

Index.

	Page
Notice of Appeal	1
Grounds of Appeal	2
Summons and Complaint	3
Answer	10
Reply	12
Case	13
Motions	50
Verdict	56

TESTIMONY.

WITNESSES FOR PLAINTIFF:

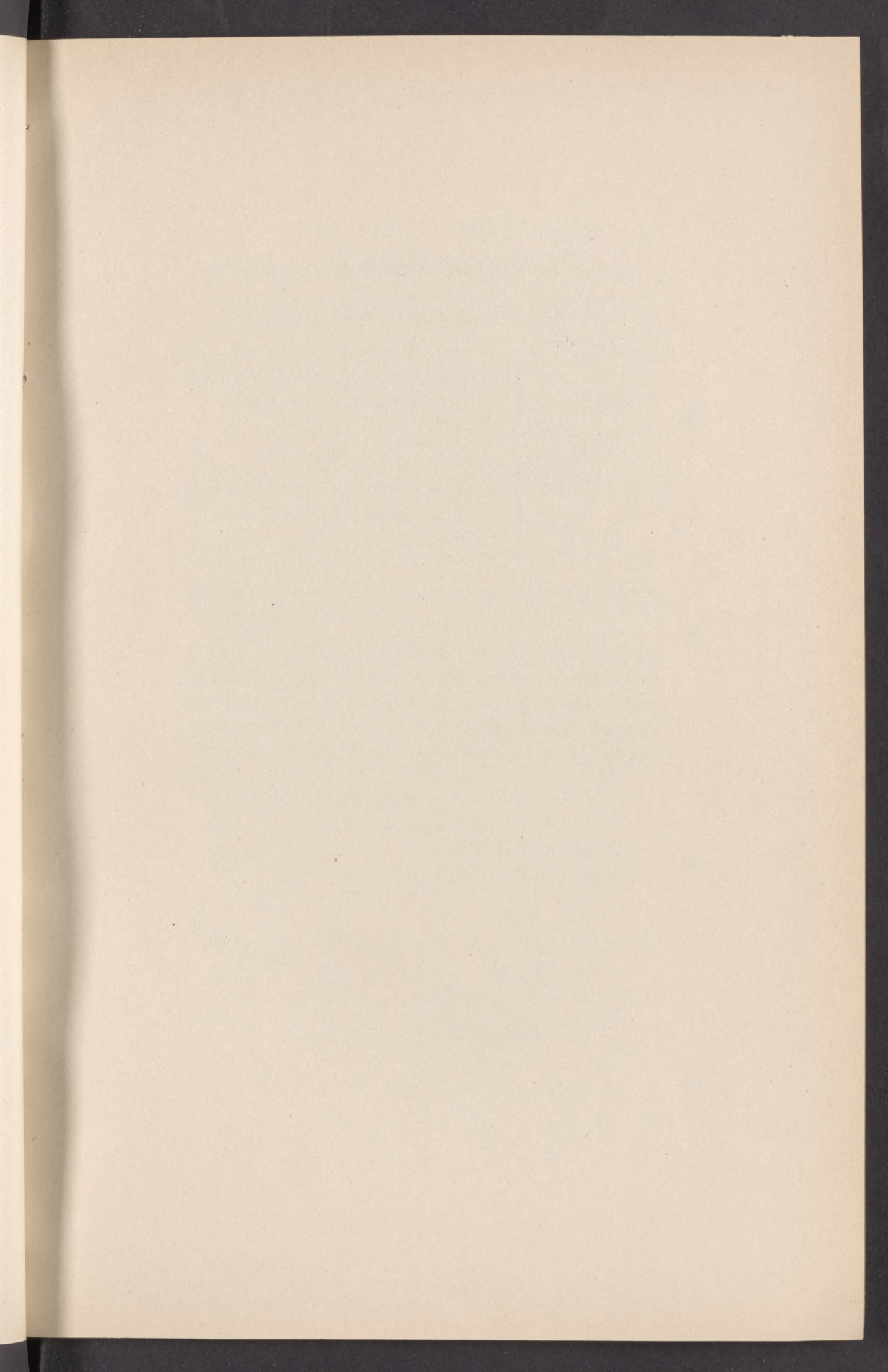
Fox, Harry E.:	
Direct	14
Recalled:	
Direct	23
Cross	25
Re-direct	30
Re-cross	31
Stein, Benjamin L.:	
Direct	22
Cross	22

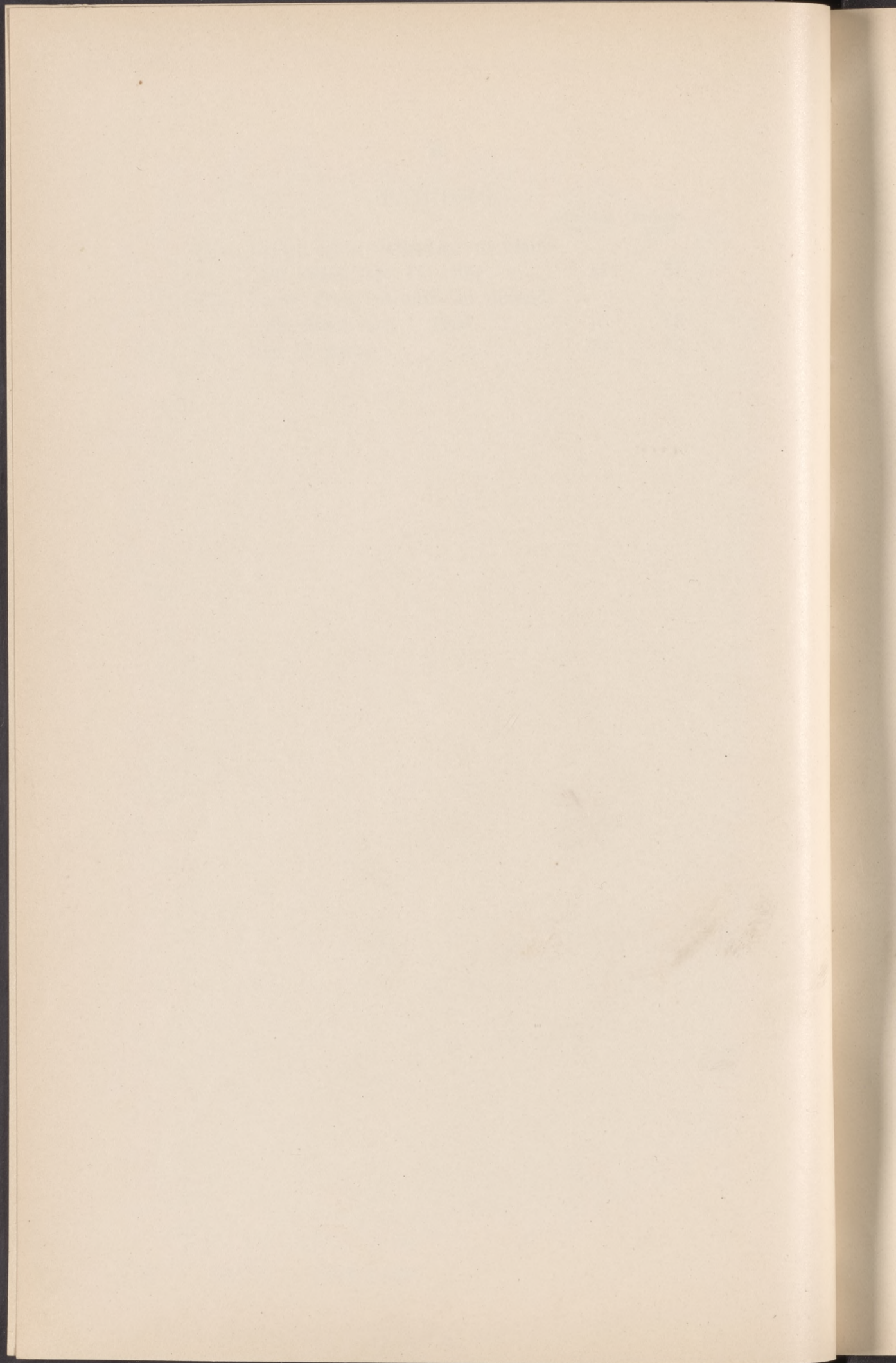
WITNESSES FOR DEFENDANT:

Lingenberg, Walter H.:	
Direct	31
Cross	35
Re-direct	41
Re-cross	42
Wiley, James A.:	
Direct	42
Cross	46

EXHIBITS.

	Admitted page	Printed page
D1. Letter from defendant to plaintiff, dated Apr. 11, 1924	35	57
P1. Letter from plaintiff to defendant, dated Apr. 1, 1924	16	58
P2. List of claims	23	59





Notice of Appeal.

PASSAIC COUNTY CIRCUIT COURT.

SAVOY SILK MANUFACTURING COMPANY, a corporation, Plaintiff, vs. ROYAL PIECE DYE WORKS, Inc., a corporation, Defendant.	}	On Appeal From Passaic Circuit.	10
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To the above-named defendant, or Wayne Dumont,
its attorney:

20

Take Notice that the plaintiff herein hereby appeals
to the New Jersey Court of Errors & Appeals, from
the judgment of the Passaic County Circuit Court,
rendered in the above-stated cause, on the twenty-
third day of March, Nineteen hundred and Twenty-
six.

Dated, March 29, 1926.

Yours respectfully,

STEIN & STEIN,
Attorneys of Plaintiff.

30

40

Grounds of Appeal.NEW JERSEY COURT OF ERRORS & AP-
PEALS.

10	SAVOY SILK MANUFACTURING COMPANY, a corporation, Plaintiff-Appellant, vs. ROYAL PIECE DYE WORKS, Inc., a corporation, Defendant-Appellee.	}	On Appeal From Passaic Circuit.
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20 The following are the grounds on which the plain-
tiff-appellant herein appeals:

1. The Court erred in directing a verdict for the
defendant.

Dated, April 12, 1926.

STEIN & STEIN,
Attorneys for Plaintiff-Appellant.

30

40

Summons and Complaint.

THE STATE OF NEW JERSEY

To the Sheriff of the County of Passaic, GREETING:

We command you that if Savoy Silk Manufacturing Company, a corporation, shall
(L. S.) make you secure, you cause to be taken and delivered to it, fifty-six (56) pieces of silk goods, described as follows: 10

Piece No.	Yardage	Quality	Color	Invoice No.	
10891	64	34	Tan	264	
10724	64	"	"		
10953	61	"	"		
10782	63	"	"		
10832	66	"	"		20
10973	64	"	"		
10427	65	380	Fallow	267	
10654	65	"	"		
10644	65	"	"		
10428	65	"	"		
10349	65	"	"		
11019	63	34	Silver	306	
11138	68	"	"		
11266	64	"	"		20
11178	64	"	"		
11256	64	"	"		
10828	64	"	"		
11168	64	"	"		
10665	64	"	"		
10897	64	"	"		
11067	64	"	"		
11304	64	"	"		
11077	64	"	"		40
11047	64	"	"		

Summons & Complaint

	Piece No.	Yardage	Quality	Color	Invoice No.
	11314	64	"	"	
	10758	69	"	"	
	11087	64	"	"	
	11207	65	"	"	
10	11187	60	"	"	
	11323	62	"	"	
	11383	63	"	"	
	10812	64	"	Navy	268
	11133	62	"	"	
	10595	64	"	"	
	11053	62	"	Navy	
	11093	63	"	"	
	10753	64	"	Fallow	
20	10713	64	"	"	
	10832A	64	"	"	
	11163	63	"	"	
	10851	64	"	"	
	10763	62	"	"	
	10911	65	"	"	
				Goods Refinished Royal	
	22114	61	34	Tan	
30	22111	60-6	"	"	
	22115	61-2	"	"	
	22110	62-1	"	"	
	22112	61-2	"	"	
	22113	59	"	"	
	20516	62	"	Natural	
	19426	63-6	"	Gray	
	19466	61-5	"	"	
	21052	45-1	"	Bran	
	21112	60-5	"	Natural	
40	19427	54-5	"	Grey	
	16857	46	"	Zinc	

Summons & Complaint

which said Royal Piece Dye Works, Inc., a corporation, took and unjustly detains as is said; and that you summon the said Royal Piece Dye Works, Inc., a corporation, to answer the annexed complaint of Savoy Silk Manufacturing Company, a corporation, in an action at law in the Passaic County Circuit Court. And that you notify it that unless it files its answer to said complaint with the Clerk of the Passaic County Circuit Court, at Paterson, within twenty days after the service upon it of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against it.

10

Witness, Clifford L. Newman, Esquire, Judge of the Passaic County Circuit Court, at Paterson, this 5th day of June, Nineteen hundred and twenty-four.

STEIN & STEIN,

20

Attorneys.

Jno. McCutcheon,

Clerk.

30

40

Summons and Complaint

PASSAIC COUNTY CIRCUIT COURT.

