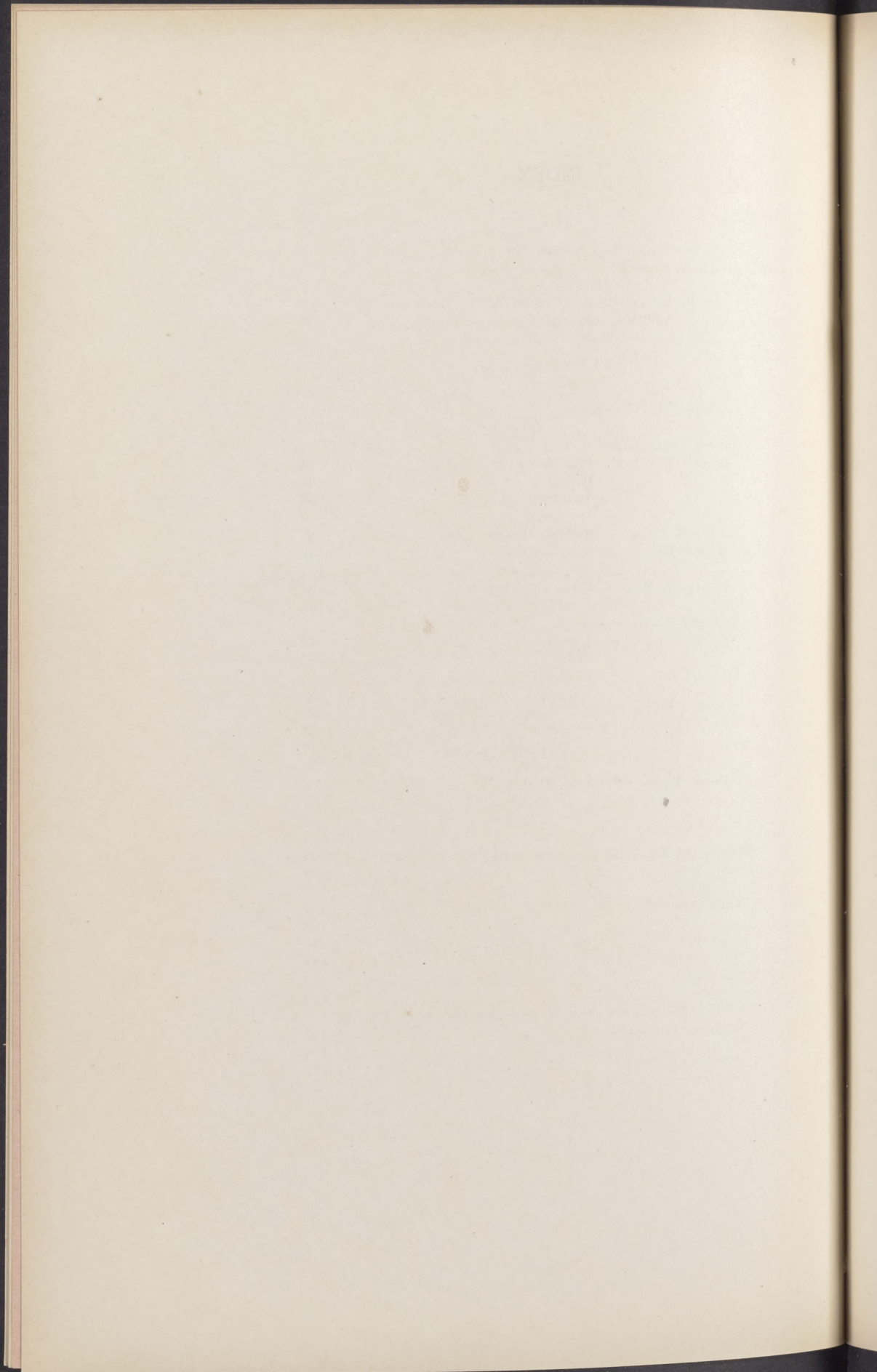


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Mercer County Circuit Court

HIGHTSTOWN TRUST COMPANY, <i>Plaintiff.</i>	}	Action at Law.	10
<i>v.</i>			
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <i>Defendants.</i>	}		

Summons

The State of New Jersey to American Equity Corporation, Vernon L. Buchman, H. D. Gordon and [L. s.] J. A. Fraser: You are summoned to answer the annexed complaint of Hightstown Trust Company, a body corporate of the State of New Jersey, in an action at law in the Mercer County Circuit Court. And take notice that unless you file your answer to said complaint with the clerk of said Mercer County Circuit Court, at the Court House, Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 20 30

Witness, A. Dayton Oliphant, judge of our Mercer County Circuit Court, at Trenton, New Jersey, this tenth day of November, nineteen hundred and twenty-seven.

THEODORE BACKES,
Attorney.

HARRY C. HARTPENCE,
Clerk.

(1)

40

Complaint

MERCER COUNTY CIRCUIT COURT.

	HIGHTSTOWN TRUST COMPANY,	}	Action at Law.
	<i>Plaintiff.</i>		
	<i>v.</i>		
10	AMERICAN EQUITY CORPORA-	}	
	TION, VERNON L. BUCHMAN,		
	H. D. GORDON and J. A.		
	FRASER,		
	<i>Defendants.</i>		

Plaintiff, Hightstown Trust Company, a body corporate of the State of New Jersey, says that—

1. On June 21, 1927, the defendant, American Equity Corporation, made and delivered to plaintiff its note of
20 that day for four thousand five hundred dollars (\$4,500), payable to Vernon L. Buchman, H. D. Gordon and J. A. Fraser, three months from date, at Hightstown Trust Company, Hightstown, New Jersey (a copy of which note is hereto annexed).

2. The payees afterwards endorsed said note to the plaintiff.

3. On the day the same fell due it was presented for payment at the place it was payable, but was not paid, and on said date, to wit, September 21, 1927, the said
30 note was duly protested and notice of protest was given to the said American Equity Corporation, Vernon L. Buchman, H. D. Gordon and J. A. Fraser.

4. Said note is now the property of the plaintiff and is unpaid.

Plaintiff demands as damages four thousand five hundred dollars (\$4,500), together with interest on said sum from September 21, 1927, also protest fees of two dollars and forty-eight cents (\$2.48).

THEODORE BACKES,
Attorney of Plaintiff.

\$4,500.00

June 21, 1927.

Three months after date we promise to pay to the order of Vernon L. Buchman, H. D. Gordon and J. A. Fraser,

Forty-five hundred Dollars,
at Hightstown Trust Co., Hightstown, N. J.

Value received.

American Equity Corporation 10
Vernon L. Buchman, Pres.
J. A. Fraser, Treas.

No. 701 Due Sept. 21

(Endorsed)
Vernon L. Buchman
H. D. Gordon
J. A. Fraser
American Equity Corporation
Vernon L. Buchman,
President, 20
J. A. Fraser,
Treasurer.

November 14/27

Personal service on Harry D. Gordon, at his residence 249 Lake Drive and Brunswick Pike, Lawrence Twp.

Personal service on Vernon L. Buchman, also served a copy on Vernon L. Buchman, president of said corporation, at 203 E. State Street, Trenton, N. J., other defendant, James A. Fraser. Not found.

30

JOHN N. RACE,
By *Sheriff.*

GEORGE B. HULIT,
Spec. Dept.

I hereby deputize and appoint Geo. B. Hulit, of Pennington, a special deputy to serve the within writ and make return thereto.

Witness my hand and seal this 12th day of November,
A. D. 1927.

[L. S.]

JOHN N. RACE,
Sheriff of Mercer County.
By PHILIP S. VINE,
Under Sheriff.

10

Answer of American Equity Corporation

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY,
Plaintiff.

v.

AMERICAN EQUITY CORPORA-
TION, VERNON L. BUCHMAN,
H. D. GORDON and J. A.
FRASER

Defendants.

Action at Law.

