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NEW JERSEY COURT OF ERRORS
AND APPEALS

ELIJAH ANDERSON,
Plaintiff.

vs

CLYDE E. FREEHAFFER AND
JOHN HENDLER, TRADING AS
FREEHAFFER-HENDLER
CHEVROLET COMPANY,
Defendants.

ACTION AT LAW

Mt. Holly, N. J., November 10, 1926.

STATE OF THE CASE

Before HON. FRANK B. JESS, Judge, and a jury

APPEARANCES

For Plaintiff—MESSRS. WELLS & TOMLINSON.
For Defendants—ROBERT PEACOCK, ESQ.

THE STATE OF NEW JERSEY

To Clyde E. Freehafer and John Hendler, trading as Freehafer-Hendler Chevrolet Company:

10 [L.S.] You are summoned to answer the annexed complaint of Elijah Anderson, in an action at Law in the Burlington County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the Burlington County Circuit Court, at Mount Holly, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 Witness, Frank B. Jess, Judge of the Burlington County Circuit Court, at Mount Holly, this fourth day of January, nineteen hundred and twenty--six.

Wells and Tomlinson.

Attorneys.

William H. Reeves,
Clerk.

BURLINGTON COUNTY CIRCUIT COURT

ELIJAH ANDERSON,
Plaintiff.
vs
CLYDE E. FREEHAFER AND
JOHN HENDLER, TRADING AS
FREEHAFER-HENDLER
CHEVROLET COMPANY,
Defendant.

ACTION AT LAW
COMPLAINT 10

Elijah Anderson, plaintiff, residing in the City of Burlington, in the County of Burlington and State of New Jersey, complaining says that:

1. On or about July 1, 1924, he sold and delivered to Clyde E. Freehafer and John Hendler, trading as Freehafer-Hendler Chevrolet Company, certain chattels, a list 20 of which is attached hereto and made a part hereof. The defendant promised and agreed to pay for the same, the amounts set opposite the respective items in the schedule hereto annexed, making a total sum of \$3,920.19. The defendant has paid to the plaintiff the sum of \$2,950.00 on account of the contract price of the goods and chattels sold and delivered as aforesaid, leaving a balance due to the plaintiff amounting to \$970.19.

Plaintiff demands the sum of \$970.19 together with interest thereon from July 1, 1924.

WELLS & TOMLINSON, 30
Attorneys for Plaintiff.

2)		
6 Doz.) 2 oz. Bottles Whiz Gasket Cement,		
135 dz.	\$ 11.93	
5 5-lb. Cans No. 3 Whiz Transmission Grease		
10.00 doz.	4.17	
2 5-lb. Cans No. Whiz Gear Grease, 10.00 doz...	1.67	
9 5-lb. Cans No. 150 Whiz Oil Soap, 10.00....	7.50	
10 6 3-lb. Cans No. 150 Oil Soap, 6.00,	3.00	
19 Cans Ford Size Whiz Gear Grease, 6.50,....	10.30	
17 qts. Cans Whiz Mohair Top Dressing, 12.00..	17.00	
4 qts Cans Ford Size Whiz Auto Top Dressing		
12.00	4.00	
21-pint Cans (Black) Whiz Engine Enamel,		
8.00	14.00	
6-pint Cans (Grey) Whiz Engine Enamel, 8.00.	4.00	
11 Cans Whiz Roadside Hard Cleaner, 2.25....	2.06	
3 Cans Size 1 Oildag ....	.30	
20 6¼ Pints Cans Velox Rubber Cement ....	.90	
27 Cans Whiz Rubber Cement, .10	2.70	
8 Cans Empire Cementless Red Patches	1.00	
5 Cans Wonderworker Mohair Top Patches....	1.00	
5 Cans Vulco-Visco Vulcanizing Patches.....	.75	
3 cans Lusco Liquid Hand Cleaner ....	.45	
1-14 oz can Lusco Soap ....	.10	
11-large Cans Davis Waterless Hand Soap)		
2-small cans Davis Waterless Hand Soap	1.80	
2-Boxes Firestone Mica ....	.10	
30 12 cans 3 in 1 Handy Oil can	2.40	
1 pint can Auto Mirrorlike Polish ....	.50	
1 pint can Dixon Veneer ....	.50	
2-5-6 pt. can Mohair Water Proofing	2.00	
2-5-6 qt. cans Leather and Pantasota Top Dress-		
ing	2.00	

2 pint cans Wonderwork Carbon Remover, .90.	1.80	
2½ cans Wonderworker Carbon Remover, 50..	1.00	
11-pint cans Wonderworker Tar and road oil, .55	6.05	
14-pint cans Hollingshead Nekfoot oil, .25.....	3.50	
1 pint can Linseo Metal Polish, 3.25.....	.27	
4½-pint cans Linseo Metal Polish, 2.00.....	.67	
436 gals. Gasoline, 19½.....	85.02	
30 gals. Polarine Oil, Heavy, .50	15.00	
15 gals. Mobile "A" Oil, 66¼	9.94	10
77 gals. Automobile Oil, .55	42.35	
1½ gals. Mobile Arid, .66¼.....	.99	
Polarine Oil Medium, .45	18.00	
24½ pint cans Slixit Auto Polish	9.00	
11 pint cans Whiz Top Dye Black, 7.20	6.60	
4 bottles Wonderworker Never Squeak	1.50	
24 packages Whiz Soap Stone, 1.50 doz.	3.00	
13 cans Se-ment-ol (7 oz.)	7.31	
6 cans Whiz Stop Leak (5 oz.), 6.00	3.00	
3 cans Linseo Liquid Radiator Cement, 6.00....	1.50	20
7 cans Whiz Stop Leak Powder (5 oz.), 6.00...	3.50	
21 cans Whiz Radiator Stop Leak Liquid, 6.00 .	10.50	
3-1gal. cans A-1 Metal Polish, 15.00.....	3.75	
2 lb. Assorted Copper Rivets ().....	1.00	
5 sets Fork Cook Gaskets, .45	2.25	
172 Ford Spark Plug Wires, .04	6.88	
4 Hudson Valve Grinders	2.50	
1 Steerier Hydrokit	1.50	
4 Columbus Running Board Step Plates	4.50	
2 Oaklond Running Board Step Plates	2.25	30
8 Ford Tail Lights, .50	4.80	
4½ Pair Paterson Lenz 8½", 2.60	11.70	
2 Ford Stop Lights, 2.25	4.50	
4 Door Rims for Ford Cars No. 40 (Hedlight) .	3.00	
6 Magic Vulcanizers, 75	4.50	

	6 bottles Eureka Liquid Patching Cement, .38 ...	2.88
	33 Schroeder Valve Insides	1.65
	11 Valve Dust Caps .....	.46
	3 Dozen lead pencils	1.00
	41 Cox Valve Caps	2.00
	1 pr. Flintex Lenses 7 3-8" .....	.83
	3-cans Pep Grinding Compounded (4 oz.), .30..	.90
	2 cans Simoniz, .45 .....	.90
10	17 tubes Cox Patching Cement (small)	1.07
	5 tubes Cox Patching Cement (large) .....	.83
	8 Farranoid Tube Patch, .20	1.60
	10 Goodrich Tube Patch Outfit, .20	2.00
	12 Cox quick repair patches (50c)	4.00
	3 Cox quick repair patches (30c) .....	.56
	9 U. S. Tire Repair Kit, 2.50 doz.	1.88
	2 pounds Tire Tape (1 ounce size) (J. M.) .44..	.88
	13 pkgs. Tire Tape 1 5/8 lbs. (2 ounce size) (J.M.), .43 .....	.70
20	4 pkgs. Tire Tape 1 lb. (4 ounce size) (J. M.)..	.42
	42 Westinghouse Auto Lamp Kit, .20	8.40
	31 E-Z Fill Caps (Fords), .35	10.85
	3 Bethelam Radiator Caps No. 1, 3.40	12.20
	1 Bethelam Radiator Caps No. 2,	3.65
	1 Bethelam Radiator Caps No. 3	3.67
	1 Bethelam Radiator Cap No. 3 X	3.40
	2 Bethelam Radiator Cap No. 30, 2.50	5.00
	2 Bethelam Radiator Caps No. 31, 2.50	5.00
	1 Bethelam Radiator Cap No. 10	3.40
30	8 Boyce Motor-Meter (Midget), 2.45	19.60
	7 Boyce Motor-Meter (Large), 5.25	36.75
	8 Ideal Triple Signals, 3.85	30.80
	4 Ideal Single Signals, 4.00 list, 2.80	11.20
	4 Ideal Junior Signals, 3.00 list, 2.00	8.00
	3 qt. cans Research Brand Eng. Enamel, 1.05....	3.15

	11 Cans Motor Draphike, .15	1.65
	2-1 qt. cans Lensco Tire Enamel, .75	1.50
	3-1 pt. cans Lensco Auto Varnish, .50	1.50
	3-1 pt. cans Black Lensco Tire Enamel, 40....	1.20
	3-1 pt. cans White Lensco Tire Enamel, .51....	1.68
	1-1 pt. cans Lensco Mohair Dressing, .60 .....	.60
	1-1 Engine Enamel, .50 .....	.50
	1-1 qt. cans Lensco Top Dye	1.13
	2 cans Lensco Nut Loosener, .45 .....	.90
	10 pt. cans Tasgon Nut Loosener, 75	7.50
	4 Fire Fighters Extinguishers, 7.50	30.00
	13 Miller Locks, 55	7.15
	3 Hack Saw Blades .....	.20
	1 Fire Extinguisher	15.00
	9 Coil Files (Sterous)	1.00
	15 Ruby Lenses, .10	1.50
	2 Ford Cylinder Head Gaskets, .38 .....	.76
	42 Tail Light Retainer Rings	1.00
	1 14" Pipe Wrench	20
	1 10" Pipe Wrench	2.85
	1 Model 266 B Relay)	
	12 1 3-4" G. L. W. Spring Oilless	
	8 2 1/4" G. L. W. Spring Oilless, .20	4.00
	3 pr. License Tag Clips (quality), .15 .....	.45
	14 pr. K. W Coil Spring Contacts, 13	1.82
	5 U. S. Tire Pressure Gauges, 1.00	5.00
	5 Schroeder Pressure Gauges, 1.00	5.00
	36 Westinghouse Flash Light Bulbs	4.09
	1 Hour Tail Lamp .....	.60
	6 Crescent Neck Pliers 6")	
	6 Crescent Neck Pliers 5")	2.75
	4 Mossberg Spark Plug Sockets	1.50
	1 Thief Oil Ford Ignition Lock	2.60
	2 sets Quickaway Socket Sets	3.00

3 sets None Better Socket sets	2.25
3 Ford Pet Cock Wreyelies, .10	.30
4 5" Plain Black Pliers, .25	1.00
10 No. 711 Combination Slip Joint Pliers, .25	2.50
1 No. 713 Combination Slip Joint Pliers, .60	.60
1 lot Gaskets	13.50
62 Champion Spark Plugs 7-8 Reg., .56	34.72
82 Champion X Spark Plugs .45	36.90
10 5 Sootless Spark Plugs, 1.00	5.00
23 Bethelam Spark Plug Core, .10	2.30
18 Champion X Insulators, .10	1.80
23 Black Spark Plugs 7-8", .25	5.75
7 Black Spark Plugs 1/2", .25	1.75
6 Bethelam Plugs, .56	3.36
3 Splittorf Metre, 1.00	3.30
2 Mosler 7-8 long, .56	1.12
7 Champion Priming Plugs 7-8", .75	5.25
9 Champion Priming Plugs 1/2", .75	6.75
20 7 Bethelam Tractor Spark Plugs, .50	3.50
29 cans Co Spark Plugs 7-8", .56	16.24
3 Rosco Parking Lamp, 1.87	5.61
2 Ever-Ready Spot Light No. 2671, 1.45	2.90
2 Ever-Ready Spot Light No. 2672, 1.79	3.58
4 Ever-Ready Daylo No. 2616, .91	3.64
2 Ever-Ready Daylo No. 2659, 1.51	3.02
1 Hot-Shot Battery No. 1461M, 1.63	1.63
3 Chamois, 1.35	4.05
6 J. C. M. Acceluator, 2.00	12.00
30 13 Boyce-cite	2.00
4 set Cork Feltbak Transmission Lenz, 2.00	8.00
8 Milwaukee Ford Timer, 1.34	10.72
7 Berg Ford Timer, .47	3.08
4 Auto Glare Shields, .60	2.40
3 Sponges, 1.15	3.45

20 ft. 12" Radiator Hose, .22	4.40
3 ft. 1 5-8" Radiator Hose, .24	.72
12 ft. 2" Radiator Hose, .29	3.48
3 ft. 1 3-8" Radiator Hose, .21	.63
12 ft. 1 3-4" Radiator Hose, .25	3.00
5 ft. 1 7-8" Radiator Hose, .26	1.30
12 ft. 1" Radiator Hose, .16	1.92
12 ft. 1 1-8" Radiator Hose, .17	2.04
18 ft. 1 1/4" Radiator Hose, .18	3.24 10
2 pr. Gilmer Bonice Absorbers	15.00
1 piece Running Board Linoleum	.60
18 Universal Hose Clamps	.54
2 Model E-2 Sterling Coils	12.50
1 lot Windshield Glass (7)	21.00
6 No. 2720 Tineken Cups, 1.12	6.72
6 No. 3520 Tineken Cups, 1.71	10.26
1 No. 3530 Tineken Cups	1.71
2 No. 3720 Tinken Cups	2.31
3 No. 2330 Tineken Cups, 1.16	3.48 20
3 10" Screw Drivers	1.00
6 No. 2320 Timklen Cups, 1.16	6.96
3 No. 395 Coves Teinken, 3.34	10.29
1 No. 235 Coves Teinken	1.72
2 No. 3920 Tienken Cup, 2.73	5.46
2 No. 3760 Tienken Coves	1.72
2 2454 Roller Bearings Hyatt	3.00
Wheel Bearings	
1 Inner Hyatt Bearing (Reo)	2.70
1 Doz. Small Hose Clamps	.60 30
9 3 1/2 Gill Rings, .40	3.60
12 3 3/4 Gill Rings	4.80
4 4 1/8 Gill Rings	1.60
68 Ford Auto Rattlers	3.40
24 3 1/4 No Leak Rings	9.12