10	SAVOY SILK MANUFACTURING COMPANY, a corporation, Plaintiff, vs. ROYAL PIECE DYE WORKS, Inc., a corporation, Defendant.	}	In Replevin. Complaint.
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20 Plaintiff, Savoy Silk Manufacturing Company, a corporation of the State of New Jersey, having its principal office at the City of Paterson, in the County of Passaic and State of New Jersey, says that:

20 1. On or before April 1, 1924, plaintiff delivered to the defendant, fifty-six (56) pieces of silk goods as set forth in the Schedule hereunto annexed, and defendant agreed to perform certain work thereon for hire and reward.

30 2. Thereafter, defendant performed said work on said goods, for which a charge of Four thousand, two hundred (\$4,200.00) dollars was made by the defendant.

3. On April 10, 1924, defendant undertook and agreed in writing, to accept twenty-five per cent of said sum in settlement of said account, in accordance with an agreement, a copy of which is hereunto annexed.

40 4. On June 4, 1924, tender was made by the plaintiff to the defendant of the sum of Ten hundred and fifty (\$1050.00) dollars due under said agreement.

5. Defendant refused to accept said sum and has

Summons and Complaint

failed and refused to deliver possession of said goods to the plaintiff who has made written demand of the defendant on June 4, 1924, for the possession of said goods.

6. Defendant has wrongfully refused to deliver said goods to the plaintiff, and now wrongfully detains the same. 10

Plaintiff demands possession of said goods, together with the sum of Five thousand (\$5,000.00) dollars damages for their detention.

STEIN & STEIN,
Attorneys of Plaintiff.

20

Schedule.

Piece No.	Yardage	Quality	Color	Invoice No.	
10891	64	34	Tan	264	
10724	64	"	"		
10953	61	"	"		
10782	63	"	"		
10832	66	"	"		
10973	64	"	"		30
10427	65	380	Fallow	267	
10654	65	"	"		
10644	65	"	"		
10428	65	"	"		
10349	65	"	"		
11019	63	34	Silver	306	
11138	68	"	"		
11266	64	"	"		
11178	64	"	"		40
11256	64	"	"		

Summons & Complaint

	10828	64	"	"	
	11168	64	"	"	
	10665	64	"	"	
	10897	64	"	"	
	11067	64	"	"	
	11304	64	"	"	
10	11077	64	"	"	
	11047	64	"	"	
	11314	64	"	"	
	10758	69	"	"	
	11087	64	"	"	
	11207	65	"	"	
	11187	60	"	"	
	11323	62	"	"	
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	11053	62	"	"	
	11093	63	"	"	
	10753	64	"	Fallow	
	10713	64	"	"	
	10832A	64	"	"	
	11163	63	"	"	
30	10851	64	"	"	
	10763	62	"	"	
	10911	65	"	"	

Goods Refinished Royal

	22114	61	34	Tan	
	22111	60-6	"	"	
	22115	61-2	"	"	
40	22110	62-1	"	"	
	22112	61-2	"	"	
	22113	59	"	"	

Summons and Complaint

20516	62	“	Natural	
19426	63-6	“	Grey	
19466	61-5	“	Grey	
21052	45-1	“	Bran	
21112	60-5	“	Natural	
19427	54-5	“	Grey	
16857	46	“	Zinc	10

The undersigned creditors of Savoy Silk Mills, Inc., and of David Fox and Harry Fox, individually and as partners, trading as Savoy Silk Mills, do hereby in consideration of One Dollar to each of the undersigned in hand paid and of other lawful consideration them thereunto moving do hereby agree with said parties and with each other to accept the sum of 20% in cash of the sums respectively due from said parties to the undersigned and a promissory note to be signed by said Savoy Silk Mills for 5% of said amount respectively due to the undersigned, payable in six months from the date hereof in full and final settlement of the respective amounts at this time in any way due to the undersigned from said parties and we do hereby release and discharge the said parties of and from all claims, demands and causes of action except said 25% of the amount due us as aforesaid.

Dated, April 10, 1924.

PROGRESSIVE SILK FINISHING CO.
FELIX MILHOMME,
President.

(Those that have already signed.)

S. & J. Silk Co.	(9,000.00)	
Brawer Bros. Silk Co.	(4,500.00)	
Walter Leon Hess Co.	(26,000.00)	40
Royal Piece Dye Co.	(4,200.00)	
Frisbie Throwing Co.	(5,000.00)	
Paterson Nat'l Bank	(13,000.00)	
Crescent Silk Dye Co.	(3,000.00)	

Answer.

PASSAIC COUNTY CIRCUIT COURT.

10	SAVOY SILK MANUFACTURING COMPANY, a corporation, <div style="text-align: right;">Plaintiff,</div>	}	In Re- plevin.
	<div style="text-align: center;">vs.</div> ROYAL PIECE DYE WORKS, Inc., a corporation, <div style="text-align: right;">Defendant.</div>		

Royal Piece Dye Works, Inc., a corporation of the State of New Jersey, with its principal office in the City of Paterson in said state, says that:

- 20 1. It admits the allegations of paragraph 1 of plaintiff's complaint.
2. It admits the allegations of paragraph 2.
3. It denies the allegations of paragraph 3.
4. It denies the allegations of paragraph 4.
- 30) 5. As to the allegations of paragraph 5, it admits that it refused to deliver said pieces of silk to the plaintiff; and states that it so refused for the reason that it had a valid lien on the same for work done thereon in dyeing the same, according to statutes of the State of New Jersey, in such case made and provided.
6. It denies the allegations of paragraph 6.

FIRST SEPARATE DEFENSE.

- 40 1. On April 10, 1924, defendant had a valid lien on said pieces of silk for dyeing the same according to the statutes of the State of New Jersey, in such case

Answer

made and provided, and was legally entitled by reason thereof to retain the possession of said silk until said lien was paid and satisfied.

2. Said alleged agreement of April 10, 1924, set forth in paragraph 3 of plaintiff's complaint was neither authorized, made or ratified by defendant, and is in no wise binding on defendant. 10

3. No part of said lien for dyeing said silk amounting to \$4,200.00, due from plaintiff to defendant, as admitted in paragraph 2 of its complaint, has been paid, and defendant is entitled to the possession of said silk until said lien is paid in full.

SECOND SEPARATE DEFENSE.

20

1. Paragraph 1 of First Separate Defense is repeated.

2. The person signing said alleged agreement of April 10, 1924, was not even a director or an officer of defendant, had no authority or right whatsoever to sign said alleged agreement in behalf of defendant, and, in fact, signed the same with the understanding on his part that it in no wise affected the lien of defendant on said silk, and was only to be applied to such indebtedness by plaintiff to defendant as defendant's said lien would not secure. Said act of said person in no wise bound this defendant, and in no wise acted as a release of its said lien. 30

3. Paragraph 3 of First Separate Defense is repeated.

WAYNE DUMONT,
Attorney of Defendant. 40

Reply.

PASSAIC COUNTY CIRCUIT COURT.

10	SAVOY SILK MANUFACTURING COMPANY, a corporation, <div style="text-align: right;">Plaintiff,</div>	}	In Re- plevin.
20	<div style="text-align: center;">vs.</div> ROYAL PIECE DYE WORKS, Inc., a corporation, <div style="text-align: right;">Defendant.</div>		

The plaintiff, by way of reply, says that:

1. It denies paragraph one of the first separate defense.
- 20 2. It denies paragraph two of the first separate defense.
3. It denies that the defendant is entitled to possession of the silk as set forth in paragraph three of the first separate defense.
4. It denies paragraph one of the second separate defense.
- 30 5. It denies paragraph two of the second separate defense.
6. It denies paragraph three of the second separate defense.
7. The plaintiff hereby gives notice that at the trial of the said cause, it will move to strike out the first and second separate defenses filed on the grounds that they disclose no legal defense to the action.

40 STEIN & STEIN,
Attorneys of Plaintiff.

Case.

PASSAIC COUNTY CIRCUIT COURT.

SAVOY SILK MANUFACTURING Co., a Corporation, vs. ROYAL PIECE DYE WORKS, Inc., a Corporation.	}	Action at Law. 10
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Paterson, N. J., March 23, 1926.

Tried before Hon. Clifford L. Newman, Judge, and a jury.

Appearances: 20

Messrs. Stein & Stein (by Mr. Benjamin L. Stein), for plaintiff.

Mr. Wayne Dumont (by Mr. Rosenkranz), for defendant.

Mr. Stein opened the case to the jury on behalf of plaintiff.

Mr. Rosenkranz opened the case to the jury on behalf of defendant. 30

Noon recess.

March 23, 1926, 2:00 P. M.

Mr. Stein: If your Honor please, with the permission of the Court and the defendant, we desire to substitute for plaintiffs in this action the Bachmann-Emmerich & Company of New York, they having acquired title to this merchandise since institution of the suit, and I understand there is no objection. 40

Plaintiff's Witness, Harry E. Fox, Direct

HARRY E. FOX, sworn on behalf of plaintiff.

Direct-examination by Mr. Stein:

10 Mr. Stein: By agreement of counsel, if your Honor please, it is agreed that the defendant is and was in possession of fifty-six pieces of silk upon which it had a statutory lien of 4,200 and some odd dollars.

Mr. Rosenkranz: Yes, on which we had a statutory lien for the value of the silk, and that is valued at \$4,267.38.

Mr. Stein: We are waiving production of the books.

The Court: Have you agreed on the value of the silk?

20 Mr. Stein: No, sir.

Q. Where do you live, Mr. Fox? A. 351 East 41st Street, City.

Q. Were you living in Paterson in 1924? A. I was.

Q. What business were you connected with? A. Silk manufacturing.

Q. What was the name of the concern? A. Savoy Silk Manufacturing Company.

30 Q. Where was the place of business? A. Clay Street.

Q. Paterson? A. Paterson, yes.

Q. Had your concern any business dealings with the defendant, the Royal Piece Dye Works? A. Yes, sir.

Q. How long had your concern done business with them?

40 The Court: Well, the most of the facts are agreed on; let's get right down to it.

Mr. Stein: Well, the purpose of this inquiry

Plaintiff's Witness, Harry E. Fox, Direct

is this, if your Honor please, the opening of counsel, that they were owing a large sum of money which they were secured by this silk and which they would not want to lose, and I want to show that they had done a large amount of business with them.

The Court: I do not suppose that makes any difference, but go ahead, if you think it is of importance. 10

Q. How long had you been doing business with them? A. I think about two years or more.

Q. How much was the average amount of business per year?

Mr. Rosenkranz: I don't see how that is material, if the Court please. 20

Q. Well, had you done a lot of business?

Mr. Rosenkranz: I object to that question.

A. Yes, sir.

Mr. Rosenkranz: One minute.

The Court: I will permit it.

Q. What was the business of the defendant? What was their business? A. Piece dyers. 30

Q. Had you sent some silk there— A. Yes, sir; to be dyed.

Q. For which you owed them a sum of money, and which we have agreed was \$4,267.38? A. That is about right.

Q. Did your concern have financial difficulties? A. Yes.

Q. Was there a meeting called of the creditors of the company? A. Yes. 40

Q. Where? A. At Mr. Gourley's office.

Plaintiff's Witness, Harry E. Fox, Direct

Mr. Stein: I think the defendant has in their possession a letter that was sent to them. May we have that?

(Mr. Rosenkranz produces paper.)

Mr. Stein: Any objection to offering it in evidence?

10

Mr. Rosenkranz: No.

Offered and received in evidence and marked Plaintiff's Exhibit P1, and read to the jury.

Q. In this letter you speak of a conversation that you had with reference to the business affairs of the company. With whom did you have that conversation?

20

Mr. Rosenkranz: One minute. I object to that because that letter is a formal letter, addressed to all creditors, isn't it?

Mr. Stein: I will withdraw the question.

Q. Had there been any conversation between your concern and the Royal Piece Dye Works prior to this letter, with reference to any settlement? A. Well, we spoke about the difficulties and we said that there would be a meeting called.

30

Q. With whom did you have this conversation? A. Mr. Wiley.

Q. Wiley? A. I think that was the name.

Q. Who was Mr. Wiley? A. He was the credit man for the Royal Piece Dye Works.

Q. Is Mr. Wiley in court? A. Yes.

Q. Which gentleman is it? A. I think the gentleman with the glasses (indicating).

Mr. Stein: Wiley, stand up.

40

The Witness: In back of you, sir.

Plaintiff's Witness, Harry E. Fox, Direct

Mr. Stein: They look alike.

Q. All right; is that Mr. Wiley? A. Yes, sir.

Q. When you opened your account with the Royal Piece Dye Works, with whom did you have your negotiations?

Mr. Rosenkranz: I object to that.

10

The Court: Admitted.

A. We didn't have any negotiations with anybody.

Q. No particular person? A. No particular person.

Q. Now, the letter, which is marked Exhibit P1, talks of a meeting to be called on April 4th. Was there such a meeting? A. Yes.

