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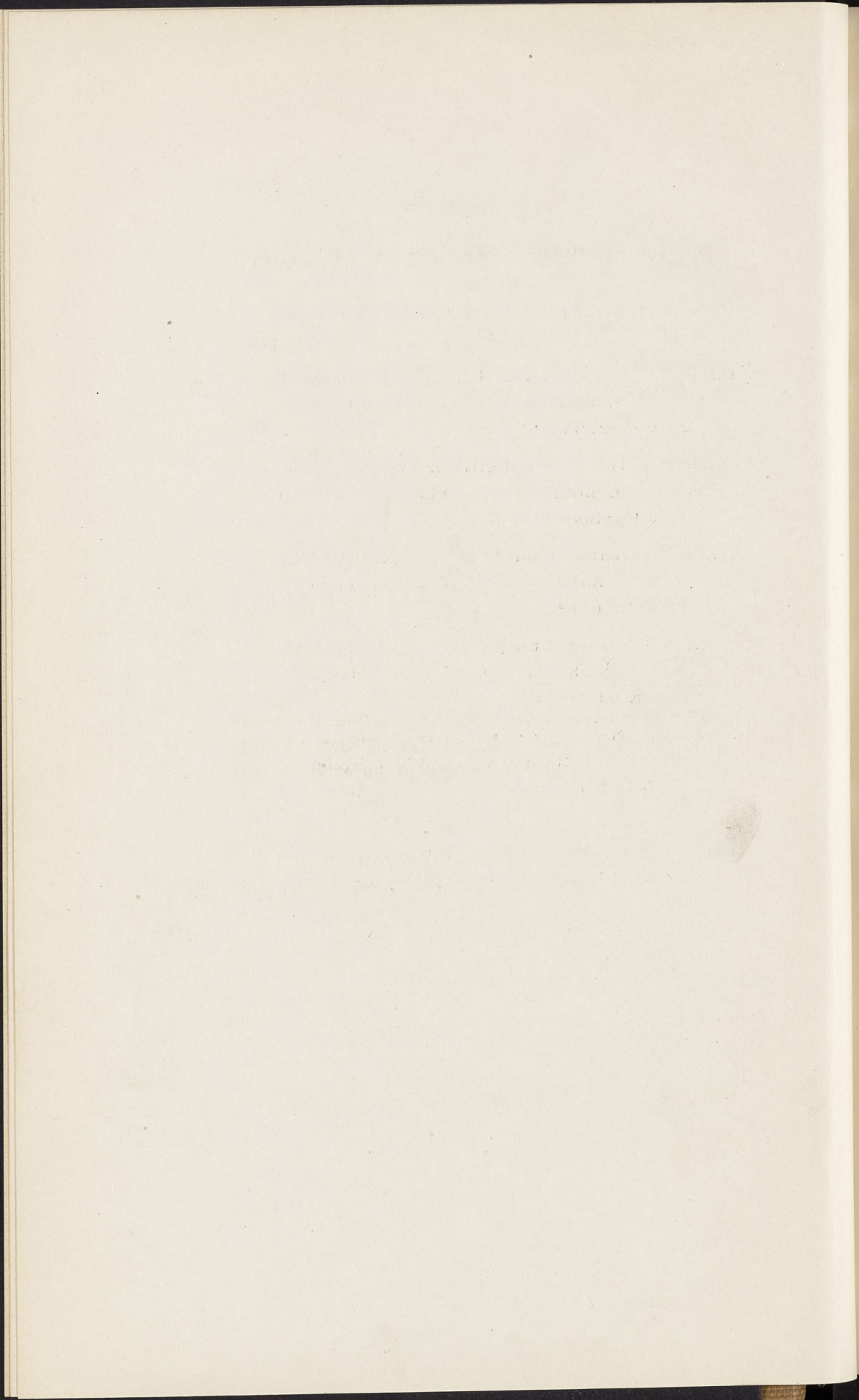
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Notice of Appeal.

NEW JERSEY SUPREME COURT.  
OCEAN COUNTY.

|   |                  |    |
|---|------------------|----|
| GOODYEAR TIRE & RUBBER COM-<br>PANY, body corporate,<br>Plaintiff-Respondent,<br><i>vs.</i><br>ARTHUR GORMAN GALLAGHER,<br>Defendant-Appellant. | } Action at Law. | 10 |
|---|------------------|----|

To DAVID GOLDSTEIN, Esq.,  
Attorney for Plaintiff. 20

*Sir:*

PLEASE TAKE NOTICE, that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause.

Yours, etc.,

McCARTHY & McTAGUE,  
Attorneys for Defendant. 30

Dated: June 20th, 1930.

**Acknowledgment of Service of Notice of  
Appeal.**

Due, timely and legal service of the within notice of appeal is hereby acknowledged.

DAVID GOLDSTEIN,  
Attorney for Plaintiff.

10

**Reasons.**

COURT OF ERRORS AND APPEALS,

---

GOODYEAR TIRE & RUBBER COM-  
PANY,  
Plaintiff-Respondent,

*vs.*

ARTHUR GORMAN GALLAGHER,  
Defendant-Appellant.

---

} Action at Law

20

The above named defendant, Arthur Gorman Gallagher, hereby assigns the following reasons why the verdict in favor of the plaintiff, against the defendant, should be set aside:

30

1. The trial court denied motion in non-suit in favor of defendant when thereunto moved. Whereas said motion should have been granted.

2. Because the verdict in favor of the plaintiff, and against the defendant, is against the weight of the evidence.

3. The court further erred in admitting evidence which evidence should have been excluded, as contrary to the legal principle involved.

McCARTHY & McTAGUE,

Attorneys for Defendant.

40

**Summons.**

THE STATE OF NEW JERSEY

[L. S.]

*to*

ARTHUR GORMAN GALLAGHER.

YOU ARE SUMMONED to answer the annexed complaint of The Goodyear Tire & Rubber Company, Inc., in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the said New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS, William S. Gummere, Chief Justice of the New Jersey Supreme Court at Trenton, this eighth day of August, nineteen hundred and twenty-nine. 20

FRED L. BLOODGOOD,  
Clerk.

DAVID GOLDSTEIN,  
Attorney.

30

40

**Complaint.**

NEW JERSEY SUPREME COURT,  
OCEAN COUNTY.

|    |  |   |               |
|----|--|---|---------------|
| 10 | <p style="text-align: center;">THE GOODYEAR TIRE &amp; RUBBER<br/>COMPANY, INC.,<br/>Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">ARTHUR GORMAN GALLAGHER,<br/>Defendant.</p> | } | Action at Law |
|----|--|---|---------------|

20 The plaintiff, a body corporate of the State of Delaware, having its principal place of business in the City of Akron, County of Summit and State of Ohio, says that:

30 The defendant is indebted to the plaintiff in the sum of \$2,085.09 for divers goods, wares and merchandise heretofore sold and delivered by the plaintiff to the defendant, at his special instance and request, which sum said defendant agreed to pay the plaintiff. The defendant has not as yet paid the plaintiff the said sum of money, or any part thereof, although often requested so to do. Annexed hereto and made a part hereof is a schedule of the said goods showing the dates of sale and the respective prices therefor.

WHEREFORE, judgment will be claimed in the sum of \$2,085.09, together with lawful interest and the costs of suit.

DAVID GOLDSTEIN,  
Attorney for Plaintiff.

*Complaint.*

## PROOF OF CLAIM.

STATE OF OHIO, }  
 County of Summit, } ss.:

Z. C. OSELAND, being first duly sworn on oath,  
 says That he is the Assistant Treasurer of The 10  
 Goodyear Tire & Rubber Company, Inc., a corpo-  
 ration doing business under and by virtue of the  
 laws of the State of Delaware; that the annexed  
 statement of account against Arthur C. Gallagher  
 of Lakewood, N. J., is for goods, wares and mer-  
 chandise sold and delivered to said Arthur C.  
 Gallagher, at his special instance and request, and  
 that the same is just, true and correct; that there  
 is now due and owing thereon, after allowing all 20  
 just credits, deductions and set-offs, the sum of  
 Two thousand eighty five dollars and nine cents,  
 and that no part thereof is for usurious interest.

KM

Z. C. OSELAND.

Subscribed and sworn to before me and in my  
 presence, this 30th day of July, A. D. 1929.

K. A. MASON,  
 Notary Public.

(Seal)

30

40

*Complaint.*

All Past Due Bills Subject to Sight Draft Without Further Notice

## STATEMENT.

THE GOODYEAR TIRE &amp; RUBBER COMPANY, INC.

GOODYEAR

July 27, 1929

|                 |    |                     |                |
|-----------------|----|---------------------|----------------|
| In Account with |    | Arthur C. Gallagher |                |
|                 |    | Lakewood, N. J.     |                |
| 10              | 6  | 1 14457             | 205.67         |
|                 |    | 6 14980             | 131.44         |
|                 |    | B-84234             | 12.50          |
|                 | 5  | 29 B-77169          | 14.36          |
|                 |    | 19 16521            | 312.82         |
|                 |    | 22 16903            | 25.27          |
|                 |    | 25 17255            | 154.63         |
|                 |    | 26 B-84120          | 12.50          |
|                 |    | 20 B-94575          | 55.56          |
|                 |    | 26 C/M 1574         | 46.53          |
| 20              |    | 28 C/M 1503         | 13.61          |
|                 |    | 27 C/M 7666         | 7.20           |
|                 |    | C/M 7667            | 9.00           |
|                 | 7  | 2 18247             | 310.79         |
|                 |    | 6 18696             | 51.30          |
|                 | 6  | 29 B-104552         | 1.00           |
|                 |    | 9 19111             | 524.73         |
|                 |    | 13 19769            | 119.80         |
|                 |    | 17 20327            | 323.98         |
|                 |    | 20 20763            | 62.78          |
|                 | 7  | 18 B-126004         | 110.99         |
|                 |    | 20 B-128241         | 55.49          |
| 30              |    | 26 C/M1868          | 3.50           |
|                 |    | 25 B-134335         | 91.47          |
|                 | 8  | 1 B-142717          | 14.58          |
|                 |    | 13 C/M 1930         | 44.27          |
|                 |    | 14 B-160227         | 5.06           |
|                 | 8  | 17 C/M 2533         | 212.22         |
|                 |    | 30 10989            | 6.00           |
|                 | 9  | 19 C/M 2390         | 8.68           |
|                 | 10 | 12 C/M 2735         | 1.15           |
|                 | 11 | 16 Bonus            | 145.22         |
|                 |    | 19 C/M 3082         | 14.25          |
| 40              |    |                     | <u>2596.72</u> |
|                 |    |                     | 511.63         |
|                 |    | Balance             | <u>2085.09</u> |

*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR

Invoice No. 14457

THE GOODYEAR TIRE &amp; RUBBER COMPANY, Inc.

Phila. 6/1/28 No. 18  
Arthur J. Gallagher  
Ocean Ave,  
Lakewood, N. J.

Terms Net  
Discount 2%  
If Paid By July 10  
Via Chestnut St. Freight

10

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No,<br>Or How Ordered<br>Phone 6/1 | Our Order<br>Reference | Sold By | Loder | Dept. D |
|---|------------------------|---------|-------|---------|
| 2—34x6.00 SS AWT                              |                        | 19.50   |       | 39.00   |
| 2—33x6.00 SS AWT                              |                        | 18.90   |       | 37.80   |
| 2—31x5.25 SS AWT                              |                        | 15.65   |       | 31.30   |
| 2—29x4.40 SS AWT                              |                        | 9.15    |       | 18.30   |
| 4—30x3½ SS Path                               |                        | 8.40    |       | 33.60   |
| 4—30x3½ Cl Cord Path OS                       |                        | 6.75    |       | 27.00   |
| 1—30x3½ Cl Cord Stand. No. 1                  |                        |         |       | 6.85    |
|   |                        |         |       | 193.85  |
|   |                        | 5%      |       | 9.69    |
|   |                        |         |       | 184.16  |
| 6—33x4½ HT Tubes                              |                        |         |       | 17.40   |
| 2—34x6.00 Reg. Tubes                          | 3.25                   |         |       | 6.50    |
|   |                        |         |       | 23.90   |
|   |                        | 10%     |       | 2.39    |
|   |                        |         |       | 21.51   |
|   |                        |         |       | 205.67  |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 14980

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

10 Phila. 6/6/28 No. 18                      Terms Net  
 Arthur G. Gallagher Co.                Discount 2%  
 249 Main St.                                If Paid By July 10  
 Lakewood, N. J.                            Via Freight

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered | Our Order<br>Reference | Sold By | Loder | Dept. D |
|----------------------------------|------------------------|---------|-------|---------|
| 1—32x6.00 SS AWT                 |                        |         |       | 18.30   |
| 4—30x4.75 SS Path                |                        | 9.85    |       | 39.40   |
| 2—30x3½ Cl Cord Path             |                        | 6.10    |       | 12.20   |
| 2—30x3½ Cl Cord Path O/S         |                        | 6.75    |       | 13.50   |
| 1—32x6.00 SS Path                |                        |         |       | 14.45   |
|                                  |                        |         |       | 97.85   |
|                                  |                        | 5%      |       | 4.89    |
|                                  |                        |         |       | 92.96   |
| 6—31x5.00 Path Tubes             |                        |         |       | 10.85   |
| 12—29x4.40 Path Tubes            |                        | 8.55    |       | 17.10   |
| 6—32x6.00 Path Tubes             |                        |         |       | 14.80   |
|                                  |                        |         |       | 42.75   |
|                                  |                        | 10%     |       | 4.27    |
|                                  |                        |         |       | 38.48   |
|                                  |                        |         |       | 131.44  |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 84234

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

|                            |                    |    |
|----------------------------|--------------------|----|
| Phila. Pa. 6/6/28 MVR 18-B | Terms Net          | 10 |
| Arthur Gallagher           | Discount 2%        |    |
| Lakewood, N. J.            | If Paid By July 10 |    |
|                            | Via PP             |    |

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

|                |           |         |       |             |
|----------------|-----------|---------|-------|-------------|
| Your Order No. | Our Order | Sold By | Loder | Dept. 14A5W |
| Or How Ordered | Reference |         |       |             |
| 4-17           | Phila.    |         |       |             |

|                          |       |
|--------------------------|-------|
| 1 Window Display Service | 12.50 |
| Shipped to               |       |
| Russell A. Groff, Inc.   |       |
| Lakewood, N. J.          | 20    |

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-77169

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

|                            |                    |    |
|----------------------------|--------------------|----|
| Phila. Pa. 5/29/28 DW 18-B | Terms Net          | 30 |
| R. Groff and Co Inc.       | Discount 2%        |    |
| 244 Main St.               | If Paid By June 10 |    |
| Lakewood, N. J.            | Via PP Pd          |    |

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

|                |              |         |       |            |
|----------------|--------------|---------|-------|------------|
| Your Order No. | Our Order    | Sold By | Loder | Dept. 62-D |
| Or How Ordered | Reference    |         |       |            |
| Sales 5/22/28  | B-38886 1320 |         |       |            |

|                                       |         |
|---------------------------------------|---------|
| 6-33x6.00 Path Tubes AV 15.95 1/2 dz. | 15.95   |
| Less 10% Trade                        | 1.59    |
|                                       | \$14.36 |
| Partial                               |         |

## Complaint.

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 16521

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

10 Phila. Pa. June 19, 1928      Terms Net  
Arthur G. Gallagher,      Discount 2%  
A. G. Gallagher      If Paid By July 10  
Lakewood, N. J.      Via Frt. Ppd

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 6/19 | Our Order<br>Reference            | Sold By  | Loder | Dept. D |
|--|-----------------------------------|----------|-------|---------|
|  | 4—29x4.40 SS AWT                  | 8.00     | 32.00 |         |
|  | 5—33x6.00                         | 15.60    | 78.00 |         |
|  | 2—31x5.25 SS AWT                  | 12.90    | 25.80 |         |
| 20   | 2—30x3½ Cl Cord AWT O/S           | 7.25     | 14.50 |         |
|  | 3—33x6.00 SS Path                 | 14.40    | 43.20 |         |
|  | 4—29x4.40 SS Path                 | 6.70     | 26.80 |         |
|  | 4—30x3½ Cl Cord Path              | 5.45     | 21.80 | 242.10  |
|  |                                   | less 5%  |       | 12.10   |
|  | 6—33x6.00 Reg. Tubes AV           | 16.50    | 16.50 |         |
|  | 6—33x6.00 Reg. Tubes              |          | 16.50 |         |
|  | 12—29x4.40                        | 9.30     | 18.60 |         |
|  | 12—30x3½                          | 15.00    | 15.00 | 66.60   |
|  |                                   | less 10% |       | 6.66    |
|  | 1—100 Ft 3 in. Flap stock on reel | 4.00     | 4.00  |         |
|  | 1—100 Ft 4 in.                    | 5.80     | 5.80  |         |
| 30   | 36—Reg. Tube Rep Kits             | .15      | 5.40  |         |
|  | 24—No. 1 Tire Plasters            | .10      | 2.40  |         |
|  | 24—No. 2                          | .17      | 4.08  |         |
|  | 1—1 Gal Can Cold Patching Cement  |          | 1.20  |         |
|  |                                   |          |       | 312.82  |

Completes order except  
2—29x5.50 AA AWT

*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 16903

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

|                          |                    |    |
|--------------------------|--------------------|----|
| Phila. Pa. June 22, 1928 | Terms Net          | 10 |
| Arthur G. Gallagher      | Discount 2%        |    |
| A. G. Gallagher          | If Paid By July 10 |    |
| Lakewood, N. J.          | Via PP Ins Paid    |    |

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 6/19 | Our Order<br>Reference | Sold by Loder | Dept. D |
|--|------------------------|---------------|---------|
| 2—29x5.50 SS AWT                               |                        | 13.30         | 26.60   |
|  |                        | Less 5%       | 1.33    |
|  |                        |               | \$25.27 |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 17255

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

10 Phila. Pa. June 25, 1928 Terms Net  
 A. G. Gallagher Co. Discount 2%  
 244 Main St. If Paid By Aug. 10  
 Lakewood, N. J. Via Frt. PPd

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered | Our Order<br>Reference | Sold By Loder | Dept. D |
|----------------------------------|------------------------|---------------|---------|
| Let 6/21                         |                        |               |         |

|           |            |       |          |
|-----------|------------|-------|----------|
| 1—30x5    | SS AWT HD  | 26.20 |          |
| 4—33x6.00 | SS AWT     | 15.60 | 62.40    |
| 4—29x4.40 | SS Path    | 6.70  | 26.80    |
|           |            |       | \$115.40 |
|           | Less 5%    |       | 5.77     |
|           |            |       | 109.63   |
| 6—32x6.20 | Reg. Tubes | 17.40 |          |
| 6—33x6.00 |            | 16.50 |          |
| 6—32x4    |            | 10.50 |          |
| 2—34x4½   | HT Tubes   | 2.80  | 5.60     |
|           |            |       | 50.00    |
|           | Less 10%   |       | 5.00     |
|           |            |       | 45.00    |
|           |            |       | \$154.63 |

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Partial

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Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B94575

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

Phila. Pa. 6/29/28 LK 18-B Terms Net  
 Russell A. Groff Co Inc. Discount 2%  
 Lakewood, N. J. If Paid By July 10  
 Via PP

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered | Our Order<br>Reference<br>Phila. | Sold by Loder | Dept. A-14-D |
|----------------------------------|----------------------------------|---------------|--------------|
| 1852                             | AL 53 Letters                    | .03           | 55.56        |

40

*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 18247

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Phila. 7/2/28 No. 18  
Arthur G. Gallagher  
Lakewood, N. J.

Terms Net  
Discount 2%  
If Paid By Aug. 10  
Via Freight P & R

10

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 7/2 | Our Order<br>Reference | Sold By Loder |       | Dept. D       |
|---|------------------------|---------------|-------|---------------|
| 4—30x3½                                       | Cl. Cord Path          | 5.45          | 21.80 |               |
| 4—30x3½                                       | Cl. Cord Path O/S      | 5.85          | 23.40 |               |
| 1—31x4  | SS AWT                 |               | 11.40 |               |
| 1—31x5.25                                     | HD AWT                 |               | 15.10 |               |
| 1—28x5.25                                     | SS AWT                 |               | 11.70 | 20            |
| 3—30x5.25                                     | SS AWT                 | 12.50         | 37.50 |               |
| 4—31x5.25                                     | SS AWT                 | 12.90         | 51.60 |               |
| 1—34x6.00                                     | SS AWT                 |               | 16.10 |               |
| 1—32x6.20                                     | SS AWT                 |               | 18.30 |               |
| 2—35x6.00                                     | HD AWT                 | 19.55         | 39.10 | 246.00        |
|   |                        | 5%            |       | 12.30 233.70  |
| 12—30x3½                                      | Path Tubes             |               | 12.35 |               |
| 6—33x5  | HT Tubes               |               | 20.20 |               |
| 6—31x5.00                                     | Reg. Tubes             |               | 11.70 |               |
| 6—28x5.25                                     | “ “                    |               | 11.70 |               |
| 6—30x6.00                                     | “ “                    |               | 14.40 |               |
| 6—32x6.00                                     | “ “                    |               | 15.30 | 85.65         |
|   |                        | 10%           |       | 8.56 77.09 30 |
|   |                        |               |       | 310.79        |
| Completes order except                        |                        |               |       |               |
| 3—33x6.00 HD AWT                              |                        |               |       |               |

40

*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 18696

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

10 Phila. Pa. July 6, 1928 Terms Net  
Arthur Gallagher Discount 2%  
Lakewood, N. J. If Paid By Aug 10  
Via Frt. Ppd

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Sales Phone | Our Order<br>Reference | Sold By Loder | Dept. D       |
|---|------------------------|---------------|---------------|
| 3—33x6.00 SS AWT HD                             | 18.00<br>Less 5%       |               | 54.00<br>2.70 |
|   |                        |               | \$51.30       |

20 Partial

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B104522

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

30 Philadelphia, Pa. 6/29/28 Terms Net  
REM 18-B Discount 2%  
H. J. Gallagher If Paid By July 10  
Lakewood, N. J. Via PP Ins Coll

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Sales 5/22 | Our Order<br>Reference<br>B-47636 1399 | Sold by Loder | Dept. 58D |
|--|--|---------------|-----------|
| 1—Cord Testing Machine                         |  |               | 1.00      |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 11111

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Phila. Pa. 7/9/28 No. 18  
Arthur G. Gallagher  
Lakewood, N. J.

Terms Net  
Discount 2%  
If Paid By Aug. 10  
Via Reading Freight

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B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 7/9 | Our Order<br>Reference    | Sold by | Loder | Dept. D |
|---|---------------------------|---------|-------|---------|
| 3—30x3½                                       | Cl Cord AWT OS            | 7.25    | 21.75 |         |
| 2—32x4½                                       | SS AWT                    | 15.95   | 31.90 |         |
| 2—35x5  | SS AWT                    | 23.30   | 46.60 |         |
| 2—32x4½                                       | SS Path                   | 13.85   | 27.70 |         |
| 6—29x4.40                                     | SS AWT                    | 8.00    | 48.00 | 20      |
| 1—30x5.25                                     | SS AWT                    |         | 12.50 |         |
| 6—31x5.25                                     | SS AWT                    | 12.90   | 77.40 |         |
| 3—31x5.25                                     | HD AWT                    | 15.10   | 45.30 |         |
| 1—30x6.00                                     | SS AWT                    |         | 14.25 |         |
| 1—31x6.00                                     | SS AWT                    |         | 14.65 |         |
| 4—32x6.00                                     | SS AWT                    | 15.10   | 60.40 |         |
| 2—32x6.00                                     | HD AWT                    | 17.40   | 34.80 |         |
| 3—32x6.20                                     | SS AWT                    | 18.30   | 54.90 | 490.15  |
|   |                           | 5%      |       | 24.50   |
| 12—32x4                                       | Reg. Tubes                | 10.50   | 21.00 | 465.65  |
| 12—29x4.40                                    | Reg. Tube                 | 9.30    | 18.60 |         |
| 6—31x5.25                                     | Reg. Tubes                |         | 12.90 |         |
| 6—33x4  | Path Tubes                |         | 9.25  | 61.75   |
|   |                           | 10%     |       | 6.17    |
|   |                           |         |       | 55.58   |
| 1—5   | P Ctn Quick Cold Tube Gum |         |       | 3.50    |
|   |                           |         |       | 524.73  |
|   | Completes order except    |         |       |         |
|   | 5—33x6.00 HD AWT          |         |       |         |
|   | 2—32x6.20 HD AWT          |         |       |         |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR

Invoice No. 19769

THE GOODYEAR TIRE &amp; RUBBER COMPANY, Inc.

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Phila. 7/13/28 No. 18  
A. C. Gallagher  
Lakewood, N. J.

Terms Net  
Discount 2%  
If Paid By Aug. 10  
Via Reading Frt.

B.11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone a/c | Our Order<br>Reference | Sold By | Loder  | Dept. D  |
|---|------------------------|---------|--------|----------|
|   | 1—32x4 SS AWT          |         | 12.10  |          |
|   | 1—32x4½ HD AWT         |         | 20.55  |          |
|   | 1—30x5 HD AWT          |         | 26.20  |          |
|   | 1—33x5 HD AWT          |         | 28.95  |          |
| 20  | 2—32x4 SS Path         | 10.20   | 20.40  |          |
|   |                        |         | 108.20 |          |
|   |                        | 5%      | 5.41   |          |
|   |                        |         |        | \$102.79 |
|   | 6—30x5 HT Tubes        |         | 18.90  |          |
|   |                        | 10%     | 1.89   | 17.01    |
|   |                        |         |        | \$119.80 |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 20327

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

|                       |                    |    |
|-----------------------|--------------------|----|
| Phila. 7/17/28 No. 18 | Terms Net          |    |
| A. J. Gallagher       | Discount 2%        | 10 |
| Lakewood, N. J.       | If Paid By Aug. 10 |    |
|                       | Via Freight        |    |

B.11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 9/F | Our Order<br>Reference | Sold By | Loder | Dept. D      |
|---|------------------------|---------|-------|--------------|
| 4—29x4.40 SS Speedway                         |                        | 4.95    | 19.80 |              |
| 4—33x6.00 SS AWT                              |                        | 15.60   | 62.40 |              |
| 2—29x4.75 SS AWT                              |                        | 10.05   | 20.10 |              |
| 2—29x4.75 SS Path                             |                        | 8.50    | 17.00 |              |
| 5—29x4.40 SS Path                             |                        | 6.70    | 33.50 | 20           |
| 1—30x3½ SS Path                               |                        |         | 6.95  |              |
| 6—30x3½ CI Cord Path                          |                        | 5.45    | 32.70 |              |
| 6—30x3½ CI Cord Path O/S                      |                        | 5.85    | 35.10 |              |
| 2—31x4 SS Path                                |                        | 9.55    | 19.10 |              |
| 2—30x3½ CI Cord AWT O/S                       |                        | 7.25    | 14.50 |              |
| 1—33x4½ SS AWT                                |                        |         | 16.60 |              |
| 3—30x3½ CI Cord Stand No. 1                   |                        | 6.35    | 19.05 | 286.80       |
|   |                        | 5%      |       | 14.84 281.96 |
| 6—29x4.75 Reg. Tubes                          |                        |         | 10.80 |              |
| 12—30x3½ Reg. Tubes                           |                        |         | 15.00 |              |
| 12—30x3½ Path Tubes                           |                        |         | 12.35 | 38.15        |
|   |                        | 10%     |       | 3.81 34.34   |
| 24—No. 2 Tire Plasters                        |                        | .17     |       | 4.08         |
| 36—No. 1 Tire Plasters                        |                        | .10     |       | 3.60         |
|   |                        |         |       | 323.98       |

*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. 20763

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

10 Phila. 7/20/28 No. 18 Terms Net  
 Arthur J. Gallagher Discount 2%  
 Lakewood, N. J. If Paid By Aug 10  
 Via Frt. Ppd

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Phone 7/20 | Our Order<br>Reference | Sold By Loder    | Dept. D        |
|--|------------------------|------------------|----------------|
| 1—5 P Crtn Cured Back Tube Gum                 |                        |                  | 3.50 3.50      |
| 4—33x6.00 SS AWT                               |                        | 15.60<br>less 5% | 62.40<br>3.12  |
|  |                        |                  | <u>\$59.28</u> |
|  |                        |                  | <u>\$62.78</u> |

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Completes order.