20

Defendant, American Equity Corporation, a corpora-
tion having its office and place of business at 203 East
State Street, Trenton, N. J., answering plaintiff's com-
plaint, says:

1. Paragraph 1 is admitted.
2. Paragraph 2 is denied.
- 30 3. As to paragraph 3, this defendant is without in-
formation or knowledge sufficient to form a belief, but
leaves the plaintiff to its proof thereon.
4. Paragraph 4 is admitted.

FIRST DEFENSE.

And this defendant, further answering, says:

1. The note referred to in the complaint, and on which
this suit is based, is in the possession of the plaintiff, and

40

by reference to the copy thereof attached to the complaint, it appears that this answering defendant was the last endorser thereon, and is thereby made to appear to be the party who discounted the said note and received the proceeds thereof. But this defendant says that the plaintiff never paid to this defendant the proceeds of the discount of the said note or any part thereof, and that the plaintiff acquired the said note without paying there- 10
for any consideration whatsoever to this defendant or to any other person who was at any time prior to maturity the lawful holder and owner of said note.

SECOND DEFENSE.

1. Plaintiff is not the holder of the aforesaid note for value.

F. R. BRACE,
Attorney of Defendant, 20
American Equity Corporation.

Answer of H. D. Gordon

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY, <div style="text-align: right;"><i>Plaintiff.</i></div>	}	
<i>v.</i>		30
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <div style="text-align: right;"><i>Defendants.</i></div>	}	Action at Law.

Defendant, H. D. Gordon, whose address is Hightstown, New Jersey, answering plaintiff's complaint, says:

40

1. Paragraph 1 is admitted.
2. Paragraph 2 is denied.
3. As to paragraph 3, this defendant is without information or knowledge sufficient to form a belief, but leaves the plaintiff to its proof thereon.
4. Paragraph 4 is admitted.

10

FIRST DEFENSE.

And this defendant further answering, says:

1. The note on which this suit is based was acquired by the plaintiff, without the plaintiff having paid to this defendant or to any other person who was the lawful holder and owner of said note before maturity any consideration or thing of value whatsoever.

20

SECOND DEFENSE.

1. The plaintiff is not the holder of the aforesaid note for value.

THIRD DEFENSE.

The endorsement "H. D. Gordon" alleged to appear upon the back of the note on which this suit is based is not the signature of this answering defendant, nor was it written upon or affixed thereto by him.

30

F. R. BRACE,
Attorney for Defendant,
H. D. Gordon.

40

Answer of Vernon L. Buchman

MERCER COUNTY CIRCUIT COURT...

HIGHTSTOWN TRUST COMPANY,	}	Action at Law.	10
<i>Plaintiff.</i>			
<i>v.</i>	}		
AMERICAN EQUITY CORPORA-			
TION, VERNON L. BUCHMAN,			
H. D. GORDON and J. A.			
FRASER,	}		
<i>Defendants.</i>			

Defendant, Vernon L. Buchman, whose address is No. 203 East State Street, Trenton, N. J., answering plaintiff's complaint, says:

1. Paragraph 1 is admitted. 20
2. Paragraph 2 is denied.
3. As to paragraph 3, this defendant is without information or knowledge sufficient to form a belief, but leaves the plaintiff to its proof thereon.
4. Paragraph 4 is admitted.

FIRST DEFENSE.

And this defendant further answering, says: 30

1. The note on which this suit is based was acquired by the plaintiff, without the plaintiff having paid to this defendant or to any other person who was the lawful holder and owner of said note before maturity any consideration or thing of value whatsoever.

SECOND DEFENSE.

1. The plaintiff is not the holder of the aforesaid note for value.

F. R. BRACE,
Attorney for Defendant,
Vernon L. Buchman.

10

Reply to Answer of Defendant Vernon L. Buchman

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY,
Plaintiff.

v.

20 AMERICAN EQUITY CORPORATION,
VERNON L. BUCHMAN,
H. D. GORDON and J. A.
FRASER,

Defendants.

Action at Law.

The plaintiff denies the allegations contained in the first and second defense of the said defendant.

THEODORE BACKES,
Attorney of Plaintiff.

30

Service of the within reply is hereby acknowledged.

F. R. BRACE,
Attorney of Defendants.

40

Reply to Answer of American Equity Corporation

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY, <i>Plaintiff.</i>	}	Action at Law.	10
<i>v.</i>			
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <i>Defendants.</i>	}		

The plaintiff denies the allegations contained in the first and second defenses of the said defendant.

THEODORE BACKES,
Attorney of Plaintiff. 20

Service of the within reply is hereby acknowledged.

F. R. BRACE,
Attorney of Defendants.

Reply to Answer of Defendant H. D. Gordon

MERCER COUNTY CIRCUIT COURT. 30

HIGHTSTOWN TRUST COMPANY, <i>Plaintiff.</i>	}	Action at Law.	40
<i>v.</i>			
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <i>Defendants.</i>	}		

The plaintiff denies the allegations contained in the first, second and third defenses of the said defendant.

THEODORE BACKES,
Attorney of Plaintiff.

Service of the within reply is hereby acknowledged.

10 F. R. BRACE,
Attorney of Defendant.

Mercer County Circuit Court met on Monday, January 7, 1929, at 10 o'clock A. M.

Present: Hon. A. Dayton Oliphant, judge of the Mercer County Circuit Court.

John G. Vanblarcom, stenographer.

20

Appearances

30	HIGHTSTOWN TRUST COMPANY, <i>Plaintiff.</i> <i>v.</i> AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <i>Defendants.</i>	}	Action at Law.
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Theodore Backes (Herbert W. Backes), attorney for the plaintiff.

Frederic R. Brace (W. Holt Apgar), attorney for the defendants.

By agreement of counsel cause tried before the court without jury.

40 Opening by Mr. Backes for the plaintiff.

Opening by Mr. Brace for the defendant.

Mr. Backes for the plaintiff called Henry G. Wikoff, sworn, rests.

Mr. Apgar for the defendant moved for a nonsuit—Decision reserved. Mr. Apgar for the defendants called Harry D. Gordon, sworn; Vernon L. Buchman, sworn; James Stanley Teunon, sworn.

Mr. Brace recalled James Stanley Teunon. 10

Mr. Apgar and Mr. Brace rests.

Mr. Theodore Backes in rebuttal called as witnesses: John W. West, sworn; Abijah Mount, sworn.

Mr. Backes in rebuttal recalled Henry G. Wikoff, rests.

Mr. Apgar moved that Harry D. Gordon be relieved of liability *re* his signature on the note in issue. The court reserved decision on the motion.

After argument of the counsel the court reserved the decision in the above case. 20

Adjourned.

Conclusions

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY,	}	Action at Law.	30
<i>Plaintiff.</i>			
<i>v.</i>			
AMERICAN EQUITY CORPORA-	}	Action at Law.	30
TION, VERNON L. BUCHMAN,			
H. D. GORDON and J. A.			
FRASER,			
<i>Defendants.</i>			

For the plaintiff, Theodore Backes and Herbert W. Backes.

For the defendants—Frederic R. Brace and W. Holt Apgar.

The court (Oliphant, J.). This is a suit by Hightstown Trust Company as plaintiff, against American Equity Corporation, Vernon L. Buchman, H. D. Gordon and J. A. Fraser, as defendants, in the sum of \$4,500 with interest and protest fees, based upon a promissory note in the following tenor:

10 \$4,500.00

June 21, 1927.

Three months after date we promise to pay to the order of Vernon L. Buchman, H. D. Gordon and J. A. Fraser,

Forty-five hundred Dollars
at Hightstown Trust Co., Hightstown, N. J.

Value received.

American Equity Corporation

Vernon L. Buchman, Pres.

J. A. Fraser, Treas.

20 No. 701

Due Sept. 21

(Endorsed)

Vernon L. Buchman

H. D. Gordon

J. A. Fraser

American Equity Corporation

Vernon L. Buchman,

President.

J. A. Fraser,

Treasurer.

30

The defendant corporation maintained a bank account with the plaintiff company and had a line of credit of \$10,000. A resolution of the board of directors, on file with the bank, provided that all checks must be signed by any two of the three officers of the corporation, who are the three individual defendants.

