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SUMMONS.

State of New Jersey to Frank
(SEAL) Lindeman. You are SUMMONED to answer the annexed complaint of the Reliable Woodworking Co., Inc., a New Jersey corporation, in an action at law in the Essex County Circuit Court. AND TAKE NOTICE, that unless you file your answer to said complaint with the Clerk of said Court, at Newark, within twenty days after service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS, WORRALL F. MOUNTAIN, one of the Judges of our Circuit Court at Newark, this 10th day of March, 1925. 20

JOHN H. SCOTT,
Clerk.

MEYER RASHKES,
Attorney for Plaintiff.

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COMPLAINT.

Essex County Circuit Court

10	RELIABLE WOODWORKING Co., INC., a corporation, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Action at Law. Complaint.</i>
	<i>vs.</i>		
	FRANK LINDEMAN, <div style="text-align: right;"><i>Defendant.</i></div>		

20 The plaintiff, Reliable Woodworking Co., Inc., a New Jersey Corporation having its principal office in the City of Newark, County of Essex and State of New Jersey, states that:

FIRST COUNT.

1. The said plaintiff on or about February 12, 1925, was the owner of a Chevrolet Roadster, Model K, Serial 2K 3464, and was lawfully possessed of the same as its own property.
- 30 2. That while it was so possessed of the said Chevrolet Roadster the defendant came upon the premises of the plaintiff and unlawfully, maliciously and intentionally seized the said automobile and converted the said Chevrolet Roadster to his own use, well knowing that the said automobile was the property of the plaintiff.
3. That said defendant converted said Chevrolet Roadster to his own use without the consent and permission of the said plaintiff.
- 40 4. That said plaintiff after said conversion demanded the return of the said automobile from

Complaint.

said defendant and that defendant refused to return same.

5. That by reason of the said actions of the said defendant the plaintiff has sustained actual damages in the sum of \$1,000.

SECOND COUNT.

10 1. The said plaintiff on or about February 12, 1925, was the owner of a Chevrolet Roadster, Model K, Serial 2K 3464, and was lawfully possessed of the same as its own property.

2. That while it was so possessed of the said Chevrolet Roadster the defendant came upon the property of the plaintiff and unlawfully, forcibly, wrongfully, wantonly, maliciously and intentionally seized the said Chevrolet Roadster without the permission or consent of the said plaintiff and converted the same to his own use and regarded the same as his own property, although well knowing at the time of said wrongful seizure that said Chevrolet Roadster was owned by the plaintiff.

3. Plaintiff further states that after the defendant wrongfully seized the said Chevrolet Roadster the said plaintiff demanded the return of its said Chevrolet Roadster from the said defendant who absolutely and maliciously refused to do so.

4. That the said plaintiff charges the said defendant with the wanton, unlawful, malicious and intentional seizing of said Chevrolet Roadster owned by the said plaintiff and so known by the said defendant.

5. The said plaintiff further states that the defendant in the conversion of the said Chevro-

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Complaint.

let Roadster belonging to the said plaintiff as aforesaid, did said act in a spirit of malice with the intention that the said plaintiff should suffer injury and damages and for the deliberate purpose of overriding the rights of the said plaintiff and insulting its self respect and dignity with a wanton disregard of the property rights of the said plaintiff.

6. That by reason of the said acts complained of against the defendant by the plaintiff, the plaintiff states that it has sustained actual damages in the sum of \$1,000 and will also demand punitive damages in the sum of \$2,500.

Take notice that the plaintiff will claim damages in the sum of \$1,000 on the first count and damages in the sum of \$3,500 on the second count, besides lawful costs of suit to be added.

MEYER RASHKES,
Attorney for Plaintiff.

To the defendant:

TAKE NOTICE, that if the within summons and complaint are served upon you personally that the plaintiff demands that within ten days after such service that you file an affidavit of merits to the within action, and that in default of so doing the plaintiff may proceed and take judgment against you.

MEYER RASHKES,
Attorney for Plaintiff.

Served by leaving a copy with a member of the family, March 11, 1925.

ANSWER.

ESSEX COUNTY CIRCUIT COURT.

RELIABLE WOODWORKING Co., INC., a corporation, vs. FRANK LINDEMAN, 	}	<i>Plaintiff,</i> <i>Defendant.</i>	<i>Action at Law.</i> <i>Answer.</i>	 	
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The defendant, residing in the City of Newark, County of Essex and State of New Jersey, answering the plaintiff's complaint, says:

FIRST COUNT.

1. Answering paragraph 1 of the first count of the plaintiff's complaint, this defendant has no knowledge or information sufficient to form any belief as to whether or not the plaintiff was the owner of a Chevrolet Roadster, Model K, Serial 2K 3464, but leaves the plaintiff to prove the same.

2. Answering paragraph two of the first count of the plaintiff's complaint, this defendant denies each and every allegation alleged in said paragraph.

3. This defendant denies paragraph three of the first count of the plaintiff's complaint.

4. This defendant denies paragraph four of the first count of the plaintiff's complaint.

5. This defendant denies paragraph five of the first count of the plaintiff's complaint.

Answer.

SECOND COUNT.

10 1. Answering paragraph one of the second count of the plaintiff's complaint, this defendant has no knowledge or information sufficient to form any belief of the allegations set forth in said paragraph one, but leaves the plaintiff to prove the same.

2. This defendant denies each and every allegation set forth in paragraph two of the second count of the plaintiff's complaint.

3. This defendant denies paragraph three of the second count of the plaintiff's complaint.

4. This defendant denies paragraph four of the second count of the plaintiff's complaint.

20 5. This defendant denies paragraph five of the second count of the plaintiff's complaint.

6. This defendant denies paragraph six of the second count of the plaintiff's complaint.

WM. GREENFIELD,
Attorney for Defendant.

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Opening.

TESTIMONY.

ESSEX COUNTY CIRCUIT COURT.

Tuesday, November 1, 1927.

RELIABLE WOODWORKING Co.,	}	<i>Action at Law.</i>	10
<i>vs.</i>			
FRANK LINDEMAN.			

Before Hon. William A. Smith, J., and a jury.

For the plaintiff appears Meyer Rashkes (by Philip J. Schotland).

For the defendant appears William Greenfield. 20

(A jury is called and sworn.)

Mr. Schotland opens to the jury as follows:

If your Honor please, and gentlemen of the jury: Frank Lindeman is connected with the Lindeman-Chevrolet, a corporation, according to their letterheads. On February 7, 1925, he sold to the Reliable Woodworking Company a Chevrolet for the sum of \$611.50. There was a deposit of \$50 paid by the Reliable Woodworking Company on account of the purchase price of the car, and the car was delivered and notes given for the payment of the balance, and a receipt for the bill and the notes given to the Reliable Woodworking Company at the time of the delivery of the car, together with the car license. 30

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Opening.

At the time of that delivery the Reliable Woodworking Company gave a check for \$8.80 that the Lindeman-Chevrolet had advanced for the license. Shortly afterwards, a matter of a few minutes, Frank Lindeman drove up to the yard of the Reliable Woodworking Company and began to curse and swear at Mr. Bornstein, the officer of the Reliable Woodworking Company who had made the deal, and threw the notes at Mr. Bornstein and he sent his man into the yard to grab the car and he went away with it.

This action is brought to recover from Frank Lindeman the value of that car that had never been used—\$611.50—and to recover damages from him for this wanton, malicious trespass in coming there personally after his company had sold the car, and grabbing the car and going away with it and keeping it.

As far as the Lindeman-Chevrolet Company is concerned, they are not in the case; they did absolutely nothing about it. This is simply an action against Frank Lindeman for coming and driving this car—taking it away—a few minutes after it had been sold and delivered to this plaintiff.

Mr. Greenfield opens to the jury as follows:

If your Honor please, and gentlemen of the jury: According to counsel's opening, Mr. Lindeman must be an awful sort of a person to come there and grab the car and run away with it. We will prove to you that Frank Lindeman is the head of the Lindeman-Chevrolet Company—what is

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Opening.

known as the "Lindeman Boys." He dealt in the Chevrolet; he was the president; he was the treasurer; he was the secretary; he was the whole show.

The Reliable Woodworking Company at that time came to buy a car. They agreed to purchase the car for a certain price for certain terms, notes to be given and go through the Finance Company. At that time the Reliable Woodworking Company said, "Well, you can't deliver the car to us for about six weeks. We have got to have the car in our business. Can you help us out?"