Q. Who was present at that meeting? A. All of the creditors.

20

Q. Was Mr. Wiley there? A. Including Mr. Wiley; yes, sir.

Q. What was said at that meeting? What was done in the presence of Mr. Wiley? A. Well, there was talk of a composition. I think that was the first meeting, and I think we made an offer of twenty per cent in cash.

Mr. Rosenkranz: I object to what he thinks.

30

The Court: Just tell what you know.

A. (Continuing.) There was an offer of twenty per cent in cash made, which was turned down, and there was another meeting called.

Q. When was the second meeting called for? A. A short time after.

Q. What do you mean by a short time? A. Oh, a matter of days, I think.

40

Q. How many meetings were there called altogether? A. There were three that I recollect.

Plaintiff's Witness, Harry E. Fox, Direct

Q. At the first, you said that there was an offer made which was rejected? A. That is right.

Q. There was a second meeting called, which was, of course, prior to the third one? A. That is right.

Q. At this second meeting, was Mr. Wiley there?

A. Yes, sir; he was also present, as well as the other
10 creditors.

Q. What happened there? A. We increased the offer to twenty per cent in cash and five per cent in notes—

Q. Yes. A. It was agreed upon at that meeting that they were to go back and talk it over, think it over, and ask their respective people about it and come back with authority at another meeting, of which the date was named at that meeting, to accept or not
20 to accept.

Q. What was the day named for the third meeting?

A. It was also a matter of days; I do not recollect the dates.

Q. Now, on the third day, which was the last meeting, was Mr. Wiley there? A. He was present, yes.

Q. And the other creditors there? A. Yes, sir.

Q. I show you this, and ask you whether that is a copy of the agreement that was signed at that time
30 (handing paper to witness)? A. Yes.

Mr. Stein: With the consent of counsel, we offer this in evidence. We have tried to get the original.

Mr. Rosenkranz: I would like to examine him in regards to that.

Mr. Stein: Yes, surely.

The Court: You may; go ahead.

40 By Mr. Rosenkranz:

Q. When was the last time you saw the original agreement? A. Why, at the last meeting, I think.

Plaintiff's Witness, Harry E. Fox, Direct

Q. April 10, 1924? A. That is right.

Q. Then, why do you say that that is a copy of that agreement? A. Well, I remember the copy distinctly, as it stands out in my mind very well.

Q. What is it you remember about it distinctly?

A. Well, it was quite a happening and I remember it very distinctly. 10

Q. Did you compare that paper— A. Well, I know the wording very well, at that time.

Q. That is why you say it is a copy? A. That is right, sir.

Q. You have never thought about it since that time?

A. No, I have not.

Q. Do you know whether there was any figures on that paper, the original paper? A. Yes, the respective amounts were set opposite the names. 20

Q. Did you compare the respective amounts? A. We were very careful about it.

Q. I am asking you, did you compare the respective amounts? A. I say, we were very careful about it.

The Court: Did you compare the respective amounts, he asked you.

The Witness: Yes, surely.

Q. How many copies were there? A. I think there was about half a dozen copies made. 30

Q. Sure there weren't more? A. I am not sure, no.

Q. Well, if you were told that seven or eight people signed, would you still say there were half a dozen copies? A. That is all; that would be more than practically necessary.

Q. What do you say? A. That was the only copy necessary, was the original and copy really. 40

Q. Then, those others were not necessary, were

Plaintiff's Witness, Harry E. Fox, Direct

they? A. They were not necessary, no; only one copy necessary for the creditors to sign.

Q. The only one that was really necessary was the original? A. What is that?

Q. The only one that was really necessary was the original? A. No, there was some duplicates necessary
10 for myself and Mr. Gourley—copy and duplicate.

Q. Then, how many were necessary? A. Well, sure, there was more copies necessary, for the reason that we wanted a copy for the creditors.

Q. How many were necessary? A. I will tell you—

The Court: No, how many were necessary?

Q. Answer the question, how many were necessary?

A. Three necessary copies, but there were six made
20 out.

Q. Why do you say three were necessary? A. Three were necessary for this reason, that we wanted a copy—our creditors wanted a copy and the counsel wanted a copy.

Q. You remember this thing very distinctly, do you? A. Yes, sir; very distinctly because it was a very definite happening in our business life.

Q. You took each copy and compared it with the original? A. No; the copies were made out at one
30 time.

Q. Well, if the copies were made out all at one time, then there must have been one original? A. Yes, sure; there was one original, yes.

Q. Have you got the original in your possession? A. No, I think the Hamilton Trust has the original.

Q. You are confused, aren't you? I am not speaking about the one that was signed? A. That was the
40 one that was signed, the original.

Q. Well, you say they were all made out at the

Plaintiff's Witness, Harry E. Fox, Direct

same time? A. Yes, the copies were all made at the same time.

Q. Well, if they were all made at the same time, how could the signatures have been in typewriting?

The Court: I understand, Mr. Stein, it is only offered by consent. If it is not, there is no use of wasting time. 10

Mr. Stein: Why, the pleadings attached to this copy, and the answers to the interrogatories, admit that Mr. Wiley signed it. We did not know until ten minutes ago that there was going to be a dispute about the original, so we went down to the Hamilton Trust Company with a subpoena for the original, and the young lady, Miss Child, informed me that it could not be located. I might say, as a matter of record, that this is a copy that I made from the original copy. 20

The Court: If the answer admits he signed that document, why waste time in proving it?

Mr. Rosenkranz: No, sir; the answer does not admit that he signed this document.

The Court: Then there is a dispute.

Mr. Rosenkranz: The position I am taking— 30

The Court: No need of taking any position, because if it is not going in by consent, that finishes it, and they have got to account for the absence of the original.

Mr. Stein: I will withdraw Mr. Fox and I will go on the stand. This was supposed to have been settled before we got here.

(Witness withdrawn.) 40

Plaintiff's Witness, Benjamin L. Stein, Direct

BENJAMIN L. STEIN, sworn on behalf of plaintiff.

Direct-examination by Mr. Stein:

10 A. When this matter was placed in our hands for suit, I went to the Hamilton Trust Company, and copied from there, from the original copy on file there, the copy which is attached to the complaint and which is now being offered in evidence. I have since been down to the Hamilton Trust Company with a subpoena only half an hour ago, requesting them to produce the original, and the young lady, Miss Child, who had it in charge, told us that she was unable to locate it.

20 Mr. Rosenkranz: Just a minute.

CROSS-EXAMINATION by Mr. Rosenkranz:

Q. Of course, you were not present, Mr. Stein, the day that the composition agreement was signed? A. No, sir.

Q. When you compared this, can you state whether—of course, the names were in ink, weren't they? A. Yes, sir.

30 Q. Can you state whether or not the figures were in ink or typewriting when you saw them? A. The figures were in ink when I saw them.

Q. You are sure about that? A. Yes, sir; and, as I recall it, if you will permit me to answer this, the handwriting of the figures was much different; that is, the handwriting to correspond with the name of the person who signed it. I mean, it wasn't one handwriting of all the figures alongside there, indicating, with
40 your permission, that as the person signed it, he put the amount of his claim opposite his name.

Plaintiff's Witness, Harry L. Fox, Direct

Q. You don't know, as a matter of fact— A. No, I do not.

Q. As a matter of fact, weren't the figures in type-writing? A. Not to my recollection; no, sir.

Q. Do you remember distinctly? A. I said, my recollection is that it was the handwriting of the different people that signed the agreement. 10

Q. But, you do not know, do you, wouldn't say positive? A. No, I couldn't say positively.

Mr. Rosenkranz: That is all.

(Witness excused.)

Mr. Stein: I offer this in evidence.

Offered and received in evidence and marked Plaintiff's Exhibit P2. 20

HARRY L. FOX, previously sworn, resumes stand.

Direct-examination by Mr. Stein:

Q. Now, look at Exhibit P2, just for the purpose of fixing the dates. A. (Witness examines P2.)

Q. Can you tell us what was the date of this third and last meeting? A. April 10, 1924. 30

(Exhibit P2 read to the jury.)

Q. These fifty-six pieces that were in the possession of the silk company aggregated how many yards, Mr. Fox? A. About sixty yards apiece; I imagine about thirty-four or thirty-three hundred, offhand.

Q. What kind of material was it? A. Crepe de Chine.

Q. What was its value at that time? A. About \$1.40 a yard. 40

Q. When did you first receive any written or ver-

Plaintiff's Witness, Harry L. Fox, Direct

bal communication from the defendant respecting this composition? A. A short time after the agreement was signed.

The Court: How long was that?

The Witness: I think it was a matter of a few days,
10 or so.

(Discussion between Court and counsel off the record.)

Q. You received a letter a few days later, you say?

A. Yes, I think so.

Q. They have been tendered the amount of their money due under that composition? A. Yes.

Q. They have refused to accept it? A. That is
20 right.

Q. From that time on, you have had nothing to do with it at all? A. Nothing further, no.

Q. Was this agreement signed by Mr. Wiley— A. Yes.

Q. —in the presence of the other creditors? A. In the presence of each of the other creditors, and each one was requested to put the amount of their claim next to their signatures in ink.

30 Mr. Stein: There is no dispute, I believe, that formal demand for possession was made for the silk. I think the files disclose a replevin for the bond and a re-replevin by the defendant.

Q. You have not received possession of this silk?

A. No.

Q. Nor has it been delivered to Bachmann-Emmerich & Company? A. I do not think so.

40 Mr. Stein: No dispute about that.

Plaintiff's Witness, Harry L. Fox, Cross

CROSS-EXAMINATION by Mr. Rosenkranz:

Q. When did Bachmann-Emmerich Company—do they now own the goods? A. Yes.

Q. Well, do you know how they acquired title to the goods? A. Yes. They acted as our factors. When we sent the goods to the dyer, we of course, took advances and the good were their collateral, belonged to them. 10

Q. Is the Savoy Silk Manufacturing Company still in existence? A. No, sir.

Q. What became of it? A. Why, we made the composition and then sold out the plant.

Q. What do you say? A. I say, after we made the composition, we closed up the plant, sold it out.

Q. Is the name of the Bachmann-Emmerich & Company on that composition? A. No, sir. 20

Q. That composition was not signed by all the creditors, was it? A. Yes. Bachmann-Emmerich Company weren't a creditor. They were secured by the collateral; they acted as a commission house factor.

Q. So you did not consider them a creditor because they were secured by collateral? A. Yes.

Q. Then the Royal Piece Dye Works was not a creditor, was it? A. Yes, they were. 30

Q. They were also secured by a lien, weren't they? A. That I don't know, sir.

Q. What do you say? A. That I don't know, sir.

Q. Well, you know that a silk dyer has a lien on the goods in their possession, don't you? A. No, I don't know that.

Q. Didn't you know that before? A. No.

Q. How long have you been in the silk business? A. Quite some time. 40

Q. You say that the Bachmann-Emmerich Com-

Plaintiff's Witness, Harry L. Fox, Cross

pany were not a creditor because they had a lien? A. Yes, they acted as the factor; yes, sir.

Q. You say because they had a lien? A. Yes, sir.

Q. You owed them money? A. They had a lien because they had advanced money on the merchandise.

Q. You owed them money? A. Yes, they advanced
10 two-thirds on the merchandise.

Q. In other words, the Savoy Silk Manufacturing Company owed Bachmann-Emmerich Company money? A. Yes, an advance of two-thirds.

Q. After the composition agreement was signed, why, you assigned your interest—or the Savoy Silk Manufacturing Company assigned their interest in these fifty-six pieces to the present plaintiff, didn't they—to the Bachmann-Emmerich Company? A. No, the
20 way it is done is this way: Bachmann-Emmerich Company are commission merchants, and they advance money on merchandise, financing the sales, guarantee the accounts, do all of the shipping and everything necessary, covering it by insurance and so on, for which they charge a commission of four per cent. They advance you two-thirds of the value of the merchandise in cash, and then advance you a third after the goods are sold.

30 The Court: Are the goods deposited with them first before they make the advance?

The Witness: Well, the goods are either deposited with them or notice given them that so much goods are sent to the dyer.

Q. But the goods are consigned to them, then, to sell for you, aren't they? A. Yes.

Q. And they account to you for the proceeds? A.
40 That is right.

The Court: When did Bachmann-Emmerich become the owner of these goods in question now?

Plaintiff's Witness, Harry L. Fox, Cross

The Witness: Well, they became the owner immediately because we never paid—

The Court: What do you mean by immediately?

The Witness: Well, when the goods was first sent there, we notified them, and they advanced us against the merchandise there at the dyer's.

The Court: Were they the owner of the goods at the time the composition agreement was signed? 10

The Witness: Yes, because we took advantage of the agreement immediately.

Q. They were not a party at all to this composition agreement, were they? A. No.

Q. So that at the time that composition agreement was signed, you had no interest in the fifty-six pieces whatsoever? A. No. 20

Q. In the fifty-six pieces? A. No. That is, we had the one-third interest, sure.

Q. Well, either you had an interest in them or you didn't have an interest in them? A. Yes, we had one-third interest in them, surely; we got advances of two-thirds on the goods at the time the goods were sent there, but we had a one-third interest still in the merchandise.

