars ($85.50) with interest from the 3rd day of July, 1923.

FIFTH: On the 1st day of December, 1921, defendant made his promissory note due the 1st day of May, 1923, which note bore interest at the rate of 6% and was paid in installments between the 9th day of July, 1923, and the 9th day of September, 1923, but the interest thereon, amounting to Ninety-five and 85/100 Dollars ($95.85), was not paid.

Plaintiff demands as damages the sum of Ninety-five and 85/100 Dollars ($95.85), with interest from the 9th day of September, 1923.

SIXTH: On the 1st day of December, 1921, defendant made his promissory note due the 1st day of June, 1923, which note bore interest at the rate of 6%, and was paid in installments between the 12th day of September, 1923, and the 19th day of November, 1923, but the interest thereon, amounting to One hundred five and 30/100 Dollars ($105.30), was not paid.

Plaintiff demands as damages the sum of One hundred five and 30/100 Dollars ($105.30) with interest from the 19th day of November, 1923.

INSLEY, VREELAND & DECKER.
Attorneys for Plaintiff.

Copies of Notes.

$969.49 December 1st, 1921.

On August 1st, 1923, after date I promise to pay to the order of Haverford Cycle Company, Nine hundred sixty-nine and 48/100 Dollars, payable at National Security Bank, Phila., Pa., with interest @ 6%.

MAX RUBY.

Endorsed: Haverford Cycle Co.,
I. C. Wilson, Treas.
Jennie. Sladkin

$900.00 Jersey City, N. J., January 1st, 1922.

On September 1st, 1923, after date I promise to pay to the order of Haverford Cycle Company Nine hundred and 00/100 Dollars payable at National Security Bank, Philadelphia, Pa., with interest @ 6%.

MAX RUBY.

Endorsed: Haverford Cycle Co.,
I. C. Wilson, Treas.
Jennie. Sladkin

$900.00 December 1st, 1921.

On July 1st, 1923, after date I promise to pay to the order of Haverford Cycle Company Nine hundred and 00/100 Dollars payable at National Security Bank, Phila., Pa., with interest @ 6%.

MAX RUBY.

Endorsed: Haverford Cycle Co.,
I. C. Wilson, Treas.
Jennie. Sladkin

Answer and Counterclaim.

The defendant, Max Ruby, residing in the City of Jersey City, County of Hudson and State of New Jersey, says, that:

First Count.

1. The defendant admits that he is the maker of the note mentioned in the First Count of the complaint, but has no knowledge from which to form a belief that the said note was endorsed to the plaintiff.

2. The defendant denies each and every allegation contained in paragraph 2 of the First Count.

Second Count.

1. The defendant admits that he is the maker of the note mentioned in the Second Count of the complaint, but has no knowledge from which to form a belief that the said note was endorsed to the plaintiff.

2. The defendant denies each and every allegation contained in paragraph 2 of the Second Count.

Third Count.

1. The defendant admits that he is the maker of the note mentioned in the Third Count of the complaint, but has no knowledge from which to form a belief that the said note was endorsed to the plaintiff.

2. The defendant denies each and every allegation contained in paragraph 2 of the Third Count.

FOURTH, FIFTH AND SIXTH COUNTS.

1. The defendant denies each and every allegation contained in the Fourth, Fifth and Sixth Counts of the complaint.

FIRST SEPARATE DEFENSE TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH COUNTS.

1. The plaintiff is not a holder in due course of the notes mentioned in the complaint.

SECOND SEPARATE DEFENSE TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH COUNTS.

1. The defendant says that the notes mentioned in the complaint were made by the defendant to the order of Haverford Cycle Company, a corporation, the payee, of said notes, in consideration of an assignment, by the said Haverford Cycle Company, of certain accounts payable, aggregating in all the sum of $10,566.51.

2. The said Haverford Cycle Company agreed that if said accounts payable were not paid, that whatever difference was not collected by defendant within a reasonable time, said Haverford Cycle Company could credit the defendant with same; said Haverford Cycle Company also warranted that the said accounts payable aggregating in all the sum of $10,566.51 was the true and correct amount due to said Haverford Cycle Company from its said creditors, but, on the contrary, the true and full amount of the accounts payable, although represented by the Haverford Cycle Company as $10,566.51 was but only $7,739.36.

By reason thereof there is due and owing to the defendant the sum of $2,827.15, no part of which has been paid to or received by the defendant.

The said Haverford Cycle Company assigned said notes to the plaintiff, who is not a bona fide purchaser for value without notice.

COUNTERCLAIM.

By way of counterclaim, the defendant repeats and realleges each and every allegation contained in the Second Separate Defense to the First, Second, Third, Fourth, Fifth and Sixth counts in the same way and manner as if the same were herein enumerated and reiterated verbatim.

By reason thereof, the defendant demands the sum of $2,827.15 in his favor.

JOSEPH M. ALSOFROM,
Attorney for Defendant.

Reply to Answer and Counterclaim.

1—Plaintiff denies the allegations contained in the first separate defense.

2—Plaintiff has no knowledge of the allegations contained in the first three paragraphs of the second separate defense but plaintiff does deny the allegations contained in the last paragraph of the second separate defense.

ANSWER TO COUNTERCLAIM.

Plaintiff has no knowledge of the allegations contained in the counterclaim except that plaintiff denies the last paragraph of said counterclaim.

INSLEY, VREELAND & DECKER,
Attorneys for Plaintiff.

Case.

HUDSON COUNTY CIRCUIT COURT.

JENNIE SLADKIN,
Plaintiff,

vs.

MAX RUBY,
Defendant.

Before—Hon. WILLARD W. CUTLER,
Judge, and a Jury

Jersey City, N. J., March 23, 1925.

APPEARANCES:

INSLEY, VREELAND & DECKER, Esqrs., for the Plaintiff, by Hamilton Cross, Esq.

JOSEPH M. ALSOFROM, Esq., for the Defendant.

A Jury was duly empanelled; being found satisfactory, they were sworn.

Mr. Cross: The Plaintiff submits to a voluntary non-suit on the 4th, 5th and 6th counts of the complaint.

It is stipulated that $440. has been paid on account of the note in the first count, leaving a balance on that note of $460.

Counsel opened to the Jury.

Mr. Cross: I offer in evidence:

Note due July 1st, 1923, for $900.

Note due August 1st, 1923, for $900.

Note due September 1st, 1923, for $900.

ACCEPTED and MARKED as Plaintiff's Exhibits P-1, P-2 and P-3 of this date.

Mr. Cross: Plaintiff rests.

The Court: Proceed to the defence.

JENNIE SLADKIN, sworn:

DIRECT EXAMINATION BY MR. ALSOFROM:

Q. You are Jennie Sladkin, the plaintiff in this case? A. Yes, sir.

Q. Where do you live? A. Wyncote, Pennsylvania.

Q. You are the wife of Max Sladkin? A. I am.

Q. Do you know what office Max Sladkin held on or about January 1st, 1921, in the Haverford Cycle Co.? A. President.

Mr. Cross: I object to it on the ground that it is immaterial.

The Court: I think it is competent.

Q. You said he held the office of President? A. Yes, sir.

The Court: Of what Company?

Mr. Alsofrom: Haverford Cycle Company.

Q. A Delaware Corporation, isn't that so? A. Yes, sir.

Q. I show you Exhibits P-1, P-2 and P-3, and ask you when you got possession of these notes? A. I believe the date is on these notes.

Q. I ask you when you came in possession of these notes? A. On December first—

Jennie Sladkin. Called by Defendant. Direct.

Mr. Alsofrom: I withdraw the question.

Q. I show you Exhibit P-1 and ask you when you got possession of this note?

The Court: Which note is that?

Mr. Alsofrom: P-1 is dated December 21st, 1921. Pay to the Order of the Haverford Cycle Company $900. on July 1st, 1923, signed Max Ruby.

A. I really cannot recollect the date the note came into my possession.

Q. Do you remember the year the note came into your possession? A. No; I am not positive.

Q. Would you say you got it in your possession last year? A. Well, I don't know.

Q. Would you say you got it this year? A. No, I don't think I got it this year. No, I didn't get it this year. I don't think so.

Q. You might have got it last year? A. I don't know. I don't remember when I got it.

Q. Who gave the notes to you? A. Well, I don't remember who gave them to me. Mr. Sladkin I suppose, but I really don't remember who gave me these notes.

Q. I presume you cannot recollect when you got the other two notes? A. No.

Q. And do you know who gave these other two notes to you; that is P-2 and P-3? A. I suppose Mr. Sladkin did.

Q. Did you do anything with these notes after you got them ? A. Why, I tried to collect. They were out for collection.

Q. Who, did you say Mr. Sladkin? A. I signed for them.

Q. I beg pardon? A. I signed for them.

Q. What do you mean you signed for them? A. I mean I put these notes in for collection. I deposited them.

Q. And where did you put them for collection? A. The bank.

Q. What bank? A. I don't know. I don't remember.

Q. What happened after you put them in for collection with the bank that you don't remember? A. I don't know.

Q. As a matter of fact, you don't know how you come into this suit? A. Yes, I do know.

Q. How did it come about? A. I advanced some money to the Haverford Cycle Company. I bought the claim of the Firestone Tire. I advanced $16,000. and I got note for collateral, which is some of these notes that are here.

Q. When did you advance that money? A. I think it was in 19—, either 21 or 1922.

Q. When, in 1921? A. I don't recollect that. Summer, during the summer, I believe in 1922.

Q. Do you mind putting your name on here? (handing witness paper)?

Mr. Cross: I don't think this is material. There is nothing set up in the answer denying that she is the holder of the notes.

The Court: The question may arise whether she held them in due course.

Mr. Cross: I presume then the only object in obtaining the signature is to show she is not the holder in due course.

(Witness signs paper.)

Q. Do you know what happened after you put these notes into the bank? A. What happened? No, I do not.

Mr. Alsofrom: That's all; cross examine.

CROSS EXAMINATION BY MR. CROSS:

Q. Mrs. Sladkin, you testified that you received these notes at the time that you purchased a claim of the Firestone Tire Company for $16,000? A. Yes, sir.

Q. Who is that claim against; who owed the Firestone Tire Company that money? A. Why, the Haverford Cycle Company.

Q. Is that a check that you used to buy the claim of the Firestone Tire Company, Mrs. Sladkin (handing witness)? A. Yes, sir.

Q. What is the date on the check? A. July 5th.

Q. What year? A. 1922.

Mr. Cross: I ask to have that marked for identification.

Marked Exhibit P-4 for identification of this date.

Q. Were these notes given to you as security for this payment? A. Yes, sir.

Q. Were they given to you before or after you made that payment? A. What payment you are referring to?

Q. The Firestone Tire on July 5th, 1922? A. I think they were given after.

Q. Do you recall how long after? A. Really, I cannot recollect that.

Q. Would you say it was the same year? A. I suppose so.

Q. Would you say it was or was not? A. I think it was.

Q. To the best of your knowledge it was the same year? A. Yes, sir.

Q. Were the notes due when you got them? A. Were they due?

Q. Had the date upon each of them expired when you got them? A. I think they were.

Q. When you got the notes, you say you put them in the bank? A. Well, if they were matured, yes, sir.

Q. You put them in the bank for collection, as you testified? A. Yes, sir.

Q. When you put them in the bank for collection, was that as soon as you got them or later? A. I don't remember when I put them, when I deposited them.

Q. You put them in the Bank before they were due? A. I really can't recollect that.

Q. Were they due at the time you put them in the bank? A. Yes, they were due.

Q. Is was time to be paid? A. Yes, sir.

Q. Had the date expired before you put them in the bank or did you put them in the bank before the date expired? A. To the best of my knowledge, I think I put them before the date they expired.

Q. These three notes were due on July 1st, 1923, August 1st, 1923, and September 1st, 1923. With this check to aid your recollection, would you say you got the notes from the Haverford Cycle Company before July 1st, 1923, or after?

Mr. Alsofrom: If your Honor please, she has already testified to that.

A. I can't recollect.

Jennie Sladkin. Called by Defendant. Cross.

Q. You cannot recall? A. I cannot recall.

Q. The best of your knowledge is that you got them either in 1921 or 1922, as you testified on your direct examination?

The Court: Don't lead the witness. Let her testifiy as to the facts; don't lead her.

Q. You testified in answer to Mr. Alsofrom's question that you either received these notes in 1921 or 1922? A. Yes, sir.

Q. Now, you paid the Firestone Tire Company $16,000. in July, 1922, July 5th, 1922? A. Yes, sir.

Q. You testified, as I recollect it, that you received the notes after you made the payment to the Firestone Tire Company? A. Yes, sir.

Q. With that check to refresh your recollection of the date, July 5th, 1922, can you give us any idea how long after July 5th, 1922, it was that you received the notes?

Mr. Alsofrom: She has already testified to that.

A. I cannot recollect.

Q. Would you say it was some time within the year 1922? A. It probably was.

Q. When you paid this money, this $16,000., was that your money? A. Yes, sir.

Q. Where did you get that money? A. I mortgaged—

Mr. Alsofrom: We are not interested in where she got it from.

The Court: The question is whether it was really her money; whether it is a bona fide transaction.

The Witness: I owned a home in Atlantic City and I mortgaged that.

Q. Did you borrow that money? A. I took that on mortgage.

Q. With that money you paid Firestone? You bought this claim, paid $16,000, and then these notes were given to you at the time you bought that claim, after that time? A. Yes, sir.

Q. As a matter of fact, were these the only notes given or were there some others. Did you get just these three notes or did you get more than three? A. I don't remember. It all depends on the amount that is there.

Q. These notes call for $2769.48. Is that all the notes you got? A. $2700?

Q. Is that all the notes you received? A. I think it was a little more.

Q. Did you put them all in the bank for collection? A. I think I did.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. Do you know what this check of $16,000. was actually given for? A. I do.

Q. What was it given for? A. To settle a claim with the Firestone Tire Company.

Q. You got a note from the Haverford Cycle Company at that time for this money? Did you? A. I got some notes for collateral, yes, sir.

Q. When you gave this check, did you get anything for it? A. I guess I did.

Q. What did you get? A. I got notes for collateral.

Q. But these notes were given some time afterward, were they not? A. After.

Q. You didn't say anything at the time; was there anything said at the time you gave this check? A. I don't know.

Q. If anything had been said, would you remember it? A. I don't know.

(Witness excused.)

MAX M. SLADKIN, sworn:

DIRECT EXAMINATION BY MR. ALSOFROM:

Q. You are the husband of the plaintiff, Jennie Sladkin, are you not? A. Yes, sir.

Q. In December, 1921, you were the president of the Haverford Cycle Company, a Delaware corporation, were you not? A. Yes, sir.

Q. And you were a director of that company? A. Yes, sir.

Q. And you were the controlling stockholder of the company? A. At that time, yes, sir.

Q. You made a certain sale of a certain business known as the Haverford Cycle Company to the defendant, Max Ruby? A. Yes, sir.