Mr. Schotland: I object to an opening dealing with any facts or going into anything not pleaded. The only defense pleaded here is a denial that Frank Lindeman took this car.

Mr. Greenfield: I am going to connect it up.

The Court: But you can't prove justification. All you pleaded was a general denial.

Mr. Greenfield: I am taken a little by surprise, if the Court please, and under the circumstances, it is an error—I would like to have an opportunity to amend.

Mr. Schotland: If your Honor please, I would gladly consent to an amendment and proceed with the trial right now, were it not for the fact that what Mr. Greenfield evidently has in mind—I have been made familiar with all the transactions between the parties—would not be the proper subject of a defense, and if pleaded, a motion would be addressed to that pleading. For that reason

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Opening.

I cannot consent to an amendment now on a matter of that kind.

The Court: What is your defense?

10 Mr. Greenfield: My defense is this: The Lindeman-Chevrolet sold the car under a conditional bill of sale, or financing. When the car was delivered Mr. Lindeman was there with his man to take away the car that was loaned to the plaintiffs and get the document signed up. At that time there was a dispute as to the financing and signing of the notes as originally agreed upon; Frank Lindeman, being the president, he took the car—

The Court: Which car? The one they loaned him—

20 Mr. Greenfield: Both.

The Court: You are suing for the one that was sold?

Mr. Schotland: The one that was loaned was taken back by the man who delivered the new car. They receipted for it, left the new one, and took the check for the license.

30 Mr. Greenfield: They would not sign the necessary papers; there was a dispute about it, and he took the car for the Lindeman concern.

The Court: Why can't they prove that under a general denial?

Mr. Greenfield: I ask that the borrowing of another car or helping them with another car that was stated in the opening be stricken out.

40 The Court: What you claim is that you went there to deliver the car and they were

Jacob Bornstein, direct.

not ready to sign the papers under the agreement you were entering into with them and title to the new car never passed.

Mr. Schotland: The claim, according to the opening, is that they really never delivered the car.

Mr. Greenfield: No delivery. 10

JACOB BORNSTEIN, sworn in behalf of the plaintiff.

Direct examination by Mr. Schotland.

Q Mr. Bornstein, are you connected with the Reliable Woodworking Company? A Yes, sir.

Q In what capacity? A I am secretary of the Reliable Woodworking Company. 20

Q Do you take an active part in the business? A Yes, sir.

Q Did you negotiate with the Lindeman-Chevrolet Company for the purchase of a Chevrolet roadster on behalf of your company? A Yes, sir.

Q Did you purchase a Chevrolet roadster? A Yes, sir.

Q After you gave the order for a Chevrolet roadster, did you receive a letter thanking you for the order? A Right. 30

Q I show you a letter dated February 7, 1925. Is that the letter you received from them? A Yes, sir.

Mr. Schotland: I offer this in evidence.

(The same is received in evidence and marked Exhibit P. 1.)

Mr. Schotland: This letter is on the letterhead of the Lindeman-Chevrolet, Incorporated. 40

Jacob Bornstein, direct.

(Mr. Schotland reads Exhibit P. 1 to the jury.)

Q How did you get this letter? A By mail.

Q On this letter I notice it says that the car delivered to you on that date, February 7th, was the car in question. Was the car delivered to you on that day? A No, sir.

Q When did you get the car? A On the 12th of February.

Q You actually got the car on the 12th of February? A That's right.

Q Who delivered the car? A Two salesmen of the Lindeman-Chevrolet Company, and a driver.

Q When they delivered the car, who received it for the company? A I did, personally.

Q What did they deliver to you when they delivered the car? What else did they deliver to you? A Bills—paid bill.

By the Court.

Q What do you mean by paid bill? A I don't understand it.

Mr. Schotland: I will reframe the question.

Q When the car was delivered to you, did you receive this receipted bill for it (handing paper to witness)? A Yes, sir.

Q What did you give to the man who delivered the car—

The Court: Do you want to put that in evidence?

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Jacob Bornstein, direct.

Mr. Schotland: I was going to put three or four things together.

Q You received this, did you? A Yes, sir.

Mr. Schotland: I offer it in evidence.

(The invoice referred to is received in evidence and marked Exhibit P. 2.)

Q You say that you received this Exhibit P. 2 on February 12th, although it is dated February 7th? A That's right.

(Mr. Schotland reads Exhibit P. 2 to the jury.)

The Court: Is there a signature for the company?

Mr. Schotland: Yes, sir.

Q At the same time that you received that receipted bill, did you also receive this car license card? A Yes, sir; I paid the \$8.80 with a check.

Q You received this car license card? A Yes, sir.

Q They brought this to you? A Yes, sir.

Mr. Schotland: I offer it in evidence.

Mr. Greenfield: What is that?

Mr. Schotland: The owner's license for that particular car.

(The same is received in evidence and marked Exhibit P. 3.)

(Mr. Schotland reads Exhibit P. 3.)

Mr. Schotland: The license card is an owner's license card for that particular car with the motor number, engine number, and

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Jacob Bornstein, direct.

serial number, as described in the bill of sale.

Q Who actually gave these to you? A Two salesmen of the Lindeman-Chevrolet Company.

10 Q When they delivered the car to you? A Yes, sir.

Q Did one of them sign that bill? A Yes, sir.

Q In your presence? A Yes, sir.

Q At the same time that you received this bill for the car and the owner's license, did you give the salesman anything? A No, sir. You mean for the car?

20 Q For any purpose. A I gave him a check for the \$8.80.

Q I show you a check of the Reliable Woodworking Company dated February 12, 1925, for \$8.80. Is this the check you gave them? A Yes, sir.

Mr. Schotland: I offer it in evidence.

(The check is received in evidence and marked Exhibit P. 4.)

30 Q I notice this check for \$8.80 is certified. Did you have it certified before you gave it to them? A No, sir.

Q It was certified after it left your hands? A It must have been.

(Mr. Schotland reads Exhibit P. 4.)

40 Q At the same time that you gave them that check, did you give them any notes? A Yes, sir.

Jacob Bornstein, direct.

Q I show you four notes dated February 12, 1925. Are these the notes that you gave them? A Yes, sir.

Q Who made out these notes? Who had them typewritten? A My bookkeeper.

Q Who had the stamp on "Lindeman-Chevrolet, Inc.?" A The Lindeman-Chevrolet Company; when Mr. Lindeman brought the notes back he had the stamp with his name on. 10

Q He did? A Yes, sir.

Mr. Schotland: I offer these notes in evidence.

By the Court.

Q I understand you gave these notes to the salesman who called with the car? A That's right. 20

(The notes are received in evidence and marked Exhibit P. 5.)

(Mr. Schotland reads Exhibit P. 5.)

By Mr. Schotland.

Q Are these the notes that you gave to the salesman for which the receipt is signed on the bill for the car, Exhibit P. 2? A Yes, sir. 30

Q When did you first order this car? A About a month before the delivery of the car.

Q And when you gave the order for the car, did you make a deposit on the purchase price? A A check.

Q I show you a check for \$50 to the order of Lindeman-Chevrolet Company, dated January 9, 1927. Is that the check you gave him? A Yes, sir. 40

Jacob Bornstein, direct.

Mr. Schotland: I offer it in evidence.

(The check is offered in evidence and marked Exhibit P. 6.)

Q What time of the day was it that this car was delivered? A On the early part of the afternoon on February 12th. 10

Q What did you do with the car after it was delivered to you? A It started to sprinkle a little bit; the car was outside in front and I took it inside the yard and I went back in my office.

Q In what yard? A The Reliable Woodworking Company yard.

Q Is there a roof over it? A Yes, sir.

Q And that is where you took the car? A Yes, sir. 20

Q Did you see Frank Lindeman on that day—on February 12th? A About fifteen minutes after the delivery of the car.

Q Where did you see him? A He came into my office about fifteen minutes after the delivery of the car; he came in very wild and his face—

Q Tell us what he said. A He came in and he said, "What the hell did you do to my car?" I didn't know what he was talking about. I said, "What car?" He said, "Never mind." And he took the notes that I gave the salesman and he said, "Stick them up your behind. I wouldn't do no business with you or the Reliable Woodworking Company. I am through with you." I asked him not to do that. He had a man with him, the driver. I just happened to know the name, Mr. Levine. He said, "Mr. Levine, go in the yard and take the car out." I asked him not to do that because I said I 30 40

Jacob Bornstein, cross.

would hold him responsible for taking the car away. I told him that the car belongs to the Reliable Woodworking Company and he had the checks and the notes. He said, "Go ahead and try to sue and collect, and I will be liable for that." He said, "I will spend every cent I have to beat you in court." And he went off. 10

Q Did you know what car he was talking about when he asked what you did to it? A I don't know; I tried to get him to explain it to me, but he wouldn't.