In June, 1927, Fraser, the treasurer of the corporation, sent the note in suit to Buchman, the president of the corporation, at Wilkes-Barre, Pa., for his endorsement,

40

explaining that it was a renewal of one for \$5,000. Buchman signed the note as president of the corporation and endorsed it both individually and as president; and returned it. Gordon claims he never endorsed it or saw it until its authenticity was questioned. It was presented to the bank which discounted it and placed the proceeds thereof, \$4,431, to the credit of the corporation on June 22, 1927.

10

According to the bank records the exact amount of the proceeds of the note was withdrawn from the account of the corporation, as follows: On June 21, \$2,000; June 24, \$431, July 7, \$1,000, and July 19, \$1,000. Gordon and Buchman say that they never signed checks in these amounts on or about these dates nor did they sign checks in blank. Fraser disappeared and after his disappearance four blank checks from the back of the corporation check book were found missing. There is no explanation of how the money was with-
drawn. The bank regularly sent statements to the corporation, but the one showing a credit of \$4,431 and the withdrawals before mentioned had been doctored and these items erased. The corporation had its books regularly audited and at the first audit after the twenty-first of June the discrepancies were discovered and immediately reported to the bank. The four checks above referred to were not among those returned nor examined by the auditors, and no explanation has been made in regard to them.

20

30

The plaintiff bank contents itself with showing on its own case an arbitrary charge against the American Equity Corporation account of the four items aggregating \$4,431.

The defendants say that the plaintiff is not a holder for value, that it is not a holder in due course, that it paid no consideration for the note in suit, and that the defendant corporation received no consideration therefor.

No case directly in point has been furnished me by

40

counsel, and after much research I have been able to discover none in this state; but the great weight of authority from other states, and the sounder rule, seems to be that "a bank giving credit for the amount of a note is not a holder in due course when such credit is not absorbed by the antecedent indebtedness or exhausted by subsequent withdrawals. 22 L. R. A. 718, and Brannans Negotiable Instrument Law, page 386, and cases therein cited. The question is also exhaustively considered in 6 A. L. R. page 252, wherein it is stated that the courts in this country almost without exception have followed the rule above set forth.

It might be argued that there were subsequent withdrawals from the proceeds of the note, but the evidence clearly shows, and I am satisfied, that if there were withdrawals they were by means of forged checks, forged both as to maker and payee.

20 "The relation between a bank and its depositor is that of debtor and creditor, and the implied contract on the part of the bank is that it will disburse the money standing to the credit of the depositor only on his order, and in conformity with his directions. When, therefore, it makes a payment upon a check to which the depositor's name has been forged * * * it must be held to have paid out of its own funds, and cannot charge the amount against the depositor, unless it shows a right to do so on the doctrine of estoppel, or because of some negligence chargeable to the depositor." Mechanics National Bank v. Harter, 63 N. J. Law 578.

30 Neither of these theories is open for use by the plaintiff under the facts as established by it in this case. Also see Camden Safe Deposit Co. v. Lord et al., 67 N. J. Equity 489.

I therefore determine that the plaintiff bank was not a holder for value or a holder in due course, and that any charges against the account of the defendant corporation were improperly made.

There are several other questions involved, but under the circumstances the court need not consider them.

A verdict of no cause of action must be returned in favor of the defendants and against the plaintiff.

Judgment

10

MERCER COUNTY CIRCUIT COURT.

HIGHTSTOWN TRUST COMPANY, <i>Plaintiff.</i>	}	Action at Law.	20
<i>v.</i>			
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER, <i>Defendants.</i>			

This action was tried before Judge A. Dayton Oliphant without a jury on January 7, 1929, at the Mercer County Court House, Trenton, N. J.

The cause having been heard and argument submitted to the court, the court rendered its decision that a verdict of "no cause of action" be returned in favor of the defendants and against the plaintiff.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed, and that the defendants recover of the plaintiff their costs, which are taxed at sixty-four dollars and seventy cents (\$64.70).

A. DAYTON OLIPHANT,
Judge.

Judgment entered April 6th, 1929.

Judgment entered in favor of the said defendants and
against the said plaintiff for the sum of sixty-four dol-
lars and seventy cents costs \$64.70

Whole amounts of costs \$64.70

Judgment signed and entered this 6th day of April,
A. D. nineteen hundred and twenty-nine.

10

A. DAYTON OLIPHANT.

Judge.

FREDERIC R. BRACE,
Attorney of Defendants.

Notice of Appeal and Grounds

MERCER COUNTY CIRCUIT COURT.

20

HIGHTSTOWN TRUST COMPANY,
Plaintiff.

v.

AMERICAN EQUITY CORPORA-
TION, VERNON L. BUCHMAN,
H. D. GORDON and J. A.
FRASER,

Defendants.

Action at Law.

30

To Frederic R. Brace, Esquire, and W. Holt Apgar,
Esquire, attorneys of defendants.

Sirs:

Please take notice that the plaintiff in the above en-
titled cause, appeals to the Court of Errors and Appeals
of New Jersey from the whole of the judgment entered
in this cause on the following grounds, to wit:

1. The court erred in finding that the checks dated
June 21, \$2,000; June 24, \$431; July 7, \$1,000 and July
19, \$1,000, of the defendant were forgeries, forged

40

both as to maker and payee, in that there is no evidence supporting this finding.

2. The court erred in that the findings upon which the judgment is based are not supported by the evidence.

3. The court erred in finding that the plaintiff was not a holder for value and in due course of said note.

4. The court erred in finding that the four checks above referred to were not among those returned or examined by the auditors, and no explanation has been made in regard to them. 10

5. The court erred in finding that any charges against the account of the defendant corporation were improperly made.

6. The court erred in finding that the check dated June 21st for \$2,000 was charged against the proceeds of the note.

7. The court erred in refusing to admit the testimony of plaintiff's witness, John W. West, offered to prove the signature of Harry D. Gordon, and especially in overruling the following questions: 20

"Look at the signature on *Exhibit P-7* and tell us in whose handwriting that signature is."

"Whose handwriting is it?"

"Now tell us whose signature that is."

"In whose handwriting is that signature?"

8. The court erred in finding for the defendant as against the plaintiff.

Respectfully yours, 30

THEODORE BACKES,

H. W. BACKES,

Attorneys for Plaintiff.

Service of a copy of the within notice of appeal and grounds of appeal is hereby acknowledged this 22d day of July, 1929.

F. R. BRACE,
Attorney of Defendants.

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

I, Charles P. Hutchinson, clerk of the County of Mercer, and also clerk of the Circuit Court and Court of Common Pleas in and for said county, the same being courts of record, do hereby certify that the foregoing is a true and correct copy of the pleadings, trial and judgment in re Hightstown Trust Company, plaintiff, v. American Equity Corporation, Vernon L. Buchman, H. D. Gordon and J. A. Fraser, as the same remains on file and of record in my said office.

In witness whereof, I have hereunto set my
 [L. s.] hand and seal of office at Trenton, this 16th
 day of August, A. D. 1929.

CHARLES P. HUTCHINSON,
Clerk.

20

Testimony

MERCER COUNTY CIRCUIT COURT.

	HIGHTSTOWN TRUST COMPANY,	}	Action at Law.
	<i>Plaintiff.</i>		
	<i>v.</i>		
30	AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON and J. A. FRASER,	}	Action at Law.
	<i>Defendants.</i>		

Transcript of shorthand notes of testimony, &c., taken in the above entitled cause on the trial thereof before Hon. A. Dayton Oliphant, Circuit Court judge, at the Court House, Trenton, New Jersey, on Monday, January 7, 1929.

40

Appearances—Theodore Backes and Herbert W. Backes, for the plaintiff; Frederic R. Brace and W. Holt Apgar, for the defendants.

(Mr. Theodore Backes opened for the plaintiff.)

(Mr. Brace opened for the defendants.)

Mr. Theodore Backes—We have served on the other side a notice to produce. (Reads notice.)

