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## Complaint.

(Filed May 5th)

### In Chancery of New Jersey

*To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.* 10

The complainant, Frank Karkuff of the Borough of Somerville, in the County of Somerset and State of New Jersey, respectfully shows that:

1. On May 10, 1924, complainant entered into a contract with the Plainfield Flint Company, D. L. Sharp, Proprietor, whereby complainant purchased from the Plainfield Flint Co., D. L. Sharp, Proprietor, one Model 1924 Flint Touring Car and equipment, Serial No. 3829, Motor No. 6717 for the sum of One thousand six hundred and one dollars (\$1,601.00). 20

2. At the time of said purchase complainant paid to the said Plainfield Flint Co., D. L. Sharp, Proprietor, the sum of Eight hundred and one dollars (\$801.00) and signed a conditional sales agreement and an annexed note for the balance, Eight hundred and one dollars (801.00) which said note was to be paid in twelve equal monthly installments of Sixty-six dollars and seventy-five cents (\$66.75) each. 30

3. Complainant was informed by Plainfield Flint Company, D. L. Sharp, Proprietor, that the said sale was to be financed through the Mutual Securities Company, a Corporation of the State of New Jersey, with its principal office at 1010 Broad Street, Newark, N. J., and was by the Plainfield Flint Company, D. L. Sharp, Proprie- 40

*Complaint.*

tor, directed to pay the said monthly installments of Sixty-six dollars and seventy-five cents (\$66.75) as each and every installment became due to the Mutual Securities Company.

10 4. Complainant did thereafter pursuant to said directions above set out, pay to the said Mutual Securities Company, the sum of Two hundred dollars and twenty-five cents (\$200.25), being three monthly installments.

20 5. At or about the time of the payment of the third monthly installment to the said Mutual Securities Company, complainant was notified by Robert Newton Crane, Attorney in fact of one Augustus Brunson, of Plainfield, New Jersey, that he the said Augustus Brunson had purchased of the Plainfield Flint Company the conditional sales agreement and the said promissory note attached thereto shortly after their execution and delivery and that by reason thereof he the said Augustus Brunson ordered and directed complainant to make all payments due on said contract and note to him at his office at No. 105 East Front Street, Plainfield, N. J.

30 6. The said Augustus Brunson still claims the money due on said note and conditional sales agreement and threatens complainant with actions at law.

40 7. The Mutual Securities Company claims that it is the sole and exclusive owner of the said Conditional Sales Agreement, and the promissory note thereto attached. The Mutual Securities Company instituted on the Seventh day of April, Nineteen hundred and twenty-five an action in replevin in the Somerset County Circuit Court against the said complainant, said action being

*Complaint.*

based upon the failure of the complainant to pay to the Mutual Securities Company the remaining installments amounting to Six hundred dollars and seventy-five cents (\$600.75).

8. Complainant has been and is still unable to determine which of the aforesaid claimants the sum of Six hundred dollars and seventy-five cents (\$600.75) rightfully belongs. 10

9. Complainant has always been willing and still is willing to pay said sum of Six hundred dollars and seventy-five cents (\$600.75) to such person or persons as is or are lawfully entitled to receive the same.

10. Complainant has not in anywise colluded, and does not in anywise collude with the said Augustus Brunson and Mutual Securities Company, or with either of them, respecting the aforesaid matters, and he has not been indemnified by the said Augustus Brunson and Mutual Securities Company or either of them, but brings this suit of his own free will to avoid being molested or injured touching the matters contained in this bill of complaint. 20

Complainant is without adequate remedy at law and, therefore, prays: 30

1. That Augustus Brunson and Mutual Securities Company, who are the defendants in this suit may answer this bill of complaint and each statement therein made and may interplead and determine their rights to said sum of Six hundred dollars and seventy-five cents (\$600.75).

2. That complainant may be ordered to pay said sum of Six hundred dollars and seventy-five cents (\$600.75) into this Court. 40

*Complaint.*

10 3. That the said Mutual Securities Company may be enjoined and restrained from proceeding further in the said action in replevin, heretofore commenced by it in the Somerset County Common Pleas Court, against complainant as aforesaid, and that the defendants, Mutual Securities Com-  
pany and Augustus Brunson and each of them may be enjoined and restrained from commencing or instituting any action or actions, suit or suits or other proceedings, against the complainant to recover said sum of Six hundred dollars and seventy-five cents (\$600.75).

20 4. That complainant, upon payment into Court of said sum of Six hundred dollars and seventy-five cents (\$600.75) and upon procuring the said defendants to interplead and settle their rights to the said sum of money, according to law and the practice of this Court, may be ordered and adjudged and decreed to be discharged from all liability to said defendants, or either of them, arising out of the transactions in this bill of complaint set forth.

30 5. That the complainant may be paid out of said fund of Six hundred dollars and seventy-five cents (\$600.75) his costs of these proceedings.

6. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

GEORGE W. ALLGAIER,  
Solicitor for Complainant.

AZARIAH M. BEEKMAN,  
Of Counsel with Complainant.

*Complaint.*

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

FRANK KARKUFF, of full age, being duly sworn on his oath according to law, deposes and says:

I am the complainant in the foregoing bill of complaint named. I have filed said bill of interpleader against the defendants in this cause without any fraud or collusion between me and the said defendants, or either of them; and I have not exhibited my said bill at the request of the said defendants, or of either of them, and have not been indemnified by the said defendants or by either of them, but have exhibited my said bill with no other intention than to avoid being sued or molested by the said defendants, touching the matters in said bill of complaint contained.

FRANK KARKUFF.

Sworn and subscribed to before me  
 this 28th day of April, 1925.

CHARLES L. VOORHEES,  
 Comm. of Deeds of N. J.

10

20

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40

**Interlocutory Decree.**

(Filed January 12, 1926)

IN CHANCERY OF NEW JERSEY.

10

*Between:*FRANK KARKUFF,  
Complainant,*and*MUTUAL SECURITIES COMPANY (a  
corporation) and AUGUSTUS  
BRUNSON,  
Defendants.

20

On Bill of  
Interpleader.  
Interlocutory  
Decree.

30

40

The bill of complaint in this cause having been filed and process having been duly issued and served upon both of the defendants and the defendant, Augustus Brunson by his answer thereto has set up a conflicting claim of property but in no way denied the right for the complainant to the relief prayed for in his bill of complaint and the complainant's right to bring the property into court not having been disputed and the defendant, Mutual Securities Company having by its answer denied the complainant's right to Interplead and this cause coming on to be heard in the presence of George W. Allgair, Solicitor of the Complainant, and the Solicitor of the Defendant, Mutual Securities Company having not appeared, and the Court having examined the pleadings and having taken proofs orally and in open court, and heard and considered the arguments of counsel thereon; and it appearing upon due consideration

*Interlocutory Decree.*

thereof that the complainant held the fund mentioned in the bill of complaint filed herein for the true owner thereof, without having or claiming any right or interest therein, that said fund has been deposited in this court to be delivered over and paid to whoever may be entitled thereto, and the said Bill of Interpleader is properly brought by said complainant and that said complainant is entitled to the relief prayed for by him; 10

It is thereupon, on this twelfth day of January, 1926, ORDERED, ADJUDGED and DECREED that the said Bill of Interpleader is properly brought by the complainant in this cause, and that said complainant is entitled to the relief prayed for by him.

It is further ORDERED, ADJUDGED and DECREED that the said complainant be and he is hereby dismissed from the further prosecution of this suit with his costs to be taxed, including counsel fee of Seventy-five dollars (\$75.00) hereby allowed to said complainant to be paid by the said defendant Mutual Securities Company and that said complainant be and he is hereby released, acquitted and discharged from all claims by or liability to the defendants in this suit, or either of them, for, upon or by reason of said fund. 20

It is further ORDERED, ADJUDGED and DECREED that the said defendants Mutual Securities Company and Augustus Brunson interplead, settle and adjust their several claims, demands and matters in controversy in this suit as between themselves. 30

E. R. WALKER,  
Clerk.

Respectfully Advised

MALCOLM G. BUCHANAN, V.-C.

A True Copy

THOMAS BARBER,  
Clerk.

**Proof of Claim.**

(Filed May 18, 1926.)

## IN CHANCERY OF NEW JERSEY.

10 *Between:*FRANK KARKUFF,  
Complainant,*and*MUTUAL SECURITIES COMPANY (a  
corporation) and AUGUSTUS  
BRUNSON,  
Defendants.

20

On Bill of  
Interpleader.  
Proof of Claim.STATE OF NEW JERSEY, }  
COUNTY OF UNION, } ss.:

AUGUSTUS J. BRUNSON, being duly sworn according to law upon his oath, deposes and says:

30 1. I am one of the defendants in the above entitled action. The following is a sworn statement of my claim to the moneys now deposited with the Clerk of this Court by the complainant, by virtue of an order of the Court heretofore made.

40 2. On April 11, 1924, deponent loaned the Plainfield Flint Co. Nine Hundred and Fifty Dollars (\$950.00) on a certain Flint Touring Car, Serial No. 3829, Motor No. 6717, said automobile at that time being stored in the Vanderventer Corporation's warehouse in the Township of North Plainfield, and said warehouse receipt for said car being then and there delivered to deponent.

*Proof of Claim.*

3. On May 10, 1924, complainant purchased said automobile from the Plainfield Flint Co. for the sum of Sixteen Hundred and Two Dollars (\$1602.00).

4. On said date the complainant signed a conditional sales agreement with the Plainfield Flint Co. on a printed form of the Mutual Securities Co. whereby the complainant agreed to pay the balance due on said car, of Eight Hundred and One Dollars (\$801.00), in twelve (12) monthly installments of Sixty-six and 67/100 Dollars (\$66.67) each; and at the same time complainant signed an installment note for a like amount, payable to the order of the Plainfield Flint Co. which note, by its terms, was payable at the office of the defendant, Mutual Securities Co., at its office #1010 Broad Street, Newark, N. J.

5. Said conditional sales agreement, together with the said note, were duly assigned by the Plainfield Flint Co. to deponent.

6. Defendant, Mutual Securities Co., had, for some time prior thereto, financed the deals of the Plainfield Flint Co. and had discounted its customer's notes.

7. It was understood and agreed by the deponent and the Plainfield Flint Co. that said conditional sales agreement and said note, so assigned as aforesaid, were to be forwarded to the Mutual Securities Company at its Newark office, for the purpose of having the same discounted, and the proceeds thereof turned over to deponent to repay the balance due to him for the moneys advanced on April 11, to the Plainfield Flint Co. on the

*Proof of Claim.*

warehouse receipt for said car so bought by Karkuff as aforesaid.

10 8. On May 10, 1924, deponent caused the original conditional sales agreement, note and assignment thereof, to be forwarded to the said Mutual Securities Co. with instructions to discount said note and deduct the discount charges, and to remit the balance to deponent, which said papers and instructions were duly received by the Mutual Securities Co.

20 9. Deponent says that the defendant, Mutual Securities Co., appropriated the said papers, but refused to recognize the right of deponent in the proceeds of the discount.

10. Deponent says that thereafter complainant had notice of the rights of deponent, and complainant thereupon refused to make any further payments to the said Mutual Securities Co. or deponent.

30 11. Deponent further says that there is due to him on account of the foregoing transaction the sum of Eight Hundred and One Dollars (\$801.00), together with interest from May 10th, 1924.

AUGUSTUS J. BRUNSON.

Sworn and Subscribed to before me }  
this 17th day of May, 1926. }

ELIZABETH HAGAN,  
Notary Public of New Jersey.

**Statement of Claim of Defendant Mutual  
Securities Co., a Corporation.**

(Filed May 20, 1926.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between:</i></p> <p style="text-align: center;">FRANK KARKUFF, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p>MUTUAL SECURITIES COMPANY (a corporation) and AUGUSTUS BRUNSON, Defendants.</p>	}	<p>10</p> <p style="text-align: center;">On Bill of Interpleader.</p> <p>20</p>
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The defendant Mutual Securities Company, a corporation, of New Jersey, makes this statement of its claim in the above entitled case and says:

1. That on or about March 22, 1924, this defendant Mutual Securities Company, a corporation, delivered to D. L. Sharp, trading as Plainfield Flint Company, a certain Flint touring car, motor #6E6717 and serial #3829 in trust which was evidenced by a certain trust receipt dated March 22, 1924. 30

2. That said negotiable trust receipt contained, among other provisions, an agreement on the part of the Plainfield Flint Company, D. L. Sharp, proprietor, that it would, after first obtaining the written consent of the Mutual Securities Company, but not otherwise, sell the same for their account for cash for not less than \$1188.10 and the 40

*Statement of Claim of Defendant Mutual  
Securities Co., a Corporation.*

10 said Plainfield Flint Company, by D. L. Sharp, proprietor, further agreed that in case of such sale, to keep the proceeds separate from its funds and immediately hand the proceeds to the Mutual Securities Company without expense or cost to the holder of the time draft, which accompanied said trust receipt. More particular reference to said receipt will be made by claimant at the time of the hearing of the proof of statement, in this action.