Q Had you used the new car that was delivered to you? A No, sir.

Q Is that all you had done with it, to drive it into the yard from the street? A That's all.

Q Did you ever see the car since? A No, sir.

Q Did the Lindeman-Chevrolet Company return you any money on that car? A No, sir. 20

Cross examination by Mr. Greenfield.

Q Mr. Bornstein, you say that you did not know what he was talking about when he asked you what you did to his car? Is that correct? A That's right.

Q Are you sure you didn't know? A Right.

Q Wasn't there some trouble about the car you had borrowed that he was talking to you about? 30

Mr. Schotland: I object to any borrowed car.

The Court: I will allow it.

Q Wasn't there some trouble about it? A Not that I knew about it at that time.

Q When did you first hear about the trouble with the borrowed car? A Two days later. 40

Jacob Bornstein, cross.

Q Have you got a bill of sale for that car?

A All the papers that I produced there.

Q You haven't got a bill of sale, have you?

A No, sir.

Q Have you? A I don't know.

10 Q Did Frank Lindeman, or the Lindeman-Chevrolet Company, ever give you a bill of sale for the car? A No, sir.

Q They never delivered any documents to show that the car belonged to you except that which you have offered here in evidence, Exhibit P. 2, the invoice? A That's right.

Q How did you come to get that invoice?

A It was brought by Lindeman-Chevrolet Company salesman.

20 Q You have offered here in evidence four notes dated February 12, 1925, marked Exhibit P. 5. Who did the typewriting in these notes, the name of the Lindeman-Chevrolet Company? A My bookkeeper.

Q I notice that there are two notes with a stamp—a rubber stamp—Lindeman Chevrolet—and two notes typewritten. Can you explain how that difference came about? A Yes.

30 Q Will you please do so? A The salesman asked the bookkeeper to leave it out, because they had a rubber stamp, and two was already made up and two was not made up, and they used the rubber stamp after the notes were taken out of our place and brought back to Mr. Lindeman with the rubber stamp on.

Q Just two notes? A Just two notes.

40 Q Did it not occur this way, Mr. Bornstein, that the original arrangement was made that the Lindeman-Chevrolet should get two notes for the money instead of four, and that when the two notes with the stamps were offered to you

Jacob Bornstein, cross.

the argument started that you refused to execute the notes unless it was made in four payments?

Mr. Schotland: I object. In the first place, it is not cross examination; in the second place, it is attempting to put in an affirmative defense that is not pleaded; it is attempting to justify the taking of the car. 10

The Court: I will allow it.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The stenographer reads the pending question.)

The Witness: Not that I know of.

Q You don't know that? A No, sir. 20

Q How did that car come into your yard?

A I drove it in myself.

Q Why? A Because it started to rain after the salesman left with the settlement of the car.

Q And you wanted to protect the Chevrolet car from getting wet? A That's right.

Q I suppose you were going to keep it in the garage when it was raining—

The Court: What difference does that make? 30

Q Now, Mr. Bornstein, isn't it a fact that when you refused to live up to the original arrangement there was an argument and then Mr. Levine and you ran out and you drove the car into the yard and Mr. Levine went out and took the car out? Isn't that so? A No, sir.

Q Who took the car away from there? A Mr. Levine. 40

Jacob Bornstein, cross.

Q Who was one of the men that came there with the car? A At the first time—he came twice.

Q Who was with Mr. Levine the second time? A Mr. Frank Lindeman.

10 Q Who was with him the first time? A Two salesmen of the Lindeman-Chevrolet Company.

Q Mr. Martin? A I don't remember him; it's three years ago.

Q Had you paid for the car?

Mr. Schotland: I object to that. What difference does it make?

The Court: I will sustain the objection.

20 Mr. Greenfield: If the Court please, a person can't be charged with conversion of his property if it didn't belong to him.

The Court: Ask him that.

Q Did the car belong to you? A Yes, sir.

Q How?

Mr. Schotland: I object to that.

Objection sustained.

30 Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q You didn't pay for it?

Mr. Schotland: I object to that.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

40 Exception noted as ground of appeal.

Sidney E. Grossman, direct.

Q And you did say you never got a bill of sale for it? A That's true.

The Court: Isn't this a bill of sale?

Mr. Schotland: Of course it is.

Mr. Greenfield: This is only an invoice, if the Court please. They couldn't get a license on this. 10

The Court: Why not? This license must have been gotten on this bill of sale.

Mr. Greenfield: No, sir; they get their license on the factory bill of sale.

The Court: If they are the agents of the factory they can give this form of bill of sale, can't they?

Mr. Greenfield: No, sir. 20

The Court: I will hear you at the proper time on that.

SIDNEY E. GROSSMAN, sworn in behalf of the plaintiff.

Direct examination by Mr. Schotland.

Q What is your business, Mr. Grossman? A Bookkeeper. 30

Q Where are you employed? A Newark Morning Ledger.

Q Are you still employed by the Reliable Woodworking Company? A No, sir, I am not.

Q You are not employed by them now? A No, sir.

Q On February 12th of this year, where were you employed? A Newark Morning Ledger. 40

Sidney E. Grossman, direct.

Q I mean, 1925? A Reliable Woodworking Company.

Q In what capacity were you employed by them? A Bookkeeper.

10 Q I show you four notes which constitute Exhibit P. 5 in this case, and ask you to look at them. Do you know who made up the type-written matter on those notes? A They were made out by the Lindeman-Chevrolet—these two notes, I believe, if I recall correctly.

Q Did you fill in the typewritten parts in any of those notes, do you recall? A I do not.

Q You don't recall? A No, sir.

Q Do you recall the purchase of a Chevrolet car by your employers at that time? A Yes, sir.

20 Q Were you present when the notes were delivered and when this bill of sale and the license for the car were delivered?

Mr. Greenfield: I object to his calling it the bill of sale.

The Court: Call them P. 1 and P. 2.

Q You were present when P. 1 and P. 2 were delivered? A Yes, sir.

30 Q Who delivered them? A At first Mr. Lindeman's salesman and a chauffeur came and delivered the car.

Q And when they delivered the car, were these notes given to them? A Yes, sir.

Q I show you Exhibit P. 4. Was this check given to them then? A Yes, sir—this check was given to them prior to the giving of the notes. It was for the license plates.

40 Q Do you recall whether that was done at the same time or not? A Yes, I believe it was.

Sidney E. Grossman, direct.

Q Do you know who wrote out the body of that check, filling in the name— A I did.

Q You did that yourself? A Yes, sir.

Q I show you Exhibit P. 3, the owner's license for the car. Did you see that delivered at the same time? A Yes, sir.

10 Q I show you Exhibit P. 2. Did you see who did the writing on there, acknowledging receipt of the notes, and so forth? A Well, yes; Mr. Lindeman's salesman, I believe did that when he delivered the car and took the notes.

Q You saw him do that? A Yes.

Q Was Mr. Lindeman there at all at the time when the car was delivered and when the notes were delivered and the owner's license and the check given and the invoice receipted? A No, sir.

20 Q Mr. Lindeman himself was not there? A No, sir.

Q Did you see Mr. Lindeman there that day at any time? A Yes, sir.

Q Was that before or after the car had been delivered? A After the car had been delivered.

Q How long after the car had been delivered? A I should say within a half hour or so.

30 Q What did you hear him say and what did you see him do? A After the car was delivered and left at our office we gave the notes to the salesman and he left, I suppose, for Mr. Lindeman's office. Within ten or fifteen minutes after the salesman left we got a 'phone from Mr. Lindeman. He asked to speak to Mr. Bornstein and I told him to wait a minute and Mr. Bornstein spoke to him. Within ten or fifteen minutes Mr. Lindeman was at our office.

40 Q What did he say or do? A He opened the door and he said—he spoke very roughly—

Sidney E. Grossman, cross.

he said, "You son-of-a-bitch, what did you do with my car?" Mr. Bornstein was stunned for the minute; he didn't know what to say. He said, "What did I do?" Mr. Lindeman said a few other words; he said, "Here, stick these notes up your behind. I don't want to have anything to do with you." He stepped outside the door and ordered his chauffeur to take the car back. Mr. Bornstein said, "You will pay for this."

