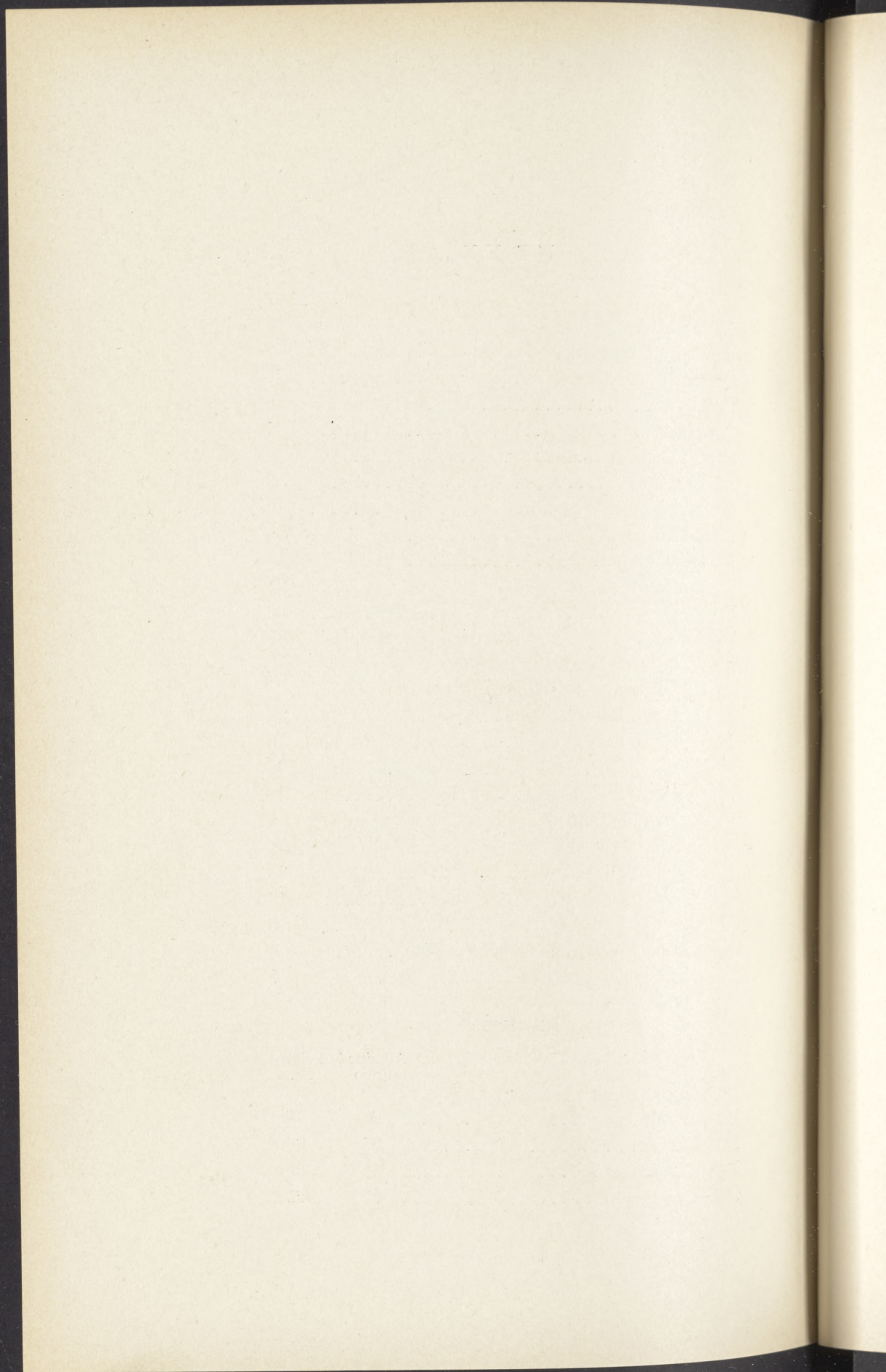


INDEX.

| | PAGE |
|--------------------------------------|------|
| Notice of Appeal..... | 1 |
| Grounds of Appeal..... | 2 |
| Postea..... | 4 |
| Summons..... | 6 |
| Complaint..... | 7 |
| Copy of Note..... | 8 |
| Answer..... | 9 |
| Notice of Motion..... | 13 |
| Affidavits..... | 14 |
| Answering Affidavits..... | 18 |
| Stipulation..... | 25 |
| Reply..... | 26 |
| Testimony..... | 28 |
| For Plaintiff— | |
| Eleanor Boesak: | |
| Direct..... | 28 |
| Cross..... | 30 |
| Redirect..... | 38 |
| Motion for Nonsuit..... | 38 |
| For Defendant— | |
| Sam Snyder: | |
| Direct..... | 39 |
| Cross..... | 49 |
| Redirect..... | 55 |
| Motion for Direction of Verdict..... | 56 |
| Direction of Verdict..... | 58 |

EXHIBITS.

| | Admitted Folio | Printed Page |
|-----------------------------------|-------------------|-----------------|
| P-1—Note (same as on page 8)..... | 29 | 8 |
| P-2—Check..... | 29 | 59 |
| D-1—Letter..... | 35 | 60 |
| D-2—Check for \$65..... | 41 | 60 |
| D-3—Envelope..... | 45 | 61 |



Notice of Appeal.

Filed May 27, 1929.

New Jersey Supreme Court

ESSEX COUNTY.

MERCHANTS' SECURITIES CORPORATION, a corporation,
Plaintiff-Respondent,
vs.
SAM SNYDER,
Defendant-Appellant.

10

Action
at Law.
On Bill, etc.

To:

GREEN AND GREEN,
Attorneys of Plaintiff-Respondent,
13th Avenue, Newark, N. J.

20

Gentlemen:

PLEASE TAKE NOTICE that the defendant in the above-stated cause hereby appeals from the judgment heretofore entered on the 10th day of May, 1929, and from every part thereof, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

30

Dated, May 22nd, 1929.

Yours, etc.,

HERMAN B. J. WECKSTEIN,
Attorney of and of Counsel
with Defendant-Appellant.

Service of a copy of the within notice is hereby acknowledged this 24th day of May, 1929.

40

GREEN & GREEN,
Attorneys for Plaintiff-Respondent.

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ESSEX COUNTY.

| | | |
|----|--|--|
| 10 | <p style="text-align: center;">MERCHANTS' SECURITIES CORPORATION, Plaintiff-Respondent, vs. SAM SNYDER, Defendant-Appellant.</p> | <p style="font-size: 3em; line-height: 1;">}</p> <p style="text-align: center;">On Appeal from New Jersey Supreme Court, Essex County.</p> |
|----|--|--|

20 The above-named defendant-appellant, Sam Snyder, assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court, in the above case:

1. Because the trial Judge upon the trial of said cause refused to permit Eleanor Boesak, the secretary of the plaintiff-respondent corporation, on the objection of the plaintiff-respondent's counsel, to answer the following question:

30 "Had a little difficulty with him?"

2. Because the trial Judge, upon the trial of said cause, refused to grant defendant-appellant's motion for a non-suit upon the evidence given at the trial, at the conclusion of the plaintiff-respondent's case.

40 3. Because the trial Judge, upon the trial of said cause, on the objection of the plaintiff-respondent's counsel, refused to admit the contract between the Newark Chandler Motors Corporation and the defendant-appellant.

Grounds of Appeal.

4. Because the trial Judge, upon the trial of said cause, on the objection of the plaintiff-respondent's counsel, refused to permit the defendant-appellant, Sam Snyder, to testify as to how the contract between him and the Newark Chandler Motors Corporation was obtained. 10

5. Because the trial Judge, upon the trial of said cause, on the objection of the plaintiff-respondent's counsel, refused to permit the defendant-appellant, Sam Snyder, to testify how the contract was obtained between the Newark Chandler Motors Corporation, after testimony was introduced concerning the same by the plaintiff-respondent upon cross-examination. 20

6. Because the trial Judge, upon the trial of said cause, directed a verdict in favor of the plaintiff-respondent against the defendant-appellant over the objection of said defendant-appellant, where said trial Judge should have submitted the case to the jury for its verdict.

7. Because the trial Judge, upon the trial of said cause, directed a verdict in favor of the plaintiff-respondent against the defendant-appellant over the objection of said defendant-appellant, where said trial Judge should have submitted the case to the jury for its verdict, since the damages presented by the plaintiff-respondent were speculative and were a matter of consideration for the jury, if the plaintiff-respondent was entitled to any amount whatsoever. 30

8. Because the trial Judge, upon the trial of said cause, directed a verdict in favor of the plain- 40

Grounds of Appeal.

10 tiff-respondent against the defendant-appellant over the objection of said defendant-appellant, where said trial Judge should have submitted the cause to the jury for its verdict, since the holder in due course can only recover what they paid for the note, plus interest, if any amount, where there was proof of any fraud in the inception.

Dated: June 13th, 1929.

HERMAN B. J. WECKSTEIN,
Attorney for and of Counsel
with Defendant-Appellant.

Postea.

20 NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

MERCHANTS' SECURITIES CORPORA-
TION, a corporation,

Plaintiff,

vs.

SAM SNYDER,

Defendant.

Action
at Law.

30

This case was tried before Circuit Court Judge Worrall F. Mountain, to whom it was referred for trial, at the Essex Circuit, on May 10th, 1929.

40 The jury by direction of the court rendered a general verdict in favor of the plaintiff, Merchants' Securities Corporation, and against the defendant, Sam Snyder, in the sum of Fourteen Hundred Sixty-eight Dollars and Twenty-six Cents (\$1,468.26).

WORRALL F. MOUNTAIN,
Circuit Court Judge.

Summons.

THE STATE OF NEW JERSEY

TO SAM SNYDER

10 (L. S.) YOU ARE SUMMONED to answer the annexed complaint of Merchants' Securities Corporation, a corporation of New Jersey, in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the said Court, at Trenton, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 WITNESS, WILLIAM S. GUMMERE, Esq., Chief Justice of the said Court, at Trenton, this 24th day of February, nineteen hundred and Twenty-eight.

EDWARD J. KELLEHER,
Clerk.

GREEN & GREEN,
Attorneys.

30

40

Complaint.

NEW JERSEY SUPREME COURT,
ESSEX COUNTY.

MERCHANTS' SECURITIES CORPORATION, a corporation,

Plaintiff,

vs.

SAM SNYDER,

Defendant.

Action
at Law.

10

Plaintiff, a corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, says that:

20

1. On January 23, 1928, the defendant made and delivered to Chandler Newark Motors, Inc., his note of that date for \$1383.00 payable to bearer, in installments as set forth in said note, a true copy of which is annexed hereto and made a part hereof, at the office of plaintiff.

2. Chandler Newark Motors, Inc., afterwards and before maturity endorsed said note to the plaintiff.

30

3. On the day the 1st installment fell due it was presented for payment at the place where it was payable, but not paid.

4. As a result, the entire balance of said note became immediately due.

5. Said note is now the property of plaintiff, and the sum of \$1383.00 is unpaid thereon.

Plaintiff demands as damages \$1383.00, with interest from February 23, 1928.

40

GREEN & GREEN,
Attorneys for Plaintiff.

Complaint.

(Attached to the Complaint:)

\$1383.00

Newark, New Jersey, Jan. 23rd, 1928.

FOR VALUE RECEIVED THE UNDERSIGNED PROMISES
 10 TO PAY TO
 B E A R E R

in installments set forth in the margin hereof,
 Thirteen Hundred Eighty-Three and 00/100 Dol-
 lars at the office of MERCHANTS' SECURITIES CORPO-
 RATION, 60 Park Place, Newark, N. J., value re-
 ceived.

Upon default in the payment of any installment
 20 the entire balance of this note shall become immedi-
 ately due. If this note is placed in the hands of
 an attorney for collection, the undersigned agrees
 to pay the attorney's fee.

SAM SNYDER,
 305 Goldsmith Av.,
 Newark, N. J.

Note No. 5287

(In Margin:)

30 SCHEDULE OF PAYMENTS

| | | |
|----|----------|----------------------|
| | \$115.25 | 1 month after date |
| | \$115.25 | 2 months after date |
| | \$115.25 | 3 months after date |
| | \$115.25 | 4 months after date |
| | \$115.25 | 5 months after date |
| | \$115.25 | 6 months after date |
| | \$115.25 | 7 months after date |
| | \$115.25 | 8 months after date |
| | \$115.25 | 9 months after date |
| 40 | \$115.25 | 10 months after date |
| | \$115.25 | 11 months after date |
| | \$115.25 | 12 months after date |

Answer.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

| | | | |
|---|---|-------------------|----|
| MERCHANTS' SECURITIES CORPORATION, a corporation, Plaintiff, vs. SAM SNYDER, Defendant. | } | Action at Law. | 10 |
|---|---|-------------------|----|

Defendant, of the City of Newark, County of Essex and State of New Jersey, in answering complaint says that: 20

1. Defendant denies allegations of paragraph 1.
2. Defendant denies allegations contained in paragraph 2.
3. Defendant has no information or belief as to paragraph 3.
4. Defendant has no information as to paragraph 4. 30
5. Defendant has no information as to paragraph 5.

FIRST SEPARATE DEFENSE.

Defendant denies that plaintiff is a bona fide holder of the note in question, but that it is one of the original parties to the same and bound by all defenses. 40

Answer.

SECOND SEPARATE DEFENSE.

10 Defendant does not read or write English and is not familiar with the language contained in the note and conditional sales agreement to which it is annexed.

THIRD SEPARATE DEFENSE.

Defendant ordered a Chandler sedan from the Chandler Newark Motors, Inc., an automobile concern which operated with the plaintiff on mutual undertakings.

20

FOURTH SEPARATE DEFENSE.

Plaintiff employed at the premises of the Chandler Newark Motors, Inc., a representative who had charge of all cars sold by said firm and financed by plaintiff.

FIFTH SEPARATE DEFENSE.

30 Defendant never, knowingly, signed any note or conditional sale agreement as described in complaint, and if any such note was signed, the signature was obtained by fraud.

SIXTH SEPARATE DEFENSE.

