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TESTIMONY (both actions).

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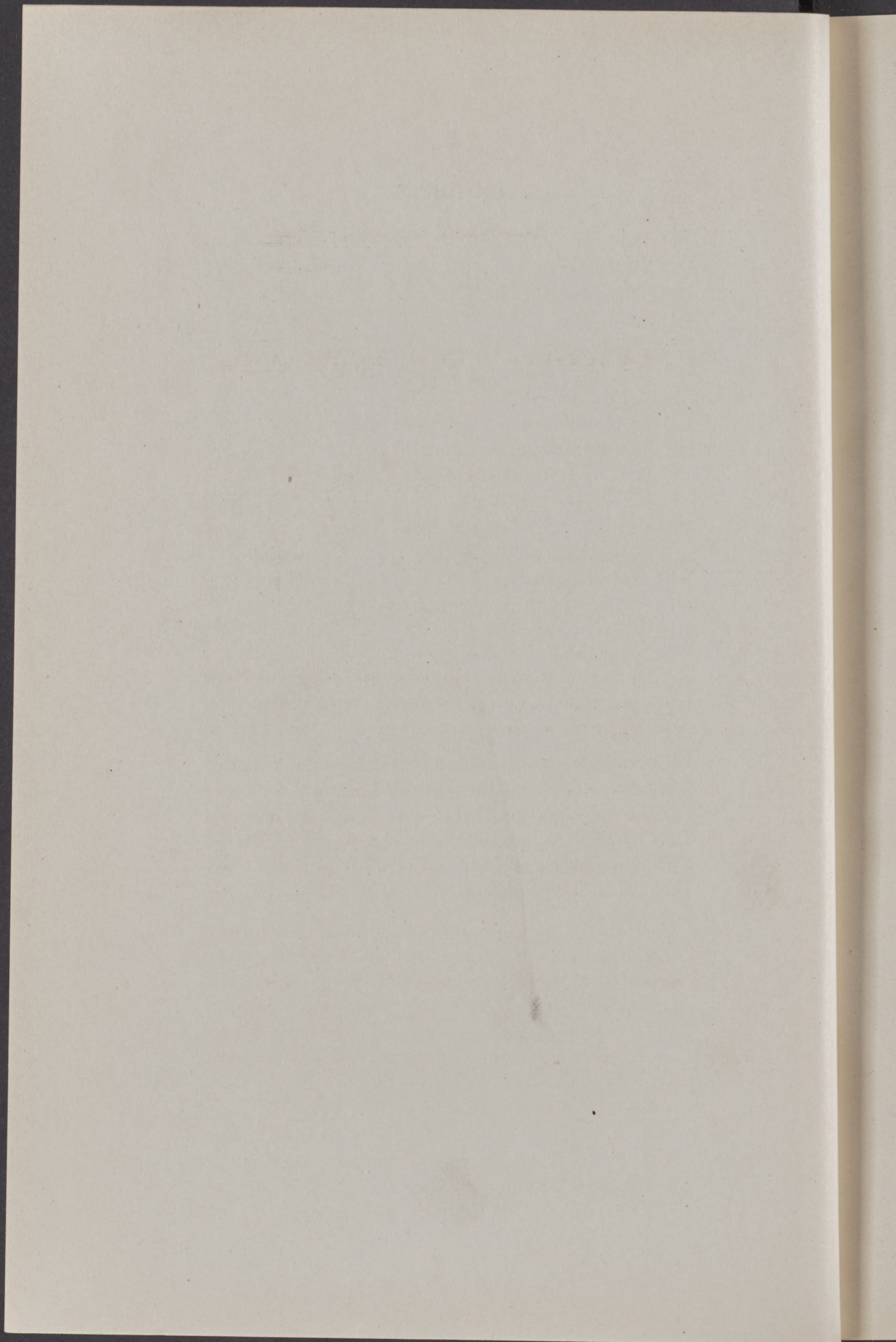
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Grounds of Appeal.

(Served Jan. 15, 1923.)

(Filed Jan. 15, 1923.)

NEW JERSEY COURT OF ERRORS AND APPEALS

10

EAGLE PIPE & SUPPLY COMPANY,
Plaintiff-Respondent,

vs.

BORDENTOWN STEEL & TUBE COR-
PORATION,
Defendant-Appellant.

Action at Law.
On Appeal
from the
Supreme Court.
Grounds
of Appeal.

20

Take notice, that the following are the grounds of appeal from the whole of the judgment entered in this cause in the Supreme Court, namely:

1. Because the Court directed a verdict as matter of law in favor of the plaintiff, Eagle Pipe & Supply Company and against the defendant, Bordentown Steel & Tube Corporation, in the sum of \$12,299.87, with costs, which instructions were erroneous and exception was taken thereto;

30

2. Because the Court refused to admit in evidence a certain arbitration agreement made between the Eagle Pipe & Supply Company, Pittsburgh Steel Tube Corporation, Isaac Lavine and Bordentown Steel & Tube Corporation, offered by the defendant, which said ruling was erroneous and exception was taken thereto.

40

Dated, January 15, 1923.

SCAMMELL & BESORE,

Attorneys of Defendant-Appellant.

To Katzenbach & Hunt, Esqs.,

Attorneys of the Plaintiff-Respondent.

Complaint

SECOND COUNT:

10 1. It sues for the amount of a promissory note for \$3,552.50, made by the defendant, Bordentown Steel & Tube Corporation, to Isaac Levin, a copy of which note is hereto annexed.

2. Before the maturity of said note, the payee thereof endorsed and delivered the same to plaintiff for value.

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

20 4. Plaintiff is the owner and holder of said note. It has not been paid.

THIRD COUNT:

1. It sues for the amount of a promissory note for \$4,060.00, made by the defendant, Bordentown Steel & Tube Corporation, to Isaac Levin, a copy of which note is hereto annexed.

30 2. Before the maturity of said note, the payee thereof endorsed and delivered the same to plaintiff for value.

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

4. Plaintiff is the owner and holder of said note. It has not been paid.

40 Plaintiff demands as damages on the first count \$3,552.50, being the face of the said note, plus protest

Complaint

fees of \$1.50, with interest on said sums from February 28, 1921; on the second count, \$3,552.50, being the face of the said note, plus protest fees of \$1.50, with interest on said sums from February 28, 1921; on the third count, \$4,060.00, being the face of the said note, plus protest fees of \$1.50, with interest on said sums from March 15, 1921; and also plaintiff's costs of suit in this action. 10

KATZENBACH & HUNT,
Attorneys for Plaintiff.

The following is a copy of the note referred to in the first count of the foregoing complaint: 20

\$3552.50/100 Trenton, N. J., Nov. 28, 1920

Three month after date we promise to pay to the order of Isaac Levin

Pay \$3552 and 50 cts.

at Mechanics National Bank of Trenton, N. J.

Value received

No. 167

BORDENTOWN STEEL & TUBE CORP. 30

V. P. JACKSON,
Treasurer.

(Written across face of note): "Payment Stopped"

(Endorsements): Isaac Levin

Complaint

The following is a copy of the note referred to in the second count of the foregoing complaint:

\$3552.50/100 Trenton, N. J., Nov. 28, 1920

10 Three months after date we promise to pay to the
order of Isaac Levin

Pay \$3552 and 50 cts.

at Mechanics National Bank of Trenton, N. J.

Value received

No. 168

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON,

Treasurer.

20 (Written across face of note): "Payment Stopped"
(Endorsements): Isaac Levin

— — —

The following is a copy of the note referred to in the third count of the foregoing complaint:

\$4060.00/100 Trenton, N. J., Dec. 15, 1920

30 Three months after date we promise to pay to the
order of Isaac Levin

Four thousand and Sixty—————Dollars

at Mechanics National Bank of Trenton, New Jersey

Value Received

No. 169 Due 3/15/21

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON,

Treasurer.

40 (Written across face of note): "Payment stopped"
(Endorsement): Isaac Levin

Amended Answer

SECOND DEFENSE TO THE FIRST COUNT:

6. Said note was given without any consideration therefor and there is nothing due thereon.

7. Plaintiff became the holder of said note, with
10 notice thereof.

THIRD DEFENSE TO THE FIRST COUNT:

8. Said note was made and delivered by the defendant corporation by way of renewal of certain other notes made to the order of Isaac Lavine, in the name of the defendant corporation, and delivered to the said Isaac Lavine, by Henry S. White (who, at
20 the time of the making and delivery thereof, was the President of the defendant corporation), without authority so to do and in pursuance of the corrupt, collusive and fraudulent agreement hereinafter described, in part payment for certain pretended purchases of material made by the said Henry S. White, in the name of the defendant corporation, from the said Isaac Lavine and the plaintiff.

9. Said pretended purchases were made pursuant
30 to a corrupt, collusive and fraudulent agreement made between the said Henry S. White and the said Isaac Lavine, without the knowledge of the defendant corporation, and for the purpose of defrauding the defendant corporation, to the profit of the said Isaac Lavine, the said Henry S. White and the plaintiff corporation, by which the said Henry S. White, pretending to act on behalf of the defendant corporation, but actually acting for his personal profit and that
40 of the said Isaac Lavine and of the plaintiff corporation, and without authority from the defendant

Amended Answer

corporation so to do and in direct violation of his duty to the defendant corporation and its stockholders as President thereof, did agree with the said Isaac Lavine to order, in the name of the defendant corporation from the said Isaac Lavine and the plaintiff corporation, certain large quantities of seamless steel tubing, of such quality and character that the same could profitably be redrawn by the defendant corporation into marketable and saleable steel tubing for sale by the defendant corporation in its business of manufacturing and selling steel tubing, at prices equal to the market prices of materials of such character and quality; and to pretend to accept, on behalf of the defendant corporation, in ostensible fulfillment of said orders, equal quantities of materials to be furnished by the said Isaac Lavine and the plaintiff corporation, of character and quality known to the said Henry S. White, the said Isaac Lavine and the said plaintiff corporation to be so inferior to the character and quality of the materials to be designated in said orders, as to be useless to the defendant corporation in its said business and as to have a value far less than the price at which said orders were to be given and to be valueless except as scrap material; and to cause the defendant corporation to pay for such inferior material, at the prices at which said orders were to be given, said prices being far in excess of the value of the materials actually intended to be furnished.

10. In pursuance of said corrupt, collusive and fraudulent agreement, the said Henry S. White, pretending to act for the defendant corporation, but in reality acting for his personal profit and that of the said Isaac Lavine and the plaintiff corporation, and without authority so to do, did order from the said

Amended Answer

Isaac Lavine and the plaintiff corporation the following amounts of seamless steel tubing, of such quality and character that the same could profitably be re-drawn by the defendant corporation into marketable and saleable steel tubing, for sale by the defendant corporation, at the following prices, for delivery to
 10 the defendant corporation on the following dates:

	1920	Lbs.	Per Ton.	
	Mar. 8	47,000	\$125.00	\$2,937.50
	“ 13	86,800	125.00	5,425.00
	Apr. 28	46,500	125.00	2,906.25
	“ 28	60,200	125.00	3,762.50
	June 5	56,500	125.00	3,531.35
20	“ 14	72,300	125.00	4,518.75
	“ 24	42,800	125.00	2,675.00
	“ 28	38,935	125.00	2,433.44
	July 1	72,300	125.00	4,518.75
	Total	523,335		\$32,708.44

and pursuant to said corrupt, collusive and fraudulent agreement, the said Isaac Lavine pretended to accept
 30 said orders for himself and for the plaintiff corporation, and caused to be delivered to the defendant corporation, upon said dates, equal quantities of scrap steel tubing and scrap pipe, being of such inferior quality as to be useless to be put through the processes of manufacture by the defendant corporation and to have no value except for remelting, being full of seams, cut in short lengths, rusted and pitted, burned, scaly, full of water sediment and so cut by
 40 alligator shears as to render it useless for redrawing, the market value whereof did not exceed \$16.75 for

Amended Answer

each 2,200 lbs., aggregating in value the sum of \$3,944.64, of all of which the said Henry S. White, Isaac Lavine and the plaintiff corporation had full knowledge.

11. Pursuant to said corrupt, collusive and fraudulent agreement, the said Henry S. White, pretending to act on behalf of defendant corporation, but actually acting for his own benefit and for the benefit of the said Isaac Lavine and of the plaintiff corporation, to the knowledge of the said Isaac Lavine and the plaintiff corporation, did pretend to accept said materials and did promise, on behalf of the defendant corporation, to make payment therefor, at the prices named in said orders, being in excess of the true market value thereof to the amount of \$28,763.80 and did cause the defendant corporation to make payment to the said Isaac Lavine, from time to time, of the aggregate sum of \$8,855.94, in cash, and did execute and deliver to the said Isaac Lavine, notes of the defendant corporation to the aggregate principal sum of \$23,852.50, in payment therefor, of which notes the note described in the First Count of the Complaint is a renewal, in part.

12. Pursuant to said corrupt, collusive and fraudulent agreement, the said Henry S. White did pretend to cause said materials to be put through its processes of manufacture by the defendant corporation, notwithstanding that the said Henry S. White well knew that said materials were unfit to be used in the manufacture of seamless steel tubing, whereby the defendant corporation was subjected to great loss and expense.

13. The said Isaac Lavine and the said plaintiff corporation had notice, at the time said orders were

Amended Answer

10 given and said materials shipped, of the use to which the same were intended to be put by the defendant corporation and of the processes of manufacture employed by the defendant corporation and that materials of the quality delivered to the defendant corporation were useless and valueless to it and that the same were pretended to be accepted by the said Henry S. White, for the defendant corporation, with knowledge that the same could not be used by the defendant corporation, and wholly for the purpose of carrying out said corrupt, collusive and fraudulent agreement.

20 14. Said Isaac Lavine was and has been the President and a director of the plaintiff corporation, the person in charge of its business transactions and the owner of all of its capital stock except such shares as were necessary to qualify its other directors and officers, at all times from the time of the making of said corrupt, collusive and fraudulent agreement, and the taking of said notes thereby, until the present time.

30 15. The plaintiff corporation had notice of said corrupt, collusive and fraudulent agreement and became the holder of said note and of the notes of which it is a renewal, with full knowledge thereof and of the fraud practiced by the said Isaac Lavine and the said Henry S. White, as aforesaid.

40 16. Said original and renewal notes were given by the defendant corporation prior to the discovery of the said corrupt, collusive and fraudulent agreement and of the fraud practiced upon it by the said Isaac Lavine and the said Henry S. White, as aforesaid.

Amended Answer

17. By reason of the foregoing the said note is wholly void and was given without any consideration therefor and the defendant corporation is in no wise liable thereon.

FOURTH DEFENSE TO THE FIRST COUNT:

10

18. The plaintiff corporation is not the holder or owner of the said note, but the same is held and owned by the said Isaac Lavine, or by the plaintiff, as his agent.

19. Said note was given without consideration and there is nothing due thereon by reason of the fraud practiced by the said Isaac Lavine upon the defendant corporation, set out in the Third Defense to this Count, the allegations whereof are hereby repeated.

20

FIFTH DEFENSE TO FIRST COUNT:

20. Said note was made and delivered by the defendant corporation in renewal of certain other notes given by the defendant corporation to Isaac Lavine, in part payment for materials ordered by the defendant corporation from said Lavine and the plaintiff corporation, as set forth in Paragraph 10 of this Answer.

30

21. The defendant corporation never received the said materials so ordered, but the said Lavine and the plaintiff corporation did ship to the defendant corporation materials of inferior character and quality, as set forth in said Paragraph 10 of this Answer.

22. The character and quality of the materials so shipped was fraudulently concealed by the said

40

Amended Answer

Lavine, the plaintiff corporation and Henry S. White, the President of the defendant corporation, until after all of said notes were given.

23. The consideration of said notes has wholly failed by reason of the foregoing and there is nothing
10 due thereon.

24. Plaintiff corporation had notice of the failure of consideration of said note, as aforesaid, at the time it became the holder of said original and renewal notes.

ANSWER TO SECOND COUNT:

25. The allegations of Paragraph 1 are repeated.
20
26. The allegations of Paragraph 2 are repeated.
27. The allegations of Paragraph 3 are repeated.
28. The allegations of Paragraph 4 are repeated.

FIRST DEFENSE TO THE SECOND COUNT:

29. The allegations of Paragraph 5 are repeated.
30

SECOND DEFENSE TO THE SECOND COUNT:

30. The allegations of Paragraph 6 are repeated.
31. The allegations of Paragraph 7 are repeated.

THIRD DEFENSE TO THE SECOND COUNT:

32. The allegations of Paragraph 8 are repeated.
40
33. The allegations of Paragraph 9 are repeated.

Amended Answer

- 34. The allegations of Paragraph 10 are repeated.
- 35. The allegations of Paragraph 11 are repeated.
- 36. The allegations of Paragraph 12 are repeated.
- 37. The allegations of Paragraph 13 are repeated.
- 38. The allegations of Paragraph 14 are repeated. 10
- 39. The allegations of Paragraph 15 are repeated.
- 40. The allegations of Paragraph 16 are repeated.
- 41. The allegations of Paragraph 17 are repeated.

FOURTH DEFENSE TO THE SECOND COUNT:

- 42. The allegations of Paragraph 18 are repeated. 20
- 43. The allegations of Paragraph 19 are repeated.

FIFTH DEFENSE TO THE SECOND COUNT:

- 44. The allegations of Paragraph 20 are repeated.
- 45. The allegations of Paragraph 21 are repeated.
- 46. The allegations of Paragraph 22 are repeated.
- 47. The allegations of Paragraph 23 are repeated. 30
- 48. The allegations of Paragraph 24 are repeated.

ANSWER TO THIRD COUNT:

- 49. The allegations of Paragraph 1 are repeated.
- 50. The allegations of Paragraph 2 are repeated.
- 51. The allegations of Paragraph 3 are repeated. 40
- 52. The allegations of Paragraph 4 are repeated.

Lavine, the p
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23. The consideration
failed by reason of the f
10 due thereon.

24. Plaintiff corpo
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ANSW

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THE FIRST COUNT:

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vine, or by the plaintiff,

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Amended Answer

FIRST DEFENSE TO THE THIRD COUNT:

53. The allegations of Paragraph 5 are repeated.

SECOND DEFENSE TO THE THIRD COUNT:

- 10 54. The allegations of Paragraph 6 are repeated.
55. The allegations of Paragraph 7 are repeated.

THIRD DEFENSE TO THE THIRD COUNT:

56. The allegations of Paragraph 8 are repeated.
57. The allegations of Paragraph 9 are repeated.
20 58. The allegations of Paragraph 10 are repeated.
59. The allegations of Paragraph 11 are repeated.
60. The allegations of Paragraph 12 are repeated.
61. The allegations of Paragraph 13 are repeated.
62. The allegations of Paragraph 14 are repeated.
63. The allegations of Paragraph 15 are repeated.
30 64. The allegations of Paragraph 16 are repeated.
65. The allegations of Paragraph 17 are repeated.

FOURTH DEFENSE TO THE THIRD COUNT:

66. The allegations of Paragraph 18 are repeated.
67. The allegations of Paragraph 19 are repeated.

Amended Answer

FIFTH DEFENSE TO THE THIRD COUNT:

68. The allegations of Paragraph 20 are repeated.
 69. The allegations of Paragraph 21 are repeated.
 70. The allegations of Paragraph 22 are repeated.
 71. The allegations of Paragraph 23 are repeated. 10
 72. The allegations of Paragraph 24 are repeated.

SCAMMELL & BESORE,
 Attorneys of Defendant.

Endorsement

NEW JERSEY SUPREME COURT. 20

EAGLE PIPE & SUPPLY COMPANY,
 Plaintiff,

vs.

BORDENTOWN STEEL & TUBE COR-
 PORATION,
 Defendant.

Action at Law. 30

AMENDED ANSWER.

SCAMMELL & BESORE, Attys.
 of Defendant,
 Mechanics Bank Bldg.,
 Trenton, N. J.

We hereby consent to the filing of the within An-
 swer out of time, as within time.

KATZENBACH & HUNT, 40
 Attorneys of Plaintiff.

Postea.

(Filed November 21, 1922.)

10 The foregoing cause was tried before Judge Ralph
W. E. Donges and a jury, at the Burlington County
Circuit on November 14th and 15th, 1922, and the
jury, by direction of the Judge, returned a judgment
in the foregoing case in favor of the plaintiff and
against the defendant in the sum of \$12,299.87, and
costs.

RALPH W. E. DONGES,
Judge.

Rule for Judgment.

20

(Filed Nov. 21, 1922.)

It is ordered that judgment be and hereby is en-
tered in favor of plaintiff and against the defendant
for the sum of twelve thousand two hundred ninety-
nine dollars and eighty-seven cents, besides costs to be
taxed *nisi*.

30 Entered November 21, 1922. On motion of
KATZENBACH & HUNT,
Attys.

40

Judgment.

(Entered Nov. 21, 1922.)

Whereupon it is adjudged that the plaintiff Eagle
 Pipe & Supply Company do recover of the said de-
 fendant Bordentown Steel & Tube Corporation the
 sum of Twelve Thousand, two hundred and ninety-
 nine dollars and eighty-seven cents damages and its
 costs which have been taxed at the sum of
 making in the whole the sum of

10

Judgment entered November 21, 1922.

WM. S. GUMMERE,

C. J.

Damages \$12,299.87

Costs

20

Notice of Appeal.

(Served Nov. 24, 1922.)

(Filed Nov. 28, 1922.)

To Katzenbach & Hunt, Esqs.,
 Attorneys for Plaintiff:

Take Notice, that the defendant appeals from the
 whole of the judgment entered in this cause to the
 Court of Errors and Appeals and Last Resort in all
 Causes.

30

SCAMMELL & BESORE,
 Attorneys of Defendant-Appellant.

Dated, November 23, 1922.

40

Order Extending Time to File Grounds of Appeal.

(Filed Dec. 26, 1922.)

Application being made by the defendant, by its attorneys, Scammell & Besore, Esquires, for an order extending the time to file the recognizance required by law to be filed to stay execution on appeal of the above-named cause, and extending the time for serving and filing the grounds of appeal in the above-named cause, each for a period of thirty days from the date of this order, and due notice of said application having been given to Katzenbach & Hunt, Esquires, attorneys of the plaintiff in this cause and good cause being shown,

It is, on this twenty-sixth day of December A. D., Nineteen hundred and twenty-two, on motion of Scammell & Besore, Esquires, attorneys of the defendant, and in the presence of Katzenbach & Hunt, Esquires, attorneys of the plaintiff, Ordered, that the time for filing the recognizance on appeal in this cause, required by law to stay execution upon the judgment entered herein, be and the same is hereby extended for a period of ten days from the date of this order and in the meantime execution on the judgment entered herein be and the same is hereby stayed for said period.

And it is Further Ordered that the time for serving and filing the grounds of appeal in the above-named cause be and the same is hereby extended for a period of twenty days from the date of this order.

SAMUEL KALISH,
Justice of the Supreme Court.

Grounds of Appeal.

(Served Jan. 15, 1923.)

(Filed Jan. 15, 1923.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

PITTSBURGH STEEL TUBE COR- PORATION, Plaintiff-Respondent, vs. BORDENTOWN STEEL & TUBE COR- PORATION, Defendant-Appellant.	}	Action at Law. On Appeal from the Supreme Court. Grounds of Appeal.	10
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Take Notice, that the following are the grounds of
 appeal from the whole of the judgment entered in
 this cause in the Supreme Court, namely: 20

1. Because the court directed a verdict as a matter
 of law in favor of the plaintiff, Pittsburgh Steel Tube
 Corporation and against the defendant, Bordentown
 Steel & Tube Corporation, in the sum of \$7,836.81,
 with costs, which instructions were erroneous and
 exception was taken thereto;

2. Because the court refused to admit in evidence 30
 a certain arbitration agreement made between the
 Pittsburgh Steel Tube Corporation, Eagle Pipe &
 Supply Company, Isaac Lavine and Bordentown
 Steel & Tube Corporation, offered by the defendant,
 which said ruling was erroneous and exception was
 taken thereto.

Dated, January 15, 1923.

SCAMMELL & BESORE,
 Attorneys of Defendant-Appellant. 40

To Katzenbach & Hunt, Esqs.,
 Attorneys of the Plaintiff-Respondent.

Summons.

(Filed May 24, 1921.)

THE STATE OF NEW JERSEY to BORDENTOWN STEEL & TUBE CORPORATION:

10 (L. S.) You are summoned to answer the annexed complaint of the Pittsburgh Steel Tube Company in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered
20 against you.

Witness, William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this fourteenth day of May, nineteen hundred and twenty-one.

ENOCH L. JOHNSON,
Clerk.

Katzenbach & Hunt,
Attorneys.

30

40

Complaint.

(Filed May 24, 1921.)

NEW JERSEY SUPREME COURT,

BURLINGTON COUNTY.

<p>PITTSBURGH STEEL TUBE COR- PORATION, Plaintiff, vs. BORDENTOWN STEEL & TUBE COR- PORATION, Defendant.</p>	}	<p>Action at Law. Complaint.</p>
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20

Plaintiff, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania and having its principal office and place of business at the City of Beaver in the State of Pennsylvania, says that:

1. It sues for the amount of a promissory note for \$7,105.00, made by the defendant, Bordentown Steel & Tube Corporation, to Isaac Levin, a copy of which note is hereto annexed.

30

2. Before the maturity of said note, the payee thereof endorsed and delivered the same to plaintiff for value.

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

4. Plaintiff is the owner and holder of said note. It has not been paid.

40

Complaint

Plaintiff demands as damages \$7,105.00, being the face of the said note, plus protest fees of \$1.50, with interest on said sums from March 28, 1921, and also plaintiff's costs of suit in this action.

10 KATZENBACH & HUNT,
Attorneys for Plaintiff.

The following is a copy of the note referred to in the foregoing complaint:

	Com'l Paper		
	net amount		
20	\$7105.00	703395	Trenton, N. J., Dec. 28, 1920.
		<hr/>	
		interest	
		71.05	
		<hr/>	

Three months after date we promise to pay to the order of Isaac Levin
Seven Thousand one hundred and five——Dollars
at Mechanics National Bank of Trenton, New Jersey
Value received
30 No. 177 Due 3/28/21
59710
BORDENTOWN STEEL & TUBE CORP.
V. P. JACKSON
Treasurer.

(Endorsements): Isaac Levin

Amended Answer.

(Filed Oct. 28, 1922.)

NEW JERSEY SUPREME COURT.

PITTSBURGH STEEL TUBE COM- PANY, Plaintiff, vs. BORDENTOWN STEEL & TUBE COR- PORATION, Defendant.	}	Action at Law. Amended Answer.	10
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Defendant, a corporation of the State of New York,
says that 20

ANSWER TO FIRST COUNT.

1. It admits the making of the note described in Paragraph 1, but denies the validity thereof.
2. It denies the allegations of Paragraph 2.
3. It admits the allegations of Paragraph 3.
4. It denies the allegations of Paragraph 4, ex- 30
cept the allegation that said note "has not been paid,"
which is admitted.

FIRST DEFENSE TO THE FIRST COUNT.

5. Plaintiff is not the owner or holder of said note,
for value.

Amended Answer

SECOND DEFENSE TO THE FIRST COUNT.

6. Said note was given without any consideration therefor and there is nothing due thereon.

7. Plaintiff became the holder of said note, with
10 notice thereof.

THIRD DEFENSE TO THE FIRST COUNT.

8. Said note was made and delivered by the defendant corporation by way of renewal of certain other notes made to the order of Isaac Lavine, in the name of the defendant corporation, and delivered to the said Isaac Lavine, by Henry S. White (who,
20 at the time of the making and delivery thereof, was the President of the defendant corporation), without authority so to do and in pursuance of the corrupt, collusive and fraudulent agreement hereinafter described, in part payment for certain pretended purchases of material made by the said Henry S. White, in the name of the defendant corporation, from the said Isaac Lavine and the Eagle Pipe Supply Company, Inc.

30 9. Said pretended purchases were made pursuant to a corrupt, collusive and fraudulent agreement made between the said Henry S. White and the said Isaac Lavine, without the knowledge of the defendant corporation, and for the purpose of defrauding the defendant corporation, to the profit of the said Isaac Lavine, the said Henry S. White and the Eagle Pipe Supply Company, Inc., by which the said Henry S. White, pretending to act on behalf of the defendant
40 corporation, but actually acting for his personal profit and that of the said Isaac Lavine and of the Eagle

Amended Answer

Pipe Supply Company, Inc., and without authority from the defendant corporation so to do and in direct violation of his duty to the defendant corporation and its stockholders as President thereof, did agree with the said Isaac Lavine to order, in the name of the defendant corporation from the said Isaac Lavine and the Eagle Pipe Supply Company, Inc., certain large quantities of seamless steel tubing, of such quality and character that the same could profitably be redrawn by the defendant corporation into marketable and saleable steel tubing for sale by the defendant corporation in its business of manufacturing and selling steel tubing, at prices equal to the market prices of materials of such character and quality; and to pretend to accept, on behalf of the defendant corporation in ostensible fulfilment of said orders, equal quantities of materials to be furnished by the said Isaac Lavine and the Eagle Pipe Supply Company, Inc., of character and quality known to the said Henry S. White, the said Isaac Lavine and the said Eagle Pipe Supply Company, Inc., to be so inferior to the character and quality of the materials to be designated in said orders, as to be useless to the defendant corporation in its said business and as to have a value far less than the price at which said orders were to be given and to be valueless except as scrap material; and to cause the defendant corporation to pay for such inferior material, at the prices at which said orders were to be given, said prices being far in excess of the value of the materials actually intended to be furnished.

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10. In pursuance of said corrupt, collusive and fraudulent agreement, the said Henry S. White, pretended to act for the defendant corporation, but in

Amended Answer

reality acting for his personal profit and that of the said Isaac Lavine and the Eagle Pipe Supply Company, Inc., and without authority so to do, did order from the said Isaac Lavine and the Eagle Pipe Supply Company, Inc., the following amounts of seamless steel tubing, of such quality and character that the same could profitably be redrawn by the defendant corporation into marketable and saleable steel tubing, for sale by the defendant corporation, at the following prices, for delivery to the defendant corporation on the following dates:

	1920.	L. B. S.	Per Ton.	
	Mar. 8	47,000	\$125.00	\$2,937.50
20	Mar. 13	86,800	125.00	5,425.00
	Apr. 28	46,500	125.00	2,906.25
	" 28	60,200	125.00	3,762.50
	June 5	56,500	125.00	3,531.25
	" 14	72,300	125.00	4,518.75
	" 24	42,800	125.00	2,675.00
	" 28	38,935	125.00	2,433.44
	July 1	72,300	125.00	4,518.75
30	Total	523,335		\$32,708.44

and pursuant to said corrupt, collusive and fraudulent agreement, the said Isaac Lavine pretended to accept said orders for himself and for the Eagle Pipe Supply Company, Inc., and caused to be delivered to the defendant corporation, upon said dates, equal quantities of scrap steel tubing and scrap pipe, being of such inferior quality as to be useless to be put through the processes of manufacture by the defendant corporation and to have no value except for remelting,

Amended Answer

being full of seams, cut in short lengths, rusted and pitted, burned, scaly, full of water sediment and so cut by alligator shears as to render it useless for redrawing, the market value whereof did not exceed \$16.75 for each 2,200 lbs., aggregating in value the sum of \$3,944.64, of all of which the said Henry S. White, Isaac Lavine and the Eagle Pipe Supply Company, Inc., had full knowledge. 10

11. Pursuant to said corrupt, collusive and fraudulent agreement, the said Henry S. White, pretending to act on behalf of defendant corporation, but actually acting for his own benefit and for the benefit of the said Isaac Lavine and of the Eagle Pipe Supply Company, Inc., to the knowledge of the said Isaac Lavine and the Eagle Pipe Supply Company, Inc., did pretend to accept said materials and did promise, on behalf of the defendant corporation, to make payment therefor, at the prices named in said orders, being in excess of the true market value thereof to the amount of \$28,763.80 and did cause the defendant corporation to make payment to the said Isaac Lavine, from time to time, of the aggregate sum of \$8,855.94, in cash, and did execute and deliver to the said Isaac Lavine, notes of the defendant corporation to the aggregate principal sum of \$23,852.50, in payment therefor, of which notes the note described in the First Count of the Complaint is a renewal, in part. 20 30

12. Pursuant to said corrupt, collusive and fraudulent agreement, the said Henry S. White did pretend to cause said materials to be put through its processes of manufacture by the defendant corporation, notwithstanding that the said Henry S. White well knew that said materials were unfit to be used in the manufacture of seamless steel tubing, where- 40

Amended Answer

by the defendant corporation was subjected to great loss and expense.

10 13. The said Isaac Lavine and the said Eagle Pipe Supply Company, Inc., had notice, at the time said orders were given and said materials shipped, of the use to which the same were intended to be put by the defendant corporation and of the processes of manufacture employed by the defendant corporation and that materials of the quality delivered to the defendant corporation were useless and valueless to it and that the same were pretended to be accepted by the said Henry S. White, for the defendant corporation, with knowledge that the same could not be used by the defendant corporation, and wholly for the purpose of carrying out said corrupt, collusive and fraudulent agreement.

20 14. Said Isaac Lavine was and has been the President and a director of the plaintiff corporation, the person in charge of its business transactions and the owner of all of its capital stock except such shares as were necessary to qualify its other directors and officers, at all times from the time of the making of said corrupt, collusive and fraudulent agreement, and the taking of said notes thereby, until the present time.

30 15. The plaintiff corporation had notice of said corrupt, collusive and fraudulent agreement and became the holder of said note and of the notes of which it is a renewal, with full knowledge thereof and of the fraud practiced by the said Isaac Lavine and the said Henry S. White, as aforesaid.

40 16. Said original and renewal notes were given by the defendant corporation prior to the discovery

Amended Answer

of the said corrupt, collusive and fraudulent agreement and of the fraud practiced upon it by the said Isaac Lavine and the said Henry S. White, as aforesaid.

17. By reason of the foregoing the said note is wholly void and was given without any consideration therefor and the defendant corporation is in no wise liable thereon. 10

FOURTH DEFENSE TO THE FIRST COUNT.

18. The plaintiff corporation is not the holder or owner of the said note, but the same is held and owned by the said Isaac Lavine, or by the plaintiff, as his agent. 20

19. Said note was given without consideration and there is nothing due thereon by reason of the fraud practiced by the said Isaac Lavine upon the defendant corporation, set out in the Third Defense to this Count, the allegations whereof are hereby repeated.

FIFTH DEFENSE TO FIRST COUNT.

20. Said note was made and delivered by the defendant corporation in renewal of certain other notes given by the defendant corporation to Isaac Lavine, in part payment for materials ordered by the defendant corporation from said Lavine and the Eagle Pipe Supply Company, Inc., as set forth in Paragraph 10 of this Answer. 30

21. The defendant corporation never received the said materials so ordered, but the said Lavine and the 40

Amended Answer

Eagle Pipe Supply Company, Inc., did ship to the defendant corporation materials of inferior character and quality, as set forth in said Paragraph 10 of this Answer.

10 22. The character and quality of the materials so shipped was fraudulently concealed by the said Lavine, the Eagle Pipe Supply Company, Inc., and Henry S. White, the President of the defendant corporation, until after all of said notes were given.

23. The consideration of said notes has wholly failed by reason of the foregoing and there is nothing due thereon.

20 24. Plaintiff corporation had notice of the failure of consideration of said note, as aforesaid, at the time it became the holder of said original and renewal notes.

SCAMMELL & BESORE,
Attorneys of Defendant.

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*Amended Answer**Endorsement.*

NEW JERSEY SUPREME COURT.

PITTSBURGH STEEL TUBE COM- PANY, Plaintiff, vs. BORDENTOWN STEEL & TUBE COR- PORATION, Defendant.	}	10
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Action at Law.

Amended Answer. 20

Scammell & Besore, Attys.
of Defendant,
Mechanics Bank Bldg.,
Trenton, N. J.

We hereby consent to the filing of the within An-
swer out of time, as within time.

KATZENBACH & HUNT,
Attorneys of Plaintiff. 30

Postea.

(Filed November 21, 1922.)

10 The foregoing cause was tried before Judge Ralph W. E. Donges and a jury, at the Burlington County Circuit on November 14th and 15th, 1922, and the jury, by direction of the Judge, returned a judgment in the foregoing case in favor of the plaintiff and against the defendant in the sum of \$7,836.81, and costs.

RALPH W. E. DONGES,
Judge.

20 **Rule for Judgment.**

(Filed Nov. 21, 1922.)

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of seven thousand eight hundred thirty-six dollars and eighty-one cents besides costs to be taxed *nisi*.

30 Entered Nov. 21, 1922. On motion of
KATZENBACH & HUNT,
Attys.

Judgment.

(Entered Nov. 21, 1922.)

NEW JERSEY SUPREME COURT.

PITTSBURGH STEEL TUBE COM- PANY,	}	10
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Plaintiff,

vs.

BORDENTOWN STEEL & TUBE COR- PORATION,	}	20
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Defendant.

Whereupon it is adjudged that the plaintiff Pitts-
 burgh Steel Tube Company do recover of the said
 defendant Bordentown Steel & Tube Corporation the
 sum of Seven Thousand, eight hundred and thirty-
 six dollars and eighty-one cents damages and its costs
 which have been taxed at the sum of

making in the whole the

sum of

Judgment entered November 21, 1922.

WM. S. GUMMERE,

C. J.

30

Damages \$7836.81

Costs \$—————

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Notice of Appeal.

(Served Nov. 24, 1922.)

(Filed Nov. 28, 1922.)

To Katzenbach & Hunt, Esqs.,
Attorneys for Plaintiff:

10 Take Notice, that the defendant appeals from the
whole of the judgment entered in this cause to the
Court of Errors and Appeals and Last Resort in all
Causes.

SCAMMELL & BESORE,
Attorneys for Defendant-Appellant.

Dated, November 23, 1922.

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**Order Extending Time to File Grounds of
Appeal.**

(Filed Dec. 26th, 1922.)

NEW JERSEY SUPREME COURT.

Application being made by the defendant, by its attorneys, Scammell & Besore, Esquires, for an order extending the time to file the recognizance required by law to be filed to stay execution on appeal of the above named cause, and extending the time for serving and filing the grounds of appeal in the above named cause, each for a period of thirty days from the date of this order, and due notice of said application having been given to Katzenbach & Hunt, Esquires, attorneys of the plaintiff in this cause and good cause being shown,

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It Is, on this twenty-sixth day of December, A. D., Nineteen hundred and twenty-two, on motion of Scammell & Besore, Esquires, attorneys of the defendant, and in the presence of Katzenbach & Hunt, Esquires, attorneys of the plaintiff, Ordered, that the time for filing the recognizance on appeal in this cause, required by law to stay execution upon the judgment entered herein, be and the same is hereby extended for a period of ten days from the date of this order and in the meantime execution on the judgment entered herein be and the same is hereby stayed for said period.

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And It Is Further Ordered that the time for serving and filing the grounds of appeal in the above named cause be and the same is hereby extended for a period of twenty days from the date of this order.

40

SAMUEL KALISCH,
Justice of the Supreme Court.

Testimony.

NEW JERSEY SUPREME COURT,

BURLINGTON COUNTY.

10	EAGLE PIPE & SUPPLY Co., Plaintiff, vs. BORDENTOWN STEEL AND TUBE CORPORATION, Defendant.	}	Action at Law.
20	PITTSBURGH STEEL TUBE COM- PANY, Plaintiff, vs. BORDENTOWN STEEL & TUBE COR- PORATION, Defendant.	}	Action at Law.

Before Donges, J., and a jury.

November 15, 1922.

30 Appearances:

For the Plaintiff: Messrs. Katzenbach and Hunt
and Mr. Slade, of New York.

For the Defendant: Messrs. Scammell and Besore.

Mr. Katzenbach opens the case for the plaintiffs.

Mr. Besore opens the case for the defendant.

40

*Plaintiffs' Witness, Isaac Levin, Direct**The Case for the Plaintiff.*

Mr. Katzenbach: I am going to make a statement to the Court, Mr. Besore. As I understand the pleadings in these three cases, the Bordentown Steel and Tube Corporation admit the signing and delivery of each of these notes. Is that true? 10

Mr. Besore: Yes.