Q What is that? A After Mr. Lindeman had slammed the door, Mr. Bornstein said, "You will pay for this." Mr. Lindeman said, "If it is the last thing I do, I will beat you to it."

Q Where was the car taken from? A From the driveway.

Q Where is that driveway? A Off to the side of the office.

Q Have you ever seen the car since Mr. Lindeman took the car away? A No, I have not.

Cross examination by Mr. Greenfield.

Q Do you know what car he was talking about when he said, "What did you do with my car?"

A Did I know? Yes, I did.

Q What car? A That was in reference to the car he had loaned Mr. Bornstein.

Q The trouble started over that, didn't it? A Yes.

Q You didn't make out these notes marked Exhibit P. 5, did you? A No, I didn't; I don't believe I did.

Q Was there another bookkeeper there? A No, sir.

Sidney E. Grossman, cross.

Q Do you remember where it was typewritten? A As I said before, I don't know whether I typewrote them.

Q Wasn't there some trouble about the terms of the payment about this Chevrolet? A No, sir; I knew nothing of that.

Q Didn't you hear any conversation as to that? A No, sir.

Q Where were they arguing with reference to the place where you were?

Mr. Schotland: I object. There isn't anything in evidence that there was any arguing. He is talking about making out the notes.

The Court: He said there was some discussion as to the other car. I will allow it.

Mr. Schotland: That is when Frank Lindeman came a half-hour later.

The Court: Read the question, please.

(The stenographer reads the pending question.)

Q Did they have an argument—Frank Lindeman and Bornstein—did they have an argument when they got together? A As I said, yes; they did.

Q And wasn't the argument concerning the notes? A No, sir.

Q Wasn't the argument concerning the payments that Bornstein wanted to change from the original arrangement? A No, sir.

Q Wasn't there an argument as to the financing of that car? A No, sir.

Q Where were they arguing with reference to the place where you were working? How far

Motion to dismiss.

away from you? A I was standing within two feet of them.

PLAINTIFF RESTS.

10 Mr. Greenfield: If the Court please, I move to dismiss this action. I have no doubt your Honor must be familiar with the laws of 1919 concerning—

The Court: I have it here.

Mr. Greenfield: There is no such bill of sale in the possession of the plaintiff company. The bill of sale must be witnessed by two witnesses, I believe—

The Court: Not if it is a manufacturer's bill of sale.

20 Mr. Greenfield: Does your Honor construe an invoice as a bill of sale?

The Court: It says sold to so and so and acknowledges receipt of the payment and delivery. I don't know what more you want. Haven't you seen this in the ordinary transaction, and attached to that are the assignments and acknowledgments of them?

30 Mr. Greenfield: There is no proof that they are the direct agent of the factory. I think they have to prove that. I ask for a non-suit.

Mr. Schotland: I am surprised at the motion. Instead of arguing that I ask leave to re-open my case.

The Court: You may.

Frank Lindeman, direct.

FRANK LINDEMAN, defendant, called in behalf of the plaintiff.

Direct examination by Mr. Schotland.

Q Mr. Lindeman, are you connected with the Lindeman-Chevrolet, Inc.? A Yes, sir. 10

Q In what capacity? A President.

Q Is Lindeman-Chevrolet, Incorporated, a factory agency for the Chevrolet car? A We were at that time, yes, sir.

Mr. Schotland: That's all.

Mr. Greenfield: That agency is not sufficient.

By the Court.

20

Q You were the factory agent? A Yes, sir.

Mr. Greenfield: And your Honor holds that that is sufficient?

The Court: What is missing? It says sold by the company who is the manufacturer's agent; it states the price and acknowledges receipt, and gives the serial number and engine number. 30

Mr. Greenfield: I say that even then it has to be witnessed.

The Court: Nothing in the act says it.

Mr. Greenfield: I say that this invoice is not a bill of sale and cannot be assigned.

The Court: I will deny your motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 40

Motion for a non-suit.

Mr. Greenfield: I also ask for a non-suit on the ground that there is no proof of damages.

The Court: There is proof of the value of the car.

10 Mr. Greenfield: That is not any damage.

The Court: Why not?

Mr. Greenfield: The value of the car is what he agreed to pay.

The Court: That is proof of an original sale of a brand new car. I don't know of any better proof.

20 Mr. Greenfield: It must be shown that there was nothing the matter with the car and the value of it. The mere fact that a sale—

The Court: The price of an automobile new is some evidence of its value, even when it is used, coupled with the proof of the use that it had. The proof here is that this was the price of the automobile new and it was just delivered from the agent of the manufacturer as a new car. The testimony shows he was buying a new car, and if that is the case, that is the proof of the value of the new car at that time.

30 Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Frank Lindeman, direct

FRANK LINDEMAN, defendant, called in his own behalf.

Direct examination by Mr. Greenfield.

Q Mr. Lindeman, you have been connected with the Lindeman-Chevrolet Company? A Yes, 10 sir.

Q What office did you hold there? A President.

Q Any other office? A General manager.

Q In the month of February, 1925, did you have any negotiations with the Reliable Woodworking Company about a car? A Yes, sir, I did.

Q Who did? A I myself, and Mr. Bornstein who is head of the Reliable Woodworking Com- 20 pany.

Q Where was it? A At my office.

Q And your office was where? A Corner of Hedden Terrace and Clinton avenue, Newark.

Q What business did you have with him? A I entered into an agreement to deliver—

Mr. Schotland: I object to that. There is no denial pleaded.

The Court: You had better start with 30 what he did at the time of the taking of the car. It may be admissible later on.

Q Did you take the car from the Reliable Woodworking Company? A After they wouldn't sign the notes, I certainly did.

Q For whom did you take that car? A I took it for the Lindeman-Chevrolet.

Mr. Schotland: I object to that.

The Court: I will let it stand. 40

Frank Lindeman, direct

Q Did you yourself take the car out personally from the yard? A No, sir, one of my men did.

Q For whom was he working? A For Lindeman-Chevrolet.

10 Mr. Schotland: I object to that.

The Court: I will allow it. I think it is proper.

Q Did you know how he came to take the car for the Lindeman-Chevrolet Company? A I certainly do.

Q Tell us. A I went down there—when I agreed to sell him the Chevrolet roadster he was supposed to pay me \$200—

20

The Court: Just confine yourself to the question.

The Witness: He wouldn't sign the notes and I told my man to take the car—

Mr. Schotland: I object to that.

The Court: I will let it stand. He has a right to show why he took it.

30 Q Did you take that car for your own purpose or in behalf of the Lindeman-Chevrolet Company?

Mr. Schotland: I object to that. That is a legal question which would have to be determined from the evidence and from the acts and from what took place.

The Court: He has already testified as to why he took it and for whom he was acting. Now, you are asking for a conclusion.

40

Frank Lindeman, direct

Q Mr. Lindeman, did you see those notes? A I certainly did see them.

Q All the four, or others? Just tell us where you saw them and how many notes you saw. A Those notes I did not see. My salesman, as I understood—

Q No. A I didn't see these notes made out with the Chevrolet stamp and Lindeman-Chevrolet typewritten—

Q Which didn't you see? Did you see these two notes (indicating)? A Yes, sir, those I saw.

By the Court.

Q Those are the two notes made out which way? A Typewritten.

By Mr. Greenfield.

20

Q Do you know how these notes with the rubber stamp came about? A They were given to my salesman by Mr. Bornstein.

Q Were you there? A No, I was not.

Q Don't tell us anything that happened when you were not there. Where did you see the notes that you say you knew about? A They were brought up to our showroom.

Q What did you do with them? A I took them right back and took two other notes as per our agreement.

Q What did he do? A He wouldn't sign them.

Q What did he say? A He said he wanted to make smaller payments and I wouldn't do it.

Q What did you say when he said he wouldn't do it?

Mr. Schotland: The witness' testimony now is that he came back afterward and he

40

Frank Lindeman, direct

is testifying now to some affirmative arrangement.

The Court: I said he may testify as to what took place at the time of the taking. As I understand it, this was all at the time of the taking.

10

Q Tell us just what took place. A I went in there to have two notes signed and he wouldn't agree because the payments were too high. I told him to give me my car back.

Q How did you happen to come to leave them? A I knew Mr. Bornstein before this—

Q What was said at the time? A All that was said by Mr. Bornstein was that he couldn't sign the notes; they were too high. And I told my man to take the car back.

20

Q Back where? A To our service station.

Q Whose service station? A Lindeman-Chevrolet.

Q You were then acting for the company, weren't you? A Absolutely.

Q Do you know where the car was when it was taken from the Reliable Woodworking Company? A Yes, it was in their driveway.