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-126004

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

|                            |                   |    |
|----------------------------|-------------------|----|
| Phila. Pa. 7/18/28 GN 18-B | Terms Net         |    |
| A. G. Gallagher Co.        | Discount 2%       | 10 |
| 244 Main St.               | If Paid By Aug 10 |    |
| Lakewood, N. J.            | Via FRT PPD Acy   |    |

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

|                |                     |               |              |
|----------------|---------------------|---------------|--------------|
| Your Order No. | Our Order Reference |               |              |
| Or How Ordered | B-68971-1           | Sold by Loder | Dept. 57-60D |
| Sales 6/23/28  | Phila 1857          |               |              |

|                              |                |       |          |
|------------------------------|----------------|-------|----------|
| 4—33x6.00 Double Eagle Tires | 24.85 ea.      | 99.40 |          |
|                              | Less 5% Trade  | 4.97  |          |
|                              |                |       | 94.43    |
| 4—33x6.00 Double Eagle Tubes | 4.60           | 18.40 | 20       |
|                              | Less 10% Trade | 1.84  |          |
|                              |                |       | 16.56    |
|                              |                |       | \$110.99 |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-128241

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

10 Philadelphia, Pa. 7/20/28 Terms Net  
 DN 18-B Discount 2%  
 Arthur J. Gallagher If Paid By Aug 10  
 Lakewood, N. J. Via FRT PPd B&O

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Sales 7/2 | Our Order<br>Reference<br>B-73385-1<br>Phila 1918 | Sold by Loder | Dept. 57-60-D |
|---|---|---------------|---------------|
|---|---|---------------|---------------|

|                              |                |       |         |
|------------------------------|----------------|-------|---------|
| 2—33x6.00 Double Eagle Tires | 24.85 ea.      | 49.70 |         |
|                              | Less 5% Trade  | 2.49  |         |
|                              |                |       | 47.21   |
| 20 2—33x6.00 Tubes           | 4.60 ea.       | 9.20  |         |
|                              | Less 10% Trade | .92   |         |
|                              |                |       | 8.28    |
|                              |                |       | \$55.49 |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-134335

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

|                                |                   |    |
|--------------------------------|-------------------|----|
| Philadelphia, Pa. 7/25/28 18-B | Terms Net         | 10 |
| Arthur G. Gallagher            | Discount 2%       |    |
| Lakewood, N. J.                | If Paid By Aug 10 |    |
|                                | Via BO FRT PD     |    |

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

|                |                               |               |
|----------------|-------------------------------|---------------|
| Your Order No. | Our Order Reference           |               |
| Or How Ordered | B-73385 2 Final Sold by Loder | Dept. 57-60-D |
| Sales 7/2/28   | Phila. 1918                   |               |

|                              |                |         |    |
|------------------------------|----------------|---------|----|
| 4—31x5.25 Double Eagle Tires | 20.85 ea.      | 83.40   |    |
|                              | Less 5% Trade  | 4.17    |    |
|                              |                | 79.23   | 20 |
| 4—31x5.25 Double Eagle Tubes | 3.40 ea.       | 13.60   |    |
|                              | Less 10% Trade | 1.36    |    |
|                              |                | 12.24   |    |
|                              |                | \$91.47 |    |

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*Complaint.*

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-142717

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

10 Phila. Pa. 8/1/28 IA 18-B Terms Net  
A. G. Gallagher Co. Discount 2%  
244 Main St. If Paid By Sept 10  
Lakewood, N. J. Via Exp PPD

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>Sales 6/23 | Our Order<br>Reference<br>B68971-2F<br>1857 | Sold by Loder | Dept. 60-D |
|--|---|---------------|------------|
|--|---|---------------|------------|

|                      |             |       |       |
|----------------------|-------------|-------|-------|
| 6—30x6.50 Reg. Tubes | 16.20       | ½ dz. | 16.20 |
|                      | Less 10% Tr |       | 1.62  |

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14.58

Subject to Sight Draft on third day after due, with exchange without notice. Positively no cash discount allowed after date stated. Claims for damages or shortage must be made on receipt of goods.

GOOD YEAR Invoice No. B-160227

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.

30 Phila. Penna. 8/14/28 Terms Net  
AES 18-B Discount 2%  
Arthur Gallagher If Paid By Sept 10  
Lakewood, N. J. Via PP

B. 11 Refer to both our invoice and order number when tracing for delivery of shipment.

| Your Order No.<br>Or How Ordered<br>7/5 | Our Order 796<br>Reference Phila. | Sold by Loder | Dept. A-14-SC |
|---|-----------------------------------|---------------|---------------|
|---|-----------------------------------|---------------|---------------|

|                    |  |    |      |
|--------------------|--|----|------|
| 250 No. 2 Adv Fans |  |    | 4.50 |
|                    |  | PP | .56  |

5.06

I MP

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**Answer.**

## NEW JERSEY SUPREME COURT

OCEAN COUNTY.

THE GOODYEAR TIRE & RUBBER  
COMPANY, INC.,

Plaintiff,

*vs.*

ARTHUR GORMAN GALLAGHER,  
Defendant.

10

Action at Law.

The defendant answering the complaint filed  
herein says that:

20

1. He denies each and every allegation con-  
tained in all of the paragraphs of the complaint.

## FIRST SEPARATE DEFENSE.

The said goods were not sold to the defendant,  
and the said goods were not delivered to the de-  
fendant, and the defendant never agreed to pay  
for the said goods.

30

## SECOND SEPARATE DEFENSE.

The said goods were delivered to the Russell A.  
Groff Company, Inc., a corporation of the State of  
New Jersey, only upon the introduction by the  
defendant of plaintiff's representative to the said  
Russell A. Groff Company.

McCARTHY & McTAGUE,  
Attorneys for Defendant.

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**Reply.**

NEW JERSEY SUPREME COURT

OCEAN COUNTY.

10

THE GOODYEAR TIRE AND RUBBER  
COMPANY, INC.,

*vs.*

ARTHUR GORMAN GALLAGHER,  
Defendant.

Action at Law.

20

Plaintiff denies each and every allegation contained in the Answer and in the First and Second Separate Defense thereof.

DAVID GOLDSTEIN,  
Attorney for Plaintiff.

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**Notice of Trial.**

NEW JERSEY SUPREME COURT

OCEAN COUNTY.

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THE GOODYEAR TIRE AND RUBBER  
COMPANY, INC.,

Plaintiff,

*vs.*

ARTHUR GORMAN GALLAGHER,  
Defendant.

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10

} Action at Law.

*Sir:*

PLEASE TO TAKE NOTICE, that the trial of the issue  
joined in this cause will be moved before said  
Court, in the presence of such Judge or Justice  
thereof, as shall then be holding said Court, on the  
third Tuesday of December, A. D. 19... , at the  
Court House, in Toms River, in and for the  
County of Ocean at ten o'clock in the forenoon,  
or as soon thereafter as the said Court can attend  
to the same.

20

Dated November 12th, A. D. 1929.

30

DAVID GOLDSTEIN,  
Attorney of Plaintiff.

To McCARTHY & McTAGUE, Esqs.,  
Attorneys of Defendant.

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**Testimony.**

NEW JERSEY SUPREME COURT

OCEAN COUNTY.

|    |   |   |                |
|----|---|---|----------------|
| 10 | GOODYEAR TIRE & RUBBER COM-<br>PANY,<br><div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;"><i>vs.</i></div> ARTHUR GORMAN GALLAGHER,<br><div style="text-align: right;">Defendant.</div> | } | Action at Law. |
|----|---|---|----------------|

Freehold, N. J., April 19, 1930.

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Before HON. R. V. LAWRENCE, Judge.

APPEARANCES:

For Plaintiff, DAVID GOLDSTEIN, Esq.

For Defendant, MESSRS. MCCARTHY &  
 McTAGUE.

30

JAMES A. LODER, sworn for plaintiff.  
*Direct examination by Mr. Goldstein.*

Q. Mr. Loder, are you in the employ of the Good-  
 year Tire & Rubber Company, Incorporated, the  
 plaintiff in this suit? A. Yes.

Q. How long have you been in the employ? A.  
 Between four and five years.

Q. What are your duties? A. Salesman.

Q. Do you know the defendant, Arthur Gorman  
 Gallagher? A. Yes, sir.

40

*James A. Loder, for Plaintiff, Direct.*

Q. How long have you known him? A. Since April, 1928.

Q. Sometime in May of 1928 did you have a conversation with Mr. Gallagher? A. That was in April, 1928.

Q. Some time in April, 1928, did you have a conversation with Mr. Gallagher? A. Yes, sir. 10

Q. When and where did that conversation take place? A. 244 Main Street, Lakewood.

Q. Was anyone present? A. Mr. Groff.

Q. Who was this Mr. Groff? A. Mr. Groff was, I suppose you would call it, manager of Russell A. Groff Company.

Q. And what was the conversation? A. Mr. Groff had previously been ill—

Q. No, the conversation; what did you say; what did Mr. Groff say? A. Mr. Groff said, "You notice the place has been all painted up since I have been ill." I says, "Yes, it looks fine." He says, "Judge Gallagher is going to take it over." I says, "That is fine. I will give you a lot more credit." 20

Q. Was Judge Gallagher present at that time? A. No, he was not.

Mr. McCarthy: I move to strike it out.

The Court: Strike it out. 30

By the Court:

Q. As a result of the conversation what did you do, if anything. Get right down to the conversation you had with Judge Gallagher. A. I was talking to Mr. Groff one day and Judge Gallagher came in. He says, "I am going to try to run this place myself and want to see if I can make some money here in the car business." He says, "This 40

*James A. Loder, for Plaintiff, Direct.*

10 business, I realize there hasn't been any money made in Lakewood by Mr. Groff on account of the credit situation; he hasn't had any capital to do anything of the kind, so we took it over." And he told Mr. Groff to order a complete covering stock of tires for every car. He said he believed that the car business could be made to pay if a complete stock was kept on hand. And I says, "You realize, Mr. Gallagher, that Mr. Groff's credit is not good with the Goodyear Tire & Rubber Company, and any merchandise shipped hereafter, if you want a complete stock, will have to be charged to you personally." He said he understood that. He thereupon ordered Mr. Groff to order a complete stock of tires at that time. However, at 20 that time, it was around the 10th of April, as I recall, and a stock ordered at that time would have to be paid for on the 10th of May, so he directed Mr. Groff to order just enough tires to cover market needs, and then on the 25th of April, which would give him a June 10th billing with us, to put in a complete stock, which he did.

By Mr. Goldstein:

30 Q. And you say who was to pay for this merchandise? A. Mr. Gallagher.

Q. Did you sell him any merchandise on that day? A. Yes.

Q. And are you able to state of your own independent recollection what merchandise was sold that day? A. Various sizes?

Q. Yes. A. Why, I know it ran around \$300, close to \$300.

Q. But can you give the items? A. The items?

40 Q. Yes. A. No, I couldn't.

*James A. Loder, for Plaintiff, Direct.*

Q. I show you here a piece of paper and ask you if this refreshes your recollection.

Mr. McCarthy: I object to the witness looking at and making use of it—

The Court: What is this?

Mr. Goldstein: It is an order taken on that day. 10

The Court: Made by whom?

Mr. Goldstein: Made by this gentleman.

The Court: He may look at it.

By the Court:

Q. Is that the order taken by you that day? A. Yes, sir.

Q. And by whom did you take the order? A. Mr. Groff, at Judge Gallagher's direction. 20

By Mr. Goldstein:

Q. When you say at Judge Gallagher's direction, what makes you say that? A. He told Mr. Groff to put in a complete line of tires and I took it that way.

By the Court:

Q. In whose name was the order entered? A. Arthur G. Gallagher, shipped to Russell Groff, Incorporated. 30

By Mr. Goldstein:

Q. And why did you put those words down, "shipped to Russell A. Groff, Incorporated?" A. Because Judge Gallagher had no store.

Q. Was anything said about where the merchandise was to be shipped? A. At one time, yes. 40

*James A. Loder, for Plaintiff, Direct.*

At one time later on. It seems that the local carrier in Lakewood delivered a stock of tires one time in Mr. Gallagher's front yard, Mr. Groff told me, and he said the next time to be sure to mark anything Russell A. Groff, Incorporated.

10 Mr. McCarthy: I object to any conversation had by the local carrier with this gentleman. It is hearsay.

The Court: It is hearsay. It should be stricken out.

Q. Do you know that this merchandise was received? A. Yes, sir.

Q. And accepted? A. Yes, sir.

20 Q: By whom? A. It was on the shelves on a visit down there.

Q. How do you know that they were received? A. The merchandise was there and it was not there previous.

Q. How do you know it was there? A. Mr. Groff told me it came in.

Q. You were in the store subsequently? A. Yes.

30 Q. Now on this conversation with Judge Gallagher was anything said about the purchase and sale of any future merchandise outside of this first order? A. Yes, Judge Gallagher said he couldn't give the business much attention, that Mr. Groff was his manager and knew a lot more about tire sizes than he did, and it was up to him to do the buying.

Q. Did he say anything about Mr. Groff's right to buy from your company? A. Only to the extent that I have told you just now, that I recall.

40 Q. Did you take any other orders yourself from

*James A. Loder, for Plaintiff, Direct.*

Mr. Groff? A. A few; I don't recall how many.

Q. And do you know if the merchandise which was ordered was shipped? A. That it was shipped or received?

Q. Shipped and received. A. It was received, yes.

Q. How do you know that? A. Because I saw it there. 10

Q. Are you in a position to say of your independent recollection just how much merchandise was shipped to and received by Groff during the entire period that you did business with them? A. The period up to the C. O. D. transactions or credit transactions?

Q. Yes, just the credit transactions. A. I would say around \$2,400, approximately. 20

Q. Did you see all of this merchandise in the store? A. Well, I can't say that. Probably there had been some sold between my visits.

Q. And I show you herewith what purports to be a complete memorandum of all the merchandise which was sold by the Goodyear Company to Mr. Gallagher and ask you if this in any way refreshes your recollection of all the merchandise which was shipped.

Mr. McCarthy: May I object to him looking at it or testifying from it unless it is a record made by him or under his direct supervision? 30

Mr. Goldstein: It doesn't have to be, as I understand.

The Court: What is that record?

Mr. Goldstein: That is invoices of the various shipments.

*James A. Loder, for Plaintiff, Direct.*

By the Court:

Q. Do you know anything about the invoices?

A. You mean from an operating standpoint?

Q. Yes. A. I only know that by billing that I personally brought out.

10 Q. What are they? A. I can't pick them out in here because these are all typewritten. I should say the original——

Q. Well, where are the originals?

Mr. Goldstein: These are the originals. I would like to have it marked in evidence.

The Court: It may be marked.

Q. Is that the one you identified?

20 (Paper marked Exhibit P-1.)

By Mr. Goldstein:

Q. Are you able to say by referring to that paper that merchandise was in the store of Groff?

A. Not from this paper; no, sir.

Q. About how much merchandise did you see there, all told?

Mr. McCarthy: I object to that unless the time is specified.

30 The Court: Yes, fix a time.

Q. Specify the time, commencing with April, the time when you first commenced to do business with Gallagher. A. He had an average stock amounting to—you mean dollars and cents or units?

Q. Yes. Dollars and cents?

40 Q. Yes. A. An average stock in April, the latter part of April, May and June, \$1,800 in tires.

*James A. Loder, for Plaintiff, Cross.*

Q. Do you know when your company stopped shipping Gallagher merchandise on credit? A. No, sir; I don't.

By the Court:

Q. How did this account appear on your books? 10

Mr. Goldstein: I have the bookkeeper here, if your Honor please. All right. That is all.

*Cross examination by Mr. McCarthy.*

Q. When did the Goodyear Tire Company first begin to do business with Russell Groff, Incorporated?

Mr. Goldstein: Objected to, if your Honor please, because that is somewhat irrelevant to this. 20

The Court: Oh, I will allow it. It has a bearing upon the question at issue.

Q. Some time in 1927, as far as I am concerned. There was a salesman on previous to me.

Q. When did you first begin to do business with Russell Groff, Incorporated? A. I think it was in September, 1927, I took the first order, as near as I can tell. 30

Q. Did you have any conversation with Judge Gallagher at that time? A. No.

Q. How many orders were taken by you between that time and April, 1928? A. How many?

Q. Yes. A. I can't tell you that off-hand.

Q. Well, you made original orders of the goods, did you not? A. A lot of orders were mailed in. I didn't take them all.

Q. Mailed in? A. That is, by Russell Groff. 40

*James A. Loder, for Plaintiff, Cross.*

Q. Do you know where they came from? Do you know to whose credit they were charged? A. To Russell A. Groff, Incorporated, at that time.

10 Q. Did I understand you to say that from April of 1928 that all goods purchased by Russell Groff, Incorporated, were charged to Judge Gallagher?  
A. As far as I know, after my conversation with Judge Gallagher.

Q. You made out the original, didn't you? A. The original invoice, yes.

Q. You have the originals in court, have you not? A. That is it right there, I think.

Q. That one here? All right. Take this one, if you will, and refer yourself to a bill of goods of 5, 29, 1928. A. May 29?

20 Q. Yes, 1928. Will you tell me who that bill of goods is billed to? A. I don't know.

Q. You have no knowledge? You made out the original. A. I can't tell you unless I see it. I didn't take all the original orders.

Q. I show you a copy of a bill attached to the copy of the bill of complaint served on the defendant and ask you is that a copy of the bill of goods of 5, 29, 1928? A. I can't tell, because it is typewritten.

30 Q. Well, you took the orders, did you not, at that time? A. Possibly, and possibly it went over by mail, I don't know.

Q. It was in your territory though? A. Yes.

Q. And do you know whether or not there was a 33x6 Path tube ordered at that time? A. I don't know.

40 Q. This bill of goods is on the stationery of the Goodyear Company though, and is directed to whom? A. Directed to R. Groff & Company, Incorporated.

*James A. Loder, for Plaintiff, Cross.*

Q. At 244 Main Street, Lakewood; is that right?

A. Right.

Q. Do you know whether or not when orders are received by mail whether there is an original order entered in the books of the Goodyear Company? A. I think so. That gentleman can tell you that.

10

Q. Referring to the same slip which has been marked in evidence, referring you to the bills of goods of June 25, 1928, do you know to whom they were charged? A. I do not.

Q. Do you know who made the original order? A. I do not.

Q. Is there any way that you can tell the character with reference to the slips other than made by you on the original orders that were mailed in? A. Personally I can't remember. The other gentleman can.

20

Q. Did you ever do any business with a company known as the A. G. Gallagher Company of Lakewood? A. That is the way the contract is signed, I think.

Q. Have you the contract? A. Yes, sir.

Q. All right. Produce it. A. Mr. Goldstein has it.

The Court: Have you that, Mr. Goldstein, the contract signed A. G. Gallagher Company?

30

Mr. Goldstein: Yes. (Produces paper.)

Q. Now to whom were those goods delivered that are specified in that contract or goods bought under that contract? A. Delivered to Russell Groff, Incorporated, I think.

Q. You think? You don't know? A. I am not

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*James A. Loder, for Plaintiff, Cross.*

quite sure. I can't tell about the billing, but this one was billed to Russell Groff, shipped to Russell Groff, Incorporated (indicating).

10 Q. This contract was made, I presume, on June 11, 1928? A. That is when it was signed. I don't know when Judge Gallagher signed it.

Q. Letterheads sent by the Goodyear Tire Company, were they made out in Judge Gallagher's name? A. No.

Q. Were they made out in the name of Gallagher & Company? A. No.

Q. To whom were they made out? A. Russell Groff, Incorporated.

20 Q. And referring to a bill dated June 29, 1928, I ask you is that an order for billheads taken by you? A. I don't recall whether I took that order or not. I would have to see the original invoice.

Q. Have you that here? A. I don't know whether he has it or not.

Mr. McCarthy: I ask Mr. Goldstein to produce it.

Mr. Goldstein: What is that?

30 Mr. McCarthy: Any original order for goods that are involved in this litigation. I served a notice upon Mr. Goldstein, which was returned duly acknowledged, which I now present to the Court.

The Court: All right. You are entitled to it.

Mr. Goldstein: Here are some of them (producing papers).

Mr. McCarthy: Are those all?

Mr. Goldstein: That is all I have with the exception of that one he has over there.

40

*James A. Loder, for Plaintiff, Cross.*

Q. I am referring you to a bill of goods addressed to Arthur Gallagher, Lakewood, New Jersey, under date of August 10th, no year being mentioned. I ask you is that in your handwriting? A. No.

Q. It is not in your handwriting? A. It was telephoned in. 10

Q. Showing you a bill of goods dated 6, 19, 1928. A. Also telephoned in.

Q. Referring you to a bill of goods dated June 23, 1928. A. Telephoned.

Q. Referring you to a bill of goods under date of June 23, 1928. A. Also telephoned.

Q. Now did you ever take any orders personally other than this order of April 11, 1928? A. Yes. 20

Q. Where are they? A. I don't know.

Mr. McCarthy: I am asking for those originals under the notice to produce.

Q. Referring you to an order dated April 16, 1928, I ask you if that is in your handwriting. A. That is.

Q. And it was taken by you personally? A. Yes, sir.

Q. And received from whom? A. Mr. Groff. 30

Q. Was Mr. Gallagher present? A. I don't think he was. He was only present at the first one.

Q. April 16, 1928, a bill of goods addressed to Arthur J. Gallagher. A. That was a mistake in the printing, this part of it. That is in my handwriting.

Q. But Mr. Gallagher was not present at that time either? A. No. 40

*James A. Loder, for Plaintiff, Cross.*

Q. April 16, 1928; is that in your handwriting too? A. Yes.

Q. Mr. Gallagher was not present at that time either? A. No.

10 Q. Referring you now to October 3, 1928, is that in your handwriting? A. Yes, sir.

Q. Was Judge Gallagher present at that time? A. No, sir; not to my knowledge.

Q. I am referring you collectively to a bill of goods ordered on October 3, 1928, April 16, 1928, April 16, 1928, April 16, 1928, and April 11, 1928. I ask you did Judge Gallagher affix his signature to any one of the orders which I now show you? A. No.

20 Mr. McCarthy: There has only one of these, I think, been offered in evidence.

Q. Now referring to those bills in your handwriting, are they all the bills that you can produce at this time?

Mr. Goldstein: That is all we have.

30 Q. Was there ever a note, memorandum of such a contract made in writing and signed by Judge Gallagher, who was to be charged for the sale of these goods? A. No, except our service station contract.

Q. Signed by him? I mean for a bill of goods ordered. A. Each particular bill of goods?

Q. Yes. A. No.

Q. Was the amount of goods involved over \$30 on each one of these bills? A. I think so.

40 Q. Will you look and see, please? A. This one is, I know. All I have here are over \$30. Here are some more.

*James A. Loder, for Plaintiff, Redirect.*

Q. Now delivery of those goods was made always to the Russell Groff Company; is that correct? A. Should have been made that way. I wouldn't say how it was.

Q. Well, don't you know? A. That would be up to Mr. Marota.

10

By the Court:

Q. As far as you know? A. As far as I know they were, yes.

By Mr. McCarthy:

Q. They were delivered to the Russell Groff Company? A. Yes.

Q. At the same place in which you had received the order? A. Yes.

20

Q. At 244 Main Street, Lakewood? A. Yes.

Q. And that is exactly the same place at which you had taken orders and delivered goods prior to ever meeting Judge Gallagher; is that right? A. That is right.

Q. Did Judge Gallagher ever give you any money or any form of consideration, any payment to bind these charges? A. No.

*Redirect examination by Mr. Goldstein.*

30

Q. As a matter of fact, when Mr. McCarthy asked you about how the goods were shipped, do you know how the goods were shipped? A. You mean how they were billed on these invoices? Is that what you mean?

Q. Yes. That is to say, when the merchandise was shipped from the factory do you know in what manner or to whom they were shipped, ac-

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*James A. Loder, for Plaintiff, Redirect.*

according to the shipping instructions at the factory? A. I only know that they reached their destination.

10 Q. Yes, but you don't know how they were shipped, do you? All you know is by whom they were delivered; is that right? A. I know to whom they were delivered.

By the Court:

Q. They were delivered to Groff? A. Yes.

By Mr. Goldstein:

20 Q. All of these orders which Mr. McCarthy referred to before, namely, those which were taken by you personally, do you know if that merchandise was delivered to Groff? A. Yes, sir.

Q. How do you know that? A. Because I saw them in his place of business.

By Mr. McCarthy:

Q. You knew that Russell Groff was a corporation, didn't you? A. In the business we had previous with him, I did.

30 Q. Wasn't there always a sign outside the place? A. There was always a sign but—

Q. What was the sign? A. Russell A. Groff Company, Incorporated, I think.

Q. Was that ever taken down to your knowledge? A. I don't think so. I don't know. I am not sure about it.

*Herman H. Marota, for Plaintiff, Direct.*

HERMAN H. MAROTA, sworn for plaintiff.

*Direct examination by Mr. Goldstein.*

Q. Do you work for the Goodyear Tire & Rubber Company? A. I do.

Q. How long have you been employed there? A. Since January 3, 1927. 10

Q. In what capacity? A. In charge of credits and collections and accounts receivable.

Q. And what are your duties? A. I have supervision over the accounts, collection of the accounts, and the extension of credits generally.