Mr. Katzenbach: They admit that in each case. They admit they have not paid any of these notes?

Mr. Besore: That is true.

The Court: Is it stipulated that the plaintiffs are the present holders of the notes?

Mr. Katzenbach: That, I think, is the only thing not admitted. 20

Mr. Besore: We don't admit anything more than the notes are in their hands. 20

ISAAC LEVIN, sworn.

By Mr. Katzenbach:

Q. Mr. Levin, where do you live? A. Mount Vernon, New York.

Q. Have you any connection with the Eagle Pipe and Supply Company? A. I have. 30

Q. Do you hold office in that company? A. Yes, sir.

Q. What is the office you hold? A. President.

Q. As president of the Eagle Pipe and Supply Company, have you knowledge of the business of the company? A. Yes, sir; I do.

Q. I show you three promissory notes, admitted to be signed by the Bordentown Steel and Tube Corporation, V. P. Jackson, treasurer, one dated November 28, 1920, in the sum of \$3,552.50; the sec- 40

Plaintiffs' Witness, Isaac Levin, Direct

ond dated November 28, 1920, in the sum of \$3,552.50, payable three months after date; the third dated December 15, 1920, in the sum of \$4,060; each of these notes being made to you as payee, and I ask you if you ever seen these notes before? A. Yes, sir; I did.

10 Q. Were those notes delivered to you? A. Yes, sir.

Q. By whom? A. By Bordentown Steel and Tube Corporation.

Q. Each payable three months after date. Mr. Levin, I show you an endorsement upon the back of each of these notes, purporting to be made by you. Will you tell me, as a matter of fact, whether or not that is your endorsement, in each instance? A. Yes, sir.

20 Q. And after you had endorsed these three notes, what did you do with them? A. I delivered to the Eagle Pipe Supply Company.

Q. Of which you are the president? A. Yes, sir.

Q. Is the Eagle Pipe and Supply Company still the holder of these notes? A. Yes, sir.

Q. And they have not been paid? A. No, sir

30 Q. Or anything on account thereof? A. No, sir.

Mr. Katzenbach: I offer the notes.

Said notes marked respectively Exhibits P1, P2 and P3.

Mr. Katzenbach: It is admitted the Eagle Pipe and Supply Company is a corporation of the State of New York?

Mr. Besore: I think so.

40 Q. Mr. Levin, do you know the Pittsburgh Steel Tube Company? A. Yes, sir; I do.

Q. Is that a corporation? A. Yes, sir.

Plaintiffs' Witness, Isaac Levin, Direct

Q. Do you know of what state? A. Pennsylvania.

Q. Are you an officer of that corporation? A. Yes, sir; I was.

Q. Are you now? A. I don't hold the same office I did before.

Q. What office do you hold? A. Treasurer. 10

Q. And as treasurer of the Pittsburgh Steel Tube Company, have you knowledge of the business of that company? A. Yes, sir.

Q. I show you a note dated December 28, 1920, payable three months after date, to the order of Isaac Levin, in the sum of \$7,105, signed by the Bordentown Steel and Tube Corporation, V. P. Jackson, treasurer, and ask you if you have ever seen that note before? A. Yes, sir; I did. 20

Q. I show you an endorsement on the back and ask you if that is your signature and ask you if you endorsed that note? A. That is my signature. I turned it over to the Pittsburgh Steel Tube Company.

Q. From whom did you receive the note? A. From the Bordentown Steel and Tube Corporation.

Q. Is the Pittsburgh Steel Tube Company still the holder of that note? A. Yes, sir.

Q. It has not been paid or any part of it? A. Not any part. 30

Mr. Katzenbach: I offer that note.

Said note marked Exhibit P4.

Q. Mr. Levin, before we offer the note that I last showed you, which is now marked Exhibit P4, it is payable to the order of Isaac Levin, is it not? A. Yes, sir; endorsed by me.

Q. Mr. Levin, I show you a note dated January 15, 1921, in the sum of \$5,582.50, payable three 40

Plaintiffs' Witness, Isaac Levin, Direct

months after date, to the order of Isaac Levin, signed by the Bordentown Steel and Tube Corporation, V. P. Jackson, treasurer, and ask you if you have ever seen that note before? A. Yes, sir; this note has been transferred to McDowell & Company, for merchandise.

10 Q. Was that note ever delivered to you? A. Yes, sir.

Q. By whom? A. Bordentown Steel and Tube Corporation.

Q. I show you an endorsement, purporting to be an endorsement of Isaac Levin, and ask you if that is your endorsement? A. Yes, sir; that is mine.

20 Q. Then you have said this note was delivered by you, after being endorsed, to the— A. McDowell and Company, for merchandise bought.

30 Q. Were the endorsements—were or were not the endorsements upon each of these notes, which have been made by you, and the delivery thereof, to the Eagle Pipe and Supply Company, and the Pittsburgh Steel Tube Company and McDowell & Company, made before or after the maturity of the notes? That is, did you endorse these notes practically upon the receipt from the Bordentown Steel and Tube Corporation, and deliver them to the various people, or did you wait until the maturity of the notes? A. No, upon receipt of the notes.

The Court: I understood you to say you endorsed them and delivered them to the plaintiffs before maturity of the notes?

The Witness: Before maturity of the notes.

*Plaintiffs' Witness, Isaac Levin, Cross**CROSS-EXAMINATION by Mr. Besore:*

Q. These various treasurer's notes, held by the Eagle Pipe and Supply Company, as you say, by the Pittsburgh Steel Tube Company, as you say, that was all submitted to arbitration?

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Mr. Katzenbach: Objection. Not cross-examination.

The Court: I don't think this witness was asked anything except concerning the signatures and delivery.

Mr. Besore: I propose to show—he has testified that the Eagle Pipe and Supply Company is the holder—

Mr. Katzenbach: I object, sir, to any matter of any arbitration, which is not pleaded in this case, being injected into it. This is a matter brought before this Court. We are not in a matter of arbitration.

20

Mr. Besore: I am simply laying a foundation to show—

The Court: I think that the purpose is to show that the testimony of the witness that plaintiffs are the holders of the notes is not true. You have opened the door to that by having the witness testify there was a delivery and they are the holders of the notes.

30

Mr. Katzenbach: It being denied in the pleadings, it is necessary to be established. I do object to the injection of any arbitration.

The Court: I suppose that any question that would properly throw light upon the question of whether or not the plaintiffs are the real holders of the notes would be competent.

40

Mr. Besore: I will withdraw the question.

Plaintiffs' Witness, Isaac Levin, Cross

Q. These notes which you say are held by the Eagle Pipe and Supply Company and the Pittsburgh Steel Tube Company, were produced in an arbitration in New York, were they not? A. Why, I believe they were.

10 Q. They were produced by you? A. Not by me; no.

Q. Was the McDowell note produced by you? A. No, sir; never produced.

Q. Now, after the arbitration, you applied to the Court to have the award set aside, did you not? A. I did not. The Eagle Pipe and Supply Company did.

Q. Did you file a petition asking for the setting aside of the award?

20 Mr. Katzenbach: I object.

The Court: Suppose he did?

Mr. Besore: He is president of this corporation and is here. He says the corporation is the holder. I want to confront him with the affidavit he made in the controversy in New York, in which he said who was the holder of these notes.

30 The Court: I suppose that would be competent. The objection is overruled.

(Question repeated.)

A. I did.

40 Q. I hold in my hand, Mr. Levin, a copy of the arbitration proceedings and the motion made to set it aside, with the Court's decision, certified under the seal of the County Clerk of New York, duly exemplified under the acts of Congress, which contains your affidavit, and I ask you whether you did not, in this affidavit, say this: "That thereafter, Isaac Levin paid

Plaintiffs' Witness, Isaac Levin, Cross

all of said notes to the Pittsburgh Steel and Tube Company and to the Eagle Pipe and Supply Company, and that said Isaac Levin became the owner of said notes, amounting to eighteen thousand odd dollars."

Did you say so? A. I don't know.

Q. You don't know? A. Unless I read it.

10

Q. All right, I will show it to you.

(Examining counsel hands paper to the witness.)

A. (Witness reads.) Whatever this was in the affidavit, that was in regard to counsel, I swore to it.

Q. Who was your counsel? A. Mr. Slade.

Q. Mr. Slade here (indicating)? A. Yes, sir.

Q. What was said in this affidavit was true, isn't it? A. I should say it was.

20

Q. You did pay those notes, didn't you? A. I don't know about I paid the notes.

Q. What you said in this affidavit was true? A. I presume it was.

Q. You know whether what you said was true or not? A. I don't know exactly everything.

Q. Did you read the affidavit before you signed it? A. It was a year ago.

30

Q. Did you read the affidavit before you signed it? A. I did, yes.

Q. And you swore to it? A. Yes, sir.

Q. And it is true, what you said? A. If I swore to it, it is true.

Q. The affidavit was made March 30, 1922, wasn't it? A. Yes, sir; that's my signature.

Q. Now, the Pittsburgh corporation filed a schedule of its assets in the United States District Court for the Eastern District of Pennsylvania, after these suits were brought? A. I don't know about that.

40

Plaintiffs' Witness, Isaac Levin, Re-direct

Q. It had a bankruptcy receiver appointed? A. No, sir.

Q. It had? A. No, sir.

Q. It never had? A. Temporary receiver in bankruptcy—not a bankruptcy. It filed no schedule of its assets.

10

Mr. Katzenbach: I object to this line of cross-examination as being irrelevant and improper.

Mr. Besore: I want to find out whether these notes were scheduled.

The Court: The witness says he has no knowledge of it, as I recall. That seems to dispose of the question.

20

Q. Do I understand you to say you do not know that the Pittsburgh Steel Tube Company was in bankruptcy? A. Not in bankruptcy.

Q. There was no petition filed against them in bankruptcy? A. Why, the receiver, but there was a composition.

Q. There was a temporary receiver? A. Just temporary.

Q. There was a petition filed? A. I don't know anything about it.

30

Q. There was a schedule of assets filed? A. I do not know about this schedule.

Q. Who filed it, if it was filed by that company? A. I couldn't tell you along there.

RE-DIRECT EXAMINATION:

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Mr. Katzenbach: It is somewhat out of the usual order, but may I ask Mr. Slade be permitted to re-examine this witness?

Plaintiffs' Witness, Isaac Levin, Re-direct

Mr. Slade: May I suggest this to your Honor? I haven't seen these affidavits. May I have a few minutes' recess so I may read these affidavits over?

(A recess for five minutes was then taken.)

By Mr. Slade:

10

Q. Mr. Levin, I understood you to testify that you were once president of the Pittsburgh Steel Tube Company? Don't shake your head. A. Yes, sir.

Q. Did you know where the Pittsburgh Steel Tube Company carried its bank account? A. Beaver Trust Company.

Mr. Besore: I object. Immaterial.

The Court: I presume the situation is this, until it is changed, that the Pittsburgh Company is the holder of the note.

20

Mr. Slade: Yes.

The Court: Under our statute, that is presumptive evidence of its right to sue. Until that is challenged, I presume that wouldn't be material. He asked the witness, but I suppose that was to test the witness's credibility. Now, I take it, that doesn't change the law, and if the case stopped now, I would suggest the plaintiffs be entitled to judgment.

30

Mr. Besore: I don't understand that is your Honor's ruling. My understanding of the situation is, Mr. Levin testified that the Pittsburgh Steel Tube Company was the holder of the note, the Eagle Pipe and Supply Company was the holder, in general terms. Now, then, on my question as to his affidavit, he admitted he had made a statement that he, himself, had

40

Defendant's Witness, Vance Parker Jackson, Direct

taken up the notes and paid for them, and admitted that statement was true. His statement is, he is the holder of the note.

The Court: No, there may be two contradictory statements, but it is for the jury.

10 Mr. Katzenbach: The plaintiffs rest in each of the cases.

The Case for the Defendant.

VANCE PARKER JACKSON sworn:

By Mr. Besore:

20

Q. Where do you live? A. Trenton.

Q. Where are you employed? A. Bordentown Steel and Tube Corporation.

Q. The defendant? A. Yes, sir.

Q. What position do you occupy? A. Secretary and treasurer of the company.

Q. How long? A. I have been with the company since its organization, since—secretary from February, 1918, to October, 1920, and then was elected
30 treasurer and held both offices since.

Q. You mean from the time it has been known as the Bordentown Steel and Tube Corporation? A. We were incorporated in February, 1918, and I went with the company at the time of the corporation.

Q. As secretary and treasurer or as secretary, what were your duties? A. Office manager and accountant.

Q. And as treasurer what were your duties? A.
40 Since then, I have had charge of all of the work as secretary and in addition the financial part of the business.

Defendant's Witness, Vance Parker Jackson, Direct

Q. Who had been treasurer before you? A. Henry S. White.

Q. You are familiar with the notes sued upon? A. I am.

Q. You signed them? A. I did.

Q. Do you know what they were given for? A. They were renewals of other notes outstanding, renewed as they came due. 10

Q. Are you familiar with the transactions from which those original notes arose? What were they? A. They were given—

Mr. Slade: May I ask that be answered yes or no? The Witness: Yes.

Q. What were those original notes given for? 20

Mr. Slade: Objection. Irrelevant, incompetent, wouldn't be binding on these plaintiffs, as to what the transactions were between the original parties. The notes, if your Honor will recall, were made to Isaac Levin individually, endorsed by him to the respective corporations. Whatever he did is immaterial.

The Court: That would be true in the present posture of proof, until shown that the present holders were not the holders in due course, if delivered. Now, I take it, from the defendant's outline, the defendant will endeavor to show that none of these plaintiffs, or at least two of them, are not holders in due course for value. Therefore, any defense that would be good against Levin, the payee, would be good against the plaintiffs, who are merely, perhaps, holders of the legal title. In that situation, of 30 40

Defendant's Witness, Vance Parker Jackson, Direct

course, any defense that would be good against Levin would be entertained.

Mr. Slade: If they had laid the proper foundation. They haven't connected, as yet, any proper elements.

10

The Court: It will be taken subject to the defendant showing that the present holders were not the owners.

Mr. Slade: And my associate suggests it is not in the regular order and would be prejudicial.

The Court (after argument): I take it that is the state of the law and I will permit the question.

20

Exception noted for plaintiffs.

(Question repeated.)

A. They were in payment of the account, or merchandise, an account which we had with Isaac Levin, settlements at various times.

Q. Were the original notes given for specific invoices? A. Not in all cases.

Q. They have been renewed for a number of times?

A. Great many times.

30

Q. And the last renewal was—could you trace it to any particular transactions? A. It would be almost impossible.

Q. Do these notes represent a balance of an open account? A. In some cases.

Q. Do they at the present time represent a balance of an account? A. I should say yes.

40

Q. Is there any question you owe any more than these notes on these various transactions? A. There is not. There is no case.

Defendant's Witness, Vance Parker Jackson, Direct

Q. I am speaking about the Levin transaction. A. This closes the transaction.

The Court: These notes are given to pay in full any known claims Levin might have against your company, down to the time these notes were given?

The Witness: Yes, sir. 10

Q. Now Mr. Jackson, I show you what purports to be an invoice made by the Eagle Pipe Supply Company to the Bordentown Steel and Tube Corporation, under date of April 28, 1920, and ask you if you have seen that paper? A. I have.

Q. Where did it come from? A. It came from Isaac Levin.

Q. Who received it? A. The Bordentown Steel and Tube Corporation. 20

Q. Is it produced in your custody now? A. It is, yes, from our files.

Q. What does it represent? A. It represents an invoice for—

Mr. Slade: I object to the competency of it.

The Court: It speaks for itself.

Q. I don't want the details. A. Invoice for a purchase of a car of tubing. 30

Q. There are a number of notations on the invoice? A. Some are in my writing, some of a clerk in the office.

Mr. Besore: I offer the invoice.

Mr. Slade: Objected to, irrelevant and incompetent, the witness having already testified he would be unable to testify to any particular part of a transaction. 40

Defendant's Witness, Vance Parker Jackson, Direct

Said paper marked Exhibit D1 for identification.

Q. I show you another paper which purports to be an invoice, dated March 8, 1920, and ask you what that is? A. The same as the previous one, an invoice.

10 Q. The same invoice, you mean? A. No, the same character. It is another invoice for tube material.

The Court: They are all in the same general class?

Mr. Besore: I think so. We will submit them to Mr. Jackson.

Q. Invoice, Eagle Pipe Supply Company, March 13, 1920; invoice, Eagle Pipe Supply Company, Inc.,
20 crossed out, and Isaac Levin written under, to Bordentown Steel and Tube Company, dated July 1, 1920; invoice, Eagle Pipe Supply Company, Inc., to Bordentown Steel and Tube Corporation, dated April 28, 1920; invoice, Isaac Levin to Bordentown Steel and Tube Corporation, dated June 28, 1920; invoice, Isaac Levin to Bordentown Steel and Tube Company, dated June 14, 1920; invoice, Eagle Pipe Supply Company, Inc., printed, and Isaac Levin written in ink, to Bordentown Steel and Tube Company, dated June 5,
30 1920; invoice, Eagle Pipe Supply Company, Inc., printed, and Isaac Levin written in pencil, to Bordentown Steel and Tube Company, dated June 24, 1920. I show you all these invoices and ask you what they are? A. They are all invoices for merchandise purchased.

Q. Who received them? A. Received by the Bordentown Steel and Tube Corporation, entered on our
40 books and taken from our files.

Defendant's Witness, Vance Parker Jackson, Direct

Mr. Besore: I offer all those invoices.

Said invoices marked Exhibits D2 to D9 inclusive, respectively.

Q. Do you know whether or not the materials were furnished the Bordentown Steel and Tube Corporation at the times these invoices were received? A. It was, 10
yes.

Q. The materials were furnished? A. The material was.

Q. Do you know from whom these materials were ordered? A. From Levin.

Q. By whom? A. Henry S. White, president.

Q. Do you remember the circumstances surrounding the receipt of any of these invoices? A. Yes, sir.

Q. What were they? 20

Mr. Slade: Objection.

The Court: I suppose the defense, in part, is failure of consideration, and if admissible at all, is against the plaintiffs. I suppose we have got to take it and rest upon the proof to show whether or not that is a valid defense. I suppose, subject to a motion to strike out, we will have to take the testimony. 30

Mr. Slade: The circumstances under which they would be delivered, or were delivered, would be immaterial and irrelevant and incompetent.

The Court: I don't know—

Mr. Slade: As to what occurred at the Bordentown Steel and Tube Corporation wouldn't be binding.

(Question repeated.)

Mr. Besore: I will reframe my question. 40
Strike out the question.

Defendant's Witness, Vance Parker Jackson, Direct

Q. Can you state the transactions which resulted in the receipt of these invoices, what happened?

Mr. Slade: There are two questions there.

The Court: I suppose the witness should state the transaction, Mr. Besore.

10 Mr. Besore: I thought I would save a lot of time by asking the circumstances.

Q. Do you know how you happened to get the invoices? A. I do.

Q. Will you tell us how?

Mr. Slade: Objection.

The Court: I think I will take it, subject to a motion to strike out, and deal with the testimony as the purposes may require.

20 Exception noted for plaintiffs.

A. They were brought to our office, usually by Mr. Levin, and then they were turned over to the general office for credit to his account.

Q. Who turned them over? A. Either Mr. Levin or Mr. White.

30 Q. Was the Bordentown Steel and Tube Corporation in the habit of keeping printed or any sort of a purchase order blank?

Mr. Slade: Objection.

The Court: I suppose it is whether they did in this transaction. I suppose the objection is, "their habit."

Mr. Slade: Isn't binding on us at all.

The Court: The precise question, I think, will not be allowed.

40 Q. Were any purchase orders written about these purchases? A. I can't—

Defendant's Witness, Vance Parker Jackson, Direct

Mr. Slade: I object to that question, the one right now propounded.

The Court: I will permit it.

Exception noted for plaintiffs.

A. In only rare instances.

Q. Did you know of any instance? A. I don't know of any. 10

Q. In the case of other purchases, were written purchase orders issued? A. They were.

Q. What sort of a system had you for that?

Mr. Slade: Objection.

Objection overruled.

Exception noted for plaintiffs.

A. We had a serial number in form orders issued and kept there in the office and a copy sent to the person from whom the material was purchased. 20

Q. Who was the order signed by? A. As a rule, I signed them.

Q. What became of copies? A. We kept a copy in our office files. Three copies; one in the office records, one in the receiving department and one from the person from whom purchased.

Q. What became of the office copy? A. Filed in our office. 30

Q. For what purpose? A. As a matter of record of purchases, to check invoices and prices and so forth.

Q. And why sent to the shipping room? A. So the receiving clerk could check the material.

Q. What had you to do, then, with the buying of materials, if anything, in the Bordentown Steel and Tube Corporation? A. I bought the small supplies used every day in our business. 40

Defendant's Witness, Vance Parker Jackson, Direct

Q. Who bought material for use in manufacture?
A. Henry S. White.

Q. Who was he? A. President of the Bordentown Steel and Tube Corporation.

10 Q. Who had charge of the mill? A. During the—
well, Henry S. White was in direct charge. We had
a superintendent under him. The president was in
sole charge of the mill.

Q. Did you have anything to do with the mill? A.
Nothing whatever at all.

Q. Who was superintendent? A. During the first
year, a man by the name of Imhoff, and after him,
Mr. Martin White.

20 Q. Who was superintendent at the time of the in-
voices? A. Martin White.

Q. Were you present at any of the directors' meet-
ings, in which the question of purchase of materials
by the Bordentown Steel and Tube Corporation, from
Isaac Levin, was discussed?

Mr. Slade: Objection as leading, suggestive,
improper and incompetent.

The Court: How is that material?

30 Mr. Besore: Our defense is that Henry
White bought that material without authority.

The Court: Unless there was some action,
it couldn't be binding, and the fact is, I take it,
whether or not the purchases were actually
made, not whether or not there may have been
some discussion.

40 Mr. Besore: I take it, it is absolutely essen-
tial for the board to adopt a resolution. His
powers to purchase anything are those purely
which the board permit him to use.

Defendant's Witness, Vance Parker Jackson, Direct

The Court: Assuming, as I take it, that the Board of Directors did authorize White to make purchases, I understand that was within the scope of his authority. Then, whatever the directors delegated to White, would be purely advisory, that they didn't think he ought to buy from A, B or C. In the absence of some official order that he was to purchase or not purchase from certain sources, he would be acting within the scope of his authority if he did in fact purchase and the corporation got the benefit of it, then the mere discussion of directors couldn't possibly affect the vendor, unless Levin was there, and I don't think it would even then be competent.

10

20

Mr. Besore: My point is not that we are resting solely on lack of authority, but the fact that White knew he was not to buy from Levin.

Objection sustained.

Exception noted for defendant.

Q. Who were the directors when you first became secretary?

30

Mr. Slade: Objection, immaterial, irrelevant and incompetent.

Objection overruled.

Exception noted for plaintiffs.

A. Julius Blum, Isaac Levin, H. S. White and Henry C. Kensing.

Q. Were you present at any meeting of the board at which Mr. Levin was present and at which the discussion occurred as to the advisability of purchasing materials from Isaac Levin?

40

Defendant's Witness, Vance Parker Jackson, Direct

Mr. Slade: Objection. The question is itself suggestive. I withdraw it.

A. I can't answer that question yes or no, Mr. Besore, as to Mr. Levin being present.

10 Q. You don't know whether Mr. Levin was present or not? A. I can't state positively.

Q. Now, were you present at any meeting of the board, at which Mr. Levin was present, at which the character and quality of materials furnished by Levin was discussed? A. I was.

Q. When was that? A. It was in the first year of our organization.

Q. You don't know the date? A. I can't fix the date definitely.

20 Q. What was the discussion upon that?

Mr. Slade: I object to that. The witness testified that they organized this sometime in 1918.

The Court: That they incorporated then.

30 Mr. Slade: Yes. The witness here was connected with an institution prior to that time and he became secretary, but there is no testimony here that Mr. Levin was a director of the Bordentown Steel and Tube Corporation, the present defendant.

The Court: I understood the witness to say he was and that he was present at the time that the witness is interrogated about.

40 Mr. Slade: The witness's testimony now is they took up a discussion as to the character and quality of material purchased, but it doesn't show the discussion took place subsequent to 1918.

Defendant's Witness, Vance Parker Jackson, Direct

The Court: You might fix the time.

Mr. Besore: Strike out the question.

Q. Had the Bordentown Steel and Tube Corporation purchased any materials from Levin, when you became secretary? A. I became secretary when the Bordentown Steel and Tube Corporation was organized. 10

Q. Were there some materials on hand? A. There was nothing else on hand but material purchased from Levin.

Q. Were you then present at any Board of Directors' meeting, at which the character of materials purchased by Levin—

The Court: You said "purchased by." 20

Q. From Levin, at which Levin himself was present? A. I was.

The Court: When was it?

The Witness: During 1918, the first year of our organization.

Q. What was the discussion?

Mr. Slade: Objection. I care not what the discussion was. What we want is the substance, and how would that be binding upon the present plaintiffs? 30

The Court: It wouldn't, unless Levin is in fact either the owner or the plaintiffs were parties to a fraud. That couldn't be binding upon them. The question is to get at the facts, without first admitting the defense, and then determining whether it is pleaded.

Mr. Slade: This witness has testified that he 40

Defendant's Witness, Vance Parker Jackson, Direct

could not now recall a conversation or discussion when Mr. Levin was present, after 1918, after the organization of this company.

The Court: No, I think not.

Objection overruled.

10 Exception noted for plaintiffs.

By the Court:

Q. What was said, in the language used, so far as you can now recall such language? A. The president, Mr. White, objected to the material we had on hand.

Q. That is a characterization. A. He said the material was rotten and we couldn't use it and gave it as a reason for not getting out production for our manufactured products. The directors were urging him to get out more material during war time. Our order book was crowded. We were not living up to our promises; and Mr. White's reason for not being able to do it was the class of material he had to work from; he had no good material and he couldn't make progress of manufacture with this material.

20

By Mr. Besore:

Q. Did he say where that came from? A. It was taken from the Bordentown Steel and Tube Company, the Bordentown Steel and Tube Corporation took it over, and it came from Isaac Levin.

30

Q. What happened then, after he said he couldn't make good steel tubing, what did the directors do? A. They told him not to buy that class of material; to buy better material.

Q. In that connection, nothing was said about not buying from Levin? A. They told him not to buy Isaac Levin's material.

40

Defendant's Witness, Vance Parker Jackson, Direct

Q. Now, Mr. Jackson, when did the purchases of material from Levin begin? A. In March, 1920, I think, was the first shipment received.

Q. How long did Levin continue to be a director? A. Levin was not a director at that time.

Q. How long did he continue to be a director after you were elected secretary? A. From the organization until May, 1919, I think. 10

Q. What happened to him then? A. Mr. White sold the stock owned by Levin to a corporation in Chicago, and in that meeting, at the time of the stock transfer, Mr. Levin resigned and a new director was elected.

Q. Was any material purchased from Levin at that time? A. I don't recall any from the time of Levin's resignation, until March, 1920. 20

Q. Was Levin there at all? A. I never saw him.

Q. Until when? A. Early in 1920, in February.

Q. Did you observe any instance as to the state of feeling between Levin and White during that period?

Mr. Slade: Objection.

Objection sustained.

Q. Were Levin and White friendly during that time? 30

Mr. Slade: Objection; immaterial.

Objection sustained.

Q. Was there any controversy between White and Levin during that period

Mr. Slade: Objection.

Objection sustained.

Q. Was there a lawsuit between them? A. There was. 40

Defendant's Witness, Vance Parker Jackson, Direct

Mr. Slade: Objection. May I ask that the answer be stricken out?

The Court: The answer may be stricken out. I sustain the objection.

Mr. Besore: I can prove it by the record.

10 The Court: The objection is sustained.

Q. Did you pay Levin any money from the Borden-town Steel and Tube Corporation?

Mr. Slade: I object to that.

The Court: On what ground?

Mr. Slade: Immaterial, irrelevant and incompetent.

20 The Court: Suppose at the time these notes were given, he didn't owe them anything? Suppose the defendant corporation didn't owe anything to Levin?

Mr. Besore: I don't intend to show that. I intend to show the money was attached in Mr. Jackson's hands. It is a very important thing to us, for we are going to show Levin made a settlement with White, for a certain amount of money, and then afterwards voluntarily paid him more money which White claimed, in excess of the amount.

30 The Court: You mean White was getting a commission from Levin for merchandise purchased?

Mr. Besore: No. White sold Levin stock and he claimed a commission on that and the proceeds were deposited in escrow and that attachment suit was something like \$3,000 and settled for \$2,000, and then two or three months after that Levin paid an additional

40

Defendant's Witness, Vance Parker Jackson, Direct

\$1,000, at the time White was buying the materials. I will withdraw the question.

Q. Was some money deposited in your hands as the result of the sale of that stock of Mr. Levin's?

Mr. Slade: I object to that, if your Honor please. 10

The Court: It all relates, I presume, to the question—it goes back finally to the question of whether or not Levin is the real plaintiff here, and assuming that he is, you are endeavoring to show that between White and Levin there was an immoral if not a criminal conspiracy to defraud the defendant company, but I can't see how the fact there might or might not have been controversies and questions between Levin and White, can affect the case, because after all it is not the state of mind, it is the acts that affect the defendant company. They might have hated each other and yet have a common purpose. Their acts are the things that show. I don't think it is admissible. 20

Mr. Besore: I don't want to press it. What we want to show is—

The Court: Obviously, there was a time when Levin and White were not friendly and thereafter they became friendly and it was because they had a common purpose to defraud this defendant company, but I think that is to be shown by their acts. 30

The noon recess was then taken.

Defendant's Witness, Vance Parker Jackson, Cross

Afternoon session.

VANCE PARKER JACKSON, recalled for cross-examination.

By Mr. Slade:

10 Q. Mr. Jackson, if I didn't understand you correctly, kindly correct me, won't you? I understand you to say you usually had blank orders, order blanks, upon which you used to give your orders for merchandise? A. I did.

Q. And you also testified that in Levin's case that was not done? A. I didn't say that; no.

Q. I misunderstood you? A. My answer will show I said in every instance it was not.

20 Q. But as merchandise arrived, when it came from Levin, your employees would check up the weights and the amount and the value of it and it would be entered in your books? A. Yes.

Q. And every carload sent by either the Eagle Pipe Supply Company or Levin was, in the ordinary course of events, entered in your books? A. I did.

Q. That is correct? A. It is.

30 Q. And books that you keep in your office are subject, are they not, to the inspection of the board of directors and your treasurer? A. They are.

Q. And also the president? A. They are.

Q. Mr. White was president, Mr. H. S. White, senior? A. Yes.

Q. You were the secretary? A. I was.

Q. And during the time that these purchases were made, you were also the secretary and treasurer? A. No, I was not.

40 Q. When the purchase was first made there, Mr.

Defendant's Witness, Vance Parker Jackson, Cross

Levin, from the Bordentown Steel and Tube people, you were the secretary? A. I was.

Q. And during the same period, you were also secretary and treasurer? A. I was not.

Q. When did you become treasurer? A. On the day Mr. H. S. White severed his connection with the company. 10

Q. You knew the various merchandise bought? A. I did.

Q. When the board of directors met, the condition of the company was taken up, wasn't it? A. It was.

Q. And the financial condition of the company? A. It was.

Q. And the character of the merchandise bought and sold? A. It was. 20

Q. And in the ordinary course of events, when you were at board of directors' meetings, the books were discussed in a general way, as to what merchandise was bought, from whom—the character of the merchandise bought and the character of the merchandise sold to your various customers? 20

Mr. Besore: Objection.

(Question withdrawn.)

Q. Now, you said that there was at some time a discussion in which Mr. White or somebody was admonished not to purchase any more merchandise from Mr. Levin? A. I did. 30

Q. Didn't you say first what was said was the class of merchandise bought should not be purchased any more? A. I think I said both of those.

Q. At that time you were a very small concern, were you not? A. That depends upon how you judge it. 40

Defendant's Witness, Vance Parker Jackson, Cross

Q. Now, then, wasn't there something said at the time that in view of the character of merchandise being then purchased, it would be better to get a higher grade, a higher class of merchandise, so you could produce a higher class of goods? A. It was.

10 Q. Now, it is nothing unusual, in your line of business, to give an order over the telephone? A. No.

Q. And orders are given over the telephone? A. Sometimes.

Q. Subsequently, that order is confirmed by either the merchandise being sent, by an invoice, or order? A. Yes.

Q. The last renewal of the notes were signed by you as treasurer, is that correct? A. It is.

20 Q. You knew at the time of the so-called claim, there was an order given us to purchase merchandise from Mr. Levin? A. I did.

Q. And you renewed those notes and partly paid? A. I did.

Q. And signed them as treasurer of your company? A. I did.

30 Q. You also knew what was on the books, of the character, sizes and dimensions of the merchandise that were delivered and for which payment was given by notes executed by you for the balance? Yes or no, please. A. No.

Q. You were secretary? A. I was.

Q. Also treasurer? A. I was not at the time of the renewals.

Q. At the time you executed these notes, you were treasurer? A. I was.

Q. So you were interested as financial agent as well as treasurer, as well as secretary? A. I was.

40 Q. Were you a member of the board? A. No.

Defendant's Witness, Vance P. Jackson, Re-direct

Q. Are you now a member of the board of directors? A. No, I am not.

Q. As secretary of the company, the books were under your charge, were they not? A. They were.

Q. That's correct, isn't it? A. It is.

Q. And you from time to time prepared the financial condition of the company for its officers and also prepared the other conditions of the company for its officers? A. I did not. That was done by certified accountants. 10

Q. Under your supervision? A. To a certain extent, yes.

Q. Didn't you know what were in the books? A. Certainly.

Q. You didn't know those books recorded the purchases of merchandise from Isaac Levin? Yes or no, please. A. Yes. 20

RE-DIRECT EXAMINATION by Mr. Besore:

Q. Mr. Jackson, who checked up the materials, for quality, when they came in? A. H. S. White. Invoices were O K'd by him. I had the accounting end, nothing to do with material.

Q. Who made reports to the board of directors as to the condition of the company and character of stuff turned in? A. The president, Mr. White. 30

Q. When was the character of this merchandise first taken up by the board? A. Early in our organization, the first year.

Q. When was the character of merchandise we are talking about first taken up before the board of directors? A. In the summer of 1920.

Q. How did it happen to be taken up? A. Well, 40

Defendant's Witness, Vance P. Jackson, Re-direct

brought it to the attention of the directors myself, the character of material we had at that time.

Q. Why didn't you bring it to their attention earlier?

10 Mr. Slade: Objection. The question suggests the mental operation of the witness.

The Court: Whether or not there was any reason in fact why it had not been done, he may testify to.

A. My duties were solely in the office. I had nothing to do with the receipt or quality of material received and I was employed by H. S. White, reported to him only and not to the directors.

20 Q. What caused you to take it up with the board of directors then?

Mr. Slade: Objection.

Mr. Besore: I think that is another fact.

The Court: He may testify to any occurrence or any fact; but what might have been the reason in his mind, I don't think that would be competent.

30 A. The material was so bad, I didn't think they ought to go on.

Q. How did you know that? A. Through the complaint of our superintendent and the class of material being returned by our customers. We were getting complaints every hour—

Mr. Slade: I move that be stricken out.

The Court: Strike it out.

40 Q. When did the superintendent complain?

Defendant's Witness, Vance P. Jackson, Re-cross

Mr. Slade: Objection; purely hearsay.

The Court: I suppose this was all suggested by your cross-examination as to this witness's knowledge of certain conditions and your inquiry as to why he didn't bring it to the attention of his superiors.

Mr. Slade: I didn't ask him any question on that. My examination was directed to the purchase of the merchandise and the books. 10

Mr. Besore: And inspection of material.

The Court: Your question now goes much farther. You are now taking up the question of what he did with respect to advising the defendant as to the quality of material.

Mr. Besore: I suggest the cross-examination was, he was the man to do it. 20

The Court: No. I think that came up through an inquiry as to his having signed the notes with the knowledge the notes were renewals, with the knowledge of the conditions.

Q. Why did you sign these renewal notes?

Mr. Slade: Objection.

Objection overruled.

A. There was an apparent indebtedness. We had no proof of fraud at that time and the notes were coming due and we thought we had to take care of them; we thought we were stung for it. 30

RE-CROSS EXAMINATION by Mr. Slade:

Q. Mr. Jackson, you said at the time you executed the renewals, you had no proof of any fraud. Is that correct? A. I did. 40

Defendant's Witness, Vance P. Jackson, Re-cross

Q. You also said that the superintendent who examined this merchandise had made complaints? A. I did.

Q. So that he made the complaints at the time the merchandise was delivered and inspected. Is that correct? A. Yes.

10 Q. These notes were executed long after these complaints were made by your superintendent and after he had inspected the merchandise? A. I did.

Q. You also said that you didn't think you owed any duty to your employer to tell him of the rotten material, as you expressed it, being delivered. Is that correct? A. It is not.

20 Q. Didn't you say that? Maybe I misunderstood you. Did I understand you to say it wasn't your duty to report? A. I said I only reported to the president at times. I made no reports to the board of directors.

Q. At no time? A. At that time.

RE-DIRECT EXAMINATION by Mr. Besore:

Q. To whom were these complaints made by the superintendent? A. To the president, H. S. White.

30 Q. In your presence? A. I heard them a number of times.

RE-CROSS EXAMINATION by Mr. Slade:

Q. When did Mr. H. S. White resign? A. Twenty-first of October, 1920, I think.

40 Q. Now, I want you to see these notes. I withdraw that question. You just, in response to counsel, said something about—may I ask the last question and answer be repeated?

Defendant's Witness, Julius Blum, Direct

(Question and answer repeated.)

Q. The president, Mr. H. S. White, resigned in October, did he? A. Yes.

Q. 19—what year? A. 1920.

Q. Will you please look at these notes and see whether these notes were signed by you after the resignation of Mr. H. S. White (examining counsel hands notes to the witness)? A. I have already admitted that. 10

Q. And these notes were executed by you when the person who is now president of the company became president? A. They were.

JULIUS BLUM, sworn. 20

By Mr. Besore:

Q. Where do you live? A. At Ardsley-on-the-Hudson, New York.

Q. You are connected with the Bordentown Steel and Tube Corporation? A. I am.

Q. In what capacity? A. I am a stockholder and one of the directors. 30

Q. How long have you been a director? A. I have been a director in the present Bordentown Steel and Tube Corporation and in its predecessor, the Keystone, ever since the company existed.

Q. How many stockholders are there in that corporation?

Mr. Slade: Objection, immaterial, irrelevant and incompetent.

Objection overruled. 40

A. I imagine about—

Defendant's Witness, Julius Blum, Direct

Mr. Besore: Never mind, if he doesn't know.

Q. Who are the other directors? A. Mr. A. D. Dorman, Mr. Al Roesch, of Chicago, Mr. Fred Beagle, of Beaver Falls, Pennsylvania, Mr. Harry E. White, of Chicago, and myself.

10 Q. Have you been in touch with the business affairs of this company? A. Tolerably so.

Q. When did you discover that these materials represented by the invoices identified here had been purchased by the company?

Mr. Slade: I object. Immaterial and irrelevant, as to how he found out, what he ascertained.

Objection overruled.

20

A. I found it out during August and September, 1920.

Q. Prior to that time, had you known that purchases had been made from Isaac Levin by the Bordentown Steel and Tube Corporation?

Mr. Slade: I object to that, if your Honor please.

Objection overruled.

30

A. How long? There were purchases made, yes.

Q. When did you first learn these purchases had been made? A. Purchases at issue in this action, I learned of in August, 1920.

Q. Had you known purchases were being made when they were being made? A. I learned it then for the first time.

40 Q. You had your knowledge at the times the invoices were coming in? A. I did not.

Q. Did you make an investigation after you found out these materials were purchased? A. I did.

Defendant's Witness, Julius Blum, Direct

Q. As a result of that investigation, did you have any conference with Isaac Levin? A. I did.

Q. Where did you have that conference? A. I had several conferences with him. The one that I remember, where these matters were discussed, was at his house in Mount Vernon, New York. That was several days prior to October 21, 1920, the date of the resignation of Mr. H. S. White, on a Sunday evening.

