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1897
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The second is the
The third is the
The fourth is the
The fifth is the

NOTICE AND GROUND OF APPEAL.
ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ,
 Plaintiff, } Action at Law.
 v. } Notice and Ground of
ISIDOR SCHMEIDLER,
 Defendant. } Appeal. 10

To the within named defendant:

Take Notice that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause as adjudges that the plaintiff be non-suited, on the following grounds: 20

1. It was error to non-suit the plaintiff.
2. Under the evidence submitted the question of the defendant's liability should have been submitted to the jury.
3. There was sufficient evidence on which the jury could have legitimately found that the plaintiff was entitled to recover. 30

COLE & COLE,
Attorneys of Plaintiff-Appellant.

Filed July 20, 1925, at 8 A. M.

WM. A. BLAIR,
Clerk.

File No. 15457.

STATE OF NEW JERSEY.

COUNTY OF ATLANTIC.

10

I, WILLIAM A. BLAIR, clerk of the County of Atlantic, and also clerk of the Common Pleas, etc., Courts holden therein, said court being a court of record, having a common seal, do hereby certify, That the foregoing is a true copy of a certain notice of appeal—Thomas O. Metz, plaintiff v. Isidor Schmeidler, defendant, as the same is filed in my said office.

20

(SEAL)

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Mays Landing, N. J., this 24th day of July, A. D. 1925.

WM. A. BLAIR,
Clerk.

By
Deputy Clerk.

30

SUMMONS AND COMPLAINT.

THE STATE OF NEW JERSEY to Isidor Schmeidler:

You are summoned to answer the annexed complaint of Thomas O. Metz, in an action at law in the Atlantic County Circuit Court. And take notice that unless you file your answer to the said complaint with the clerk of the Atlantic County Circuit Court at Mays Landing, New Jersey, within twenty days after service upon you of this writ and the annexed complaint the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, HONORABLE RALPH W. E. DONGES, Judge of the Atlantic County Circuit Court at Mays Landing, N. J., this twenty-third day of May, nineteen hundred and twenty-three.

E. A. PARKER,
Clerk.

COLE & COLE,
Attorneys.

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

10	THOMAS O. METZ, <i>Plaintiff,</i>	}	Action at Law.
	v.		Complaint.
	ISIDOR SCHMEIDLER, <i>Defendant.</i>	}	

The plaintiff, Thomas O. Metz, of the City of Atlantic City, County of Atlantic and State of New Jersey, says that:

20

FIRST COUNT.

1. On or about June 12, 1922, plaintiff paid to defendant the sum of \$12,000, which payment was represented by plaintiff's check to the order of defendant on the Chelsea National Bank of Atlantic City and which was cashed by defendant and the amount charged to plaintiff's account.
2. Said payment was made in consideration of the purchase of 510 shares of the stock of the Coast Automobile Company, a corporation of the State of New Jersey said stock standing in the name of Walter Hanstein who held same in trust for defendant.
3. On or about the 17th day of June, 1922, defendant caused to be issued to plaintiff certificate

30

No. 19 for 225 shares of the Coast Automobile Company in the name of plaintiff, who is still the holder and owner of said stock and on the same day defendant caused to be issued to William Beck certificate No.— for 255 shares of stock of said Coast Automobile Company.

4. Plaintiff has paid to said William Beck the sum of \$6,000 for 255 shares issued to him and later said William Beck transferred, assigned and set over to plaintiff all his right, title and interest in and to said 255 shares, and plaintiff paid him the sum of \$6,000 so plaintiff is now the holder and owner of said 510 shares of said stock, formerly in the name of Hanstein, trustee for defendant. 10

5. Plaintiff and said Beck purchased said stock relying upon a written statement of the condition of said Coast Automobile Company as of June 12, 1922, which statement was presented by defendant to plaintiff and said William Beck as truly and accurately setting forth its financial standing. In truth and in fact said statement was false and untrue as defendant knew, in this that while the amount of inventoried goods on hand was stated to be \$12554.68, they were, in fact, but \$9136.97. 20

6. On or about the 31st day of January, 1923, plaintiff learned that said statement was false and untrue in the respect mentioned and thereupon rescinded the contract for the purchase of said stock and notified defendant of such rescission and demanded a return of the sum of \$12,000, paid for same which defendant refused to do. Plaintiff again and now tenders the return of 510 shares to the defendant. 30

Judgment will be claimed on this count for the sum of \$12,000 with interest from the 31st day of January, 1923, besides costs.

SECOND COUNT.

10 1. On or about June 12, 1922, plaintiff paid to defendant the sum of \$12,000, which payment was represented by plaintiff's check to the order of defendant on the Chelsea National Bank of Atlantic City and which was cashed by defendant and the amount charged to plaintiff's account.

20 2. Said payment was made in consideration of the purchase of 510 shares of the stock of the Coast Automobile Company, a corporation of the State of New Jersey, said stock standing in the name of Walter Hanstein who held same in trust for defendant.

3. On or about the 17th day of June, 1922, defendant caused to be issued to plaintiff certificate No. 19 for 255 shares of stock of the Coast Automobile Company, in the name of plaintiff, who is still the holder and owner of said stock, and on the same day defendant caused to be issued to William Beck, certificate No.—for 255 shares of stock of said Coast Automobile Company.

30 4. Plaintiff has paid to said William Beck the sum of \$6,000 for 255 shares issued to him and later said William Beck transferred, assigned and set over to plaintiff all his right, title and interest in and to said 255 shares and plaintiff paid him the sum of \$6,000 so plaintiff is now the holder and owner of said 510 shares of said stock formerly in the name of Hansten, trustee for defendant.

5. Plaintiff and said William Beck purchased said stock relying upon a written statement of the condition of said Coast Automobile Company as of June 12, 1922, which statement was presented by defendant to plaintiff and said Beck was truly and accurately setting forth the financial condition of the company with the statement by defendant that it did truly and accurately set forth its financial standing. In truth and in fact set statement was false and untrue as defendant knew in this that while the amount of inventoried goods on hand was stated to be \$12554.68, they were, in fact, but \$9136.97. 10

6. By reason of said false and untrue statement concerning the financial condition of the company the value of said stock was materially less than what it would have been had said statement been true and accurate and it was materially less than the amount plaintiff paid for same.

Judgment will be claimed on this count for the difference between the amount paid for said stock, to wit, \$12,000, and what it was in fact worth according to the true financial condition of the company, said difference being the sum of \$6,000 for which judgment will be claimed with interest from the 12th day of June, 1922, besides costs. 20

Plaintiff demands damages.

COLE & COLE,
Attorneys for Plaintiff.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ,)
 v.) Action at Law.
 ISIDOR SCHEIDLER,)

10

STATE OF NEW JERSEY, }
 ATLANTIC COUNTY, } ss.

James Cimino, under sheriff of the County of Atlantic, being duly sworn according to law, on his oath saith that on the 25th day of May, nineteen hundred and twenty-three, he served on the defendant, Isidor Schmeidler personally a full, true and correct copy of the annexed complaint in the above stated cause, with the summons to which complaint is annexed, and that there was endorsed on the said complaint, a notice that if the defendant intends to make a defense to the said action he shall within ten days after the date of personal service of said copy of the complaint file with the clerk of the above mentioned court an affidavit of merits, and unless in case such affidavit shall be so filed, the said defendant shall file an answer to the said action within twenty days after the date of service of said copy of the complaint, judgment by default would be entered against him.

20

30

JAMES CIMINO,
Under Sheriff.

Sworn and subscribed to before me this 26th day of May, A. D. 1923.

HOWARD R. CLOUD,
Notary Public of N. J.

Duly served within summons and complaint May 25th, 1923, personally on Isidor Schmeidler at his office in the City Hall, Atlantic City, Atlantic County, New Jersey. 10

MALCOLM B. WOODRUFF,
Sheriff,

By

JAMES CIMINO,
Under Sheriff.

Sheriff's fees \$7.09.

Filed May 29, 1923, at 2 P. M.

EDWIN A. PARKER,
Clerk. 20

ANSWER.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ, Plaintiff,	} Action at Law. 30
v.	
ISIDOR SCHMEIDLER, Defendant.)	

Defendant, Isidor Schmeidler, answering plaintiff's complaint, says that:

FIRST COUNT.

1. He admits the allegation of paragraph 1.
2. He neither admits nor denies the allegations of paragraphs 2, 3 and 4, and asks that the same be proven.
- 10 3. He denies the allegations of paragraph 5 and 6.

SECOND COUNT.

1. He admits the allegation of paragraph 1.
2. He neither admits nor denies the allegations of
20 paragraphs 2, 3 and 4, and asks that the same be proven.
3. He denies the allegations of paragraphs 5, 6 and 7.

AFFIRMATIVE DEFENSE.

Defendant, further answering plaintiff's complaint, says that:

- 30 1. He denies that there was any misrepresentation to the plaintiff in the transaction in question.

THOMPSON & HANSTEIN,
Attys. of Defendant.

Filed Oct. 29, 1923, at 8 A. M.

EDWIN A. PARKER,
Clerk.

RULE FOR JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ, <i>Plaintiff,</i> v. ISIDOR SCHMEIDLER, <i>Defendant.</i>	}	Rule for Judgment.	10
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This cause was tried before Judge Donges and a jury on the 31st day of January, and the 1st day of February, 1924, and the jury rendered a verdict in favor of the plaintiff and against the defendant for the sum of thirteen thousand one hundred and sixty dollars: 20

It Is, Therefore, on motion of Cole & Cole, attorneys of plaintiff, Ordered that judgment final be entered in favor of plaintiff and against the defendant for the sum of thirteen thousand one hundred and sixty dollars besides costs to be taxed.

On motion of
 COLE & COLE,
Attorneys of Plaintiff. 30

Filed and entered February 4, 1924, at 8 A. M.
 WILLIAM A. BLAIR,
Clerk.

JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

January Term, 1924.

10

THOMAS O. METZ, <i>Plaintiff,</i>	}	Action at Law.
v.		On Verdict.
ISIDOR SCHMEIDLER, <i>Defendant.</i>	}	Cole & Cole, Attys.

Judgment entered Feb 4, 1924, at 8 A. M.

20

Damages	\$13,160.00
Costs	54.31

Total	\$13,214.31
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This action was tried before Ralph W. E. Donges, Judge with a jury on January 31st, 1924, and February 1st, 1924.

This cause having been heard and submitted to the jury, they returned their verdict in favor of the plaintiff and against the defendant.

30 Whereupon it is ordered that the plaintiff, Thomas O. Metz, recover of the defendant, Isidor Schmeidler, the sum of thirteen thousand one hundred and sixty dollars damages and fifty-four dollars and thirty-one cents costs of suit.

WM. A. BLAIR,
Clerk.

County Circuit Judgment Book, No. 13, page 461.

RULE TO SHOW CAUSE.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ, <i>Plaintiff,</i>	}	10
v.		
ISIDOR SCHMEIDLER, <i>Defendant.</i>	}	Rule to Show Cause.

On motion of Thompson & Hanstein, attorneys for defendant.

It Is, on this 5th day of February, 1924, ordered that Thomas O. Metz, the above named plaintiff, show cause before this court on the 4th day of March, 1924, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Court House in the City of Woodbury, State of New Jersey, why the judgment in the above stated cause should not be opened and a new trial granted on the ground that the same is against the weight of the evidence. 20

And it is further ordered that all of the defendant's exceptions be reserved to him. 30

And it is further ordered that in the meantime and until the further order of this court, all proceedings hereunder be stayed.

On motion of

THOMPSON & HANSTEIN,
Attorneys of Defendant.

Let the above rule be entered on the minutes.

RALPH W. E. DONGES,

Judge.

Filed and entered February 7, 1924, at 1 P. M.

WILLIAM A. BLAIR,

Clerk.

REASONS.

10

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ,
Plaintiff, }

v.

ISIDOR SCHMEIDLER,
Defendant. }

Action at Law.
Reasons.

20

Defendant assigns the following reasons for the granting of a new trial in the above entitled cause:

(1) The verdict was against the weight of the evidence.

(2) The verdict was excessive.

(3) The verdict was the result of prejudice and passion.

THOMPSON & HANSTEIN,

Attorneys for Defendant.

30

Due and legal service hereby acknowledged this 21st day of Feb., 1924.

COLE & COLE,

Attys. for Pltff.

Filed Feb. 23, 1924, at 8 A. M.

WILLIAM A. BLAIR,

Clerk.

CONTINUANCE.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ,
Plaintiff,

v.

ISIDOR SCHMEIDLER,
Defendant.

Continuance.

10

It appearing to the Court, on motion of Thompson & Hanstein, attorneys for defendant, that the Honorable C. L. Cole, attorney for plaintiff, is ill and unable to appear in court;

20

It Is, therefore, on this 5 day of March, 1924, Ordered that the argument upon the rule to show cause in the above entitled matter be continued to April 1st, 1924, at Camden.

On motion of

THOMPSON & HANSTEIN,
Attorneys of Defendant.

RALPH W. E. DONGES,
Judge.

30

Filed & entered March 8, 1924, at 8 A. M.

WM. A. BLAIR,
Clerk.

OPINION.

ATLANTIC COUNTY CIRCUIT COURT.

10	THOMAS O. METZ, <i>Plaintiff,</i>	}	On Rule for a New Trial.
	v.		
	ISIDOR SCHMEIDLER, <i>Defendant.</i>	}	

HON. CLARENCE L. COLE, for plaintiff.

20 WALTER HANSTEIN, Esq., and GEORGE A. BOURGEOIS,
Esq., for defendant.

DONGES, J.:

Plaintiff recovered a verdict for \$12,000, and defendant prosecutes a rule for a new trial, based solely on the ground that the verdict is against the weight of the evidence.

30 Plaintiff sued upon two counts, the first alleging that on June 17th, 1922, plaintiff purchased 255 shares of stock of a corporation, and that one Beck purchased a like number of shares of said corporation, which latter shares the plaintiff later purchased from Beck. That "plaintiff and said Beck purchased said stock relying upon a written statement of the condition of said Coast Automobile Company as of June 12, 1922, which statement was pre-

sented by defendant to plaintiff and said William Beck as truly and accurately setting forth its financial standing. In truth and in fact, said statement was false and untrue as defendant knew, in this that while the amount of inventoried goods on hand was stated to be \$12554.68, they were in fact but \$9136.97," and that on January 31st, 1923, plaintiff learned of the falsity of the statement, notified defendant that he rescinded the contract for the purchase of the stock and demanded back the \$12,000 paid by plaintiff for his own and Beck's stock. 10

The second count seeks to recover the difference between \$12,000 paid, and the alleged value of \$9136.97.

The verdict was undoubtedly found upon the first count so that this rule must be disposed of in view of the verdict.

A careful review of the case has persuaded me that the verdict is not in accordance with the weight of the evidence. At the close of the trial, I entertained doubt whether the plaintiff had established that the alleged statement of defendant that the inventory showed over \$12,000, was false, or that, if it was false, that plaintiff was misled by it. The allegation of falsity rested almost entirely upon the production of another statement purporting to be taken from the books of the company and showing the inventory value to be \$9,136.97. Upon cross-examination the plaintiff virtually admitted that he had assented to each item on the statement first mentioned. He likewise testified that negotiations had been under way for several months, during which time he was frequently at the company's place of business and had ample opportunity to check the inventory, if he had wished. The plaintiff practically relied for recovery upon the fact that one statement was different from the other, which latter one was 20 30

made up from the books. Upon this point, the testimony of William Elmer Brown, Esq., seems to me to be important. Mr. Brown was acting for Metz. He testified (p. 39) that the defendant said he has no knowledge of the accuracy of the statement, and that he relied on Mr. Christensen, an expert accountant. Mr. Brown said: "I then asked and questioned Mr. Christensen as to how those valuations were arrived at and he told me as to how this statement was made up: He told me the statement was made up
10 from the books of the company together with a casual survey of the assets of the company; in other words, that my inquiry brought out from Mr. Christensen the fact that they had not made a detailed inventory article by article, that they had made up an inventory from the books, he had made the inventory from the books together with information that he had gotten from Mr. Johnson."

Johnson testified that Metz had both statements before making the purchase, and explained the difference in the inventory value as representing actual cost in the "book statement," and a fair or
20 "agreed value" assented to by Metz, in the other statement. The testimony is very strong that Metz was not led to believe that the statement represented book value, as would appear necessary, if the production of a statement showing book value is to be adopted as real value. On the contrary, there is abundant testimony that Metz was told the statement he alleges to be false was not based on book
30 value. There is no proof that the value was not in fact as stated in the alleged fraudulent inventory. In view of the meagre testimony on the important question of falsity of the statement complained of, and of the positive testimony corroborating defendant, I am constrained to grant a new trial. The ends of justice require that this case shall be retried.

To avoid delay in re-trial, defendant will be required to accept five days' notice of trial, so that the case may be put upon the list for the October term. The rule will be made absolute.

Filed Sept. 29, 1924, at 8 A. M.

WM. A. BLAIR,
Clerk.

ORDER.

ATLANTIC COUNTY CIRCUIT COURT. 10

THOMAS O. METZ,
Plaintiff, }
v. } On Rule for a New
ISIDOR SCHMEIDLER, } Trial.
Defendant. } Order.

20

A rule to show cause why the judgment entered in the above entitled cause should not be opened and set aside and a new trial granted having been allowed, and no cause being shown to the contrary:

It is, on this 2d day of October, 1924, Ordered that the rule to show cause heretofore allowed be made absolute and the judgment entered in the above entitled cause be opened and set aside and for nothing holden. 30

It is further ordered that the defendant be required to accept five days' notice of trial for a re-

trial of the above entitled cause at the October term of the Atlantic County Circuit Court.

RALPH W. E. DONGES,
Judge.

On motion of
THOMPSON & HANSTEIN,
Attys. for the rule.

10 Filed & entered Oct. 4, 1924, at 8 A. M.
WILLIAM A. BLAIR,
Clerk.

JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

20

THOMAS O. METZ, <i>Plaintiff,</i>	}	Action at Law. Judgment.
v.		
ISIDOR SCHMEIDLER, <i>Defendant.</i>		

30 This action was tried before Judge Theodore W. Schimpf, with a jury, at the Atlantic County Circuit Court on February 3rd, 1925. The plaintiff having submitted his testimony in the above case and rested, and the defendant having moved for a non-suit, which motion was granted:

Therefore, It is adjudged that judgment of non-suit be entered for the defendant and against the

plaintiff and that the defendant recover of the plaintiff his costs to be taxed.

Judgment entered.

THOMPSON & HANSTEIN,
Attys of Defendant.

THEO. W. SCHIMPF,
Judge.

Filed and entered Feb. 10, 1925, at 8 A. M.

WM. A. BLAIR, 10
Clerk.

JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

January Term, 1925.

20

THOMAS O. METZ, <i>Plaintiff,</i>	} Action at Law. On Non-suit. Thompson & Han- stein, Attys.
v.	
ISIDOR SCHMEIDLER, <i>Defendant.</i>	

Judgment entered Feb. 10, 1925, at 8 A. M. 30
Costs \$41.24.

This action was tried before Judge Theodore W. Schimpf, with a jury on February 3rd, 1925.

The cause having been heard and the defendant having moved for a non-suit, which motion was granted.

Whereupon it is adjudged that judgment of non-suit be entered for the defendant and against the plaintiff and that the defendant, Isidor Schmeidler, recover of the plaintiff, Thomas O. Metz, the sum of forty-one dollars and twenty-four cents, costs of suit.

WM. A. BLAIR,
Clerk.

10 County Circuit Judgment Book, No. 14, page 69.

20

30

TESTIMONY.

ATLANTIC COUNTY CIRCUIT COURT.