Q. Do you have an account on the books of your company against Arthur G. Gallagher or Arthur J. Gallagher? A. We have. 20

By Mr. McCarthy:

Q. Which one? A. We have the account on our books in the name of Arthur G. Gallagher.

By Mr. Goldstein:

Q. What, if anything, have you to do with that account? A. Well, I was responsible, like the other accounts that are under my supervision, and the collection and the posting of debits and credits thereon. 30

Q. And did you personally post the debits and credits in this account of Arthur G. Gallagher? A. I did not.

Q. What, if anything, did you have to do with it in so far as the entries were concerned? A. I was responsible.

By the Court:

Q. You supervised? A. General supervision of posting. 40

*Herman H. Marota, for Plaintiff, Direct.*

By Mr. Goldstein:

Q. And by supervision you mean what? A. I was responsible for any errors that were made.

By the Court:

10 Q. What is your position, credit man? A. Credit man and collections and also accounts receivable.

By Mr. Goldstein:

Q. Will you refer to your account with Arthur G. Gallagher and tell the Court when it was opened? A. I have here the original posting under date of June 1, invoice in the amount of \$205.67.

20

By Mr. McCarthy:

Q. Are those in your handwriting? A. No, sir; they are not.

By the Court:

Q. In whose handwriting are they? A. The bookkeeper's.

30 Q. Were they made under your supervision and direction? A. They are.

Q. You are familiar with the account? A. I am.

The Court: You may proceed.

By Mr. Goldstein:

Q. Continue. A. Under date of June 1, we have a posting here in the amount of \$205.67, which fell due July 10, 1928. This invoice was paid.

40

Q. What other invoices, if any, have you in the

*Herman H. Marota, for Plaintiff, Direct.*

name of Arthur G. Gallagher? A. Quite a number here. Any particular one?

Q. Will you call them all off? A. I have here posting since June 1st.

By the Court:

Q. What do they total? A. Well, the total open items amounted to \$2,085.09.

10

By Mr. Goldstein:

Q. Does that represent the amount due to your company for purchases made by A. G. Gallagher? A. Yes, sir.

Q. Is that before or after giving him credit for any credits that he might be entitled to? A. That is after giving him credit for everything he is entitled to.

20

Q. Did you send Mr. Gallagher any statement of his account for merchandise purchased of your company? A. We did, monthly.

Q. And to whom were those statements sent? A. I will answer that question without seeing copies of the original statements.

Q. Well, just answer the question, to whom were they sent? A. Arthur G. Gallagher Company.

30

Q. All of them that way? A. No, there is one statement of July 26 was sent to Arthur G. Gallagher, 244 Main Street, and then by some request, we were requested to carry the account as Arthur G. Gallagher Company. I don't know what source that request came from.

Mr. McCarthy: I ask that that be stricken out.

The Court: Strike it out.

40

*Herman H. Marota, for Plaintiff, Direct.*

By the Court:

Q. You may state the change there. There was a change? A. The first statement we sent was under date of July 26, 1928.

10 Q. And that was to whom? A. Arthur G. Gallagher.

Q. Then when was the next one? A. August 26.

Q. To whom was that sent? A. Arthur G. Gallagher Company. So something had happened, I assume, in between. I don't know what that was.

Q. Did you have any authority to send to Judge Gallagher individually? A. According to our contract—

Q. I mean anything on your— A. Yes.

20 Q. What is the contract? A. Arthur G. Gallagher.

By Mr. Goldstein:

Q. Did you have a conversation with Mr. Gallagher over the telephone some time in July, 1929?

A. If my memory serves me correctly it was on July 15, 1928.

Q. And what was that conversation? With whom was that conversation?

30 Mr. McCarthy: I object to that unless it can be definitely shown—

Mr. Goldstein: I will lead up to that.

Mr. McCarthy: That he was familiar and knew the voice of Judge Gallagher.

The Court: On the assumption that it is to be properly connected I will let him go along. If he doesn't connect it I will tell the jury to disregard it.

*Herman H. Marota, for Plaintiff, Direct.*

By the Court:

Q. With whom did you have that conversation?

A. I asked the party who was speaking over the telephone—

Q. With whom did you have the conversation?

A. As far as I know, Judge Gallagher. 10

Q. How do you know? A. Because I asked who it was on the telephone and he says, "It is Mr. Gallagher."

Q. Whom did you ask for at the time you phoned? A. I asked for Mr. Gallagher.

Q. What was the conversation? A. After ascertaining whether or not Judge Gallagher was on the telephone and on his admission—

Q. How did you ascertain that? A. By his own admission, your Honor. I asked him whether it was Judge Gallagher on the phone. 20

Q. Had you heard him before? A. No, sir.

Q. Never heard his voice? A. No, sir.

Q. Never heard the sound of his voice? A. No, sir.

Q. And you asked him, "Who are you?" A. Yes, he says "Judge Gallagher."

Q. So you proceeded and talked. Go on. A. I asked whether he realized that his account was delinquent; he said he did. I asked him whether it would be possible to get a check; he says, "No." I says, "Well, we will have to get after the store." He says, "Well, if you have to get after the store you will have to do it; that is up to you." That is just what he told me. 30

By Mr. Goldstein:

Q. Was there anything due to your company, and if so how much, at the time of that conversa- 40

*Herman H. Marota, for Plaintiff, Direct.*

tion? A. July 15th, oh, I would say about a thousand dollars, well over a thousand. I wouldn't say exactly how much was due at that time.

10 Q. Did you receive any payment on account of this particular account which you carried with Arthur G. Gallagher? A. We did.

Q. And when did you receive that payment and how much was it?

Mr. McCarthy: Just a second. I object unless he shows by whom payment was made.

The Court: That may appear. I can't tell yet. Go ahead.

20 A. Received a check under date of May 23rd; amount of check with discount was \$850.12.

By the Court:

Q. Whose check was it? A. I don't know, sir.

By Mr. Goldstein:

Q. What relation, if any, did that check have to the original order of merchandise which was taken by Mr. Loder?

30 Mr. McCarthy: I object to the question because there is no identification of any connection between Judge Gallagher and the check.

Mr. Goldstein: I am going to get it out if you just give me a chance.

The Court: Of course he can't do it all at once. We will see whether he does it or not. Proceed.

40 Q. What relation, if any, did that payment have to the merchandise covered by the original order

*Herman H. Marota, for Plaintiff, Direct.*

which Mr. Loder testified to and which was made out in the name of A. G. Gallagher? A. The only relation that the remittance had to the account of Arthur G. Gallagher was the fact that we posted it to Judge Gallagher's account and gave him credit for it and he received a statement.

10

By the Court:

Q. A. G. Gallagher Company? A. Arthur G. Gallagher individually, the first statement went out.

By Mr. Goldstein:

Q. Did that have any reference to that merchandise in that first statement, Arthur G. Gallagher?  
A. Yes.

20

Q. And what relation did it have? A. Because it paid this first shipment of June 1st, 205.67.

Q. And had you prior to the time that you received that payment sent any memorandum of that statement to Mr. Gallagher? A. I don't get that.

Q. Prior to the time that you received that check had you sent any memorandum of that first statement to Mr. Gallagher? A. You mean a notice of the amount due?

30

Q. Yes. A. No, because it was not due at the time.

Q. The total that was posted at the time that that total was posted in your book, is it an original amount? A. You mean the cash posting?

Q. No, no, this invoice that you referred to. A. As \$205.67?

Q. Yes. A. Yes, he received the original invoice. At least we mailed the original invoice.

40

*Herman H. Marota, for Plaintiff, Cross.*

Q. Was that prior to the time the check was paid? Is that right? A. Just a minute. I beg your pardon. I made a mistake, may it please the Court.

10 Q. Go ahead. A. The remittance under date of June 23rd, because it paid on his invoice of June 1st of \$850.12, it paid the invoice under the date of June 1st of \$205.67, the original of which was mailed to Arthur G. Gallagher.

Q. Before or after you received that payment? A. The original invoice went out before we received the payment.

20 Q. Do you know to whom it was addressed and by whom it was received? A. Sent by the mailing department and addressed to Arthur G. Gallagher.

Q. Have you anything to do with the mailing of those statements? A. Well, I see that they are given to the proper department for mailing.

By the Court:

Q. Sent from your department to the other? A. Yes.

*Cross examination by Mr. McCarthy.*

30 Q. What was the date upon which this check was alleged to have been received? A. Which check?

Q. Some check in payment of \$205.67. A. Oh, yes, received under date of June 23rd.

Q. June 23rd? A. Yes, that is the day we received it.

Q. Do you know what it was for? A. Well, I can tell how we used it.

40 Q. I didn't ask you that. I asked you what it

*Herman H. Marota, for Plaintiff, Cross.*

was for. A. Well, it was to apply on Arthur G. Gallagher's account.

Q. Did you have any notice of any claim against Arthur G. Gallagher prior to the receipt of that check? A. Did I have any notice?

Q. Yes, of any claim owed by Arthur G. Gallagher to the Goodyear Tire & Rubber Company prior to the receipt of the check. A. No. 10

Q. As a matter of fact that check paid to your company for \$205.67 was given prior to the sending of any goods; is that correct? A. No, sir; I corrected myself. I first said that the check was received May 23rd; instead it was received June 23rd.

Q. Then how did you figure that that check was in payment of the first order then? A. Why, because it balances exactly. 20

Q. Now you made up an account, I assume, for your attorney in instituting this suit, did you not? A. Yes, sir.

Q. And you made up these individual slips? A. What individual slips? Oh, you mean copies of invoices?

Q. Yes. A. They were done under my supervision.

Q. And you also made up a bill indexing the amounts and dates? A. I didn't make that particular one. 30

Q. You didn't make that? A. No, sir.

Q. But you have charge of the credit items? A. Yes, sir.

Q. Now I show you this statement of July 27, 1929, and the data contained therein. I ask you to show me wherein this \$205.67 is accounted for, the check received. A. I can answer that by saying— 40

*Herman H. Marota, for Plaintiff, Cross.*

Q. Is it on there? A. It is not on this posting.

Q. Well, that is a copy of the summarizing of those items in the bill of complaint; is that not true?

The Court: The amount you are suing for.

10

A. Just a minute. I have made a terrible mistake. No, the \$205.67 is not paid.

Q. It is not paid? A. No, sir.

Q. Then you wish to correct all the testimony that you gave heretofore that it had been paid?

A. Yes, sir.

By the Court:

20

Q. And therefore that check didn't pay any—  
A. Didn't pay this item. It is checked in error.

By Mr. McCarthy:

Q. Now did you as credit man receive any memorandums or notes or original copies of orders? A. Original copies of orders?

Q. Yes. A. The orders come through me for credit approval.

30 Q. Have you any of those originals other than those which you have already produced? A. No, sir; I have not.

Q. I ask you to look at those and tell me whether they bear the signature of the person supposed to be charged. A. I will. (Examines papers.) They do not.

Q. Do you know whether or not the goods were actually delivered and received by the person charged? A. No, sir.

40 Q. And do you know whether or not the check you spoke of, the payment to which you referred,

*Herman H. Marota, for Plaintiff, Redirect.  
Recross.*

was a check of Arthur G. Gallagher's? A. No, I can't swear to that.

Q. Did you ever receive or do you know whether any payments were made either in cash or in check directly by Arthur G. Gallagher on any one of the accounts? A. No, sir. 10

*Redirect examination by Mr. Goldstein.*

Q. Do you know how the merchandise was shipped? A. I can tell you by these orders.

Q. How were they shipped? A. This one is shipped freight prepaid.

Q. No, I mean to whose name they were shipped? A. To Mr. Gallagher. 20

By the Court:

Q. As an individual? A. Yes, sir.

Q. Were they all sent to Gallagher as an individual? A. Yes, sir.

Q. The whole account? A. The letterhead of that (indicating).

Q. That is, they were charged? A. Charged and shipped to him. The shipping records show Arthur G. Gallagher. 30

*Recross examination by Mr. McCarthy.*

Q. Referring you now to these invoices which you said before were made by or came under your supervision, I show you an account dated June 1, 1928. Now to whom is that addressed? A. That is Arthur G. Gallagher.

Q. I show you one of June 6, 1928. To whom is that addressed? A. To Arthur G. Gallagher Company. 40

*Herman H. Marota, for Plaintiff, Recross.*

Q. I show you one of June 6, 1928. That is addressed to whom? A. Arthur Gallagher.

Q. I show you one of June 29, 1928. To whom is that addressed? A. That is not a part of our claim.

10 Q. You mean that this \$14.36 is not a part of your claim? A. I beg your pardon. I just want to check that, please. What is the date of that?

Q. 5, 29, 1928. A. \$14.36?

Q. Yes. A. It is.

Q. To whom is that addressed? A. Russell Groff Company, Incorporated.

Q. I show you one of June 19, 1928. To whom is that addressed? A. Arthur G. Gallagher.

20 Q. Not A. G. Gallagher? A. A. G. Gallagher, evidently, yes.

Q. I show you one of June 22, 1928. To whom is that addressed? A. Arthur G. Gallagher, A. G. Gallagher.

Q. I show you one of June 25, 1928. To whom is that addressed? A. A. G. Gallagher Company.

Q. I show you one of June 29, 1928. A. That is addressed to Russell A. Groff, Incorporated.

Q. I show you one of July 2, 1928. To whom is that addressed? A. Arthur G. Gallagher.

30 Q. I show you one of July 6, 1928. To whom is that addressed? A. Arthur G. Gallagher.

Q. I show you one of June 29, 1928. To whom is that addressed? A. H. J. Gallagher.

Q. I show you one of July 29, 1928. To whom is that addressed? A. Arthur G. Gallagher.

Q. I show you one of July 13, 1928. To whom is that addressed? A. A. G. Gallagher.

Q. I show you one of July 17, 1928. To whom is that addressed? A. That is A. G. Gallagher.

40 Q. I show you one of July 20, 1928. To whom

*Herman H. Marota, for Plaintiff, Recross.*

is that addressed? A. Arthur J. Gallagher, he has.

Q. He has? Who do you mean by he? A. The stenographer.

Q. I show you one of July 18, 1928. To whom is that addressed? A. A. G. Gallagher Company.

Q. I show you one of July 20, 1928. To whom is that addressed? A. Arthur J. Gallagher.

Q. I show you one of July 25, 1928. To whom is that addressed? A. Arthur G. Gallagher.

Q. I show you one of August 1st. To whom is that addressed? A. A. G. Gallagher Company.

Q. I show you one of August 14th. To whom is that addressed? A. Arthur Gallagher.

Q. Now you didn't mean it before when you said all the goods were shipped and directed to Arthur G. Gallagher personally, did you? A. Well, as far as I know they were addressed—

Q. You know now that they were not; isn't that so? A. According to these billings, yes.

Q. Those are correct, aren't they? A. Yes, I presume so.

Q. They are copies of your own; isn't that true? A. Yes.

By Mr. Goldstein:

Q. And the total amount, do you know now, is what? A. \$2,085.09.

Mr. Goldstein: That is all.

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*James A. Loder, Recalled, for Plaintiff, Direct.*

JAMES A. LODER, recalled for plaintiff.

*Direct examination by Mr. Goldstein.*

Q. Did you ever make demand for payment upon Mr. Groff for the amount due your company?

10 A. Certainly.

Q. And are you able to tell the Court when your last demand was made and how much was demanded?

Mr. McCarthy: Objected to as immaterial and irrelevant to the issue.

The Court: What do you want to show?

Mr. Goldstein: Well, I want to show indirectly the receipt of the goods.

20 Mr. McCarthy: Receipt of goods by Russell Groff.

The Court: Yes, I don't see why you object to that. He may answer.

A. What is your question again?

Q. Are you able to state the last date when you made a demand and the amount which you demanded? A. I can't tell you the last date but it was some time in the summer of 1929.

30 By the Court:

Q. Upon whom did you make the demand, Groff?

A. Mr. Groff. I tried to see Mr. Gallagher but could never see him.

By Mr. Goldstein:

Q. Do you know how much was due to your company at that time? A. Yes, I had a statement.

Q. How much—

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*James A. Loder, Recalled, for Plaintiff, Direct.*

The Court: They have already stated that \$2,085 and some odd cents is the open account on the book of the Goodyear Company that has not been paid. The question at issue now is whether Judge Gallagher is liable at all or not.

10

Mr. Goldstein: That is the only issue.

The Court: That is the only issue, as I see it.

Mr. McCarthy: We make no admissions for Russell Groff Company or Russell Groff individually. You may state for the record that Russell Groff Corporation owes you \$2,085 if you wish to.

By Mr. Goldstein:

20

Q. Do you know if the merchandise for that \$2,085 was received by Groff, and if so, state how?

A. Absolutely, because he made the statement down there a number of times.

Q. He never disputed it? A. Never disputed the statement. I says, "Well, when is Judge Gallagher going to pay up?" He says, "Well, he is off to the Kiwanis convention now and as soon as he gets back he will probably take care of it."

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Plaintiff Rests.

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## MOTION FOR NON-SUIT.

Mr. McCarthy: I make a motion for non-suit under the Statute of Frauds, page 2615.

The Court: That is a familiar rule. What have you got to say, Mr. Goldstein? How can you hold Judge Gallagher in the absence of some writing?

10 Mr. Goldstein: Why is a writing necessary?

The Court: Were the goods sent directly?

Mr. Goldstein: Certainly. We are not suing Judge Gallagher on the theory of a guarantor. This merchandise was sold to Judge Gallagher and it was very carefully explained.

20 The Court: If that be so that is an issue of fact, I suppose. We have established apparently the goods were shipped to Groff.

Mr. Goldstein: Yes, because Judge Gallagher himself told the salesman at the time that he said that the merchandise should be charged to him, he says, "Ship the goods to Groff."

The Court: I will hear the defense.

30 Mr. McCarthy: I am going to ask that the Court receive, without putting this man back on the stand, the contracts which were identified.

Mr. Goldstein: I have no objection.

The Court: Yes, it may be marked in evidence.

(Paper marked Exhibit D-2.)

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*Arthur Gorman Gallagher, for Defendant, Direct.*

DEFENDANT'S TESTIMONY.

ARTHUR GORMAN GALLAGHER, SWORN for defendant.

*Direct examination by Mr. McCarthy.*

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Q. Mr. Gallagher, you are the defendant in this action? A. I am.

Q. Were you on or about April, May, June, July or August of 1928, or at any time subsequent to that, a member of the firm of Russell Groff, Incorporated? A. I was not.

Q. And did you at any time authorize the Goodyear Tire Company to bill to you goods purchased or ordered by Russell Groff, Incorporated? A. I did not.

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Q. Did you at any time ever have any conversation with this gentleman sitting at the end— A. I don't recognize this gentleman as having been there, and I still don't recognize him, but I do remember a conversation with the Goodyear Tire man in the Groff store.

Q. When did it happen? A. It happened, as near as I recall it, quite some time previous to this date. How far ahead of this date that you refer to I don't recall.

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Q. All right. Now tell us what conversation you had with this gentleman.

By Mr. Goldstein:

Q. Will you fix the date first? A. Well, it must have been previous—I would guess it must have been around February, perhaps maybe January.

Mr. Goldstein: May it please your Honor, I am going to object to any conversation prior

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*Arthur Gorman Gallagher, for Defendant, Direct.*

to the date when this account was opened by Judge Gallagher because we admit that up until that time the merchandise had been sold to the corporation.

10 The Court: I know, but he is entitled to be heard. Now it appears here that you have opened on your books, at least, some account to Judge Gallagher as an individual, with the direction to ship the goods to Russell Groff, Incorporated. Now if you did that without authority of course that is an issue of fact in the case.

By Mr. McCarthy:

20 Q. Did you at any time on or about April, May, June, July or August of 1928, or any time subsequent thereto, have any conversation with the Goodyear Rubber Tire representative and authorize him to charge you for goods shipped to Russell Groff, Incorporated? A. I did not.

By the Court:

30 Q. What was the conversation, Judge? A. I had one time a conversation with the Goodyear Tire man about, as I would say, in February, as I best recall it, at which time the question of whether or not they should be conveyors of their tires in their store or not was discussed with me as a friend of Mr. Groff, and that is the last conversation I remember with any tire salesman regarding any purchases. I had several conversations with different salesmen from time to time regarding their business. I always asked them how their business was, but I don't recall any  
40 other conversation.

*Arthur Gorman Gallagher, for Defendant, Direct.*

Q. Did you ever at any time authorize the Good-year Company to use you for credit directly? A. I did not.

Q. Authorize them to charge goods shipped to Russell Groff Company to you? A. I did not. I had one transaction when Mr. Groff was present and he asked me if I had removed myself as a member or stockholder of the Russell Groff Corporation, to buy a set of tires that amounted to— I don't know what, and I paid for them in cash. The understanding was they would not be shipped unless there was a cash payment, and they wanted me at that time to guarantee the future accounts, and I said no, I will go for this one set; because Mr. Groff, who had been a very dear friend of mine, told me that he had practically sold those tires that he was about to order and his customers were waiting for them; so I bought one set and paid cash for it and that is all that I remember.

By Mr. McCarthy:

Q. When was that, Judge? A. I don't recall. It must have been probably in March, April or May, sometime like that, and I gave Mr. Groff the money for that set of tires or whatever they were. I don't know.

Q. And showing you the contract that is mentioned here this morning and the service station agreement, is that the one you signed or is that your signature? A. Yes, that is my signature.

Q. And is that the time that you signed, or the time that you refer to? A. I would say that was the time, yes.

*Arthur Gorman Gallagher, for Defendant, Direct.*

By the Court:

10 Q. Did that have any relation to this transaction? A. I don't know. I didn't know what it contained. I didn't know what I signed there. I just signed it. Mr. Groff asked me to sign that piece of paper there where I was to sign it and I signed it. I didn't know what it was.

Q. This was the A. G. Gallagher Company? A. I don't know about the back. All I did was to sign it. There was nothing there. I signed my name and he left a slip there. I don't know what it was. Whatever it says was what I signed, but I don't know a single word of the contents of it.

By Mr. McCarthy:

20 Q. Did you at any time sign any of the original orders? A. No.

Q. Did you at any time receive delivery of any of the goods? A. No, I never have.

30 Q. Did you at any time pay in any manner, shape or form for any of the goods which are alleged in this suit? A. Not that I know of. I don't know what Mr. Groff did. I gave Mr. Groff the amount of money as a loan to him and whatever this sale of goods was on that particular day.

Q. The money wasn't given to the Goodyear Company or its representative? A. No, sir; it wasn't, not from me.

Q. No, I said by you? A. No, not from me; no, sir.

Mr. McCarthy: Cross examine.

*Arthur Gorman Gallagher, for Defendant, Cross.*

*Cross examination by Mr. Goldstein.*

Q. When did you withdraw from the Groff Corporation? A. I don't know; that must have been a year or a year and a half before this date, possibly longer, before that.

Q. That would fix the date some time in about June, 1926; is that right? A. I wouldn't say; I don't know. I don't know when I withdrew. But as a matter of fact Mr. Groff paid me back the amount of money, which was \$1,600, for sixteen shares of stock. 10

Q. I am not asking you that, Judge. I want to know— A. Well, I don't know.

Q. You are positive it was before 1927, are you? A. I am not positive.

Q. Well, was it in 1926? A. I can't say. 20

Q. Well, you have an idea when you withdrew from the corporation, haven't you? A. I have an idea, yes.

Q. What is your idea of the date when you withdrew from the corporation? A. It was about a year or year and a half before this period you speak of now.

Q. Around about a year or a year and a half before, from 1928; is that right? A. I don't know; about a year or a year and a half before this time we are discussing. 30

Q. Which time are we discussing? A. Discussing some time around June, 1928, I believe.

Q. And you are absolutely positive about that fact; you had no connection with the company in that time A. I am absolutely positive I was not a stockholder. I don't know what you mean by that. I know I was out of it.

Q. Will you refer to this paper and just tell me 40

*Arthur Gorman Gallagher, for Defendant, Cross.*

whether that is your signature? A. That is my signature; yes, sir.

Q. Now will you look at the top of that letterhead and refer to the date? A. May 9, 1928.

10 Q. Now after looking at this signature and the date of this letter do you still say that you had no connection with the company around May of 1928?

A. My best recollection is that I did not.

Q. Are you still willing that that should be your answer? A. That is the best answer I can give.

20 Q. How do you account for the fact that on May 9, 1928, on the letterhead of Russell A. Groff, Inc., you directed a letter to the Goodyear Tire & Rubber Company at Philadelphia, and signed it "Arthur Gorman Gallagher, Treasurer?" A. Well, I must have still been treasurer. I was not a stockholder. I don't know anything about why I signed it. Let me see the letter again. I probably saw Mr. Groff typewrite it and he asked me to sign it and I signed it.

Q. You are a judge, aren't you? A. Yes.

Mr. McCarthy: Objected to.

30 Q. What is your employment? A. Well, I am a judge and he is a bill collector.

Q. You know you made the statement before that you may have been an officer of the corporation and not a stockholder. A. Yes.

Q. You know perfectly well under the corporation act of this state, in order to be an officer of a corporation you have to be the owner of at least one share of stock? A. I don't know anything about it.

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*Arthur Gorman Gallagher, for Defendant, Cross.*

Q. That is the truth, isn't it? A. I don't know.

Q. Is it the truth that you do or don't know?

A. I am telling you that I don't know.

The Court: You don't have to discuss that.  
A judge is not supposed to know the law, the  
lawyers tell them.

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Q. And you say you signed this letter without even reading it; is that so? A. I wouldn't say I signed it without reading it, no, I wouldn't say that.

Q. What would you say? A. What do you want to ask me?

Q. What would you say about you having signed this letter with or without reading it? A. It is possible that I signed it without reading it.  
Mr. Groff—

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By the Court:

Q. Well, Judge, if you signed your name as treasurer were you treasurer at that time? A. Well, I hadn't been removed, as far as I know. I may have been treasurer without being a stockholder. Whatever he told me to do or sign I did it to keep him going there, that is all.

30

By Mr. Goldstein:

Q. Now getting back to this conversation in May, 1928, you heard Mr. Loder testify that he had such a conversation with you and that you agreed that all future charges of merchandise to be used in the Groff store were to be made to you and shipped to the Groff Company; you heard him say that?  
A. Yes, I heard him say that.

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*Arthur Gorman Gallagher, for Defendant, Cross.*

Q. Did you have such a conversation with him in May? A. I did not.

Q. Did you have any conversation with him in May? A. I may have.

10 Q. You don't remember? A. I don't recognize this gentleman.

By the Court:

Q. Judge, when did you first learn that the Goodyear Company was charging these goods to you individually? A. Why, I didn't know anything about it.

20 Q. When did you first learn it? A. When I first learned it, there was a fellow came along and said to me, if I may use his exact words, that he said that a kike bill collector from Asbury Park was about to sue me; and I said, "Well, what is that for?" And he said, "You have been running a tire store here and they have billed a lot of goods to you and they are going to hold you to account for the goods. The Groff Company is in bad shape." That is the first that I ever heard that I was responsible personally.

Q. About when was that? A. That was just shortly before his——

30 Q. Suit was brought? A. No, I don't know when suit was brought. It was shortly before the bankruptcy of the Groff Company. It must have been last summer.