Q And did the Lindeman-Chevrolet ever get paid for the car?

30

Mr. Schotland: I object to that.

Objection sustained.

Q Mr. Lindeman, anything that you did in the taking of the car and making the arrangement was done in whose behalf? A The Lindeman-Chevrolet—

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

40

Frank Lindeman, cross.

The Court: Strike it out.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Do you know, Mr. Lindeman, how the owner's license was obtained? A Yes, sir, I do.

10

Q Tell us. A Before we deliver an automobile we have an owner's card signed. We take it up to the Motor Vehicle Department with our bill of sale which has to be approved by the Motor Vehicle Department and stamped by their agent. We got a set of plates for the Chevrolet roadster and it was put on and it was taken to the Reliable Woodworking Company. We have to pay in advance for the plates.

Q The Lindeman-Chevrolet received a deposit of \$50? A Yes, sir.

20

Q Exhibit P. 1, a letter dated February 7th—do you know how this letter was sent out? Do you know how it came to be sent out? A Everybody who takes delivery of an automobile, supposedly, our bookkeeper—this letter is sent to everybody we ever sold a Chevrolet to. My stenographer and bookkeeper thought it was delivered.

Q But it was not delivered at the time? A No, sir.

30

Q Did you have that particular Chevrolet at your place of business on February 7th? A No, sir, I did not.

Cross examination by Mr. Schotland.

Q Mr. Lindeman, you are not very clear as to dates and time in connection with this transaction, are you? A Of course, it is two years ago, no.

40

Frank Lindeman, cross.

Q You say that the owner's license card was paid for in advance? A Yes, sir.

Q You advanced the money? A Yes, sir.

Q I suppose you procured it on the date, February 7th? A Yes, sir.

10 Q You then had in your possession the factory bill of sale for that car? A There is no such thing as a factory bill of sale.

Q But you had the data on which to get the license? A Yes, sir.

Q You were not there when this car was delivered to the Reliable Woodworking Company, were you? A No, sir, I was not.

Q Do you know who delivered the car? A Yes, sir.

20 Q Who? A My salesman, Robert Harris.

Q He was your salesman? A Yes, sir.

Q Is that his signature on this receipted invoice? A Yes, sir, it is.

Q After he delivered the car he came back to your office with four notes, did he not? A No, sir, he came back with two notes.

Q What two notes did he bring back? A As I recall it, it was—it may have been four; I don't remember whether it was four or two.

30 Q You may be more familiar with the handwriting of your salesman. Will you look at Exhibit P. 2 and see what he said on there where he says, "Received notes." A "Received notes payable—

Q Is that payable, or as per agreement? A "Received notes payable as per agreement," but he didn't know what the agreement was—

40 Mr. Schotland: I ask that it be stricken out.

Frank Lindeman, cross.

The Court: Strike it out.

Q He brought back the notes together with the check to reimburse you for the license plates?

A I think so, yes.

Q That is the date when the car was delivered—February 12th? A I don't recall 10 whether it was the 7th or the 12th.

Q When it was delivered? A I don't recall the date.

Q The date of the note will not refresh your recollection? A The date of the invoice is when the car was delivered.

Q Is that when the car was delivered or when the invoice was made out? A I think February 12th was the day the car was delivered.

Q The date of the note fixes that, too, doesn't 20 it, February 12th? A Yes.

Q After the car was delivered and after your salesman brought back to your office the check reimbursing you for the advance for the owner's license plates together with four notes representing the purchase price of the car, then you personally took a hand in it, didn't you? A I had a hand in it before that.

Q I am talking about February 12th. Did you call them on the 'phone first? A I think I did. 30

Q Did you curse at Bornstein and ask him what the hell he did with your car? A No, sir.

Q Are you positive of that? A Positive.

Q Did you hear the testimony of the young man who was bookkeeper at that time and who now works for the Newark Ledger? A Yes, sir, I did.

Q Does his testimony refresh your recollection as to what you did at that time? A No, sir, it does not; I don't even remember that he was in 40 the office.

Frank Lindeman, cross.

Q Didn't you, as a matter of fact, come to the office of the Reliable Woodworking Company and throw these four notes, which make up Exhibit P. 5, at Mr. Bornstein and tell him to shove them up and you wouldn't have anything to do with him? A Absolutely not.

10 Q And didn't you tell Mr. Levine, who was with you, to go and take the car out? A After he wouldn't sign the other two notes, then we took our car back.

Q You told Levine to go and take the car back? A I certainly did.

Q You are positive, are you, that your whole discussion was as to notes instead of some car you were complaining about? A I am positive.

Q You are positive of that? A Positive.

20 Q Didn't you give your salesman instructions as to what notes you were to receive when he took the car out to deliver? A No, I did not.

Q Did you have any written agreement before you sold that car to the Reliable Woodworking Company? A I certainly did.

Q You did? A Yes, sir.

Q Where is it? A Mr. Greenfield has it.

30 Q It is signed by the Reliable Woodworking Company? A No, it isn't signed by the Reliable Woodworking Company.

Q I asked you if you had an agreement with them. A You didn't ask me signed by them.

Q Did you have an agreement signed by them? A No, everything was verbal.

Isidore Levine, direct.

ISIDORE LEVINE, sworn in behalf of the defendant.

Direct examination by Mr. Greenfield.

Q Mr. Levine, where are you employed? A At the Waverly Garage. 10

Q In 1925, in February, were you employed by the Lindeman-Chevrolet Company? A I was.

Q Where was their place of business? A At Hedden Terrace and Clinton avenue.

Q In what capacity were you employed there? A As new car man—handy-man.

Q General utility man? A Yes.

Q Do you drive a car? A Yes, sir.

Q You worked for whom? A Frank—Lindeman-Chevrolet. 20

Q Known as the Lindeman Boys? A "See Lindeman Boys," yes.

Q On February 12, 1925, did you go to the Reliable Woodworking Company? A I did.

Q With whom did you go down? A With Frank Lindeman.

Q What took place in your presence? A I went in the office with Mr. Lindeman and heard Mr. Lindeman tell Mr. Bornstein that he wants him to sign two notes—just sign two notes to meet the payments for the Chevrolet roadster he was to buy. 30

Q What happened then? A Mr. Bornstein said he won't—that he can't meet those notes; that he wants four notes. And Mr. Lindeman said he wanted two.

Q What did Mr. Bornstein say after that? A Nothing.

Q Did you take the car? A Yes, sir. 40

Isidore Levine, cross.

Q Where did you find it? A About two feet in off the curb in the driveway.

Q How did you come to take it? A I was ordered to take it.

Q By whom A Mr. Lindeman.

10 Q Where did you take it? A To the showroom.

Q That is, to the Lindeman-Chevrolet Company? A Yes, sir.

Q And Frank Lindeman is one of the officers? A Yes, sir.

Cross examination by Mr. Schotland.

20 Q You had delivered that car before? A No, sir.

Q Weren't you along with the salesman that delivered the car? A No, sir.

Q You took the car because Mr. Frank Lindeman told you to take it? A Yes, sir.

Q Were you inside in this— A Yes, sir.

30 Q What was the first thing you heard Mr. Lindeman say? A Mr. Lindeman was inside and the first thing I heard him say was that he would not accept four notes, that he wants two notes.

Q Did you hear Mr. Lindeman say, "What the hell did you do with my car"? A No, sir.

Q Did you hear him curse and call him "S. O. B."? A No, sir.

Q Did anything like that take place? A No, sir.

Q Did you hear all that was said? A Yes, sir.

40 Q And the only conversation was about two notes instead of four notes? A Yes, sir.

Motion for direction of a verdict.

Q How much was the amount to be? A I don't know.

Q It wasn't mentioned? A No, sir.

Q Not in your presence? A No, sir.

DEFENDANT RESTS.

10 Mr. Greenfield: If the Court please, I move for the direction of a verdict in this case. There is no proof that Frank Lindeman took the car in his own behalf and converted it to his own use. He acted for the Lindeman-Chevrolet Company and reclaimed or repossessed that car, not for himself, not in his individual capacity, but for the Lindeman-Chevrolet Company. He did not drive the car out; he did not attach the car; the car was taken by an employee of the Lindeman-Chevrolet Company from the yard and taken back to the Lindeman-Chevrolet Company. There is no proof whatever that Frank Lindeman, of his own volition, for his own benefit, for his own use, converted that car to himself, but, on the contrary, was reposed in Lindeman-Chevrolet Company, a corporation. 20

I submit that Frank Lindeman is not guilty of trespass or of conversion.