THOMAS O. METZ, <i>Plaintiff,</i>	}	Action at Law.	10
v.			
ISIDOR SCHMEIDLER, <i>Defendant.</i>			

Mays Landing, N. J., February 3, 1925.

APPEARANCES:

20

-
- MESSRS. COLE AND COLE, for the plaintiff.
 - MESSRS. THOMPSON AND HANSTEIN, for the defendant.
 - GEORGE A. BOURGEOIS, Esq., of counsel for defendant.
-

The above entitled case was tried at Mays Landing, N. J., on February 3, 1925, before HON. THEODORE W. SCHIMPF, Judge, and a jury. 30

Mr. Cole opened the plaintiff's case to the jury.

Mr. Bourgeois opened the defendant's case to the jury.

THOMAS O. METZ, called as a witness in his own behalf, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

- 10 Q. Where do you live?
A. 4500 Ventnor Avenue.
Q. How long have you lived in this county?
A. Over thirty years.
Q. What was your business on June 21, 1922?
A. I was not in any active business.
Q. Up to that time had you had any experience
in the automobile business?
A. No.
- 20 Q. Were you approached sometime before June
21, 1922, by any person to interest you in the Coast
Automobile Company?
A. I was.
Q. Who was it?
A. Mr. Johnson.
Q. And was he at that time interested in the com-
pany?
A. He was.
Q. What was his business?
A. He was president of the Coast Automobile
30 Company.
Q. Now, following up to this interview—

Mr. Cole: Withdraw that.

- Q. What did he want you to do?
A. He wanted Mr. Beck and I to buy out Mr.

Schmeidler's interest in the Coast Automobile Company.

Q. Now, as a result of your meeting and what he said to you, did you thereafter meet Mr. Schmeidler?

A. Yes.

Q. Did you see him sometime along about the seventeenth or eighteenth of June, 1922?

A. Yes.

Q. In Mr. Brown's office?

A. Yes.

10

Q. What was the exact date, do you recall?

A. Well, now, I don't exactly; about the seventeenth or eighteenth.

Q. All right. And who was there?

A. Mr. Brown, Mr. Schmeidler, Mr. Johnson, Miss Christensen, Mr. Beck and myself.

Q. Did you later pass your check for \$12,000 to Mr. Schmeidler?

A. I did.

Q. Is that the check? (Paper is shown to and examined by the witness.)

20

A. Yes.

Q. Was it paid from your account?

A. It was.

Q. For what was that check given?

A. For 510 shares of the Coast Automobile Company.

Mr. Cole: I offer that check.

30

(Paper offered is received in evidence and marked as an exhibit for the plaintiff P1.)

Q. Did you either at that time or later get the stock?

A. Yes.

Q. 510 shares?

A. Yes.

Q. I show you certificate of stock for 255 shares coast Automobile Company, dated June 17th, 1922, Thomas O. Metz. Is that one of the certificates that you got?

A. One of them, yes.

Mr. Cole: I offer that.

(The Paper offered is received in evidence and
10 marked as an exhibit for the plaintiff P2.)

Q. If you know, in whose name was the other certificate of 255 drawn?

A. Why, I think it was all drawn to me, but then I assigned it to Mr. Beck.

Q. Isn't this the certificate dated July 17th, 1922, for 255?

A. 255, yes.

Q. The certificate you got at that time?

20 A. Yes.

Q. You think the other certificate was also drawn in your name for the 255?

A. Then I assigned it to Mr. Beck; I think that was it.

Q. Yes. Now, I show you another certificate for 255 shares, dated the 18th of October, 1922, drawn to you. How did you come to get that?

A. They are the shares I bought from Mr. Beck.

Q. Making up the full 510 shares?

30 A. Yes.

Mr. Cole: I offer that.

(Paper is received in evidence and marked as
an exhibit for the plaintiff, P3.)

Q. Now, when you met at Mr. Brown's office, did you see a statement of the financial standing of the Coast Automobile Company?

A. I did.

Q. Is that the statement you saw?

A. Yes.

Mr. Cole: I offer that.

(The paper offered is received in evidence and 10 marked as an exhibit for the plaintiff, P4.)

Q. Do you know, and if so, state, who prepared that statement?

A. I don't know positively. We were told that Vollmer, Thompson and Christensen prepared it.

Mr. Bourgeois: I move it be stricken out. Well, I do not care; it does not matter.

20

Q. Who said so?

A. Mr. Christensen and Mr. Schmeidler in there.

Q. On that occasion?

A. Yes.

Q. Well, now, who produced that statement?

A. Well, one of those gentlemen; I don't know which.

Q. Did you see any other statement on that day?

A. I did not.

Q. Of the affairs of this company?

30

A. I did not.

Q. Had you before that time seen any other statement of the affairs of this company?

A. Yes.

Q. Before this date?

A. Yes.

Q. Of June 17th?

A. Yes.

Q. What statement had you seen?

A. Oh, several weeks before they presented a statement of the standing of the company.

Q. In writing?

A. Well, just an ordinary statement of what they claimed were the assets of it.

Q. Did they give you that?

A. No.

10 Q. Now, I show you what purports to be a statement of the Coast Automobile Company as of June 12th, 1922, and ask you whether that statement was produced on that day?

A. No; positively was not.

Q. Had you seen that statement before that day?

A. Never.

Q. From whom had you received that statement?

A. Well, from Mr. Elmer Brown.

Q. And when did you receive it?

20 A. That latter part of January.

Q. Of what year?

A. 1923.

Mr. Cole: Mark that for identification.

(The paper referred to, is marked as an exhibit of the plaintiff for identification, P5.)

30 Q. I show you another purported statement of the condition of the Coast Automobile Company and ask you whether you had seen that statement—

A. No.

Q. —before you met in Mr. Brown's office?

A. No; I had not.

Q. When did you first see that?

A. The latter part of January.

Q. Then at the same time that you saw the statement marked Exhibit 5 for identification?

A. Yes.

Q. And who handed you that statement?

A. Mr. Brown.

Q. By the way, Mr. Brown was your attorney at that time?

A. Yes.

Mr. Cole: I offer that for identification.

10

(The paper referred to is received and marked as an exhibit of the plaintiff for identification, P6.)

Q. Now, you tell the jury just what was said and done in Mr. Brown's office on this day as nearly as you can recall it—all that took place as it presently occurs to you.

A. Well, Mr. Johnson was asked—the go-between on this deal, and they said they would have a statement ready to bring up to Mr. Brown's. So we met up there. I don't recall what day it was. It was on the 17th day—it was from the 17th to the 20th of June; and they presented this statement of the standing of the company and we asked them if it was a statement coming from Vollmer, Thompson and Christensen and they said it was, and that firm was not familiar to me and I said to Mr. Brown: "How about that statement?" "Well," he said, "any statement that comes from Vollmer, Thompson and Christensen," he said, "I certainly would have confidence in."

Mr. Bourgeois: Was Mr. Schmeidler there at that time?

The Witness: Beg pardon?

Mr. Bourgeois: Was Mr. Schmeidler there at that time?

The Witness: Yes.

Mr. Bourgeois: Go ahead.

The Witness: He said: "I certainly would have confidence in it." I said: "I have no means of
10 finding out whether this stuff is here or not, and I would take their word for it under those conditions," and it went on then and Mr. Brown asked a number of questions, and finally we were assured that this statement was correct.

Q. Who assured you it was correct?

A. The three. Mr. Schmeidler—Mr. Schmeidler said that he didn't know a thing about it; he said he left all of the work to Mr. Christensen; he prepared all his statements, and if he said it was right
20 it must be so, and Mr. Johnson assured me that this was right, and Mr. Christensen there did, and on the strength of that we finally paid the money over.

Q. Did you believe that statement to be true?

A. I did; most assuredly.

Q. Did you rely on its truthfulness in turning over your money and taking this stock?

A. I did.

30 Q. Had you observed on that occasion an inventory account which showed \$12,554.68?

A. I did.

Q. Now, having had this stock, did you take some part in the management of the company after that?

A. Not until October.

Q. Well, did you in October?

A. I did in October after I bought Mr. Beck's shares out.

Q. Now, after that, did you think there was something wrong about that statement?

Mr. Bourgeois: I object to that as leading.

Mr. Cole: I am not going to go into detail. I want to give the explanation for what he thereafter did, and show that he acted promptly thereafter in rescinding this contract. 10

The Court: I will permit it. I do not know whether it is relevant or not.

Q. I do not want the details. I simply want to know whether later, after you went into the management, you thought there was something wrong with this statement?

A. In the latter part of December, yes. 20

Q. Well, now, with that thought, did you consult anybody?

A. I did.

Q. Whom did you consult?

A. I took all my statements to Mr. Sickler; he is treasurer of the Guarantee Trust Company—and asked him if he would not analyze them for me and he said he would. He took them home with him—

30

Mr. Bourgeois: Now,—

Mr. Cole: Did you object to that conversation?

Mr. Bourgeois: I do not see how that is going to be helpful.

Q. They object to your stating what conversation you had with Mr. Sickler; but, anyhow, you did talk to him about it?

A. Yes.

Q. Did you talk to anybody else about the statement?

A. Mr. Brown.

Q. Anybody else?

A. Well, not that—possibly Mr. Bessor of the
10 Chelsea National Bank, cashier.

Q. Did you see Mr. Brown about this statement?

A. I did.

Q. The first one, I am talking of now?

A. Yes.

Q. Yes. Well, now, was it after that that Mr. Brown produced to you the other statements?

A. Yes.

Q. Five and six for identification?

A. Yes.

20 Q. Now, what did you do after you saw the other two statements which are marked for identification, 5 and 6?

A. I promptly came to you.

Q. Yes.

A. I promptly came to you to represent me in this action and we prepared a letter addressed to Mr. Schmeidler rescinding the contract.

Q. Did you mail that to him or hand it to him?

A. I handed it to him.

30

Mr. Cole: Will you produce the letter?

(Paper produced.)

Q. Is that the letter that you handed to Mr. Schmeidler?

A. Yes.

Mr. Cole: I offer that in evidence.

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P7.)

(Recess to 1.30 P. M.)

THOMAS O. METZ, recalled.

10

Direct examination.

By Mr. Cole:

Q. What, if anything, did Mr. Schmeidler say when you served the letter upon him?

A. He simply said: "I will file this with my attorney." That was the only thing.

Q. Did you ever thereafter get any word from him? 20

A. No.

Q. Did you ever get any word from his attorney?

A. None that I recall.

Q. Has this stock ever paid any dividend?

A. No.

Q. At the time you ceased to help manage this company were its books still at its place of business?

A. Yes.

Q. And where was its place of business? 30

A. 2600 Atlantic Avenue.

Q. Now, did you ever see Mr. Schmeidler at the place of business of this company after you had bought this stock?

Mr. Bourgeois: That is objected to as irrelevant and immaterial.

The Court: What is its materiality?

Mr. Cole: It is material in the possible inference that the jury may draw. Of course, it is our contention as counsel has said in his opinion, Mr. Johnson was anxious to have Mr. Schmeidler get out of this business, and presumably Mr. Schmeidler was anxious to get out. We think that this jury may find from the evidence that between them the statements were fixed so that—that is the one which we
10 bought, would be made alluring to Mr. Metz. Now, with that evidence, if we can show that Mr. Schmeidler was there, as would make this proper, after his interest in the company ceased, going over the books of this company and in handling its wares, the jury have a right to take that into consideration for whatever weight it may have as to why he was doing that if his interest had in fact ceased and this transaction was a perfectly honest, bona fide
20 transaction.

The Court: Well, I think if it is proposed to show that he still retained an interest in the business this would not be a proper method of showing it. I think I will sustain the objection.

Mr. Cole: Your Honor will allow me an exception?

The Court: Yes.

Mr. Cole: Cross-examine.

30 Cross-examination.

By Mr. Bourgeois:

Mr. Bourgeois: Judge, you have a statement of this agreed account on which Mr. Metz has written some memoranda.

(Mr. Cole hands paper to Mr. Bourgeois.)

Q. Mr. Metz, I show you exhibit P4. That, I understand you to say, is the statement that was furnished to you upon and from which you purchased?

A. Yes.

Q. And later you became dissatisfied with it and wanted to rescind; didn't you?

A. Well, when I found it was not right, yes.

Q. Now, I want you to tell me just what it was that was not right. What was it? What is the real trouble? What was there that happened or what was there that you thought happened that made you dissatisfied with the agreement and the bargain that you had made? 10

A. When—about December, the latter part of December, when I decided the thing did not look right and I took these statements, all of them, to Mr. Sickler—is that what you mean now?

Q. No, not what somebody told you; but what was it that you were dissatisfied with? 20

A. Well, not being a bookkeeper—or not being an accountant, I could not analyze them myself.

Q. Well, what was there that made you think anything was wrong? What was it you saw that made you think anything was wrong?

A. Well, I don't know; I couldn't account for some things.

Q. Well, what was it that you showed to Mr. Sickler?

A. I showed all of my statements. 30

Q. Now, let us see what they are. Where are they?

A. Well, the Judge, I think, has them. (Referring to Mr. Cole.) There was this statement, and June 30th, July 31st, August 31st, October 31st, November 31st; that was the last one; it was nearly

Christmas, if I recall, that I took all these statements to Mr. Sickler.

Q. Now, the first one was for what date?

A. June 30th.

Q. June 30th?

A. They were the monthly statements issued to us.

Q. You had monthly statements issued to you, did you, each month?

10 A. Yes.

Q. And at the end of June, you had one issued?

A. Yes.

Q. Then July you had one issued?

A. Yes.

Q. And August you had one issued?

A. Yes.

Q. September you had one issued?

A. Yes.

Q. And they were taken from what?

20 A. From Vollmer, Thompson's audit of the books.

Q. They were all taken from the books?

A. Yes.

Q. Now, then, there came a time when you got a statement as of June 12, as I understand; that is what made you suspicious, was it—from the books?

A. No.

Q. Wasn't it?

A. No.

Q. How is that?

30 A. No.

Q. Well, now, what was it that made you suspicious? What was it that changed your mind, I am showing you the statement of June 30th, and ask you if that is one of the statements that you saw, that you had. (Paper shown to and examined by the witness.)

A. Yes; this is one of them.

Mr. Bourgeois: I will have that marked for identification, please.

Mr. Cole: You may mark them as coming from me, if you want to, in evidence.

Mr. Bourgeois: You can offer them, if you want.

Mr. Cole: Well, yes; I will offer them now.

10

The Witness: One of these is supposed to be a sixth month's report of the company, as I understand it.

Q. Well, they are both dated June thirtieth?

A. Yes.

(The papers referred to are received in evidence and marked as exhibits for the plaintiff, P8 and P8—A.)

20

Q. I show you a statement under date of July, 1922, and ask you if that is one of the statements?

A. Yes.

Mr. Cole: I offer them.

(The papers offered are received in evidence and marked as exhibit for the plaintiff, P9 and P9—A.)

30

Q. I show you a statement of August, 1922, and ask you if that is another?

A. Yes.

Mr. Cole: I offer it.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P10.)

The Witness: These are the statements you had.

Mr. Cole: They are the ones I produced on his call.

Q. Another statement that appears not to be complete, under the date of September, 1922.

A. This is complete, I think.

Q. Is that the one that you had?

10 A. Yes.

Mr. Cole: I offer that also.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P11.)

Q. I show you another statement under date of October, 1922, and ask you if that is another of them?

20 A. Yes.

Mr. Cole: I offer that also.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P12.)

Q. I show you another statement under date of November, 1922, and ask you if that is another of them?

30 A. Yes.

Mr. Cole: I offer that also.

(The paper referred to is received in evidence and marked as an exhibit for the plaintiff, P13, and an additional paper is marked also as an exhibit for the plaintiff, P13—A.)

Q. Now, how—may I have the other statement?
There is another one.

Mr. Cole: It is marked for identification.

Mr. Bourgeois: Do you want to offer those now?

Mr. Cole: Yes.

(The paper referred to, heretofore marked as
exhibit for the plaintiff for identification P5 and 6, 10
are received in evidence.)

Q. Now, I understand you to say that something
in these statements which were handed to you, all
monthly statements, aroused your suspicion; is that
correct?

A. No; I don't think you did hear me say that.

Q. Well, now, what was it? You had these state-
ments; didn't you? 20

A. Yes.

Q. They were given to you each month?

A. Yes.

Q. Taken from the books of the company, and
something came along in December that induced
you to go and see Sickler. Now, what was it?

A. I wanted to see what shape we were in, and
I wasn't capable of answering that myself.

Q. Was Sickler in your employ?

A. No. 30

Q. Was he in the business?

A. No.

Q. Was he familiar with the books of this com-
pany?

A. Not this company, no.

Q. Well, why did you go to him instead of going
to your bookkeeper?

- A. Because I had confidence in Mr. Sickler.
- Q. Well, didn't you have confidence in your bookkeeper?
- A. Which bookkeeper?
- Q. Well, Vollmer, Thompson and Christensen?
- A. I evidently did not, at that time.
- Q. Then you continued them?
- A. How is that?
- Q. You continued them?
- 10 A. I did not.
- Q. Did you get Mr. Sickler to go down and over the books?
- A. No.
- Q. What did you do, just talk to him about it?
- A. Just got him to analyze my statements.
- Q. That was the only thing? You wanted somebody to analyze your statements?
- A. Isn't that enough?
- Q. Well, I am asking you. Was that all you
- 20 wanted, somebody to analyze your statements?
- A. Yes.
- Q. And you went to an outside man to do that?
- A. Yes.
- Q. Had you ever been to Mr. Christensen after that? Had you ever asked him about the accounts?
- A. I had talked over some matters, yes.
- Q. Well, after you had gone to somebody, I don't care who, nor what they told you, but tell me what you finally concluded the trouble was?
- 30 A. What I finally concluded the trouble was?
- Q. Yes.
- A. Now, let me see. Just what do you mean by that?
- Q. I want to know exactly what it was that you thought had been done to you?
- A. Why I decided that a false statement must have been issued to me.

Q. A false statement?

A. Yes.

Q. Did you ever become convinced that that was so?

A. Yes.

Q. When?

A. About the last of January.

Q. And was it in this statement that you—that is marked here in evidence as Exhibit P6, under date of June twelfth? 10

A. Yes.

Q. When you got that statement you concluded a false statement had been made to you?

A. Yes.

Q. Now, up to that time—up until January or December you had been satisfied that everything was all right; hadn't you?

A. My report showed so, yes.

Q. I didn't ask you about your report. I asked you if you had not been satisfied? 20

A. Yes.

Q. You had been satisfied, yes. You had been in the business; you had conducted it yourself?

A. No; I had not.

Q. What part had you done?

A. I hadn't taken any part in it at all.

Q. Not after October?

A. After October I did, yes.

Q. Up until October who had charge of the sales department? 30

A. Mr. Johnson.

Q. And who had charge of the service department?

A. Mr. Beck.

Q. And Mr. Beck was your partner?

A. In another business, yes.

Q. I beg your pardon?

- A. In another business.
- Q. That was in the Sea Coast Machine Works?
- A. No; Seashore Machine Company.
- Q. Seashore Machine Company. And you had induced him—the two of you had gone in this business together?
- A. Yes.
- Q. But you understood he was to look after the service part?
- 10 A. Yes; that was the agreement.
- Q. He did that for four months?
- A. About that time, I guess.
- Q. You were perfectly satisfied at that time?
- A. Yes.
- Q. With that. Then he wanted to withdraw?
- A. Yes.
- Q. And you made some investigation about these accounts to see that they were all right; didn't you?
- A. Yes.
- 20 Q. And you satisfied yourself that everything was all right?
- A. Must have been or I would not pay \$6,000 for it.
- Q. And after you had satisfied yourself, you paid him \$6,000 for his half of the stock?
- A. Yes.
- Q. And then came November; October came along and then November and then things didn't go so good; did they?
- 30 A. No.
- Q. You ceased to make money; you lost money that month, didn't you, in November?
- A. I don't know whether it was November. One month.
- Q. Beg pardon?
- A. One month there we didn't make much.
- Q. Well, didn't you lose \$1,600 in November?