40 Defendant never signed any note or instrument purporting to be a note, unless same was obtained by fraud.

Answer.

SEVENTH SEPARATE DEFENSE.

There was no consideration for the alleged note.

EIGHTH SEPARATE DEFENSE.

10

There was no consideration for the alleged note aforesaid, and plaintiff being a party thereto, and stipulated therein, cannot hold this defendant liable for same.

NINTH SEPARATE DEFENSE.

Note and conditional contract to which it should be annexed were given for the purchase of a certain motor vehicle, and said car was never delivered to this defendant, all of which facts were and are in the knowledge of this plaintiff, its agents or representatives. 20

TENTH SEPARATE DEFENSE.

Plaintiff, by the nature of its business, are charged with the knowledge of the transactions of Chandler Newark Motors, Inc., and are now barred by laches from seeking to recover from this defendant. 30

ELEVENTH SEPARATE DEFENSE.

Plaintiff has commenced suit in the New Jersey Court of Chancery for the recovery of the sum advanced on the note in this suit, and cannot maintain two suits for the same funds. 40

Answer.

TWELFTH SEPARATE DEFENSE.

10 Plaintiff had access to all the books and records of Chandler Newark Motors, Inc., and knew an order was entered for a car to be delivered on or after March 15th, 1928, to defendant and was not justified in advancing any funds under said contract in Jan., 1928.

THIRTEENTH SEPARATE DEFENSE.

Defendant denies any sums were advanced on said note.

20 FOURTEENTH SEPARATE DEFENSE.

Defendant denies Chandler Newark Motors, Inc., endorsed said note to plaintiff, the copy attached to State of Demand bearing no endorsement.

FIFTEENTH SEPARATE DEFENSE.

30 The note attached to the State of Demand purports to be a contract between plaintiff and defendant and there being no consideration, plaintiff cannot maintain in its suit.

HERMAN B. J. WECKSTEIN,
Attorney of Defendant.

Notice of Application to Strike Out Answer.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

| | | |
|--|---|---------------------------|
| <p>MERCHANTS' SECURITIES CORPORATION, a corporation, Plaintiff,</p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">SAM SNYDER, Defendant.</p> | } | <p>Action at Law.</p> |
|--|---|---------------------------|

10

To

HERMAN B. J. WECHSTEIN,
Attorney for Defendant:

20

PLEASE TAKE NOTICE, that on Saturday, the 24th day of March, 1928, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Court House, Newark, New Jersey, before Hon. William A. Smith, Supreme Court Commissioner (also Circuit Court Judge), or the Supreme Court Commissioner (also Circuit Court Judge) hearing motions at that time, we will move to strike out the answer filed in the above entitled action by the defendant, on the ground that the same is sham or frivolous, and filed only for the purpose of delay.

30

In the event said Supreme Court Commissioner does not strike out said answer, we will apply at the same time and place to extend the time in which a reply may be filed until ten days after the determination of this application.

40

Notice of Motion to Strike Out Answer.

We will use the annexed affidavit in support of our application.

Dated, March 21st, 1928.

Respectfully yours,

GREEN & GREEN,
Attorneys for Plaintiff.

Affidavit in Support of Motion.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

MERCHANTS' SECURITIES CORPORATION, a corporation,
Plaintiff,
vs.
SAM SNYDER,
Defendant.

Action
at Law.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss. :

ELEANOR BOESAK, of full age, being duly sworn according to law, on her oath deposes and says that:

1. She is Secretary of Merchants' Securities Corporation, a corporation of the State of New Jersey, the plaintiff in the above entitled action;

Affidavit of Eleanor Boesak.

that she is authorized to make this affidavit on behalf of plaintiff, and that she is cognizant of the facts hereinafter stated.

2. On or about January 23rd, 1928, the defendant, Sam Snyder, made and delivered to Chandler-Newark Motors, Inc., his note of that date for \$1383.00, payable to bearer, at the office of Merchants' Securities Corporation, 60 Park Place, Newark, New Jersey, in installments as set forth in said note, a true copy of which is annexed hereto and made a part hereof. 10

3. Chandler-Newark Motors, Inc., afterwards and before maturity endorsed and negotiated said note to plaintiff under the following conditions: 20

(a) That note was complete and regular upon its face;

(b) That plaintiff became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(c) That plaintiff took it in good faith and for value;

(d) That at the time it was negotiated to it he had no notice of any infirmity in the instrument, or defect in the title of the person negotiating it. 30

4. On the day the first installment fell due, it was presented for payment at the place where it was payable, but not paid.

5. As a result, the entire unpaid balance of said note became immediately due and payable.

6. The sum of \$1383.00 is due thereon, with interest from February 23rd, 1928. 40

Affidavit of Eleanor Boesak.

7. Deponent believes that there is no defense to the above entitled action, and that the answer filed therein is sham or frivolous, and filed only for the purpose of delay.

10

ELEANOR BOESAK.

Sworn and subscribed to before me
this 21st day of March, 1928.

HAROLD FARKAS,
Notary Public of New Jersey.
My Commission expires Sept. 17, 1932.

20

(Attached to Affidavit:)

\$1383.00 Newark New Jersey Jan. 23rd, 1928

FOR VALUE RECEIVED THE UNDERSIGNED PROMISES TO PAY TO BEARER in installments set forth in the margin hereof Thirteen Hundred Eighty-three and 00/100 Dollars at the office of MERCHANTS' SECURITIES CORPORATION, 60 Park Place, Newark, N. J., value received.

30

Upon default in the payment of any installment the entire balance of this note shall become immediately due. If this note is placed in the hands of an attorney for collection, the undersigned agrees to pay the attorney's fee.

SAM SNYDER,
305 Goldsmith Ave., Newark, N. J.

Note No. 5287

40

Affidavit of Eleanor Boesak.

(In Margin:)

SCHEDULE OF PAYMENTS

| | | |
|----------|----------------------|----|
| \$115.25 | 1 month after date | |
| \$115.25 | 2 months after date | |
| \$115.25 | 3 months after date | 10 |
| \$115.25 | 4 months after date | |
| \$115.25 | 5 months after date | |
| \$115.25 | 6 months after date | |
| \$115.25 | 7 months after date | |
| \$115.25 | 8 months after date | |
| \$115.25 | 9 months after date | |
| \$115.25 | 10 months after date | |
| \$115.25 | 11 months after date | |
| \$115.25 | 12 months after date | 20 |

30

40

Affidavit in Opposition to Motion.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

10

 MERCHANTS' SECURITIES CORPORA-
 TION, a corporation,
 Plaintiff,

vs.

 SAM SNYDER,
 Defendant.

 Action
 at Law.

20

 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

SAM SNYDER, being duly sworn, according to law, on his oath deposes and says:

That he is the defendant in the above captioned cause and that he has read the affidavit of Miss Boesak.

30 Deponent says that he had purchased a truck and sedan during the summer of 1927 from the Merchants' Securities Corporation, the plaintiff in this cause, and that he is familiar with their transactions and with the officers of the corporation. Deponent knows that Miss Boesak is the Secretary and Manager in charge of the office and that a Mr. Schmidt is one of the officers and principal stockholders and supervises all of the activities of the concern.

40 Both the truck and automobile which he purchased from the Merchants' Securities Corporation were repossessed cars, and in order to obtain them he was sent to the warehouse and offices of the Chandler Newark Motors Company, Inc., and at

Affidavit of Sam Snyder.

the said office he discussed each of these purchases with both Mr. Carton of the Chandler Newark Motors Company and Mr. Schmidt of the finance company. In each instance the transaction was not completed until approved by both parties.

In the early part of January, 1928, deponent was making a payment on his car at the office of the Merchants' Securities Corporation, when he discussed with Miss Boesak the question of buying a new automobile, but told her that he did not want to use it until the 15th of March. Miss Boesak advised him to go down and see Mr. Carton and that she would arrange to finance it if deponent was satisfied with the car. 10

Deponent also avers that he attended the automobile show a week or so later and saw Mr. Carton at the show and on the floor of the said automobile show gave Mr. Carton an order for a Chandler seven-passenger sedan, a copy of which is hereto annexed. Under the terms of the order, the car was to be delivered on or about March 15th. Several days later he called at the office of the Chandler Newark Motors Co. and Mr. Carton asked him to sign the necessary papers for the insurance policy, so that he could prepare the sale. Deponent signed such papers as Mr. Carton asked him to and a few weeks later did receive a certificate of said insurance policy from the Merchants' Securities Corporation. 20 30

Although deponent speaks and understands the English language fluently, he is not able to read and write English to any extent and he is not at all familiar with the language contained in any of the papers which his attorney has shown him in this cause. Immediately after signing these insurance papers, at Mr. Carton's office, deponent went to the office of the Securities Corporation for 40

Affidavit of Sam Snyder.

10 the purpose of making a payment on his Reo truck and he met Miss Boesak and told her that in accordance with her advice he had bought a Chandler from the Carton people and that it was to be delivered to him on March 15th or later. Miss Boesak told him that she would watch for the order when it came in and take care of it for him, and that she knows every order that the Chandler Newark Motors Co. place because they go over the books of the Chandler Newark Motors Co. and finance practically all of their cars together with some other finance company.

20 Deponent never signed any note or conditional sales agreement to his knowledge and if there is any note or agreement bearing his signature, it must have been obtained from him by fraud.

30 The said Sam Snyder never received the automobile in question and this fact was well known to the Merchants' Securities Corporation because he advised them that the car was not to be delivered until March 15th, and, as he understands, the Chandler Newark Motor Car Co. was placed in the hands of a Receiver on the 21st day of February, 1928. The Merchants' Securities Corporation must have known that no car was delivered to deponent because much to his surprise he received from them, after the insurance policy, an order advising him that the Guarantee Fire Insurance Co. had cancelled its certificate as of the date of issue.

40 Deponent does not know how the plaintiff arrives at the figure of \$1383.00, but if this is the full amount of the note, he is certain that the plaintiff did not advance this amount because he has purchased two other cars from the plaintiff and knows that they charge approximately eight per cent. for financing, besides adding insurance to the amount

Affidavit of Sam Snyder.

of the note. He knows that it is common knowledge that the finance charges, together with the insurance charge would amount, on a transaction of this kind, to at least \$200.00 and that the plaintiff could not have advanced the full amount as alleged in the affidavit of Miss Boesak. 10

From deponent's own observation, he has seen Mr. Schmidt in and out of the Chandler Newark Motor Car Co. and has seen him going into the main office and look at the orders and files.

Deponent further says that he is informed that the Merchants' Securities Corporation filed a suit against the Receiver and that other proceedings are pending in the Chancery Court to compel the Chandler Newark Motor Car Co. to turn over money, which said corporation has received for this and other transactions in which the cars were not delivered to the customers and cannot understand how the plaintiff can maintain a suit against both the individuals and the Chandler Newark Motor Car Co. for the same items. 20

Deponent denies that the plaintiff is a bona fide holder of the note in question but that it had full knowledge of the transaction; that the plaintiff knew that deponent was about to buy a car, and the terms under which said car was to be bought; that the car was not to be delivered until no earlier than the 15th day of March, 1928, and that if it did accept a note, it did so with full knowledge of all the circumstances. 30

SAM SNYDER.

Sworn to and subscribed before me
this 22nd day of March, 1928.

SADYE GREENBAUM,
A Notary Public of N. J.

40

Exhibit Attached to Affidavit of Sam Snyder.

CHANDLER NEWARK MOTORS, INC.

239 Central Avenue. Newark, N. J.
 Tel. Mitchell 4870.

AUTOMOBILES AND TRUCKS.

Jan. 18-1928.

10

Please enter my order for one Chandler 7 Pass. Sedan same car shown at show. Maroon with Landau effect.

ORDER.

| | |
|---------------------------------------|-----------|
| Model | \$2165.00 |
| Terms to be arranged through Finance. | |
| Old car to be turned in at once. | |

PAYMENT.

20

| | |
|--------------------------------|----------|
| Cash Deposit. | \$ 65.00 |
| Balance. | 1200.00 |
| Allowance on used car. | 900.00 |
| Make Chandler | |

| | |
|----------------|-----------|
| Total. | \$2165.00 |
|----------------|-----------|

30

To be delivered to me on or about March 15th, 1928, barring delays for causes beyond your control.

I agree to execute on or before the delivery of said automobile all the necessary documents and your regular Conditional Sales contract, in triplicate.

Failure on my part to take car when notified, forfeits my deposit as liquidated damages for your expense and efforts in the matter and permits you to otherwise dispose of the car without any liability to me whatsoever.

40

It is agreed that car will be delivered as promptly as prior orders permit and that you will

Exhibit Attached to Affidavit of Sam Snyder.

not be held liable for any delay or failure to make delivery through any cause whatsoever.

Reasonable time for delivery to be interpreted to be at least (120) one hundred twenty days.

The allowance on used car as stated above is made, based on the condition of the car at this date. In event of delivery of "Trade-in" car at a date subsequent to this Chandler Newark Motors, Inc., reserves the right to reappraise the car if necessary. 10

In event of cancellation a commission of at least 15% of the used car allowance must be paid.

On time payment sales, the title and right of possession of this car or truck shall remain vested in and shall be insured at full value without expense to and in favor of the Chandler Newark Motors, Inc., until payments or any renewals thereof have been completed with interest and if default is made in payment the said Chandler Newark Motors, Inc., or its assigns may take possession of said property wherever found and hold same until all claims are liquidated or may sell it at public or private sale, the proceeds thereof less the expense to be applied upon the debt, all of which shall be without prejudice to the right of the said Chandler Newark Motors, Inc., or its assigns to forthwith collect the balance remaining unpaid and for which the purchaser remains liable. 20 30

When allowance is made on a used car it is understood that such allowance includes all equipment and I hereby assign title and interest in same.

No order is accepted unless approved by an officer of the corporation.

It is agreed, in the event this order is cancelled, any second-hand car which may have been taken in exchange, for part payment of purchase price, and sold by the Chandler Newark Motors, Inc., 40

Exhibit Attached to Affidavit of Sam Snyder.

previous to such cancellation shall be credited at the price allowed or less if sold at a reduced price.

