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Writ of Certiorari.

Filed June 27th, 1930.

New Jersey—ss.:

*State of New Jersey to the Judge of the Orange
District Court of the City of Orange, GREET-
ING:* 10

We being willing for certain reasons to be certified of a Judgment, Order and Proceedings, given and made in the said (L. S.) Orange District Court of the City of Orange, in a certain action brought by Jose Maria Viera, Claimant, in a certain cause, wherein Jose Marques, was the Plaintiff, and Francisco Pereira Salles and Maria Gurreiro Salles, were the Defendants. 20

WE COMMAND YOU, that you send under your seal, to our New Jersey Supreme Court, at Trenton on the 11th day of July, next, the Judgment, Order and Proceedings aforesaid, with all things attached concerning the same, as fully and entirely as they remain in said Court before you, together with this Writ, that we may further cause to be done thereupon what other right should be done. 30

WITNESS, WILLIAM S. GUMMERE, Chief Justice,
of our Supreme Court, this 21st day of June,
1930.

FRED L. BLOODGOOD,
Clerk.

APOSTOLAKOS, MANDELBAUM & PAPPAS,
Attorneys. 40

ENDORSEMENT ON WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

JOSE MARIA VIERA,

Prosecutor,

JOSE MARQUES,

Defendant.

10

—————

WRIT

—————

Returnable, July 11th, 1930

APOSTOLAKOS, MANDELBAUM & PAPPAS,

Attorneys for Prosecutor,

1060 Broad Street,

Newark, N. J.

20

ALLOCATUR

I allow the within Writ, Let it be sealed.

WILLIAM S. GUMMERE,

Chief Justice of the Supreme Court.

Dated: June 21st, 1930.

30

40

Summons.

Essex County,
The State of New Jersey—ss.:

To any Constable of said County, or to the
Seargent-at-Arms of the District Court of the
City of Orange: 10

SUMMON

Francisco Pereira Salles, and Maria
(L. S.) Gurreiro Salles to appear before the
District Court of the City of Orange
to be held at the City Hall, No. 29 No. Day Street
(third floor), in the said City, on the 23rd day of
April, 1930, at ten o'clock in the forenoon, to an-
swer unto Jose Marques in an action upon Con-
tract, wherein the Plaintiff demands of the De-
fendant, Five Hundred Dollars. Hereof fail not. 20

WITNESS: DANIEL A. DUGAN, Esquire, Judge of
said Court at Orange, aforesaid, the 12th day of
April, in the year One Thousand Nine Hundred
and Thirty.

SUMMONS.

HAROLD J. TRABOLD, 30
Clerk.

A true copy.

HAROLD J. TRABOLD,
Clerk.

ENDORSEMENT ON SUMMONS.

SUMMONS.

43 Union Street, Newark,
City of Orange

10 SUMMONS IN AN ACTION ON CONTRACT

JOSE MARQUES,

Plaintiff,

vs.

FRANCISCO PEREIRA SALLES, and MARIA GURREIRO
SALLES,

Defendants.

20	Demand \$500.00	Costs
	Summons	2.50
	Mileage	.32
	Listing fee	1.50
	Attorney's fee	20.10

Returnable April 23rd, 1930

JOSEPH N. BRAFF,

24 Commerce Street,

30

Newark, N. J.,

Attorney for Plaintiff.

I served the within Summons and State of Demand on April 14th, 1930, on the Defendants Francisco Salles and Maria Salles, by reading it to them and giving them a copy thereof.

MAX MARKOWITZ,

Constable.

A true copy.

40 HAROLD J. TRABOLD,
Clerk.

State of Demand.

ORANGE DISTRICT COURT.

On Contract, State of Demand.

 JOSE MARQUES,

Plaintiff,

vs.

10

 FRANCISCO PEREIRA SALLES and MARIA GURREIRO
 SALLES,

Defendants.

 The Plaintiff demands of the Defendants the
 sum of Five Hundred (\$500.00) Dollars, on a cer-
 tain note, a true copy of which is as follows:

20

\$400.00

August 10, 1929

 Eight months after date, I promise to
 pay to the order of Jose Marques, the sum
 of Four Hundred Dollars.

Payable at Newark, N. J. or at Portugal.

Value Received.

Due April 10, 1930

 FRANCISCO PEREIRA SALLES
 MARIA GURREIRO SALLES

30

 Judgment will be claimed in the sum of Four
 Hundred (\$400.00) Dollars, together with lawful
 interest and costs of suit and protest fees.

 JOSEPH N. BRAFF,
 Attorney for Plaintiff.

A true copy.

 HAROLD J. TRABOLD,
 Clerk.

40

Affidavit for Judgment.

(Filed May 3, 1930)

ORANGE DISTRICT COURT.

On Contract, Affidavit for Judgment.

10

JOSE MARQUES,

Plaintiff,

vs.

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

20

State of New Jersey,
County of Essex—ss.:

JOSE MARQUES, being duly sworn on oath according to law, deposes and says:

He is the Plaintiff in the above-entitled cause, and that he is well acquainted with the account of the above-named Defendants.

30

Deponent further says, that there is due and owing to the Plaintiff, the sum of Four Hundred (\$400.00) Dollars, on a certain promissory note, a true copy of which is set forth in the State of Demand theretofore filed, together with protest fees thereon in the sum of Two Dollars and sixty cents (\$2.60) making a total of Four Hundred Two Dollars, and Sixty cents (\$402.60).

40

Deponent further says, that the said Defendants are not entitled to any credits, allowances or set offs on the said sum of Four Hundred Two

Execution.

Dollars and Sixty cents (\$402.60) but that the said sum of Four Hundred Two Dollars and Sixty cents (\$402.60) is justly due and owing from the Defendants to the Plaintiff.

JOSE MARQUES. 10

Sworn to before me, this
2nd day of May, 1930.

IRVING GELBER,
A Notary Public of New Jersey.

Execution.

(Issued May 6th, 1930) 20

DISTRICT COURT EXECUTION

Essex County,
The State of New Jersey—ss.:

To any Constable of said County, or to the
Seargent-at-Arms of the District Court of the
City of Orange,

You are hereby commanded to levy 30
(L. S.) and make of the goods and chattels,
rights and credits, moneys and ef-
fects of Francisco Pereira Salles and Maria Gur-
reiro Salles, the sum of Four Hundred Two Dol-
lars and Sixty cents (\$402.60) debt, damage and
Twenty-four Dollars and forty-five cents (\$24.45)
costs, which Jose Marques, by the Judgment of
the District Court of the City of Orange, rendered
on the 3rd day of May, 1930, recovered against 40

Endorsement on Execution.

them, and also the costs thereof, and forthwith pay the same to the said Jose Marques, or in his absence in said Court, and within thirty days from the time you shall receive this execution make return of the proceedings had thereon.

10 WITNESS: DANIEL A. DUGAN, Esquire, Judge of said Court at Orange, aforesaid, the 6th day of May, in the year One Thousand Nine Hundred and Thirty.

HAROLD J. TRABOLD,
Clerk.

A True Copy.

HAROLD J. TRABOLD,
Clerk.

20

ENDORSEMENT ON EXECUTION.

EXECUTION

(Issued May 6th, 1930)
43 Union Street, Newark.

ORANGE DISTRICT COURT.

EXECUTION ON GOODS AND CHATTELS.

30

JOSE MARQUES,

Plaintiff,

vs.

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

40

Judgment	\$402.60
Costs	24.45
Execution	1.35

Endorsement on Execution.

Alias Execution		
Pluries Execution		
Mileage	.32	
Constable's Commission 5%	21.44	
	<hr/>	
	\$450.16	10

JOSEPH N. BRAFF,
Plaintiff's Attorney.

I return this execution May 9th, 1930, with a
levy annexed.

IRVING GELBER,
Constable.

A True Copy.

20

HAROLD J. TRABOLD,
Clerk.

30

40

Levy and Inventory.

(Filed June 30th, 1930)

ORANGE DISTRICT COURT.

10 State of New Jersey,
County of Essex,
City of Orange—ss.:

In the Orange District Court of the City of
Orange, Before Daniel A. Dugan, Esquire, Judge.

In Debt, on Execution.

JOSE MARQUES,

Plaintiff,

20

vs.

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

By virtue of the within Execution, I have this
day levied on and inventoried the following goods
and chattels, rights and credits, viz.:

30

1. Graham Truck—N. J. Plates 1930-
X91215

1. National Cash Register

1. Standing Scale—serial #465699 Style 344

1. Slicing machine

1. Coffee Mill

1. Ice box

1. Toledo Scale

1. Delicatessen Show Case

40

1. Coffee Roaster

2. Grocer Counters

Claim of Property.

about 1000 cans of mixed peas, beans, prunes, tomatoes, tomato soup.

Including all other goods in the store located at #69 Ferry Street, Newark, N. J.

A True Copy. 10

HAROLD J. TRABOLD,
Clerk.

Claim of Property.

(Filed May 16th, 1930)

ORANGE DISTRICT COURT 20
OF THE CITY OF ORANGE.

JOSE MARQUES,
Plaintiff,

vs.

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,
Defendants. 30

*To Irving Gelber, One of the Constables of the
County of Essex, of the Orange District Court
of the City of Orange:*

Sir:

TAKE NOTICE, that I claim as my own property
the following enumerated articles: all the stock, 40

Claim of Property.

merchandise, fixtures, ice box, cash register, lease
and all the goods and chattels which you have
seized and taken into your possession by virtue of
a Writ of Execution, issued out of the Orange
District Court of the City of Orange, in a suit
10 wherein Jose Marques is the Plaintiff, and Fran-
cisco Pereira Salles and Maria Gurreiro Salles are
the Defendants, and I hereby warn you, not to
take any further proceedings in connection there-
with.

Yours Respectfully,

JOSE MARIA VIERA,
Claimant.

Dated: May 13th, 1930.

20

A true copy.

HAROLD J. TRABOLD,
Clerk.

30

40

Order for Venire.

(Filed May 16th, 1930)

**ORANGE DISTRICT COURT
OF THE CITY OF ORANGE.**

10

 JOSE MARQUES,

Plaintiff,

vs.

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

 20

Application being made to me, Judge of said Court, by Jose Maria Viera, who has claimed by notice in writing, delivered to Irving Gelber, a constable of Essex County, to own the property levied upon under the execution issued in this cause for a venire to summon a jury of six (6) lawful men as jurors, to try the right of such claimant to the property claimed

I do on this 16th day of May, 1930

30

ORDER, that a venire issue out of this Court to try the said right of property, and that on the 6th day of June, 1930, at ten o'clock in the forenoon, at the Orange District Court, in the City of Orange, be and the same is hereby fixed as of time and place, for said trial.

It is further

ORDERED, that the said Jose Maria Viera, the

40

Return.

Claimant, shall give two (2) days' notice in writing to the Judgment Creditor or his Attorney, and to the said Constable of the time and place of the said trial.

10 DANIEL A. DUGAN,
Judge of the Orange District Court
of the City of Orange.

On motion of Apostolakos, Mandelbaum & Pappas, Claimant's Attorneys.

A true copy.

HAROLD J. TRABOLD,
Clerk.

20

Return.

*To the Honorable, the Chief Justice and Associate
Justice of the New Jersey Supreme Court:*

30 The judgment, order and proceedings herein, with all things touching and concerning the same as fully and entirely as they remain in the Orange District Court, of the City of Orange, I do hereby certify under the seal of the Court in the schedule hereto annexed, as within I am commanded.

DANIEL A. DUGAN,
Judge of the Orange District Court,
of the City of Orange.

40

Case.**DISTRICT COURT OF THE CITY OF
ORANGE.**

On Claim of Property.

Jose Maria Vieira, Claimant.

10

 JOSE MARQUES,

Plaintiff,

—against—

FRANCISKO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

 20

Transcript of shorthand notes of testimony taken in the above entitled matter on Friday, June 13th, 1930, at 10:30 o'clock in the forenoon, at the District Court of the City of Orange, Orange, N. J., before his Honor, Daniel A. Dugan, Judge of said Court, and a jury.

APPEARANCES:

30

IRVING MANDELBAUM, ESQ., of Apostolakos, Mandelbaum & Pappas, on behalf of the Claimant;

JOSEPH N. BRAFF, ESQ., on behalf of the Plaintiff.

(Louis Winard, stenographer, sworn.)

(A jury of six men was duly empanelled and sworn.)

(Counsel open to jury.)

40

Motion for Direction of a Verdict.

Mr. Mandelbaum: If your Honor please, we would like to see the levy, that is, the inventory.

The Court: This is all I have here (showing papers). You may look over all the papers I have here.

10 Mr. Mandelbaum (to Mr. Braff): Have you got the levy here?

Mr. Braff: No.

Mr. Mandelbaum: Then in that case I would like to move for a direction of verdict, since there was no levy filed in this court.

The Court: Are you making a motion or what?

Mr. Mandelbaum: I would like to make a motion for a direction of verdict as there was no levy filed that there was no actual levy made on
20 the goods and chattels of Vieira.

The Court (to Mr. Braff): How are you going to prove it?

Mr. Braff: The duty of the claimant is to file a claim with this Court as to the articles levied upon. If he wanted to, he could have very easily subpoenaed the constable to prove there was a levy upon the goods. There was a levy, otherwise he wouldn't file a claim of property.

30 Mr. Mandelbaum: The District Court Act provides that a written levy should be made and filed on the goods and chattels.

The Court: Was there any levy made?

Mr. Mandelbaum: We don't know. We received a notice of a levy.

The Court: Do you deny it?

Mr. Mandelbaum: Yes.

40 The Court: Somebody's property, as they say, has been levied upon or supposed to be levied upon. They claim the property and the constable wouldn't let them have it until they came into

Joseph M. Vieira—for Claimant—Direct.

court; and they come into court and they say, "That is our property". Am I going to work and give a judgment for possession if that is the situation?

10

JOSEPH MARIA VIEIRA sworn in his own behalf.

Direct examination by Mr. Mandelbaum:

Q. Mr. Vieira, I show you a copy of a claim of property—do you recall filing this claim of property of certain goods and chattels which you claim to be your own? A. Yes, sir.