	1 Box 12 Coil Springs .....	.24
	8 Assorted Gill Rings	3.20
	2 Cord Steveus License Plate Holders less 9	4.20
	10 pints Goodyear Tire and Auto Paint	3.00
	6 Minute Meter	11.25
	4 Outlook Windshield Cleaners	3.60
	5 Weed License Bracket	2.16
	15 Steering Rod Auto Rattlers	3.75
10	1 Trico Windshield Cleaner .....	.90
	1 Midwest Mirror 7"	1.05
	1 Ever-Ready Blk Fin. Windshield Cleaner auto- matic	3.00
	2 White House Mirrors Round	4.00
	1 Trouble Light	1.25
	4 No. 7 Rear View Mirrors, 1.17	4.68
	4 No. 11 Rear View Mirrors, 1.34	5.36
	2 Stop Lights	3.00
	1 Ford Tail Light .....	.60
20	4 Oil Tail Lights	2.40
	4 31x4 Tire Covers (Gordon)	5.00
	6 32x4 Tire Covers (Gordon)	7.50
	1 Case containing 2-1 gal (oil) cans	2.50
	2 Anthony Tire Pumps, 2.25	4.50
	1 Matchless Dust Brush .....	.50
	4 Pair Auto Side Wings (Oskosh)	34.00
	2 Badger No. 3 Jacks, 2.70	5.40
	3 Badger No. 6 Jacks, 3.15	9.45
	11 1/2 pairs Hudson Lens (Ford Size)	5.50
30	5 Ford Rear Axles	7.50
	7 pairs Radius Rod Supports Ford	4.44
	9 Ford Motor Aruis (Hudson)	9.00
	3 Crane Pumps (Hand)	12.00
	2 Crane Pumps (Engine)	8.00
	1 Rayfield Carburetors (Dodge 1 1/4)	15.00

	1 Petree Cut-out	3.50
	1 Rayfield Carburetor 784260	25.00
	1 Rayfield Carburetor Type U. F. Ford	13.50
	2 Luggage Carriers	4.00
	8 Ford Hub Caps .....	.72
	6 1/2 pairs Ford Brake Shoes	9.75
	3 Heat and Cold Deflectors (Ford)	1.20
	2 Ford Rig Gears	4.50
	4 Wind and Heat Maps	2.00
	3 Detroit Ford Gasoline Gauges	4.50
	1 Tire Iron	2.00
	31 cans Polarine Cup Grease 1 lb.	4.35
	1 Lot run lugs and bolts	4.00
	10 Ford Fan Belts Leather	3.80
	4 Oakland V. Belts	4.00
	3 Cleveland Belts Leather	1.80
	5 Tractor Belts, Leather	5.00
	7 Ford Timer Wires	3.50
	5 Tire Lock Cables	1.75
	6 Tire Lock Chains	1.20
	4 Pair Door Anti Rattlers	1.00
	1 Hack Saw	1.25
	1 Top Leap Ford Rear Spring .....	.50
	6 Ford Front Springs	6.90
	5 Odd Springs	15.00
	1 Radius Rod	1.75
	1 case Gaul Dehr & Shearer	21.90
	25 A. C. Cico Spark Plugs 1/2"	14.50
	6 A. C. Cico Spark Plugs 7/8"	3.48
	57 Ford Radiator Hose	7.50
	2 Model E. Coils	12.50
	1 Light Testing Box of 6 doz. Cells	2.00
	2 Auto Top Covers	3.00
	4 Auto Tire Covers	1.00

	21 Rolls Register Tape	1.26
	1 5 gal. can Floor Oil.....	2.10
	10 No. 1129 Modza 21 C. P. 6-8 Globes	2.28
	7 Rim Wrenches	2.15
	2 Modaz Bulbs 16 C. P. 8 to 9 volts .....	.46
	8 Leather Key Purses	2.00
	10 Ford Safety Steering Wheel devices	4.00
	5 Ford Plugs (No Name)	1.25
10	27 Champion X Plugs, 46	12.15
	7 Champion X Plugs 7/8" Regular, .58	4.06
	5 Champion Plugs Standard, .50	2.50
	8 Miscellaneous Spark Plugs, .50	4.00
	1 Weis Filing Card Cabinet	1.50
	54 Misc. Light Connections, 13 1/2	7.29
	93 Misc. Light Connections, 13 1/2	12.56
	3 Single Gang Switches, 13 1/2 .....	.42
	20 Gas Burners "Y"	4.00
	21 G-12 Headlight Bulbs, 2 1/2	4.83
20	5 G-8 Side Light Bulbs	1.60
	27 G-12 Headlight Bulbs	6.21
	92 G-6 Rail and Dash Bulbs, .10	11.96
	1 Amer. Sales Register	25.00
	2 1/2 pint cans Carbon Remover (Linsco)	1.00
	1 pint Leather Top Dressing (Linsco) .....	.60
	5 1/2 pint Engine Enamel Linsco	1.80
	1 pint Metal Polish Linsco .....	.27
	2-1/2 pint Cushion Dressing Linsco	1.00
	1 pint Tire Enamel Linsco .....	.50
30	2-1/2 pint Re-touching Enamel .....	.76
	2 cans Clutch Belt Compound .....	.50
	129 Hose Clamps (Assorts), .05	6.45
	4 H-10 Gearshift Extension Handles	
	1 H-11 Gearshift Extension Handles	
	2 S-10 Gearshift Extension Handles	

	1 S-9 Gearshift Extension Handles	
	1 S-4 Gearshift Extension Handles	
	1 S-3 Gearshift Extension Handles	
	1 H-3 Gearshift Extension Handles	
	1 F 10 Gearshift Extension Handles	
	1 H-6 Gearshift Extension Handles.	
	1 S 8 Gearshift Extension Handles	9.25
	63 Ford Switch Keys	4.32
	15 ft. Wire Belting	1.50
	26 pr. windshield ruggers, .07	1.82
	24 ft. cable (Insulated)	2.44
	15 ft. cable (Insulated)	1.50
	12 ft. 1 1/4 in. Leather Belting	1.44
	9 Crank Handle Holders (leather) .29	2.61
	1 Tirco Windshield Cleaner .....	.90
	1 Outlook Windshield Cleaner .....	.90
	2 Universal Brackets, No. 7	2.62
	2 Oil Tail Lamps	1.20
	1 None Better ticket set .....	.75
	12 3 gang lighting switch	1.70
	1 No. 11 Universal Bracket	1.75
	1 Rosco Parking light	1.98
	1 Anthony Tire Pump	2.25
	1 Get at it oil can	1.25
	4 Bumpers	52.30
	11 5-lb. cans Polarine Cup Grease	6.42
	33 3-lb. cans Polarine Cup Grease	9.90
	7 Gal. Polarine Transmission Oil, .65	4.55
	9 Qts. Liquid Gloss	4.15
	7 Gal. Mobile Oil Artic (1 gal. cans) .94	6.58
	10 Gal. Mobile Oil B Artic (1 gal. cans)	10.50
	11 Gal. Mobile Oil A Artic (1 gal. cans) .94	10.31
	1 5-gal. can Mobile Oil Artic	4.20
	1 5-gal. can Mobile Oil E	4.20
	1 5-gal. can Mobile Oil B	4.76

	1 Emergency Gasoline can	5.00
	4 sets Hol-set Wrench sets	10.24
	1 Oil Rack (display)	17.00
	1 Chevrolet Rim S. S.	2.70
	1 Tire Changing Jack (Pacific)	8.00
	1 Tire Changing Jack (Weaver)	60.00
	1 Tire Rack	10.00
	1 McCord Gasket Board and Gasket	9.00
	1 B. & S. Wench Board and Wenches	30.00
10	3 used Rim Wenches	1.05
	2 doz. Tire stops	3.00
	180 No. 950 Ever-ready dry cells, .13	23.40
	20 No. 935 Ever-ready dry cells, .11	2.20
	1 Filing Cabinet	20.00
	1 Show Case	10.00
	1 Desk, counter and shelving	50.00
	1 Bowser Oil Tank, .65 gals.	
	1 Red Devil Jack	50.00
20	Measures	2.00
	Overheadmast and Vulcanizer	10.00
	1 Hose	5.00
	1 4-way wench	1.50
	17 Ford Rear Fenders, 2.62	44.54
	2 Front Fenders	6.00
	1 Rear Fender	5.00
	14 Radius Rods	19.88
	2 Truck Springs	28.00
	9 Chains-camp	13.50
	23 Hood and Red Covers	44.00
30	1 Grease Pump and Grease	5.00
	1 Water Can	1.83
	1 Cash Register	150.00
	Cigars and Cigarettes	
	3 packs Fatimas, less 1 pkg.	4.52
	3 packs Lucky Strike	3.72

	1 Carton Sweet Caps, less 1	1.12
	4 Cartons Camels	4.86
	2 Cartons Chesterfields	2.45
	1 Carton and 4 packs pied. .15	1.95
	1 Carton Recruits	1.60
	1 Carton Murad	1.60
	2 Cartons Helmar	2.30
	1 Carton Piedmont, 10c less—exprs .....	.72
	1 Box Taking Cigars, less 2	2.88
	1 Box Manual Cigars, less 9	3.07
	1 Box Lord Sterling Cigars, less 13	2.78
	1 Box Cinco Cigars, less 16	2.00
	2 Boxes Havana Ribbon Cigars, less 16	4.87
	1 Box Bold Cigars, less 2	2.78
	1 Box Lord Gloster	3.75
	1 Box 44	2.95
	1 Box Blackstone, less 20	2.25
	1 Box Philadelphia Hand-made, less 19	3.07
	24 Cans Velvet	3.00
	16 Cans Prince Albert	2.00
	43 ft. 3x $\frac{1}{4}$ Thermoid Lining, .85	36.55
	14 ft. 2 $\frac{1}{8}$ x3-16 Thermoid Lining, .55	7.70
	33 ft. 1 $\frac{3}{4}$ x3-16 Thermoid Lining, .40	13.20
	20 $\frac{1}{2}$ ft. 1 $\frac{1}{2}$ x3-16 Thermoid Lining, .35	7.18
	41 ft. 1 $\frac{1}{4}$ x3-16 Thermoid Lining, .30	12.30
	16 ft. 2 $\frac{1}{4}$ x3-16 J. M. Ash Lining, .50	8.00
	15 $\frac{1}{2}$ ft. 2 $\frac{1}{2}$ x3-16 J. M. Ash Lining, .55	8.53
	13 ft. 1 $\frac{1}{4}$ x $\frac{1}{8}$ J. M. Ash Lining, .15	3.25
	22 ft. 1 $\frac{1}{4}$ x $\frac{1}{8}$ J. M. Ash Lining, .25	5.50
	30 ft. 1 $\frac{1}{4}$ x $\frac{1}{8}$ J. M. Ash Lining, .25	7.50
	21 ft. Tire Flaps, .07	1.47
	1 pr. 32x4 Chains	4.12
	1 pr. 35x5 Chains	6.00
	1 pr. 35x5 used chains	6.00
	1 pr. 31x4 Chains	4.12

4 bags Cross Chains	13.52
20 30x3½ Grey Tubes Goodyear, 1.35	27.00
5 30x3½ Red Tubes Goodyear, 2.03	10.15
10 30x3½ II. S. Grey, 1.35	13.50
2 30x3 Goodyear Grey Tubes, 1.25	2.50
2 31x4 Thermoid Grey Tubes, 1.80	3.66
2 32x4 II. Shogal Tubes, 2.78	5.56
3 32x4½ Shogal Tubes, 3.35	10.50
2 33x4 II. Grey Tubes, 2.44	4.88
10 2 33x4 Goodyear Grey Tubes, 2.44	4.88
4 33x4½ Goodyear Grey Tubes, 3.20	12.80
3 34x4 Goodyear Grey Tubes, 2.56	7.68
3 33x5 Goodyear Grey Tubes, 3.94	11.82
1 35x5 U. S. Royal Tubes, 4.56	4.56
3 34x4½ Goodyear Tube, Heavy, 3.39	10.17
1 36x6 Goodyear Grey Tube	7.15
1 36x6 Thermoid Grey Tube	7.15
2 34x4½ Goodyear Red Tube, 3.78	7.56
1 33x5 Grey Tube, 3.94	3.94
20 2 37x5 Ceylon Grey Tubes, 4.00	8.00
1 37x5 Grey Ceylon Tubes	4.00
1 35x4½ Grey L1 8 Tube	3.44
2 34x5 Royal Tubes, Heavy, 3.90	7.80
4 Inner Liners, 30x3½, 2.00	8.00
7 5" Blow Out Patches, .32	2.24
2 5" Hook on Boots	2.00
1 3½ Hook on Boots	1.00
7 5½" B. O. Patches, .40	2.80
1 30x3 Ll. S. Rhner, 1.50	1.50
30 4 30x3 Lay on Boots	4.00
21 3½" B. O. Patches, .27	5.67
12 3" B. O. Patches, .12	1.44
1 35x5 Thermoid Cord	32.95
1 34x4½ Nobby Cord	25.20
1 34x4½ Grey Tube	3.39