10

Q. What happened? A. I went to Levin's house, at Mount Vernon.

Mr. Slade: In order to preserve the record, I make an objection to what conference he had, that would not be binding upon either one of these plaintiffs, and it would be immaterial, irrelevant and incompetent, and would be a statement by Isaac Levin when presumably Isaac Levin had parted with the title to all of these notes.

20

The Court: In view of the defense proposed, I will admit it.

Exception noted for plaintiffs.

A. I met Mr. Levin, by appointment over the telephone, at his house in Mount Vernon, and my wife was with me, and Mr. Levin and I went outside; we walked outside in the garden, and I told him of suspicions I had with his dealings with H. S. White, that they were improper. I asked him whether he had paid him any money and he absolutely denied that he had done so. I had pretty definite suspicions then—

30

The Court: Just tell what took place.

Mr. Slade: I ask that be stricken out.

The Court: That may be stricken out.

40

Defendant's Witness, Julius Blum, Direct

The Witness: I pressed him for an answer—

Mr. Slade: I ask that be stricken out.

The Court: Don't give your conclusions but tell what was said.

10 The Witness: I asked Levin whether he had paid H. S. White any moneys, but he denied it. I asked him repeatedly and told him that I thought the dealings were very suspicious and he denied that again, and—pardon me, Mr. Katzenbach, may I ask that you don't interrupt me?

Mr. Katzenbach: Go right ahead.

20 The Witness: I asked him point-blank whether he had bribed H. S. White, and he denied it. I asked him whether he had paid him any moneys whatsoever and he denied that. I was most insistent. He gave me his word of honor he had not paid any money to H. S. White. That is about all that happened.

Q. All at that conference? A. That is practically all.

30 Q. When did H. S. White resign? A. Several days later. Pardon me for answering the last question again. I told H. S. White, I told Isaac Levin that the board of directors were going to hold a meeting in a few days and I asked him to please tell me the truth about it. I said it was most important for us to know what to do and he absolutely denied paying any money.

Q. How did H. S. White happen to resign?

Mr. Slade: Objection, irrelevant, immaterial and incompetent.

40 The Court: Unless you bring it home to the knowledge of the plaintiffs, how is it material?

Defendant's Witness, Julius Blum, Direct

Mr. Besore: You mean the plaintiffs in this case?

The Court: Yes.

Mr. Besore: I take it, in proving this fraud, we don't have to prove everything happened in Mr. Levin's presence.

The Court: It must be related somehow to the subject-matter of the suit, the mere fact that White resigned. 10

Mr. Besore: I am trying to prove why he resigned, that's all.

The Court: He may have resigned because of charges the board of directors made against him. Unless it is shown Levin knew of it and didn't deny it, or he had some part in it, that can't possibly be competent. 20

Mr. Besore: If we don't show a connection, none of our testimony will ever get to the jury.

The Court: That is true. The fact that he resigned, if it is related to the subject-matter of the suit, then, of course, it might be competent, otherwise not.

Q. What investigation had you made, prior to your conference with Isaac Levin, with reference to this material? 30

Mr. Slade: I object to that.

The Court: That can't be telling any more than his conclusions.

Mr. Besore: I am asking what he did.

Q. I want to know what you did, not what you thought. What did you do? A. I visited the mill, I looked at the material then on the floor of the mill and 40

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in process of manufacture. I found the most inferior class—

Mr. Slade: Objection to his opinion.

The Court: No, just what you did.

10 The Witness: I questioned the superintendent, Martin White, why he—

Mr. Slade: Objection.

The Court: Don't tell what he said, but your inquiry was directed to why he used this material?

The Witness: I said, what is—

Mr. Slade: Objection to what you said.

20 The Witness: I don't quite understand how to answer the question.

The Court: Tell what you did.

The Witness: I went to the floor of the mill, looked at the material which was there, made inquiries as to what was being done with the material there. My inquiries were—

Mr. Slade: Objection.

The Witness: With Martin White.

30 The Court: Don't tell your conversations with him.

The Witness: I found that Martin White was supervising the manufacture of steel tubing from very short ends, from tubing badly pitted, badly rusted, from tubing evidently cut out from old steam boilers, showing the marks of fire, of water sediment such as you find in old boiler tubes and such similar.

40 Q. Did you ask H. S. White anything about it? A. Not—

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Mr. Slade: Answer that yes or no, please.

The Court: Did you or didn't you?

A. Not on the floor of the mill but right after that. H. S. White was not present. He was laid up after that with a sore foot and I visited him at his boarding house at Bordentown, New Jersey.

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Q. Did you acquaint him with the result of your investigation? A. I did.

Q. Did you ask him—

Mr. Slade: Objection.

The Court: I suppose if there was a conspiracy between Levin and White, it would be competent.

Mr. Slade: The conspiracy must be established by independent evidence of the conspiracy itself first, as a preliminary fact, before they can proceed to show the result of that conspiracy.

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The Court: Perhaps a conspiracy is shown to exist only by what the parties said and did.

Mr. Slade: He is now getting down to give us a conversation between him and White.

The Court: I think I shall permit the testimony. This conversation took place before White severed his relationship.

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Mr. Slade: And after the conspiracy had been formed, after they gave us the notes.

The Court: I think I shall permit this testimony.

Exception noted for plaintiffs.

A. I asked H. S. White point-blank whether he had received any money from Levin. I told him what I found on the floor of the mill, that the material was

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of the most inferior quality, that he himself had stated at many times that material of this class was improper material for the manufacture of our tubing. I asked him to explain how that happened, how we happened to have this material on hand and his answer was that was the best he could get. I asked him why he had purchased this material from Levin and in such large quantities, knowing, as I told him before, on various occasions, knowing the policy of the company to manufacture tubing only from first-class material, the policy which he himself had insisted upon from the very inception of the company.

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The Court: Is this what you told him?

The Witness: Yes. In fact, he had only accepted employment from the company, in 1917 or 1918, when Levin was to furnish all the raw material which the Bordentown Company, then called the Keystone, was to be furnished by Levin, and H. S. White insisted then this contract should be surrendered, as otherwise he would not accept employment as president and general manager. This agreement was then surrendered at his request, when the new corporation was formed, and the discussion was—

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30 Mr. Slade: Objection.

The Court: This is the conversation you had with H. S. White?

The Witness: We had a long conversation. I reminded him of the condition that he himself had insisted on having first-class material only; that he had always explained the lack of production of material by reason of having this inferior material on his hands. That was his alibi for not raising production of the mill. I asked him to explain why and he did not give me an explanation. I asked him right out

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in unmistakable language, I accused him of having accepted a bribe, that a man of his experience in the steel business, being a member of the standardization committee of the automotive industry, a man connected with the National Tube Company, part of the United States Steel Corporation, that he should buy material of this nature for the Bordentown Steel and Tube Corporation. He wouldn't say much in reply. He didn't say much. He shook his shoulders and said it was the best he could get and he didn't give me the explanation.

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Q. Was this before or after the conference with Levin, as to which you have just testified? A. That was before the conference with Levin.

Q. How long after that was the conference with Levin? A. Several weeks, perhaps five weeks.

20

Q. And how long after the conference with Levin did H. S. White resign? A. After the conference at Mount Vernon, Levin—

The Court: White.

The Witness: White resigned at a directors' meeting, October 21, 1920.

Q. How long after that conference with Levin? A. Only a short time, before, I think, either Sunday before, or a holiday.

30

Q. Did you have any further conference with Levin in relation to this material? A. I did.

Q. When was the next? A. There were several conferences. The next one of importance I remember was in February of 1921, at the McAlpin Hotel, New York City.

Q. Who was present there? A. Mr. H. E. White and myself, together with Mr. Levin.

40

Defendant's Witness, Julius Blum, Direct

Q. Was Harry White connected with the Bordentown Steel and Tube Corporation then? A. He was then new president of the Bordentown Steel and Tube Corporation, after the resignation of Henry S. White.

Q. What was said at that conference? A. At that conference, Levin was again questioned.

10 Q. Give the substance of the conversation, if you remember it. A. I again told Levin that I had definite reasons to suspect he had paid White money and Levin first denied it. I told him that I had definite information that he had and finally, I might say, for bluff—

Mr. Slade: Objection.

The Court: Just tell what was said.

20 The Witness: I told him that I had definite information and finally Levin did admit he had paid money to White. I said, "How much?" He said, "\$1,200." I said, "Why didn't you tell me before?" He said he didn't want to say it while the man was in his employ, he didn't want to hurt him. I said, "Levin, you have been identified with this company before, you were one of the men who formed the company with me, an officer, stockholder and director with me. I don't think you have treated me fairly." Well,
30 he didn't want to say it while White was in our employ. I said, "What did you pay him for?" He said that White had sold the stock in the Bordentown Steel and Tube Corporation and I had sold Isaac Levin's stock for him to this group of Chicago people, and he had given White \$500 in May, 1919, a few days, or at the time this stock sale was made, and that White construed this voluntary payment on his part as a part
40 payment of a five per cent commission on the stock of this company for which Levin got something like

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sixty-two or four thousand dollars and that he had attached the money on deposit in the Bordentown Steel and Tube Corporation for Levin, in Burlington County, and had brought a suit against him for the stock—a suit against him for this commission of \$3,000; that he defended that suit and denied he had made any agreement with White, that he had merely given him this \$500 as a voluntary gift and that he had settled with H. S. White through a legal agreement, whereby, in addition to the \$500, he had paid \$1,500 additional, making in all \$2,000, whereas White demanded \$3,000, and that when he started again—correct that, please—when he started to do business again with H. S. White, in February, 1920, or March, 1920, that H. S. White insisted that this thousand dollars he had taken off be paid to him and he said he did pay him that thousand dollars or twelve hundred dollars. I pressed him some more and told him I had information that he had made other payments and Levin finally admitted he had paid him more, perhaps \$4,000. I said, "What was it for?" He said, "H. S. White was instrumental in getting for me a government contract for some material and I made a profit of \$10,000 on that transaction, so I paid him about \$4,000 for his share of the profit on the transaction." I said, "Is that so? Would you be willing to show it to me?" He, no, he wouldn't. I pressed him to give me some details. I said, "I don't want to take your word for it. You told me an untruth when you were with me in November, in Mount Vernon. How shall I believe you this time?" He said there was nothing to show. I said, "You mean to say you make a transaction involving \$10,000 and you are a business man?" He said that

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was a personal transaction, that was a vest pocket transaction. I got no further with him.

Q. When did you have your next conversation? A. The next conversation took place on March 15, 1921.

Q. Where was that? A. At the office of Isaac Levin, or the Pipe Supply Company.

10 Q. What occurred there? A. Preceding to this conversation, the Bordentown Steel and Tube Corporation, after this conversation with Levin at the Mc-Alpin Hotel, communicated with attorneys and it was decided—

Mr. Slade: Objection.

Objection sustained.

20 The Witness: We stopped payment on the notes. This again led to several conferences with Levin and Levin finally agreed—

Mr. Slade: Objection.

The Court: Tell what was said.

The Witness: Levin told me I was all wrong, that there was nothing improper with his relations with White. I told him that it looked suspicious to me and that it was an old story that a man who gave money
30 for something and couldn't justify payment would say something else. Levin told me I was all wrong. I said, "Levin, I will be the very first one to shake you by the hand and apologize to you, but you have to show me." He said, "All right, come to my office and I will show you the whole thing." I said I would like to wait until Harry White came on from Chicago. Harry White came on from Chicago and he and I, on March 15, 1921, went to Levin's office and
40 Levin there at this conference, Levin showed me original checks, cancelled vouchers returned from his two

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banks, on several payments. He permitted me to take pencil notes of these checks, he also permitted me to take notes of the materials he had bought against these sales he had made to us, and he admitted—he went over practically the same ground as testified to before at the McAlpin. I again insisted upon being shown this vest pocket transaction, in fact, I was more insistent at that conference than the first one— 10

Mr. Slade: Objection. Strike it out.

The Court: Tell what was said.

The Witness: I asked him to show me this data of this government deal, also show me his transaction with H. S. White, how he settled this commission lawsuit he had, show me the cancelled checks. He said he couldn't find them. All he could find were four checks and these checks he showed me. There was one check for \$500, drawn to bearer. If you will permit me to look at the statement— 20

The Court: Is that the memoranda you made at the time?

The Witness: This is the memorandum. There was a check dated June 29, 1920, for \$500, made to bearer and cashed through the Mechanics National Bank at Trenton, the check being drawn on the Irving National of New York, signed by Isaac Levin personally. There was a check of July 3, 1920, for \$500, on the Irving National, signed by Isaac Levin, to the order of bearer, cashed through Brock's garage at Trenton. There was a check of November 5, 1920, for \$200, drawn on the Columbia Bank, New York, to the order of H. S. White, endorsed by P. Slater, at the First National Bank in Beaver. Another check of November 26, 1920, drawn on the Columbia Bank, 30 40

Defendant's Witness, Julius Blum, Direct

to the order of H. S. White, for \$100, endorsed by Alice L. White.

Q. The two first checks you refer to, did they bear any endorsement? A. Yes, they were cashed and endorsed by H. S. White.

10 Q. Do you know who Alice White is? A. I understand Mr. H. S. White's wife.

Q. What else happened at this conference? A. I questioned Levin about the other payments and he said he couldn't find his vouchers, but he admitted—

Mr. Slade: Objection.

The Court: Tell what he said.

20 The Witness: He said he could not find his vouchers, but he said there was a possibility of \$4,000 more—no, not \$4,000 more, \$4,000 in all, that he paid H. S. White, partly for that commission which he had—for which he had settled but for which he hadn't paid in full and partly for that commission on the so-called government deal. I told him also at that conference that the price at which that material was sold was exorbitant, was unjustifiable, and he said I was very much mistaken. We accused him, we had
30 accused him of shipping scrap iron and that he had bought the material from parties in the Pittsburgh district, and he produced and showed me what seemed to be invoices for the material which he had bought and sold to us. He permitted me to take copies or notes from them and I did.

Q. Are those the notes you took (indicating)? A. Those are the original notes I took on March 15, 1920.

40 Q. Refreshing your memory, what did the invoices show? A. He had purchased one car from Foster

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Songer, Pittsburgh, at \$70 and at \$80, 2,000 pounds, and that also on that same car a lot of 29,500 pounds of 3 1/4-inch tubing, for which there was no charge.

Q. Do you know at what price that material was sold at Bordentown? A. \$125. He showed me another invoice from Foster Songer in which it appears 50,200 pounds were purchased at \$60 and 10,200 at \$80. 10

Q. At \$80 per what? A. I don't know whether 2,000 or 2,240 per net ton; it didn't say so.

Q. Do you know at what price it was sold at Bordentown? A. \$125 per 2,000 pounds. He showed me another invoice from Foster Songer for 50,200 pounds at \$80 per 2,000 pounds.

Q. At what price was that sold? A. At \$150 or \$155, \$155, either \$150 or \$155 per 2,000 pounds. He showed me another invoice from the Peerless Iron Pipe Exchange, dated June 5, 1920, for 56,500 pounds at \$80 per 2,000 pounds. 20

Q. At what price was that sold at Bordentown? A. That was sold at \$125 per 2,000 pounds. I asked him whether or not that was his son and he said yes. The owner of the Peerless is Levin's son. He showed me another invoice from Foster Songer, 47,000 pounds at \$70 per 2,000 pounds. 30

Q. At what price was that sold at Bordentown? A. \$125. He showed me an invoice from the Republic Iron Company for 38,935 pounds at three cents per pound or \$60 per ton.

Q. Do you know at what price? A. \$125 per ton. He showed me an invoice from Foster Songer for 32,600 at \$50, 39,700 at \$90. Whether it was net ton I don't know.

Q. At what price was that sold? A. \$125 per ton. He showed me another invoice for 63,400 40

Defendant's Witness, Julius Blum, Direct

pounds at \$117.50; net or gross ton I do not know. Sold at Bordentown at \$150 or \$155 per ton. He showed me an invoice from the Fuller Steel and Iron Company for 72,300 pounds at \$63 per gross ton.

10 Q. Do you know at what price that was sold? A. That is \$57 per net ton. It was sold at \$125 per net ton at Bordentown. He showed me two more invoices from the Fuller Iron and Steel Company, but I don't believe they are of interest in this case.

Mr. Slade: Don't let the witness pass upon that.

The Witness: These are not invoices billed to Bordentown.

20 Q. Did you know what these invoices were? A. Yes.

Q. Did the Bordentown Steel and Tube Corporation ever get them? A. They might have gotten the invoices; that I don't know. I was not there when it was received, but the material arrived at the siding, it was all of such inferior value—

Mr. Slade: Just a moment.

30 The Witness: It was chopped up material that was only fit for remolding.

The Court: It was rejected?

The Witness: It was rejected. Those three cars were shipped at about the same time as the other car I just mentioned from the Fuller Steel and Iron Company.

Q. Now, Mr. Blum, was that all that happened at that time? A. A great deal happened there.

40 Q. When did you discuss this matter with Levin again? A. There were many discussions with Levin. I used to meet him quite often.

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Q. Did he at any time tell you anything further about this situation? A. Yes. I saw him often and we always talked about the same subject. Levin had begun these suits which are now pending, shortly after this conversation. I told him—

Mr. Slade: I ask that be stricken out as a conclusion of the witness. 10

The Court: He said Levin started these suits. I suppose that is the objection. That may be stricken out.

Q. You had a talk with Levin in Jersey City, did you not? A. That was at the time of the purchase of the Peerless Iron Pipe Exchange.

Q. You had a talk with him there? A. Yes.

Q. How long ago was that? A. In January or February of 1922. 20

Q. That was during the trial of a case that involved this question? A. Yes, sir.

Mr. Slade: I ask that be stricken out.

The Court: Yes, that may be stricken out.

Q. Well, it was during the trial of a case? A. It was after the trial of the case, after the question had been submitted to the jury. 30

Q. What did you say to him? A. I told him that this action which had just been tried ought to show him how the matters stood and he agreed with me.

The Court: Don't characterize.

The Witness: He said it ought to be settled and I agreed with him and I told him why did he not come out and tell the truth in the matter, and he said, "You know as well as I do that H. S. White is a grafter and that he shook me down every time I came 40

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down to Bordentown." I reminded him then of a conversation which we had in December, 1921, where he had said the same thing. Levin had made an offer of settlement—

Mr. Slade: I object to that.

10 The Witness: Mr. Levin had purchased from the Government a large quantity of Government material, surplus material, and he wanted to sell the Bordentown Steel and Tube Corporation a certain quantity of this material at a certain figure, figuring that the Bordentown Steel and Tube Corporation ought to buy this material at this low figure at which he offered it and that these cases then could be dropped and he could get his money in that very way. He admitted
20 to me then—

Mr. Slade: Just a moment.

The Witness: We walked to the Pennsylvania station together, or coming up to the Pennsylvania station, walked over from the elevated and Levin was making a train, and during this conversation again he admitted to me—

Mr. Slade: Just a minute.

The Witness: He told me—excuse me.

30 The Court: Tell what he said.

The Witness: He told me that H. S. White had shook him down and that he had to pay him money to sell him goods, every time he came to Bordentown and made a settlement, that he got paid for the merchandise furnished, he had to give H. S. White a rake off.

40 Q. Mr. Blum, did you see any of the material furnished by the man, down at the Bordentown Steel and Tube Corporation? A. I did.

Defendant's Witness, Julius Blum, Direct

Q. Do you know anything about material of this character? A. I know more about finished material, which is my line of business, but I have had quite a bit of experience with raw material.

Q. How long have you been connected with this mill? A. 1916.

Q. And you have been there on occasions? A. Quite often. 10

Q. Do you know anything about the process of manufacture? A. I do.

Q. Have you ever bought any of this material? A. I do not think so.

Q. Do you know what sort of material this was? A. Pitted.

Q. What do you mean by that? A. Pockmarked, badly rusted, full of water stains, in short lengths, rusty, bent. 20

Q. What was this material? A. Junk.

Q. I don't mean that. Iron or steel? A. No, it was steel tubing.

Q. What sort of material were you buying or using? A. The Bordentown Company makes seamless steel tubing, which is a high class, I might say the highest class of tubing made. Take a gas pipe, it is made round, but a seamless tubing is seamless product. It is heated and revolved, thereby becoming hollow. The Bordentown Steel and Tube Corporation does not make what I have just described. Their operations begin at this point. In other words, the Bordentown Steel and Tube Corporation purchases a tube, a seamless tube of steel which has already been made into a tube of more or less rough nature. This tube is brought into the mill and a point is hammered on to that tube, then it is put into an annealing furnace, a large oven furnace, by oil, and heat 30 40

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10 treated to about twelve to fourteen hundred degrees Fahrenheit, which makes it soft and pliable. Then it is put through an acid bath and put through another bath and then drawn on a draw bench. A draw bench is a traveling chain with a head and in this head is an outer die. The outer die gives the tubing its outside dimension. The tubing is stuck through this outer die and an inner die is shoved from the rear, so that the rear die is between the outer die and the inner diameter of this tube. Now, as this chain is very strong and as that pull is very great, the tube has to follow that traveling chain and is pulled through this die. This elongates the tube, makes the wall tougher and the diameter smaller. In order to reduce a larger tube, this process has to be gone through two, three, four, perhaps eight times, if you want to make an even, small tube.

20 Q. What were these materials you saw there? What were they? A. Steel tubes as I have described them before.

Q. And what was their character?

Mr. Slade: Objection. It is already gone over.

30 Q. How long had you known Mr. Isaac Levin? A. 1915.

Q. Were you connected with him originally in the Bordentown venture? A. He and I formed it together. Levin had a great deal of seamless steel tubing. In fact, Levin wanted to start a mill of his own in Pennsylvania.

Mr. Slade: Objection, immaterial.

40 The Witness: He and I formed a corporation together.

Defendant's Witness, Julius Blum, Direct

Q. What was his function in the corporation? A. President of the company.

Q. Did he have any dealings with it? A. He had a contract with the corporation, whereby—

Mr. Slade: Objection.

Q. What were you? A. Treasurer and selling the finished material. 10

Q. What did he do? A. Sold all the raw material which the company purchased.

Q. He sold it to whom? A. Sold all that supplied to the Bordentown corporation.

Q. When did you get H. S. White to come down? A. In December, 1917.

Q. How did you happen to get him? A. H. S. White was well known to me, I might say a man nationally known in the tube industry. 20

Q. Why did you have H. S. White come down there to take charge of the mill? What was the object? A. The company was then called the Keystone Company and we were looking for a reorganization and proper management of the company. I spoke to Henry S. White, who sold us material, and through this conversation I found that he might be willing to accept employment and he agreed to come to the mill and make an inspection of the plant. 30

Q. Then you did get him? A. We did. He signed a contract of employment in December of 1917.

Q. At that time was there any material at the mill? A. Yes, sir; a great deal.

Q. Who furnished it? A. Isaac Levin, the Eagle Pipe Supply.

Q. Was the question of that material discussed at that time between the directors, including Levin? A. Yes, sir. 40

Defendant's Witness, Julius Blum, Direct

Q. Was that discussed with H. S. White? A. It was.

Q. Was any conclusion come to as to what should be done with it? A. Yes, sir.

Q. Well, what happened?

10 Mr. Slade: Objection, immaterial, irrelevant, incompetent and not binding on this plaintiff and remote.

The Court: I don't suppose what happened prior to the time this alleged conspiracy to defraud took place would be material. If Levin was present, what was said may be told.

A. He certainly was. Levin and White and myself went down in Levin's car. We took H. S. White
20 down to make an inspection and he did make the inspection of the plant in the presence of Levin and myself and he expressed himself very well satisfied but with the exception of the raw material. He raised the point that material of that nature was unfit and you never could make seamless tubing from such raw material. As I testified before, he insisted this contract which Levin held for furnishing tubing exclusively should be abrogated, and incidentally he held
30 I should abrogate the contract I held, in other words, he should be given a free hand in managing the affairs of the company. We considered ourselves, in our talk with Levin, a possibility of H. S. White coming with us. We thought it would be very desirable to have him with us and Levin and I were most anxious to have him. As I said before, H. S. White was a well-known figure in the steel tube world and it would give us a good deal of prestige to have him.

40 Q. After the corporation was formed, was the method of purchase discussed A. Yes. The ques-

Defendant's Witness, Julius Blum, Cross

tion of raw material, there was a great deal of tubing at the mill.

Q. Was anything said about Levin's material? A. Yes, sir.

Q. What? A. It was always H. S. White's excuse, at meetings, or directors' meetings or informal meetings, to criticize the material he was compelled to work with, which the new company had taken from the old company, all the material, and he said he could not get production from that sort of material. 10

Q. Did the directors say anything? A. They said, cut it out, buy first-class material only.

Q. In the latter part of 1919, was there any discussion as to purchases from Levin? A. Yes, sir.

Q. What was said then? 20

Mr. Slade: Objection, unless Levin was present.

The Court: Was Mr. Levin present?

The Witness: No, sir.

Q. Was there any discussion prior to that time, when Levin was present, other than you have testified to? A. Yes, sir. At all meetings, as soon as official matters were disposed of, the talk would be about production and always when the subject of production came up the question of raw material was brought up by Mr. White. 30

CROSS-EXAMINATION by Mr. Slade:

Q. Mr. Blum, I think the last answer you made was that at all meetings, the talk finally drifted to the matter of the character of the merchandise. Is that correct? A. Correct. 40

Defendant's Witness, Julius Blum, Cross

Q. Well, now, when Mr. White came to inspect that mill, the Bordentown property, with a view to entering into your employment, you said that he insisted that your contract and the contract of Mr. Levin should be abrogated? A. Correct.

10 Q. He hadn't at that time criticized any of your actions? Yes or no, please. A. I don't know what that question means.

The Court: He says he doesn't understand.
(Question repeated.)

Q. Did not criticize your conduct in any way whatsoever? A. What do you mean by conduct?

20 Q. Just a moment. You understood your counsel's questions. What is there about that question that you do not understand? A. My conduct may mean anything.

Q. I mean with reference to your business associations. A. No, sir; he never criticized that.

Q. Still, he insisted your contract should be abrogated? A. Correct.

30 Q. He also insisted Levin's contract should also be abrogated so that he should take full charge of the plant? A. Correct. He wanted to form a different sales policy.

Q. Just a moment, Mr. Blum. How long had you and Levin been in business prior to the time you had any discussion with White? A. Never.

Q. Didn't you and he form the Keystone? A. We were shareholders.

Q. Did you and he form that? A. Correct.

Q. You had discussed that with Mr. Levin prior to the time the Keystone was formed? A. Certainly.

40 Q. Prior to the time the Bordentown was formed and prior to the time the Keystone was formed, you

Defendant's Witness, Julius Blum, Cross

were to do the selling, you were to sell the merchandise of the company and he was to sell the raw material to the Keystone? A. After the company was formed.

Q. For how long a period did Mr. Levin sell to the Keystone, prior to the time the Bordentown was formed? A. 1916, toward the end of 1916, the Keystone was formed and Levin furnished material to that company even before it was legally formed, before it had purchased its property. He had a great deal of material; he didn't know where to store it.

10

Q. Please confine yourself to my question. I will repeat my question. For how long a period prior to the time that the Bordentown concern was formed did he furnish merchandise, raw material, to the Keystone Company, under the contract which then existed between him and the Keystone? A. From December, 1916, until 1918.

20

Q. For a period of about two years? A. Not quite.

Q. And you were the selling agent of that company? A. Correct.

Q. What was that company's business? A. Manufacturing seamless steel tubing.

Q. And from the material Levin then furnished under his contract, your company, then known as the Keystone, was making these seamless tubes and selling them? A. Correct.

30

Q. When you made up your mind to form the Bordentown, the Keystone had some merchandise then on hand? A. Yes, sir.

Q. Raw material? A. Yes, sir.

Q. Not manufactured? A. Yes, sir.

Q. And that is the material that subsequently came into the hands of the Bordentown? A. Correct.

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Defendant's Witness, Julius Blum, Cross

Q. And which Mr. H. S. White criticized? A. Correct.

Q. When he was about to enter into the Bordentown? A. Correct.

10 Q. Now, up to that period when Mr. White criticized the character and quality of the material which the Keystone was to deliver to the Bordentown and when he was to enter into the employment, you had been selling manufactured merchandise from material supplied by Mr. Levin? A. I sold material for the Keystone Company which was manufactured out of material supplied by Levin.

Q. You knew the character of the merchandise that remained in the hands of the Keystone prior to the time the Bordentown was formed? A. Yes, sir.

20 Q. And you and Mr. Levin, when you were about to organize, or the Keystone officers, were to transfer that as part of the Keystone property to the Bordentown? A. It wasn't worded just like that. In fact, we turned over the assets. It was included.

Q. How long prior to the time Mr. White came to work for you were you working under the Bordentown? A. None at all.

30 Q. Mr. White was the first president? A. Yes, sir.

Q. And he was to take charge of the properties then and the properties which were transferred from the Keystone, the merchandise? A. Probably, yes.

Q. Don't you know? A. I don't quite get your question but I suppose the answer is yes.

Q. Don't suppose. A. The answer is yes.

40 Q. Now, after the Bordentown was formed, how many meetings did you have the first year, board of directors' meetings? A. I cannot tell.

Defendant's Witness, Julius Blum, Cross

Q. Give me your best judgment. A. I cannot tell, because I do not know. We had a great many meetings, whether formal directors' meetings spread on the minutes of the company or whether they were meetings, I cannot tell, I cannot answer.

Q. Mr. Blum, you were interested in the Bordentown? A. Very much so. 10

Q. How much stock? A. Seventy-five thousand out of a total issue of two hundred thousand. I have thirty per cent of the capital stock.

Q. You are a member of the board? A. Always have been.

Q. I assume your by-laws provide when the meetings shall be had? A. Correct.

Q. You have given us a great deal of information as to details of conversations. How many meetings did you have the first year? A. I am sorry I cannot tell you. 20

Q. Please give us how many meetings you had in the year 1919? A. I am sorry I cannot tell you.

Q. At how many meetings of the board did you discuss Isaac Levin the first year? A. Discuss Isaac Levin? He was a director himself.

Q. When did he cease to be a director? A. May 23, 1919. 30

Q. Up to that period, you said you had discussed the purchase of merchandise from Isaac Levin? A. We had discussed the character of merchandise, the merchandise purchased from Isaac Levin.

Q. How much merchandise did he sell to the Bordentown from the time Mr. White became president? A. Quite a good bit, in the early days of 1918, when the Keystone turned over its assets to the Bordentown corporation, there was quite a quantity of material which had just then arrived from Levin, and Levin 40

Defendant's Witness, Julius Blum, Cross

made this material an exception from the general assets of the company and insisted this material should not be included in the general list of assets but it should be held separately.

10 Q. Now, I didn't ask you that. I am asking you how much merchandise did Mr. Levin sell to the Bordentown people during the period he was a member of the board of directors and while Mr. White was president? A. I don't know the amount.

Q. Give us your best judgment. A. I am afraid I can't.

Q. Can't you give us some impression? A. Try. Perhaps \$20,000 worth.

20 Q. And he sold the company \$20,000 worth of merchandise, notwithstanding the fact Mr. White said he would not use that character of merchandise. Is that correct? Yes or no. A. Yes and no.

Q. How much merchandise did he sell to the Bordentown people during the year 1918 and after he ceased to be a member of the Board of Directors? A. After Levin ceased to be a member of the Board of Directors in 1919, he sold none until February or March, 1920. The invoices that were submitted in evidence for identification before—

30 Q. Did he ever sell them any merchandise from an order from your company, filled by him? A. There was discussion about it, about the merchandise, about the order which you talk about. It was never delivered to my knowledge.

Q. Who had that discussion with Mr. Levin? A. What discussion? I have not taken any orders from Bordentown.

40 Q. I show you a paper and I ask you whether you do not recognize that as being one of the letterheads of your company?

Defendant's Witness, Julius Blum, Cross

Mr. Slade: May I withdraw the question?

Q. What is the name of your company? A. Julius Blum, 521 West 42d.

Q. I show you a letterhead and ask you whether you do not recognize that to be a letterhead of your company at the time you were at 510 West 42d? 10
A. Yes, sir; 22d; correct.

Q. I show you another paper and ask you whether that is not an order or form of order used by your company or by the Bordentown corporation? A. Yes, sir; it is.

Q. You notice your name on there? A. It is addressed to me; yes, sir.

Q. You are familiar with Mr. H. S. White's signature? A. I am. 20

Q. I show you Mr. H. S. White's signature and ask you whether you recognize that to be the signature of the president of the Bordentown Company? A. It is.

Q. Now, I ask you who was your manager of Julius Blum & Company during the month of February, 1920, when you were at 510 and 512 West 42d Street? A. West 24th.

Q. 24th I mean. A. I am the manager of my company. 30

Q. Did you have a manager or assistant manager or one who acted in the capacity of manager, by the name of Weiler? A. Yes, sir; he is the manager of the steel tube department.

Q. Is that his signature (indicating)? A. It is.

Mr. Slade: I now offer it in evidence.

The Court: You may mark it for identification. 40

Mr. Slade: I offer it for the purpose of—I beg your pardon.

Defendant's Witness, Julius Blum, Cross

Q. Mr. Blum, I now ask you to read Plaintiff's Exhibit 6 for identification. A. Letter on the stationery of Julius Blum & Co.—

Mr. Besore: One minute. It isn't in evidence.

10 The Court: No. I suppose it is cross-examination to disprove or tending to disprove something this witness has testified to.

Mr. Besore: It is not his letter.

The Court: He admits the letter and as being binding upon him.

The Witness: No, sir; I do not. Sales manager of the steel tube department.

20 The Court: Sent out by one of your employees in the course of business?

The Witness: Not in the course of business; no, sir.

Q. Mr. Blum, in what course was that letter sent out, if it was not sent out in the course of business?

Mr. Besore: If he knows.

30 A. I have a manager who sells, used to have—he is not in my employ any longer—for the sale of steel tubing and shafting, by the name of Carl Weiler. He is the agent who sent this letter. This letter and these exhibits I have seen for the first time in my life in January or February—

The Court: You are asked in what course it came to be sent out.

The Witness: I can only testify to what I have learned, your Honor. I did not know that.

40 The Court: You have no personal knowledge now?

The Witness: Yes, I have, but I didn't have then.

Defendant's Witness, Julius Blum, Cross

Q. Mr. Blum, you notice Plaintiffs' Exhibit 7 for identification is on your letterhead, an order of the Bordentown? A. Yes, sir.

Q. And that order—

The Court: Do you want the other question answered? 10

Mr. Slade: Yes.

(Previous question repeated.)

A. Mr. Weiler was the sales manager of the steel department, incidentally handling the account of the Bordentown Company, selling their finished product to the customers. As I now know, he and Isaac Levin met some place or other and Levin offered material to Julius Blum & Co. He couldn't do business with Bordentown, as I testified before, because after this lawsuit he had a falling out with White, and he came to this man and offered material and Levin suggested we should purchase the material and sell it to the mill. Now, at that time I was not at my office very much. As this letterhead shows, we were then moving, and if you will recall the winter of 1919 and 1920, we had extremely severe weather then. We were moving between two places. My office was at 510 and 512 West 22d. I was supervising the construction of a five-story building. It seems Weiler and Levin discussed this tubing covered by this purchase order and Weiler, for some reason or other, seemed to be willing to make that sale and came to me and submitted it to me and I turned it down, for two reasons; one, that I didn't want to buy it; second, I never purchased material for Bordentown and took a profit. This is what I am testifying to now. It only came to my knowledge since January or February of this year, when this same letter and exhibit 20
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40

Defendant's Witness, Julius Blum, Cross

were shown to me in another suit and were then shown to me and since that time I have gone into the matters.

Q. Notwithstanding that, that is an order placed with you for raw material by the Bordentown people, is that correct? A. Correct.

10 Q. And you recognize it as being such? A. It was turned down. It is a piece of paper.

Q. Now, I show you—at the time, during the month of February, 1920, you were a director of the Bordentown? A. Correct.

Q. And you recognize the signature of Mr. White? A. Correct.

Q. I ask you to look at Plaintiff's Exhibit 8 and see if it does not refer to the order you say you turned
20 down? A. It does. It confirms what I said.

Q. It does confirm there that the Bordentown received a letter from your company? A. Correct.

Q. Informing them that the order was delivered to the Eagle Pipe and Supply Company? A. Correct.

Q. Read that. A. Letter signed by H. S. White, dated February 16, 1920, addressed to the Eagle Pipe Supply Company. "Gentlemen: We are advised by Julius Blum & Company that they have turned our
30 order over to you for 2", 1¾" and 1½" by 11 gauge, which you have at your Maspeth plant and we trust you will ship this material to us as promptly as possible."

Q. That letter refers to the order marked P7 for identification? A. I have no idea.

Q. Didn't you just a moment ago say it does? A. No, sir.

Q. Please look at it again. A. It refers to what
40 I have said before.

Q. Now, did you have any other order which Mr.

Defendant's Witness, Julius Blum, Cross

Weiler turned over to be filled by them? A. No, sir.

Q. That was mailed to your office? A. I don't care; it isn't an order unless I accept it. I never accepted it.

Q. That order, whether you accepted it or not, that proposed order eventually reached your company? 10
A. It reached Mr. Weiler of that company.

Q. Will you kindly tell his Honor and this jury how that order came to the hands of the Eagle Pipe Supply Company? A. I do not know. It was turned over, it seems. This letter the Bordentown mailed. I vetoed the purchase.

Q. I ask you to read Plaintiff's Exhibit 6 and see if it doesn't refer to the order? The order you turned down, 1185? A. It does. 20

Q. The letter you have in your hand is signed by your manager and on your letterhead? A. I was manager of my steel sales department.

Q. And that refers to 1185 which you turned down, you say? A. It does.

Q. Please read that letter to the jury. A. "Eagle Pipe & Supply Co., 233 Broadway, City. Gentlemen: Att. Mr. Levin. Enclosed, herewith, find order No. 1185 of the Bordentown Steel & Tube Corp., for one (1) car of Seamless Steel Tubing. As per our telephone conversation, we are turning this order over to you to bill to Bordentown direct. This material is to be billed at \$125.00 per ton, and terms are sixty days, net, which kindly note. We have advised Bordentown to this effect. Very truly yours, Julius Blum & Company, C. Weiler, Manager. P. S. Will you kindly use all speed in getting this car off to Bordentown as it is urgently wanted. Note our new address, 532-540 West 22d St., New York City." 30
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Defendant's Witness, Julius Blum, Cross

Q. Now, Mr. Weiler, prior to that letter, had worked for you how long? A. Two or three years.

Q. And he had charge of what department? A. He had charge of sales.

Q. Well, Mr. Weiler didn't enter into any conspiracy with H. S. White? A. I hope not.

10 Q. And Mr. White didn't enter into any conspiracy with Mr. Levin? A. Which?

Q. Mr. Weiler, I mean. A. I hope not.

Q. Don't you know he didn't? A. I don't know that he did.

Q. Would you say that letter was written as the result of a conspiracy between Mr. Weiler and Mr. Levin? A. I would say not.

20 Q. Let me show you Plaintiff's Exhibit 8, in which the Bordentown people acknowledge receipt of your letter, which is referred to in Plaintiff's Exhibit 6. A. Yes, sir; that's the same letter.

Q. Please read that to the jury. A. We are advised by Julius Blum & Company that they have turned our order over to you for 2", 1¾" and 1½" by 11 gauge, which you have at your Maspeth plant and we trust you will ship this material to us as promptly as possible.

30 Q. Now, you know by those three orders, one placed by you and the letter mailed by you or your manager to the Bordentown Company, that during the the month of February, 1920, after the discussion had taken place between Mr. White and the Board of Directors, that they should not purchase merchandise from Levin, you had sent him an order? A. I have not.