20 3. That said D. L. Sharp, trading as the Plainfield Flint Company, executed and delivered to this defendant, a time draft in the principal sum of \$950.48, which draft was dated March 22, 1924, and was to become due and payable on or before June 20th, 1924, and which time draft recited that it was written "as security for acceptor's obligations under the negotiable trust receipt of even number covering motor vehicle serial #3829" and which draft bears on its face the acceptance thereof by Plainfield Flint Company, D. L. Sharp, Proprietor.

30 4. That said draft was not fully paid when it became due, being at that time still in the possession of this defendant, nor has said draft been fully paid up to the present time.

40 5. That subsequently, and on or about the 10th day of May, 1924, this defendant received a certain conditional sales contract and note covering the aforesaid automobile which conditional sale contract and note were signed by the complainant Frank Karkuff, and the payee thereunder was the Plainfield Flint Company; that said conditional

*Statement of Claim of Defendant Mutual  
Securities Co., a Corporation.*

sales contract and note were given to secure the payment of \$801.00 by said Frank Karkuff.

6. That said note provided for payments thereunder in twelve monthly installments of \$66.75 each, the first becoming due one month from date, the remaining installments to be paid on even date of each ensuing month thereafter until paid at the office of the Mutual Securities Company, 1010 Broad Street, Newark, N. J. 10

7. That said conditional sales contract and note were duly endorsed by the Plainfield Flint Company, D. L. Sharp, proprietor, and delivered to the Mutual Securities Company, a holder in due course, for value. 20

8. That said note was duly discounted and the proceeds thereunder were applied to the account theretofore existing between this defendant and the Plainfield Flint Company, arising out of the trust receipt and time draft first above set forth.

9. That thereafter and pursuant to the terms of said note the complainant, Frank Karkuff, made three of said monthly payments of \$66.75 to the Mutual Securities Company at its office in Newark, N. J. 30

10. That by reason of the foregoing and in accordance with the terms of the aforesaid conditional sales contract and the accompanying note of \$801.00 this defendant became entitled to the remaining nine payments or installments to grow due and payable under the terms of said note of Frank Karkuff. 40

*Statement of Claim of Defendant Mutual  
Securities Co., a Corporation.*

11. That the full amount of money interpleaded  
by the complaint in this cause constitutes the  
remaining amounts which have become due under  
said note of Frank Karkuff, and the said money to  
its full extent, justly belongs and is the property  
10 of said defendant Mutual Securities Company, a  
corporation.

ANDREW J. WHINERY,  
Attorney for Defendant,  
MUTUAL SECURITIES COMPANY.

---

**Reference of Case.**

20

On February 3, 1927, this case was referred by  
the Chancellor to the Honorable M. G. Buchanan  
for hearing. Vice-Chancellor Buchanan fixed  
March 31, 1927, at the Court House in Elizabeth,  
N. J. as the time and place for the hearing.

30

40

**Testimony.**

IN CHANCERY OF NEW JERSEY.

*Between:*

FRANK KARKUFF,  
Complainant,

*and*

MUTUAL SECURITIES COMPANY and  
AUGUSTUS BRUNSON,  
Defendants.

10

On Bill, &c.  
Testimony.

Testimony taken in the above entitled cause, at the Union County Court House, Elizabeth, New Jersey, on Thursday, the thirty-first day of March, 1927, at 12:30 P. M. 20

Before

Hon. MALCOLM G. BUCHANAN, Vice-Chancellor.

Appearances:

ANDREW J. WHINERY, Esquire, for Defendant  
Mutual Securities Company;

ROBERT NEWTON CRANE, Esquire, for Defendant  
Augustus Brunson. 30

—

GEORGE J. FINGER, a witness produced on behalf of the defendant Brunson, being duly sworn, testifies as follows:

*Direct examination by Mr. Crane:*

Q. Where do you live, Mr. Finger? A. Plainfield. 40

*George J. Finger—Direct.*

Q. And are you associated in business with Mr. Augustus J. Brunson? A. Yes.

Q. One of the defendants in this case? A. I am.

Q. Were you associated with him in May, 1924?

A. I was.

10 Q. In May or in April, 1924, did you, acting for Mr. Brunson, have business dealings with the Plainfield Flint Company? A. I did.

Q. Through Mr. Sharp of that Company? A. I did.

Q. Now, then, on April 11, 1924, did Mr. Sharp come to you to procure a loan on a Flint automobile? A. He did.

Q. What took place between you and him? A. He wanted a loan on a Flint car on warehouse receipt. We required a receipted invoice.

20 Q. For the car? A. For the car. He presented that. The car was put in the warehouse and the receipt endorsed and the loan granted, of \$950.00.

Q. I show you a check— A. Yes.

Q. This check is dated April 11, 1924, for \$950.00, to the order of the Plainfield Flint Company, and signed "A. J. Brunson," collection account, and ask you if that is the check you refer to? A. Yes, sir.

30

Mr. Crane: I offer it in evidence.

Said check is marked Exhibit B-1.

Q. Where was the warehouse that the car was put in? A. The Van Deventer Corporation.

Q. Where? A. North Plainfield.

Q. When was the automobile put in the warehouse, with reference to the check of April 11th?

A. Prior to the check.

40

Q. How long did the automobile remain in the warehouse? A. About a month.

*George J. Finger—Direct.*

Q. And then what happened? A. Mr. Sharp stated that he had a sale for it, and it was necessary to get it out and service it before delivery could be made.

Q. Mr. Sharp told you that? A. Yes, sir.

Q. Did you consent to that withdrawal from the warehouse for that purpose? A. We did. 10

Q. And the automobile was sold to Mr. Karkuff, wasn't it? A. It was.

Q. Tell me what happened after the automobile had been taken out of the warehouse and serviced and sold to Mr. Karkuff, Mr. Finger? A. In exchange for the warehouse receipt, we got in return a trust receipt during the period of time he would have—

By Mr. Whinery: 20

Q. Did you see all this you are telling about? A. I was the only one that handled the transaction.

Q. And you were present? A. I was the only one that handled it.

Q. Go on? A. Then an order was given for the car to be delivered to the Plainfield Flint Company for the purpose of service and delivery, with the understanding that settlement would be made as soon as the car was ready. The man was turning in a car, part cash, part car, and the balance financed. 30

Q. The car was to be financed through what company, Mr. Finger? A. The Mutual Securities Company.

Q. And at the time that Karkuff bought the car, did he sign a conditional sales agreement and note? A. He did.

Mr. Crane: Have you that? 40  
(Mr. Whinery produces paper.)

*George J. Finger—Direct.*

Q. I show you a conditional sales agreement and note that I have just referred to, and ask you if that is the agreement and note that you refer to? A. It is.

Mr. Crane: I offer them in evidence.

10 Said conditional sales agreement and note are marked Exhibits B-2 and B-3, respectively.

Mr. Crane: Have you the letter to the Securities Company of May 10th?

Mr. Whinery: No.

Q. After the agreement and note, Exhibits B-2 and B-3, were signed, what was done with them by Karkuff and Sharp, Mr. Finger? A. The papers were signed and turned over to Sharp for the car. Sharp gave an assignment to—

20

Q. What did he do with the papers? A. Turn them over to me.

Q. At the same time did he give you a paper bearing date May 10th, to the Mutual Securities Company, of which this is a copy (showing witness paper)? A. He did.

Q. When the note, the agreement and the assignment that I just showed you were turned over to you, what did you do with them? A. I deposited them in the letter box.

30

By the Court:

Q. In the letter box? A. Mailed them to the Mutual Securities Company for collection.

Mr. Crane: I offer this letter in evidence. I served notice to produce on the Mutual Securities Company.

40 The Court: What are you now offering?

*George J. Finger—Direct.*

Mr. Crane: I offer in evidence a letter, which is the paper the witness has just testified to, dated May 10th, addressed to the Mutual Securities Company, signed P. F. Co., D. L. S., and ask that it be marked.

The Court: It may be.

Said letter is marked Exhibit B-4.

10

Q. At the time that the Exhibits B-2 and B-3, the note and the agreement, were turned over to you, you said an assignment was given you by the Sharp Company? A. There was.

Q. Is that the assignment? (Showing witness paper). A. It is.

Mr. Crane: I offer this in evidence.

Said assignment is marked Exhibit B-5.

20

The Court: Is the due execution of this assignment admitted?

Mr. Whinery: Yes, sir.

Q. You say you mailed the note and the agreement with your letter of May 10, 1924, to the Mutual Securities Company? A. I did.

Q. Did you get an acknowledgment of that letter, from the Mutual Securities Company? A. Not until a second letter was written, registered.

30

Q. You say a letter was written after that time? A. There was.

Q. No response to it? A. No response to it.

Q. I show you a letter of June 23, 1924, which was sent to Brunson by the Mutual Securities Company, and ask you if you received that letter from him? A. This is the one sent by Mr. Brunson to the Mutual Securities Company.

Q. Did you dictate the letter? A. I didn't dictate it, I was there at the dictation.

40

*George J. Finger—Direct.*

Mr. Crane: I offer it in evidence.

By Mr. Whinery:

Q. Is that Mr. Brunson's signature? A. It is.

10 Said letter is marked Exhibit B-6.

Q. And I show you a letter addressed to Mr. Brunson, dated June 27, 1924, signed by the Mutual Securities Company, and ask you if you received that letter from Mr. Brunson, in reply to his of the 23rd? A. I did.

Mr. Crane: I offer it in evidence.

Said letter is marked Exhibit B-7.

20 Q. Now, then, Mr. Finger, referring back to May 10th, at the time that Sharp took the automobile out of the warehouse for the purpose of servicing it to sell it to Karkuff, how much was then due to Mr. Brunson on the advances he had made— A. The note, \$950.00; one month's interest, \$4.75; the storage charges, \$5.00; making a total of \$959.75.

By the Court:

30 Q. At what time was this? A. May 10th.

Q. Now, then, at the time the deal was closed out with Karkuff on May 10th, what did Mr. Brunson get from Sharp on account of the loan that he had made on April 11, 1924? A. \$272.89.

Q. How? A. In a check; and the finance papers, of \$801.00, from which was to be deducted \$107.00 for the finance expenses, leaving a net balance of \$694.00, which would balance the account.

40 Q. So that the assignment with the conditional sales agreement had a net value of \$694.00? A. That is right.

*George J. Finger—Cross.*

Q. Had Mr. Brunson had previous dealings with the Flint Motor Company? A. He—

Q. Wait a minute. Of Plainfield, and the Mutual Securities Company? A. He did.

Q. About how many transactions had there been between Mr. Brunson and you, or Mr. Brunson, Sharp and the Company? A. The greater part of them were banking transactions, when Mr. Brunson was president of the First National Bank and I was cashier, during the year 1923, I should assume from fifteen to twenty transactions. 10

Q. Fifteen to twenty? A. Yes.

Q. And those transactions, except as to the amount, were handled just the same as this one was handled? A. They were.

Q. And in the other instance when the finance papers were sent through to the Mutual Securities Company, did they remit to the bank a check for the net amount of the discount of the finance papers? A. They did. 20

Q. When you took the—or when Mr. Brunson took the automobile into the warehouse on April 11, 1924, what papers did Sharp show you as to his ownership of the automobile, Mr. Finger? A. A receipted invoice.

*Cross-examination by Mr. Whinery:* 30

Q. You brought suit in one of the district courts against Mr. Karkuff, to recover some of these payments? A. We did.

Q. What was the result of that suit? A. It was felt that it should be a Chancery matter.

Q. Was it non-suited or judgment entered, or what was it that happened? A. That is the only way I can answer.

Q. Did you recover in the district court? A. No. 40

*David L. Sharp—Direct.*

Q. Had you ever had, or had Mr. Brunson ever had any dealings himself with the Mutual Securities before this, or were they dealings with his bank? A. Well, he was the head of the bank, and they were at his direction.

10 Q. Were the dealings between the bank and the Mutual Securities Company or Mr. Brunson? A. The First National Bank.

Q. And not between Brunson? A. No.

---

DAVID L. SHARP, a witness produced on behalf of the defendant Brunson, being duly sworn, testified as follows:

20 *Direct examination by Mr. Crane:*

Q. Mr. Sharp, in 1924, were you connected with the Plainfield Flint Company? A. Yes, sir.

Q. And an officer of the Company? A. Yes, sir.

Q. What office did you hold? A. Owner.

Q. You owned the company? It was your company? A. Yes.

By the Court:

30 Q. It was not a corporation; it was simply a trade name? A. Yes.

Q. You were the company? A. Yes.

Q. In April, 1924, did you apply to Mr. Brunson for a loan of \$950.00 on a Flint automobile? A. I did.

Q. And where was the automobile that you were going to get the loan on? A. In my showroom.

40 Q. What did you show Mr. Brunson evidencing your ownership of the automobile at the time you

*David L. Sharp—Direct.*

applied for the loan? A. A manufacturer's invoice.