2 34x4½ Goodyear Cord	50.40
1 34x4½ Thermoid Cord	25.20
2 34x5 Royal Cord, 32.50	65.00
1 33x4½ Royal Cord	24.60
2 33x4½ Royal Cord, 19.15	38.50
4 32x4 Royal Cords, 18.55	74.20
1 32x4 Silvertown Cord, 20.72	20.72
2 32x4½ Silvertown Cord, 26.67	53.34
2 33x4 Michelin Cord	36.00
2 33x4 Tubes	4.80
1 32x4½ Speedway Cluches	10.00
1 32x4½ Triplex Cluches	10.00
2 31x4 II. S. Nobby Fabre	31.00
2 31x4 Goodyear Fabre	31.00
3 31x4 Goodrich Cord	56.49
2 31x4 Goodyear Cord Com.	31.00
1 31x4 Vacuum Clin Fabric	12.50
1 30x3½ Goodrich Com. Cord S. S.	8.90
3 30x3½ Silvertown Cord	35.01
11 30x3½ Goodyear Fabric S. S.	87.45
5 30x3½ LL. S. Cluches	37.25
1 30x3 Thermoid Fabric	6.36
4 30x3½ G. & J. Cord Clin	35.60
1 28x3 Motor Cih Tire U. S.	9.00
1 28x3 Motor Cih Tube	1.00
4 28x1½ Tubes	
Farranoid Fan Belts	
9 No. 24 S. S., .55	4.95
33 No. 25, .60	19.80
29 No. 26, .60	17.40
15 No. 28, .95	14.25
17 No. 27, .85	14.45
Farranoid Fan Belts	
8 No. 30, .75, 6.00; 1 No. 117, 2.50	47.23

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	4 No. 29, .70, 2.80; 1 2.81 No. 120, 2.50	
	8 No. 32, .90, 7.20; 11 No. 107, 1.50	
	5 No. 44, 1.80, 5.00; 5 No. 119, 2.25	
	4 No. 45, 1.75, 7.00; 3 No. 101, 2.00	
	8 No. 87, .45, 6.00; 1 No. 116, 2.00	
	4 No. 46, 2.25, 9.00; 1 No. 110, 2.50	
	26 No. 48, 1.00, 26.00; 5 No. 108, 1.40	
	26 No. 49, 1.00, 26.00; 5 No. 111, 2.00	
10	3 No. 50, 1.00, 3.00; 2 No. 105, 3.00	
	19 No. 52, 2.25, 42.75; 5 No. 115, 2.50	
	30 No. 33, .95, 28.50; 1 No. 102, 2.50	
	4 No. 32, 1.25, 5.00; 1 No. 106, 2.50	
	9 No. 35, 1.00, 9.00	207.37
	7 No. 36 .75, 10 Ford Fan Belts)	
	10 No. 49, 1.00, 10.00 8 Ford Fan Belts	6.48
	9 No. 37 .65	5.85
	37 No. 39 .85	31.45
	5 No. 38, 1.25	6.25
20	9 No. 40, 1.25	11.25
	1 No. 42, 1.25	1.25
	4 No. 41,, 1.65	6.60
	10 No. 53, 1.00	10.00
	2 No. 109, 3.50	6.00
	1 No. 114, 2.50	2.50
	1 No. 118, 2.25	2.25
	1 Display Sign	18.00
		<hr/>
		\$3,920.19

BURLINGTON COUNTY CIRCUIT COURT

ELIJAH ANDERSON,
Plaintiff.

vs

CLYDE E. FREEHAFER AND
 JOHN HENDLER, TRADING AS
 FREEHAFER-HENDLER
 CHEVROLET COMPANY,
Defendants.

ACTION AT LAW
 AFFIDAVITS OF MERITS 10

STATE OF NEW JERSEY

ss.

COUNTY OF BURLINGTON

Clyde E. Freehafer and John Hendler, trading as Free- 20
 hafer-Hendler Chevrolet Company, being duly sworn ac-
 cording to law on their respective oaths say: That they are
 the defendants named in the foregoing cause, and that they
 have a just and legal defense to said cause, upon the merits
 of the case.

CLYDE E. FREEHAFER
 JOHN HENDLER

Sworn and subscribed to before
 me this 11th day of January,
 A. D. 1926.

VERA P. RAINER,
 Notary Public of N. J.

BURLINGTON COUNTY CIRCUIT COURT

	ELIJAH ANDERSON,	} Plaintiff.	} ACTION AT LAW
	vs		
10	CLYDE E. FREEHAFFER AND	} ANSWER	
	JOHN HENDLER, TRADING AS		
	FREEHAFFER-HENDLER		
	CHEVROLET COMPANY,		
	Defendants.		

The answer of the defendants Freehafer-and-Hendler trading as Freehafer-Hendler Chevrolet Company to the bill of complaint of the plaintiff is as follows :

- 1. Defendants deny the matters and things set forth in plaintiff's complaint.
- 2. Defendants will offer the following defenses :
 - 1. Defendants acted as agents for the sale of the articles set forth in plaintiff's complaint.
 - 2. Defendants never contracted to sell said goods for plaintiff.
 - 3. Defendants left articles set forth in plaintiff's complaint at plaintiff's place of business and plaintiff sold some of the articles to different purchasers.

ROBERT PEACOCK,
Attorney of Defendants.

BURLINGTON COUNTY CIRCUIT COURT

	ELIJAH ANDERSON,	} Plaintiff.	} ACTION AT LAW
	vs		
	CLYDE E. FREEHAFFER AND	} REPLY	
	JOHN HENDLER, TRADING AS		
	FREEHAFFER-HENDLER		
	CHEVROLET COMPANY,		
	Defendants.		

The Plaintiff, Elijah Anderson, by way of reply to the matters set up in the defendants' answer by way of defense denies each and every allegation contained in paragraphs 1, 2 and 3 of said defenses.

WELLS & TOMLINSON,
Attorneys for Plaintiff.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ELIJAH ANDERSON,
Plaintiff-Appellee

vs

10 CLYDE E. FREEHAFFER AND
JOHN HENDLER, TRADING AS
FREEHAFFER-HENDLER
CHEVROLET COMPANY,
Defendant-Appellant

ACTION AT LAW
NOTICE OF APPEAL

TO WELLS & TOMLINSON, ESQS.,
Attorneys of Plaintiff-Appellee.

20 TAKE NOTICE that defendants appeal from the
whole of the judgment entered in this cause on the fol-
lowing grounds:

- 1. The verdict was contrary to the weight of the evidence.
- 2. The verdict was excessive.
- 3. No contract was proven by the plaintiff.
- 4. Plaintiff accepted the return of the goods in question and acknowledged ownership of the same after defendants vacated premises.

- 30 5. The Court refused to charge as follows:
 - 1. If plaintiff delivered goods to defendants to pay for same when they were sold he cannot recover in this case.
 - 2. If defendants sold goods for plaintiff and paid as they were sold, then there is no contract to buy, and plaintiff cannot recover.

3. If defendants left goods in plaintiff's place of business and gave him an inventory, and he accepted the goods, then plaintiff cannot recover.

4. If plaintiff accepted the goods and sold part, he acknowledged ownership of same, and cannot recover.

5. In order for plaintiff to recover he must establish a contract existed between plaintiff and defendants to purchase goods, the amount to be paid, and when payments were to be made, and the same had to be accepted by both plaintiff and defendants, there must be a mutual agreement between the parties before plaintiff can recover. 10

6. The Court rejected legal evidence.

7. The Court admitted illegal evidence.

ROBERT PEACOCK,
Attorney of Defendant-Appellant.

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NEW JERSEY COURT OF ERRORS AND APPEALS

<p>ELIJAH ANDERSON, <i>Plaintiff-Appellee</i></p> <p>10 vs</p> <p>CLYDE E. FREEHAFER AND JOHN HENDLER, TRADING AS FREEHAFER-HENDLER CHEVROLET COMPANY, <i>Defendant-Appellant</i></p>	}	<p>ON PETITION OF APPEAL</p> <p>REASONS</p>
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20 The defendants Clyde E. Freehafer and John Hendler, trading as Freehafer-Hendler Chevrolet Company, by their attorney Robert Peacock, come and pray that the judgment of the Burlington County Circuit Court and verdict rendered against them in an action at law wherein Elijah Anderson was plaintiff, may be reversed and set aside for the following reasons:

1. Because the verdict was contrary to the weight of the evidence.
2. Because the verdict was excessive.
3. Because no contract was proven by the plaintiff.
4. Because plaintiff accepted the return of the goods in question and acknowledged ownership of the same after defendants vacated premises.
- 30 5. Because the Court refused to charge as follows:
If the plaintiff delivered goods to defendants to pay for same when they were sold he cannot recover in this case.

If defendants sold goods for plaintiff and paid as they were sold, then there is no contract to buy, and plaintiff cannot recover.

If defendants left goods in plaintiff's place of business and gave him an inventory, and he accepted the goods, then plaintiff cannot recover.

If plaintiff accepted the goods and sold part, he acknowledged ownership of same, and cannot recover.

10 In order for plaintiff to recover he must establish a contract existed between plaintiff and defendants to purchase goods the amount to be paid, and when payments were to be made, and the same had to be accepted by both plaintiff and defendants, there must be a mutual agreement between the parties before plaintiff can recover.

6. Because the Court rejected legal evidence.
7. Because the Court admitted illegal evidence.

20 These defendants therefore pray that the said verdict and judgment of the Court below may be for the reasons aforesaid reversed, set aside and for nothing holden and that a new trial may be granted in said cause.

ROBERT PEACOCK,
Attorney for and of counsel
with Defendant-Appellants.

IN THE CIRCUIT COURT OF BURLINGTON COUNTY

	ELIJAH ANDERSON,	} Plaintiff.
	vs	
10	Clyde E. Freehafer and John Hendler, Trading as Freehafer-Hendler Chevrolet Company,	} OCTOBER TERM, 1926 No. 11
	Defendants	

TESTIMONY

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

Mt. Holly, N. J., November 10, 1926

ELIJAH ANDERSON, Plaintiff, sworn.

30 DIRECT EXAMINATION BY MR. TOMLINSON:

Q. Mr. Anderson, on or prior to July 1, 1924, what was your business? A. Automobile business and accessories, and garage.

Q. Where were you in business? A. Burlington, N. J.

Q. What sort of equipment did you have for carrying on your business? A. We had a general line of accessories and storage for automobiles.

Q. Did you have a garage? A. Yes.

Q. And a store? A. Yes.

Q. And you had automobile accessories in the store? A. Yes.

Q. Do you know the defendants in this case, Clyde E. Freehafer and John Hendler? A. Yes, sir.

Q. Where did you first see these two defendants? A. Just a few days prior to July 1, 1924.

Q. Tell the court and jury what conversation you first had with them at that time. A. It was through the solicitation of Mr. Hall, who was the Chevrolet wholesale agent, coming to my place one day and he asked me—

MR. PEACOCK: Objected to.

THE WITNESS: It was not in the presence of the defendants.

THE COURT: Objected sustained.

BY MR. TOMLINSON:

Q. Give us the conversation you had with the defendants in this case, Freehafer and Hendler, when you first saw them. A. That was the time at my place and they wanted to know if I wanted to sell my business, and I said I did.

MR. PEACOCK: I ask that it be stricken out as it is objected to.

THE COURT: On what ground?

MR. PEACOCK: I withdraw the objection.

BY MR. TOMLINSON:

10 Q. Go on with the conversation. A. They looked about the place and it seemed to be favorable to them and they seemed anxious to go in to it and I was anxious to get out of the business because I am advanced in years, etc., and they seemed to be favorable and they said they would be back in a few days.

Q. Did they come back there within a few days? A. They did.

Q. What happened at that time? A. They were prepared to get an inventory of the goods on hand at their prices, the market value.

Q. Was such an inventory made? A. Yes, sir.

20 Q. Who made the inventory? A. Mr. Freehafer and Mr. Hendler there together.

Q. They made that inventory there together? A. And gave me a copy.

Q. Was any agreement made between you and them for the purchase of those accessories shown on that invoice? A. No written agreement.

Q. Was there an oral agreement? A. As to payment, do you mean?

30 Q. Did they agree to buy the accessories from you? A. Yes, sir, absolutely.

Q. What did they agree to pay you for them, if anything? A. The catalogue prices,—wholesale market prices.

Q. Are they so represented by the inventory and between you and him both? A. Yes, sir.

Q. What amount of money did they come to? A. Around \$3,900.

Q. Do you know the exact amount? A. I think it was \$3,920.19.

Q. I show you some sheets of paper and ask you if those sheets of paper consist of the inventory you have made reference to? A. Yes, sir.

Q. And they were made by whom? A. Mr. Freehafer.

Q. That was turned over to you by whom? A. 10 Mr. Freehafer.

Q. And was the price they agreed to pay you set forth any place? A. Yes.

Q. How much money was it? A. \$3,920.

MR. TOMLINSON: I offer the sheets in evidence, marked Plaintiff's Exhibit "A".

BY MR. TOMLINSON:

20

Q. Now, Mr. Anderson, what arrangement, if any, was made between you and Mr. Freehafer and Hendler, concerning this \$3,920, and how it was to be paid? A. Well, certainly there was no definite time as to that. They asked me to extend them a credit, and they would make payment as their business would permit.