Q. Then your manager did? A. Yes, he did.

40 Q. The manager represented you? A. He did not.

Defendant's Witness, Julius Blum, Cross

Q. He committed a fraud on you, didn't he? A. He did not, nothing of the kind.

Q. You now notice that the date, February 16, 1920, is subsequent to the time when you and the directors had decided not to purchase any material from Levin on behalf of the Bordentown Company? A. Yes, sir. 10

Q. Now, Mr. Blum, you gave the jury a description of what merchandise the Bordentown Company manufactures? A. Yes, sir.

Q. Isn't it a fact that the merchandise you manufacture is known as redrawn castoffs from mills? A. Indeed not.

Q. Do you have new material or rejects? A. It depends upon what you call rejects. 20

Q. What do you recall it? A. A reject might be two things. A reject might be, for instance, rejected because it is too short. Say a locomotive boiler may be sixteen feet long. If the tube is only fifteen feet long, it might be rejected. However, if you cut that two feet off, it may be perfect and may be used for manufacture. On the other hand, if you call a reject a piece of tubing which is concentric, I would call it an unfit reject. 30

Q. Do you manufacture tubes from raw material or do you manufacture your tubes by redrawing shorter tubes; for example, if a tube is five feet or over and say has a three-inch inside diameter, you redraw that by making it a smaller inside diameter and a longer tube? A. Such as I have described; yes, sir.

Q. So that you buy merchandise that may be new but which has been rejected by the mills that manufacture it? A. Maybe, yes. That is only one part I described. 40

Defendant's Witness, Julius Blum, Cross

Q. Do you know of any occasion where you have manufactured brand new tubing from raw material?

A. We always do. What do you mean by raw material?

10 Q. From the metal? A. No, sir; I have testified that we do not.

Q. You, however, buy merchandise rejected by mills that make seamless tubing, because of some defect? A. No, sir; I didn't say rejected at all.

Q. I am asking you whether that isn't a fact? A. It may be and may not.

Q. The material manufactured by a mill, what is the purpose in redrawing it? A. The large steel
20 companies do not redraw tubes such as we do; in other words, they finish the tubes only to a certain point of outside diameter and wall thickness. If you go below that point, it becomes unprofitable, because they are organized on a tonnage basis and Borden-town is on a footage basis.

Q. If it is short and has no point, it is useless unless it has a large diameter so you can redraw that into a five-foot pipe or over? A. It depends on what
30 you want to make out of it.

Q. Had you used three-foot pipe in your business? A. Perhaps.

Q. Don't you know? A. No, sir.

Q. Are you guessing? A. Yes, sir. I am not present at the mill. I am located in New York City.

Q. You were present at the mill when they discussed Levin on every occasion. Is that correct?

A. Correct.

40 Q. Well, now, when you came to Mr. Levin's office, he showed you checks, didn't he? A. On March 15, 1920; yes, sir.

Defendant's Witness, Julius Blum, Cross

Q. And he gave you the invoices? A. Showed them to me.

Q. And he told you you could get copies of those checks? A. Yes, sir.

Q. And of the invoices? A. Yes, sir. 10

Q. After you did that, you turned over all papers you had to your lawyers, didn't you? A. Later on, yes.

Q. You had those two little papers in your pocket? A. Yes, sir.

Q. You kept them always in your possession? A. No, sir; they have been in the possession of Mr. Besore in the suit you were plaintiff in in New Jersey; either in my possession or my counsel's possession. 20

Q. They were in either one of those possessions? A. Yes, sir.

Q. Those notes were supplied to you by Mr. Levin? A. I made them.

Q. At that time he told you, did he not, that he had paid Mr. White commissions for selling stock, his stock certificates that he then owned in the Bordentown Company? A. He told me that and in addition to that the money he had taken off. 30

Q. How much stock did Mr. Levin own? A. Seventy-five thousand.

Q. Didn't he tell you Mr. White claimed three thousand commission from him for the sale of his personal stock? A. Correct.

Q. Didn't he also tell you Mr. White wouldn't deal with him because he wouldn't pay him that commission? A. No. 40

Q. You don't remember that, do you? A. I don't recall. He might have said it. I don't believe so.

Defendant's Witness, Julius Blum, Cross

Q. Would you say he didn't say that to you? A. I couldn't say either way.

10 Q. Didn't he also tell you he had a Government contract which he had obtained from the Government as the result of the efforts of Mr. White? A. Yes, sir.

Q. And as a result, he paid Mr. White some money for obtaining that contract for him? A. He told that story amongst others.

Q. Did he say that, sir? A. Yes, sir.

20 Q. Did he also tell you that subsequently he gave Mr. White some more money because Mr. White refused to deal with him? A. I don't think he admitted that on March 15th. No, I don't think he said that in March.

Q. He told you he gave him \$4,000, is that correct? All told? A. No, he told me besides those checks that he showed me, he paid him \$4,000. Besides that money he paid him in legal settlement, he paid him a thousand dollars which he took off when he settled with him, having paid already that commission, he paid him in addition four thousand dollars and a thousand dollars.

30 Q. Every payment he made was evidenced by a check except the \$4,000? A. He said he couldn't find them.

Q. Didn't he give you four checks? A. That's all he said he could find.

Q. Those checks were endorsed by Mr. White? A. Yes.

40 Q. And one of the checks was endorsed by his wife? A. The last check, in November.

Q. By Mr. White's wife? A. I believe so; no question about it.

Defendant's Witness, Julius Blum, Cross

Q. Now, then, that was during what conversation?

A. What?

Q. When was that conversation had that I have been examining you on? A. In February, at the Hotel McAlpin and in March.

Q. When you came to the McAlpin Hotel, you came by appointment? A. Yes, sir. 10

Q. You brought Mr. White? A. Yes, sir.

Q. Mr. Levin came alone? A. Yes, sir.

Q. And there he also denied paying any money to Mr. White for the purpose of influencing Mr. White to purchase anything? A. He denied having given him money altogether and then admitted having given him the money but always denied having influenced the purchasing of merchandise. He denies that to this day. 20

Q. Didn't he tell you why he gave him the money? A. No, sir; he gave an excuse.

Q. Did he tell you why he gave him the money? A. He told me about the Government deal. He told me that when he started dealings again with White, in 1920, February or March, White made him pay him this thousand dollars.

Q. What thousand dollars? A. White had sued Levin for \$4,000, in Burlington County, in this court, and Levin settled by legal agreement with H. S. White, sometime in December—no, January, I believe it was, of 1920, and he paid him only three thousand, and two thousand, he had sued him for \$3,030 and Levin had paid him \$500 at the time the sale was made and \$1,500 when he made this settlement with him, so he had taken off a thousand dollars. So Levin said, when he started to do business again with White, he paid him that thousand dollars and that White asked him for it. 30 40

Defendant's Witness, Julius Blum, Cross

Q. Didn't you testify here, you said Levin told you he gave him \$1,200? A. No, he gave me that information in March. That is, the checks, in March. I am talking now about the February discussion.

10 Q. Notwithstanding you suspected him and you told him he was bribing Mr. White to purchase merchandise—you told Mr. Levin you suspected him of bribing Mr. White? A. Yes, sir.

Q. He denied it? A. Yes, sir.

Q. Notwithstanding your accusations, you came to his office and he showed you the checks? A. Yes, sir.

Q. And also the amount of money he paid to Mr. White? A. Not exactly; he said about four thousand.

20 Q. And that was after you had told him you suspected him of paying bribes to Mr. White? A. Yes, sir.

Q. And he also told you what it was for? A. He told me a story.

Q. Did he tell you what it was for? A. He gave me his version of what it was for.

Q. You had personally no other version? A. I had my suspicions.

30 Q. Did you personally, from your own knowledge, have any other version except the version Mr. White or Mr. Levin told you? A. No, I don't think so.

Q. So, as far as you were concerned, you didn't know any other story from personal knowledge? A. No, sir; I did not.

40 Q. And from those invoices, notwithstanding that the merchandise cost Mr. Levin less than he charged you, he allowed you to take the figures of the actual cost to him? A. Yes, sir.

Defendant's Witness, Julius Blum, Cross

Q. So that he allowed you to take the figures the merchandise cost him, \$70 and \$80? A. \$60, whatever I testified to.

Q. You knew and he knew he sold the merchandise to the Bordentown Company for \$125? A. Yes, sir.

Q. Notwithstanding that, he allowed you to take the figures? A. Yes, sir. 10

Q. How much does it cost per ton to ship the merchandise to the Bordentown concern, if you know? A. The Bordentown Company paid the freight. I have forgotten the freight rate.

Q. Now, the other invoices, Mr. Levin also allowed you to look at the actual cost to him of the merchandise? A. Whatever that was.

Q. That was notwithstanding the fact you told him you suspected him, you told him he gave Mr. White a bribe? A. Yes, sir. 20

Q. Now then, some of the merchandise he showed you cost him \$117? A. I believe that is the figure.

Q. Have you any evidence here present from the Bordentown people, showing the \$117 merchandise was sold to your concern for \$155? A. \$154, yes, sir.

Q. Have you it here? A. I believe so.

Q. Please ask your lawyers if you have it here. 30

Mr. Besore: Yes, I have it. It may take me a minute to get it.

Q. He also showed you one invoice only cost him \$50, 32,600 pounds? A. I have to refresh my memory. I couldn't say. Yes, 32,600.

Q. That also was sold for \$125? A. Correct.

Q. And yet you accused Mr. Levin of having entered into a conspiracy with Mr. White? A. Yes, 40
sir.

Defendant's Witness, Julius Blum, Cross

Q. Notwithstanding that, he showed you what it actually cost him? A. Yes, sir.

Q. And in his own place of business? A. Yes, sir.

Mr. Besore: We have four sets of invoices. They are not within the invoices mentioned. Which one did you want?

10

Mr. Slade: The merchandise, \$117, sold to the Bordentown for \$154.

The Witness: That was the invoice of June 11th.

Q. Now, Mr. Blum, the Peerless, he gave you the invoice and told you it was owned by his own son? A. Yes, sir.

Q. And he showed you then what it cost him? A. Yes, sir.

20

Q. Now, did Mr. Levin say anything else to you with reference to that merchandise? A. I don't know what you mean.

Q. Did he say anything else in reference to the merchandise? Supposing I can help you, didn't Mr. Levin also tell you that when he bought merchandise from Foster Songer Company, amongst the material there was some so bad he had to throw it away and he, notwithstanding that, had to pay \$80 a ton for it? A.

30

He did not.

Q. That you recall distinctly? A. Absolutely.

Q. Did he also tell you that three cars were rejected and on which he lost over \$5,000, which he paid? A. No, he didn't say it in those words. He discussed these cars with me and he said he had purchased this material from the Fuller Iron and Steel Company but they had cheated him by selling him material all chewed up; that this material had been out on the Pacific coast and had been chopped off every few feet and he didn't

40

Defendant's Witness, Julius Blum, Cross

know that and that Fuller had shipped this material to him and those cars had been standing along Bordentown and demurrage had—

Q. Did he say anything else? A. No.

Q. Didn't he tell you he directed those cars be delivered to the Bordentown Company and actually delivered to the company? A. They were not delivered, as I understand. 10

Q. Here is Mr. White in reference to those three cars. You recognize that as the signature of Mr. White (indicating)? A. Yes, sir; that is his signature.

Q. And that was signed by Mr. White at the time you were still a director of that company? A. Yes, sir. 20

Q. Please read it to familiarize yourself with the contents of it. A. I read it but it doesn't seem to mean anything.

Q. Having read it, didn't Mr. Levin tell you these three cars were sent by him to Bordentown and Mr. White rejected them? A. Certainly they were rejected. He told me so.

Q. That was after July, 1920, after the conspiracy? A. Yes, sir; they were cars, I find out— 30

Q. They were rejected? A. Yes, sir.

Mr. Slade: I now offer this letter for identification.

Letter marked Exhibit P9 for identification.

Q. Now, please read P9 for identification. A. Addressed to Mr. I. Levin, N. Y. City. Dear Sir: The R. R. Co. now tell us that they must have instructions from the shipper to either return the cars to them or to ship to some other point, that they cannot take ship- 40

Defendant's Witness, Julius Blum, Cross

ping instructions from us or from you. You had better wire the firm that shipped the material to tell the agent at the point the material was shipped from to ship the material to you to Beaver, Pa. Yours truly,
10 H. S. White, Prest. The agent to wire the R. R. agent here." That is a little insert in ink, "the agent to wire the R. R. agent here." The words "from which it" are stricken out.

Q. Now, you know, by that letter, Mr. White, as late as July, 1920, rejected material sent to the Bordentown Company by the Eagle Company? A. So it appears.

20 At this point adjournment was taken to November 16, 1922, at 9:45 o'clock A. M.

JULIUS BLUM, resumed.

By Mr. Slade:

Q. Mr. Blum, approximately how much raw material did the Bordentown Steel and Tube Company purchase during the first year of its existence? A. I am
30 sorry I can't say without referring to the books of the company.

Q. Well, give me your best judgment.

Mr. Besore: Now, if the Court please, I object to that. This man has not testified that he is an accountant; he has not testified he has had anything to do with the transactions of the
40 company. We are getting into the realm of speculation here entirely; he does not know.

Defendant's Witness, Julius Blum, Cross

The Court: He did testify, as I recall it, that there was some statement or discussion of the fact that materials should not be purchased from Levin, and this witness testified to it. Now, I suppose this is for the purpose of testing him as to how much, if he knows, was actually purchased. 10

Mr. Besore: He has just said, your Honor, that he could not tell us.

The Court: Well, if he can approximate it, he may; if he cannot, he may say so.

A. Not being an executive officer of the corporation, I am sorry I cannot answer your question without referring to the books of the company. 20

Q. I see, and that would be likewise your views on the second and third years, wouldn't it? A. 1919 and 1920, yes, sir.

Q. Well, now, Mr. White, in addition to being president, was general manager and superintendent of your entire plant? A. Yes, sir.

Q. And Mr. White did all the purchasing of your raw material, didn't he? A. Yes. 30

Q. He bought from various concerns all the material that was used by the Bordentown Steel & Tube Company during the periods that I have just referred to? A. Yes, sir. 30

Q. You had no other purchasing agent? A. No, sir.

Q. Now, can you today—have you refreshed your recollection since we were here yesterday as to how many meetings the Board of Directors had during the first year? A. If you— 40

Defendant's Witness, Julius Blum, Cross

Q. Yes or no, please. A. If you refer your question to the meetings—if you will amend that question, what you mean by meetings, I will answer your question.

10 Q. Mr. Blum, won't you kindly, if you can, answer my question yes or no; have you refreshed your recollection? A. No, sir.

Q. So that today, you can't tell us as to how many meetings you had during the first year? A. If you ask me as to directors' meetings of which a record is kept, such as the election of officers and other matters, such as a corporation has, I am able to answer you approximately; if you ask me how many meetings we
20 had, meaning that one or two of the directors met and discussed the business policies of the company, I can't tell you how many there was.

Q. I will accept your correction, sir. Now, how many meetings did you have as a Board of Directors?

The Court: Formal meetings?

Mr. Slade: Yes.

A. I don't know the exact number, but generally
30 speaking, there is always one in the spring and one in the fall; they coincide—the dates coincide as a rule with the meetings of the American Iron & Steel Institute, of which all we directors are members; and the meetings of this Iron & Steel Institute are in the fall and in the spring, so usually we have them, I think there may have been meetings at other times.

Q. Yes; now, Mr. Levin ceased to be a member of the Board of Directors sometime in 1919? A. In
40 May, 1919.

Q. Yes, now, subsequent to 1919, the meetings that you had, you had no occasion to discuss the purchase of materials from Levin, did you? A. Yes, sir.

Defendant's Witness, Julius Blum, Cross

Q. Was there any merchandise purchased from him from 1918 up to 1919, when he ceased to be a member of the Board of Directors? A. Yes, I think there were some purchases.

Q. Notwithstanding the fact that Mr. White was told not to purchase any merchandise from him, is that correct—yes or no, please? A. It is only partly correct.

10

Q. Mr. Blum, will you kindly, if you can, answer my last question yes or no. A. I think I have given you the correct answer. It is only partly correct, I say; I can't see how I can answer yes or no to the question unless you frame it differently.

The Court: In other words, the statement of fact you cannot subscribe to.

20

The Witness: No, sir; in other words, there were transactions, but they weren't in the manner that the counsel asked me.

Q. Was there any merchandise purchased by the Bordentown Steel & Tube Corporation from the time Mr. White became president up to the time Mr. Levin ceased to be on the Board of Directors? A. Yes.

Q. And that was after the various discussions that you had, of merchandise not be purchased from Mr. Levin—yes or no, please? A. I object to the part of your question in which you say that there were instructions not to purchase from Isaac Levin. I have testified that there were instructions and discussions from the early time that Mr. White took—from the early time of the formation of the company when Mr. White became the executive officer of this company, not to purchase the material which we had been getting, but which was then on hand, from Levin; but right at

30

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Defendant's Witness, Julius Blum, Cross

that time, in February, 1918, there was material right then on the tracks which had been purchased from Levin by the old company, which Mr. Levin excepted from this turn-over of the assets of the old company; and in addition to that, there were several transactions right then in the early days of 1918, as I recall, and
10 there was some material which was very well suited for the purposes of the company which was then bought from Levin, as I recall it; and in addition to that, I recall a sale which Levin made later on where he purchased some material for the company—I have forgot just the nature of the material, but some material for which he was paid a commission.

Q. But whatever that was, there was some material purchased from Mr. Levin? A. Correct.

20 Q. By Mr. White? A. Yes, by Mr. White.

Q. With the knowledge of the Board of Directors, you being one of them? A. I don't know whether the board had knowledge of it, but I presume they had.

Q. You did, didn't you? A. No, I know now, but I did not know then.

Q. At the meetings your Board of Directors had, these two after the first, after they were incorporated, the financial condition of the company and its various
30 purchases and sales were discussed? A. Yes.

Q. And you were there, weren't you? A. Yes, sir.

Q. So that the purchase of material from Mr. Levin was discussed, wasn't it? A. Yes, sir.

Q. And what Mr. White bought from him was also discussed? A. Not necessarily.

Q. Well, was that eliminated? A. No, it was discussed, like all routine business of the corporation.

Q. Now, you had no personal knowledge as to any
40 improper relations between Mr. Levin and Mr. White?
A. When?

Defendant's Witness, Julius Blum, Cross

Q. Any time? A. I have testified that I have.

Q. Personal knowledge? A. Yes, sir.

Q. Now, where did you get your personal knowledge? A. In conversations with Mr. Levin, from circumstances surrounding the case, from an investigation of the affairs of the company.

10

Q. So that that was not personal knowledge, is it—it is what Mr. Levin had told you—yes or no, please.

A. I don't know what you mean by personal knowledge; define what you mean and I will answer your question.

Q. Well, you came to Mount Vernon to interview Mr. Levin because at that time you said you were suspicious? A. Yes.

Q. Now, at that time you only had a mere suspicion, didn't you? A. Yes, sir.

20

Q. You had no personal knowledge of facts except your suspicion, is that correct? A. It depends upon what you mean by personal knowledge. I confirmed my suspicions by personal investigation of the affairs of the company.

Q. Now, when your counsel asked you, you understood exactly what he meant. A. He doesn't ask the questions quite as difficult as you do, sir.

30

Q. Notwithstanding that fact, you understood his questions perfectly? A. Positively.

Q. What is there about the last question you don't understand? A. You make a very fine distinction as to what personal knowledge means. My understanding of what personal means is a great deal; if I glean certain facts from an investigation I call it personal knowledge; you might therefore not qualify my answer.

40

Q. Very good; with the exception of what certain

Defendant's Witness, Julius Blum, Cross

persons told you, you have no knowledge yourself, have you? A. Well, I wasn't born with it, naturally not.

Q. Very true; now we have an understanding. Now, when you came to Mr. Levin, you visited his home, did you? A. I did.

10 Q. How long did you stay at his house? A. Oh, an hour or an hour and a half.

Q. Now, what time of the day was it you came there? A. Toward evening.

Q. And when was that? A. Several days prior to the resignation of Mr. White as a director of the company, which was on October 21st, or October 23, 1920.

Q. Mr. White resigned in October, did he? A. At that directors' meeting.

20 Q. Yes; now, please refer to that little memorandum you had with the checks. A. Yes, sir.

Q. Take your memorandum, please. A. Yes, sir.

Q. Please look at the date of the check for \$100. A. November 26, 1920.

Q. That was after Mr. White resigned, wasn't it? A. Yes.

Q. Now, please look at the check for \$100—\$200. A. You mean for \$200; November 5, 1920.

30 Q. That was also after Mr. White resigned? A. Yes.

Q. And after you had talked with Mr. Levin and told him of your suspicions? A. Yes.

Q. And that was after you had talked to Mr. White? A. Talked to Mr. White about what?

Q. About your suspicions? A. Yes.

Q. Now, at that conversation in Mount Vernon, Mr. Levin denied to you, didn't he, any improper relations? A. He denied absolutely he ever paid any

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Defendant's Witness, Julius Blum, Cross

money to H. S. White, not once, but several times; he gave me his word of honor that he hadn't paid him any money.

Q. Now, will you kindly answer my question that was just propounded to you, if you can; he denied any improper relations between he and Mr. White? A. Yes, sir. 10

Q. At that conversation—you came there alone, didn't you? A. No, sir.

Q. Who came with you? A. I was accompanied by my wife, but she did not take part in the conversation; she was talking to Mrs. Levin.

Q. And Mrs. Blum is not here in court, is she? A. No, sir. 20

Q. Where was Mrs. Blum when you had this conversation? A. Talking with Mrs. Levin; she showed her over the house.

Q. The relations as far as your part there were mighty friendly and courteous by Mr. Levin to you? A. Certainly.

Q. And Mrs. Levin's conduct toward your wife was also very courteous, wasn't it? A. Certainly.

Q. You came there for the purpose of getting certain information, didn't you? A. I telephoned Levin and told him I was going to come up and he invited me to his house. 30

Q. He asked you to come there, didn't he? A. Yes.

Q. And at that time he told you he had done nothing that was improper? A. Correct.

Q. The same as before that when you came to his office, and he gave you the checks and invoices to copy from? A. He tried to say so, yes. 40

Q. I don't care what your views are, but he did do that, didn't he? A. He denied that there was anything improper.

Defendant's Witness, Julius Blum, Cross

Q. And Mr. White, when you came to see him, also denied it, didn't he? A. Yes, sir.

Q. That is correct, isn't it? A. Correct.

Q. And with the exception of the material that you
10 say was pitted, and with the exception of the statements made to you by Mr. Levin, you have now no evidence of any bribes being paid to Mr. White, have you? A. I have the admissions of Mr. Levin.

Q. Did he admit to you that he paid him a bribe? A. Yes.

Q. When? A. He admitted it to me the day after the trial of the Peerless action in Jersey City this winter.

Q. What did he say to you? A. That Levin was a
20 grafter, that I knew as well as he did that White was a grafter, and that he held him up for money every time he came there.

Q. Yes. A. He again told it to me, starting the conversation at Levin's office, which was continued on our way to the Pennsylvania Station in New York, where Levin made a train on December 8, 1921—I believe it was the 8th.

30 The Court: 1921?

The Witness: Yes, last year, where Levin offered us material which he had purchased from the Government at a low figure with the idea that the suits now pending should be dropped, and that we should buy this material at the lower figure to satisfy these notes, thereby finding compensation elsewhere; and he admitted again on that day that Levin had shook him
40 down every time he came over to make a settlement of the invoices, and that he had to pay him money all the time.

Defendant's Witness, Julius Blum, Cross

Q. Every time you met Mr. Levin, he admitted to you some way that he bribed White, didn't he? A. No, sir, I have met Levin a number of times.

Q. On those two occasions he admitted that he bribed White, didn't he? A. Yes. 10

Q. And that White was a grafter and shook him down? A. Correct.

Q. Did you ask him how much he gave White? A. Not on those occasions; I had the information before from Mr. Levin.

Q. What information did you have before that he gave him a bribe? A. On March 15, 1920.

Q. What? A. And in February, 1920, at the McAlpin Hotel, the conversations I testified to yesterday. 20

Q. What? A. In February, 1920, at a luncheon at the McAlpin.

Q. What did he say to you at the luncheon at the McAlpin? A. Levin said to me that he had—Levin for the first time then admitted to me that he had paid H. S. White about \$1,200.

Q. Bribes? A. No, sir, money.

Q. Well, that is what I am trying to get at. You said in 1920, in Jersey City Mr. Levin had told you— A. I said 1922, sir. 30

Q. In 1922 Mr. Levin told you that White was a grafter, that he shook him down? A. Yes, sir.

Q. Then in that year also, either prior or subsequent, he told you the same thing? A. In substance, yes, sir.

Q. At the time that you speak of at the McAlpin, Mr. Levin told you that that \$1,200 was money paid to Mr. White for a contract that Mr. White obtained from Mr. Levin for the government? A. No, sir. 40

Defendant's Witness, Julius Blum, Cross

Q. Or a balance— Won't you wait a minute? A. Pardon me; I thought you were through; continue your question.

10 Q. Or a balance that Mr. White claimed that was due Mr. White for commissions for selling Mr. Levin's stock? A. No, sir; you are right insofar as he said that he paid him commissions and money for the Government deal, a certain Government deal that he has referred to, but what he did say was that White— he didn't quite say that, but I think he gave me the substance of it—White has sued Levin for three thousand odd dollars for the sale of his stock certificates of the Bordentown Steel & Tube Corporation to these
20 Chicago people. Levin disputed at that time this sale, and had given him five hundred dollars voluntarily, which he admitted, and that H. S. White construed as a commission to be paid him for three thousand dollars. Levin disputed that, he brought suit in this court, in Burlington County, an attachment suit, and Levin through a legal agreement settled with H. S. White to take off about a thousand dollars from the claim made by H. S. White. This suit was all settled in
30 November, 1919. When he started trading again, when Levin started to sell merchandise again to the Bordentown Company, H. S. White insisted that in addition to this money which he had gotten, he should be paid that thousand dollars to which he was no longer entitled, having settled for less, and that is what Levin gave as an excuse for paying another thousand to H. S. White.

40 Q. Now, when you just added that he gave it as an excuse, you expressed your opinion. Did Mr. Levin say to you, "That is what I am giving you as an excuse"? A. No, sir, that was a statement of mine.

Defendant's Witness, Julius Blum, Cross

Q. That was your opinion, wasn't it? A. Yes, sir, I did not believe a word he said.

Q. I didn't ask you that, sir, did I? A. You asked me for my opinion.

Q. But I didn't say about that? A. I am sorry I gave you the wrong answer, but that is the way I understood the question. 10

Q. As Mr. Levin told you, all the moneys he paid were in reference to a transaction that Mr. White had in the sale of a stock certificate that Mr. Levin had in the Bordentown Company? A. My answer was very plain on that subject before.

Q. Now, is that correct? A. No, sir, not quite; I said the additional thousand which had been taken off the commission was paid in full, when this account was settled by legal agreement. Now, if you ask me whether he said he paid him an additional thousand dollars besides that agreement— 20

Q. I didn't ask you that, sir; I am asking, did Mr. Levin tell you that—that is what I am asking you, not your opinion. A. What I just testified to, did he tell me?

Q. That is what I am trying to get. Was what Mr. Levin told you, that he paid Mr. White the thousand dollars that you refer to at the time that he began to deal, because Mr. White claimed that was an advance due him, notwithstanding this legal settlement that you referred to, for commissions which he thinks he had earned for the sale of this stock—isn't that correct? 30
A. It is correct but—

Q. Well, is that what Mr. Levin told you?

The Court: Let him answer.

A. Mr. Slade, I was familiar with this transaction, and Levin didn't repeat everything that I have just 40

Defendant's Witness, Julius Blum, Cross

told you now, because I was familiar with it, but if I answer that question, I will have to tell you the circumstances surrounding it; I was familiar with it, and you are not and the jury is not.

Q. I am not asking for your familiarity; I am asking you did Mr. Levin tell you that at the McAlpin?

10 A. He told me that he paid him that additional thousand dollars. Now, you asked me whether he told me that was the commission to which he was entitled; to that question the answer was no, because he was no longer entitled to it; therefore I can't answer that question the way you asked me.

Q. Did Mr. Levin tell you that the thousand dollars that he paid him was a claim made by Mr. White because Mr. Levin had deducted that thousand dollars in the suit of Mr. White against Levin? A. Well, 20 maybe it was, the substance was, but it wasn't said in that way.

Q. Now, you realize I wasn't there; I am not quoting the language, but that was what Mr. Levin told you in substance? A. I answer that question as I have answered it before and I can't answer it in any other way, Mr. Slade. You try to make me say that this was a commission which H. S. White earned, and to that 30 I say no.

Q. Mr. Blum, I am not trying to have you say anything which is not the fact; I am only asking you, sir, whether that is not the statement made to you by Mr. Levin? A. I think I have answered that question fully; I don't know what else to answer.

Q. Very good. Now, when you came to Mr. Levin's office, that was after you had talked to Mr. White, and at that time Mr. Levin told you, "Mr. 40 Blum, you are all wrong; there was nothing improper

Defendant's Witness, Julius Blum, Cross

between Mr. White and I," is that correct? A. That is the conversation which took place between February of 1921, and March of 1921.

Q. Yes, that was March 15th, wasn't it? A. There were several conversations between Mr. Levin and myself; we talked quite often, but the only thing—

Q. I am asking you in reference to his office, sir; I don't care about any other conversation. A. The conference at his office followed one of these conversations.

Q. Yes, and it was at that time when he told you that you were all wrong, that there were no improper relations, and that he allowed you to examine these documents he submitted to you? A. Correct; he said he wanted to put the cards on the table.

Q. He did say that to you? A. Correct, he wanted to avoid a lawsuit, he said.

Q. Now, you personally were not present at the time the material was delivered from time to time by the Eagle Pipe, or by Mr. Levin? A. I was not.

Q. You don't know whether the material was or was not delivered, from personal observation? A. No, sir.

Q. By the way, Mr. Blum, during the period that we just referred to, from 1918 up until about 1920, had you personally been dealing with Mr. Levin? A. Probably.

Q. Well, don't you know you were? A. There were so many transactions handled I believe I was; you mean, under the name of Julius Blum and Company or Bordentown—what do you mean?

Q. Yes, don't you know that Julius Blum & Company bought about forty or fifty thousand dollars worth of merchandise during this period from the Eagle Pipe and Supply Company? A. I don't think

Defendant's Witness, Julius Blum, Cross

it was that much, but it might have been very large transactions; they were export matters.

Q. So that your dealings, J. Blum and Son with Mr. Levin or Mr. Levin's concern, extended to about forty thousand dollars, thereabouts, during this period or maybe a little less? A. I don't admit the amount, not
10 having gone over my records, but it is possible.

By Mr. Besore:

Q. Mr. Blum, you were shown yesterday a certain alleged purchase order addressed to Julius Blum & Company marked Exhibit P7 for identification, and three letters; when did you first see that purchase order? A. In January or February, 1922, at the trial
20 of the Peerless Iron Pipe Exchange against the Bordentown Steel & Tube Corporation in Jersey City.

Q. When did you first hear about the transaction which it evidences? A. It first came to my attention at the time of the Peerless trial, but I then recalled having heard of it at the approximate date of the order, which is early in 1920.

Q. Who called it to your attention in 1920? A. Mr. Weiler, the sales manager of my steel and tube department came to me and told me.

30 Mr. Slade: I object to that; just a moment. Don't tell what he told you; that is incompetent.

Mr. Besore: I think, your Honor, this question—

The Court: No, the question has been answered in any event.

Mr. Slade: Oh, yes, certainly.

Defendant's Witness, Julius Blum, Cross

Q. Now, what business are you in? A. I am a merchant in iron and steel products under the name of Julius Blum.

Q. How many departments have you? A. I have three departments. 10

Q. What are they? A. One is the department of building specialities and steel products for building purposes, which I manage personally; the second one is my export department, the third one is my steel and tube department.

Q. What does it do, the steel and tube department? A. The steel and tube department occupies itself with the purchase of steel and finished steel products, particularly rolled steel and shafting and seamless steel tubing. 20

Q. Does that department buy any materials for re-drawing? A. No, sir, it only purchases finished materials.

Q. Who is the manager of that department? A. Carl Weiler.

Q. When this matter was brought to your attention by Mr. Weiler, what was said by Mr. Weiler? 30

Mr. Slade: I object to that.

The Court: Well, I suppose, Mr. Slade, as a matter of fact, you went rather extensively into this and inquired what Mr. Weiler had done and what he had said in his communications out of the presence of this witness, and I suppose in that situation it is competent to inquire into the whole transaction, including what Mr. Weiler informed this witness, in view of your cross-examination. 40

Mr. Slade: If the Court please, my testimony was to the credibility of this witness, and hav-

Defendant's Witness, Julius Blum, Cross

10 ing testified that there were certain statements made in the presence of Mr. Levin, that they should not purchase any materials, to affect his credibility, I showed through him, and upon the principle of *respondeat superior* that his duly authorized agent had taken an order of this kind through official channels and through the business course, and transferred the order after the prohibition not to purchase from Mr. Levin, directly from one of the officers, to Mr. Levin, to supply merchandise, merely to affect his credibility.

20 The Court: Now, suppose he said as a matter of fact he told Weiler not to do it, and Weiler did it in a wholly unauthorized manner.

Mr. Slade: That would not be binding on us.

The Court: Well, it would explain, however, what now appears to be perhaps, as you view it at any rate, an incredibility in his statement.

Mr. Slade: Yes, that may be true, but we would not be bound by that.

30 The Court: You are not bound by it; they are not seeking to bind you, but it is simply explaining his testimony which you say, up to this time, shows that he was inaccurate in his statements. He may certainly explain that; I will permit him to do that.

Exception noted for the defendant.

40 A. Mr. Weiler came to me and told me that Levin or the Eagle Pipe Supply had offered him raw material suitable for the Bordentown Steel and Tube Corporation. I told him I wanted no dealing with Levin, and I did not want to purchase raw material for Borden-

Defendant's Witness, Julius Blum, Cross

town, and least of all to purchase material for Bordentown and make a profit on the sale of the raw material to Bordentown; that is what Weiler had told me, that he could make a profit on it.

By Mr. Besore:

10

Q. Did Weiler ever consult you again about this transaction? A. No, sir.

Q. Did you have any knowledge of these transactions until you heard it in the Peerless case? A. None whatsoever.

Q. I show you a letter dated February 13, 1920, which was yesterday read to the jury, marked Exhibit P6 for identification, which I will now read to the jury in order that they may identify it: "February 13, 1920. Eagle Pipe & Supply Company, 233 Broadway, City. Gentlemen: Attention to Mr. Levin. Enclosed herewith find Order No. 1185 of the Bordentown Steel & Tube Corporation, for one (1) car of Seamless Steel Tubing. As per our telephone conversation, we are turning this order over to you to bill to Bordentown direct. This material is to be billed at \$125.00 per ton, and terms are sixty days, net, which kindly note. We have advised Bordentown to this effect. Very truly yours, Julius Blum & Company, C. Weiler, Manager. Will you kindly use all speed in getting this car off to Bordentown as it is urgently wanted." I will ask you when you first saw this letter? A. At the trial in Jersey City before Judge Speer in January or February of 1922.

20

30

Q. I ask you whether you instructed Mr. Weiler to write that letter?

40

Mr. Slade: I object to that; just a moment.

Defendant's Witness, Julius Blum, Cross

The Court: I think it is competent in view of the cross-examination; he may answer.

A. I did not.

10 Q. I then show you a letter from the Bordentown Steel & Tube Corporation, marked Exhibit P9 for identification yesterday and read to the jury, which reads as follows: "I, Levin, New York City. Dear Sir: The Railroad Company now tell us that they must have instructions from the shipper to either return the cars to them or to ship to some other point, that they cannot take shipping instructions from us or from you. You had better wire the firm that shipped the material to tell the agent at the point the material was shipped from to ship the material to you to Beaver, Pa. Yours truly, H. S. White." Did you ever see that letter? A. Not until yesterday.

20 Q. Did you know that it had been written until yesterday? A. No, sir.

Q. I show you a letter yesterday read to the jury, marked Exhibit P8 for identification, which reads thus: "Bordentown Steel and Tube Corporation, General office, Bordentown, New Jersey, February 16, 1920. Eagle Pipe Supply Company, New York City. Gentlemen: We are advised by Julius Blum & Company that they have turned our order over to you for two inch, one and three-quarter inch and one and a half inch by eleven gauge, which you have at your Maspeth Plant and we trust you will ship this material to us as promptly as possible. Yours very truly, H. S. White, President." I ask you when you first saw that letter? A. At the trial in Jersey City in 1922.

40 Q. Had you any knowledge that that letter had been written before that time? A. None whatsoever.

Defendant's Witness, Julius Blum, Cross

Q. Do you know, as a matter of fact, whether that material was shipped? A. I made inquiries and searched the records of the corporation, and I found that this material was not shipped; the only evidence that a very small portion was shipped, which might be applied against that order, is a very small invoice for a few hundred pounds. That invoice was marked for identification. 10

Q. When did you make that investigation? A. After the trial in Jersey City, when this matter was brought to my attention.

Q. Now, you were asked as to the amount of material which was purchased by Bordentown from Isaac Levin during 1918, and 1919. Did you know of the purchase of this material at the time the purchases were made? A. No, sir. I knew about the material that was on hand and to come in a very general way. 20

Q. If any material was purchased after those consignments were delivered, did you have knowledge of the purchases? A. I did not.

Q. After Levin resigned in 1919, was any action taken by the Board of Directors in reference to future purchases of material from Levin? A. No, it was not necessary. 30

Q. Well, why wasn't it necessary? A. Oh, after 1919—pardon me; I misunderstood your question; I thought you referred to after this suit. The question was in 1919, October, 1919?

Mr. Besore: Will the stenographer read the question?

(Question repeated.)

Mr. Slade: Just a moment; I object to the question. 40

Defendant's Witness, Julius Blum, Cross

The Court: On what ground?

Mr. Slade: As immaterial, irrelevant and incompetent as to what action was taken by the Board of Directors after Mr. Levin had ceased to be a member of the Board of Directors and in his absence, when he had no knowledge of it.

10

The Court: No, not if there was a conspiracy between White and Levin. I think that is competent; I will permit that to be answered.

Exception noted for the defendant.

Q. You are referring to May, 1919?

(Question repeated.)

20

A. The discussion was—there was no resolution passed, but the discussion was to discontinue purchases of raw material from Levin of the kind and character that he had formerly delivered.

Q. And where did that discussion take place? A. I think the meeting was held at the McAlpin, but I don't quite recall when it was.

30

Q. After the stock commission became known which White had gotten on the Levin stock, was any action taken by the Board of Directors with regard to future dealings with Levin? A. Yes.

Q. What action? A. It was decided upon to have no dealings with Levin, and White was so instructed.

Q. Who so instructed him? A. Mr. Dorman, one of the directors, in my presence, and myself.

Q. When was that, Mr. Blum? A. Late in 1919, when this attachment suit was brought against Bordentown, late in the fall.

40

Q. Did you know until that time that H. S. White

Defendant's Witness, Julius Blum, Cross

was getting a commission on the sale of Levin's stock? A. I learned through this attachment.

Q. Did you know before that time? A. Perhaps a few days before, because Levin told me.

Q. Now, I show you what purports to be an arbitration agreement entered into purporting to be signed by the Eagle Pipe & Supply Company, Pittsburgh Steel and Tube Corporation, Isaac Levin and Bordentown Steel & Tube Corporation, and ask whether you know what that is? A. Yes, sir. 10

Q. Do you know the signature of Isaac Levin? A. I do.

Q. Have you seen him write his name? A. Yes, sir.

Q. Is the signature under the words "Eagle Pipe & Supply Company" the signature of Isaac Levin? A. It is. 20

Q. Is the signature under the words, "Pittsburgh Steel & Tube Company," the signature of Isaac Levin? A. It is.

Q. Is the signature following on the next line the signature of Isaac Levin? A. It is.

Q. Do you know H. E. White's signature? A. I do. 30

Q. Is the signature of H. E. White appearing under the words, "Bordentown Steel & Tube Corporation," his signature? A. It is.

Mr. Besore: I will offer the agreement.

Mr. Slade: I object.

The Court: How do you make it competent?