10 The price quoted is for immediate delivery but if the price should be increased by the manufacturer of transportation and other charges be increased before delivery is taken then this order shall be construed as if the increased prices were originally herein or shall be annulled at my option.

Should order be cancelled I agree to pay Chandler Newark Motors, Inc., for lessons received at their regular rate of \$3.00 per hour.

20 It is hereby understood that no salesman is authorized to make other than the Standard Warranty for the sale of any Truck, car or other merchandise sold by the Chandler Newark Motors, Inc., which is as follows: The manufacturers will agree to replace any parts which are, in the judgment of said manufacturer, found to be defective in workmanship or materials in three months; provided that the time of the workman replacing the same shall be paid by the owner of Truck or car, and parts shall be returned to said manufacturer, transportation charges prepaid.

30 No salesman is authorized to warrant any Second-Hand Truck or car, except under the signature of an officer of this corporation.

I hereby bargain, sell and deliver unto the Chandler Newark Motors, Inc., Car. No. etc. with equipment, free of all encumbrances, as part payment on a new car. Should my order be cancelled for any reason whatsoever by the said Company, the Chandler Newark Motors, Inc., reserves the right to accept this car at the price allowed or to return said car to me, or if it has
40 been disposed of, to allow me the sale price thereof less commission for selling the same.

Exhibit Attached to Affidavit of Sam Snyder.

The above comprises the entire agreement pertaining to the purchase and no other agreement of any kind, verbal understanding or promises whatsoever will be recognized. Receipt of a copy of this order is hereby acknowledged.

Signed SAM SNYDER, 10
305 Goldsmith Avenue, City.

Order obtained by
S.
Salesman

Stipulation.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY. 20

MERCHANTS' SECURITIES CORPORATION, a corporation,

Plaintiff,

vs.

SAM SNYDER,

Defendant.

Action
at Law.

IT IS STIPULATED AND AGREED by and between the parties hereto, by their respective attorneys, that in lieu of an amended complaint being filed herein, that in paragraph 2 of said complaint, the word "delivered" be substituted in place and stead of the word "endorsed." 30

Dated, March 27th, 1928.

GREEN & GREEN,

Attorneys for Plaintiff. 40

HERMAN B. J. WECKSTEIN,

Attorney for Defendant.

Reply.

NEW JERSEY SUPREME COURT,

ESSEX COUNTY.

| | | | |
|----|---|---|-------------------|
| 10 | MERCHANTS' SECURITIES CORPORATION, a corporation, Plaintiff, vs. SAM SNYDER, Defendant. | } | Action at Law. |
|----|---|---|-------------------|

20 Plaintiff, in reply to answer filed by defendant, says that :

1. It denies the First Separate Defense.
2. It has no knowledge or information sufficient to form a belief as to the Second Separate Defense, and leaves the defendant to his proof.
3. It admits that defendant ordered a Chandler sedan from the Chandler-Newark Motors, Inc., but denies the remainder of the Third Separate Defense.
- 30 4. It denies the Fourth Separate Defense.
5. It denies the Fifth Separate Defense.
6. It denies the Sixth Separate Defense.
7. It denies the Seventh Separate Defense.
8. It denies the Eighth Separate Defense.
9. It denies the Ninth Separate Defense.
10. It denies the Tenth Separate Defense.
- 40 11. It denies the Eleventh Separate Defense.

Reply.

12. It denies the Twelfth Separate Defense.
13. It denies the Fifteenth Separate Defense.

NOTICE.

TAKE NOTICE, that on or before the trial of the above entitled action, plaintiff will move to strike out: 10

(a) The answer filed by the defendant, on the ground that the same is sham or frivolous.

(b) The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Fifteenth Separate Defenses of answer, on the ground that the same are sham or frivolous. 20

GREEN & GREEN,
Attorneys for Plaintiff.

30

40

Testimony.

NEW JERSEY SUPREME COURT,

ESSEX CIRCUIT.

May 10, 1929.

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MERCHANTS' SECURITIES
CORPORATION

vs.

SAM SNYDER.

Action
at Law.
Before:
HON. WORRALL
F. MOUNTAIN,
J., and a jury.

For the plaintiff appears GREEN & GREEN (by
DAVID GREEN).

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For the defendant appears HERMAN B. J. WECK-
STEIN.

(A jury is called and sworn.)
(Mr. Green opens for the plaintiff.)
(Mr. Weckstein opens for the defendant.)

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ELEANOR BOESAK sworn in behalf of the plaintiff.

Direct examination by Mr. Green.

Q. You are connected with the Merchants' Securities Corporation in what capacity? A. Secretary.

Q. In that capacity you are familiar with the accounts bought by the Merchants' Securities Company? A. Yes, I am.

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Q. Are you familiar with the account of Sam Snyder? A. Yes, sir.

Eleanor Boesak—For Plaintiff—Direct.

Q. Did you buy that account? A. Yes, sir.

Q. I show you what purports to be a promissory note. Is that the original note in the matter?

A. Yes, sir, it is.

Mr. Green: I offer the note in evidence.

Mr. Weckstein: No objection. 10

(Same is marked Exhibit P-1.)

Q. When was that note bought by you? A. The date of the check. You have the check there. January 23, 1928.

Q. That was the date of the note? A. Correct.

Q. Was the note paid? A. No, sir, no payment was made.

Q. Nothing paid on the note? A. Nothing at all. 20

Q. What is due on the note at the present time?
A. \$1383, the principal, plus interest of \$100.26, making a total of \$1483.26.

Q. When did the first default occur on that note?
A. February 23, 1928.

Q. Is this the check you gave him in payment of the note? A. Yes, sir.

Q. You signed that yourself? A. Yes, sir.

Mr. Green: I offer the check in evidence.

Mr. Weckstein: No objection. 30

(The same is marked Exhibit P-2.)

Q. When that note was bought by you was it in the condition it looks to be now? A. What do you mean?

Q. Has there been any change on the face of the note? A. No, none whatever.

Q. It was presented to you like that? A. With the contract. 40

*Eleanor Boesak—For Plaintiff—Cross.**Cross-examination by Mr. Weckstein.*

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

Q. Done business with him before? A. Yes, sir.

10 Q. When did you first meet Mr. Snyder? A.
Mr. Snyder came into our office regarding a Ford
car. I can tell dates better from these cards. On
or about August 17, 1927, Mr. Snyder came in
concerning a Ford sedan which had been repos-
sessed by us and he wanted to take over the balance
due on that contract at the time and have title in
his name. I closed the deal with Mr. Snyder at
that time.

20 Q. At that time was the automobile the prop-
erty of the Merchants'? A. It was.

Q. As the representative of the Merchants' Se-
curities Corporation you dealt directly with Mr.
Snyder? A. I did.

Q. When was the next transaction? A. The
next transaction took place August 19, 1927.

The Court: Have these anything to do
with this case?

Mr. Weckstein: Yes, to show that the de-
fendant was not an innocent holder.

30 The Court: These are other transac-
tions.

Mr. Weckstein: To show the time of
these transactions.

A. (Continuing) On August 19, 1927, Mr.
Snyder closed a deal with me on a Reo truck which
he purchased, also repossessed by us, and signed
papers on that.

40 Q. That was also the property of the Merchants'
Securities Corporation? A. Yes.

Eleanor Boesak—For Plaintiff—Cross.

Q. Mr. Snyder made his payments regularly on both of these cars? A. According to the records, he did.

Q. While he was making them did he ever have occasion to see or speak to you in the office? A. I never received the payments and I personally never came in contact with Mr. Snyder any more, that was the only transaction Mr. Snyder and I saw each other personally in. 10

Q. In the beginning of January did Mr. Snyder talk to you about buying a new car? A. Not Mr. Snyder.

Q. Didn't you refer Mr. Snyder to the Newark Chandler Motor Corporation?

Mr. Green: I object to the conversation Miss Boesak had with these defendants. It is all a matter of cross-examination. 20

The Court: She represents the plaintiff corporation. You might ask only one question on direct examination, but on cross-examination they can open up the entire transaction. She represents the plaintiff and I think she is in that position. The corporation cannot testify.

Mr. Green: There is nothing in the answer that sets forth any of the transactions that counsel seems to refer to. 30

The Court: I think the present questioning is in order and I will allow it.

Q. (Question read.) A. I do not refer anybody to any corporation when they want to purchase cars.

Q. Didn't you send Mr. Snyder down to the Chandler Newark Motors Corporation originally to get one of these automobiles you sold to him? A. Did I? 40

Eleanor Boesak—For Plaintiff—Cross.

Q. Yes. A. I don't recall that I did. I don't recall how it was that Mr. Snyder came into the office and became interested in the car. I am sorry I cannot tell you that.

10 Q. Do you know when Mr. Snyder paid for any of those automobiles? Did he pay for them to you at any time? A. No, he did not. Some payments came in person and other payments through the mails. Our records do not show how they were received.

Q. Did Mr. Snyder ever come in to you and tell you that he had bought a car from the Newark Chandler Motors Corporation at your suggestion? A. Never, no, sir.

20 Q. Did he tell you the car was to be delivered March 15th? A. Delivery was never brought up, because I did not discuss this transaction with Mr. Snyder. There was no reason for anything like that.

(At 1 o'clock P. M. the Court takes a recess for one hour.)

 AFTER RECESS.

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ELEANOR BOESAK resumes the stand in behalf of plaintiff.

Cross-examination (continued) by Mr. Weckstein.

Q. How long have you been with the Merchants' Securities Corporation? A. Five years.

40 Q. Explain to the jury just what steps are taken by a dealer and what steps are taken by a finance corporation before any sums are paid out. A. As to what steps are taken by a dealer, I do not think

Eleanor Boesak—For Plaintiff—Cross.

I can explain that, not being with a dealer. I can explain the finance companies.

Q. Just what steps are taken by a finance company before the money is paid out. A. We receive a credit application given to us over the telephone and our clerk takes that down and starts to investigate the credit and accordingly the contract is either accepted or rejected and some days later when the delivery is supposed to take place, sometimes the same day, the contract is brought in in company with a note and a bill of sale and discounted and we in turn issue our check, but only upon delivery of the car. 10

Q. What contract? A. Conditional sale contract.

Q. Do you have any references to co-operate with the dealers in talking to these parties? A. Co-operating with the dealers? 20

Q. In taking the credits of the parties? A. Any information is given us by the dealer and our credit manager does the investigating.

Q. Do you ask for any evidence of purchase by the prospective purchaser? A. The evidence is right in the contract. The contract acknowledges delivery of the car so we do not have occasion to ask for evidence.

Q. You do not ask for a copy of the order? A. No, the contract is all we have. We have no reason to ask for an order. It is signed. 30

Q. Is a bill of sale issued for these cars? A. By the dealer. The bill of sale is copied with the contract and sometimes held two or three days by the dealer.

Q. The bill of sale contains the motor number and other particulars concerning the car? A. To correspond with the contract. 40

Eleanor Boesak—For Plaintiff—Cross.

Q. Do you check them with the particular car to see whether such car has been delivered? A. No, the contract specifies the car and delivery is acknowledged on there, so we do not check it.

10 Q. You do no checking of the deliveries by the dealer at all? A. Not as far as retail contracts are concerned.

Q. Relying entirely on the contract? A. Relying on the instrument presented to us, yes.

Q. Who does the guaranteeing of the fire insurance? A. That is one of the things that is handled by one of the insurance companies that handle our fire and theft insurance on conditional sales contracts on the cars.

20 Q. They have an office in the same office occupied by the Merchants' Securities Corporation? A. No, they are not part of the Merchants' Securities Corporation or occupy an office there.

Q. They are in the same building, aren't they? A. They were at one time.

Q. Upon the filing of the contract you cause insurance to be placed upon the automobile? A. Yes, sir.

30 Q. And you add the amount of insurance to the note? A. It is in the note, when the finance charge is.

Q. How much is the insurance on this particular automobile? A. I couldn't tell you that, I haven't the papers on that.

Q. Yet you have included that in the note? A. We have a regular finance charge.

Q. Wasn't that insurance canceled? A. I am sorry, but I did not look into that.

40 Q. Are you familiar with the signature of Mr. Schmidt? A. Yes.

Q. I show you this letter and I ask you if this purports to be an official letter of the Merchants'

Eleanor Boesak—For Plaintiff—Cross.

Securities Corporation signed by Mr. Schmidt?

A. The letter is on the letterhead of the Merchants' Securities Corporation. It is not signed by Mr. Schmidt.

Q. It is not? A. No.

Q. By reading that letter can you tell us whether this insurance is canceled or not? A. I couldn't say that unless I see a confirmation from the insurance company. 10

Q. This letter is on the letterhead of the insurance company? A. Yes.

(The letter is marked Exhibit D-1 for Identification.)

Mr. Green: We will admit that the letter was sent. 20

Q. If the insurance was canceled Mr. Snyder would be entitled to a credit for that? A. He would be, yes.

Q. Have you given him such credit? A. No, sir. We have not. I could explain that, if I am allowed to.

Q. Surely. A. I do not know how soon after the insurance was canceled. The date of the letter is March 5th. That is when it was discovered that the insurance company would not carry the insurance, but the default in the contract took place on February 23, and we brought suit on that basis at the time, and I had no occasion to credit the account then. 30

Q. Is there a Mr. Schmidt connected with your company? A. Yes.

Q. What is his capacity? A. He is president.

Q. What were Mr. Schmidt's particular duties in connection with this contract? A. Mr. Schmidt had no particular duties except that we would 40

Eleanor Boesak—For Plaintiff—Cross.

consult him occasionally, or the credit manager would on the question of credit, but he had no particular duties, he depended upon me.

Q. How much did you pay for this contract? A. The amount of the check.

10 Q. \$1200? A. \$1200 is right.

Q. Were there any other checks given to the Newark Chandler Motors Company on that day?

A. In connection with this contract?

Q. No, any other checks given by your company?

A. That I couldn't say. I haven't the check book before me to tell you that.

Q. How would you know this check given for Snyder's automobile from the evidence on the check? A. In the first place, my stub in the check

20 book would show it, and in the second place, it is in the corner of the check.