Q. Did they make any payment on account at that time? A. Yes, sir.

Q. Was that July 1924? A. Yes.

30

Q. How much did they pay you? A. \$1,500.

Q. That was on account of the accessories? A. Yes.

Q. \$1,500 was in one month? A. Yes, sir.

Q. How much did they pay you altogether? A. I think \$2,950.

Q. And the balance of that \$2,950 would be due subsequent to that time. A. Yes, sir.

Q. Have they ever said anything to you about paying the balance of the money due you? A. No, sir.

Q. Have they refused to pay it? A. Yes, sir.

Q. Did you have any conversation with Mr. Freehafer or Mr. Hendler when the lease expired? A. Yes, sir.

Q. What did they say about the accessories at that time, if you know? A. I don't recall the entire conversation; they simply had them all stuck up in a portion of the place and left them there.

Q. Did you request that they should remove them from the premises? A. I certainly did.

Q. Did they remove them? A. No, sir.

Q. And these accessories then were left on your premises against your will? A. Yes, sir.

Q. And these accessories are intact as they were left, —at the present time? A. No, just in the same place. I moved from there but they are all there.

BY THE COURT:

Q. When was the payment of \$1,500 made? A. About the 2nd or 3rd of July, 1924.

Q. And there is still due and owing about how much money on account of these accessories? A. The difference between \$3,920 and \$2,950, which would be \$970.

CROSS EXAMINATION BY MR. PEACOCK:

Q. Where were you, Mr. Anderson, when you made this agreement with the defendants concerning this matter? A. At my place of business.

Q. Who were present? A. Mr. Freehafer and Mr. Hendler and Mr. Hall.

Q. And you say you rendered him a bill at the time, didn't you? A. Yes, sir.

Q. You mean a written contract, as far as the building was concerned? A. As to the lease.

Q. And you didn't make any contract as far as the accessories were concerned? A. No, sir.

Q. Did you talk to Mr. Hall about this matter first? A. Yes, sir.

Q. Didn't you, in the presence of Mr. Hall, Mr. Freehafer and Mr. Hendler, agree that they should take the accessories and sell them for you? A. No, sir.

Q. You say you didn't do that? A. No, sir.

Q. You didn't have an inventory of the goods there? A. Yes.

Q. Who set the prices on those things? A. We all did; we went to the catalogue and took the items as they were listed in the catalogue.

Q. And then did they make payment to you at different times? A. Yes, sir.

Q. And you never had an agreement as to when they should pay for these things? A. No, sir, no definite agreement.

Q. And from that time to the present time there has been no agreement as to when they should pay for them? A. No, sir.

Q. When did they make the payment to you? A.

Well, they paid the rental regularly every month, and most every month they gave me something on account.

Q. Where is your book showing the times they paid you? A. I have the record of payments up until December; after that I have no record.

Q. They paid you after December? A. I have one payment; on the accessories they paid regularly.

Q. And you exactly kept records until December?

A. That is a little, more or less, I had no other book-keeper to make note of these at that time.

Q. You know there was a large sum of money owing you? A. Yes.

Q. But you didn't think it worth while to keep a record of those amounts? A. They were paying the rental up there all the time, and I failed to do it afterwards.

Q. Do you owe them any money? A. I do not think so.

Q. Have you a contract that they were to do anything for you? A. No, sir.

20 Q. Did he ever do any work for you? A. Yes, sir.

Q. Did you ever pay for it? A. Yes, sir.

Q. Then you owe them money. A. I was given credit for it on the bill.

Q. And it is \$284.45 you owe them? A. If I do, I am not aware of it.

Q. Did you ever get a statement from them? A. I do not recall any.

Q. Didn't you get a statement like that (indicating and showing witness a paper)? A. I may have, I do
30 not recollect it.

Q. Did you get a statement like that, and for the work they did for you, and other things belonging to you? A. I agree that I had some work done.

Q. When they sent the statement you owed them?

A. I may have had that, I just don't recollect, but I owed them some money, I agree with you.

Q. You never kept any record of what you owed them? A. No, sir.

Q. Then it would appear true that you owed \$284.45? A. I didn't go over the items very carefully.

Q. Did you ever get a letter giving the amount of money you owed them? A. I don't recollect.

MR. PEACOCK (To counsel for plaintiff): Have you a letter addressed to Mr. Anderson, sent by Frechafer-Hendler Co.? 10

BY MR. PEACOCK:

Q. I show you a letter dated December 12, 1925, addressed to Mr. Anderson, signed by the defendant. A. I do not remember ever getting it.

Q. You never received a letter like that? A. No, 20 sir.

Q. Then you deny you ever got it? A. I do not deny it, but I do not recall ever getting one.

Q. Do you remember having a note for \$200 on the Mechanics Bank to these people, due on the 18th of December, did you pay that? A. Yes, sir.

Q. And they told you that the payment of that note would be applied against your account, didn't they? A. I don't recall any such conversation with them.

Q. Didn't you agree that the note of \$200 you owed them was to apply against the account you owed these people? A. I know they had a note of \$200 which I paid. 30

Q. When did they vacate those premises? A. July 1, 1925.

Q. Have you an inventory showing the amount of goods they left on the premises? A. Yes, sir.

Q. They gave you a copy of it? A. Yes, sir.

Q. And your copy of the inventory showed the true amount of the goods left there? A. As far as I know; I never went over them.

Q. The copy of the inventory was executed by you when they vacated the premises, wasn't it? A. Yes, sir.

10 Q. And the same prices that are set forth on that inventory are on the original inventory what they entered the premises? A. As far as I know.

Q. And when they left there was \$743.43 worth of accessories? A. According to them.

Q. And you sold them after that? A. Yes, sir.

Q. And you sold some of them since that time? A. No, sir.

Q. Didn't you sell Mr. Carlani a set of springs? A. No, Mr. Freehafer.

20 Q. Didn't you sell him a set of springs from the goods on the inventory? A. No, sir.

Q. How many sets of springs did you have around there, except what were turned over to Mr. Freehafer? A. I have no record.

Q. When Mr. Freehafer entered the premises, weren't all the springs set forth on the inventory? A. And they are still there.

Q. When they left there, were the springs still in the place? A. Yes, sir.

30 Q. And after they left, didn't you sell some springs to Mr. Carlani? A. Yes, I sold him, but not their springs; I sold him some springs of my own which were upstairs.

Q. When they took the place over were all the springs

in the place mentioned in the inventory? A. I had some old parts of springs which were not in there.

Q. You are sure of that? A. Yes, sir.

Q. I show you a note for \$400, dated December 23, 1924, to apply upon accessories account, did you receive the money on that? A. Yes, sir.

Q. I show you a note for \$300, dated March 23, 1925, to apply on accessories account, and ask you did you receive the money on account of that? A. This \$300 note is renewed for a \$400 note. 10

Q. You are sure of that? A. Yes, sir.

Q. And \$100 was paid on both? A. On both.

Q. I show you a check dated June 26, for \$300, on account of accessories and ask you if you got that? A. Yes, sir.

Q. I show you a check for \$1,350 on account of accessories and ask you if you got that? A. Yes, sir.

Q. What was the date of that? A. July 1, 1924.

Q. I show you check dated August 4, 1924, for \$500, \$300 of which was for accessories account, and I ask you did you get that? A. Yes, sir. 20

Q. I show you a check dated September 3, 1924, for \$500, \$300 of which was upon the accessories account and I ask you did you receive that? A. Yes, sir.

Q. I show you a check dated September 3, 1924, for \$400, \$200 of which was upon the accessories account, and I ask you did you receive that? A. Yes, sir.

Q. I show you check dated November 4, 1924, \$200 of which was upon the accessories account, and I ask you if you received all those amounts? A. Yes, sir. 30

Q. Did you receive any cash? A. No, sir; I don't recall any money.

Q. Did you or did you not receive any? A. I don't think so.

Q. What is the total amount that you have received from these people? A. I think it is \$2,950.

Q. And you owe them \$238.50? A. Yes, sir.

Q. And in your possession at the present time are there accessories worth \$1,047.43? A. Yes, sir.

BY MR. TOMLINSON:

10 Q. Now, Mr. Anderson, after this lease was given up you went back in the automobile business? A. Yes, sir.

Q. And that accounts for your having sold automobile accessories since that time, is that true? A. Not from this concern; I sold my own.

Q. You have sold accessories since that time? A. I am still in the accessories business.

Q. But you have not sold any of the accessories that have been listed in this particular inventory? A. No.

20 Q. Did you ever notify them to come and get the stuff from your place? A. Yes, sir.

Q. Did you do that more than once? A. No, sir, I think that was done by you.

MR. PEACOCK: I ask that the answer be stricken out.

30 Q. I show you an inventory of several sheets of paper, which purports to be an inventory and ask you if this is the inventory which you testified was handed to you by Mr. Freehafer and Mr. Hendler at the time they left, and in giving up the lease? A. No, sir.

Q. When, if at any time, did you ever get those papers? A. They left these with me, something like a month before they vacated.

Q. What were the circumstances under which that par-

ticular list was given to you? A. I don't just recall the conversation about this inventory.

Q. Do you recall in substance what the conversation was? A. I am under the impression they wanted me to take those goods back; that is my thought of it.

Q. Do you recall how much they amounted to of the inventory that I showed you? A. Not exactly; I think around \$500; I don't recall the exact amount.

MR. TOMLINSON: I offer in evidence the inventory amounting to \$596.78, which is marked Plaintiff's Exhibit "B". 10

Q. Did you agree at that time that you would take that amount of goods back? A. No, sir.

Q. You refused to take back the inventory of the stuff that appears there? A. Yes, sir.

Q. That was a couple of months before the lease was given up? A. I cannot recall the date exactly, somewhere within a month or six weeks. 20

Q. When they gave up the premises they gave you another list, did they? A. Yes, sir.

Q. I show you two more pieces of paper, and ask you if that is the list they gave you on the second occasion? A. Yes, sir, but they were not presented until five or six days after they vacated.

Q. How much amount does the second list show were on the premises and which they wanted you to take back? A. \$1,041.43.

Q. The content were as much te second time as the first time? A. Yes, sir. 30

MR. TOMLINSON: I offer the second list in evidence, which is marked Plaintiff's Exihit "C".

Q. Now, Mr. Anderson, you were questioned about a bill for \$238 and about which you were asked whether or not it was for work which had been done,—now, as a matter of fact, isn't it true then that this \$238 bill which was shown to you by Mr. Peacock, that less than \$50 worth of it was for work done for you and the rest was for adjustment on the inventory? A. That is correct.

10 Q. So that when you look again at these bills which Mr. Peacock showed you a few minutes ago, would you say that you did or did not owe Mr. Freehafer and Mr. Hendler \$238,—pick out from that list on the second page an item of January 8, 1925, repair order, 112-R., how much is that for, on the second page, the third item made by you on January 8th. A. That is all owed.

Q. Did you see that item? A. Yes, sir.

Q. That is for work they did for you? A. Yes, sir.

Q. That amounts to how much? A. \$1.50.

20 Q. And the next item that appears on there is just for work on your brakes? A. 75 cents.

Q. On March 12th, how much does that amount to, and for what? A. Adjustment of belts, \$1.

Q. And coming to the middle of the page, is that payment for work done by Macks Brothers, and was that for repairs on your machine? A. That was for repairs on the motor.

Q. Was that chargeable against you? A. Yes, sir.

30 Q. And the next item on the third page marked March 16, 1925, adjusting the cars,—your touring car, was that properly chargeable against you? A. Yes, sir.

Q. Repair order for Reo automobile, June 19, 1925, was that chargeable against you? A. Yes, sir.

Q. Now, we come back to the question of the first item there for fan belts listed there as \$254, is it not? A. Yes, sir.

Q. That is for \$66.72, an item for adjustment on the inventory they made? A. Yes, sir.

Q. Now, the agreement between you and him, as you testified, was that they were to pay you the prices as set forth in the inventory they made? A. Yes, sir.

Q. Is it proper then that they can come back at this time, in 1925, and write a letter and ask for a deduction on that inventory? A. It is not right, but I stood for it notwithstanding.

10 Q. You told them you would accept that, did you? A. Yes, sir.

Q. Did you tell them you would permit them to take two gallons amounting to \$12.50? A. I just don't recall the gallons.

Q. You were shown that on the second page of the bills Mr. Peacock has just presented to you. A. Yes, sir, but I don't recall those gallons.

20 Q. Now, Mr. Anderson, I show you again an inventory as originally made by Mr. Freehafer and Mr. Hendler, in respect to the fan belts, an item we are now discussing of \$66 and some cents, and I ask you whether or not it does not appear. As a matter of fact a discount has already been taken on this inventory they made up on page 19 of the inventory; in other words, doesn't it show when you add up the items with respect to the fan belts, beginning at the bottom of page 18 and going over to page 19, isn't it a matter of fact that these items total \$305, and they have not taken their amount of discount, and brought it in the actual \$207.37 instead of \$311.05, and it shows the catalogue prices of these items? A. Yes, 30 sir.

Q. So they already had their discount on that? A. Yes, according to that.

Q. Now that should be deducted from that \$238 as credit they are asking for, is that correct? A. Yes.

Q. Now, Mr. Anderson, with respect to this bill which Mr. Peacock has presented, isn't it true that the total amount of that bill, and I call your attention to the second page of the bill, comes to \$149.21, and they have charged you for electric current for fans from June 30, 1912, for \$12, is that correct? A. The agreement whereby they were to pay for that lighting.

Q. Then that \$12 is not owing by you to them? A. No.

10 Q. All you owe them is \$137.21? A. Yes, sir.

Q. You are perfectly willing to give them credit on the bill to that extent and have given them credit? A. Yes, sir.

Q. And they still owe you something, even though you have not paid them \$149.21, is that correct?

MR. PEACOCK: Objected to.