Mr. Mandelbaum: I will read it to the jury; this is a claim which Mr. Vieira has claim of certain goods that belongs to him: 20

"Take notice that I claim as my property the following enumerated articles: all of the stock, merchandise, ice box, cash register, lease, and all of the goods and chattels which you have seized and taken into your possession by virtue of a writ of execution issued out of the Orange District Court of the city of Orange, in a suit wherein Jose Marques is the plaintiff and Francisco Pereira Salles and Maria Gurreiro Salles are the defendants; and I hereby warn you not to take further proceedings in connection therewith." 30

Q. Vieira, are you the owner of the store located on Ferry Street, corner Prospect Street, Newark, grocery store? A. Yes, sir—I buy it.

Q. When did you buy it, Mr. Vieira? A. January 7th. 40

Joseph M. Vieira—for Claimant—Direct.

Q. From whom—who sold it to you? A. Mr. Salles.

Q. Was Mr. Salles your partner? A. My partner? He sold it to me. He got business and he sold it to me.

10 Q. Did you pay him? A. I pay him all the money.

Q. How much did you pay him for the store? A. \$3,000.

Q. Did you pay him in cash or by check? A. I paid bills. Somebody come and all checks in the book; you know, for the salesmen, if he comes, I pass checks; and about \$1,800 in checks. After this I pay cash money.

20 Q. Did you pay Salles in money besides paying the bills? A. Yes; I paid him.

Q. How much? A. I pay \$1,000, \$10, \$20, \$15; and I paid the money, all cash money, for his expenses; some bills. He says, "I need \$25", and I say, "All right". Sometimes he need \$50, \$10, \$15, \$20—I give him.

Q. And up to that day did you take a lease for the store? Did you take a lease from the landlord for the store? A. Yes—I asked one man who is the boss from the house.

30 Q. I show you this paper and ask you if this is your signature? A. Yes.

Mr. Mandelbaum: Your Honor, I would like to have this lease marked in evidence.

The Court: Any objection?

40 Mr. Braff: I object at this time. All that is proven is that this man signed a paper. He has not proven what it is. I don't know if this man knows; he must have signed hundreds of papers of this

Joseph M. Vieira—for Claimant—Direct.

kind. At this time I would like to ask Mr. Mandelbaum, under the circumstances, not to lead the witness.

Q. Is this the assignment (showing witness paper)? A. Yes. 10

Mr. Braff: If your Honor please, I am going to object.

Q. Do you know what this paper is (showing witness)? A. Yes; that is a writing. It is a writing for my business from Mr. Salles and me, and the boss of the house.

Q. The contract for the house? A. Yes.

Q. You mean for the store? A. Yes; for the store, yes. 20

Q. Did you get a lease on the store which you now occupy? A. Yes, sir.

The Court: I thought you asked him if he was the owner.

Mr. Mandelbaum: The owner of the store.

The Court: Then why are you asking him about a lease then? 30

Mr. Mandelbaum: He leased the store there. My purpose is to show that this man took a lease in order to point out the date and the time he was in possession of the store.

The Court: Well, he bought the store, didn't he?

Mr. Mandelbaum: Yes.

The Court: Where is the bill of sale? Bring that in. 40

Joseph M. Vieira—for Claimant—Direct.

Q. I show you this and ask you what it is (showing witness paper)? A. This is a bill of sale.

10 (At this point Louis Schwarz was sworn as interpreter of the Portuguese language and the examination is continued through the interpreter.)

Q. I show you the bill of sale and ask you if you received the same from Salles.

Mr. Braff: If your Honor please, I am trying to be lenient in this case, but I don't want counsel to lead the witness.

20 The Court: I will sustain the objection.

Q. I show you a paper and ask you what it purports to be? A. This is a contract of sale that I bought the place.

Q. Did you see Salles sign this paper? A. I did.

Mr. Mandelbaum: I offer the bill of sale in evidence.

30 Mr. Braff: I have no objection.

(Paper received in evidence and marked Exhibit P-1.)

Q. I show you this paper and ask you what it purports to be? A. This is the bill of sale of the automobile, the truck.

Q. Did you see Salles sign that bill of sale? A. He signed it in front of me.

Mr. Mandelbaum: I offer it.

40 Mr. Braff: No objection.

Joseph M. Vieira—for Claimant—Direct.

(Paper received in evidence and marked Exhibit P-2.)

Q. I show you this and ask you if you know what it is? A. This is a bill from the insurance company.

10

Q. What is the date of it? A. 28th of February.

Mr. Mandelbaum: I offer it.

Mr. Braff: I am going to object to the offer of this in evidence, your Honor, on the ground that this insurance policy is dated February 28th, 1930, when the bill of sale to Mr. Vieira is dated in April.

The Court: I will allow it for what it may be worth.

20

(Paper received in evidence and marked Exhibit P-3.)

Q. What chattels does that insurance cover?

The Court: It speaks for itself.

Q. I show you this and ask you if you know what it is (showing witness paper)?

30

The Court: Do you offer it in evidence?

Mr. Mandelbaum: Yes.

The Court: Mark it for what it is worth.

(Paper received in evidence and marked Exhibit P-4.)

Q. I show you this (showing witness paper),

40

Joseph M. Vieira—for Claimant—Cross.

and ask you if that is your signature? A. This is a check from the business when I paid out the bills.

Q. What is the date of that? A. January 27th, 1930.

10

Mr. Mandelbaum: I offer that in evidence.

Mr. Braff: No objection. Offer them all.

(Batch of checks received in evidence and marked as one exhibit, Exhibit P-5.)

Q. I show you these bills and ask you if you paid these bills while in the store? A. All those bills were paid for merchandise while I was in the place.

20

Q. I show you this paper and ask you if you know what it is and if you signed it—whether it is your signature? A. This is a transfer of the lease by the landlord, from the landlord to Jose Vieira.

Mr. Mandelbaum: I would like to offer it in evidence.

30

(Batch of bills received in evidence and marked as one exhibit, Exhibit P-6.)

(Paper received in evidence and marked Exhibit P-7.)

Cross examination by Mr. Braff:

Q. Mr. Vieira, do you know Joseph Marques?

A. Yes, I do.

40 Q. How long do you know him? A. I know

Joseph M. Vieira—for Claimant—Cross.

him for a long time. I know him for many years.

Q. Did you know that Mr. Salles owed him \$400? A. When I bought the store I did not know it, but a short time afterwards I did.

Q. When did you find out he owed him \$400? A. About a month later I know it, that he owed him money. 10

Q. When did you buy the store? A. The 7th of January, 1930.

Q. How long before the time you bought the store were you in the store? A. I was there many times before I got the store.

Q. And did you ever see Mr. Marques in the store then? A. I seen him many times in the store.

Q. And did you ever hear him ask Mr. Salles for \$400 that was due? A. I heard him ask him several times for the money. 20

Q. Now, you say you bought the store January 7th? A. Yes, sir.

Q. And about a month later you knew about this money? A. About a month later, for a month, I heard he owes him money.

Q. Didn't you just say you knew about it and you heard him talk about it before this day, of January 7th? A. No, sir—I came over almost every day and sometimes pretty near every day. 30

Q. And sometimes did you hear him ask for the money? A. Afterwards I heard him ask for the money.

Q. Now, this assignment of the lease of Henry Weinberg to Salles, did you sign that assignment? A. Yes, sir.

Q. Where did you sign it? A. In the office of the counsel for the owner of the building. 40

Joseph M. Vieira—for Claimant—Cross.

Q. Did you go to the office to sign this assignment? A. Yes, sir.

Q. And did you sign it on January 15th, 1930?

A. Yes, sir.

10 Q. He made a bill of sale that day? A. No, sir.

Q. You were not at the lawyer's office that day, were you? A. Yes.

Q. Did Mr. Weinberg tell you anything about drawing a bill of sale? A. He said he could make the bill of sale, but I didn't have enough money to settle with that day.

20 Q. Did he make an appointment for you to come back and draw a bill of sale? A. He said if I would come back he would make a bill of sale; but sometimes Mr. Salles was in the store and couldn't get away, and sometimes he could sign and I couldn't make the bill of sale.

Q. And is this the bill of sale that Mr. Salles signed (showing witness)? A. Yes, sir.

Q. That bill of sale is dated April 22nd, 1930, over three months past the time you had the assignment of lease. Will you tell us why you waited that long to have a bill of sale drawn up?

30 A. I was waiting; I didn't have money enough to settle that. I gave him money little by little, and then we went to make the bill of sale.

Q. Mr. Vieira, Mr. Salles was in the store with you all this time between January 7th and April 22nd, 1930, wasn't he? A. He was.

Q. And that store is number 43 Union Street, Newark? A. No.

Q. Ferry Street, Newark? A. Ferry Street.

40 Q. You know that summons was issued in this case on April 12th, 1930, in the case of Jose Marques against Francisco Salles and Maria

Joseph M. Vieira—for Claimant—Cross.

Salles, and that was served upon Mr. Salles in the store, wasn't it?

Mr. Mandelbaum: I object, your Honor.

A. He came and brought the papers. I don't know what it was for. 10

Q. You were served on April 14th, wasn't it?

The Court: That speaks for itself.

Mr. Braff: I ask to have the original summons, showing the date of service, marked.

The Court: Mark it for identification.

(Paper marked Exhibit D-1 for identification.) 20

Q. And a week later you went to have a bill of sale drawn? A. The bill of sale was made before.

Q. Did you ask Mr. Salles for a list of creditors?

Mr. Mandelbaum: I object, your Honor. The bill of sale speaks for itself. There is an affidavit attached. 30

The Court: Sustain the objection.

Mr. Braff: If your Honor please, under the Bulk Sales Act, Compiled Statutes, it says that the sale in bulk of the whole or a large part of the stock of merchandise and fixtures or merchandise, or fixtures, or goods and chattels, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business or occupation, shall be void as 40

Leo L. Weinberg—for Claimant—Direct.

against the creditors of the seller, unless the purchaser—

The Court: Why make that argument now?

10 Mr. Braff: —unless the purchaser shall, in good faith and for the purpose of giving the notice herein required, make inquiry of the seller and receive from him a list in writing of the names and places of residence or business of and indebtedness to each and all of such creditors.

The Court: Proceed: Anything further?

Q. Did you ask Mr. Salles for a list of creditors?

20 Mr. Mandelbaum: I object, your Honor. The affidavit in the bill of sale speaks for itself.

The Court: Yes, I think so.

Mr. Braff: Your Honor is ruling on that and refuses to allow the question?

The Court: I sustain the objection.

30 LEO L. WEINBERG, sworn on behalf of the claimant:

Direct examination by Mr. Mandelbaum:

Q. Mr. Weinberg, did you attend the execution of this lease? A. Yes, sir, I did.

Q. Will you explain exactly what was done in your office relative to the execution of the assignment of the lease, and on what date?

40 The Court: Why, there is the result,

Leo L. Weinberg—for Claimant—Cross.

isn't it (indicating paper)? The lease is in evidence.

Mr. Mandelbaum: If your Honor please, we have a note to show that Mr. Vieira placed up as additional security as a new tenant on the date of the execution of the lease, and I would like to bring that out. 10

The Court: Does not the lease show what was done?

Mr. Mandelbaum: No, sir.

Q. Was there a note executed in your office for additional security for the lease? A. There was.

Q. Have you the note with you? A. Yes, I have. 20

Q. May I see it? A. It is in my portfolio on the desk there (pointing).

(Paper is produced.)

Mr. Mandelbaum: Is there any objection to the offer of the note in evidence?

Mr. Braff: No.

(Paper received in evidence and marked Exhibit P-8.) 30

Q. Did Mr. Vieira tell you he was buying the store that day? A. Yes, sir.

Cross examination by Mr. Braff:

Q. Did you draw a bill of sale on that day? A. No, I did not.

Q. Were you asked to draw a bill of sale?

Mr. Mandelbaum: I object. 40

The Court: Objection sustained.

FRANK P. SALLES, sworn on behalf of the claimant:

Direct examination by Mr. Mandelbaum:

10 Q. Mr. Salles, did you sell the store to Mr. Vieira? A. I did.

Q. Is this your signature to the bill of sale (indicating)? A. Yes, it is.

Q. Did you make that affidavit (indicating)? A. Yes, sir.

Q. I show you this and ask you if this is your signature to the automobile bill of sale? A. Yes, it is.

Q. When did Mr. Vieira go into possession of that store? A. When?

20 Q. Yes. A. The 15th of January.

Cross examination by Mr. Braff:

Q. Mr. Salles, you were served with the summons in the case of Jose Marques against you, on April 14th? A. Yes, sir.

Mr. Mandelbaum: I object.

The Court: Overruled.

30 Q. Were you not? You were served with the summons of Jose Marques against you on April 14th? A. Yes, I was.

Q. And did you owe Mr. Marques \$400? A. Yes, sir.

Q. Were you served at your store?

Mr. Mandelbaum: If your Honor please, I object to all this. It isn't proper cross examination.

40 The Court: Overruled.

Manuel Nascimento—for Claimant—Direct.

Q. Were you served at your store? A. If I sold the store?

Q. Were you served with the summons at your store? A. The store was not mine at that time.

MANUEL NASCIMENTO, sworn on behalf of the claimant:

10

Direct examination by Mr. Mandelbaum:

Q. What is your business? A. Newspaper editor.

Q. I show you this paper and ask you if you edited this paper? A. Yes, sir.

Q. As the editor of that paper did you have occasion— 20

The Court: I think the important part is whether he publishes the paper. Anybody may edit a paper. You got to have the publisher or somebody.

Q. Are you the publisher of the paper? A. Yes, sir; publisher in the office.

Q. As publisher of the paper did you ever have occasion to insert an advertisement for Mr. Vieira? A. Yes, sir. 30

Q. What date was the advertisement inserted? A. On January 13th, 1930.

Q. Was that advertisement in English? A. No; in Portuguese.

Q. Will you translate that advertisement in English?

Mr. Braff: I object to any translation unless it is shown who gave it to him and whether he had authority to give it to him.

40

Manuel Nascimento—for Claimant—Direct.

Q. Who gave you that advertisement? A. I got it from Mr. Marques, who went in my office to get some advice on a note, and he told me Mr. Salles sold the store to Mr. Vieira.

10 The Court: I don't understand.

Q. Who gave you the advertisement to put it in the paper? A. It is not an advertisement.

Q. The announcement, or whatever it is. A. Mr. Marques.

The Court: That is a news item, isn't it?

The Witness: Yes, sir.

Mr. Braff: I object to him reading it.

20 The Court: An editor may testify to a news item.

Q. It is a fact that it appeared in your newspaper on January 23rd? A. Yes, sir.

Q. Will you translate it for us?

Mr. Braff: I object. I don't know where he got this news and information from. News items are not any evidence.