Mr. Brace—There were two sets of statements, 10 and I am particularly anxious to have these marked separately for identification. One was the statement that was originally sent in and checked over by the auditor of the American Equity Corporation. The second one is the copy that was forwarded by the Hightstown Trust Company to the defendant at a later date. I want these marked in such a way that they can be identified as between each other.

The Court—Do you want them marked Mr. 20 Backes?

Mr. Backes—Yes.

(Two statements referred to are marked respectively P-1 for identification and P-2 for identification.)

Mr. Backes—Now what about the checks?

Mr. Brace—Do you want all the checks we have?

Mr. Backes—The checks that were cashed by the bank up to the time the note was protested and shortly thereafter. 30

Mr. Brace—We have all the checks except the four which drew out this credit. We never saw them.

Henry G. Wikoff, sworn for the plaintiff.

Direct examination by Mr. Herbert W. Backes.

Q. Mr. Wikoff, what is your position with the Hightstown Trust Company?

A. Treasurer.

Q. How long have you been treasurer?

A. Since 1921; since the organization of the bank.

Q. Do you know the American Equity Corporation?

A. I do.

Q. How long have they had an account with your bank?

A. I think since 1922 or 1923.

10 Q. Who were the officers of that corporation?

A. Mr. Buchman was president; Mr. Gordon was secretary and Mr. Fraser was treasurer at this time.

Q. Do you mean at the time of the making of this particular note in dispute?

A. Yes.

Q. From the time that they first commenced business with you did they discount notes at your bank?

A. Not right away; it was sometime after they started business with us.

20 Q. Did you receive any authorities as to whom the officers were that were authorized to draw on the account at your bank?

A. I think we did.

Q. Have you those authorities with you?

A. I think they are there.

Q. You say that you started business with them in the early part of 1923?

A. I do not remember, but somewhere around there; yes, sir.

30 Q. Now, I show you a letter dated January 15, 1923, addressed to the Hightstown Trust Company, and ask you if you received this letter?

A. Yes, sir.

(Letter referred to is marked P-3 for identification.)

Q. Now, this letter is addressed to the Hightstown Trust Company, Hightstown, N. J., "Gentlemen: In the future honor checks from this corporation signed by any two of the following signatures. Do not honor any checks for amounts in excess of two thousand dollars,

and should you receive two checks for two thousand dollars in one week promptly notify Mr. Marvin A. Spaulding, Broad Street Bank Building, Trenton, N. J., the legal representative of the corporation. Thanking you in advance for your attention in this matter we are, very truly yours, American Equity Corporation. H. Kershaw, president." Annexed to that letter are three signatures. Do you know whose signatures they are? 10

A. Yes; Mr. Kershaw, Mr. Buchman and Mr. Gordon.

Q. And were various checks of the corporation signed by those officers?

A. They were.

Q. In the regular course of your business?

A. Yes, sir.

Q. You are familiar with Mr. Buchman's signature?

A. Yes, sir.

Q. After that date in January, 1923, did you receive 20 other instructions from the corporation as to a change in officers who were to sign the paper of the corporation?

A. I think we did. I do not recall.

Mr. Herbert W. Backes—I will go back to that in a minute.

Q. Have you in the files of your company signature cards of the American Equity Corporation?

A. We have.

Q. I show you a card dated October 19, 1922, and ask you what that is? 30

A. That is the signatures of the American Equity Corporation.

Q. Whose signatures appear thereon?

A. Mr. Gordon and Mr. Kershaw.

Q. They were the officers of the corporation at that time?

A. Yes, sir.

Q. Do you know their signatures?

A. Yes, sir.

(Signature card referred to is marked P-4 for identification.)

Q. I show you a signature card of the American Equity Corporation dated August 19, 1927, and ask you if that is a card signed by the officers of the corporation?

A. Yes, sir.

10 Q. And who are the officers there?

A. Mr. Buchman, president, and Mr. Gordon, vice-president and J. A. Fraser, secretary and treasurer.

Q. They are the signatures of those gentlemen?

A. Yes, sir.

Q. Do you know them to be such?

A. Yes, sir.

(Signature card referred to is marked P-5 for identification.)

20 Q. I show you a card dated October 16, 1922, and ask you if you know whose signature appears on that card?

A. Mr. H. D. Gordon.

Q. That is his signature?

A. Yes, sir.

(Signature card referred to is marked P-6 for identification.)

Q. All of these cards and signatures were presented at your bank at your request for the signatures of the officers of the corporation?

30 A. Yes, sir.

Q. And these are the only signature cards that you have?

A. Yes, sir.

Mr. Herbert W. Backes—I will offer those cards in evidence.

(Three signature cards referred to and offered in evidence are marked, respectively, *Exhibit P-1*, *Exhibit P-2* and *Exhibit P-3*.)

Q. I show you a note, dated June 21, 1927, for \$4,500,

"Three months after date we promise to pay to the order of Vernon L. Buchman, H. D. Gordon and J. A. Fraser, \$4,500 at the Hightstown Trust Company, Hightstown, N. J. American Equity Corporation. Vernon L. Buchman, president. J. A. Fraser, treasurer." Have you seen that note before?

A. Yes, sir.

Q. Was it presented to you for discount? 10

A. Yes, sir.

Q. Will you refer to endorsements that are on that?

A. Yes, sir.

Q. What endorsements are there?

A. Vernon L. Buchman, H. D. Gordon, J. A. Fraser, and American Equity Corporation, by Vernon L. Buchman, president and J. A. Fraser, treasurer.

Q. When was that presented for discount?

A. About June nineteenth or twentieth, I think.

Q. Whose signature is that as president? 20

A. Mr. Vernon L. Buchman.

Q. Do you recognize that to be his signature?

A. I do.

Q. You knew his signature?

A. Yes.

Q. Whose signature appears as treasurer?

A. J. A. Fraser.

Q. That is his signature?

A. Yes, sir.

Q. Do you so recognize it? 30

A. I do.

Q. Do you know the first endorsement, of Vernon L. Buchman?

A. Yes, sir.

Q. Is that Mr. Buchman's signature?

A. Yes, sir.

Q. Do you recognize that to be his signature?

A. I do.

Q. The endorsement of H. D. Gordon, do you recognize that?

Mr. Apgar—I object. I would like to have Mr. Wikoff give some evidence of qualification to pass upon Mr. Gordon's signature.

The Court—Yes; I do not think there is any testimony that he even knows his signature.

10 Mr. Herbert W. Backes—He has testified from these identification cards.

The Court—Was Mr. Gordon's signature on those?

The Witness—Yes, sir.

Mr. Herbert W. Backes—The last one, *Exhibit P-3*, he testified that was Mr. Gordon's signature and that he knew it to be his signature.

Q. Had Mr. Gordon a private account in your bank?

A. He had.

20 Q. For how long a period?

A. I cannot tell exactly but it must have been six or seven years.

Q. And you knew his signature?

A. Yes, sir.

Q. And you know that signature there to be the signature of H. D. Gordon?

Mr. Apgar—I still think he has not qualified himself to be able to identify that signature, to swear to it.

30 The Court—He may answer the question if he can.

A. I believe it to be Mr. Gordon's signature; yes, sir.

Q. I show you the signature of J. A. Fraser. Do you know that to be Mr. Fraser's signature?

A. Yes, sir.

Mr. Apgar—I interpose an objection to his identifying that signature. There is no card or anything else with Mr. Fraser's name.

The Court—Let me see those cards.

40 (The Court examines signature cards.)

Q. I show you a letter dated September 27, 1923, addressed to the Hightstown Trust Company, Hightstown, N. J., and ask if you received such a letter?

A. We did.

Q. The letter reads, "Gentlemen: At a regular meeting of the board of directors of this company held on September 18, 1923, the following resolution was passed: On motion duly seconded, Mr. Fraser was authorized to sign checks of the corporation as assistant treasurer," and "please honor checks when signed J. A. Fraser, assistant treasurer. Yours very truly, American Equity Corporation, Vernon L. Buchman, president." I ask you if that is the signature of Mr. J. A. Fraser annexed to that paper? 10

Mr. Brace—That is objected to unless he saw him sign.