20 THE COURT: It is very leading.

Q. Have you not given him credit for \$149.21? A. No, sir.

Q. But you are perfectly willing to give him credit for that amount on the amount for which you have brought suit, isn't that true? A. Yes.

Q. And you are perfectly willing to give them credit for \$149.21, if they will pay you \$790.19? A. Yes.

CROSS EXAMINATION BY MR. PEACOCK:

30 Q. You said there was an item for \$12 which wasn't a proper item? A. Yes.

Q. You lived on the second floor? A. No, sir.

Q. You had a room there? A. I had my office there.

Q. You used light and fans? A. Yes, sir.

Q. And you want them to pay for the lights and the fans in your office? A. That was their agreement.

Q. You agreed to pay them a certain amount because that was on their motor? A. I do not recall that.

Q. You do not recall anything about that? A. No, sir.

Q. You didn't agree to pay so much a month for the lights and fans—your fans, you want them to pay for them? A. I don't want them to pay it, it was agreed 10 to be paid.

Q. They agreed to that? A. Yes.

Q. And you have never gone into it until you came here today? They paid it and naturally they deducted it from your bill? A. No, sir.

Q. Now, Mr. Tomlinson said they gave you one inventory for \$500 and the other for \$1,000, making a total of \$1,500, and you said yes. A. You know that is untrue. 20

Q. Mr. Tomlinson asked if they didn't give you an inventory of \$506.28. A. Yes, those goods were left there.

Q. Is that correct? A. They handed me no inventory there.

Q. I asked you if they didn't give you another inventory? A. Yes.

Q. And you want the jury to infer that there were goods set forth on both inventories that were left there, is that correct? A. That all the goods were left there. 30

Q. On both inventories? A. No, fifteen hundred and some dollars' worth.

Q. Then that is not true? A. That is the amount.

Q. And they gave you this inventory, and that was not good until you made the sale? A. I don't know anything about having to sell them.

Q. They told you that they were obsolete articles,— didn't they tell you that? A. I don't remember their saying that, and they were left there.

Q. They were left there? A. Yes, sir.

Q. Some of the articles were on that and some on this \$1,000 inventory? A. Yes, sir.

10 Q. Why didn't you tell Mr. Tomlinson of that, will you try to explain to the jury about the fan belts and the gallons being charged against you, and why you should not pay for them,—tell me how you can explain that. Mr. Tomlinson was asking the question, tell the jury how you explain that error of the fan belts? A. The fan belts were taken at the inventory and priced on the catalogue.

Q. Were they priced at that charge? A. That it was too high.

Q. Then you had too high a price at the inventory prices, and you allowed them the right prices? A. Mr. Freehafer got the prices from the catalogue himself. I 20 had nothing to do with it.

Q. Your inventory had too high prices? A. Apparently so.

Q. And you did not object to them getting a fair price on it? A. No, sir.

Q. Then the fair price is added there on the bill, the amount they are entitled to. A. Yes, according to them.

Q. And you brought suit upon the original inventory that had the high prices? A. Yes.

30 Q. Then they ought to have it made near the high prices or right prices. A. I do not want but the right prices, if any.

Q. You have never demanded that these defendants should take these goods away from there, you never did that personally? A. Personally, no, sir.

Q. And you even have not seen them? A. Not very often.

Q. They have not had their business there since July, what year? A. 1924.

Q. And they are located in Burlington and you live in Burlington? A. Yes, sir.

Q. When you sold these goods, at the time set forth they were to pay for them? A. No.

Q. There was an agreement that they should pay for them as sold, is that right? A. No, sir.

BY MR. WELLS: 10

Q. As far as that mistake with respect to the fan belts is concerned, didn't a credit appear on the inventory that I showed you a few moments ago? A. Yes, sir.

Q. Therefore the sum total on the inventory is correct? A. I believe it is.

Q. Did you ever request your attorney to send a notice to Freehafer and Hendler to remove these articles? 20

MR. PEACOCK: I object to that and ask that it be stricken out.

THE COURT: Objection over-ruled. Exception.

Q. Who were your attorneys that you asked about that case? A. Wells & Tomlinson.

MR. TOMLINSON: Mr. Peacock, have you the original of the letter of July 11, 1925, to Freehafer & Hendler, and you don't deny having received it? 30

MR. PEACOCK: I haven't it.

MR. TOMLINSON: I offer in evidence letter written by Wells & Tomlinson to Freehafer & Hendler Chevrolet

Company, stating that the claim against them amounting to \$917.17 has been placed in our hands for collection by Elijah Anderson dated July 8, 1925, which is marked Plaintiff's Exhibit "D".

I offer in evidence the original reply dated August 3, 1925, directed to Wells & Tomlinson, which is marked Plaintiff's Exhibit "E".

10

PLAINTIFF RESTS

DEFENDANT'S EVIDENCE

FREDERICK A. HALL, sworn.

BY MR. PEACOCK:

20

Q. What is your name? A. Frederick A. Hall.

Q. Where do you live? A. Oaklane, Philadelphia.

Q. What is your business? A. I represent the Chevrolet Motor Company.

Q. Do you know Mr. Freehafer and Mr. Hendler?

A. Yes, sir.

Q. Are they the agents for the Chevrolet in Burlington, New Jersey? A. Yes, sir.

Q. Do you know Mr. Anderson? A. Yes, sir.

30 Q. You were present at the time the agreement was made with Mr. Anderson and the defendants to lease his building? A. Yes, sir.

Q. Well, will you tell the conversation concerning that matter? A. I went in to see Mr. Anderson.

MR. TOMLINSON: Objected to, unless this conversation took place in the presence of all the parties.

THE COURT: Objection sustained. Exception.

THE WITNESS: The four of us went in together into Mr. Anderson's office, and so the idea was—

BY THE COURT:

10

Q. What was said? A. They wanted to rent the building and Mr. Anderson said in order to get the building they would have to buy his stock of assessories and automobile parts, and I looked them over and talked to these boys and said 50% of them.

Q. Was Mr. Anderson present at that time? A. He was.

Q. And this was said in the presence of Mr. Anderson? A. About the parts he included and the accessories. I advised them not to buy the parts. 20

MR. TOMLINSON: I object to any advice given by Mr. Hall.

THE COURT: Strike it out.

Q. What was the subject matter of this conversation? A. They decided that they would not take the building if they had to buy the accessories, and Mr. Anderson said 30 he would leave them stay there and pay for them as they sold them. There was no agreement made in my presence, or that they would pay for them at any specific time or any date.

Q. Did Mr. Anderson agree that they should keep the parts that were there and sell them for him and pay him as they sold them?

MR. TOMLINSON: I object to that question as leading.

Q. What did Mr. Anderson agree to? A. To let
10 the stock of parts and accessories stay there and to be paid for as sold.

Q. He was to sell them for whom?

MR. TOMLINSON: Objected to.

A. Mr. Freehafer and Mr. Hendler.

THE COURT: The witness should be limited to what was said by the parties; not give his conclusion as to
20 what was agreed upon.

Q. What did Mr. Anderson say concerning the sale of these parts? A. He said, "If you take the building I will let the parts stay here, and I think they can be paid for as sold."

Q. What was said to him at the time he wanted the defendants to buy the parts, what did you say and what did the defendants say to him? A. I didn't say anything about that in the presence of Mr. Anderson; that
30 was said outside the building.

Q. In your presence did the defendants ever make any agreement with him to buy the parts? A. No, sir.

Q. You were present during the entire conversation between Mr. Anderson and these men concerning these parts? A. Absolutely.

MR. TOMLINSON: Objected to, as there is no testimony here that he was present at the very conversation.

THE COURT: I understand he was present, and you may recall him, if you wish, and ask him that question,—if there is any doubt about it.

BY MR. PEACOCK:

Q. Was there an inventory made at the time, in your
10 presence? A. I was there the day they were making the inventory.

Q. I show you an inventory that has been presented in this case here, and I ask you if that is the inventory that was made? A. Yes, sir, it was made on the same kind of paper and that is identically the same one.

Q. How were the prices set opposite the articles in the inventory? A. From the catalogues that are sent out by the wholesale houses to dealers.
20

Q. Did you ever talk to Mr. Anderson about the conditions of those accessories that were there? A. To the best of my knowledge I don't recall.

(No cross-examination.)

CLYDE FREEHAFER, sworn.

30

BY MR. PEACOCK:

Q. What is your name? A. Clyde Freehafer.

Q. Are you a member of the Freehafer-Handler Company? A. I am.

Q. Where is your place of business? A. On the State Highway in Burlington at that time.

Q. What is your business? A. Automobile dealer.

Q. Do you know Mr. Anderson? A. I do.

Q. Did you ever make any agreement with Mr. Anderson to buy the parts which is the subject matter of this suit? A. We never made any agreement to buy anything.

10 Q. What agreement did you have with Mr. Anderson concerning these accessories? A. We made an agreement with him, with Mr. Anderson, to lease the accessories and pay him for them as we sold them.

Q. No other agreement with him? A. No other agreement, we asked him if he wanted a written agreement and he said no, he didn't want any.

Q. Did you have an inventory made in this case at that time? A. We had an inventory made in duplicate at that time.

20 Q. Did you sell the goods? A. Some of them, all of them except those we left at the place.

Q. As you sold them, would you sell at the inventory, or at inventory prices? A. At different inventory prices, because we could not sell them at that price.

Q. Did you turn the money over to Mr. Anderson, that is, what you had received for them? A. We turned it over to him at the inventory prices.

Q. You were not paid anything for selling them? A. No.

30 Q. You received no profit? A. No.

Q. And all the goods that you have sold, you have paid the money for them? A. Dollar for dollar, everything we sold.

Q. I understand you say you received no profit for

selling these goods for him? A. We received no profit whatever.

Q. Did you vacate the building? A. We vacated the building on the 30th of June, 1925.

Q. At the time you vacated the building were there certain parts of those accessories left there? A. There were.

Q. What did you do concerning the goods you left there? A. We put the goods together in one place, and we took an inventory and submitted a copy to Mr. Anderson of every item there. 10

Q. I show you an inventory dated July 1, 1925, and ask you if that is the inventory of the accessories left at his place, what is the total amount of the goods on that inventory? A. \$1047.43.

Q. And are they based at the inventory prices as left there at that time? A. Based on the inventory prices.

Q. When you left there, where did you leave those articles? A. We left them in a bridgeway and some of the heavy articles such as springs, in the original place where they had been. 20

Q. Did you send a copy of that inventory to Mr. Anderson? A. I delivered it personally.

Q. At the time it was delivered, where was he? A. He was sitting right in the show room at the desk.

Q. How close was that to your office? A. To our present location?

Q. Where you were at that time. A. Probably a distance of ten feet. 30

Q. Did he maintain an office in the same building you had used for this business? A. An office upstairs.

Q. Where did he have some of these accessories

when you entered the building? A. He had some upstairs and some downstairs.

Q. Where did he have the springs? A. The springs were upstairs.

Q. How much money did you collect for the sale of these goods, do you know?

(Question withdrawn.)

10 Q. How much did you pay Mr. Anderson,—name those amounts. A. We paid him \$200 on one item here; \$200 on another; \$300 on another; \$300 on another; \$300 on another; making a total of \$1,350, and on one \$100; I think the full itemized statement of the amount we paid him on these is covered by the cancelled checks.

Q. Does he owe you any money? A. He owes us the bills that we rendered to him.

20 Q. How much? A. \$238.45, if I recollect. I have a statement here.

Q. What was that bill for? A. That bill covered adjustment on the inventory, where that was done for him and every transaction that took place.

Q. Have you ever been paid that amount of money that he owed you? A. We have never been paid.

Q. That was \$238 and how many cents? A. \$238.45.

Q. And you have paid him \$2,950? A. \$2,950.

30 Q. Have you a note there for \$400 and for \$300, did you call these off on bills when the one for \$400 was given and this \$100 was paid on it? A. There was one for \$300.

Q. The \$300 payment and \$100 payment? A. Yes.

Q. The inventory has been shown to Mr. Anderson and there are \$526.76,—what inventory is that? A. That is the inventory of the complete accessories and parts of accessories.

Q. What was done with that inventory? A. It was handed to Mr. Anderson and simply told that this was the list of the items that were obsolete and unfit, and that these items were left at the place of business and were incorrect as to the other inventory we rendered to him. 10

Q. Was that when you vacated the premises? A. When we vacated the premises these articles were left there.

Q. At the time you maintained your office there did he maintain a room? A. On the second floor.

Q. Was there any agreement made as to the lighting of that room? A. He had a light and a fan in his room upstairs. There was nothing said about this; because we didn't know at the time that he maintained a room up there and that he was using light and the fan. 20

Q. But when you found that he was using it, you spoke to him and said it would be all right? A. I asked him what he thought was a fair charge and we decided on the moment according to the rendering of the meter, of the charge of one dollar, and that is how it was due, but it was never paid.

Q. Is that included in the amount of \$238.43? A. Included in that amount.

CROSS EXAMINATION BY MR. TOMLISON: 30

Q. Now, Mr. Freehafer, this bill of \$238.43, upon examination of that bill does it appear that there was really a charge against Mr. Anderson of \$161.21, and

the rest of that is made up and charged against him in the inventory prices of those goods which you left there and charged against him the amount of money you claim you paid him. A. That is perfectly right.

Q. So you have returned those goods and made up a bill in that fashion, can you say how he owes you for the goods you returned him? A. He didn't owe us for the goods we returned him.

10 Q. For the goods you left there—you say he owes you for those there and he owes for something that doesn't belong to him. A. We over-paid Anderson in connection with the accessories.

Q. As a matter of fact, didn't you on this bill put down an item of \$3,920.19 on one side and deduct all these other items that you have charged against him? A. I certainly have.