30 Mr. Mandelbaum: If your Honor please, it is some evidence which shows that this man was in possession.

The Court: I will sustain the objection.

The Court: You have no advertisement

of this?

The Witness: No, sir.

Q. Did you get paid for putting this announcement in? A. No, sir.

40 (No cross examination.)

Motion for Direction of a Verdict.

Mr. Mandelbaum: We rest.

Mr. Braff: If your Honor please, at this time I would like to make a few motions for a direction of verdict. First, on the ground that the bill of sale in itself transfers nothing, Mr. Vieira having nothing, and of course, can claim exactly what he gets. The bill of sale is dated April 22nd, and, of course, usually transfers what is in the schedule. The schedule in this case is blank. I think under the circumstances I am entitled to a direction of verdict on that ground. The second motion is that the party himself, Mr. Vieira, testified that he knew of this debt before the time he bought the store, and he says, a month after he bought the store; and he claims he bought the store on January 7th. So he must have known about it on February 7th; and, having known about it, and having known there was a debt in existence February 7th, 1930, he had notice, and it was his duty under the Bulk Sales Act, laws passed in the State of New Jersey, to inquire of the seller for a list of the creditors, and, knowing that this debt was in existence from Mr. Marques on February 7th, it was his duty to inquire on April 22nd, when he took this bill of sale as to whether that debt was in existence or not. Of course, there is an affidavit that there was everything free and clear, but that is not enough.

Mr. Mandelbaum: As to the first ground on which Mr. Braff asks for a direction of verdict, I think the bill of sale speaks for itself in that it says that Mr. Salles has sold his right, title and interest, and describes the business; and as to the second ground, the affidavit attached to the bill of sale clearly shows that the property was sold without any exception, and that a demand

Motion for Direction of a Verdict.

was made that he render a true statement. The affidavit speaks for itself in that case; and I, therefore, respectfully submit that Mr. Braff is not entitled to a direction of verdict.

10 I would like to make a few motions in behalf of Mr. Vieira at this time. My first motion is that Marques was never a creditor at all. Any trans-
action which he had with Mr. Salles was a private transaction, and he clearly does not come within the provisions of the Bulk Sales Act. The intent of the Legislature in passing the Bulk Sales Act was to clearly protect the creditors who sold goods in bulk to be delivered and placed upon the shelf. Nothing is shown here that this creditor
20 Marques was a creditor under the Bulk Sales Act. My second ground is that there was never a proper levy made. No proof has been shown of a proper levy upon the goods and chattels of Salles, or as we claim, Mr. Vieira's.

The Court: The jury is here on a claim of property on that now, isn't there?

Mr. Mandelbaum: We only received a notice of a levy.

30 The Court: You are claiming this property against a party who is holding it on a levy or on some claim. Why should we come here if they have not any levy?

Mr. Mandelbaum: We are here to protect our rights. The District Court Act provides that an inventory be made and that it be posted in three public places.

40 My third ground, if your Honor pleases, is the fact that we have certainly shown that Mr. Vieira has come into possession of these goods and chattels located on Ferry and Prospect Streets, 43 Ferry Street, by the fact that Mr. Vieira was in

Motion for Direction of a Verdict.

possession on January 7th, and he subsequently took an assignment on January 15th, and he also showed checks for paid bills.

The Court: I will grant a direction of verdict on the grounds stated by counsel for the defendant on the claim. The question is whether the claim be dismissed or not. I will direct the jury to return a verdict against the claimant, for a dismissal of the claim of the action by the claimant. The reason I am doing this is because there is no dispute as to the facts which are shown in this case. The papers set the dates. So that I will direct the jury to render their verdict through their foreman. There are no facts for the jury to determine. The jury is called to decide what the facts are. Where there is no dispute of the facts there is nothing to be settled or determined by the jury, and then, of course, it is the duty of the Court to direct a verdict, and that is what I am doing.

Mr. Mandelbaum: I ask an exception.

(Exception granted.)

(Jury returns verdict for defendant.)

Mr. Mandelbaum: If the Court pleases, I would like to make a few exceptions on the record. First, that there was sufficient evidence shown by the claimant to warrant the Court submitting the facts to the jury; and that the action of the Court was entirely against the weight of the evidence as produced by the claimant.

(Exception granted.)

DISTRICT COURT OF THE CITY OF
ORANGE.

On Claim of Property.

Jose Maria Vieira, Claimant.

10

JOSE MARQUES,

Plaintiff,

—against—

FRANCISKO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

20

I, DANIEL A. DUGAN, Judge of the District Court of the City of Orange, New Jersey, do hereby certify that the claimant in the aforesaid action applied to me for the appointment of a stenographer to transcribe the proceeding at the trial of the aforesaid action and take down the testimony therein.

30

I CERTIFY that Louis Winard was designated to act as aforesaid in the said case and was duly sworn. I do further certify that this transcript of the said proceedings and said testimony made by the said stenographer is a correct state of the case on certiorari in the aforesaid action.

DANIEL A. DUGAN,
Judge.

40

Transcript of Entry Docket.

ORANGE DISTRICT COURT.

JOSE MARQUES,

Plaintiff,

vs.

10

FRANCISCO PEREIRA SALLES and MARIA GURREIRO
SALLES,

Defendants.

Summons issued April 12, 1930.
Returnable April 23, 1930.

ON CONTRACT.

Demand, \$500.00 20
Joseph N. Braff, plaintiff's attorney.

Summons returned as follows:

I served this summons April 14th, 1930, by reading the same to the defendants and delivering to them a copy thereof.

MAX MARKOWITZ,
Constable.

PLAINTIFF'S COSTS.		30
Summons	\$2.50	
Mileage	.32	
Listing fee	1.50	
Attorney's fees	20.13	
Witness fee		
Venire		
Total costs	24.45	
Execution	1.35	
Mileage	.32	
Statement		40

TRANSCRIPT OF ENTRY DOCKET.

Defendants made no appearance on April 23rd, 1930.

10 There having been no appearance by the defendants on the return day of the summons or adjourned day thereafter nor any reasons given for non-appearance, and an affidavit being filed in proof of debt on May 3rd, 1930.

Judgment was entered in favor of the plaintiff and against the defendant for Four hundred two dollars and sixty Cents (\$402.60) and Twenty-four dollars and forty-five Cents (\$24.45) costs.

20 Execution issued May 6th, 1930, of Four hundred two dollars and sixty Cents (\$402.60) and Twenty-four dollars and forty-five Cents (\$24.45) costs, returnable within thirty (30) days to Irving Gelber, constable.

I return this execution May 9th, 1930, with a levy annexed.

IRVING GELBER,
Constable.

Claim of property and order for venire filed on May 16th, 1930.

30 TRANSCRIPT OF ENTRY DOCKET.

Trial had with jury. The following jury was sworn and served:

- | | |
|-------------------------|----------------------|
| 1. Walter K. Garret. | 4. Talbot Helbs. |
| 2. William H. Hodges. | 5. George E. Davids. |
| 3. William F. Groubart. | 6. Henry H. Martens. |

40 Louis Winard sworn as stenographer. Jose Maria Viera sworn and testified. Louis Schwartz

Transcript of Entry Docket.

sworn as interpreter. Bill of Sale, Ex. P-1, Insurance Policy Ex. P-2. Paper Ex. P-3. Checks Ex. P-4. Bills Ex. P-5. Lease Ex. P-6. Summons marked D-1. Leo L. Weinberg sworn and testified. Note marked Ex. P-7. Frank P. Salles and Manuel Nosomeuto sworn and testified. 10

Claimant rested. Motion for direction of verdict for defendant on claim of property granted, and verdict was accordingly rendered against the claimant.

I hereby certify the foregoing to be a true and accurate transcript of the entry docket of the said Court in so far as it concerns the above cause.

HAROLD J. TRABOLD, 20
Clerk.

(Seal)

30

40

Exhibit P-1.

BILL OF SALE FROM SALLES TO VIERA.

10 KNOW ALL MEN BY THESE PRESENTS, That I,
FRANCISCO PEREIRA SALLES of the City of New-
ark in the County of Essex and State of N. J.
party of the first part, for and in consideration
of the sum of Three Thousand Dollars lawful
money of the United States, to in hand paid, at
or before the ensealing and delivery of these pres-
ents, by JOSE MARIA VIEIRA of the City of Newark
in the County of Essex and State of New Jersey
party of the second part, the receipt whereof is
hereby acknowledged I have bargained and sold,
and by these presents do grant and convey, unto
20 the said party of the second part, his executors,
administrators and assigns, all the goods and chat-
tels particularly described and mentioned.

The business commonly known as Lusitania Coffee, with the stock of merchandise, fixtures, ice-box, cash register, etc., etc., free and clear from all debts, bills, accounts and judgments pending.

30 TO HAVE AND TO HOLD, the same unto the said
part of the second part, his executors, admin-
istrators and assigns forever. AND I do for my-
self, my heirs, executors, and administrators, cove-
nant and agree to and with said part of the
second part, to warrant and defend the sale of
said business hereby sold unto the said part
of the second part, his executors, administrators and
assigns, against all and every person and persons
whomsoever.

40 IN WITNESS WHEREOF, I have hereunto set my
hand and seal the 22nd day of April, in the year

Exhibit P-1.

of Our Lord One Thousand Nine Hundred and
Thirty.

FRANCISCO P. SALLES.

Signed, Sealed and Delivered,
in the presence of

10

R. HEBELLO MARTIN.

State of New Jersey,
County of Essex—ss.:

FRANCISCO PFREIRA SALLES, being duly sworn,
says:

1. That he is not minor. 20
 2. That he is the owner of and in the actual possession of the property mentioned in the within instrument.
 3. That he has the absolute right and authority to sell same under the conditions and terms mentioned in the within instrument.
 4. That no mortgage or mortgages, judgments, levies, or any person who can claim any credit, attachments or executions existing against the said property, and that the same is free and clear except 30
- No exceptions
5. That this affidavit is made to induce Jose Maria Vieira to purchase said goods and chat- 40

Exhibit P-1.

tels mentioned in the within instrument knowing that the said Jose Maria Vieira relies upon the truth of the statements herein contained; and also in compliance with the "Bulk Sales Act" (so-called), Chapter 208, page 377, Pamphlet Laws 1915.

10

FRANCISCO P. SALLES.

Sworn and subscribed before me, this
22nd day of April, 1930.

MANUEL NOSCEMENTO,
Notary Public.

My Commission expires Sept. 6, 1933.
(Seal)

20

State of New Jersey,
County of Essex—ss.:

BE IT REMEMBERED, that on this 22nd day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty, before me, a Notary Public of N. J., subscriber, personally appeared Francisco Pereira Salles, who, I am satisfied, is the seller mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

30

MANUEL NOSCEMENTO,
Notary Public.

My Commission expires Sept. 6, 1933.

(Seal)

40

Exhibit P-2.**BILL OF SALE AND ASSIGNMENT OF BILL
OF SALE OF TRUCK, SALLES TO VIERA.**

KNOW ALL MEN BY THESE PRESENTS, that Hillas Motor Car Company, of the City of Newark, County of Essex and State of New Jersey, of the first part, for and in consideration of the sum of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION, lawful money of the United States, to it in hand paid, at or before the ensealing and delivery of these presents, by Jose Barradas of the City of Newark, County of Essex and State of New Jersey, of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey, unto the said part of the second part, his executors, administrators and assigns, one Graham Brothers DD760 Panel Car No. D-176309, Engine No. 1103844.

TO HAVE AND TO HOLD, the same unto the said party of the second part, his executors, administrators and assigns, forever. AND it does, for its successors and assigns, covenant and agree to and with the said party of the second part, to warrant and defend the sale of said Motor Vehicle hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, the Hillas Motor Car Company has caused these presents to be signed by its President, and attested by its Secretary, and its corporate seal to be hereto affixed, the

Exhibit P-2.

Twenty-first day of May, in the year of our Lord
One Thousand Nine Hundred and twenty-eight.

HILLAS MOTOR CAR COMPANY,

By R. D. CHAPLIN,

Vice-President.

10

Attest:

A. HAMILTON,

Secretary.

(Seal)

State of New Jersey,
County of Essex—ss.:

20

BE IT REMEMBERED, that on this 21st day of
May, Nineteen Hundred and 28, before, the sub-
scriber, a Notary Public of New Jersey, Appeared,
R. D. Chaplin, Vice-President of Hillas Motor
Car Company, who acknowledged that he executed
the foregoing instrument as and for the voluntary
act and deed of said company, for the uses and
purposes therein expressed.

30

S. ROWE KENT

(Official Taking Acknowledgment)

(Seal)

Exhibit P-2.

ASSIGNMENT

May 21, 1928.

FOR VALUE RECEIVED, (I) (WE) hereby assign, transfer and set over all (my) (our) right, title and interest in the motor vehicle described in the foregoing Bill of Sale, unto Motor Finance Corp., of the City of Newark, County of Newark, and State of New Jersey.

10

JOSE BARRADAS.

Signed in the presence of:

G. HENTSCH

I. MYERS

20

State of New Jersey,
County of Essex—ss.:

BE IT REMEMBERED, that on this 21st day of May, in the year of our Lord One Thousand Nine Hundred and 28, personally appeared Jose Barradas who I am satisfied is the person named in the above assignment, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

30

P. WAGMAN
(Official Taking Acknowledgment)

(Seal)

40

Exhibit P-2.

ASSIGNMENT

Sept. 27, 1928.

10 FOR VALUE RECEIVED, (I) (WE) hereby assign, transfer and set over all (my) (our) right, title and interest in the motor vehicle described in the foregoing Bill of Sale, unto Marques & Alves, of the City of Newark, County of Essex and State of New Jersey.

MOTOR FINANCE CORP.,
A. STARR,
Asst. Secretary.

20 Signed in the presence of:

G. HENTSCH
I. MYERS

State of New Jersey,
County of Essex—ss.:

30 BE IT REMEMBERED, that on this 27th day of Sept. in the year of our Lord One Thousand Nine Hundred and 28, personally appeared A. Starr who I am satisfied is the person named in the above assignment, and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

P. WAGMAN
(Official Taking Acknowledgment)

40 (Seal)

Exhibit P-2.

ASSIGNMENT

September 27, 1928.

FOR VALUE RECEIVED, (I) (WE) hereby assign, transfer and set over all (my) (our) right, title and interest in the motor vehicle described in the foregoing Bill of Sale, unto Motor Finance Corp., of the City of Newark, County of Essex, and State of New Jersey. 10

MARQUES & ALVES,
JOSE MARQUES,
ANTE. A. BARGES.