A. I don't recall.

Q. And didn't you lose \$2,200 in December?

A. I don't think so; I don't know though.

Q. Well, you made money up to that time; didn't you?

A. The reports showed it.

Q. The business made money in June, in July, August and September, and even October; each of those months you made money; didn't you?

A. Whatever the reports say.

10

Q. You made money every month so long as Johnson sold the cars and Beck did the service work; isn't that true?

A. According to the reports, yes.

Q. Then as soon as Beck got out you took over the service work; didn't you?

A. No.

Q. Well, who did?

A. Well, I stayed in there awhile, yes.

Q. And then you lost money; didn't you?

20

A. According to reports, yes.

Q. As soon as you commenced to lose money, then things commenced to look suspicious to you; didn't they?

A. No.

Q. Well, just a coincidence, was it, that happened that they happened both at the same time?

A. It must have been.

Q. It was perfectly all right; you were satisfied during all those months up to November, and then in November and December you commenced to be suspicious, and those months you lost money?

30

A. I was not particularly suspicious. The accounts showed all right.

Q. The accounts showed all right; very well. Then you were not suspicious in December, were you?

A. Not until the latter part, after I took the statements to Mr. Sickler.

Q. That is the latter part of December?

A. Yes.

Q. Then you went outside and took the statement of some man who knows nothing about the accounts, knew nothing about the business. and upon his statement you became suspicious; is that right?

A. Yes, surely.

10 Q. You were suspicious of what, in the December statement?

A. No; I didn't know anything about the December statement.

Q. You were suspicious of the November statement?

A. That was the last statement we had.

Q. Well, were you suspicious of that?

A. No; I was not suspicious of that, either. When I went to him I was open minded.

20 Q. Well, after you had gone to him then what statement were you suspicious of?

A. The statement on which we bought.

Q. Oh, of this particular one?

A. Yes.

Q. That is of Exhibit P4?

A. Well, whatever it was.

Q. Which showed statement of condition as of June 12, 1922?

A. Yes.

30 Q. Now, if that statement was all right, then, you had not any complaint whatever; had you?

A. If the statement was all right, no; I have not.

Q. I mean if the facts were according to that statement you had not any complaint at all?

A. I would not have any.

Q. Well, now, I wonder if that was like that. What is the first item you have—what was wrong

with that statement in your notion? In your judgment, what was wrong about it. All of it or only part of it?

A. Only in the inventories there.

Q. Everthing else was all right but the inventory; wasn't it?

A. As far as I knew.

Q. Then the thought that you had was—if the inventory, if the inventory is all right then you have no claim, have you?

10

A. We have not.

Mr. Cole: I object to that.

Q. Now, let us see what that inventory consisted of. See if I have a copy of what you have there. First inventory, Willys-Knight cars \$2,450; Overland cars \$3,019.15; used cars \$2,525.00; parts \$3,874.95; accessories \$310.58; gas, oil and grease \$225; stationary, office, \$150. Now, they were all of the items under inventory; that is correct, isn't it?

20

A. It is.

Q. Now, let us take the first one. First is the Willys-Knight cars. Now, Mr. Metz did you go over the Willys-Knight cars or the question of cars with Mr. Johnson or Mr. Schmeidler and did you agree to pay \$2,450 for them?

A. When? In Mr. Brown's office we did.

Q. On the twelfth?

30

A. Up in Mr. Brown's office, yes.

Q. In whose office?

A. Mr. Brown's office.

Q. Did you go over those cars down in the shop or wherever they were?

A. No; I did not.

Q. But you did agree to pay the \$2,450?

A. Up in Mr. Brown's office, yes.

Q. Then after you agreed to pay it—that is all right; is it?

A. Well, we agreed to pay it.

Q. You agreed to pay it, yes. Then if you agreed to pay it you don't mean to go back on your agreement now; that is settled, isn't it?

A. Well, not necessarily. If we find it is not right it is not settled.

10 Q. Then if it is not right you want to go back on your agreement; isn't that the idea? You don't mean to do that, do you?

A. Mr.—

Q. Now, if you will just answer the question we will get along so much better.

Mr. Cole: He has a right to explain that.

Mr. Bourgeois: He must answer first.

20

Q. You have not answered. I say if you agreed to pay the \$2,450 for those cars that is a closed transaction; isn't it?

A. Not necessarily, no.

Q. Then your agreement didn't mean anything when you agreed to pay it and he gave you the—or you gave him the money and he turned the goods over to you; that didn't mean anything to you—do you mean that?

30

A. If we found they were not there, if they were short.

Q. Then your agreement did not mean anything when you agreed to pay it and he gave you his—or you gave him the money and he turned the goods over to you; that didn't mean anything to you—do you mean that?

A. Well, I don't know how to answer that.

Q. Well, Mr Metz, you and Schmeidler dealt and you came to an item of cars, Willys-Knight cars, and you say that you agreed to give him for those cars—\$2,450 and he turned them over to you; didn't he?

A. I presume so.

Q. And you turned him over your check in payment for them?

A. Yes.

Q. Now, do you mean that is not closed? Is that 10 still open? Isn't that a closed transaction?

A. Well, I can't explain it that way, Mr. Bourgeois. We bought this thing on Vollmer, Thompson and Christensen's statement, not only on what he said.

Q. You said you bought it on Vollmer and Thompson's statement?

A. Yes.

Q. Which statement?

A. On the statement he rendered to us. 20

Q. Before that time had you not been down to this plant?

A. I had been in the place, yes.

Q. A number of times?

A. A number of times.

Q. You had seen the cars?

A. I don't know that I had.

Q. Well, don't you know that you did?

A. No; I don't know that.

Q. What did you see? 30

A. I saw different cars around there; there was a number of cars.

Q. At the time you gave your check you thought you had seen them; didn't you?

A. We depended entirely on Vollmer, Thompson and Christensen's say so.

Q. How could you depend on Vollmer's statement for simply something that was physical property, after you looked at it?

A. The same way as if I depended if I bought one hundred shares of Pennsylvania Railroad; I was depending on what their author said. I wouldn't go and count their engines, would I?

Q. I didn't ask you that.

A. It is the same thing.

10 Q. I asked you a specific question; you give me something else.

A. We depended—we bought on their statement purely and simply.

Q. Did you say that you didn't see a Willys-Knight car in their place of business?

A. I didn't say I didn't see one. I presume they were there.

Q. Would you say that you didn't see two, one a demonstration car?

20 A. There may have been more than two there.

Q. Beg pardon?

A. There may have been more than two there, or possibly there could be some customer's cars in there. I wouldn't know who they were.

Q. Then after you saw the cars you did not depend on your own sight?

A. I wouldn't know whose they were.

Q. Well, did you find out anything about that any of them belonged to anybody else?

30 A. I didn't inquire.

Q. After you purchased this stock did you go sell those two cars?

A. I don't know; I took no active part in it whatever, Mr. Bourgeois.

Q. Then the only thing that you know is that you saw the cars; you agreed to pay \$2,450 for them; Schmeidler turned them over to you and

you turned over a check. Don't you say it is a closed transaction?

A. I don't say I saw the cars.

Q. Do you say you didn't see them?

A. I don't know; they may have been there when I looked through.

Q. Are you in the habit of buying \$12,000 worth of personal property without knowing what is there and looking at it?

A. I think I had a competent auditor; I was advised that they were and and to believe that the— 10

Q. Then why did you go around and look at it at all if you were depending on the statement?

A. Most of the time I was down there to get a little work done on my car.

Q. I didn't ask you that. I asked you—

A. You asked me why I had to go down.

Q. Did you go to get work done or look at the cars?

A. To get work done mostly.

Q. Did you look at the cars? 20

A. Not necessarily.

Q. Well, did you look at the cars?

A. No.

Q. You never saw them?

A. I may have seen them by going through there; I don't know.

Q. Did Johnson ever take you and point them out to you?

A. Not directly, no.

Q. Well, what do you mean by "directly"? I 30 don't quite understand.

A. Well, they didn't go to this, that and the other car and show them to me.

Q. You say that you bought all that personal property from a statement which was rendered to

you without ever having seen the cars to know their condition or anything about it?

A. I did; also the cash in the bank; we never went to the bank to find out.

Q. But you did agree to pay \$2,450 for them?

A. \$2,450.

Q. \$2,450 for those Willys-Knight cars?

A. In Mr. Brown's office we did.

Q. And you didn't see any of them?

10 A. I may have seen them; I don't know; I wouldn't say I didn't.

Q. Didn't Brown tell you when you were up in his office, when you talked about whether or not they were all there at that time, that you would have to take the responsibility for them; you were going into that deal and you would have to take the responsibility for them?

A. I don't recall it.

Q. You don't recall that?

20 A. No; he may have said it.

Q. Well, now, Mr. Metz, the next item is the Overland cars. You have your statement there?

A. Yes.

Q. \$3,019.15. Did you see those cars?

A. I don't know that I did.

Q. Did you agree on that price?

A. At Mr. Brown's office we did, yes.

Q. Will you take the statement that you have there and turn over the back of it and tell me

30 whether there is a memorandum on the back of it?

A. Yes.

Q. Whose handwriting is it in?

A. Mine.

Q. What does it say?

A. It says: "Kissel Car, nine hundred; Dodge, five hundred fifty; Overland, four hundred; Ford, two hundred twenty-five; Overland, two hundred fifty."

Q. How did you put them down there, from this man's statement or did you look at them?

A. This was done afterwards, after the deal went through.

Q. Did you see them?

A. I saw them afterwards, yes.

Q. How did you come to look at them?

A. I don't know that I saw all of them. I took Mr. Johnson's word for them.

Q. How did you come to look at any of them? 10

A. I happened to be down there. This was done after the transaction.

Q. Just casual observation; you happened to be down there and saw some cars, and you handed them over your check for \$12,000 and now you are kicking about that; is that the idea?

Mr. Cole: I object to that.

Mr. Bourgeois: All right. 20

Mr. Cole: I object to the question because there are two or three questions in one and it is not a fair question to ask a witness. It is not proper cross-examination.

The Court: No. I will sustain the objection.

Q. Mr. Metz, when was it that you made that memorandum on the back of that statement? 30

A. Oh, it was sometime afterward; I don't know how long.

Q. Did you get those cars?

A. I don't know; Mr. Johnson said they were there.

Q. Didn't you sell them? Didn't your company sell them afterward?

A. I couldn't tell you that; I didn't know till it was sold.

Q. Well, now, you don't know a thing about it, but something or other has made you dissatisfied. Now, just what is it that makes you dissatisfied?

A. Why, this other statement.

Q. Oh! This statement—

A. The actual statement that Vollmer and Thompson made out on the date of June 12th.

10 Q. That is the book statement, you mean?

A. No, book statement nothing.

Q. What statement?

A. The statement they made of the true condition of the company on that day, and it was not presented.

Q. I understand this is the true condition of the company; is that the statement you object to?

A. Now, yes.

Q. You object to that now?

20 A. Yes.

Q. And is this the one you want?

A. The one that shows the \$9,000 or the one they actually made up.

Q. That is the statement that you want?

A. That is the statement that Vollmer, Thompson and Christensen made out.

30 Q. And this statement shows that the assets of that company at that time were \$61,904. You want half of that, \$61,904 for your \$12,000; is that the idea?

Mr. Cole: I object. He has not said anything of the sort.

Mr. Bourgeois: He says he wants this statement.

Mr. Cole: No; he is asking to have the \$12,000 back because he says there was a fraud made to him.

Mr. Bourgeois: Oh, no; he has said this was the statement he wants.

Mr. Cole: No; he has not said that, either.

Mr. Bourgeois: Well, the record will show what he said.

10

Q. (Repeated by the stenographer.)

A. This statement shows that the assets of that company at that time were \$61,904. You want half of that \$61,904 for your \$12,000; is that the idea?

Mr. Cole: The whole issue is the inventory.

Mr. Bourgeois: He says he is dissatisfied because of this particular statement.

20

Mr. Cole: No, as to the inventory.

Mr. Bourgeois: No, he talked about the inventory before. He said the inventory was the only part in dispute.

Q. That is the only part in dispute?

A. Yes.

Q. And in this statement the total amount of the statement shows \$61,904 assets; doesn't it?

30

A. With the good will, yes.

Q. Yes; \$20,000 good will; with the \$20,000 good will?

A. There is a contract in there, Willys-Overland—\$10,800, and good will \$20,000. That is not anything.

Q. Well, the contract was something when you received it, wasn't it?

A. No.

Q. Wasn't it?

A. Absolutely worthless.

Q. And then you don't want to settle by this statement?

A. By the inventory statement.

10 Q. You want to pick out a part of the statement and settle by that but not accept the whole statement; is that it?

A. Nobody would accept good will like that.

Q. Well, that is the situation, isn't it? You don't want to accept the statement—the book statement of June 12, 1922, as an entirety at all; do you?

A. Let me see that a minute.

Q. That is a complete statement of the assets and liabilities as of the books of that date.

20 A. With the Willys-Overland contract and the good will in there—they are not considered—they are considered worthless.

Q. I want to know if you do not want to accept that statement as an entirety?

A. Not as an entirety, no.

Q. But that statement says the business at that time was worth \$61,904; doesn't it?

A. The statement showed it, yes, with the padding.

30 Q. All right; that is padded \$20,000 for good will and \$8,000 for, you say, contract, that you ought not to pay for; that is \$28,000 off of the \$61,000 leaves you \$33,000; now, is that right?

A. There is more than that there.

Q. No; that is all that you have said; that \$33,000 is the net price. Are you willing to have that \$33,000—half of it—for your \$12,000?

A. Well, they have other things in there that were never considered in it.

Q. Well, you don't want to settle by that at all?

A. There isn't any plant there.

Q. I say you don't want to settle up by that?

A. The only thing we are suing on is the inventory.

Q. And that is because the inventory on this statement here, such as it is, is less than the inventory on yours, isn't it? Now, isn't that true?

A. This one calls for \$12,554, and that one calls for \$9,160 something.

10

Q. Now, it is because it is smaller here than it is on yours that you want to settle on your statement; isn't it?

A. Not necessarily.

Q. Then, why are not you satisfied?

A. Because that statement was not presented instead of this one.

Q. If this statement had been presented instead of that one, then the amount of the inventory would have shown \$61,000?

20

A. No; because that would have been eliminated like it is on this one.

Q. How?

A. On account of this good will and things.

Q. But you bought the stock?

A. Yes, but we didn't buy the good will with it.

Q. Don't you know if this statement was handed to you as they say it was, that you would have found that instead of being \$904 there for one Willys-Overland car, you would have found that one car had been sold for \$1,400 and you would have found another Willys-Knight car that had been sold for \$1,050 in stock there?

30

A. No; I don't know that I would.

Q. Do you say that it is not so?

A. I don't know.

Q. Then you are finding fault with this statement

because it is a smaller amount, when you don't know whether that is right or not and you don't know that that is wrong or right; you are just finding fault because one is smaller than the other; aren't you?

A. I know one thing; that no other statement of their audit corresponds with this one.

Q. Well, does it make any difference—

A. Why certainly it does.

10 Q. —if this corresponds with the facts?

A. Certainly it does.

Q. Even if those two cars were in stock valued at \$2,450 you would not be willing to pay that for them if you found a statement somewhere that said there was only one car in stock?

A. I certainly would not, if they showed an inventory—

20 Q. Suppose they showed you this inventory for one car for \$904 down there and Mr. Johnson had gone out and said: "Well, now, Mr. Metz, we have two cars, only one of them has been taken out of the inventory. Now, here is this one that is in the inventory for \$904, but that has been sold for \$1,400, and out here in the shed there is aother car," and showed it to you, "that has been sold for \$1,050." Now, you were going to get both of those cars; you would not have been satisfied to allow more than the \$904 for them, would you?

A. You are getting in too deep book work for me.

30 Q. Are you satisfied?

A. How is that?

Q. Are you satisfied with the Overland cars at \$3,019?

A. We decided on it up in Brown's office, yes.

Q. And you are satisfied with that?

A. We decided that; we decided to pay it, yes.

Q. Well, are you satisfied with it?

A. Not now.

Q. Even though you made a memorandum on the back of your own paper about it?

A. That is not what that is.

Q. What is it?

A. Well, that is for you to find out, not me.

Q. Oh, is that so? Well, suppose I proceed to find out why you take that in your hand, please, and look at it. Now, tell me what the first item is.

A. That is a Kissel car. 10

Q. Kissel car. Is that a used car or one of the Overland cars?

A. Used car.

Q. That is satisfactory?

A. As far as I know. We took it for granted.

Q. What is the next item?

A. Dodge.

Q. Is that a used car also?

A. Yes.

Q. You are satisfied with that? 20

A. And the next is an Overland.

Q. Yes. How many Overlands are there?

A. Two.

Q. Two Overlands?

A. Yes.

Q. For \$3,019. Are you satisfied with that?

A. No; that is not what it is.

Q. Well, look on your front page and see if it is not.

A. No; I know it is not. 30

Q. What does it say about Overland cars?

A. \$3,019.15.

Q. Well, that is what I said. Now, you are satisfied?

A. That is what you are reading over.

Q. Beg pardon?

A. That is what you are reading over.

Q. Yes, I am.

A. No; you are not.

The Court: He says the memorandum on his paper does not represent that item. That is what he is saying.

Q. Which does not represent?

A. That represents the used cars, what you are
10 reading.

Q. What is the next item that you have got?

A. Used cars now.

Q. How many used cars?

A. Well, according to this—

Q. No; is that all the items on the back?

A. Yes; that is all that is on the back.

Q. Now, do you say that you are or are not satisfied with your Overland cars?

A. I don't know whether they were there or not.

20 This statement says they were.

Q. Well, did you agree to pay the price for them?

A. Up in Mr. Brown's office, yes.

Q. Now, the used cars. Are they all right?

A. All those items—there is no use going all through these. They were all agreed to in Mr. Brown's office; we all agreed to what they were.

Q. Which is the particular item, if you will tell me, that you object to at the present time?

A. All of that inventory, of the \$12,500.

30 Q. After you have gone all over it and agreed to pay it, then you come back and you are not satisfied with any of it; you want it back again?

A. When we find the actual inventory of it, we do.

Q. Do you know anything about the statement—

A. What is that?

Q. Do you know anything about the statement that you found?

A. Yes.

Q. Was it true?

A. Certainly it was.

Q. How do you know?

A. Because it corresponded with all the following statements issued right straight on down.

Q. Then that shows—the fact that that corresponds with all the following statements shows the whole thing was accurate; doesn't it? 10

A. Yes, from the statement we found but not from this one.

Q. Then if it—

Mr. Cole: When you say: "From this one" which do you mean?

The Witness: This was the one we bought from and it corresponds with no other statement that Vollmer, Thompson and Christensen had issued. 20

Q. Doesn't it correspond with all the statements they have made?

A. No.

Q. If you add to that the cars that were in stock but were not on the inventory, the book inventory?

A. In stock?

Q. Yes.

A. What do you mean? 30

Q. The stock that they owned, but that had been taken off of the book inventory because they had been sold. Now, if you add—

The Court: Had not yet been delivered.