Q. And you took certain notes amounting to the sum of $20,000? A. Yes, sir.

Q. Or part of which was cash and the balance notes? A. No, there was no cash.

Q. That Haverford Cycle Company at or about the time that the sale was made to Max Ruby, was

in the hands of a Receiver? A. No, not at that time.

Q. How soon afterwards? A. A year afterwards.

Q. And you at all times corresponded with Mr. Max Ruby regarding the payment of the notes in question, or any other notes? A. Yes, sir.

Q. Part of the sale that you made at the time to Mr. Ruby consisted of accounts, didn't it? A. They were.

Q. You knew that many of these accounts were bad, did you not? A. I do not.

Q. You know Mr. Gerrow, do you not? A. Very well.

CROSS EXAMINATION BY MR. CROSS:

Q. Mr. Sladkin, you testified you sold this business and received notes? A. Yes, sir.

Q. Are these Exhibits, P-1, P-2 and P-3, three of the notes? A. Yes, sir.

Q. Received at that time; are they? A. Yes, they were part of the notes.

Q. Now, you testified on your direct examination that any correspondence and any negotiations in respect to these notes was carried on by you? A. Yes, sir.

Q. What did you do with the notes when you got them? A. These notes were turned to the International Bank of Washington, D. C. as collateral for a note which I and Mrs. Sladkin signed, a collateral note for $16,000.

Q. Who made the note in the International Bank of Washington? A. Mrs. Sladkin and myself only.

Q. And you got with the note, $16,000? A. That is right.

Max M. Sladkin. Called by Defendant. Cross.

Q. Was any collateral pledged with the note? A. The mortgage in Atlantic City as well as this $32,000. worth of notes.

Q. And that property in Atlantic City was in your wife's name? A. Yes, sir.

Q. And that is the mortgage she testified to? A. That is right.

Q. She pledged that as collateral security? A. Yes, sir,

Q. And also, I understood you to say you received from the Haverford Cycle Company some $32,000. worth of notes? A. Something like $32,000. of various notes.

Q. Included in these notes were the notes represented by these Exhibits? A. That is right; there was something like $6,000. of Ruby's, his amongst them.

Q. Was any part of that paid? A. Yes; there was thirty-three or $3400. paid.

Q. These notes represent the balance? A. Some of it was paid on the three notes.

Q. That is the amount that we said at the beginning of the case? A. I think the balance is.

Q. Who has paid the interest on this $16,000. note in the Washington Bank? A. Mrs. Sladkin.

Q. When did the Haverford Ccyle Company go into the hands of a Receiver? A. On the 2nd day of December, 1922, I believe it was.

Q. December, 1922? A. Yes, sir.

Q. Were these notes transferred from the Haverford Cycle Company to Mrs. Sladkin before or after the bankruptcy? A. Before the bankruptcy; before the Receivership; there was no bankruptcy.

Q. Then can you recall how long before the Receivership these notes were given to her? A. I don't

remember the exact date. I would say about two or three months after the Firestone claim was purchased.

Q. What was this Firestone claim? A. The Firestone claim was $32,000. that the Haverford Cycle Company owed the Firestone Tire & Rubber Company for merchandise purchased. They pressed their claim hard and they threatened receivership. The only salvation was to buy that claim and to keep the Company afloat. The Company had no money to buy it. I went to my wife and I said to her, I said, "We can save this money if you lend me $16,000. so you lend me your collateral." She said "I will do it." I immediately went to the International Bank in Washington and negotiated a loan for $16,000. provided we put up this collateral. They gave me $16,000. That is, they didn't give it to me, they gave it to me in her name; the check was made payable to her. I immediately took the check and went to New York, where I settled with the Firestone their claim direct with the Firestone people. When I got back, I went to the vice-president and I talked the matter over. I said, "Now, I don't know how good that claim is, but the house is the only thing my wife has got. I don't feel that she ought to put it up; you ought to give me full collateral." He said, "All right, we will give $16,000. note of the branch notes." I said, "That won't be enough; if you will give $32,000. of these branch notes, it will be enough," because I figured some would pay and some would not.

Q. Do you know how much was paid? A. About $9100. on all the notes.

Q. Against the $16,000. that you loaned? A. Against $16,000. of which $32,000. was put up.

Max M. Sladkin. Called by Defendant. Redirect.

Q. When you, as President of the Haverford Cycle Company gave these notes to your wife to put up as collateral at the bank, did you tell her anything in connection with the notes? A. Well, I did explain to her that I have got full collateral which I have put up with the International Bank, but as a matter of fact she has not examined them and she has only endorsed them. That's all, because they insisted upon it.

Q. Did she know how the Haverford Cycle Co. got the notes? A. She did.

Q. What did you tell her? A. I told her they came from the sale of the branch stores, from the various managers who bought these stores.

Q. Did you sell more than the store to Ruby? A. Yes, sir.

Q. What were the stores? A. Ten or 11 stores we had and we sold them all.

Q. You received notes from all of them? A. Notes, about $350,000. all told.

Q. It was part of the $350,000. of notes, this $32,000. that you turned over to Mrs. Sladkin as collateral? A. Yes, sir.

Q. Did the Haverford Cycle Company, before they went into the hands of a Receiver ever pay Mrs. Sladkin the $16,000? A. No, sir.

Q. Did she ever get anything on account of the claim? A. No, sir; not from the Haverford Cycle Co. Only on the notes she had collected.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. You took care of all the affairs of your wife, financially, did you not?

Mr. Cross: I object to that as improper redirect. Well, I withdraw the objection.

The Court: It is competent.

A. I do in a way, yes, sir.

Q. You acted as her agent, didn't you? A. I was agent in what?

Q. You took care of her affairs? A. Yes, after she gave me the money I had to.

Q. You acted as her agent? A. Yes, sir.

Q. You were also President of the Haverford Cycle Company? A. I was at that time.

Q. What was the name of the Vice-President? A. John Irving.

Q. Is he here in Court to corroborate your testimony? A. Not that I know of.

Q. You know where he is, do you not? A. No, I do not.

Q. He is in Philadelphia? A. Maybe.

Q. When did you last see him? A. About a year ago; or maybe six or seven months ago.

Q. Did you make any effort to locate him? A. No.

Q. I understand that you purchased in behalf of your wife, a certain account for $16,000; is that correct? A. Yes, sir.

Q. What was the name of the account? A. I didn't purchase it. I purchased it for the Company.

Q. For your wife, is that correct? A. Yes, sir.

Q. What is the name of these people? A. Firestone Tire Company.

Q. You purchased that account for $16,000? A. Yes, sir.

Q. And the face value of the account was $32,000? A. Yes, sir.

Q. Correct? A. Yes, sir.

Q. You borrowed $16,000. from the bank in Washington, did you not? A. Yes, sir.

Q. How did you come to put up notes of the Haverford Cycle Company as collateral for a loan

of your wife? A. Why, these notes didn't belong to me. The notes didn't belong to her. She put it up. I explained to the bank in Washington just exactly the entire transaction and what I was doing and they agreed to take the notes as soon as I got them. When I got them, I turned them over to them.

Q. Have you got the note? A. Have I got?

Q. Have you the note showing the loan by the bank in Washington? A. Yes, I have.

Q. Where is it? A. The attorney has got it, and all the payments that he has made direct to the bank is on the back of it.

(Paper produced by counsel for plaintiff.)

Mr. Alsofrom: I ask to have it marked for identification.

Marked Exhibit D-1 for identification of this date.

Q. You borrowed this money for your wife? A. Yes, sir.

Q. How did it come to be by the corporation? A. Because they wanted to know what I want the money for. I explained that it was to get this transaction out of the way and for which and in turn they insisted upon other collateral and that is why I gave it to them.

Q. This is a collateral note? A. Yes, sir.

Mr. Alsofrom: I offer it in evidence.

Exhibit D-1 for identification now marked in evidence.

Q. This note, D-1, called for an assignment—

Mr. Cross: I object; the note speaks for itself. There is nothing can be introduced to alter or vary that particular instrument.

The Court: He may ask the question and if counsel objects I will rule on it.

Q. This note states on its face that there was received an assignment of mortgage on property in Gloucester County and Atlantic County; is that property belonging to you or your wife? A. My wife.

Q. You didn't own any of the collateral? A. Not a single one.

Q. On the back of the note it says 721/23, M. Ruby, $100. Does that represent a payment by this defendant? A. That is the defendant made direct payments to me, payable to the International Bank and I used to forward them on to the bank.

Q. There are twelve or more that have been marked M. Ruby?

Mr. Cross: I object to this line of questions, because the note speaks for itself. There is nothing this witness can testify to that can alter or change that.

The Court: He may ask the question; he hasn't asked it yet.

Q. These 10 or 12 other payments marked "Ruby" relate to the notes of this defendant?

Mr. Cross: I object.

The Court: Why?

Mr. Cross: On the ground that the instrument speaks for itself. It is in the handwriting of somebody and I don't see how this man is competent to explain what this writing is.

The Court: If he knows what the payments are.

A. Yes, they were payments made direct to the International Bank. The checks were drawn to the International Bank and they were forwarded to me. I used to forward them to the bank in payment on the notes.

The Court: Payments were made by Ruby and you sent them to the bank?

The Witness: Ruby used to send to me, to Philadelphia from Jersey City, payable to the International Bank, and I used to take that check and send it on to Washington and they used to give credit for it. When he didn't pay, they used to write me and I used to write them.

Q. I show you a letter purporting to be from the Haverford Cycle Company to you dated July 31st, 1922, signed by the Vice-President of the Haverford Cycle Co. and ask you if this was received by you? A. This letter I received; that is a copy of a letter, the originals are over there.

Q. Do you recognize that as the signature of the Vice-President (indicating)? A. Yes, sir.

Mr. Alsofrom: I will have that marked for identification.

Marked Exhibit D-2 for identification.

Mr. Alsofrom: I am going to read part of this to the jury.

The Court: You may go ahead.

(Exhibit D-2 for identification read to the jury.)

Max M. Sladkin. Called by Defendant. Cross.

Q. Now, Mr. Sladkin, do you know by whom the endorsements near these items were made? A. I could not tell you, no, because they kept that in Washington, until I got the note when I paid in full.

Q. I call your attention to the item here, May 2, 1923, paid $1,000. and also call your attention to the item here, 1923 $1000. M. Ruby? A. $100.

Q. What does that mean? A. That means that this $1000. I received from Max Ruby also was one of these notes, one of the notes I pay on that $32,000. That is $100. was paid.

Q. As a matter of fact this represents notes that were paid? A. Collections on notes.

Q. Notes that were turned over? A. That was on collection; was these notes from four different kind of people.

Q. But these were not all Ruby notes? A. No just payment on notes.

CROSS EXAMINATION BY MR. CROSS:

Q. You testified on your direct examination that you acted as agent for your wife after she advanced this money. In what respect did you act as her agent?

Mr. Alsofrom: I object to that if your Honor please. It is clear what counsel tries to show by this testimony. I don't think it is proper.

The Court: I think he can ask him.

A. Why, I didn't act in any agency capacity, only when she advanced me that money, I seen that the collateral was gotten and put in the bank as promised. That's all that I did, now, whatever you call it.

Q. Did you do anything after that? A. No, only tried to collect the money for her.

Q. And you say you saw to it that collateral was obtained from the Company and put up in the bank? A. Yes, that is right.

Q. Had that been promised to her before? A. Positively.

Q. When you signed these notes, did you put anything up? A. No.

Q. Why did you sign the note? A. They insisted upon it, because they claimed a man and wife joined in a mortgage.

Q. And the mortgage was being given as collateral? A. That is right.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. Did I understand you to say you didn't act for your wife at all in this matter, other than try to collect it? A. I did to the extent that I have explained.

Q. Well, did you act for her in negotiating this sale of the account from the Firestone Company? A. Did I?

Q. You didn't? A. I got the money from her, that's all. That's all I wanted from her, to buy it with.

Q. You mean to tell me that you didn't act for her in any capacity at all? A. Only as I explained.

Q. Did you act for her when you made that loan and signed this note? A. With her together.

Q. You acted for her? A. With her together I signed that note.

Q. Did you act for her? A. She was there with me and she was there with me. She acted for herself; she was there.

Q. In the sale of that account to her, you did act? A. What account.

Q. The Firestone account? A. Sale to who?

Q. Sale to your wife? A. They didn't sell it to the wife. I bought the account for the Haverford Cycle Company in order to keep them out of bankruptcy. I got that out of the way. They had threatened us with bankruptcy. That was the reason, and she wanted to help me to save the business.

Q. Did I understand that you personally bought it? A. I didn't buy it.

Q. Who bought it? A. She bought and she put up the money.

Q. You bought it for your wife? A. That's the idea; call it that way if you want.

Q. Was there any paper drawn up assigning that account? A. Yes, sir.

Q. Have you got those papers? A. No, I think there was a regular assignment made of the account.

Q. You haven't a copy? A. I haven't a copy with me; I didn't think it was necessary.

Q. What was said with regard to all the notes? A. Why, as I told her, there was $32,000 worth of notes of four different makers, and as soon as they paid $16,000 the rest of it has got to be put back in the Haverford Cycle Company, which was my company at that time.

Q. You said you will turn over these accounts to her as collateral, is that right? A. That is right.

Q. Did she ever ask you for them? A. She didn't ask for them, but I insisted upon her having them.

Max M. Sladkin. Called by Defendant. Recross.
Max M. Sladkin. Called by Defendant. Redirect.

RECROSS EXAMINATION BY MR. CROSS:

Q. When you got the money from her, you told her, as I understand your testimony, you would give her adequate collateral? A. Yes, sir.

Q. This was collateral? A. Yes, sir.

Q. When you asked for the $16,000 on this mortgage, is that right? A. I told her I could give her a little later.

Q. Did you try to get the $16,000 anywhere else? A. Yes, but we could not get it.

Q. And that is why you went to your wife? A. That is why we went to Washington.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. You knew as a matter of fact at that time that the Haverford had a loan from the bank in Washington? A. Yes, sir.

Q. Do you know whether these notes that you speak of, which were supposed to be given over to your wife, or were they not, or do you know whether or not these notes were deposited with the Washington Bank as collateral for the payment of that loan? A. The Haverford note?

Q. Yes? A. No, sir.

Q. Do you know or don't you? A. I do know, positive.

(Witness excused.)

John A. Gerrow, Jr. Called by Defendant. Direct.

JOHN A. GERROW, JR., sworn:

DIRECT EXAMINATION BY MR. ALSOFROM:

Q. Where do you live, Mr, Gerrow? A. Glen Olden, Pennsylvania.

Q. On or about December 1st, 1921, where did you live? A. Philadelphia.

Q. By whom were you employed at that time? A. The Haverford Cycle Company.

Q. A Delaware corporation? A. Yes, sir.

Q. In what capacity were you employed at that time by them? A. Credit manager and bookkeeper.

Q. Do you recall any transaction with respect to a certain sale of a business of the Haverford Cycle Company to Max Ruby? A. I do.