The Court—Let me see it. (After examining paper.) The question may be answered. 20

A. It is.

Q. Did you receive other correspondence from Mr. Fraser?

A. Yes, sir.

Q. I show you a letter dated October 8, 1924, addressed to the Hightstown Trust Company, and ask you if that is the signature of Mr. Fraser?

A. It is.

Mr. Brace—I make the same objection.

The Court—Yes. 30

Q. Now, during the time that you had the account of the American Equity Corporation did you have certain checks or other papers of the corporation signed by Mr. J. A. Fraser?

A. We did.

Q. And you are familiar with his signature?

A. Yes, sir.

Q. I ask you now whether the signature that appears

on this note, of J. A. Fraser, is the signature of J. A. Fraser.

Mr. Brace—Objected to. The witness has had correspondence sent to him that he says was signed by J. A. Fraser but he did not see Fraser sign it, and he has no signature card of Fraser.

10 The Court—Well, he has a letter from the corporation containing Fraser's signature, or purporting to contain it. The question will be allowed.

Q. I show you an endorsement of the American Equity Corporation signed by Vernon L. Buchman as president and ask you whether the signature of Vernon L. Buchman is his signature?

A. It is.

20 Q. I show you the endorsement of J. A. Fraser as treasurer of the American Equity Corporation, endorsed on this note, and ask you whether the signature of J. A. Fraser is his signature?

Mr. Apgar—I object to that question. There is no evidence to show that Mr. Fraser had any connection whatever with this company.

The Court—Mr. Apgar, there is a letter from the corporation containing the signature.

Mr. Apgar—I withdraw the objection.

A. Yes, sir.

30 Q. Have you any records of your company to show the discounting of that note and placing of it to the credit of the American Equity Corporation?

A. We have.

Q. (Showing witness paper.) Will you tell us what this statement is, please?

A. This is a leaf taken from our note tickler, the original entry of all notes.

Q. Are you referring to—Will you refer to any one of the entries there which has to do with the American Equity Corporation.

A. No. 701; the first one.

Q. Will you tell us what that record is?

A. It shows that the American Equity Corporation had credit for \$4,500 less the discount on note endorsed by Vernon L. Buchman, H. D. Gordon and J. A. Fraser and the American Equity Corporation.

Mr. Apgar—What is the discount?

The Witness—Sixty-nine dollars.

10

Q. And that is the record of that transaction?

A. Yes, sir.

The Court—What is the date?

Mr. Herbert W. Backes—September 21, 1927.

I offer that letter dated September 27th in evidence.

(Paper referred to and offered in evidence is marked *Exhibit P-4.*)

Mr. Herbert W. Backes—And I offer the letter dated October 8th in evidence.

20

(Paper referred to and offered in evidence is marked *Exhibit P-5.*)

Mr. Herbert W. Backes—And I also offer the note tickler, particularly that part marked "No. 701," in evidence.

(Marked *Exhibit P-6.*)

Q. The identification mark, 701, that appears upon your tickler record, is that also endorsed on the note?

A. That is also on the note, yes.

Q. And that is the figure, 701?

30

A. Yes, sir.

Q. And that is used in your bookkeeping system of checking your transactions?

A. Yes, sir.

Q. Was this note paid?

A. No, sir.

Q. When it became due was it protested?

A. It was.

Q. I show you a record of protest and ask whether

40

that was signed by you as a notary public and protested before you?

A. Yes, sir.

Q. The notice is sent in conformity with the notice that appears on the protest record to the various endorsers?

A. Yes, sir.

10 Mr. Herbert W. Backes—I offer the note in evidence.

Mr. Apgar—On behalf of Mr. Gordon I object to its admission, as we claim that that signature is a forgery.

The Court—Objection overruled and exception noted.

(Note referred to and offered in evidence is marked *Exhibit P-7.*)

20 Q. I show you a statement of the American Equity Corporation—tell me what that is, please?

A. A statement of the American Equity Corporation of 203 East State Street, Trenton, N. J.

Q. What kind of a statement is it?

A. This is our ledger sheet in the bank.

Q. Will you refer to that sheet and say whether there is any record that appears thereon of the discount of this \$4,500 note which you had on June 21, 1927?

A. Yes, sir.

Q. Where is that record?

30 A. It is dated June 22; \$4,431.

Q. Do you send statements to your customers?

A. We do.

Q. What are those statements?

A. A copy of the ledger entries.

Q. Is it a duplicate copy of this particular ledger entry that you have here that you would send to the American Equity Corporation?

A. Yes, sir.

Q. And the same to all of your customers?

40

A. Yes, sir.

Q. So that the statements that they receive are copies of your original books of entry?

A. They are.

Q. Now, after the discounting of that note did you forward any statements to the American Equity Corporation?

A. We did. 10

Q. Have you any records to show when they were so forwarded?

A. Yes, sir.

Q. Where are those records?

A. They are dated on the ledger sheet.

Q. Will you tell us what those dates were.

A. June 30, 1927; July 23, 1927; July 30, 1927; August 12, 1927; September 1, 1927; September 30, 1927; November 30, 1927; December 31, 1927; January 31, 1928; February 29, 1928; March 31, 1928; April 20, 1928; June 30, 1928, and July 31, 1928.

Q. To whom were those statements forwarded?

A. The American Equity Corporation.

Q. At what address?

A. 203 East State Street, Trenton, N. J., The Wilkinson Building.

Q. That was their address?

A. Yes, sir.

Q. Were any of those statements returned to you?

A. No, sir. 30

Mr. Herbert W. Backes—I offer this statement in evidence.

Mr. Apgar—I understand that is the original of your ledger?

The Witness—Yes.

Mr. Apgar—No objection.

(Paper referred to is marked *Exhibit P-8*.)

Q. After this note became due did you have any conversation with any of the officers of the corporation?

- A. I did.
- Q. And with whom?
- A. Mr. Gordon and Mr. Buchman.
- Q. When did that conversation take place?
- A. I have forgotten the date but it was shortly after they notified us they thought there was something wrong with the note.
- 10 Q. How near the time of the maturity of the note?
- A. I think the latter part of August.
- Q. It was before the note matured?
- A. Yes, sir.
- Q. Where did you have this conversation?
- A. In the bank.
- Q. Who was present?
- A. Mr. Mount and myself and Mr. Gordon and Mr. Buchman.
- Q. Who is Mr. Mount?
- 20 A. Assistant treasurer of the Hightstown Trust Company.
- Q. Will you tell us what conversation you had with these gentlemen pertaining to this particular note and the signatures thereon?
- A. We had the note in the front office and were discussing it, and Mr. Buchman said, "Harry, whether that is your signature or not, it is mine."
- Q. He made that statement to you?
- A. He did.
- 30 Q. Referring to his signature on that note?
- A. Yes. Mr. Gordon was not exactly sure whether that was his or not.
- Q. I show you a statement marked for identification P-1 and ask you if you have ever seen that statement made to the American Equity Corporation?
- A. Yes, sir.
- Q. I particularly call your attention to an erasure that appears on June 21st and ask you if when this statement

was sent to the American Equity Corporation that erasure appeared?

A. No, sir.

Q. I show you a statement of the American Equity Corporation in duplicate and ask you if that is a duplicate of the *Exhibit P-1*?

A. This is a duplicate of that as it originally was.

Q. As it was originally sent to them? 10

A. Originally sent to them. It was taken from our ledger.

Q. Comparing the duplicate as taken from your ledger with the statement P-1, I ask you if you will tell me as to the similarity between the balance brought forward on May 3, 1927, that appears on P-1, and on your duplicate?

A. It is exactly the same.

Q. As you go down your statement of *Exhibit P-1* will you point out where the first change appears between *Exhibit P-1* which was sent to the American Equity Corporation and the duplicate statement? 20

A. The entry of the credit for the note of \$4,500, \$4,431.

Q. And that appears on the duplicate statement?

A. It does.

Q. But does not appear on *Exhibit P-1*?

A. It does not.

Q. Where is the next change, if you see any?

A. Only in the balance. 30

Q. And the balance that appears on the duplicate statement is how much?

A. \$4,678.23.

Q. And the balance that appears on *Exhibit P-1* is how much?

A. \$2,678.23.

Mr. Herbert W. Backes—I offer the duplicate statement in evidence.