(Argument.) 30

The Court: It seems to me that there is no dispute but that he came there on behalf of the company, and that being established, he not being the person who actually took the car—he was conveying the company's message to the man that went there—and you are not entitled to maintain your action. Your action should be against the Chevrolet Company or against Mr. Levine. 40

Charge to Jury.

Mr. Schotland: May I say one other thing? As to whether he came on behalf of the company or not depends on whose car he was complaining about. If he was complaining about the old car, it is a question of fact for the jury.

The Court: I will stand by my ruling.

10 Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

CHARGE.

SMITH, J.:

20 Gentlemen of the Jury: By direction of the Court, you will return a verdict in favor of the defendant and against the plaintiff.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

30

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*Plaintiff's Exhibits.***EXHIBIT P. 1.**

LINDEMAN CHEVROLET INC.
Main Office and Show Room
560-562 Clinton Ave., Newark, N. J.

February 7, 1925.

10

Reliable Woodworking Company,
27 Badger Ave., Newark, N. J.

Gentlemen:

We wish to thank you for the confidence you have shown in us by placing your order with us for a Chevrolet Roadster, which was delivered to you on February 7th.

We feel sure that your decision in placing your order with us will never be regretted by you and wish to state that if for any reason you have any trouble with your car, no matter how small or how large, that you will not hesitate to call upon us as we stand ready at all times to give you unexcelled service.

20

If you know of anybody that is interested in a Chevrolet car or is anticipating placing an order for a new car, we would greatly appreciate it if you would advise us of their name and address.

Again thanking you for your order, we are

30

Yours very truly,

LINDEMAN CHEVROLET INC.
Frank Lindeman
Frank Lindeman, Pres.

FL:SK

40

Plaintiff's Exhibits.

EXHIBIT P. 2.

Original

INVOICE

LINDEMAN-CHEVROLET, INC.

560 Clinton Ave. Newark, N. J.

No. C689

Feb. 7, 1925

Sold to Reliable Woodworking Company,

27 Badger Ave., Newark, N. J.

Salesman House

Part No.	Model	Quantity	Motor No.	Serial No.	Description	Price	Amount	Total
	K	1	1554215	2K3464	Chevrolet Roadster		\$595.00	
					Lock Wheel		16.50	
Total Price of Car						\$611.50		
Less Deposit						50.00		
						\$561.50		
License Plates						8.80		
Balance due						\$570.30		

Receivable Notes payable as agreement. Robt Harris Lindeman Chev.

IMPORTANT—In Billing Cars Always Show Motor and Serial Number.

Plaintiff's Exhibits.

EXHIBIT P. 3.

Passenger Vehicle Registration No. 326228

Issued to Reliable Woodworking Co.

Street Address 27 Badger Ave.

City or Town Newark-N. J.

Description of Vehicle	10
Name Chev.	
Serial No. 2K 3464	
Engine No. 1554215	
Body type Road.	
Body color Blue	
Year 1925	
Model K	
No. Cyl. 4	
H. P. (S. A. E.) 22	
Fee \$8.80	20

This Registration Expires December 31, 1925

This certificate must be carried by the person operating the car at all times.

This is a certificate of Registration only and does not license the registrant to operate a motor vehicle.

Reliable Woodworking Co.

30

40

Plaintiff's Exhibits.

State of New Jersey
Office of Secretary of State
Department of Motor Vehicle Registration and
Regulation

10 In pursuance of "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations." Approved April 8, 1921.

20 In Testimony Whereof, I have set my hand and my seal of office this 7 day of Feb A. D. 1925.

Signed Wm. L. Dill,
(SEAL) Commissioner of Motor Vehicles
H. J. Stanley Irvington, N. J. Agent

30

40

Plaintiff's Exhibits.

EXHIBIT P. 4.

(Check.)

No. 214
RELIABLE WOOD WORKING CO., INC.
Manufacturers of Sash, Doors and Trim 10
27-29-31 Badger Avenue
Newark, N. J. February 12 1925

Pay to the
order of Lindeman Chevrolet, Inc. . . . \$8 80/100
Eight and 80/100 Dollars
S Becker President
Jacob Bornstein Secretary
To National Newark & Essex Banking Co.
55-1 Newark, N. J.

(Endorsements.) 20

Pay to the order of Fidelity Union Trust Co.
Newark N. J. Lindeman Chevrolet Co., Inc.
Received payment through the Newark Clearing
House Feb 14 1925. Fidelity Union Trust Co.
Prior endorsements guaranteed No. 5
Paid 2-14-25

30

40

Plaintiff's Exhibits.

EXHIBIT P. 5.

(Four notes.)

\$381-50/100 Newark, N. J. Feb 12 1925
 Four Months after date We promise to pay to
 the order of Lindeman Chevrolet, Inc.
 10 Three hundred eighty one & 50/100.....Dollars
 Payable at National Newark & Essex Banking Co
 Value received Reliable Woodworking Co, Inc.
 Pres S Becker Jacob Bornstein Secy
 No.....Due.....

\$50-00/100 Newark, N. J. Feb 12 1925
 Three Months after date We promise to pay to
 the order of Lindeman Chevrolet, Inc.
 20 Fifty & 00/100.....Dollars
 Payable at National Newark & Essex Banking Co
 Value received Reliable Woodworking Co, Inc.
 Pres S Becker Jacob Bornstein Secy
 No.....Due.....

\$50-00/100 Newark, N. J. Feb 12 1925
 Two Months after date We promise to pay to
 the order of Lindeman Chevrolet, Inc.
 30 Fifty & 00/100.....Dollars
 Payable at National Newark & Essex Banking Co
 Value received Reliable Woodworking Co, Inc.
 Pres S Becker Jacob Bornstein Secy
 No.....Due.....

Plaintiff's Exhibits.

\$50-00/100 Newark, N. J. Feb 12 1925
 One Month after date We promise to pay to
 the order of Lindeman Chevrolet, Inc.
 Fifty & 00/100.....Dollars
 Payable at National Newark & Essex Banking Co
 Value received Reliable Woodworking Co, Inc.
 Pres S Becker Jacob Bornstein Secy 10
 No.....Due.....

EXHIBIT P. 6.

(Check.)

No..... Newark, N. J. Jan 9 1924
 WEST SIDE TRUST COMPANY
 Pay to the order of 20
 Lindeman Chevrolet Inc.....\$50 00/100
 Fifty and 00/100.....Dollars
 Jacob Bornstein
 Safe Deposit Boxes for rent

(Endorsements.)

Paid 4-12-25
 Pay to the order of Fidelity Union Trust Co.
 Newark, N. J. Lindeman Chevrolet Co., Inc. 30
 Received payment through the Newark Clear-
 ing House Jan 12 1925 Fidelity Union Trust Co.
 Prior endorsements guaranteed No. 5

that the defendant Frank Lindeman was not the person who physically took the car because he ordered Levine to take it and that therefore the action should have been against the Chevrolet Company, or against Levine.

To this ruling of the Court directing a verdict on behalf of the defendant, the plaintiff noted its exception as a ground of appeal and this appeal is taken from that ruling.

ARGUMENT.

Every person is liable in trover who personally or by agent commits an act of conversion, or who participates by instigating, aiding, or assisting another, or who benefits by its proceeds in whole or in part.

38 Cyc. 2054, Section 4 and cases cited.

That defendant was acting as agent or servant of another when he wrongfully detained or disposed of plaintiff's goods is no defense, and it is immaterial whether he did so in ignorance of the owner's rights or in obedience to the command of his master or principal.

38 Cyc. 2056 D and cases cited.

One who aids and abets another in keeping property from its rightful owner is guilty of conversion, and the fact that he acted as agent for another is no excuse.

26 R. C. L. 1138, Section 51.

The fact that one acted as agent for another in converting the property of a third person is clearly no defense on the part of the agent, even though he acted within the scope of his authority and was ignorant of his principal's want of authority.

26 R. C. L. 1139, Section 52.

A person who, acting as president of a corporation, converts property to the use of the corporation, cannot escape personal liability for the tort on the theory that he was merely acting as agent.

Semple v. Morganstern, 97 Conn. 402, 116 Atl. 906, 26 A. L. R. 21.