Q. Then you have charged him for the goods you have left there. A. I have not. I rendered him an account but there was not charge. Mr. Anderson never kept
20 any books and never knew a penny that was coming to him. That is no bill; that is a statement, and I think it is marked at the top, "Statement".

Q. When Mr. Anderson makes the statement that you paid \$129.50 he has made that statement I think from his own bill? A. He has, yes.

Q. And he has been relying absolutely on you? A. I have the cancelled checks to prove that. We didn't want to make more than we had.

30 Q. Give us these payments, the dates when you made these payments. A. On July 2, 1924, there was a payment, a check for \$1,350.

Q. That is on accessories, is it? A. The \$1,350. I have to take instances. Have you got a copy of this statement before you?

Q. Just answer my question. A. I cannot answer the question because some rent and accessories were not credited in that check.

Q. How much was rent you paid on July first; are you sure you didn't pay in \$1,500 on the first of July? A. \$1,500 on the first of July.

Q. How much of the \$1,500 was for rent, and leaving a balance of what for accessories? A. The first check of \$300 included \$150 worth of rent.

Q. The first check for \$1,500, do you mean? A. 10 The check is for \$1,350, and the check of \$300 is dated June 26th.

Q. What date did you say that was? A. June 26, 1924, and for \$300.

Q. The year 1924 and for \$300. A. Yes.

Q. And the next check was for how much? A. \$1,350, and \$150 of that was rent in advance, so that the accessories account is \$1,500 net on those two checks on July 2nd, 1924.

Q. And you have paid \$1,500 on account of these ac- 20 cessories, and is the rent of the payment in order? A. The cost of the accessories \$300.

Q. What date is that? A. August 4th.

Q. Now, on September 3rd how much did you pay? A. \$300.

Q. Was that on account of accessories? A. That is right.

Q. Was it on September 4th? A. October 4th, \$200.

Q. On October 4th you paid how much? A. \$200. 30

Q. Now, what other payments, if any, did you make? A. Within that time the payment of \$200 on two notes.

Q. Were they actually paid? A. They were actually paid.

Q. By you? A. By us.

Q. What were the dates of those notes? A. One note was reduced \$100 on March 23rd,—\$100 paid on the note, I do not have the records showing when the last \$100 was paid.

Q. What are the dates of those notes? A. The first note, December 23, 1924, in the amount of \$400.

Q. That is \$400, when was that paid, if at all? A. That was renewed with the payment of \$100 on March 23rd, it was a 90-day note.

10 Q. Therefore there was not two notes,—\$200 note and \$400 note given? A. Yes.

Q. And was the \$400 paid? A. \$200.

Q. When did you pay that? A. At the renewal of the \$300 note, a 60-day note, probably May 22nd.

Q. What date was that that the renewal was made? A. March 23.

Q. Now, that note of March, was that again renewed or paid? A. It was renewed for \$200 and \$100 paid on 20 account.

Q. When was that? A. It was a 60-day note, May 20th or 21st, around there.

Q. I show you note dated May 20th, and ask you if that is a note you gave to renew that \$200 payment? A. That is the note.

Q. It appears on this note that it is to apply on the accessories account. A. That is right.

Q. Was that note ever paid? A. That was never paid.

30 MR. PEACOCK: I offer the note in evidence, which is marked Defendants' Exhibit No. 1.

Q. And that note was again renewed in July, 1925? A. July 20th.

Q. I show you a note dated July 20th, 1925, for \$500 and ask you if that is the renewal of the note I showed you? A. That is correct, yes.

Q. And this note has not been paid? A. That is the renewal of it, and it has not been paid.

MR. PEACOCK: I offer in evidence the note dated July 20, 1925, for \$200, marked Defendants' Exhibits Nos. 2 and 3.

10

Q. What are the other credits on that? A. \$161.21.

Q. I mean payments, what other payments have been made? A. That is all the payments we paid, and it was always by check.

Q. So that only comes to \$2,500, and is exclusive of notes. A. No, you are entirely wrong.

Q. The statement shows \$2,950. A. You are entirely wrong, if you will look at this statement, we have cash paid on accessories \$2,200.

20

Q. If you add \$200, that makes \$2,700 paid; go back and give us the figures over again, that only included that note and that note you testified has not been paid. A. That note has not been paid; in fact, payment was stopped because in this letter to us containing this statement of \$238.45.

Q. Show us how you make up this \$2,950 that you have spoken of. A. You see if I was at my office I would be better able to do it. The first check of \$300 and the second check of \$1,350 makes a total of \$1,650, of which \$150 was rent and on the accessories account. That was in July.

30

Q. August 4th is the next one? A. August 4th is the next,—accessories \$300, September, \$300. I have another check over at the office and I can produce it.

Q. What is that? A. A payment on the accessories account, I can produce that, the cancelled check, and give the exact amount.

Q. Tell us what it is. A. Just exactly what the statement corresponds with, and I have the checks to prove it.

Q. In other words there is another check due to balance the account—the difference between \$2,500 and \$2,950,—\$450. A. Whatever the difference is there according to that statement.

Q. And that includes the \$200 note? A. Yes.

Q. So that would be \$250, and you do not have it with you? A. I will not commit myself, the statement is rendered.

Q. Why did you charge that \$200 note as credit and as cash paid on accessories when it wasn't paid by you? A. We wanted to recover \$200 on this account due for any expenses in the bookkeeping.

20 THE COURT: Do I understand now that the payments claimed by the defendants amounting to \$2,950 include a note which was given and not paid?

A. That is right.

Q. Then, instead of owing \$2,950, you owe \$2,950 plus \$200,—I mean as far as this account is concerned.

A. However, this appears as debit and credit, that is the way that statement has been built up.

Q. Are you standing on your claim of \$2,950?

30 MR. TOMLINSON: So that only instead of adding, he subtracted, and they included \$200 which should be deducted. Mr. Anderson did say that \$2,950 had been credited but that it had not been paid. That is practically

all right if this credit of \$200 is not applied then this naturally reduces itself.

Q. And your claim? A. That is reduced to \$3,845, showing debits and credits.

MR. WELLS: The complaint ought to be amended to ask for eleven hundred and some odd dollars, and then whatever credits they are entitled to shall be considered. It does not increase our claim, it is apparent on its face that this \$200 note has been paid. 10

MR. PEACOCK: I object to that, because Mr. Anderson testified he had received the amount in cash.

THE COURT: It now appears on the defendants' own case that the note for \$200 has not been paid, and under those circumstances the motion to amend it is allowed. 20

(Exception to defendants).

MR. WELLS: The complaint can be amended at that point where the defendant has paid plaintiff \$1,950. That nineteen should never have been in there, and by substituting \$2,750.

THE COURT: Leaving a balance to the plaintiff of what amount?

MR. WELLS: \$1,170. 30

BY MR. TOMLINSON:

Q. Now, Mr. Freehafer, each time you made these payments to Mr. Anderson, did you submit a statement

showing the articles which you had sold? A. No, it was impossible.

Q. You just paid him a little sum of money each time?
A. That is the idea.

Q. And you kept a record of the things you sold from time to time, on which you base your payments to Mr. Anderson? A. Yes, we had no other accessories outside of his.

10 Q. Have you with you the records of sales of accessories you charged, that is, covering this period of time?
A. No, I have not.

Q. What prices did you get for these accessories,—the retail prices or inventory prices? A. We got any price we could get for them.

Q. And you sold them for anything you could get?
A. Yes.

Q. And when you got in \$300, you paid that to Mr. Anderson? A. We paid him when we sold them.

20 Q. Why did you give Mr. Anderson that note for \$400? A. We gave it on the accessories account just as stated.

Q. And these were accessories that had already been sold? A. We didn't have a list of the accessories as they were sold.

Q. You did not pay Mr. Anderson until after the accessories had been sold? A. We may have, I do not know.

30 Q. How did you come to give him the \$400, how did you determine that? A. Because he was asking us persistently for money.

Q. How did you come to give him a \$400 note, if you did not know you had actually sold \$400 worth of goods?
A. Because we trusted him, that is all.

Q. Did he ask you for \$400? A. Yes.

Q. What reason did he give you for that? A. He said he was hard up,—he was always hard up.

Q. Why did you give him a note when the goods had already belonged to Anderson, they were his goods? A. They were his goods.

Q. Why did he have them? A. Simply because we have no records definitely whether we sold that amount or not; we knew we were selling accessories right along, and payments were probably due on things we sold. We were complete and entirely fair with him in that matter. We had no complete records of accessories as they were sold, and we simply advanced him sums of money as accessories were turned over. 10

Q. If you had sold all the accessories that had been turned over to you, how much money would you have paid Mr. Anderson,—would you have paid \$3,920.19? A. If we had sold the entire inventory, that is right.

Q. What would you have paid him actually if you would have sold these articles for what you could get for them? A. We may have sold them for \$2,000—sold them for anything you could get for them, and they were sold for anything we could get for them, and that has been the reason, because some were obsolete, and some we had no record on. 20

Q. You say you sold these goods for whatever you could get? A. Yes.

Q. And if you had sold all of them, you would have paid \$3,920.19. A. If we could have sold them we would have agreed to pay for them as we sold them, and as that list. 30

BY THE COURT:

Q. According to the invoice here, there was a payment on July 1, 1924, of \$1,350. A. That is right.

Q. And there is a check for \$1,500? A. A check for \$1,350 and one for \$300.

Q. What was that \$1,350 for? A. On the accessories account.

Q. Why did you pay anything on the accessories account? A. Simply because he was after our debt.

Q. This was still after you had made the bargain? A. Yes, sir.

10

JOHN HENDLER, sworn.

BY MR. PEACOCK:

Q. What is your name? A. John Handler.

Q. You are one of the defendants in this case? A. Yes, sir.

20 Q. Did you ever agree to buy these goods from Mr. Anderson, the subject matter of this suit? A. No, sir.

Q. What agreement was made with him concerning these goods? A. We agreed to sell the accessories and pay for them as sold.

Q. Did you make an inventory? A. Yes, sir.

Q. Is that the inventory that has been offered in evidence today? A. Yes, sir.

Q. And then, did you make an inventory when you left there? A. Yes, sir.

30 Q. And the goods that were set out in that inventory, were they left there about when you vacated the premises? A. Yes, sir.

Q. Did you keep books showing the amount of money you did pay him? A. Yes, sir.

Q. You made only one payment of \$1,350, and when was that payment made? A. That payment was advanced to the man because he was hard up for money and we were good enough to help him out. We advanced him that money in expectation of having enough accessories to secure the amount.

Q. You had the accessories there at that place? A. They were in the place.

Q. And you sold them from time to time? A. Yes, 10
sir.

Q. And you made him payments as you sold them? A. We advanced him money from time to time, as much as we could.

Q. Did you ever receive any profit from the sale of those accessories? A. Not as a gross profit; nor as a net profit or any kind of profit.

Q. Were you present when the inventory was delivered to Mr. Anderson, after you vacated the premises? A. Yes, sir. 20

Q. Where was that? A. In his place of business.

Q. And where you conducted your business? A. He was in there, and our lease expired just the day before.

Q. What was said by him about the goods you left there? A. We told him that the goods were absolutely unsaleable and we could not sell them and had to leave them with him.

Q. Did you give him a copy of the inventory? A. Yes, sir. 30

Q. Did he accept it? A. Yes, sir.

Q. Now, did you have springs, were there springs set out in the inventory? A. Yes, sir.

Q. When you left there were those springs left there? A. Yes, sir.

Q. What were those springs?

MR. TOMLINSON: I objected to this line of testimony it is not an issue and is not pertinent to this case.

THE COURT: Objection over-ruled. Exception.

A. On the second floor.

10 Q. I show you an inventory, and ask you are those springs set out in the inventory? A. There are two truck springs here and five obsolete springs here.

Q. Are they the only springs set out in the inventory?

A. I think they are; there is one spring left, which on the job does not amount to much.

Q. When you vacated the premises, did you leave these springs there? A. Yes, sir.

Q. Were you present when these springs were sold?

A. No.

20

CROSS EXAMINATION BY MR. TOMLINSON:

Q. Mr. Hendler, you heard the testimony of Mr. Freehafer, who is your partner? A. Yes, sir.

Q. His testimony was accurate, in general, was it?

MR. PEACOCK: I object to that.

THE COURT: Objection sustained. Exception.

30

Q. Mr. Hendler, you made a statement, did you not, that you had made a gross profit but not a net profit, what do you mean by that? A. I did not make any such statement

Q. Just tell us what you did state. A. As far as we know, we did not make any gross or net profit.

Q. Do you know whether or not you have? A. I do not know.

Q. What records do you keep of the sales of these items listed in this inventory? A. Personally, I did not keep any record.

Q. Do you know whether any records were kept?

A. My partner keeps the records.

10

Q. Have you ever seen them? A. I have seen them, yes.

Q. Do those records show the amounts that were received for each one of those items? A. No. I was not interested in that, not interested in what was received for each individual item; I was interested in the sum total, that is all.

Q. And you have not examined these books that were kept by your partner? A. I have no interest in detail items.

20

Q. Do you know whether or not the sale price of each of these detail items was set forth in that account? A.. I do not understand your question.

MR. PEACOCK: Objected to.

THE WITNESS: I do not know what account you have reference to.

Q. I have reference to the account, the sales account of all of the items that appear in the inventory of the goods that you got from Mr. Anderson when you first went into the place. A. We had no such account that I know of, of all the sales that were set forth in the inventory.

30

Q. How then did you determine upon the amount that was to be paid in to Mr. Anderson each time you made payment to him? A. You have a statement there in your hand. We took the total amount made on the last stuff as the basis of working on, as a matter of record, and we know as we sold the stuff as stated on the inventory the difference between the new inventory and the old inventory would be the amount that we were responsible for as having been sold.