Q. Had not been delivered, sold but not delivered

—if you count those cars, then this statement corresponds with the book statement; doesn't it?

A. No.

Q. How do you know?

A. Because it never has corresponded. I have had them analyzed. They never have corresponded.

Q. You know personally nothing about it?

A. No.

Q. You cannot analyze it?

10 A. No.

Q. Then you are simply tell hearsay, what somebody told you?

A. That is the only way I can do.

Q. And yet you admit you agreed to pay that for them?

A. Yes, up in Mr. Brown's office.

Q. How about the accessories? There were \$200 of accessories. Did you agree to pay that?

20 A. We agreed to pay everything that is on this statement.

Q. Did you agree on parts, \$310?

A. Yes,—now, wait.

Q. And the \$225 for oil?

A. Everything on that.

Q. And the stationary, office stationary, \$150; you agreed to that, didn't you?

A. Yes.

Q. And you agreed to pay \$3,874 for the parts; didn't you?

30 A. That is part of the list there, yes.

Q. Well, now, Mr. Metz, is it true that those parts vary from day to day?

A. Slightly.

Q. And I suppose it is likewise true that the cars vary from day to day?

A. They should not.

Q. What?

A. They should not vary.

Q. They should not vary?

A. The sales—all those sales should show, as far as that is concerned.

Q. If you sell a car would it show on the inventory?

A. When we asked Vollmer, Thompson and Christensen they gave us a statement—

Q. I didn't ask you that.

A. You are asking me how the—

10

Q. If you sell a car will it show on the inventory? After it is sold don't you take it off the inventory?

A. Yes.

Q. After it is delivered?

A. Yes, they take it off then.

Q. Then it would make a difference?

A. It would show an asset in another place.

The Court: Well, how often is an inventory of this business made, anyhow? Inventories are not made every day as a general thing. 20

The Witness: Monthly. There was a monthly statement made.

The Court: Monthly inventory?

The Witness: Yes.

The Court: I am speaking about an inventory, not a statement. 30

The Witness: Judge, when we bought this we asked for a statement to be issued by Vollmer, Thompson and Christensen; that we would be satisfied to take their audit of it from the standing of

the company, and this statement was presented to us.

Mr. Bourgeois: Now, there is no question pending, and so long as it is my cross-examination I would like to finish it.

Q. You say that if a car has been sold and it comes off of the inventory, then the value of that car ought
10 to appear somewhere else on on the books of the company?

A. I should think so, although I am not a book-keeper.

Q. I think that is reasonably sure.

A. We ought to have the car note or something for it.

Q. Then why do you say that you want to settle according to this statement, June 12th, the inventory of it taken from the books, and exclude the other
20 entires in the book that will show the assets that came in for the car that was sold?

A. I don't know how you mean on that.

Q. Well, you don't make any claim, in other words, you insist upon—

A. That does not change the other assets, the cash on hand.

Q. You insist on settling upon the inventory in this what is called the book statement?

A. The cash on hand is the same.

30 Q. That may be, but I say you insist on considering the inventory only of this book statement of June 12th, 1922; you say that is what does not correspond with your statement?

A. Yes.

Q. Well, now, if your statement includes the value of all the cars they have, and the book statement only includes the cars that they have filled out

of their inventory, why shouldn't you include in making your comparison, the assets that came into the firm for the car that went out?

A. Where did it come in? That is what I haven't found yet.

Q. Do you say that there were not two Willys-Knight cars there?

A. Will I say there were?

Q. Yes.

A. I really don't know.

10

Q. You don't know?

A. No.

Q. Do you say that the item of Willys-Knight cars in your statement of \$2,450 does not include one—I mean one demonstrating car that had been agreed to be sold for \$1,400 and did not include another Willys-Knight car that had been sold for \$1,050?

A. That is what they said, yes.

Q. They told you that that was so; didn't they? 20

A. Yes.

Q. And they told you that was the difference between your statement and this statement of \$904; didn't they?

A. No; I don't know when.

Q. But they did tell you that there were two cars there making up that \$2,450, one a demonstrating car for \$1400 that it had been sold for, and another a used car that had been sold for \$1,050? Didn't they? They told you that?

30

A. Who told me that?

Q. Mr. Johnson told you that when you agreed to pay the \$2,450?

A. On the day of the sale.

Q. I don't care when it was; it was done before you paid your check; that is right, isn't it?

A. Well, they testified that those cars were there; that the stock was there.

Q. Well, now, do you say they were not there?

A. I don't know, Mr. Bourgeois, whether they were there or not. I didn't go down and see them. I don't know whether there was \$1,000.01 in bank or not. I didn't go to the bank and find out.

Q. Then you don't know a thing about it except the fact that one statement contained an inventory
10 of \$904 and the other statement contained cars at \$2,450; do you?

A. I know—the main thing I know about it is that there were two statements issued on the same day, of the standing of the same concern.

Q. And one of those statements showed the book inventory and the other showed the actual physical property they were selling to you. Now, that is true; isn't it?

A. I don't know.

20 Q. Well, that is what they represented, wasn't it?

A. The one that we bought from, yes.

Q. They represented that that was the actual physical property they had and was selling to you?

A. That is what they claimed.

Q. And you didn't go to find out?

A. No.

Q. You accepted it as being true?

A. I accepted it.

30 Q. And even now you don't know that it is not true?

A. I know it is not true now, because the real statement does not correspond with it.

Q. How do you know that what you call the real statement is true?

A. Why, the real statement is the one we found later, that corresponds with the book.

Q. How do you know?

A. Because it corresponds with the books and this statement does not.

Q. How do you know it corresponds with the books?

A. It corresponded with all of the statements following.

Q. Do you know that of your own knowledge?

A. I have had it analyzed and found out.

Q. But you don't know that of your own knowledge? 10

A. Well, I tell you I am not a bookkeeper.

Q. Then the whole gist of the trouble is because you saw the statement that contained items of an inventory that were different from the statement that was made up and agreed to at the time you purchased it—

A. On the very same day, yes.

Q. On the very same day?

A. Yes.

Q. Now, did they explain to you that some of these cars were in process of sale? 20

A. They may have; I don't know.

Q. Would that make any difference in your judgment about the inventory?

A. I don't think so, no.

Q. You don't think it would? Do you think if they had had the two Willys-Knight cars in stock, both, on the tenth day of June, then on the eleventh day of June they had sold one of those cars but didn't get the money for it, hadn't delivered it, but the fact was that it was sold and they had gotten notes for it; that they took the car out of the inventory and put the notes in bills receiveable, and then when you came to settle there was only one car in the inventory, even though you got the uncompleted sale of that car, and had the note given for it and 30

the cash and all,—that you ought to rescind the sale because they were both on the inventory even though you had the property?

A. No; if this car was sold and part cash and notes were received for it, it would show the balance in the bank books, but it does not; it is exactly the same.

Q. It might not.

A. Well, it is the same.

10 Q. Does every promissory note you get change your balance in bank?

A. The cash would.

Q. I didn't ask that. They might have gotten a note; they might have gotten the cash, and it might have been in the cash drawer.

Mr. Cole: Are you testifying or asking a question?

20 Mr. Bourgeois: I am asking if that would make any difference.

The Court: Mr. Bourgeois, let me see that other statement, the statement of June 12th.

The Witness: The cash is the same on both of them.

Q. Beg pardon?

A. The cash is the same on both of them.

30 Q. I suppose that is right. Now, you say that the books remained at the place of business up to the time—from the time that you purchased until when?

A. They are there now, so far as I know.

Q. And although they remained in that same place you never had them audited?

A. I didn't have the opportunity.

Q. Why not?

A. Because I never had access to them.

Q. Why not? You are a partner?

A. Because I never knew the combination or anything.

Q. Well, weren't they open in the day time?

A. Sometimes, yes.

Q. And did you ever ask for them?

A. If I would ask a question Miss Fisher would 10 usually be too busy or something.

Q. Did you ever ask them, tell them you wanted to have those books audited?

A. No.

Q. Why didn't you?

A. I didn't have any suspicion.

Q. Not at all?

A. Not until I found this statement.

Q. Didn't you send an auditor down there on one occasion?

A. An auditor was there for a few hours, yes. 20

Q. What was he doing?

A. He was seeing how much—what he would charge for auditing the books.

Q. He was not down there for the purpose of checking up those books?

A. He positively was not.

Q. No. He went down there because you thought he would do the work of bookkeeping cheaper than Vollmer was doing it?

A. Yes. 30

Q. And you sent him down there?

A. Yes.

Q. Now, did he have any trouble in getting access to the books?

A. I believe not, no.

Q. Did you have any reason to believe that if you

wanted to have those books audited they would not give you access to them?

A. I didn't have any excuse to audit them. I was not suspicious of them.

Q. You never raised any question until the business began not to pay; did you?

A. Until I found the variance in the statements.

Q. And that was in December or January?

A. It was the last of December.

10 Q. And at that time you had lost about three or four thousand dollars in the business, in the two months previous?

A. Well, I don't know that we had. You don't expect to make any in November or December.

Q. But you had lost money?

A. I think they showed a loss.

Q. And at that time you had determined you were not going to buy any more new cars?

A. We didn't have the money.

20 Q. I didn't ask you that. I say you had determined that you were not going to do it; hadn't you?

A. Yes.

Q. And you had been written a letter from the company that unless your company came up and bought the cars the agency would be taken from you?

A. They told us they wanted to see us; to come up.

Q. Have you that letter?

A. No.

Q. Did you go up?

30 A. Yes; we went up.

Q. What date did you go up?

A. I don't recall.

Q. Well, it was after the first of the year, wasn't it?

A. I think it was around the first week in January.

Q. Yes. About the fourth of January. Now, up

to that time you had never said to Mr. Schmeidler you were not satisfied with that deal; had you?

A. I didn't know of this discrepancy.

Q. I say up to that time you had never said a word to him about it; had you?

A. No.

Q. And you went to Philadelphia, you and Mr. Johnson, and they took the agency away from you; didn't they?

A. Not then, no.

Q. What did they do?

10

A. They said they would give us two weeks. They said: "The trouble here seems to be internal, and we will give you two weeks to iron out your trouble."

Q. Between you and Johnson?

A. Yes.

Q. Oh, did you have trouble, too?

A. They seemed to think so.

Q. I said did you think so?

A. No; I didn't think so. Johnson and I were good friends. 20

Q. They gave you two weeks to determine what you would do?

A. Yes.

Q. Did you determine to take the cars?

A. They didn't wait two weeks. In two or three days they sent the letter down.

Q. That night you had a fire in there, that you came back?

A. I don't think it was the same night.

Q. Which night was it?

30

A. The next night, I think it was.

Q. Now, what damage did that fire do?

A. It destroyed the cars pretty well in there.

Q. Just cleaned you right out; didn't it? The whole business was gone?

A. Well, it was a total loss so far as we were

concerned. The insurance company paid the loss and sold the cars.

Q. And what was done with the money the insurance company paid?

A. The notes were paid on the money that was borrowed on the cars.

Q. You bought the cars and gave notes for them?

A. That is the way the business is transacted.

Q. Did you endorse the notes?

10 A. I think only as the Coast Automobile Company.

Q. Then you took the insurance money and paid the notes?

A. Yes.

Q. Now, after that had all been done, what stock was there on hand?

A. There was quite a lot of cash on hand.

Q. Yes.

20 A. And parts, lots of used cars and some accessories.

Q. When you wrote Mr. Schmeidler a letter that you were going to rescind the contract did you tender back to him the property that he had turned over to you?

A. What there was, yes.

Q. Well, what had become of the other of it?

A. Well, it was in cash and used cars, a lot of it.

Q. Some of them had been sold?

30 A. A dozen or two of used cars.

Q. Was part of it—I say part of it had been sold by you; I mean by the company after you went into it?

A. The used cars.

Q. Yes, and new cars, too.

A. We had a few used—new cars left, too.

Q. This Willys-Knight car, demonstrating car, that had been sold; hadn't it?

A. That was several months before. So far as I know it had. I don't know.

Q. And all of the cars that were in there at the time the sale was made to you, that were delivered over to you by Mr. Schmeidler,—all those cars had been sold; hadn't they?

A. I think so, yes.

Q. And pretty near all of the parts had been sold? 10

A. No; lots of those parts were not.

Q. Part only?

A. Part only.

Q. And the used cars, they had been sold?

A. I don't imagine there were any left.

Q. And you got the money for them?

A. The company did; I did not.

Q. Well, I mean the company, because you are a part of the company. And then when the agency had gone and the balance of the stock had been destroyed by fire,—then you tendered to Mr. Schmeidler a letter and told him you wanted to rescind the contract; is that right? 20

A. The company didn't lose anything by the fire; everything was insured.

Q. I am not talking about that.

A. Well, you are intimating that we lost through this.

Q. Were you well insured? 30

A. Naturally you have got to keep things covered if you are going to borrow money on it.

Q. But they were the cars that you had bought?

A. The company had bought them, yes.

Q. Yes, after the cars that Mr. Schmeidler had turned over had been sold.

A. Oh, lots have been sold since then, yes.

Q. Sure. But you didn't tender them back to Mr. Schmeidler?

A. Which was that?

Q. Why, the value of the stock that were sold to you or the stock itself?

A. The stock was available.

Q. Well, you didn't tender it to him, I say; you didn't say: "Now, here, I am going to tender you back the stock that you turned over to me and I
10 want my money?"

A. Yes; I did.

Q. What did you do?

A. I tendered the stock to him.

Q. Tendered the stock to him, but the stock wasn't worth anything; it didn't have any cars?

A. It had a lot of value.

Q. It had a lot of value?

A. Isn't that what you mean?

Q. I mean whether or not it had the same value
20 as it had when Schmeidler turned it over to you? Whether the same stock was there, or whether you had been using it all the time?

A. Well, those cars had been sold, but we had others.

Q. In other words, you had experimented; you think the sale that he made to you wasn't anything to you?

A. No; I don't think anything of the sort.

Q. Beg pardon?

A. I don't think anything of the sort.
30

Q. You do think it amounted to something?

A. Why certainly.

Q. Just what do you think it amounted to?

A. It amounted to me giving up my good money for something that was not all there.

Q. Then you think that when you paid him \$12,000 for the stock that he had there which gave

you the right to speculate and use that stock for six or seven months and then when you made a failure of it come back to him and say: "I want my money back;" is that the idea?

Mr. Cole: There is nothing in this case to show that there was a failure made. My friend assumes that there was a failure made here.

The Court: I do not think it has been shown 10
yet that there was a failure made exactly. I do not know what an automobile agency does after it ceases to sell cars; I do not know very much about it; but it seems to me that we break off in this story somewhere after the fire, and I think the jury would like to know—I know I would like to know what became of the business eventually, what did happen to it. I do not think there is anything shown yet as to what happened to it.

20

Mr. Bourgeois: To the agency?

The Court: To the business itself. I think the conclusions in your question then are premature.

Q. What actually happened to your agency?

A. They finally—two or three days after we were up there they wrote a letter to either Mr. Johnson or the Coast Automobile Company saying they had cancelled it.

30

Q. That was about the seventh or eighth of January; wasn't it?

A. I think it must have been around that time.

Q. And twenty-three days after that was the time when you tendered Mr. Schmeidler the letter that you were rescinding your contract?

A. When I found this statement, yes.

Q. That was the thirty-first day of January of 1923?

A. It was about the twenty-eighth or twenty-ninth that I found it.

Q. Now, is it your notion that you were within your rights to go along and use that property as your own, sell the property and dispose of it as you saw fit, have a fire and burn it out, lose the agency because you would not buy the cars, and then after you had made a failure of the business transaction say to Mr. Schmeidler: "Here, I want my money back"? Is that your notion?

Mr. Cole: I object to that. Whatever this plaintiff's rights are are to be settled as a matter of law, not by his opinion. In the second place, he has injected into the question a conclusion of fact on the part of the counsel.

20 Mr. Bourgeois: This is cross-examination. I have a perfect right to find out what this man's opinion is upon which he is bringing this suit. I have a perfect right to find out what this man's theory is upon which he is bringing this suit.

The Court: I am inclined to think the question is all right. I will permit it.

Mr. Cole: Allow me an exception?

30

The Court: Yes.

Q. (Repeated by the stenographer.) Now, is it your opinion that you were within your rights to go along and use that property as your own, sell the property and dispose of it as you saw fit, have a fire and burn it out, lose the agency because you

would not buy the cars, and then after you had made a failure of the business transaction say to Mr. Schmeidler: "Here, I want my money back"? Is that your notion?

A. I had very little to do with the business. Mr. Johnson ran the whole business.

Q. I didn't ask you that. I want to know whether that is your opinion or not?

A. No; it was not my notion at all.

Q. Now, what was your notion? 10

A. Naturally to make money on the thing.

Q. That was all there was to it?

A. That is what you buy—or go into a company for, to make money; isn't it? That is what I went in for. If I had a suspicion that there was anything wrong I would not have bought \$6,000 worth more of the stock—that's a sure thing—in October.

Q. Now, you say the stock did not make dividends, but you admit that it did make money during the first four months after you had it? 20

A. Well, according to their statements, they showed profits.

Q. Well, is there any other way that you can tell?

A. No.

Q. Then it did make money; didn't it?

A. According to the statements, yes.

Q. Wasn't this statement of June 12th, handed to you by Mr. Johnson two days after the twelfth day of June?

A. About four days—three days before the settlement was made. 30

Mr. Cole: He said June 22nd. You don't mean that; statement of June 12th.

Q. June 12th. Wasn't this statement of June handed to you by Mr. Johnson two days after the

twelfth day of June and about three days before the settlement was made; that is, the book statement?

A. There was no other statement except this one we settled on.

Q. And you never had that statement in your possession prior to the day that you made settlement, on the seventeenth of June; is that right?

A. Twelfth of June—seventeenth of June, yes I
10 never saw that statement until Mr. Brown put it in my hands about the 28th.

Q. You are sure of that?

A. I am positive of that.

Q. Well, what was this other statement that you saw beforehand? You told Judge Cole that you saw a statement before that. What was that statement?

A. That statement was what—it was a sort of statement they presented to us as a basis to work on.

Q. When was that statement presented to you?

20 A. Oh, that was a month or so before.

Q. Whom was that made by?

A. I don't know that.

Q. Was it typewritten?

A. I don't even recall that. We never went any distance on it.

Q. Who handled that statement?

A. Mr. Johnson had it.

Q. And he gave you a statement of it?

A. No; he didn't give me a statement of it.

30 Q. He just kept that for himself?

A. He just showed it to me as a standing of the company.

Q. And what did that show?

A. I don't recall now.

Q. Was that a statement made from the books of the company?

A. I couldn't tell you; I don't know what he made the statement from.

Q. Now, Mr. Metz, let me ask you just one question more; didn't you go out on more than one occasion with Mr. Schmeidler and Mr. Johnson and go from car to car and agree upon the price that was to be paid for either of those cars before this statement was made up?

A. I did not.

Q. Not at all?

10

A. No.

Q. Never?

A. No.

Mr. Bourgeois: That is all.

Re-direct examination.

By Mr. Cole:

Q. Have you had any experience in bookkeeping? 20

A. Not a bit, to my sorrow.

Q. Ever had any business in analyzing statements of the standing of the corporations?

A. Not a thing.

Q. Was there ever any inventory of the assets of this corporation made up in your presence?

A. No.

Q. Before you met in Mr. Brown's office?

A. No.

Q. When you say that you agreed to certain 30 figures on this inventory, what do you mean by that?

A. We mean—I mean by that that when we met in Mr. Brown's office these figures were purported to come from Vollmer, Thompson and Christensen and we agreed that they must be all right.

Q. What was said and who said, if anything,

about the accuracy of the correctness of the figures on that statement?