(Marked *Exhibit P-9*.)

Mr. Herbert W. Backes—Cross-examine. 40

Cross-examination by Mr. Brace.

Q. Mr. Wikoff, you have just testified to a difference in the balance as shown between the original and the mutilated statement as of June 3, 1927. Were the vouchers and the statement forwarded to the American Equity Corporation at that time?

A. Yes; they were.

10 Q. Have you any record which shows that?

A. Yes, sir.

Q. Where is that?

A. On the ledger sheet.

Q. It is the practice to put a ledger stamp on here, is it not?

A. Yes.

Q. Is that marked there?

A. Yes, sir.

Q. Where? On June 30, 1927, vouchers returned,
20 what does that mean?

A. It means the statement has been made and the vouchers returned to the party to whom they belong.

Q. By whom is that done?

A. By Miss Probasco.

Q. You do not do that personally, do you?

A. No.

Q. Then when you testified that you had seen that statement which is marked P-1 before it went out, you did not mean that literally, did you?

30 A. I did not understand it was before it went out.

Q. You had not seen it before?

A. I do not recall that I had.

Q. Are you able to say whether on July 31st when statements and vouchers were delivered—are you able to say how they were delivered?

A. Yes; they were mailed.

Q. You know when they were mailed, do you?

A. Yes, sir.

Q. To whom?

A. The American Equity Corporation.

Q. When you say that you speak from personal knowledge, you know that was done?

A. Yes, sir.

Q. Did Mr. Fraser ever call at the bank and get statements, to your knowledge?

A. No, not to my knowledge.

Q. Now, referring to *Exhibit P-4*, which is a letter 10 sent to you over Mr. Buchman's signature, and stating that J. A. Fraser, assistant treasurer, should be honored on checks, was that given a liberal interpretation by the Hightstown Trust Company or was it interpreted to mean that Mr. Fraser would be substituted for Mr. Kershaw?

A. That Mr. Fraser would be substituted for Mr. Kershaw.

Q. The Hightstown Trust Company did not interpret it to mean that Mr. Fraser's signature alone was good 20 on checks?

A. No.

Q. It would still have to be with Mr. Gordon or Mr. Buchman, but it was in the place of Mr. Kershaw?

A. Yes, sir.

Q. And that was the practice that was afterward followed, wasn't it?

A. Yes, sir.

The Court—Why is there a difference in the balance in these two statements, one of which as 30 I understand is presumed to be a duplicate of the other?

Mr. Herbert W. Backes—Erasures were made.

Mr. Brace—If the court please I can explain that, I think. These vouchers when they came to the American Equity Corporation laid there without audit by anyone except Fraser until in August and it was then that the audit was made.

Q. Now have you anything except that letter to verify J. A. Fraser's signature?

A. I do not recall that we have.

Q. How did that happen?

A. I do not recall now.

Q. Don't you usually require a signature card?

A. We do; yes.

Q. When this note was presented to the Hightstown Trust Company for discount, that is the \$4,500 note, 10 who actually handled that transaction? Did you handle it yourself?

A. I did not.

Q. Do you know who did?

A. I do not of my own knowledge.

Q. In the ordinary practice of the bank wouldn't that have been handled by you ordinarily?

A. It might have been, but not necessarily.

Q. Are you able to say whether it was a new note or a renewal of an old one?

20 A. It was a new note.

Q. Doesn't someone pass upon new loans usually?

A. Yes, sir.

Q. Aren't you the man who does it?

A. No, the board of directors.

Q. That goes before the board?

A. Yes, sir.

Q. Have you any knowledge of whether this came before the board or not?

A. Yes, sir.

30 Q. Now, when a new note is presented to you don't you scrutinize the signatures of both the makers and endorser?

A. I do.

Q. Was that done in this case, so far as you know?

A. As far as I know.

Q. Do you know by whom it was done?

A. No, I do not.

Q. Do you know by whom it would have been done in the ordinary course of business?

A. Either Mr. Mount or myself or another young lady in the bank.

Q. Is it your practice to scrutinize the signatures on these notes with the signature cards?

A. No. If we are familiar with the signature that is all; that is as far as it goes.

Q. Have you the minutes of the board of directors' meeting which passed on this note?

10

A. I don't recall that I have.

Mr. Theodore Backes—We have them here.

Mr. Brace—(After examining papers.) I do not see it here.

The Witness—It appears in the numbers.

Q. That is the only record there is here, "It was voted that the purchase of bills numbers 576 to 735 be approved." Is that the minute that covers this transaction?

A. Yes, it is.

Q. That meeting was June 24, 1927. Had this note 20 been discounted before that time?

A. It had.

Q. The money had already been placed to the credit of the American Equity Corporation, according to the statement, on June 22d?

A. Yes.

Q. And this was merely a ratification of something that had been done by the officers?

A. No; I believe that the loan was brought up before and this is where it was approved.

30

Q. Is there a minute of that?

A. When a note is presented in that way we don't always have a minute of it in the minutes.

Q. Was there a meeting of the board of directors between June 21st, the date of the note, and June 24th, the date it was approved?

A. I think there was and it was on Friday.

Q. Have you any minutes of that meeting here?

A. No, I do not. That would not appear in that meeting anyway.

40

Q. The application would not appear?

A. The application would not appear, it isn't likely, because they had a line and it was merely taken up and asked if it was all right, and if they said, "Yes," we put them on.

Q. The note was discounted and credited to the American Equity Corporation on June 22d; the note was
10 dated June 21st; the board approved it on June 24th. Now the question is by whom was this note passed or discounted between June 21st and June 24th?

A. I cannot say.

Q. The board passed on it on June 24th?

A. Yes.

Q. And the transaction had actually been consummated on June 22d, two days before?

A. Yes.

Q. By whom had that been done?

20 A. It was put on in the usual course of the business.

Q. It had been done by the officers before their action was ratified on June 24th?

A. Yes, sir.

Q. You did not then personally attend to the discounting of that note and you are not able to say now who did?

A. No.

Q. Is the practice in scrutinizing the signature on checks the same as with notes?

30 A. Yes, except it is done by different people.

Q. Is it done by more than one person?

A. Yes, sir.

Q. Have you with you any record of the form and signature of a check for \$2,000, which was charged by you against the American Equity Corporation on June 21, 1927?

A. I have not.

Q. Have you any record or correspondence which shows the course of that check after it had been charged
40 by you?

A. We have not.

Q. When checks go through your bank there is a record kept of them, is there not?

A. The incoming checks come through with an adding machine list and it would be impossible to identify any one.

Q. And if this \$2,000 check was presented at your window and the cash was drawn for it wouldn't your records show that that was the way it had been done? 10

A. No; it would not.

Q. If the check had come to you through another bank wouldn't your records show the course it had followed to get to you?

A. We would not have any record at all only on the adding machine list.

Q. If it came through another bank and was charged by you to the American Equity Corporation would there be no record of your correspondence from that other bank which was forwarding it? 20

A. Excepting as I tell you, the adding machine list. We get practically all our checks from the Federal Reserve Bank in Philadelphia, and it is just an adding machine list.

Q. There is no other data?

A. There is no other data.

Q. Do you simply take the total of that typewritten list then and credit the Federal Reserve Bank with it and distribute it among your customers? 30

A. Yes.

Q. And that is the only record that is kept of those checks?

A. Yes, sir.

Q. Is that true as to the check for \$431 which was charged up to the account by you on June 24, 1927?

A. As far as I know.

Q. Now this \$2,000 that was charged to the American Equity Corporation account on June 21, 1927, was ac- 40

tually paid out by you before the board of directors had authorized the discounting of this note, wasn't it?

A. Yes, sir.

Q. And you have no record to show to whom that \$2,000 was paid or how it was paid?

A. No, sir.

Q. Is that also true as to the check for \$431, on June 10 24th?

A. Yes, sir.

Q. And the check for \$1,000 on July 7th?

A. Yes, sir.

Q. And the check for \$1,000 on July 19th?

A. Yes, sir.

The Court—What were the dates of the withdrawals?