Mr. Besore: It is competent, your Honor, I think, for this reason: Yesterday Mr. Levin was on the stand and admitted that in a motion 40

Defendant's Witness, Julius Blum, Cross

10 to set aside an award made under this agree-
ment, he had made certain statements. I now
propose to show that this agreement was made
between the plaintiffs in these two suits and
the Bordentown Steel & Tube Corporation, that
Mr. Levin signed it for the plaintiffs, that he
appeared with these notes representing the
plaintiffs as a witness, and that his action in
that arbitration proceeding was the action of
the plaintiffs, namely, that he appeared as their
witness, their officer, to show that his action
in filing that affidavit is that of the Eagle Pipe
& Supply and the Pittsburgh Steel Tube, but
not his own individual action. I have no other
way of proving that situation.

20 Mr. Slade: I don't see how that is mate-
rial; notwithstanding what my learned adver-
sary has said, there are certain questions here
for the jury to decide in the proceedings pend-
ing here. How would that be material?

The Court: I cannot see, Mr. Besore, that
the fact that there was an arbitration and an
award binding upon the parties could be mate-
rial, either as contradicting the witness or as
furnishing any evidence by way of defense.

30 Mr. Besore: Oh, your Honor, I do not main-
tain for one minute that this is a bar, not for
a minute, but what I am trying to do is this:
Mr. Levin goes on the stand and first testifies
that the Eagle Pipe and Supply and Pittsburgh
Steel Tube are the holders of these notes. We
then ask him whether in May of this present
year he did not in a proceeding in which these
very plaintiffs were parties, and in which he
40 appeared on their behalf, whether he did not sav

Defendant's Witness, Julius Blum, Cross

that he had since taken up these notes and was the owner. Now, it has been suggested that his statement to that effect cannot bind the parties, because it was an individual transaction. I now propose to show, to introduce this thing for the sole purpose of showing that his statement was made—was a statement made while transacting the business of these very companies. I propose to show that he appeared there as a witness on their behalf, that they made the arbitration agreement, that the whole proceeding was a proceeding in which they were parties. 10

The Court: I do not think for that purpose the arbitration agreement is competent. The objection will be sustained. 20

Exception noted for the defendant.

Q. Was there an arbitration of that?

Mr. Slade: I object to that as immaterial, irrelevant and incompetent.

Mr. Besore: It is for the same purpose.

The Court: I think for the purpose of contradicting Levin, it may be competent; I will permit that. 30

A. There was.

Q. Who were parties to that arbitration? A. The Eagle Pipe and Supply Company, Pittsburgh Steel Tube Company, Isaac Levin, the Bordentown Steel & Tube Corporation.

Q. What was the subject-matter of that arbitration? 40

Mr. Slade: I object to that.

The Court: I suppose if this is a contradic-

Defendant's Witness, Julius Blum, Cross

10 tion, Mr. Besore, you ought to contradict the witness; I don't think you ought to go into the subject-matter of the arbitration; we are not concerned with it; it is not raised as a matter of defense.

Mr. Besore: Your Honor, I am not contradicting Levin; Levin himself admitted the subject; I don't impeach Levin.

The Court: Very well, then, for what purpose is it possibly competent?

20 Mr. Besore: To show that Levin's admission made here on the stand was made while he was acting as agent for these very plaintiffs.

The Court: Well, did Levin deny that?

Mr. Besore: It was not suggested to him.

The Court: Very well then, how is it competent for you to put in proof of something that is not material to this issue for the purpose of contradiction merely?

30 Mr. Besore: No, your Honor, it is material to this issue whether Levin is the owner of these notes or whether these people are, and I have produced here Levin's own affidavit which Levin admits, in which he admits himself in that affidavit that he is the owner of these notes, was at the time, which is after these suits were brought. Now, what I want to do, is to be assured that Levin's statements there were made under circumstances binding on these two companies, and to do so I must show under what circumstances they were made. I am now trying simply to show that
40 what Levin admitted, the proceeding he ad-

Defendant's Witness, Julius Blum, Cross

mitted he made these statements in, was one in which these plaintiffs were parties.

The Court: And so was Levin a party individually.

Mr. Besore: So was Levin a party, but he is there nevertheless. 10

The Court: Well, he was a party to it.

Mr. Besore: Yes, but I am going to ask who produced the notes.

The Court: Well, you may do that, but you are now seeking to go into and open up the whole matter of the arbitration.

Mr. Besore: Only to the extent to find out who were the parties. What is the last question? 20

(Last question repeated.)

The Court: The objection will be sustained. Exception noted for the defendant.

Q. Were the notes upon which these three suits were brought produced in that arbitration?

Mr. Katzenbach: Upon which three suits were brought? 30

Mr. Besore: These three suits were brought.

Mr. Slade: Just a moment; I object, as it is not binding on the McDowell people; they were not parties to any proceeding there, have not been represented, were not there, were not made parties, judging from the statement made by Mr. Besore.

Mr. Besore: No, they were not.

Mr. Slade: Anything that was done there would not be binding upon them. That is a special objection I make insofar as the plaintiff DcDowell is concerned. 40

Defendant's Witness, Julius Blum, Cross

Mr. Besore: Wait one minute; I will eliminate the McDowell note from this question; I will withdraw the question.

10 Q. Were the notes upon which suit is brought here on behalf of the Pittsburgh Steel Company and Eagle Pipe Supply produced at that arbitration? A. They were.

Q. By whom were they produced? A. Isaac Levin.

By the Court:

Q. When was that? A. About February, 1922.

By Mr. Besore:

20 Q. Was the McDowell note produced? A. Yes, sir.

Q. By whom? A. Isaac Levin.

Q. These proceedings, these arbitration proceedings subsequently became a matter of consideration for the Supreme Court of New York, didn't they? A. They did.

30 Q. Have you ever seen the affidavit of which a copy was yesterday produced here and a portion of which was read to Mr. Levin? A. I have.

Q. Was that part of these proceedings? A. It was.

Mr. Slade: Just a moment; I object to that.

The Court: The record speaks for itself.

Mr. Slade: I ask that that answer be stricken out.

The Court: That may be stricken out.

40 Mr. Besore: I will offer the record in a moment; I am going to reserve my offer for the present. I think that is all.

Defendant's Witness, Julius Blum, Cross

By Mr. Slade:

Q. Mr. Blum, why, don't you know, as a matter of fact, that the McDowell note was never produced at that arbitration agreement? A. I know positively that the note was produced at the arbitration.

Q. Don't you know at that arbitration McDowell note was in possession of Mr. Katzenbach here all the time, and was not produced at that arbitration agreement? A. The very opposite is the case, Mr. Slade; the note was produced by Isaac Levin in the arbitration agreement, and he asked for judgment for approximately \$24,000. 10

Q. Just a moment; I didn't ask you, sir, what he asked for.

Mr. Slade: I ask that the last part of his answer be stricken out. 20

The Court: It may be stricken out.

Q. Now, you are asked here whether you had given instructions to Mr. Weiler to write this letter, and you said no. I am referring now to Plaintiffs' Exhibit 6 for identification? A. Correct.

Q. Now, Mr. Weiler, as manager of your concern, had written many letters without you giving him instructions, hasn't he? A. Mr. Weiler never was the manager of my concern. If you change your question, I shall answer it. 30

Q. Whether he was or was not the manager of your concern, he had written many letters on business transactions that came under his observation without consulting you? A. Correct.

Q. And every letter that was written by him did not necessarily come under your personal supervision? A. Certainly not. 40

Defendant's Witness, Julius Blum, Cross

Q. And Mr. Weiler wrote many letters on behalf of your concern in his department which you had never seen? A. Correct.

Q. Letters that were written by the Bordentown Steel & Tube Company in their business never came under your personal observation, did they? A. Certainly not.

Q. Or for your personal inspection? A. Certainly not.

Q. You were not manager of the concern? A. The Bordentown?

Q. Yes. A. Certainly not.

Q. So, it is nothing unusual that those letters here which were referred to, Plaintiffs' 8 for identification, and Plaintiffs' 9 for identification, that you had never seen them until they were produced in court? A. Certainly.

Q. You did not have charge of the correspondence of the Bordentown Steel & Tube Company, did you? A. No, sir, I was in New York and they were in Bordentown.

Q. Now, then, you said that after Plaintiffs' Exhibit 6, or the order, I should say, 1185, Plaintiffs' Exhibit 7, was called to your attention, you told Mr. Weiler you did not want to have any dealings with Levin? A. Correct.

Q. As you told him, because you did not want to make a profit on the Bordentown Steel & Tube Company? A. One of my reasons, yes.

Q. And notwithstanding that, Mr. Blum, isn't this an order to the Eagle Pipe and Supply Company?

Mr. Besore: I object; there is no testimony Mr. Blum sent the order.

Defendant's Witness, Julius Blum, Cross

Q. Mr. Weiler, I meant to say. A. It so appears from the letters.

Q. Now, while Mr. Weiler worked for you, you found him trustworthy, didn't you? A. Absolutely.

Q. Honest? A. Absolutely.

Q. Efficient? A. Absolutely.

Q. And a capable man? A. Certainly.

10

Q. You were asked whether you knew anything about the material that was shipped under Plaintiffs' 9 for identification, and you said a small portion of it was shipped, and if I am in error, Mr. Blum, in reference to this, please correct me. A. No, this refers to the three cars which were on the siding and were rejected.

Q. Then you referred, when you said a small portion of the order was shipped, to Plaintiffs' Exhibit 7 for identification? A. As it subsequently was turned over, yes.

20

Q. Now, when did you refresh your recollection as to how much of that merchandise was shipped to Bordentown Steel & Tube Company? A. During the preparation for the arbitration agreement, for the arbitration in New York.

Q. You looked over the books and found that some of this merchandise was actually shipped? A. No, I didn't find that; I found that none of it was shipped, but there is a possibility that a very small portion much later than what this order purports to be, which is supposed to be a rush order, was shipped, but it really amounts to a very small quantity, as this order calls for a carload, which is thirty-six thousand pounds or over; therefore, I say that I don't believe as against this order anything was shipped.

30

Q. So, when you said you thought a part of it was shipped, you made a guess, didn't you? A. No, sir.

40

Defendant's Witness, Julius Blum, Cross

Q. There was no merchandise shipped under this order, was there? A. As I just explained it, there was a possibility of a small sale to be applied against that order. This order calls for a carload of material, a rush order, and if you ask me whether this order was shipped, I answer you "No."

10 Q. Please look at this order and see whether there was anything here about a rush order, will you? A. The letter that goes with it, says "Rush."

Q. But there is nothing about a rush order there, is there? A. The letter which accompanies the order.

Q. There is nothing unusual about a rush order to send merchandise in installments? A. Yes, it would be unusual if the order calls for a carload, because that
20 implies the carload rate of freight.

Q. Now, after you had told Mr. Weiler that you did not want to have any dealings with Mr. Levin did you on behalf of Julius Blum & Company purchase any merchandise from Levin? A. I don't believe so.

Q. Well, are you guessing or do you know? A. I am guessing.

Q. You made a guess, didn't you? A. I couldn't
30 possibly remember.

Q. Will you say that you did not buy merchandise from Mr. Levin on behalf of Julius Blum & Company after you told Mr. Weiler you did not want to deal with Mr. Levin? A. I would be very much surprised if we had.

Q. I didn't ask you that, sir. A. I don't believe we did.

Q. Did you look it up? A. No, sir.

40 Q. Do you know? A. No, sir.

Defendant's Witness, Harry Ellsworth White, Direct

Q. Then you are guessing, aren't you? A. Just as I told you.

HARRY ELLSWORTH WHITE, sworn. 10

By Mr. Besore:

Q. Where do you live, Mr. White? A. Evanston, Illinois.

Q. What is your business? A. I am president of the Bordentown Steel & Tube Corporation, also a director; I am sales manager of the tube department for the Steel Sales Corporation, Evanston, Illinois. 20

Q. How long have you been president? A. Since October 21, 1920.

Q. And you are a son of H. S. White, the former president? A. I am.

Q. And you were elected upon his resignation? A. I was.

Q. Did you have any conference with Isaac Levin in which the question of payment of moneys to H. S. White was discussed? A. I did. 30

Q. When was the first conference? A. In February, 1921, at the McAlpin Hotel in New York.

Q. Who was present at that conference? A. Mr. Levin, Mr. Blum and myself.

Q. Well, what was said to Mr. Levin in reference to the payment of money to Mr. White?

Mr. Katzenbach: I object to the question, sir, as framed, unless it states by whom those remarks were made. 40

Mr. Besore: I don't think it makes any dif-

Defendant's Witness, Harry Ellsworth White, Direct

ference by whom; they were all talking; Mr. White testified to the occurrence.

(Question repeated.)

10 Q. When Mr. Blum and Mr. White and Mr. Levin were present at the conference?

The Court: He may answer it.

A. Mr. Levin was questioned as to payments to H. S. White.

By the Court:

Q. Who questioned him? A. Mr. Blum questioned him and I questioned him. He denied—

20 Mr. Katzenbach: I feel, sir, that we ought to have the conversation, the questions and answers.

The Court: Yes, as far as possible tell what was said by each of the parties to the conversation.

A. I asked Mr. Levin whether or not he had made payments to H. S. White; he denied that.

30 Q. What did he say? A. He said, "I have never made payments to H. S. White for any reason except this sale, this commission due on the sale of stock." He finally stated that he had paid him about one thousand dollars additional over the settlement, that is all.

By Mr. Besore:

Q. Was he asked many questions about this matter?

A. He was questioned very many times; Mr. Blum did most of the questioning.

40 Q. Was he asked if he paid any other moneys to H. S. White? A. He was.

Defendant's Witness, Harry Ellsworth White, Direct

Q. What did he say to that? A. He denied it.

Q. When was the next conference? A. In March, on March 15, in Mr. Levin's office by appointment.

Q. Who was at that conference, Mr. White? A. Mr. Levin, Mr. Blum and myself.

10

Q. What was said in relation to this matter at that conference and by whom? A. This conference was brought about by a desire on Mr. Levin's part—

Mr. Katzenbach: I object.

Q. No, tell what was said. A. Well, I would like to introduce my story.

Q. Just answer the questions. Strike out the question. How did you happen to have this conference?

20

A. At the request of Mr. Levin, who wanted to put the cards on the table and clear this matter.

Q. Well, what happened at the conference then? A. He produced cancelled checks bearing H. S. White's signature, and also showed invoices for material which he had purchased and later sold to Bordentown.

Q. Did you take any notes of the— A. Mr. Blum took the notes; I could O K the notes as seeing them made, but I did not take any notes myself.

30

Q. Was Mr. Levin then asked whether he had paid H. S. White any money? A. He was.

Q. And what did he say? A. He admitted additional payments to H. S. White, stating that it was on a Government transaction.

Q. How much did he say? A. About \$4,000.

Q. Was he asked to produce any evidence of that transaction? A. He was questioned as to the transaction, and he said that he could not show any records, as it was a vest pocket transaction.

40

Q. Was he asked to produce his books? A. Not at that time.

Defendant's Witness, Harry Ellsworth White, Cross

Q. Did he show any evidence as to that transaction? A. He did not.

Q. Did he give any calculation by which that sum of \$4,000 was arrived at? A. Only inasmuch as his
10 profit had been so much, and he paid H. S. part of that profit.

Q. How much did he say his profit had been? A. Approximately ten thousand dollars.

Q. And how much did he say the payments were? A. About four thousand dollars.

CROSS-EXAMINATION by Mr. Katzenbach:

20 Q. Mr. White, what is your age? A. Thirty-four years old.

Q. How long have you been in the steel business? A. How long?

Q. Yes. A. A little over seven years.

Q. Were you in the steel business at any time with Mr. H. S. White? A. Only in a sales connection with him, never—he has been president or sales manager, or president of companies in which I have handled
30 western sales.

Q. And did you handle western sales for the Bordentown Steel & Tube Corporation at the time Mr. H. S. White was president? A. The Steel Sales Corporation.

Q. You were connected with the Sales Corporation? A. The Steel Sales Corporation.

Q. The Steel Sales Corporation; that was a company which performed the function of selling the product of the Bordentown? A. As a distributor.
40

Q. Mr. Blum was associated with you in that company? A. He is not.

Defendant's Witness, Harry Ellsworth White, Cross

Q. He was, wasn't he? A. He was not.

Q. Was he a director of the company? A. In Steel Sales?

Q. Yes. A. He never has been, no.

Q. And not an officer of it? A. Not at all.

Q. In no sense was he connected with you or associated with you in the sales of the product of the Bordentown Steel Company through the Steel Corporation? A. Through the Steel Sales, Mr. Blum has nothing whatsoever to do with the company. 10

Q. Now, at the time, however, that the company with which you were connected was making sales of steel tubes, they were procured from the Bordentown Steel Corporation? A. Part of our sales, yes.

Q. And Mr. H. S. White was president of the corporation at that time? A. Yes. 20

Q. Mr. H. S. White is your father, isn't he? A. He is.

Q. And you realize, I suppose, when you are telling of payments or trying to tell of payments which Mr. Levin said he made to your father, that it is of your father that you are speaking? A. I do.

Q. And that your father is accused in the defense of these suits of fraud with Mr. Levin? A. I do.

Q. Of bribery? A. I do. 30

Q. And that the same man who is thus accused is your father? A. I do.

Q. I want to make certain of that.

Mr. Besore: I think he admitted all of it.

Mr. Katzenbach: Yes, he has.

Mr. Besore: He admitted that man was his father, and that the man that committed the bribery, that same man is his father.

Mr. Katzenbach: That is the way I wanted 40

Defendant's Witness, Harry Ellsworth White, Cross

to get it, both forward and backward; it is quite remarkable.

The Court: Go ahead.

10 Q. Now, you do not know of your own knowledge, save through what you say you heard Mr. Levin say, that any moneys at any time passed between Mr. Levin and your father? A. I do not.

Q. And then the knowledge that you possess is absolutely that which Mr. Levin gave you? A. No, I wouldn't say that.

Q. Do you possess any other information of your own knowledge? A. Mostly acquired through Mr. Levin's admissions. You don't see bribery; you can't be behind the door.

20 Q. I am not asking you for a speech, Mr. White; I am asking whether you have, of your own knowledge, any information other than that which you received through Mr. Levin? A. None.

30 Q. Exactly; that is what you said first. Now, all the knowledge then that you had was obtained from Mr. Levin, as I understand your testimony, upon two occasions, one in February, 1921, at the Hotel McAlpin in New York, when Mr. Blum, yourself and Mr. Levin were present, and the second upon March 25th at Mr. Levin's office when the same persons were present? A. March 15th.

Q. I beg pardon? A. March 15th.

Q. March 15th, when the same persons were present, is that so? A. Correct.

40 Q. Now, at the first meeting that you had with Mr. Levin, pursuant to questions that were asked, I understood you to say that Mr. Levin said that Mr. H. S. White, your father, had sold some stock belonging to Mr. Levin, upon which Mr. H. S. White claimed a commission?

Defendant's Witness, Harry Ellsworth White, Cross

Mr. Besore: I object to that, your Honor; it was not so stated.

The Court: Reframe your question, Mr. Katzenbach.

Mr. Katzenbach: I will reframe the question.

Q. As I understand you, in the month of February, 1921, at the Hotel McAlpin, Mr. Levin, in response to questions, stated that Mr. H. S. White had sold certain stock in the Bordentown Steel and Tube Corporation which had belonged to Mr. Levin, and upon the sale of that stock Mr. H. S. White had claimed a commission, is that so? A. That is so. 10

Q. That Mr. H. S. White had instituted a suit to collect this commission from Mr. Levin? A. Yes.

Q. That subsequent to the commencement of the suit there had been paid by Mr. Levin to Mr. H. S. White upon account of these commissions so claimed the sum of \$1,000? A. The suit had already been settled by agreement. 20

Q. Yes, I said, subsequent to the suit. A. A legal agreement, whatever that was.

Q. I have said subsequent to the suit in question, and a thousand dollars additional? A. Yes.

Q. A thousand dollars, and Mr. Levin told you and told Mr. Blum at that time that that thousand dollars was on account of these commissions for the sale of that stock? A. That claim had already been settled; it was an additional amount. 30

Q. I am asking what Mr. Levin told you and told Mr. Blum at that time—that was his statement, wasn't it? A. That was an additional payment of one thousand dollars.

Q. On account of such commissions? A. Yes. 40

Defendant's Witness, Harry Ellsworth White, Cross

Q. Now, on March 15th, you have said you were invited by Mr. Levin to attend at his office? A. Yes, sir.

10 Q. And Mr. Blum and Mr. Levin and yourself being present, Mr. Levin said that he would exhibit to you the documents connected with transactions which he had had and in which Mr. H. S. White had figured? A. Such documents as he could produce.

Q. Such documents as he could produce; you had then no knowledge of any documents and what they were, had you, personal knowledge? A. He had admitted payments in previous meetings.

Q. He had admitted one payment, I understood you to say? A. Yes, sir.

20 Q. Yes, one payment; that was all the knowledge you possessed at the time of this second interview? A. Yes.

Q. And all that knowledge had been derived from Mr. Levin? A. It had.

Q. Now, Mr. Levin at this second interview said that he would put the cards on the table and show all the transactions which he had had with Mr. H. S. White, didn't he? A. He did.

30 Q. He could not have said he would do any more, could he? A. Not if he produced everything.

Q. No, but a man can do no more than produce what he has, can he? A. That is true.

Q. And at that time Mr. Levin did produce and permit Mr. Blum in your presence to make copies of certain checks? A. He did.

Q. You did not know anything about those checks before Mr. Levin showed them to you, did you? A. No.

40 Q. It was Mr. Levin's voluntary action which

Defendant's Witness, Harry Ellsworth White, Cross

showed you those checks, wasn't it? A. We knew of payments that were made in some way.

Q. You knew of one payment, you said; now, I am asking you whether it was not Mr. Levin himself who voluntarily showed you these papers? A. He did.

Q. And he voluntarily showed you the invoices for the Bordentown Steel Tube? A. He did. 10

Q. And permitted Mr. Blum to make such copies of notes from all those papers as he wished? A. He did.

Q. And that was done, as I understood— Mr. White, you were elected president of the Bordentown Company upon the resignation of your father? A. I was.

Q. And you were president of the Bordentown Company at the time of both these interviews? A. I was. 20

Q. And payment upon the notes given by the Bordentown to Mr. Levin and indorsed to plaintiffs in this suit had been then stopped before these interviews, hadn't it? A. Stopped after the interview in February.

Q. In February; now, at the time Mr. Levin passed you out these checks and these invoices and permitted you to make an examination at your will of these papers, these notes were all due and payment upon them had been stopped? A. Yes, sir. 30

Q. Now, after Mr. Levin had shown you the notes from which Mr. Blum made notes, he then told you that there was still something else? A. Yes.

Q. Some other transaction that he had had with Mr. White? A. Yes.

Q. And he told you that that was a Government transaction? A. He did. 40

Defendant's Witness, Harry Ellsworth White, Cross

Q. He told you the figures in the Government transaction? A. No, he gave us the figures as to profits.

Q. As to his profit? A. The profits, yes.

Q. Of course, he would not have been at liberty to have disclosed other figures in connection with a Government contract, would he? A. Why, I see no reason why.

Q. Of course, you don't see any reason? A. No.

Q. Now, he gave you the matter of the whole amount of the profit and the approximate amount, at least, that Mr. H. S. White had received? A. All he gave us in connection with the transaction was the profit.

Q. And the approximate amount which Mr. H. S. White had received? A. Yes.

Q. And he told you that was \$4,000? A. Approximately \$4,000.

Q. Approximately \$4,000? A. The entire deal was approximate.

Q. That is, he said he had made approximately \$10,000 profit, and had given approximately \$4,000 to Mr. White? A. Correct.

Q. And he told you that Mr. H. S. White had helped Mr. Levin to get the Government contract, didn't he? A. He did.

Q. And that was the reason for the payment being made to Mr. H. S. White by him? A. That was his answer.

Q. Now, you have said Mr. Levin said he would lay the cards on the table at that interview, haven't you? A. Yes.

Q. And those were the cards that were laid on the table, weren't they? A. Yes.

Q. And was it from what Mr. Levin told you in

Defendant's Witness, Harry Ellsworth White, Cross

those two interviews—I understand you possess no personal knowledge as to any of the relations or any relation which may have existed between Mr. H. S. White and Mr. Levin? A. None.

By Mr. Besore :

Q. Was this a Government contract, a contract with the Government? A. A Government deal, the purchase of Government supplies, materials. 10

Q. And what records of this Government deal did he show you? A. None.

Q. Did you ask him? A. We did.

Q. What did he say? A. He could not produce them; it was a confidential, vest pocket transaction.

Q. Was he asked to show the books of the company? A. Not at that time. 20

Q. In March was he asked? A. No, not at that time.

Q. Did he give you accurate figures with relation to this deal? A. Approximate figures.

Q. Did he tell you how much material was bought from the Government? A. No.

Q. Or at what price it was bought? A. No.

Q. The amount that was paid for it? A. No.

Q. What figures did he give you? A. His profit and the amount paid to H. S. White. 30

Q. In approximate figures? A. In approximate figures.

Q. Was he asked whether that commission appeared on his books? A. Not at that time.

Defendant's Witness, G. H. Martin White, Direct

G. H. MARTIN WHITE sworn:

By Mr. Besore:

Q. Where do you live, Mr. White? A. Cleveland, Ohio.

Q. What business are you in? A. The rubber business.

Q. You were formerly in the steel business? A. Yes, sir.

Q. Were you at the Bordentown Steel & Tube Company's plant during 1920? A. I was.

Q. What position did you occupy there? A. Plant superintendent.

Q. You will have to speak a little louder, please. A. Plant superintendent.

Q. When did you come there as plant superintendent? A. March, 1918.

Q. And when did you leave? A. October, 1920.

Q. You are also a son of H. S. White, aren't you? A. Yes.

Q. You came with him? A. Yes.

Q. And left with him? A. Left with him.

Q. Now, how long have you been in the steel business—how long were you in the steel business? A. I started in the steel business in 1916 with the Standard Seamless Tube Company at Ambler, Pennsylvania.

Q. What departments of the steel business have you been in? A. All departments.

Q. Have you had occasion to use material for re-drawing? A. I have.

Q. How long did you operate a tube drawing mill? A. The first tube drawing mill I ever operated was in Bordentown, starting there in April, 1918, until 1920.

Defendant's Witness, G. H. Martin White, Direct

Q. Had you had experience in tube manufacturing before that time? A. At the Standard Seamless Tube Company as Ambler—I was not operating that plant there; it was simply a matter of experience that I went there.

Q. I show you an invoice marked D1 for identification, and ask you whether you received the material therein described while at Bordentown? A. I did. 10

Mr. Besore: Now, I think, your Honor, perhaps we had better shorten this, by showing him all of them at once.

The Court: All right.

Q. I show you invoices marked Exhibit D2 for identification to D9 inclusive for identification, and ask you to examine them and say if you received the materials therein described? A. These were all received. 20

Q. You remember them? A. I do.

Q. Now, will you take those invoices?

Mr. Besore: I should like to offer these invoices now in evidence; have you any objection?

Mr. Katzenbach: Let me see them. (After examining papers.) If the Court please, I object to the introduction as evidence of these papers for the reason that while they are introduced apparently as purporting to come from Isaac Levin, they bear certain marks which have been placed thereon, and which it has not been proven were ever placed thereon by Mr. Levin. 30

Mr. Besore: Well, when I offered these yesterday, I asked counsel if they wanted the 40

Defendant's Witness, G. H. Martin White, Direct

marks taken off, and they then told me they did not want to make me take them off; now, if they want me to take them off, I will renew my offer to take them off; I simply want to know, what counsel wants.

10 Mr. Katzenbach: This is one which was shown us yesterday; you may admit that as it is, if you wish.

Mr. Besore: I am perfectly willing to tear them off.

Mr. Katzenbach: Now, if your Honor please, I think these things ought not to be admitted except as they were in their original condition; they have memorandum all over them made afterward.

20 The Court: It might be well to restore them to their original condition before they are offered.

Mr. Besore: I offer the invoices.

30 Mr. Katzenbach: We have no objection now since the notations have been removed. The one that was submitted to us yesterday had inoffensive notations, but I understand even that has been removed now, so there is no objection whatever.

Mr. Besore: There is one notation which I will prove.

Q. I show you Exhibit D3 for identification, and ask you in whose handwriting is the notation on the side? A. H. S. White.

40 Q. I show you also Exhibit D4 for identification and ask you in whose handwriting that is? A. H. S. White.

Defendant's Witness, G. H. Martin White, Direct

Mr. Besore: I now offer the invoices.

The Court: They may be marked.

Said invoices are marked respectively Exhibits D1, D2, D3, D4, D5, D6, D7, D8 and D9.

Q. Now, Mr. White, what sort of material is required for the making of steel tubing by the processes employed at Bordentown A. We require material of good steel, free of pits and scale and fairly long length. 10

Q. What sort of material is used for that—where does it come from, the material used in—

Mr. Katzenbach: We object to that as irrelevant and immaterial. The question, I assume, is not where in general the Bordentown Steel and Tube Company gets its steel tube. 20

Mr. Besore: No, it is only for the—

The Court: He may state generally.

Mr. Besore: Where such material comes from, what its origin is.

(Objection withdrawn.)

Q. Not the people you buy it from, but where it comes from? A. Other large mills that have these shorter ends, running five feet and over, in some cases left over, or else new material from other mills. 30

Q. Now, when you say "new material" what do you mean: what sort of new material? A. New tubes pierced and ready for redrawing.

Q. The Bordentown does not make any material from the pierced billets, does it? A. None at all.

Q. You have to have a tube to start with in order to redraw? A. You have to have a pierced billet to start operations. 40

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Q. Now, I show you these various invoices, and ask you if by looking at them you can tell the character of materials which were received in each instance. If you don't know, why, don't hesitate to say so. A. Just what do you mean?

10 Q. I want to know what kind of material was received when that invoice was received, the class of material that was received in this invoice? A. On that invoice?

Mr. Katzenbach: Let us get it in, exhibit so and so.

Mr. Besore: You want it by each exhibit?

Mr. Katzenbach: I think that would be right.

20 Q. All right, I show you Exhibit D1, and ask you if you can tell by looking at it what sort of material was delivered at that time? A. It was a carload of miscellaneous sized tubing, short in length, rusty, pitted, generally a poor class of material.

Q. Were you able to use it? A. About fifty per cent.

30 Q. How did you use it? A. By putting a lot of work on it that would not have been necessary on first-class tubing.

Q. Were you able to make first class tubing out of that fifty per cent? A. Some of the fifty per cent that was put into process was finished and shipped.

Q. Well, how many operations did it require? A. In a number of cases it required as many as seven or eight passes on the benches.

40 Q. How many passes does it ordinarily take for that tubing? A. First-class material?

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Q. First-class material, yes. A. Two to three or four would not be excessive for first-class material.

Q. What became of the other fifty per cent? A. Scrap.

Q. Did you put it through the process? A. Some of it was tried to be put through, but it was impossible to process, and it had to be scrapped, the other material was scrapped without trying to be processed. 10

Q. Now, I show you Exhibit D2, an invoice, and ask you the same question as to that—what class of material came on that particular invoice? A. This particular car was second-hand boiler tubes, inch and a half, nine gauge in longer lengths, cut from boilers. It was burned on one end for a length of about four feet. The other portion of the tube was pitted and scaly. 20

Q. Were you able to use it? A. Part of it.

Q. What became of the rest of it? A. The rest, some of it was scrapped, and some of it I believe is still lying in the mill at the present time.

Q. The part that you used, how many operations did you require to use that? A. I believe six passes on that particular car.

Q. Is that an unusual number? A. Well, not unusual; four passes would not be excessive; this is a little unusual. 30

Q. Well, is that more than would be required if the material were first-class material? A. If the material were first-class, yes.

Q. How many passes would it require then? A. Four.

Q. I now show you Exhibit D3, and ask you whether you can tell us as to the character of material which was delivered to that invoice? A. The 40

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same class of material that I have just qualified on the other invoice.

Q. Identically the same? A. Identically the same sort of material as the car before, inch and a half nine gauge, the same class of material.

Q. And you used the same proportion of it? A. 10 Just about the same proportion.

Q. In the same manner? A. The same ratio.

Q. I show you now Exhibit D4, and ask you what class of material was delivered in that invoice? A. There is an item on here listed inch and inch and a quarter, twelve, twenty thousand pounds, which was material which had been sheared on a scrap shear; it had been hacked with a cleaver: it was in lengths of from eighteen to twenty-four inches, extremely short.

20 The rest of the material was miscellaneous, was inclined to be short; it was also rusty.

Q. Material which was sheared with shears that you speak of, can you use that? A. If it is long enough to permit drawing it out into long lengths of steel tubing; it has to be five feet or longer.

Q. Was that long enough? A. It was twenty-four inches, some of it shorter than that; it wasn't long enough. In the larger pieces there would oftentimes 30 be a cleaver mark clear through the outside wall.

Q. Were you able to use it? A. I was not.

Q. What did you do with it? A. Scrapped it.

Q. What about the rest of the material? A. Some of the other material was finished, processed.

Q. How many passes did it require? A. It is rather hard to classify that on that material, as there is so many miscellaneous sizes.

40 Q. Was it first-class material? A. No, it was not first-class.

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Q. Why wasn't it? A. It had been in the fire so long that it was rusty, very badly pitted.

Q. Do you know what per cent of that was used?

A. Speaking of the car?

Q. Yes. A. Less than fifty per cent.

Q. And that fifty per cent, did that require any unusual process, any unusual number of passes—when I say "unusual" I mean a number of passes over and above what would be required for first-class material? 10

A. It required more pickling in the pickle room; it also, I would say, required on an average of one to two passes more than first-class material would have required.

Q. I now show you Exhibit D5, and ask you what class of material was delivered under that invoice?

A. That is parallel with the same class of material that was described in the last item, on the previous invoice, inch and eighth, inch and a quarter twelve and thirteen gauge, sheared on both ends; that also was cut with the cleaver. 20

Q. The entire carload? A. The entire carload.

Q. What did you do with that? A. I believe that carload was rejected.

Mr. Slade: What exhibit is that? 30

Mr. Besore: D5.

Q. You mean you did not get it at all?

Mr. Slade: Just a moment; I object to that question.

Mr. Besore: He said it was rejected; I want to find out what he means.

Q. What do you mean when you say it was rejected? A. Just that it was rejected. 40

Defendant's Witness, G. H. Martin White, Direct

Q. You didn't get it? A. That is exactly what I mean.

By the Court:

Q. You did not accept delivery of it, is that what you mean? A. As I recall that car, it was put on our siding, but it wasn't received in the mill; it was returned.

By Mr. Besore:

Q. Now, I show you Exhibit D6, and ask you if you can tell what material was delivered under that?

A. A miscellaneous carload of tubing from one inch to two and three-quarters, various gauges.

Q. What was its condition? A. The car was topped off; a third part of the top of the car was very good material. Just a minute—one-third of the car was very good material, namely, the top; the bottom two-thirds was mixed, short, a lot of it been sheared. In this car there were several lengths of pipe that had been used for steam coils.

Q. What did you do with that material? A. We processed the third of the car that was good; the other two-thirds, some of it was scrapped, some of it was sorted, spent a lot of money on it trying to sort it.

Q. Were you able to make first-class material out of it? A. Out of the top third.

Q. I now show you Exhibit D7, and ask you if you can remember the character of materials delivered under that invoice? A. It was a miscellaneous carload of tubing of various sizes, also topped off very nicely, containing the same character of merchandise as the other.

Q. What was done with it, the same thing? A. Practically the same thing.

Defendant's Witness, G. H. Martin White, Direct

Q. I now show you Exhibit D8, and ask you if you can determine what the character of the material delivered under that invoice was? A. That is larger class of material, two to three inch; it is rather large for our requirements.

Q. Do you remember it at all? A. I remember the car, yes. 10

Q. What was the character of the material? A. The top half of the car was practically all right; the bottom half was shorter lengths and mixed material, various sizes and gauges, and required a lot of work to sort.

Q. What sort of material was it? A. The top half was all right; the bottom half was very poor quality.

Q. I show you Exhibit D9, and ask you as to the character of that material? A. That is a car of the same character; it is two inches, smaller. 20

Q. Well, what was—if you don't remember, Mr. White, don't hesitate to say so; perhaps we can refresh your recollection, but do you know, do you remember that carload of material? A. I can't describe that car very fully.

Q. You don't remember? A. I remember that the car came in, and that it was unloaded. 30

Q. But you don't remember the character of the material? A. I can't describe it very fully.

Q. Did you see the freight bills rendered by the railroad company on these various cars? A. I did, yes, and I have seen them a number of times.

Q. I show you a freight bill issued by the Pennsylvania Railroad, and ask you if you have ever seen that bill? A. Yes, I have.

Mr. Katzenbach: I can't see, your Honor— 40
Of course, the freight bill has not yet been of-

Defendant's Witness, G. H. Martin White, Direct

ferred; if Mr. Besore desires to offer the freight bill—

Mr. Besore: All I want to do is to refresh the witness's recollection as to the car itself by the freight bill, showing where it came from.

10

Mr. Katzenbach: I object to that, sir, it being impossible to have his recollection refreshed by annotations made by others.

The Court: Yes.

Mr. Besore: Your Honor, I am simply showing him the freight bill which came into the place; it is not his memorandum, of course.

The Court: You are offering it for the purpose of refreshing his recollection; you are offering something which he did not make.

20

Mr. Besore: Which he did not make, but which he knew at the time.

The Court: I don't think it is competent.

Q. And you don't remember about this car?

Mr. Katzenbach: He said he didn't.

30

Q. Now, looking over these various invoices, Mr. White, is there anything on the face of the invoice to designate the character of the material—that is, its lack of quality?

40

Mr. Katzenbach: I object to that question. The witness has testified exactly what each one of the carloads indicated by the invoices were; he has been asked fully to explain in each instance just what class of goods was comprised in the invoice, which he has done from memory, and I think that it is inadmissible to ask him if there could be memoranda upon the in-

Defendant's Witness, G. H. Martin White, Direct

voices which he could have taken into consideration when he was classifying the goods.

The Court: Let me hear the question.

(Question repeated.)

Mr. Katzenbach: I object, for the invoice speaks for itself.

Mr. Besore: The purpose of this is simply 10
this: Our allegation is that this thing was a fraud and a sham, orders were given for good material and bad material delivered in fulfillment.

Mr. Katzenbach: And accepted.

Mr. Besore: Now, the invoices in question don't show on their face that we were getting the kind of material that we actually got; they are quite as consistent with the delivery of 20
good material—

Mr. Katzenbach: Well, they speak for themselves at any rate.

The Court: That is a matter of argument.

Mr. Besore: Well, of course, if your Honor has so ruled, but the language is equivocal; it is language used in the trade, language which the jury does not understand, I suppose; I 30
don't.

The Court: It is a matter for argument, and if more than one inference may be drawn from it, I suppose that is likewise a matter for argument, unless it is technical language which in the trade had a particular and peculiar signification, but I don't understand that that is offered for that.

Mr. Besore: Well, that was my purpose, to show that there was nothing on it. Now, I 40
will reframe my question.

Defendant's Witness, G. H. Martin White, Direct

Q. Will you look at these invoices, and tell what the significance in the tube trade is of the designation of the materials thereon?

Mr. Katzenbach: If there is such a significance, you mean.

10

Mr. Besore: If it has any—well, it has some significance, certainly.

The Court: Well, if it is the mere ordinary use of English, the jury can conclude as well as this man what it means; if it is technical language known to the trade, then he may explain it.

20 A. Well, I don't see any technical designation of what that tube is. It is inch and eighth and inch and inch and quarter twelve and thirteen gauge. Gauge means the wall thickness. Inch and eighth and inch and quarter means the outside diameter. It simply says "tubes."

Q. It doesn't say what kind of tubes? A. No.

By the Court:

Q. It does not refer to quality? A. No, no reference to quality.

30

By Mr. Besore:

Q. None of them refer to quality, do they? A. No.

Q. Well, do you know who ordered this material? A. H. S. White ordered it.

Q. And to whom did you report down there at the mill? A. H. S. White.

40 Q. Did you say anything to H. S. White about the character of this material at the time it came into the plant?

Defendant's Witness, G. H. Martin White, Cross

Mr. Katzenbach: I object; it is no conversation which occurred between the parties to these suits, or at which any of the parties are alleged to have been present.