Q. Tell us about it?

Mr. Cross: If your Honor please, I object to this testimony regarding the sale unless it is connected up.

The Court: What is the purpose of this?

Mr. Alsofrom: I am going into the proof to show that these accounts were entitled to credits.

Mr. Cross: Will your Honor receive it subject to a motion to strike out if it is not shown that the plaintiff is the holder of value.

The Court: I think that is a jury question.

Mr. Cross: I want to argue that when the time comes.

Q. (Question read as follows: Tell us about it?)

Mr. Cross: I object on the further ground that the prior witness testified that there was

an agreement of sale executed and the best evidence of the transaction is the agreement.

The Court: That is true. If there was an agreement of sale, you must produce that.

Mr. Alsofrom: Is there anything on record of an agreement of sale.

The Court: Find out from him whether there was.

Q. Will you tell us what happened up to the time of any transaction that took place between the defendant and the Haverford Cycle Company?

Mr. Cross: I object to that, if your Honor please. If there was an agreement of sale executed, what took place before is immaterial.

The Court: Certainly; put your agreement in evidence.

Mr. Cross: Will your Honor admit it subject to a motion to strike out?

(Agreement produced.)

Accepted and marked as Defendant's Exhibit D-2 of this date.

Q. Do you know anything about this agreement? A. I was employed by the Company, yes, sir.

The Court: By the Cycle Company?

The Witness: Yes, sir.

Q. Of Philadelphia, and a Delaware corporation with main office in Philadelphia? A. Yes, sir.

Q. Now, do you know the condition of the Haverford Cycle Company at that time? A. Yes, sir.

Q. Will you tell us what the condition of the Company was?

Mr. Cross: If your Honor please, I object as immaterial.

The Court: I don't think it is competent. The question comes right down now to whether or not there was consideration for these notes.

Mr. Alsofrom: I will ask leave to read this agreement to the jury.

(Exhibit D-2 read to the jury.)

Q. What was said with regard to this agreement?

Mr. Cross: I object to that. The agreement is absolutely clear. There is no question about it; that anything was said at that time other than what is contained in the agreement.

The Court: I think the agreement is a very plain contract and agreement. The Cycle Company sells to Ruby the business at 52 Newark Avenue, Jersey City, including its good will, furniture and fixtures, merchandise and accounts receivable, for the sum of $20,069.48. Instead of paying cash, they took this in notes, and then they go on to say that when Ruby collects these accounts he is to turn it over at once to the seller. In other words, they don't have to wait until the notes are due, but as far as the money is collected it is turned over on account of these notes. That's all there is to this agreement. That is the construction I place on that agreement.

Mr. Alsofrom: I ask an exception to your Honor's ruling on the ground that there is a latent ambiguity.

The Court: Take your exception; I don't think so.

John A. Gerrow, Jr. Called by Defendant. Direct.

Q. Was there anything said at the time with regard to this agreement?

Mr. Cross: I object on the same ground.

The Court: Sustained.

Mr. Alsofrom: Exception on the ground there is a latent ambiguity that ought to be explained.

Q. Was there any agreement made between the Haverford Cycle Company and Max Ruby at that time?

Mr. Cross: I object.

The Court: Sustained. Any agreement made at that time would be incorporated. Any agreement made afterwards is another thing.

Q. Was there anything said after this contract was executed?

Mr. Cross: Answer yes or no.

A. Yes, sir.

Q. What was said?

Mr. Cross: If your Honor please, I object on the ground that this agreement is clear.

The Court: Of course if there was an amplification of the agreement after it was executed, that is another situation. That would be competent.

Q. What was said?

The Court: After?

The Witness: After the agreement, it was agreed upon by both parties that any of the accounts receivable—

The Court: Was that after the agreement was executed?

The Witness: I am talking about after.

The Court: Find out when it was?

The Witness: After December 1st, 1921.

The Court: You are not fixing the time; that is too indefinite.

The Witness: Well, I should say probably two months afterwards.

Mr. Cross: If your Honor please, I object to that unless it is shown that the agreement was made with someone in authority.

The Court: You can find out who it was made with.

The Witness: It is not a written agreement.

The Court: Where was the conversation?

The Witness: Mr. Sladkin and Mr. Ruby.

The Court: Where was the conversation?

The Witness: Philadelphia office of the Haverford Cycle Company.

The Court: What was it?

The Witness: That he was to receive a rebate, a credit for all uncollectable accounts which he purchased.

The Court: Tell us the conversation; that is a conclusion.

The Witness: Well, that is the gist of it.

The Court: We don't want that. We want what was said?

The Witness: Mr. Ruby claims he had bad accounts he could not collect and Mr. Sladkin promised to give him credit for accounts which

he could not collect. Mr. Ruby has asked for the credit several times during the year 1922, but he has never received it.

Q. Were rebates given?

Mr. Cross: I object.

The Court: You cannot go into that question. The question is what was done in this case.

Q. Do you know anything about these notes? A. What do you mean, know anything about them.

Q. Whose property they were at the time and whose property they are now? A. These notes were originally the property of the Haverford Cycle Company. They were given as part payment of the branch which Mr. Ruby purchased. They afterwards became the property of the International Finance Company, a bank in Washington, D. C.

Q. How did they come to be bank property? A. On account of a loan we got in the bank. They were given as additional security. A loan which appears on our books. My records show that they were in the possession—

Mr. Cross: I object; if he has got the record, let him produce it.

Q. Have you got any memorandum of any transaction from the records? A. Yes, sir.

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

Q. All right; produce it.

Mr. Cross: I object to his producing the memorandum.

The Court: Yes, produce your records. You cannot produce a memorandum you made yourself from the records. The record ought to be here in Court.

Q. Where are the records you are talking about? A. What do you mean?

Q. You say you have the record? A. The Company's record; Haverford Cycle Company.

Q. They are still in existence? A. They are still in existence. I was referring to my records, the records of my books, the Company's books when I said records.

Q. Who made these records? A. I did.

Mr. Alsofrom: It seems to me, he made the records and he made the memorandum.

The Court: You are entitled to have your records here in Court.

Q. Tell us what you remember; don't tell us anything about the records?

The Court: What he remembers about this transaction.

The Witness: These notes were given the bank in Washington as collateral for a loan to the Haverford Cycle Company, that they had gotten from the bank, and I have only seen the notes once since and that was around December 5th, 1922, about a day prior to the time we went into the hands of a receiver, and then these notes came to me and I was told they were being transferred to Mrs. Sladkin as additional collateral on a note which she held against the Company for $32,000. but up to

that time, my records show that these notes were in Washington and then I made a transfer showing that they were transferred from the Washington bank to Mrs. Sladkin and that was about two days or a day before the Receivership.

Q. Of the Haverford Cycle Company? A. Of the Haverford Cycle Company, yes, sir.

Q. Who were the holders of these notes? A. Yes, sir.

Q. When were these notes assigned over to Mrs. Sladkin? A. On or about December 5th, 1922.

Q. With other notes? A. With other notes, yes, sir.

Q. Now, do you know what brought about the agreement of the rebate that you speak of, which took place two months after this agreement was drawn up? A. Mr. Ruby claimed he was overcharged for the branch and that's what brought it about.

Q. Can you tell us exactly what was said about the value of the sale at the time and when that took place about? A. He claimed that the branch was bought at a big value, not the actual value. He claimed that he was overcharged. He claimed that a lot of accounts he bought in were absolutely worthless, were no good. He was demanding a credit to take care of that.

Q. Do you know what prompted the sale of this business?

Mr. Cross: I object to that.

The Court: That is immaterial.

Q. So the transfer of these notes was made six months after this check was given; is that correct? A. Correct.

Q. Were you present at the time these notes were assigned? A. I was.

Q. Was anything said at that time?

Mr. Cross: To who?

Q. To anybody who was present?

Mr. Alsofrom: I withdraw that.

Q. Who was present at the time? A. The Vice-President of the Company, the President and myself.

Q. What was said?

Mr. Cross: I object, Mrs. Sladkin was not not there.

The Court: I think it is not competent; it cannot bind her.

Q. Was she ever present at the time of the transaction, at any time? A. Not to my knowledge.

CROSS EXAMINATION BY MR. CROSS:

Q. This conversation which you claim was had between Ruby and somebody else—

Mr. Alsofrom: I object to it, "somebody else". Mr. Ruby and Mr. Sladkin it was.

Q. Ruby and Sladkin, at which you say Sladkin told him he would give him credit for any accounts not collected, who else was present then? A. John

P. Irving, Vice President of the Company; I think that's all.

Q. The Company had a Board of Directors? A. I think they did.

Q. Were you a director? A. No, I was not.

Q. Were you Secretary? A. No.

Q. Any officer? A. No, no officer.

Q. What was your position? A. Credit manager and bookkeeper.

Q. You don't know whether the Board of Directors took up this question of letting Ruby out of some of his indebtedness, do you? A. I do not.

Q. You don't know whether the Board of Directors had delegated their authority to anybody to make such an agreement do you? A. I do not.

Q. All you do know is that this conversation was had between Ruby and Sladkin in your presence? A. Correct.

Q. Was any amount stated that Ruby was to be let out of? A. He was to file a record of the amounts which he could not collect; file a record with our Company, bring his figures over and say what he could not collect, say what was worthless.

Q. Did he ever give you such a record? A. Yes, sir.

Q. Have you got it with you? A. No.

Q. Do you know of anything that the corporation was to get for this alleged promise, from Ruby? A. Anything they were to get; I don't quite get that.

Q. They held his notes, didn't they? A. Yes, sir.

Q. They offered to give up part of his indebtedness, according to this story; is that correct? A. They volunteered to give up some of these notes?

Q. Yes. A. Not to my knowledge.

Q. They were going to give him credit for something he had agreed to pay? A. That is correct.

Q. Were they to get anything for that, giving him that credit? A. No, they were to cancel enough of the notes to cover his claim.

Q. What were they to get for that promise; was he to give them anything, pay them anything else; give them any property? A. No, absolutely nothing.

Q. It was just a courtesy promise to your opinion, that they were going to give up some of the indebtedness under this agreement? A. Correct.

Q. Now, these notes that you have got there, what is the first due date of these notes; which one is due first? A. The first one due July 1st, 1923.

Q. When did you say they were given to Mrs. Sladkin? A. On or about December 5th, 1922.

Q. That was before the due date of any of them? A. Yes, sir.

Q. Were you familiar with this transaction, whereby Mrs. Sladkin settled the claim of the Firestone Tire Company? A. I was familiar with it in this respect, that Mr. Sladkin told me and told the Vice President that Mrs. Sladkin settled the claim.

Q. Wait a minute; you were the bookkeeper, weren't you? A. Yes, sir.

Q. There was a claim of $32,000. against them? A. There was.

Q. And that claim was settled, wasn't it? A. For $16,000.

Mr. Alsofrom: We admit it; I don't see how it is material.

The Witness: On a fifty per cent basis, for $16,000.

Q. You were told, as you say, that the money was put up by Mrs. Sladkin? A. Only what Mr. Sladkin said. I didn't see it put up.

Q. All you know, the claim was paid? A. I know somebody paid it; I don't know who.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. You have none of the records here, have you, with you? A. Book records, no.

Q. In whose possession are they? A. In mine.

Q. I mean who owns them? A. The Receiver of the Haverford Cycle Company.

Q. Have you a right to take these records with you?

Mr. Cross: I object to that.

A. Yes.

Q. Do you know who turned over these notes to Mrs. Sladkin? A. Mr. Sladkin.

Q. Do you know whether any authority was given to Mr. Sladkin, authorizing him to turn them over? A. He was President of the Company; done it of his own volition I guess.

Q. Do you know whether he had it or not, I want to know? A. He turned them over personally, sure.

Q. You were the bookkeeper at that time? A. Yes, sir.

Q. What was said to you at that time with reference to the accounts? A. I was told these notes were being transferred to Mrs. Sladkin and note my records accordingly. My records at that time showed they were down in Washington in the bank in Washington.

Q. That is what your records showed? A. Yes, sir.

Q. Do you know what happened with the line in the Washington Bank? A. I don't know what happened to it.

Mr. Cross: I object to that; he certainly would not know what happened to it.

The Court: If he doesn't know, of course he can't tell.

Mr. Cross: At this time, I move, if your Honor please, to strike out all the testimony of this witness, on the following grounds:

First: that there is absolutely no consideration shown for such alleged promise;

Second: for the reason that no authority is shown in the persons alleged to have made this agreement, to make such agreement.

The Court: The question is, if there was no consideration.

I will not strike it out.

It is a jury question as to whether there was consideration.

Mr. Cross: Your Honor denies my motion?

The Court: Yes.

Mr. Cross: Will your Honor allow me an exception.

The Court: You may have an exception.

Max Ruby. Called by Defendant. Direct.

MAX RUBY, sworn:

DIRECT EXAMINATION BY MR. ALSOFROM:

Q. Mr. Ruby, you are the defendant in this case? A. Yes, sir.

Q. You know Mr. Max Sladkin? A. Yes, sir.

Q. When was the first time you saw him? A. 1910 or 1911, when I started to work for him. All my life.

Q. How long had you worked for him? A. About 10 years, 11 years; I don't recollect. I worked there ever since I left school.

Q. Tell us what happened after that? A. In 1921, December, 1921, I was employed by the Haverford Cycle Company, Philadelphia. I used to run around the different stores; for a time when they would locate a branch store, they would stick me in there for a couple of months until he could get the man in shape—every one of them businesses today—

The Court: Strike that out.

Q. Tell us what happened? A. The last one I was in was Baltimore.

Q. Leave that out? A. I have got to go through this story to tell facts that happened five years ago.

The Court: Nothing of the kind.

Mr. Alsofrom: Mr. Witness, I will ask the questions and you answer them and we will save time.

The Witness: Your Honor; if you will let me tell my story.

The Court: No, you can't do that. Answer the questions.

Q. Mr. Ruby, you bought a place of business from Max Sladkin in 1921 I believe? A. Yes, sir.

Q. You paid how much in cash?

Mr. Cross: I object to this.

A. I don't recollect it. As a matter of fact—

Q. What happened after you bought the business?

Mr. Cross: I object, if your Honor please; it is immaterial what happened after he bought the business.

The Court: Did you buy the business?

The Witness: Yes, I bought it.

The Court: Find out if there was any change after that.

Q. Was there any other agreement made after this? A. Yes, right in Hoboken, Mr. John Irving was President and Jack Gerrow was there—

Q. Who? A. Gerrow.

Q. The last witness? A. Mr. Gerrow was there I happened to come in and everybody said to me.

Mr. Cross: I object to this going in, unless it is received subject to my motion to strike out.

The Court: No, this is a conversation down in the store?

The Witness: No, this, I am in Philidelphia when I visit my folks. They live in Philadelphia and I used to come home every week, and to buy merchandise in the same store of Mr. Sladkin, the Haverford Cycle Company. I came in there, and after I was in the store, I

began to tell about the store I bought and the handful of accounts, they are still there. I showed that to Mr. Sladkin. May I tell what kind of accounts they were.