Mr. Brace—The four withdrawals—\$2,000 on June 21st; \$431 on June 24th; \$1,000 on July 7th, and \$1,000 on July 19th. Those four checks totaled a credit.

Q. Do you insist on getting a receipt when vouchers are sent out?

A. We do not.

Q. Did you ever do it?

A. No, not at all, as far as I know.

Q. The vouchers are simply put in an envelope with the statement and mailed to the depositor?

A. Yes, sir.

Mr. Brace—I have nothing further.

Redirect examination by Mr. Herbert W. Backes.

Q. Mr. Wikoff, I show you minutes of the executive committee of the board of directors of the Hightstown Trust Company, in which there is the statement "Bills purchased were examined by the committee and discussed in detail and it was voted that the purchase of bills 576 to 735 inclusive be approved." Is that the record of the executive committee meeting?

A. It is.

Mr. Herbert W. Backes—I offer that in evidence.

(Marked *Exhibit P-10*.)

Q. I also show you the minutes of the regular meeting of the board of directors of the Hightstown Trust Company of December 11, 1925, signed by C. Stanley Stultz as secretary, and ask you if that is a copy of the minutes of that date? 10

A. Yes, sir.

Q. And there appears thereon the following: "Application of the American Equity Corporation, Trenton, N. J., for a line of five thousand was also approved by the committee."

The Court—What date is that?

Mr. Herbert W. Backes—December 11, 1925.

Q. That appears there, does it not?

A. Yes, sir; it does. 20

Mr. Herbert W. Backes—I offer those minutes in evidence.

(Marked *Exhibit P-11*.)

Q. What was meant by a line of five thousand being extended to the American Equity Corporation?

A. That they were extended a line of credit of five thousand dollars at that time.

Q. Do you mean that they could discount notes up to the extent of five thousand dollars without the approval of the board? 30

A. Yes, sir.

Q. It was passed by the officers?

A. Yes, sir.

Q. And at the time this note in dispute was open for discount was the line five thousand dollars?

A. No; the line had been increased to ten thousand dollars at that time.

Q. Have you any record to show the increasing of their line of credit to ten thousand dollars? 40

A. Not a thing with us. I do not recall that we have it.

Q. But their line at the time was ten thousand dollars?

A. No, it was not quite ten—yes, their line at that time was but they did not have it.

Q. At the time this note was presented had that line of credit been exhausted?

10 A. No.

Q. And did the discount of the \$4,500 note exceed their line of credit?

A. No, it did not.

Recross-examination by Mr. Brace.

Q. The amount of this \$4,500 loan did not exhaust the ten thousand dollar line of credit then?

A. It did not.

Q. How far did it go in consuming it?

20 A. I think it was ninety-five hundred.

Q. Then there was a previous note for \$5,000.

A. Yes, sir.

By Mr. Herbert W. Backes.

Q. I show you a copy of a letter addressed to J. S. Teunan & Company dated June 21, 1927. Was the original of that mailed by you to Mr. Teunan?

A. Yes, sir.

Q. At his request?

A. Yes, sir.

30 Q. Why was it mailed?

A. At his request.

Q. What does that letter disclose?

The Court—It speaks for itself I suppose.

Mr. Apgar—I will see whether we want to object to it or not. (After examining paper.) It seems to me that letter is on June 21st and it is admitted to be prior to the time this note was discounted and I cannot see its relevancy and I object to it. It has no reference to this note.

Mr. Herbert W. Backes—It is a letter showing the condition of the account of the American Equity Corporation.

The Court—Prior to this transaction.

Mr. Herbert W. Backes—It was just mailed prior to the transaction.

The Court—I do not see its relevancy.

Mr. Herbert W. Backes—It may not be relevant but I think it might be helpful to show what the situation was. That is all. 10

Now, your Honor, I have a number of other witnesses who will go into the phase of the signatures of these various parties. I realize the fact that perhaps I have gone beyond the necessary proof in my main case, but I did so because of the defenses that Mr. Brace had raised in the hope of facilitating this.

The Court—I take it you have established a 20 *prima facie* case.

Mr. Herbert W. Backes—Yes, I have gone beyond that with Mr. Wikoff. I merely make the statement to show that we want to use these witnesses if necessary in rebuttal; and we will rest our case.

Mr. Apgar—Then, your Honor, I move for a nonsuit. My grounds are as follows: First, the note which has been offered in evidence, admitting, for the sake of this argument of course that 30 it is properly proven, there is no question of its having any forged signature because there is no proof it has occurred as far as that is concerned—Now that money, \$4,431, was put to the credit of the American Equity Corporation—they have no right in the bank to pay that out unless if it was by properly signed vouchers or checks signed by the proper officers of this corporation—they have offered no proof whatever as to the checks

that drew that \$4,431, they have not given us any evidence whatever to show that at any time upon a legitimate check drawn by this corporation has there been this money paid out, and if so they have got the money in the bank and it cancels the note, and that is all there is to it. I move for a nonsuit on that ground.

10

(After argument.)

The Court—I will hold the motion and hear the balance of the case, Mr. Apgar.

Harry D. Gordon, one of the defendants, sworn.

Direct examination by Mr. Apgar.

Q. Mr. Gordon, where do you reside?

A. Colonial Lakeland, Trenton, New Jersey.

Q. How long have you lived in this vicinity?

A. Two years and a half, about.

20

Q. And where prior to that?

A. In Hightstown.

Q. How long there?

A. I think around seven years.

Q. Altogether in Hightstown and Trenton then close onto ten years?

A. Yes, sir.

Q. Are you an officer of the American Equity Corporation?

A. Not at the present time, no sir.

30

Q. Were you, prior to August, 1927?

A. Yes, sir.

Q. What office did you hold?

A. Vice-president.

Q. The offices of the company were where?

A. 203 East State Street.

Q. And you had another at that time in Wilkes-Barre, Pennsylvania?

A. Yes, sir.

Q. Who was in charge most of the time?

40

A. Mr. Buchman.

Q. You gave attention to the office also, did you not?

A. Yes, sir.

Q. At the time that the account was opened down in the Hightstown Bank, in 1923, you were then one of the officers of the American Equity Corporation, the defendant?

A. Yes, sir.

10

A. And at that time was there notice given to the bank as to what signatures were required upon the checks and notes and so forth of the corporation?

A. Yes, sir.

Q. Now during all the time that you were an officer how many signatures were there required to a check or a note or a draft that went through either of the banks in which you kept a deposit?

A. There were two signatures required on checks and three on the notes.

20

Q. Whose were the two signatures that were required?

A. Well, two of any of the three officers.

Q. Was there one that must be on there and just one of the others or was it any of the two out of the three?

A. Any of the two out of the three.

Q. Then you did not require the president and treasurer or president and vice-president, but if it was the president or vice-president or the vice-president and treasurer it would be all right, would it not?

A. Yes, sir.

30

Q. When did Mr. Fraser have first connection with the company do you recall?

A. No, I do not. I think it was in 1923 though, or 1924.

Q. I have here *Exhibit P-4*, which is dated September 27, 1923, and was a notice to the Hightstown Trust Company that Mr. Fraser's signature would be required. Is that about the time when that notice was given, that he first came there?

40

A. Yes, I would say so.

Q. After that time was there any change in the requirement that there must be two of the three officers' signature to checks?

A. That was always the rule.

Q. Checks that were drawn were always signed by two, were they not?

10 A. Yes, sir.

Q. You heard Mr. Wikoff say that that was the understanding with the bank at that time?

A. Yes, sir.

Q. And that was followed out in usage by you folks, was it not?

A. Yes, sir.

Q. Did you ever authorize any check to be signed by any of the officers alone?

A. No, sir.

20 Mr. Apgar—What are those four entries?

The Court—June 21st, \$2,000; June 24th, \$431; July 7th, \$1,000; July 19th, \$1,000.