Q. And the automobile was then paid for at the time you showed him the invoice? A. Paid for by the finance company.

Q. Which one? A. The Mutual Securities.

Q. Did you tell Mr. Brunson that? A. Yes, sir.

Q. You told Mr. Brunson it was free and clear?

A. He didn't ask me.

Q. You showed him the warehouse receipt?

10

By the Court:

Q. Is there a difference between a manufacturer's invoice and the warehouse receipt? A. No; when you buy from the manufacturer they give you a receipt, and when it is financed by the finance company, sometimes they give you a receipt or it—

20

Q. You have spoken of a manufacturer's invoice, and also of a receipted warehouse receipt?

A. Yes, sir.

Q. Are they two separate papers? A. Yes, sir.

Q. What did you show to Mr. Brunson? A. A manufacturer's invoice.

Q. Well, did that show that you owned the car?

A. Yes, sir.

Q. How? A. Because it was receipted, marked paid.

30

Q. And at that time you got this check, Exhibit B-1, for \$950.00, from Mr. Brunson, didn't you?

A. Yes, sir, I did.

Q. And before you got the check from Mr. Brunson, what did you do with the automobile?

A. Put it in the warehouse, and his man in charge gave me a receipt for it, which I brought back to Mr. Brunson.

40

*David L. Sharp—Direct.*

Q. And that automobile was later sold by you to a man named Karkuff, in Bound Brook; isn't that so? A. Somerville.

10 Q. Will you just tell the Vice Chancellor what took place between you and Mr. Brunson when you got the car out of his warehouse to deliver it to your buyer, Karkuff? A. Yes—

Q. Tell the Court? A. I had, of course, the numbers of the car, and made my finance papers out in advance, had them signed by my purchaser, and took the papers to Mr. Brunson, and he in exchange for that released the car to me and I delivered it to my customer.

20 Q. And at the same time did you sign an assignment of your interest in the finance papers under date of May 10th, which is B-5 in evidence? A. I did.

Q. Is that your signature? A. That is my signature.

Q. And then you say you turned over to Mr. Brunson the conditional sales contract, got the note for \$801.00 signed by Karkuff, which are Exhibits B-2 and B-3 in evidence, together with the assignment that I have just called your attention to? A. Yes, sir.

30 Q. You never saw anything of the finance papers, as you call them, that is, the note and conditional sales agreement, after they were turned over to Mr. Brunson, until today, did you? A. No.

Q. And you never got the \$801.00 from the Finance Company, did you? A. No.

By the Court:

Q. Or anything else from the Finance Company on account of that note or on account of that sale? A. No.

40

*David L. Sharp—Direct.*

Q. And you mean the Mutual Securities Company? A. Yes, sir; I got the car out of the warehouse; that's all I wanted then.

Q. You got that out of the warehouse by reason of your obtaining the warehouse receipt from Mr. Brunson? A. He expected the finance papers—

Q. What do you mean? A. I didn't mean that; I misspoke. I mean he accepted the finance papers.

Q. Having accepted those, he gave you a warehouse receipt. A. What?

Q. He gave you a warehouse receipt? A. Yes, sir.

Q. When you left the car in the warehouse? A. Yes.

Q. What was the car put in the warehouse for? A. For a loan.

Q. And the car was to be his security? A. Yes.

Q. I understood you to say you gave him the warehouse receipt? A. I gave him the factory invoice.

Q. What was to prevent you from taking the car out of the warehouse at any time? A. I couldn't get the car out until I paid back—

Q. What would have prevented you? A. I delivered the car to this warehouse and he held that receipt himself.

Q. He held the receipt? A. Yes, sir.

Q. The warehouse receipt? A. Yes.

Q. So that in order to get the car out of the warehouse he gave you the receipt? A. That's right.

Q. And he gave you the receipt in exchange for this note and the contract with the finance company? A. Yes, sir, he released the car to me.

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*David L. Sharp—Cross.**Cross-examination by Mr. Whinery:*

Q. Have you the invoice of which you have spoken? A. No.

Q. Do you know where it is? A. No.

Q. Did you give that to Mr. Brunson? A. Yes.

10

By the Court:

Q. You said you showed it to him? A. No; gave it to him.

Q. When was this assignment signed, Mr. Sharp? A. Whatever that date is on there, May or June.

Q. When did you first take up negotiations with the Mutual Securities Company relative to this car? A. I don't remember the exact date.

20

Q. Was it in March? A. I don't remember the exact date.

Q. Did you go to them about buying this car? A. Yes, sir.

Q. Did they make some arrangements to take it over and give it to you in trust or otherwise? A. Yes.

Q. Do you know whether they made a check out for the amount of the price of the car? A. I think they did.

30

Q. Did you ever see that check before? A. I couldn't say; we were handling so many of them.

Q. The car was bought through the Newark Flint Company, wasn't it? A. Yes, sir.

Q. At the time you signed that check, or at the time that check was given for the car and the car was turned over to you, did you execute any other papers? A. Yes.

Q. You knew what they were? A. Yes, sir.

Q. You knew this was a draft? A. Yes.

40

*David L. Sharp—Cross.*

Q. And you knew that was a trust receipt? A. Yes.

Q. Stating you hold the car in trust for the Mutual Securities Company? A. That is right.

Q. And anything you received from it—

The Court: He says he signed it. 10

Mr. Whinery: I offer these papers in evidence.

Said papers, being a check, a draft and a trust receipt, are marked Exhibits M-1, M-2 and M-3, respectively.

Q. At the time this note was signed had you paid the Mutual Securities Company for the car? A. No.

Q. B-3? A. No. 20

Q. The full amount as shown on this draft, or any other sum? A. That amount there?

By the Court:

Q. The full amount shown on the draft, Exhibit M-2? A. Yes, sir.

Q. What is that amount? A. \$950.48.

Q. Did you tell Mr. Brunson anything at all about this trust arrangement? A. No.

Q. Which you had with the Mutual Securities Company? A. No, sir. 30

Q. Why didn't you? A. No reason; he didn't ask me.

Q. And the only thing you showed him was this manufacturer's invoice? A. Yes.

Q. And on that he made the loan? A. Yes, sir, and took my note.

Q. Did he ask you anything about whether you owned the car or not? A. No, sir.

Q. Did he ask you if anybody else had any interest in the car? A. No, sir. 40

*David L. Sharp—Re-direct.*

*Re-direct examination by Mr. Crane:*

He didn't need to ask you anything, did he, Mr. Sharp, when you had the manufacturer's warehouse receipt, or whatever it was, showing the ownership of the car?

10           The Court: That is a matter of argument.

By the Court:

Q. You got from him a check for \$950.00, did you not? A. No, this check was the Mutual Securities Company's, \$950.48.

Q. What did you get from Mr. Brunson? A. What did I get?

20    Q. Yes. A. I don't remember just the figures.

Q. Does this help you to tell the Court how much you got,—B-1? A. \$950.00.

Q. Did you pay the Mutual Securities Company? A. No, sir.

By the Court:

Q. You have not paid them anything? A. No, sir.

30           RECESS UNTIL TWO O'CLOCK.

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AFTER RECESS.

DEFENDANT BRUNSON RESTS.

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*Walter L. Markey—Direct.*

WALTER L. MARKEY, a witness produced on behalf of the defendant Mutual Securities Company, being duly sworn, testifies as follows:

*Direct examination by Mr. Whinery:*

Q. Mr. Markey, in 1924, from March until July, were you connected with the Mutual Securities Company? A. I was. 10

Q. In what capacity? A. Bookkeeper and cashier.

Q. And did you know of the transaction with Mr. Sharp relative to this car which was purchased by Mr. Karkuff? A. I do.

Q. Can you tell us what that check represents? A. That check represented the purchase of the car in question from the Newark Flint Company. 20

Q. Who paid for the car? A. The Mutual Securities Company.

## By the Court:

Q. You say it represented the purchase of the car? A. Yes.

Q. Do you mean the Mutual Securities Company advanced that money to Sharp so that he might purchase the car. Is that it? A. That is it.

Q. The check was made to whom? A. To the Newark Flint Company. 30

Q. When that car was purchased, what happened to it then; Mr. Markey? A. The car was purchased immediately; we got a check for one-fifth its value, and this draft for four-fifths, this was owing to us.

Q. This draft and trust receipt represented four-fifths of the purchase price of the car? A. Of the purchase price of the car?

Q. Some time later did you receive the note and the conditional bill of sale? A. I did. 40

*Walter L. Markey—Direct.*

Q. And when you received that——

By the Court:

Q. You received this from Mr. Brunson? A. We received that through the mail, yes.

10 Q. With this letter or a letter similar to that?  
A. Yes, sir, one similar to that. (Referring to Exhibit B-4).

Q. Whose signature is on that letter? Do you know who signed the letter that you received? A. Well, I can't recall.

Q. What is the signature? A. "P. F. Co.," Plainfield Flint Company, D. L. Sharp.

Q. It doesn't show on the face of the letter that that is from Mr. Brunson? A. No, it doesn't.

20 Q. After you received the conditional bill of sale, what did you do with it? A. We looked up our records and we noted that that car was covered by a time draft, on which there was owing to us \$950.48, and as was customary, we deducted that from the check, which ordinarily would have been sent to the dealer on such a document as that.

Q. Do you know what did become of it? A. Yes, covered on the Plainfield Flint Company account. Cars covered on this——

30 Q. Do you find a record there of the amount the company put out for the car? A. It is A-272, \$1,188.10.

Q. What date is that? A. Dated March 22, 1924.

By the Court:

Q. What book is that? A. The Plainfield Flint Company's account book.

40 Q. What does your book show as to the receipts on account of that particular indebtedness? A. On the same date we received \$237.62.

*Walter L. Markey—Cross.*

Q. Does your account show anywhere where the proceeds of the discount of that note were applied?

By the Court:

Q. That left the balance of \$950.48? A. Yes, 10  
sir.

Q. This entry here of \$694.00, what is that? A.  
This entry here of \$694.00 is this amount less our  
service charge.

Q. What was the service charge? A. \$107.00.

Q. How much does this book show was realized  
from the discount on this note? A. \$694.00.

Q. Applied to what? A. The account of the  
Plainfield Flint Company.

Q. How many of these payments were made on 20  
account of this note? A. Three.

Q. By Mr. Karkuff? A. By Mr. Karkuff.

Q. And you have not received any more? A.  
No.

Q. And the full amount of the notes remaining  
you have not received the proceeds from? A. No.

By the Court:

Q. The note you refer to is Exhibit B-3? A.  
Yes, sir. 30

Q. And no one else has paid you the money due  
you on these notes or on this indebtedness from  
Sharp? A. No.

*Cross-examination by Mr. Crane:*

Q. Mr. Markey, when you gave the check of  
\$950.00, of March 22, 1924, which is M-2—when  
you gave the check of March 22, 1924, to the New-  
ark Flint Company for \$1,188.10, which is M-1, the  
check was handed to Mr. Sharp, wasn't it? A. It 40  
was customary to give it to Mr. Sharp to go up  
and get the car.

*Walter L. Markey—Cross.*

Q. When Mr. Sharp went to the Newark agency and got the car, he also got a manufacturer's warehouse receipt, didn't he? A. He got an invoice, I believe.

10 Q. And that invoice at that time was Mr. Sharp's evidence of title to the automobile. Is that so? A. Well, I didn't see that invoice, but inasmuch as we paid our check for it I believe it should have been made out to the Mutual Securities Company.

Q. Do you know how this was made out? A. No, I don't.

Q. Anyway, the Securities Company didn't take the manufacturer's invoice away from Sharp when he came back and reported he had the car, did you? A. I never saw it, no.

20 Q. You know you didn't take it? A. I never saw it, no.

Q. Is it in the files? A. No.

By the Court:

Q. From the fact that you never saw it you know you didn't take it, don't you? A. Yes.

Q. You know the car was taken by Mr. Sharp to the showroom in Plainfield? A. Yes, sir.

30 Q. And later he paid back to the company a certain percentage of the cost of the car? A. He didn't pay it later; he paid it at the same time. We issued this check to the Newark Flint Company, and as soon as we did that he immediately gave us his check for one-fifth.

Q. He went away with the car and the manufacturer's warehouse receipt? A. Yes, the invoice.

40 Q. Now, you had been dealing with Mr. Sharp for a long time prior to this transaction of March 22, 1924, hadn't you, Mr. Markey? A. Well, I was

*Walter L. Markey—Cross.*

there a few months before that, and they had always done business, I believe, from its inception; they always had done some business.