The Court: What took place?

The Witness: I said, "Here is a bunch of accounts". He said "What's the matter with them". I said "There is a bunch that don't look they are collectable. That is the way they have been since the store started." As a matter of fact when I signed the contract it was made out for me and I came off the train and into the office and I signed that contract, never read it. I never believed anybody would do that, not that man; I worked for him all my life.

The Court: Do you hear what I say.

The Witness: I have to. You don't know, your Honor, what I am bucking up against. I am bucking one of the shrewdest men.

The Court: Do you want to be committed for contempt of Court?

The Witness: No, sir.

The Court: Be careful what you say, or I will do it.

Mr. Alsofrom: Before this witness goes on, I would like—

The Court: I am going to strike this all out. This way we don't get anywhere, trying to put in things that are not competent. I am striking it out and you can start all over again.

Mr. Alsofrom: (To the witness) Remember you have got to do what the Court says.

Mr. Alsofrom: (To the Court) That testimony relating to the fact that the contract

was signed without his knowledge of the contents.

The Court: Not at all; you have got to try this case on the pleadings and you don't allege fraud or misrepresentation. What you do allege is failure of consideration. You have the agreement and that shows what the consideration was.

Mr. Alsofrom: I believe this is material to show the failure of consideration. We will start with the agreement.

Q. I understand that you have been with Mr. Sladkin ever since 1910 or 1912 and when he sold you this business, you signed this agreement? A. Yes, sir.

Q. He turned over to you the business and certain accounts. Now, you said that you went back there one day and presented some of these accounts which you say were uncollectable. Were there also any accounts in these books which were accounts at all? A. What do you mean?

Q. You say some were collectable? A. One day I had a talk with him, and I left them in the office. Mr. Sladkin told me, he said, "I don't want you to buy any bad accounts". I said I had a few of the accounts I brought in with me, and they were collected by a fellow by the name of Bumkin who is a collector and the money wasn't even returned and I had the receipt books from the customers showing where he had collected them, and this man had evidently kept the money, signed his name and that was the end of it.

The Court: Tell us what took place?

The Witness: I am telling you.

Q. Tell us what took place? A. At the time I got in, we were still on good terms. I said, "Well, Mr. Sladkin, what are you going to do about these accounts". Well I recall he told me there several times, "I will give you credit; let it go until we get to the point and meanwhile, you will be collecting something out of them", which of course I did. But they kept piling up, the accounts would not get any better, they got worse, and he told me, kept on telling me that he would make good some day. As a matter of fact, he never made good to me what I was promised. And there is only one reason why I can't get Mr. John Irving because he would be afraid to come in. He was one of them that was trimming me. Yet he was a great friend of mine, which I found out later. I happened to meet him in Philadelphia not so long ago.

The Court: Now, stop.

Mr. Alsofrom: I have the accounts here and a statement showing the accounts which were not collectable. I would like to offer them in evidence. This statement was prepared by my stenographer.

Mr. Cross: I won't admit any statement prepared by any stenographer.

The Court: You must have all the books.

Mr. Alsofrom: I have all the books here.

Q. Are these all the account cards? (Handing witness.) A. Yes, there was some there, I am telling you that this fellow collected and never turned the money in; yet I had the accounts on the books. The customers, a number of them had paid but I didn't get any money. In other words, they swiped the money, this fellow did. And these are accounts

that are owed me. This one here—in other words, begin right from the beginning. You will find that I didn't collect any more money. You will find this list of items $1, $5, and so forth, during the time I purchased the branch.

Q. Are there any other books; how do you find the balances? A. The balance will show on these cards.

Q. Do you know what amount of accounts were bad that he agreed to give you a rebate for? A. There is around $2700. Around that; that's all.

CROSS EXAMINATION BY MR. CROSS:

Q. Who keeps the books? A. I do.

Q. How long were these in the branch before you bought the business? A. I came to Jersey City January—no December 10th, 1921.

Q. You bought it on December 1st, 1921? A. I bought it as of December first.

Q. Where were you when you bought the branch. A. Where was I? Wait a minute; I will get back to where—

Q. Just tell me where you were? A. I got to think. I was sent over there from Philadelphia. The manager here had gotten in some kind.

Q. Never mind what the manager had done. I am asking where you came from when you came to Jersey City? A. Philadelphia.

Q. You came here and bought the Jersey City store? A. I was still an employe.

Q. Who kept these books? A. Miss Reardon.

Q. Miss who? A. Miss Reardon; I think so.

Q. Who kept the cards? A. Miss Reardon at that time. When I got there I changed things.

Q. She kept the cards and the books; is that all in her handwriting (indicating)? A. No, some of it is in my handwriting.

Q. These cards were some of them made up after you bought the business, weren't they? A. No. They are all the original cards.

Q. How could they be, if cards are in your handwriting, if you got here ten days after you bought the business? A. What do you mean?

Q. These accounts are all prior to your purchase of the business, are they not? A. When I came to Jersey City, all these accounts were incurred. Already they were all out.

Q. How could the cards be in your handwriting? A. I got payments on some of them, yes, sir.

Q. The payments are in your handwriting? A. Yes, some of the payments, but I could not collect any more.

Q. What attempt did you make to collect them? A. I have turned them over to four or five collection agencies. I did run around with them, on bicycles, motorcycles and automobile.

Q. They are local people, aren't they? A. Some are; some are the towns around and some I went as far as Lyndhurst.

Q. You are still in business? A. Yes, sir.

Q. This particular store didn't bust when you took it? A. What do you mean?

Q. You managed to hang on? A. Managed to hang; through no fault—

Q. How much cash did you put into the business when you bought it? A. Well, when I came to Jersey City, I had no money. I was always working for a living.

Q. You bought the business on notes? A. Not all notes.

Q. What price did you buy the store? A. $20,069.

Q. That was for the accounts and the value of the merchandise? A. For everything.

Q. You paid nothing for the good will? A. Nothing; took in the good will as part of it.

Q. These records by Miss Reardon, as far as the original entries are concerned, the amounts due, are correct? A. Yes, sir.

Q. Some of the payments are in her handwriting? A. Yes, sir.

Q. That is true of the books? A. Through her books you will find her handwriting.

Mr. Cross: I object to his testifying as to the entries made in the books.

The Court: I think the object is to prove accounts that it is alleged there was an agreement should be credited. It is alleged there was an agreement between these parties. It has not been shown the jury why they were uncollectable.

Mr. Cross: I object to the offer of the books of account, and ask an exception.

The Court: I haven't admitted them. You are putting in a lot of books that don't show anything.

Mr. Cross: I make the further objection that they are not competent, unless they invalidate the agreement.

Marked as Defendant's Exhibit D-2 for identification of this date.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Q. When you got these accounts, when you bought the business, did you go around and try to collect these accounts? A. I certainly did.

Max Ruby. Called by Defendant. Redirect.

Q. Tell us what happened? A. I went around. I went and found that this fellow has been working there.

Q. Don't tell us all that. Did you try to collect them personaly? A. Yes, sir.

Q. Did you go around and verify them personally? A. Yes, sir.

Q. Then what happened, from your own knowledge of what you did yourself? A. Well—in a number of cases, I found that people like that (indicating) had lived there, but they are not there any more. Some of them not even in America. Some of them were foreigners and you found out that they lived there, as near as I could make out, or if they lived there, they wouldn't pay. I cleaned up some of them the best I could, and when I have found they were uncollectable, I have turned them over to a collection agency, Newark, Chicago and other collection agencies, three or four of them. I have slips of paper showing every account, or at least nearly every one. Some of them I lost, where this Company and that reported they can't collect, showing they were absolutely uncollectable. Of course I can't do any more.

Q. Did I understand you to say that some of these accounts never existed; did I understand you to say that? A. Well, I could not say that. That they didn't never exist. I would say that the accounts, some of them had been collected and so far as some of them was concerned, they were paid in full. They showed me a balance on my cards, and the customer had receipts showing they had paid in full. They didn't sell them to dumps; they sold them to people all right.

Q. At that time, did you take that matter up with them? A. Yes, sir.

Q. At this meeting, in the presence of these people? A. I even left them—

Q. Did he promise to credit you? A. Absolutely he said, "My dear boy, I am not one to have you pay for any bad accounts". He says, "I will credit you for them". He kept telling me that from time to time". I was buying merchandise from him, in his store, I am right now, right at this minute there is merchandise in my store there of his concern.

Mr. Alsofrom: I wish to offer them now.

Mr. Cross: I make the same double objection.

(Argument.)

Q. I show you this card, Patrick Schubra; tell us about this account? A. He lives.

Q. Is this one of the accounts? A. Yes.

Mr. Cross: I don't want to force counsel to go over every one of them. He can identify these as accounts that he purchased, but he has not collected.

The Witness: I can give you a story on every one of these accounts.

The Court: Are those accounts which counsel has, accounts which you say you have not collected?

The Witness: Yes, sir.

The Court: Have you collected any part of these?

The Witness: Yes, some part of some of them. Some of them, not a penny.

The Court: You see, the part he has collected, he can't have credit for.

Q. Have you been given credit for those you have collected on these cards? A. Well—

Mr. Cross: Wait a minute; let him answer.

Q. Have you been given credit for any moneys you have collected on them? A. Well, I paid the notes until I had—

Mr. Alsofrom: Strike that out.

The Witness: I didn't answer that. I don't know how—

Q. See if you understand the question. Wherever you have collected on these, did you mark down on the cards? A. Yes, certainly; why not?

Q. What happened to the rest that you could not collect? A. I cannot collect them.

Q. Did you tell Mr. Sladkin that? A. Certainly.

Q. What did you say? A. He kept telling me that he would credit me, but it never got to happen. Then the outfit busted.

The Court: Let me ask you. When these cards go out, how is the jury going to have any idea at all how much was collected out of the accounts.

(To the witness) How much have you collected on this one?

The Witness: $30.

The Court: How much is the total?

The Witness: $37.

The Court: How much is the balance?

The Witness: $7.

The Court: In other words, you credited the $30. that has been collected?

The Witness: Yes; I was charged dollar for dollar for it.

The Court: You were charged $37.

The Witness: Yes, sir.

The Court: Let us see how you made up this account?

Mr. Alsofrom: That was made up under his direction at my office.

The Court: Where is the item?

(Witness presents card.)

The Court: What is the account?

The Witness: Patrick Schubra.

The Court: Is that the same thing all the way through these accounts?

The Witness: Yes, all the way through. It shows what was paid and what was the balance. There are still balances open running from $1. up to $150. Some are for bicycles and some for motorcycles which run into money.

(Argument.)

The Court: I think they are admissable as far as what he says is good. I will allow you an exception.

Mr. Cross: Exception.

Cards accepted and marked as Defendant's Exhibit D-4 of this date as one exhibit.

Q. You were promised a rebate on these? A. Yes, sir.

Q. Did you ever receive any? A. Not a penny.

Q. They total how much? A. From 28, or $2700., somewhere in that figure.

By the Court:

Q. Have you paid all the notes except these three? A. Yes, sir; there is one held by the National Security Bank, Philadelphia, that I have been paying on the installment plan to them and Mr.

Ziegler was up to see me last week. I gave him a check for $25. and I still owe him something on the note. Then there is another one, the U. S. Acceptance Corporation, Philadelphia. I am paying that off. That is the only two out of the $20,000, the whole amount except these in question now; two notes.

The Court: How much is due on these other two notes?

The Witness: Which ones?

The Court: The notes that you are still paying?

The Witness: One around $450. and another around $400. The $400. one I renewed small notes for that. I gave small notes and picked up the big one.

The Court: How much is due on the other two?

The Witness: Which ones?

The Court: The two which you say are still unpaid?

The Witness: One to the National Security Bank, Philadelphia, is about $450. I am pretty near sure, because I only handled the matter a short time ago.

The Court: And the other one?

The Witness: The other one I don't recollect. Right to the penny I don't recall.

The Court: About?

The Witness: It is much smaller.

The Court: How much about?

The Witness: I would say around $300. That is the only other debts I have against the store.

The Court: Are there any other notes mentioned in this agreement except the three that are in issue here that have not been paid?

The Witness: No, sir.

By Mr. Alsofrom:

Q. What is the reason you refuse to pay these notes? A. Because I don't get the rebate. I figure what I have paid on these notes that I have already overpaid the amount due against these notes, because Mr. Sladkin promised me that he would make good and give me a rebate on these accounts. He only done it to keep stringing me along from time to time, until the notes got to a point where I was disgusted with it.

Recross Examination by Mr. Cross:

Q. When did you decide that you were entitled to the rebate? A. I started to get after Mr. Sladkin several months ago and he kept telling me that he would give me a rebate. "Wait until you get cleaned up these accounts."

Q. You bought the store December 1st, 1921? A. Yes, sir; as of December first, 1921.

Q. When did you first start to talk rebate? A. Several months after, after the contract.

Q. About when? A. I don't remember just exactly when.

Q. Was it six months, was it July, June, July or August? A. Well, I don't remember. I am very poor on that.

Q. You don't remember? A. I am not blushing. When a man tells the truth he won't blush. I know I am telling the truth.

Q. All right. These notes that you gave were payable every month? A. Mr. Cross—

Q. Answer the question and we will get through. These notes that you gave were payable one every month, weren't they. (No answer.)

Q. The first note was payable April first, 1922, and after that you paid every month? A. Yes, as they fell due.

Q. When did you first decide that you had paid enough? A. Well that was still later, till these notes were practically all out. That is when I kept telling Mr. Sladkin and he says "All right." He says, "We will credit you; we will credit you."

Q. Just answer the question and we will get along all right. The last note that we have got here was due September first, 1923? A. The last note?

Q. These are July, August and September, 1923? You didn't pay them. A. These last three, I paid $600. on the third one from the last.

Q. You didn't pay any more? A. Yes, sir.

Q. Because of this overcharge you say? A. Because they were overcharging me.

Q. You figured you had paid? A. I was to be repaid. I never got it.

Q. You figured you had overpaid as it was? A. Yes, all right.

Q. I show you a letter dated August 30th, 1923. Do you remember writing that letter (handing witness)? A. Yes, sir.

Q. Also, a letter of July 17th, 1924? A. Yes, sir.

Q. Then I show you a letter written September 21, 1924. You wrote that one too, didn't you (handing witness)? A. Yes, sir.

Q. That is right after you were down in Philadelphia? A. Well, I owed that man for merchandise.

Q. You wrote that letter? A. Certainly I wrote it; I don't deny it.

Mr. Cross: I ask to have them marked for identification.

Marked for Identification as Plaintiff's Exhibits 6, 7 and 8 for identification respectively of this date.

Q. You went to Philadelphia six or seven months ago? A. I went to him. He is still with the Haverford Cycle Company.

Q. You gave him $50 at that time, didn't you? A. Yes, sir. Will I tell you why?

Q. And you promised to give him $200 more, didn't you? A. I don't remember that.

Q. You promised to pay $50 a month until these notes were paid?

Mr. Alsofrom: I object.