Q. Does it now appear to be after the goods were shipped? A. It was, oh, yes, according to his statements, as I understand them here.

By Mr. Goldstein:

40 Q. With whom did you have that conversation about a kike bill collector? A. A client of mine.

*Arthur Gorman Gallagher, for Defendant, Cross.*

Q. You remember that conversation very well, don't you? A. No, I don't; I just remember that particular part of it.

Q. You just remember the kike part of it? A. I thought it was offensive; it naturally stuck in my mind. I didn't think it was a very nice statement to make. 10

Q. You are not in a position to deny that any such conversation took place in May, are you? A. I am.

Q. You say you don't know that you even had such a conversation? A. I say that I had a conversation with someone.

Q. When? With whom? A. Some time in the spring, maybe April, May or June. I don't recall that this was the gentleman that I had a conversation with. I may have. I had a conversation with this gentleman or another gentleman representing the Goodyear Tire Company. I am positive that I didn't say that I would be responsible for any goods personally. 20

Q. Didn't you testify a few minutes ago that the last conversation you had about any transactions with the Goodyear Tire & Rubber Company was in February of 1928? A. Well, it may have been either March or February. Maybe it was February. 30

Q. It may have been February or March or April or May or June; is that your idea of it? A. No, it was before summer time.

Q. You knew you had a conversation in February, didn't you? A. I think I did.

Q. And are you able to say whether you had an additional conversation in May or are you just confused as to whether that conversation was in February or in May? Which was it? A. I had 40

*Arthur Gorman Gallagher, for Defendant, Cross.*

several conversations during that time when I would happen to be coming in there, either to see Mr. Groff or to get gasoline. When salesmen were around I would always ask them how business was.

10 Q. Then you were mistaken when you stated before that your last conversation was in February? A. No, I didn't say that my last conversation was in February.

Q. You said that before, didn't you? A. I am not mistaken.

Q. You were mistaken? A. I am not mistaken.

20 Q. Did you have your last conversation in February? Is that the way you want your record to stand? A. I say I had a conversation in February and I had several perhaps in March, April and May.

Q. With the representative of the Goodyear Rubber Company? A. That I can't say. I am quite sure I conversed with the Goodyear man in February and I may have conversed with him several times in every one of those months after, but I also know that I conversed with other salesmen.

30 Q. I am not interested in other salesmen, I am interested in trying to find out who you were talking with.

Mr. Goldstein: Stand up, Mr. Loder.

(Mr. Loder stands.)

Q. Would you say positively you have never seen this man? A. I would not.

Q. You would not? A. No, sir.

40 Q. How many companies were there at this place of business, doing business? A. Only one I know of was the Russell Groff Company, Incorporated.

*Arthur Gorman Gallagher, for Defendant, Cross.*

By the Court:

Q. Did the Goodyear Company ever cut off the credit of Groff? A. I think they did.

Q. Did you learn of that? A. No, I didn't learn of that. Now you mean at the time?

Q. Yes. A. No, sir; I did not. The Goodyear Company, as I recall their affairs with the Groff Company, were sort of trying to break in on the General Tire & Rubber Company, who had a successful business there, and they interlapped in on it, and that is the only recollection I have of the Goodyear people. 10

By Mr. Goldstein:

Q. You know that the credit was cut off, don't you, Judge? A. I don't know positively, but I think it was. 20

Q. You know that after a time merchandise was shipped only on a C.O.D. basis, don't you? A. No, I don't know that.

The Court: By the way, when did the transaction go on a C.O.D. basis, after this credit extended to Gallagher?

Mr. Goldstein: Yes, sir; after this amount had become due and was not paid. 30

The Court: And then how were the goods shipped?

Mr. Goldstein: C.O.D.

The Court: I mean to Groff?

Mr. Goldstein: No, Gallagher. All the bills, I think, were marked in evidence.

The Court: They continued to be shipped to Gallagher, did they?

Mr. Goldstein: Yes, everything, even on 40

*Herman H. Marota, Recalled, for Deft., Cross.*

the C.O.D. basis, continued to be shipped to Gallagher.

Q. What did you have to do with the signing of checks of the company? A. Of what company?

10 Q. Of the Russell A. Groff Company? A. I don't know. I think I was the treasurer and I had to sign them. I am not positive about that.

Q. And you continued to sign all checks, didn't you, up until the time that a receiver in chancery was appointed for the corporation? A. No, I hardly think so.

Q. Up until what time? A. I don't recall the last one I signed.

20 Q. As a matter of fact don't you know, Judge, that you signed numerous checks of the Russell A. Groff Company in payment of merchandise shipped by the Goodyear Tire & Rubber Company on a C.O.D. basis, after this two thousand and some odd dollars had become due and was in arrears? A. No, I don't know that.

The Court: And addressed to and the goods shipped to him?

Mr. Goldstein: In his name.

30 A. No, I don't know that.

Mr. Goldstein: That is all.

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HERMAN H. MAROTA, recalled.

*Further Cross examination by Mr. McCarthy.*

Q. The goods that were shipped C.O.D. were sent in Judge Gallagher's name, I understood?

A. Yes, sir.

40 Q. And I understand that the checks in payment

*Herman H. Marota, Recalled, for Deft., Cross.*

therefor were paid by the Russell Groff Corporation and countersigned by Arthur Gallagher as treasurer; is that correct? A. I couldn't swear to that, no. You see a lot of them, if you delve into it further, some of them were sent sight draft bill of lading, and we got a check from the Lakewood Trust Company or Peoples National Bank of Lakewood, got a bank draft from the bank. 10

Q. We have nothing to do with that side. Mr. Goldstein asked about Judge Gallagher signing checks after things were on a C.O.D. basis with the Groff Company. A. Did I have anything to do with it?

Q. Yes, did you prompt him to do it? A. No, I did not.

Q. Do you know as a matter of fact they were paid? A. I know they were paid, certainly. I don't know who paid them but they were paid. 20

Q. You don't know who paid them though? A. Well, I presume that Arthur J. Gallagher. They were shipped to him.

Q. Now those C.O.D. orders which were sent after these goods of \$2,085.09 had been sent, are there original bills for those? A. We don't have those, because we have the bills only for the open items, but I have brought some original orders here showing that the shipment went out C.O.D. to Arthur G. Gallagher. 30

Q. They don't show how they were paid? A. No.

Q. Nor by whom? A. No.

Q. Or when they were received? A. Well, received payment. We received when they received the merchandise.

Q. You assume that? A. Well, I wouldn't pay for anything I didn't receive. 40

*Herman H. Marota, Recalled, for Deft., Redirect.*

*Redirect examination by Mr. Goldstein.*

Q. This C.O.D. merchandise was shipped chiefly on a sight draft bill of lading basis, wasn't it? A. Yes, it shows on there.

10 Q. As a matter of fact all of them were shipped that way? A. I wouldn't say. Some small items might have been shipped parcel post, I couldn't say.

Q. But at any rate you shipped the goods in such a way that you got your money at or before the time the delivery was made? A. Yes.

By the Court:

20 Q. C.O.D., wasn't it? A. C.O.D., and we were sure of our money.

Mr. McCarthy: I am in this position now—

The Court: Where is Mr. Groff?

30 Mr. McCarthy: Mr. Groff, if you recall, I made an application before you at Toms River the opening day of the term, told you that Mr. Groff was in a critical condition and asked that we take his testimony *de bene esse* before the trial. We set a date before you and designated ex-Judge Newman, of Lakewood. We set a date, but the morning of that day I was engaged before Judge Cleary in the Hudson Circuit. I finished at noon yesterday and called his office and spoke to the girl and said that I would be late in getting there. I came there and when I got there there wasn't anybody there. Now I admit that it is true that I was about an hour and probably forty minutes late in getting there.

40 The Court: Well, I think you are entitled to

*Herman H. Marota, Recalled, for Deft., Redirect.*

have Groff's testimony in. I would like to hear what he has to say myself.

Mr. Goldstein: I want to place a most serious objection to that.

The Court: Why?

Mr. Goldstein: In the first place I consented to have this testimony taken without any formality whatever. I think your Honor will recall that on the slightest suggestion of Mr. McCarthy I consented. I had Mr. Loder down from Trenton that day at considerable expense and inconvenience. A stenographer was there, Mr. Newman was there and we sat around there for two hours, almost, waiting for Mr. McCarthy to come down. 10

The Court: What is Groff's physical condition now? 20

Mr. Goldstein: If your Honor will just permit me to finish. It puts us in a most awkward position to have Groff come into court now and testify after the whole case is in. He can take his testimony and twist it and turn it any which way.

The Court: Oh, no, he can't. I will allow any litigant to bring in any available witness at any time. Groff is one of the important witnesses here. 30

Mr. Goldstein: Why isn't he here?

The Court: I don't know. Why isn't he here now?

Mr. McCarthy: Because his physical condition would not merit it and would not merit it at the time. I knew that.

(After further argument.)

*David Goldstein, for Defendant, Direct.*

The Court: I am going to allow any testimony that is available. The case is continued until Saturday morning. Let Groff's testimony be taken in the meantime, or Groff produced; otherwise I will decide the case.

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Mr. McCarthy: I am renewing the application made at the close of the plaintiff's case for the direction of a verdict, because I cannot possibly be here personally next week.

Adjourned till April 26, 1930, at 10.00 A. M.

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Freehold, N. J., April 26, 1930.

Trial of the cause resumed at 10.00 A. M.

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DAVID GOLDSTEIN, sworn for defendant.

*Direct examination by Mr. Gallagher.*

Q. Mr. Goldstein, did you at one time represent the Miller Tire & Rubber Company against Russell A. Groff, Incorporated?

Mr. Goldstein: I object to the question on the ground that it is irrelevant.

30

The Court: What do you want to show, Judge?

Mr. Gallagher: I want to show by this witness that at the time covering the period of delivery of these goods he caused an attachment to be levied on a claim of the Miller Tire & Rubber Company against these goods which were delivered by the Goodyear Tire & Rubber Company, which were in the store and which were levied upon by this claim which he represented of the Miller Tire Company against Groff.

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*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

The Court: I will allow it. You may answer.

A. I don't know.

Q. You don't know whether you were attorney of record for the Miller Tire & Rubber Company?

A. I can't answer that, Judge, for the very simple reason that I handle about five thousand claims a year.

10

Q. Do you recall ever having had such a claim?

A. No, sir.

Q. Do you recall having put such claim in the hands of the sheriff of Ocean County for execution? A. I don't deny it but I don't recall it.

Q. You don't recall it? A. No, sir; neither do I admit it.

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Q. Do you recall any claim of the Miller Tire & Rubber Company? A. I do not, sir.

Mr. Gallagher: I rest.

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PLAINTIFF'S TESTIMONY IN REBUTTAL.

CHARLES L. HALLETT, sworn for plaintiff.

Mr. Goldstein: I think I ought to preface this witness' testimony with the remark that in the examination yesterday of Mr. Groff certain testimony was produced which makes it necessary for me to call this witness to contradict Mr. Groff's testimony, and which is in a way corroborative of what Mr. Loder testified to last week.

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Mr. Gallagher: I want to object to any testimony by this witness in contradiction of the testimony given yesterday regarding this wit-

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*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

ness and Mr. Groff, upon the ground that from the testimony taken yesterday it is shown that whatever conversation went on between this witness and Russell A. Groff was not binding upon the defendant.

10 The Court: I will determine whether that is so or not.

*Direct examination by Mr. Goldstein.*

Q. Mr. Hallett, are you in the employ of the Goodyear Tire & Rubber Company, the plaintiff in this action? A. Yes, sir.

Q. How long have you been in the employ there? A. Sixteen years.

20 Q. What are your duties? A. District credit manager.

Q. In connection with those duties will you state in a general way what you are required to do? A. Pass on credit to the various customers that we sell and supervise the collection of the accounts.

Q. Do you know a party by the name of Russell Groff? A. Yes, sir.

30 Q. I direct your attention to a statement made by Mr. Groff yesterday in an examination, at which time he stated in answer to a question which I asked of him as to whether or not you had any conversation with him during the month of about October, 1928, till January, 1929. Do you recall the questions and the answers which were put to Mr. Groff at that time? A. I think I do.

40 Mr. Gallagher: I want to object to him answering the question unless it appears that the defendant Gallagher was present at the time the conversation was had. That is an objection to the whole of the—

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

The Court: I will determine whether it is competent or not. It may involve an issue of fact in the nature of a contradiction of Groff.

Mr. Goldstein: I am not trying at this time, if your Honor please, to use any statement made by Mr. Groff out of the presence of Judge Gallagher to bind Judge Gallagher, but simply to contradict and discredit the testimony, and I believe you can do that. 10

The Court: I will allow it. You may have an exception, Judge Gallagher.

Mr. Gallagher: If it is just for the purpose of attacking his credibility I have no objection to it.

Mr. Goldstein: That is all it is. 20

Q. I direct your attention to the following questions asked Mr. Groff yesterday: "Q. Towards the latter part of 1928, fixing as the dates from about October, 1928, to January, 1929, didn't you have several conversations with Mr. Hallett and Mr. Loder regarding the Goodyear account?" And his answer was, "Yes." "Q. Isn't it a fact that at each of those conversations you told Mr. Hallett and Mr. Loder that Mr. Gallagher was supplying funds to the corporation for the purpose of enabling the corporation to pay you your salaries?" And his answer was, "No." Do you remember that last question and answer? A. Yes. 30

The Court: I think that would be competent anyway, because you were asked that question a week ago, as I recall, whether you had been financing Groff.

Mr. Gallagher: What application has it to this case? 40

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

The Court: It may not be dispositive of this particular issue. I will allow this question. The answer was yes, I understand?

Mr. Goldstein: I asked him if he remembered the question and he said yes.

10

Q. Now I want to ask you if you had such conversations with Mr. Groff, commencing with October, 1928, and up to around January 1, 1930. A. Yes.

Q. And was anyone present at that time? A. Mr. Loder.

Q. Where were these conversations? A. In the store.

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By the Court:

Q. At Lakewood A. At Lakewood, yes.

By Mr. Goldstein:

Q. 224 Main Street? A. I believe that is the number, yes.

Q. Now can you tell the Court how many conversations you had during that period? A. Well, I called during that period, I think I was up there at least twice.

30

Q. And was Mr. Loder with you on each occasion? A. Every occasion that I called.

Q. Now can you tell the Court as nearly as you can recollect what your first conversation was with Mr. Groff? A. Well, I went there to collect a bill that was long overdue, a bill against Gallagher or in the name of Gallagher. I didn't get any satisfaction from Mr. Groff as to paying.

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Q. Just tell us what was said, what you said and what he said. A. I asked Mr. Groff if he could

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

give me a check in settlement; he said he couldn't. I asked him if Judge Gallagher was about. He said he thought he was around locally, he didn't know just where. I asked him if he had spoken to Arthur Gallagher in regards to paying our account. He said that he had spoken to him regarding that, and that he told him he was going to take care of it. I then asked him where I could locate Arthur Gallagher. He didn't know. And I asked Mr. Loder if he hadn't better call Mr. Gallagher's house, which he did; but they didn't know where Mr. Gallagher was. I believe Mr. Loder or Mr. Groff, I am not certain which, suggested that we try over to the Democratic Headquarters. We went over there, didn't locate him. We also went to Judge Gallagher's office and they didn't know where he could be located. I went to your office also. We went there for the purpose of getting settlement of our account.

Mr. Gallagher: That is not the point. I object.

The Court: He has been asked about this conversation with Groff. I assume this is a continuation.

A. I sized up as nearly as I could the inventory of our merchandise, which I think amounted to \$800 or \$900. I don't think it amounted to a thousand, but it might. I estimated as near as I could by looking at the racks. I offered at that time, to get a settlement, as the account was long past due, I offered at that time to accept back merchandise, although that would not fully cover the bill. I offered to take that in settlement. Mr. Groff refused. He was not receptive to my suggestion,

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

and his reply was that he couldn't do anything in that respect until he saw Judge Gallagher.

Q. Now I direct your attention to the following question which was asked Mr. Groff yesterday: "Q. Do you recall in September or October of 1928 when Mr. Hallett and Mr. Loder called at your place of business and spoke to you about the Goodyear account that you suggested to these two gentlemen that they should go over to see Mr. Gallagher at the committee headquarters of the campaign which was being waged at that time?" And his answer was "I will say to the best of my knowledge, no." Do you remember that conversation? A. I remember the conversation; yes.

10

Q. What was the conversation with respect to that trip over to the campaign headquarters? A. That is the conversation I have just given.

20

Q. I direct your attention to the following question which was asked Mr. Groff: "Q. At the same visit don't you remember that these gentlemen or either one of them asked you if you had seen Judge Gallagher about the account of the Goodyear Company?" The answer was, "I don't remember." Do you remember that portion of the conversation? A. I remember the question, yes.

30

Q. And what have you to say with respect to Mr. Groff's answer? A. Mr. Groff's answer, he didn't remember.

Q. Was there any such conversation on the day in question about whether or not Mr. Groff had seen Judge Gallagher about the account of the Goodyear Company? A. I just stated he said he had seen him and he was going to take care of it.

The Court: That is already in the record.

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*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

Q. The following question was asked of Mr. Groff yesterday: "Q. Don't you remember that on that occasion Mr. Hallett asked you if you spoke to Judge Gallagher about paying this balance due to the Goodyear Company and you said that you had and Judge Gallagher had told you he would take care of the account? Do you remember that conversation? A. No. Q. Is it that you don't remember or that you deny it? A. I don't remember." Now directing your attention to that portion of the conversation, will you state to the Court what conversation if any was had with respect to the questions and answers just recited? 10

The Court: Well, hasn't he already given an answer to that? 20

By the Court:

Q. You gave the complete conversation already on the record? A. Yes.

By Mr. Goldstein:

Q. Was that all the conversation, Mr. Hallett?

A. That was all on that one visit.

Q. And then you saw him again subsequent to that? A. I saw him, I am pretty sure it was two or three times, I saw him twice anyhow, I know. 30

Q. Are you able to recall at this time what the conversation was on any one of the subsequent occasions? A. Simply asking him and requesting him to settle his account, and getting a promise that it would be taken care of shortly, but on this particular one I came up with blood in my eyes to collect, see? 40

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

The Court: Have you any written obligation on the part of the defendant?

Mr. Goldstein: I am going to come to that.

10 Q. Who assumed responsibility for this indebtedness, Mr. Hallett, in your office, any written undertaking on the part of the defendant? A. Such as a guaranty?

Q. Yes. A. We have no guaranty that I know of. You mean a guaranty for the Russell Groff account?

Q. Yes. A. We have no guaranty.

20 Q. How did you come to charge it directly to Gallagher? A. Well, our salesman asked about opening the account—I will tell you the story in this way. First we did business with Russell Groff. I opened an account in a small way and then they wanted a larger bill, which I recollect Judge Gallagher by letter said he would stand for. I think that amounted to around \$700 or \$800. I let them have that on the strength of Judge Gallagher merely, on his being judge, the endorser.

30 Q. And was that paid? A. That was paid, yes. And then I figured, well, I guess we can take a chance on an account for a small line of credit, which I gave.

40 Q. To Groff? A. Yes, to Groff. And they gradually built in that credit until it got up to a little higher point, and slowness developed, and that slowness began to become very acute and had all the earmarks of a dangerous risk and I was very glad—had all the earmarks of a dangerous risk and I got to the point where I simply didn't dare to go further on the credit, so I closed the account. In other words, I opened the Russell Groff account and I closed the Russell Groff ac-

*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

count from a credit point of view; and when that account was closed we finally got our money, there was nothing owing by Russell Groff to us or Goodyear was under no obligation to Groff. Now the next step was this. Groff, of course, began handling Goodyear tires and Mr. Loder—I notified Mr. Loder that he had better look around for a better account, an account that could pay their bills. I think it was about a month later—a short time later, I don't think it was over a month—he says, "Well, Judge Gallagher wants our proposition and he wants it 100%." "Well," I says, "all right. I think that the man being judge, his integrity should not be questioned. I see no reason why I should not grant him a line of credit." He says, "He is going to take Russell Groff in to manage for him." I says, "Well, in that case I will insist on a contract. You get a new contract signed by Gallagher;" and on the strength of his being judge, and I had a little more information that they showed he had a little piece of land, \$4,000 or \$5,000. I says, "I will grant him a line of credit and see how it works out." So I did. The transaction took place and bills were paid.

By the Court:

Q. Did you open an account in his name then?

A. I opened an account in his name.

Q. And those bills were paid? A. And those bills were paid, sir, until it developed the slowness and it developed the present amount of this claim.

Q. His indebtedness? A. Yes; and we had a contract. The contract came through signed by him. The contract was signed "Arthur G. Gal-

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*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

lagher Company, Arthur G. Gallagher.” What did he put on there——

By Mr. Goldstein:

10 Q. Treasurer? A. “Treasurer,” which is not unusual; because I figured that it was either an incorporated thing in effect or he was going to use “Arthur G. Gallagher” as a trade style or name.

By the Court:

Q. The contract was really in the name of the so-called corporation or company? A. It was “Arthur G. Gallagher Company, Arthur Gorman Gallagher.”

20 Q. You said “Treasurer,” didn’t you? A. Yes.

Q. Were these goods all shipped, sold, under that contract? A. Yes, sir. Now to substantiate the fact that Russell Groff was manager for him, we have correspondence——

Q. Well, that was gone into last week. They produced most of it. It is already in the record. You needn’t put that in again.

30 Mr. Goldstein: We want to use these matters, if your Honor please. They have an important bearing on the case.

Q. Well, of course, you never had anything from Gallagher as an individual; you did have that contract from the company, didn’t you, and on the strength of that you extended the credit and shipped the goods A. We shipped the goods.

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*Charles L. Hallett, for Pltff. in Rebuttal, Direct.*

By Mr. Goldstein:

Q. I direct your attention to the following question which was asked Mr. Groff yesterday: "There was a company by the name of A. G. Gallagher Company? A. I know of no such company? A. And you are still positive in your statement that you conducted all the correspondence or it was under your supervision? A. Yes. 10

Q. If I tell you that in May of 1928 the Russell A. Groff Company sent a letter to the Good-year Company directing merchandise to be sent to the A. G. Gallagher Company will you still state that there was no such company?" Do you remember that line of questions and answers? A. I remember that conversation, yes. 20

Q. Now I direct your attention to a piece of paper and ask you if you know whose signature that is. A. Russell Groff's signature. 20

Q. Do you know that to be Mr. Groff's signature? A. As near as I can remember it, yes, Russell A. Groff.

Q. And did you receive this letter? (Another letter shown witness.) A. That is the same signature, Russell A. Groff.

Q. Will you look at the other two? A. This says "Kindly address to A. G. Gallagher Company." (Another letter shown witness.) This is Russell A. Groff's signature, the same manager. 30

Mr. Goldstein: I would like to have these marked in evidence.

(Letters marked Exhibits P-3, P-4, P-5 and P-6.)

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

*Cross examination by Mr. Gallagher.*

Q. Mr. Hallett, when was the first time that you ever saw this defendant Gallagher? A. Gallagher? I never saw Gallagher except till yesterday.

10 Q. Then on none of your trips to Lakewood in reference to the collection or extension of credit did you have any conversation with Gallagher? A. Never with Gallagher.

Q. Now the first time that you went to Lakewood, as I understand, in reference to this bill and had a conversation with Mr. Groff and your Mr. Loder was in October, 1928, about October, 1928; am I correct? A. Yes, it was during—I am certain of that because it was the time the campaign was on for president.

20

Q. And your visit at that time was in reference to goods that had been shipped previously; is that not so? A. Correct.

Q. And that is the first time that you, with Mr. Loder, had any conversation with Groff in relation to Gallagher? A. No, I wouldn't say that.

Q. I said with Loder and with Groff. A. I know. I believe I dropped in there once on a collection before that.

30 Q. All right. Now you said it was October before. Now when was it that you first went to Lakewood then? A. When I first went to Lakewood?

Q. About this account of theirs with Groff and about Gallagher going to pay for it? A. I made two or three calls previous to that.

Q. When were they? A. They were during 1928.

Q. What time in 1928? A. I believe it was about May.

40 Q. You want to change now that the first time

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

was not October? A. No, I don't want to change. My testimony was on that final call. That was the last call I made in, I guess it was October. It was when the campaign was on, and I tried to look you up. But I had dropped in on previous occasions and simply asked for money, which I didn't get. 10

Q. Now you said in your testimony that you went there with this bill against Gallagher at Groff's store to collect at that time? A. Yes.

Q. And you said to Groff that you would like to have him give you a check? A. Yes.

Q. For that account? A. I would like to have that account paid.

Q. Why did you ask Groff for a check? A. Why did I ask Groff for a check? 20

Q. Yes. A. Because I assumed he was managing the business for you and he was the only person in the place of business where our merchandise appeared that I could possibly talk to to collect it.

Q. You said your goods were there? A. Our goods were there.

Q. The conversation that you had in relation to Groff paying for it was based on the assumption—— 30

Mr. Goldstein: Objected to.

The Court: He has already admitted it. He says his goods were there, he assumed that Groff was the manager for Gallagher.

Q. Now you say that you called my house, Gallagher's house? A. I had Mr. Loder phone your house.

Q. And do you recall what phone number he 40

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

used when he called my house? A. No, I don't. He looked the phone number.

Q. He looked the phone book up and got the number; he called a number? A. Yes.

Q. I want to know what phone number he called.

10 By the Court:

Q. Do you know what number he called? A. No, I don't know.

By Mr. Gallagher:

Q. Do you know whether he called Gallagher's house or not? A. I heard him go to the phone and ask for a call.

20 Q. Do you know as a matter of fact whether he got Gallagher's house or not? A. I don't know.

The Court: He does not.

Q. Do you know where he got that phone number from? A. I suppose he got it from the book, I don't know. That would be an assumption.

30 Q. Where was the club or the headquarters that you went to? A. I don't know Lakewood very well. I think it was on a street about parallel to the other, about a block or two, about something like that.

Q. And was Groff with you on those trips? A. No, sir; he was not. Mr. Loder and I went together.

Q. Where did you call for my office in Lakewood? You were there at that time; you say you called at my office. A. I think it was on the same street, up a little ways. It was not far, it was right across.

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

Q. And whom did you speak to there? A. I didn't speak to anybody there myself. Mr. Loder asked for you.

Q. You were there at the time he asked for me?  
A. I was with Mr. Loder, yes.

Q. Do you recall whom he asked there for me?  
Was it a lady or gentleman? A. I don't recall. 10

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

Q. And this was in 1928? A. During the campaign.

Q. Now if I should tell you that I had no office in Lakewood in 1928 would you be surprised? A. I wouldn't be surprised. It was supposed to be your office.

Q. You assumed it to be my office? A. I went with the supposition he knew where your office was. 20

Q. Now you spoke about a contract that you had and an account which you opened originally. Now can you tell me when you first opened the account under that contract, so-called? A. The contract, I believe, was in June. We have it as June.