Q. You have already said that the Bachmann-Emmerich Company now own the goods? A. Yes. 30

Q. All right? Now, I am trying to find out when did they come to own the goods? A. After the composition agreement was signed, we closed out our affairs. We sold out most of our stock and the equity that was still left we received a check for it.

Q. How long afterwards? A. Why, I believe it was six months or so.

Q. You told the Bachmann-Emmerich Company at that time, that this defendant disputed the composition agreement and wouldn't turn over the goods, didn't you? A. Yes, sure. 40

Plaintiff's Witness, Harry L. Fox, Cross

Q. And they had full knowledge of it? A. Sure.

Q. At the time, you say? A. They had knowledge of it.

Q. That you had turned over your equity? A. They had knowledge of it, yes.

Q. What did you get for your equity?

10

Mr. Stein: We object to that.

The Court: What difference does that make? They stand in no better position than the Savoy Silk Manufacturing Company.

Mr. Stein: No.

Q. Now, that notice was for a meeting on April 4th, wasn't it? A. Yes; it was a notice for April 4th.

20

Q. Don't you know that that meeting of April 4th was adjourned to April 10th, yes or no? A. My recollection—

Q. Yes or no. A. —there were three meetings.

Q. One minute.

Mr. Rosenkranz: Just read the question.

30

Q. (Repeated by stenographer): "Don't you know that that meeting of April 4th was adjourned to April 10th—yes or no?" A. Yes; there was a future meeting.

Q. I didn't ask you that. A. A later meeting.

Q. I didn't ask you that. I asked you whether you know that that meeting for which a notice was given, called on April 4th, was adjourned to April 10th? A. Yes, yes.

Q. There wasn't any meeting on April 4th at all, was there? A. Yes, there were two meetings prior to this last meeting on April 10th.

40

Q. One minute; I am asking you: There wasn't

Plaintiff's Witness, Harry L. Fox, Cross

any meeting on April 4th at all, was there? A. I think there was, yes.

Q. Well, do you know? A. I don't remember exactly the date but there was two meetings prior to this April 10th meeting, to the final meeting.

Q. Then, there wasn't—you don't know whether there was a meeting, or not, on April 4th, 1924? A. I don't remember the exact date. 10

Q. What was that? A. I don't remember the exact date, but I do know that there was two meetings prior to the final meeting of April 10th.

Q. When was the first meeting—in March? A. I believe it was at the end of March or so.

Q. Well, when in March? A. I don't remember the dates now. It is quite some time ago, but I remember very distinctly that we held three meetings, two meetings prior to the final meeting. The first meeting we discussed twenty per cent— 20

Q. One minute. A. —and the second meeting we discussed twenty-five—

Q. One minute. When did you look at this notice? You have seen that notice, haven't you? A. I have saw that notice before but it is not fresh in my mind (examining P1).

Q. Now, refreshing your memory; when was the first meeting? A. That was sent out on April 1st, it seems. 30

Q. I am asking you when the first meeting was. A. It seems right after April the first meeting.

Q. In other words, having seen that that is dated April 1st, now, you are guessing? A. No, I am not guessing. It is quite some time ago, and I cannot state exactly what the date is, but I do know exactly how many meetings there were and what transpired at each meeting. 40

Plaintiff's Witness, Harry L. Fox, Re-direct

Q. Who was present at the meetings? A. All of the creditors.

Q. Well, whom? A. Well, the Royal Piece Dye Works representative, the S. J. Silk Company—

Q. Who was it? A. Mr. Wiley of the—credit man of the Royal.

10 Q. Who else? A. Mr. Brauer of Brauer Brothers; Mr. Murray, Paterson National Bank; Mr. Hess of Leon Hess; S. J. Silk Company had their representative there.

Q. Who was he? A. Mr. Tabak.

Q. Who else was there?

20 The Court: Mr. Rosenkranz, I understand your defense is that Mr. Wiley had no authority whatsoever. Why go into all these other things?

Mr. Rosenkranz: Question of recollection, that is all, in regards to these meetings, that is all I am after, how many there were.

The Court: What difference does it make, ten or eleven or what it was.

Mr. Rosenkranz: That is all.

30 *RE-DIRECT EXAMINATION by Mr. Stein:*

Q. The debt owed to this Royal Piece Dye Works was for silk that had been dyed by them other than this fifty-six pieces, including the fifty-six pieces? A. That is right.

Q. Your concern owed them that debt regardless of whether you had your goods in your commission house, or not? A. That is right; we were responsible.

40 Mr. Stein: That is all.

Defendant's Witness, Walter H. Lingenberg, Direct

RE-CROSS EXAMINATION by Mr. Rosenkranz:

Q. One minute. You say you were responsible? A. Yes, we were responsible for the dyeing charges and labor charges incurred on the goods.

Q. I thought you just said a minute ago you were responsible? A. No, I am not talking about that, Mr. Rosenkranz. 10

Q. What are you talking about? A. I say, that before we took advances on the merchandise, before we turned it into the factors.

The Court: You mean liable instead of responsible?

The Witness: That is right.

Mr. Rosenkranz: That is all.

(Witness excused.) 20

Mr. Stein: That is all; plaintiff rests.

PLAINTIFF RESTS.

WALTER H. LINGENBERG, sworn on behalf of defendant.

Direct-examination by Mr. Rosenkranz: 30

Q. Mr. Lingenberg, you are connected with the Royal Piece Dye Works, Inc.? A. Yes, sir.

Q. Were you connected with them in April, 1924?

A. I was.

Q. In what capacity? A. I was manager of the plant.

Q. And as manager of the plant, what did you have to do regarding help? A. I hired most of the—in fact, all of the help, and all of the people that were responsible in any capacity. 40

Defendant's Witness, Walter H. Lingenberg, Direct

Q. Did you have general supervision over the entire plant? A. Yes, sir.

Q. Do you know Mr. J. A. Wiley? A. Yes.

Q. In April, 1924, what was his capacity in that plant? A. He was bookkeeper in the plant.

10 Q. I show you notice, marked Exhibit P1, bearing date April 1st, of a meeting of the creditors— A. Yes.

Q. —of the Savoy Silk Mills, Inc., and ask you when you first saw that notice, as near as you can recollect. A. At the very beginning of April, I saw that notice the first time.

Q. Now, that called for a meeting on April— A. The 4th.

20 Q. —4th. Do you know whether there was a meeting on that day? A. No, there was no meeting on that day.

Q. Do you know when the meeting was held? A. The meeting was held possibly a day later—possibly two or three days later.

Q. Well, was it?

The Court: Were you there?

The Witness: No.

30 The Court: He was not there.

Q. Did you instruct anyone to attend the meeting pursuant to that notice? A. I did.

Q. Whom? A. Mr. Wiley.

Q. Mr. J. A. Wiley? A. Mr. J. A. Wiley, I instructed.

40 Q. What did you tell him? A. I was busy on that day; I had to go to New York, and since this calls for the purpose of considering what is the best thing to be done for the benefit of all persons interested, I instructed Mr. Wiley to go there and see how the af-

Defendant's Witness, Walter H. Lingenberg, Direct

fairs of the company were standing and what proposition or propositions were going to be made, and to let me know.

Q. That is, to report back to the company? A. To report back to the manager.

Q. Now, did he go there? A. Yes, he did.

Q. When did you first learn that he had signed for the company a composition agreement, as near as you can recollect? A. When he reported back to me, the next day. 10

Q. As soon as you learned that, what did you do?

The Court: The next day after what, Mr. Lingenberg?

The Witness: The next day after Mr. Wiley came to me, the next day after the meeting. 20

The Court: Which meeting? There seems to have been three, according to the plaintiff.

The Witness: We did not know of three.

The Court: Which one are you talking about?

The Witness: I am talking about the meeting which took place either on the 5th or 7th.

Q. I show you an agreement, bearing date of April 10th. Is that the meeting you refer to? A. Yes, I guess it is. 30

Q. Well? A. Yes, that is the meeting.

Q. That is the date upon which Mr. Wiley signed? A. He signed—

Q. The name of your company? A. Yes.

Q. Now, is that the meeting that you referred to? A. That is the meeting.

Q. Do you know of any other meetings? A. Of no other meeting that really took place.

Q. That is what I am asking you? A. No. 40

Q. Do you know of any other meetings that took place? A. No.

Defendant's Witness, Walter H. Lingenberg, Direct

Q. You say you found out that Mr. Wiley had signed that on April 10th? A. Yes.

The Court: Next day, I think he said. You knew that the next day?

Q. Or the next day? A. Or the next day.

10 Q. Then, what did you do? A. I told Mr. Wiley that he had no authority to sign such a thing.

Q. All right, then, what did you further do? A. I communicated with the treasurer of the company and laid the proposition before him, to find out if the Board of Directors would be satisfied with such an agreement, and the treasurer of the company said it was absolutely ridiculous.

20 Mr. Stein: We object to what the treasurer of the company told him.

The Court: Don't tell what he said.

Mr. Rosenkranz: All right.

Q. Then, what did you do in regard to repudiating, if anything, the contract? A. I telephoned to the Savoy Silk Manufacturing Company, and confirmed it in writing.

30 Q. Do you remember whom you telephoned? A. No, I do not remember.

Q. Did you write anybody? A. Yes.

Q. I show you a letter addressed to the Savoy Silk Mills, Inc., Paterson, New Jersey, dated April 12, 1924. Is that the letter that you wrote? A. That is the letter that I referred to.

Q. Repudiating the acts of Mr. Wiley? A. Right.

40 Q. I notice the copy of the letter which you had in your possession bears date April the 11th. Do you know which date is correct, April 11th or April 12th, or don't you recollect that? A. No, I don't recollect that.

Defendant's Witness, Walter H. Lingenberg, Cross

Mr. Rosenkranz: I offer the letter in evidence. No objection?

Mr. Stein: Letter dated April 12th?

Mr. Rosenkranz: Yes.

Mr. Stein: No objection.

Offered and received in evidence and marked Defendant's Exhibit D1, and read to the jury. 10

Q. Now, after that, did the creditors, or did the Savoy Silk Mills, Inc., or someone else for them, tender you a check? A. A check was tendered together with the—I think it was.

Q. Together with the demand, was it, for possession of the goods? A. Demand for possession; that is right.

Q. And you refused to accept the check and refused to give up the silk? A. Yes. 20

Q. Do you know, on April 10th, 1924, do you know the value of the fifty-six pieces of goods in dispute? A. \$1.25 a yard.

Q. Do you know about what the value was of the whole account? A. About three thousand, three hundred dollars.

Mr. Rosenkranz: Cross-examine.

30

CROSS-EXAMINATION by Mr. Stein:

Q. How many yards are there in fifty pieces?

The Court: Fifty-six pieces.

Q. Fifty-six pieces? A. There were on the average of about sixty yards to the piece.

Q. That is thirty-three hundred yards? A. All right.

Q. At \$1.25 a yard is how much? A. They were not all sixty yards exactly. 40

Defendant's Witness, Walter H. Lingenberg, Cross

Q. Well, it was an average of sixty yards to a piece?
A. Yes.

Q. Thirty-three hundred yards at \$1.25 a yard is how much? A. It is about thirty-six hundred dollars.

10 Q. Well, it amounts to over four thousand dollars, if you will take a pencil and compute it? A. All right.

Q. Who is the credit man in your concern? A. We have no credit man.

Q. You have no regular man who passes on whom to do business with, have you? A. No, sir; we have not.

Q. How long had Mr. Wiley been working for you? A. Since 1921.

20 Q. And had he attended creditors' meetings before? A. He has attended one other creditors' meeting.

Q. Did he sign a composition there too? A. Why, I cannot answer that.

Q. You know whether he did or not? A. I do not.

Q. Well, what was the name of the concern whose creditors' meetings he attended?

Mr. Rosenkranz: One minute; I do not see how that is material.

30 The Court: I think it is important.

Mr. Stein: Very important.

The Court: I will admit it.

Q. What is the name of the debtor whose meetings, as a creditor, Mr. Wiley attended for your concern?

A. I only know of one case.

Q. Who was that? A. B. Borenstein.

40 Q. There was a composition made there, too, wasn't there? A. Yes.

Q. Which Mr. Wiley signed and which was approved of by your company? A. Not quite correct.

Defendant's Witness, Walter H. Lingenberg, Cross

Q. Well, what was the subject there? A. We were first informed of the ratio we would be paid by the receiver, what percentage we would get, and what percentage settlement would be made, before Mr. Wiley was authorized to go there and sign for the company.

Q. I asked you whether he went there and signed for the company? A. Yes, he did. 10

Q. Your company did not repudiate that, did it? A. Because he was—

Q. Did your company repudiate that? A. No.

Q. Now, after Mr. Wiley came back and told you that he had signed this composition, was that the same day that he had signed it, on Thursday, April the 10th, or was it the next day? A. It might have been the same day; it might have been the next day.