A. Mr. Brown said to Mr. Schmeidler, he said: "Mr. Schmeidler, do you know that these figures are correct?" He said: "I have no way of telling it." Mr. Schmeidler said: "I don't know a thing about it. I leave all my work to Mr. Christensen. He looks after all my business and I don't know a thing about it, and if he says it is right it must
10 be right."

Q. What, if anything, did Christensen say in reply to that?

A. Mr. Christensen said the statement was all right.

Q. Now, you stated on cross-examination, that you went to see Mr. Sickler?

A. Yes.

Q. About these statements that you had received from month to month?

20 A. Yes.

Q. Where did you see him?

A. He—I took them down to his house.

Q. What is Mr. Sickler's business?

A. He is the treasurer in the Guarantee Trust Company.

Q. Did he tell you whether or not there was a discrepancy between this statement you received on the day that you were in Mr. Brown's office and these monthly statements?

30 A. Yes; he did.

Q. What did he tell you was the discrepancy?

A. He says: "There was a discrepancy of about \$3,500 for which I cannot account".

Q. That was before you received the statements from Mr. Brown?

A. Yes; that was two—about three weeks before.

Mr. Cole: That is all.

Re-cross examination.

By Mr. Bourgeois:

Q. What has been your business experience? You have not been in the automobile business, nor a book-keeper. What have you been?

A. I am a carpenter by trade, Mr. Bourgeois. 10

Q. Any other business besides carpenter? You have done what?

A. Well, I have been in the butcher business and I have built quite a lot of properties for myself.

Q. Bought and sold real estate?

A. No, very little.

Q. What other business have you been in besides that?

A. Well, that is practically the extent of my business. I had an oppor— 20

Q. Going back to the statements again and your knowledge of them, didn't you and Mr. Schmeidler actually go over the furniture in the office there and determine how much you would pay for it?

A. The furniture was the only thing. Mr. Schmeidler and I didn't. Mr. Johnson did as a go-between.

Q. Didn't you also go over the stationary?

A. Well, that included the office fixtures; that was in the same line, not all of them. 30

Q. Now Mr. Metz, of course, you examined that statement, book statement of June 12th, 1922, pretty carefully, I suppose, because you take exception to the inventory because it shows less on that statement than what is on the agreed statement?

A. Yes.

Q. Now, what have you got to say about the item

of office furniture? On the agreed statement it was \$750; on the book statement that you relied on for your inventory it was \$2,025?

A. Well, that was supposed to be checked up for income purposes, so they could take a lot of it each year.

Q. Then the \$750 you think is what ought to go?

A. Yes.

10 Q. Then in machinery and tools on the agreed statement—you made an estimate of that; didn't you; had Mr. Beck come down there and go over that?

A. Mr. Beck did look over some of the tools.

Q. And you agreed that you would pay \$1,250 for them?

A. Well, whatever the statements say.

20 Q. On your book statement, but not of the same date, it says those tools are worth \$3,250. You don't make any complaint of that; do you?

A. Well, they were not worth it.

Q. They were not worth it?

A. No.

Q. Then in the service truck, where you go to buy in the agreed statement, you give \$300 for a service truck; in the book statement for the same date it showed that service truck or service trucks \$2,650. You don't make any complaint about that, do you?

30 A. Well, there was only one service truck.

Q. I see. Then you say something was said to you about undelivered cars. Now, you were charged with one-third of the profit of those undelivered cars; weren't you?

A. I believe so, yes.

Q. And this amount was \$878. That is what you agreed to pay for the undelivered cars, your share of the profit?

A. Whatever it says on there, yes.

Q. So you knew there were undelivered cars there?

A. They were presumed to be, yes.

Q. And they told you that those undelivered cars were the Willys-Knight, that service car, and the Willys-Knight that they put in at \$1,050; you admit that?

A. That is making some money if they can make that charge on two cars.

Q. Didn't you say that you did admit that; that they said that to you? 10

A. I don't admit that, no.

Q. A little while ago you said they did say that to you?

A. Said what?

Q. You admitted that they said to you that there was the service car, the Willys-Knight had been sold or agreed to be sold for \$1,400, and another Willys-Knight had been agreed to be sold or had sold for \$1,050? 20

A. I don't think I agreed to that.

Q. Well, you said they told it to you, only you didn't know whether it was so or not.

A. I said they might have told me; I don't know.

Q. But, at any rate, you did agree to pay \$878 as one-third of the profits on the undelivered cars?

A. According to the statement, yes; we did.

Q. Now, will you look at your agreed statement and tell me which of these items are not O. K.? The Willys-Knight car, \$2,450. 30

A. I don't know which is not O. K.; I have no means of telling.

Q. Well, which do you claim is not right?

A. That whole statement in there.

Q. Well, what part, all of it?

A. Yes.

Q. Do you deny that you agreed to pay \$150 for the office stationary.

Mr. Cole: May it please your Honor, I object to this. It is not re-cross, and if he has been asked that question once he has been asked it at least twenty times.

The Court: He has, but I do not think he has
10 ever answered. If he would answer it once I would be glad to shut off the examination.

Q. Now, the office stationary, \$150; is that satisfactory or isn't it? Is that right or not right?

A. I have told you, Mr. Bourgeois, that we agreed to everything on here. Now, why harp on it.

Q. Well, what are we kicking about or fighting about if you agreed to pay it?

A. Because the other statement said it was not
20 there.

Q. Well, the other statement—well, that is the only thing you have got; because the other statement does not call for it, is that it?

A. The statement supplied by Vollmer, Thompson and Christensen does not call for it.

Q. Didn't Vollmer, Thompson and Christensen furnish you with the statement you have there?

A. I don't know who furnished this one. They
30 claim they did.

Mr. Bourgeois: All right.

(Witness excused.)

EDWARD M. WELLS, called as a witness on behalf of the plaintiff, being duly sworn was examined and testified as follows:

Direct examination.

By Mr. Cole:

Q. What is your business or profession? 10

A. Public accountant.

Q. With whom are you associated?

A. Vollmer, Thompson and Christensen.

Q. How long have you been associated with them?

A. Six and a half years.

Q. Did you yourself make a statement of the financial affairs of the Coast Automobile Company as of June 12th, 1922, or assist in having that done?

A. I did make one myself.

Q. I show you Exhibit 5 and 6, and ask you 20 whether they are the statements to which you refer?

A. I am unable to say whether this is the statement that I made because I cannot remember the figures now.

Q. At whose request did you make the statement?

A. Mr. Christensen told me to go down and make a statement of the financial condition of the company.

Q. What did you do with the statement that you made up? 30

A. That I couldn't say, whether I sent it down to the office of the company or give it to Mr. Christensen to deliver; I don't remember.

Q. What is the practice, or was the practice on June 12th, 1922, if there was any, concerning the firms keeping a copy of the statements that are made?

A. They always kept a copy of any statement that went out and put it in a file.

Q. So that if you or any other member of the firm made a statement of the affairs of the company as of June 12th, 1922, in the usual course, a copy would be found in the files of the company?

A. Yes, sir.

Mr. Bourgeois: Judge, we are willing to admit
10 that is a copy of the statement that was made on
June 12th, 1922.

Mr. Cole: All right; and was made at the request of Mr. Christensen?

Mr. Bourgeois: At the request of Mr. Schmeidler.

Mr. Cole: And he knew about the statement,
20 these two statements?

Mr. Bourgeois: He knew they were to be gotten out. I don't know that he actually saw it, but he knew it was ordered to be gotten out.

Mr. Cole: I want also to be sure that in fact he saw the statement; these two statements, five and six.

30 Mr. Schmeidler: Yes.

Mr. Bourgeois: We admit, then, that he saw them.

Mr. Cole: That is all, Mr. Wells.

(Witness excused.)

W. ELMER BROWN, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

Q. You are a member of the Bar of this State; 10
are you not?

A. I am.

Q. Do you recall a meeting at your office some-
time in June, 1922, at which Mr. Metz and others
were present?

A. I do.

Q. Will you state all who were present?

A. Mr. Metz, Mr. Beck, Mr. Schmeidler, Mr. Chris-
tensen, Mr. Johnson and myself.

Q. First, according to your recollection, what was 20
said or done and what took place on that occasion?

A. As I recall it, Mr. Metz was there a few min-
utes before the others came, and there was a state-
ment presented to me purporting to be a statement
of the financial condition of the company.

Q. Who presented that?

A. My recollection is that I got the statement
from Mr. Metz.

Q. I show you Exhibit P4—

Mr. Bourgeois: If the Court please, Mr. Brown 30
made which I think was not responsive and I ask
that a part of his answer be stricken out; that which
says: "Purporting to be a statement of the financial
condition of the company." That is not responsive
to the question.

Q. (Repeated by the stenographer.) First, according to your recollection, what was said or done and what took place on that occasion?

A. As I recall it, Mr. Metz was there a few minutes before the others came in, and there was a statement presented to me purporting to be a statement of the financial condition of the company.

10 Mr. Cole: Strike out "purporting."

Q. The question is whether Exhibit P4 is the statement that Mr. Metz presented to you.

A. That is the statement.

Q. Now, proceed.

The Court: Judge, will you tell me whose statement that is?

20 Mr. Cole: This is the one upon which we say we relied, with the \$12,000 inventory.

30 A. This statement I personally knew nothing about, and Mr. Metz seemed to know nothing about the details or how it was made up, and for the purpose of getting that information I first inquired of Mr. Schmeidler how this statement was made up, and he said that he knew nothing about the actual making up of the statement; that the statement was made up by Mr. Christensen who was in his employ to render to him monthly statements of his interest in this company and of other interests that he had put down; and he said that if Mr. Christensen made this statement he backed it up; he would stand back of whatever Mr. Christensen said about it. I then turned to Mr. Christensen and I inquired how this statement was made up and he told me that the statements were made from the books of

the company, together with some information that he had gotten from Mr. Johnson. I asked him whether or not he had taken a physical inventory of the stock, referring particularly to parts and accessories and cars, and he said he had not. I asked him whether or not the values opposite the various items under the general head of "Inventory" were given to him by Mr. Johnson or whether he had taken those items from the books, and he told me that he had taken them from the books of the company. Some discussion took place there by myself with Mr. Metz as to what reliance could be put in this statement, it having been made by the firm of Vollmer, Thompson and Christensen, and I told him that I knew Mr. Vollmer and I knew Mr. Thompson. Up to that time I don't think I had met Mr. Christensen, and knew nothing about him. And I said that I had considerable regard for the integrity of the firm, and that I personally would accept their statement. There then occurred some discussion about an item of advertising. It appeared that the company had entered into some contract for advertising which covered the entire period of a year and a portion of the year having elapsed and still some portion to come, it was then discussed as to whether or not there should not be some apportioning of the cost of that advertising between Mr. Schmeidler and Mr. Metz, and it was agreed—the item for advertising was \$2,325.70—it was agreed that there had been \$768.40 worth of that advertising already used up, and I made a notation on the sale of that difference. Then I deducted that sum from \$12,484.41 which was the total of the statement, and showed Mr. Schmeidler's interest in the company to be worth then with that deduction, \$11,716.01. Some discussion took place between Mr. Metz and Mr. Schmeidler as to

how much Mr. Metz ought to pay them for Schmeidler's interest in the company based on this statement, and my recollection is that Mr. Metz at the outset of that discussion, agreed to pay only the amount that the statement showed Mr. Schmeidler's interest to be worth, with the deduction on account of the advertising that had been used up; and Mr. Schmeidler said that he would sell for \$12,000, no less, and the result of it was that Mr. Metz then
10 made out his check for \$12,000 and gave it to Mr. Schmeidler, and there was delivered at that time the stock of five hundred and ten shares, I think it was, which stood in the name of Mr. Hanstein and had been endorsed by assignment in blank by Mr. Hanstein.

Q. Now, was there any other statement touching the affairs of this company produced at that session?

20 A. There was no other statement at that session except this one that is marked Exhibit P4.

Q. Had you yourself before that date seen any other statement?

A. I had not.

Q. Did you later see a statement om this company as of the same date as that, to wit, June 12th, 1922?

A. I did.

Q. How did you come to get this statement or see it?

30 Mr. Bourgeois: Objected to as incompetent, immaterial and irrelevant. We have admitted the statement in evidence. It matters not how he got it.

The Court: I will admit it.

Q. Now, don't tell us what Mr. Metz said to you, except that he did see you. As the result—

A. As the result of Mr. Metz coming into my office and seeing me sometime in the month of January—I don't recall just the time—I went in and interviewed Mr. Thompson of the firm of Vollmer, Thompson and Christensen, who are on the same floor of the Guarantee Trust Building with me, at that time—

Mr. Bourgeois: I object to that as incompetent, immaterial and irrelevant. We admit that he got it and that it was made. That is the gist of the whole thing. 10

Mr. Cole: That fact does not preclude it if what I am trying to show is relevant.

The Court: No. I will permit you to show how you got the statement.

A. I had with me at that time this statement, Exhibit P4, and some other statements that Mr. Metz had given me— 20

Mr. Colt: Have you that batch of statements that were called for, Mr. Bourgeois? I have not seen them if you had them.

Mr. Bourgeois: Well, I handed them up to the court.

Mr. Cole: The bunch? 30

Mr. Bourgeois: Oh, I have the bunch.

Q. Are these statements that have been marked in evidence the other statements that he showed you?

A. Well, these appear to be the same statements.

Q. Now, from that point proceed.

A. I called Mr. Thompson's attention to the fact that there seemed to be an apparent discrepancy—

The Court: It was not my purpose to admit conversation between you and Mr. Thompson, but just to show how you came to get the other statements.

10

The Witness: I asked for an explanation of the statements and as a result of that I got a statement of the condition of the Coast Automobile Company as of June 12th, 1922, which was different from that which has been marked Exhibit P4.

Q. Where did Mr. Thompson get that statement from?

20 A. Where did he get it? I only know that he told me that he got it from the files of his office.

Q. Did he hand you that in his office or in your office?

A. No, in his office.

Q. Then it was in his office you got it?

A. Yes.

Q. Now, did you make a copy of that?

A. I did.

30 Q. I show you Exhibit P5 and 6 and ask you whether they are copies of the statement or statements which Mr. Thompson handed you at that time?

A. They are the copies which I made.

Mr. Cole: Cross-examine.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Brown, there are about three questions or four, I think. On this day when settlement was made in your office you were representing Mr. Metz as his lawyer, were you?

A. Yes.

Q. And were you advising him as a lawyer? 10

A. Yes.

Q. At that time you said to him this, did you not: That Mr. Christensen had said that the statement that was made was made up from an inventory from the books which he had supplanted—not supplanted; let me get that; I am trying to transpose this language—well, this is what took place, this is what you say took place: It was brought out from Mr. Christensen the fact that they had not made a detailed inventory article by article; that they had made up the inventory from the books, together with the information that he had gotten from Mr. Johnson. Now, that is right; isn't it? 20

A. That is my recollection.

Q. Then you said to Mr. Metz that you could only advise him legally and that either he would have to make a detailed examination of the assets of the company himself or accept the statement that had been rendered as made up by the firm of Vollmer, Thompson and Christensen; you told him that, didn't you? 30

A. That is my recollection.

Q. And then he agreed to go through and make the settlement; didn't he, without going down and making a detailed examination of the assets or anything else?

A. Finally he did. There was some conversation that took place between that.

Mr. Bourgeois: That is all.

Mr. Cole: That is all, sir.

(Witness excused.)

10

WILLIAM BECK, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

20 Q. Are you the Mr. Beck who bought some of the stock of this company?

A. Yes.

Q. Were you in Mr. Brown's office on the day Mr. Metz passed this check to Mr. Schmeidler?

A. I was.

Q. Did you see the statement which is marked Exhibit P4?

A. Yes; yes; I saw that statement.

Q. Did you see any other statement at that time?

30 A. No, sir.

Q. Had you seen any other statement in writing of the affairs of this company before you met in Mr. Brown's office?

A. No, sir.

Q. Did you ever see any inventory taken of the property of this company before June 19th, 1922,

or whatever the date was that you met in Mr. Brown's office?

A. I did not.

Q. Now, when did you go to the company's office or plant to assist in the management or to work there, about.

A. About a couple of weeks after the seventeenth.

Q. How long did you continue there?

A. Until October; sometime in October.

Q. Was that the time that you sold your stock 10 to Mr—

A. Metz.

Q. Yes: When you left in October were the books of the company still there so far as you know?

A. They were down on Atlantic Avenue.

Q. What?

A. On Atlantic Avenue. I worked up—

Q. Is that where the place of business was?

A. Where they were selling the cars; but where they repaired the cars was down on Baltic Avenue. 20

Q. But the books were at the office on Atlantic Avenue?

A. Yes.

Q. And were they still there when you left?

A. Yes, sir.

Mr. Cole: Cross-examine.

Cross-examination.

30

By Mr. Bourgeois:

Q. Mr. Beck, you are a practical machinist; aren't you?

A. Yes, sir.

Q. And Mr. Beck was anxious to have you go into business with him; wasn't he?

A. Yes.

Q. And before the settlement was made in Brown's office you were down there looking over the business on a number of occasions; weren't you?

A. On several occasions, yes.

Q. You went over the parts?

A. I looked through them; I looked around.

Q. You saw the automobiles?

A. Yes.

10

Mr. Cole: I object to this as not proper cross-examination.

Q. Used cars?

A. Yes.

The Court: I will permit it.

Q. And the Willys-Knight cars?

20

A. And the Willys-Knight cars.

Mr. Cole: Exception.

The Court: Yes, you may have it.

Q. You saw them?

A. Yes.

Q. And the Overland cars?

A. Yes; I saw the Overland cars.

30 Q. Did you go over with Mr. Schmeidler or with Mr. Johnson and price those cars?

A. No, sir.

Q. You did not? When you saw the statement in Brown's office you were satisfied it was all right; weren't you?

A. Yes; I was satisfied it was all right.

Q. You had gone over and you knew they were there and they were satisfactory; isn't that true?

A. Yes.

Mr. Bourgeois: That is all.

Re-direct examination.

By Mr. Cole:

Q. What do you mean, Mr. Beck, when you say¹⁰ the statements were satisfactory?

A. This statement here. You see on that statement that they had in the office there; that is the only thing.

Q. What do you mean by "agreed on it?"

A. We were willing to pay the price that they asked for.

Q. Did you have anything—did you know anything about it outside of what that statement told²⁰ you?

A. No; I didn't know any more about it.

Q. Did you rely on that statement as being true, that they submitted to you?

A. I think—I thought it was true.

Q. What?

A. I thought it was true.

Mr. Cole: That is all.

Re-cross examination.

30

By Mr. Bourgeois:

Q. I understand you to say and you did say, that before that statement was submitted to you you had gone over these cars and you knew the parts

were there; you were familiar with the whole situation?

A. I knew the parts were there, but I didn't go over everything; I can tell you that.

Q. But you knew the cars were there?

A. I saw some of the cars.

Q. And they were priced to you and they were satisfactory?

A. No; there was not no price mentioned.

10 Q. Just priced them at the place; did they?

A. Yes; they were all lumped together up in the office.

Q. And from your knowledge of it you were satisfied with it?

A. Yes.

(Witness excused.)

20

HARRY C. JOHNSON, called as a witness on behalf of the plaintiff, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cole:

30 Q. Are you a stockholder in the Coast Automobile Company?

A. Yes, sir.

Q. What was the extent of your interest in the company?

A. I hold a half interest in it.

Q. And who had the remaining interest?

A. Mr. Schmeidler.

Q. Now, in whose name did Mr. Schmeidler's stock stand?

Mr. Bourgeois: That is objected to as irrelevant and immaterial, so long as it was delivered, what difference does it make in whose name it was?