The Court: At any rate after the date of the contract.

Q. What year? 30

By the Court:

Q. In any event it was after you received the contract? A. Yes.

Q. Signed A. G. Gallagher Company?

By Mr. Gallagher:

Q. In June, 1928? A. Yes.

Q. Now when you speak of a contract is this 40

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

what you refer to as the contract? (Paper shown witness.) A. Yes, sir.

Q. Now is that what is physically called a contract or what? A. It is headed "Service station agreement to do business."

10 Q. Does it in any of its terms provide for the payment of obligations or credit? Is credit referred to in any way in that franchise or contract? A. "Upon failure of the dealer to make any payments as herein provided on 2%, 10, proximate terms, upon failure of the dealer to make any payments as hereinbefore provided, the Goodyear Company may at its option cancel this agreement or defer additional shipments thereon until overdue accounts have been paid."

20 The Court: That is the provision. •

Q. Now who is the dealer on that contract? A. Arthur G. Gallagher, Arthur G. Gallagher Company.

Q. Pardon me. Let me see this just a moment. Who is that franchise accepted by?

Mr. Goldstein: Read it just as it is.

30 A. E. G. Shick, Philadelphia, Pa., signed by the vice-president, stamped by the vice-president of our company and accepted on the left as "A. G. Gallagher Company, by Arthur G. Gallagher, treasurer."

Q. Then it is not accepted by A. G. Gallagher, treasurer, is it? A. I say it is. If no such company existed or such a signature was made with a non-existent company, the Court will have to account for that.

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

Q. You said in your direct testimony that you had made an offer to Groff to take back all the goods that he had on hand in settlement of the bill? A. Of our merchandise.

Q. Of your merchandise, that is what I am referring to. A. Yes.

Q. Why did you make him that offer? A. Because I couldn't make contact with him. I supposed that he was manager of the business. We had received letters signed Arthur G. Gallagher Company, he as manager. I supposed he had the running of the business and I could talk with him.

10

Q. That was your assumption of the situation, was it not? You assumed that to be so? A. Will you define assumption? That was my belief.

Q. That was what you believed from the letters you had received signed by Groff? A. I believed that he had authority from you to act.

20

Q. You had no proof of that, though, at the time, had you? You had no contract by Gallagher in your company files, did you? A. I had that contract.

Q. And this contract which you refer to now and that is accepted by— A. A. G. Gallagher company, A. G. Gallagher, treasurer.

Q. Now have you any contract or guaranty in the files of your company wherein A. G. Gallagher individually as holder of a franchise or the obligor on a guaranty on a contract to sell and deliver? A. We have the letters which the Court will determine.

30

(Question repeated.)

A. No guaranty other than that contract referred to and marked Exhibit B for Identification.

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

10 Mr. Gallagher: Now if your Honor please, I move to strike out all the testimony that this witness has given with relation to conversations had with Russell Groff or with this defendant or with both, on the ground that they are not binding upon this defendant, and the defendant was not present; that no agency has been shown by the plaintiff to hold responsible the defendant in this case through any statement, writings or offers that Russell A. Groff individually or corporate has made.

The Court: The Court will reserve a ruling on the present motion. I shall take the matter in consideration.

20 Mr. Gallagher: And further, that the only relationship that is shown between the plaintiff and the defendant is some company or corporation or limited partnership or trade name by the name of A. G. Gallagher Company, to which there has been no relationship attached to this defendant as an individual.

Mr. Goldstein: Does your Honor want to hear me on that now?

The Court: No, not now.

30 Q. You say that you opened an account with Russell A. Groff originally? A. Yes, sir; Russell A. Groff Company.

Q. And you closed the account? A. Closed the account.

Q. Do you remember when you opened an account with Russell A. Groff Company? A. Sometime in 1927.

40 Q. And do you remember when you closed the account? A. The early part of 1928.

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

Q. And when did you fix the liability of this defendant, according to your books, for the goods that you sold or delivered to 224 Main Street, Lakewood? A. You mean your liability?

Q. The defendant's liability. A. The defendant's liability, from the time the bill came due.

10

Q. And not from the time the goods were delivered? A. Well, we don't usually collect accounts before they are due. That is about the only way I can answer that.

Q. Now you say that this franchise agreement by A. G. Gallagher Company, dealer, was accepted by you on June 11, 1928? A. The day it is specified.

(Paper shown witness.)

20

A. June 11, 1928.

Q. Now you further said that from that date forward the debtor was Arthur G. Gallagher, an individual? A. I assumed that that was the responsible party that I was doing business with and that party is the party that I granted the credit to.

Q. That is what you assumed? Now you are familiar with the bills that are forwarded by your concern to purchasers? A. Yes. I don't handle them personally but I am familiar with them.

30

Q. Now in relation to the bill of goods sued upon in this case, I want you to look at the items forming a part of the complaint, and I particularly call your attention to the addressee or consignee of the goods and ask you in each case and according to the statement, to whom the goods

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

were consigned and charged. A. What do you want me to do, enumerate these bills?

Q. Yes.

The Court: And give him the dates.

10 Q. Give me the dates. A. June 1, 1928, Arthur J. Gallagher, Ocean Avenue, Lakewood.

June 6, 1928, Arthur G. Gallagher Company.

Q. Now give the address on that. A. 249 Main Street.

Q. What was the address on the other? A. Ocean Avenue, Lakewood.

June 6, 1928, Arthur Gallagher, Lakewood, N. J.

20 May 29, 1928, R. Groff & Co., Inc., 244 Main Street, Lakewood, N. J. I don't know what the bills are you hand me.

The Court: The schedule here in your complaint. I am following you. Go ahead.

A. June 19, Arthur G. Gallagher, A. G. Gallagher, Lakewood, N. J.

June 22, Arthur G. Gallagher, A. G. Gallagher, Lakewood, N. J.

30 June 25, 1928, A. G. Gallagher Company, 244 Main Street, Lakewood, N. J.

June 29, 1928, Russell A. Groff Company, Inc., Lakewood, N. J.

July 2, 1928, Arthur G. Gallagher, Lakewood, N. J.

July 6, 1928, Arthur Gallagher, Lakewood, N. J.

June 29, 1928, A. J. Gallagher, Lakewood, N. J.

40 July 9, 1928, Arthur G. Gallagher, Lakewood, N. J.

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

July 13, 1928, A. C. Gallagher, Lakewood, N. J.

July 17, 1928, A. J. Gallagher, Lakewood, N. J.

July 20, 1928, Arthur J. Gallagher, Lakewood, N. J.

July 18, 1928, A. G. Gallagher Company, 244 Main Street, Lakewood, N. J.

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July 20, 1928, Arthur J. Gallagher, Lakewood, N. J.

July 25, 1928, Arthur G. Gallagher, Lakewood, N. J.

August 1, 1928, A. G. Gallagher Company, 244 Main Street, Lakewood, N. J.

August 14, 1928, Arthur Gallagher, Lakewood, N. J. That is all.

Q. Now, Mr. Hallett, to whom would you say, from the duplicates of your account in your office and files, that you are familiar with, to whose account would you say the goods represented in these bills, reading your bills, had been delivered?

20

A. I believe they were all received at the same place of business.

Q. And where is that place that you refer to by the same place of business? A. Well, I think it is 244, I am not sure of the number, but it is where the store is.

Q. 244 Main Street? A. I presume that is the number.

30

Q. On any of the visits that you made at 244 Main Street did you take any notice of the markings on the store, the outside of the building? A. Not particularly.

Q. Do you recall whether you ever saw that name Arthur G. Gallagher on that store? A. I don't recall whether I saw your name, no.

Q. Do you recall whether you saw Russell A. Groff's name across the door? A. I did, yes.

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

Q. Do you recall having seen anything other than Russell A. Groff? A. I won't say whether it is Russell A. Groff or Russell A. Groff Company. It was Groff all the time.

10 Q. It was Groff all the time that you recall? A. Well, I think it was Groff up at the top and goes down the side.

Q. To the best of your recollection the name Gallagher never appeared on that building when you were there? A. I didn't see that.

Q. Now you are familiar with this account, are you not? A. Yes.

20 Q. You recall that during the progress of this account some goods were shipped C. O. D., don't you? A. When the credit became congested we shipped C. O. D.

Q. And are you familiar enough with the account to know who paid the account? A. I wouldn't see that transaction.

30 Q. Now when the goods were shipped either C. O. D. or f.o.b. Lakewood or on credit, the goods were always receipted for in the usual course of business, were they not? A. Well, C. O. D. shipments. The check would be credited. I wouldn't come in contact because the money would be received by our office.

Q. You would only have relationship with the credits, wouldn't you? A. That is all.

Q. On the question of the account and credits that were extended and the goods were shipped and credited, are you familiar with that part of the account personally? A. I opened and closed, both ends.

40 Q. Now during all that time do you ever recall having received anything personally from Arthur G. Gallagher in the way of a payment or a check?

*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

A. Those would go through the office. They would not go through my hands.

By the Court:

Q. You have no personal knowledge? A. No, sir.

10

By Mr. Gallagher:

Q. Now can you tell me when you closed the Groff account, as you say you did? A. The Groff account was closed very early in 1928, as close as I remember.

Q. And you recall that this service agreement was entered into on June 11th? A. Yes, sir.

Q. That is a fact? A. Yes, sir.

20

Q. And I now show you, as I have already shown you, these statements forming a part of the complaint. You recall having seen those and you are familiar with the dates of them? A. Those are the dates I have read to you.

Q. Now according to this service agreement the responsibility of A. G. Gallagher Company only began on June 11th, did it not? A. According to that.

Q. Well, is that not so? Did your company not take it that way, that the agreement was on June 11th, began that day?

30

Mr. Goldstein: Now if your Honor please, I am going to object to this question unless the witness knows.

Mr. Gallagher: I don't want him to say anything he doesn't know anything about. I am showing him the agreement.

The Court: He will protect himself about that. If he doesn't know he will say so.

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*Charles L. Hallett, for Pltff. in Rebuttal, Cross.*

A. I will explain the opening of the account this way. Sometimes we will take on a small order, a chance order, you know.

By the Court:

- 10 Q. A chance order to see how it works out? A. A chance order to see how it works out. But that is a thing that lets in good will in opening our accounts. Then we go back to our salesman and insist that he get this contract in, which he is supposed to do just as soon as he possibly can, and I think this may have happened in that case, where I probably did let a few orders go out to be covered upon the assumption that this contract should
- 20 come in.

By the Court:

Q. In other words, on the statement of your salesman? A. Yes, on his credit.

By Mr. Gallagher:

- Q. And so that is the only basis you have for any charge against A. G. Gallagher Company or Arthur G. Gallagher, is the statement of your
- 30 salesman previous to this? A. Previous to that date.

Q. Previous to that date, June 11th? A. Yes.

- Q. And so far as Arthur G. Gallagher personally is concerned, from that day the only thing that you have in the way of guaranty or obligation of Arthur G. Gallagher personally is this service agreement dated June 11th, accepted by A. G. Gallagher Company? A. Under which we supposed you were responsible.

- 40 Q. So that in any event these items which are

*Chas. L. Hallett, for Pltff. in Rebuttal, Redirect.*

in this complaint and appear to have been sold previous to June 11th, there is no responsibility for on the part of A. G. Gallagher Company by a contract or Arthur G. Gallagher personally? A. Not by contract, no.

Q. Well, now is there any other—have you any other form of obligation covering these transactions previous to June 11th as to Arthur G. Gallagher Company or Arthur G. Gallagher? A. Any other form of obligation? 10

Q. Yes, you say not by contract.

The Court: Anything in writing, he means.

Q. Have you anything in writing? 20

The Court: Letter form or a contract?

Q. Or a personal obligation on the part of Arthur G. Gallagher? A. Not that I recall.

Q. Then you have nothing at all in writing? A. Not that I recall, unless I have the salesman's written request on the regular form which we use, and that didn't go through.

The Court: Anything signed by Gallagher is what he means. 30

A. Nothing signed by Gallagher, no.

Q. I mean anything signed by Gallagher individually. A. No, sir.

*Redirect examination by Mr. Goldstein.*

Q. How do you account for the fact, Mr. Hallett, that these statements attached to the complaint are made out in a variety of names? A. 40

*Chas. L. Hallett, for Pltff. in Rebuttal, Redirect.*

That is a matter of detail. It may be some clerical error. The only way I can do is to ask Mr. Marotto his version, because he handles all the details of the case.

By the Court:

10 Q. You know as a matter of fact the only one of these bills that appears to be in the name of A. G. Gallagher Company is under the date of August 1st; is that right?

By Mr. Goldstein:

Q. And I understand you to say that the credit was extended to Mr. Gallagher personally; is that right? A. It was on the strength—

20 Q. Now just answer the question. A. Yes, sir.

Q. Will you explain to the Court how it is that in spite of this so-called written agreement which bears the name of what would apparently be a corporation, you still carried the account in A. G. Gallagher's personal name, if you can explain it? A. I extended the credit on the strength of Arthur G. Gallagher personally, because I thought that was all there was to this proposition, that he was either the incorporator of the A. G. Gallagher Company or he was to use it as a trade style.

30

By the Court:

Q. In other words, you assumed that he was either going to incorporate or use that name as trade? A. That is it exactly.

Mr. Goldstein: That is all. At this time I want to have this marked in evidence (referring to agreement).

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(Agreement marked Exhibit P-7.)

*Herman H. Marota, Recalled, for Pltff., Direct.*

I should like to offer in evidence at this time a certificate from the Secretary of State in so far as the corporate existence or non-existence of A. G. Gallagher Company is concerned.

The Court: It may be marked.

10

(Paper marked Exhibit P-8.)

The Court: In other words, the Secretary of State certifies there is no corporation?

Mr. Goldstein: Is not and never has been a corporation of the State of New Jersey under the name of A. G. Gallagher Company.

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HERMAN H. MAROTA, recalled for plaintiff.

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*Direct examination by Mr. Goldstein.*

Q. You heard the testimony, didn't you, Mr. Marota, which has just been given in connection with the statements or invoices attached to the bill of complaint and which bore a variety of names of the debtor? Are you able to tell the court how it comes about that there is such a variety of names? A. Yes, I think I can give an explanation. When an account is not incorporated on our books——

30

Mr. Gallagher: I don't want what he thinks, I want what he knows.

By the Court:

Q. Do you know how it happened? A. Yes.

Q. All right. Go ahead. A. When we open an account that is not incorporated on our books we

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*Herman H. Marota, Recalled, for Pltff., Direct.*

10 always include the name of the proprietor. In the case of Arthur G. Gallagher Company, which was not incorporated, we inserted Arthur G. Gallagher's name at the top as being proprietor of the Arthur G. Gallagher Company, which was not incorporated. I can't account for the different addresses.

By Mr. Goldstein:

Q. Have you anything to do with that? A. No. We carried the account as 244 Main Street, Lakewood, New Jersey, on our books. As for Arthur J. and Arthur G. and Arthur Gallagher, they are purely typographical errors.

20 Q. You mean as far as what part of the names are concerned? A. The differentials there in the initials.

Q. Which initials? A. Well, some are Arthur G. Gallagher in there, some Arthur J. Gallagher, and some are Arthur Gallagher.

Q. Have you the account in your book here? A. Yes.

Q. Will you permit me to have that?

(Witness produces paper.)

30 Q. Is this the account which you kept of this particular transaction? A. Yes, sir; it is.

Mr. Goldstein: I offer the account in evidence.

(Account marked Exhibit P-9.)

The Court: In whose name is it?

Mr. Goldstein: Arthur G. Gallagher Co.

Mr. Gallagher: I would like to know some-

40

*Herman H. Marota, Recalled, for Pltff., Direct.*

thing about this account. It is a self-serving declaration anyhow.

The Court: No, it is proof of how the account was entered.

Mr. Goldstein: I am coming to that, because there is something very apparent on the face of it. 10

Q. Who added the words "G." and "Co."? It is apparent that the capital "G." was inserted in pencil and the abbreviation "Co." added. A. Originally it was Arthur J. in the original typewriter, and then they corrected it in pencil and added "Co." and the address, 244 Main Street, was added also.

Q. Do you know when the "Co." was added? 20  
A. I do not, no way I could tell.

Q. Do you know how the account was originally opened? A. Well, according to that as Arthur J. Gallagher, originally, and then when the contract came in I have no doubt that they adopted it and that they changed it at that time.

Mr. Gallagher: You don't know. Only testify what you know.

A. I previously testified that I had no way of 30  
telling.

Mr. Goldstein: I offer this in evidence.

Mr. Gallagher: I object to the offer of it.

The Court: I am going to allow it to go in.

(Paper marked Exhibit P-10.)

*Herman H. Marota, Recalled, for Pltff., Cross.*

*Cross examination by Mr. Gallagher.*

Q. Now you say this is a statement of the account of whom? A. Arthur G. Gallagher Company.

10 Q. And did you make that statement up? A. Not personally.

Q. Do you know who did? A. Well, there is several people in our office.

Q. I say do you know who did? A. No, I don't.

Q. Did you supervise the making of it? A. I can't say that I did at that time.

Mr. Gallagher: I object to the introduction of this, if your Honor please.

The Court: I am going to allow it.

20 Q. What does that show the charge is against? A. According to this, Arthur G. Gallagher Company.

Q. That is correct, is it, as far as you know? A. Yes.

Mr. Gallagher: All right. Let it go in. No objection to it.

30 Q. You say that all these charges were made as they were made because you were under the impression or understood, rather, that this was a corporation; is that so? A. I didn't testify to such.

Q. What did you say? A. I said that when the account is not a corporation we always show the name of the proprietor on the invoice.

40 The Court: Well, what he did say was this: that the credit was to be extended to Arthur G. Gallagher, but when the contract came in

*Herman H. Marota, Recalled, for Pltff., Cross.*

the bookkeeper found on comparing it that the contract was Arthur G. Gallagher Company, and that is the way he explains the name on the account.

Q. Did you not say on your direct examination that you knew it was not a corporation at the time the account was opened? A. I didn't say I knew it was not. 10

Q. You didn't say that? A. No.

Q. I will abide by what the testimony shows. Now this shows it was started in April, 1928? A. Yes.

Q. Now you are familiar with the books and statements, are you not A. I am, yes.

Q. I show you this forming a part of the complaint, "Russell A. Groff Company, Incorporated," and ask you if that amount of money appears on this statement. A. There is no way I can tell that, Mr. Gallagher, for the simple reason that this only includes the total amounts for each month. 20

Q. Does that statement include the total amount claimed which you are suing under? A. It shows the totals of each month.

Q. And is that total the same as the total in your complaint? A. With checks and credits that are added, yes. 30

Q. Now then part of that, there is also a statement of charging Russell A. Groff Company, Incorporated? A. It was, yes.

Q. Forms a part of your complaint? A. Yes.

Q. And part of your total on this statement? A. Yes, I can explain.

Q. I didn't ask you to explain. 40

*Herman H. Marota, Recalled, for Pltff., Redirect.  
Recross.*

*Redirect examination by Mr. Goldstein.*

10 Q. Now can you explain how it happens that those invoices were headed in the name of Russell A. Groff? A. Yes, that particular invoice that Judge Gallagher just presented for me covered advertising material which was ordered by Russell A. Groff at the time he was running the business, and I say we ordered this material from Akron, Ohio.

Q. And what happened after that? A. And they represent campaigns which covered a period of a year sometimes.

20 By the Court:

Q. So you charged them, eh? A. When the charges go through they are automatically entered upon the book account.

30 Q. How do you explain that circumstance? A. I explain it in the manner that it was a prior transaction which was ordered by Russell A. Groff prior to the—the only way I can explain it is that it was a transaction ordered by Groff prior to the opening of the Gallagher account in his name, and the Gallagher account being a successor to the Groff account, was entered upon the Gallagher ledgers. Now that is my assumption.

*Recross examination by Mr. Gallagher.*

Q. Without any notice to Gallagher or to the Gallagher Company? A. I can't say that there was any notice.

40 Q. In other words, this particular item represents an obligation of Russell Groff, Incorporated,

*James A. Loder, Recalled, for Plaintiff, Direct.*

which occurred sometime previous to the closing of the Groff account, and the alleged opening of the Gallagher Company account, as shown by your ledger, for which the Gallagher Company never contracted, and yet it is charged against them in the Gallagher Company account and in the complaint upon which you are suing. A. Understand, I assume that. 10

Q. Is that not so? A. I assume that.

Q. Do you know? A. I do not.

Q. Don't know.

Mr. Goldstein: May I refer to the complaint, if your Honor please? This case has taken much longer than I expected, but we will try to dispose of it as soon as possible. 20

Mr. Gallagher: Am I still on cross examination?

Mr. Goldstein: Yes, you can still cross examine him. I have no objection.

Mr. Gallagher: That is all.

Mr. Goldstein: Yes, that is all.

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JAMES A. LODER, recalled for plaintiff.

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*Direct examination by Mr. Goldstein.*

Q. Now it has been testified to by Mr. Marota that the invoice of June 29, 1928, headed by the name of Russell A. Groff Co., Inc., was for advertising. Do you know whether that is so? A. That is so.

Q. And are you able to tell the Court what kind of advertising that was? A. It was advertising Goodyear tires under the name of the Russell A. 40

*James A. Loder, Recalled, for Plaintiff, Direct.*

Groff Company, but the advertising was ordered through that way, because that is the name that appeared over the tire store.

By the Court:

10 Q. Ordered a year before, say, and not delivered? When was it delivered? A. It was delivered in June, wasn't it? I remember taking the order.

By Mr. Goldstein:

Q. Did you take the order? A. I took the order.

Q. From whom did you take it? A. Took it from Mr. Groff.

20 Q. Was anything said by Judge Gallagher at any time as to who was to pay for that order? A. Yes, I showed Judge Gallagher, recommended the advertising proposition.

Q. Was that after the date when you said that Judge Gallagher said that all merchandise was to be charged to his account? A. It was the same time.

Q. That was in April, 1928? A. Yes, sir.

30 Q. And at that time you had a conversation about this bill? A. About that, first about the order. The order was not given to me at that time.

Q. And you showed him the general advertising layout? A. Yes.

Q. And he ordered at that time? A. No, he said, "We will check this list."

40 Q. And you say that the only reason that that was made out to Russell A. Groff is because the advertising is made out that way? A. The advertising is made out that way. That is the way the business was done.

*James A. Loder, Recalled, for Plaintiff, Cross.*

*Cross examination by Mr. Gallagher.*

Q. Now let me understand. When was this order given for the advertising? A. The actual order for the advertising was given to me at the hotel in Forked River, the Greyhound Inn, the advertising order.

10

Q. Who gave you that? A. Russell Groff.

Q. What date was that? A. It was probably three weeks after I talked with you.

Q. And you say that I had a conversation with you in the Forked River hotel? A. No, you didn't, Groff did.

Mr. Goldstein: But he says it was three weeks after the conversation with you.

The Witness: He simply gave me a list of names.

20

Q. The Russell Groff Company was incorporated at that time, was it not? A. No, not that I know of.

Q. Now I want to get this thing straightened out about this contract for advertising. You keep your mind on that and I will keep mine on the same thing. When was this contract entered into for this advertising? A. The same day that you told me that you would assume the obligations for the tires.

30

Q. I asked you what date it was. A. In April.

Q. In April, when? A. Of 1928.

Q. 1928? A. Yes, sir.

Q. And the delivery was made in June? A. June; yes, sir.

Q. Now where was that contract made? A. In the store at 244 Main Street.

40

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

Q. Now you made reference to the Greyhound Inn in reference to this contract. What had that to do with it? A. Goodyear had a dinner for their dealers at the Greyhound Inn and Mr. Groff was there, and brought down his mailing list to be used in this mail campaign.

10 Q. Mr. Groff brought it to you? A. Yes, he brought it. You told him to go ahead.

Q. I told him to go ahead? When and where did I tell him to go ahead? A. In the store, probably two or three weeks previous. I don't remember that.

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20 ARTHUR GORMAN GALLAGHER, recalled for defendant.

The Witness: Testimony has been given—

Mr. Goldstein: I would prefer, Judge, that you should ask yourself questions and give the answer.

The Witness: I am going to ask questions.

30 Testimony has been given, Mr. Gallagher, to the effect that you contracted for advertising with the Goodyear Tire & Rubber Company, which was evidenced by a bill dated June 29, 1928, for the sum of \$55.56. I now ask you if you ever had a conversation relative to advertising for the Goodyear Tire & Rubber Company or entered into any contract with them for that purpose?

A. No.

40 Q. Mr. Loder, the witness on before you, has stated that he entered into this obligation in his presence and in the presence of Mr. Groff at a time

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

which he says is the time that you guaranteed to pay the account of Russell A. Groff Company. Now first did you ever offer to guarantee the account to Mr. Loder or anyone else of the Russell A. Groff Company?

Mr. Goldstein: I object to that question on the ground that there has been no testimony before the Court as to a guarantee, and upon the further ground that we are not suing upon the theory of a guarantee. 10

Mr. Gallagher: I will withdraw the question.

Q. There has been testimony given that you either guaranteed the account of Russell A. Groff Company some time in April of 1928 or individually contracted with the Goodyear Tire & Rubber Company for an extension of credit based upon the delivery and selling of tires and tubes and other accessories of the Goodyear Tire & Rubber Company. 20

Mr. Goldstein: I object to that question on the ground that there has been no testimony that Judge Gallagher was either to guarantee or that the merchandise was to be sent to him. 30

Mr. Gallagher: In the testimony of the plaintiff—

The Court: The latter portion of the question is competent.

Mr. Goldstein: But I don't see why we are concerned, because by that guarantee you confuse the issues in the case, because I don't pretend to hold Judge Gallagher on a guarantee. 40

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

The Court: I will allow him to answer that question, because it contains in it a question of your incurring a direct liability for the extension of credit for the goods involved in this suit.

10 By the Court:

Q. Was there any such assumption of liability directly with the Goodyear Company by you at any time? A. Never.

Q. Now let me ask you, Judge Gallagher, about this contract. You signed that paper? A. Yes, sir; I did.

Q. You signed it in the name of Arthur G. Gallagher Company? A. I did.

20 Q. By Arthur G. Gallagher, treasurer? A. Yes, sir.

Q. What is that company? A. That company is not, for the simple reason that it never was organized, and the very signature itself is very cogent evidence that there was no intention of a personal responsibility by any member.

Q. What did you intend to do, to organize a company? A. We did.

30 Q. Did you notify the Goodyear Company that you didn't do it? A. No, I don't know as we did.

Q. Didn't you think you were under obligation to notify them instead of allowing their goods to be shipped? A. No, because the goods were not shipped on the understanding that I was to be personally responsible or that the Gallagher Company was.

Q. Wasn't this deal covered by this contract? A. No, it was not.

40 Q. You say it was not? A. No, sir; it was not;

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

and the complaint itself and the items of the complaint show that it was impossible for that contract or that agreement to cover items which had been delivered and sold before it was ever made.