Q. You paid \$1200 for this note? A. Yes, sir.

Q. And charged an insurance premium in addition to that? A. Insurance and finance premium.

Q. Can you estimate about how much that insurance would be? A. We have a chart and that is all figured together. I am sorry I cannot answer you that.

30 Q. You knew Mr. Carton, didn't you? A. Yes, sir.

Q. Had a little difficulty with him?

Mr. Green: I object. I think counsel has gone as far as he can in cross-examination as to the note, and, as to Mr. Carton, I think he is going a little far afield.

The Court: Yes, I think that is beyond the scope of cross-examination.

40 Mr. Weckstein. The only reason I am bringing this in is because I am under the impression that separate suits for these ac-

Eleanor Boesak—For Plaintiff—Cross.

counts, or similar accounts or other accounts, have been commenced in other jurisdictions against Mr. Carton, and if there is a suit pending against Mr. Carton I think the jury should know that fact.

The Court: This is in the nature of a fishing expedition. Have you set that up as a defense? 10

Mr. Weckstein: Yes, the eleventh separate defense.

The Court: I will sustain the objection.

Q. Do you know whether or not the car was delivered to Mr. Snyder on this transaction?

Mr. Green: I object. The note is in evidence and the action is on the note. There is nothing on the note that refers to the car. I think counsel is trying to bring out a matter of defense on cross-examination. 20

The Court: This note is made payable to who—myself or bearer?

Mr. Green: Payable to bearer, and then so to us. It was negotiated by delivery and it is made payable to bearer and negotiated by delivery. 30

The Court: I will permit that question to be asked, as to whether at the time this note was taken there was any knowledge of that at the time it was purchased.

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

Exception noted as ground of appeal.

Q. At the time you purchased this note, do you know whether the car was delivered to Mr. Snyder? A. I assumed it was delivered, because he acknowledges delivery on the contract. 40

Q. Do you know as a matter of fact? A. I told you we did not do that.

*Eleanor Boesak—For Plaintiff—Cross—Redirect.
Motion to Dismiss.*

Q. This note you produce in court is part of a long legal paper, is it not? A. Yes.

Q. Have you that legal paper here? A. I think Mr. Green has that. Wait a minute. Yes, Mr.
10 Green has the condition of sale contract.

Q. Is this the paper to which this is attached (indicating)? A. That's right.

Q. The note at the time of presentation to you was not perforated in that manner, was it? A. What do you mean, "perforated"? Do you mean detached from the contract?

Q. Yes. A. In most instances it is attached right to the contract.

20 *Redirect examination by Mr. Green.*

Q. When this note and contract was sold to you, the note was one instrument and the contract another?

Mr. Weckstein: I object to that as calling for a conclusion of law.

The Court: I sustain the objection.

PLAINTIFF RESTS.

30 Mr. Weckstein: I move for a nonsuit on the ground that the damages presented by the plaintiff are speculative. The plaintiff presented the note for \$1383, on which they admit there is a certain amount which should be credited for insurance, and yet they cannot estimate that exact amount. I think we should know exactly what amount is demanded of this defendant.

The Court: I will deny the motion.
40 Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Sam Snyder—Defendant—Direct.

SAM SNYDER, SWORN in his own behalf:

Direct examination by Mr. Weckstein.

Q. Where do you live? A. 305 Goldsmith Avenue. 10

Q. Did you have any dealings with the Merchants' Securities Corporation? A. Yes, sir.

Q. About when did you have the first dealings with them? A. In 1927, what time of year I can't just recall—the month. A friend of mine told me that the Merchants' Securities Company had a car there repossessed, a Ford sedan, and he took me up and I had a talk with Miss Boesak.

Q. You bought the car? A. And I bought the car from Miss Boesak under the same conditions that the other man had to pay. 20

Q. That's all right. Where was the car? A. The car? After I bought the car, she gave me a note to go over to the Chandler Newark Company, to Mr. Carton, and I went around there with the note.

Q. You got a car? A. I received a car with that note Miss Boesak gave me to get the car.

Q. You paid for it? A. Yes, and got a receipt.

Q. You know Miss Boesak and have seen her in the office? A. Yes. 30

Q. How many times? A. Quite often. Then I bought another car, I went over there again and wanted to pay my payments. Mostly, sometimes, I did see her, and sometimes I didn't see her. Twice I mailed my payments.

Q. Were you in the office of the Merchants' Securities Company during the early part of January, 1928? A. Yes, sir.

Q. Did you see any of the officers of the company? A. Yes, sir. 40

Q. Who did you see? A. Miss Boesak.

Sam Snyder—Defendant—Direct.

10 Q. Did you talk to her? A. Yes. I went in to ask her something, being I bought two cars and made a good buy, because they were repossessed cars and I got them cheap, so my intention was to get a new, larger car for myself, so I went in to find out if they got any pleasure cars.

Mr. Green: I object to this testimony as irrelevant to the note made in this case in January.

The Court: I will admit it.

The Witness: That was right after New Year's, in January some time.

20 Q. What did you say? A. I went in to try and find out if they got another car the same way I bought the others, and I said—

By the Court.

30 Q. Who did you say this to? A. Miss Boesak. I went in and asked if they had anything in the way of a car the way I bought the first two cars. I bought a Ford sedan and a Reo truck from them, and she said that "We ain't got one," and then we started talking about a Chandler, because I had once a Chandler, and I said, "I am going over to the Chandler Company. Will you finance it?" She said, "You are always fair with your payments." I was to pay the 25th, and it was always in there, and I told her I was going to buy a new car, but didn't need it, but wanted it when the clear weather starts up, and when I left I said "Good-bye" and went out. And on the 25th—

By Mr. Weckstein.

40 Q. Was there an automobile show in Newark?
A. Then the auto show started on the 14th—I can't

Sam Snyder—Defendant—Direct.

remember—or the 12th—but I know I went down on the 18th, Friday, and I see a car and I had a talk with Mr. Carton. He was the manager of the Chandler, and we straightened out about the car. And the price was \$2,165, so I gave a check for \$65—

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Q. Just a minute. Is this the check that you paid to the Chandler Newark Motors Corporation (indicating)? A. Yes. They went over to certify it the next day.

Mr. Weckstein: I offer this check in evidence.

Mr. Green: No objection.

(The check is marked Exhibit D-2.)

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Q. Is this the contract you made with Mr. Carton that evening (indicating)? A. Yes, sir.

Mr. Weckstein: I offer the contract in evidence.

Mr. Green: I object to the contract with the Chandler Newark Motors Company.

The Court: How is that evidential?

Mr. Weckstein: Our purpose is to show that the Merchants' Securities Company is not an innocent holder and knew of this transaction and therefore is bound by any equities we may have had.

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The Court: This contract does not show it.

Mr. Weckstein: No, but it shows the date of delivery in accordance with the conversation with Miss Boesak. The contract required delivery to be made on March 15th.

The Court: I will not admit it in evidence as yet, but I may later on.

40

Sam Snyder—Defendant—Direct.

Q. Did you have occasion in the making of that contract to call again at the office of the Merchants' Securities Corporation? A. Yes, sir.

Q. How soon? A. Right the following week, when I made my payment on the old car.

10 Q. How soon after the signing of this contract was that? A. That was the following week, because I signed the contract on Friday and that was the following week.

Q. Who did you see there? A. Miss Boesak.

Q. Did you talk to her? A. Yes. I told her that I bought a car and I would like to take it on the 15th of March and I hoped they will find me all right, that I will make my payments to suit their financing.

20 Q. Why did you go to Miss Boesak? A. I had all my confidence in them because I bought two cars and they treated me nice, and confidence is more than money sometimes.

Q. Up to that time when you had talked to Miss Boesak and told her that you bought a car, up until March 15th, had you signed any other papers for a contract to purchase the car? A. Of whom do you mean?

30 Q. Well, after you had this conversation did you get in touch with Mr. Carton? A. Yes. Mr. Carton called me up.

Q. How soon after this conversation with Miss Boesak? A. I couldn't just recall if it was the day before or the day after. I think it is the day after. I can't recall exactly the time, because it didn't concern me at all, exactly.

Q. Did you go down and see Mr. Carton? A. Yes, sir.

40 Q. How did you happen to go down? A. I come down and he was late getting through from work and I come into the office and Mr. Carton said,

Sam Snyder—Defendant—Direct.

“That’s it, Sam. Do you want the car any time?”
I said, “Yes.” He says, “You know, you will have
to get——”

Mr. Weckstein: I object to any conversation between Mr. Carton and the defendant.

Mr. Green: One of the defenses in this case is that the contract and note were secured from Mr. Snyder by fraud. I believe such proof is admissible in view of the circumstances.

The Court: He obtained it by fraud? Who did?

Mr. Weckstein: The Chandler Newark Motors Corporation.

The Court: Then it is a good defense between that company and Snyder, but how about the next endorsee or the next holder?

Mr. Weckstein: As I have explained to your Honor, the testimony is before this Court that the holder, or ultimate holder, the Merchants’ Securities Company, knew that this car was not to be delivered until the 15th of March and that this defendant could not read or write.

The Court: You allege that you can set up fraud as a defense. Now, fraud as a defense cannot be set up as a defense against the holder of this note unless you prove the owner knew of the fraud. Fraud is a personal defense between the parties to an instrument. An innocent holder of this note is not bound by any fraud at all that the corporation who sold this car to him might have participated in, if they did.

Mr. Weckstein: Our allegation and our proof thus far is that the Merchants’ Securi-

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Sam Snyder—Defendant—Direct.

ties Corporation is not an innocent holder of this contract.

The Court: You can prove that.
(Argument.)

10 The Court: I do not want you to prove fraud and then stop, because, of course, that will leave something in the air which should not be there. I am perfectly willing that you should prove what the defendant knew to indicate that it was not an innocent holder for value, or what the plaintiff knew, but I am not willing that you should prove fraud between Snyder and the people who sold the car to him, but I will let you prove that they knew there was fraud. Do you see what I mean?

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Mr. Weckstein: Yes.

The Court: Then the fact of their not being innocent holders for value goes to your defense.

Q. How long have you been in this country? A. About eighteen years.

Q. How old were you when you got here? A. Twenty-two or twenty-one.

30 Q. Did you ever attend any of the public schools? A. About a year, when I first come.

Q. What school did you attend? A. In Boston, the Cambridge School in Boston.

Q. Day or evening? A. Night school.

Q. Can you read and write English? A. Slightly. Typewriting mostly, but not very high work.

Q. I show you this condition of sale contract and I ask you if you know what that shows? Look at it and tell us. A. I can read some of the words, but I don't understand the meaning.

40

Sam Snyder—Defendant—Direct.

Q. You spoke to Miss Boesak about this purchase on how many occasions? A. Twice.

Q. On each occasion you told her when the car was to be delivered? A. Around the 15th of March or the 1st of April.

Q. Do you know Mr. Schmidt? A. Yes. I happened to meet him a couple of times in the Chandler people's place with Mr. Carton. 10

Q. Did you meet him anywhere else? A. I met him in his own office, too.

Q. When you met him in the office of the Chandler Newark Motors Corporation did you notice what he was doing? A. No, I didn't pay much attention, because it didn't concern me much. He was working around with Mr. Carton.

Q. About how many times did you see him there? 20
A. I met him twice, on two occasions, and Mr. Carton introduced me and said, "This is Mr. Schmidt from the Merchants' Securities Company."

Q. When did you first hear from the Merchants' Securities Corporation in reference to this matter?

A. The first I received the insurance bill, and I called up Mr. Carton and he said—

Mr. Green: I object.

Q. When did you first receive any notice of payment, do you know, from the Merchants' Securities Corporation? A. I should say about some time in February or the beginning of March. 30

Q. If I show you this envelope will it refresh your recollection? It is dated February 16th. A. Yes, sir.

Q. Is that the notice you got from them? A. Yes, sir.

Mr. Weckstein: I offer the notice in evidence. 40

(Same is marked Exhibit D-3.)

Sam Snyder—Defendant—Direct.

Q. Those were dated the 16th of February? A. Yes, sir.

Q. I show you this paper for the purpose of refreshing your recollection and I ask you if you were in the office of the Merchants' on that day?

10 A. Yes, sir.

Q. What is the date of that check? A. February 6th.

Q. That was before you received the notice of payment? A. Yes, sir.

Q. Who did you see in the office then?

The Court: Wait a minute. Before he received notice of what payment?

20 Mr. Weckstein: The notice of the first payment under this note. Notice that it was due.

The Court: Yes.

A. What? I didn't receive——

By Mr. Weckstein.

30 Q. Just a minute. Who did you see in the office on that day? A. At that time I talked to the girl, and she went in and got me the bill of sale from Miss Boesak. I don't remember exactly whether I did talk at that time with Miss Boesak, because she asked me to bring out the bill of sale because my bill was due the 25th and I paid that check two weeks ahead.

Q. That had nothing to do with this car? A. No. The week before I did.

Q. On that day did you talk to anyone at all about this Chandler car you had ordered? A. I said I couldn't just exactly——

40 Q. You are not sure? A. No.

Q. Did anyone say anything to you about the Chandler car you had ordered? A. No.

Sam Snyder—Defendant—Direct.

Q. Does the cashier know you by name? A. I saw the cashier for six or eight months, every month coming in, and they always had trouble making out the checks.

Q. Did they call you by name? A. They called me Mr. Snyder, because I always showed them the check. It was made out this way (indicating) and they filled in the name. 10

Q. Did you receive this Chandler automobile? A. I never seen it, except in the show, that's all.

Q. Did you tell the Merchants' that you never received this automobile? A. I never went up on that occasion. I told you to notify them. I didn't receive a car and I didn't know why I should pay.

Q. As the result of some notification which they received did you receive this letter canceling the insurance? A. Yes, and I brought it over to you. 20

Q. You told us before that after you had informed Miss Boesak of the purchase you went to see Mr. Carton? A. Yes, sir.

Q. As the result of something he said to you, you signed the papers? A. Yes, sir.

Q. Did he read the papers to you? A. He started reading them, and he was busy and he said, "What's the use of reading? You have to have the insurance also for the fire and theft——" 30

Mr. Green: I object to this. There is nothing in the evidence to show who Mr. Carton is.

The Court: I think it is the same situation as existed before. If the plaintiff had notice of this, that is different.