The Court: Well, of course, the whole gist of this defense is fraud, and the conduct of both of the actors would be material, and I take it that this relates to the conduct of one of the actors in the alleged fraud. I think I shall permit it to be answered. 10

Mr. Katzenbach: May I ask an exception, sir?

The Court: Yes.

(Question repeated.)

A. I told him that it wasn't fit for use, and wished him to secure better material. 20

Q. What did he say about it? A. He said that it was the best material that he could secure at that time.

Q. What did he tell you to do? A. He ordered that we go ahead and draw the material as best we could.

Q. Were you getting any other material at that time? A. Yes, there was some other material came in at that time. 30

CROSS-EXAMINATION by Mr. Slade:

Q. Mr. White, at the time when you first became acquainted with the Bordentown Steel and Tube Corporation, how old were you? A. 1918—about twenty.

Q. I understood you to say that you first became connected with the steel business in 1916? A. Yes, sir. 40

Defendant's Witness, G. H. Martin White, Cross

Q. And that you went to work for a concern, if I am not in error, by the name of the Engineering—is that the concern? A. Who?

Q. Will you kindly give me the name of the concern? A. The Standard Seamless Tube Company.

10 Q. How long were you with them? A. About a year.

Q. What was the character of the work you did there? A. I started it at the open hearth department, making steel, followed the raw steel entirely through the plant in every department they had in the mill there.

Q. You were just an ordinary workman? A. Exactly.

20 Q. Where did you go after you ceased connection with this concern you just referred to? A. I was in Cleveland a short time after that.

Q. Without work? A. No, with the Kelly Springfield Rubber Company.

Q. A rubber company—you went out of the steel business altogether? A. Yes.

Q. How long were you out of the steel business after you had been with this concern you last mentioned? A. A period of five or six months.

30 Q. Then you went back again in the steel business? A. With the Bordentown Company.

Q. So that your entire experience prior to the time that you came to the Bordentown was that of a workman? A. An ordinary workman in the mill learning the tube business.

Q. And you were there for one year? A. One solid year.

40 Q. Do you know how long your father had been in the business prior to the time that you had gone to

Defendant's Witness, G. H. Martin White, Cross

work in the first mill? A. About twenty-two or twenty-three years.

Q. And your father has had a great deal of experience in that line? A. Yes, sir.

Q. That is correct, isn't it? A. Yes.

Q. Your father was president of the concern when you went to work for the Bordentown Steel & Tube Company? A. Yes, sir. 10

Q. And you were dismissed or you severed your relations with the Bordentown at the time your father did in October, 1920? A. Dismissed?

Q. Or you severed your relations? A. I resigned.

Q. Well, you resigned after you father resigned? A. Yes.

Q. The same month? A. The same month.

Q. And you stayed there during the period that your father was there as president, is that correct? A. My father was president. 20

Q. And you worked there as superintendent while your father was president? A. Yes, sir, that is absolutely right.

Q. It was your father who gave you that position as superintendent? A. Absolutely.

Q. That is correct? A. Yes.

Q. And he was the one who placed your salary? A. Yes. 30

Q. And you were under his supervision? A. Yes.

Q. You say your father had about twenty years' experience in that line? A. Twenty-two or twenty-three years.

Q. Yes, he has worked in an official capacity in his life for a period of twenty-three years? A. He certainly has. 40

Defendant's Witness, G. H. Martin White, Cross

Q. And you would consider his judgment better than yours, wouldn't you, upon raw material? A. Not on raw material.

Q. No, not raw—well, of the character of the material that you were using for drawing pipes? A. No, I would not.

10 Q. Would you consider your judgment superior to your father's? A. Yes.

Q. Your father, however, was president of that concern, wasn't he? A. He was.

Q. And you were working under your father? A. Yes.

Q. Employed by your father? A. Yes, sir.

Q. Since you have got out of Bordentown, have you been superintendent in any other factory? A.
20 Pittsburgh Steel Tube Company, Beaver.

Q. Beaver? A. Yes.

Q. Were you superintendent there? A. Superintendent.

Q. What was the character of their work? A. It would have been the same as the Bordentown.

Q. But they didn't do it, did they? A. They never got that far.

Q. So you became the superintendent of a factory
30 that never did any work? A. I helped build the plant.

Q. Did you or did you not, sir? A. What is that?

Q. You became superintendent of a factory that never did any work? A. There wasn't any work to be done at that time.

Q. But you were superintendent of that factory, weren't you? A. There weren't any orders available—

Defendant's Witness, G. H. Martin White, Cross

Q. I didn't ask you that. A. I was superintendent, yes.

Q. And they did no work and produced no material? A. There wasn't any work to be done.

Q. They produced no material, did they? A. No, sir.

The Court: Just answer the questions. 10

The Witness: No.

Q. So you were superintendent of a factory that did no work, the Pittsburgh Steel? A. Yes, that is right.

Q. How long did you stay with them? A. I think it was exactly a year.

Q. The only place where you worked as superintendent where actual work was being done was under the supervision of your father? A. As superintendent, yes. 20

Q. Now, after you severed your relations with the Pittsburgh Steel & Tube Company, where did you go to work? A. McGraw Rubber Company, Cleveland.

Q. In the tire business? A. In the tire business.

Q. What were your duties in the tire concern that you work for? A. At present?

Q. Yes? A. Manager. 30

Q. At Youngstown, Ohio? A. The office at Youngstown.

Q. So you were twice in the rubber business and twice in the tube business in a period of about three years? A. Yes.

Q. That is correct, isn't it? A. Not three years, no; five years.

Q. Had you personally supervised or given instructions either as foreman or superintendent in redraw- 40

Defendant's Witness, G. H. Martin White, Cross

ing pipes prior to the time that you came to the Bordentown Steel & Tube Company? A. In drawing pipe?

Q. Yes? A. No.

Q. The first time you became superintendent where you gave instructions was with the Bordentown Steel & Tube Company? A. Yes.

Q. Now, you spoke something here about these passes, four passes; you said six passes were sometimes unusual and four passes was not, is that correct? A. That is it.

Q. Well, doesn't that depend upon the dimension of the pipe? A. It does.

Q. If we say, for example, that you have a four-inch diameter, and you want to draw that down to inch and three-quarters, how many passes would you say that pipe would have to go through before you had reduced it to one and three-quarters diameter? A. The same thickness of the wall?

Q. Yes? A. The same thickness—it could be made in two passes.

Q. You could make it in two passes from four-inch to inch and three-quarters? A. It could be made in two passes.

Q. Now, the Bordentown Steel and Tube Company made tubes of various dimensions, didn't they? A. Yes.

Q. And various sizes? A. Yes.

Q. And various wall dimensions, as you just suggested? A. Yes.

Q. That is right, isn't it? A. That is perfectly true.

Q. So in passing a tube through the passes that you have, you do it by a sort of chain process, don't you? A. A chain process?

Defendant's Witness, G. H. Martin White, Cross

Q. Yes, in the mill at Bordentown? A. There is an endless chain running on a draw bench that has a carriage on it that grips the tube and pulls it through the die.

Q. You did what they call the cold system, didn't you? A. Cold drawing operation.

Q. Now, suppose you want to draw a four-inch pipe to an inch and three-quarter dimension with a smaller wall than the original pipe had, how many passes would that pipe have to go through? A. How much smaller wall? 10

Q. Well, you are a judge of the size of the pipe, the wall of the pipe, when it is four-inch pipe? A. I don't know anything about pipe.

Q. Well, tube, I mean? A. A four-inch tube?

Q. Yes? A. It could be any thickness, any gauge; 20 there is no standard gauge.

Q. When you say four-inch there is no standard gauge? A. It could be a quarter of an inch if it was a mechanical tube.

Q. We will say three-quarters of an inch and you wanted to reduce that to a quarter inch thickness; how many passes would it go through? A. Well, if you have got a pencil and paper, I will figure it out for you. 30

Q. Yes, please? A. Let me get your dimensions right; four inch, three-quarters wall.

Q. Yes, now, when I refer to four inch, you realize I mean four inch outside or inside diameter? A. Tube is always spoken of as outside diameter, pipe inside diameter.

Q. Now, assuming that the tube is four-inch outside diameter with a wall seven-eighths of an inch thick, that you were to reduce to one and three-quarter- 40

Defendant's Witness, G. H. Martin White, Cross

ters inch diameter and sixteen gauge? A. It cannot be done.

Q. Did you hear of any such pipe? A. What say?

Q. Did you ever hear of any such pipe? A. It can't be made out of four-inch, inch and three-quarters by seventeen.

10 Q. It could not be done? A. No, sir.

Q. We will assume that pipe is two and a half inches with the same wall thickness? A. Assume four-inch pipe is two and a half inch?

Q. Yes, and you wanted to reduce it to sixteen gauge? A. It can't be done; you couldn't make the wall that light; you can't take off that much off the wall.

20 Q. Now, then, the passes of the pipe, and the gauge of the pipe and the rust would have nothing to do with it, would it? A. Oh, considerable.

Q. Before you use a pipe which is rutsy, do you pickle it? A. I do.

Q. And it all depends upon the processes they use in pickling whether that pipe is fit or unfit to be redrawn? A. It may show up in the pickling.

Q. Yes or no, please? A. State your question.

Q. The stenographer will read it to you.

30 (Question repeated.)

A. No.

Q. The pickling has nothing to do with it? A. It has a lot to do with it, yes.

Q. Pipe with surface rust is good material if it is properly pickled, isn't it? A. No.

40 Q. Would you say tubes that had a slight surface rust would be improper material for redrawing? A. If they were otherwise perfect.

Defendant's Witness, G. H. Martin White, Cross

Q. Now, don't assume anything, Mr. Witness; just confine yourself to my questions.

Mr. Besore: If the Court please, he is certainly entitled to explain that.

Q. No, the question is if it had rust?

The Court: A slight rust; I assume that otherwise it is in perfect condition; the witness may assume that; he may assume, I take it, a perfect piece of material except in the respects as specifically mentioned. 10

A. If a tube with slight rust were properly pickled, it would be all right for redrawing.

Q. So slight rust has nothing to do with the character of material whether it is bad or unfit for your purposes? A. Not necessarily, no. 20

Q. Now, will you tell me how many passes would be necessary to four-inch by quarter-inch wall, to reduce it to one by twelve gauge? A. In the neighborhood of ten passes.

Q. Now, will you take four by four and a quarter, and tell us how many passes it would take to produce a tube two by ten? A. Four by four and a quarter? 30

Q. No, four I mean by one-quarter? A. Four-inch O. D.?

Q. Yes, quarter-inch wall? A. What do you want to reduce it to?

Q. Four by a quarter, to produce a tube two by ten? A. In the neighborhood of six passes.

Q. So that the passes depend also on the size of the original material and the character of the material you desire to produce—yes or no, please? A. Yes. 40

Defendant's Witness, G. H. Martin White, Cross

Q. Mr. White, when did you first come down from Cleveland for the purpose of this trial? A. When did I first come?

Q. Yes? A. I think it was a week ago Tuesday morning.

10 Q. Tuesday morning; at whose request did you come here? A. Mr. H. E. White's.

Q. Your brother? A. Yes.

Q. Are you having your expenses paid for coming down here? A. Certainly.

Q. And your hotel expenses? A. Certainly.

Q. Are you getting any money for loss of salary? A. Absolutely not.

Q. You came down here voluntarily, didn't you?

A. Voluntarily.

20 Q. From Cleveland down here to assist— A. I came from Youngstown.

Q. You came from Youngstown as a witness? A. Yes.

Q. And you have been in the company of your brother and Mr. Blum at the hotel? A. Yes.

Q. You are stopping at the Stacy House, isn't it? A. Stacy-Trent.

Q. At Trenton? A. Yes.

30 Q. And you have been there since when? A. A week ago Tuesday morning.

Q. And you have discussed this case, haven't you, frequently? A. Yes.

Q. You have discussed the character of testimony they had here in Court yesterday? A. I have heard it talked about, naturally.

40 Q. Yes, you discussed it with your brother and Mr. Blum, didn't you? A. I have heard it talked about.

Defendant's Witness, G. H. Martin White, Cross

Q. In the hotel? A. Yes.

Q. You also knew that the claim of the defendant in this case, the Bordentown Steel & Tube, was that the material was rusty, pitted, useless and scrap—you knew that? A. Absolutely, yes.

Q. At the time the actions were brought, that the answers were filed by the defendant, you were not connected with the Bordentown people, were you? A. No. 10

Q. You got that information from whom? A. The information that the material was worthless and scrap?

Q. Yes? A. I got it from whom? I knew it.

Q. That the defendant, the Bordentown people, made that claim—who did you get that information from? A. That same thing was claimed in the trial in the arbitration in New York City, Jersey City, last year. 20

Q. Now, is that the first time you found that out? A. Why, I knew it; I worked there; I saw the material.

Q. I didn't ask you that, sir; I am asking you from whom did you get the information that the Bordentown Steel & Tube Corporation had filed a defense in this case— A. I don't know anything about their defense. 30

Q. In this case, the filing of the defense, you did not know that they claimed that the steel was rusty in this case, made such a defense? A. I imagined the defense would be the same as it was last year in the New York case.

Q. As a matter of fact, didn't you discuss it with your brother and Mr. Blum? A. Yes.

Q. For the purposes of this case, didn't you discuss the facts? A. Yes. 40

Defendant's Witness, G. H. Martin White, Cross

Q. At the hotel? A. Yes.

Q. Now, then, your father, at the time you made the complaint of the material, told you it was the best material they could get then? A. He did.

Q. You know as a fact that material was scarce at that time, don't you—yes or no? A. Yes or no.

10 Q. Yes or no? A. Yes and no.

Q. Well, what do you mean by "yes and no"? A. It was scarce, scarcer than usual. Material could be secured at that time.

Q. At high prices? A. Not particularly high prices.

Q. You said it was scarce at the time, didn't you? A. Scarcer than usual.

20 Q. And the price of material went up, didn't it, being scarcer than usual? A. It advanced some, yes.

Q. Now, you said you inspected these cars and you separated the good from the bad and used it? A. That is right.

Q. The bad was placed as scrap? A. That is right.

Q. You never used the bad at all, did you? A. Oh, we have used a lot of bad material; we have tried to use it.

Q. Isn't it the usual practice to assort material?

30 A. In a redrawing plant?

Q. Yes? A. Yes.

Q. Redrawing is done from rejects of other mills, isn't it—yes or no, please? A. Rejects, yes.

Q. The rejects come various sizes, various dimensions and various lengths? A. They usually buy them—

Q. Yes or no, please?

40 Mr. Besore: I don't think, your Honor, he can limit him to a yes or no answer.

Defendant's Witness, G. H. Martin White, Cross

The Court: No, unless yes or no is the appropriate answer. What is the question?

(Question repeated.)

The Court: Can you answer that yes or no?

The Witness: I can answer it in my own language or yes or no.

The Court: Answer it yes or no, then? 10

The Witness: Have I the privilege of answering it the way I want to?

The Court: If it is susceptible of a yes or no answer, answer it yes or no.

The Witness: Well, it is not; it is not susceptible of a yes or no answer.

Q. Well, please give me your answer? A. Material bought from the mill as rejects usually comes through as one quantity as to size and gauge; there may be three or four quantities, but they will be assorted in that car before they are shipped; they won't come in all mixed together. 20

Q. In other words—have you ever bought any material from a mill—yes or no, please? A. No, I never bought any.

Q. Did you ever sell any to a mill? A. No.

Q. Did you ever see them when they are packed in a mill, rejects? A. Yes. 30

Q. What mill? A. Standard Seamless.

Q. Any other? A. National Tube Company.

Q. So your knowledge is predicated as to what a mill does upon what you saw in those two mills? A. Why, I have seen them in other mills.

Q. Would you say that rejects are not of various sizes? A. I won't say that they were not of various sizes, no. 40

Defendant's Witness, G. H. Martin White, Cross

Q. Did you ever see a carload come in, with various sizes of tubing? A. Many times.

Q. And you separated them, didn't you? A. I separated the sizes? Certainly, the good from the bad.

Q. Don't you do that in every car that comes, that you separate the tubing into various sizes? A. It ought not to be necessary, no.

Q. I didn't ask you whether it was necessary; do you do that with every car? A. No.

Q. Do you recall any car that you ever saw at the Bordentown Tube & Steel Company that you did not reject some short ends? A. Yes, I do.

Q. When? A. We purchased some material from the Detroit Seamless Tube Company.

Q. When was that? A. 1919.

Q. And you remember what you rejected in 1919—you remember it today, is that correct? A. In a general way, yes.

Q. You remember you rejected from that particular concern some pipe from a carload of tubing? A. I didn't reject anything from their car; I said I didn't reject any from this car.

Q. Oh, you didn't; now, how much tubing?

The Court: Mr. Slade, will your examination be very much extended?

Mr. Slade: I think probably twenty minutes with this witness.

At this point a recess was taken until 1:30 o'clock P. M.

Defendant's Witness, G. H. Martin White, Cross

Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

G. H. MARTIN WHITE resumed.

By Mr. Slade:

10

Q. Mr. White, when the exhibits or the invoices were exhibited to you, you told us the percentage of the materials that the Bordentown used and the percentage that you didn't use; that is correct? A. That is correct.

Q. You remember today as to what percentage of the merchandise you used in 1920? A. I do.

Q. Distinctly? A. Distinctly, yes.

Q. So as each exhibit was shown to you of merchandise, you were enabled from memory to tell us the exact amount of the merchandise that the Bordentown Steel & Tube Company used? A. Yes, sir.

20

Q. You had no means of refreshing your recollection, did you? A. I had refreshed my recollection from the invoices.

Q. Please take D5, and tell us what percentage of the merchandise enumerated on that invoice did the Bordentown Steel & Tube Company actually manufacture into their product? A. I believe that car was rejected.

30

Q. You said, Mr. White, that the merchandise represented by the invoice D5 was rejected? A. I believe it was.

Q. And at the time that the car was rejected, your father was still president of that concern, wasn't he, that is, the Bordentown Steel & Tube Company? A. Yes.

40

Defendant's Witness, G. H. Martin White, Cross

Q. Please look at D9; is there anything there on the invoice which would refresh your memory as to how much of that merchandise was actually consumed by the Bordentown Steel & Tube Company? A. The size of the material refreshes it to my mind.

Q. How many sizes are there on that invoice? A.
10 There is only one specified.

Q. One specified size? A. Specified.

Q. And the fact that there is a specification of the size of the tubes refreshes to your mind how much of that merchandise you used? A. It does.

Q. And that is the only means by which you refresh your memory? A. That is the only means which I have on the invoice.

Q. Now, how much of that merchandise did you use? A. About fifty per cent.
20

Q. Are you certain of that, or are you merely guessing? A. That is approximately.

Q. Are you certain of that, or are you merely guessing? A. I am certain that that is approximate.

Q. I will ask you the question again; are you certain of that, or are you merely guessing? A. I am certain.

Q. Certain that you used fifty per cent of the merchandise enumerated on D9? A. I qualified that by saying fifty per cent approximately.
30

Q. I see; now, please state D8, also only one size of tubes; I ask you how much of that merchandise was consumed? A. I beg your pardon, but there are two sizes here; it means that there is a range of from two inch to three inch in that car; that is the way I identify them.

Q. Now, what is there on that invoice that refreshes
40 your memory as to how much of the merchandise

Defendant's Witness, G. H. Martin White, Cross

was consumed by the Bordentown Steel & Tube Company? A. The sizes, the different sizes, two inch and three inch.

Q. And when I showed you that D9 had one, the fact that it had one characteristic of the merchandise there refreshed your recollection? A. Yes.

Q. The exhibit you now hold before you, because it has two sizes, refreshes your recollection? A. There were more sizes than that in the car, but just two sizes specified, between two and three inch. 10

Q. Yes, and that refreshes your recollection? A. Yes.

Q. Now, please take D4; I ask you what is there on that invoice that refreshes your recollection as to how much merchandise you used? A. One inch, inch and a quarter, and twelve gauge; I remember that distinctly because it was such bad material. 20

Q. Yes? A. And other assorted sizes I remember because of their extreme shortness in length, and also because of their rusty and pitted condition.

Q. How much of that merchandise was used? A. Less than fifty per cent.

Q. How much? A. Less than fifty per cent.

Q. Well, approximately how much—was it forty-nine per cent? A. Between forty-five and fifty. 30

Q. You are making a guess then, aren't you? A. You have an approximate carload of material; you can't say that fifty pounds was used and fifty pounds was scrapped; it is approximate.

Q. Now, what became of the fifty per cent of merchandise that you did not use? A. It was either scrapped, or possibly there is some of it still down there at the plant, never used.

Q. During the period that you were there, and during the various times that the merchandise was pur- 40

Defendant's Witness, G. H. Martin White, Cross

chased by the Bordentown from Mr. Levin or from the Eagle, none of it was returned except the carload that you rejected and three other cars, if you please?

A. Yes, there were three other cars returned to them.

10 Q. Four cars altogether were returned? A. I believe that is correct.

Q. And during the time that your father was president, those four cars were returned? A. I believe that is correct.

Q. Now, was any of this merchandise, the fifty per cent that remained unused, ever returned while you were still employed by the Bordentown? A. I believe not.

20 Q. And when you left there in October, 1920, the merchandise which you could not use still remained on the premises of the Bordentown? A. The part that had not been sold as scrap.

Q. Yes; now, when did the Bordentown Steel & Tube Corporation cease to purchase merchandise from Isaac Levin? A. When did they stop purchasing from him?

Q. Yes? A. I can't tell you when they stopped purchasing.

30 Q. They stopped purchasing while you were still employed there, didn't they? A. They stopped purchasing several times. In what year do you mean?

Q. During 1920? A. During 1920?

Q. Yes? A. They started purchasing in the early part of 1920, in the spring, and the cars continued to come in there all during the remainder of that year.

40 Q. Well, during the month of October when you were still there; please look at this invoice and see if there is any purchase made during the months of September and October? A. No, they were not.

Defendant's Witness, G. H. Martin White, Cross

Q. They made none, did they? A. No.

Q. And when you severed your relations, the merchandise which you could not use was still on the premises? A. Except that portion that had been scrapped.

Q. And that continued all the way from March up to October? A. That is correct. 10

Q. The merchandise which you purchased from Mr. Levin is what is known as rejects from the mill, isn't it? A. I never purchased any.

Q. Well, that the Bordentown purchased? A. Will you state that again, please?

(Question repeated.)

A. No.

Q. What caused you to hesitate before you gave the answer? A. There is a lot of second-hand material in there cut out of boilers that is not a reject. 20

Q. That is right, but if it is new material, the merchandise that you purchased from Mr. Levin, was rejects from other mills? A. In a few cases.

Q. Did you ever buy any new pipe which were not rejects for the purpose of redrawing it? A. I never bought any.

Q. Well, did the Bordentown? A. We have. 30

Q. On how many occasions? A. Not more than one or two, I don't believe.

Q. The business you were interested in, or the Bordentown was, was for the purpose of redrawing the rejects from mills? A. Correct.

Q. That is right, isn't it? A. Exactly.

By Mr. Besore:

Q. Now, what sort of material is this stuff that is 40

Defendant's Witness, G. H. Martin White, Cross

known as rejects from mills—what is it? A. It is usually the off-fall from a longer tube.

Q. What sort of off-fall? A. A perfect piece of tube, except that it is not long enough to make sixteen, eighteen or twenty feet lengths of boiler tube. It is what is left of the tube after the other mill has taken out of it what it can use.

Q. After the other mill has cut out the piece that is applied on its order and shipped it for application to a boiler, and this smaller piece is what is left over? A. Exactly.

Q. It is the same quality as the piece that the other mill uses, isn't it? A. Exactly the same.

Q. It is pointed, isn't it? A. It usually has a point on one end.

Q. That is put on to put it through the passes in the other mill? A. Through the cold drawing die.

Q. Is it any advantage to you to have that point on the piece? A. Yes, it saves an operation.

Q. Saves what operation? A. Saves the pointing operation which we would have to do if the point was not on there when we purchased the material.

Q. Now, does the term "reject" as used in this trade have anything to do with inferior quality of merchandise? A. No.

Q. Now, such a piece of tubing, if left exposed to the weather for a long time, might deteriorate, mightn't it? A. It would.

Q. It would become pitted? A. Yes, sir.

Q. What causes material to be pitted? A. Rejected material?

Q. No, what causes material to be pitted? A. What class of material?

Q. Well, this stuff that you were getting from Levin? A. Second-hand boiler tube?

Defendant's Witness, G. H. Martin White, Cross

Q. Yes, what caused it to be pitted? A. Water sediment in the boiler in localities that they may use acids for cleaning the boiler tubes would cause it to become pitted.

Q. Would storing it in the yard exposed to the weather cause it to become pitted? A. Yes, it would become pitted from rust. 10

Q. Now, would a surface rust hurt a tube for re-drawing? A. Not a surface rust; it would have to be deeper than that to injure the material so that it could not be cleaned up properly for resale.

Q. Do you know what was the market price of scrap during the time that these consignments of material came into Bordentown? A. I do.

Q. How do you know? A. Through referring to the "Iron Trade Review" at that time; it always publishes the prices of scrap material, also new material. 20

Q. Do you know what the price of scrap was during this time? A. I do.

Q. What was it?

Mr. Slade: I object to it; he is not properly qualified.

The Court: You may qualify him.

Q. Well, did you sell any scrap? A. I never sold any scrap personally. 30

Q. Did the Bordentown sell any scrap? A. Sold it right along.

Q. Do you know what it was sold for? A. I do.

Q. Did you know then what it was sold for? A. I did.

Q. Does scrap have a fixed, determined market price? A. It has.

Q. Where is it quoted? A. The "Iron Trade Review" quotes scrap prices on tubing and other metals. 40

Defendant's Witness, G. H. Martin White, Cross

Q. How often does that appear? A. Once a month.

Q. Did you ever read that publication? A. Regularly.

Mr. Besore: I submit he is qualified.

The Court: You may cross-examine if you desire on the qualifications.

10

By Mr. Slade:

Q. The information that you received as to the market value was from that book, from that publication? A. That was one source.

Q. Did you ever buy any merchandise of any kind? A. I never did.

Q. Did you ever sell any? A. I never did.

20

Q. The only knowledge you had, other knowledge, was what the Bordentown did? A. Yes.

Q. And in selling scrap, they sell various characters of merchandise, don't they? A. They do.

Q. And when it is a higher quality of scrap it is worth more? A. I think tube scrap is sold at a standard price.

Q. I see, but you never sold any; now, how many occasions did you see tube scrap sold? A. Sold about a car and a half to two cars a month, I would say.

30

Q. And that is where your knowledge is derived from? A. Yes.

Mr. Slade: I submit he has not been qualified as a witness.

The Court: He said he sold it every month.

Mr. Slade: He didn't say he sold it; he said the Bordentown sold it.

40

The Court: Well, he was cognizant of the sales and prices; I think I shall permit him to testify.

Exception noted for plaintiff.

Defendant's Witness, G. H. Martin White, Cross

Q. What was the market price of tube scrap during the early part of 1920 and up until August, 1920?

Mr. Slade: I object to the form of the question. If the witness is going to testify at all, he has got to specify the market value during each time that the property was delivered, not when they finally accumulated a certain amount; as each car was delivered is the time the market value governs, if it governs at all. 10

The Court: Well, I suppose it would be competent to show during the period in which these purchases were made what the price from time to time of scrap was, and if there was no variation in price, it would cover the entire period; if there was a variation, then of course the different times should be stated. 20

(Question repeated.)

A. We sold tube scrap at that time ranging from twelve dollars a ton to as high as sixteen dollars a ton; the market varied from time to time.

Q. Was it higher in the earlier part of 1920 or lower? A. I believe at that time it was higher, in the early part of 1920, then it was in the latter part; the metal market was dropping. 30

Q. Do you know, Mr. White, the prices at which the Bordentown purchased materials from other people than Isaac Levin or the Eagle Pipe & Supply Company in 1920 of the same size as appears on these bills of lading? A. I do.

Q. How do you know that? A. Through information furnished me by H. S. White at that time, also by seeing the invoices, by talking over with him where he was buying material, how much he was paying for 40

Defendant's Witness, G. H. Martin White, Cross

it, when it would arrive at the mill; it was generally known.

Q. At what price was such material purchased?

Objected to.

The Court: I don't think this witness has qualified to testify as to that.

10

Mr. Besore: He knows, your Honor, what they paid for the material.

The Court: No, he knows what H. S. White told him.

Mr. Besore: No, he also saw the invoices, he said.

The Court: It does not follow that that was what was paid. I don't think he has qualified himself on that score.

20

Q. Mr. White, did you ever draw a pipe four by a quarter inch wall to inch by twelve gauge? A. I never have.

Q. Did you ever hear of its being done?

Mr. Slade: I object to what he has heard.

Mr. Besore: Well, I will withdraw it.

Q. Is it usually done? A. It never is.

30

Q. Why not?

Mr. Slade: I object to that.

The Court: Oh, I think he may answer that.

40

A. It is not practical to take a four-inch tube with a quarter wall and draw it to one inch twelve gauge, or even to one inch as heavy as eight gauge; it would not be practical, there is too much reduction to be made. You could get a smaller sized pierced billet with a four-inch quarter wall if you wanted to produce such a product.

Defendant's Witness, G. H. Martin White, Cross

Q. What sort of tube would you start with? A. The closest possible size to one inch twelve that could be secured. We would at the same time clean up any surfaced pits that might be in the tube we could secure, and that you could furnish a first-class job at one inch twelve, I would say one inch ten or inch and a half ten would be a good size to redraw the 10
inch twelve from.

Q. Would it be possible to draw a four-inch by a quarter inch wall to a one inch by twelve gauge so that you could sell it at any sort of price at which it could be sold? A. You would lose a tremendous amount of money in such an operation.

Q. Why? A. The price of the product would be tremendous; the labor involved, the time required; it could not be done at any sort of profit; it would be 20
a loss, pure and simple.

Q. Now, these materials in these cars which were still down at Bordentown when you left, how much was there? A. Just the odds and ends; we had a stock rack at that time, and if some pieces came in with the car that were not up to standard, and there wasn't enough of one size and gauge to put through on an order, perhaps that would be laid aside, or if there wasn't a sufficient quantity to save to get additional material to put through, it would be thrown 30
immediately into the scrap heap.

Q. Do you know why those three cars were rejected? A. I do.

Q. Why were they rejected?

Mr. Slade: I object to that as immaterial and irrelevant and incompetent; they have been rejected and that is all; the reasons why they were rejected are immaterial. 40

Defendant's Witness, G. H. Martin White, Cross

Mr. Besore: The question that immediately followed was that this happened while H. S. White was president of the company, the plain intent being to show that some material was rejected, and we want to show the reason.

10 The Court: I think I shall permit the question.

Exception noted for the defendant.

A. They were rejected after I had made numerous protests about the quality of the material. It was identical, similar to the quality of the car that had come in previous, in fact, this invoice here covers material inch, inch and a quarter, inch and an eighth, thirteen gauge. If we were to attempt to draw some of the material, it would show it could not possibly
20 be done, short lengths, from eighteen to twenty-four inches, that had been nicked with a cleaver. For that reason H. S. White had the cars returned.

Q. Now, you were how long at Bordentown as superintendent? A. I became superintendent in July, 1919, and was superintendent there until the latter part of October, 1920.

Q. In what capacity were you there before July nineteen hundred— A. Gauger on the benches, inspector of material, in charge of millwright gang for
30 installing machinery, more or less of an assistant to the chief superintendent.

Q. When did your knowledge of the steel tubing business first begin? A. It would be pretty hard to definitely set a date on that.

Q. Well, what period of your life? A. Father has always been in the seamless tube business, and as long as I can remember, that has been a topic of conversation in our home, seamless tubing; in fact, before I
40

Defendant's Witness, G. H. Martin White, Cross

ever went into a mill, I thoroughly understood the theory of manufacturing seamless steel tubing, and simply went in the mill to get the practical end of it.

By Mr. Slade:

Q. Since we adjourned at recess, the subject of your conversation was discussed with you, wasn't it, the subject of your testimony? Why do you hesitate? 10

A. I don't recall any such conversation.

Q. You don't recall what occurred here at recess, but you do recall what occurred in 1919, is that correct? A. I don't recall any such conversation.

Q. Just a moment, please; you and your brother and Mr. Blum and the attorney went to lunch together? A. We did.

Q. You discussed there the testimony in the court, that took place in court today? A. I did not have any discussion with them. 20

Q. I didn't ask you that, whether you discussed it or your brother or Mr. Blum or the attorney with you? A. There was a discussion.

Q. And the subject of when you became acquainted with the steel industry was one of the discussions? A. I believe that was.

Q. And it was since the discussion that you had testified here that you had some knowledge from hearsay that your father told you? A. That is very evident. 30

Q. Yes; well, now, the subject of your testimony was also discussed, that you testified in court, that you became connected with the steel industry in 1916 when you were twenty years old? A. That is true.

Q. That is correct, isn't it? A. Yes, sir.

Q. And the subject of your testimony was also dis- 40

Defendant's Witness, G. H. Martin White, Cross

cussed, that you had only had one year's actual experience? A. One year's actual experience?

Q. Yes, prior to the time you became engaged with Bordentown? A. One year in the Standard Seamless.

10 Q. Yes; now, then, you said that none of the scrap that came to the Bordentown Steel from Mr. Levin or the Eagle Pipe was sold while you were there; you so testified, didn't you? A. None of the scrap?

Q. Yes. A. I did not.

Q. Didn't you say the scrap remained? A. I said the scrap was sold.

Q. That came from Mr. Levin's place? A. Absolutely.

20 Q. It was never returned to them, was it? A. It was sold, Mr. Levin or the Eagle Pipe.

Q. At whose suggestion was it sold? A. It wasn't any suggestion; it was just the course of the business; when we accumulated scrap we sold it.

Q. Didn't you testify that when you left in October that the fifty per cent of the scrap was still on the premises? A. I did not.

30 Q. Don't you recall what you testified here in Court only a half an hour ago? A. I do not; I answered your question; I said I did not.

The Court: Did not what, you don't recollect or you did not so testify?

The Witness: I did not so testify.

40 Q. Well, do you recall at recess that I asked you the question when I showed you the exhibits, what became of fifty per cent of the merchandise that was scrapped, and you answered that for all you know they are still on the premises? A. Some of it, I testified.

Defendant's Witness, G. H. Martin White, Cross

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

Q. Now, did you sell a carload and a half of scrap that accumulated a month from the merchandise sent by Mr. Levin, or the Eagle Pipe? A. That included all the material that was bought, scrap that was sold.

Q. Yes, so that you had scrap accumulated from other purchases that you had made from others? A. 10
We did.

Q. So that you separated that which you can use and that which is scrap from purchases made from others? A. We separated some that came from other people.

Q. And you threw all the scrap together that came from the various purchases and sold it? A. One scrap bin.

Q. You said that it was necessary in order that you may use the tubes that they have a point? A. Yes. 20

Q. Do you use the same kind of die that the mills used? A. Use the same kind of die in redrawing that they use.

Q. The same size? A. Smaller sizes.

Q. And so you make a new point, don't you—yes or no, please? A. Not always.

Q. But you do on some occasions, don't you? A. 30
Some occasions we do.

Q. Do you cut any part of the pipe off before you begin to redraw it? A. If the point is too large, we cut the point off.

Q. Yes, and you make a smaller point? A. Yes.

Q. And that is nothing unusual, is it? A. Not unusual, no.

Mr. Besore: Now, if your Honor please, I offer the interrogatories and answers thereto 40

in each of these cases; suppose I just read them to the jury.

The Court: You may read them.

Mr. Katzenbach: These are interrogatories which you made, Mr. Besore, without any examination of the witness by anyone else?

Mr. Besore: I beg pardon?

10 Mr. Katzenbach: They are matters of discovery before trial.

Mr. Besore: Yes, I offer them.

Mr. Katzenbach: Without the witness being subjected to cross-examination; I object.

Mr. Besore: I offer them; they are the answers to interrogatories under oath.

The Court: These are interrogatories propounded to the plaintiff?

20 Mr. Besore: Propounded to the plaintiff, yes, under the practice.

Mr. Katzenbach: Well, what are you offering, Mr. Besore? First you had a set of interrogatories, and you had one examination of the plaintiff before trial; which are you offering, one or both?

Mr. Besore: I am offering the interrogatories and the examination before trial; first the examination before trial, I will offer that.

30 The Court: I understand that the questions and answers propounded as interrogatories under our practice are admissible to be read.

Mr. Katzenbach: Yes, the interrogatories, but there was one set of interrogatories and then there was an examination of a witness before trial. Now, it is a question what they want to do. Now, he is going to read the

interrogatories, I understand, with the answers made thereto under oath by or on behalf of the plaintiffs or some one.

Mr. Besore: Yes.

Mr. Katzenbach: I do not object to the reading of the interrogatories, but the examination before trial where there was no opportunity for cross-examination, I would object to.

10

The Court: Well, the interrogatories are what is—

Mr. Besore: I think we are entitled also to offer that. The first interrogatory—

The Court: Now, in which case is this?

Mr. Besore: The Eagle Pipe & Supply (reading): "Who was president of the Eagle Pipe & Supply Company at the time the original note, of which the note sued upon is a renewal was given?" Answer by the plaintiff "Isaac Levin."

20

Mr. Katzenbach: I think, Mr. Besore—I beg your pardon; I don't want to be captious in the thing—I think you examined Mr. Isaac Levin under that and not the corporation. When you say "Answer by plaintiff" the plaintiff is a corporation.

The Court: Well, I presume the plaintiff has to answer by some officer.

30

Mr. Katzenbach: We do not deny that Mr. Levin was president; we have had him so testify and I believe he did.

The Court: But, Mr. Katzenbach, I understand the practice to be to propound it to the party to the suit, and the party being a corporation acts through its officials.

40

Mr. Katzenbach: I believe that the heading of the interrogatories made it the examination of Mr. Isaac Levin; I think it will so show, if Mr. Besore will read it.

Mr. Besore: I don't so understand. All right then, I will read this.

Mr. Katzenbach: Yes, read it, and then that will simplify the whole thing.

10 Mr. Besore (reading): "New Jersey Supreme Court. Eagle Pipe Supply Co., plaintiff vs. Bordentown Steel & Tube Corp., defendant. Action at law. Interrogatories. To Katzenbach & Hunt, Esqs., American Mechanic Building, Trenton, N. J., attorneys for plaintiff. Take notice that the defendant in the
20 above-entitled cause requires answers under oath from Eagle Pipe Supply Company, the plaintiff therein, to the following interrogatories proposed in the above cause within ten days after service thereof upon you." Then follows the interrogatories which I will read in conjunction with the answers. The answers to the interrogatories reads thus: "New Jersey Supreme Court. Eagle Pipe Supply Company, plaintiff, vs. Bordentown Steel Tube Corporation, defendant. Action at law. Answers
30 to interrogatories. State of New Jersey, County of Mercer, ss: Isaac Levin, of full age, being duly sworn according to law on his oath deposes and says, that he is the president of the Eagle Pipe Supply Company, the above-named plaintiff, and the duly authorized agent of said corporation for the purpose of making this affidavit; that the following are true and correct answers to the interrogatories pro-

pounded by the defendant in this action:"
 Now, the first interrogatory propounded to the plaintiff is: "Who was president of the Eagle Pipe Supply Company at the time the original note, of which the note sued upon is a renewal, was given?" Then the answer by the plaintiff is: "Isaac Levin." Second interrogatory: "State the names of the stockholders and the number of shares of stock held by each at the time the original note was given?" Answer: "James Pierson, 5 shares, Mrs. Isaac Levin, 45 shares, Isaac Levin, 450 shares." Third interrogatory: "What interest had Isaac Levin in the plaintiff company at said time, and what interest has he continued to have up to the institution of this suit?" Answer to Interrogatory at said time, and what interest has he con- No. 3: "President, director and stockholder." Fourth interrogatory: "Who was in charge of the executive management of the plaintiff company at the time the original note was given, and who was in charge of said management at the time this suit was instituted?" Answer to Interrogatory No. 4: "The board of directors, consisting of James Pierson and Mr. and Mrs. Isaac Levin; James Pierson, treasurer and general manager, and Isaac Levin, president." Fifth interrogatory: "Who was in charge of the financial transactions of the said plaintiff company during the times referred to in the preceding interrogatory?" Answer to interrogatory No. 5: "James Pierson, treasurer." Sixth interrogatory: "By what authority and by what officer was the said original note and the renewal note sued upon accepted by said plain-

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tiff company?" Answer to Interrogatory No. 6: "James Pierson, treasurer." Seventh interrogatory: "For what consideration was said original note given to said corporation?" Answer to Interrogatory No. 7: "Said note was given for merchandise sold and delivered. Sworn and subscribed before me this 6th day of November, 1922. Isaac Levin. Lillian M. Martino, notary public of N. J." I will offer these.