Q. Well, conceding that, what about these goods after the date of June 11, 1928? A. What do you mean, what about them? 10

Q. There were goods shipped after June 11, 1928? A. Yes.

Q. And the testimony is on the part of the representative of the Goodyear Company that it was under that contract? A. That is not so.

Q. What have you to say as to why you signed this contract and then you say you decided not to incorporate and didn't notify the Goodyear Company, but put them in a position where they should ship these goods notwithstanding? A. They never sent any goods to this company or as a result of that. 20

Q. That is your claim? A. That is right. I think so. As a matter of fact—and I would like permission to produce the record in support of what I say now, this very attorney, on behalf of the Miller Tire & Rubber Company—

Mr. Goldstein: Just a minute now, Judge. Now you are a judge and you know what the proprieties are. 30

Mr. Gallagher: I am a witness.

Mr. Goldstein: You know something about law. I object to Judge Gallagher putting anything into the case which does not properly belong here. I think he is trying to take advantage of us now.

The Court: Let him answer it.

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

A. I want permission to later introduce the records of the Ocean County Sheriff's office as evidence of an execution issued by one Officer Lane of Point Pleasant, with this attorney, David Goldstein, of Asbury Park.

10 Mr. Goldstein: I object to that.

The Court: Objection overruled. You may have an exception. Go on and finish the answer.

(Objection noted for plaintiff as ground of appeal.)

20 A. Issued execution on behalf of Miller Tire & Rubber Company against Russell A. Groff Company and caused the goods belonging to the Goodyear Tire & Rubber Company to be levied upon and seized as part of the assets of Russell Groff, Incorporated.

Q. How could that bind the Goodyear Tire & Rubber Company, even conceding that to be true? In other words, you could go to any place of business and seize any goods. I will examine the situation. Is there anything more? A. I don't think I have finished that other question.

30 Q. What is it? A. About the personal responsibility here.

Q. The question in my mind is why you signed this contract and then didn't notify the Goodyear Tire & Rubber Company that they must not act under that contract, in other words, rescind it, before anything was done. A. There was nothing done under it.

40 Q. But from June 11th there were goods shipped? A. There were goods shipped before June 11th for a year before that and to the same place

*Arthur G. Gallagher, Recalled, for Deft., Direct.*

Q. And shipped after June 11th? A. Yes.

Q. Of course I realize that you have a very peculiar bit of evidence here—all sorts of names.

A. No, it is against the company and the suit is against an individual.

Q. Now, for example, you and I know the business trade law, don't we; a concern doing business as the A. G. Gallagher Company is obliged to file a certificate? A. Yes. 10

Q. You say this was to be incorporated? Why didn't you tell these people that thing? A. They knew it. Their witnesses already have testified to that effect.

Q. Who did? A. The gray-haired gentleman there said that the previous credit was extended because they understood that a corporation was going to be formed. Did they look it up? No. They, however, come in to charge a person with repsonsibility and admit at the same time they never intended that there should be a personal responsibility. 20

Mr. Goldstein: Never admitted anything of the kind.

Mr. Gallagher: I will leave it to what the evidence shows, the testimony. I am very clear on that. 30

The Court: Is that all?

Mr. Goldstein: Except this, your Honor: that as long as Judge Gallagher has raised that question, about how it comes about that some merchandise was shipped before this contract was signed, I don't know if your Honor recalls Mr. Loder's testimony that he went down and took the first order himself. 40

*James A. Loder, Recalled, for Plaintiff, Direct.*

The Court: He claims there was some conversation with Gallagher and Gallagher denied the conversation.

10 Mr. Goldstein: No, I just wanted to recall that to your Honor's mind. Perhaps if I should put the other witness on again I could put him on.

20 Mr. Gallagher: I just want one more question. There was testimony here given that one of the representatives of the Goodyear Tire & Rubber Company called me up at my house on the telephone. In answer to that statement I want to say that I have never had a telephone in my house; that I live at 614 Sixth Street, Lakewood, New Jersey, and that I have never had a contract with the telephone company for a phone in my house.

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JAMES A. LODER, recalled for plaintiff.

*Direct examination by Mr. Goldstein.*

Q. Do you remember the incident about the telephone call? A. Yes.

30 Q. What took place at that time? A. Mr. Groff told me where to call, I don't know.

Q. Do you know what the number of that was? A. I understood at that time that the Judge lived there or boarded there or something of that kind.

Q. And the only reason you called was because Mr. Groff gave you that address? A. I didn't know where he called.

40

*Deposition of Russell A. Groff, for Deft., Direct.*

## DEPOSITION.

RUSSELL A. GROFF, a witness for the defendant, was duly sworn, according to law.

(Continuance until April 25, 1930.)

ARTHUR GORMAN GALLAGHER appeared *pro se*, in the absence of Mr. McCarthy. 10

Mr. Goldstein: It may be stipulated on the record that the testimony of Mr. Groff be taken *de bene esse*.

*Direct examination by Mr. Gallagher.*

Q. Are you the president of the Russell A. Groff Company, Incorporated? A. I was. 20

Q. And that is the firm that is now in the receiver's hands? A. Yes.

Q. Do you recall the organization of that company in 1925? Recall the month? A. It was incorporated in the month of July, 1925.

Q. Do you recall who the original incorporators were?

Mr. Goldstein: I object to any questions dealing with the incorporation of the Russell A. Groff Company, and particularly to this question on the ground that it is irrelevant to the issues in this case, and on the further ground that it is incompetent to bind the plaintiff and on the further ground that it is immaterial. 30

Q. Do you recall who the original incorporators were? A. Russell A. Groff, Arthur G. Gallagher, Charles H. Brown. 40

*Deposition of Russell A. Groff, for Deft., Direct.*

Q. Do you recall whether or not the same members of the corporation continued in the capacity of stockholders up to the date of your bankruptcy?

10 Mr. Goldstein: Object upon the same grounds as in the previous question. It may be stipulated that it will not be necessary to repeat all the original objections.

A. The same members continued until the following year.

Q. Was there a change at that time? A. Yes.

Q. What change?

Mr. Goldstein: Object for the same reason.

20 A. One of the original incorporators was dropped.

Q. Who was that? A. Arthur G. Gallagher.

Q. Do you remember when that was? A. That was in the month of July, 1926.

Q. Did the said Arthur G. Gallagher have any interest in the corporation from that time on?

Mr. Goldstein: Same objection.

A. He did not.

30 Q. Do you recall an account you had at 244 Main Street with the Goodyear Tire and Rubber Company? A. I do.

Q. Do you recall when that first started?

Mr. Goldstein: Object as irrelevant.

A. In the year 1927 to the best of my recollection.

40 Q. Was that in the latter or in the fore part of the year? A. It was in the summer months.

*Deposition of Russell A. Groff, for Deft., Direct.*

Q. Did you continue to do business with the Goodyear Tire and Rubber Company until the day of the bankruptcy?

Mr. Goldstein: Object as leading and on the further ground that it calls for a conclusion.

10

Mr. Gallagher: I will reframe the question.

Q. How long did you continue to do business with the Goodyear Tire and Rubber Company?

Mr. Goldstein: Object as calling for a conclusion.

A. Till the summer of 1928.

20

Q. It has been testified heretofore that you and Arthur G. Gallagher and a representative of the Goodyear Tire and Rubber Company had a discussion in your store relative to the future purchase and supply of goods from the Goodyear Tire and Rubber Company.

Mr. Goldstein: Object unless the date is fixed.

Q. About April, 1928. I will restate it.

30

Q. It has been testified heretofore that on or about April, 1928, a conversation was had at 244 Main Street between yourself and Arthur G. Gallagher and a representative of the Goodyear Tire and Rubber Company relative to the future purchase and sale of goods from the Goodyear Tire and Rubber Company. Do you recall a conversation of that character at that time and place? A. No.

40

*Deposition of Russell A. Groff, for Deft., Direct.*

10 Q. It has been testified that in that conversation heretofore referred to that it was agreed in your presence that for all goods, wares and merchandise that the Goodyear Tire and Rubber Company would forward from that time on the said Arthur G. Gallagher would pay or cause to be paid the cost thereof, and that this conversation took place in your presence. Do you recall any such conversation? A. No.

20 Q. It has been testified that in that conversation heretofore referred to an arrangement was at that time made in your presence wherein it was agreed that the goods should be shipped to your store but that the charge was to be made and the goods delivered against the account of Arthur G. Gallagher personally. Did you have any such conversation at that time and place? A. No.

Q. Did you hear at that time any agreement entered into between Arthur G. Gallagher and the Goodyear Tire and Rubber Company or their representative to the effect that said Arthur G. Gallagher would be responsible for all the indebtedness in the way of cost of goods shipped by the Goodyear Tire and Rubber Company to you at your request? A. No.

30 Q. In April, 1928, did the said Arthur G. Gallagher have any interest, monetary or financial interest, in your business then conducted by you at 244 Main Street?

40 Mr. Goldstein: Object on the ground that it is leading and on the further ground that it calls for a conclusion and upon the further ground that the witness has not shown himself to be qualified to answer this question, and upon the further ground that no founda-

*Deposition of Russell A. Groff, for Deft., Direct.*

tion has been laid to show that this witness has knowledge or would have knowledge of such a condition.

Q. What was your business in April, 1928?

Mr. Goldstein: Object on the ground that it is irrelevant, and on the further ground that the plaintiff in this case sues Arthur G. Gallagher for goods sold and delivered, and not the Groff Company. 10

A. I was a member of the company, which was engaged in the retail sale of automobile supplies at 244 Main Street, Lakewood, New Jersey.

Q. How long have you been so engaged? A. Since 1925. 20

Q. Was there any change in that business from its incorporation in 1925 until the time of your bankruptcy? A. Except for the change in the stockholders.

Mr. Goldstein: Object on the ground that it calls for a conclusion.

Q. In the ownership or management?

Mr. Goldstein: And on the further ground that it is irrelevant. 30

A. No.

Q. Who owned the business in April, 1928?

Mr. Goldstein: Object on the ground that it is irrelevant and calls for a conclusion.

A. My wife and myself.

Q. Did you ever at any time hear Arthur G. Gal- 40

*Deposition of Russell A. Groff, for Deft., Direct.*

lagher guarantee the payment of any of the accounts existing between you and the Goodyear Tire and Rubber Company or between you and the Russell A. Groff Company, Incorporated?

10 Mr. Goldstein: Object on the ground that this action is not based on a guarantee but is to recover the price of goods sold and delivered to Arthur G. Gallagher and on the further ground that it is incompetent, irrelevant and immaterial.

A. No.

20 Q. In conducting your business at 244 Main Street did anyone beside yourself ever place orders with the Goodyear Tire and Rubber Company?

Mr. Goldstein: Object as irrelevant.

A. I placed all orders.

Q. 244 Main Street, Lakewood, was the place where you were conducting business, was it not?

A. That's right.

30 Q. All of the goods you ordered from the Goodyear Tire and Rubber Company arrived at 244 Main Street, your place of business, did they not?

A. Yes. It would be impossible for them to be delivered any other place.

40 Mr. Goldstein: I ask that that portion of the answer, "It would be impossible for them to be delivered any other place," be stricken out on the ground that it is not responsive and on the further ground that it calls for a conclusion, and upon the further ground that the witness has not shown himself to be qual-

*Deposition of Russell A. Groff, for Deft., Direct.*

ified or competent to testify whether or not the Goodyear Company could ship to that place or any other place.

Q. When goods arrived at your place of business were you there on their arrival?

10

Mr. Goldstein: Object as irrelevant, and upon the further ground that the plaintiff in this case is not concerned with what goods were delivered on any other occasions than those the plaintiff's complaint deals with.

A. I would be there for all deliveries by express or freight.

Q. How were the goods delivered there, by express or freight?

20

Mr. Goldstein: Object on the ground that it is irrelevant. We are concerned only with the purchases, sales and deliveries from the Goodyear Tire and Rubber Company.

A. Both ways.

Q. How would they be accepted? A. The carriers would demand a receipt.

Mr. Goldstein: Object, same ground as previous question. 30

Q. Did you sign a receipt for all the goods delivered?

Mr. Goldstein: Object upon the same grounds.

A. I signed receipts for all goods except when I had employees.

40

*Deposition of Russell A. Groff, for Deft., Direct.*

Q. Do you know of any goods arriving at your place of business wherein the receipt was signed by Arthur Gorman Gallagher or anyone on his behalf?

Mr. Goldstein: Object as irrelevant.

10

A. Not to my knowledge.

Q. Mention has been made in the evidence that goods were ordered by telephone from the Goodyear Tire and Rubber Company and that in consequence they were shipped to you at 244 Main Street. Do you recall any of those orders thus made? A. By myself, yes.

20

Q. And when you made an order what direction did you give the Goodyear Tire and Rubber Company, if any? A. I gave them my name and Lakewood, New Jersey, and stated the articles I desired and that was all.

Q. Those articles you ordered, did you ever get authority or direction or consult with Arthur G. Gallagher as to the purchase of these articles? A. No.

30

Q. Did Mr. Gallagher have anything to do with the business conducted at 244 Main Street to your knowledge from the time of the transfer of his stock? A. No.

Q. How long have you lived in Lakewood? A. Thirty years.

Q. Are you acquainted with the tire business and the people engaged in the tire business during 1927, 1928 and 1929? A. Yes.

40

Q. Did you ever hear of Arthur G. Gallagher as a tire agent or owner of a tire store or auto accessories or automobile goods of any kind or description?

*Deposition of Russell A. Groff, for Deft., Direct.*

Mr. Goldstein: Object on the ground that it is irrelevant and upon the further ground that the question relates to automobile accessories and other automobile goods, which have no relation whatever to the purchase, sale and delivery of automobile tires.

10

A. No.

Q. Did you ever hear of a man named Arthur G. Gallagher engaged in the sale of automobile tires or tubes in the Township of Lakewood during 1927, 1928 or 1929?

Mr. Goldstein: Object on the same grounds as in the previous question.

A. No.

20

Q. It has been testified to heretofore that you have knowledge that a certain bill of goods forwarded by the Goodyear Tire and Rubber Company was delivered to Mr. Gallagher at 415 Sixth Street and later recovered by you and brought to your store at 244 Main Street. Do you recall any such incident? A. No.

Q. Do you recall any goods you ordered from the Goodyear Tire and Rubber Company being delivered at any other place than your place of business at 244 Main Street? A. No.

30

Q. Do you recall that from time to time goods you ordered from the Goodyear Tire and Rubber Company were forwarded f.o.b. Lakewood, and the charge was C. O. D. there by draft or by collection through express agency? A. Yes.

Q. Do you recall in those cases who paid for the goods upon delivery and receipt by you of the goods? A. I paid for them representing the Russell A. Groff Company.

40

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. Do you recall during the time you were engaged in business and including 1927 and 1928 any time or any occasion when Arthur G. Gallagher entered into an agreement to purchase goods for you on his own account with the Goodyear Tire and Rubber Company? A. No.

10

*Cross examination by Mr. Goldstein.*

Q. How long have you known Mr. Gallagher?  
A. Ten years intimately, all my life otherwise.

Q. How long were you in business with him up until the date you say Mr. Gallagher retired from the corporation? A. One year.

Q. Have you discussed this case with Mr. Gallagher prior to to-day's examination? A. Yes.

20 Q. How recently? A. Last fall, perhaps on one occasion, and I have seen Mr. Gallagher since I recovered from my illness but not to talk business to any great extent.

Q. When was that? A. A week ago.

Q. That was the last time you spoke to him about this case? Was it? A. Yes.

Q. You went over the whole case with him, did you? A. No.

30 Q. To what extent did you discuss the case? A. To the extent of my being able to appear and act as a witness.

Q. What connection, if any, did Mr. Gallagher have with this so-called corporation after the date that you claim he retired from the corporation?  
A. He had no connection legally with the company.

40 Q. I didn't ask you what connection he had legally, I asked you what connection, if any. A. He had no connection with the company.

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. What date do you fix as the date when Mr. Gallagher retired from the corporation? A. The month of July, 1926.

Q. You are absolutely sure of that? A. I know that the basis of the amount of money he was to be paid for his interest was based on the year ending May 31, 1926. 10

Q. Did he have anything to do with the business after that? A. Not with the business, no.

Q. Isn't it a fact that Mr. Gallagher continued to sign checks of the corporation in the capacity of an officer after the date in question? A. Mr. Gallagher never signed checks of the corporation either before the date you mentioned or after.

Q. What position did Mr. Gallagher hold in the corporation at the time you claim he was interested in it? A. What position? 20

Q. What office? A. I think he was secretary.

Q. Was he ever treasurer? A. It may have been so stated in the incorporation papers, secretary or treasurer.

Q. Can you tell me now whether he was secretary or treasurer or both? A. I could not. I know regardless of the fact that he was treasurer or not I signed the checks.

Q. Didn't those checks have to be countersigned by some one? A. No. 30

Q. I show you what purports to be a letter on the stationery of Russell Groff Inc., signed by Arthur Gorman Gallagher, Treasurer, and I ask you to look at that letter and read it and then tell me if you still insist that Mr. Gallagher was not connected with the corporation after May of 1926.

Mr. Gallagher: If you know. I object to the form of the question. The letter is not written by him. 40

*Deposition of Russell A. Groff, for Deft., Cross.*

10 Q. I am asking if after he reads the letter he still wants to answer the question in the same way. I ask him to read the letter and ask him if he still insists that Mr. Gallagher had no connection with the corporation after May of 1926. A. I still answer that he had no connection with Russell A. Groff Incorporated after the date stated,

Q. Do you recall that a check was sent May 9, 1928, to the Goodyear Tire and Rubber Company for purchases for the month of April, 1928? A. No.

Q. Do you know that this letter was sent? A. No.

20 Mr. Goldstein: I ask to have the letter marked for identification,  
(Letter marked for identification "Ident. A".)

Q. You understand that the two previous questions had reference to the paper now marked "Ident. A"? A. Yes.

Q. Who took charge of the books of the company? A. I did.

Q. Who took charge of sending out of the checks? A. I did.

30 Q. All of them since May, 1926? A. Yes.

Q. You took care of the correspondence? A. Yes.

Q. Did you have a stenographer? A. No.

Q. Who did the typewriting? A. If there happened to be somebody working there who could typewrite they could do the typewriting.

Q. Did you ever have anybody that could typewrite? A. Yes.

40 Q. Who was it? A. A clerk in the store.

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. How long was he in your employ? A. I should say practically the entire summer of 1928.

Q. Commencing when? A. In the middle of March.

Q. Did you know that a check was sent to the Goodyear Tire and Rubber Company on May 9, 1928, for purchases made in April of 1928? A. I do not know that a check was sent on that exact date. 10

Q. About that date? A. I don't know at this time.

Q. This particular check was for quite a substantial sum. A. I don't know. That is two years ago and I sent a number of checks out.

Q. You stated before that all the merchandise that came in from the Goodyear Company was delivered to your company, is that correct? A. Delivered at 244 Main Street. 20

Q. Around April of 1928 the Groff corporation was in financial difficulties, wasn't it? A. Not necessarily.

Q. Were you able to meet your bills? A. Yes.

Q. Your account with the Goodyear Tire and Rubber Company was not in good standing at that time, was it? A. I don't think there was any particular trouble over the account. 30

Q. Do you know this gentleman, Mr. Loder? A. Yes.

Q. What was the first time you saw him? A. Approximately in 1927.

Q. You gave him orders at that time? A. Yes.

Q. And continued to give him orders? A. Yes.

Q. And don't you recall that sometime around April of 1928 Mr. Loder had a conversation with you about the account of the Goodyear Tire and 40

*Deposition of Russell A. Groff, for Deft., Cross.*

Rubber Company to the effect that it was in difficulties? Financial difficulties? A. No.

Q. Did he have any conversation with you regarding his Company? A. He might have.

10 Q. Did he tell you at that time that his Company was not disposed to extend to your Company any further credit? A. I don't know.

Q. Didn't he also tell you in the presence of Judge Gallagher that if the merchandise was going to be sold to Mr. Gallagher the Company would be willing to sell it? A. I don't remember.

Q. Let us get back to the question of the Groff corporation after May 26. Isn't it a fact that Mr. Gallagher continued to supply funds to the corporation? A. No.

20 Q. Did he ever supply any money to the corporation? A. No.

Q. Isn't it a fact that you received your salary from the corporation by checks drawn by Mr. Gallagher? A. No.

Q. Do you recall having a conversation with Mr. Loder at which time you stated to him that Mr. Gallagher was paying your salary for your services in the corporation, having reference to various times after May 6, 1928? A. No.

30 Q. Do you know this gentleman, Mr. Hallet? A. Yes.

Q. You have seen him before? A. Yes.

Q. Have you discussed the account of the Good-year Tire and Rubber Company with him? A. Yes.

40 Q. Towards the latter part of 1928, fixing as the dates from about October 1928 till January 1929, didn't you have several conversations with Mr. Hallet and Mr. Loder regarding the Good-year account? A. Yes.

*Deposition of Russell A. Groff, for Deft., Cross.*

Mr. Gallagher: I want to object to all this line of questioning where it does not appear that the defendant, Arthur G. Gallagher, was present at the conversations had with either Mr. Loder or Mr. Hallet, and move to strike it all out.

10

Q. Isn't it a fact that at each of these conversations you told Mr. Hallet and Mr. Loder—

Mr. Gallagher: Do you mean both these gentlemen were together each time these conversations took place?

Mr. Goldstein: Yes:

Q. (Continued) that Mr. Gallagher was supplying funds to the corporation for the purpose of enabling the corporation to pay you your salaries?

20

A. No.

Mr. Gallagher: You understand I am objecting to all conversations had with this witness and Mr. Hallet and Mr. Loder where the defendant Arthur G. Gallagher was not present, as incompetent and immaterial and not binding upon the defendant.

Q. Do you recall in September or October of 1928 when Mr. Hallet and Mr. Loder called at your place of business and spoke to you about the Goodyear account that you suggested to these two gentlemen that they should go over to see Mr. Gallagher at the committee headquarters of the campaign which was being waged at that time?

30

Mr. Gallagher: Object for the same reason.

A. I will say to the best of my knowledge, no.

40

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. Why do you say "to the best of your knowledge?" A. I cannot say positively yes or no.

Q. At the same visit don't you remember that these gentlemen or either one of them asked you if you had seen Judge Gallagher about the account of the Goodyear Company?

10

Mr. Gallagher: Object for the same reason.

A. I don't remember.

Q. But you do know that if Judge Gallagher did not have any connection with the Company there would not have been any possibility of such a situation arising. A. I don't know anything about the situation myself.

Q. Didn't you tell him at that time you had spoken to Judge Gallagher about the account?

20

A. I repeat my same answer,—I don't remember.

Q. Don't you remember that on that occasion Mr. Hallet asked you if you spoke to Mr. Gallagher about paying this balance due the Goodyear Company and you said you had and Judge Gallagher had told you he would take care of the account?

30

Mr. Gallagher: Object for the same reason.

Q. Do you remember that conversation? A. No.

Q. Is it that you don't remember or that you deny it? A. I don't remember.

Q. Do I understand that you ever took particular notice as to whose name the merchandise was shipped to after April of 1928?

40

Mr. Gallagher: Object. There is nothing here as to what notice he took regarding who it was shipped to.

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. I am asking him if he ever took notice. A. You mean merchandise delivered from the expressmen or freight into the store,—how it was addressed?

Q. Yes. I am asking if you ever took any notice. A. To the best of my knowledge all merchandise addressed to that store was addressed to the Russell A. Groff Company. 10

Q. Are you sure about that? A. In the course of the life of the Company there was goods that came in there addressed to me personally, addressed to Arthur G. Gallagher personally. That began from the beginning of the Company and there was a reason for that.

Q. And that continued up to the time that the Company— A. Went into the hands of the receiver. 20

Q. Which was when? A. July or August 1929.

Q. And you cannot truthfully state, can you, that all of this merchandise on and after April, 1928, was consigned to the corporation, can you? A. So far as the shipping instructions or address on the parcels, no.

Q. There was a company by the name of the A. G. Gallagher Company? A. I know of no such company. 30

Q. And you are still positive in your statement the you conducted all the correspondence or it was conducted under your supervision? A. Yes.

Q. If I tell you that in May of 1928 the Russell A. Groff Company sent a letter to the Goodyear Company directing merchandise to be sent to the A. G. Gallagher Company, will you still state that there was no such company? A. Yes. 40

*Deposition of Russell A. Groff, for Deft., Cross.*

Q. In spite of those letters? A. The facts speak for themselves regardless of what I might say in any letter. There is no such company. That is conclusive.

10 Q. Was any of this merchandise ever consigned after April of 1928 to the A. G. Gallagher Company?

20 Mr. Gallagher: Object to all questions pertaining to a corporation by the name of A. G. Gallagher Company as irrelevant, incompetent and immaterial, and not binding upon this defendant A. G. Gallagher in person. Further object that there is no proof in this case that there ever was a company, or partnership, or corporation known as A. G. Gallagher Company. There is no evidence before the court of such corporation, trade name, or firm, or business entity under the name of A. G. Gallagher Company.

A. I don't understand the word "consigned."

Q. Shipped or addressed. A. Merchandise might possibly have been received in the store so addressed, yes.

30 Q. I show you herewith a paper and ask you to look at this. A. (Witness complies.)

Mr. Goldstein: I offer this for identification.

(Paper marked for identification "Ident. B").

40 Q. Referring to the paper marked "Ident. B", I ask you to look at the signature to the left and I ask you if you still answer that there was no such

*Deposition of Russell A. Groff, for Deft., Redirect*

company to your knowledge as A. G. Gallagher Company on or about or after June 11, 1928? A. I know nothing of this.

Q. I did not ask you if you knew anything of that letter. A. Will you repeat the question?

Q. Referring to the paper marked "Ident. B" I ask you to look at the signature to the left and I ask you if you still answer there was no such company— A. To the best of my knowledge there was no such company that had any relation with me. 10

Q. Did you ever either orally or by writing order any merchandise to be shipped to A. G. Gallagher Company? Signed by Russell A. Groff as manager? A. Not to the best of my recollection. No. 20

*Redirect examination by Mr. Gallagher.*

Q. There has been testimony here given that you had several conversations with Mr. Loder and Mr. Hallet when they were both together, and at times when they were not together, relative to the credit standing of your concern and conversations relative to Mr. Gallagher. At any of those conversations was Mr. Gallagher or Judge Gallagher present when this Mr. Loder or Mr. Hallet spoke of credit advancement or bad credit or anything regarding your business relationships in a credit way between the Goodyear Tire and Rubber Company and yourself? A. No. 30

**Postea.**

NEW JERSEY SUPREME COURT,  
OCEAN COUNTY.

|    |  |   |                |
|----|--|---|----------------|
| 10 | GOODYEAR TIRE & RUBBER COM-<br>PANY, body corporate,<br><div style="text-align: right;">Plaintiff,</div> | } | Action at Law. |
|    | <i>vs.</i>   |   |                |
|    | ARTHUR GORMAN GALLAGHER,<br><div style="text-align: right;">Defendant.</div>                             |   |                |

20     The plaintiff company in this action seeks to recover of defendant \$2,085.09 for certain automobiles, tires and tubes alleged to have been sold and delivered to defendant at his special instance and request. The suit was submitted to the trial judge at the Ocean Circuit, without a jury, by consent, for determination on the law and facts.