Q. And you testified before, or, if you did not, is it not a fact that you took that up with the Board of Directors of your company? A. I took that up with the treasurer of the company. 20

Q. The day that Wiley reported to you that he had signed it? A. Either the same day or the next.

Q. And the treasurer reported to you that the company would not stand by it? A. Yes.

Q. So that within a day or two after Mr. Wiley reported to you, you knew then from the treasurer of your company, that they were not going to approve of the composition, is that correct? A. Right. 30

Q. And you knew that before you notified the Savoy—I will withdraw that question. Before you notified the Savoy, by letter, that your concern was repudiating this signature of Wiley's, you had already found out then from your treasurer that your company would not stand for it? A. I cannot say that exactly the same day or not— 40

Q. Yes. A. —it is too far back.

Defendant's Witness, Walter H. Lingenberg, Cross

Q. Well, who was Mr. Brauer? A. I never met Mr. Brauer in my life.

Q. Did you ever hear the name? A. Yes.

Q. You knew that he was a creditor of the Savoy? A. Yes.

10 Q. Mr. Brauer had given you a copy of the offer of twenty-five per cent settlement, had he not? A. He never did.

Q. Never did? A. (No response.)

Q. Do you know any Mr. Brauer at all in Paterson? A. I never met him.

Q. Did you ever have any talk to any Mr. Brauer? A. That is possible.

Q. In connection with the Savoy Silk Company's affairs? A. No.

20 Q. Never did? A. No.

Q. Mr. Brauer never gave you a copy of the offer of the twenty-five per cent settlement? A. No, sir.

Q. What is your name? A. Walter H. Lingenberg.

Q. Is that your signature (indicating)? A. Yes.

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

30 Q. Reading from Exhibit D1, I will read you the bottom of this: "Mr. Brauer has been kind enough to submit to us a copy of an offer of a twenty-five per cent settlement, and the same will be submitted to our Board of Directors for its approval." Did you know that that was in your letter that you signed? A. I have never had such copy in my hand.

40 Q. So that when you wrote that letter to the Savoy, in which you say the part that I just read, that Mr. Brauer had submitted to you a copy of the twenty-five per cent settlement and you wrote that it will be taken up by the Board of Directors, that was not the truth, was it? A. It may have been given verbally.

Defendant's Witness, Walter H. Lingenberg, Cross

Q. Well, did Mr. Brauer give you any report verbally, in writing, by telephone, telegraph, or any way that you want to mention, or do you mean them all?

A. I do not recollect that—

Q. You do not know Mr. Brauer? A. (Continuing.) It is too far back. I have never met Mr. Brauer.

10

Q. So, as far as you know, he gave you no report of anything? A. Possibly over the telephone.

Q. Then, you might have spoken to Mr. Brauer? A. That is possible, over the telephone.

Q. Well, to whom did you refer to in that letter? Which Mr. Brauer? Do you know which one you were referring to in that letter? A. I do not.

Q. What was the nature of the report that he had given to you which you thought you were discussing in that letter? A. Will you read that question?

20

Q. (Question repeated by stenographer.) "What was the nature of the report that he had given to you which you thought you were discussing in that letter?"

A. He was discussing the affairs of the Savoy with me over the telephone.

Q. In that letter, you were referring to a verbal discussion over the telephone with Mr. Brauer, weren't you? A. No, that does not say so.

30

Q. Well, now, you have said a half a dozen times—I will ask you again. Did you ever see a Mr. Brauer? A. No.

Q. Did you ever talk over the telephone to a Mr. Brauer? A. I possibly did.

Q. You possibly did. Well, if you had not talked to Mr. Brauer, you would not have—never said that in a letter, would you? A. That is true.

Q. So that, after you talked to Mr. Brauer, you were going to submit it to your company, to your Board of Directors; is that correct? A. Yes.

40

Defendant's Witness, Walter H. Lingenberg, Cross

Q. And the date of this letter is April 12th, is it not? A. Yes.

Q. And you were going to submit that offer of the Savoy to your Board of Directors for approval, weren't you, according to this letter, eh? Correct? A. Yes.

10 Q. But before you had sent this letter you had already taken it up with the treasurer and it had been turned down; is that correct? A. Yes.

Q. Has your concern sent representatives to attend any other creditors' meetings since April 10, 1924, or before?

Mr. Rosenkranz: One minute. I object to since April 10, 1924.

20 The Court: How is that material?

Mr. Stein: To show what the system was or the practice.

The Court: Yes, to show what the system was, but not what the system is.

Q. Well, what was the system before April—withdraw the question. Did you send Mr. Wiley to any creditors' meetings before April 10, 1924? A. Mr. Wiley has only attended one other creditors' meeting.

30 Q. Were there any other creditors' meetings that you had? A. No, sir.

Q. Or any other representative of your concern? A. There possibly have been, yes.

Q. Well, now, let us know, if you can tell us, one single creditors' meeting of the Royal Piece Dye Works, Inc., since Mr. Wiley has been employed by you, that was attended by anybody except Mr. Wiley.

A. To the best of my recollection, there have not been
40 any.

Q. But those that have been, the Borenstein one

Defendant's Witness, Walter H. Lingenberg, Re-direct

and the Savoy, were attended by Mr. Wiley? A. Right.

Q. In the one, in the Borenstein, Mr. Wiley signed that you had approved of, and in the Savoy he signed, which was not approved of; is that correct? A. No, it is not correct.

Q. Well, all right, you say that is not correct. A. 10
(No response.)

RE-DIRECT EXAMINATION by Mr. Rosenkrans:

Q. In the Borenstein meeting of creditors, did your concern have a lien on the goods? A. No, we had not.

Q. Under what instructions did you send Mr. Wiley 20
there? A. A proposition was received in the Borenstein matter before Mr. Wiley went there, and this proposition was approved of before he went there, and he was authorized to sign.

Q. That is, you had already approved of the composition, and you went there—Wiley did—and he was authorized to sign; is that it? A. (Indicating affirmatively.)

Q. Now, referring again to this repudiation, dated 30
April 12, 1924, in which you say at the last: "Mr. Brauer has been kind enough to submit to us a copy of an offer of a twenty-five per cent settlement, and the same will be submitted to our Board of Directors for its approval." Did you or did you not submit it to the board afterwards? A. No, it was not submitted to the board.

Q. Why not? A. Because the treasurer considered the proposition ridiculous. 40

Q. You did not think it was necessary to take it up with the board? A. No.

Defendant's Witness, James A. Wiley, Direct

Q. And as the general manager, you turned it down?
A. Right.

Mr. Rosenkranz: That is all.

RE-CROSS EXAMINATION by Mr. Stein:

10 Q. The bill that Borenstein owed you was for what, if it was not for dyeing? A. It must have been for dyeing and finishing.

Q. Was it for dyeing? A. It must have been.

Q. Didn't you have goods in your possession in the Borenstein matter also? A. No, I do not think so.

Q. You had sent it out before the bill was paid?
A. Yes.

20 Mr. Stein: That is all.
(Witness excused.)

JAMES A. WILEY, sworn on behalf of defendant:

Direct-examination by Mr. Rosenkranz:

30 Q. Mr. Wiley, what was your position in April, 1924, with the Royal Piece Dye Works, Inc.? A. I was a bookkeeper.

Q. I show you a paper, marked Exhibit P1, dated April 1, 1924, addressed to the Royal Piece Dye Works, Inc., calling for a creditors' meeting in Mr. Gourley's office for the creditors of the Savoy Silk Mills, Inc., and ask you whether you have seen that paper before? A. I have.

40 Q. Did you ever have any talk with Mr. Lingenberg in regard to that meeting or any other meeting?

Defendant's Witness, James A. Wiley, Direct

A. You mean, in regards to the meeting which was called for April 4th?

Q. Yes. A. Why, the notice came in in the mail, and he saw it, and he asked me if I would go there.

Q. One minute. How many times—how many meetings did you attend? A. I attended the meeting of April 10th. 10

Q. That was the only meeting you attended? A. That was the only meeting I attended.

Q. How did you come to attend that meeting? A. I was sent there by Mr. Lingenberg. He was unable to go and he asked me if I would go to that meeting.

Q. You say you were the bookkeeper? A. I was the bookkeeper.

Q. When he told you to attend that meeting, did he give you any instructions? A. Why, he told me to go there and to find out what the financial condition of the company was and to report back to him any proposition which they might make to the creditors. 20

Q. And you attended that meeting, did you? A. I attended the meeting.

Q. Now, did you sign a composition agreement on that day? A. I did.

Q. At that time you were not an officer in the company at all, were you? A. No. 30

Q. Just the bookkeeper?

The Court: Were you a director?

The Witness: No, sir.

Q. How did you come to sign that agreement? A. Why, at that meeting there was a number of the creditors there and they—one man stated there was no proposition from the Savoy Silk Mills, and Mr. Brauer kindly organized the people and got them together, and 40

Defendant's Witness, James A. Wiley, Direct

wanted them to submit a proposition, and he asked Mr. Fox, Senior, what he would be willing to pay, and Mr. Fox told him that he could not make any reply to the offer at all, so he got seven of the creditors together and told them, and said, "If you people will accept twenty-five per cent," he said, "I think I
10 can put it over." He said, "If you do not accept it, why," he said, "it will go into court and you won't get anything." So Mr. Brauer asked me what I had to say, and I told him that the company had a lien on some merchandise and that it was properly secured, and that if the other creditors accepted twenty-five per cent on their claims, that I would make an effort to have my company verify the settlement, which
20 would be the difference between the value of the merchandise which we held and the total amount of the claim.

Q. What did you consider the value of the merchandise that you held worth? A. Why, in the meeting it was considered worth, I think, about thirty-two hundred dollars.

Q. I see. What did you say? A. I told him that we had—that I believed that our company had a claim for about twelve hundred dollars, and he told me that
30 the procedure was that they would have someone come around and take over the merchandise and that any settlement would be based upon the difference between the value of the merchandise and the total amount of the claim, and he told me that he felt that I should sign that agreement, because if these people did not accept, that they would not get anything, and I didn't know that I was doing anything wrong, and that it may be done, so to be a good fellow I came along
40 with them. If I had had any idea that I was becoming a party to an agreement which would deprive the com-

Defendant's Witness, James A. Wiley, Direct

pany of thirty-two hundred dollars' worth of silk for a thousand dollars, naturally, I would not have done so.

Q. You thought that you were signing for the difference between your lien and the bill? A. That was my understanding.

Q. And that the twenty-five per cent agreement was just on the margin; is that it? A. On the margin. 10

Q. Now, before you signed to that agreement, under that impression, did you make any statement at the meeting, to Mr. Fox or anyone? A. I spoke to Mr. Fox and asked him about the silk, if he couldn't arrange to take it over. He said it was out of his hands, it would depend upon what the creditors might say.

Q. Did you say anything at that meeting in regard to what authority you had? A. Mr. Brauer asked me if I was an officer of the company, and I told him that I was not; and he said, "Wiley, don't you think it could be put over?" 20

Q. What did you say? A. I told him that I did not know, that if I could be instrumental in seeing that the people got the twenty-five per cent, whereas, if they wouldn't get anything if it went into court, that I would try it.

Q. What did you mean when you said you would try? 30

The Court: Cannot say what he meant.

Q. Well, was anything else said? A. I do not recall.

Mr. Rosenkranz: Cross-examine.

Defendant's Witness, James A. Wiley, Cross

CROSS-EXAMINATION by Mr. Stein:

Q. Those other creditors of the Savoy, who were there with you, and who were trying to put over this compromise, were customers of your company, weren't they? A. Customers of my company?

10 Q. Yes.

Mr. Rosenkranz: One minute, I object—

A. No—

Mr. Rosenkranz: One minute, I object to that. What do you mean by customers of his?

Mr. Stein: Company.

The Court: I will permit it. He said, "No."

20 Q. Your concern did business with these other creditors, did they not? A. Creditors on this agreement, sir?

Q. That were at the creditors' meeting? A. Yes—

Q. You just wanted to please them because you wanted to be a good fellow? A. Well, according to what he said, what I understood, yes.

Mr. Stein: Withdraw that question.

30 Q. Was there any business reason for your signing this? A. Any business reason?

Q. Yes, in so far as those other creditors were concerned?

Mr. Rosenkranz: I object to that. I do not see how that can bind the company.

The Court: Well, I think it is relevant under your direct-examination, this particular part.