Mr. Weckstein: There is no way of proving that the plaintiff had notice of the fraud or is a party to the fraud. I am willing to state that as an open fact, but I thought 40

Sam Snyder—Defendant—Direct.

that, as they knew that the car was not to be delivered until then, that they were not the innocent holders; that they knew of some of the defects that existed.

10 The Court: If they had notice, the mere fact that a man could not read or write does not preclude him from signing a contract.

(Argument.)

The Court: I permitted you to show that Miss Boesak was told that delivery was not until March, 1928. That has been shown in the evidence and I am not combating that.

20 Mr. Weckstein: Now, I say that putting in evidence that the holder of the note knew that there was some modification in the deal——

The Court: No, up to this time I will only go that far. Proceed.

Q. You said that your car was insured but the policy was canceled? A. Yes, sir.

Q. Were you ever given credit for that amount of insurance? A. No, sir.

By the Court.

30 Q. Do you know the amount of the premium you had to pay? A. No, sir.

Mr. Green: We will admit that to be \$15.

40 Q. Is that what you remember? A. I gave him a deposit, and when I was supposed to take the car and that maybe about how much I will have to pay a month. I don't know anything. I was to have to pay for the car, because the only thing I signed was this thing to be delivered the 15th of March. That's all I know about it.

Sam Snyder—Defendant—Direct—Cross.

Q. You went to the Chandler Motors Company in Newark and signed an agreement, and at the same time or some time afterwards signed this note and gave it to them? A. Will you let me explain? When I signed this it was not a note like that. It was a long sheet of paper, about two double sheets. 10

By Mr. Weckstein.

Q. That is all right. What I want to get is this: Where did you sign it? In the office of the Newark Chandler Motors Company? A. Yes, sir.

Q. You gave this and the other papers to them? A. No, this I signed in there for insurance.

Q. How did you come to do it? A. Mr. Carton and the bookkeeper was there.

Q. He was an officer of the Newark Chandler Motors Company? A. He was boss of the Newark Chandler Motors Company. 20

Cross-examination by Mr. Green.

Q. You bought two cars before that from the Merchants' Securities Corporation? A. Yes, sir.

Q. And each time you signed a contract like that (indicating)? A. I don't recollect.

Q. Did you or didn't you? A. They used to give me some papers to sign. 30

Q. The paper looked like this, didn't it? A. I can't recall. I couldn't say for sure or not, but I don't think it was.

Q. You wouldn't say they didn't? A. It was a different paper, a short paper, a paper like that (indicating).

Q. You also signed a note each time, didn't you? A. I signed two short papers.

Q. Each time you bought a car you signed a paper like this (indicating)? A. I signed two 40

Sam Snyder—Defendant—Cross.

papers and I can't recall. It was a plain, ordinary note, I think.

Q. Can you read what that says? A. That wasn't on it when I got it.

Q. Can you read that? A. "115," yes.

10 Q. \$115. What does that say right after it? A. "One month."

Q. Read this line (indicating). A. The top writing line?

Q. Yes. A. That wasn't on when I signed it. I can read that one three hundred.

Q. Read some more of that note. A. One three hundred in the note, that's all. I can read "Merchants' Securities Corporation," but when I come to read or understand the other words, I don't know them.

20

Q. Read this part here, beginning with this word, and go right across. Read it out loud. A. I am trying to make it out. As soon as I make it out I will read it to you. "For value"—"received."

Q. What is after that? A. I can't make this word out.

Q. What is the next word to that? A. I can make out the last two, but I don't know what it means.

30 Q. Read on there. A. "Paid to——."

Q. What is this word here? A. "Bearer."

Q. Read on. A. What does that mean (indicating)?

Q. Read on here. A. The small words I can't make out.

Q. This is what? A. One hundred eighty three and nought.

Q. What does this say? The small word there. A. "Dollars."

40 Q. \$1383. Now, what is here (indicating)? A. This means Merchants' Securities Company, there.

Sam Snyder—Defendant—Cross.

Q. What does this mean up here (indicating)?
What is that? A. One three eight three, but when
I signed this here (indicating) there was nothing
on there.

Q. There was nothing? It was in blank? A. In
blank for insurance.

10

Q. There was nothing on there? A. No, sir.

Q. You do know that this reads "For value re-
ceived," as you just said? A. Some words I under-
stand, but I don't know what this word means
(indicating).

Q. "Promise to pay to bearer." A. What does
"bearer" mean?

Q. The person who holds it. A. I will explain.
When I got this paper I didn't see that. It wasn't
on. The paper was folded up, two of them. There
was another one, two double sheets. It was doubled
up. If you want me to explain, I will explain to
you.

20

Q. You say the paper was folded? A. Two of
them.

Q. You say when you got the paper it was folded
like this (indicating)? A. If you will let me, I
will show you. That is the way I got one paper
and another one, and he said—he was going home
from work and he said, "Sign it."

30

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

The Court: Proceed.

Q. Did you have a bank account with the Clinton
Trust Company in Newark? A. Yes, sir.

Q. Did you also have a bank account at the
Liberty Trust Company in Newark? A. Yes, sir.

Q. You borrowed money from those two banks,
didn't you? A. Yes, sir.
signed.

40

Sam Snyder—Defendant—Cross.

Q. You were asked to sign notes? A. They gave me a plain note.

Q. How long have you dealt with banks? A. For five years.

10 Q. What business are you in? A. Carpenter contractor business.

Q. Do you contract work? A. A little. Small jobs once in a while.

Q. You sometimes go to banks to finance you, to borrow some money? A. Yes, sir.

Q. You own the house you live in, too? A. Yes, sir.

Q. You drive an automobile, I understand? A. Yes, sir.

20 Q. How long have you had a license? A. I couldn't tell you. About five years.

Q. You took an examination to get your license, didn't you? A. Yes.

Q. You took a written examination, too? A. No, sir.

Q. You did not? A. I don't remember.

30 Q. When you went down to get your license out didn't you take a driving test around the block and then come back and take a written examination? A. I'll think it over and tell you. I started writing and the fellow objected to that and he took me in the back—

Q. You were able to write it out? A. He couldn't read it.

Q. You were able to read the questions? A. He said, "You better go in the back there."

40 Q. On the previous two accounts on the Ford car and the Reo car you bought from the Merchants' Securities Company, didn't you sign a note each time? A. Whatever Miss Boesak gave to me I

Sam Snyder—Defendant—Cross.

Q. If she gave you a paper like this (indicating), it was signed? A. She gave me a paper and I signed it.

Q. When you paid your account in full you insisted on the return of your notes, too, didn't you? A. They gave it to me myself. I only asked for the bill of sale, because I had to sell the car. 10

Q. You did get back a bill of sale and a note on the previous two cars? A. I don't think I got a note back. I got a bill of sale, because I had to have a bill of sale.

Q. You do know that you signed a note each time? A. Whatever she gave me I signed. I believe—

Q. You say you went to the office of the Merchants' a number of times to make instalment payments on the other two accounts? A. Yes, sir. 20

Q. They have a pretty big office up there, haven't they? A. Yes.

Q. How many employees do they have there? A. Three or four. Two windows, and if you want to see Miss Boesak you go in and then Miss Boesak has an office for herself, and sometimes you can see her through a little window, too.

Q. You made payments to the cashier, did you not? A. Yes, sir. 30

Q. The cashier was present and you spoke to her every time you went there? A. No, sir. When I wanted to come in to pay, they used to have a check and that was made in the name of the Merchants'.

Q. The cashier was the one you paid the money to? A. Yes, sir.

Q. As a matter of fact, you didn't have anything to do with Miss Boesak when you went in to pay the instalments on the other accounts, did you? A. If I wanted to see her, I asked for her. 40

Sam Snyder—Defendant—Cross.

Q. How many times did you see Miss Boesak?

A. Once. I didn't have to ask, because she was standing in the front and I called her over.

Q. You signed your name here (indicating), didn't you? A. Yes, sir, that is my signature.

10

Mr. Green: I ask to have this paper marked for identification.

(Paper marked Exhibit P-2 for Identification.)

Q. You also signed your name on the note here (indicating)? A. Yes, but that isn't the way it was when I signed it.

20

Q. You signed your name to that contract and note on January 19th, or January 23rd? A. Here is the contract, you can see it.

Q. Did you sign your name on this on January 19th, or January 23rd? A. I don't remember the date.

Q. You don't remember the date of this? A. No. It was the following week after the show was going on.

Q. Can you read this in here, "cash"? A. Cash.

30

Q. "Price"? A. I can read this here (indicating).

Q. What does "price" stand for? A. Price.

Q. What is this word here, "balance"? A. Yes.

Q. What is "amount"? A. I can read this word (indicating).

Q. You can read this here, too (indicating)? What does this say? A. I can read this word because you showed me here.

40

Q. "Time." I understand that when you received the notice from the Merchants' that there was an instalment due on the note you signed, that you did not go back to the Merchants', but went

Sam Snyder—Defendant—Cross—Redirect.

over to your attorney; is that so? A. My wife could read and she told me right away what it was, and she helped me out in my business.

Q. You didn't go up to the Merchants' Securities Corporation. You went to your attorney. Is that correct? A. Yes. She told me, "What is that?" And I told her I would go over to the lawyer and ask him. 10

Redirect examination by Mr. Weckstein.

Q. How did you happen to sign that note and contract? A. He gave me a big paper and it was folded something like that (indicating). I said, "What is that?" and he said—

Mr. Green: I object to any testimony regarding a conversation this witness may have had which he testified to on direct examination as to how he signed it. 20

(Argument.)

The Court: The original transaction we are not interested in, except as to whether or not the plaintiff had knowledge of it.

Mr. Weckstein: As long as Mr. Green has opened the door—

The Court: I will not let it go in over his objection. 30

Q. Was anything filled in on those papers when you signed them? A. No.

Mr. Weckstein: I offer again the contract of purchase of the automobile, requiring delivery on March 15th, with the Chandler Newark Motors Corporation.

Mr. Green: I object to the contract going into evidence. 40

The Court: What contract is this?

Motion for Direction of Verdict.

Mr. Weckstein: The contract for the purchase of the Chandler car, requiring delivery of the automobile on March 15th.

The Court: No, I will not admit that.

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

Exception noted as ground of appeal.

Mr. Green: May I move for the direction of a verdict, and, if it is denied, put in my rebuttal?

The Court: No.

Mr. Green: I offer the contract in evidence. This is the conditional sales contract the purchaser signed.

20 Mr. Weckstein: I object to it on the ground there is no proof that the defendant knew its contents.

The Court: Why should this go in evidence?

30 Mr. Green: I will withdraw it. Now, if your Honor please, I respectfully move for the direction of a verdict on behalf of the plaintiff on the ground that no fraud has been shown. The plaintiff in this case is the holder of the note in due course and purchased the note without any notice of any infirmity at the time the note was bought. The proof of the matter is that the plaintiff is the holder in due course and bought it before maturity and there is no proof here that there was any fraud.

(Argument.)

40 The Court: I am going to dispose of this motion, but I would like to know what happened to the automobile company. Where is this man's right of redress against that company? I will direct a verdict for the

Motion for Direction of Verdict.

plaintiff. There is no proof that the plaintiff had any notice of any defect. This is one of those cases that works a great hardship on the defendant. In a great many cases in commercial life, frequently notes are used. They are the easiest thing to turn loose in the business world and the most convenient to use for the purpose of escaping liability, because, as I have indicated to counsel, if he and I had a transaction where I gave him a note and he takes the note and we both know it is fraudulent between ourselves, that if I tried to sue him or he tries to sue me, why, fraud is a perfect defense; but suppose he takes that note with my name upon it and says to you, one of you who may be a friend of his or business acquaintance, "I am in an awful hurry. I have to get a train to Buffalo. Will you cash the note?" and he says "Yes," and he writes his name on the back and you put the note in your pocket, and if you had no knowledge of this fraud you are a bona fide holder for value without notice and there can be no defense to your recovery if you sue him. But if you did know about the fraud, then, of course, you could not recover.

The situation in this case is this: There is proof that this man Snyder had dealings with an automobile company and there is proof that he bought a car and that he signed a contract to it which has not been put in evidence. It is admitted he signed some agreement to it and signed a promissory note and gave it to the company. They took the promissory note and gave it to the plaintiff, who paid for it, and the plaintiff alleges that

Direction of Verdict.

they received the note without any defect in the note, and there isn't anything to show it. The nearest they have come to it is to say that delivery was to be made in March. That isn't notice of infirmity, that is notice of contract for sale with future delivery.

10

I will grant the motion and you may have an exception to my asking that question. I was just curious.

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

Exception noted as ground of appeal.

Mr. Weckstein: There is no amount before the jury.

20

Mr. Green: I consent to the deduction of \$15.

Mr. Weckstein: I haven't consented to the deduction of any amount, so the amount is speculative, and also the fact that the plaintiff only paid \$1200 for this note.

The Court: Gentlemen of the jury, I direct that you bring in a verdict in favor of the plaintiff and against the defendant in the amount of \$1468.26.

(The jury retired.)

30

Mr. Weckstein: I respectfully pray an exception to any amount being fixed in this cause without any proof as to the value.

Exception noted as ground of appeal.

40

Exhibit P-2.

MERCHANT'S SECURITIES
CORPORATION

No. 9291.

Newark, N. J. 1/23 1928.

PAY TO THE ORDER of Chandler Newark Motors,
Inc. \$1200.00. 10

Twelve Hundred and 00/100.....Dollars.
To the

FIDELITY UNION TRUST COMPANY
55-9 Newark, N. J.

CERTIFIED
Jan. 23, 1928.

ELEANOR BOESACK,
Secretary-Treasurer. 20

#5287—Snyder.

(Endorsement:)

CHANDLER NEWARK MOTORS, INC.
W. E. Cartin, P.

30

40

Exhibit D-1 for Identification.

MERCHANTS' SECURITIES CORPORATION
 60 Park Place
 Military Park Building
 Newark, N. J.
 COMMERCIAL BANKERS

10 Insurance Department

March 5, 1928.

Mr. Sam Snyder,
 305 Goldsmith Ave.,
 Newark, N. J.