30     The defense is that the goods were not sold or delivered to defendant; that he never agreed to pay for them and that the debt incurred therefor is the proper obligation of the Russell A. Groff Company to which they were actually delivered; in other words, that plaintiff is endeavoring to make defendant pay the debt of a third person contrary to the recognized provision of the statute of frauds.

40     The testimony taken at the trial discloses that prior to June 1, 1928, a corporation known as the Russell A. Groff Company had been doing business at Lakewood selling automobiles and the usual accessories such as tires and tubes. It had

*Postea.*

been dealing with the plaintiff company, and in April or May of that year its credit had become so impaired that the latter had about determined to refuse a further extension, particularly as to any new business. In this situation, plaintiff alleges that defendant who had formerly been a stockholder and officer in the Groff Company agreed to assume direct liability for any indebtedness thereafter arising for tires and tubes sold and delivered to the Russell A. Groff Company, the understanding being that the credit should be extended and charged to the defendant. Accordingly, as appears by the proofs, between June 1, 1928, and August 14, 1928, quantities of tires and tubes were ordered by Mr. Groff with the authority of defendant, of the plaintiff and shipped to defendant, in the circumstances properly mentioned, but actually delivered at the place of business of the Groff Company and from there sold to customers. This appears to have been due to the fact that defendant allowed Russell A. Groff of this company to carry on and conduct the business on the credit established by him with plaintiff during the period indicated. 10 20

On the records of the plaintiff company the shipments are set down as variously charged to "Arthur J. Gallagher," "Arthur G. Gallagher," "Arthur G. Gallagher Co.," "Arthur Gallagher," "A. G. Gallagher," "H. J. Gallagher," "A. C. Gallagher," "A. J. Gallagher." The evidence, however, clearly justifies the inference that in fact credit was intended to be extended to the defendant and that the obvious error in nomenclature was due to the blundering or carelessness of the clerical staff of the plaintiff at the Philadelphia office. 30 40

*Postea.*

Although there was sharp contradiction in the testimony as to conversations between agents of plaintiff, Mr. Groff and the defendant regarding the credit arrangement, there was offered in evidence at the trial a written agreement admittedly signed by defendant under the name of "A. G. Gallagher Co., per A. G. Gallagher, Treas.," whereby the latter undertook as "dealer" to actively engage in the sale and distribution of Good-year's merchandise, including tires and tubes, from June 11, 1928, the date of execution. Defendant's explanation of the signing of this agreement is that at the time he intended to form a corporation or company to operate under it but afterwards changed his mind, and while it was never cancelled the contemplated enterprise was never actually organized. That plaintiff company regarded the agreement as valid is evident, also that shipments thereafter made were subject to its terms seems clear under the proofs. While the deliveries were made at the place of business of the Russell A. Groff Company, it seems to have been entirely consistent with the arrangement as claimed by plaintiff, in view of defendant's former association with Mr. Groff to whom apparently he left the active management of the business. That this is so, would seem to be indicated by the fact that three letters and an order, under date of September 7, 10, 27 and Dec. 18, 1928, respectively, which appear to have been signed "A. G. Gallagher Co., by Russell A. Groff," were produced at the trial (Exhibits P-3, 4, 5 and 6), although the account was changed after August 14, 1928, from a credit to a c. o. d. basis.

*Postea.*

It is urged in behalf of plaintiff that the evidence as a whole warrants the conclusion that the credit agreement with defendant, upon which the present suit is brought, was made in April, 1928, which would result in covering all of the disputed items. This would seem to be so, since a ledger sheet kept by plaintiff, offered in evidence at the trial, discloses that the account began in that month, was originally in the name of "Arthur Gallagher" but later amended by inserting the middle letter "G." and adding the abbreviation "Co.," doubtless when the dealer's agreement admittedly signed by defendant, reached the company's office on June 13, 1928, and was discovered to have been executed by him in the name of "A. G. Gallagher Co., per A. G. Gallagher, Treas."

10

20

While this ledger sheet is somewhat confusing, inasmuch as it shows the account carried through to the month of March, 1929, when it was closed and balanced by payment, it was testified at the trial that this account did not include the disputed items here sued for, and as this was not questioned by defendant and no claim was made by him that they had been paid for, the court feels obliged to accept it as a fact. The fact, likewise, that while this account was being carried in his name, defendant executed the dealer's agreement appears to afford additional proof of the existence of the credit arrangement claimed by plaintiff as fixing his personal liability in this suit. Although signed by him in the manner stated, it may fairly be said to have been used by him merely as a trade name connoting the assumption of an individual enterprise usual in such cases, since there admittedly was no such company, corporate

30

40

*Postea.*

10 or otherwise, during the period of the transactions involved. It seems needless to say that the use of such trade name in the circumstances did not relieve defendant from individual liability to plaintiff under the arrangement for the extension of credit to him personally. It may also be observed that there is no evidence in the case that either Mr. Groff or the defendant at any time informed the plaintiff that a mistake was being made in charging and shipping the merchandise to the defendant with delivery to the Groff Company, while it may be regarded of some significance that defendant's answer, in the second separate defense, sets up that the goods were delivered to the Groff Company upon the introduction  
20 by defendant of plaintiff's representative, although the proofs disclose that that company had been dealing with the plaintiff for some time prior, that its credit had become impaired and a further extension was about to be denied when the arrangement to thereafter accept defendant as the credit risk to whom goods were from then on to be charged and shipped was made. The Court's conclusion consequently is that the defendant became personally liable for the payment of the  
30 goods included in the bill of particulars attached to the complaint, with the exception of the items under date of May 29 and June 29, 1928, amounting to \$69.92, and charged directly to the Groff Company which should be deducted from the sum here sued for.

40 Judgment may accordingly be entered in favor of the plaintiff company and against defendant for the sum of \$2,015.17 with interest from August 14, 1928, together with costs of suit to be taxed.

*Postea.*

WHEREUPON it is adjudged that the plaintiff, Goodyear Tire and Rubber Company, body corporate, do recover of the said defendant, Arthur Gorman Gallagher, the sum of Two Thousand Fifteen Dollars and seventeen cents damages with interest from August 14, 1928, together with its costs which have been taxed at the sum of Sixty-eight dollars and two cents, making in the whole the sum of Two Thousand eighty-three dollars and nineteen cents. 10

Judgment signed and entered June 6, 1930.

WILLIAM S. GUMMERE,  
C. J.

|            |    |
|------------|----|
| \$2,015.17 |    |
| 68.02      | 20 |

---

\$2,083.19

Int. on damages  
from Aug. 14, 1928.

30

40

**Exhibit D-1, Original Order Dated June 23, 1928.**

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.  
AKRON, OHIO

10 Ship.....Date No.....  
Date 6/23/28  
57-60

Bill to (Prop's Name).....Ship to.....  
Firm Name A G Gallagher Co  
Street 244 Main St Street Same  
City Lakewood N J City.....  
Terms—Ry Via Frt Pa Their Order No. Lot 6/21 Salesman  
(Attached) Loder  
Aug 10th Section No.....

| Quan-<br>tity | Size   | Article              | Price | Exten-<br>sion | Total  |
|---------------|--------|----------------------|-------|----------------|--------|
| 4             | 33x600 | Double Eagle Casings | 24.85 | 99.40          |        |
| 4             | 33x600 | “ “ Tubes            | 5.00  | 20.00          |        |
| 6             | 30x650 | Rg Tubes             |       | 16.20          |        |
|               |        |                      |       | <hr/>          | 135.60 |

20 Less Discount  
Please rush above already sold.  
Partial Order  
B7 No. 1857  
Credit O. K.  
Valuation \$..... J

“The ‘Returned Goods’ practice is harmful to the manufacturer, dealer and public and benefits no one. It is to our mutual interest, therefore, to eliminate it.  
It is understood that the acceptance of this order does not carry with it any promise on our part that these goods or any part of them are subject to return for credit or exchange.”

ACCEPTED SUBJECT TO APPROVAL OF HOME OFFICE

Customer's Signature .....  
(Company Name)

30 By .....  
(Proprietor or Official)

**Exhibit P-1, Original Order Dated April 11, 1928.**

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.  
AKRON, OHIO

No. 1 9445  
Ship At once Date April 11, 1928  
Bill to (Prop's Name) Arthur J. Gallagher Ship to Russell Groff Inc  
Firm Name.....  
Street..... Street.....  
City Lakewood N. J. City Lakewood N. J.  
Terms 20/0 May 10 Via Central frt Their Order No.....  
Via Chestnut St (Attached)  
Salesman J. A. Loder Section No.....

10

| Quan-<br>tity | Size    | Article                 | Price | Exten-<br>sion Total |
|---------------|---------|-------------------------|-------|----------------------|
| 2             | 30x3½   | Cl. cord pathfinder O/S | 6.75  | 13.50                |
| 2             | 30x3½   | Cl. cord AWT OS         | 8.30  | 16.60                |
| 1             | 30x3½   | SS pathfinder           | 8.40  | 8.40                 |
| 1             | 31x4    | SS pathfinder           | 10.60 | 10.60                |
| 2             | 32x4    | SS pathfinder           | 11.15 | 22.30                |
| 1             | 33x4    | SS pathfinder           | 11.75 | 11.75                |
| 1             | 32x4½   | SS pathfinder           | 15.20 | 15.20                |
| 1             | 33x4½   | SS pathfinder           | 15.80 | 15.80                |
| 1             | 34x4½   | SS pathfinder           | 16.15 | 16.15                |
| 1             | 30x5    | SS pathfinder           | 18.25 | 18.25                |
| 1             | 33x5    | SS pathfinder           | 20.15 | 20.15                |
| 1             | 30x5    | SS AWT HD               | 28.30 | 28.30                |
| 2             | 29x4.40 | SS pathfinder           | 7.55  | 15.10                |
| 1             | 30x4.75 | SS pathfinder           | 9.85  | 9.85                 |
| 1             | 31x5.00 | SS pathfinder           | 11.00 | 11.00                |
| 1             | 30x5.25 | SS pathfinder           | 12.30 | 12.30                |
| 1             | 31x5.25 | SS pathfinder           | 12.80 | 12.80                |

20

BILLED  
Apr 16 1928  
SHIPPED  
Apr 13 1928  
B 3/24

Credit O. K.  
Valuation \$.....  
J 4/13

30

“The ‘Returned Goods’ practice is harmful to the manufacturer, dealer and public and benefits no one. It is to our mutual interest, therefore, to eliminate it.

It is understood that the acceptance of this order does not carry with it any promise on our part that these goods or any part of them are subject to return for credit or exchange.”

ACCEPTED SUBJECT TO APPROVAL OF HOME OFFICE

Customer's Signature .....  
(Company Name)

By .....  
(Proprietor or Official)

Credit OK WJM 4/13/28

40

*Exhibit P-1, Original Order Dated April 11, 1928.*

THE GOODYEAR TIRE & RUBBER COMPANY, Inc.  
AKRON, OHIO

No. 2 9445

Ship At once Date Date April 11, 1928

Bill to (Prop's Name) Arthur J. Gallagher Ship to Russell Groff Inc

10

Firm Name.....

Street..... Street.....

City Lakewood N.J. City Lakewood N.J.

Terms 20/0 May 10 Via Central frt Their Order No.....  
Via Chestnut St (Attached)

Salesman J. A. Loder Section No.....

20

| Quantity | Size    | Article       | Price | Extension | Total |
|----------|---------|---------------|-------|-----------|-------|
| 1        | 32x6.00 | SS pathfinder | 14.45 | 14.45     |       |
| 1        | 33x6.00 | SS pathfinder | 15.30 | 15.30     |       |
| 1        | 29x4.75 | SS pathfinder | 9.45  | 9.45      |       |
| 1        | 29x5.00 | SS pathfinder | 10.20 | 10.20     |       |
| 1        | 30x5.00 | SS pathfinder | 10.60 | 10.60     |       |
| 1        | 31x6.00 | SS pathfinder | 14.10 | 14.10     |       |
| 1        | 32x6.20 | SS pathfinder | 17.65 | 17.65     |       |
| 2        | 29x4.40 | SS AWT HD.    | 11.15 | 22.30     |       |
| 1        | 30x5.00 | SS AWT        | 13.00 | 13.00     |       |
| 1        | 29x4.75 | SS AWT        | 11.50 | 11.50     |       |
| 1        | 30x5.25 | SS AWT        | 15.15 | 15.15     |       |
| 1        | 31x5.25 | SS AWT        | 15.65 | 15.65     |       |
| 1        | 30x6.00 | SS AWT        | 17.30 | 17.30     |       |
| 1        | 31x6.00 | SS AWT        | 17.75 | 17.75     |       |
| 1        | 32x6.00 | SS AWT        | 18.30 | 18.30     |       |
| 1        | 33x6.00 | SS AWT        | 18.90 | 18.90     |       |

BILLED  
Apr 16 1928

30

Credit O. K.  
Valuation \$.....

“The ‘Returned Goods’ practice is harmful to the manufacturer, dealer and public and benefits no one. It is to our mutual interest, therefore, to eliminate it.

It is understood that the acceptance of this order does not carry with it any promise on our part that these goods or any part of them are subject to return for credit or exchange.”

ACCEPTED SUBJECT TO APPROVAL OF HOME OFFICE

Customer's Signature .....  
(Company Name)

By .....  
(Proprietor or Official)

40

*Exhibit P-1, Original Order Dated April 11, 1928.*

THE GOODYEAR TIRE & RUBBER COMPANY, INC.  
AKRON, OHIO

No. 3 9445

Ship At once Date April 11, 1928  
 Bill to (Prop's Name) Arthur J. Gallagher Ship to Russell Groff Inc  
 Firm Name.....  
 Street..... Street.....  
 City Lakewood N. J. City Lakewood N. J.  
 Terms 20/0 May 10 Via Central frt Their Order No.....  
 Salesman J. A. Loder Section No.....

10

| Quan-<br>tity | Size    | Article | Price  | Exten-<br>sion | Total |
|---------------|---------|---------|--------|----------------|-------|
| 1             | 32x6.20 | SS AWT  | 21.80  |                |       |
| 1             | 30x6.75 | SS AWT  | 22.20  |                |       |
| 1             | 32x6.75 | SS AWT  | 23.30  |                |       |
|               |         |         | 447.95 |                |       |
|               | Less 5% |         | 22.40  |                |       |

425.55

|   |         |                   |      |       |  |
|---|---------|-------------------|------|-------|--|
| 6 | 30x3½   | Cl. cord Speedway | 4.25 | 25.50 |  |
| 4 | 29x4.40 | SS Speedway       | 5.50 | 22.00 |  |

20

|   |         |                          |       |  |  |
|---|---------|--------------------------|-------|--|--|
| 6 | 30x4.50 | reg. tubes               | 11.40 |  |  |
| 6 | 30x5.00 | reg. tubes               | 12.90 |  |  |
| 6 | 29x4.75 | reg. tubes               | 12.30 |  |  |
| 6 | 30x5.25 | reg. tubes               | 14.70 |  |  |
| 6 | 31x5.50 | reg. tubes (angle valve) | 15.30 |  |  |
| 6 | 29x5.50 | reg. tubes               | 17.10 |  |  |

71.40

Less 10% 7.14

64.26

537.31

BILLED  
Apr 16 1928

Credit O. K.  
Valuation \$.....

30

"The 'Returned Goods' practice is harmful to the manufacturer, dealer and public and benefits no one. It is to our mutual interest, therefore, to eliminate it.

It is understood that the acceptance of this order does not carry with it any promise on our part that these goods or any part of them are subject to return for credit or exchange."

ACCEPTED SUBJECT TO APPROVAL OF HOME OFFICE

Customer's Signature .....  
(Company Name)

By .....  
(Proprietor or Official)

40

*Exhibit P-1, Original Order Dated April 11, 1928.*

THE GOODYEAR TIRE & RUBBER COMPANY, INC.  
AKRON, OHIO

No. 4 9445

Ship At once Date Date April 11, 1928

Bill to (Prop's Name) Arthur J. Gallagher Ship to Russell Groff Inc

Firm Name.....

10

Street..... Street.....

City Lakewood N. J. City Lakewood N. J.

Terms 20/0 May 10 Via Central frt Their Order No.....

Salesman J. A. Loder Section No.....

| Quan-<br>tity | Size  | Article          | Price | Exten-<br>sion | Total |
|---------------|-------|------------------|-------|----------------|-------|
| 12            | 30x3½ | pathfinder tubes | 13.70 |                |       |
| 12            | 30x3½ | reg. tubes       | 16.20 |                |       |
| 2             | 31x4  | reg. tubes       | 1.95  | 3.90           |       |
| 2             | 32x4  | reg. tubes       | 2.15  | 4.30           |       |
| 2             | 33x5  | HT Tubes         | 3.75  | 7.50           |       |
| 2             | 34x4½ | HT Tubes         | 3.10  | 6.20           |       |

20

51.80

Less 10% 5.18 46.62

2 3½ ft. flap stock 100 ft. Rolls 4.55 9.10

1 10 lb. roll curved back tube gum .78 7.80

\$724.95

BILLED  
Apr 16 1928

Credit O. K.  
Valuation \$.....

“The ‘Returned Goods’ practice is harmful to the manufacturer, dealer and public and benefits no one. It is to our mutual interest, therefore, to eliminate it.

30

It is understood that the acceptance of this order does not carry with it any promise on our part that these goods or any part of them are subject to return for credit or exchange.”

ACCEPTED SUBJECT TO APPROVAL OF HOME OFFICE

Customer's Signature .....  
(Company Name)

By .....  
(Proprietor or Official)

40

**Exhibit P-3, Letter Dated Sept. 7, 1928, from  
A. G. Gallagher Co. to The Goodyear Tire  
and Rubber Co.**

Lakewood, N. J.  
Sept. 7, 1928.

The Goodyear Tire And Rubber Co.,  
2750 North Broad Street, 10  
Philadelphia, Pa.

Gentlemen;

Enclose you will find Bill of Lading covering

6—33x6.00 Double Eagle Tires  
6—33x6.00 Double Eagle Tubes  
2—31x5.25 Double Eagle Tubes  
2—31x5.25 Double Eagle Tires

We are returning these for exchange as we find 20  
on account of the delay in the original order we  
have lost out on the sale and would rather have  
sizes that we can move.

Kindly send credit memo and we will order in  
on it later.

A. G. GALLAGHER Co.,  
By Russell A. Groff

244 Main Street.

CM 2533

RS 2690—2706 30

**Exhibit P-4, Letter Dated Dec. 18, 1928, from  
A. G. Gallagher Co. to The Goodyear Tire  
& Rubber Co.**

RECEIVED DEC 19 1928

39392

C. O. D.

Lakewood, N. J.

December 18, 1928.

10 The Goodyear Tire & Rubber Co.,  
2750 North Broad Street,  
Philadelphia, Pa.

Rg PP Call Loder

Gentlemen:

Kindly send, parcel post,  
One Pair Goodyear Rubber Tire Chains to fit  
30x5.50 Tires.

20 1 Pr No. 3 Rubber N/S Chains 8.40

A. G. GALLAGHER Co.

By Russell A. Groff

P Pc Insly 37

Kindly address to:

A. G. Gallagher Co., 8.77

244 Main Street,

Lakewood, N. J.

30 BILLED  
Dec 19 1928

SHIPPED

Dec 19 1928

less w 8-77

2% .16

8.61

C. O. D.

40 NJ 12/19  
Credit O. K. Valuation \$.....  
1 Ctn 19 N69579

**Exhibit P-5, Letter Dated Sept. 27, 1928, from  
A. G. Gallagher Co. to The Goodyear Tire &  
Ruber Co.**

Lakewood, N. J.  
September 27, 1928

The Goodyear Tire & Rubber Co.,  
2750 North Broad Street, 10  
Philadelphia, Pa.

Dear Sirs;

We are returning today by American Express  
1-1-Gal Can Vulcanizing Cement. This was sent  
to us my mistake. We ordered Cold Patching Ce-  
ment. We have never purchased the other and  
have no use for it. Will you ship the Goodyear  
Cold Patching cement as soon as possible?

20

Yours very truly,

A. G. GALLAGHER Co.  
By Russell A. Groff  
Manager

K 9/29/Y

JNW

RS2966  
10/9/28

C

30

40

**Exhibit P-6, Letter Dated Sept. 10, 1928, from  
A. G. Gallagher Co. to The Goodyear Tire &  
Rubber Co.**

Lakewood, N. J.  
Sept. 10, 1928.

K 9/12/Y

K 9/11/Y

10

I have here your invoice No. 27181, Aug 31st wherein you back order 1-34x4 SS AWT. That is not correct. I want a 34x4½ SS A W T. Perhaps that was my fault on the order if so I am very sorry as it would have to be returned if it did reach here. In addition please ship,

6—33x5 Goodyear Reg Tubes

12—30x3½ Goodyear reg Tubes

20

12—30x3½ Pathfinder “

2—31x5.25 Goodyear SS AWT Tires

1—35x6.00 “ “ “ “

Kindly ship the above Sight Draft Freight via Chesnut Street. Will you get the bill of lading off at once as I had to wait three days the last time before I could lift the shipment.

A. G. GALLAGHER Co.  
By Russell A. Groff

30

40

**Exhibit P-7, Service Station Agreement between  
A. G. Gallagher Co. and The Goodyear Tire &  
Rubber Co., dated June 11, 1928.**

SERVICE STATION AGREEMENT.

Between THE GOODYEAR TIRE & RUBBER COMPANY, INC., having its principal place of business at Akron, Ohio, hereinafter called Goodyear, and A. J. GALLAGHER Co. located at Lakewood, N. J., hereinafter called Dealer. 10

The Dealer agrees to actively engage in the sale and distribution of Goodyear's merchandise hereinafter enumerated, as a Goodyear Service Station Dealer, in Lakewood, N. J., and to render Goodyear Tire Service to the consumer. In pursuance thereof the Dealer agrees to carry Goodyear casings, tubes, and accessories in stock in sufficient quantities to insure prompt service, to display the Goodyear Service Station sign in a conspicuous location at Dealer's place of business, and not to substitute or attempt to substitute any other brand or name of merchandise when the consumer requests Goodyear casings, tubes or accessories. 20

In consideration of the foregoing, Goodyear agrees that during the life of this agreement the Dealer shall be entitled to its Service Station prices on automobile casings, tubes and accessories, subject to the conditions set forth in Goodyear's lists of such prices and shall further be considered a Service Station Dealer in Goodyear's merchandise. It is understood that such prices and conditions are subject to change from time to time. Goodyear will give the Dealer such assistance in advertising, instructions in Goodyear service, and such aid generally as Goodyear 30 40

*Exhibit P-7, Service Station Agreement Between  
A. G. Gallagher Co. and The Goodyear Tire &  
Rubber Co., Dated June 11, 1928.*

gives to Service Station Dealers in carrying out its policy of distribution.

10 In consideration of the Dealers' agreement to carry adequate stock, Goodyear agrees in case of a decline in its suggested consumer prices on its automobile casings and tubes, and in case there is also concurrently a decline in Service Station prices on its automobile casings and tubes, to re-  
20bate to the Dealer by merchandise credit the difference between net Service Station prices as invoiced and the reduced net Service Station prices on all casings and tubes invoiced by Goodyear to the Dealer within thirty (30) days prior to the date such joint suggested consumer and Service Station price reduction shall have become effective, provided always that casings or tubes sold to the Dealer at less than Service Station prices in effect on date of sale shall not be subject to rebate.

30 Delivery of goods sold hereunder shall be f. o. b. Akron, Ohio, or any of the Goodyear Branches, or Goodyear's distributing warehouses; freight allowed to nearest railroad station to Lakewood, N. J., on shipments of 100 pounds or over. On express shipments of 100 pounds or over when so ordered by the Dealer only freight allowance will be made and that allowance according to the class to which the article belongs, but not to exceed the First Class freight rate.

Terms of settlement shall be 2%—10th proxiem

40 Upon failure of the Dealer to make any payments as hereinbefore provided, Goodyear may, at its option, cancel this agreement or defer additional shipments hereon until overdue accounts have been paid.

*Exhibit P-7, Service Station Agreement Between  
A. G. Gallagher Co. and The Goodyear Tire &  
Rubber Co., Dated June 11, 1928.*

Goodyear may decline to make deliveries except for cash whenever it is not satisfied with Dealer's financial responsibility.

The Dealer agrees to refer all claims for adjustment (replacement or repairs) to Goodyear; it being understood that this agreement does not confer on the Dealer any authority to make adjustments in behalf of Goodyear, nor, any authority to warrant any merchandise purchased hereunder, except as set forth in the Goodyear Standard Warranty for Pneumatic Casings and Tubes in effect on the date of resale by the Dealer. 10

The Dealer agrees not to exhibit casings, tubes or accessories purchased of Goodyear, at any automobile show or exhibition without the consent of Goodyear. 20

It is understood that Goodyear shall have the right to sell Automobile casings, tubes and accessories to other firms in Lakewood N J

The Dealer agrees not to use Goodyear's name or trade marks without affirmative written consent of Goodyear.

Upon termination of this agreement by cancellation, or otherwise, the Dealer agrees, on demand, to remove and return to Goodyear the Goodyear Service Station sign and all other signs furnished by Goodyear (the Dealer agreeing that Goodyear owns all signs for the cost or maintenance of which it pays in whole or in part) and to remove all painted signs on windows or on inside or outside walls or attached thereto displaying a representation of said Service Station sign or the name Goodyear in connection with the words 30

*Exhibit P-7, Service Station Agreement Between  
A. G. Gallagher Co. and The Goodyear Tire &  
Rubber Co., Dated June 11, 1928.*

10 "Service Station" or any of Goodyear's trade marks or trade names. Upon failure of the Dealer to remove such signs, Goodyear shall have the right to enter the Dealer's place of business to effect such removals. The Dealer agrees to hold Goodyear harmless from any liability arising out of or connected with the erection, maintenance or removal of any of said signs.

The conditions of this agreement are fully and clearly explained herein and hereby, and there is no verbal agreement or custom whereby the terms and conditions hereof are or can be modified in any manner whatever.

20 This agreement shall become effective when countersigned by an authorized Branch Manager of Goodyear and shall expire five years from date of execution unless otherwise previously terminated as hereinafter provided.

30 This agreement may be abrogated upon Five (5) days' written notice of intention to discontinue given by the Dealer to Goodyear, or by Goodyear through its local manager to the Dealer. At the expiration of said Five (5) days, Goodyear shall have the right to cancel all unfilled orders, and during such time may refuse any orders in excess of the average five-day requirements of the Dealer based on the orders actually given hereunder during the term hereof.

Dated June 11, 1928.

THE GOODYEAR TIRE & RUBBER COMPANY, INC.