Q. $50 a month more until these notes were paid for? A. Let me tell you—

Q. What is your answer, yes or no? A. —well, I don't get that, no.

Q. Did you or didn't you. You can answer that, yes, no, or I don't know. A. Well, I was afraid of the man. I can't stand a suit.

Q. And that was after this suit was started, wasn't it?

The Court: The record speaks for itself.

A. No, I don't recollect it. As a matter of fact, I was afraid of this man.

Mr. Cross: You have answered.

Q. The summons was issued July 1st, 1924, so that when you saw Sladkin in Philadelphia and made that proposition in September, 1924, that was after this suit was started, wasn't it? A. Those figures, yes, sir.

Q. No, did you. It is a matter of dates? A. I owe that man for merchandise at the time. I don't recall.

Q. I didn't ask you that You testified a minute ago, not over a minute ago, that you were to pay him $50. a month to pay these notes and that was your promise when you gave him the $50. Do you want to change that testimony? A. I don't remember what happened at that time. I can't say.

Q. Then when you testified that you did tell him that, then you were not there, were you? A. I am not sure.

Q. You are not sure now? A. I am not sure.

Q. And that happened last September? A. Yes, whenever it was, I don't know. I know I saw him quite often because I used to go down to buy merchandise. I saw him every couple of weeks or so.

Q. All right; go ahead and talk. I can stay here if you can. When you wrote on July 17th, 1924, this letter you have identified, when you said "it will be necessary for me to hold up the matter of these notes for about ten days or two weeks, I will get in touch with you at that time to straighten out this mater". Do you think you owed the money then? A. No, I didn't think I did.

Q. Why did you write that then? A. That is why I didn't send any money.

Q. That is why you didn't pay any money? A. Yes. I wanted to see what he was going to do about the credits.

Q. Two months after that— A. He swung me again.

Q. The next— A. He is the greatest swinger in the world.

Q. Gypped you out of $50? A. Exactly.

Q. You don't mean that, do you? A. If you want that man's record, call up any bank in Philadelphia. Call up the Security National Bank.

Q. You haven't anything against Mrs. Sladkin?

Mr. Alsofrom: I object.

A. Well, call up and find out. Mention his name in any Bank in Philadelphia and they will throw you out. As a matter of fact—

Q. On August 30th, 1923, you wrote the International Bank of Washington asking to know the record of your notes then? A. I wanted to find out if there was such a concern. I don't recall; at that time I didn't really believe there was such a thing there, to find out what was going on.

Q. You didn't think there was such a concern as the International Bank? A. I wrote to them. I never got an answer.

Q. You never went out there? A. I am in Jersey City. They were in Washington, D. C.

Q. You made all payments direct to Mr. Sladkin? A. I made payments to Mr. Sladkin. In fact all the money I got. Some of it was for goods I purchased and some for notes. As a matter of fact I didn't owe him a penny for anything outside of what I have in the store. Around $30 or $40 worth of goods what I just bought.

Q. How many conferences did you have in Philadelphia when this supposed agreement was made?

Mr. Alsofrom: I object as immaterial.

A. Time and again. I can't tell you how many. I used to go down to Philadelphia.

Q. You had your conference— A. I know I kept seeing Mr. Sladkin. Naturally I got into a conversation.

Q. Will you please answer. When you had your first conversation that was several months after you purchased the store? A. Yes, sir.

Q. How many more conferences did you have? A. I can't tell you exactly how many. I used to go to Philadelphia every three or four weeks, two weeks.

Q. Did you ever get any letter or postal card or written agreement from the Haverford Cycle Company either containing any such agreement or making such an agreement? A. All agreements like, when I went down there, in words. I always waited to talk to him. Never did I know of—

Q. When you purchased the business you signed the agreement that is here today? A. Yes, but I didn't read it.

Q. You didn't read it? A. I didn't believe that man would. I believed in him like—he was like a father to me all my time. I was brought up there. I thought he was a god.

Q. You were friendly with him yesterday, or Friday when you met him out here in the hall and talked to him? A. Yes, sir.

Q. Didn't you call him in the telephone on Wednesday or Thursday of last week? A. Yes, I knew I can't afford it if I should lose this case. It would put me out of business. I can't afford. I did try to reason with him. I says "Mr. Sladkin, you are doing this what are you doing to me." He

said "Why"? I said "You have been selling me merchandise up to this last month. I paid you six or seven hundred dollars a month. I got nobody else; what are you doing to me."

Q. What did you call him up for? A. That is my business.

Q. You talked to him, didn't you? A. He had me rattled.

Q. You talked to him on the phone in Philadelphia. You called him from Jersey City. What did you say to him on the telephone? A. I said "Mr. Sladkin, you are—do you realize what you are doing with this suit." "Well," he says, "I can't help you. You will have to pay for this."

Q. What did you say? A. Well, I tried to reason with him. I said "Why don't you consider me."

Q. Did you try to settle with him over this case? A. No, the way I did, because—

Q. You offered him $1,000. didn't you; yes or no?

The Court: Answer the question.

Q. Don't look at your counsel? A. I ain't looking at him.

Q. Did you offer $1,000? A. Yes, because I figured I could not afford.

(Recess until 2 p. m.)

(After recess, 2 P. M.)

MAX RUBY resumed the stand:

RECROSS EXAMINATION BY MR. CROSS (continued):

Q. After you purchased this business, you continued to do business with Sladkin? A. Yes, sir.

Q. Up to the time of the receivership? A. I was doing business all along with him.

Q. He is not in that business now, is he? A. I am even doing business with him to-day.

Q. Are you still doing business with the receiver? A. I don't know the receiver. I don't owe the Haverford Cycle Company any money at all.

Q. You do business with them occasionally? A. Yes, I have done business with them.

Q. You have done business with them right from the time you bought the business? A. Oh, yes.

REDIRECT EXAMINATION BY MR. ALSOFROM:

Mr. Alsofrom: I will consent to the introduction into evidence of the letters.

Q. I show you letter dated August 30th, 1923, signed by you, to the International Bank of Washington, D. C., Exhibit P-5. Now, can you tell the Court and jury why you sent this letter? A. Why, yes; I wanted to find out how I stood about those notes. These accounts that I had were, as we know now, were uncollectable as far as I can recollect; I wanted to find out if there was any money due and how much there was. I didn't know. I wanted to find out.

Q. You mean to say that you had an offset account as against the notes? A. I figured that I had

overpaid already and that therefore I wanted a statement.

Q. I also show you a letter dated July 17th, 1924, addressed to Mr. M. M. Sladkin, Haverford Cycle Co., Philadelphia, Pa., being Exhibit P-7, what had you in mind when you sent that letter? A. Why, the same, to find out just how these accounts was, what he was going to do about these accounts.

The Court: What is the date of that letter?

The Witness: I would not pay any more money until these accounts were straightened out because as I have stated here, I figured I had overpaid already. There was never any credit issued me. He was only—

Q. You have testified on cross examination in answer to Mr. Cross' questions that you made an offer of $1,000 to settle this matter. Will you tell the Court and jury that conversation that you had with Mr. Sladkin offering him $1,000 to settle this matter? A. Yes; I called up Mr. Sladkin and—do you want me to relate the whole conversation?

Q. Yes, as far as it related to this settlement of $1,000? A. I called up Mr. Sladkin and I says, "What are you doing it for? Do you realize what you are doing? What you are doing to me, that you are going to break me if I should lose? Why don't you take $1,000 in small payments?" And he said, "No, I will tell you what I will do. You come down today with $1,500 cash." So I said, "That's too much," and positive I could not pay cash which I could not and I would not—it was too much.

Q. Did you tell him why you offered that $1,000? A. Yes.

Q. Tell us? A. That's why. I figured that by paying him $1,000 in small installments that it would pay me to get on the better side of him that for one reason he sold merchandise that I almost had to buy from him. For instance, certain bicycle items he carries. I can get a better price off him because he is better able to buy than I can get it from elsewhere. Another reason was that I could not get Mr. Gerrow here, I called him up. I spent about $10 for telephone calls, and I could not get any satisfaction till the last time I called him up. I said, "Jack, won't you please try to come here. I will come after you Sunday, and try to come with me." So we—

Mr. Cross: I object to this conversation. I ask that it be stricken out.

Mr. Alsofrom: I will consent to it being struck out except that part which says the reason he offered the $1,000.

Q. You have made several efforts to get Mr. Gerrow? A. I made three or four telephone calls to Philadelphia, and every time I have got Mr. Gerrow, I could not get him to come over.

Q. Is there any other reason why you made this offer of settlement? A. That was one of the reasons, because I figured after I could not get Mr. Gerrow into the court room, if he should come to court, that he was a witness for me and the other reason was that it paid me to settle it for $1,000 in small moneys for the simple reason that I gave first of all. I have never been in court before. I don't like to go through and well—I don't like to

see anything like that happen. I have never been to certain stores and with one of them my credit is very good, and if they hear about the case, whoever I am buying from—I figured that it is worth $1,000 in installments to get rid of it.

RECROSS EXAMINATION BY MR. CROSS:

Q. Are these the same reasons you had when you paid the $50 in September and offered to settle then? A. I don't know whether that was for open account. I don't remember that.

Q. You do know that when you were down in Philadelphia that September that you said you would settle this account then for $1,500? A. No.

Q. You paid $50 down and you were to send $200 more and $50 a month or week? A. I don't exactly remember.

Q. You don't remember that. You won't say that wasn't a fact, will you? You did have some conversation about that? A. We talked every time I came down there. I talked—

Mr. Cross: That's all.

(Witness excused.)

John A. Gerrow, Jr. Recalled. Direct.

JOHN A. GERROW, recalled:

DIRECT EXAMINATION BY MR. ALSOFROM:

Q. Mr. Gerrow, you see these notes are all "Pay to the order of the Haverford Cycle Company," which were taken at the time by Mr. Sladkin. How long before the receivership was it that these notes were taken?

Mr. Cross: I object; he has already testified, two or three days before.

Q. Did you know a receiver was to be appointed? A. Yes, sir.

Q. Did Mr. Sladkin know a receiver was to be appointed? A. Yes, sir.

Mr. Cross: I move to strike that out on the ground that he is testifying to a conclusion.

The Court: It doesn't make any difference whether he did or not. The question is whether this lady knew.

Q. Do you know who instituted the equity proceedings against the Haverford Cycle Company?

Mr. Cross: I object to that.

The Court: That must be shown by the papers.

Q. Do you know the name of the case?

Mr. Cross: I object to that.

The Court: You have to produce the records.

(Witness withdrawn.)

Mr. Alsofrom: Defendant rests.

Max M. Sladkin. Called in Rebuttal. Direct.

MAX M. SLADKIN, in rebuttal:

DIRECT EXAMINATION BY MR. CROSS:

Mr. Cross: Before I examine Mr. Sladkin, I think it is proper for me at this time to make a motion to strike out all the testimony relating to the alleged second agreement, the oral agreement.

First; on the ground that no authority has been shown in Mr. Sladkin or the Vice-President to make such an agreement and,

Second; on the ground that absolutely no consideration has been shown for such a promise.

The Court: It is a jury question; I must refuse your motion.

Mr. Cross: Exception.

Q. Mr. Sladkin, did you have any conference with Ruby after this written agreement was entered into with regard to altering or modifying the terms of it? A. No, with the exception of one time he came over to me and he said "Mr. Sladkin, I found that there was some money collected on the accounts and when I called on the people for the balance they said that didn't owe me that much. They showed me receipts for it". I said "Is that right?"

Q. Was that before he purchased the store they were paid or after? A. No, before he purchased.

Q. In other words there were accounts which you had no right to sell? A. That is the idea. We have sold him accounts for $30. where a party may have paid a dollar or two different.

Mr. Alsofrom: I think that ought to be stricken out.

The Court: The question is what was said on that occasion.

The Witness: That's what.

Q. Did he tell you at that time how much these accounts amounted to? A. I asked what they amounted to and he showed me at that time $32 worth and I asked who signed for it and he gave me the initials. I says, "I will collect it for you. That was a young man that worked there previous to him taking the branch store".

Q. Did he ever at any time call your attention to any similar accounts? A. Then he came a second time and said "I found $20 more". Finally, it was $72 all told and I said "Ruby, you need not worry about the $72. if you keep on paying your account. I will see you are taken care of. The $72 I will collect from Mr. Bumkin".

Q. When was that in regard to this agreement, how long after? A. That was I would say a couple of months; right after that.

Q. And that was before Mrs. Sladkin got these notes? A. Oh, yes, way before.

Q. So far the total amount in dispute as you stated was $72? A. Yes; I didn't verify it. He said it was about $72 when I pinned him down to it.

Q. Did you ever at any time tell Ruby that you would give him credit for all accounts that he failed to collect? A. I did not.

Q. Did Ruby at any time tender to you while you were President of the Haverford Cycle Company any accounts because they were uncollectable? A. No, sir.

Q. When was the first time that in your own knowledge, that Ruby questioned the payment of

the balance? A. Why that was about a year ago he agreed to pay $100 a week.

Q. That was about a year ago; that would be March, 1924? A. No, maybe; I have a record there. I can tell you exactly the date.

Q. You have a record of the dates? A. Yes, as he paid along I kept a record of it.

Q. In your own handwriting? A. In my own handwriting.

Q. Can you testify to the dates without looking at your record? A. Well, the last money I got from him outside of the $50 was about the middle of last summer, I would say.

Q. The question is; when was the first time he questioned the payment of these balances; did he ever question it? A. Never; he never questioned the payment.

Q. What excuse did he give for not paying? A. None, excepting he didn't have it. He said "wait" and "wait" and I kept on waiting.

Q. Just that he didn't have the money? A. That's all. That was all.

Q. Did he made any statement as to his intention of paying? A. Yes, sir.

Q. When was the first time that you knew of this alleged claim for uncollectable accounts? A. After we brought suit.

Q. Now, he wrote you this letter, Exhibit P-7 on July 17th, 1924, that is last year, asking you to hold the matter of notes ten days. Did you see him after that letter? A. Yes, sir.

Q. What did he say then? A. Why, he didn't say anything except "I will pay you whenever I have the money".

Max M. Sladkin. Called in Rebuttal. Direct.

Q. Did he refuse to pay? A. A day or two before he wrote me this letter he made a settlement with me whereby he would pay me $100 a week.

Q. How much was the settlement? A. Was something like $1750. I thought I would like him to get ahead and to help him along.

Q. And then he was to pay you $100 a week? A. And then he wrote this letter and told me to hold the matter.

Q. He offered the settlement before you got the letter? A. Yes, sir.

Q. Did you get any money on that settlement? A. No.

Q. Then he wrote you September 21st, 1924? A. Then I pressed him again for it, and this time he said he would positively go through with it even if he has to sell his shoes.

Q. When was that settlement; what was it? A. That settlement was I think $1700 by paying me $250 and $50 installments, and he was to include a check for $200 to come by return mail which I never got.