Signed in the presence of:

G. HENTSCH 20
L. TRIPPE

State of New Jersey,
County of Essex—ss.:

BE IT REMEMBERED, that on the 27th day of Sept. in the year of our Lord One Thousand Nine Hundred and 28, personally appeared Marques & Alves, who I am satisfied are the persons named in the above assignment, and I having first made known to them the contents thereof, they did thereupon acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 30

P. WAGMAN
(Official Taking Acknowledgment)

(Seal)

40

Exhibit P-2.

ASSIGNMENT

Aug. 13, 1929.

10 FOR VALUE RECEIVED, (I) (WE) hereby assign,
transfer and set over all (my) (our) right, title
and interest in the motor vehicle described in the
foregoing Bill of Sale, unto Marques and Alves
of the City of Newark, County of Essex, and State
of New Jersey.

MOTOR FINANCE CORP.,
A. STARR.

Signed in the presence of:

20 G. HENTSCH
I. MEYERS

State of New Jersey,
County of Essex—ss.:

30 BE IT REMEMBERED, that on this 13th day of
Aug. in the year of our Lord One Thousand Nine
Hundred and 29, personally appeared A. Starr,
who I am satisfied is the person named in the
above assignment, and I having first made known
to him the contents thereof, he did thereupon
acknowledge that he signed, sealed and delivered
the same as his voluntary act and deed, for the
uses and purposes therein expressed.

P. WAGMAN
(Official Taking Acknowledgment)

(Seal)

Exhibit P-2.

ASSIGNMENT

August 26, 1929.

FOR VALUE RECEIVED, (We) hereby assign, transfer and set over all (our) right, title and interest in the motor vehicle described in the foregoing Bill of Sale, unto Francisco P. Salles of the City of Newark, County of Essex, and State of New Jersey. 10

MARQUES & ALVES,
JOSE MARQUES,
ANTONIO ALVES.

Signed in the presence of:

ALBERT MARSHALL 20
PORFIRIO dOLIVERIA e SILVA

State of New Jersey,
County of Essex—ss.:

BE IT REMEMBERED, that on this 26th day of August, in the year of our Lord One Thousand Nine Hundred and 29, personally appeared Jose Marques & Antonio Alves, trading as Marques and Alves, who I am satisfied are the persons named in the above assignment, and I having first made known to them the contents thereof, they did thereupon acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. 30

MANUEL NOSCIMENTO,
Notary Public of N. J.
(Official Taking Acknowledgment) 40
(Seal)

Exhibit P-2.

ASSIGNMENT OF BILL OF SALE

10 I, FRANCISCO P. SALLES, of the City of Newark, County of Essex, and State of N. J., for and in consideration of the sum of one dollar, to me in hand paid, I hereby sell, assign, transfer and set over unto Jose Maria Vieiro of Newark, in the County of Essex, and State of N. J. the said motor vehicle described in the attached Bill of Sale.

IN WITNESS WHEREOF, I have hereunto set hand and seal this 22nd day of April, 1930.

FRANCISCO P. SALLES.

WITNESS:

20 A. REBELLO MARTINE
MANUEL JANEIRA

ACKNOWLEDGMENT

State of New Jersey,
County of Essex—ss.:

30 BE IT REMEMBERED, that on this 22nd day of April, 1930, before me a Notary Public of the State of N. J. personally appeared Francisco P. Salles, who, I am satisfied, is the seller mentioned in the foregoing assignment, and I having personally made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

MANUEL NASCIMENTO,

Notary Public.

40

My Commission expires Sept. 6, 1933.

(Seal)

Exhibit P-3.**ASSIGNMENT OF INSURANCE POLICY ON
TRUCK TO VIERA.**

COMMONWEALTH CASUALTY COMPANY

ENDORSEMENT

10

It is hereby understood and agreed that the name of the assured has been changed to read "JOSEPH VIERERA" and not as written. All other terms and conditions to remain unchanged.

Nothing herein contained shall be held to vary, alter, waive or extend any of the stipulations, provisions or conditions of the undermentioned policy other than as above set forth.

20

Attached to and forms part of
Policy No. 328450
Issued to Marques & Salles

Dated at Newark, N. J., this 28th day of
Feb. 1930.

E. W. COOK,
Vice-President

C. WILLIAM FREED, 30
Secretary

Countersigned

E. W. McDONOUGH & Co.
Per M. C. BLACK

M. MANKOWITZ

40

Exhibit P-3.

Automobile Policy

COMMONWEALTH CASUALTY CO.
PHILADELPHIA, PENNSYLVANIA.

(A Stock Company)

10

INSURING AGREEMENTS

herein called the Company, in consideration of the premium herein provided, and of the Declarations forming a part hereof, and subject to the EXCLUSIONS and CONDITIONS hereinafter contained, DOES HEREBY AGREE, as respects accidents occurring within the United States of America and Dominion of Canada during the period of

20 this policy, as follows:

LEGAL LIABILITY FOR BODILY INJURIES OR DEATH

(1) To pay all sums which the Assured shall become liable to pay as damages imposed by law for bodily injuries (including death at any time resulting therefrom) caused as the result of the ownership, maintenance or use of any automobile described in said Declarations, but not exceeding the limits of insurance expressed in paragraph 9

30 of the Declarations;

LEGAL LIABILITY FOR DAMAGE TO PROPERTY OF
OTHERS

(2) To pay all sums which the Assured shall become liable to pay for damages imposed by law on account of damage to or destruction of property of any description (including loss of use thereof and damage or destruction by fire) caused

40 by the ownership, maintenance or use of any auto-

Exhibit P-3.

mobile described in said Declarations but not exceeding the limit of insurance expressed in paragraph 10 of the Declarations;

DEFENSE OF CLAIMS AND SUITS

(3) To investigate any claim for such damages and to negotiate settlement thereof as may be deemed expedient by the Company; to defend suits for such damages, even if groundless, in the name and on behalf of the Assured, unless and until the Company shall elect to effect settlement thereof; 10

TAXED COSTS AND INTEREST

(4) To pay (a) all costs taxed against the Assured in any legal proceeding defended by the Company according to the foregoing paragraph, and interest accruing upon that part of any judgment rendered in connection therewith which is not in excess of the policy limits, (b) such premium charges on attachment or appeal bonds required in such legal proceedings, and (c) all expenses incurred by the Company for investigation, negotiation and defense; and 20

FIRST AID 30

(5) To reimburse the Assured for the expense incurred in providing such immediate surgical relief as is imperative at the time of the accident.

ADDITIONAL ASSURED

(6) The insurance granted by the foregoing provisions shall apply to additional assured as follows: (a) any person while riding in any au- 40

Exhibit P-3.

tomobile described in said Declarations or while legally operating any automobile described in said Declarations with the permission of the Assured or any adult member of the Assured's household other than a chauffeur or domestic servant, and

10 (b) any person, firm or corporation (except automobile repair shop, garage, automobile sales agency or service station and the agents and employees thereof) for whom said automobile is being operated; provided that should any additional assured be protected by other valid and collectible insurance then no insurance under this policy shall extend to such additional assured. If an automobile covered by this policy is sold or

20 transferred the insurance provided herein shall not extend to such purchaser or transferee unless the interest in the policy is assigned in accordance with condition G hereof.

This paragraph entitled "Additional Assured" shall not apply to any automobile leased or hired or to any automobile used for carrying passengers for a monetary consideration.

EXCLUSIONS

30 (7) NO INSURANCE IS GRANTED BY THIS POLICY

(a) While any automobile described herein is operated by any person whose age is less than the age limit fixed by law, or under the age of sixteen years in any event;

(b) For bodily injuries or death suffered by employees of the Assured if such injuries or death arise out of or are sustained in the course of their employment.

40 This exclusion does not apply to domestic

Exhibit P-3.

servants whose duties do not include the operation, maintenance or repair of any automobile;

(c) In respect of the obligations imposed upon or assumed by the Assured under any Workmen's Compensation plan or law; 10

(d) For damage to property owned by or in the custody of the Assured, or carried in or upon any automobile described in said Declarations;

(e) While any automobile described in said Declarations is operated in any race or any competitive speed test.

THE FOREGOING AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS: 20

LIMITS OF LIABILITY

A. The Company's limit of liability under Insuring Agreements (1) and (2) foregoing, to one or all Assureds in respect of each automobile described in Declaration 7 is limited to the amounts and as expressed in Declarations 9 and 10.

ACCIDENTS, CLAIMS AND SUITS 30

B. Upon the occurrence of an accident involving bodily injuries or death, or damage to property of others, the Assured shall promptly give written notice thereof with the fullest information obtainable at the time to the Company or to one of its duly authorized agents. The Assured shall give like notice with full particulars of any claim made on account of such accident. If suit is brought against the Assured to enforce such claim 40

Exhibit P-3.

the Assured shall promptly forward to the Company every summons or other process that may be served upon the Assured.

CO-OPERATION OF ASSURED

- 10 C. The Assured shall not voluntarily assume any liability, or incur any expense, other than for immediate surgical relief, or settle any claim, except at the Assured's own cost. The Assured shall not interfere in any negotiation for settlement, or in any legal proceeding, but, whenever requested by the Company, and at the Company's expense, the Assured shall aid in securing information and evidence and the attendance of witnesses, and shall co-operate with the Company, except
- 20 in a pecuniary way, in all matters which the Company deems necessary in the defense of any suit or in the prosecution of any appeal, and pending the prosecution of any such appeal the Company shall not become liable to pay until final judgment has been rendered establishing Assured's liability.

INSOLVENCY OF ASSURED

- 30 D. The insolvency or bankruptcy of Assured shall not release the Company from payment of damage sustained or loss occasioned during the life of the policy, and if execution against Assured in an action for damages is returned unsatisfied because of such insolvency or bankruptcy, the injured, or his personal representative in case of death, may maintain an action against the Company for the amount of the judgment obtained not exceeding the limits of the
- 40 policy.

Exhibit P-3.

SUBROGATION

E. The Company upon paying a loss shall be subrogated to the extent of such payment to all right of recovery against any third party, and upon such payment, or upon assuming liability therefor may require from the Assured a transfer of his rights against such third party, and the Assured shall execute all documents properly required by the Company to secure to it such rights. 10

CONCURRENT INSURANCE

F. If the Assured carries a policy of another insurer against a loss covered by this policy, the Assured shall not be entitled to recover from the Company a larger proportion of the entire loss than the amount hereby insured bears to the total amount of valid and collectible insurance. 20

ASSIGNMENT

G. No assignment of interest under this policy shall be binding upon the Company unless such assignment is consented to by endorsement signed by its President or Vice-President and Secretary, but in the event of the death, insolvency or bankruptcy of the Assured within the policy period, the policy during the unexpired portion of such period shall cover the legal representative of the Assured, provided that notice in writing is given to the Company within thirty days after the date of such death, insolvency or bankruptcy. 30

CANCELLATION

H. This policy may be cancelled at any time by either of the parties upon written notice to the 40

Exhibit P-3.

other party, stating when thereafter cancellation shall be effective and the date of cancellation shall then be the end of the policy period. If cancelled by the Assured, the Company shall receive or retain the short rate premium calculated according to the table of short rates printed hereon. If cancelled by the Company, the Company shall be entitled to the earned premium pro rata. Notice of cancellation in writing, mailed to or delivered at the address of the Assured as given herein, shall be a sufficient notice, and the check of the Company, or of its duly authorized agents, similarly mailed or delivered, shall be a sufficient tender of any unearned premium.

20 INSPECTION

I. The Company shall be permitted, at all reasonable times during the policy period, to inspect any of the automobiles covered by this policy.

CHANGES

J. No change in the Agreements, Exclusions, Conditions or Declarations of this policy, either printed or written, shall be valid unless made by endorsement signed by its President or Vice-President and Secretary, nor shall notice to, or knowledge possessed by, any agent or any other person, be held to waive any such Agreements, Exclusions, Conditions or Declarations.

SPECIFIC STATUTORY PROVISIONS

K. If the limitation of time for notice of accident or for any legal proceeding herein contained is at variance with any specific statutory provision

Exhibit P-3.

in relation thereto, in force in the state in which it is claimed that the Assured is liable for any such loss as is covered hereby, such specific statutory provision shall supersede any condition in this policy inconsistent therewith.

DECLARATIONS

10

L. The Assured hereinbefore referred to, is the Assured designated in the following Declarations, of which those numbered one to eight inclusive, the Assured, by the acceptance of this policy, makes and warrants to be true.

PASTE ENDORSEMENTS HERE

DECLARATIONS

20

1. Name of Assured: Marques & Salles.
2. Address of Assured, No. 69 Ferry Street.
City or Town of Newark. County of Essex.
State of N. J.
3. The Assured is individual and the Assured's profession or business is Grocer.
4. The automobiles described will be principally used, maintained and garaged in the city or town of Newark, N. J.
5. The automobiles are and will be used for the following purposes only:

30

A. Truck type automobiles: Commercial purposes.

B. Pleasure type automobiles.....

40

Exhibit P-3.

6. The automobiles (a) are owned by the above-named Assured, (b) will not be rented to others or used to carry passengers for a consideration, (c) are not equipped with a trailer, except as follows: No ex.

10

7. The automobiles covered by this policy and the premium charge therefor are as follows, it being understood and agreed that the Company will not be liable under either of the first two of the insuring agreements except that agreement or those agreements for which a specific premium is provided in the following table:

Trade name of automobile—Graham. Engine number—M-1103844, S-D116309. Kind of power—Gas. Year of model—1928. Style of body—Panel $\frac{3}{4}$ ton. Premium charge on account of insuring agreement (1)—\$50.40, (2) \$30.00. Total of premiums for account of paragraphs 1 and 2 of the Insuring Agreements———. Grand Total Prem. \$80.40.

20

8. No automobile insurance has been declined or cancelled by any company during the past three years, except as follows: No ex.

30

9. The Company's liability under paragraph (1) of the Insuring Agreements on account of bodily injuries to, or the death of, one person is limited to the sum of Ten Thousand Dollars (\$10,000) and, subject to the same limit for each person, the Company's total liability on account of bodily injuries to, or the death of, more than one person, as the result of one accident, is limited to the sum of Twenty Thousand Dollars (\$20,000).

40

Exhibit P-3.