Q. About a year? A. A little less than a year.

Q. And there had been transactions of a similar nature to this one between your company, Sharp and the First National Bank of Plainfield, of which Mr. Brunson was president. Isn't that so? A. Well, similar in this respect, that in particular deals, that is, on the retail plan, that didn't happen to be a case where we would hold anything on the trust receipt, he has; they were different in that respect. We financed on the retail plan some cars, but there was nothing owing to us on a trust receipt. 10

Q. About how many transactions did you have between the First National Bank, Mr. Sharp and your company before this deal—as many as twenty? A. Well, I couldn't say. 20

Q. A great many, weren't there? A. I wouldn't say it was a great many; there were several, though.

Q. And in each instance, except this particular one, when the finance papers were received by you, you would send to the First National Bank your check representing the proceeds of the discount. Isn't that so? A. Yes, there were some arrangements, because we were instructed to send the checks to the First National Bank, but never to any individual. 30

Q. But in this instance when you were instructed to send it to the First National Bank, you did. Isn't that so? A. Well, the Flint Company didn't instruct us to send it to any place. They didn't have any jurisdiction.

Q. You got B-4, the letter of May 10th, you have already testified, you got that letter, didn't you? A. Yes, sir. 40

*Walter L. Markey—Cross.*

Q. Why didn't you answer the letter when you got it? A. Well, in the first place we didn't know who Mr. Brunson was, and we knew, too, that some money was owing to us on that car; so we applied it against the Plainfield Flint Company's indebtedness to our company, which was the usual thing—

10

Q. You knew who the Plainfield Flint Company was? A. Yes, sir.

Q. Did you acknowledge receipt of the papers to the Plainfield Flint Company, and say, "Who was A. J. Brunson?" or anything to that effect? A. I believe we got in touch with Mr. Sharp regarding it.

20

Q. In touch with Mr. Sharp? A. Yes, and told him he owed us so much on that time draft.

Q. Did you do this or did— A. I didn't personally, but I believe—

Q. I don't want—

The Court: Strike it out, then.

30

Q. It was not until after repeated demands had been made on your company by Mr. Brunson, by letter or otherwise, that the letter from the Mutual Securities Company, B-7, was written, was written to Mr. Brunson; is that so? A. Isn't there a letter there dated June 4th, to Mr. Sharp, regarding that?

Q. I am talking, sir, about the letter you wrote to Mr. Brunson. That is the first letter you wrote to Mr. Brunson, isn't it? A. That is the only one I found in the files, so I presume it must be.

Q. It is? A. It must be.

40

Q. It was your purpose when you advanced this money to Sharp, to control an interest in the ownership of this car, as your security, wasn't it? A. Yes, sir.

*Walter L. Markey—Re-direct.*

Mr. Whinery: I think the papers speak for themselves.

Q. Then why didn't you take from him what was the evidence of the ownership of the automobile,—the manufacturer's invoice? A. Well, I don't know why it wasn't done in this case. 10

By the Court:

Q. You did take it usually? A. With some of them we did take it and with some of them we didn't take it.

Q. You had been engaged in financing the sale of automobiles for some time prior to this transaction, hadn't you? A. Yes.

Q. And you knew that the manufacturer's invoice receipted in the hands of a dealer was evidence of the ownership of an automobile it called for, didn't you? A. Well—— 20

Mr. Whinery: That is objected to on the ground that it calls for a conclusion, and is not necessarily binding on the situation at all. The invoice stands for what it says on its face.

The Court: The objection is overruled.

Q. (Stenographer repeats the question.) A. Yes, sir, I guess I did. 30

*Re-direct examination by Mr. Whinery:*

Q. Had you in any of these other deals with the First National Bank, had a situation such as this arise, where money was owing to you on your trust receipt and time draft at the time the conditional bill of sale and note were forwarded to you to be discounted? A. No, we didn't. 40

*Walter L. Markey—Re-cross.*

By the Court:

Q. You say you didn't know who Mr. Brunson was? A. No, we didn't know who Mr. Brunson was at all.

10 *Re-cross examination by Mr. Crane:*

Q. How did you get his address to write to him when you wrote to him on the 24th, Exhibit B-7?

A. It says here in the first paragraph, "We have for acknowledgment your favor of the 23rd instant" and so forth, which I presume showed Mr. Brunson addressed his communication—

Q. Did you inquire of Mr. Sharp who Mr. Brunson was? A. I think we wrote to Mr. Sharp on June 4th regarding Mr. Brunson.

20 Q. Didn't he tell you who Mr. Brunson was? A. There doesn't seem to be any reply to our communication, no.

DEFENDANT MUTUAL SECURITIES COMPANY RESTS.

Mr. Crane: I am not sure whether there is clearly upon the record that the manufacturer's invoice was the legal evidence of the ownership of this car.

30 The Court: This witness admitted that he knew that.

BOTH SIDES REST.

**Conclusions.**

(Filed December 12th, 1928.)

## IN CHANCERY OF NEW JERSEY.

*Between:*FRANK KARKUFF,  
Complainant,*and*MUTUAL SECURITIES Co., ETC.,  
*et al*,  
Defendants.

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Conclusions.

ON FINAL HEARING.

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BUCHANAN, V. C.

This is an interpleader suit over a fund of \$600.00 deposited in Court by complainant,—being the unpaid balance due on an automobile purchased by him.

It appears by the proofs that the car in question was purchased March 22, 1924, by defendant Mutual Securities Company for \$1188.10, for one Sharp, trading as Plainfield Flint Co., and delivered to Sharp on his execution and delivery to the Securities Company of a check for \$237.62, “time draft” for \$950.48, and “negotiable trust receipt” for the car.

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By the terms of the negotiable trust receipt Sharp, as “trustee-bailee” acknowledged receipt of the car from the Securities Co., as owner, and agreed to hold in trust for the holder of the contemporaneously executed “time draft” and to return it on demand in good order and unused, ex-

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*Conclusions.*

cept that upon obtaining the prior written consent of the holder of the time draft, he might sell the car for their account, for not less than \$1188.10 and deliver the proceeds of sale to the holder of the time draft. The time draft was to be security for the performance of Sharp's obligations under the trust receipt. The time draft was drawn to the order of the Securities Company, to mature June 20th, 1924, and recited that it was security for Sharp's obligation under the trust receipt.

Sharp took the car to Plainfield, put it in a warehouse, and on April 11th, borrowed \$950.00 from defendant Brunson, giving Brunson the warehouse receipt as security.

On May 10th, Sharp sold the car to complainant, on a conditional sales agreement. Complainant paid part cash and agreed to pay the balance of \$801.00 in twelve monthly instalments, evidenced by his promissory note (payable at the office of the Securities Company), attached to the conditional sales agreement. Sharp endorsed the note in blank, executed an assignment of his interest in the conditional sales agreement and note and delivered the assignment, agreement and note to Brunson; Brunson surrendered the warehouse receipt; and the car was delivered to complainant.

Brunson sent the conditional sales agreement and note to the Securities Company, with a letter signed by Sharp and written on Sharp's letterhead, asking them to "draw your check for the proceeds due us made payable to A. J. Brunson and mail it to 105 E. Front Street, Plainfield, N. J.", (Brunson's address), but saying nothing about the assignment to Brunson, which assignment was retained by Brunson.

*Conclusions.*

The Securities Company, having a balance due them from Sharp, of \$950.48 (more than the entire face of the note) figured that there was nothing "due" Sharp, and sent no check to Brunson. Brunson and the Securities Company knew nothing of each other's claims in the matter until June, when there was some correspondence between them. Complainant has paid to the Securities Company three instalments on the note, and paid the balance into Court and obtained decree of interpleader against the two claimants.

10

The Securities Company had no prior claim over Brunson by reason of the so-called "trust receipt". It is contended on behalf of that Company that it was the purchaser and owner of the car,—not Sharp; but the proofs contradict this. It is true that the Securities Company gave its check to the Newark Flint Company for the full purchase price of the car, but Sharp contemporaneously gave the Securities Company his check for 20% of that amount, (together with the time draft for the balance and the "trust receipt"). Markey, the officer of the Securities Company who handled the transaction, admitted when questioned by the Court, that the Securities Company advanced the money to Sharp so that he might purchase the car. The evidence also shows that Sharp, not the Securities Company, got the manufacturer's invoice for the car. The Securities Company was in the business of financing the purchase of cars for others; not buying cars for its own account.

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It is quite clear that Sharp bought the car and was the owner thereof, not the Securities Company. It follows that the so-called "trust agreement" was in fact and essence a chattel mortgage. *Commonwealth Finance Co. v. Schutt*, 97

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*Conclusions.*

N. J. L. 225. It was not verified or recorded, and was invalid as against Brunson, who had no notice. Since Sharp was the owner of the car, he received the proceeds of his subsequent sale of the car not as bailee or trustee for the Securities Company, but for himself, as his own property.

10

The conditional sale agreement is not particularly material in the present case. It was simply security for the payment of the note given by Karkuff to Sharp,—and that note has been paid by Karkuff by the payment into Court of the balance due thereon,—this suit being as to the ownership of such balance.

20

The proofs show that when Sharp sold the car to Karkuff and took the latter's note, he (Sharp) endorsed the note in blank and delivered it (together with an assignment of the conditional sale agreement) to Brunson, in exchange for Brunson's delivery of the warehouse receipt. Title to the note thus passed to Brunson.

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Brunson, having title to the note, sent it (and the conditional sale agreement) to the Securities Company, with the letter from Sharp to the Securities Company hereinbefore referred to, not disclosing himself (Brunson) as having title to the note or conditional sale agreement, or any interest therein,—but in such way as to appear that Sharp had title and was himself endorsing and sending the papers as his (Sharp's) own transaction with the Securities Company.

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The Securities Company had no other knowledge or notice of Brunson's claim or interest, and acted on their belief of Sharp's ownership,—a belief caused by Brunson,—so that instead of sending to Brunson, as Sharp requested, the balance apparently due to Sharp after deduction of its own charges for collection and other services, the

*Conclusions.*

Securities Company kept that balance and credited the amount upon the indebtedness which Sharp owed on his original note. This it would have had a perfect right to do, so far as the arrangements between it and Sharp were concerned.

Brunson contends that the Securities Company had notice of his claim or interest by reason of prior dealings between himself and Sharp and the Securities Company. This contention is without basis, for the proofs show that there had not been a prior transaction similar to this (where Sharp sold a car on which the Securities Company had a trust receipt), and also show that there had been no prior transaction in which Brunson was involved by name,—the prior transactions had been with a bank.

The situation then, reduced to its simple and material elements is this:

B. (Brunson) sends C. (the Securities Company) a promissory note made by K., payable to bearer, at the same time causing C. to believe that it is S. who is sending it. C. receives it as coming from S., discounts it, and credits the proceeds on a prior indebtedness due from S. to C. A number of weeks elapse before B. discloses the facts to C. and asserts claim of ownership of the note.

In this situation it seems clear that Brunson is estopped from asserting his ownership of the note. In reliance on his representation the Securities Company changed its position, by crediting Sharp with payment of about 75% of his debt instead of suing him or otherwise enforcing the collection. The Securities Company is entitled to the fund in dispute.

**Final Decree.**

(Filed December 14, 1928.)

## IN CHANCERY OF NEW JERSEY.

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*Between:*FRANK KARKUFF,  
Complainant,*and*MUTUAL SECURITIES Co. *et al.*,  
Defendants.On Bill of  
Interpleader.  
Final Decree.

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This cause coming on to be heard before the Court, in the presence of Andrew J. Whinery, solicitor for and of counsel with the defendant, Mutual Securities Co., a Corporation, and of Robert Newton Crane, solicitor for and of counsel with the defendant Augustus Brunson, and the several answers of the said defendants being read, depositions of witnesses taken and the arguments of respective counsel heard, and

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It appearing that the complainant herein, Frank Karkuff, did, at the time of filing the Bill of Complaint in this cause, pay into this Court the sum of Six Hundred Dollars and Seventy Five Cents (\$600.75), which amount was claimed by both of said defendants hereinabove named, and that the said sum of money still remains deposited in this Court and is subject to the order and direction thereof, and

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It further appearing that the defendant, Mutual Securities Company, a Corporation is lawfully entitled to receive the said sum of money, and that

*Final Decree.*

the defendant Augustus Brunson is not so entitled,

It is, on this 14th day of December, 1928, ORDERED, ADJUDGED and DECREED, and the Chancellor, by virtue of the power and authority of this Court, does hereby ORDER, ADJUDGE and DECREE that the said sum of Six Hundred Dollars and Seventy Five Cents (\$600.75) which was paid as aforesaid by the complainant into this Court, rightfully belongs to the defendant Mutual Securities Co., a Corporation, and that said Mutual Securities Co., a Corporation, was and is now entitled to receive said sum, together with all and any accumulation of interest thereon, and that the balance remaining in this Court, after deducting costs, if any, and now remaining deposited herein, together with all interest accumulated thereon, be paid to the defendant, Mutual Securities Co., a Corporation, or to Andrew J. Whinery, its solicitor, and

It is FURTHER ORDERED, ADJUDGED and DECREED that the said defendant Augustus Brunson do pay to the said defendant Mutual Securities Co., a Corporation, the costs in said cause to be taxed.