Dear Sir:

20 You are hereby notified that the Guaranty Fire
 Insurance Company has cancelled its certificate
 #M.S.C.2621, as of date of issue.

Yours very truly,

MERCHANTS' SECURITIES CORP.
 William Schmidt.

GKM

30

Exhibit D-2.

(Envelope, postmarked Newark, N. J., Feb. 6,
 1928; 8.30 P. M.)

SUITE 1307-1308 MILITARY PARK BLDG.,
 NEWARK, NEW JERSEY.

MR. SAM SNYDER,
 305 GOLDSMITH AVE.,
 NEWARK, N. J.

40

Exhibit D-3.

NOTICE OF PAYMENT

MAKE ALL PAYMENTS DIRECT TO THIS COMPANY

If payment is not made on date when due, the entire balance on note becomes due and payable.

If payment is paid by check or money order, the cancelled check or voucher is your receipt. We send receipt only when return postage is enclosed. 10

DATE DUE: Feb. 23rd

CONT. No.: 5287

| | |
|-----------------|----------|
| Installment due | \$115.25 |
| | <hr/> |

| | |
|---------------------|----------|
| Send Remittance for | \$115.25 |
|---------------------|----------|

20

SAM SNYDER

MERCHANTS' SECURITIES CORPORATION

Suite 1308, Military Park Building,

60 Park Place, Newark, N. J.

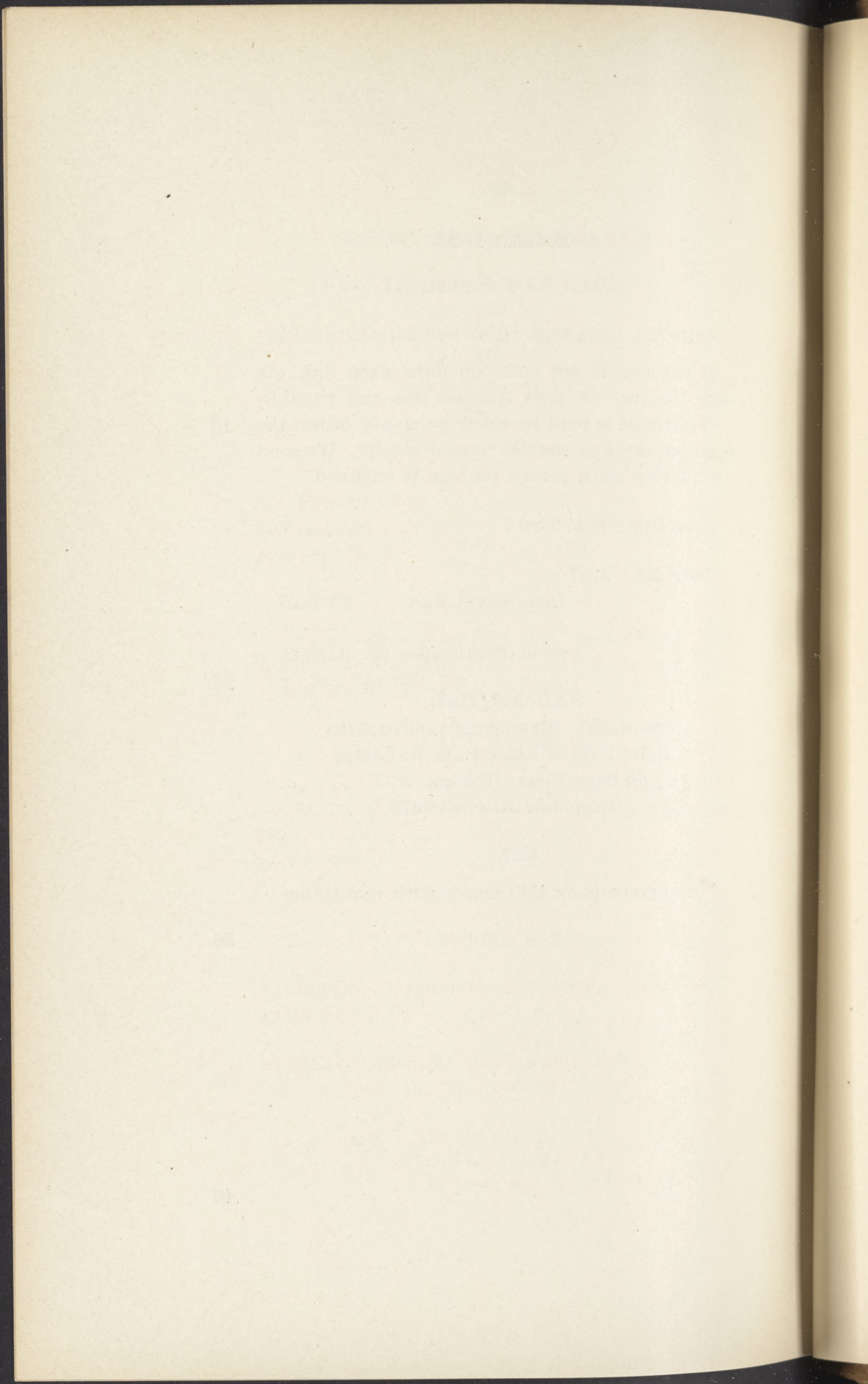
Telephone Mitchell 6670

NOTE:

Please accompany this notice with remittance

30

40



NEW JERSEY

Court of Errors and Appeals

MERCHANTS' SECURITIES COR-
PORATION,
Plaintiff-Respondent,

vs.

SAM SNYDER,
Defendant-Appellant.

Action at Law.
On Appeal from
New Jersey
Supreme Court.

BRIEF OF DEFENDANT-APPELLANT.

Facts.

Sam Snyder, an illiterate carpenter, had during 1927 purchased two repossessed motor vehicles from the Merchants' Securities Corporation, a finance company in the City of Newark. Both of said transactions had been conducted with Miss Boesak, secretary and office manager for said corporation. Both of said automobiles had been stored with the Chandler Newark Motor Corporation and examined there at instructions from the Merchants' Securities Corporation.

During the early part of January, 1928, said Sam Snyder called at the office of the finance company above mentioned, and inquired for a pleasure car, and advised Miss Boesak he would see the Chandler people.

On January 18, 1928, during the course of an automobile show in Newark, Snyder saw Mr. Carton of the Chandler Newark Motors Corporation, and ordered an automobile to be delivered on March 15, 1928.

A week later, Snyder again called at the office of the finance company to make a payment on one of his old cars, and while there advised Miss Boesak that he had bought a car to be delivered on March 15th.

A day later Mr. Carton sent for Mr. Snyder.

(An attempt was made to introduce in evidence that on this occasion, Mr. Carton, by fraud and artifice, induced the defendant Snyder to sign a note and conditional sales contract, upon the false representation that it was insurance papers, but the Court excluded this evidence, except so much as was elicited on cross-examination which is used as a basis for these facts—pp. 43-47, State of Case.)

Snyder attended evening school for about one year when he arrived in America eighteen years ago at the age of twenty-one or twenty-two. His knowledge of the language is limited to reading very little and understands none of the technical terms contained in a contract.

It appears that the alleged note and conditional sales contract in the sum of \$1,383, dated January 23, 1928, was on January 23, 1928, sold to the plaintiff for \$1,200.

Said sum was to include financing and insurance, and on March 5, 1928, the plaintiff company advised the defendant of the cancellation of the insurance policy.

The automobile involved was never delivered to the defendant.

Snyder did not know he was signing a note or contract, but merely advised it was an insurance

paper, the contract and note being on one large perforated sheet. He did not know he was signing a paper which purported to be a contract, and could not understand its contents.

Plaintiff instituted suit for the full amount of the note, and defendant contends that it is not an innocent holder, but knew of such facts as would constitute bad faith on its part.

L A W .

POINT I.

In a suit by an alleged holder in due course, all testimony which would destroy this standing is permissible, both on direct and cross-examination.

ARGUMENT.

N. I. L., Sec. 52:

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

I. That it is complete and regular upon its face;

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

III. That he took it in good faith and for value;

IV. *That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it*” (P. L. 1902, p. 592).

N. I. L., Sec. 59:

“Holder in due course; presumptions and burden of proof.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course, but the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title” (P. L. 1902, p. 594).

Proof of the general bad reputation of the payee is admissible as a circumstance on the issue of the alleged good faith purchase of a note.

First National Bank v. Chapman, 164 S. W. 900.

Good faith, and not care or negligence in any degree, is the question for the jury.

Sternhard v. Boker, 34 Barb. 436 (N. Y.).

ARGUMENT.

An effort was made, on cross-examination, to cause the secretary of the plaintiff corporation to describe her dealings with Mr. Carton, president of the payee corporation. Cross-examination would have elicited the fact that Mr. Carton had perpetrated hundreds of frauds of the same nature; that he was at the time of the trial actually incarcerated as a punishment for these very frauds; and that plaintiff corporation had instituted an action in the Court of Chancery against Mr. Carton for the recovery of funds lost as a result of this and other frauds.

The question, "Had a little difficulty with him?" (p. 36), went to the question of good faith, and plaintiff's witnesses should have been required to answer the same.

To prevent the answer to this question was prejudicial error.

(No. 1 of Grounds of Appeal.)

POINT II.

Fraud in the inception, or proof that the title of any person who has negotiated the instrument was defective, is always admissible.

Where a party is induced to sign a negotiable instrument by fraud, artifice or deception, and he signs it innocently, there can be no recovery upon the bill or note, although the holder may be an innocent purchaser for value before maturity.

National Exchange Bank v. Veneman, 43 Hun 241.

Chapman v. Rose, 56 N. Y. 137.

An illiterate maker of a note and mortgage for \$1,000 who is fraudulently induced to sign them supposing that he is signing a lease and a note for \$100 to a different payee, is not liable on the note, even when it is in the hands of an innocent purchaser, unless he was guilty of negligence in making it since he was never a party to such contract.

36 L. R. A. 434 (Iowa).

When an illiterate colored woman over seventy years of age was, by false and fraudulent representations, induced to sign certain negotiable promissory notes and mortgages securing the payment

of the same, under the belief that she was signing her last will and testament and a power of attorney, such promissory notes are unenforceable in the hands of a bona fide holder, it appearing that the maker was free from negligence.

First National Bank v. Wade, 27 Okla. 102; 111 Pac. 205; 35 L. R. A. (N. S.) 775 [large list of cases cited in 35 L. R. A. (N. S.)].

A contract which a party is induced by false representation, without reading, is void, where there is a misrepresentation as to its contents.

Alexander v. Brogley, 62 L. 584.

The manner in which the note was handled did not exhibit upon the part of the plaintiff that entire good faith which would deprive a defendant of the right to set up the true condition of affairs as a defense.

Adams v. Ashman, 203 Pa. 536; 53 Atl. 377.

ARGUMENT.

It has always been the well settled law of New Jersey, that when fraud is the defense, evidence is admissible to prove the transaction, and that even parol evidence may be introduced to show the real contract. Where a contract was obtained by fraud, and the person did not know he was signing an instrument which purported to be a contract, he is not bound thereby.

Evidence of the real contract, the perpetration of the fraud, and the circumstances attending the transaction are always admissible, even in a suit on a promissory note, and the refusal of the Court

to admit the contract between Snyder and Newark Chandler Motors, as well as the conversation as to how the contract was obtained, are prejudicial error. It is also error in that it relieved the plaintiff of a burden which the law placed on him under Section 59, N. I. L. (*supra*).

(Nos. 3 and 4 of Grounds.)

POINT III.

Where incompetent testimony is elicited on cross-examination, the matters so brought out can be gone into on redirect.

In re Wharton, 132 Iowa 714.

Upon a redirect examination a witness has the right to give evidence explanatory of his testimony on cross-examination, although such evidence might not have been admissible in the first instance.

Chrisco v. You, 153 N. C. 439.

Where a party brings out on cross-examination of a witness part of a conversation, statement or transaction, the whole may be brought out on redirect.

40 *Cyc.* 2526.

If a party, in cross-examining a witness of the other side, ask whether the party whose witness he is had had a conversation with him on a certain subject, without showing what was said, the party producing him has a right, on re-examination, to show what the conversation was.

Somerville v. Doughty, 22 L. 495.

There are authorities which hold that an overruled objection to the admissibility of testimony is waived by eliciting a repetition of such testimony on cross-examination.

Morrison v. Bryson, 129 Iowa 645.

Gautieri v. Romano, 28 R. I. 246; 66 Atl. 652.

Finnegan v. Waterhouse, 67 Atl. (R. I.) 427.

A party's exceptions to the introduction of testimony are waived by subsequent cross-examination on the same subject.

Gautieri v. Romano, 66 Atl. 652.

ARGUMENT.

Upon cross-examination, Snyder was examined as to portions of the conversation and transaction with Mr. Carton, as well as to his ability to read and write (State of Case, pp. 50-55). This conversation was objected to on this direct examination (pp. 43, 47), but upon counsel bringing out the same under cross-examination (p. 51, line 30), he thus waives his objection to the same, and the plaintiff should be permitted to explain it on redirect.

Even though it is urged this testimony was proper when first offered, the Court again erred by refusing its admittance, after the "doors had been opened" under cross-examination.

(No. 5 of Grounds of Appeal.)

POINT IV.

Where there is any evidence of bad faith, or circumstances from which bad faith may be inferred, it is a question for the jury to determine if the owner is a holder in due course, free from defenses.

Whether or not the maker was guilty of a want of ordinary care in signing the note without being able to read it, but trusting another man to do so, is for the jury.

Sim v. Pyle, 84 Ill. 271.

It has been stated that the N. I. L. does not change the rule of the law merchant as to the burden of proof, where fraud is shown, or where title of the person negotiating instrument is defective.

Mitchell v. Baldwin, 88 App. Div. 265.

Parsons v. Utica Cement, 82 Conn. 333;
73 Atl. 783.

Mech. Sav. Bank v. Feeney, 108 Atl. 295
(N. H.).

Sproul v. Besken, (1917) 166 N. Y. Supp.
606.