40 A. Ask that question again, please.

Q. (As repeated by stenographer): "Q. Was there

Defendant's Witness, James A. Wiley, Cross

any business reason for your signing this? A. Any business reason? Q. Yes, in so far as those other creditors were concerned." A. I know of no reason. The only thing I could say was that Mr. Fox, Senior, stated that if they did not reach an agreement, they would not make any compromise with them, and the case would go into court, and it could be settled as they saw fit, and they would not get anything, and one of the representatives of the Crescent Silk Dyeing Company spoke about the matter too, and he said twenty-five cents on the dollar was better than nothing at all. 10

Q. You were only at one meeting? A. I remember only one meeting.

Q. You knew about this meeting of April 4th, didn't you? A. Well, there was a meeting called for April 4th, and the meeting was called off. 20

Q. Did you go to the meeting? A. I don't remember going to the meeting.

Q. Well, you were recollecting quite accurately a moment ago. Why do you say it was called off? A. We got a telephone message from the president of the Crescent Silk Dyeing Company.

Q. You did not go to the meeting of April 4th? A. No, because he said he was not going, and as long as they were not going to hold the meeting, there was no use of my going. 30

Q. You said that there was only one meeting that you were at. A. Well, this is two years; my recollection is only one meeting.

Q. There might have been two that you were at? A. That I was at?

Q. Yes. A. I don't remember the meeting which was of April 4th. 40

Q. Well, now, how many times was the original

Defendant's Witness, James A. Wiley, Cross

meeting called off, to your recollection? A. Only once.

Q. So that between the 4th and the 10th, there was no meeting? A. To my knowledge, no.

Q. It is an unusual thing, isn't it—

10 Mr. Rosenkranz: I object to that.

Q. (Continuing.) —in your experience, in your business—

Mr. Rosenkranz: One minute.

Mr. Stein: Wait until I ask the question.

Q. (Continuing.) —for delaying a creditors' meeting?

20 Mr. Rosenkranz: I object to that.

The Court: I will permit it.

Mr. Rosenkranz: There is no evidence that he had any experience.

The Court: I will permit it; if he does not know, he may say so.

A. I had nothing to do with the calling of the meeting, as to when it should be held; it was none of my business.

30 Q. But you want us to believe that the creditors' meeting that was called for April 1st, did not materialize until April 10th, is that right?

Mr. Rosenkranz: I object to that. It called for April 4th.

Q. Or April 4th? A. I am saying that I do not remember going to any meeting on April 4th. They might have done something that I do not know about.

40 Q. Are you an officer of this company now?

Mr. Rosenkranz: One minute, I object to that.

The Court: I sustain the objection.

Defendant's Witness, James A. Wiley, Cross

Q. You signed this agreement, did you not—this composition agreement? A. I did.

Q. Without authority? A. Without authority.

Q. You were not discharged for that, were you?
A. No.

Q. You came back and told Mr. Lingenberg, your superior, that you had signed the composition agreement? Right? A. Yes. 10

Q. How old were you then? Or, how old are you now? We will figure back for you. A. I guess I was about twenty-nine.

Q. Twenty-nine then? A. Yes.

Q. You could read and write English? A. Yes.

Q. You were familiar with the contents of this composition agreement? A. No.

Q. Oh, you didn't read it? A. (No response.) 20

Q. You did read it, or not, before you signed it?

The Court: I do not see that it makes any difference, Mr. Stein, if he was authorized to sign it, he was bound by it, if he signed it, by his signature.

Mr. Stein: As affecting his credibility.

The Court: What do you mean?

Mr. Stein: His general credibility. He wants this Court and jury to believe that he signed an agreement and did not know what was in it. 30

The Court: Well, the presumption is that he knows what is in it when he signs it.

Q. Did you read it? A. I do not think I did.

Q. Was it read to you? A. It was read to the meeting.

Q. By whom? A. Mr. Brauer. 40

Q. You do not say now that he did not read it to you correctly, do you? A. No.

Mr. Stein: That is all.

(Witness excused.)

Mr. Rosenkranz: We rest.

DEFENDANT RESTS.

Mr. Stein: So do we.

10 PLAINTIFF RESTS.

Mr. Rosenkranz: If the Court please, I ask for a direction of a verdict in favor of the defendant in this cause, on the ground that, in the first place, the undisputed evidence is that this J. A. Wiley had no authority whatsoever to sign that composition agreement. His instructions were to go there and attend the meeting and to hear what was said and to report
20 back. The evidence further is that Mr. Wiley was nothing but their bookkeeper. There cannot be any question about that. And for that one meeting he certainly was a special agent—I might say general agent—he was the bookkeeper there—but he was a special agent for that one meeting. Now, I understand the law to be that the important distinction between a general agent and a special or particular agent lies within the rule that if a particular agent exceeds
30 his authority, the principal is not bound, but if a general agent exceeds his authority the principal is bound, provided he acts within the scope of the business he was authorized to transact and the parties dealing with the agent did not know he was exceeding his authority. The only testimony in this case is that this man was a bookkeeper, and in this case he went down there as a special agent. I do not think there can be any question about that, and the
40 testimony is that he transcended his authority. Now, they are trying to bring this case in to show that

he attended one other meeting, but that is entirely different from this because the undisputed testimony is in that other meeting that he attended, that before he went there he was told by the manager that they had agreed upon a percentage and he was authorized to sign it, and that case is not in parallel with this case at all, the only other creditors' meeting he ever attended. In that case the creditors did not have any meeting at all, that he was told to go there and that it had all been threshed out. It seems to me that it is incumbent upon the plaintiff here to show that he had that authority, which they have not done, so that I do not think there is a jury question here (citing cases). In other words, if there had been a course of conduct, or if there had been a number of meetings—suppose there had been a dozen or two that he attended—that all of the meetings were where they had a lien—but the only one they bring in here at all—the only other meeting—was this one meeting in which he said upon his testimony that they had no meeting, he was sent there because the amount was already fixed upon, and that those people knew about that; but there is no testimony to that effect at all, in this instance. The testimony in this case is that when he signed, they practically told him, in effect, that he would have to sign subject to approval, and the very next day, or the day afterwards, why these people promptly disapproved that signature. It does not seem to me that there is a jury question here at all. It seems to me that it is incumbent, in a case of this kind, for the plaintiff to establish that, and I submit they have not done so.

Mr. Stein: If your Honor please, there are sufficient circumstances here from which this jury has a right to assume that when this agent went to this meeting he had the right to sign this composition agreement. If the undisputed facts were that there

was only one meeting and that he was sent there for that purpose alone, for the purpose of listening to the discussion and reporting back, the defendant's case might be stronger; but the plaintiff's proof is that there were three meetings, that this representative of the company came there in response to a letter sent to all the creditors, that this offer was submitted to him, and that he came back to the second meeting, and he and the other creditors disapproved of the offer; that a new offer was made and he was then requested to go back and find out whether or not his company would take that; and that he came back at the third meeting and signed the agreement. Furthermore, the testimony in this case is that any composition agreements—any creditors' meetings that were ever attended to up to that time by a representative of the Royal Piece Dye Works, they were attended by Mr. Wiley, and that he had signed the composition agreement with authority in the preceding one. Now, this company cannot give instructions to its agent to go to one meeting today and sign a composition agreement by authorization or ratification and the next day, or the next week, and send him around to another one, and repudiate his acts in signing a composition agreement at that meeting.

The Court: In that case, authority had been expressly conferred upon him.

Mr. Stein: Yes, sir.

The Court: While the evidence shows that without any knowledge on the part of the Savoy, which was only developed on cross-examination, of course they cannot claim estoppel by some acts which were never known to one party.

Mr. Stein: But the distinction is this and the point that I was to impress is this, that the circumstances indicated that these men were giving the impression, that is the defendant company and the people who

were dealing with them, that the agent had the authority to sign.

The Court: That is the point; what impression did they get.

Mr. Stein: Because he came there first to a meeting, hears the proposition, goes away, comes back the second time, and the testimony—the direct-testimony of the plaintiff's witness is that he was asked to go back to submit the offer and see if the company approved of it. 10

(At this point, at the Court's request, a portion of Mr. Fox's testimony was read by the stenographer.)

The Court: I suppose the burden is on you to show three things, either that the agent was authorized specifically, or by a course of conduct of general authority, or, if he had no authority, that the defendant held him out as having authority, or that the defendant ratified his acts. You must rest your case on one of those three things. 20

Mr. Stein: Yes, sir.

The Court: Which one do you rest it upon, what evidence?

Mr. Stein: The second one, as having authority, and his conduct under the circumstances.

The Court: That they held him out as their agent?

Mr. Stein: Yes, sir.

The Court: On what do you base it, then? 30

Mr. Stein: Well, they sent a man to a creditors' meeting, on the plaintiff's invitation.

The Court: In response to this letter?

Mr. Stein: Yes; that he came and he was made an offer and he went back and reported.

The Court: Nobody said he went back and reported.

Mr. Stein: Well, the defendants say that.

The Court: No, the defendant does not say that. 40

In fact, the witness says he was only at one meeting.

Mr. Stein: Then, it is a disputed question of fact, on this motion.

The Court: No, not on that, but you say he went back and reported?

Mr. Stein: Well, he went back. Where he went, we do not know. He came back to the second meeting, according to the plaintiff's story, and he said the company will not accept.

The Court: Who said that he said that.

Mr. Stein: Mr. Fox and Mr. Wiley said that, too.

The Court: I do not recall that Mr. Wiley said that. He said that the creditors would not take it.

Mr. Stein: Mr. Wiley was one of the creditors there.

The Court: It may be that he said so, proceed.

Mr. Stein: They made him another offer, and that he was instructed to go back and report to his company, and come back with authority to accept or to reject; and that he came back the third time, under the plaintiff's case, and signed the agreement.

The Court: But there is no evidence that he ever submitted it, assuming your testimony to be correct, that he ever submitted this offer to the defendant.

Mr. Stein: That can be assumed that he did so from the circumstances, that the offer was made and they were told to go back to their respective people and come back with authority to accept or to reject, and that he came back at the subsequent meeting and signed this agreement accepting that offer.

The Court (after further discussion): In this case, of course, the right of recovery on the part of the plaintiff must depend upon the authority of the agent who purports to sign a release—the question of consideration was not raised in this case, therefore I shall

not pass upon that question, although it might be a question of considerable interest. On April 1st, the Savoy Silk Mills, Inc., who, for the present purposes, I will call the plaintiff, although Bachmann-Emmerich & Company have since succeeded to their rights, sent a notice to their various creditors, of which the defendant was one, calling a meeting for April 4, 1924, in which they request the creditor to have a representative there, so that they could have the benefit of his opinion. 10

There is quite some dispute in this case as to whether Mr. Wiley, who was alleged to have been the defendant's agent, attended one or two meetings. Mr. Wiley says that he attended one, and I think Mr. Fox said he attended two or more. There has been no evidence offered by the plaintiff in this case as to any direct authorization on the part of Mr. Wiley to sign this instrument. The testimony shows that he was a bookkeeper, and not an officer or a director; that on one other occasion he had signed a composition agreement in the matter of one Borenstein after the terms of the proposed composition had been submitted to his principal and he had been then expressly authorized to sign such composition, and the defendant then had no goods upon which they had any lien. 20

The evidence was directly to the contrary, of any express authorization, both of Mr. Wiley and Mr. Lingenberg, expressly denying that Mr. Wiley was in any way authorized to sign this composition agreement. Nor, does it seem to me, can it be said that the defendant pursued a course of conduct which would estop it from claiming that Mr. Wiley was not its agent. 30

This notice which was brought to the attention of the principal was to have his representative present that they might have the benefit of his opinion, not that he might sign any composition. 40

The plaintiff says that Mr. Wiley attended a meeting, or two, and he was instructed to return after consultation with his principal for the purpose of signing a composition agreement.

Both Mr. Wiley, the agent, and Mr. Lingenberg, the manager representing the principal, deny that such matter was ever brought to their attention.

10 There seems to be nothing brought home to the principal, the defendant in this case. There is no evidence which, in the opinion of the Court, would warrant the jury in finding any expressed authority on the part of the defendant for the purpose of executing this composition, which, of course, would be a great sacrifice of the legal rights of the defendant, nor has the defendant at any time held Mr. Wiley out as its agent for such purpose.

20 The law seems to be settled, as I view it, that if there is no dispute as to the facts, nor as to the inferences which could be legitimately drawn from the facts, then it becomes a court question.

As I view it, there is no dispute in this case as to the facts or as to the inferences which could be drawn, so far as they might be favorable to the plaintiff.

For that reason the motion for a direction of a verdict for possession will be granted, and the plaintiff can note an exception.

30 Mr. Stein: Verdict for the defendant?

The Court: For the defendant.

Mr. Stein: I ask an exception.

The Court: Members of the jury, in the view of the Court, there is no question of fact for your determination, but it becomes a question of law. The Court therefore directs you to find a verdict in favor of the defendant in this case, and the clerk will so take your verdict.

40 As directed by the Court, the jury accordingly returned a verdict in favor of the defendant, and was then discharged.

Defendant's Exhibit I.

ROYAL PIECE DYE WORKS, INC.

PATERSON, N. J.

(Copy.)

April 11th, 1924. 10

Savoy Silk Mills, Inc.,
Paterson, N. J.

Attention of Mr. Harry Fox, President.