Respectfully advised,

E. R. WALKER,  
C. 30

M. G. BUCHANAN,  
V. C.

**Amended Notice of Appeal.**

(Filed December 23, 1928.)

IN CHANCERY OF NEW JERSEY.

10 *Between:*

FRANK KARKUFF,  
Complainant,

*and*

MUTUAL SECURITIES Co. *et al.*,  
Defendants.

On Bill of  
Interpleader.

Amended Notice  
of Appeal:

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The defendant, Augustus J. Brunson, hereby appeals from the final decree made in the above entitled cause on the 11th day of December, 1928, and from the whole and every part thereof, to the New Jersey Court of Errors and Appeals in the Last Resort in All Causes.

Dated December 19, 1928.

30

ROBERT NEWTON CRANE,  
Solicitor for and of Counsel with  
Defendant, Augustus J. Brunson.

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

ROBERT NEWTON CRANE,  
Of Counsel with Defendant,  
Augustus J. Brunson.

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The decree appealed from was made by Chancellor Walker, on the advice of Vice Chancellor Buchanan.

**Petition of Appeal of Augustus J. Brunson.**

(Filed December 23, 1928.)

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

*Between:*

FRANK KARKUFF,  
Complainant,

*vs.*

MUTUAL SECURITIES Co., a corp.,  
Defendant-Appellee,

AUGUSTUS J. BRUNSON,  
Defendant-Appellant.

On Appeal  
from Court of  
Chancery.

Petition of  
Appeal of  
Augustus J.  
Brunson.

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*To the Honorable the Court of Errors and  
Appeals in the Last Resort in All Causes:*

The petition of Augustus J. Brunson, the appellant in the above entitled cause, respectfully shows that:

1. Your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 11th, 1928, in a certain cause wherein Frank Karkuff was the complainant and Mutual Securities Company, a corporation, and Augustus J. Brunson, were defendants, in this respect, to wit: 30

(a) That the said decree complained of Orders, Adjudges and Decrees that the sum of Six Hundred Dollars and Seventy-five cents (\$600.75) which was paid as aforesaid by the complainant into this 40

*Petition of Appeal of Augustus J. Brunson.*

Court, rightfully belongs to the defendant Mutual Securities Company, a corporation, and that the said Mutual Securities Company was and is now entitled to receive said sum together with all and any accumulations of interest thereon;

- 10 (b) That the said decree complained of Orders, Adjudges and Decrees that the defendant, Augustus J. Brunson, do pay to the said defendant Mutual Securities Co., a Corporation, the costs in said cause to be taxed, and also the taxed costs of the complainant heretofore ordered paid by the defendant Mutual Securities Co., a Corporation, which said tax costs were paid by the said defendant Mutual Securities Co., a Corporation, to the complainant, pursuant to the prior
- 20 Order of this Court.

2. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that it decrees that the Mutual Securities Company is rightfully entitled to the said sum of Six Hundred Dollars and Seventy-five cents (\$600.75), and that it decrees that the said Augustus J. Brunson pay the costs of the proceeding in the Court of Chancery, to the Mutual Securities Company, and also pay the taxed costs of the complainant ordered paid by the defendant, Mutual Securities Company.
- 30

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other and further relief in the premises as this Court shall deem proper.

40

ROBERT NEWTON CRANE,  
Solicitor for and of Counsel  
with Appellant.

**Answer to Petition of Appeal.**

(Filed Jan. 3, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

FRANK KARKUFF, Complainant,	10
<i>vs.</i>	
MUTUAL SECURITIES Co., a Cor- poration, Defendant-Appellee,	On Appeal from Court of Chancery.
<i>and</i>	
AUGUSTUS J. BRUNSON, Defendant-Appellant.	20

Answer to Peti-  
tion of Appeal.

The answer of Mutual Securities Co., a Corporation, the above named Appellee, to the Petition of Appeal of Augustus J. Brunson, the above named Appellant.

This Appellee, not admitting the truth of any or all of the matters in said Petition of Appeal contained, for answer thereto nevertheless, admits that a Decree was, on or about December 11th, 1928, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said Petition mentioned and as therein set forth, except that said Decree did not order that the taxed costs of Complainant heretofore ordered paid by the defendant Mutual Securities Co., a Corporation, be paid by the Appellant to the Appellee. As to the sub-

40

*Answer to Petition of Appeal.*

stance and form of said Decree, this Appellee begs leave to refer thereto when the same shall be produced.

10 This Appellee is advised and believes that the said Decree is agreeable to equity and it prays that the same may be affirmed, with costs to be taxed in favor of this Appellee.

ANDREW J. WHINERY,  
Solicitor for and of Counsel  
with Appellee.

**Exhibit B-1.**

20 No. 126

Plainfield, N. J. April 11 1924

THE FIRST NATIONAL BANK 55-191  
OF PLAINFIELD

Pay to the order of Plainfield Flint Company  
Nine Hundred Fifty and 00/100 Dollars.

Collectible at par through the Federal Reserve Bank New York

30 \$950.00

A. J. BRUNSON  
Collection Account

(Check)

(Endorsed)

PLAINFIELD FLINT Co.

D. L. SHARP  
Prop.

40

**Exhibit B-2.**

(Copy)

NEW JERSEY

## CONDITIONAL SALE AGREEMENT

This Agreement, made this 10th day of May, 10  
 1924, between Plainfield Flint Co. at Plainfield,  
 N. J., first party, his or its successors, or assigns  
 (hereinafter called "Seller"), and Frank Karkuff  
 at Main St. in Bound Brook, N. J., second party  
 (hereinafter called "Buyer")

WITNESSETH:—That the Seller in consideration  
 of the payments, agreements and conditions con-  
 tained herein which on the part of the Buyer are  
 to be made, done and performed, has this day de-  
 livered and agreed to sell and the Buyer has this 20  
 day agreed to buy from the Seller, but upon the  
 conditions hereinafter recited, to the Buyer the  
 following Passenger or Commercial Car, (herein-  
 after called the "Car"):

Make, Flint; Type of Body, Touring; Manufac-  
 turer's Serial No., 3829; Motor No., M6717; Ad-  
 vertised Horse Power, 27; List Price F.O.B. Fac-  
 tory, 1188.10; Cash Selling Price Including Ex-  
 tras, 1495, including service charges, for the gross 30  
 sum of \$1602. The Buyer has this day paid to the  
 Seller \$801, and the Buyer agrees to pay to the  
 Seller, or order \$801, balance payable in 12  
 monthly installments of \$66.75 each, to be evi-  
 denced by a promissory note (not as payment, but  
 as evidence of the amounts to become due here-  
 under) made by the Buyer to the order of the  
 Seller bearing even date hereof, and maturing on  
 the due dates of said respective installments. Any  
 extensions or assignments of this Agreement or 40

*Exhibit B-2.*

said note shall not waive any condition herein contained.

10 Title to the Car and extra equipment shall not pass by delivery to the Buyer but shall remain vested in and be the property of the Seller or Assigns until the purchase price has been fully paid. Buyer agrees to operate and control said Car in conformity with all Laws and Ordinances and to indemnify and save harmless the Seller from any and all loss, or damage to persons or property caused by said Car or by the use and operation thereof to which the Seller might possibly be subjected.

20 Buyer agrees and acknowledges that the within contract covers all conditions and agreements between the parties, that the loss, injury or destruction of said Car shall not release said Buyer from payment as provided herein. Buyer hereby acknowledges receipt of and accepts the Car, having first examined and tested the same and found same in sound and first class condition, and agrees to keep the Car insured against loss by fire and theft with insurance companies acceptable to the Seller for not less than the amount owing, and until fully paid, payable to and to protect the interest of the Seller, and the Seller may place, 30 continue and renew said insurance for the Buyer at the Buyer's expense if the Seller so elects.

Buyer agrees to pay all taxes, license fees or charges against said Car and to keep same in good condition, and that any equipment, repairs or accessories placed upon said Car shall be at Buyer's expense and become a component part thereof and included in the terms of this Agreement. Buyer further agrees not to use or permit said Car to be used for passenger hire.

40 Buyer further agrees that he will not use or caused or permit to be used the Car herein men-

*Exhibit B-2.*

tioned for the transportation of liquors, wines or any other beverage, for personal or commercial use, prohibited by any Federal or State statute to be transported, and it is hereby agreed that should the Car hereinbefore described be used for such purpose or any other unlawful purpose, it shall be considered as a default under the agreement, whether or not there shall be a default under any other terms or conditions thereof, which shall entitle the holder hereof to immediate and continued possession of the Car herein described. 10

Should the Buyer fail to keep and perform any or all his agreements herein contained, and to promptly pay at maturity any and all sums hereunder, or if said Car is removed or attempted to be removed from the State in which the Buyer now resides, or to be otherwise disposed of, or if Buyer shall lend, sell or encumber, or shall attempt to sell or encumber said Car, or in case of misuse or abuse thereof, or whenever the Seller or his assign shall deem the debt insecure, said Seller may without any demand or notice take possession of said Car and equipments, wherever found and without process of law, and all rights of the Buyer hereunder shall cease and terminate thereupon absolutely. Buyer does hereby expressly waive any right of action against the Seller growing out of the removal, repossession or retention of said Car or otherwise, and hereby consents that upon any default (or in the event that the Buyer, for any reason gives up or loses possession of the Car), all unpaid balance of said purchase price and note representing the same shall forthwith become due and payable. 20 30

Seller may, by suit or otherwise, enforce payment of said note, and no legal proceedings with respect thereto shall be deemed any waiver of 40

*Exhibit B-2.*

said right of Seller to take possession on default or breach as aforesaid. Upon the Seller so taking possession of the Car, Seller may sell the Car at public or private sale at any time thereafter without any notice to the Buyer, and said Seller may become the purchaser thereof, and if the proceeds  
 10 thereof are insufficient to pay all sums remaining unpaid hereunder and the expense caused by such repossession, removal, reparation, storage, liens and sale, including a reasonable attorney's fee, incurred in taking possession of said Car, or in or about the sale thereof, or in collecting in any manner any sums which may be due and owing hereunder, Buyer agrees to pay any deficiency as damages for use of said property. The waiver  
 20 or indulgence of any default shall not operate as a waiver of subsequent defaults. Time is of the essence of this agreement.

This agreement shall apply to and bind the heirs, executors, administrators and assigns of the Buyer, and shall inure to the benefit of the Seller, Seller's heirs, executors, administrators, successors and assigns, and contains the entire agreement between the parties hereto, their agents or employees, either verbal or written.

30 IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals to this Agreement the day and year first above written.

FRANK KARKUFF  
 PLAINFIELD FLINT Co.  
 By D. L. SHARP

*Exhibit B-2.*

Bound Brook, N. J., Date May 10, 1924.

FOR VALUE RECEIVED, I, we, promise to pay to the order of Plainfield Flint Co., Eight Hundred and one Dollars (\$801.00) in 12 monthly installments of \$66.75 each, the first to become due one month after date, balance of installments to be paid on even date of each ensuing month thereafter until paid at the office of Mutual Securities Co., 1010 Broad Street, Newark, N. J., with interest AFTER MATURITY at the highest legal contract rate. 10

I, we, do hereby authorize, irrevocably, any attorney to appear for me, us, after maturity of the whole or any part hereof in any court of record in the United States, in term time or vacation, and to waive the issue and services of process and to confess a judgment against me, us, in favor of the payee or any subsequent holder hereof, for such amount as may appear to be unpaid hereon, and all other expenses including attorney's fees incurred in collecting any amount owing hereunder, which we agree to pay, and to release all error and waive all right of appeal. I, we, hereby waive presentment, protest, notice of protest and all benefit of valuation, appraisalment and exemption laws. This note becomes immediately due and payable (less any payments made hereon) in event of non-payment at maturity of any installment scheduled hereon. 20 30

(Signed) FRANK KARKUFF

*Exhibit B-2.*

## APPLICATION FOR INSURANCE

10 The purchaser, hereby requests the Star Motor Co. of N. J., or their representative, to arrange insurance under an open policy as required in the agreement contained in the lien instrument executed on reverse side.

## WARRANTIES BY THE PURCHASER FOLLOW

Occupation Butcher.

Description of the automobile (See Reverse Side.)

The facts with respect to the purchase of the automobile described are as follows:

20 The uses to which the automobile described is and will be put, are Pleasure.

The automobile described is usually kept in Private garage, located Bound Brook, Somerset County, N. J.

PLAINFIELD FLINT Co.

Dealer Endorse Here Without Recourse

30

40

**Exhibit B-3.**

119 E. Main St., Somerville, N. J.,

Date May 10th, 1924.