The Court: I do not think it is relevant.

Mr. Cole: What is your Honor's ruling? 10

The Court: I say, I do not think it is relevant.

Mr. Cole: Your Honor will allow me an exception?

The Court: Yes.

Q. Have you the books of the company here?

A. Here in court? 20

Q. Yes.

A. Yes, sir.

Q. Will you produce them, please?

A. (Witness produces five books.)

Q. Do you remember the previous trial of this case?

A. Yes, sir.

Q. Were the books here then?

A. Yes, sir.

Q. In court?

A. Yes, sir. 30

Q. Do you recall whether they were offered in evidence?

Mr. Bourgeois: I object to that as incompetent, immaterial and irrelevant. The record is the best evidence.

Mr. Cole: He might know.

The Court: If you couldn't tell, I don't think he could.

Q. Did Mr. Christensen have a share of stock in that company?

A. I think he held one share.

Q. Do you know whether it was his own stock or
10 somebody else's?

A. That I couldn't tell you.

Q. How is that?

A. That I couldn't tell you.

Q. You do not know?

A. No; I don't know whether it belonged to him.

Q. Don't you know it was Mr. Schmeidler's stock?

A. Not for a fact, no.

Q. Are these all the books of the company?

A. Yes, sir.

20

Mr. Cole: I want to offer these books in evidence. Won't you please name them as the stenographer marks them.

The Witness: This is the parts book.

(The book referred to is received in evidence and marked as an exhibit for the plaintiff, P14.)

30 Q. And the next?

A. I would rather someone else would tell you.

Q. You mean to say you do not know what the books are called?

A. No; I don't know whether they are journal or ledger.

Q. Well, here is a book which on the inside cover

has the following: Number 782; National Column Book.

(The book referred to is received in evidence and marked as an exhibit for the plaintiff, P15.)

The Witness: I think there is a bookkeeper in the court who can tell what they are.

The Court: This is a cash book. 10

(The book referred to is received in evidence and marked as an exhibit for the plaintiff P16.)

Mr. Cole: Now, the next one?

The Court: This is too much for me. That is some special book they keep in their own system.

Mr. Cole: Now, here is a book—— 20

Mr. Bourgeois: Maybe that does not belong to the set.

Mr. Cole:—has on the back the word “ledger.” That will be offered. That is one of your books, is it, Mr. Johnson?

The Witness: Yes, sir.

(The book referred to is received in evidence and marked as an exhibit for the plaintiff, P17.) 30

Q. Here is another, printed on the back “Journal.” Is that one of your books?

A. Yes, sir.

(The book referred to is received in evidence and marked as an exhibit for the plaintiff, P18.)

Q. Did you assist anyone in preparing the statement which is marked, Exhibit P4?

A. Yes, sir.

Q. Whom did you assist?

A. I assisted—you mean who was I assisted by or whom did I assist?

Q. Either way. Who helped in making it up?

A. Why Mr. Metz helped me to arrive at the prices, him and Mr. Schmeidler.

10 Q. Mr. Schmeidler assisted; did he?

A. Him and Mr. Metz together.

Q. That is what I want to know. Where were you?

A. In the office of the Coast Automobile Company and in the garage.

Q. And when was that?

A. Probably three or four days prior to June 12th.

Q. Now, were these books used?

20 A. Were these books used? These books in evidence?

Q. Yes.

A. Yes, sir.

Q. You don't understand bookkeeping yourself?

A. No.

Q. Who gave you instructions about the accuracy of these books?

A. I don't quite understand your question.

Q. Who helped, who assisted in telling about these books if you didn't understand them? Who did?

30 A. Why, we employed a bookkeeper.

Q. Well, did she help?

A. She helped get out the figures, but the figures of June 12th were taken off by Mr. Wells, Mr. Wells and Mr. Christensen.

Q. Well, that is what I am trying to get at.

A. Well, don't confuse me about this statement.

Either the book statement or the agreed statement, which is it?

Q. I am talking about this statement marked Exhibit P4.

A. That is the statement that they agreed upon.

Q. I want to know, did you mean to say that these books offered in evidence were used in making up that statement?

A. Yes, sir; at times.

Q. And did the bookkeeper assist?

10

A. When she was asked.

Q. What?

A. When she was asked; but it was not cus—

Q. Was she ever asked?

A. She was asked either by Mr. Wells—principally by Mr. Wells—or Mr. Christensen.

Q. What is the name of the young lady?

A. Miss Fisher.

Mr. Cole: That is all. Cross-examine.

20

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Johnson, will you take this statement that you call the agreed statement and tell me what you mean when you speak of the agreed statement?

A. Why, these figures under "Inventory"—every item on there with the exception of the parts, was 30 agreed upon.

Q. Now, tell me what you mean by "agreed upon." You have there Willys-Knight cars \$2,450.

A. Yes, sir.

Q. Now what do you mean by that was "agreed upon?"

A. For instance, we had two cars, one of them

was a demonstrating and the car at the time this negotiation was going on, was sold with a thousand dollar deposit on it for \$1,400. They both knew it, both Mr. Metz and Mr. Schmeidler; and the price that they agreed on was \$1,400, for that particular car.

Q. Now, you had another Willys-Knight car?

A. That was \$1,055.

Q. What about that?

10 A. That was agreed on as \$1,055.

Q. And has that been sold or not sold?

A. Deposit of \$55. The sale was to be consummated as soon as Mr. Schmeidler got out. It was sold to a jitney man.

Q. Why wasn't it consummated immediately?

A. Because I had an understanding with Mr. Schmeidler that I would not sell the jitneys while he was in the company.

20 Q. Then you were holding that in the air, as it were, until he got out, so you could make delivery of it?

A. Yes, Mr. Metz understood it.

Q. Now, in the book statement you have there, it shows Willys-Knight cars at \$904. How is that explained? What is it?

30 A. This particular car, that was sold for \$1,400, was carried on our books at \$904. The other car was not even on our books and had been cleared. I cannot explain why it was not on the books, but it had been cleared pending delivery.

Q. You had one car on your books carried at \$904 that you had then sold for \$1,400?

A. Yes.

Q. That was your demonstrator?

A. Yes.

Q. And you had another car that was not on your books at all?

A. No, sir.

Q. Not in your book inventory?

A. No, sir.

Q. That was then sold for \$1,050?

A. Yes, sir, with a \$55 deposit on.

Q. And \$1,050 plus \$1,400 made the \$2,450 that they agreed to take?

A. Yes, sir; both of them agreed on it, because both cars were sold.

Q. Metz agreed to accept it and Schmeidler agreed 10
—Metz agreed to pay it and Schmeidler agreed to accept it on the basis of \$2,450?

A. Yes, sir.

Q. And that clears up that discrepancy between the \$904 and the \$2,450?

A. Yes, sir.

Q. Now, when you came to the Overland cars it says: \$3,019. How is that arrived at?

A. Overland cars were all new automobiles. We took the cost price plus the handling charge on 20
each car with the exception of one. That car was sold to a Mr. Cantes in Atlantic City, and was to be delivered in the course of a few days. I think the holding up on the delivery was the lettering on the body. It was sold for whatever appears on the inventory, either \$750 or \$770; but the sale had actually taken place before this firm negotiating or agreeing on prices, and Schmeidler insisting on the car being put in at that figure.

Q. And did Metz agree to it? 30

A. He did.

Q. And did Schmeidler agree to take it?

A. He did.

Q. Then that car that was sold makes the difference, does it, between the agreed statement of \$3,019 and the book statement of \$2,587?

A. No, sir; there is an item in there of \$162 for a body that is not carried in of the Overland cars, but was on an Overland chassis in our show room.

Q. But actually in stock there and turned over?

A. Why sure; they saw it.

Q. And that cleans up the discrepancy in those two items?

A. Yes, sir.

Q. Now, the used cars, what about used cars?

10 A. The used cars were carried on our books at exactly what they were taken in at.

Q. That was \$1,720?

A. Whatever it might be; I don't remember the figure. Used cars are expensive—we bring a car in at \$200, spend \$300. That \$100 doesn't appear in that particular car, but goes over into an item of used car expense. I have cards here that I showed both Mr. Metz and Mr. Schmeidler while we were looking over the cars and again in the office; showed him exactly what the cars cost us and what we had spent on them, and the figures in the corner of the cards, what they agreed to pay for them.

20 Q. And that aggregated \$2,525?

A. I don't know what the aggregate is.

Q. Well, that is what they agreed to pay, isn't it?

A. Yes, \$2525.

30 Q. That, I understand you to say, means the cost to the firm of \$1,720 plus the moneys you had spent on those used cars in getting them ready so you could sell them again?

A. Yes, sir.

Q. New parts, what about them?

A. Parts?

Q. Yes.

A. There was an inventory of the parts taken.

I think the parts were carried on our books at \$3,500 or something.

Q. Yes, \$3,500.

A. And I made the statement, I think, in Mr. Beck's house to Mr. Metz and Mr. Schmeidler, that I thought there were more than those parts there. So we took an actual inventory of them in the day time, myself and Mr. Goldsmith in the night time; and Mr. Schmeidler and myself and Mr. Hank Christensen. Mr. Metz was in and out there during the time, and I asked him to participate in taking inventory. 10

Q. And that amounted to \$3,874?

A. Whatever the figure is there; yes, sir.

Q. Now, how about the accessories? You carried the accessories on your books at \$200; on the agreed statement it is \$310. How did that arise?

A. Well, we probably counted everything that we put on a car.

Q. What? 20

A. We probably counted everything that had been placed on a car, taken out of stock and put on a car, but was actually new.

Q. It represented the actual physical accessories that you had?

A. That we had on hand.

Q. The value of them?

A. Yes, sir.

Q. And the gas and oil and grease, they are both the same; \$225. Now, office stationary—do you know anything about the office stationary? 30

A. We never carried that on our books at all, and Mr. Metz and Mr. Schmeidler agreed on that.

Q. Did you have it there actually?

A. Yes.

Q. Did Mr. Metz ever see any of these cars we have been talking about?

A. Yes, sir.

Q. Did he see the parts?

A. Yes, sir; he did.

Q. And you say that these values were actually agreed upon for those articles between him and Mr. Schmeidler?

A. Every item on that inventory on the agreed statement, with the exception of parts, was agreed upon.

10 Q. Except the parts?

A. Except the parts.

Q. And the parts were taken as your inventory?

A. Yes, sir.

Q. Who took the inventory, you?

A. Myself and Mr. Goldsmith in the day time, and in the night time, Mr. Schmeidler, Mr. Hank Christensen and myself.

Q. And the actual amount of those things, the cost of them, I suppose it was—

20 A. The cost of them plus five per cent for war tax and five per cent for handling.

Q. And that amounted to this, \$3,874?

A. Yes, sir.

Q. Now, where were these agreements made between Mr. Metz and Schmeidler?

Mr. Cole: I object. It is not proper cross-examination. I have been pretty liberal, but I have to draw the line somewhere.

30

Q. You are shown 'an agreement' there, an "agreed" agreement. Did you ever see any other agreement besides that one?

Mr. Cole: I object. It is not proper cross-examination. I called his attention to that particular

paper and asked who assisted in the preparation of it.

The Court: Well, I do not think it makes much difference whether this witness ever saw any other paper or not; does it?

Mr. Bourgeois: Well, no; it does not make any difference whether he says it on cross-examination or direct examination. I know he examined about 10 the paper and I have been examining about the other paper also.

Mr. Cole: No; you have been examining about that paper.

Mr. Bourgeois: Well, I asked him about the other.

Mr. Cole: I object to it on the ground that it is not proper cross-examination. 20

The Court: I will sustain the objection.

Q. You have been asked to identify the books. Did Mr. Metz ever see the books?

A. He did.

Q. When?

A. Well, I couldn't tell you the specific number of times, but I can tell you one instance was the night before the day of the settlement. 30

Q. The night before what?

A. The day of the settlement.

Q. The settlement was on the seventeenth of June and he saw them, then, on the sixteenth of June?

A. He had access to them for two months prior to the sale.

Q. And had he gone over them prior to that time?

A. He had asked particular questions about different items,—not me; he asked the bookkeeper.

Q. I see. Was he ever refused any information about them?

A. No, sir.

Mr. Cole: I object, on the ground that it is not proper cross-examination.

10 The Court: Well, no; I think it is not, perhaps, proper cross-examination. I will sustain the objection.

Mr. Bourgeois: I think I must have covered all the cross-examination, so I will stop.

Mr. Cole: Is that all?

20 Mr. Bourgeois: I say, I think I have covered everything you have examined upon.

Re-direct examination.

By Mr. Cole:

Q. Were you anxious to have Mr. Schmeidler sell his stock?

30 Mr. Bourgeois: That is objected to as not re-direct and it is not in the nature of rebuttal, either.

The Court: I will sustain the objection.

Mr. Cole: That is all, Mr. Johnson.

(Witness excused.)

PLAINTIFF RESTS.

DEFENDANT'S MOTION FOR A NON-SUIT.

Mr. Bourgeois: If the court please, we move for a non-suit. There are two counts in this complaint: One is on the ground of rescission. As to that count, we say that the proof shows that this property has been changed and altered and not at all capable of being the same property that was transferred 10 at the time of this sale. It is impossible of being redelivered and was at that time and, therefore, there can be no rescission.

The second count is for damages. There is no evidence in this case—not the slightest evidence in this case of any damage they have sustained. Their whole case is that: “We bought this property according to an agreed statement and after a while we saw a book statement of the same day and book statement was not the same as the agreed state- 20 ment.” They do not say and Metz would not say that he had not received the articles; that he had not received as much as he was entitled to get. He would not say that. He does not say that he has been damaged. All he says is that the agreed statement was different from the statement he saw sometime after that was made up. Now, in order to recover on the second count, they have to prove damages, and they have not proved them. He says he relied on that statement, and does not say that 30 statement was wrong. Metz says he relied on the agreed statement but he does not know the goods were not there; he does not say it was wrong. He only says it is different from the other statement. and he does not show that the other statement is true; he does not show his loss or damage and

there is absolutely no proof here of loss or damage at all.

On the other hand, there is evidence that there was no loss or damage. Johnson's testimony is clear that those articles were there, and he explains exactly what Mr. Metz claims was the discrepancy between the two statements. Now, without any proof at all that would indicate that there was a loss, there certainly cannot be a recovery.

10

Mr. Cole: Of course, the single question here is whether there is any evidence to go to the jury on either count. The first count says that there was a false statement upon which we acted as being true. We discovered its falsity and thereafter rescinded; tendered back the thing we got, which was not the stock of the corporation, the physical stock, but a certificate of stock.

20

My friend says, that we cannot give back the stock that the company had at the time we purchased the certificate of stock. Of course, we can't. I suppose if I buy stock of the Pennsylvania Railroad Company upon the representation, which I believe to be true, and which turns out to be false, —I suppose I have a right to rescind that bargain and hand the stock back and get my money. The fact that the rolling stock of the Pennsylvania Railroad Company and a lot of other things change in the interim, is of no concern to me; I am not selling
30 the physical stock—or buying the physical property of the railroad; I am buying its certificate of stock, and if the man sees fit to defraud me in the statement, he takes the chance of what is to happen to the physical property of the company in the meanwhile. That is his situation. There is nothing here to show that anybody dissipated

the property. It is true that you may not have the same property, but so far as this case goes, the company has the equivalent; either has the cash or bills receivable.

Now, is there anything to go to the jury on the question of fraud? My friend says that Mr. Metz would not swear he had been damaged. Mr. Metz is not the one to decide this case. The jury is the body to say whether he has been damaged, and that is why we have the jury here. We have an inventory showing over \$12,000 of which Mr. Metz says that Mr. Schmeidler said: "If my agent says that is correct it is correct and I stand back of it," and in the case of Nichol, I think it is, against the insurance company, the court says that there is a right to rescind the contract even though the principal does not make the statement. If the agent makes it in the course of the transaction, he is bound by it. Now, Christensen says that statement is correct; that is, the proof, the inventory show- 10
in \$12,000. Metz says: "I bought believing that to be true, irrespective of what I may have seen or what I didn't see. When we came to make the settlement, it was said that that amount of property in that inventory existed." Later there is produced another statement made up by the same firm, by the same man, for Schmeidler's benefit, at his direction, which we say we never saw and which shows the inventory to be \$9,000. Now, I submit that this may be said as to the strength of that 20
testimony, as to the weight of that testimony: "It is testimony from which the jury have a right to find that when the same man produces two different statements, one showing \$12,000 of inventory, the other showing \$9,000,—that unless and until there is a satisfactory explanation to the jury, they would have a right to say that the \$12,000 inventory was 30

false and the \$9,000 was correct. If that is so, then there is a discrepancy of over \$3,000, and that is what Metz said he was told by the treasurer of this company was true; that there was a difference of \$3,000 in those statements. My friend is arguing as though he expects the jury to find that there was nothing wrong; that there was no fraud; that there was no loss, and the jury may so find in the end; but that there is evidence to go
10 to this jury on every phase necessary to sustain that first count I submit is the state of this case.

Mr. Bourgeois: On the question of fraud, if your Honor please, if Judge Cole had introduced those two statements and then Metz had testified that he knew nothing about it, and there was no other testimony, it might be said here that the two statements might raise a question of fact that the jury might pass on; but he didn't speak about that. Metz
20 went on and said: "I don't know. I won't say one is wrong and I won't say the other is correct;" and then the Judge produces Mr. Johnson, who goes over and explains exactly the whole situation and shows how they are exactly the same—the difference in the amount of the inventories—in the books, I mean, but not a difference in the amount of the property. Now, where is there a question of fact to go to the jury?

30 Mr. Cole: In the meantime Metz denied on cross-examination the very question you put to Mr. Johnson on cross-examination, which you hadn't any right to, but I knew it would come out at some time; I did not care. But you have that controverted fact in the case.

Mr. Bourgeois: There is no controverted fact

that I can see in the case. But Metz did say the first time he was asked about that account "I don't know anything about that; it may be those were there. We agreed upon them." That is what I cannot conceive on the question. You do not have to let every case go to the jury because at some stage of the proceeding there might be a question open.

The Court: The question that goes to the jury in this case is whether or not the statement upon which they settled was a false statement and whether or not they relied upon it. 10

Mr. Bourgeois: Metz says he didn't know, and Johnson comes in and explains the statement fully; no controversy about it at all. He says that the \$904 car was one car. There were two cars there. Metz got them both and one of them was valued by those people at \$1,400 and the other at \$1,050. He shows there was no discrepancy between the two statements except the fact that in one of the statements there may be a part of the physical property was not there, whereas in the other it was there, and the testimony is that the physical property was there and there is no dispute about it. Metz says he was satisfied it was there. Johnson says it was there. Metz says he doesn't know; that it may have been there. 20

Mr. Cole: My friend overlooks what happened in Johnson's office while Johnson was present. When Metz was asked on cross-examination whether he agreed to those things he said: "I relied on those figures as being correct, in that inventory of \$12,000. And he didn't know anything about it." 30

Mr. Bourgeois: And Johnson comes along and shows it was correct, and his man Beck says they were correct, and there is no proof they were not correct, and they are his witnesses. Metz says he does not know. If there is anything there to go to the jury, I do not know what it is.

10 The Court: Before the plaintiff can rely upon a false statement or an alleged false statement whereby he would have the right to rescind or sue for damages, he must prove the statement false.