10. The Company's liability under paragraph (2) of the Insuring Agreements shall in no event exceed the sum of One Thousand Dollars (\$1,000) for any one accident resulting in damage to or destruction of property of one or more claimants.

11. The Policy Period shall be from October 1st, 1929, 12.01 P. M. to October 1st, 1930, Noon, standard time, at the Assured's address, as to each of said dates. As respects any claim hereunder standard time at place where injury is sustained shall apply.

M MANKOWITZ L.M

IN WITNESS WHEREOF, THE COMMONWEALTH CASUALTY COMPANY has caused this policy to be signed by its President or Vice-President and Secretary, but the same shall not be binding upon the Company unless countersigned by a duly authorized agent of the Company.

C. WM. FREED,
Secretary.

E. W. COOK
Vice-President.

Countersigned by

F. W. McDONOUGH & Co.
Per M. C. BLACK
Authorized Agent.

10

20

30

40

Exhibit P-4.

This form shall be void if used on any policy not issued by the Plate Glass Department.

Plate Glass Policy

No. 20316

SUN INDEMNITY COMPANY
of New York

10

(hereinafter called the Company)

DOES HEREBY AGREE TO INDEMNIFY the person, firm, or corporation named in the Schedule of this policy and hereinafter called the Insured, against loss or damage of the glass, lettering or ornamentation described in the Schedule by breakage from causes beyond the Insured's control during the term of this policy, or any renewal thereof.

20

THE FOREGOING AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

Notice of Loss

1. Immediate written notice of loss or damage hereunder, with full particulars so far as they can be ascertained, must be given to the Company at its home office, or to its authorized agent; and the Insured shall make all reasonable efforts to preserve the glass and to prevent further loss or damage. The Company may require the Insured to file affirmative proof of loss under oath on forms provided by the Company.

30

Liability

2. This policy covers only the cost of replacing any broken glass, lettering, or ornamentation insured hereunder, and the liability of the Company

40

Exhibit P-4.

hereunder is limited to the cash value of the replacement at the time of the breakage or to the amount of specific insurance stated in the Schedule.

10 *Adjustment*

3. The Company shall have any broken glass, lettering, or ornamentation insured hereunder, replaced without unnecessary delay or pay for such loss in money within the limits provided herein, as the Company may elect. Salvage shall be the property of the Company in all cases.

Subrogation of Rights

20 4. The Company shall be subrogated to all the rights of the Insured against any party or parties as respects any loss to the extent of its interest, and the Insured shall cooperate with the Company in the execution of all papers required to secure to the Company such rights.

Automatic Reinstatement

30 5. Upon replacement of any glass or lettering or ornamentation insured hereunder, or payment therefor by the Company, the insurance hereunder shall continue automatically as respects the new glass or lettering or ornamentation to the end of the policy term, without additional premium.

Losses Not Covered

6. The Company shall not be liable for any loss or damage caused by or resulting from:

40 (a) Fire, whether in the premises described in the Schedule or elsewhere;

Exhibit P-4.

(b) Earthquake or from the blowing up of any structure on land or water when authorized by national, municipal, civil, military, or naval sanction;

(c) Work of construction, demolition, addition, alteration, or repair in, or to the premises of the Insured, or any portion thereof, or to the frames in which the glass is set; 10

(d) The scratching or defacing of any glass or lettering or ornamentation, or any other disfiguration or damage that is not a fracture extending through the entire thickness of the glass.

7. The Company shall not be liable for any loss or damage (a) to frames or sashes or bars; (b) occurring before the glass is properly and completely glazed in a workmanlike manner; (c) or resulting from the removal of any glass from its frame or permanent position. 20

8. Unless specifically described in the Schedule as covered hereunder, this policy does not cover lettering or ornamentation; clamped, glued, or bent glass; glass not set in sashes, frames, or bars; art, leaded or cathedral glass; doors, mirrors, or show-cases; nor wired glass. 30

*Cancellation**Suspension*

9. The Company may cancel this policy at any time by written notice delivered to or sent by mail to the Insured at the location given in item 2 of the Schedule at least five days prior to the date 40

Exhibit P-4.

that the cancellation shall take effect, and the Company shall be entitled to the earned premium computed pro rata. The Insured may effect cancellation at any time by written notice to the Company, or by the surrender of this policy, and
10 the Company shall be entitled to the earned premium computed on the basis of the short rate table printed hereon. The Company shall be permitted at any reasonable time to inspect the property insured hereunder and the premises described herein, and the Company, or any representative thereof, may immediately suspend the insurance hereunder at any time as to the entire policy or any part thereof, by written notice delivered or mailed to the Insured at the location given in
20 item 2 of the Schedule. The Company may reinstate the insurance by like notice to the Insured and the Insured shall be entitled to the premium unearned during the period of such suspension computed pro rata. In any case the check of the Company or of its authorized agent shall be a sufficient tender of any unearned premium.

Other Insurance

30 10. If the Insured carries other insurance, not issued by the Company, against a loss covered by this policy, the Insured shall not be entitled to recover from the Company a larger proportion of the entire loss than the proportion that the amount of this policy bears to the total amount of his valid and collectable insurance against such loss.

Cooperation

40 11. The Insured shall at his own expense

Exhibit P-4.

remove and replace any fixtures or any other obstructions to the replacement of the glass.

Change of Interest

12. No assignment of interest under this policy shall be binding upon the Company unless the written consent of the Company is endorsed hereon by one of its executive officers, or by an authorized agent of the Company. 10

Alteration of Policy

13. No condition or provision of this policy shall be waived or altered except by written endorsement attached hereto, signed by an executive or officer of the Company; nor shall notice to any agent, nor shall the knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this policy, unless set forth in such a written endorsement and signed by such officer. 20

IN WITNESS WHEREOF the SUN INDEMNITY COMPANY OF NEW YORK has caused this policy to be signed by its President and its Secretary, but the policy shall not be binding upon the Company until it has been countersigned by a duly authorized representative of the Company. 30

A. CALLOS,
President

R. A. KEARNEY JR
Secretary

THE HERBERT H. EBER CO.
Countersigned by GEORGE W. MILLER 40

Exhibit P-4.

TABLE OF SHORT RATES

(Showing What Percentage of the Premium is
Earned at any Given Date)

Number of months since issuance of policy:

10	Percentage of premium earned:											
	1	2	3	4	5	6	7	8	9	10	11	12
	20	30	40	50	60	70	75	80	85	90	95	100

SCHEDULE

1. Name of the Insured is Frank Salles.
2. Location of the premises is 69 Ferry St.,
(Street and Number)
Newark, N. J.
(City or Town, State)
- 20 3. The kind of business conducted in the premises
is Grocery Store.
4. The premium for this policy is Thirteen and
48/100 dollars.
5. The term of this policy is 12 months, from
October 4th, 1929, to October 4th, 1930, noon,
standard time at the location of the premises
herein described.
6. The items covered by this policy are described
as follows:

30	Height		Width		Description of Glass	
	No. of Plates	in Inches	in Inches			
	1	77	76	Front	9.24	
	1	77	78½	Front	9.84	
	1	77	17½	Return	2.03	
	1	75½	106½	Front	15.39	
	1	75½	17¾	Return	1.98	
						38.48
40				Less 65%		25.00
						13.48

Balance of glass not insured. Lettering if any,
not covered by this policy.

Exhibits P-5 and P-6.

(CHECKS AND BILLS)

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 9 1930 No. 476

FIDELITY UNION TRUST COMPANY 55-9

IRONBOUND TRUST BRANCH 10

Pay to the order of Swift & Company \$28 74/100
twenty eight and 74/100 Dollars.

JOSEPH VIEIRA.

(Perforated) : Paid 1 10 30

(Reverse)

Pay to the order of North Ward National Bank,
Newark, N. J. SWIFT & Co., Newark, N. J. 20Presented for payment through the Newark
Clearing House. Prior indorsements guaranteed.
Jan 10 1930. North Ward Nat'l Bank No. 4.

No. 92641

Telephones: Branch Brook 9570-71-72-73-74-75

SWIFT & COMPANY

201 High Street

Newark, N. J., 1/9/1930 30

Sold to Lusitania Coffee Co.

Address 69 Ferry St.

Route No. 8

All bills due and payable at our office on or
before Monday following date of sale.

	Pounds Oz.		
1 Whole B. C. Ham	10	.37	3.70
1 C. C. Roll	5½	.48	2.64
10 lb. Canned Sal	10	.39	3.90
10 lb. Capriola	10	.50	5.00
			40
			15.24

Exhibits P-5 and P-6.

Special Notice

All shipments are made at buyer's risk of damage
in transit.

10 All goods in package form are sold at weight
when packed; wrapped smoked meats are sold at
net weight when wrapped; other wrapped meats
are sold at weight taken after wrapping; sausage
and cooked specialties in cloth bags are weighed
after being placed in such bags and are so sold;
no allowance is made in any case for shrinkage
due to natural causes.

No claims will be considered unless immediate
notice is given as soon as goods are received.

20 We guarantee that food products mentioned
herein are not adulterated or misbranded within
the meaning of the Federal Food and Drugs Act
of June 30, 1906, as amended.

Swift & Company, U. S. A.

Paid W. Bty.

(Swift & Company bill head)

No. 92603

30 Newark, N. J., 1/9/1930

Sold to Lusitania Coffee Co.

Address 69 Ferry St,

Route No. 8

1 Cs. Calif. White Eggs 30 .45 13.50

Paid C. J. B.

(Two bills totalled at foot)

15.24

13.50

40

27.74

Exhibits P-5 and P-6.

(Figure 1 in circle in upper right-hand corner)

Newark, N. J., January 11 1930 No. 485

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCH

10

Pay to the order of Swift & Company \$3 05/100
three and 5/100 Dollars.

JOSEPH VIEIRA.

W B

(Perforated) : Paid 1 14 30

(Reverse)

Pay to the order of National Newark & Essex
Banking Co. 812 Newark, N. J. 812 SWIFT & Co.,
Newark, N. J.

20

Presented for payment through Newark Clearing
House. Prior endorsements guaranteed. P. M.
Jan. 14 1930. No. 1. Nat'l Newark & Essex
Banking Co.

(Swift & Company bill head)

30

No. 94365

Newark, N. J., 1/11/1930

Sold to

Address 69 Ferry St.

Route No. 8

Pounds Oz.

1 Fat Bax 15½ .15 2.33

Paid to Walker

40

Exhibits P-5 and P-6.

(Swift & Company bill head)

No. 94364

Newark, N. J., 1/11/30

10 Sold to.....

Address 69 Ferry St.

Route No. 8

Pounds Oz.

1	City Bacon	4	.18	.72
---	------------	---	-----	-----

Paid to W. B.

20 (Figure 1 in circle in upper right-hand corner)

Newark, N. J., January 13 1930 No. 487

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCH

Pay to the order of D'Avella Macarroni Co.
\$5 80/100 Five 80/100 Dollars.

30 JOSEPH VIEIRA.

(Perforated) : Paid 1 15 30

(Reverse)

For deposit, D'AVELLA MACARONI Co.

(Stamp of Fidelity Union Trust Co., No. 5,
Jan. 15, 1930.)

40 (Stamp of First National Bank, Belleville, N. J.,
No. 3, Jan. 14, 1930.)

Exhibits P-5 and P-6.

Customer's Copy

No agent authorized to collect without special written authority.

All claims must be made three days after receipt of goods.

10

(Monogram star)

D'AVELLA MACARONI CO.
53-55 Heckel St.

Phone 9563 Branch Book

Lo Bello

Silver Lake

Newark, N. J., 1/21/1930

20

Sold to J. Vieira

Address 69 Ferry St.

United States Food Administration License
No. G-101165

4 Boxes S. B. Mac. Cartons

\$5.80

.20

5.60

30

Paid J. M.
(Pencil notation)

14c

4

56

No. 32744

40

Exhibits P-5 and P-6.

(Figure 1 in circle in upper right-hand corner)

Newark, N. J., January 17 1930 No. 496

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCH

10

Pay to the order of Samuel Piltzer \$4 10/100
Four and 10/100 Dollars

JOSEPH VIEIRA.

(Stamp N. P. 55-1)

(Perforated) : Paid 1 20 30

(Reverse)

20 Pay Natl. Newark & Essex Banking Co. New-
ark, N. J., or order SAMUEL PILTZER.

(Stamp of Nat'l Newark & Essex Banking Co.,
No. 1, P. M., Jan. 20, 1930.)

All bills must be paid weekly

SAMUEL PILTZER
Receiver and Dealer in
Butter, Cheese, Eggs, Etc.
213 Wright Street

30 Telephone
Terrace 8559

Newark, N. J., 1/10/30

Sold to M Joseph Viera
Address 69 Ferry
Neut/c M

10 Salt Print Butter 41 4.10

Paid up G. M.

40 Any claim to be allowed must be made promptly
upon receipt of goods.

A No. 16842

Exhibits P-5 and P-6.

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 20 1930 No. 502

(Stamp N. P. 55-371)

FIDELITY UNION TRUST COMPANY 55-9 10
IRONBOUND TRUST BRANCH

Pay to the order of D'Avella Macaroni Co.
\$11 50/100 Eleven and 50/100 Dollars.

JOSEPH VIEIRA.

(Perforated) : Paid 1 22 30

(Reverse) 20

For deposit. D'AVELLA MACARONI Co.

(Stamp of Fidelity Union Trust Co., No. 5,
Jan. 22, 1930.)

(Stamp of First National Bank, Belleville, N. J.
No. 2, Jan. 21, 1930 55-371.)

30

40

Exhibits P-5 and P-6.

(D'Avella bill head)

Lo Bello

Newark, N. J., 1/14/1930

10

Sold to Jose Vieira
Address 69 Ferry St.

8 Boxes S. B. Mac. Cartons \$11.60

Paid J. M.

20

No. 32637

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 20, 1930 No. 500

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCHPay to the order of Swift & Company \$4 61/100
Four and 61/100 Dollars.

30

JOSEPH VIEIRA.

(Perforated): Paid 1 22 30

(Reverse)

(Stamp of Nat'l Newark & Essex Banking Co.,
No. 1, P. M. Jan. 22, 1930.)

(Stamp of Swift & Co.)

40

Exhibits P-5 and P-6.

(Swift & Company bill head.)