FOR VALUE RECEIVED, I, we, promise to pay to  
 the order of Plainfield Flint Co. Eight Hundred 10  
 One & 00/100 Dollars (\$801.00) in 12 monthly in-  
 stallments of \$66.75 each, the first to become due  
 one month after date, balance of installments to  
 be paid on even date of each ensuing month there-  
 after until paid at the office of Mutual Securities  
 Co., 1010 Broad Street, Newark, N. J., with inter-  
 est AFTER MATURITY at the highest legal contract  
 rate.

I, we, do hereby authorize, irrevocably, any at- 20  
 torney to appear for me, us, after maturity of the  
 whole or any part hereof in any court of record  
 in the United States, in term time or vacation, and  
 to waive the issue and services of process and to  
 confess a judgment against me, us, in favor of the  
 payee or any subsequent holder hereof, for such  
 amount as may appear to be unpaid hereon, and  
 all other expenses including attorney's fees in-  
 curred in collecting any amount owing hereunder,  
 which we agree to pay, and to release all error 30  
 and waive all right of appeal. I, we, hereby waive  
 presentment, protest, notice of protest and all  
 benefit of valuation, appraisement and exemption  
 laws. This note becomes immediately due and  
 payable (less any payments made hereon) in event  
 of non-payment at maturity of any installment  
 scheduled hereon.

(Signed) FRANK KARKUFF

*Exhibit B-3.*

No. 935

PLAINFIELD FLINT Co.

Dealer Endorses Here Without Recourse

D. F. SHARP, Prop.

MUTUAL SECURITIES Co.

F. WALTON, Secy.

10

1 .....

2 .....

3 Aug. 12, 1924 FK 66.75

4 Sep. 8, 1924 FK 66.75

5 Oct. 6, 1924 FK 66.75

20

6 Nov. 12, 1924 FK 66.75

7 Dec. 10, 1924 FK 66.75

8 Jan. 15, 1925 FK 66.75

9 Feb. 11, 1925 FK 66.75

10 Mar. 14, 1925 FK 66.75

11 .....

12 .....

30

(Stamps—18¢)

40

**Exhibit B-4.**

PLAINFIELD FLINT COMPANY  
431 Park Avenue  
Plainfield, New Jersey  
Phone 2208

May 10-24 10

Mutual Securities Co.  
1010 Broad St., Newark, N. J.

Gentlemen:

Enclosed please find finance papers signed by Frank Karkuff for \$801.00.

Please draw your check for the proceeds due us made payable to A. J. Brunson and mail it to 105 East Front St., Plainfield, N. J.

Very Truly Yours, 20

P. F. Co.  
D. F. S.

**Exhibit B-5.**

PLAINFIELD FLINT COMPANY  
431 Park Avenue  
Plainfield, N. J.

May 10-24 30

In consideration of one dollar and other valuable consideration I hereby sell, assign and transfer all my right, title and interest to the finance papers dated May 10, 1924 signed by Frank Karkuff amounting to \$801. covering Flint Touring Car Serial #3829 and Motor #6717 and sent to the Mutual Securities Co., 1010 Broad St., Newark, N. J., for collection.

PLAINFIELD FLINT Co. 40  
D. L. SHARP, Prop.

GEORGE J. FINGER  
Witness

**Exhibit B-6.**

A. J. BRUNSON  
105 East Front Street  
Plainfield, New Jersey

June 23rd, 1924.

10 Mutual Securities Company  
1010 Broad Street  
Newark, N. J.

Gentlemen:

I have received no reply to my letter of the 4th instant asking for report on the Karkuff finance papers assigned to me by Plainfield Flint Company of this City, and sent you on the 10th ultimo.  
20 I understand through Mr. Sharp that you are holding these up because he owes you money on another deal. That does not justify such action on your part, and I demand the return of the papers, or check in settlement, or I shall feel obliged to take proceedings against you for the recovery of the amount, if any, which you have collected, and replevin the uncollected notes.

Please let me have your reply to this by return mail, and if not hearing from you, I will understand that I am to proceed to suit.  
30

Yours truly,

A. J. BRUNSON.

B:M

**Exhibit B-7.**

TELEPHONE MULBERRY 3377

MUTUAL SECURITIES COMPANY  
 1010 Broad Street  
 Newark, N. J.

10

June 27, 1924.

Mr. A. J. Brunson,  
 105 East Front St.,  
 Plainfield, N. J.

Dear Sir:

We have for acknowledgment your favor of the 23rd inst., relative to Conditional Sale Agreement of one Frank Karkuff.

20

Beg to state, that such Conditional Sale Agreements are our own contracts and are not transferrable to any other party.

The proceeds thereof, if credit is approved, are payable only to the Dealer who makes the sale, and we recognize no other interests.

It occurs to us, that if you had any arrangement with Mr. Sharp, you should look to him, because if we had known of any agreement of this kind with you, we would have promptly denied the credit.

30

Also, we reserve the right of applying credit to any account we see fit, and if you think we are violating any law or statute in so doing, you are at liberty to take any recourse you see fit, as stated in your communication.

Very truly yours,

MUTUAL SECURITIES COMPANY,

By H. G. CHARLTON.  
 (D).

40

GMD:GMW

**Exhibit M-1.**

COPY

---

Newark, N. J., March 22, 1924. No. 666.

10

FIDELITY UNION TRUST COMPANY

Pay to the Order of NEWARK FLINT Co., \$1188.10.  
 Insured—*Eleven Hundred Eighty Eight Dollars  
 Ten Cents*—Insured.

R. V. KUSER,  
 Asst. Treasurer.

20

F. E. WALTON,  
 Secretary.

Endorsed on reverse side:

Pay to the order of

LIBERTY NAT'L BANK OF N. Y. C.

NEWARK FLINT Co.,  
 JOHN J. BERGEN,  
 President.

Copy

30

**Exhibit M-2.**

COPY

---

\$950.48                      TIME DRAFT                      No. A-272

Newark, N. J., March 22, 1924.

40

On or before June 20, 1924,  
 pay to the order of MUTUAL SECURITIES Co., if de-  
 mand be made, NINE HUNDRED FIFTY & 48/100

*Exhibit M-2.*

.....DOLLARS as security  
 for acceptor's obligations under Negotiable Trust  
 Receipt of even number covering Motor vehicle,  
 Serial No. 3829 together with an attorney's fee of  
 15% if permitted by law, should the holder elect  
 to require payment and place this draft in the  
 hands of an attorney for collection. Demand, 10  
 Protest and Notice of Protest waived.

To PLAINFIELD FLINT Co.,  
 Address PLAINFIELD, N. J.

VALUE RECEIVED and charge to  
 PLAINFIELD FLINT Co.

By D. L. SHARP, Prop.

Endorsed:

PLAINFIELD FLINT Co.,  
 D. L. SHARP, Prop.

20

Accepted:

Payable at Office of  
 MUTUAL SECURITIES COMPANY,  
 Newark, N. J.

Endorsed on  
 reverse side of check  
 MUTUAL SECURITIES Co., 30  
 F. E. WALTON, Sec.

KUSER MOTORS INC.  
 F. E. WALTON, V. P.

We hereby certify that attached Dealer's signa-  
 tures are genuine.

Bank or Distributor.

KUSER MOTORS, INC., 40  
 By: F. E. WALTON,

**Exhibit M-3.**

COPY

ONE TRUST RECEIPT (ACCOMPANIED BY A TIME DRAFT)  
FOR EACH MOTOR VEHICLE

10

---

**NEGOTIABLE TRUST RECEIPT.**

No. A-272

Newark, New Jersey, March 22d, 1924.

Received from MUTUAL SECURITIES COMPANY,  
the owner thereof FLINT Motor Vehicle, Model  
Touring, Serial No. N3829, Motor No. 6E8717  
20 complete with all standard catalogue attachments  
and equipments in consideration whereof and of  
being permitted to display same in our place of  
business we agree, at our expense, to warehouse  
and to hold said Motor Vehicle in trust for the  
holder of time draft of even number herewith  
(which we have this day accepted) as their prop-  
erty, and agree to return on demand in good order  
and unused but with liberty to us to exhibit and  
30 after first obtaining their written consent (but not  
otherwise) to sell the same for their account for  
cash for not less than \$1188.10 and we further  
agree in the case of such sale to keep the proceeds  
separate from our funds and immediately hand  
the proceeds to them without expense or cost to  
the holder of said time draft. The acceptance of  
TIME DRAFT equal in amount to the value of said  
Motor Vehicle shall not be effective to terminate  
this trust but said draft and any sums delivered  
by us shall be security for the performance of the  
40 things obligatory upon us hereunder and all other  
obligations to holder of said Time Draft.

*Exhibit M-3.*

We further agree to keep a separate account of all Motor Vehicles delivered to us under this or any like receipt and of the proceeds thereof when sold, and to furnish to them on the first day of each month a true and complete report for the preceding month. We will also permit them or their duly accredited representatives, to examine our books and the cars in our possession at all reasonable times during business hours. 10

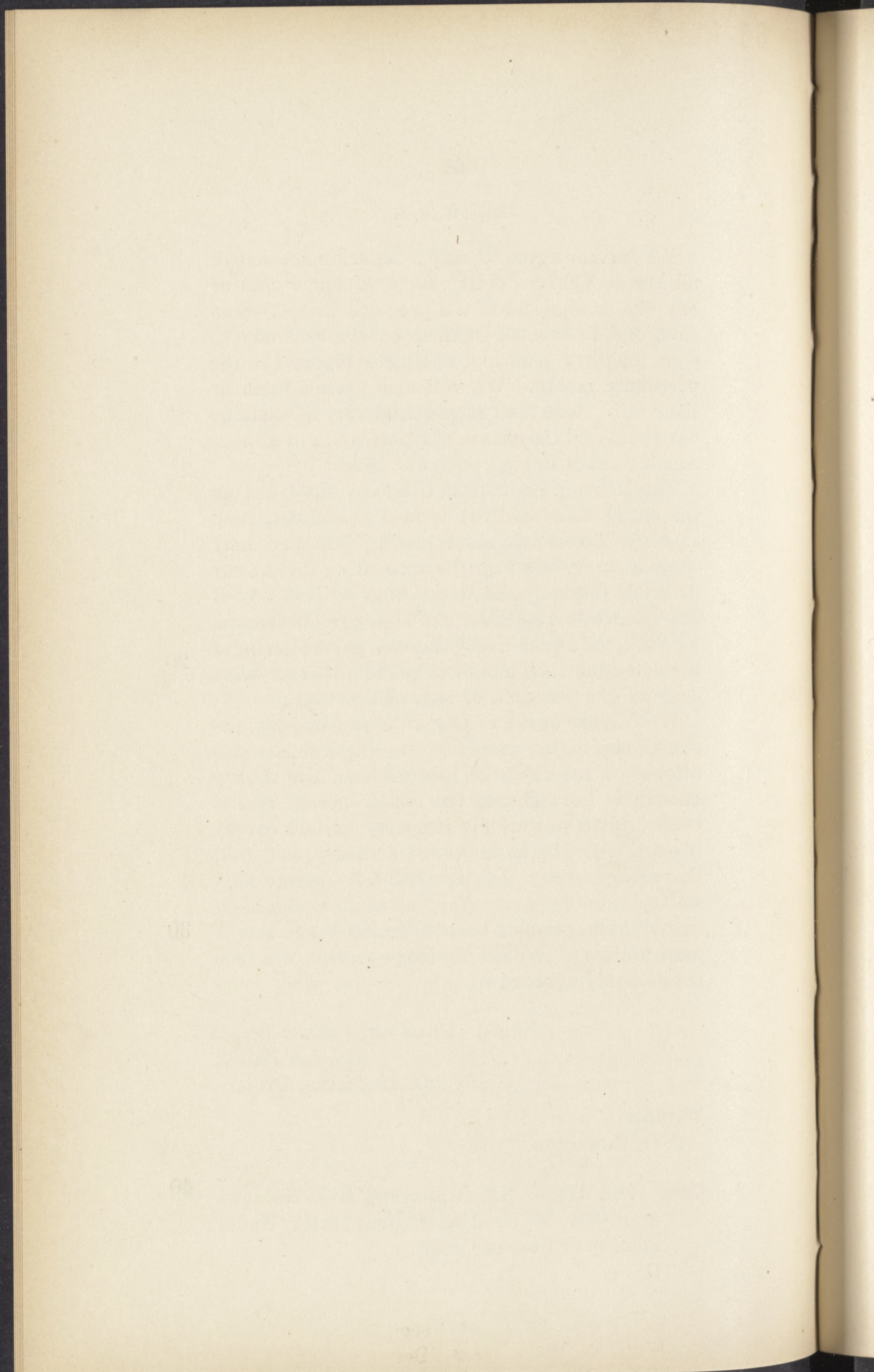
The MUTUAL SECURITIES COMPANY shall, during the entire time said car is held hereunder, keep said car insured against loss by fire and may cause a surety bond for the accounting for the car proceeds thereof to be issued, and in the event of our failure to re-deliver the said car on demand we shall, until re-delivery thereof, pay as damages for detention each month or portion thereof after demand one per cent. of said sale price. 20

We further agree to pay all costs, charges, expenses and disbursements, including a reasonable attorney's fee (15% of sale price of car if permitted by law) should the holder hereof find it necessary to protect his property in said car by placing it in the hands of an attorney, and that the waiver of any default shall not operate as a waiver of subsequent defaults, but all rights hereunder shall continue, notwithstanding any one or more waivers. We acknowledge receipt of a true copy of this agreement. 30

Signed PLAINFIELD FLINT Co.,  
Trustee Bailee.  
By D. L. SHARP, Prop.