Q. Then he talked to you last week on the telephone; did he offer another settlement? A. Last week, on Thursday afternoon I think it was, he called me up on the phone. He said "You know the case comes up tomorrow". I said "I don't know anything about it. Is that right?" I said "I didn't have any notice of it". He said "What are you going to do about it." "You forced me to go through with it", I said. He said "Can't you wait, hold it up until Monday morning. I will surely come down and make a settlement". I said "I can't hold it up. It is out of my hands. You can't take it out of court. It will have to be tried or settled". He said "No, you take it up". I said

"If you want to settle this thing, you come to Philadelphia". He said "I will call you back and see if I can come around there", and about half past four he called me up I should wait until Monday. I said "I could not do it". Right after that my attorney called me—

Q. You have been doing business with him right along? A. Yes, we sold him some merchandise last week.

Q. Did you see him Friday? A. No—

Q. When he was in court? A. Yes, I seen him Friday, right here I seen him. I thought you meant Philadelphia.

Q. Was he friendly? A. I have nothing against him and he has nothing against me.

Q. Did he ever accuse you of trying to steal from him before?

Mr. Alsfrom: I object.

The Court: Strike that out; objection sustained.

Q. You never had any trouble with him before? A. No.

Q. Except that he didn't pay these notes? A. That's all.

Cross Examination by Mr. Alsofrom:

Q. Mr. Sladkin, you admit that there was some dispute between you and Mr. Ruby? A. Dispute. No dispute.

Q. You had conferences didn't you? A. Just that one time, yes.

Q. All that time did you have these notes in your possession? A. I did not.

Q. You didn't? A. No.

Q. You wrote these letters? A. What letters?

Q. To Mr. Ruby demanding payment? A. I wrote it for the International Bank. They were pressing me and I was pressing him.

Q. You wrote these letters about this transaction? A. I did, yes, sir.

Q. You mean these notes were in the hands of the International Bank? A. Yes, sir.

Q. All of them? A. All of them.

Q. You are sure? A. I am sure.

Q. Positive about that? A. Positive.

Q. How did they come into the hands of the International Bank? A. Why, we gave it to them at that time when we borrowed money as additional securtiy.

Q. You mean the $16,000. check you referred to, the $16,000 loan? A. Yes, I gave collateral after we got the money.

Q. And that loan was given to you and Mrs. Sladkin, was it not? A. It was her collateral.

Q. Who got the money? A. Mrs. Sladkin got the money.

Q. She borrowed it? A. That is right.

Q. And you gave the Corporation's notes to the bank as collateral? A. Afterwards, yes, sir.

Q. You took over an assignment of the Firestone account? A. Yes, sir.

Q. Of the Haverford for $32,000? A. Of Jennie Sladkin.

Q. You took over an assignment of this $32,000. worth of account? A. No, one account.

Q. One account of $32,000, for this $16,000? A. Yes, correct.

Q. You say you have got an assignment? A. I have got it home.

Q. You haven't got it here? A. No.

Mr. Cross: I offer copy of letter which is signed as an original by the Vice-President of the Haverford Cycle Company, to Max Sladkin, dated July 31st, 1922, for the purpose of corroborating Mrs. Sladkin's testimony that she received $32,000. worth of notes.

Mr. Alsofrom: I object to it.

The Court: I don't think it is competent.

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

Mr. Alsofrom: I move to strike out the complaint on the ground that these notes are not the property of Jennie Sladkin. It has been testified that corporation notes were given as collateral security for a loan of an individual.

The Court: As long as these notes have been paid for, they are hers.

Mr. Cross: I move for a direction of verdict at this time on the following grounds:

First: That there is absolutely no proof in the case that proves that Jennie Sladkin was not the holder of value, or that even challenges her being the holder of value.

Second: No proof of any consideration given to support the so-called second agreement.

Third: Or that there is sufficient in the case to go to the jury.

The Court: Motion refused.

Mr. Cross: Exception.

Counsel summed up to the jury.

Charge of the Court.

The Court then charged the jury as follows:

The Court: Members of the Jury: This suit was brought by the plaintiff to recover the amount due on three promissory notes, and those notes read as follows:

"December 1, 1921.

On August 1, 1923, after date, I promise to pay to the order of Haverford Cycle Company $969.48 payable at the National Security Bank, Philadelphia, Pa., with interest at six per cent,"

and signed by Max Ruby. Endorsed Haverford Cycle Company, I. C. Wilson Treasurer, and endorsed also by Jennie Sladkin, the plaintiff.

The second note is dated:

"Jersey City, N. J.,
January 1, 1922—$900.

On September 1, 1923, after date, I promise to pay to the order of Haverford Cycle Company $900, payable at the National Security Bank, Philadelphia, Pa., with interest at six per cent."

Signed Max Ruby and endorsed Haverford Cycle Company, I. C. Wilson Treasurer; Jennie Sladkin.

And the third note is dated December 1, 1921:

"On July 1, 1923, after date, I promise to pay to the order of Haverford Cycle Company, $900, payable at the National Security Bank, Philadelphia, Pa., with interest at six per cent."

Signed Max Ruby, and endorsed Haverford Cycle Company, I. C. Wilson Treasurer; Jennie Sladkin.

Charge of the Court.

The plaintiff in this suit claims that she is the holder of these three notes in due course and therefore can collect the amount due on them without regard to any credits that the defendant might have against the company to whom the notes were originally given.

Is this plaintiff a holder in due course of these notes? The 52nd Section of the Negotiable Instrument Act of this State describes a holder in due course as follows:

A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face.

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

These three notes are regular on their face, so the questions which you have to decide are:

First; that this plaintiff became the owner of these notes before July first, 1923, that is, the date when the first of the three notes became due.

Second; did she take them in good faith and for value.

Third; did she at the time she took title have notice of any infirmity in the instruments or defect of title of the person negotiating it.

Now, those are questions that you have to decide. If you find that the plaintiff obtained title to these notes before they became due, in good faith, and for value, without notice of any infirmity in the notes or defect of title of the Company to whom the notes were given, she can recover, even if the defendant had a defense against the original holder of the notes, for the fifty-seventh section of the Negotiable Instrument Act, to which I have referred provides:

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

If you find that this lady was the holder in due course, she is entitled to a verdict for the amount which you find due on these notes, that is, the principal of the notes, less the credit which has been admitted of $440. and interest from the dates the notes bear, because they draw interest from date, and it would be your duty to compute the interest due on these notes and determine the amount due on the three notes and render a verdict in favor of the plaintiff.

But if you find the plaintiff is not a holder of these notes in due course, then any defense that the defendant had against the original Company is a defense to this action.

You see, if she takes them after the note becomes due, or if you find that she did not pay value for it, or that she knew of a defect in the note, then any defense that the defendant had against the original Company is available in an action against a person who is not a holder in due course.

Now in this case, there is no denial that the defendant purchased the business of this Company at Jersey City, and its accounts, and gave certain notes, including these three notes in question, in part payment for this business.

The defendant, however, claims that there was a second agreement made by the defendant with this Company and that by such agreement, he was to be credited with all accounts that were uncollectable. He says that the President of this Company agreed that the accounts which could not be collected, that the President agreed to credit him with these accounts which were uncollectable.

Now, this is denied by Mr. Sladkin who says that the only talk which they had in reference to these accounts was a complaint made by the defendant that somebody had collected a little money on the accounts. Then he mentioned the three occasions and the total amount of money that the defendant claimed had been collected by a former collector was $72 and that he personally, not representing the Company, but that he personally would make that good to the defendant.

So you see, the next question you have to decide is, was there an agreement that all unpaid accounts should be credited on these notes. Now, if there was such an agreement, it would not be enforceable unless there was a consideration for this second promise, because the contract must have a consideration, and this was a contract, if made, and so, if you find it was made, then you must determine whether or not there was a consideration for that contract. If you find there was a second agreement and consideration for such an agreement, then the defendant would be entitled to a credit for such claims as were uncollected and therefore the de-

fendant must establish the fact and the amount of the uncollected claims, if you may find there was such an agreement and consideration for such an agreement.

That would not mean necessarily that the plaintiff could not recover if you find that these uncollected claims amounted to more than the amount due on the notes and then of course the plaintiff could not recover. But if you find that these uncollected accounts did not amount to the face of the notes and the interest, then the plaintiff would be entitled to recover the difference between the face of these notes and the uncollected accounts, but if you find there was no such agreement to credit the uncollected accounts, or if you find there was such an agreement and there was no consideration for such agreement, it would make no difference; the plaintiff would be entitled to recover the full amount of principal and interest on her note.

I have been requested to charge certain principles of law and I will dispose of them.

If the jury finds that there was no consideration for the promise to credit Ruby with the unpaid accounts, they must find a verdict for the plaintiff.

I so charge.

If the jury finds that no promise was made to credit Ruby with the unpaid accounts, they must find for the plaintiff.

I so charge.

If the jury finds that Sladkin made the agreement to credit Ruby with the unpaid accounts without authority of the corporation, they must find for the plaintiff.

I so charge you Gentlemen of the Jury.

But in this case you must take into consideration, in considering that last request to charge, whether

or not the whole business of the corporation was not under the management of the President, and whether or not all agreements of the Company were made on behalf of the Company by the President.

Of course if you find that the husband was acting as the agent of the wife, in all matters, then of course any knowledge which he had as agent of his corporation as to any informity about the note, would be chargeable to the wife. But if on the contrary he simply acted for his wife in the collection of these notes, that is an entirely different matter and the wife would have to have some knowledge herself of the informity of these notes in order to prevent her from recovery as a holder in due course.

These matters, Gentlemen of the Jury, are matters which you have to decide and you have to decide them from the evidence.

The plaintiff must establish her claim by a preponderance of the evidence.

Then, this defendant sets up an affirmative defense, that is, the second contract. This defendant must establish that second contract and the consideration of that contract by a preponderance of the evidence.

The fact that the Court has refused the motion for a direction of verdict for the plaintiff and the motion to direct a verdict for the defendant, and the motion to non-suit, have nothing whatever to do with your decision in this case. It is simply a decision of the Court that in this case there are disputed questions of fact which the jury must pass upon and not the Court.

Gentlemen, you may retire.

(The Jury retired.)

Requests to Charge in Behalf of Plaintiff.

1. If the jury finds that were was no consideration for the promise to credit Ruby with the unpaid accounts, they must find a verdict for the plaintiff.

2. If the jury finds that no promise was made to credit Ruby with the unpaid accounts, they must find for the plaintiff.

3. If the jury finds that Sladkin made the agreement to credit Ruby with the unpaid accounts without authority of the corporation, they must find for the plaintiff.

4. If the jury finds that Jennie Sladkin actually advanced the money to purchase the claim of the Firestone Tire Company and that she took the notes without knowledge of the second agreement, they must find for the plaintiff.

Exhibit P-1.

$900.00 December 1st, 1921.

On July 1st, 1923, after date I promise to pay to the order of HAVERFORD CYCLE COMPANY, Nine hundred and 00/100 Dollars at National Security Bank, Phila, Pa.

With interest @ 6%
Without defalcation, for value received.

MAX RUBY.

Back:—HAVERFORD CYCLE CO.,
I. C. Wilson,
Treas.
Jennie Sladkin.

Exhibit P-2.

$969.48 December 1st, 1921.

On August 1st, 1923 after date I promise to pay to the order of Haverford Cycle Company, Nine hundred Sixty Nine and 48/100 Dollars at National Security Bank, Phila., Pa.,

With interest @ 6%
Without defalcation, for value received.

MAX RUBY.

Back:—HAVERFORD CYCLE CO.,
I. C. Wilson,
Treas.
Jennie Sladkin.

Exhibit P-3.

$900.00 Jersey City, N. J., January 1st 1922

On September 1st, 1923 after date I promise to pay to the order of Haverford Cycle Company Nine Hundred and 00/100 Dollars at National Security Bank, Philadelphia, Pa.

With interest @ 6%
Without defalcation, for value received.

MAX RUBY.

Back:—HAVERFORD CYCLE CO.,

I. C. Wilson,
Treas.
Jennie Sladkin.

Exhibit P-4.

JENKINTOWN TRUST COMPANY.

No. 521 Jenkintown, Pa. July 5th 1922

Pay to the order of Firestone Tire & Rubber Co., Sixteen thousand 00/100 Dollars $16000.00/100

JENNIE SLADKIN

Exhibit P-5.

HAVERFORD CYCLE CO.
503 Market St.
Philadelphia, Pa.

July 31, 1922.

Mr. Max M. Sladkin
503 Market Street
Philadelphia, Pa.

Dear Sir:

In connection with the advance of Mrs. Jennie Sladkin made this Company in re Firestone Tire & Rubber Co., amounting to $32,005.92, we are enclosing herewith the following notes as collateral for the above mentioned loan.

Name	Amount	Due
H. Heidleberger	$1500.00	3/1/23
"	2000.00	5/1/23
"	2000.00	6/1/23
"	2000.00	8/1/23
"	3180.43	9/1/23
M. I. Bunkin	1000.00	3/1/23
"	1500.00	7/1/23
"	1710.71	9/1/23
M. Goldman	750.00	2/1/23
"	2000.00	6/1/23
"	2000.00	7/1/23
"	1500.00	8/1/23
"	3047.36	9/1/23

M. Ruby	750.00	3/1/23
"	900.00	5/1/23
"	900.00	6/1/23
"	900.00	7/1/23
"	969.48	8/1/23
"	900.00	9/1/23
W. J. Walker	1000.00	8/1/23
"	1061.57	9/1/23
	$31,569.55	

Very truly yours,

HAVERFORD CYCLE COMPANY
John P. Suser,
Vice President.

Exhibit P-6.

Jersey City, N. J.
9/21/24.

Dear Mr. Sladkin,

Enclosed find $50.00 on account, at present this is all I can afford. I still have a few more checks and as soon as they come in I will surely send you a little more to make up for the 250 we spoke about. Please accept this as it is the best I can do now.

MAX RUBY.

P. S. In a week or two, I will try to come over and see you.

Exhibit P-7.

HAVERFORD CYCLE CO.

Jersey City, N. J.,
7/17/24.

Mr. M. M. Sladkin,
Haverford Cycle Co.,
Phila, Pa.

Dear Mr. Sladkin,

It will be necessary for me to hold up the matter of these notes for about ten days to two weeks. I will get in touch with you at that time to straighten out this matter.

Yours very truly,

M. RUBY.

Exhibit P-8.

HAVERFORD CYCLE CO.

Jersey City, N. J.
Aug. 30th 1923.

International Bank,
Washington, D. C.

Please mail me a statement of all my notes, that you hold and also all payments, that I have made to you up to date.

Yours very truly,

MAX RUBY.

Exhibit D-1.

Philadelphia June 30, 1922.
City Date

On Demand I, we or either of us promise to pay to the order of

INTERNATIONAL BANK, Washington, D. C.