No. 98321

Newark, N. J., 1/15/1930

Sold to J. Diedma				10
Address 69 Ferry St.		Route No. 8		
12 lb Print Lard	12	.14	1.68	
1 Bologni	5½	.25	1.38	

			3.26	
			1.35	

			4.61	

(Pencil notations, changes in prices and note "20 diff.") 20

Paid M. B. 1/20/30

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 20 1930 No. 498

FIDELITY UNION TRUST COMPANY 55-9

IRONBOUND TRUST BRANCH 30

Pay to the order of Rice & Fishman \$31 36/100
 Thirty one and 36/100 Dollars.

JOSEPH VIEIRA.

(Perforated): Paid 1 22 30

(Reverse)

(Stamp of Rice & Fishman.)

(Stamp of North Ward Nat'l Bank, R T 10 40
 No. 4, Jan. 22, 1930.)

Exhibits P-5 and P-6.

Telephones Terrace 1904-1905

No. F 22417

RICE & FISHMAN
Wholesale Food Distributors
UCO Brand Products

10

Samson

506-510 Frelinghuysen Avenue
Newark, N. J., Jan. 13, 1930

M J. Bieirsh
69 Ferry St.

Salesman.....
Terms

20	2 cs. Campbell Beans	3 20	6.40
	2 cs. Potatoes	2/500	10.00
	1 cs. Darling Milk		6.50
	1 bag Blue Rose Rice		5.00
	1 M #20 Bags		3.46

31.36

Pd. Check Jan 20/30

J. SAMSON

New Account

30

(Pencil notation, Confer Vieira.)

40

Exhibits P-5 and P-6.

(Ink notation P-5 Evidence.)

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 27 1930 No. 512

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCH

10

Pay to the order of Swift & Company \$19 46/100
Nineteen and 46/100 Dollars.

JOSEPH VIEIRA.

(Perforated): Paid 1 29 30

(Reverse)

20

(Stamp of Swift & Co.)

(Stamp of Nat'l Newark & Essex Banking Co.,
No. 1, P. M. Jan. 29, 1930.)

(Swift & Company bill head.)

No. 99263

30

Newark, N. J., 1/20/1930

Sold to Lusitania Coffee
Address 69 Ferry St.

		Pounds	Oz.		
4	Lagro Sal.	5 $\frac{1}{2}$.40	2.20	

A. Simons

Paid M. B.

(Pencil notations.)

40

Exhibits P-5 and P-6.

(Swift & Company bill head.)

No. 99243

Newark, N. J., 1/20/1930

10 Sold to J. Disire
 Address 69 Ferry St. Route No. 8

	Pounds	Oz.		
6/5 Rib. White	30	.28	8.40	

Paid M. B. 1/29/30

(Pencil notation, "1946".)

20

(Swift & Company bill head.)

No. 99351

Newark, N. J., 1/20/1930

Sold to J. Disire
 Address 69 Ferry St. Route No. 8

	Pounds	Oz.		
30 10 lb. Emp. Milano Sal. Canc.				
10 lb. Capricolu	10	.51	5.10	
12 2 lb. Pail Pure Lard	24	.16 $\frac{1}{2}$	3.96	
				<u>9.06</u>

Paid M. B. 1/27/30

40

Exhibits P-5 and P-6.

(Figure 1 in circle in upper right-hand corner)

Newark, N. J., January 27 1930 No. 509

FIDELITY UNION TRUST COMPANY 55-9
 IRONBOUND TRUST BRANCH

10

Pay to the order of Rice & Fishman \$14 75/100
 Fourteen and 75/100 Dollars.

(Stamp N. P. 55-10)

JOSEPH VIEIRA.

(Perforated): Paid 1 29 30

(Reverse)

20

(Stamp of Rice & Fishman.)

(Stamp of North Ward Nat'l Bank, R T 10,
 No. 4, Jan. 29, 1930.)

(Rice & Fishman bill head)

No. F 22882 30

Newark, N. J., Jan. 20, 1930

M J. Freira

69 Ferry St.

1 cs.	Vegetable Soup	4.25
5 cs.	#2 Tomatoes	10/105 10.50

14.75

Paid (J. M.) Jan 27/30

40

Exhibits P-5 and P-6.

(Figure 1 in circle in upper right-hand corner)

Newark, N. J. January 28 1930 No. 515

FIDELITY UNION TRUST COMPANY 55-9
IRONBOUND TRUST BRANCH

10

Pay to the order of S. Krasner \$3 90/100 three
and 90/100 Dollars.

JOSEPH VIEIRA.

(Stamp, "9".)

(Perforated) : Paid 1 29 30

(Reverse)

20

(Sig.) S. KRASNER

(Stamp of Rose Krasney.)

30

40

Exhibits P-5 and P-6.

All claims must be made within five days
after receipt of goods.

L. D. Tel. 2993 Market

Newark, N. J., Jan. 11, 1930 10

SPECIALTIES

Paper, Paper Bags, Twines, Pails, Brooms,
Lamp Chimneys

M 69 Ferry

Bought of S. KRASNER

Wholesale Dealer in

Hosiery, Notions, Stationery, Playing Cards 20

Candles and Matches

Also Importer of all Kinds of Balls and

Christmas Tree Ornaments

89 Elm Street

1 Cas. Jap. Caps	2.75	
	1.15	
	<hr/>	
	3.90	30

(Pencil notation, illegible.)

Paid S. K.

Exhibit P-7.**LEASE AND ASSIGNMENT.**

10 THIS AGREEMENT between HENRY WEINBERG and
 HARRY LERMAN, hereinafter known as Landlords
 and FRANK P. SALLES and JOSEPH S. MARQUERS, in-
 20 dividually and as partners trading as LUSITANIA
 COFFEE COMPANY, all of the City of Newark,
 County of Essex and State of New Jersey, herein-
 after known as Tenants WITNESSETH:—That the
 said Landlords have let unto the said Tenants and
 the said Tenants have hired from the said Land-
 lords the corner store of premises known and des-
 20 ignated as #69 Ferry Street, corner Prospect
 Street, Newark, New Jersey, and the cellar under
 the store, for the term of two years, said term to
 commence June 1st, 1929, to be used and occupied
 as a store for the sale of coffees, teas, cocoa and
 extracts, and wholesale and retail groceries, upon
 the conditions and covenants following:

30 FIRST: That the Tenants shall pay the rent of
 Twelve Hundred (\$1200.00) Dollars annually, pay-
 able One Hundred (\$100.00) Dollars per month
 on the first business day of each and every month
 in advance.

SECOND: That the Tenants shall take good care
 of the premises and shall at their own cost and
 expense make the repairs and at the end or other
 expiration of the term, shall deliver up the de-
 mised premises in good order or condition, dam-
 ages by the elements excepted.

40 THIRD: That the Tenants shall promptly exe-
 cute and comply with all statutes, ordinances,

Exhibit P-7.

rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances, violations or other grievances, in, upon or connected with said premises during said term; and shall also promptly comply with and execute all the rules, orders, and regulations of the Board of Fire Underwriters for the prevention of fires, at their own cost and expense. 10

FOURTH: That in case the Tenants shall fail or neglect to comply with the aforesaid statutes, ordinances, rules, orders, regulations and requirements or any of them, or in case the tenant shall fail or neglect to make any necessary repairs, then the Landlords or their Agents may enter said premises and make said repairs and comply with any and all of the said statutes, ordinances, rules, orders, regulations or requirements, at the cost and expense of the Tenants and in case of the Tenant's failure to pay therefor, the said cost and expense shall be added to the next month's rent and be due and payable as such, or the Landlord may deduct the same from the balance of any sum remaining in the Landlord's hands. This provision is in addition to the right of the Landlords to terminate this lease by reason of any default on the part of the Tenant. 20 30

FIFTH: That the Tenants shall not assign this agreement, or underlet or underlease the premises, or any part thereof, or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous 40

Exhibit P-7.

on account of fire, under penalty of damages and forfeiture.

10 SIXTH: That no alterations, additions or improvements shall be made in or to the premises without the consent of the Landlords in writing, under penalty of damages and forfeiture, and all additions and improvements made by the Tenants shall belong to the Landlords.

20 SEVENTH: That the Tenants shall, in case of fire, give immediate notice thereof to the Landlords who shall thereupon cause the damage to be repaired forthwith; but if the premises be so damaged that the Landlords shall decide to rebuild, the term shall cease and the accrued rent be paid up to the time of the fire.

30 EIGHTH: That said Tenants agree that the said Landlords and Agents, and other representatives, shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

40 NINTH: The Tenants also agree to permit the Landlords or their Agents to show the premises to persons wishing to hire or purchase the same; and the Tenants further agree that on and after two months next preceding the expiration of the term hereby granted, the Landlords or their Agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale,"

Exhibit P-7.

and the Tenants hereby agree to permit the same to remain thereon without hindrance or molestation.

TENTH: That if the said premises, or any part thereof, shall become vacant during the said term, or should the Tenants be evicted by summary proceedings or otherwise, the Landlords or their representatives may re-enter the same, either by force or otherwise, without being liable to prosecution therefor; and re-let the said premises as the Agent of the said Tenants and receive the rent thereof; applying the same, first to the payment of such expenses as may be put to in re-entering and then to the payment of the rent due by these presents; the balance (if any) to be paid over to the Tenants who shall remain liable for deficiency. 10 20

ELEVENTH: That in case of any damage or injury occurring to the glass in the store premises hereby demised, or damage and injury to the said premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence, or improper conduct on the part of the said Tenants, their Agents or Employees, then the said Tenants shall cause the said damage or injury to be repaired as speedily as possible at their own cost and expense. 30

TWELFTH: That the Tenants shall neither encumber, nor obstruct the sidewalk in front of, entrance to or halls and stairs of said building, nor allow the same to be obstructed or encumbered in any manner. 40

Exhibit P-7.

10 THIRTEENTH: The Tenants shall neither place, nor cause, nor allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said store nor any other part of same, except in or at such place or places as may be indicated by the said Landlords and consented to by them in writing. And in case the Landlords or their representatives shall deem it necessary to remove any such sign or signs in order to paint the store or make any other repairs, alterations or improvements in or upon said store or any part thereof, they shall have the right to do so, providing they cause the same to be removed and replaced at their expense, whenever the said repairs, alterations or improvements shall have been
20 completed.

30 FOURTEENTH: It is expressly agreed and understood by and between the parties to this agreement, that the Landlords shall not be liable for any damage or injury by water, which may be sustained by the said Tenants or other persons or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of any other Tenant or Agents, or Employees, or by reason of the breakage, leakage, or obstruction of the water or soil pipes, or other leakage in or about the said building.

FIFTEENTH: That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlords to re-enter the said premises, and the same to have again, re-possess and enjoy.

40 SIXTEENTH: That this instrument shall not be

Exhibit P-7.

a lien against said premises in respect to any mortgages that hereafter may be placed against said premises, which mortgages are not to exceed in the aggregate the sum of TWENTY-FIVE THOUSAND (\$25,000.00) Dollars, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenants agree to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instruments shall entitle the Landlords, their heirs, assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage, and the term hereby granted is expressly limited accordingly.

10

20

SEVENTEENTH: The Tenants have this day deposited with the Landlords a promissory note in the sum of \$300.00 payable six months after date as security for the full and faithful performance by the Tenants of all of the terms and conditions upon the Tenants' part to be performed, which said sum shall be returned to the Tenants after the time fixed as the expiration of the term herein, provided the Tenants have fully and faithfully carried out all of the terms, covenants and conditions on their part to be performed.

30

EIGHTEENTH: That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenants without the written consent of the Landlord.

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Exhibit P-7.

10 NINETEENTH: It is expressly understood and agreed that if for any reason it shall be impossible to obtain fire insurance on the buildings and improvements on the demised premises in an amount, and in the form, and in fire insurance companies acceptable to the Landlords, the latter may, if they so elect, at any time thereafter terminate this lease and the term thereof, on giving to the Tenant three days' notice in writing of intention so to do and upon the giving of such notice, this lease and the term thereof shall terminate and come to an end.

20 TWENTIETH: It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlords, the Tenants shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenants to be kept and performed, or if the Tenants shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government or of any and all their Departments and Bureaus applicable to said premises, or hereafter established as herein provided, or if the Tenant shall file a petition in bankruptcy and be adjudicated a bankrupt or make an assignment for the benefit of creditors to take advantage of any insolvency act, the Landlords may, if they so elect, at any time thereafter terminate this lease and term thereof, upon giving to the Tenants five
30
40 days' notice in writing of their intention so to do,

Exhibit P-7.

and upon the giving of such notice, this lease and the term thereof shall terminate, expire and come to an end on the date fixed in such notice as if said date were the date originally fixed in this lease for the termination or expiration thereof.

All notices required to be given to the Tenants may be given by mail addressed to the Tenants at the demised premises. 10

TWENTY-FIRST: The Landlords shall pay the regular annual rent or charge, and all meter charges, which is or may be assessed or imposed upon the demised premises for Water.

TWENTY-SECOND: The failure of the Landlords to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect. 20

TWENTY-THIRD: Permission is hereby granted to the Tenants to install in the said leased premises a roasting machine and a grinding machine. 30

TWENTY-FOURTH: It is understood between the parties hereto that the said wall cases now in the premises leased, belong to and shall remain the property of, the Landlords.

And the Landlords do covenant that the said Tenants on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid. 40

Exhibit P-7.

And it is further understood and agreed, that the covenants and agreements herein contained are binding on the parties hereto and their legal representatives.

10 IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this Tenth day of May, one thousand nine hundred and twenty-nine.

HENRY WEINBERG (L. S.)
 HENRY LERMAN (L. S.)
 LUSITANIA COFFEE (L. S.)
 FRANK P. SALLES (L. S.)
 JOSE MARQUES (L. S.)

20 Sealed and delivered
 in the presence of

LEO L. WEINBERG

State of New Jersey,
 County of Essex—ss. :

30 BE IT REMEMBERED, That on this Tenth day of May, in the year of our Lord One Thousand Nine Hundred and twenty-nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Henry Weinberg, Harry Lerman, Frank P. Salls and Joseph S. Marquers, who, I am satisfied, are the persons mentioned in the within lease, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

40

LEO L. WEINBERG,
 A Master in Chancery of New Jersey.

Exhibit P-7.

JANUARY 15TH, 1930.