I do not see any proof in this case that that statement was false and until the falsity of the statement is proven or until there is at least a disputed question of fact as to whether or not it was false, there could be nothing to go to the jury. I do not know of a line of testimony that Metz or any other of the plaintiff's give, that that statement was false. They simply compare it with
20 another statement that they found afterwards and say the two statements do not agree. That is the whole effect of their testimony, but as to which statement is untrue. I do not know and nobody else in the case seems to know.

I will allow the motion for a non-suit.

Mr. Cole: Your Honor will allow me an exception?

30 The Court: Yes.

EXHIBIT P4.

Overland
 1-31-24 L.
 Willys Knight
 Improves with Use
 COAST AUTOMOBILE CO.
 Salesroom
 3424 Atlantic Avenue
 Atlantic City, N. J. 10
 STATEMENT OF CONDITION AS OF JUNE
 12th, 1922.

CURRENT ASSETS:

Cash in Bank	10,009.11	
Cash on Hand	97.91	
Cash Petty	50.00	
Cod's Collection	10.76	
Deposits, Mnfr.	650.00	
Retail Certificates	55.00	
Accts. Receivable	883.57	20

11,756.35

Inventories:

Willys Knight Cars	2,450.00	
Overland Cars	3,019.15	
Used Cars	2,525.00	
Parts	3,874.95	
Accessories	310.58	
Gas, Oil & Grease	225.00	
Stationery, Office	150.00	30

12,554.68

PARTS AND LABOR IN PROCESS

	280.03	
Office Furniture	750.00	
Machinery and Tools	1,260.00	
Service Truck	300.00	2,310.00

		<u>62.50</u>	
	PREPAID RENT	62.50	
	Prepaid Insurance	350.00	412.50
		<u>2,325.70</u>	
	ADVERTISING		2,325.70
			<u>29,639.26</u>
	TOTAL ASSETS		<u>29,639.26</u>
			<u>6,427.14</u>
	LIABILITIES		
10	ACCOUNTS PAYABLE	1,271.78	
	DEPOSITS ON SALES	2,350.00	
	NOTES PAYABLE	2,805.36	
			<u>6,427.14</u>
	NET WORTH		<u>23,212.12</u>
			<u>11,606.06</u>
	1/2 of Net worth	11,606.06	
	1/3 of profit unde-		
20	livered cars	878.35	
			<u>12,484.41</u>

 EXHIBIT P5.

1-31-24 L.

30 COAST AUTOMOBILE CO.

STATEMENT OF OPERATIONS TO JUNE 12,
1922.

Sales Parts,	4,309.37
Sales Labor	3,818.60

Sales Accessories,	1,805.85		
Sales Gas & Oil,	514.36		
Sales Willys Knight Cars,	27,127.55		
Sales Overland Cars,	18,895.00		
Sales Used Cars,	10,269.00		
Sales Stewart Trucks,	1,317.08		
			68,056.81
Purchases:—			
Parts,	6,661.12		10
Gas & Oil,	698.08		
Wills Knight Cars,	21,453.35		
Overland Cars,	18,279.37		
Accessories,	698.75		
Used Cars,	9,994.50		
Stewart Truck,	1,155.20	58,940.37	
Inventory June 12, 1922.			
Parts,	3,500.00		
Gas & Oil,	225.00		20
Overland Cars,	2,587.15		
Willys Knight Cars,	904.47		
Used Cars,	1,720.35		
Accessories,	200.00	9,136.97	49,803.40
			18,253.41
Overhead:—			
Overland Car Expenses,	155.87		
Willys Knight Car Exp.,	119.64		
Used Car Exp.	1,166.51		
Rent-Service Sts.	605.00		30
Commissions,	1,239.42		
Company Car Exp.,	2.35		
Insurance,	238.14		
Misc. Expense,	391.47		
Advertising,	1,525.70		
Free Service,	102.86		

	Int. & Discount,	317.28	
	Shop Wages,	3,962.27	
	Office Salary & Exp.	2,715.30	
	Traveling Exp.	65.73	
	Light & Heat,	301.07	
	Rent 3424 Atl. Avenue,	166.66	13,075.27
			<hr/>
			5,178.14
	Other Income:—		
10	Misc. Income,	58.48	
	Rent—Apartment,	210.00	
	Mdse. Discount,	580.89	
	Rent, 3424 Atl. Ave.	200.00	1,049.37
			<hr/>
		Net Profit,	6,227.51
			<hr/> <hr/>

EXHIBIT P6.

COAST AUTOMOBILE CO.
STATEMENT OF CONDITIONS AS OF June 12,
1922.

	Current Assets:		
	Cash in Bank,	10,009.11	
	Cash Petty,	50.00	
	Cash Mnfrs.	650.00	
	Accounts Receivable,	983.57	11,692.68
30	Inventory,		9,136.97
	Fixed Assets:		
	Office Furniture,	2,025.00	
	Machinery & Tools,	3,250.00	
	Plant,	2,000.00	
	Trucks and Autos,	2,650.00	9,925.00
			<hr/>

Contract—Willys Overland Inc.	10,800.00		
Goodwill,	20,000.00		
Prepaid Insurance,	350.00		
			<u>61,904.65</u>

LIABILITIES

Accounts Payable,	1,271.78		
Deposits on Sales,	1,500.00		
Notes Payable,	2,805.36	5,577.14	10
Capital Stock,	50,100.00		
Surplus,	6,227.51	61,904.65	

EXHIBIT P7.

1-31-24 L.

20

January 31, 1923.

Mr. Isadore Schmeidler,
1919 Atlantic Ave.,
Atlantic City, N. J.
Dear Sir:—

On or about June 17, 1922, I purchased from you all of your interest in the Coast Automobile Company, consisting of 510 shares of the capital stock thereof. Said shares of capital stock of said Company were then being held in trust for you by Walter Hanstein, Esq. and in his name. 30

I entered into negotiations with you for the purchase of your interest in said capital stock solely upon the basis of a statement which you submitted to me, purporting to show the financial status or condition of the said Coast Automobile Company, as of

the date of June 12, 1922. Said statement was in writing, and represented to be a true and correct showing of the assets and liabilities of said company, as well as its net worth.

Relying upon said statement as it was represented to me, I agreed to and did purchase said stock. I have recently learned that said statement was not a true and correct account of the financial condition of the affairs of said Company, and that I was there-
10 by misled, and was induced to pay to you for the said stock more than it was actually and truly worth.

This is, therefore, to notify you that I have elected and concluded to rescind said purchase, for the reasons aforesaid, and I hereby require and demand that you repay to me the sum paid to you for transfer of said stock, to wit: \$12,000. Upon the payment to me of said sum, I hereby tender myself ready and willing to return to you the shares of stock so purchased, and will, at that time, sever all my connections or relations with said Coast Automobile
20 Company.

Yours very truly,
Thomas O. Metz.

Overland

Willys Knight
Improves with Use

COAST AUTOMOBILE CO.

Salesroom

3424 Atlantic Avenue

Atlantic City, N. J.

30 STATEMENT OF CONDITIONS AS OF JUNE
12th, 1922.

CURRENT ASSETS:

Cash in Bank	10,009.11
Cash on Hand	97.91
Cash Petty	50.00
Cod's Collection	10.76
Deposits, Mnfr.	650.00
Retail Certificates	55.00
Accts. Receivable	883.57

11,756.35 10

Inventories:

Willys Knight Cars	2,450.00
Overland Cars	3,019.15
Used Cars	2,525.00
Parts	3,874.95
Accessories	310.58
Gas, Oil & Grease	225.00
Stationery, Office	150.00

12,554.68 20

PARTS AND LABOR IN PROCESS

280.03

Office Furniture	750.00
Machinery and Tools	1,260.00
Service Truck	300.00

2,310.00

PREPAID RENT 62.50

Prepaid Insurance 350.00 412.50

ADVERTISING 2,325.70

TOTAL ASSETS 29,639.26 30

LIABILITIES

ACCOUNTS PAYABLE 1,271.78

DEPOSITS ON SALES 2,350.00

NOTES PAYABLE 2,805.36

		6,427.14
	NET WORTH	<u>23,212.12</u>
	1/2 of Net Worth	11,606.06
	1/3 of profit unde- livered cars	878.35
		<u>12,484.41</u>
10		

EXHIBIT P8.

VOLLMER, THOMPSON & CHRISTENSEN

Accountants and Auditors

415-416-417 Guarantee Trust Building

Atlantic City

	Alex. Vollmer	Accounting Systems
20	Philip E. M. Thompson	Income Tax Service
	Certified Public Accountant	Periodical Reports
	Thos. J. Christensen	Audits-Investigations

COAST AUTO COMPANY
STATEMENT OF PROFIT AND LOSS.

JUNE 30, 1922.

	Gross Profit on Willys Knight Cars Sold.	6620.04
	Gross Profit On Overland Cars Sold.	3404.43
	Gross Profit on Used Cars.	799.50
30	Gross Profit on Parts and Accessories Sold.	2665.91
	Gross Profit on Gas & Oil Sold.	128.80
	Sales of Labor.	4501.76
	Gross Profit on Stewart Truck Sold.	114.55
	TOTAL GROSS INCOME	<u>\$18234.99</u>
	EXPENSES:—	

Service Station Rent.	605.00	
Commissions.	1509.67	
Insurance.	268.86	
General Expense.	430.36	
Advertising.	1752.42	
Free Service.	128.38	
Int. & Disc.	302.66	
Shop Wages.	4409.25	
Office Wages & Expense.	3073.56	
Traveling.	65.73	10
Light & Heat.	325.96	
Outside Labor.	36.64	12908.49
	<hr/>	<hr/>
Rent from Apartments.	210.00	5326.50
Rent from 3424 Atl. Avenue	33.34	243.34
	<hr/>	<hr/>
NET INCOME 6/30/21		\$5569.84

20

EXHIBIT P8-A.

VOLLMER, THOMPSON & CHRISTENSEN
 Alex. Vollmer Accounting Systems
 Accountants and Auditors
 Philip E. M. Thompson Income Tax Service
 Certified Public Accountant Periodical Reports
 415-416-417 Guarantee Trust Building
 Thos J. Christensen Audits—Investigations 30
 Atlantic City

COAST AUTO COMPANY.

STATEMENT OF CONDITION AS OF 6/30/22.

ASSETS:—

Cash on hand and in Bank.	4052.43
Deposit a/c.	650.00
Accounts Receivable.	586.53

INVENTORIES:—		
	Parts (Estimate)	3095.04
	Gas & Oil (Estimate)	225.00
	Accessories (Estimate)	200.00
	New Cars Overland.	1786.25
	New Cars Willys Knight.	3856.62
	Used Cars.	2878.41
	Office Furniture.	12041.32
	Machinery & Tools.	2025.00
	Plant & Service Station.	3250.00
10	Trucks & Autos.	2000.00
	W. K. O. Contract.	2650.00
	Good Will	10800.00
	Prepaid Insurance	20000.00
		210.00
		<hr/>
		58265.28
LIABILITIES:—		
	Accounts Payable.	991.88
	Bills Payable.	1603.56
		<hr/>
20		2595.44
	Made up of:—	55669.84
	Capital Stock	50100.00
	Surplus.	5569.84
		<hr/>
		<u>55669.84</u>

EXHIBIT P9.

30

1/31/24 L.

VOLLMER, THOMPSON & CHRISTENSEN
 Alex. Vollmer Accounting Systems
 Accountants and Auditors
 Philip E. M. Thompson Income Tax Service
 Certified Public Accountant Periodical Reports
 415-416-417 Guarantee Trust Building

Thos J. Christensen Audits—Investigations
 Atlantic City
 COAST AUTOMOBILE COMPANY
 Statement of Profit & Loss
 July, 1922

W-K Car Sales		\$6995.00	
Inventory 7/1/22	3856.62		
Purchases	10231.96		
	<hr/>		
	14088.58		10
Inventory 7/31/22	8515.01		
	<hr/>		
Cost of W-K Cars Sold		5573.57	
		<hr/>	
GROSS PROFIT on W-K Cars		\$1421.43	
OVERLAND CAR Sales	6102.66		
Inventory 7/1/22	1786.25		
Purchases	8401.87		
	<hr/>		
	10188.12		20
Inventory 7/31/22	4974.35		
	<hr/>		
Cost of Overland Cars Sold	5213.77		
		<hr/>	
GROSS PROFIT on Overland Cars		888.89	
USED CAR SALES	2900.00		
Inventory 7/1/22	2878.41		
Purchases	2923.86		
	<hr/>		
	5802.27		30
Inventory 7/31/22	3203.41		
	<hr/>		
Cost of Used Cars Sold	2598.86		
GROSS PROFIT on Used Cars		301.14	
PARTS SALES	1730.70		
Inventory 7/1/22	3095.04		
Purchases	1574.31		
	<hr/>		

		4669.35	
	Inventory 7/31/22	3321.60	
		<hr/>	
	Cost of Parts Sold	1347.75	
	GROSS PROFIT on Parts		282.95
	LABOR SALES	1150.27	
	Less Free Service	34.02	
		<hr/>	
	Gross Income from Labor		1116.25
10			<hr/>
	TOTAL GROSS TRADING INCOME		\$4110.66
	EXPENSES:		
	Demonstration	75.15	
	Rent	125.00	
	Commission	407.75	
	Miscellaneous Expense	74.62	
	Insurance	47.54	
	Advertising	150.58	
	Interest & Discount	52.65	
20	Mechanics' Wages	991.71	
	Office Wages & Expense	568.05	
	Traveling	22.97	
	Light & Heat	15.23	
	Outside Labor	131.08	2662.33
		<hr/>	<hr/>
	NET TRADING PROFIT		\$1448.33
	Rent from Apartment		50.00
			<hr/>
	TOTAL NET PROFIT		\$1498.33
30			<hr/>

EXHIBIT P9-A.

VOLLMER, THOMPSON & CHRISTENSEN
 Alex. Vollmer Accounting Systems

Accountants and Auditors

Philip E. M. Thompson Income Tax Service
 Certified Public Accountant Periodical Reports

415-416-417 Guarantee Trust Building

Thos J. Christensen Audits—Investigations
 Atlantic City

COAST AUTOMOBILE COMPANY

Statement of Condition

July 31st, 1922

ASSETS:

Cash on hand and in bank	\$8037.97	10
Accounts Receivable	676.64	
Deposit Account	650.00	
Inventory:—Parts, Oils &		
Accessories	3746.60	
W-K Cars	8515.01	
Overland Cars	4974.35	
Used Cars	3203.41	20439.37
	<hr/>	
Office Furniture	2025.00	20
Machinery & Tools	3250.00	
Plant	2000.00	
Trucks & Autos	2650.00	
W-K-O Contract	10800.00	
Goodwill	20000.00	
Prepaid Insurance	160.00	
	<hr/>	
	\$70688.98	

LIABILITIES:

Accounts Payable	2061.69	
Bills Payable	11459.12	13520.81
	<hr/>	
Difference or Net Worth	\$57168.17	
made up of:—		
Capital Stock	50100.00	
Profit to 6/30/22	5569.84	
Profit for July	1498.33	\$57168.17
	<hr/>	

	9,412.29	
Inventory 8/31/22	7,090.00	
	<hr/>	
		2,322.29
		<hr/>
Gross Profit on Used Cars		867.71
Sales Parts		1,420.51
Inventory 8/1/22	3,321.60	
Purchases	1,618.49	
	<hr/>	
	4,940.09	10
Inventory 8/31/22	3,844.67	
	<hr/>	
Cost of Parts Sold	1,095.42	
		<hr/>
Gross Profit on Parts Sold		325.09
Sales Labor	1,031.45	
Less Free Services	44.22	
	<hr/>	
Gross income from Labor	987.23	20
Total Gross Trading Profit	5,681.99	
Overland	Stewart Trucks	Willys Knight
		Improves with Use
COAST AUTOMOBILE CO.		
Atlantic City, N. J.		
Sales:		Service:
Albany Ave. and Boulevard		1315 Baltic Avenue
Phone 3359-W		Phone 3117
Aug. 31st 1922.		
Total Gross Trading Profit	5,681.99	30
Expenses:—		
Demonstration	103.44	
Service Station Rent	175.00	
Commissions	651.63	
Insurance	148.00	
Misc. Expn.	63.49	
Advertising	211.00	

Exhibits

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		\$80,650.64
LIABILITIES:—		
Acct. Payable	2,376.46	
Bills Payable	18,861.56	21,238.02
		<hr/>
	Difference or Net Worth	59,412.62
Difference or Net Worth made up of:—		
Capital Stock	50,100.00	
Surplus 8/1/22	7,058.17	
August Profit.	2,244.45	59,412.62 10
		<hr/> <hr/>

EXHIBIT P11.

VOLLMER, THOMPSON & CHRISTENSEN
415-416-417 Guarantee Trust Building
Atlantic City

Alex. Vollmer	Accounting Systems	20
	Accountants and Auditors	
Philip E. M. Thompson	Income Tax Service	
Certified Public Accountant	Periodical Reports	
Thos J. Christensen	Audits—Investigations	

COAST AUTO CO.

STATEMENT OF PROFIT & LOSS.

SEPT. 1922.

Sales:—		
Willys Knight Cars,	18,416.88	
Overland Cars.	4,978.34	
Used Cars.	5,745.00	30
Parts.	1,325.76	
Labor.	851.70	
		<hr/>
		31,317.68
Inventories 9/1/22:—		
Willys Knight Cars.	16,848.18	

	Handley Knight Cars.	2,315.00	
	Overland Cars.	2,745.99	
	Used Cars.	7,090.00	
	Parts Estimated.	4,044.67	
			<hr/>
			33,043.84
	Purchases:—		
	W. K. Cars.	9,268.60	
	Overland Cars.	4,371.02	
10	Used Cars.	5,825.87	
	Parts (Net)	889.31	
	Labor-Mech-Wages.	1,227.39	21,582.19
			<hr/>
			54,626.03
	Inventories 9/30/22.		
	W. K. Cars.	11,368.59	
	Handley Knight.	2,315.00	
	Overland Cars.	2,687.90	
	Used Cars.	6,072.62	
20	Parts (Estimated)	4,539.61	26,983.72
			<hr/>
	Cost of Goods Sold		\$27,642.31
			<hr/>
	Gross Trading Profit		\$3,675.37
	Expenses:—		
	Demonstration.	75.91	
	Rent.	175.00	
	Commission.	404.00	
	Misc. Exp.	33.51	
30	Advertising.	135.29	
	Free Service.	100.31	
	Int. & Disc.	53.09	
	Office Wages.	961.13	
	Light & Heat.	8.17	
	Outside Labor.	47.55	1,993.96
			<hr/>
			1,681.41

Exhibits 133

Rent Income 50.00

1,731.41

Note—A Ford Sedan was sold in August on which you had only made a small deposit. The balance of the purchase price to us was paid in September which lowers this month's profits by the amount paid this month.

10

EXHIBIT P12.

VOLLMER, THOMPSON & CHRISTENSEN

Accountants and Auditors

415-416-417 Guarantee Trust Building

Atlantic City

20

Alex. Vollmer Accounting Systems
Philip E. M. Thompson Income Tax Service
Certified Public Accountant Periodical Reports
Thos J. Christensen Audits—Investigations

COAST AUTOMOBILE COMPANY

Statement of Condition

October 31st, 1922

ASSETS:

Cash on hand in bank	\$12609.12	
Accounts Receivable	452.29	30
Deposit Account	675.00	
Inventories:—		
Willys-Knight Cars	14427.51	
Overland Cars	4543.55	
Used Cars	5320.00	
Parts (Estimated)	4746.07	29037.13

Office Furniture		2025.00	
Machinery & Tools		3250.00	
Plant		2000.00	
Trucks & Autos		2650.00	
W. K.-O. Contract		10800.00	
Good Will		20000.00	
			<u>20000.00</u>
			\$83498.54
10 LIABILITIES:			
Accounts Payable	2509.94		
Bills Payable	21556.52	24076.46	
			<u>24076.46</u>
	Difference or Net Worth		\$59422.08
	made up of:—		
Capital Stock	50100.00		
Surplus 10/1/22	9296.47		
October Profit	25.61	\$59422.08	
			<u>59422.08</u>
20			

EXHIBIT P13.