AT SAID BANK Sixteen Thousand.....DOLLARS for value received with interest at Six per centum per annum, having deposited with said Bank, as collateral security for the payment of the full sum of principal, interest and costs due on this note, and also as collateral security for all other present or future demands, of any and all kinds, of the said Bank, against the undersigned, due or not due, the following property which the undersigned has the right to pledge, to wit:

Assignment of mortgage in Gloucester County, N. J.
Mortgage of property in Atlantic County, N. J.
Bond and warrant accompanying latter mortgage.

with full power and authority to said Bank to sell, use or hypothecate and transfer or cause to be transferred to itself or another said collateral security or any part thereof, and may receive the interest and dividends accruing thereon before the payment of this note and interest thereon, and apply the said dividends and interest to the payment of the principal of this note or the interest thereon or both; and further agree on demand of the said Bank to deposit with it such additional security as it may from time to time require, and in default thereof this note may, at the option of the holder of the

note, be deemed instantly due and payable as though it had actually matured and upon default of payment at maturity whether such maturity occur by expiration of time or default in depositing additional security as above agreed, hereby authorize and empower the said bank, for the purpose of liquidation of this note, and of all interest and costs thereon, to sell, transfer and deliver the whole or any part of such security, or any addition thereto or substitute therefor, without any previous demand, advertisement, or notice, either at public or private sale at any time or times thereafter, with the right on the part of the said Bank to become the purchaser and absolute owner thereof, free of all trusts and claims. And further agree that the securities thereby pledged together with any that may be pledged hereafter, as aforesaid, shall be applicable in like manner to secure the payment of any past or any future obligations of the undersigned held by the said Bank, and all securities in its hands shall stand as one general continuing collateral security for the whole of said obligations, so that the deficiency on any one shall be made good from the collaterals for the rest, and hereby agree to remain responsible for any deficiency in payment, waiving any benefit, exemption or privilege under any law now or hereafter to be in force.

And further agree that should any litigation ensue to said Bank with respect to the collection of the said note or the holding or sale of the said collateral security or any part thereof the said Bank shall be paid such reasonable Counsel fees as it shall have paid to its attorney for the conduct of such litigation, which sum shall be also secured by said collateral security, and be payable on demand of said bank, in default of which payment said collateral security may be sold as is hereinafter pro-

vided, and hereby promise to pay to said Bank any deficiency resulting from the inadequacy of said collateral security in this respect.

MAX M. SLADKIN.
JENNIE SLADKIN.

COLLATERAL ADDED
INTERNATIONAL BANK
John R. Waller, Pres.

FOR VALUE RECEIVED, I hereby guarantee the payment of the principal and interest on the within note when due, and agree to any extension of time on payment of same, and waive demand, protest and notice of protest on same when due.

9/11/23	paid	$100.00
9/14/23	"	100.00
9/19/23	"	100.00
9/25/23	"	100.00
10/ 3/23	"	100.00
11/11/23	"	100.00
10/25/23	"	100.00

7/ 3/22	Int.	paid	to	July 30
8/16/22	Int.	paid	to	Aug. 30
8/30/22	Int.	paid	to	Sept. 30
10/ 4/22	"	"	"	Oct. 30
11/20/22	"	"	"	Nov. 30
12/14/22	"	"	"	Dec. 30
2/15/23	"	"	"	Jan. 30
2/23/23	"	"	"	March 1st/23
4/16/23	"	"	"	April 1/23

COLLATERAL WITHDRAWN

7/11/23	charge	$2.04
7/17/23	Heidelberger	125.00
7/21/23	M. Ruby	100.00
7/25/23	M. Ruby	100.00
7/26/23		10193.44
	Revenue Stamps attached $3.20	
7/31/23	M. Ruby	100.00
8/ 7/23	" "	100.00
8/18/23		100.00
8/24/23	paid	100.00

11/20/22	paid on princ.	500.00
3/ 3/23	M. Ruby	256.25
4/ 3/23	" "	300.00
4/11/23	" "	252.50
5/ 2/23	" "	300.00
5/ 2/23	paid	1000.00
5/18/23	M. Ruby	100.00
5/29/23	M. Ruby	100.00
6/ 8/23	M. Ruby	100.00
6/19/23		200.00
6/19/23		250.00
6/27/23		125:00
7/ 6/23	M. Ruby	100.00
7/ 6/23	Heidelberger	125.00
7/11/23	M. Ruby	100.00

Exhibit D-2.

Memorandum of Agreement made this 1st day of December, 1921, between the Haverford Cycle Company, a corporation organized under the laws of the State of Delaware, with its principal office at Philadelphia, Pa., party of the first part and Max Ruby of 52 Newark Ave., Jersey City, N. J., party of the second part.

Whereas the party of the first part has a branch store at 52 Newark Avenue, Jersey City, N. J., which it desires to sell and the party of the second part desires to purchase and continue business therein:

Witnesseth: The party of the first part hereby sells to the party of the second part the business located at its branch store at 52 Newark Avenue, Jersey City, N. J., including its good will, furniture and fixtures, merchandise and accounts receivable for the sum of Twenty Thousand Sixty Nine Dollars and Forty Eight Cents ($20,069.48) which shall be payable as follows:

Twenty Two Hundred Fifty Dollars ($2250.00) upon the signing of this contract, Twenty Seven Hundred Fifty Dollars ($2750.00) on January 1st, 1922, Fifteen Thousand Sixty Nine Dollars and Forty Eight Cents ($15,069.48) in seventeen notes bearing six per cent interest, one for One Thousand Dollars ($1000.00) due April 1st, 1922, one for One Thousand Dollars ($1000.00) due May 1st, 1922, one for One Thousand Dollars ($1000.00) due June 1st, 1922, one for One Thousand Dollars ($1000.00) due July 1st, 1922, one for One Thousand Dollars ($1000.00) due August 1st, 1922, one for One Thousand Dollars, ($1000.00) due September 1st, 1922,

one for Seven Hundred Fifty Dollars ($750.00) due October 1st, 1922, one for Seven Hundred Fifty Dollars ($750.00) due November 1st, 1922, one for Seven Hundred Fifty Dollars ($750.00) due December 1st, 1922, one for Seven Hundred Fifty Dollars ($750.00) due January 1st, 1923, one for Seven Hundred Fifty Dollars ($750.00) due February 1st, 1923, one for Seven Hundred Fifty Dollars ($750.00) due March 1st, 1923, one for Nine Hundred Dollars ($900.00) due April 1st, 1923, one for Nine Hundred Dollars ($900.00) due May 1st, 1923, one for Nine Hundred Dollars ($900.00) due June 1st, 1923, one for Nine Hundred Dollars ($900.00) due July 1st, 1923, one for Nine Hundred Sixty Nine Dollars and Forty Eight Cents ($969.48) due August 1st, 1923, all of said notes are to be made payable to and at the National Security Bank located at Philadelphia, Pa., and there shall be deposited with the said notes as collateral security therefor, the entire stock of a corporation which shall be used by the party of the second part for the purpose of conducting business at said store and to which will be turned over the assets conveyed herein and which corporation shall endorse the said notes and it is understood and agreed that all moneys received by the party of the second part from the collection of accounts receivable, which are existant at said branch store when taken over by the party of the second part, shall be applied upon the payment of said notes and remittances of said collections made every week and said account shall be open for inspection at all reasonable times by a representative of the party of the first part and said account shall not be pledged, assigned or in any manner encumbered by the party of the second part and as further security for payment of said notes, the party of the second part will execute a pledge upon the furniture and fixtures at said store.

Witness the signature and seals of the parties hereto.

THE HAVERFORD CYCLE COMPANY
by MAX M. SLADKIN (Signed)
MAX RUBY (Signed)

Witness:
J. R. IRWIN (Signed)

Judgment.

This case was tried before Judge Willard Cutler with a jury, in the presence of the counsel of the respective parties, on March 23rd, 1925.

The case having been heard and submitted to the jury, they returned their verdict as follows:

They found in favor of the plaintiff and against the defendant the sum of $133.99 damages.

WHEREUPON it is adjudged that the plaintiff Jennie Sladkin recover from the defendant Max Ruby the sum of $133.99 and her costs, which are taxed at the sum of fifty one 78/100 dollars, making in the whole, the sum of $185.77.

New Jersey Court of Errors and Appeals

JENNIE SLADKIN,
Appellant,

vs.

MAX RUBY,
Respondent.

BRIEF FOR APPELLANT.

Appellant sued to recover the amount due on three promissory notes made by respondent to the order of the Haverford Cycle Company and by it endorsed to her.

The defense was: appellant was not a holder for value in due course consequently respondent was entitled to set off $2827.15 claimed to be due to him under an agreement said to have made with the Haverford Cycle Company subsequent to the date of the notes.

The amount sued for was $2329.40 ($460-$900-$969.40). The Judgment was for the appellant in the sum of $133.99.

The Haverford Cycle Company, a corporation, was obliged to restrict its business during 1921 for financial reasons. It sold all of its branch stores and among them it sold to respondent its branch store on Newark Avenue in Jersey City. He purchased the fixtures, merchandise and accounts receivable therein for $20069.48 which he paid by giving promissory notes aggregating that sum.

The notes sued on by appellant (due $460, July 1st, 1923—$969.49 due August 1st, 1923 and $900

due September 1st, 1923) were three notes of the notes given to the Haverford Cycle Company as aforesaid.

The manner in which the notes sued on came into appellant's possession is this: In June, 1922, the Firestone Tire and Rubber Company was pressing the Haverford Cycle Company for payment of a debt of $32,000; it offered to accept $16,000 in settlement and threatened insolvency and a receivership if not paid. Max M. Sladkin, husband of appellant, was president of the Haverford Cycle Company. Called as a witness for respondent he testified:

> "The only salvation was to buy that claim "and to keep the Company afloat. The Com- "pany had no money to buy it. I went to my "wife and I said to her, I said, 'We can save "this money if you lend me $16,000. so you "lend me your collateral.' She said, 'I will "do it.' I immediately went to the Inter- "national Bank in Washington and negotiated "a loan for $16,000. provided we put up this "collateral. They gave me $16,000. That is, "they didn't give it to me, they gave it to me "in her name; the check was made payable to "her. I immediately took the check and went "to New York, where I settled with the Fire- "stone their claim direct with the Firestone "people. When I got back, I went to the vice- "president and I talked the matter over. I "said, 'Now, I don't know how good that claim "is, but the house is the only thing my wife has "got. I don't feel that she ought to put it up; "you ought to give me full collateral.' He said, "'all right, we will give $16,000. not of the "branch notes.' I said, 'That won't be enough; "if you will give $32,000. of these branch notes, "it will be enough,' because I figured some "would pay and some would not." (Case, p. 20, line 10.)

Appellant made a collateral note to the International Bank of Washington, D. C. and delivered

it together with a mortgage on her own property in Atlantic City and an assignment of a mortgage on property in Gloucester County, New Jersey. The bank advanced to her $16,000 on her note. On July 5th, 1922, she turned this money over to the Haverford Cycle Company. Sladkin then with the consent of the Haverford Cycle Company turned over $32,000. of notes received from the sale of its branch houses among them the notes sued on. These notes were deposited with the International Bank and $9100 of them paid.

The court below denied appellant's motion for a directed verdict and submitted the case to the jury leaving it to decide (1) whether appellant was a holder of the notes for value and in due course; and if not (2) then whether the defendant had established a contract with the Haverford Cycle Company whereby he was entitled to a deduction against the notes in appellant's hands.

Our appeal rests on the ground that there was no testimony in the case to destroy the presumption of the 59th section of the Negotiable Instruments Law that every holder is deemed prima facie to be a holder in due course. And further assuming there was some testimony from which such an inference could be drawn the respondent did not establish any valid contract whereby he became entitled to a deduction from the notes—the contract he tried to establish was void for lack of consideration.

I.

The 59th section of the Negotiable Instrument Law (*3 Comp. Stat. 3741*) provides that "Every holder is demed prima facie to be a holder in due course."

The 52nd section (*3 Comp. Stat. 3741*) states that a holder in due course is a holder who has taken the instrument under these conditions:

a.

That it is complete and regular on its face. There was no question concerning this in the testimony. The notes were produced and were complete and regular on their face.

b.

That he became the holder of it before it was overdue, and without notice that it had been previously dishonored if such was the fact.

The notes were dated two on December 1st, 1921 and one on January 1st, 1922. They fell due on July 1st, 1923, August 1st, 1923 and September 1st, 1923 respectively.

On June 30th, 1922, appellant gave her collateral note to the International Bank and borrowed $16,000 (*Exhibit D1, page 87*). She paid this $16,000 over to the Firestone Tire and Rubber Company for the Haverford Cycle Company on July 5th, 1922 (*Exhibit P4, page 83*). Max M. Sladkin called by respondent testified that when he returned from settling the Firestone Tire and Rubber Company claim he said to the vice president of the Haverford Cycle Company

> "Now I don't know how good the claim is, "but the house is the only thing my wife has "got, I don't feel she ought to put it up; you "ought to give me full collateral." He said "(the vice-president), All right, we will give $16,000 notes of the branch houses." I said "That won't be enough, if you will give $32,000 "of these branch notes; it will be enough be-

"cause I figured some would pay and some "$16,000 notes of the branch house." I said "would not." (*Case, p. 20, lines 25-36.*)

On July 31st, 1922, the Haverford Cycle Company enclosed $31,569.55 of notes (including the notes sued on) by letter to Max M. Sladkin as collateral for the $16,000 advance made by appellant to the Firestone Tire and Rubber Company (*Exhibit P5, page 84*). Gerrow, the bookkeeper of the Haverford Cycle Company called by respondent testified (*Case, page 35, line 13, page 37, line 10*) the notes in question were given to the International Bank and were in its possession until a day or two prior to December 5th, 1922, when they were delivered to appellant. The collateral note (*Exhibit D1, page 87*) shows the bank had these notes in addition to the other collateral. The foregoing is all of the testimony on this point and is taken from respondent's witnesses and shows that appellant became holder of the notes in July, 1922, almost a year before the earliest maturity.

c.

That he took it in good faith and for value.

There is nothing whatever in the testimony that raises any question of appellant's good faith. The 25th section of the Negotiable Instruments Law defines value as follows:

"Value is any consideration sufficient to sup- "port a simple contract; an antecedent or pre- "existing debt constitutes value; and is demed "such whether the instrument is payable on "demand or at a future time." (*3 Comp. Stat. 3738.*)

The value given by appellant was the $16,000 advanced by her to the Firestone Tire and Rubber

Company in payment of an overdue bill by the Haverford Cycle Company thereby relieving the later company of threatened insolvency proceedings. That she did this is not disputed.

d.