Gentlemen:

Referring to the Special Meeting of your creditors which was held at 2:00 P. M., on Thursday, April 10th, at the office of your attorney in the First National Bank Building, Paterson, N. J., you are advised that the Royal Piece Dye Works, Inc., did not give authority to Mr. J. A. Wiley, an employee of the company, to agree to any settlement, which you might propose. You are hereby notified that the signature of Mr. Wiley is not binding upon the corporation, and you are requested to remove same from the list of creditors who have signed the settlement of 25%. 20

Mr. Brawer has been kind enough to submit to us a copy of the offer of a 25% settlement, and the same will be submitted to our Board of Directors for its approval. 30

Yours very truly,
ROYAL PIECE DYE WORKS, INC.
(Signed) W. H. LINGENBERG
Manager.

Plaintiff's Exhibit 1.

Phone Lambert 3924

SAVOY SILK MILLS

Incorporated 1921

Manufacturers of

10

BROAD SILKS

Clay and Chestnut Sts.

Paterson, N. J., April 1/24. 192

Royal Pce. Dye Wks.,
25 6th Ave.,
City.

Gentlemen :

20 In accordance with the conversation had between us in relation to the business affairs of the Savoy Silk Mills we have to say that we are calling a meeting of the creditors of the company to be held at the office of William B. Gourley, First National Bank Building, Paterson, N. J., on Friday, the fourth of April at eleven o'clock, A. M. for the purpose of considering what is the best thing to be done for the benefit of all persons interested.

30 Will you be good enough to have a representative here so that we can have the advantage of his opinion.

Yours very truly,
SAVOY SILK MILLS, INC.

H/F

HARRY A. FOX, Pres.

40

Plaintiff's Exhibit 2.

The undersigned creditors of Savoy Silk Mills, Inc., and of David Fox and Harry Fox, individually and as partners, trading as Savoy Silk Mills, do hereby in consideration of One Dollar to each of the undersigned in hand paid and of other lawful consideration them thereunto moving do hereby agree with said parties and with each other to accept the sum of 20% in cash of the sums respectively due from said parties to the undersigned and a promissory note to be signed by said Savoy Silk Mills for 5% of said amount respectively due to the undersigned, payable in six months from the date hereof in full and final settlement of the respective amounts at this time in any way due to the undersigned from said parties and we do hereby release and discharge the said parties of and from all claims, demands and causes of action except said 25% of the amount due us as aforesaid.

Dated, April 10, 1924.

PROGRESSIVE SILK FINISHING CO.

FELIX MILHOMME,
President.

(Those that have already signed):

S. & J. Silk Co.	(9,000.00)
Brawer Bros. Silk Co.	(4,500.00)
Walter Leon Hess Co.	(26,000.00)
Royal Piece Dye Co.	(4,200.00)
Frisbie Throwing Co.	(5,000.00)
Paterson Nat'l Bank	(13,000.00)
Crescent Silk Dye Co.	(3,000.00)

Financial Statement

The following is a list of the names of the members of the Board of Directors of the American Silk Industry Association, Inc., for the year ending December 31, 1934. The names are listed in alphabetical order of their surnames. The names of the members who have resigned are indicated by an asterisk. The names of the members who have been elected are indicated by a plus sign. The names of the members who have been re-elected are indicated by a check mark. The names of the members who have been elected to the office of President are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Vice President are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Secretary are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Treasurer are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Auditor are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Executive Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Finance Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Public Relations Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Technical Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Educational Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Research Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Legislative Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the International Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Honorary Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Advisory Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Nominating Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Resolutions Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Credentials Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Entertainment Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Reception Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Registration Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Seating Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Signaling Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Ticketing Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Transportation Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Accommodation Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Catering Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Entertainment Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Reception Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Registration Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Seating Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Signaling Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Ticketing Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Transportation Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Accommodation Committee are indicated by a plus sign and the name of the office. The names of the members who have been elected to the office of Chairman of the Catering Committee are indicated by a plus sign and the name of the office.

Respectfully,
 J. H. MICHONNE,
 President

(Those that have already signed)

(9,000.00)	W. J. Silk Co.
(4,500.00)	W. J. Silk Co.
(20,000.00)	W. J. Silk Co.
(4,200.00)	W. J. Silk Co.
(5,000.00)	W. J. Silk Co.
(13,000.00)	W. J. Silk Co.
(3,000.00)	W. J. Silk Co.

NEW JERSEY COURT OF ERRORS AND APPEALS

SAVOY SILK MANUFACTURING Co.,
a corporation,
Plaintiff-Appellant,

vs.

ROYAL PIECE DYE WORKS, a corporation,
Defendant-Appellee.

On Appeal
from Passaic
Circuit.

BRIEF OF PLAINTIFF-APPELLANT.

Statement of Facts.

This appeal is brought to review the judgment of the Passaic Circuit Court which directed a verdict in favor of the defendant.

The suit was brought by the plaintiff-appellant, in replevin, to recover possession of fifty-six (56) pieces of silk in the possession of the defendant, the defendant justifying the retaining of said silk in its possession by virtue of the statutory lien for dyeing.

The plaintiff contended that on April 10, 1924, the defendant agreed in writing, to accept twenty-five per cent of said sum in settlement of its account, which agreement was signed by the defendant, and other creditors at a meeting called for said purpose. The defendant contended that the alleged agreement of April 10, 1924, was signed by a person who had no authority so to do in behalf of the defendant.

1.

The Court erred in directing a verdict in favor of the defendant on the proofs in the case.

The testimony in behalf of the plaintiff showed that it had been doing business with the defendant for two years or more (case, p. 15, l. 1), and that the plaintiff was in financial difficulties (p. 15, l. 38), and that a meeting of the creditors of the company was called for April 4, 1924, at 11 A. M. (see Plaintiff's Exhibit 1, p. 58).

It appears that there were three meetings called for the purpose of bringing about a settlement (p. 17, l. 42), and that the dates of these meetings were between April 4th and April 10th. There was an offer made at the first meeting which was rejected (p. 18, l. 2).

It appears that a Mr. Wiley attended the first meeting (p. 17, l. 20) and that he also attended the second meeting as well as the other creditors (p. 18, l. 10). The testimony of the plaintiff was, at that second meeting, the people present were to go back and talk it over and come back with authority at another meeting (p. 18, l. 15) and that the third and last meeting, which was held on April 10, 1924, the defendant was represented by the same Mr. Wiley (p. 18, l. 25) and that the other creditors were present. It was at this third meeting that the composition agreement, Plaintiff's Exhibit 2, was signed by all the creditors.

It also appears that after the signing of this composition agreement, the defendants were tendered the amount due under that composition, and that they refused to accept it (p. 24, ll. 15 to 20).

The whole question involved in this case is whether or not Mr. Wiley of the defendant company had express or implied authority to sign the composition,

or whether there were such circumstances from which a jury had a right to assume such authority, or whether the defendant held him out as having such authority.

It appears that Mr. Lingenberg who is the manager of the defendant company (p. 31, l. 35) and who had general supervision of the entire plant (p. 32, l. 2) instructed Mr. Wiley to attend the meetings pursuant to the notice that was sent to the creditors (p. 32, ll. 30 to 35), and apparently Wiley attended the meeting of the creditors, pursuant to such instructions. Mr. Wiley had been working for the defendant since 1921, and had attended creditors' meetings before this time (p. 36, l. 20). It appears that there was only one other instance where Wiley had attended a creditors' meeting in behalf of the defendant company and that there had been a composition made and which Mr. Wiley signed in behalf of the company (p. 36, ll. 35 to 40, and p. 37, l. 10). It also appears that the company did not repudiate his authority in that case (p. 37, l. 12).

The witness, Lingenberg, testified that he was going to submit the proposition to the Board of Directors (p. 39, l. 41) but it appears that this was not done (p. 41, l. 38) because the treasurer considered the proposition ridiculous (p. 41, l. 40).

It also appears that there had been no other creditors' meeting in behalf of the defendant since Wiley was employed by them, that was attended by anybody except Wiley. The witness, Wiley, testified under direct-examination, that he was told to attend the meeting and find out what the financial condition of the company was AND TO REPORT BACK ANY PROPOSITION WHICH THEY MIGHT MAKE TO THE CREDITORS (p. 43, ll. 20 to 25).

It also appears that Wiley was not discharged for executing this agreement (p. 49, l. 5).

At the close of the case, the defendant moved for a direction of a verdict upon the ground that the agent, Wiley, exceeded his authority, and the motion was granted by the Court.

It is the clearly settled law of this state, that the authority of an agent to do certain acts on behalf of his principal may be inferred from the continuance of the acts themselves over such a period of time and the doing of them in such a manner that the principal would naturally have become cognizant of them and would have forbidden them if unauthorized. (*Dierkes vs. Hauxhurst*, 80 N. J. Law, p. 369.)

It is the contention of the appellant that there were sufficient circumstances here from which the jury had a right to assume that when the agent, Wiley, went to the meeting the third time, he had the right to sign the composition agreement. It appears from the testimony hereinabove referred to, that at the time of the second meeting, he was notified that he should present the proposition of settlement to the defendant, his principal, and come back with authority to sign (p. 18, l. 20). It is true that the defendant contends that the agent, Wiley, attended only one meeting, but on the motion for a directed verdict, the theory of the plaintiff as supported by its testimony, must be considered.

In addition thereto, the testimony is clear that any and all creditors' meetings that were attended to by a representative of the defendant company, were attended by this same Mr. Wiley and that he had signed the composition agreement in the *Bornstein* case, with authority and that his signing of the same was agreeable to and ratified by the defendant.

Under these facts, the jury also had a right to consider whether or not the defendant held Wiley out as having authority to sign the composition agreement involved in this suit.

The jury had a right to determine whether or not

Wiley made a report of the happenings at the second meeting and whether or not in pursuance thereto, he came back with authority to sign the composition agreement.

In *Aerial League of America vs. Aircraft*, in 97 N. J. Law, on page 532, the Court held that "a corporation is bound by the act of an officer or agent * * * where the act is within the apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them."

It has also been held in this state that "the question of agency in any form is one of fact" (*Manchester B. & L. Ass'n vs. Allee*, 81 N. J. Law, on p. 612).

Agency, in fact, may be established by proof of the performance by the alleged agent of similar acts in behalf of the alleged principal, with a knowledge or the acquiescence of the principal or with his subsequent ratification.

Proof of such prior performance by the agent raises a situation from which the jury might infer or presume an implied authority to act in behalf of the principal.

From all the facts and circumstances in this case, we submit that it was for the jury to determine whether or not the act of the agent, Wiley, was authorized by the defendant, expressly or impliedly, and that it was also for the jury to determine whether the defendant, by its acts, held the witness, Wiley, out to the plaintiff as a person authorized to sign the composition agreement.

We, therefore, ask that the judgment of the Passaic County Circuit Court be reversed.

STEIN & STEIN,
Attorneys of Plaintiff-Appellant.

BENJ. L. STEIN,
Of Counsel.

THE HISTORY OF THE UNITED STATES OF AMERICA
BY CHARLES A. BEAMAN

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New Jersey Court of Errors and Appeals

Savoy Silk Manufacturing Co., a Corporation, Plaintiff-Appellant, vs. Royal Piece Dye Works, a Corporation, Defendant-Appellee.	}	In Replevin On Appeal from Passaic Circuit
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BRIEF OF DEFENDANT-APPELLEE,

Wayne Dumont, Attorney

STATEMENT OF FACTS

This appeal brings up for review a direction of verdict for the defendant. The motion appears on page 50 of case and the Court's disposition of the motion on Page 54, line 36, &c.

Plaintiff was in financial difficulties and sent out a general letter to its creditors for a creditors' meeting. Defendant was the only creditor whose claim was secured, and its claim for \$4200., the exact amount being \$4267.38, was secured by its possession of 56 pieces of silk belonging to plaintiff, on which it had a statutory lien for dyeing and finishing. (Case, page 14.)

The general letter sent to plaintiff's creditors called for a meeting to be held at the office of William B. Gourley, on Friday, April 4, 1924, for the purpose of **considering** what was the best thing **to be done** for the **benefit of all persons interested**

and ended as follows: "Will you be good enough to have a representative here so that we can have the advantage of his opinion." The copy of the general letter addressed to the defendant appears on Page 58 of Case as Exhibit P-1. The meeting was not held on the day called for in the letter but on April 10th. See testimony of Mr. Lingenberg, general manager of defendant (Pages 32 and 33) and also testimony of Mr. Wiley (Page 47, line 18 and also Page 43, lines 1-13). Mr. Lingenberg, the manager of defendant company and its general supervisor, being unable to attend the creditors' meeting sent Mr. Wiley, a **book-keeper** of defendant (Case, p. 32, lines 1-10) to attend, as appears by the following testimony of Mr. Lingenberg on Page 32 of Case, lines 30 &c.

Q. Did you instruct any one to attend the meeting pursuant to that notice? A. I did.

Q. Whom? A. Mr. Wiley.

Q. Mr. J. A. Wiley? A. Mr. J. A. Wiley I instructed.

Q. What did you tell him? A. I was busy on that day; I had to go to New York, and since this calls for the purpose of considering what is the best thing to be done for the benefit of all persons interested, I instructed Mr. Wiley to go there and see how the affairs of the company were standing and what proposition or propositions were going to be made, and to let me know.