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The Court: They will be admitted; there will be no objection.

Said interrogatories are marked Exhibit P10 and the answers thereto are marked Exhibit P11.

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Mr. Besore (reading): "New Jersey Supreme Court. Pittsburgh Steel Tube Company, plaintiff, vs. Bordentown Steel & Tube Corp., defendant. Action at law. Interrogatories. To Katzenbach & Hunt, Esqs., American Mechanic Building, Trenton, N. J., attorneys for plaintiff. Take notice that the defendant in the above-entitled cause requires answers under oath from Pittsburgh Steel Tube Company, the plaintiff therein, to the following interrogatories proposed in the above cause within ten days after service thereof upon you. New Jersey Supreme Court. Pittsburgh Steel Tube Company, plaintiff, vs. Bordentown Steel Tube Corporation, defendant. Action at law. Answers to interrogatories. State of New Jersey, County of Mercer, ss: Isaac Levin, of full age, being duly sworn according to law, on his oath deposes and says, that he is the president of the Pittsburgh Steel Tube Company,

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the above-named plaintiff, and the duly authorized agent of said corporation for the purpose of making this affidavit; that the following are true and correct answers to the interrogatories propounded by the defendant in this action?" Interrogatory No. 1: "Who was

president of the Pittsburgh Steel Tube Company at the time the original note, of which the note sued upon is a renewal, was given?"

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Answer to Interrogatory No. 1: "Isaac Levin."

Interrogatory No. 2: "State the names of the stockholders and the number of shares of stock held by each at the time the original note was given?"

Answer to Interrogatory No. 2:

"Henry A. Shaffer 10 shares, Albert Child 5 shares, Davidson Pipe & Iron Co. 50 shares, Israel Oleet 50 shares, Stewart

20

White 2 shares, Charles A. Levin 250 shares, Isaac Levin 900 shares, Louis Bardy

2 shares." Interrogatory No. 3: "What interest had Isaac Levin in the plaintiff company at said time, and what interest has he continued to have up to the institution of this

suit?" Answer to Interrogatory No. 3:

"President, director and stockholder." Interrogatory No. 4: "Who was in charge of the executive management of the plaintiff company

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at the time the original note was given, and who was in charge of said management at the time this suit was instituted?"

Answer to Interrogatory No. 4: "Board of directors, consisting of Henry A. Shaffer, Louis Bardy, Albert Child, Isaac Levin; Albert Child, secretary, treasurer and general manager; Isaac

Levin, president." Interrogatory No. 5:

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Plaintiffs' Witness, Isaac Levin, Direct

10 "Who was in charge of the financial transactions of the said plaintiff company during the times referred to in the preceding interrogatory?" Answer to Interrogatory No. 5: "Albert Child, treasurer." Interrogatory No. 6: "By what authority and by what officer was the said original note and the renewal note sued upon accepted by said plaintiff company?" Answer to Interrogatory No. 6: "Albert Child, treasurer." Interrogatory No. 7: "For what consideration was said original note given to said corporation?" Answer to Interrogatory No. 7: "Pittsburgh Steel Tube Company received this note from Isaac Levin for merchandise sold and delivered upon book account. Sworn and subscribed before me this 6th day of November, 1922. Isaac Levin. Lillian M. Martino, Notary Public of New Jersey." I offer these.

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Said interrogatories offered are marked Exhibit P12 and the answers thereto Exhibit P13 for plaintiff.

30 DEFENDANT RESTS.

Plaintiff's Rebuttal.

ISAAC LEVIN recalled.

By Mr. Slade:

40 Q. Mr. Levin, I will just ask you one question: With the exception of being a stockholder and director of the Pittsburgh, are you in any way or are

Plaintiffs' Witness, Isaac Levin, Direct

you the owner of the note which is being now sued upon by the Pittsburgh Pipe & Steel Company?

Mr. Besore: I object to that; he already testified on that subject.

The Court: I don't recall that he testified as to his interest in the note; he testified that he indorsed it and delivered it to the Pittsburgh Company; I don't recall that he was asked anything about the interest he might have in the note. 10

Mr. Besore: He was asked whether he did not make an affidavit in which he said he was the owner of the note.

The Court: Yes, he was asked that on cross-examination. 20

Mr. Besore: And he answered that what he said in the affidavit was true; this was all gone into.

The Court: No, I think I shall permit this.

A. I am not, not the owner.

Q. I will ask you the same question in reference to the note sued upon or the notes sued upon by the Eagle Pipe & Supply Company? A. The same question? Why, I was acting as an officer for the Eagle Pipe & Supply Company, and I signed— 30

Mr. Slade: No. (To the reporter): Just repeat the question.

(Question repeated.)

Q. I will restate my question: With the exception of being a stockholder and officer of the company, are you in anywise interested in the notes sued upon by the Eagle Pipe & Supply Company, and is the 40

Plaintiffs' Witness, Isaac Levin, Cross

Eagle Pipe & Supply Company the owner of that note? A. No, sir, I am not.

Q. You are not interested? A. No, sir.

Q. Is the Eagle Pipe & Supply Company the owner of that note or notes, I should say? A. Yes.

10 Q. Are you the owner of that note? A. I am not the owner.

CROSS-EXAMINATION by Mr. Besore:

Q. Who delivered the note to the Pittsburgh Steel & Tube Company? A. Who delivered?

Q. Yes? A. It was sent by mail to Mr. Katzenbach.

20 Q. No, I don't mean that; the note was first given to you, wasn't it—the note sued upon by the Pittsburgh Steel Company?

Mr. Slade: I object to that, if the Court please; it is not proper re-cross; I have asked him nothing on that subject; I have simply asked him as to what the Pipe—

30 The Court: How would you assume, Mr. Slade, that cross-examination as to that matter should be undertaken?

Mr. Slade: I will withdraw my objection; I think your Honor is correct.

A. The note was originally made payable to me, Isaac Levin, and I have turned it over to the Eagle Supply Company for merchandise that they have shipped.

40 Q. I am talking about the one that the Pittsburgh Steel Tube sued on? A. The same applies to the Pittsburgh Steel Tube Company.

Plaintiffs' Witness, Isaac Levin, Cross

Q. Who turned it over? A. I myself personally indorsed it to the Pittsburgh Steel Tube Company; it was discounted by the Pittsburgh Steel Tube Company at the Beaver Trust Company, Beaver, Pennsylvania, for their account.

Q. Now, I show you the same affidavit or an exemplified copy of an affidavit which I showed you yesterday? A. Yes, sir. 10

Q. And I call your attention to the first page which reads thus: "That between the month of February, 1920, and the month of October, 1920, said Eagle Pipe & Supply Company has sold and delivered seamless tubing to the Bordentown Steel & Tube Corporation, a corporation organized under the laws of the State of New York, but having its principal business in the State of New Jersey; that in payment of said merchandise the said Bordentown Steel & Tube Corporation had from time to time delivered to your deponent notes payable at various periods; that from time to time as said notes came due, part payment would be made on said notes and the balance extended for various periods, as said Bordentown Steel & Tube Corporation was unable to pay the notes as they matured in full; that for the balance remaining due said Bordentown Steel & Tube Corporation executed its promissory notes which were the subject of the arbitration herein before referred to, one of which notes for \$7,105 was indorsed and delivered to the Pittsburgh Steel & Tube Company by said Eagle Pipe & Supply Company." Now, will you read that and see that I have read it correctly? A. That is an error. 20 30

Q. An error in the affidavit? A. Yes, it should be turned over by myself personally to the Pittsburgh Steel Tube Company. 40

Motions

Q. You did so swear in this affidavit, didn't you, as I have read you? A. Yes.

By Mr. Slade:

10 Q. I show you Plaintiffs' Exhibit 4, and ask you to be good enough to read the indorsements on the back of that exhibit, which is the note you have just been questioned about by counsel for the defendant? A. The signature of myself, Isaac Levin, on the top of the note; for deposit, Pittsburgh Steel Tube Company, A. C. Childs, secretary and treasurer.

Q. There is no indorsement there by the Eagle Pipe & Supply Company, is there? A. No, sir.

BOTH SIDES REST.

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After the close of the case the following motion was made at side bar:

30 Mr. Katzenbach: The two other suits, the Pittsburgh Steel & Tube Company and the Eagle Pipe & Supply Company suits, are also founded upon notes. The proof is to the effect that these notes are held by these companies, having been indorsed to them in due course for value, and that they have not been paid by the Bordentown Steel & Tube Corporation, nor has anything been paid on account of them by such corporation. As against this there is a suggested defense that Isaac Levin, who was in each instance the payee on these notes and who subsequently indorsed them to the holders, was in collusion with one H. S. White, a former president of the Bordentown Steel & Tube Corporation, and we desire to move for the direction of a verdict in each of these cases upon
40 the ground that there has been no proof adduced in

Motions

the defense suggested, as supported by the testimony offered, to the effect that there was any such collusion, or that there was any infirmity in any of these notes in the hands of Isaac Levin or in the hands of the present holders. We call the attention of the Court to the fact that the present holders are separate corporations to whom these notes have been indorsed for value, and there has been brought home absolutely no fraud or collusion to constitute such a defense; there isn't anything in the testimony as we can see it at all which would constitute a defense under the state of the facts. We believe the situation to be that the present plaintiffs are holders of these notes for value in due course, they having been indorsed to them and delivered to them by the payee of the notes, to whom the Bordentown Steel Corporation made the notes, and we move for a direction and a verdict in favor of the plaintiff for the full amount of each of the notes sued upon with interest in these two suits.

10

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The Court (after lengthy argument): I confess that I am always reluctant to take a question involving fraud from the jury, because I am very reluctant ever to give countenance to apparent fraud where that question may properly be passed upon by a jury; but it seems to me in this case that the plaintiff corporations are holders in due course for value, and that a defense on that ground is not available to the defendant, and further, that such fraud as would bar a recovery has not been shown, and I therefore feel constrained to direct a verdict.

30

Exception noted for the defendant.

The Court (to the jury): Gentlemen, the Court as a matter of law will direct you as to the verdict

40

Exhibit P1

10 which should be returned. You will return your verdict in favor of the Eagle Pipe & Supply Company and against the Bordentown Steel & Tube Corporation in the sum of \$12,299.87; in favor of the Pittsburgh Steel Tube Company against the Bordentown Steel & Tube Corporation in the sum of \$7,836.81, and in favor of McDowell against the Bordentown Steel & Tube Corporation in the sum of \$6,114.54.

Exhibit P1.

\$3552.50 Trenton, N. J., Nov. 28, 1920

20 Three Months after date we promise to pay to the order of Isaac Levin

Pay \$3552 and 50 Cts. Dollars.

at Mechanics National Bank of Trenton, N. J.

Value received.

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON

Treasurer.

No. 167 Due (Payment stopped)

30 (Endorsed) : Isaac Levin, Eagle Pipe Supply Co. Inc.,
James Pierson, Secy. (U. S. I. R. stamps 72¢).

Exhibit P2.

\$3552.50 Trenton, N. J., Nov. 28, 1920.

Three months after date we promise to pay
to the order of Isaac Levin

Pay \$3552 and 50 Cts. Dollars.
at Mechanics National Bank of Trenton, N. J.

Value received.

10

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON

Treasurer.

No. 168 Due (Payment stopped)

(Endorsed) : Isaac Levin, Eagle Pipe Supply Co. Inc.,
James Pierson, Secy. (U. S. I. R. stamps 72¢).

20

Exhibit P3.

\$4060.00 Trenton, N. J., Dec. 15, 1920.

Three months after date we promise to pay
to the order of Isaac Levin

Four thousand and Sixty Dollars
at Mechanics National Bank of Trenton, New Jersey.

Value received.

30

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON

Treasurer.

No. 169 Due 3/15/21 (Payment Stopped)

(Endorsed) : Isaac Levin, Eagle Pipe Supply Co. Inc.,
James Pierson, Secy. (U. S. I. R. Stamps 82¢).

40

Exhibit P4.

\$7105.00 Trenton, N. J. Dec. 28, 1920

Three months after date we promise to pay,
to the order of Isaac Levin

Seven thousand one hundred and five Dollars
at Mechanics National Bank of Trenton, New Jersey.

10 Value received.

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON

Treasurer.

No. 177 Due 3/28/21

(Stamped) : Com'l Paper Net Amount \$7033.95 Int.
71.05.

20 (Endorsed) : Isaac Levin for Deposit Pittsburgh
Steel Tube Co. A. C. Childs Secy.-Treas. (U. S. I.
R. Stamps \$1.40).

Exhibit P5.

\$5582.50 Trenton, N. J. Jany. 15, 1921

30 Three months after date we promise to pay
to the order of Isaac Levin

Pay \$5,582 and 50 Cts. Dollars
at Mechanics National Bank of Trenton, New Jersey.

Value received.

BORDENTOWN STEEL & TUBE CORP.

V. P. JACKSON

Treas.

No. Due 4/15/21 (Payment Stopped)

40 (Endorsed) : Isaac Levin, McDowell & Co. Per Nel-
lie G. McCain, Attorney in Fact. (U. S. I. R.
Stamps \$1.12.)

Exhibit P6 for Identification.

JULIUS BLUM & CO.

STEEL TUBING, SHAFTING AND SCREW STEEL

IRON AND STEEL

Office & Warehouse

10

510-512 W. 24th Street

New York Feb. 13, 1920.

Eagle Pipe & Supply Co.,
233 Broadway, City.

Gentlemen:

Att. Mr. Levin

Enclosed, herewith, find order No. 1185 of the Bordentown Steel & Tube Corp., for one (1) car of Seamless Steel Tubing. As per our telephone conversation, we are turning this order over to you to bill to Bordentown direct. 20

This material is to be billed at \$125.00 per ton, and terms are sixty days, net, which kindly note. We have advised Bordentown to this effect.

Very truly yours,

JULIUS BLUM & COMPANY

30

C. WEILER

Manager

P. S. Will you kindly use all speed in getting this car off to Bordentown as it is urgently wanted.

(Note Our New Address 532-540 West 22nd St. New York City.)

40

Exhibit P7 for Identification.

(Purchase Order.)

Order No. 1185

BORDENTOWN STEEL & TUBE CORPORA-
TION

10

Bordentown, N. J. Feb. 5, 1920

To

Julius Blum & Company,
532-540 West 22d St.,
New York City.

Kindly enter our order, subject to terms and condi-
tions as stated

20

Quantity	Description Material	Price
	Seamless Steel Tubing	
One Car	1-1/2" OD x 10, 11, 12 and 13 BWG	
Only	1-3/4" OD x 10, 11, 12 and 13 BWG	\$125
	2" OD x 10, 11, 12 and 13 BWG	ton

Terms: 60 days net

30 Ship to: Bordentown Steel & Tube Corp., Borden-
town, New Jersey. Our Siding, via P. R. R. Freight

This order accepted at prices stated; if none given,
same is not to be filled at a higher price than last
charged unless so advised prior to shipping material.

Acknowledgment of this order must be made upon
attached stub hereto by return mail.

40 No charge to be made for boxing or carting unless
previously arranged.

Exhibit P7

Material shipped on account of this purchase order will be subject to two (2%) per cent cash discount, basis 10th and 25th of month proximo, unless agreed to the contrary by contract or in other form of writing or upon this order.

We reserve the right to cancel this order or any unfilled portion if not shipped within time promised or specified by us. 10

Material proving defective or not up to standard will be subject to return; furthermore, you to assume all freight and cartage expense in connection therewith.

BORDENTOWN STEEL & TUBE CORPORATION,
V. P. Jackson
Secretary. 20

Dict. by
J H

30

40

Exhibit P8 for Identification.

BORDENTOWN STEEL & TUBE CORPORATION

GENERAL OFFICE

Bordentown, N. J., Feb. 16, 1920.

10 H. S. White
 President & Treasurer
 V. P. Jackson
 Secretary

Eagle Pipe Supply Co.,
 New York City.

Gentlemen:

20 We are advised by Julius Blum & Company that they have turned our order over to you for 2", 1¾" and 1½" by 11 gauge, which you have at your Maspeth Plant and we trust you will ship this material to us as promptly as possible.

Yours very truly,
 BORDENTOWN STEEL & TUBE CORP.
 H. S. WHITE
 President.

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Exhibit P9 for Identification.

BORDENTOWN STEEL & TUBE CORPORATION

GENERAL OFFICE

Bordentown, N. J., July 22 20

H. S. White 10
 President & Treasurer

V. P. Jackson
 Secretary

I. Levin
 N. Y. City

Dear Sir:

The R. R. Co. now tell us that they must have instructions from the shipper to either return the cars to them or to ship to some other point, that they cannot take shipping instructions from us or from you. 20

You had better wire the firm that shipped the material to tell the agent at the point the material was shipped from to ship the material to you to Beaver Pa.

Yours truly

H. S. WHITE
 Prest 30

The agent to wire the R. R. agent here

Exhibit D1.

All material offered subject to prior sale, agreements are contingent upon strikes, accidents and other causes beyond our control. Any material proving defective will be replaced, but no claims for labor or damage will be allowed.

10 EAGLE PIPE SUPPLY COMPANY, INC.

General Offices

WOOLWORTH BUILDING

Invoice No. 3202A

Receipt No. 1152

New York, N. Y. April 28th, 1920

20 Sold to Bordentown Steel & Tube Corp.,
Bordentown,
N. J.

Terms Net 30 days Your Order No.

Via P. C. C. & St. L. R. R.

Car No. L. V. 64363

	S. S. Tubing 60200# net	\$125.00 N. T.	\$3762.50
30		90 days Interest	56.44
			<hr/>
			3818.94

40

Exhibit D2.

(Billhead of Eagle Pipe Supply Company, Inc.)

(Written in Pencil) : Isaac Levin.

New York, N. Y. June 24th, 1920

Sold to Bordentown Steel & Tube Co.,
 Bordentown,
 N. J. 10

Terms Net Your Order No. Via
 Car No. B&O 145859

1 C/L 1½" x 9 ga. Tubing			
42,800#	\$125. N. T.	\$2675.00	
	Int	40.13	
		<hr/>	20
		2715.13	

30

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Exhibit D3.

(Billhead of Eagle Pipe Supply Company, Inc.)

(Written in ink) : Isaac Levin.

Invoice No. 3412

Receipt No. 1362

10

New York, N. Y. June 5th, 1920

Sold to Bordentown Steel & Tube Co.,
 Bordentown,
 N. J.

Terms Net 30 days Your Order No. Via Penn R. R.
 Car No. P. R. R. 839160

1 C/L 1½" OD #9 ga S. H.

20 Seamless Steel Tubing @ \$125. N. T. \$3531.25
 2 mo. int. 6% 35.31

 3566.56

Gross 102500#

Tare 46000

 Net 56500#

30

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Exhibit D4.

All material offered subject to prior sale. Agreements are contingent upon strikes, accidents and other causes beyond our control. Any material proving defective will be replaced, but no claims for labor or damage will be allowed.

ISAAC LEVIN

10

STEEL TUBES

General Offices

Woolworth Building

Invoice No.

Receipt No.

New York, N. Y. June 14th, 1920

20

Sold to Bordentown Steel & Tube Co.,
Bordentown, N. J.

Terms Net 30 days Your Order No. Via
Car No. HV 20785

225	pcs	2½x14	ga	416'	2170#
1106	"	2¾x14	"	3'	6500
425	"	2¼x12	"	6'8'	5900
1276	"	2¼x11	"	5'6'	23310
		1½x 9	"	3'5'	13440
		1" & 1¼	#12	"	20980

30

72300#	@ \$125. N. T.	\$4518.75
	Int.	67.78

4586.53

40

Exhibit D5.

(Billhead of Isaac Levin.)

New York, N. Y. June 28th, 1920

Sold to Bordentown Steel & Tube Co.,
 Bordentown,
 N. J.

10

Terms Net Your Order No. Via
 Car No. L. V. 139959

1 C/L 1-1/8 & 1 1/4 x 12 &
 13 ga. Tubes 38,935# @ \$125. NT. \$2433.44
 1 mo int. 12.17

 2445.61

20

Exhibit D6.

(Billhead of Eagle Pipe Supply Company, Inc.)

Invoice No. 3202B
 Receipt No. 1152

New York, N. Y. April 28th, 1920

30

Sold to Bordentown Steel & Tube Corp.,
 Bordentown,
 N. Y.

Terms Net 30 days Your Order No.
 Via P. C. C. & St. L. R. R.
 Car No. P. R. R. 287339

1 C. L. 1-2 3/4" S. S. Tubing
 46500# net \$125.00 N. T. \$2906.25

40

90 days Interest 43.59

 2949.84

Exhibit D7.

(Billhead of Eagle Pipe Supply Company, Inc.)

(Eagle Pipe Supply Company, Inc., crossed out with pen and "Cr. Isaac Levin" written in.)

Receipt No. 1479

New York, N. Y. July 1st, 1920 10

Sold to Bordentown Steel & Tube Co.,
Bordentown,
N. J.

Terms Net Your Order No. Via P. C. C. & St. L.
Car No. N. Y. C. 237609

1 C/L Steel Tubing 72,300# @ \$125. N. T. \$4518.75 20

Exhibit D8.

(Billhead of Eagle Pipe Supply Company, Inc.)

Receipt No. 482

New York, N. Y. Mar 13th, 1920 30

Sold to Bordentown Steel & Tube Co.,
Bordentown,
N. J.

Terms Net 30 days Your Order No. 1225 Via
Car No. R. J. 39278

1 C/L 2" 3" S.S. Tubes
86800# @ \$125. N. T. \$5425.00 40

Exhibit D9.

(Billhead of Eagle Pipe Supply Company, Inc.)

Receipt No. 483

New York, N. Y. Mar 8th, 1920

10 Sold to Bordentown Steel & Tube Co.,
Bordentown,
N. J.

Terms Net Your Order No. Via
Car No. C.G.W. 17262

1 C/L 2" S.S. Tubes
47,000# @ \$125.00 N. T. \$2937.50

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NEW JERSEY Court of Errors and Appeals

EAGLE PIPE AND SUPPLY COM-
PANY,

Plaintiff-Respondent,

vs.

BORDENTOWN STEEL AND TUBE
CORPORATION,

Defendant-Appellant.

PITTSBURGH STEEL TUBE COM-
PANY,

Plaintiff-Respondent,

vs.

BORDENTOWN STEEL AND TUBE
CORPORATION,

Defendant-Appellant.

Action at Law.
On Appeal from
the Supreme
Court.

Brief of Eagle Pipe and Supply Company and Pittsburgh Steel Tube Company, Plaintiffs-Respondents.

These two cases involve appeals from two several judgments entered in the Supreme Court, one in favor of the Eagle Pipe Supply Company amounting to \$12,-299.87 damages, and the other in favor of Pittsburgh Steel Tube Company amounting to \$7,836.81 damages, both being against the Bordentown Steel and Tube Corporation and both being entered upon a postea after direction of a verdict in favor of the plaintiffs for the

full amounts claimed in each case by Honorable Ralph W. E. Donges, Circuit Judge. The appeal in each case is taken from the entry of such judgment by direction, exceptions having been entered at the trial to such direction.

FACTS.

The actions upon which these judgments were entered were upon two several summons and complaints, summons in each instance being tested May 14, 1921, and *the actions being based upon promissory notes.*

In the case of the Eagle Pipe Supply Company there were three notes, each signed by the "Bordentown Steel and Tube Corporation, V. P. Jackson, Treasurer," payable to the order of Isaac Levin and endorsed by Isaac Levin for value to the Eagle Pipe Supply Company. Said notes were each payable three months after date and were dated respectively, two notes on November 28, 1920, and one note on December 15, 1920. Payment upon each of the three notes was stopped.

The action in the case of the Pittsburgh Steel Tube Company is based upon one note, dated December 28, 1920, payable three months after date to the order of Isaac Levin, executed by the "Bordentown Steel and Tube Corporation, V. P. Jackson, Treasurer," and endorsed by Isaac Levin for value to the Pittsburgh Steel Tube Company.

Bordentown Steel and Tube Corporation admitted:

1. The sufficient signing and delivery of each of said notes.
2. That it had paid none of the said notes.
3. That the notes were in the hands of the respective plaintiffs.

Bordentown Steel and Tube Corporation denied:

1. That the plaintiffs were the present holders of the notes for value.
2. That the notes were, or should be, payable by the Bordentown Steel and Tube Corporation.

This last contention was based upon the following alleged grounds:

(a) That the notes, or the originals of which these were renewals, were given by reason of a certain fraudulent and collusive agreement between Isaac Levin, the payee of the notes, and Henry S. White, at one time, but before the execution and delivery of the notes in question, president of the Bordentown Steel and Tube corporation.

(b) The conspiracy was alleged to be that Levin supplied certain materials of inferior quality and kind and that White, as president of the company, accepted such goods because he received a certain compensation or bribe from Levin for so defrauding his company.

The Court permitted, as in all cases of alleged fraud, the widest latitude in the production of testimony upon the part of the defendant so alleging fraud, even going to the extent of permitting the introduction of matter which might, by the strict rules of evidence, have been excluded as being irrelevant to the issue. *The defendant, therefore, was, in each instance, given complete opportunity to demonstrate a case of fraud if such there was and, notwithstanding such opportunity, the Court felt constrained to direct a verdict* stating, State of Case, page 209, lines 25-36:

“The Court (after lengthy argument): I confess that I am always reluctant to take a question involving fraud from the jury, because I am very reluctant ever to give countenance to apparent fraud where that question may properly be passed upon by a jury; but it seems to me in this case that the plaintiff corporations are holders in due course for value, and that a defense on that ground is not available to the defendant, and further, that such fraud as would bar a recovery has not been shown, and I therefore feel constrained to direct a verdict.”

It is undisputed that Isaac Levin furnished material to the Bordentown Steel and Tube Corporation and it

is undisputed that original notes, of which the notes sued upon were renewals, were given to him for the materials so furnished. It is also undisputed that certain payments from time to time were made upon the notes at the time of giving such renewals. Isaac Levin was present, as a witness for the plaintiffs. *Henry S. White, alleged to be the co-conspirator by the defendant, was not produced as a witness on behalf of the defendant, neither did the defendant attempt at any time to take any depositions from the said Henry S. White in an effort to establish such collusion and fraud.*

The facts develop that Henry S. White was succeeded as president of the Bordentown Steel and Tube Corporation on October 21, 1920, prior to the delivery by the corporation of any of the notes upon which action was instituted. (See State of Case, page 145, lines 21-22.) The facts also develop that Henry S. White's son, G. H. Martin White, was plant superintendent of the Bordentown Steel and Tube Corporation from March, 1918, to October, 1920, the period during which the merchandise was furnished by Levin to the Bordentown Steel and Tube Corporation. It develops from the testimony that all the merchandise purchased from Levin and for which notes were given, was purchased at least as early as the spring of 1920. (See State of Case, page 186, line 35.) It also develops from the testimony that, with the exception of four carloads returned to Isaac Levin (See State of Case, page 186, line 9) and not accepted by the Bordentown Steel and Tube Corporation, no other merchandise sold by Levin and none which was represented in anywise in the consideration for the notes originally given to Levin, was ever returned to him. Everything furnished by Levin to the Bordentown Steel and Tube Corporation was either used by it, sold by it as scrap, or retained by it for other purposes (State of Case, page 186, lines 14-22) prior to the delivery of the renewal notes upon which action was instituted.

Mr. V. P. Jackson, who on behalf of the Company signed the notes which are the subject of these actions,

was with the Bordentown Steel and Tube Corporation since its organization as Secretary from February, 1918, to October, 1921. Subsequent to the latter date he held both offices. His predecessor as Treasurer was Henry S. White. Mr. V. P. Jackson was Treasurer after the reorganization of the Company, which occurred subsequent to the withdrawal of Henry S. White as President and Treasurer, and executed the notes in question for renewals of other notes outstanding, which were renewed as they came due. (See State of Case, page 48, line 25, to page 49, line 12.) The original notes, according to the testimony of Mr. Jackson, were given for specific invoices. They had been renewed "many times." It would be impossible to trace them to any particular transaction. In some cases they represented a balance of account, but there was no question that any more was owed upon the notes than the amount sued upon, and the notes were given in full of any known claims Levin might have had against the Bordentown Steel and Tube Corporation down to the time of the execution and delivery of the notes. (Testimony of V. P. Jackson, State of Case, page 50, line 20; page 51, line 10.) Isaac Levin testifies that he is President of the Eagle Pipe Supply Company (State of Case, page 39, line 33) *that he received the notes from the Bordentown Steel and Tube Corporation and for value delivered them to the Eagle Pipe Supply Company* (State of Case, page 39, line 34, to page 40, line 30.) Isaac Levin testifies that he is Treasurer of the Pittsburgh Steel Tube Company, *that he received the note of the Bordentown Steel and Tube Corporation, upon which the Pittsburgh Steel Tube Company brings action, and for value delivered the same to the Pittsburgh Steel Tube Company* (State of Case, page 41, line 3 to line 30) and *that each of said notes contained his valid endorsement.* There is no testimony offered to show that any of said notes were delivered to either of the plaintiffs without consideration, the testimony being undisputed and distinctly to the contrary.

In answer to the suggestions and insinuations, rather than proof, of fraud which was introduced by the defendant, Isaac Levin states that it is true that he paid Henry S. White certain moneys. He states that he paid him money as a commission for the sale of his, Levin's, stock in the Bordentown Steel and Tube Corporation. There is no dispute that such stock was sold or that said commission was due. It is insinuated that Levin had settled a case which White had brought against him for such commission for a lesser sum and then later had paid White the entire sum which White originally demanded. Such was entirely within Levin's province and furnishes no evidence of fraud. Levin states that he also in some independent transactions with other parties upon government matters, paid White certain commissions. There is no evidence that such moneys as he paid to White were not paid in such manner and no evidence that such payments were not perfectly legitimate and entirely free from all fraud in connection with the transaction, now subject to review.

We have stated the facts thus fully, even stating some which we consider to be really irrelevant to the present issue, in order that the court may have a full and frank conception of what was produced before the trial Judge, and in order that this court may know that there was no evidence of fraud adduced under a case of the nature of that at bar which could permit of its going to a jury, it being solely a question of law and rightly conceived by the trial Judge to be so. *There was, as a matter of fact, absolutely no evidence of fraud which was proven in the case and certainly nothing of such a nature to be left to the jury.* On the other hand, the very nature of the case would indicate that such insinuations as were made in connection with it were as a matter of law to be determined by the court and impossible of submission to the jury.

The appellant in its brief has referred, with the suggestion that it should be binding upon this court, to the case of Maloney vs. Bordentown Steel and Tube

Corporation, decided but not reported by the New Jersey Supreme Court in the June term 1922. It is to be noted that in this case the trial Judge permitted the jury to pass upon the facts. It is likewise to be noted that the jury passed upon the facts favorably to the plaintiff. It is, however, to be noted that the case upon which the appellant seems most to rely in alleging error on the part of the trial Judge in the case at bar is one founded upon contract other than negotiable instruments, therefore arising under entirely different rules of law and to be considered accordingly. It is misleading to the court to represent such a case as one similar to the case at bar, and counsel for the appellant fails to conceive that the cases now being passed upon by the court involve the law of negotiable instruments (See Negotiable Instruments Act, 3 C. S. 3741), making a vastly different case in those now being considered from the one which the Supreme Court decided upon a rule to show cause in June, 1922.

ARGUMENT.

Under the state of facts, giving the most liberal possible construction to such matter as was submitted in evidence in the defense of the case, the following questions only are involved:

1. *Were the plaintiffs holders in due course of the notes in question and therefore entitled to make collection of them for the full amount due thereon?*
2. *Was there any defect in the title of Isaac Levin to these notes, or could any defect in his title under the circumstances of the case, if such defect there be, effect said notes in the hands of the plaintiffs?*

QUESTION I.

A holder in due course is defined by section 52 of the Negotiable Instruments Act (3 C. S. 3741, sec. 52) as follows:

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

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

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

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

IV. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

Section 55 of this Act (3 Comp. Stats., p. 3741, Sec. 55), provides:

"The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."

Analyzing such sections of the Negotiable Instruments Act in the light of the facts of the case at bar, we find the following:

Eagle Pipe Supply Company was a corporation separate and distinct from Isaac Levin, in which he owned considerable of the stock and of which he was an officer. Pittsburgh Steel Tube Company was a similar corporation of which Isaac Levin was an officer. The notes in question were all endorsed by Isaac Levin to these respective companies for value. There was positive testimony of the fact of the value. It was not based upon a negation of proof as might have been permitted even by the statute. As it is framed a person is a holder in due course until the contrary is proven. There was no testimony whatsoever that the Eagle Pipe Supply Company or the Pittsburgh Steel Tube Company, or either of them, had, at the time of the endorsement of any of the instruments to them, or either of them, any

knowledge whatsoever of any defect in the said instrument in the hand of Levin or otherwise, and such endorsement was accompanied by delivery for value and before maturity.

(a) The first requirement "that the instrument is complete and regular upon its face" is met by an inspection of the instruments themselves. There is absolutely nothing about any of these notes which would give rise to the slightest suspicion with respect to their regularity or completeness.

(b) That the respective companies "became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact" is likewise absolutely true under the testimony.

The entire testimony shows that the notes were endorsed to these companies before they became overdue. Payment on the same was "stopped" while the notes were in the hands of these companies and there is no testimony that they had ever been previously dishonored nor had they, as a fact, been so.

(c) That they took them "in good faith and for value." *It is to be noted that these notes were renewals of notes previously had by Isaac Levin and previously negotiated to these respective companies, upon which payments had previously been made on account. They were all signed by the Treasurer of the Company subsequent to the retirement of Henry S. White, alleged co-conspirator with Levin. It is entirely impossible, under such circumstances (the notes being renewals, payments having been made upon the previous notes, no question of the legality of the notes renewals of which these were, having ever been raised, and being executed during the new regime of the company some time subsequent to the retirement of Henry S. White), that the Pittsburgh Steel Tube Company or the Eagle Pipe Supply Company could have had any suspicion whatsoever with respect to the said notes, and it is equally obvious that they must have been taken in good*

faith and for value. Such is the testimony and such alone.

(d) That at the time the notes were negotiated to them they "had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

Let us again consider that said notes were renewals. They had been previously negotiated. Payments had been made upon the same at the time of the renewal. No question was raised previous to the execution of the notes and none for some time subsequent thereto with respect to their validity. They were executed and delivered by officers of the company who were confessedly, under the testimony, in no collusion with Isaac Levin or any one else. There could have been no suspicion upon the part of Isaac Levin even in taking the notes that there was any contention of any defect with respect to them. He had furnished material, the material had been retained and used. The notes were given in satisfaction therefor. Much less would it be possible, even with Mr. Levin's connection with the plaintiff's corporations, to say that they had been received by these corporations or either of them, in any instance with any knowledge of any infirmity of the instrument, or any notice of any defect in the title of Levin.

With respect to section 55 of the Negotiable Instruments Act, there is no evidence that any signature to the instruments was obtained by fraud, by duress, by force and fear, or by any other unlawful means. *They were executed by the then officers of the company long after the delivery of the material, in renewal of other notes. They were executed freely and payments were made upon account of the other notes when they were so executed.* There is nothing to connect the officers executing these notes with any fraud, duress, force or fear, or to associate them with the signature of the notes obtained by any other unlawful means. *Materials furnished to, retained and used by a corporation are surely not illegal consideration.* There is no testimony that Levin ever negotiated these instruments in breach of

faith and there is no testimony to the effect that he negotiated them under other circumstances such as amount to fraud. In every possible instance, therefore, the corporations holding these notes, under every vestige of testimony in the case, were bona fide holders of these notes for valuable consideration before maturity and in due course without notice of any defects whatsoever. Under the circumstances, therefore, it was impossible, under the Negotiable Instruments Act, in any respect or at any time to say that a judge could do anything other than direct the jury to bring in a verdict for the plaintiffs in each of these cases for the full amount so claimed, bearing in mind always that the cases arose and were tried and conducted under the said Negotiable Instruments Act.†††

It having been established by evidence that the plaintiffs in these cases are holders in due course, the Negotiable Instruments Act, 3 *Comp. Stat.*, p. 3741, section 57, says:

“A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument *for the full amount thereof* against all parties liable thereon.”

Interpreting this section of the statute see *Montgomery Garage Co. v. Manufacturers' Liability Insurance Co.*, 109 *Atl.* 296, 94 *N. J. L.* 152, where the Court, speaking by Justice Trenchard, holds that under such circumstances, the holder for value may enforce full payment. There was no proof, of course, as to the consideration paid by the plaintiffs for these notes other than that it was for value. *Having proven value, however, and that the plaintiffs were holders in due course, it would become necessary for the court to direct that the verdict should be for the full amount due on said notes.* In losing sight of this fact the appellant, in its brief, fails to distinguish the difference between the case of *Maloney v. Bordentown Steel and Tube Corporation*,

mentioned therein, and the case at bar, which is the difference between a disputed fulfillment of an order and notes negotiated in due course for value. We feel it necessary to call the Court's attention to these distinctions. The evidence in this last-named case is not before this court. The record of the last-named case was not introduced in evidence in these cases, nor would it have been relevant had it been so introduced. It is our conception that this Court cannot consider evidence given by witnesses in another case the record of which is in nowise associated with this case.

Assuming that the Court was correct in its judgment in *Maloney v. Bordentown Steel and Tube Corporation*, upon the evidence adduced therein there is absolutely nothing to show that in the case at bar the trial court was in error in ruling upon the evidence produced before him. It appears to us that under such circumstances the decision in the case of *Maloney v. Bordentown Steel and Tube Corporation* is not only of no value in the determination of the issue at bar as the case was not similar, but improper, in the manner in which it is cited, even to constitute a part of the appellant's brief.

QUESTION II.

The proof in this case is that these notes were negotiated by Isaac Levin for value and before maturity. Any suggestion which may be made to the contrary is false and misleading. It is submitted that there is no proof whatever in the case of any fraud upon the part of Isaac Levin, or of any collusion between Isaac Levin and Henry S. White. If there had been such it would not have vitiated the notes under the proofs of this case in the hands of the plaintiffs, being *bona fide* holders for value in due course without notice, unless one could go to the impossible length of considering that a stockholder of a corporation in which he owned a portion of the stock only was, as a matter of fact, the corporation itself. We submit that such has never been held and

so long as the principles of the English law and the statutes of our State recognize corporations as separate entities, it could not be held. The evidence, which is adduced in an effort to demonstrate that these notes were held held by Isaac Levin and were obtained through fraud and collusion, is all evidence which is supposed to have been obtained from Isaac Levin himself by admissions made. It depends solely upon the following facts. That Henry S. White, being president of the Bordentown company, purchased certain materials from Isaac Levin. It is admitted that there is a suggestion by the witness, Blum, that the directors of the Bordentown Company, of which Blum was one, had given particular orders that materials should not be purchased from Levin, but it develops, as is very clearly demonstrated, that as late as February 13, 1920, after such order was alleged to have been given, the Eagle Pipe Supply Company receives an order from Julius Blum & Co., which was the corporation in which said Blum possessed a large or controlling interest, transmitting an order for materials to be supplied by the Eagle Pipe Supply Company, "attention Mr. Levin," for the Bordentown Steel and Tube Corporation. Under such circumstances it is hardly conceivable that such testimony as is given by the witness Blum could have any weight or value or was, as a matter of fact, relevant to the issue. This is demonstrated by *Exhibit P-6*, State of Case, p. 213; *Exhibit P-7*, State of Case, p. 214; *Exhibit P-8*, State of Case, p. 216.