10 Q. Now, Mr. Hendler ever personally sell any articles that were listed in that inventory? A. I sold a lot of them.

Q. What prices did you charge for them, the prices set forth in the inventory or retail market prices? A. The prices that were set out in the inventory.

Q. That is the price you sold for in each case? A. On some items, and some were considerably lower.

Q. Some were considerable less? A. Mr. Anderson himself had to sacrifice some of them.

Q. You agreed with Mr. Anderson that if you sold all of these articles, you would pay him \$3,920.19? A. We have not agreed to anything of the kind; we agreed to pay for accessories as sold, and we agreed to sell them and turn the money over to him.

Q. And if you sold all of them, weren't you going to turn over the inventory prices? A. We always pay our bills, everything that has been contracted for, if that will answer your question. Well, it would be a physical impossibility and an imposition on the public to sell all of them at any price.

Q. Who made up these inventories? A. I helped.

Q. If you had sold all of the goods listed in that inventory, you would have had to pay Mr. Anderson

\$3,920.19? A. If I was willing to take a loss, I don't think I would.

Q. You were to be the sole judge of that? A. No, sir.

Q. Why did you determine upon this amount, \$3,920.19? A. That was a matter of record, a basis to work on, and that is all that inventory was made for.

Q. Now, if you sold, say, an item on that list that was marked \$50 and you sold it for \$75, were you going to give the profit to Mr. Anderson? A. There was no such thing in point.

Q. Would you pay him more than \$3,920.19, if there was any profit or were you going to keep it? A. I don't think I ever expected to pay him \$3,920.19. I never expected to do that at all, because I knew a lot of that stuff was worthless and could not be sold.

Q. If you sold an item and you lost money on that item, did you report that loss to Mr. Anderson? A. No.

Q. You just took the loss yourselves, didn't you? A. In a lot of cases absolutely I took all the loss, nothing but loss.

JOSEPH A. CARLANI, sworn.

BY MR. PEACOCK:

Q. What is your name? A. Joseph A. Carlani.

Q. Where do you live? A. Walnut Height.

Q. What business are you in? A. The garage and a blacksmith shop.

Q. Do you know Mr. Anderson? A. Yes, sir.

Q. Do you know Mr. Hendler? A. Yes, sir.

Q. Do you know where they had their garage, in Burlington, N. J.? A. Yes.

Q. Were you there after they vacated the premises? A. Yes, sir.

Q. Did you buy some springs from Mr. Anderson? A. Yes, sir.

Q. Where were those springs? A. When I first saw them, they were upstairs and I told him to bring them down.

Q. Were they there with a lot of automobile goods? A. Yes.

Q. Were there two truck springs in that bunch of stuff that you bought? A. I don't quite recall, we cleaned it up and brought it downstairs.

Q. You bought all the springs he had there? A. As far as I could see.

Q. There were two Reo springs there that you had purchased? A. I don't quite remember, but I think there were.

Q. Did you buy any Studebaker springs? A. I cannot tell you; there was a bunch of spring there.

Q. And all the springs that were there you purchased from Mr. Anderson? A. Yes.

Q. And after these men had left the premises? A. Yes.

NO CROSS EXAMINATION.

30

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury:

The plaintiff, Elijah Anderson, brings this suit against the defendants, Freehafer & Hendler, trading as the Freehafer-Hendler Chevrolet Company, to recover the balance of the purchase price of certain goods known as automobile accessories, which the plaintiff claims to have sold to these defendants.

10

The plaintiff alleges that the purchase price was the inventory value of the goods, namely, \$3,920.19, and he is seeking to recover the balance of the purchase price claimed to be due, namely, the sum of \$1,170.19.

The first question the Jury will have to answer in this case is whether there was a sale of these goods by the plaintiff to the defendants. Now, a sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration, which is called a price. The plaintiff alleges that there was such a sale; a sale that met the requirements of the law as I have stated it. Admittedly there was some sort of bargain or agreement between these parties at the time the defendants leased the plaintiff's property in the city of Burlington; there is no dispute about that, that there was a bargain and understanding between the parties as to the future disposition of the accessories that were then in Mr. Anderson's business place which he at that time leased to the defendants; but there is a serious dispute as to what that contract or bargain or agreement was.

30

Now, disputes as to contracts usually arise—perhaps not usually but in many cases,—certain disputes arise where the contract is not in writing, and it is not in writing in this case. Of course, if it was there would be no chance perhaps for any differences in the interpretation

or construction of the contract. But this contract, whatever it was, was not reduced to writing.

It was not necessary, under the law, that it should be in writing. A contract for the sale of goods, such as this contract is alleged to have been, may be entirely by word of mouth, and such a contract is as valid, binding, and enforceable in law as a contract in writing. The only difficulty is where a contract is not in writing, and the parties come into court and litigate, the question must be
10 determined what the contract was, and that must be determined from the evidence in the case.

Now, as I have already said, there are two conflicting stories of what happened at the time of this arrangement, whatever it was, between the parties. Mr. Anderson has testified that there was a sale of these goods; that in pursuance of the arrangement between the parties, an inventory was made and an appraisal; not only an inventory of the articles themselves but the appraised value, and assent
20 to each specific article in that appraisal was based upon the catalogue or the wholesale price of the goods presumably at that time.

And then Mr. Anderson says that the agreement was that these goods were to be sold to the defendants at the appraised value shown in the inventory; that the payment was to be made from time to time thereafter; that there was no definite time in which payment was to be made.

The defendants on the other hand deny that that was the agreement, but insist that the contract between the parties was, with reference to these goods, that they were
30 to be left on the premises which they had leased, and that they were to be sold in the course of the business and payments made to the plaintiff, Mr. Anderson, from time to time as they should come into their hands from the sale of the goods. In other words, they insisted that in keeping the goods upon the premises and selling them, or at-

tempting to sell them, they were acting merely as agents for Mr. Anderson, he retaining the possession and title himself. Of course, under those circumstances if that was the arrangement between the parties, the plaintiff could not recover in this case, because he is basing his right to recover on the allegation that there was a sale of the goods to these defendants.

You will consider the testimony of the parties and the witnesses as to what the transaction was. You are not to be bound by any technical terms which the parties them-
10 selves in their testimony may apply to their understanding. That is, when one party says that it was "agreed" to be so and so, and the other party says it was "agreed" to be so and so, it is for the jury to say from the evidence what they can get from the transaction and all the other evidence in the case as to what the agreement was. You have, therefore, not only the testimony of the parties and the witnesses to go on, in order to reach a solution of this
20 problem, but you have all the other testimony that there is in the case, which throws any light upon the situation, and I refer to the conduct of the parties as it appears from the evidence; they are of course bound as to what they did in pursuance of any arrangement, whatever was done subsequent to the time the defendant went into possession of the property.

Anything that the evidence discloses in reference to the conduct of the parties, or the interpretation which the parties themselves put upon the contract prior to the arising of any dispute about the contract, is evidence for the jury to consider in its efforts to determine what the
30 agreement was.

Now, Ladies and Gentlemen, the solution of this problem will depend upon what you find from the evidence the fact to be as to the nature of the agreement between the parties. If you find from the evidence that the plaintiff

has shown by the greater weight, that is by the greater weight of the plaintiff's evidence in the case, that there was a sale of these goods to the defendants; that the price was agreed upon, then the plaintiff would be entitled to a verdict in this case.

If you find, on the other hand, that the plaintiff has failed to bear that burden of showing that the agreement was as he says it was, namely, that there was a sale of the accessories to the defendants, then the plaintiff would not
10 be entitled to recover, and in that event, your verdict should be for the defendants, a verdict of no cause of action.

Now, if you find for the plaintiff, then you will come to the question of the amount to be awarded him by your verdict. He would be entitled under such a verdict to receive the full amount that he claims, \$1,170.19, less whatever you find is the amount of his indebtedness to the defendants, and it is admitted in this case that there is some sum owing from the plaintiff to the defendants. I am
20 unable to indicate to you what that sum is, because it is a disputed question of fact here and I have no purpose to indicate it. You will have to take the evidence as you have it and the exhibits as they have been offered, and then determine, if you find a verdict for the plaintiff, what sum should be deducted from the amount claimed, to discharge the indebtedness, which he admitted he owed to the defendants. The only dispute as to that being what that amount is, there being a difference there between the parties.

30 Perhaps, I should say to you in conclusion, that the fact that the goods in dispute are still upon the premises of the plaintiff in this case, is not a material fact to be considered by the jury, if the jury find from the evidence that there was a sale of these goods to the defendants, because, if your verdict is for the plaintiff, it must be based

upon the findings that the goods belonged to the defendants and wherever they are, and wherever they may happen to be, the title to these goods and the right to possession of them, is in the defendants, that is I say, of course, if you find that the plaintiff has shown that there was a sale to the defendants.

The defendants have asked me to charge you on seven points.

The first request I charge as follows:

“1. The burden is on the plaintiff to show by a preponderance of evidence that there was a contract to purchase by defendants in this case.” 10

The sixth request I charge:—

“6. If the contract between plaintiff and defendants was to leave goods in defendants' possession and defendants were to sell them for him, there is no contract to purchase, as they acted as agents for plaintiff, and he cannot recover against defendants.”

The remaining requests, that is, numbers 2, 3, 4, 5, and
7 are not charged. 20

MR. PEACOCK: I ask for an exception to the refusal to charge on requests numbers 2, 3, 4, 5 and 7.

MR. PEACOCK: I object to the offer of plaintiff's Exhibits “H” and “I”.

30 The remaining points of defendants refused to be charged are as follows:—

2. If plaintiff delivered goods to defendants to pay for same when they were sold he cannot recover in this case.

3. If defendants sold goods for plaintiff and paid as they were sold, then there is no contract to buy, and plaintiff cannot recover.

4. If defendants left goods in plaintiff's place of business, and gave him an inventory, and he accepted the goods, then plaintiff cannot recover.

5. If plaintiff accepted the goods and sold part, he acknowledge ownership of same, and cannot recover.

10 7. In order for plaintiff to recover he must establish a contract existed between plaintiff and defendants to purchase goods, the amount to be paid, and when payments were to be made, and the same had to be accepted by both plaintiff and defendants, there must be a mutual agreement between the parties before plaintiff can recover.

122MAY.T.1927

NEW JERSEY COURT OF ERRORS AND APPEALS

ELIJAH ANDERSON,

Plaintiff - Appellee,

vs.

CLYDE E. FREEHAFFER and
JOHN HENDLER, trading as
FREEHAFFER - HENDLER
CHEVROLET COMPANY

Defendant - Appellant

On Appeal

BRIEF BY DEFEND-
ANT APPELLEE.

ON APPEAL

BRIEF BY PLAINTIFF-APPELLEE

WELLS & TOMLINSON
COUNCILORS AT LAW
TRENTON NEW JERSEY
TRENTON TRUST BUILDING

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On Appeal

10

BRIEF BY DEFEND-
ANT APPELLEE.

20

The plaintiff, Elijah Anderson based his suit on the allegation that he had sold and delivered certain automobile accessories to the defendants, and that the defendants paid a certain portion of the contract price, and this suit was instituted to recover judgment for the balance claimed to be due.

The plaintiff testified that there was still due and owing to him the sum of nine hundred and seventy dollars (\$970.00). See page 30, line 29.

Q. And there is still due and owing, how much money on account of these accessories ?

30

A. The difference between \$3,920.00 and \$2,950.00, which would be \$970.00.

It developed later in the trial upon the testimony of Clyde Freehafer, one of the defendants, at page 56, upon the questioning of the Court that the defendants owed two hundred dollars (\$200.00) more than the nine hundred and seventy dollars (\$970.00) or one thousand one hundred and seventy dollars (\$1,170.00) which was the amount for which verdict was given. The testimony of the defendant Clyde Freehafer on page 56, line 24 is,

Q. Then instead of owing \$2,950.00, you owe \$2,950.00 plus \$200,—I mean as far as this account is concerned.

A. However, this appears as debit and credit, that is the way that statement has been built up. Page 57, line 12.

The Court : It now appears on the defendant's own case that the note for \$200 has not been paid, and under those circumstances the motion to amend it is allowed.

10

Concerning the testimony with respect to whether or not a sale was made irrespective of the testimony of the plaintiff, which shows that a sale of the goods had been made we see that Mr. Frederick A. Hall, who was a Chevrolet Agent, and not a party to the suit, testified on page 45, line 11.

Q. What was said ?

A. They wanted to rent the building and Mr. Anderson said in order to get the building they would have to buy the stock of accessories and automobile parts, and I looked them over and talked to these boys and said 50% of them.

20

Again at line 28.

Q. What was the subject matter of their conversation ?

A. They decided that they would not take the building if they had to buy the accessories, and Mr. Anderson said he would leave them stay there and pay for them as they sold them. There was no agreement made in my presence, or that they would pay for them at any specific time or any date.

30

This testimony clearly shows that it was the intention of Mr. Anderson to sell these goods and that a sale was discussed at the time that Mr. Hall was present, and also shows that no agreement was made in the presence of Mr. Hall so that whatever the transaction was between the parties, cannot be shown any further by Mr. Hall's testimony.

Mr. Anderson says on page 28, line 29, that on the question:

Q. Did they agree to buy the accessories from you ?

A. Yes sir, absolutely. Again on page 29 line 28.

Q. Did they make any payment on account at that time ?

A. Yes, sir.

Q. Was that July, 1924 ?

A. Yes.

Q. How much did they pay you ?

A. \$1,500.00.

10

The goods which are alleged to have been sold were turned over by the plaintiff to the defendants. See page 29 line 10.