VOLLMER, THOMPSON & CHRISTENSEN

Accountants and Auditors

415-416-417 Guarantee Trust Building

Atlantic City

Alex. Vollmer	Accounting Systems
Philip E. M. Thompson	Income Tax Service
30 Certified Public Accountant	Periodical Reports
Thos J. Christensen	Audits—Investigations

COAST AUTOMOBILE COMPANY

Statement of Profit & Loss

October, 1922

Sales:

Willys—Knight Cars	\$16245.00
--------------------	------------

Exhibits

135

Overland Cars	3900.00
Hanaly Knight Cars	2895.00
Parts	2208.91
Used Cars	8400.00
Labor	1531.86
Gas & Oil	198.07

35378.84

Inventories 10/1/22:

Willys-Knight Cars	11368.59	10
Overland Cars	2687.90	
Used Cars	6072.62	
Hanaly Knight Cars	2315.00	
Parts (Estimated)	4539.61	

26983.72

Purchases:

Willys Knight Cars	17043.63	
Overland Cars	5105.62	
Used Cars	8582.70	20
Gas & Oil	103.58	
Parts	2216.64	
Labor	1253.30	34305.47

61289.19

Inventories 10/31/22:

Willys-Knight Cars	14427.51	
Overland Cars	4543.55	
Used Cars	5320.00	
Parts (Estimated)	4746.07	29037.13

30

Cost of goods sold 32252.06

GROSS TRADING PROFITS \$ 3126.78

EXPENSES:

Rent	466.66
Commissions	479.19
Insurance	161.64

Miscellaneous Expense	47.14	
Advertising	947.78	
Free Service	47.07	
Interest & Discount	118.10	
Office Expense & Wages	656.26	
Traveling Expense	10.00	
Light & Heat	217.33	3151.17
		<hr/>
	NET TRADING LOSS	\$ 24.39
10 RENT INCOME:		50.00
		<hr/>
	NET PROFIT FOR MONTH	\$ 25.61
		<hr/>

EXHIBIT P14.

COAST AUTO COMPANY.
STATEMENT OF PROFIT AND LOSS.
NOV. 1922.

20	Sales—New Cars W. K. Cars	4,660.11	
	Less Rebates on Cars Sold	229.55	4,430.56
		<hr/>	
	Sales—New Cars Overland.		3,192.55
	Sales Used Cars.		2,850.00
	Sales—Parts.		1,190.72
	Sales—Labor.		498.03
	Sales—Gas & Oil.		112.78
30			<hr/>
			12,274.64
	Inventory 11/1/22. New		
	Cars W. K.	14,427.51	
	New Cars Overland	4,543.55	
	Used Cars.	5,320.00	
	Parts Estimated.	4,746.07	
		<hr/>	

		29,037.13	
Purchases:—			
New Cars W. K.	1,346.21		
New Cars Overland	3314.42		
Returns.	1011.00	2,303.42	
Used Cars.	2,799.26		
Labor.	751.42		
Gas & Oil.	77.05		
Parts.	1,061.36	8,338.72	10
		<u>37,375.85</u>	
Inventory 11/30/22.)	11,159.84		
New Cars W. K.)			
New Cars Overland.	4,116.62		
Used Cars.	5,610.00		
Parts (Estimated)	4,818.52	25,704.98	
		<u>Cost of Goods Sold</u>	<u>\$11,670.87</u>
			20
		Gross Trading Profit	\$603.77
Expenses:—			
Rent.	466.66		
Commissions.	439.84		
Miscellaneous Exp.	92.18		
Advertising.	1,199.42		
Free Service.	46.66		
Interest & Disc.	8.87		
Office Wages & Exp.	569.98		
Traveling.	31.06		30
Light & Heat	61.50	2,916.26	
		<u>Net Business Loss</u>	<u>\$2,312.49</u>
Other Income:—			
Apartment Rent.		40.00	
		<u>Total Net Loss for Month</u>	<u>\$2,272.49</u>

COAST AUTO COMPANY.
STATEMENT OF CONDITION.
NOV. 30, 1922.

ASSETS:—			
	Cash on hand and in Bank.	3,812.38	
	Accounts Receivable.	327.22	
	Deposit a/c.	675.00	
10	Inventories:—		
	New Cars—W. K.	11,159.84	
	New Cars—Overland.	4,116.62	
	Used Cars.	5,610.00	
	Parts (Estimated.)	4,818.52	25,704.98
	Office Furniture.		2,077.65
	Machinery & Tools.		3,285.00
	Plant.		2,000.00
	Trucks & Autos.		2,650.00
	Contracts W. K. & C.		10,800.00
20	Goodwill.		20,000.00
			71,332.23
LIABILITIES:			
	Accounts Payable.	1,184.00	
	Bills Payable.	12,998.64	14,182.64
	Difference or Net Worth		\$57,149.59
Made up of:—			
	Capital Stock	50,100.00	
30	Surplus 11/30/22.	7,049.59	\$57,149.59

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New Jersey Court of Errors and Appeals

THOMAS O. METZ,
Plaintiff-Appellant,
v.
ISIDOR SCHMEIDLER,
Defendant-Respondent.

ON APPEAL FROM ATLANTIC CIRCUIT.

APPELLANT'S BRIEF.

STATEMENT.

Respondent sold to plaintiff some shares of the capital stock of the Coast Automobile Company. Appellant claimed that certain statements or representations were made by or on behalf of respondent concerning the assets of the company which induced appellant to purchase the stock. Later appellant discovered, as he claimed, that the statements or representations were false and thereupon notified the respondent that he rescinded the contract and tendered him the stock with demand for a return of his money. This was refused. This action was brought to recover the money. The trial Judge nonsuited upon the ground as stated by him, as follows:

“Before the plaintiff can rely upon a false statement or an alleged false statement whereby he would have the right to rescind or sue for damages, he must prove the statement false.

I do not see any proof in this case that that statement was false and until the falsity of the statement is proven, or until there is at least a disputed question of fact as to whether or not it was false, there could be nothing to go to the jury.”

(From the judgment of non-suit this appeal was taken.)

ARGUMENT.

THERE WAS SOME PROOF TO GO TO THE JURY WHICH WOULD HAVE WARRANTED IT IN FINDING THAT THE STATEMENTS OR REPRESENTATIONS WERE FALSE.

It will be noted that there is a single sharp question involved. Was there any evidence on which the jury would have been justified in finding the falsity of the statements or representations? It is settled law that if one enters into a contract relying upon the truthfulness of a material representation and such representation is found to be false, there is a right to rescind the contract and recover the money paid upon the strength of the truthfulness of the representation.

Byard v. Holmes, 33 N. J. L. p. 119.

It will be conceded that the case was not a strong one for the appellant. It may even be that on a rule to show cause, a verdict in his favor would be set aside as against the clear weight of the evidence. This was done by Judge Donges, who sat in the first

trial, where the jury rendered a verdict for the plaintiff. He concluded after due consideration of the case on rule allowed by him, that the verdict was against the clear weight of the evidence. A different question is presented on this appeal. If there was any evidence to be submitted to the jury involving the question of fact involved, it was error to nonsuit. The claim was that the assets of the corporation were materially less than represented. The statements or representations were in writing, which writing pretended to set forth the assets and were presented at the time of the payment of the money as being an accurate statement of assets. By that statement (Exhibit P4), the inventoried articles amounted to \$12,554.68. This statement purported to show the value as of June 12, 1922. Sometime after this date appellant became suspicious that things were not what they seemed with relation to this corporation. He thought he had been defrauded. As a result of his investigation and inquiry his counsel procured from the office of Vollmer, Thompson & Christensen, the auditors for the respondent, and who produced (Exhibit P4) a copy of a statement of the condition of said corporation as of June 12, 1922. in which the inventory was fixed at \$9,136.97, being something over \$3,000 less than shown on the statement produced at the settlement. Further inquiry and investigation convinced the appellant that the statement (Exhibit P4) was not correct, and that the respondent knew or should have known that it was not correct. He then rescinded and instituted the action. There was no proof independent of the written statements as to the falsity of either. Appellant had to rely upon the statements themselves. The trial Judge concluded that these were not enough to justify a jury in finding that there was anything false in Exhibit P4 upon which appellant relied.

As stated, the statement exhibited at the time of the settlement valued certain property at \$12,554.68. The statement was produced by respondent's agents. Looking to the date of Exhibit P6, of the same date, said agents made another statement of the condition of the affairs of the corporation which show that the goods inventoried were worth only \$9,136.97. The sharp question seems to be, did not this situation call upon the respondent to explain? Putting it another way, would not the jury have been justified in finding that the correct amount of the inventory on June 12, 1922, was \$9,136.97 and not \$12,554.68 as stated in Exhibit P4? Certain it is, that either the respondent or his agents who prepared the two statements could have explained the discrepancy. There was no explanation. The view of the learned trial Judge seemed to be that there was a duty cast upon the appellant to show that the goods inventoried in Exhibit P4 were not worth \$12,554.68. Had there been no other statement, we would readily concede the correctness of that view. But there was another statement purporting to be made on the same day which was not exhibited to the appellant but for some unknown or unexplained reason, retained by the agents of the respondent and disclosed only after an inquiry by appellant, and that statement shows a marked discrepancy in the value of the inventoried goods. In that posture, we contend that either the respondent should have explained or else the jury been permitted to find which of the two statements was correct.

We respectfully submit that there was a jury question and that a non-suit should not have been granted. The judgment should be reversed.

COLE & COLE,

*Attorneys for and of Counsel
with Appellant.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THOMAS O. METZ,
Plaintiff-Appellant,

v.

ISIDOR SCHMEIDLER,
Defendant-Respondent.

ON APPEAL.

BRIEF OF RESPONDENT.

This appeal brings into question the propriety of the ruling of the Circuit Court Judge in non-suiting the appellant, the plaintiff below.

Plaintiff's complaint alleges the purchase by him of certain shares of stock belonging to the defendant in the Coast Automobile Company, which stock plaintiff alleges he was induced to purchase by reason of having been presented by the plaintiff with a false statement as to the financial condition of the company in question. He then alleges a rescission and a demand for the return of his money.

A demand for a bill of particulars as to the false representations was served upon the plaintiff and the plaintiff answered that the false representations consisted in the fact that under the heading of "in-

ventory" in the statement under which plaintiff purchased the value was represented as being \$12,554.68; whereas, in fact, the assets under the inventory were only \$9925.00. The answer denied the alleged false representations. The bill of particulars is not printed in the State of the Case but the case was tried on the theory that if there was any fraud it was under the heading of "inventory."

The testimony disclosed that the defendant was the owner of half of the stock of the Coast Automobile Company, which company was the Atlantic City agency for Willys-Knight and Overland automobiles. Defendant's partner, Mr. Johnson, being anxious for business reasons to get him out of the business, approached the plaintiff, and a man named Beck, to buy out the defendant's stock. The negotiations resulted in the purchase by the plaintiff and Beck from defendant, of 255 shares of stock each, for the total price of \$12,000.00. The settlement of the transaction took place about the 17th or 18th of June, 1922, at the office of the plaintiff's attorney, Mr. Brown. There was present at that time a statement of the financial condition of the company as of June 12th, 1922, which is marked Exhibit P4 (p. 115). This statement shows the worth, under the heading of "Inventory" to be \$12,544.68. This statement had been prepared by Metz, Johnson and Schmeidler (p. 100, l. 11). This statement will, for convenience, be referred to as the "agreed statement." Subsequently Metz obtained from a firm of accountants who had been auditing the books of the Coast Automobile Company, another statement (Exhibits P5 and 6), showing the condition of the books of the company on June 12th. We will for convenience, refer to that statement as the "book statement." Under the heading of "Inventory" on that statement the amount appears as \$9136.97.

Metz testified that immediately after the purchase of the business, he and Mr. Beck and Mr. Johnson proceeded to conduct the business. Metz bought out Beck's 255 shares of stock for \$6000 in October, 1922 (p. 26, l. 25), and was satisfied at that time that everything was all right with the business (p. 42, l. 20).

The business made money in June, July, August, September and October (p. 34, l. 8). In November of 1922 the business lost \$1600 (p. 42, l. 40). It also lost in December. In January, 1923, the agency of the Coast Automobile Company for Willys-Knight cars was cancelled (p. 69). That same night on which the agency was cancelled there was a fire in the show room of the company, which destroyed all the property of the company (p. 69). After that had taken place to wit, on January 31st, 1923, Mr. Metz wrote to Mr. Schneidler a letter rescinding the contract (Exhibit P7, pp. 701, 21). Prior to that time he had never told Mr. Schneidler that he was not satisfied with his purchase (p. 69, ll. 1-2).

The only evidence of fraud that the plaintiff relied upon was the fact that the so-called agreed statement showed the assets under the heading of inventory to be \$12,554.68, whereas, the statement taken from the books showed the assets under the heading of inventory to be \$9136.97.

The "agreed statement" was made up by making a physical inventory of the affairs of the company. This was arrived at by making up a list of the various items and by Mr. Metz and Mr. Schneidler agreeing on the prices to be charged, and paid for the items in that statement (p. 100, ll. 1-11). Mr. Johnson, a witness called by the plaintiff, who was himself a one-half owner in the business, testified as to the first item under the inventory on the "agreed statement," that there were in the busi-

ness at the time of the sale two Willys-Knight cars. That both Mr. Metz and Mr. Schmeidler agreed that the price for these cars would be \$2450 (p. 101, l. 24; p. 103, l. 15).

The item on the "agreed statement" of "Overland cars \$3019.15" was arrived at by agreement of the parties (p. 103, ll. 18-36). The next item of used cars was likewise agreed upon (p. 104, ll. 12-32). The item of "parts" was arrived at by an actual inventory (p. 105, ll. 1-12). "Accessories" were also arrived at by an inventory (p. 105, ll. 15-20). Gas, oil and grease on the agreed statement and the book statement are identical. Stationery was never carried on the books and does not appear in the book statement but Mr. Metz and Mr. Schmeidler agreed on the price to be paid for that (p. 105, l. 32).

Mr. Metz saw the cars that were owned by the company before he bought (p. 105, l. 36), and also saw all the other items on the inventory, and the price for every item on the inventory was agreed to by Metz and Schmeidler, with the exception of parts (p. 106, ll. 1-11), and the value of the parts was taken as per the inventory made under the supervision of Mr. Johnson, and which was accepted by Metz (p. 106, ll. 1-25). Mr. Metz himself testified that he agreed to pay the sum of \$2450 for the Willys-Knight car (p. 47, l. 5); that he agreed to pay the sum of \$3019.15 for the Overland cars (p. 56, l. 32). Mr. Metz further testified as follows:

"Q. Now, the used cars. Are they all right?

A. All those items—there is no use going all through these. They were all agreed to in Mr. Brown's office; we all agreed to what they were.

Q. Which is the particular item, if you will tell me, that you object to at the present time?

A. All of that inventory, of the \$12,500" (p. 58, l. 25).

“Q. And yet you admit that you agreed to pay that much for them?

A. Yes, up in Mr. Brown’s office.

Q. How about the accessories? There were \$200 of accessories. Did you agree to pay that?

A. We agreed to pay everything that is on this statement (referring to the agreed statement p. 4).

Q. Did you agree on parts, \$310?

A. Yes—now, wait.

Q. And the \$225 for oil?

A. Everything on that.

Q. And the stationary, office stationary, \$150; you agreed to that, didn’t you?

A. Yes.

Q. And you agreed to pay \$3,874 for the parts; didn’t you?

A. That is part of the list there, yes” (p. 60, ll. 15-30).

“Q. Now, the office stationary, \$150; is that satisfactory or isn’t it? Is that right or not right?

A. I have told you, Mr. Bourgeois, that we agreed to everything on here. Now, why harp on it.

Q. Well, what are we kicking about or fighting about if you agreed to pay it?

A. Because the other statement said it was not there.

Q. Well, the other statement—well, that is the only thing you have got; because the other statement does not call for it, is that it?

A. The statement supplied by Vollmer, Thompson and Christensen does not call for it.

Q. Didn’t Vollmer, Thompson and Christensen furnish you with the statement you have there?

A. I don't know who furnished this one. They claim they did" (p. 82, ll. 13-29).

Mr. Beck, who in the first instance, purchased 255 shares of stock, and went into the business along with Mr. Metz and who subsequently sold his stock to Mr. Metz, testified that he is a practical machinist. He had charge of the mechanical department of the company after he went into the business. Prior to the settlement he went down to the place of business of the company on several occasions and went over the parts and saw the automobiles there (p. 94; p. 95, ll. 1-3).

"Q. But you knew the cars were there?

A. I saw some of the cars.

Q. And they were priced to you and they were satisfactory?

A. No; there was not no price mentioned.

Q. Just priced them at the place, did they?

A. Yes; they were all lumped together up in the office.

Q. And from your knowledge of it you were satisfied with it?

A. Yes" (p. 96, ll. 5-15).

Mrs. Metz, too, had been down to the place of business of the company a number of times before the transaction was closed.

There was not one scintilla of evidence produced tending to show that the items purchased under the heading of inventory were not of the value set forth in the inventory; nor that Mr. Metz had suffered one cent of loss by reason of relying upon the agreed statement. Mr. Metz had a part in the management of the business from June, 1922, when he took title, until January when the agency was cancelled and the place burned out. During that time he had

every opportunity of ascertaining whether or not the items listed under the heading of inventory were there, and whether or not they were of the value set out on the agreed statement. Yet he does not produce one shred of proof tending to show that the items under the heading of inventory in the agreed statement were not there, nor that they were not worth the amount set down on that statement as being the sale price of them. The only proof that the plaintiff shows is that these items are carried on the books of the company at a different value than they were included in the agreed statement. That, of course, is no proof of the value of these items or of fraud for it is a well known fact that business concerns very often carry items on their books at very different figures than their true worth.

There was no other proof that the values of the items under inventory were less than set forth in Exhibit P4. The statement that Metz claimed he received in January, 1923, from the accountants is marked Exhibit P5, and it is upon that statement that he relies to show that he was defrauded. P6 shows the condition of the company as reflected by the books on June 12, 1922; that statement shows total assets of \$61,904.65, subject only to liabilities of \$5577.14, exclusive of liability for capital stock and surplus. From which it is apparent that according to the book statement of the company its net worth was \$56,327.51, and that is the statement that Metz uses as the basis of the charge that he was defrauded. The agreed statement (P4) only shows net worth to be \$23212.12. Metz took from the book statement merely the single item of inventory, which happened to be less than the item of inventory on the agreed statement. He certainly was not entitled to buy one-half the stock of a going

business concern and contend that he was defrauded because a single item on the statement from which he bought happened to be more than the corresponding item on the statement compiled from the books of the company. Nor was he entitled to have all the assets of the company in his hands from June to January without complaint, and then, after the very life blood of the company—its agency—was taken away and the assets destroyed by fire, rescind his bargain.

It is respectfully submitted that the plaintiff below never showed that he had been defrauded nor that any false statement was made to him, nor that the stock that he purchased was not worth all that he paid for it, or that it was represented to be. It is, therefore, respectfully submitted that the judgment of non-suit was proper and should be sustained.

Respectfully submitted,
THOMPSON & HANSTEIN,
*Attorneys for and of Counsel
with Defendant-Respondent.*