That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

The 56th section of the Negotiable Instrument Law provides as follows:

> "To constitute notice of an infirmity in the "instrument or defect in the title of the person "negotiating the same, the person to whom it "is negotiated must have had actual knowledge "of the infirmity or defect, or knowledge of "such facts that his action in taking the in-"strument amounted to bad faith."
>
> *3 Comp. Stat., page 3741.*

The particular infirmity said to be in the notes sued on was this: Respondent in his answer said the Haverford Cycle Company agreed to credit the amount not collected of the accounts receivable sold to respondent against the amount of notes. (*Case, p. 7, line 25.*) He claims he was unable to collect about $2700 of the accounts and consequently was entitled to set off this sum from the amount of the notes. Whether this is an infirmity depends (1) whether a valid contract was made allowing such deduction which we discuss below and (2) whether appellant had actual notice thereof.

Respondent makes no claim that appellant had actual personal notice of the so called infirmity. Whatever notice she had must be imputed to her

because her husband, so respondent says, had notice and he was her agent.

Respondent testified concerning this so called agreement (*Case, p. 47, line 4*) speaking of Max M. Sladkin:

> "* * * he told me there several times, I will "give you credit; let it go to the point and "meanwhile you will be collecting something "out of them."

And again (*Case, p. 52, line 4*) that Sladkin said he would credit respondent for the bad accounts. When this socalled agreement was made the respondent did not say; he testified he could not remember the date; that the talk started "several" months after the contract (*Case, p. 56, lines 20-40*).

The testimony has been referred to above and while there is testimony from which an inference can be drawn that Max M. Sladkin was the agent of the Haverford Cycle Company in procuring the advance of $16,000 from appellant there is no proof that he was her agent.

In order that the knowledge of one person shall be imputed to another it is indispensable that there exist between them *in fact* the relation of the principal and agent.

> *21 Ruling Case Law, p. 840, Citing Clement* vs. *Young, McShea Amusement Co., 70 N. J. Eq. p. 677.*

There is no authority in the law for assuming that a husband is *in fact* his wife's agent in the absence of proof that he was.

> *Sternberger* vs. *Hurtzig,* 36 N. J. Eq. 375; *O'Carroll* vs. *Stark,* 85 N. J. L. 438.

Consequently having satisfied the requirements of the section of the Negotiable Instruments Law the

claim of set off should have been disregarded and a verdict directed for the amount of the notes.

II.

Assuming, however, that notice of the conversations between respondent and Max M. Sladkin as president of the Haverford Cycle Company can be imputed to appellant then before any deduction can be allowed to respondent it must appear he was entitled to such deduction or in other words a contract must have been established whereby respondent became entitled to such deduction.

The element lacking in the contract set up by the respondent is the element of consideration. There was nothing to support any promise of deduction by the Haverford Cycle Company. The trial judge ruled that a consideration must be shown in order to establish a contract but left it to the jury to say whether there was a consideration.

We submit that in this case taking the testimony most strongly against appellant there was no facts proved from which a consideration could be spelled out and consequently the question of lack of consideration should have been dealt with by the court as a matter of law.

We submit the judgment should be reversed.

INSLEY, VREELAND & DECKER,
Attorneys of Appellant.

WILLIAM E. DECKER,
Of Counsel.

New Jersey Court of Errors and Appeals

JENNIE SLADKIN, Plaintiff-Appellant, *v.* MAX RUBY, Defendant-Respondent.	On Appeal from the New Jersey Supreme Court (Hudson Circuit)

BRIEF FOR DEFENDANT-RESPONDENT.

Statement.

The plaintiff in the court below, before Judge Cutler and a jury, in the New Jersey Supreme Court (Hudson Circuit), recovered a judgment of $133.99 against the defendant. The plaintiff being dissatisfied with the result below, and alleging error, is prosecuting this appeal in this court.

The plaintiff sued upon three certain promissory notes, the total amount of which was $2,329.40 (Exhibits P-1, P-2 and P-3, Case pp. 82-83). The plaintiff's case was to the effect that the defendant had executed the notes to the order of the Haverford Cycle Company, and that the latter concern had endorsed the notes over to Jennie Sladkin, the plaintiff, and the latter, being a holder in due course, was entitled to recover.

The answer and counterclaim of the defendant, in addition to pleading the general issue, set up the fact that the notes were made by the defendant to the order of the Haverford Cycle Company in consideration *inter alia* of the assignment of certain accounts due the Haverford Cycle Company, the said Haverford Cycle Company agreeing to de-

duct from the notes payable such amount as could not be collected by the defendant on the assigned accounts.

The answer then went on to say that the amount which could not be collected was the sum of $2,827.15, which sum the defendant sought to set-off or counterclaim against the notes in question.

The facts as they developed at the trial were these:

On the 1st day of December, 1921, the Haverford Cycle Company sold one of its stores, to wit: the store 52 Newark Avenue, Jersey City, N. J., to the defendant for the sum of $20,069.48. A memorandum of agreement, constituting the bill of sale, was offered in evidence by the defendant and is marked Exhibit D-2 (Case, p. 91). This agreement indicates that the sale included the good will, furniture and fixtures, merchandise and accounts receivable.

On his part the defendant gave $2,250.00 in cash and seventeen (17) promissory notes.

An inspection of the foregoing agreement (Exhibit D-2) indicates that the sale of the accounts receivable was included when the store was sold, and undoubtedly was considered in arriving at the price for which the sale was made.

There is ample evidence to indicate that some $2,700.00 of these accounts were uncollectable (Case, p. 54). (At any rate, no appeal is taken from the admission of this evidence.)

The question then is whether, first, under the agreement aforesaid the uncollected accounts could be deducted from the consideration; or, secondly, if they could not be deducted under the original agreement, whether a valid subsequent agreement was not made for their deduction.

There is ample evidence from which the jury could infer that, subsequent to the agreement (Ex-

hibit D-2), the president of the Haverford Cycle Company, Mr. Max Sladkin, the controlling genius of the concern, specifically agreed to deduct the uncollected accounts (Case, p. 47, evidence of Max Ruby; Case, p. 34, bottom, evidence of John A. Gerrow, Jr.).

The situation then is, undoubtedly, that if the Haverford Cycle Company were suing on these notes, the defense interposed would have been a valid one, and the verdict easily sustainable.

However, the three notes aforesaid, which were originally among the 17 made to the Haverford Cycle Company, found their way into the hands of the plaintiff in this cause, Jennie Sladkin.

Jennie Sladkin is the wife of Max Sladkin, the president of the Haverford Cycle Company. Mr. Sladkin was likewise a controlling stockholder of the company (Case, p. 17, line 30), and it was he who conducted the entire sale to the defendant aforesaid (Case, p. 17). The story of Max Sladkin as to how the notes came into the possession of Mrs. Sladkin is that as the Haverford Cycle Company was in need of a loan of $16,000.00, the company borrowed this money from Mrs. Sladkin. Mrs. Sladkin, in order to raise the money, was compelled to borrow the money from the International Bank, giving as security various properties belonging to her. To secure Mrs. Sladkin, the Haverford Cycle Company transferred a quantity of its notes, including the notes sued upon.

It was urged by the plaintiff in the court below, and it is urged by the appellant here, that the plaintiff was a *bona fide* holder under the terms of the Negotiable Instruments Act, and that she was hence not bound by the defense interposed.

The trial error urged by the appellant is the refusal to direct a verdict in favor of the appellant for the amount due upon the three promissory notes (fourth ground of appeal, Case, p. 1). The other three grounds of appeal are abandoned.

ARGUMENT.

POINT ONE.

Whether plaintiff was a bona fide holder in due course of the promissory notes was a question to be determined by the jury.

The appellant in her argument first seeks to demonstrate that the evidence adduced at the trial is of such a nature that the trial court should have held as a matter of law that the plaintiff was a *bona fide* holder in due course, and should, therefore, have directed a verdict in her favor.

It is submitted that the entire argument of the appellant is based upon a misconception of the 59th Section of the Negotiable Instruments Law. The appellant's opening statement under her Point One is that "the 59th Section of the Negotiable Instruments Law (3 Comp. Stat., 3741) provides that 'every holder is deemed *prima facie* to be a holder in due course.'"

The appellant, however, neglects to state and to give any consideration to the balance of the section. Section 59 of the Negotiable Instruments Law aforesaid, in full, reads as follows:

> **"Holder in due course; presumptions and burden of proof.**—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course; but the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."

This section has been construed in the case of

Louis De Jonge & Co. v. *Land Co.*, 77 Law, 233; 72 Atl., 439.

In that case the plaintiff brought suit upon a promissory note of which he was the endorsee. The defendant had ample evidence to indicate that the note was made by its agent without any authority whatsoever so to make it. The trial court insisted that the issue of a holder in due course be presented first, and the trial court then being convinced that as a matter of law the plaintiff was a holder in due course, refused to consider the other important evidence as to the affirmative defense, and directed a verdict in favor of the plaintiff.

A reading of the opinion of the learned Chief Justice indicates the rule to be that the evidence as to the affirmative defense was clearly admissible under this section of the Negotiable Instruments Act, because

> "The effect, therefore, of the rejected proof would have been to destroy the then existing presumption that the plaintiffs were holders in due course, and to throw upon them the burden either of proving that fact, or of overcoming the proof of the defendant that the note was given for Bright's personal debt, and that his act in making it was not authorized or ratified by the company, provided that the making of the note under the conditions recited rendered it invalid in the hands of McLoughlin, the payee."

The appellant's misconception then is that she fails to realize that the evidence of an affirmative defense renders it a jury question, as to whether the plaintiff was a holder in due course or not. This must be evident from a reading of Section 59 of the Negotiable Instruments Act aforesaid.

And the merit of this rule can best be appreciated by a consideration of a case such as the one *sub judice*. The plaintiff is the wife of the man who knew all about the transaction. The husband was in every respect the agent of the wife. Yet it

is a matter of some difficulty to establish the actuality of notice.

The Negotiable Instruments Law very wisely provides, however, that the holder of a note is merely *prima facie* a holder in due course, and that when it is shown that the title of the person who negotiated the instrument (the payee) was defective, that the burden then rests upon this holder to prove that she acquired the title as a holder in due course.

The burden being upon her, it is submitted that it would have been error for the court below to have directed a verdict for the plaintiff on this score. *Louis De Jonge & Co.* v. *Land Co., supra.*

Furthermore, the appellant is not quite correct in her statement of the evidence. There is evidence to indicate that she was not a holder in due course.

In the extracts from the testimony cited in the appellant's brief, it would appear that Mrs. Sladkin refused to turn over her collateral until she received the $32,000.00 worth of notes, amongst the latter of which were included the notes in question. The evidence is that the collateral note was given to the International Bank on the 30th of June, 1922 (Exhibit D-1). This note was not made by Jennie Sladkin. It was made jointly by Max M. Sladkin and Jennie Sladkin, his wife.

The notes upon which the present suit is based were not turned over to Mrs. Sladkin until December, 1922. See Case, page 36, where the witness John A. Gerrow, Jr., testifies as follows:

> "The Witness: These notes were given the bank in Washington as collateral for a loan to the Haverford Cycle Company, that they had gotten from the bank, and I have only seen the notes once since and that was around December 5th, 1922, about a day prior to the time we went into the hands of a receiver, and then

> these notes came to me and I was told they were being transferred to Mrs. Sladkin as additional collateral on a note which she held against the Company for $32,000, but up to that time, my records show that these notes were in Washington and then I made a transfer showing that they were transferred from the Washington bank to Mrs. Sladkin and that was about two days or a day before the receivership."

In addition to this Max M. Sladkin aforesaid, the president and controlling genius of the Haverford Cycle Company, distinctly told his wife that these notes came from the sale of the branch stores, and from the various managers who bought these stores (Case, p. 21, line 15).

Furthermore, it is very clear that Sladkin acted as the agent of his wife (Case, p. 21, line 38; p. 22, line 10). If Sladkin was the agent of his wife, the wife would be charged with notice.

> "Notice of defenses or equities in the transfer of commercial paper falls under the general rule that notice to an agent is notice to the principal." 8 Corpus Juris, 523 (especially footnote 3 and cases cited).

To summarize, our position is this:

The question of the plaintiff being a holder in due course was distinctly a jury question, either under the authority of *Louis De Jonge & Co.* v. *Land Co., supra,* and Section 59 of the Negotiable Instruments Act, or under the evidence in the case, to the effect that the plaintiff was chargeable with notice.

POINT TWO.

The defendant had a proper set-off or counterclaim in this action.

The appellant in her brief very summarily dismisses the proposition of the set-off or counterclaim. The appellant states that the deduction was not allowable as there was no consideration for the contract, and that there was nothing to support any promise of a deduction by the Haverford Cycle Company. We submit that here again the trial court was correct. The trial court ruled that a consideration must be shown in order to establish a contract, but left it to the jury to say whether there was such a consideration. This was the proper disposition of the point.

In the first place, an examination of the bill of sale (Exhibit D-2, Case, p. 91) shows that the accounts receivable were included. Undoubtedly the purchase price was based in part upon a total of the accounts receivable.

The question then becomes whether under this very agreement the defendant could not set-off or counterclaim for such accounts as were not collectable. We do not have to decide this point. It was an arguable point. There would, therefore, be ample consideration for the allowance of the set-off under the proposition of law that a settlement of a disputed legal proposition is good consideration for a contract.

Bowers Dredging Co. v. *Hess,* 71 Law, 327; 60 Atl., 362.

No appeal is taken from the introduction of facts indicative of the amount of the set-off. The amount of the set-off was close to $2,700.00 (Case, p. 54). There is ample evidence in the case to indicate that there was an agreement to credit these set-offs (Case, p. 34, bottom; p. 47; p. 57).

To be sure, this agreement was made subsequent to the execution of the contract, but it seems to us that the consideration for this subsequent agreement comes quite clearly under the rule stated in

Worcester Loom Co. v. *Heald,* 78 Law, 172; 72 Atl., 421.

In the latter case Mr. Justice Trenchard says:

> "We are not now concerned with the question whether or not the objections of the defendants to the plaintiff's claims were unfounded. The rule is that a compromise of a disputed claim made in good faith furnishes a good consideration to support a contract, even though it should appear that such claim was in fact wholly unfounded. The court will not inquire into the adequacy or inadequacy of the consideration of a compromise fairly and deliberately made. Trenton St. Ry. Co. *v.* Lawlor, 71 Atl., 234; Bowers Dredging Co. *v.* Hess, 71 N. J. Law, 327, 60 Atl., 362; Grandin *v.* Grandin, 49 N. J. Law, 508, 9 Atl., 756, 60 Am. Rep., 642; Clark *v.* Turnbull, 47 N. J. Law, 265, 54 Am. Rep., 157; Conover *v.* Stillwell, 34 N. J. Law, 54. Whether the claim was disputed in good faith, and whether the compromise was fairly and deliberately made, were, under the testimony, essentially jury questions. 8 Cyc., 541. We conclude, therefore, that the motion for a direction of a verdict was properly refused."

It is respectfully submitted that there was no error committed in refusing to direct a verdict for the plaintiff for the amount of the notes sued upon, and that, therefore, the judgment of the Supreme Court should be affirmed, with costs.

Respectfully submitted,

JOSEPH M. ALSOFROM,
Attorney for Defendant-Respondent.

LEO BLUMBERG,
Of Counsel.