Clyde Freehafer, one of the defendants on page 53, in answer to the question,

Q. How much was rent you paid on July first; are you sure you didn't pay in \$1,500 on the first of July ?

A. \$1,500 on the first of July.

Q. How much of the \$1,500 was for rent, and leaving a balance of what for accessories ?

20

A. The first check of \$300 included \$150 worth of rent.

Q. The first check for \$1,500, do you mean ?

A. The check is for \$1,350, and the check of \$300 is dated June 26th.

Q. What date did you say that was ?

A. June 26, 1924 and for \$300.00.

Q. The year 1924 and for \$300 ?

A. Yes.

30

Q. And the next check was for how much ?

A. \$1,350, and \$150 of that was rent in advance, so that the accessories account is \$1,500 net on those two checks on July 2nd, 1924.

Line 22.

Q. Now on September 23, how much did you pay ?

A. \$300.00.

Q. Was that on account of accessories ?

A. That is right.

Q. On September 4th ?

Q. And after they left, didn't you sell some springs to Mr. Carlani ?

A. Yes, I sold him, but not their springs ; I sold him some springs of my own which were upstairs. The testimony of Mr. Carlani on page 66, as to what springs he purchased is not very definite.

Line 19.

10 Q. There were two Reo springs there that you had purchased ?

A. I don't quite remember, but I think there were.

Q. Did you buy any Studebaker springs ?

A. I cannot tell you, there was a bunch of springs there.

V

20 All the charges refused by the Court were properly refused as being inaccurate statements of the law, and in no wise prejudiced the rights of the defendants. The charge made by the Court substantially and fairly covered the entire situation presented by the pleadings and testimony.

VI

30 The argument in the defendant's brief concerning the Statute of Frauds and Perjuries, is in no wise pertinent, inasmuch as the question was not raised in the pleadings nor the matter raised in the trial of the case. Such objection would have been of no avail inasmuch as the testimony is clear that the contract was partially performed in that the defendants had accepted the delivery of the goods as per inventory, and had paid a portion of the purchase price. It was a question of fact to be determined, and that was determined by the jury whether or not there was in fact a definite purchase price agreed upon and whether that purchase price was paid.

Respectfully submitted,

WELLS & TOMLINSON,

Of Counsel with Plaintiff-Appellee.

1222 MAY. 1. 1927

NEW JERSEY COURT OF ERRORS AND APPEALS

ELIJAH ANDERSON,
Defendant-Appellee,
and
CLYDE E. FREEHAFFER AND
JOHN HENDLER, TRADING AS
FREEHAFFER-HENDLER
CHEVROLET Co.,
Plaintiff-Appellant.

ON APPEAL.
BRIEF

The plaintiff sued the defendant company on an alleged contract, that on July 1, 1924, he sold and delivered to defendant company articles set forth in the complaint, as set out in

State of Case, p. 3-19,

for the sum of thirty-nine hundred twenty dollars and nineteen cents, on which the defendants had paid twenty-nine hundred fifty dollars, leaving a balance of nine hundred seventy dollars and nineteen cents.

Defendants replied that no contract was ever made to purchase the same, but that they were acting as agents for plaintiff for the sale of the articles set forth in plaintiff's complaint and that the defendants never contracted to buy said goods but that the plaintiff left the articles named in said complaint with an inventory and that the defendants agreed to sell the same for him and pay him the amount of money that had been received for the sale of the same, because defendants had rented the property belonging to plaintiff in which these automobile accessories were stored and when defendants vacated said premises they left there a thousand dollars worth of goods in

the premises which they claimed belonged to the plaintiff inasmuch as they had never made any agreement to purchase the same.

And during the trial, counsel for plaintiff asked to amend his complaint, to make a claim of eleven hundred seventy dollars instead of nine hundred seventy dollars and the jury rendered a verdict for eleven hundred seventy dollars.

Defendant contends that the verdict was contrary to the weight of the evidence.

The plaintiff, Anderson, testified that the first conversation concerning the sale of these goods was with Mr. Hall, who is the Chevrolet wholesale agent.

State of Case, p. 27, l. 10.

And that the defendant agreed to buy the accessories from him.

State of Case, p. 28, l. 28.

But no definite time was set forth in the contract for the payment of the same.

State of Case, p. 29, l. 20-30

And that the difference between the inventory of \$3,920 and \$2,950 that had been paid was \$970.00 due him.

State of Case, p. 30, l. 31.

He was the only witness for the plaintiff.

Mr. Fred A. Hall, to whom Mr. Anderson refers in his testimony, testified that he was the agent representing the Chevrolet Co. and was present when the defendants talked to Mr. Anderson about these goods and that he advised the defendants not to buy the parts.

State of Case, p. 45, l. 20

And that the conversation was as follows:

Q. What was the subject matter of this conversation?
A. They decided that they would not take the building

if they had to buy the accessories, and Mr. Anderson said he would leave them stay there and pay for them as they sold them. There was no agreement made in my presence, or that they would pay for them at any specific time or any date.

Q. In your presence did the defendants ever make any agreement with him to buy the parts? A. No, sir.

Q. You were present during the entire conversation between Mr. Anderson and these men concerning these parts? A. Absolutely.

State of Case, p. 45 and 46.

10

And Mr. Freehafer testified further that he had never made any agreement to buy these goods from Mr. Anderson.

Q. Did you ever make any agreement with Mr. Anderson to buy the parts which is the subject matter of this suit? A. We never made any agreement to buy anything.

Q. What agreement did you have with Mr. Anderson concerning these accessories? A. We made an agreement with him, with Mr. Anderson, to lease the accessories and pay him for them as we sold them.

20

Q. No other agreement with him? A. No other agreement, we asked him if he wanted a written agreement and he said no, he didn't want any.

Q. Did you turn the money over to Mr. Anderson, that is, what you had received for them? A. We turned it over to him at the inventory prices.

Q. You were not paid anything for selling them. A. No.

Q. You received no profit? A. No.

30

State of Case, p. 48.

And that Mr. Hendler the other defendant, testified that no agreement was ever made to purchase the goods.

Q. Did you ever agree to buy these goods from Mr. Anderson, the subject matter of this suit? A. No, sir.

Q. What agreement was made with him concerning these goods? A. We agreed to sell the accessories and pay for them as sold.

Q. Did you ever receive any profit from the sale of those accessories? A. Not as a gross profit; nor as a net profit or any kind of profit.

State of Case, p. 60 and 61.

10 So from the testimony as set forth above the verdict was contrary to the weight of the evidence as no contract was ever made or agreed to between the parties in this case.

A contract is:

20 “An agreement upon sufficient consideration to do or not to do a particular thing. 2 Bl. Comm. 442; 2 Kent, Comm. 449; Justice v. Lang, 42 N. Y., 496, 1 Am. Rep. 576; Edwards vs. Kearzey, 96 U. S. 599, 24 L. Ed. 793; Canterbury v. Miller 76 Ill. 355.

“A covenant or agreement between two or more persons with a lawful consideration or cause.” Jacob.

“A contract or agreement is either where a promise is made on one side and assented to on the other; or where two or more persons enter into engagement with each other by a promise on either side.” 2 Steph. Comm. 54.

30 “A contract may be defined as an agreement between competent parties, supported by a legal consideration, and in the form, if any, prescribed by law, creating an obligation on the part of one or both to do or refrain from doing some lawful thing. To constitute a contract, the agreement must create an obligation; it must be an agreement enforceable at law—an element in contract which has often been lost sight of by judges and writers. While an

agreement may be void, that is, destitute of legal effect, it is absurd to speak of a void contract, for a contract is an agreement plus a legal obligation, and if there is no obligation, there is no contract at all.”

9 Cyc. p. 240, 241 and 242.

The second reason is that the verdict was excessive.

According to plaintiff's own testimony the inventory price was \$3,920.00 and he had received \$2,950.00, leaving a balance of \$970.00. 10

State of Case, p. 30 l. 31.

And that he owed the defendants the sum of \$238.00.

State of Case, p. 38 l. 10-16

State of Case, p. 39 l. 34-35.

Deducting that from \$970.00 would only leave an amount of \$732.00. And when defendants left or vacated plaintiff's place of business they left goods at an inventory price of \$1,041.43. So that if they accepted the total goods from him at inventory price of \$3,920 and left goods of the value of \$1,041.43 defendants would not owe \$970.00 inasmuch as they had paid \$2,950 and inasmuch as plaintiff admitted that he owed defendants \$238.00, deducted from the \$970.00. 20

So for the purpose of argument, that the verdict was excessive showing the difference between \$970.00 and \$238.00 all the defendants would owe, if he had proven his case, is \$732.00 and not \$1,170 which was the amount of the verdict. As the witness Freehafer testified Anderson owed him \$238.00, State of Case p. 50 l. 18-28 and the plaintiff admitted it, so from the testimony of the defendant and admission of the plaintiff the verdict was excessive. 30

On the third reason that no contract was proven by plaintiff there is no testimony showing that he was cor-

roborated in any of the essential and material details that no contract ever existed, but that the defendants by all three witnesses show that they never made any contract with defendant for the purchase of the goods as set forth under the first reason in this brief.

On the fourth reason, that plaintiff accepted the return of the goods in question and acknowledged ownership of the same after defendants vacated the premises, plaintiff sold all the springs on his premises to a man named
10 Carlini.

State of Case, p. 34 l. 30-35.

Carlini testified that he bought all the springs that Anderson had in his possession.

State of Case, p. 66, l. 6-26.

The defendants left springs with plaintiff when they vacated the premises and these springs were set forth in the inventory, so if plaintiff accepted the goods when defendants vacated the premises and accepted the inventory given him by defendants and afterwards sold the goods
20 which were returned to him by the defendants he certainly acknowledged ownership of the same and that no verdict should be rendered against the defendants.

Under the fifth reason the Court refused to charge as follows:

1. If plaintiff delivered goods to defendants to pay for same when they were sold he cannot recover in this case.
2. If defendants sold goods for plaintiff and paid as they were sold, then there is no contract to buy, and plaintiff cannot recover.
30
3. If defendants left goods in plaintiff's place of business and gave him an inventory, and he accepted the goods then plaintiff cannot recover.

The Court refused to charge as above set forth which we submit was prejudicial to the defendants inasmuch as

these requests which the Court refused to charge constitute the essentials of a bona fide contract between the parties.

The Court refused to charge as set forth in the fifth reason.

"If plaintiff accepted the goods and sold part, he acknowledged ownership of same and cannot recover."

On the question that the Court rejected legal evidence as follows:

Q. What was said in the presence of Mr. Anderson?
10

A. About the parts he included and the accessories. I advised them not to buy the parts.

Mr. Tomlinson objected to this answer and the Court struck out that answer.

We contend that the Court rejected legal evidence because Mr. Hall was there as agent of the Chevrolet Co., and went to see Mr. Anderson for the express purpose of talking over accessories and that the advice given by Mr. Hall to Mr. Freehafer, was in the presence of Mr. Anderson.
20

On the second question that the Court admitted illegal evidence.

Q. Did you ever request your attorney to send a notice to Freehafer and Hendle to remove these articles?

Objected to by counsel for defendant. Objection overruled and exception allowed.

The Court allowed that question to stand, which is a conversation not in the presence of the defendant and also allowed the letter of counsel for plaintiff to be offered in evidence against the defendants.
30

Defendants contend that the alleged contract in this

case is contrary to the statute under the Fifth section of Frauds and Perjuries.

“Upon any agreement, that it is not to be performed within one year from the making thereof; unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized.”

10

The clause as to agreements not to be performed within one year, only applies to cases where neither party is to perform the contract within a year.

Berry v. Doremus, 30, l. 399, 403; King v. King, 9, E. 44; Updike v. Ten Broeck, 32, l. 105; Compiled Stat. No. 2, p. 2612.

Because the plaintiff himself testified as follows:

20

Q. And did they make payment to you at different times? A. Yes, sir.

Q. And you never had an agreement as to when they should pay for these things? A. No, sir; no definite agreement.

State of Case, p. 31, l. 28-30.

And the defendants contend that under said section nothing was ever paid on account of the contract but they were paid as they sold the goods. And Mr. Hall testified that Mr. Anderson said he would leave them there and they could pay for them as they sold them. That there was no agreement made in his presence that they would pay for them at any specified time or any date.

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State of Case, p. 45, l. 28-30.

Defendants further contend that this contract was not to be performed within one year but more than a year, because plaintiff in his complaint states that the alleged contract was made on July 1, 1924, and that the suit was started on January 4, 1926, and that he had accepted a note on March 23, 1925, to apply upon said account, which shows that the payments for the same were not to be made within one year.

Defendants further contend that the contract is void under the Fraud and Perjury Act as follows: 10

“That every contract for the sale of goods, wares and merchandise, for the price of thirty dollars or upwards shall be void; unless (1) a note or memorandum of such contract be made in writing, and signed by the party to be charged thereby or by his agent thereunto lawfully authorized; or (2) unless the buyer shall accept part of the goods so sold, and actually receive the same; or (3) unless the buyer shall give something in earnest to bind the bargain or pay some part of the purchase money.” 20

Comp. Stat. 2 p. 2615.

And under that section there was nothing given to bind the bargain because the payments were made as the goods were sold.

1. Defendants in this case respectfully submit that the verdict should be set aside inasmuch as there is no contract proven between the parties.

2. There was no consideration for said contract.

3. That the verdict is void because of the Fifth and Sixth sections of the Statute of Frauds and Perjuries and that the verdict was contrary to the weight of the evidence. 30

ROBERT PEACOCK,
Of Counsel with Defendant-Appellant.