Daniel on Negotiable Inst., Vol. I, 6th Edition,
p. 819, says:

“Holder must show: He did acquire the instrument bona fide for value in the usual course of business, while it was current, and under circumstances which do not operate as constructive notice of the facts which impeached the original validity, the defendant must then prove he had actual knowledge of such facts; otherwise the holder’s right to a recovery against him is perfected.”

This is cited with approval by many Courts, "that he acquired it bona fide for value, in the usual course of business, while current, and under circumstances which create no presumption that he knew the facts which impeached its validity."

Brook v. Teegue, 52 Kan. 119.

Hodson v. Eugene Glass, 156 Ill. 397.

He makes out a prima facie case by proving the note was endorsed to him for value before maturity. Nothing else appearing, a presumption arises that he purchased the note in good faith without notice of the fraud. This presumption stands instead of direct proof, till overcome by rebutting evidence. Where there is evidence on both sides affecting the several points or propositions necessary to be shown, then the general burden of proof is upon the plaintiff to make them out.

Kellogg v. Curtis, 69 Mo. 212.

When a note is shown to have been fraudulent in its inception, the burden is thrown upon the holder to prove that he came by the possession fairly, without any knowledge of the fraud, and it is held, further, not enough merely to show that it was negotiated before maturity. It must appear to have been done fairly in the due course of business, unattended with any circumstances justly calculated to awaken suspicion.

Aldrich v. Warren, 16 Mo. 465.

Perrin v. Noyed, 39 Mo. 384.

It was recognized as necessary for a bank who had purchased a note, and was suing thereon, to show that none of its officers had any notice of the matters pleaded by the defendant in defense

of the note, and it was held that the testimony of the cashier that neither he nor the other officers of the bank had any notice of the matters was not conclusive.

Bennette State Bank v. Schloesser.

First Nat'l Bank v. Wise (1915), 172
Iowa 24.

German Nat'l Bank v. Kelly (1918), 183
Iowa 269.

Johnson v. Walker, 79 Conn. 348, 65 Atl.
132.

In the case below defendant offered to prove not note of corporation, but individual debt—which the Court refused to permit, and in its opinion the Court says by Gummere, C. J.:

“Under Section 59 every holder is deemed to be a holder in due course, * * * but that section further provides that when it is shown that the title of the person who has negotiated the instrument was defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired the title as a holder in due course. The effect, therefore, of the rejected proof, would have been to destroy the then existing presumption that the plaintiffs were ‘holders in due course,’ and to throw upon them the burden either of proving that fact or of overcoming the proof of the defendant. The exclusion of the offered testimony was harmful error. Reversed” (unanimous opinion of Gummere, C. J., Swayze & Trenchard, JJ.).

DeJonge & Co. v. Woodport, 77 L. 232.

Fraud at the inception of the notes in suit would have justified the defendant below in rescinding the notes as against the payee therein. There was

sufficient evidence thereof to go to the jury, and when such fraud was proven to the satisfaction of the jury, it was necessary for the plaintiff in order to recover, that he took these notes before maturity, *bona fide* and for value.

The Trial Judge erred in directing a verdict for plaintiff in this case, and there should, therefore, be a new trial, and the question should be left to the jury to find whether these notes were taken by the plaintiff before maturity, *bona fide* and for value.

Haines v. Merrill Trust Co., 56 L. 312, supporting *Duncan v. Gilbert*, 29 L. 521, in which Beasley, C. J., says:

“Mere carelessness in taking the paper will not, of itself, impair the title so acquired; but carelessness may be so gross that bad faith may be inferred from it. Nor is it necessary, in order to defeat the title of the holder, that he have actual knowledge of the facts and circumstances constituting the particular fraud; it is sufficient if he has knowledge that the paper is tainted with any fraud, although he may be ignorant of the nature of it.”

Hamilton v. Vought, 34 L. 187.

It is undoubtedly true that where the maker or endorser of negotiable paper proves it was obtained from him by fraud, or that it was fraudulently put in circulation, the burden of proof is shifted. The plaintiff, in order to recover on such paper, must prove that he took it before maturity, *bona fide* and for value and unless there be circumstances disclosed in the case or produced by the defendant by way of rejoinder, from which bad faith on his part may be inferred, the Court should

withdraw the case from the jury and direct a verdict in favor of the holder of the paper.

Fifth Ward v. First National, 48 L. 513.

Under the former practice, circumstances of slight suspicion would take the case to the jury; under the present rule, the circumstances must be so strong that bad faith can be reasonably inferred.

Hamilton v. Vought, 34 L. 187, cited above, in which Moschzisker, C. J., says:

"After proving the note, and its purchase from the Franklin Operating Company, through its president of that concern, Solon A. Stein, plaintiff rested, and the defendant then offered in evidence the record in the equity suit, to show that he had been defrauded into giving the paper. Plaintiff then undertook in rebuttal, *as was his duty under the law* (N. I. L., paragraph 59), to show that, despite the fraud which had been committed against defendant to obtain the note, he (plaintiff) was a holder in due course, and therefore was subject to the defense of prior equities."

Fehr v. Campbell, 288 Pa. 549, 137 Atl. 113:

"Bad faith, not merely suspicious circumstances, must be brought home to a holder for value."

Davis v. Clark, 85 L. 696, citing *Rice v. Barrington*, 75 L. 806, says:

"Bad faith, not merely notice of suspicious circumstances, must be brought home to the holder for value of a negotiable note whose rights accrued before maturity in order to defeat his recovery upon the note on the ground of fraud in its inception."

The question in such cases is, did the holder have actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Suspicious circumstances, negligence or wilful ignorance may be evidence of bad faith from which the jury may find the fact.

First National Bank of Albuquerque v. Stover, 155 Pac. 905, L. R. A. 1916-D, 1280, in which case the Court also cited with approval this rule:

“Although suspicious circumstances are not notice as a matter of law, yet the jury may find them to be so as a matter of fact, and evidence going to show the existence of such grounds for suspicion is always admissible” (from par. 280, p. 1075, 3 R. C. L.).

Notice or knowledge in this connection does not mean that the maker of the paper must bring home to its holder actual knowledge of the infirmity which renders the paper valueless, but it will be sufficient if it is shown that he had the means of knowledge, that is, that he had notice of such facts as would have led a prudent man to further inquiry, which inquiry, if pursued, would have disclosed the infirmity of the paper.

Hamilton v. Vought, 34 L. 187.

ARGUMENT.

Section 52 of the Negotiable Instruments Law describes in detail the qualifications necessary for a person to be in the selective class of a holder in due course, and under Section 59 every holder is deemed to be a holder “but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder

to prove that he or some person under whom he claims acquired the title as a holder in due course" (lines 2-6, Sec. 59, N. I. L., Comp. Statutes 3741).

These sections have been construed in authorities too numerous to mention, that under the Negotiable Instruments Law, that the holder need merely offer in evidence his note, and the presumption granted in Section 52 inures to his benefit. It thereupon becomes the duty of the maker to prove fraud or defective title in the payee or its indorsement. Upon proof of this fact, the burden shifts to the plaintiff to prove, by a preponderance of the evidence, that he enjoys all of the qualifications requisite in Section 52.

Daniels (cited *supra*) alleged that he must acquire "under circumstances which do not operate as constructive notice of the facts which impeached the original validity."

The authorities in New Jersey (cited *supra*) seem to follow this definition, and very little distinction is made between our law as it existed under the law of merchant and since the Negotiable Instruments Law. Chief Justice Beasley in *Hamilton v. Vought* (*supra*) says "mere carelessness may be so gross that bad faith may be inferred from it," but this view has been abridged in our recent decisions by saying "under the present rule, the circumstances must be strong, so that bad faith can be reasonably inferred."

Fifth Ward v. First National.

Rice v. Barrington (*supra*).

None of the authorities require that the holder have actual notice; all that is required is notice of such facts and circumstances as will infer bad faith; and if there be any evidence of circumstances of bad faith, which would justify a jury

in finding the holder was not a holder in due course, it becomes an issue for the jury and the Court cannot direct a judgment.

The plaintiff proved its note, and rested. An effort was then made by defendant to prove fraud in the procuring of the instrument. This offer was refused, which is in itself prejudicial error, as determined in *DeJonge & Co. v. Woodport* (*supra*). The defendant, however, did prove that all of his negotiations were with the plaintiff; that he had bought two previous automobiles directly from them; that he called on them to purchase a new car, and, by mutual agreement, went to the Chandler Newark Motors Corporation. Defendant further testified that he was to buy a car to be delivered on March 15th, and informed plaintiff that he had bought a car to be delivered on March 15th. Was plaintiff, under such circumstances, justified in purchasing a note dated January 23rd accompanied by a conditional sales contract which acknowledged delivery of said automobile?

If this was not bad faith, what efforts, if any, did the plaintiff make to justify its selective position? It has been held that the burden shifts to the plaintiff. The plaintiff remains mute, and does not take the stand for rebuttal, standing on its original position, and offering no testimony to overcome the allegations of fraud and bad faith. It becomes the duty of all of the officers of a corporation to rebut the fraud or any knowledge of it (*First National Bank v. Wise and other*, cited *supra*).

It was error, in view of the bad faith shown, and the attempt to prove fraud, and the failure of the plaintiff to overcome same, to direct a verdict, and remove the case from the jury.

(No. 6 of Grounds of Appeal.)

POINT V.

One who purchases a note accompanied by a contract takes subject to all defenses under said contract, and is not a holder in due course.

Todd v. State Bank (Iowa), 165 N. W. 595, 3 A. L. R. 97.

ARGUMENT.

The note in question was attached (p. 38) to a conditional sales contract, on one long sheet of paper. The contract and note were therefore mutual and dependent, and not collateral and independent. As long as the buyer does not take the note alone and rely on his rights under the Negotiable Instruments Law, but demands and accepts additional security, he loses that privileged status. And once relying on the contract, he is subject to all defenses, since an assignee takes no better title than that held by his assignor. In this case, plaintiff had sold two previous cars, assisted in the negotiation of the third and taken the conditional sales contract as additional security. Since the auto mentioned in the contract was never delivered, the assignee under said contract cannot recover. Since it could not recover under his contract, it should not be permitted to discard an essential part of the written instrument alleged to be signed by defendant. This should have been submitted to the jury for their determination.

(No 6 of Grounds of Appeal.)

POINT VI.

Where the damages are speculative, it is a question for the jury to determine, what amount, if any, the plaintiff should recover.

It many times happens that the damage arising from an actionable injury chargeable to the defendant is, in the nature of things, or from the circumstances of the case, indistinguishable.

In such cases, since the injured party cannot supply the material necessary to enable the jury to make an exact computation of the damages in suit, the approved practice is to leave it to the good sense of the jury, as reasonable men, to form, from the evidence, the best estimate that can be made under the circumstances as a basis of compensatory damages for the actionable injury.

Jenkins v. Penn. R. R., 67 L. 331.

Where a contractor fails to fulfill his contract, it is the duty of the other party to make reasonable exertions to mitigate his loss.

Ramsey v. Perth Amboy, 65 Atl. 461.

It is error for the Trial Judge to state to the jury, as a fact within his own knowledge, matter pertinent to the issue, but not lawfully put in evidence.

State v. Raymond, 53 L. 260.

ARGUMENT.

There was no evidence in the case as to the cost of insurance included in the note. A suggestion was made by counsel (p. 58) that \$15 be deducted

for the same, which defendant's counsel refused to admit. The damages due to the plaintiff being speculative and uncertain, the Court was without authority to make an allowance suggested by counsel, unsupported by any evidence. This was a matter strictly for the jury's determination and to direct a judgment was prejudicial error. The Court further erred in considering this item, since it was not legal evidence, having been accepted without oath.

(No. 7 of Grounds of Appeal.)

POINT VII.

Where the note is fraudulent in inception, the holder in due course may only recover the cost of purchase, plus interest.

Allaire v. Hartshorne, 21 L. 665.

Holcomb v. Wyckoff, 35 L. 35.

Duncan Sherman v. Gilbert, 29 L. 521.

ARGUMENT.

Although these cases all precede the adoption of the Negotiable Instruments Law, the Courts seem to follow its intent, for in *Davis v. Clark*, 85 L. 696, at 698, the suit being on a \$10,000 note, the Court said:

“The \$900.00 note was not paid and the plaintiff was permitted to recover the amount of the note actually cost him, which was \$9100.”

A holder in due course is given a privileged situation under the law, but where a note is fraudulent in its inception, and through no fault of the

maker, the equities require that the holder recover only what he has paid.

(No 8 of Grounds of Appeal.)

CONCLUSION.

The adoption of the Negotiable Instruments Law was for the purpose of making uniform all laws designed for the protection of individuals engaged in the business of purchasing commercial paper, and in its construction has been so enforced.

But the Act itself, and all jurisdictions having adopted it, give to the maker an opportunity to prove fraud and the knowledge on the part of the holder of such facts as would infer bad faith. No greater protection is given to a careless or fraudulent holder than under our prior decisions.

As urged above, the Court erred in several particulars:

First: The Court should have permitted the cross-examination of Miss Eleanor Boesak on any and all matters which might affect their good faith.

Second: The Court erred in refusing the admittance of the contract between Sam Snyder and Newark Chandler Motors Corporation.

Third: The Court erred in refusing to permit the conversation and the transaction, which led to the execution of the fraudulent note.

Fourth: The Court erred in refusing such testimony on redirect, after cross-examination, by the plaintiff.

Fifth: The Court erred in directing a verdict, and not submitting same to the jury, since there

was sufficient evidence from which the jury might have found bad faith.

Sixth: The Court erred in directing a verdict where the damages were speculative and uncertain.

Seventh: The Court erred in directing a verdict for the full amount, where holder paid a smaller amount therefor.

It is respectfully urged that said judgment be reversed for the reasons aforesaid.

HERMAN B. J. WECKSTEIN,
Attorney for and of Counsel
with Defendant-Appellant.

On the Brief:

MARTIN P. ROTH.

New Jersey Court of Errors and Appeals.

MERCHANTS' SECURITIES CORPORATION,
 a corporation,
Plaintiff-Respondent,
 VS.
 SAM SNYDER,
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT.

Statement.