Per Frank K. Espenhaine  
First Vice President

*Exhibit P-7, Service Station Agreement Between  
A. G. Gallagher Co. and The Goodyear Tire &  
Rubber Co., Dated June 11, 1928.*

Accepted A G GALLAGHER Co  
Dealer

Per A G Gallagher Treas

Countersigned G S Schick 10  
Branch Manager  
City Phila State Pa

(Endorsement on back)

Added 6-25-28 By B  
Cancel 6-25-29 By B  
Expired..... By.....  
Filing Dept.

— 20  
G 0426 6-11-29

AUTOMOBILE TIRE SERVICE STATION AGREEMENT

Parent Branch Phila  
Depot .....  
Town Lakewood  
State N J  
Firm A. G. Gallagher Co  
Prop'r Name A G Gallagher  
Expires 6-11-33 30

BRANCH RECORD

Service Station Agreeemnt

Signed 6-11-28  
Received at Branch 6-13-28  
Approved Credit Mgr. WJZ Date Initial 6-13-28  
Approved and Countersigned Branch Mgr. CSS  
Date-Initial 6-13-28  
Sent to Akron Date 6-13-28  
GOOD YEAR 40

**Exhibit P-9, Ledger Sheet of Arthur G. Gallagher Co. Showing Account of Said Company.**

Town Lakewood County..... State New Jersey  
 Proprietor's Name Arthur Gallagher Co Class D  
 Firm Name 244 Main St Terms.....  
 Street Ocean Ave Credit Limit 7500. Date 6/21/28  
 Salesman's Territory No. Loder  
 Ship Via ..... COD 10/17/28

10

Legal Dept 11/19/28

|        | Dept. No. | Price | Date            | Cont. Express |
|--------|-----------|-------|-----------------|---------------|
| Go 426 | 6/11/295  | SS    | 6-11-28 6-11-33 |               |

20

| Month | Year | Credits  | Balance  |             |               |
|-------|------|----------|----------|-------------|---------------|
| Apr   | 1928 | 1,098.82 |          | 1,098.82    |               |
| May   | 1928 | 35.90    | 856.85   | 277.87      |               |
| Jun   | 1928 | 1,497.00 | 926.46   | 848.41      | 1,368.80*     |
| Jul   | 1928 | 1,394.38 |          | 2,242.79    | 1,393.38*     |
| Aug   | 1928 | 435.65   | 205.83   | 2,472.61    | 382.82*       |
| Sept  | 1928 | 373.95   | 475.00   | 2,371.56    | 153.05*       |
| Oct   | 1928 | 282.90   | 244.01   | 2,410.45    | 281.75*       |
| Nov   | 1928 | 50.54    | 2,460.99 | 000         | Debit 14.25*  |
| Dec   | 1928 | 171.55   | 158.64   | 12.91       | 171.55        |
|       |      |          |          | 157.30 (4%) | 6.29          |
| Jan   | 1929 | 48.55    | 48.55    | 12.91       | 48.55         |
| Feb   | 1929 | 64.90    | 12.91    | 64.90       | 64.90         |
| Mar   | 1929 |          | 64.90    | 000         |               |
|       |      |          |          |             | 270.75 (6.77) |

\*Bonus issued 11/16/28 per Jr 495 acct going to Legal Dept volume 3630.39@ 4Go. This includes Ins 34544-35367 and 35691 already posted on 11/26 sta.

30

40

1 OCT. T. 1931

**New Jersey Court of Errors and Appeals**

GOODYEAR TIRE AND RUBBER COM-  
PANY, body corporate,  
Plaintiff-Respondent,

*vs.*

ARTHUR GORMAN GALLAGHER,  
Defendant-Appellant.

Action at Law.

Appeal from  
New Jersey  
Supreme Court,  
Ocean Circuit.

**BRIEF OF McCARTHY & McTAGUE IN  
BEHALF OF THE DEFENDANT-  
APPELLANT.**

This cause was submitted to the Trial Judge of the Ocean Circuit without a jury, by consent, for determination on the law and facts, to the finding of which Court the defendant takes this appeal.

**Statement of Case.**

It appears that prior to June 1st, 1928, the Russel A. Groff Company, a corporation, had been doing business in the township of Lakewood, selling automobiles, tires and tubes. This company has been dealing with the plaintiff company for some time prior to April of that year, when its credit became somewhat impaired.

The plaintiff alleges that around the 10th of April, 1928, the defendant, Arthur Gorman Gallagher, assumed direct liability for any indebtedness thereafter arising for tires and tubes sold to the Russel A. Groff Company and they base this contention on a conversation alleged to have

taken place between one of the salesmen for the plaintiff's company and the defendant as follows:

"He said he believed that the car business could be made to pay if a complete stock was kept on hand." And I says, "You realize, Mr. Gallagher, that Mr. Groff's credit is not good with the Goodyear Tire and Rubber Company, and any merchandise shipped hereafter, if you want a complete stock, will have to be charged to you personally." He said he understood that (see State of the Case, page 28, lines 10-18).

The defendant denies ever having had this conversation with the gentleman in question.

Goods were shipped thereafter to the Russel A. Groff Company, as they had been previous to this alleged conversation upon which they wish to hold Judge Gallagher, though the defendant contends without his knowledge or consent. There was offered into evidence a service station contract, whereby the Arthur Gorman Gallagher Company undertook to sell and distribute Goodyear's merchandise from June 11, 1928. However, it is not denied that this company was never actually organized though intended to be organized by the defendant and others and it is also a proof in this case, that the shipments were made to the Russel A. Groff Co., the defendant having no store or place to accept deliveries, he being a Common Pleas Judge of the County. The Court returned a verdict for the plaintiff in the sum of Two Thousand, Fifteen Dollars and Seventeen Cents (\$2,015.17) with interest from August 14, 1928, together with costs of suit to be taxed, making a total of Two Thousand, Eighty-three Dollars and Nineteen Cents (\$2,083.19), the Court having found that the account was changed after August 14, 1928, from a credit to a C. O. D. basis, charged the defendant definitely with goods delivered up to August 14, 1928.

**The grounds of appeal raised by the defendant-appellant, to the finding of the lower Court are as follows:**

1. The Trial Court denied motion in non-suit in favor of defendant when thereunto moved, whereas said motion should have been granted.

2. There is no evidence showing any agreement, whereby the defendant should be held personally liable for the goods delivered to the Russel A. Groff Company, Inc.

## **ARGUMENT.**

### **POINT I.**

**The Trial Court denied motion in non-suit in favor of defendant, when thereunto moved, whereas said motion should have been granted.**

It is admitted for the purpose of this argument that the Russel A. Groff Company, Inc., which company had been buying automobile accessories from the plaintiff for some time, was in financial difficulty around the early part of April 10, 1928, and that the plaintiff corporation was about to discontinue sending goods to the said company on credit. However, in order to hold the defendant, Arthur G. Gallagher, for any of the goods which were admittedly shipped and received by the Russel A. Groff Corporation, without the knowledge of the defendant, it is necessary to find either an original promise on a part of this defendant to be personally and primarily liable for the goods shipped to the Russel A. Groff Corporation, or if the promise is found to be secondary or collateral, a writing or memorandum is necessary (see Stat-

utes of Frauds and Perjuries, 2 Compiled Statutes, sec. 5, page 2612):

“that no action shall be brought to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the person to be charged therewith or some other person thereunto by him or her lawfully authorized.”

An examination of the testimony in this case shows clearly that the plaintiff, in order to hold this defendant, relies first on a certain alleged conversation between the defendant, A. G. Gallagher, and a salesman of the plaintiff corporation named Loder, which was alleged to have taken place on April 10th, 1928 (see State of the Case, page 28, line 10) and secondly, a service station contract signed by Judge Gallagher as treasurer of the A. G. Gallagher Company on June 11th, 1928 (see State of the Case, page 38, lines 28-32). The first contention is entirely denied by the defendant, who, on direct examination, when asked the following question, “Did you, at any time on or about April, May, June, July or August of 1928, or any time subsequent thereto have any conversation with the Goodyear Tire representative and authorize him to charge you for goods shipped to Russel A. Groff, Incorporated” answered, “I did not” (see State of the Case, page 58, lines 19-25). As to the second contention, namely, the service station contract, it is clear from a reading of it, that it was intended to bind the A. G. Gallagher Company and not Arthur G. Gallagher personally to a pledge to deal in the accessories of the plaintiff company (see State of the Case, page 147, lines 9-13). The appellant urges that if they had intended to bind A. G. Gallagher as a person, they

would have insisted upon having the contract so signed, instead of as it was signed, A. G. Gallagher Company by A. G. Gallagher Treasurer, and further the defendant-appellant contend that if any promise was made, it falls within the letter and spirit of section 5 of the Statute of Frauds.

It is of great importance to note, that since the making of the alleged promise, the plaintiff company continued to ship all of the goods to the Russel A. Groff Company (see State of the Case, page 35, lines 30-34), and that all the letters sent out by the Goodyear Rubber & Tire Company continued to be addressed to "Russel A. Groff Incorporated" and not to Arthur Gorman Gallagher (see State of the Case, page 36, lines 10-16), and it is of extreme importance to note that when a demand for payment was made it was made first to Mr. Groff, and when asked to explain this, the plaintiff said that it had tried to see Mr. Gallagher but could not see him, although they had spoken to him on the 'phone, according to their testimony, and although they were cognizant of the fact that he was a Common Pleas Court Judge in Toms River and that he lived in Lakewood and had an office in Lakewood. The appellant strongly urges that this conduct on the part of the plaintiffs shows clearly that they looked for payment first to Russel A. Groff and Company, the party with whom they had been dealing and with whom they continued to ship their goods, and being unable to collect from the said company endeavored to hold Judge Gallagher.

This conduct on the part of the plaintiff clearly shows that any obligation which they thought that Judge Gallagher might have to pay was collateral and secondary, and that they look first to the Russel A. Groff Company, Incorporated.

Your appellant urges that this is the exact situation and set of facts for which section 5 of the

Statute of Frauds was intended, and which, therefore, necessitated a writing in order to bind Judge Gallagher. The writing upon which the plaintiff-respondent relies is not one, "Signed by the party to be charged therewith as required by section 5 of the Statute of Frauds, but signed for the A. G. Gallagher Company", a company which never had any existence and which never carried on any business according to the admissions of the plaintiffs in this case.

An examination of the entire State of the Case fails to show any testimony whereby Judge Gallagher made any payments either in cash or in check on any of the orders of the Russel A. Groff Company, nor was any demand made prior to the time when the plaintiff stopped sending goods on credit. In fact the plaintiff's own witness testified as follows:

"Q. Did you ever receive, or did you know whether any payments were made in cash or in check directly by Arthur G. Gallagher on any one of the accounts. A. No, sir" (see State of the Case, page 51, lines 5-10).

The Trial Judge must have realized the weakness of the plaintiff's contention, for when the motion for non-suit was made, the Court spoke as follows:

"How can you hold Judge Gallagher in the absence of some writing",

and consented to hear the defense because counsel for plaintiff contended that the merchandise was sold to Judge Gallagher. The defendant-appellant urges that this was error, for an examination of the State of the Case up to this stage will show that there had already been introduced into evidence the service station contract and therefore the Court was of the opinion that this writing was insufficient to meet the requirements of the

Statute of Frauds and Perjuries, inasmuch as the Court had said that Judge Gallagher could not be held in the absence of some writing, and Judge Gallagher was not the party to be charged under that contract. The defendant-appellant urges that an examination of the State of the Case up to this stage will show that the goods were sold to the Russel A. Groff Company, Incorporated, and there was no evidence before the Trial Court at that time to show that goods having been delivered to Judge Gallagher at his address, or with his knowledge or consent, or in fact sold to him. For, from the plaintiff's own testimony, they never spoke to Judge Gallagher after the alleged conversation of April 10th, and all payments for goods were made by Russel A. Groff. Clearly, if the goods were sold to Judge Gallagher, it seems preposterous to suppose that the Russel A. Groff Company would undertake to pay his obligations.

A further examination of the record will again disclose that, although they billed their goods to Judge Gallagher, the plaintiff sought payment from Russel A. Groff (see State of the Case, page 76, lines 33-38) when the question was asked:

“Q. Now can you tell the Court, as clearly as you can recollect what your first conversation was with Mr. Groff? A. Well, I went there to collect the bill, which was long overdue, a bill against Gallagher or in the name of Gallagher. I didn't get any satisfaction from Mr. Groff, as to paying it.”

It is of importance to note, that Mr. Goldstein, the plaintiff's attorney, asked the following question:

“Well of course, you never had anything from Gallagher as an individual” (see State of the Case, page 82, lines 33-34).

Your appellant therefore urges that this shows a contradiction as to the position taken by plaintiff's attorney, when he said in arguing the motion for non suit that the goods were sold to Judge Gallagher (see State of the Case, page 56, lines 10-18).

An examination of the State of the Case will repeatedly show, that the plaintiffs merely work under an assumption on their part, that Judge Gallagher might pay these bills, which assumptions your appellant urges were self-serving on the part of the plaintiff, they having never sent bills to Judge Gallagher, and they having looked to Russel A. Groff for payment and sent all their letters to Russel A. Groff and delivered their goods to Russel A. Groff, and admitted that they had nothing against Judge Gallagher personally, except a service station contract, signed by A. G. Gallagher as treasurer of the Gallagher Company, which your appellant has already shown to be a non-existing company which never was formed (see State of the Case, page 89, lines 17-29).

The appellant claims that it was error on the part of the Court to deny the motion of the defendant, to strike out the testimony of the plaintiff's witness, with relations to the conversation had with Russel A. Groff, on the grounds that they were not binding upon this defendant, because this defendant was not present, and that no agency had been shown to bind the defendant, to hold responsible the defendant in this case, through any statement, writings or offers, that Russel A. Groff individually or as a corporation had made (see State of the Case, page 90, lines 1-30) and further there was no relationship shown between the Russel A. Groff, Incorporated, and the defendant Judge Gallagher.

The defendant's own witness admitted, that as far as Judge Gallagher personally was concerned,

the only thing which they had in a guarantee or obligation was a service station agreement, dated June 11th, which agreement was made with the so-called A. G. Gallagher Company, under which they supposed that Judge Gallagher was responsible, though they never communicated with Judge Gallagher with reference to any responsibility, which he might have (see State of the Case, page 96, lines 32-39, also State of the Case, page 97, lines 32-34).

To further substantiate the contention that the plaintiffs charged Judge Gallagher with goods which were ordered by Russel A. Groff, Incorporated, prior to the time of the alleged opening of the Gallagher Company account and for which they are suing in this case, your appellant refers to testimony at the bottom of page 104, lines 36-40 of the State of the Case, and page 105, lines 1-15, upon which appears the following testimony:

“Q. Without any notice to Gallagher or to the Gallagher Company? A. I can't say that there was any notice.

Q. In other words, this particular item represents an obligation of Russel A. Groff, Incorporated, which occurred some time previous to the closing of the Groff account, and the alleged opening of the Gallagher account, as shown by your ledger, for which the Gallagher Company never contracted, and it is charged against them in the Gallagher Company account and in the complaint, upon which you are suing? A. Understand, I assume that.

Q. Is it not so? A. I assume that.

Q. Do you know? A. I do not.”

And your appellant urges that it is of importance to note that the goods were billed to Judge Gallagher prior to his having any dealings whatsoever with the plaintiffs and without his knowledge.

**POINT II.**

**There is no evidence showing any agreement, and whereby the defendant should be held personally liable for the goods delivered to the Russel A. Groff, Incorporated.**

Your appellant urges, that from an examination of the State of the Case it is clearly shown that the plaintiffs in this case merely sought to hold Judge Gallagher after they had failed to receive payment for their goods from the Russel A. Groff, Incorporated, with which they had been doing business, and which arrangement for doing business had not changed, subsequent to the making of any alleged promise by Judge Gallagher, and if they seek to hold Judge Gallagher on any promise which might be collateral to the Russel A. Groff obligation to pay the same, though entirely denied by Judge Gallagher (see State of Case, page 58, lines 19-25), it would necessitate a writing, which writing, according to the Statute of Frauds, see 2 Compiled Statutes, section 5, page 2612, "shall be signed by the person sought to be charged therewith, or some other person thereunto by him or her lawfully authorized", and your appellant urges that no such writing was signed by Judge Gallagher as an individual in this case.

As a further substantiation of the contention of the defendant in this case, your appellant refers to the deposition *de bene esse* taken of Russel A. Groff, who was unable to appear at the trial because of sickness, and who substantiated the defendant in this case, in that there never was any conversation had between Judge Gallagher and the representative of the plaintiff company, which conversation was alleged to have taken place in the presence of Mr. Groff and which was alleged

to pertain to a promise by Judge Gallagher to be personally liable for the goods sold to Russel A. Groff Company, upon which the plaintiffs rely and who further testified that Judge Gallagher had no connection with the business and had not to his knowledge assumed payment for any of the goods admittedly shipped to the Russel A. Groff Company, and who testified, which was admitted by the plaintiff, that he, Russel A. Groff, had made some payment for the goods delivered during the time which the plaintiffs seek to hold Judge Gallagher (see State of the Case, pages 115-133; see State of the Case, page 117, lines 30-40; see State of the Case, page 118, lines 1-40).

Your appellant further urges that the billing of goods to the credit of Judge Gallagher on the part of the plaintiff are self-serving entries, made without authority and without cause.

### CONCLUSION.

**The defendant-appellant respectfully submits that the judgment of the Trial Court in favor of the plaintiff should be reversed.**

Submitted May Term, 1931.

McCARTHY & McTAGUE,  
Attorneys for Defendant-Appellant.

FRANK P. McCARTHY,  
Of Counsel with  
Defendant-Appellant.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

GOODYEAR TIRE AND RUBBER COM-  
PANY, body corporate,  
*Plaintiff-Respondent,*

*vs.*

ARTHUR GORMAN GALLAGHER,  
*Defendant-Appellant.*

*Action  
at Law.*

*Appeal from  
New Jersey  
Supreme  
Court,  
Ocean  
Circuit.*

### BRIEF OF RESPONDENT.

(Italics and parenthetical words, etc. are mine except where otherwise noted.)

#### Foreword.

This is a fact case. The respondent sold and delivered to the appellant goods, wares and merchandise for which it seeks to recover the purchase price. The cause having been submitted to the trial judge without a jury, by consent, for the determination of the law and facts, and the said trial judge having found as a matter of fact that the respondent sold and delivered the said goods and merchandise to the appellant, in consideration wherefor the appellant agreed to pay the respondent the sum for which judgment was rendered, the findings of the said trial judge are equivalent to a verdict by a jury, and on appeal, the reviewing court should pass only upon those exceptions which have been properly taken in the course of the trial, but will not question the propriety of the trial court's findings. *Mills v. Mott*, 59 New Jersey Law, page 15; *Backes v. Movso- vich*, 82 New Jersey Law, page 44; *Maccia v. Stanzione*, 84 New Jersey Law, 509; *Upton v. Slater*, 83 New Jersey Law, page 373. At the

close of the case, the appellant made a motion for a non-suit. The motion was denied and this appears to be the only basis of the appeal filed herein. In this connection, a review of the testimony will clearly indicate that the trial judge was justified in denying the motion for a non-suit. There was an abundance of testimony of this by the respondent, much of which was uncontradicted by the appellant, which established the respondent's claim.

“The well established rule is that a motion for a non-suit admits the truth of the plaintiff's evidence and of every inference of fact that can be legitimately drawn therefrom, but denies its sufficiency in law, and that where the evidence and the inferences reasonably arising therefrom, will support a verdict for the plaintiff, a motion for a non-suit must be denied.” (*S. Kosson & Sons v. Union Bldg. Co.*, 8 Adv. Reports, page 559, Court of Errors and Appeals.)

## ARGUMENT.

### POINT 1.

The point raised by the appellant that the Statute of Frauds is applicable to this case is without merit. The respondent did not bring its suit against the appellant upon the theory of a guaranty by the appellant to pay for the goods sued for. The complaint (see State of Case, page 4) shows that recovery is sought for goods sold directly to the appellant. The testimony of the respondent is to the same effect.

Thus, the respondent's witness, James A. Loder, testified (State of Case, page 27):

“Q As a result of the conversation what did you do, if anything. Get right down to the conversation you had with Judge Gallagher. A I was talking to Mr. Groff one

day and Judge Gallagher came in. He says, 'I am going to try to run this place myself and want to see if I can make some money here in the car business.'

"Q When you say at Judge Gallagher's direction, what makes you say that? A He told Mr. Groff to put in a complete line of tires and I took it that way. Q In whose name was the order entered? A Arthur G. Gallagher, shipped to Russell Groff, Incorporated" (State of Case, page 29).

"Q Now on this conversation with Judge Gallagher was anything said about the purchase and sale of any future merchandise outside of this first order? A Yes, Judge Gallagher said he couldn't give the business much attention, that Mr. Groff was his manager and knew a lot more about tire sizes than he did, and it was up to him to do the buying" (State of Case, page 30).

The respondent's witness, Charles L. Hallett, testified as follows:

"Q Now you further said that from that date forward the debtor was Arthur G. Gallagher, an individual? A I assumed that that was the responsible party that I was doing business with and *that party is the party that I granted the credit to*" (State of Case, page 91).

"Q And I understand you to say that the credit was extended to Mr. Gallagher personally; is that right? A It was on the strength— Q Now just answer the question. A Yes, sir. Q Will you explain to the Court how it is that in spite of this so-called written agreement which bears the name of what would apparently be a corporation, you still carried the account in A. G. Gallagher's personal name, if you can explain it? A I extended the credit on the strength of Arthur G. Gallagher personally, because I thought that was all there was to this proposition, that he was either the incorporator of the A. G. Gallagher Company

or he was to use it as a trade style'' (State of Case, page 98).

## POINT 2.

The charges for the merchandise in question were entered in the respondent's books of account in the name of the appellant.

Thus, the respondent's witness, Herman H. Marota, who was the bookkeeper of the respondent, testified:

''Q Do you have an account on the books of your company against Arthur G. Gallagher or Arthur J. Gallagher? A We have'' (State of Case, page 41).

''Q Will you refer to your account with Arthur G. Gallagher and tell the Court when it was opened? A I have here the original posting under date of June 1, invoice in the amount of \$205.67'' (State of Case, page 42).

''Q Did you send Mr. Gallagher any statement of his account for merchandise purchased of your company? A We did, monthly. Q And to whom *were those statements sent?* A I will answer that question without seeing copies of the original statements. Q Well, just answer the question, to whom were they sent? A Arthur G. Gallagher Company'' (State of Case, page 43).

It appears from the testimony that all of the invoices which were mailed or prepared in connection with the merchandise which was sold, bore the name of the appellant. Thus, on pages 52 and 53 of the State of Case, the respondent's witness testified to this fact and likewise on pages 92 and 93 of the State of Case, it appears furthermore that statements of the account were mailed to the appellant (see State of Case, page 43 and page 51).

It is conceded that some of these invoices and statements bore slight discrepancies as to the appellant's name. This is fully explained by the respondent's witness who testified that these discrepancies were purely typographical errors (see State of Case, page 100).

### POINT 3.

The question of a guaranty has no bearing on this case since recovery is sought for the price of goods sold directly to the defendant. This was made clear to the Court in the argument on the motion for the non-suit by the appellant.

"Q Were the goods sent directly? A Certainly. We are not suing Judge Gallagher on the theory of a guarantor. This merchandise was sold to Judge Gallagher and it was very carefully explained. The Court: *If that be so that is an issue of fact, I suppose.* We have established apparently the goods were shipped to Groff" (see State of Case, page 56).

See also page 109 of the State of Case:

"Mr. Goldstein: I object to that question on the ground that there has been no testimony before the Court as to a guarantee, and upon the further ground that we are not suing upon *the theory of a guarantee.* Mr. Gallagher: *I will withdraw the question.*"

### POINT 4.

There is no specific denial by the appellant of the most important parts of the testimony given by the witnesses of the respondent. Such denial as the appellant has made is very vague and general and relates only to few of the facts testified to by the respondent.

**POINT 5.**

The trial judge had the best opportunity of determining what credibility should attach to the testimony offered by the witnesses inasmuch as he was able to judge the character and demeanor of the witnesses testifying before him.

The testimony of the appellant was entitled to very little weight and credibility and the trial judge must have so found. That this is so can be seen from the uncertainty and doubt with which the appellant testified. It is conceded that the appellant is judge of the Ocean Common Pleas Court (see Appellant's Brief, page 2). The Court's attention is also directed to pages 60, 61, 62 and 63 of the State of Case.

**POINT 6.**

The mere fact that the goods were shipped to Mr. Groff instead of to the appellant direct does not alter the appellant's liability. The shipments of goods were made to Groff because the respondent was directed to make the shipments in that manner (see page 29 of State of Case).

“Q In whose name was the order entered? A Arthur G. Gallagher, shipped to Russell Groff, Incorporated.”

“Q Now on this conversation with Judge Gallagher was anything said about the purchase and sale of any future merchandise outside of this first order? A Yes, Judge Gallagher said he couldn't give the business much attention, that Mr. Groff was his manager and knew a lot more about tire sizes than he did, and it was up to him to do the buying” (see State of Case, page 30).

The appellant in the brief filed by it raises the point on page 9 of the said brief that certain goods were shipped by the respondent prior to

the time of the alleged opening of the Gallagher account. The manner in which this incident took place is fully explained on page 96 of the State of Case:

“By the Court: A chance order to see how it works out? A A chance order to see how it works out. But that is a thing that lets in good will in opening our accounts. Then we go back to our salesman and insist that he get this contract in, which he is supposed to do just as soon as he possibly can, and I think this may have happened in that case, where I probably did let a few orders go out to be covered upon the assumption that this contract should come in.”

#### POINT 7.

The appellant signed a contract which bound him to pay for the goods in question. He admits signing this contract (see State of Case, page 59):

“Q And showing you the contract that is mentioned here this morning and the service station agreement, is that the one you signed or is that your signature? A Yes, that is my signature. Q And is that the time that you signed, or the time that you refer to? A I would say that was the time, yes.”

#### CONCLUSION.

As stated at the outset, this was purely a fact case. Isn't it worthy of serious consideration that the trial judge, knowing the appellant to be a member of the bench, saw fit to practically disregard the testimony which he gave and attach practically no weight to it? He must have felt that the appellant's story was untrue, because it stands to reason that if there was any doubt at all as to whether or not the appellant was telling

the truth, it would have been resolved in favor of the appellant in view of the appellant's judicial standing. This lends weight to the argument that the facts testified to by the appellant were not worthy of belief and that his denial of the respondent's testimony was deserving of no consideration. The opinion filed by the trial judge is sufficient to indicate the reasons which prompted him in rendering judgment in favor of the respondent, and against the appellant, and no better reasons can now be offered why the said judgment should be affirmed.

Submitted May Term, 1931.

DAVID GOLDSTEIN,  
Attorney for and of Counsel with  
Plaintiff-Respondent.