Witness:  
S. G. CHARLTON.

Cars Held Under Trust Receipt May Not AND 40  
MUST NOT be Used as Demonstrator Under  
Penalty of Loss of Credit.



**New Jersey Court of Errors and Appeals**

FRANK KARKUFF, Complainant,  <i>vs.</i>  MUTUAL SECURITIES Co., a corpo- ration, Defendant-Appellee,  AUGUSTUS J. BRUNSON, Defendant-Appellant.	}	ON APPEAL FROM COURT OF CHANCERY.
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Sat below :

WALKER, C.  
BUCHANAN, V. C.

**BRIEF OF THE APPELLANT BRUNSON.**

**Facts.**

This appeal brings a decree of the Court of Chancery in an interpleader case before this Court for review. The contest for the fund now in the Court of Chancery is between the defendants, Mutual Securities Company and Augustus J. Brunson. By the decree of the Court of Chancery the fund was awarded to the Mutual Securities Company (hereinafter called the "company").

The salient facts in the case are: That on April 11, 1924, one Sharp, in business as Plainfield Flint Company, made an application to the defendant Brunson, who was former President of the First National Bank of Plainfield, N. J., for a \$950.00 loan on a Flint automobile which was then in

Sharp's showroom in Plainfield, Sharp being the Plainfield agent of the Flint Automobile Company. Sharp produced as evidence of his ownership of the automobile, a manufacturer's invoice or bill of sale issued by Kuser Automobile Company of Newark, duly receipted. The loan was approved by Brunson who required Sharp to move the automobile from his showroom to the Vanderverter warehouse in Plainfield, and to deliver to him the receipted invoice and the warehouse receipt from the Vanderverter warehouse. Brunson then gave Sharp his check dated April 11, 1924, for \$950.00 (Case p. 16, ll. 12-30). The automobile remained in Vanderverter's warehouse, Brunson holding the warehouse receipt and manufacturer's bill of sale, until May 10, 1924, at which time Sharp sold the automobile to Karkuff, the complainant. Brunson then delivered to Sharp the warehouse receipt and manufacturer's bill of sale and took from him a conditional sale agreement signed by Karkuff (Exhibit B-2, Case p. 49), installment note for \$801.00 (Exhibit B-3, Case p. 55), and assignment of the interest of the Plainfield Flint Company in said finance papers (Exhibit B-5, Case, p. 57, ll. 15-30). See also Finger's testimony, Case p. 18, ll. 1-30; p. 19, ll. 1-23; Sharp's testimony, Case p. 24, ll. 15-26. All of the above mentioned papers were mailed in the course of the mail to the Mutual Securities Company at Newark, N. J. (Case p. 18, ll. 14-30). All of the papers were received by Mutual Securities Company but no acknowledgment made of them until June 27, 1924, when the Mutual Securities Company wrote to Brunson, after repeated demands, a letter marked Exhibit B-7 (Case p. 59, ll. 1-30). The Mutual Securities Company in that letter replied to a letter from Brunson to it, dated June 23, 1924 (Exhibit B-6, Case p. 58). Brunson says in that letter in part: "I have received no

reply to my letter of the 4th instant asking for report on the Karkuff finance papers assigned to me by Plainfield Flint Company of this City, and sent you on the 10th ultimo." In its reply the Mutual Securities Company, said in part: "Beg to state, that such Conditional Sale Agreements are our own contracts and are not transferable to any other party. The proceeds thereof, if credit is approved, are payable only to the Dealer who makes the sale, and we recognize no other interests." See also proof of claim of Brunson (Case p. 10, ll. 3-16, par. 8).

The Mutual Securities Company claimed that by virtue of a paper called a trust receipt accompanied by a time draft (Exhibit M-3, Case pp. 62-63) the title to the automobile never passed from it, and that consequently Brunson could acquire no interest in the automobile as collateral security or otherwise.

It was contended by Brunson that the so-called trust agreement was in fact a security or a chattel mortgage and as it was admittedly not recorded, and since Brunson had no notice of its existence prior to his loaning Sharp the money on the automobile, it was void as against him.

### **Brief of the Law.**

The Court below filed written conclusions in the case (Case, pp. 37, 38, 39, 40 and 41). The Court found:

- (a) That the so-called "trust agreement" of the company not being verified or recorded, was invalid as against Brunson who had no notice of it.
- (b) That Sharp was the owner of the automobile in question on May 10, 1924.
- (c) That Sharp sold the automobile to Karkuff and took the latter's note. He

(Sharp) endorsed the note in blank and delivered it, together with the assignment of the conditional sale agreement to Brunson, in exchange for Brunson's delivering the warehouse receipt. Title to the note thus passed to Brunson.

So far, the findings of the Trial Court are not challenged by the appellant, but are accepted as being the law of the case. The part of the findings that this appellant challenges is wherein the Court finds:

“Brunson sent the conditional sales agreement and note to the Securities Company, with a letter signed by Sharp and written on Sharp's letterhead, asking them to ‘draw your check for the proceeds due us made payable to A. J. Brunson and mail it to 105 E. Front Street, Plainfield, N. J.’ (Brunson's address), but saying nothing about the assignment to Brunson, which assignment was retained by Brunson” (Case p. 38, ll. 31-40).

There is no testimony to justify such a finding. The testimony of Sharp is that on May 10, 1924, when he sold the car to Karkuff, he assigned his interest in the finance papers (Exhibit B-5, Case p. 57, ll. 20-40, copy of such assignment), and that he turned over to Brunson the conditional sale contract, the note and the assignment above referred to, which papers he left with Mr. Brunson (Case p. 24, ll. 17-32).

Finger testified that, acting for Mr. Brunson, he mailed the original bill of sale, note, assignment and letter to the Mutual Securities Company at its Newark office (Case p. 18, ll. 16-40; p. 19, ll. 1-28).

Markey, the only witness for the company, does not say anywhere in his testimony that the assignment was not received by the company with the conditional sales agreement, note and letter from

Sharp directing him to send the check to A. J. Brunson, 105 E. Front Street, Plainfield, N. J., but this is what he says (Case p. 29, ll. 39-40; p. 30, ll. 5-12):

“By the Court:

Q. Some time later did you receive the note and the conditional bill of sale? A. I did.”

“By the Court:

Q. You received this from Mr. Brunson?  
A. We received that through the mail, yes.

Q. With this letter or a letter similar to that? A. Yes sir, one similar to that.” (Referring to Exhibit B-4.)

The file was not complete because it did not contain the letter from Brunson to Mutual Securities Company (Exhibit B-4, Case p. 57). Copy of the exhibit was received in evidence. The only thing the file did contain was the finance papers and the letter of Brunson to the company and the letter of the company to Brunson (Exhibit B-6, Case p. 58; Exhibit B-7, Case p. 59).

The witness was questioned about the company's previous dealing with Sharp as follows (Case, p. 33, ll. 8-18):

“Q. And there had been transactions of a similar nature to this one between your company, Sharp and the First National Bank of Plainfield, of which Mr. Brunson was president. Isn't that so? A. Well, similar in this respect, that in particular deals, that is, on the retail plan, that didn't happen to be a case where we would hold anything on the trust receipt, he has; they were different in that respect. We financed on the retail plan some cars, but there was nothing owing to us on a trust receipt.”

The witness couldn't say how many transactions there were, although there were several. (Case p. 33, ll. 26-38):

“Q. And in each instance, except this particular one, when the finance papers were received by you, you would send to the First National Bank your check representing the proceeds of the discount. Isn't that so? A. Yes, there were some arrangements, because we were instructed to send the checks to the First National Bank, but never to an individual.

Q. But in this instance (these instances?) when you were instructed to send it to the First National Bank, you did. Isn't that so? A. Well, the Flint Company didn't instruct us to send it to any place. They didn't have any jurisdiction.”

Markey had no particular or independent knowledge of this transaction and relied on the contents of the file of the company for his testimony, which is apparent throughout his testimony, and especially so, where on page 34 of the Case, ll. 33-46, he says:

“Q. I am talking, sir, about the letter you wrote to Mr. Brunson. That is the first letter you wrote to Mr. Brunson, isn't it? A. That is the only one I found in the files, so I presume it must be.”

The stand of the company was, that regardless of what attempts Sharp had made to assign his interest in the conditional sale agreement and the Karkuff note, it was of no avail, because the conditional sale agreement and the note were the sole and exclusive property of the company. It was not claimed by the company at the trial that it had changed or altered its position because of anything Brunson had done or omitted to do, but it credited Sharp's account with the amount of the note and the conditional contract, regardless of what Brunson did, as a matter of right.

The Court further concludes (Case p. 41, ll. 22-30):

“In this situation it seems clear that Brunson is estopped from asserting his ownership of the note. In reliance on his representation the Securities Company changed its position, by crediting Sharp with payment of about 75% of his debt instead of suing him or otherwise enforcing the collection.”

The appellant is unable to find from the testimony any representation he made that could cause the company to change its position toward Sharp. It is true that the assignment did not name Brunson as the assignee, but it is equally true that Sharp's letter, which accompanied the assignment, bill of sale and note, directed the company to send the proceeds of the note to A. J. Brunson, at #105 East Front Street, Plainfield, N. J. All of these papers which were sent to the company in the same envelope, would have to be read together. Surely a business man of ordinary prudence, on receiving such a communication would be compelled to understand that Sharp had assigned his interest in the note and conditional sale agreement to Brunson. Certainly it cannot be said that Brunson made any representation to the company which could have in any way misled it.

Vice-Chancellor Backes, in *Minton v. Sutton*, 135 Atl. 692, at 696, said:

“ ‘In order to work an estoppel the silence must be under such circumstances that there are both a specific opportunity, and a real or apparent duty to speak.’ 10 R. C. L. 692. ‘To constitute an estoppel *in pais* there must be an admission intended to influence, or of such a nature as will naturally influence the conduct of another to injure him, if the party making it is allowed to retract it.’ *Phillipsburg Bank v. Fulmer*, 31 N. J. Law 52.”

Vice-Chancellor Bentley, in *Degheri v. Carobine*, 100 N. J. Eq., p. 493, at page 501:

“\* \* \* equitable estoppel is invoked only where a party, relying upon the promise or conduct of another, changes his position for the worse or obligates himself to a third party.”

There is another feature of this case that the Trial Court overlooked. That is, that the company did not alter its position in this transaction in any particular except to credit the proceeds of the note on Sharp's account on its books. It made no claim that it had been deprived of its right to sue Sharp, because of the transaction, but on the contrary the fact is it never did sue Sharp for the balance he owed it.

The statement of claim of the company (Case, pp. 11-14 inclusive) does not set up any facts on which estoppel could be predicated. The principle that the company worked on in this transaction, in no way involves the principle of Notice, Want of Notice, Representation or Concealment of Facts, or Estoppel, but the company went through the transaction rough-shod with the idea (to use a homely expression) “to get while getting was good”.

When the Court keeps in mind that the company, in its endeavor to evade the Recording Act, placed Sharp in a position where he could perpetrate a fraud, it seems that equity should not uphold such conduct, but should censure it and should award this fund to Brunson, who admittedly was an innocent party to the machinations of Sharp on the secret agreement between Sharp and the company.

**It is urged that the decree of the Court of Chancery be reversed.**

Respectfully submitted,

ROBERT NEWTON CRANE,  
Solicitor of Defendant-Appellant.  
and of Counsel

84 84 FEB. 1. 1929

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

FRANK KARKUFF,

*Complainant,*

*vs.*

MUTUAL SECURITIES Co., a corporation,

*Defendant-Appellee,*

AUGUSTUS J. BRUNSON,

*Defendant-Appellant.*

*On Appeal  
from Court  
of Chancery.*

*Sat Below:*

WALKER, C.

BUCHANAN, V.-C.

### BRIEF OF MUTUAL SECURITIES CO., Defendant-Appellee.

This is an interpleader suit, in which the Mutual Securities Co., a corporation, and Augustus Brunson each claim the fund deposited with the Clerk in Chancery.