This is an appeal by the defendant, Sam Snyder, from a judgment of the New Jersey Supreme Court, tried at the Essex Circuit, based upon verdict directed by the Court in favor of the plaintiff-respondent, and against the defendant-appellant.

Facts.

The facts are not fully stated by defendant-appellant.

The uncontroverted facts may be briefly stated as follows:

On or about January 23rd, 1928, Sam Snyder (hereinafter referred to as defendant) made and delivered to Chandler Newark Motors, Inc. (hereinafter referred to as Chandler Newark), his note of that date for \$1,383 payable to bearer at the

office of Merchants' Securities Corporation (hereinafter referred to as plaintiff) in installments as set forth in said note (Case, p. 29, ll. 1 to 15, Exhibit P-1, Case, p. 8).

On the same day, plaintiff purchased said note in the regular course of business from Chandler Newark and delivered its check in payment thereof (Case, p. 29, ll. 1 to 5 and 25 to 40, Case, p. 59, Exhibit P-2).

Said note was complete and regular on its face when purchased by plaintiff and plaintiff became the holder thereof before it was overdue and without notice of any infirmity in the instrument.

Defendant admitted signing note, but claimed that note was secured by fraudulent representations; that there was no consideration for same; that plaintiff was not a *bona fide* holder for value and before maturity.

There was no proof whatsoever, on the part of the defendant, which showed any relationship between Chandler Newark, the prior holder of note, and plaintiff, or that any knowledge or notice was brought home to plaintiff of alleged fraud practiced upon defendant or of any fraudulent representations, before note was purchased.

Defendant's attorney, in answer to question propounded by Court (Case, p. 47, ll. 38 to 41), stated as follows:

"There is no way of proving that the plaintiff had notice of fraud or is a party to the fraud. I am willing to state that as an open fact. * * *"

On this state of facts the trial Court directed a verdict in favor of plaintiff and against the defendant.

THE TRIAL COURT PROPERLY DIRECTED VERDICT IN FAVOR OF THE PLAINTIFF, MERCHANTS' SECURITIES CORPORATION, AND AGAINST THE DEFENDANT, SAM SNYDER.

POINT I.

Under this head we will discuss grounds of appeal, 1, 4, 5 and 2.

Defendant failed to note exceptions to alleged errors referred to in grounds of appeal 1, 4 and 5 and has not argued ground No. 2 in his brief. We are therefore not answering these grounds in our brief.

However, we desire to refer your Honors to the state of case wherein these alleged errors are set forth.

Ground 1 (Case, p. 36, ll. 31 to 41, Case, p. 37, ll. 1 to 15).

Ground 4 (Case, p. 43, ll. 1 to 41). In lines 8 to 10, names of counsel are interchanged (Case, p. 44, ll. 1 to 25).

Ground 5 (Case, p. 55, ll. 16 to 31).

Chancellor Walker, speaking for this Court, in *Blanchard Brothers, Inc., v. Beveridge et als.*, 86 N. J. L. 561, at page 562 stated as follows:

“The appellant, plaintiff below, contends that as the state of the case presented to the Supreme Court showed no objection to evidence, no request for any finding and no objection to the finding of the trial court, there was nothing for that court to review. This is correct.”

This Court in *Simmons Pipe Bending Works v. Seymour*, 80 N. J. L. 465, upon the authority of an earlier case in the Supreme Court, held:

“The state of the case fails to show that any legal question was presented to the trial court. There is no objection to evidence, no request to find, and no exception to the actual finding. There is, therefore, no determination of the District Court in point of law or upon the admission or rejection of evidence for us to review. *O'Donnell v. Weiler*, 72 N. J. L. 142.”

“* * * but it was certainly incumbent upon counsel to request the court to make a finding or findings of law or fact, or law and fact, and to except or object to an adverse finding when made in order to lay the foundation for a review on appeal.”

Mr. Justice Trenchard, speaking for this Court, in *Kargman v. Carlo*, 85 N. J. L. 632, at page 638:

“* * * Common sense and common fairness alike require that if counsel thinks the trial judge has fallen into legal error he should call attention to it at a time and in such manner that the judge may know that his ruling is to be made a ground of appeal, and thereby afford an opportunity to the Judge to revise his ruling and to opposing counsel to modify his position so as to save error. Where at the trial the attention of the judge is not called to an alleged error, the abiding presumption will be that the correction of the error at the trial was not desired by the party who complains of it on appeal.

Perhaps no better form of expression can be devised to advise the judge that his ruling is to be made the subject of review than for counsel to say: ‘I desire to note an exception.’”

Mr. Justice Dixon, speaking for the Supreme Court in *Hanson v. P. R. R.*, 72 N. J. L. 407, at page 407 bottom, 408 top, states as follows:

“The record discloses that some evidence offered by the plaintiff was received and some offered by the defendant was excluded against the defendant’s objection, *but as the rulings of the court on those matters are not referred to in the brief submitted to us on behalf of the defendant, they need not be considered.*” (Italics ours.)

Mr. Justice Pitney, speaking for this Court, in *Hopwood v. Atha & Illingsworth Co.*, 68 N. J. L. 707, at page 713, stated as follows:

“We have now dealt with all the exceptions that were discussed upon the argument. *Other exceptions we are not required to consider. Roofing Co. v. Leather Co.*, 38 Vroom 566.” (Italics ours.)

POINT II.

Under this head, we will discuss ground No. 3, which is set forth in Point II of appellant’s brief.

Said ground is as follows:

“Because the trial Judge upon the trial of said cause on the objection of the plaintiff-respondent’s counsel refused to admit the contract between the Chandler Newark Motors Corporation and the defendant-appellant.”

There is no allegation in said ground of appeal that the trial Court erred, which would be the proper basis for appeal. Said ground is but a mere statement relating what the trial Court did.

In recent case of *Grossman v. Lincoln Trust Co.*, 146 Atl. 376 (not officially reported), this Court in a *per curiam* opinion stated:

“* * * then the six grounds of appeal are unavailable, because they do not set forth the judicial action complained of. The mere statement of a proposition of law or fact is of no value, as a ground of appeal. *Abbe v. Erie R. R. Co.*, 97 N. J. L. 212.”

At most, the contract offered by defendant, which was made between defendant and Chandler Newark, was a mere collateral agreement and was not binding upon plaintiff, the holder in due course of note.

We desire to refer your Honors to the case of *Coffin v. May*, 104 N. J. L. 347. Mr. Justice Kalisch, speaking for this Court, at page 349, stated in part as follows:

“The arguments advanced by counsel of appellant under points one and two of his brief in support of the principal defenses set up in defendant’s answer to plaintiff’s complaint is, in substance, that the trade acceptance was not a negotiable instrument, within the meaning of the Negotiable Instrument Act, because the acceptance of the instrument by the drawee was conditional in that the endorsement made thereon, in legal effect, operated to qualify the acceptance by a contingency, such as a non-fulfillment by a drawer of the guarantee referred to in the endorsement upon the instrument. The fallacy of this contention lies in the assumption that the endorsement in question constitutes a condition upon which the trade acceptance is made payable, whereas, obviously, this is not so. *It is purely a collateral undertak-*

ing between drawer and drawee, and cannot in anywise detract from the obligation of the drawee to pay to the drawer or his order, according to the express terms of the instrument." (Italics ours.)

The subject matter of controversy in present suit is a negotiable note signed by defendant. There is no connection whatsoever between said note and contract offered by defendant. Same are separate and distinct instruments and bear no reference, one to the other. Said contract at most is a collateral undertaking between defendant and Chandler Newark.

POINT III.

Under this head, we will discuss Points IV and V of appellant's brief, which cover ground of appeal No. 6.

Rice v. Barrington, 75 N. J. L. 806, cited by appellant, at page 807, states as follows:

"* * * Proof of circumstances calculated merely to arouse suspicion will not defeat recovery on a negotiable note taken for value before maturity. *Bad faith, i. e., fraud, not merely suspicious circumstances, must be brought home to a holder for value whose rights accrued before maturity, in order to defeat his recovery on a negotiable note upon the ground of fraud in its inception or between the parties to it. Hamilton v. Vought*, 5 Vroom 187; *Read v. Abbott*, 16 Id. 303; *Aldrich v. Peckham*, 43 Id. 711, and the cases there cited." (Italics ours.)

Even if there were circumstances sufficient to put a holder for value on inquiry, said circum-

stances should not defeat the holder from recovering. *David v. Clark*, 85 N. J. L. 696; *Montgomery Garage Co. v. Manufacturers, etc.*, 94 N. J. L. 152.

Mr. Justice Garrison, speaking for the Supreme Court in *Second National Bank of Reading v. Hewitt*, 59 N. J. L. 57, at page 58, approving the case of *Hamilton v. Vought*, 34 N. J. L. 187, states as follows:

“* * * it was held that negotiable paper, fraudulent in its inception, is not invalid in the hands of one taking it for value, before maturity, unless there be actual fraud on his part.”

Todd v. State Bank, referred to in Point V of appellant's brief, is not applicable.

In that case, the performance of an executory agreement was a condition precedent to the right of the payee to demand or recover payment. There is no proof whatsoever in case *sub judice* that terms of conditional sale contract were conditions precedent to recovery on note. Same is being injected for the first time and improperly so.

The footnote to *Todd v. State Bank, supra*, at page 987, is as follows:

“It is a well settled rule that knowledge by the purchaser of a bill or note that the consideration therefor was an executory contract does not prevent him from becoming a *bona fide* holder thereof unless there has been a breach of the contract to the knowledge of such purchaser. * * *”

Page 988:

“* * * The court in *Todd v. State Bank* admits the general rule, but holds it inapplicable where the performance of an ex-

ecutory agreement is a condition precedent to the right of the payee to demand or recover payment."

We also desire to refer your Honors to the case of *Auto Brokerage v. Ulrich*, 4 N. J. Misc. Reports 808 (not officially reported), in opinion by Circuit Court Judge Ackerson, former Judge of this Court.

The facts of said case briefly are that an action in replevin was commenced by plaintiff and against defendant in which action defendant was allowed to interpose defense of fraud on the part of plaintiff's assignor. Case was submitted to the jury by trial Court and jury returned a verdict in favor of the defendant and against the plaintiff. Case was affirmed on appeal to this Court, 102 N. J. L. 241.

Thereafter, plaintiff commenced an action on promissory note against the defendant, in which action defendant interposed the same defense of fraud.

Judge Ackerson, at page 809, stated as follows:

"The plaintiff, in the present suit, the Auto Brokerage Co., is a holder of the note in due course, for value and before maturity and there is no suggestion anywhere that this company had any notice of the fraud perpetrated upon the defendant by its assignor, the N. Y. Commercial Vehicle Co., Inc., and while fraud was a good defense in a replevin suit as against an innocent assignee of the conditional bill of sale, nevertheless it would not be a good defense against a *bona fide* holder of the note who received it for value before maturity and without notice."

Case *sub judice* is on all fours with case of *Commercial Credit Corporation v. Boyko*, 103 N. J. L. 620, as to facts and proof adduced with regard to note sued upon.

Mr. Justice Kalisch, speaking for the Court of Errors and Appeals, at page 622, says:

“The testimony adduced, on behalf of the defendant to establish that the note in question was tainted with fraud, proceeded solely from him. His testimony is utterly barren of any fact or circumstance tending to show the plaintiff was not a holder in due course * * *.”

Testimony in case *sub judice* with regard to fraud likewise proceeded solely from defendant.

It is of interest to note the following remark of counsel for defendant in reply to question propounded by Court (Case, p. 47, ll. 38 to 41):

“*There is no way of proving that the plaintiff had notice of the fraud or is a party to the fraud. I am willing to state that as an open fact. * * **” (Italics ours.)

POINT IV.

Under this head, we will discuss ground 7, which is set forth under Point VI of appellant's brief.

At this point we desire to refer your Honors to testimony of defendant with regard to credit for insurance (Case, p. 48, ll. 23 to 34):

“Q. You said that your car was insured but the policy was cancelled? A. Yes, sir.

By the Court:

Q. Do you know the amount of the premium you had to pay? A. No, sir.

Mr. Green: We will admit that to be \$15.00."

Offer made by counsel for plaintiff, allowing a credit of \$15 to defendant for said insurance was not objected to by defendant.

There was no testimony whatsoever on the part of the defendant to show what allowance he was entitled to and therefore nothing to be submitted to a jury for determination as to amount of credit. The Court would therefore be justified in not allowing any credit whatsoever.

The allowance of \$15 is more than sufficient in view of the fact that policy for fire and theft insurance was in force for approximately two months (Case, p. 35, ll. 27 to 33) and allowance made is a liberal one indeed.

POINT V.

Under this head, we will discuss ground No. 8, which is set forth under Point VI of appellant's brief.

There is no allegation in said ground of appeal that the trial Court erred, which would be the proper basis for appeal. Said ground is but a mere statement relating what the trial Court did. *Grossman v. Lincoln Trust Co., supra.*

Point 7 is further a misstatement of law.

Section 57 of the Negotiable Instrument Act, Compiled Statutes, page 3741, is as follows:

"A holder in due course holds the instru-

ment free from any defect of title of prior parties; and free from defenses available to prior parties among themselves, and *may enforce payment of the instrument for the full amount thereof against all parties liable thereon.*" (Italics ours.)

See also:

Model Garage Co. v. Manufacturers Liability Ins. Co., 94 N. J. L. 152.

Summary.

Plaintiff is the holder for value of promissory note and purchased same before it was due and without notice of any infirmity in the instrument. Defendant's proof of fraud merely concerns Chandler Newark, the company which negotiated instrument to plaintiff. No proof of any fraud whatsoever on the part of the Chandler Newark was brought home to plaintiff, but on the contrary, counsel for defendant readily admitted in open court that there was no way of proving that plaintiff had notice of fraud or was a party to the fraud.

CONCLUSION.

The respondent respectfully submits that the trial Court was correct in directing a verdict in favor of the plaintiff, Merchants' Securities Corporation, and against the defendant, Sam Snyder, and that judgment of the New Jersey Supreme Court should be affirmed, with costs.

Respectfully submitted,

GREEN & GREEN,
Attorneys for Plaintiff-Respondent.

DAVID GREEN,
Of Counsel with Respondent.