For value received, I do hereby transfer, set over and assign unto Joseph M. Vieira all my right, title and interest in and to the within lease subject to all the terms covenants and conditions as therein contained and set forth. 10

LUSITANIA COFFEE COMPANY
By FRANK P. SALLES

Witnessed by

LEO L. WEINBERG

We hereby consent to the transfer and assignment of the within lease by Frank P. Salles unto Joseph M. Vieira subject to the terms, covenants and conditions as therein set forth. The said Joseph M. Vieira agrees however to pay the sum of \$50.00 in addition to the monthly rental until the sum of \$300.00 shall have been paid, which sum is to be considered as security money and this consent is based upon that consideration. 20

WEINBERG & LERMAN
By HARRY LERMAN 30

Witnessed by

LEO L. WEINBERG

40

Exhibit P-8.

I hereby accept the assignment of the within lease subject to the terms, covenants and conditions as therein set forth, and agree to pay the additional sum of \$50.00 in addition to the regular monthly rental until \$300.00 shall have been paid which sum shall be returned upon the termination of this lease provided all the terms and conditions of this lease shall have been performed and complied with.

JOSEPH MARIA VIEIRA

Witnessed by

LEO L. WEINBERG

20

Exhibit P-8.

NOTE AS SECURITY FOR ASSIGNMENT OF
LEASE.

\$300.00

Newark, N. J. Jan. 15, 1930

On Demand, after date I promise to pay to the order of Anna Weinberg and Harry Lerman, Three Hundred and no/100 Dollars.

30 Payable at 69 Ferry Street, Newark, N. J.

Value received

No.....Due.....

JOSEPH MARIA VIERA

Exhibit D-1.

SUMMONS ON CASE.

40

(Printed herein at pages 3 and 4.)

Reasons.

(Filed July 16, 1930.)

NEW JERSEY SUPREME COURT.

On Certiorari Reasons.

10

JOSE MARIA VIERA,

Prosecutor,

vs.

JOSE MARQUES,Defendant.

The prosecutor presents the following reasons for the setting aside of the judgment entered in a suit in the Orange District Court, of the City of Orange, and County of Essex, between Jose Marques, plaintiff and Francisko Pereira Salles and Maria Guerreiro Salles are the defendants, and in which a claim of property was filed by Jose Maria Viera, and from the direction of a verdict against the prosecutor by said Judge of said Orange District Court.

20

30

1. Because no inventory and levy had been filed with said Court as required by Sec. 199, 2 Comp. St. of N. J. 1910, page 2010.

2. Because the Court refused to direct a verdict in favor of your prosecutor, upon the failure of the Court and counsel for the defendant to produce an inventory and levy of the goods alleged to have been seized pursuant to the order of the writ of execution.

40

Reasons.

3. Because the evidence in the cause presented a factual question for the determination of the jury.

10 4. Because the action of the Judge of said District Court in directing a verdict against your prosecutor was illegal, erroneous and improper.

5. Because the failure of said Judge of said District Court to direct a verdict at the close of the case in favor of your prosecutor was illegal, erroneous and unlawful.

20 6. Because the defendant could not avail himself of the provisions of the "Bulk Sales Act" because he was not a creditor as therein contemplated.

7. Because said alleged attack upon said sale was made more than ninety days after said sale, contrary to the provisions of the Bulk Sales Act.

30 8. Because the burden of proof was upon defendant herein to show that said proceedings to set aside said sale was made within ninety days from the date of said sale as provided by law.

9. And because for divers other reasons the said judgment and the action of the said Judge of the said District Court in directing a verdict in favor of the defendant herein, was illegal, erroneous and unlawful.

APOSTOLAKOS & MANDELBAUM,
Attorneys for Prosecutor.

40 MICHAEL BREITKOPF,
Of Counsel with Prosecutor.

Opinion of the Supreme Court.
NEW JERSEY SUPREME COURT.

No. 208—OCTOBER TERM, 1930.

JOSE MARIA VIERA,
 Prosecutor-Appellant,

vs.

JOSE MARQUES,
 Respondent.

} On Certiorari

10

Submitted October Term, 1930, Decided October 17th, 1930.

Before—Justices CAMPBELL and BODINE.

20

For the Prosecutor, APOSTOLAKOS & MAND-
 DELBAUM.

For the Defendant, JOSEPH N. BRAFF.

Per Curiam.

Jose Marques had judgment in the Orange District Court, for \$450.16 on a promissory note dated August 10th, 1929, made by Francisco P. Salles and Maria G. Salles. Execution was levied and Jose Maria Viera filed a claim of property. The court directed a verdict against the claimant.

30

In January of 1930, Salles attempted to sell his business to the prosecutor. He went into possession, took over the lease on January 15th, and thereafter conducted the business. The bill of sale, however, was not delivered until April 22nd, 1930, after Marques had brought suit on the note, because Viera prior to that time had not had enough money to complete the purchase.

40

The bill of sale contained no inventory of the

Opinion of the Supreme Court.

good and vendor's affidavit states that he has no creditors. Marques, the holder of the note, had been a former partner and had taken the note for his interest in the merchandise sold to Salles. Viera admits that as early as February and long before he made settlement for the goods he knew of the note and also knew that it had not been paid.

10 We concur in the view of the trial court that there was no sale until the delivery of the bill of sale.

The sale of all the stock and merchandise of a retail business is obviously a sale in bulk. The purchaser at such sale, knowing of a merchandise creditor to whom a note had been given, cannot rely upon an affidavit of his vendor which he knows to be false.

20 The principal argument before us and in the Prosecutor's brief is addressed to an attack upon the manner in which the levy was made under the District Court execution. The record shows that the execution was returned May 9th, 1930, and that the inventory of the goods seized was not filed until June 30th, 1930, and never was annexed to the execution as provided by the act. However, the claim of property filed, upon which the trial took place, admits a due and legal seizure of the goods.

30 The claim filed states: "I claim as my own property * * * that which you have seized and taken into your possession by virtue of the writ of execution * * *." Such a claim is an admission of the validity of the seizure, so that it was not open to the District Court to consider the question now urged.

The District Court quite properly, on the evidence adduced, directed a verdict in favor of the Defendant, and on the proofs submitted there was

40 no issue for the jury.

The writ will be dismissed, with costs.

Notice and Grounds of Appeal.

Filed December 13, 1930.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

JOSE MARIA VIERA,
Prosecutor,

vs.

JOSE MARQUES,
Defendant.

On Certiorari
from the
Orange Dis-
trict Court of
the County
of Essex.

10

Notice and
Grounds
of Appeal.

To: JOSEPH N. BRAFF, ESQ.,
Attorney for Defendant:

20

Sir:

Please Take Notice, that the above prosecutor appeals to the New Jersey Court of Errors and Appeals from the Judgment of the Supreme Court, affirming the Judgment of the Orange District Court of the County of Essex, upon the following grounds:

Because the Supreme Court erred in affirming, instead of reversing and setting aside the Judgment of the Orange District Court of the County

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40

Notice and Grounds of Appeal.

of Essex, which was under review in this proceeding.

Dated: November 5th, 1930.

APOSTOLAKOS & MANDELBAUM,
Attorneys for Prosecutor.

10 I conceive there is a good cause for appeal in the above entitled cause.

JAMES F. X. O'BRIEN,
Of Counsel with Prosecutor.

Affidavit of Service.

Filed December 13, 1930.

20 State of New Jersey. }
County of Essex. } ss.:

Irving H. Hellman, of full age, being duly sworn upon his oath deposes and says:

1. "I am a clerk in the law offices of Michael Breitkopf, in the City of Newark, County of Essex and State of New Jersey.

2. On November 6th, 1930, I served a copy of A Notice of Appeal from the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals, in the case of Jose Maria Viera vs. Jose Marques, upon Joseph N. Braff, Attorney for Jose Marques, by handing it to him personally, at his
30 Office, #24 Commerce Street, Newark, New Jersey, between the hours of ten A. M. and four P. M."

IRVING H. HELLMAN.

Sworn to and subscribed before me
this 3rd day of December, 1930.

40 Irving Mandelbaum,
An Attorney at Law
of New Jersey.

New Jersey Court of Errors and Appeals

JOSE MARIA VIERA,
Prosecutor-Appellant,

vs.

JOSE MARQUES,
Respondent.

On Appeal
from New Jersey
Supreme
Court.

BRIEF OF PROSECUTOR-APPELLANT.

Statement of Facts.

This is an appeal from the judgment of the New Jersey Supreme Court affirming the judgment of the Orange District Court, which judgment was entered in the Orange District Court by a directed verdict against the prosecutor-appellant, who was then the claimant in a claim for property filed after levy had been made upon the property in question.

When the case was presented to the Supreme Court, several points were urged for the reversal of the judgment of the Orange District Court entered upon said directed verdict.

On appeal to this Court however, the prosecutor-appellant is content to rest his appeal upon one point, to wit, that the Judge of the Orange District Court erred in taking the case on the claim of property from the jury and directing a verdict against the claimant, and that the Supreme Court erred in affirming this judgment, because there was

a question of fact for the jury to pass upon, and the direction of the verdict by the trial judge against the claimant was therefore error.

This matter came before the Supreme Court upon a Writ of Certiorari allowed by Chief Justice Gummere, and comes before this Court on appeal from the adverse judgment of the Supreme Court upon said Writ.

The facts of the case as they appear in the transcript are as follows:

On April 12, 1930, a suit was instituted in the Orange District Court by Jose Marques, the defendant-appellee herein, against Francisko Salles, and a judgment by default on affidavit was entered for the plaintiff, Marques, on May 3, 1930. On May 6, 1930, execution was issued on said judgment and a levy made upon the goods and chattels contained in a store which had formerly been owned by Salles, the judgment debtor, but which was in the possession of and owned by the prosecutor-appellant, Viera, at that time.

The undisputed evidence shows that at the time of the levy Viera was the owner and in possession of the store.

On May 16, 1930, the prosecutor-appellant filed a notice of claim and the matter was heard on June 13, 1930 before the Honorable Daniel A. Dugan, Judge of the Orange District Court, and a jury summoned pursuant to the statute. The judgment holder, Marques, contended that any sale from Salles, the judgment debtor, to Viera, the prosecutor herein, was void as to him by reason of non-compliance with the Bulk Sales Act, and after hearing the testimony, the Judge took the case from the jury and directed a verdict against Viera,

the then owner of the store and the appellant herein.

The evidence showed that Viera bought the store from Salles on January 7, 1930 (Tr. page 17), and (Tr. page 18) that he paid \$1,800. down at the time, and paid the balance in different sums until \$3,000. was paid, and that (Tr. p. 20, l. 20) on April 22, 1930, a formal bill of sale was given by Salles to Viera and at the same time an affidavit by Salles that he had no creditors (Tr. page 38). Further, it appears (Tr. p. 41-48) on the same day, assignment of the bill of sale to the truck used in the business was also made, and that on February 28th, (Tr. page 49) the insurance on the truck was transferred from Salles to Viera, and still more important, (Tr. p. 60) that on March 15, 1930, the insurance on the plate glass windows of the store was transferred to Viera, which policy had been held by Salles as shown by the Sun Indemnity Company's endorsement and Exhibits P-5 and P-6, consisting of checks and bills paid by Viera from January 9, 1930, two days after he took possession of the store, and further from Exhibit P-7, particularly that part on page 91 of the Transcript whereby it is shown that the landlord of the store consented to the assignment of Salles' lease to Viera and the transfer of the security to Viera on January 15, 1930, eight days after Viera testified he bought the store, even though long before the actual Bill of sale was issued. This consent was executed by Weinberg & Lerman, and witnessed by Leo L. Weinberg, a member of the bar of this State, and on page 92 of the Transcript appears the note executed January 15, 1930 by Viera to Weinberg as security for the assignment of the lease.

Viera testified (Tr. page 23) that about a month after he bought the store, to wit, about February 7th, he knew of the note which Salles owed to

Marques, and Viera testified generally to his continuous possession of the store from January 7th, and the payment by him of the bills in the business.

Mr. Leo L. Weinberg, a member of the bar of this State, testified (Tr. page 26-27) that the consent to the assignment of the lease and the execution of the note as security by Viera was taken care of by him.

The Witness, Nascimento, testified (Tr. page 30) that Marques told him on January 13th that Salles had sold the store to Viera.

After argument of counsel, the trial judge directed a verdict against the claimant and in favor of Marques, saying:

“So that I will direct the jury to render their verdict through their foreman. There are no facts for the jury to determine. The jury is called to decide what the facts are. Where there is no dispute of the facts there is nothing to be settled or determined by the jury, and then, of course, it is the duty of the Court to direct a verdict, and that is what I am doing.”

ARGUMENT ON FACTS AND LAW.

POINT I.

A jury question was presented by the evidence as to when title actually passed.

It is respectfully submitted that at least a jury question was presented from the testimony, first, as to when the sale actually took place, that is whether it was January 7, 1930, the time when Viera took possession, or April 22, 1930, the date of the bill of sale. All of the testimony showing that Viera actually took possession, paid the bills of the place,

had the lease transferred to him, gave his own note of security for the lease, all between January 7th and January 15th, that he continued to run the store, had the plate glass insurance transferred to him in March, and the automobile truck insurance transferred in February. All this tends to show that he was actually the purchaser from January 7th on, and that merely as a matter of poor business, he failed to obtain formal papers in the form of a Bill of Sale. It should be noted in this connection that while the automobile insurance was transferred (Tr. page 49) February 28, 1930, the actual assignment of the Bill of Sale did not take place until April 22nd, which was also the date of the Bill of Sale for the store.

It might well be inferred from the testimony that Viera actually bought the store as shown by his conduct and his actions with reference to the insurance policies and lease, and that after Marques sued Salles, Viera became frightened and asked for formal papers showing that he was actually the owner.

Certainly, if there was any attempt to defraud, the Bill of Sale would have been executed before insurance policies were transferred and before the lease was assigned.

In the case of *Fixter v. Van Deren*, 7 M. 544, 146 Atlantic 345, the Supreme Court held that the date when title was actually transferred is a mixed question of law and fact and therefore properly a jury question.

In the case of *Collins v. Oliver*, 299 Pa. 372, 149 Atlantic 647, the Court held that the payment of insurance by the buyer of certain goods was evidence of the fact that title had vested in the buyer.

It is therefore respectfully contended that there was a question for the jury as to when the actual

sale and transfer of title occurred, and that in view of all of the testimony above set forth, the date of the bill of sale was not controlling since the bill of sale was merely evidence of the ownership which was vested in him.

Therefore, the Supreme Court erred when it said in its opinion (Tr. page 96) "We concur in the view of the trial Court that there was no sale until the delivery of the bill of sale," because there was a question for the jury to determine as to when title passed by reason of the conflicting evidence.