We do not conceive that there is any testimony whatsoever tending to connect either the plaintiffs, or Isaac Levin, with any fraud, especially in view of the notes in question. There was no more than an effort made, but one without any weight or substance—of suspicions rather than facts—that a commission paid by Levin to Henry S. White for selling stock might have constituted a fraud. There was no evidence in this sufficient, under any circumstances, to go to a jury, nor was there even a tendency in the evidence to establish any proof of such

fraud. There was an effort to show that another commission, which was paid by Levin to Henry S. White, for entirely another transaction unconnected with these notes or anything pertaining to them, was an evidence of fraud. What was said had no prohibitive force, nor was it relevant to this issue, nor did it even create suspicion of any fraud which could have enabled the court to have sent the question to the jury had Levin himself been the holder of the notes, much less the Court could not have sent the case to a jury under such proofs when the notes were in the hands of *bona fide* holders for value in due course without notice. Fraud, as a defense, is one only when brought home to the plaintiff corporation by proofs, not suspicion.

In the case of *Davis v. Clark*, 85 N. J. L. 696, 90 Atl. 303, the Court of Errors and Appeals, speaking through Kalisch, J. (85 N. J. L. at page 699, 90 Atl. at page 304) said:

“The latest pronouncement of the legal rule governing this topic was made in *Rice v. Barrington*, 75 N. J. Law, 86, 70 Atl. 169, decided by this court after the enactment of sections 56 and 57 of the Negotiable Instruments Act (3 Comp. St. 1910, p. 3741), dealing with the subject as to what shall constitute notice of infirmity or defect in title and as to the rights of a holder in due course of a negotiable instrument under that act, where Mr. Justice Garrison, speaking for the court (75 N. J. Law, 807, 70 Atl. 170), said: ‘Bad faith—*i. e.*, fraud; not merely suspicious circumstances—must be brought home to a holder for value whose rights accrued before maturity, in order to defeat his recovery on a negotiable note upon the ground of fraud in its inception or between the parties to it.’

“As the defense failed to adduce any testimony tending to establish that the alleged fraud charged against Rotter was brought home to the respondent, who was a holder for value whose

rights accrued before maturity, no jury question was presented, and therefore the court very properly directed a verdict for the plaintiff."

It is submitted in the appellant's brief that section 59 of the Negotiable Instruments Act (3 *Comp. Stats.*, p. 3741, *Sec. 59*) (from page 20 of the brief) provides:

"Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course; but the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."

Such is the law. It is not disputed, but there was no proof in the case which, under the statute, cast any burden greater than that which was sustained upon the plaintiffs. The case was barren of any such proof. We do not dispute that where there is proof that the real title of a prior holder was successfully attacked, the holder of the notes was compelled, under the case of *Knapp v. Hoboken*, 39 *N. J. L.* 394, to assume a burden of proof; but the facts in this case do not cast such burden upon the plaintiffs. In the latter case Justice Depew said:

"Fraud in the inception of the instrument being established, the burden is laid upon the plaintiff to build up a title in himself better than that of the original party. He can recover only in virtue of the merits of his own title, arising from the consideration he has paid, and the circumstances under which it came to his hands."

In the case at bar no fraud in the inception of the instrument was established. The plaintiffs proved that they held the notes in due course for value, that they obtained them before maturity. They had no notice of defect. There was none. They could not have had

notice of defect for the reasons which we have set forth heretofore and, admitting the truth of all which Justice Depew said in the case cited *supra*, it is entirely certain that the plaintiffs were entitled to recover and were entitled to the direction of the verdict which they had.

The appellant cites the case of *DeJonge v. Woodport Hotel and Land Co.*, 77 N. J. L., p. 233, in which the opinion was rendered by Chief Justice Gummere. The question raised in that case was relative to the exclusion of evidence. The evidence excluded was proof offered that a note on which the suit was brought was given by the defendant's treasurer to pay his own individual debt. The Court held that such evidence should have been admitted as having bearing upon whether the plaintiff was holder in due course. It surely should have been so admitted and we have no dispute with the Court's ruling in that case, but we challenge the appellant to show that in the case at bar any evidence which they offer or attempted to offer was, in any manner, excluded. It did not possess any prohibitive force, but relevant or irrelevant, it was admitted and, under the circumstances, the citation in the appellant's brief is entirely without merit, notwithstanding the great merit of the decision itself.

The appellant cites Crawford's Negotiable Instrument Act, page 59, referring to section 59 of the Negotiable Instrument Act quoted *supra*, stating that:

"The holder may make out his title by presumption until it is impeached by evidence showing the paper had a fraudulent or illegal inception. When this is done he can no longer rest upon presumption, but it is incumbent upon him to show the circumstances under which it came into his possession, and that he has acted in good faith (Quoting numerous cases) and where the plaintiff seeks to establish this by his own testimony, the credibility of such testimony, though it is undisputed, is for the jury." (*Joy v. Dieffendorf*, 130 N. Y., p. 6.)

We do not dispute the validity of this note to the Negotiable Instrument Act, but we call attention of the Court to the facts: (a) Title in the plaintiffs was not by presumption but by proof, and (b) such evidence was never impeached by showing in any valid way that any of the notes had fraudulent or illegal inception. The appellant seems to forget that there is an absence of proof in its case. They have not adduced anything of any value relevant to the issue, or able to impeach in any respect the paper upon which the actions are brought. What is said in the appellant's brief, or in that which it considers to be proof in the testimony, is of no force and could be of no force with either a court or a jury. The proofs offered leave no question of fact whatsoever to be submitted by the court to the jury. The citations in appellant's brief of *Merchants' Exchange National Bank v. New Brunswick Savings Institution*, 33 N. J. L., p. 170, and *Haines v. Merrill Trust Company*, 56 N. J. L., p. 312, are to be disposed of in exactly the same manner. There is no dispute relative to the law involving the shifting of the burden of proof under the Negotiable Instrument Act where there is proof of fraud. We defy, however, any one to show that there is such proof of fraud which could or would attach to the plaintiffs or either of them, with respect to any of these notes. We do not feel that the citation to 8 *Corpus Juris*, p. 986, contained in the brief of the appellant, could give any information or assistance to this court, nor would we dispute the rule as therein set forth in appellant's brief, save that it is not applicable to the case at bar.

What is required in a defense of fraud is to bring such fraud home to the plaintiffs. This is not done.

SUMMARY.

We urge the Court to notice the following facts:

I.

While it is alleged, though not proven, that there was a conspiracy between Isaac Levin and Henry S. White, the facts are as follows: (a) The plaintiffs in these suits are not Isaac Levin, but are corporations to whom Isaac Levin negotiated and endorsed said notes before maturity and for value, and there is no proof that said corporations had any notice of defects with respect to the execution or negotiation of said notes, and there is proof that they were bona fide holders of the same in due course. (b) The appellant issued these notes in every instance as renewals of notes previously negotiated, upon which there had been many renewals and upon which payments had been made. They were executed and delivered by officers of the Company elected as such and acting as such, subsequent to the withdrawal of Henry S. White, the alleged conspirator. (c) The appellant issued these notes as renewals of other notes, upon which payments had been made for materials furnished to the Bordentown Steel and Tube Corporation by Isaac Levin, which materials were retained by the Bordentown Steel and Tube Corporation, used by it and not returned to Levin, the notes being in payment of the exact balance due by said corporation to said Levin. (b) If there had been any evidence of fraud whatsoever (which it is submitted the proofs do not disclose) there was no suggestion that such fraud attached to said notes in the hands of the plaintiffs, but—

II.

There was no evidence whatsoever of fraud upon the part of Isaac Levin, much less upon the part of the plaintiffs. Allowing the widest latitude for proof, nothing more was shown in these cases than that there had been other perfectly legitimate transactions between Levin and Henry S. White. It is also quite obvious that had materials furnished by Levin, for which the notes were given, been unsatisfactory and had the prices paid for the same been only by reason of collusion with Henry S. White, the new officers of the corporation, of which V. P. Jackson was one (and he had been with the corporation since its inception) would never have given the renewal notes upon which suit is brought. Effort is made to convict Mr. Levin of fraud out of his own mouth, but what he says was no evidence of fraud at all—much less sufficient to go to the jury or to remove the case from the consideration of the court as a question of law. The case is positively lacking in any testimony of a probitive force and “laying all cards on the table,” according to the testimony of Levin, the case simply becomes one of a suit for moneys due upon a note executed by the Company in the hands of a holder for value in due course before maturity and without notice of infirmities.

Under such circumstances, it being purely a question of law and no defense being shown, it became necessary for the court to rule and to direct a judgment in favor of the plaintiffs. In the doing of this the Court was entirely justified and there is no merit in the appeal from his action.

Respectfully submitted,

KATZENBACH & HUNT,

Attorneys for and of counsel with the plaintiff-respondents, Eagle Pipe and Supply Company and Pittsburgh Steel Tube Company.

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**NEW JERSEY COURT OF ERRORS AND
APPEALS**

EAGLE PIPE & SUPPLY COMPANY,
Plaintiff-Respondent,

vs.

BORDENTOWN STEEL & TUBE COR-
PORATION,
Defendant-Appellant.

Action at Law.
On Appeal
From the Su-
preme Court.

PITTSBURGH STEEL TUBE CORPO-
RATION,
Plaintiff-Respondent,

vs.

BORDENTOWN STEEL & TUBE COR-
PORATION,
Defendant-Appellant.

Action at Law.
On Appeal
From the Su-
preme Court.

**BRIEF OF BORDENTOWN STEEL & TUBE
CORPORATION, DEFENDANT-APPELLANT.**

These appeals are taken from two judgments entered in the Supreme Court, one in favor of Eagle Pipe & Supply Company, amounting to \$12,299.87 damages, and the other in favor of Pittsburgh Steel Tube Corporation, amounting to \$7,836.81 damages, and both against Bordentown Steel & Tube Corporation, the appellant. The verdicts were directed by

the Court over defendant's objection and exception was duly taken to the ruling.

The suits on which these judgments were entered, were brought by summons tested May 14, 1921, on promissory notes made by the Bordentown Company to the order of one Isaac Lavine; the Eagle Company suing on three notes amounting respectively to \$3,552.50, \$3,552.50 and \$4,060.00, and the Pittsburgh Company suing on one note for \$7,105.00, both companies claiming that they were holders of the notes for value, without notice of infirmity.

The substantial defense to each action was that the plaintiffs were not holders in due course without notice and that the notes were renewals of notes previously given by H. S. White, the former president of the Bordentown Company, without authority and pursuant to a corrupt, collusive and fraudulent agreement made between White and Lavine, the payee in all of the notes, for the purpose of defrauding the Bordentown Company and for the personal profit of White, Lavine and the Eagle Company, by which White was to pretend to purchase certain materials from Lavine at a high price and to accept from Lavine and the Eagle Company, materials of inferior quality and cause them to be paid for at the price of good materials, White to accept the materials and make a show of putting them through the processes of the company and that pursuant to said agreement approximately 523,335 pounds of such materials were sold by Lavine to the Bordentown Company and purchased by White at an aggregate price of \$32,708.44, which materials were of such inferior quality as to be useless to the Bordentown Company, either being of such poor quality as not to be capable of being used by it, except for sale as scrap iron, or being in such condition that the cost of manufacture precluded all profit on the manufactured product.

Notes were given for a portion of the purchase price, all made by White, and as they came due the notes were renewed in part, cash payments being made from time to time by White from the company's funds. The notes sued upon were not signed by White, as they were renewals made after White's resignation had been requested and accepted by the Bordentown Company and before sufficient evidence of the fraud had been obtained by the Bordentown Company to warrant their repudiation. Upon discovery of the fraud, however, the Bordentown Company gave notice to the holders of the notes in question that it repudiated them and when the notes came due payment was refused.

The cases were tried together at the Burlington Circuit of this Court, before the Honorable Ralph W. E. Donges, Circuit Court Judge, and a verdict was directed in favor of the plaintiffs for the full amount claimed in each case, on the grounds that (1) sufficient proof of fraud had not been adduced and (2) the plaintiffs had shown themselves to be the holders in due course for value of the notes in question.

The Bordentown Steel & Tube Corporation is a New York corporation operating a mill for redrawing seamless steel tubing, located at Bordentown, New Jersey. The process of redrawing is very aptly described by the witness Julius Blum on pages 89 and 90 of the State of the Case. The materials from which the product is made consist of seamless steel tubes of larger diameter and wall thickness which are redrawn into seamless steel tubes of smaller diameter and wall thickness by the use of what is known as a draw bench on which the tubes are pulled by a chain with a grip, through an outer die and over an inner die. In order to put the metal in proper condition to draw, the tubes are first heated in an annealing furnace and then subjected to an acid bath and a

point is hammered on the tube in order that the end may be passed through the outer die and the grip attached on the other side. The inner die is inserted from the other end of the tube and the tube is drawn by main force to a different size and thickness. The character of materials usually used by the Bordentown Company for redrawing are what are commonly known as "mill rejects." The term "rejects" has no relation to quality, but describes the end of a long piece of tubing drawn by the larger mills and consisting of the excess in length over that required by the mill for its market. The materials purchased by White from Lavine and the Eagle Company, for which the original notes were given, were supposed to be materials of this character and also other kinds of tubing in fit condition for redrawing.

The Eagle Pipe and Supply Company, the plaintiff in the one suit, is a New York corporation of which Lavine was president and director when the original notes were given and in which he held 450 shares of stock and his wife 45 shares of stock out of 500 shares issued (Case, p. 201). An examination of the invoices, Exhibits D1 to D9 (Case, pp. 218 to 224), shows that four out of the nine invoices were made by this company direct to the Bordentown Company and that three other invoices were made on the billhead of this company with the name crossed out and the name of Isaac Lavine substituted in ink.

The Pittsburgh Steel Tube Company is a Pennsylvania corporation of which Isaac Lavine was at the time of the giving of the original notes, president and director and the holder of 900 shares of stock, out of 1,267 shares issued and his son Charles A. Lavine was the holder of 250 shares of this stock (Case, p. 203). This is the same son who was the majority stockholder of the Peerless Iron Pipe Ex-

change, Inc., the corporation involved in the *Maloney* case hereafter referred to.

POINT I.

It is respectfully submitted that defendant's proof of fraud was sufficient to raise a jury question and that the Court's refusal to submit this question to the jury was error.

The evidence of the fraud set up by the Bordentown Company by way of defense, consists of Isaac Lavine's own admissions and of testimony as to the circumstances surrounding the sales of the materials in question, and the character of the materials furnished. Lavine's admissions are not denied and the truth of the defendant's story as to the circumstances surrounding the sale of these materials and the obtaining of the original notes by Lavine is not challenged.

The fraud charged by the defendant in these cases and the evidence of fraud adduced by the defendant was substantially identical with the evidence of fraud adduced in the case of *Maloney vs. Bordentown Steel & Tube Corporation*, decided by the Supreme Court on November 10, 1922, and not reported. For the convenience of the Court a copy of the opinion is annexed to this brief. In that case an action was brought by one Maloney as assignee of the Peerless Iron Pipe Exchange, Inc., a New York corporation, owned and controlled by Isaac Lavine's son, Charles A. Lavine, for a carload of materials sold by Isaac Lavine to the Bordentown Company through Henry S. White. The defense interposed by the Bordentown Company was the same fraudulent agreement set up in the cases at bar. The proofs of the alleged fraudulent agreement were the same admissions made

by Lavine, proved by the same witnesses (except for one or two admissions made by Lavine after the trial of that case which were proved in the cases at bar), and the same circumstances surrounding the very purchases involved in the cases at bar were shown in that case as part of the proof of fraud and the character of the materials involved in these cases was there testified to by the same witnesses who testified as to their character in the cases at bar.

The *Maloney* case was tried before Judge Speer at the Hudson Circuit and was permitted to go to the jury and the jury thereupon rendered a verdict of \$2,847.95 instead of \$8,418.00 the amount sued for. The case came before the Supreme Court on a rule to show cause why a new trial should not be granted. Among the reasons alleged were that a verdict against the defendant should have been directed for failure to make proof of fraud, that the verdict was against the weight of the evidence and that the damages were inadequate.

The Court, in a *per curiam* opinion, discharged the rule to show cause, with costs, and settled the question of the sufficiency of plaintiffs' proof of fraud with the words, "Of course, there was no error in the refusal to direct a verdict for the plaintiff."

It is respectfully submitted that this decision is a direct authority as to the sufficiency of defendant's proofs of fraud and that by reason of the recognized ability both of the Judge before whom it was tried at Circuit and of the Court by which it was decided above, it is entitled to the greatest weight in the consideration of this Court.

The Evidence of the Fraud.

Lavine had formerly been a stockholder and director of the Bordentown Company (Case, p. 57).

He had sold it and its predecessor materials (Case, p. 91). A reorganization was effected for the purpose of placing the enterprise on a better basis and Henry S. White, a man well known in the steel tubing business, was employed as its president (Case, p. 91). White complained of the character of materials then on hand and on order, all of which came from Lavine (Case, pp. 60, 91, 92 and 93). He announced to the Board of Directors that he could not make good seamless steel tubing from such materials and suggested that no more materials be purchased of this character (Case, p. 92). As a result the Board instructed him not to buy any such materials and not to buy materials from Lavine (Case, p. 60). Lavine remained a director until May, 1919 (Case, p. 61). He sold no more materials to the company (Case, pp. 61, 98). White arranged for the sale of Lavine's stock to Chicago interests (Case, p. 61). Lavine resigned in May, 1919 (Case, p. 61). White claimed a commission from Lavine on the sale of the stock which was not known to the directors of the Bordentown Company until an attachment was issued by White against the money coming to Lavine for the sale of his stock (Case, p. 80). A settlement was effected between White and Lavine, by which White was paid about \$1,000.00 less than the full amount of his claim (Case, p. 81). The attachment was discontinued and a release executed (Case, p. 81).

At that time Julius Blum, one of the directors of the Bordentown Company had a conference with White, in which he told White that now that they were rid of Isaac Lavine, the Bordentown Company wanted no more dealings with him (Case, p. 134). At numerous conferences of the directors with White and Lavine, White had been instructed not to buy any materials of the character furnished by Lavine (Case, p. 93).

In the spring of 1920 White began to purchase materials from Lavine and purchased all of the materials involved in these suits, together with other materials between that time and July of that year (Case, p. 61; also see latest invoice, Exhibit D7, Case, p. 223). The directors of the Bordentown Company had no knowledge that these purchases were being made. They were discovered by Mr. Blum in August, 1920 (Case, p. 72).

A number of the directors resided in Chicago, Mr. Blum resided in New York and none of them resided at Bordentown (Case, p. 72). No written purchase orders were presented at the trial and no record of any such purchase orders can be found by the Bordentown Company covering the purchases in question. All purchases were made from Lavine direct by personal interview (Case, p. 54).

Mr. Blum discovered the situation in the summer of 1920 (Case, p. 72). He visited the mill shortly thereafter and found large quantities of bad material about the plant (Case, p. 75).

He discovered also that the superintendent, Martin White was attempting to manufacture steel tubing from materials of very bad quality (Case, p. 76).

Mr. Blum then sought out Henry S. White, who was not at the mill and charged him with having entered into a conspiracy with Lavine to defraud the Bordentown Company. This White denied. Mr. Blum then charged him with having received payments of money from Lavine, which White also denied. (Case, pp. 77, 78, 79). Later Mr. Blum sought out Lavine and charged Lavine with having entered into a conspiracy with White and paid White money. Lavine denied the conspiracy and denied that he had paid any money whatsoever to White (Case, pp. 73, 74). Shortly thereafter White resigned as president

(Case, p. 79). His son, Harry E. White was elected in his stead. White also resigned as treasurer and Vance P. Jackson was elected in his place.

Mr. Blum still suspecting that a fraud had been practiced on the Bordentown Company, continued to pursue Lavine, and gradually gained from Lavine the following admissions, first, that Lavine had paid White \$1,200 during the time the purchases were being made, this being the amount of the excess of commission claimed by White, over the amount paid in settlement of the attachment suit (Case, pp. 80, 81). At this time Lavine denied that he had paid White any other money whatsoever, but subsequently admitted that he had paid White in addition, approximately \$4,000 at various times. He said that these payments were made as part of a commission on the purchase of materials from the United States Government. Mr. Blum asked him to throw open his books to him and show up the transaction fully and fairly in order to dissipate his suspicions. Lavine replied that there were no books, that it was a vest pocket transaction. Mr. Blum urged him to give him definite figures on this alleged contract. Lavine was unable to do so. He said the amount of commission involved was approximately \$10,000 but he had no record of it and did not disclose any precise amount (Case, pp. 80-81).

This was corroborated by the testimony of Mr. Harry E. White, who was also present while part of the admissions were made (Case, pp. 145, 146, 147, 148).

The Bordentown Company immediately after obtaining these admissions gave notice that it would not honor the notes at maturity (Case, p. 82).

At a later conference Lavine showed Mr. Blum and Mr. Harry E. White various checks made by him to

H. S. White, which he said were connected with the alleged commission transaction. Some of these checks were made while the purchases were being made, some bore a later date (Case, pp. 82, 83, 84).

Finally Lavine said to Mr. Blum, "You know as well as I do that H. S. White is a grafter and that he shook me down every time I came down to Bordentown" (Case, pp. 87-88). And at a later time he told Mr. Blum, "That H. S. White had shook him down and that he had to pay him money to sell him goods every time he came to Bordentown and made a settlement, that he got paid for the merchandise furnished, he had to give H. S. White a rake off."

Mr. Blum's story of these admissions was told three times during the trial, once on direct-examination and twice on cross-examination and each time without substantial variation. Neither he nor Harry E. White were impeached in any particular, nor their stories shaken.

Lavine was present in court and testified as plaintiff's only witness. He did not deny the truth of the admissions in question; he made no explanation of the payments made by him to H. S. White; he made no effort to clear himself of the charges of fraud. H. S. White was not produced as a witness, his testimony was not taken by the plaintiffs. The failure to take his testimony, or produce him, was not explained. The plaintiffs had full notice of the character of the defense interposed, not only from the pleadings, but from the trial of the *Maloney* case in which the same New York counsel appeared for Maloney as appeared for the plaintiffs in these cases.

The invoices for the materials which were alleged by the defendant to have been the instrument of the fraud, were identified, one by one by Vance P. Jackson (Case, pp. 50, 52, 53). Mr. Jackson testified that

orders for materials for the Bordentown Company ordinarily were made on order blank forms of which copies were kept in the company's office; that no order blanks could be found for the materials in question, but that the orders were given personally by H. S. White to Isaac Lavine (Case, p. 55). The plaintiffs produced no original order blanks.

Mr. Jackson also testified that the invoices were brought to the company's office by Isaac Lavine personally and were turned over for credit to his account by him or by H. S. White; that the materials were checked up for quality by Henry S. White and the invoices O K'd by him (Case, p. 67). That H. S. White alone was charged with the duty of reporting to the Board of Directors and his (Jackson's) duties were solely in the office and that he reported to H. S. White (Case, pp. 67-68). Finally, by reason of the complaints of Martin White, the superintendent, and the amount of manufactured products returned by the company's customers, he called attention to the situation (Case, p. 68), resulting in Mr. Blum's investigation.

Martin White, a witness not connected with the Bordentown Steel & Tube Corporation at the time of the trial, but at the time of the purchases and furnishing of the materials in question, its superintendent, testified as to the character of the materials furnished, identifying them, invoice by invoice (Case, pp. 156-165). His testimony was unshaken on cross-examination and it is submitted that a reading of it is convincing of his knowledge of the subject and the truth of his statements. He said that much of the material was badly pitted and rusted, useful only for scrap. Some of it was old boiler tubing, so badly burned as to be useless for redrawing. A number of the cars furnished were topped off with good material to a

depth of about one-third, the balance being junk. Much of the material was in short lengths, some too short to redraw; others so short as to make redrawing extremely expensive. Some of the cars consisted of miscellaneous sizes which required enormous labor and expense for sorting in order that they might be remanufactured. In many instances the material was of such size and character as to make it necessary to put it through the company's processes an unusual number of times in order to reduce it to the diameter and wall thickness required, thus adding materially to the expense of manufacture. His testimony may be summarized by saying that approximately 50% of the material in question was useful only for scrap and was sold as such at from \$12 to \$16 per ton and that the remainder was of such character as to produce an inferior manufactured product as well as to cause a large increased manufacturing cost.

Martin White also testified that he had complained to H. S. White that the materials were not fit for use, to which H. S. White replied that it was the best that he could get and ordered him to go ahead and draw the material as best he could (Case, p. 169).

Mr. Blum also testified from a memorandum made in Lavine's office as to the contents of certain invoices shown him by Lavine and said by Lavine to be invoices for materials purchased by him and resold to Bordentown (Case, p. 85). These invoices purported to show the price paid by Lavine for a portion of the materials in question. An examination of these invoices, it is respectfully submitted, will show a tremendous margin of profit made by Lavine on the sales in question, ranging from a maximum of \$68 a ton profit, to a minimum of \$35 a ton. One carload in particular was said to have been purchased by Lavine for \$70 and \$80 per 2,000 pounds, with 29,500 pounds

of 3 1/4" tubing thrown in, without charge, the whole of which was sold to the Bordentown Company at \$125 per ton. Another invoice for 56,500 pounds of material purchased at \$80 per net ton, sold to the Bordentown Company at \$125 per net ton, came from the Peerless Iron Pipe Exchange, Inc., the corporation concerned in the Maloney case, which was controlled by Lavine's son, Charles A. Lavine.

Among the invoices so shown, was one for materials rejected by the Bordentown Company as utterly useless, consisting of material chopped with a cleaver for the express purpose of making it useless for any purpose but remelting.

In four instances Lavine's profit on the resale, as shown by his invoices, was more than 100%, and in all but two instances his profits exceeded 50%.

It is submitted that the large percentage of profit admitted by Lavine to have been made by him on these consignments of material is in itself evidential of the fact that the materials were not nearly worth \$125 per ton, the price at which they were sold to the Bordentown Company and is corroborative of the testimony of defendant's witnesses as to the quality of the material itself.

It was shown that H. S. White was a man of large experience and high reputation in the steel tubing business. His acceptance of materials of the character testified to, over the superintendent's protest; his denial that he had received any money from Lavine, Lavine's denial that he had paid any money to White and his subsequent admissions that he had paid White first, a sum which he was in nowise legally obligated to pay on account of the commission matter, and second, other sums which were never satisfactorily explained, during the times the purchases were being made, coupled with Lavine's admissions that White

was a grafter, that he had had to pay him money every time he came to Bordentown to sell merchandise, and coupled with the surrounding circumstances of White's prohibition to purchase from Lavine; the secrecy of the purchases, the failure to make out written purchase orders and White's own change of attitude toward dealing with Lavine, together with the other suspicious circumstances constituted a state of facts susceptible of a reasonable inference of fraud and inconsistent with a reasonable inference of honest conduct, and therefore should have been submitted to the jury by the Court.

It is respectfully submitted that even the transaction brought out on pages 99, 100, 101, 102, 103 and 104 of the state of the case, relating to an alleged sale of materials from Lavine to the Bordentown Company, through the manager of one of Mr. Blum's departments, shows an effort on Lavine's part to use this man as a means of entering into negotiations with White. It is significant that Lavine's application was not made to Mr. Blum himself and no evidence was produced to show any real connection between Mr. Blum and this transaction, whatever it was, except that he refused to become a party to the transaction as soon as it was brought to his attention. As explained by Mr. Blum (Case, p. 101) Lavine was searching for an avenue of approach to the Bordentown Company, because all other avenues had been closed by his disagreement with White over the commission and the Bordentown Company's refusal to do any further business with him.

It is therefore respectfully submitted that the Court's refusal to permit the evidence of fraud to go to the jury was error.

POINT II.

It is respectfully submitted that the question whether or not plaintiffs were holders in due course should have been submitted to the jury.

A holder in due course, is defined by Sec. 52 of the *Negotiable Instruments Act* (3 Comp. Stats., p. 3741, Sec. 52), as

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

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

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

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

“IV. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.”

Section 55 of this Act (3 Comp. Stats., p. 3741, Sec. 55), provides:

“The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.”

The execution of the notes in question by the Bordentown Company was admitted. Their endorsement

by Isaac Lavine, to whom they were made, to the various plaintiffs, was not admitted. Proof of plaintiffs' title was attempted to be made by the testimony of Isaac Lavine himself (Case, pp. 39 to 42). He testified that he had received the notes from the Bordentown Steel and Tube Corporation and had endorsed them to the various plaintiffs upon receipt of them from the Bordentown Company and before their maturity. On cross-examination Lavine's attention was called to an affidavit which he had made in an arbitration proceeding in New York City, involving the notes in question in this suit, containing the following statement, "That thereafter Isaac Lavine paid all of said notes to the Pittsburgh Steel and Tube Company and to the Eagle Pipe & Supply Company and that said Isaac Lavine became the owner of said notes amounting to eighteen thousand odd dollars" (Case, pp. 44 and 45). He admitted the execution of the affidavit and said that the contents of the affidavit were true. It was later shown (Case, pp. 137-139 and 140) that both of the plaintiffs in these actions were parties to the arbitration proceeding and that the controversies in question are the same controversies involved in the cases at bar.

Notwithstanding that the plaintiffs obtained an adjournment in order to examine the affidavit in question for re-direct examination, no re-direct examination on this subject was had and the only other testimony on the subject of plaintiffs' title was the testimony given by Lavine at the end of the trial (Case pp. 204-205 and 206) to the effect that he was not the owner of the notes. He did not deny, however, that he was the owner of the notes on March 30, 1922, the day on which the affidavit was made, and his admission of that fact was never denied or explained.

Assuming the truth of Lavine's testimony that the notes in question were endorsed by him to the various plaintiffs for merchandise, immediately after their delivery, and that he (Lavine) had repurchased the notes from the plaintiffs and was their owner on March 30, 1922, and that the plaintiffs were the owners at the time of trial, it is respectfully submitted that this, the whole proof of plaintiffs' title, leads to but one conclusion, namely, that plaintiffs must have reacquired the notes from Lavine during the pendency of the actions in question and after maturity. The notes all matured early in the year 1921. Suits were brought on May 14, 1921, and were being vigorously defended at the time Lavine says he was the owner of the notes.

Of course if the plaintiffs became the holders of the notes after maturity, all defenses against Lavine as payee, were maintainable against the plaintiffs, including the defense of fraud in the inception of the instruments.

But quite aside from that question, it is respectfully submitted that plaintiffs' proofs as to the consideration paid for the notes and the circumstances under which the alleged negotiation occurred, were not sufficient to warrant taking this question from the jury.

Section 59 of the *Negotiable Instruments Act* (3 Comp Stats., p. 3741, Sec. 59) provides:

"Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course; but the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."

The shifting of the burden of proof where the title of a prior holder is attacked, is discussed in the case of *Knapp vs. Hoboken*, 39 N. J. L., p. 394, where Justice Depue, at page 396, uses the following language:

"In actions by the assignee, or transferee, upon instruments negotiable in the broadest sense, such as bills, notes and ordinary commercial paper, where the contract is invalid as between the parties to it, for fraud, as distinguished from mere failure of consideration, a defendant need not prepare the way for putting in his defense, by showing the infirmity of the plaintiff's title. Fraud in the inception of the instrument being established, the burden is laid on the plaintiff to build up a title in himself better than that of the original party. He can recover only in virtue of the merits of his own title, arising from the consideration he has paid, and the circumstances under which it came to his hands."

In *De Jonge vs. The Woodport Hotel & Land Co.*, 77 N. J. L., p. 233, the question involved was the lower Court's exclusion of proof that a note on which suit was brought was given by the defendant's treasurer to pay his own individual debt. The Supreme Court, in an opinion by Chief Justice Gummere, held:

"The effect, therefore, of the rejected proof, would have been to destroy the then existing presumption that the plaintiffs were 'holders in due course,' and to throw upon them of the burden either of proving that fact or of overcoming the proof of the defendant that the note was given for Bright's personal debt, and that his act in making it was not authorized or ratified by the company, provided that the making of the note under the conditions recited rendered it invalid in the hands of McLoughlin, the payee."

A note to *Crawford's Annotated Negotiable Instrument Law*, p. 59, referring to Section 59 of the *Negotiable Instruments Act*, above quoted, contains the following statement of the rule in this particular:

"The holder may make out his title by presumption until it is impeached by evidence showing the paper had a fraudulent or illegal inception. When this is done he can no longer rest upon presumption, but it is incumbent upon him to show the circumstances under which it came into his possession and that he has acted in good faith (quoting numerous cases) and where the plaintiff seeks to establish this by his own testimony, the credibility of such testimony, though it is undisputed, is for the jury." (*Joy vs. Diefendorf*, 130 N. Y. p. 6.)

To the same effect are *Merchants Exchange National Bank vs. New Brunswick Savings Institution*, 33 N. J. L., p. 170, and *Haines vs. Merrill Trust Company*, 56 N. J. L., p. 312.

In discussing the reason for the rule of shifting the burden of proof, the following will be found in 8 *Corpus Juris*, page 986:

"The reason of this rule has been stated to be that the proof of fraud or illegality of the inception of the instrument raises a presumption that the party to the fraud, who formerly held the paper and who is precluded from recovering thereon himself, has placed it in the hands of another to sue on for him and this presumption the holder must overcome."

Lavine had been shown to be an officer and director in each of the plaintiff companies. His interest in the Eagle Company was almost that of a sole owner; his interest in the Pittsburgh Company was that of a holder of a large majority of its stock, his son being another large stockholder. A large part

of the material, the furnishing of which was the basis of defendant's charge of fraud, was shown by the invoices to have been furnished by the Eagle Company itself and all transactions had occurred through Lavine personally.

In addition Lavine appeared as the only witness for the plaintiffs at the trials and the answers to the interrogatories served by the defendant, were sworn to by him. He produced the notes at the trial and had produced them at the arbitration proceedings. He admitted that he had made an affidavit in the arbitration proceedings in which he said that he was the owner of the notes at that time and had paid the plaintiffs for them.

Under circumstances showing so close a connection between Lavine and the plaintiffs, what was more natural than that Lavine should attempt to hide behind an alleged negotiation to the plaintiffs when suit was to be brought, and thus escape the consequences of his own fraud.

In view of these circumstances, it is respectfully submitted that the plaintiffs have not carried the burden of proof imposed upon them upon defendant's showing of the fraud. Can it be said that by the meager testimony adduced by them that they have "built up a new title to the notes in question" and "shown the consideration and the circumstances under which the notes came into their hands" so conclusively as to withdraw the question of their status from the jury?

It must be borne in mind that plaintiffs' testimony on this point is limited to a bare statement that the original notes had been negotiated by Lavine to the plaintiffs for merchandise shortly after their delivery to him and that the plaintiffs were the owners at the time of trial. The real character of the consideration,

the state of the accounts between Lavine and the plaintiffs and the actual circumstances attendant upon the alleged negotiations were not disclosed. Certainly in view of Lavine's close connection with the plaintiffs and the connection at least of the Eagle Company with the instrument of the fraud, a full disclosure of these matters should have been made by uncontrovertible proof showing the innocence of the plaintiffs and an undisputed title to the notes, in order to warrant the withdrawing of this question from the jury's consideration.

It is, therefore, respectfully submitted that the Court erred in withholding this question from the jury, first, because plaintiffs' proofs show that plaintiffs had acquired the notes after maturity and, therefore, took them subject to all defenses; secondly, because plaintiffs' testimony did not frankly and candidly show the consideration for the alleged negotiation, nor the circumstances under which such alleged negotiation took place, and thirdly, because the Eagle Company, through Lavine its president and practically sole owner, was a party to the fraud itself, in the sale of a large portion of the materials in question.

It is, therefore, respectfully submitted that, for the reasons above stated, the judgments entered against the defendant should be reversed, with costs.

Respectfully submitted,

SCAMMELL AND BESORE,
Attorneys for and of Counsel with
the Defendant-Appellant, Bor-
dertown Steel & Tube Corpora-
tion.

NEW JERSEY SUPREME COURT,

No. 12, June Term, 1922.

DENIS MALONEY,	}
Plaintiff,	
vs.	
BORDENTOWN STEEL & TUBE COR- PORATION,	}
Defendant.	

Submitted July 6, 1922; decided November 10, 1922.

On plaintiff's rule to show cause why his own verdict should not be set aside.

Before Gummere, Chief Justice, and Justices Swayze and Trenchard.

For the rule, A. A. Melniker.

Contra, Scammell & Besore.

PER CURIAM:

This was an action to recover \$8,418 brought by the plaintiff, assignee of the Peerless Iron Pipe Exchange, Inc., against the defendant, upon an alleged purchase order executed September 23, 1920, by one White, defendant's former president.

The defense was that the order was entered into by White without authority and as a part of a fraudulent scheme between him and one Lavine who procured the order to be given, as agent of the Peerless Company, for the purpose of causing defendant to purchase a carload of scrap iron worth about \$16 a ton and to pay for the same to the Peerless Company \$125 a ton; that in pursuance of such

fraudulent scheme a carload of scrap iron was actually shipped to the defendant; that White, with knowledge of its inferior character, pretended to accept it in fulfillment of the purchase order, and caused a portion of it to be run through the processes of the defendant for the sole purpose of making a show of using the material; that the remainder of the material was returned according to an order of Lavine, assuming to act for the Peerless Company, before the fraud was discovered, and that upon the discovery of the fraud the entire transaction was repudiated by the defendant.

The action was trial at the Hudson Circuit and resulted in a verdict of \$2,847.95 in favor of the plaintiff, a sum approximately equal to the purchase price of the materials run through its processes by the defendant and therefore not returned.

The plaintiff thereupon obtained this rule to show cause why its own verdict should not be set aside and a new trial granted, mainly upon the ground that it is against the weight of the evidence.

We think that the jury was justified in finding the matters of fact upon which their verdict rested. While the evidence is conflicting we cannot say that the verdict is against the great weight of the evidence.

Lavine's connection with the order and shipment were established and so was White's. When the material arrived at Bordentown and was unloaded, the superintendent of the defendant reported to White that the material was of such a quality that it could not be used, but White insisted that it be put through the various processes of the company. Eventually a large part of the material found its way to the scrap heap, and, according to the testimony, none of it could be used in defendant's business.

The weight of the testimony seems to be that the material was actually scrap iron of the value of

\$16 a ton instead of good material worth \$125 a ton; that defendant's Board of Directors had expressly forbidden White to purchase any materials from or through Lavine because of the poor quality of materials previously furnished by him; Lavine had notice of this prohibition prior to February, 1920; that notwithstanding this prohibition White purchased materials of Lavine secretly from February, 1920, to August, 1920; that later the order in question was given by White to Lavine in the name of the Peerless Company; that after the purchase was discovered White resigned by request on September 28, 1920. In this connection there is evidence of various sums of money paid by Lavine to White.

The testimony tends to show also that before the facts indicating fraud were discovered, a large portion of the material had been rejected because of inferior quality; that the Peerless Company refused to admit that it was inferior or to receive it back; but Lavine agreed to accept it and himself adjust the account; that in December, 1921, when the fraud was discovered through Lavine's admissions, these rejected materials had already been sent to Beaver, Pennsylvania, according to Lavine's orders. It was then that defendant denied all liability under the order.

We think the evidence sufficient to show knowledge upon the part of the Peerless Company of Levine's fraud. The furnishing of scrap iron worth \$16 a ton in fulfillment of an order for material worth \$125 a ton, with knowledge of the facts, we think very persuasive of a fraudulent connection between the Peerless Company and Lavine.

True, the plaintiff produced testimony tending to show that Lavine had no connection with the Peerless Company, and Levine so testified on his main ex-

amination, but on cross-examination his admissions seem to show such connection. He was compelled to admit that the Peerless Company was owned by his son whom he had started in business by lending him money. And so upon the whole case we cannot say that the verdict is against the great weight of the evidence.

We do not see that the verdict can be fairly said to be contrary to the Judge's charge.

We cannot say that the damages are inadequate, considering what the jury may have found the facts to be. It represents the value of the material retained by the defendant calculated at the contract price.

We see no prejudicial error in the admission of evidence, nor in the refusal to strike out testimony.

We find no error in the refusal of the Judge to instruct the jury to disregard the remarks of counsel for defendant in summing up.

We find no prejudicial error in the refusal of the Judge to charge the various requests to the plaintiff.

Of course there was no error in the refusal to direct a verdict for the plaintiff.

The rule will be discharged, with costs.