Q. That is, to report back to the company? A. To report back to the manager."

Mr. Wiley, a **book-keeper** of defendant in April, 1924, (Case, page 42) testifies to like effect; he was sent to the meeting by Mr. Lingenberg with specific instructions "to go there and to find out what the financial condition of the company was and to report back to him any proposition they might make to the creditors."

Mr. Wiley, as such special agent of defendant, attended the creditors' meeting on April 10, 1924, and at said meeting, without any authority whatsoever, signed the composition agreement marked Exhibit P-2, (Case, page 59). He was not an officer of defendant, nor a director, merely a book-keeper, (Case, page 43, lines 26 &c.). He testifies in effect that he came to sign the agreement (Case, page 43, lines 30 &c., and following page) because, at the meeting, the silk held by defendant company under its dyers' lien was considered by the creditors as worth about \$3200.00, and he thought that the 25% settlement only applied to the balance of defendant's claim, after deducting from its entire claim the value of the silk held. He further testified that "if the other creditors accepted 25% on their claims, **I would make an effort to have my company verify the settlement**, which would be the difference between the value of the merchandise which we held and the total amount of the claim." (Case, page 44, lines 16-22.)

He further testified, that if he had had any idea that he was becoming a party to an agreement which would deprive the company for whom he worked of \$3200.00 worth of silk for \$1000., naturally he would not have done it. (Bottom of page 44.) Before he signed the agreement he stated to

the creditors, upon the inquiry of one of them, a Mr. Brauer, that he was not an officer of the company, and thereupon Brauer said "Wiley, don't you think it could be put over," and I said I would try it. (Page 45, lines 20 &c.)

None of this testimony of Mr. Wiley is controverted.

Upon learning the next day from Mr. Wiley that he had transcended his authority and had signed the astounding composition agreement of April 10, 1924, Exhibit P-2, whereby defendant company would be placed on the same basis as the unsecured creditors and would for no reason or consideration whatever be compelled to compromise its secured claim of about \$4200. for \$1050., Mr. Lingenberg forthwith repudiated on the behalf of defendant company, the act of Mr. Wiley in signing the composition agreement. (Case, pages 34 and 35.) This he did both by letter and telephone. The letter of repudiation addressed to plaintiff is marked Exhibit D-1 and appears on page 57 of Case.

After defendant company had repudiated the composition agreement, a check was tendered it for \$1050., being $\frac{1}{4}$ of its \$4200. claim against plaintiff and at the same time the possession of the goods which are the subject matter of this replevin suit demanded and the same refused.

At the trial of the cause, it was agreed that the defendant is and was in possession of the said 56 pieces of raw silk upon which it had a statutory

lien for its claim of \$4200. or thereabouts, (Case, page 14); and the pleadings show that the only right plaintiff had to maintain his replevin suit was by reason of the composition agreement of April 10, 1924. This defendant repudiated for the reasons hereinbefore set forth. The sharp and only issue at the trial was the question of agency and authority, and at the close of the case defendant moved for a direction of verdict, which was granted.

The motion for non-suit (Case, page 50) was based upon the grounds, that the undisputed evidence is that Wiley had no authority whatsoever to sign the composition agreement, that Wiley was nothing but a book-keeper of defendant and for the purpose of attending the creditors' meeting was a special agent of defendant, and that when he signed the composition agreement, he transcended his authority, and, consequently, the principal was not bound, and on the further ground that the plaintiff, although attempting so to do, did not show a course of conduct by Wiley for the company sufficient to take the case out of the rule, and on the further ground that the uncontroverted testimony was that when Wiley signed the composition agreement, he told the creditors (including plaintiff) that he signed it subject to the approval of his principal, and that the next day the principal repudiated his act.

THE COURT COMMITTED NO ERROR IN DIRECTING A VERDICT IN FAVOR OF THE DEFENDANT ON THE PROOFS IN THE CASE.

Parsons on Contracts, 8th Edition, Vol. 1, page 40.

The importance of the distinction between a general agent and a special or particular agent lies in the rule, that if a particular agent exceeds his authority, the principal is not bound; but if a general agent exceeds his authority the principal is bound, provided the agent acted within the ordinary and usual scope of the business he was authorized to transact, and the party dealing with the agent did not know that he exceeded his authority.

Dowden vs. Cryder, 55 N. J. L., pages 330-334.

Persons dealing with one who is known to be a special agent are chargeable with knowledge of the extent of his authority.

“Barnett was only a special agent, and his authority was to negotiate the draft for cash at a reasonable discount. This did not authorize him to negotiate the draft for cash and merchandise. The plaintiff dealt with him as such agent, and was, therefore, bound to ascertain the extent of his powers. Black vs. Shrene, 2 Beas. 455; National Iron Armor Co. vs. Bruner, 4 C. E. Green, 331; Perrine vs. Cooley, 12 Vroom, 322; S. C., 13 Id., 623. The contract between the plaintiff and the agent having been beyond the agent's authority, it gave the plaintiff no rights against the principal.”

The uncontroverted facts in the case at bar are:

(1) That Wiley was merely a book-keeper of defendant company not even an officer or director;

(2) That in attending the meeting of the creditors he was acting as a special agent for the company;

(3) That the only authority given to him by his principal was to attend the meeting and find out what the financial condition of the company was and report back;

(4) That he was known to plaintiff to be a special agent and without authority to bind his principal, because plaintiff in swearing that Wiley attended 3 creditors' meetings (which Wiley denies) says that at the second meeting (the one before the composition agreement was signed) "It was agreed that they were to go back and talk it over and **come back with authority to accept or not accept.**" (Case, p. 18, l. 13);

(5) That the meeting of April 10, 1924, was the only meeting known to Mr. Lingenberg (defendant's general manager and the one who gave Wiley authority to attend) as ever having taken place (Page 33, lines 30, &c.), and there is not a scintilla of evidence in the case that Wiley, to Lingenberg's knowledge, ever attended any other creditors' meeting of the plaintiff company, or that he ever reported back to Lingenberg that he had attended any other meeting;

(6) Nor is there a scintilla of evidence in the case that Wiley ever submitted to Lingenberg, for approval or rejection, the 25% composition agreement, or that Lingenberg knew anything whatsoever about said composition agreement until after Wiley had signed the same and told Lingenberg about it the day after he signed it, and that thereupon Lingenberg forthwith repudiated it. In fact the only evidence is to the contrary; Lingenberg only knew of the meeting of April 10, 1924. (Case, p. 33, l. 28 &c.) See testimony of Wiley, (page 43, line 10 &c., page 47, line 19 &c., page 48, line 39 &c.)

Seven creditors are alleged to have signed the composition agreement. See exhibit P-2, page 59; yet the singular fact remains, that at the trial the only witness produced by plaintiff is Harry L. Fox, who was connected with the plaintiff corporation. We mention this fact, because he swears that there were three meetings of creditors of plaintiff company between April 4th and April 10th, 1924, inclusive, and tells just what was done at each meeting and that at each meeting Wiley and the other creditors were present. Wiley swears on the other hand that he only attended one meeting of the creditors, and that that meeting was held on April 10th, 1924, the time when he signed the composition agreement. Of course, this would make it a jury question, **if material**, as to just how many meetings Wiley attended, but the **material factor in the case is** what knowledge, if any, the general manager of the defendant company had of these alleged meetings, and what reports of them were made to him. Plaintiff in his

resume of facts on page 2 of his brief is silent on this material point; he does not even suggest that Mr. Lingenberg, the general manager of defendant company, had actual knowledge of any of these meetings or that the 25% offer of settlement was brought to him, to accept or reject, on behalf of his company.

In order to bridge this vital gap in the evidence plaintiff says, on page 3 of his brief, that "It appears that Mr. Lingenberg, who is the manager of defendant company and who had general supervision of the entire plant, instructed Mr. Wiley to attend the **meetings** pursuant to the notice that was sent to the creditors."

This statement is but partly correct, as Mr. Lingenberg in the testimony to which plaintiff refers, testified that he only knew of **one meeting** (Case, page 33, lines 30-40), and that he sent Mr. Wiley to that meeting with the specific instructions hereinbefore set forth. (Case, page 32, line 30 &c.)

Plaintiff further states that "Mr. Wiley had been working for the defendant since 1921, and had attended **creditors' meetings** before this time." This statement is untrue as to his having attended **creditors' meetings** before this time.

Plaintiff further states that "It appears that there was only one other instance when Wiley had attended a creditors' meeting in behalf of the defendant company, and that there had been a composition made and which Mr. Wiley signed in behalf of the company. It also appears that the com-

pany did not repudiate his authority in that case.”

This last statement does not set forth the true situation in that case, as in that case, (Testimony of Mr. Lingenberg, top of page 37 of Case), the Borenstein composition, “We were first informed of the ratio we would be paid by the receiver, what percentage we would get, and what percentage settlement would be made, **before Mr. Wiley was authorized to go there and sign for the company.**”

Furthermore, there is not a scintilla of evidence in the case at bar that the plaintiff or other creditors knew at the time of the composition agreement of April 10, 1924, that Mr. Wiley had previously signed the Borenstein agreement.

Plaintiff further states in his brief that “It also appears that there had been no other creditors’ meetings in behalf of the defendant since Wiley was employed by them, that was attended by anybody else except Wiley.” This statement might be misleading if left alone, as it might create the impression that Wiley habitually attended creditors’ meetings.

The fact is that, as testified to by Mr. Lingenberg, that there were only two creditors’ meetings since Mr. Wiley’s employment; the Borenstein meeting, in which case the defendant corporation had no lien on goods and were common creditors, and sent Mr. Wiley there to sign after the company had settled the percentage basis, (Case, page 40, lines 30 &c., and page 41), and the case at bar, when Mr. Wiley was sent because Mr. Lingenberg had to go to New York, (Case, page 32, line 35, &c.).

We agree with plaintiff in the citation in his brief that "It is the clearly settled law of this state, that the authority of an agent to do certain acts on behalf of his principal may be inferred from the **continuance of the acts themselves over such a period of time and the doing** of them in such a manner that the principal would naturally have been cognizant of them and would have forbidden them if unauthorized." *Dierkes vs. Hauxhurst*, 80 N. J. L., 369.

A short recital of the facts in that case will demonstrate how far afield its application is to the case at bar. That case was an action for serious personal injuries sustained by a girl thirteen years of age by being ejected as a trespasser from defendant's premises. The court said, quoting from page 373, "Plaintiff's counsel produced eleven witnesses who testified that **at various times before plaintiff's injury extending over a period of years**, Wallace, (defendant's agent) had not perhaps invariably, **but certainly habitually ejected similar trespassers** by coming out after them with a stick in his hand and urging his dogs to chase them."

The converse of the proposition of law above laid down, viz., that the authority of an agent to do certain acts on behalf of his principal cannot be inferred by one or two isolated instances is likewise true; and the case at bar comes under the converse proposition.

In the case of *Aerial League of America vs. Aircraft*, 97 N. J. L., 532, also cited in plaintiff's brief, the court held that "a corporation is bound

by the act of an officer or agent **only to the extent**—that the act is within the apparent powers which the corporation has caused those with whom its officers or agents have dealt to believe it has conferred upon them.”

In the case at bar the agent was a book-keeper, and according to plaintiff's own testimony, plaintiff knew he had no power to act, for he sent him at the second meeting to report back to his principal and obtain authority to act.

J. Wiss & Sons Co. vs. H. G. Voge Co., 86 N. J. L., 618.

As between the principal and third persons the true limit of the agent's power to bind the principal is the **apparent authority** with which the agent is invested. The principal is bound by the acts of the agent within the apparent authority which he knowingly permits the agent to assume, or which **he holds the agent** out to the public as possessing.

The question in every case depending on apparent authority of the agent, is whether the principal has by his voluntary act placed the agent in such a situation that a person of **ordinary prudence, conversant with business usages and the nature of the particular business**, is justified in presuming that such agent has authority to perform the particular act in question, and when the party relying upon such apparent authority **presents evidence which would justify a finding in**

his favor, he is entitled to have the question submitted to the jury.

It would be ridiculous to contend that any person of ordinary prudence, conversant with the silk business and usages would be justified in assuming that Mr. Wiley in the case at bar had authority to sign a composition agreement in behalf of his principal giving up a secured lien for \$4200. and accepting \$1050. on the 25% basis of all the unsecured creditors.

We respectfully submit that the judgment of the Circuit Court be sustained.

WAYNE DUMONT,
Attorney of Defendant-Appellee.

WILLIAM V. ROSENKRANS,
Of Counsel.

The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1900.

It is the duty of the Justice of the Peace to see that the laws are faithfully executed, and to see that the rights of the people are protected. He is also to see that the peace is kept, and that the public order is maintained.

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