If the jury had been permitted to take the case, it might well have found as a mixed question of fact and law under the charge of the trial court that title did pass on January 7th, and if this were true, the sale could not have been attacked as in violation of the Bulk Sales Act because more than ninety days elapsed between January 7, 1930 and the time of the levy by Marques.

The appellant was deprived of his opportunity and right to have the jury pass upon these disputed facts and arrive at a determination which might have, and probably would have, resulted in a finding for him.

POINT II.

Assuming that title did not pass until delivery of the bill of sale, it was still a question for the jury to determine whether or not Viera fraudulently accepted the false affidavit of Salles.

In the opinion of the Supreme Court, Transcript 96, the following statement appears:

"Viera admits that as early as February, and long before he made settlement for the goods, he knew of the note and also knew it had not been paid."

This statement is quite correct, but it is respectfully submitted that examination of the note itself (Tr. page 5) shows that it was an eight month note, dated August 10, 1929, and therefore not due until April 10, 1930. Therefore, when he knew in February that the note due April 10th, was not paid, he had no knowledge which could affect him because the note was not yet due, and of course was therefore still unpaid. *There is nothing to show that between April 10th when the note actually became due, and April 22nd when he took Salles' affidavit that he had no creditors, that Viera knew the note had not been met upon its due date.* Even though he knew in February that the note had not been paid, he had a right to assume that it would be met upon its due date, and when Salles gave to him on April 22nd a sworn affidavit that no monies were owing, Viera had a right to rely upon that affidavit and believe that the note had been met upon its due date. Therefore, even assuming that title did not pass until April 22nd when the formal bill of sale was actually delivered, Viera did comply with the Bulk Sales Act and had a right to rely upon Salles' affidavit.

The contention of Marques that because Viera knew in February of the existence of this note, his taking the affidavit was really fraudulent, was at very most a question for the jury to pass upon.

On the evidence, it would appear that Viera had a right to rely upon the affidavit, and therefore complied with the Bulk Sales Act so that his claim of property was justified in every respect, but certainly if the bona fides of his reliance upon the affidavit were questioned, it became a jury question, and the trial court erred in taking that question from the jury.

Conclusion.

In the case of *City of Bayonne v. O'Mara*, 88 N. J. Law 449, 97 Atlantic 149, Justice Parker, for the Supreme Court, held as follows:

(Syllabus 3 by the Court.)

"Possession of chattels is presumptive evidence of ownership; and, if on the trial of a claim of property the defendant and claimant testify to ownership by the latter of goods in possession of the former, a dispute of fact is presented which should be submitted to the jury."

It is respectfully submitted that a jury question was presented, first, as to when title actually did pass under proper instructions from the trial judge that if it actually passed January 7th, the sale could not be attacked because more than ninety days had elapsed, and secondly, that at most a jury question was presented as to the bona fides of Viera's reliance upon the Bulk Sales affidavit showing no creditors.

To take these questions from the jury was error. Juries are permitted, under the statute, for the purpose of passing upon the facts of the case, and the appellant had a right to have the facts in his case passed upon by a jury.

It is therefore respectfully submitted that the judgment of the Supreme Court affirming the judgment of the Orange District Court should be reversed, set aside and for nothing holden.

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New Jersey Court of Errors and Appeals

JOSE MARIA VIERA, <i>Prosecutor-Appellant,</i> <i>vs.</i> JOSE MARQUES, <i>Respondent.</i>	}	<i>On Appeal from New Jersey Supreme Court.</i>
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BRIEF OF RESPONDENT.

On April 12, 1930, suit was instituted by Jose Marques, the respondent herein, against Francisco Pereira Salles and Maria Gurreiro Salles in the Orange District Court to recover the sum of four hundred dollars (\$400.00), protest fees and lawful interest on a note made by the said Francisco Pereira Salles and Maria Gurreiro Salles to the order of Jose Marques, the respondent herein, and judgment by default on affidavit was entered against both defendants on May 3, 1930. On May 6, 1930, execution (Tr. 7) was issued out of the Orange District Court and on May 9, 1930, Irving Gelber, a constable of the County of Essex, returned the execution with a levy annexed (Tr. 8), (Tr. 9). On May 16, 1930, prosecutor-appellant filed a notice of Claim of Property (Tr. 11) and on May 16, 1930, on application by prosecutor-appellant to the Judge of the Orange District Court, the said Court signed an Order for Venire presented to him by the prosecutor-appellant, which order was returnable June 6, 1930. On the return day of the Venire, counsel for the respective parties consented to adjourn the matter for one week and the case was heard on June 13, 1930.

After the conclusion of the testimony of the witnesses for the claimant, the counsel for the respondent herein made a motion for a direction of a verdict (Tr. 31, l. 2) for the defendant on the ground that the claimant, by his own testimony and that of his witnesses, proved that he, the claimant, had failed to comply with the act commonly known and designated as the "Bulk Sales Act" of the State of New Jersey, Pamphlet Laws 1915, page 377, and that consequently said sale was void as against the respondent herein.

Claimant's counsel thereupon moved for a direction of a verdict (Tr. 31, l. 33) in favor of the claimant, which motion was denied and the motion of the respondent herein for a Direction of a Verdict was granted. The Court directed the jury (Tr. 33, l. 27) to find in favor of the defendant and against the claimant and the jury so found.

POINT I.

The prosecutor-appellant, by his own testimony (Tr. 24, l. 13; Tr. 24, l. 29) very clearly shows that he did not purchase the store on January 7, 1930, for he had insufficient monies to pay therefore. His testimony shows that he was to pay off the defendants, Francisco Pereira Salles and Maria Gurreiro Salles, and when he had paid them the purchase price of the store, and not before, was he to become the legal owner of the store. The bill of sale (Exhibit P. 1) was dated April 22, 1930, and that was the day when the alleged transfer of the store took place. He admits, by his testimony (Tr. 22, l. 38; Tr. 22, l. 40; Tr. 23, l. 9; Tr. 23, l. 18; Tr. 23, l. 20) that he knew of the debt from Mr. Salles to the respondent herein prior to the time of the purchase of the store and it thereby became his

duty to inquire from the respondent herein, before he took over the store, whether that debt was still in existence. His failure to do so makes the sale void as to the respondent under "Bulk Sales Act," where the respondent brought action and levied against the merchandise sold within the ninety-day period.

The case of *Cole v. Berry*, 42 N. J. Law 308, holds, "Possession is evidence of title."

The testimony of the prosecutor-appellant (Tr. 24, l. 38; Tr. 25, l. 10) clearly shows that up to the date of the service of the summons on April 12, 1930, Salles was in possession of the store. The summons was served on Salles at the store in the presence of the prosecutor-appellant. This is admitted by the testimony of the defendant, Salles (Tr. 29, l. 3). Taking the decision of the Court, as above set forth, Salles being in possession of the store on April 12, 1930, and the bill of sale being transferred at a later date, the Orange District Court had the right to determine as a fact that Salles and not the prosecutor-appellant was the owner of the store on April 12, 1930. The prosecutor-appellant (Tr. 24, l. 32) testifies that Mr. Salles was in the store until April 22, 1930, the date of the bill of sale. Certainly, he did not relinquish possession prior to that date and therefore he was presumed to be the owner of the chattels upon which the levy was made. The truck was also assigned the same date. Salles was in possession of the same until that date and the Court had the right to find as a fact that Salles was the owner of the truck to April 22, 1930.

There being no testimony given to refute the ownership of the goods and chattels in the store and the truck by Salles to April 22, 1930, and the

prosecutor-appellant having testified that he knew of the existence of the debt to the respondent herein, the Court was correct in directing a verdict in favor of the respondent herein on application by the counsel of the said defendant.

The case of *Sefler v. Vanderbick & Sons*, 88 N. J. Law 636, agrees with the respondent herein on his view.

The testimony clearly shows that the defendant Salles was in possession of the goods and chattels levied upon until April 22, 1930, the date of the transfer of the bill of sale. It being thereby established as a fact that Salles was in possession to the aforesaid date, the Court had the right to accept as a fact, in view of the decisions, and there being nothing to refute that fact, the Court had a right, at the close of the claimant's case, to direct a verdict in favor of the judgment creditor. In proper cases, the trial judge has power to direct. *City Bank v. O'Marra*, 88 N. J. Law 499.

In January of 1930, Salles attempted to sell his business to the prosecutor-appellant. He went into possession, took over the lease on January 15th, and thereafter conducted the business. The bill of sale, however, was not delivered until April 22, 1930, after Marques had brought suit on the note, because Viera prior to that time had not had enough money to complete the purchase.

The bill of sale contains no inventory of the goods and vendor's affidavit states that he has no creditors. Marques, the holder of the note, had been a former partner and had taken the note for his interest in the merchandise sold to Salles. Viera admits that as early as February and long before he made settlement for the goods

he knew of the note and also knew that it had not been paid.

We concur in the view of the trial court that there was not sale until the delivery of the bill of sale.

The sale of all the stock and merchandise of a retail business is obviously a sale in bulk. The purchaser at such sale, knowing of a merchandise creditor to whom a note had been given, cannot rely upon an affidavit of his vendor which he knows to be false.

The testimony of the claimant himself, that he did not take the bill of sale to the store and automobile until April 22, 1930, because he had insufficient monies to pay for the same until that date (Tr. 24, l. 13; Tr. 24, l. 29), very clearly shows what the intentions of the vendor and buyer were. If it were not for the fact that Viera had insufficient monies to close the deal that prevented the transfer of the bills of sales, Salles would have given them to him some time before. It is the usual practice applied in the sale of a business in bulk, for the prospective buyer to remain in the store and be responsible for all bills and for the seller to remain in the store as well until the full purchase price is paid. That was what actually took place in the present case. The money for the store was paid over on April 22nd, 1930, and the intention of the parties was to consummate the sale on that date.

The Orange District Court had the right, in view of the testimony of the prosecutor-appellant and the dates of the bills of sales, to find as an undisputed fact that the transfer of the store and auto took place on April 22nd, 1930, and it was

proper for the Court to direct a verdict in favor of the respondent.

The prosecutor-appellant, in Point 1 of his arguments, cites the case of *Fixter v. Van Deren*, 7 M. 544, 146 Atlantic Reporter 345, to the effect that the date when title was actually transferred is a mixed question of law and fact and therefore properly a jury question. The prosecutor-appellant, however, has failed to properly digest this case. That case was one based upon a written contract for the sale of land, part payment to be given at the signing of the contract, the balance to be given when title passed. Before title passed a new agreement was entered into to extend the time of closing title. Nothing was done as to the closing of title for a period of five (5) years. The plaintiff now brings suit to recover the deposit and the defendant files a counter-claim for expenses expended in trying to settle the riparian rights of the land. At the time of the trial, motions were made by both counsels for a direction of a verdict in favor of each. Both motions were dismissed; the Court holding that the interpretation of the contract, as to the intention of the parties, was a factual question for the jury to decide and therefore denying of the motions was proper.

In the same Point the prosecutor-appellant cites the case of *Collins v. Oliver*, 299 Pa. 372, 149 Atlantic 647, in which he says that the Court held that the payment of insurance by the buyer of certain goods was evidence of the fact that title had vested in the buyer. The Court, however, says in that case, that with regards to the fire insurance to be carried by the buyer of the said merchandise in question, the Court holds that "This is a charge normally assumed by the owner; and payment thereof by the buyer is

evidence to show the UNDERSTANDING OF THE PARTIES was that the title was vested in him.”

It therefore seems very clear, even from the cases cited by the prosecutor-appellant, that where there is any question of disputed facts the case should go to the jury but in a case such as the one on appeal, where the facts are clearly undisputed as to the date of the sale and the reason for the sale being held on April 22nd, 1930, there was no question of fact for the jury and the Court had a perfect right to direct a verdict in favor of the respondent herein.

POINT II.

The prosecutor-appellant admits by his testimony (Tr. 22, l. 38; Tr. 22, l. 40; Tr. 23, l. 9; Tr. 23, l. 18; Tr. 23, l. 20) that he knew of the existence of the debt from Mr. Salles to the respondent herein prior to the time of the purchase of the store and it thereby became his duty to inquire from the respondent herein, whether that debt was still in existence. His failure to do so makes the sale void as to the respondent under the “Bulk Sales Act,” where the respondent brought action and levied against the merchandise sold within the ninety-day period.

It being an undisputed fact that the sale of the business and automobile took place on April 22, 1930, and it being undisputed that the prosecutor-appellant knew of the existence of this debt at least on February 7, 1930, and he having failed to make proper inquiry as to whether the debt was in existence on April 22, 1930, and thereby violating the terms of the “Bulk Sales Act,” the Court had no undisputed facts before it and was right in directing a verdict against the prosecutor-appellant.

Further arguments listed by the prosecutor-appellant under this point are answered by the facts and citations listed heretofore.

CONCLUSION.

In the case of *City Bank of Bayonne v. O'Mara*, 88 N. J. Law 449, 97 Atlantic 149, cited by the prosecutor-appellant, the facts show that the defendant was in possession of the property, consisting of household furniture, and was using them for his family in that part of the two-family house where he lived. The claimant, a sister of the defendant, testified that she supplied him with the chattels in question, not as a sale or gift, but as a loan; that occasionally she took some back. Such testimony the execution creditor naturally could not very well find evidence to rebut or discredit, unless there was some chance admission of the parties to the contrary.

Justice Parker, in his opinion, says "the inherent improbability of the loan theory as applied to all the articles claimed, especially in view of the interest of the defendant in blocking the levy, and of his sister in helping him; and several flaws in the testimony from which the inferences of gift instead of loan as to some of the articles, and of purchase by the defendant as to others were deducible."

Thus we see that the facts of the case cited and the facts of the case at issue are different and each case must stand or fall on its own facts. In the case cited, it is true there was a variance of the facts and a question for the jury to decide whether or not the testimony of the claimant and defendant was to be believed. But in the case at issue the claimant by his own testimony says that he could not obtain a bill of sale for the

store until April 22nd, 1930, because he did not have sufficient funds whereby he could purchase the store before that date. The cited case, by its own peculiar facts, involves a dispute as to ownership and the testifying of, as the Court held, "the inherent improbability of the loan theory." Thus in that case there was a question of fact for the jury. But in the case on appeal the facts, gathered from the entire testimony, are uncontroverted and therefore did not present a factual question for the jury.

It is respectfully submitted that the judgment of the Supreme Court affirming the judgment of the Orange District Court be affirmed.

JOSEPH N. BRAFF,
Attorney and Counsel of Respondent.

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