In 20 A. L. R. at pages 120 to 127 inclusive, there is a very full annotation on the point involved in the case at bar and the annotator gathers the law from all the cases to be

“An agent or servant who assists his principal or master in converting property of a third person to the use of the principal or master is personally liable to the true owner for the loss thereby inflicted upon him.”

and at the bottom of page 123 the same annotator gathers the law of the cases to be

“The fact that the property has been turned over to the principal is immaterial. The liability of the agent continues as though he still had the property in his possession. In fact, the act of turning it over may be the very act which completes the conversion.”

There seems to be absolute unanimity by all the courts that the law is as above quoted. Applying the law as settled by the above authorities to the facts of this case, and considering only the version introduced on behalf of the defendant, we find on page 29 of the case that the defendant testifying on direct examination, lines 33 to 38, testified as follows:

“Q Did you take the car from the Reliable Woodworking Company? A After they would not sign the notes, *I certainly did.*

Q For whom did you take the car? A I took it for the Lindeman-Chevrolet.”

and on the top of page 30, the defendant continuing on his own direct examination testified:

“Q Did you yourself take the car out personally from the yard? A No, sir, one of my men did.

Q For whom was he working? A For Lindeman-Chevrolet.”

and in the middle of page 30 the defendant himself said “he would not sign the notes *and I told my men to take the car*” (ll. 23 to 25).

On page 29 the defendant testified that he was President of the Lindeman-Chevrolet and General Manager (ll. 10 to 15). The defendant’s witness Isadore Levine testified on behalf of the defense on his direct examination on page 38, lines 5 to 7:

“Q How did you come to take it? A I was ordered to take it.

Q By whom? A Mr. Lindeman.”

Appellant respectfully submits that the evidence introduced on the part of the defendant does not constitute a defense to the conversion charged and that therefore the Court below erred in directing a verdict in favor of the defendant.

Appellant respectfully submits that the judgment entered on the directed verdict should be set aside and for nothing holden, and a new trial ordered.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Attorney and of Counsel with Appellant.

New Jersey Court of Errors and Appeals

RELIABLE WOODWORKING COMPANY, INC., a corporation,
Plaintiff-Appellant,

vs.

FRANK LINDEMAN,
Defendant-Respondent.

*Action
at Law.*

*On Appeal
from Essex*

*County
Circuit
Court.*

BRIEF OF WILLIAM GREENFIELD, Attorney and of Counsel with Respondent.

Facts.

This suit was instituted by the plaintiff against the defendant for trover and conversion of an automobile known as a Chevrolet roadster, under the following circumstances: The Lindeman-Chevrolet, Inc., corporation, were dealers in that particular make of car and the plaintiff on February 7, 1925, agreed to purchase the car in question from the Lindeman-Chevrolet, Inc. (see Exhibit P. 2, p. 42, of the State of the Case), for \$611.50. The balance of the purchase price was to be paid by notes as per agreement (Exhibit P. 2, p. 42, of the printed State of the Case). The car was shipped by the Lindeman-Chevrolet, Inc., to the plaintiff, and the plaintiff was to execute and deliver to the salesman of Lindeman-Chevrolet, Inc., two notes for the balance, but instead of delivering two notes, the plaintiff saw fit to deliver four notes, to make payments in four installments instead of two. When the notes were delivered to the office of the Lindeman-Chevrolet, Inc., of which the defendant was president and general manager, the same were rejected, as not being in accordance with the terms

of the agreement. Frank Lindeman, as general manager and president of the Lindeman-Chevrolet, Inc., returned to the plaintiff with the four notes and demanded two notes as agreed upon, as testified to by Jacob Bornstein, secretary of the plaintiff company (p. 16, folios 20-30, inclusive, of the printed State of the Case), as follows:

“Q Did you see Frank Lindeman on that day—on February 12th? A About fifteen minutes after the delivery of the car.

Q Where did you see him? A He came into my office about fifteen minutes after the delivery of the car; he came in very wild and his face—

Q Tell us what he said. A He came in and he said, ‘What the hell did you do to my car?’ I didn’t know what he was talking about. I said, ‘What car?’ He said, ‘Never mind.’ And he took the notes that I gave the salesman and he said, ‘Stick them up—I wouldn’t do no business with you or the Reliable Woodworking Company. I am through with you.’ ”

At the time Mr. Lindeman returned the notes to the plaintiff, as being contrary to their agreement, he directed the man that was with him (Levine) to take the car back to the Lindeman-Chevrolet, Inc. Throughout the entire transaction Frank Lindeman, as president and general manager, represented and acted for the Lindeman-Chevrolet, Inc. The car was actually taken and driven away from the plaintiff company by one Isidore Levine, and taken to the showroom of the Lindeman-Chevrolet, Inc., as testified to by Isidore Levine (pp. 37 and 38 of the printed State of the Case).

The suit was brought against Frank Lindeman for trover and conversion, although the car was taken possession of by an employee of the Linde-

man-Chevrolet, Inc., and not by the defendant, and put in the place of the business of the Lindeman-Chevrolet, Inc., with whom the plaintiff company transacted its business for the purchase thereof. Defendant neither took nor had possession, and therefore could not have converted the car to his own use.

The sole question for the court to determine is, is the defendant guilty of trover and conversion of this particular car where he neither took nor had possession of the car, but went there in behalf of the company he represented to insist upon the terms of the contract entered into for and in behalf of the Lindeman-Chevrolet, Inc., or the return of the property. The plaintiff failed to perform the contract, and the Lindeman-Chevrolet, Inc., re-possessed itself of the car through its agents. Therefore, a direction of a verdict for the defendant by the learned court below was proper and should be sustained.

ARGUMENT.

POINT 1.

It is an elementary principal of law that before a person can be guilty of trover and conversion of another’s property, there must be, First: Title or the right of immediate possession in the plaintiff of the property in question.

Second: That the defendant had unlawfully, illegally and improperly seized the goods in question and refused to return upon demand. No such conditions or wrongful acts exist in the case at bar.

Admitting that the defendant in the case at bar ordered the employee of Lindeman-Chevrolet, Inc., to take the car and return it to its owner,

Lindeman-Chevrolet, Inc., who never legally parted with or divested itself of the title, by reason of the fact that the plaintiff did not fulfill or comply with the terms of the agreement, by executing two notes in payment thereof, can Frank Lindeman, who went to the plaintiff in behalf of the Lindeman-Chevrolet, Inc., of which he was president and general manager, be guilty of trover and conversion when the Lindeman-Chevrolet, Inc., had made a conditional delivery of the car to the plaintiff, namely, to get two notes in payment of the balance of the purchase price.

On page 29, folio 34, of the printed State of the Case, Frank Lindeman testifies as follows:

“Q Did you take the car from the Reliable Woodworking Company? A After they wouldn't sign the notes, I certainly did.

Q For whom did you take that car? A I took it for the Lindeman-Chevrolet.”

On page 30 of the State of the Case, Frank Lindeman testifies further:

“Q Did you yourself take the car out personally from the yard? A No, sir; one of my men did.

Q For whom was he working? A For Lindeman-Chevrolet.

Q Did you know how he came to take the car for the Lindeman-Chevrolet Company? A I certainly do.

Q Tell us. A I went down there—when I agreed to sell him the Chevrolet roadster he was supposed to pay me \$200—

The Court: Just confine yourself to the question.

The Witness: He wouldn't sign the notes and I told my man to take the car—

Mr. Schotland: I object to that.

The Court: I will let it stand. He has a right to show why he took it.”

On page 32, folio 10, Frank Lindeman testifies further:

“Q Tell us just what took place. A I went in there to have two notes signed and he wouldn't agree because the payments were too high. I told him to give me my car back.”

Throughout the testimony there is no proof that the defendant acted wilfully, maliciously or out of malice. Frank Lindeman certainly had a right to act the way he did, when the plaintiff company thought it had possession of the car, it refused to carry out its agreement. The Lindeman-Chevrolet, Inc., had a right to re-possess itself of its own property in a peaceable manner when the plaintiff refused to carry out its contract, and the only way the Lindeman-Chevrolet, Inc., could have re-possessed itself of the car was through its agents. Frank Lindeman was an agent of the Lindeman-Chevrolet, Inc., and ordered Isidore Levine to return the car to the Lindeman-Chevrolet, Inc., the owner of the property.

Bigelow Co. v. Heintze, 53 N. J. Law, page 69, at page 74.