On March 22, 1924, the Mutual Securities Co. purchased a 1924 Flint Touring car (Serial 3829 motor 6717) from Newark Flint Co., giving therefor its check (M1) for \$1,188.10. Sharp, trading as "Plainfield Flint Co." then paid the Securities Company \$237.62 and it delivered the car to him, upon his execution and delivery to it of his time draft for \$950.48 (Ex. M 2) and a trust receipt (Ex. M 3). On April 11, 1924, After the above transactions with the Securities Company, Sharp borrowed \$950 on the car from Brunson, placed the car in a warehouse and gave Brunson the warehouse receipt. The Securities Company was not advised of this transaction. Brunson claims to have seen an invoice to Sharp from the Newark Flint Co., but this invoice was not produced, although Sharp testified he gave it to Brunson (S. C., p. 26, ll. 5-12). On May 10,

1924 Sharp sold the car to Karkuff, complainant, for \$1,602, including therein finance charges of \$107. Karkuff paid \$801 in cash and executed and delivered to Sharp a conditional sales agreement (Ex. B. 2) and its accompanying note for \$801 (Ex. B. 3). The note was payable to Plainfield Flint Co. (Sharp) and was endorsed by Sharp in blank. It provided for 12 monthly payments of \$66.75 each "at the office of Mutual Securities Co. 1010 Broad street, Newark, N. J." At this time the draft held by the Securities Company for \$950.48 was unpaid. Upon the sale to Karkuff, Brunson surrendered the warehouse receipt. A letter (Ex. B. 4), signed by Sharp was then sent to the Securities Company, contained the "finance papers" (*i. e.* conditional sales agreement and note of Karkuff) and stated "Please draw your check for the proceeds *due us* made payable to A. J. Brunson." The letter said nothing more than that. The Securities Company was not advised of any reason for making a check to Brunson nor was his interest therein stated. At the sale to Karkuff, Sharp also executed a form of assignment (Ex. B. 5) which purports to "assign—all my right, title and interest to the finance papers" but failed to name any assignee therein. The assignment was not forwarded to the Securities Company nor was notice given of its existence; it was produced at the hearing by Brunson (S. C., p. 19, ll. 12-15) although the sales agreement and note were produced by the Securities Company (S. C., p. 17, l. 40). (See also testimony of Finger, p. 19, ll. 25-27.) The Securities Company discounted Karkuff's note and applied the proceeds against its draft against Sharp. Pursuant to the terms of his note, Karkuff paid to the Securities Company three monthly installments of \$66.75 each. Then Brunson demanded

of Karkuff that he make the payments to him instead of the Securities Company, although the note itself provided for payments to the Securities Company. Karkuff consulted the Securities Company and it demanded that payments be made to it pursuant to the note. Karkuff then filed his Bill of Interpleader and deposited the balance due, \$600.75, in the Court of Chancery.

Although the sale to Karkuff occurred on May 10, 1924, Brunson's first letter offered in evidence, in which he contested the claim of the Securities Company, is dated June 23, 1924 (Ex. B. 6). The reply of the Securities Company on June 27, 1924 (Ex. B. 7) denied Brunson's claim to the money.

In the decree on interpleader, the Chancellor directed that the Securities Company pay the complainant's costs, including a counsel fee of \$75.00.

The hearing on the above facts was held before Vice-Chancellor Buchanan on March 31, 1927, and he filed his conclusions on December 21, 1928, in which he held that the Securities Company was entitled to the fund. A decree of the Chancellor, pursuant to the conclusions, was signed on December 14, 1928. From this order the defendant, Brunson, appeals.

#### POINT I.

Brunson is estopped from asserting his ownership of the Note of Karkuff or the proceeds thereunder.

Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have other-

wise existed, either of property, of contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of property, of contract, or of remedy (*Pomeroy, Eq. Juris*, 4th Ed. par. 804; *Bayonne v. Passaic Water Co.*, 98 E. 174).

In this case, Brunson caused Karkuff's conditional sale agreement and note (the "finance papers") to be mailed to the company in a letter signed by Sharp and purporting to come from Sharp. The assignment (B. 5) was not forwarded with the finance papers. No notice of rights of Brunson in the proceeds was given; the letter requested the company to draw "check for the proceeds due us made payable to A. J. Brunson." Certainly this mere statement does not say that Brunson had taken an assignment of all the proceeds. The company received the papers as coming from Sharp; discounted them in its bank, becoming thereby liable for the payment thereof; ascertained that nothing was due Sharp and therefore sent no check to Brunson. It credited the proceeds to a prior indebtedness of Sharp, relying upon collection of payments from Karkuff. After about a month elapsed, Brunson made a claim against the company for the proceeds, or the note of Karkuff.

By forwarding the note to the company without any statement of his claim, but merely with a direction to send a check for the amount due Sharp to Brunson, the company was induced to discount the note at its bank and to credit Sharp's debt to it by that amount. It thereby changed its position with reference to its account with Sharp. And if the court should now award the remaining Karkuff payments, *i. e.*

the fund now in Chancery, to Brunson, the Securities Company would be seriously prejudiced by its action in crediting the proceeds to Sharp's debt, such action having been induced by Brunson's failure to disclose the nature of his claim when the Karkuff note was forwarded to the company.

Under the above circumstances, Brunson is estopped from setting up his claim to the proceeds against the company.

## POINT II.

**The fund belongs to Mutual Securities Co. under the undisputed facts in the case.**

The car was purchased by the company from Newark Flint Co. It was delivered to Sharp as "trustee-bailee" upon his execution of the time draft for \$950.48 and the trust receipt. By the later instrument, Sharp agrees "to hold said motor vehicle in trust for the holder of the time draft—as their property and agrees to return on demand in good order and unused but with liberty—after first obtaining their written consent, but not otherwise, to sell the same for their account—and—in case of such sale to keep the proceeds separate from our funds and immediately hand the proceeds to them." Sharp did not have legal title; he merely held the car as "trustee-bailee." Upon sale of the car, the conditional sales agreement and note were forwarded to the Securities Company, the note providing for payments thereunder at the office of that company. The note was endorsed without recourse by Sharp. The letter enclosing these "finance papers" from Sharp to the company, did not describe any interest of Brunson in the note; it merely stated "Please draw your check for the

proceeds *due us* made payable to A. J. Brunson." Nothing was *due* Sharp, the proceeds all being due the company. The assignment (B. 5) does not transfer any complete title to the funds; it merely assigns "all my right, title and interest to the finance papers" and, as between Sharp and the company, any claim of Sharp to the proceeds was clearly subordinate to the claim of the company. The so-called assignment does not name any assignee. Moreover, it was never sent to the company and the company had no knowledge of its existence at the time. (Produced by Brunson, S. C., p. 17, see testimony of Finger, p. 19, ll. 25-27.) The term "finance papers" only included the agreement and note (S. C., p. 24, ll. 11-14; l. 18; ll. 29-32). The company held the note by endorsement in due course for value; Brunson's claim is based on an assignment of Sharp's "right, title and interest" to money due him. There was no money due Sharp on the "finance papers" and his "right, title and interest" was nothing.

Brunson, a banker, knew the effect of an endorsement and might easily have avoided this confusion by having the note endorsed to him, in which case the company would not have discounted the note. But he took merely an assignment of any interest Sharp might have in the proceeds and Sharp had no such interest. By the endorsement, Sharp warranted the genuineness of the note, his title to it, Karkuff's capacity to contract and that he knew no fact which would impair the validity of the note (C. S., p. 3743, par. 65). The company, relying upon these warranties, accepted the note; discounted it, making itself liable to the bank thereby; and credited Sharp's account with the proceeds. It took the paper free from equitable defenses; the assignee took subject to such defenses.

Under these facts, the fund should be given to the Securities Company.

### POINT III.

As bailee for the Securities Company, Sharp could not divest it of its title to the car or the proceeds of its sale.

Under the trust receipt held by the company, Sharp was a bailee. The car was delivered to him in trust, either to return it on demand or to pay the company the proceeds of any sale thereof. He could not transfer legal title to the car on the proceeds of its sale without the company's consent. The assignment (B. 5) merely transferred Sharp's "right, title and interest" which under the facts, was subordinate to the rights of the company.

In *Sturtevant Co. v. Dugan*, 106 Md. 587; 68 Atl. 351, the court says:

"In bailments, the identical thing delivered is to be restored, or the proceeds after sale. In a sale, there is an agreement—to pay money or its equivalent for the thing delivered and there is no obligation to return."

If the company had sought the return of the car before its sale, it would have been entitled to recover it, even if then in Brunson's possession. In *N. Y. etc. Ry. Co. v. N. J. Elec. Ry. Co.*, 60 N. J. L. 338 (affirmed 61 N. J. L. 287) Justice Lippincott says:

"If a bailee assumes to pledge or sell the bailed goods as his own, such an act amounts to a conversion and the bailor may bring an action of trover or replevin against the third party in whose possession the property is found."

In 3 R. C. L. 84, a similar statement of law is stated in cogent terms.

Consequently, the Securities Company, as bailor, is entitled to the proceeds of the sale to Karkuff by Sharp, as bailee, even though the car had been pledged by Sharp to Brunson. Sharp testifies (S. C., p. 23, ll. 5-12) that he told Brunson, the car was paid for by the Securities Company and that he did not tell him it was free and clear. Thus Brunson had notice of the interest of the company. Much is made of the invoice, alleged to be shown Brunson. This was not produced by Brunson, although Sharp delivered it to him (S. C., p. 25, l. 23 and p. 26, ll. 5-9). We cannot ascertain its terms, except from the oral evidence that it was a receipted invoice. Consequently it is weak in evidential value.

In the conclusions of Vice-Chancellor Buchanan, the case of *Commonwealth Finance Co. v. Schutt*, 97 N. J. L. 225, is cited to show that the trust receipt given by Sharp to the company was in fact a chattel mortgage and ineffective because not verified or recorded. The cited case refers to a transfer of property from a debtor to a creditor to secure a debt. In this case the property belonged to the Securities Company and was merely delivered to Sharp as trustee-bailee; it was never the absolute property of Sharp. It is respectfully submitted that the cited case does not control the situation in this case.

#### POINT IV.

Where there is equal equity, the law must prevail and the Securities Company becomes entitled to the fund.

If two persons have equal equitable claims or interests in the same subject matter, and one of them also obtains the legal estate in it, then he

who thus has the legal estate will prevail. (*Pomeroy—Eq. Juris* 4th Ed., par. 417; *Forman v. Brewer*, 62 N. J. E. 748.) In this case, the legal title to the note and conditional sales agreement is in the company by virtue of the delivery to it of these papers, with the endorsement on the note. The company had no notice of the nature of Brunson's claim. The letter to it merely directed that any proceeds due Sharp be sent to Brunson. Nothing was due Sharp. The company accepted the note, discounted it at a bank, and credited Sharp's account. Thus, assuming for argument, that there is equal equity in this case, the company, holding legal title to the papers, is entitled to the proceeds thereof.

#### POINT V.

Where there are equal equities, the first in order will prevail and the company, under this maxim, is entitled to the fund.

If two claims to the same matter are wholly equitable and neither is accompanied by the legal estate—and neither possesses any special equitable feature giving it precedence irrespective of order of time, the priority of claim is determined by priority of time. (*Pomeroy, Eq. Juris*, 4th Ed. par. 415.) Here the claim of the company is accompanied by legal title, but assuming there are equal equities without that element, the company is entitled to the fund because its claim is prior in time to that of Brunson. The original dealings between the company and Sharp were in March; those between Brunson and Sharp were in April. When the Karkuff agreement and note were forwarded to the company, it had no knowledge of the nature of Brunson's claim, its only information being a request to make a check for proceeds due Sharp to Brun-

son. So far as the company knew, such a payment might have been on account of any debt due Brunson or perhaps merely for some other convenience for Sharp. The nature of Brunson's claims was not transmitted to the company for about a month after the company had discounted the note and thereby changed its position in its dealing with Sharp.

#### POINT VI.

**The attempt by Brunson to show a previous course of dealing, binding the company, is not successful.**

Much is made in Brunson's brief over the question of previous dealing. The evidence shows that on some previous occasions, the company made remittances to the First National Bank of Plainfield, of which Brunson was President. It does not show any previous dealing with Brunson or any other individual in a like capacity. In none of the transactions with the bank, were the facts similar to those in this case, where the company was entitled to the car or the proceeds of the sale thereof. The company had no knowledge of the identity of Brunson. The evidence showed that it was the usual practice of the company to first apply proceeds of a sale to the amount due it on a car and this practice was adopted in this case. (To substantiate the above statements see S. C., p. 30, ll. 20-27; p. 33, ll. 8-18; p. 34, ll. 2-11; p. 35, ll. 32-40 and p. 36, ll. 4-7.)

It is respectfully submitted that the Decree of the Court of Chancery should be affirmed, for the above reasons.

ANDREW J. WHINERY,  
Solicitor for and of Counsel with Mutual  
Securities Co.—Defendant-Appellee.