Opinion by Depue, J.:

“In trover conversion is the gist of the action; the plaintiff must prove property in himself and a wrongful conversion. The defendant had no actual possession of the machine; while it remained on his inventory as personal property, it was left undisturbed on the premises as it had been set up. To furnish the evidence necessary to show a conversion, the plaintiff relied on demand and refusal. Demand and refusal do not of themselves amount to a conversion; they are only the evidence on which a jury may find a conversion. If on special verdict the jury finds only demand and refusal, without expressly finding the conversion, the court can

give no judgment upon it. The demand must be made at a time and place and under such circumstances as that the defendant is able to comply with it if he is disposed, and the refusal must be wrongful. If the refusal be qualified, or there be a condition annexed to it, the question then will be whether it be a reasonable one."

The Court will perceive in that case, that a demand for the return of the goods and chattels alleged to have been converted, must be made before the plaintiff can sustain its action. There is no such proof in the case at bar of any demand for the return of the property.

Temple Co. v. Penn. Mutual Life Ins. Co.,
69 N. J. Law, page 36.

This is a suit for trover and conversion to recover the value of personal property, and a verdict was rendered in favor of the plaintiff for \$8,621.05.

Opinion by Van Syckel, J:

"There was no other notice served upon the defendant, nor demand made before this action of trover was instituted. The goods were left in the theatre, which was lawfully in possession of the defendant, who did not remove the goods or do any act except to permit them to remain where they were, when mortgaged to the plaintiff and when the sale was made under the chattel mortgage which is the basis of his alleged title.

The gist of the action of trover is wrongful conversion by the defendant, *without proof of which the action will not lie.*"

The Court will perceive that in cases of this character there must be proof of demand and refusal to return the property, before the action is instituted. There must be proof that the plaintiff was entitled to the possession of the property, and that it wrongfully, unlawfully and illegally

came into the possession of the defendant, or that he willfully and maliciously seized the goods and upon demand refused to return it. The gist of the action of trover is wrongful conversion by the defendant, without such proof no action will lie. In the case at bar, the car was delivered to the Lindeman-Chevrolet, Inc., and it never came into the possession of the defendant. On the contrary, it was delivered to the Lindeman-Chevrolet, Inc., by Isidore Levine. Therefore, it is respectfully submitted that the plaintiff has utterly failed to establish the right of recovery against Frank Lindeman.

Assuming for the sake of the argument that the action might lie against Frank Lindeman, who was at the plaintiff's place of business as representative of Lindeman-Chevrolet, Inc., to insist upon the terms of the contract and which the plaintiff refused to comply, has the plaintiff such property rights in that particular car as it would entitle it to sustain a cause of action? On that, I desire to call the Court's attention to

38 *Cyc.* page 2089, paragraph 4: *Special Property or Qualified Right of Plaintiff.*

"A plaintiff who had only a special property or qualified interest in goods which have been converted can recover only the value of such property or interest, not exceeding, however, the value of the goods, against a defendant who held the title or was entitled to the remaining interest in the goods."

POINT 2.

The suit if instituted against Lindeman-Chevrolet, Inc., the plaintiff could only succeed in the recovery of the value of its interest, namely, \$50. and \$8.00 license plates. But the suit is not against Lindeman-Chevrolet, Inc., but against the president of the Lindeman-Chevrolet, Inc., indi-

vidually, who went there for the benefit of Lindeman-Chevrolet, Inc. It is true that counsel may say that the president and general manager derives some benefit of the company. It may be so, but nevertheless, the president went to the office of the plaintiff to insist upon performance of terms of sale in behalf of the Lindeman-Chevrolet, Inc., together with another employee (Isidore Levine), of the Lindeman-Chevrolet, Inc.

See testimony of Isidore Levine, pages 37 and 38 of the printed state of the case. That is the only evidence upon which the plaintiff attempts to hold Frank Lindeman, defendant, in an action for trover, for willful and malicious conversion of the car, for which the plaintiff never paid, but attempts to recover the value of the car against the president of the Lindeman-Chevrolet, Inc. The scheme of the plaintiff attempting to hold the defendant liable is too apparent, namely, the plaintiff did not pay for the car, except the sum of \$50. A suit against Lindeman-Chevrolet for trover and conversion would have been met with a counter-claim for the balance of the purchase price of the car, in that the plaintiff failed to pay for it. Having failed to pay for it, it cannot recover in an action for trover and conversion or any other suit, for the value of an article which did not belong to the plaintiff. It is a wonderful scheme on the part of the plaintiff to attempt to get a money judgment or something for nothing. The learned court below was not deceived or misled in such efforts on the part of the plaintiff at bar. Hence, the direction of the verdict in favor of the defendant and against the plaintiff was proper, and should be sustained.

POINT 3.

Counsel is not unmindful of the authorities cited by the plaintiff in his brief on page 2, as follows:

“Every person is liable in trover who personally or by agent commits an act of conversion, or who participates by instigating, aiding or assisting another, or who benefits by its proceeds in whole or in part.”

38 Cyc. 2054, Section 4.

But the defendant in the case at bar did not aid, assist or participate by instigating, in the alleged trover and conversion, on the contrary, uncontradicted proof that Frank Lindeman in behalf of Lindeman-Chevrolet, Inc., was there to insist upon the terms of the contract entered into by the plaintiff. The plaintiff having failed to comply with the request to sign the two notes, it is respectfully submitted, that Frank Lindeman as manager of Lindeman-Chevrolet, Inc., had a right to direct its employees to repossess itself of its own personal property.

Counsel for the plaintiff also cites 38 Cyc. 2056 D.

“That defendant was acting as agent or servant of another when he wrongfully detained or disposed of plaintiff's goods is no defense, and it is immaterial whether he did so in ignorance of the owner's rights or in obedience to the command of his master or principal.”

Upon reading the state of the case, the Court will note the fact that Frank Lindeman did not in any way wrongfully detain or dispose of plaintiff's goods, on the contrary, Isidore Levine took the car and returned it to its owner, namely, Lindeman-Chevrolet, Inc. Hence, Frank Lindeman, never had possession of the car, never detained or disposed of it, and therefore cannot be

found to be guilty of trover and conversion, and the court below rightfully ruled that he was not guilty of trover and conversion. Hence court below directed a verdict for defendant.

Counsel for the plaintiff also cites 26 *R. C. L.* 1138, Section 51.

“One who aids and abets another in keeping property from its *rightful owner* is guilty of conversion, and the fact that he acted as agent for another is no excuse.”

There is no proof that the defendant did aid and abet Mr. Levine or the Lindeman-Chevrolet, Inc., in keeping any alleged goods or property of the plaintiff company. The plaintiff never had title to the car, never complied with the terms of purchase, hence, title never vested in the plaintiff, and the defendant, as president and general manager of the Lindeman-Chevrolet, Inc., had a lawful right to insist upon the performance of the agreement, and on refusal of the plaintiff company to comply therewith, directed Levine to return the car to the Lindeman-Chevrolet, Inc., its owner.

Counsel for the plaintiff also cites the following authority, page 3 of his brief:

“A person who, acting as president of a corporation, converts property to the use of the corporation, cannot escape personal liability for the tort on the theory that he was merely acting as agent.”

Semple v. Morganstern, 97 Conn. 402, 116.

In the case at bar, the president did not convert the property belonging to the plaintiff. It is respectfully submitted that it was the property of the Lindeman-Chevrolet, Inc., by reason of the fact that the plaintiff refused to carry out the terms of its contract, by executing the two notes as agreed upon.

Counsel for plaintiff also cites 20 *A. L. R.*, pages 120 to 127.

“An agent or servant who assists his principal or master in converting property of a third person to the use of the principal or master is personally liable to the true owner for the loss thereby inflicted upon him.”

In the case at bar, plaintiff never had title to the property in question. If the Court will say that the plaintiff was entitled to recover against the defendant in the case at bar, on the facts proven, it is respectfully submitted, that it would aid and assist fraudulent schemers, by a person paying a small deposit on merchandise, agreeing to terms, and requesting that the same be delivered, and when it is delivered, the purchaser refuses to pay for it, the owner, immediately repossesses itself of his own merchandise, or refusal to deliver it, or upon tender of the goods, the vendee refuses to pay or carry out the terms of the contract, the vendor takes the car back to its place of business through its agents, can it be said that the agent or employee can be held for trover and conversion? If that was so, the Court would open the doors to the perpetration of the grossest kind of fraudulent scheme, namely, attempting to get something for nothing, and if they do not succeed in such scheme, they sue the agent who merely performed his duty to insist upon the rights of his master namely, the vendor's rights in the premises.

It is respectfully submitted on all facts in the case and law herein cited, the verdict of the court below should be sustained with costs.

Respectfully submitted,

WILLIAM GREENFIELD,
Attorney and of Counsel with Respondent.

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