Q. Now, Mr. Gordon, there has been submitted here and offered in evidence a statement of the Hightstown Trust Company showing all checks that were drawn and all credits or deposits that were made by the American Equity Corporation with it and there is a notation here on a genuine statement, so stated, of the American Equity Corporation that on the twenty-first day of June, 1927,
30 a check for \$2,000 was credited up to you, which is found on *Exhibit P-2*. Now in what is known as the mutilated certificate of account sheet, and which was in the possession of your auditor, there seems to be on June 21, 1927, as I will show you, something erased.

A. Yes. ?

Q. Now that check of \$2,000, which we see here on the other statement, did you on or about that date sign any check for that amount of money upon the funds that you had in the bank, for \$2,000?

40

Mr. Herbert W. Backes—Objected to as not being relevant to this particular issue, in the first place; and, in the second place, it is not proper evidence. The production of the checks themselves would be the only possible evidence that could be made of this if it were at all relevant. Whether or not he signed checks or whether or not checks were signed, is certainly not relevant to the issue here that is brought for the recovery of moneys due on a protested note, no matter what took place afterward. 10

(After argument.)

The Court—I suppose the difficulty is that the checks are not producable by either side.

(After further discussion.)

The Court—I will overrule the objection.

Mr. Herbert W. Backes—We pray an exception. 20

The Court—Certainly.

(Last question read.)

A. No sir; I did not.

Q. Now there is another check, on the twenty-fourth day of June, for \$431, which appears on this *Exhibit P-2* and in the statement that the Hightstown Trust Company has, and as we look at *Exhibit P-1*, the mutilated one, we find there is an erasure concerning it. We cannot read what it is. Was there on or about June 24, 1927, a check for \$431 signed by you? 30

Mr. Herbert W. Backes—Objected to on the same ground, with the additional situation here that the more I see this matter, your Honor, any bank and every bank would be put in this very position that we are put in here at the present time, that once we send away our vouchers, which it is our duty to do under our contract with our customer we have no proof in any way and we would be put in the position that any

bank would be put in, of a witness coming into court and testifying that he did not sign those checks, and our hands are tied, because we could not possibly get any proof, nor could any man get any proof. We have followed the usual course of banking procedure.

10 The Court—The objection is overruled and an exception noted.

Q. Now you may answer that question.

A. No sir, I did not.

Q. We again find that on July 7th, a check for \$1,000 was charged up to the account of the American Equity Corporation, as appears by P-2, when on P-1 that particular charge of \$1,000 on July 7th does not seem to be there, and there appears to be an erasure and we cannot tell what it was; presumably it was the \$1,000. Did you on or about that date, July 7, 1927, sign any check
20 of the American Equity Corporation for \$1,000?

Mr. Herbert W. Backes—Objected to.

The Court—The same ruling.

A. No, sir.

Q. On July 19, 1927, on the statement P-2, which the Hightstown Trust Company claims is correct, there is a charge of \$1,000 against the account of the American Equity Corporation; and, on looking at P-1, the mutilated one, we find in the third column a point where on P-2 the \$1,000 is charged, we likewise find an erasure,
30 which we cannot tell what it was but presumably it was that. Did you on or about that date, July 19, 1927, sign any check for \$1,000 on that account there?

Mr. Herbert W. Backes—Same objection.

The Court—Same ruling and an exception noted.

A. No, sir.

Q. Among your duties as the vice-president of the company and jointly with any other of the officers who

signed checks on the account of the corporation in the different banks, did you ever go over the vouchers?

A. Yes.

Q. At the time when the vouchers for June and July were gone over by you were there any vouchers therein representing these different payments on the dates above mentioned, of \$1,000, \$431, \$2,000 and \$1,000?

A. There was not.

10

Q. No vouchers at all that you had received to that effect?

A. No, sir.

Q. Now, Mr. Gordon, I show you *Exhibit P-7* which is a note of the American Equity Corporation purporting to be signed by Mr. Buchman and Mr. Fraser, and on the back is endorsed Vernon L. Buchman, H. D. Gordon, J. A. Fraser, then American Equity Corporation, Vernon L. Buchman, president; J. A. Fraser, treasurer. I ask you to look at that name purporting to be the name of H. D. Gordon and ask you to tell me whether or not that is your signature thereon?

20

A. No sir; it is not.

Q. Did you ever sign your name there where it appears?

A. No, sir.

Mr. Apgar—Cross-examine.

Cross-examination by Mr. Herbert W. Backes.

Q. You say this is not your signature, Mr. Gordon?

30

A. No, sir.

Q. I show you a card, marked *Exhibit P-2*, and ask you if that is your signature?

A. Yes, sir; it is.

Q. I show you a card marked *Exhibit P-1* and ask you if that is your signature?

A. Yes, sir.

Q. And I show you a card marked *Exhibit P-3* and ask you if that is your signature?

A. Yes, sir.

40

Q. Now, can you show me how the signature on that note is different from the signatures that appear on those cards?

Mr. Apgar—If your Honor please, I do not know as Mr. Gordon qualifies as an expert. I did not qualify him as such, and now your are going into expert testimony.

10 Mr. Herbert W. Backes—I would think that a man would know his own signature. He says this is not his signature, and he would be better than any expert.

The Court—He may answer if he can.

A. It looks like my signature, but the "D" is different from my D's.

Q. You say that the capital "D" in this signature here is different from this "D" here?

A. Yes, sir.

20 Q. Will you write your name please, Mr. Gordon.

A. (Witness complies.)

Mr. Apgar—Now there are different angles at which a witness can sit, or different positions that he can have, and there are different tables at which he may sit, and it seems to me if they want a sample of his handwriting the witness ought to be placed at a table or something as he usually writes.

30 The Court—He may go over to the table there and sign his name.

Mr. Apgar—I do not object to that. But I do not want him to write on that railing

(Witness goes to a table and writes on paper.)

Mr. Apgar—Now, do you propose to use that? If counsel wants to use that as an exhibit—Do you?—I might have an objection to it but since we are before the court without a jury I would only say—

40 The Court—I am not going to resolve myself into a handwriting expert.

Mr. Apgar—The court will notice there is a difference of a year and eight months in these signatures.

Mr. Herbert W. Backes—I offer this signature in evidence.

Mr. Apgar—I do not object but your Honor will notice that one is in January, 1929, while that signature purports to have been made in June 10 of 1927.

(Paper referred to is marked *Exhibit P-12.*)

Q. When was the first time you saw *Exhibit P-1* for identification?

A. I do not remember just the date. It was in June some time.

Q. Who showed it to you?

A. I do not know as anyone showed it to me. I think I picked it up and looked at it myself.

Q. In your office?

20

A. Yes, sir.

Q. Were there vouchers with it at the time?

A. Yes, sir.

Q. Did you check up those vouchers with the statement?

A. I am not positive that I did.

Q. Was it necessary for you to check your vouchers with the statement?

A. At times, and at times not.

Q. Had you received other statements from the bank? 30

A. Yes, sir.

Q. And did you find statements that had erasures on them?

A. Yes, sir.

Q. Did you notice that right along?

A. Yes, sir.

Q. All your statements?

A. I could not say all of them but several statements came through with erasures on.

Q. But did you find statements with two or three or four erasures on them?

A. I could not say, but I know I have noticed erasures on them.

Q. Did you ever question the erasures?

A. No, I don't know as I did.

Q. Did you bank at the bank yourself?

10 A. Yes, sir.

Q. Did you find your statements with erasures on them?

A. I do not think so; no, sir. I do not remember it.

Q. And when these statements of the American Equity Corporation were examined by you and you found these erasures on them you thought nothing of it?

A. No, sir.

Q. Did you ever attempt to discover what appeared under the erasures?

20 A. Yes, I did try to.

Q. When did you do that?

A. When I went over it.

Q. Did you ever try to check up the balance that appeared on your account with what would be brought forward on the following statement?

A. Yes, I have.

30 Q. When you found the statement that followed the one for June, 1927, did you notice any variation between the balance that appeared on that June statement and that which appeared as being the amount carried over on that July statement?

A. No, sir.

Q. You did not examine that?

A. No.

Q. Do you know who made these erasures?

A. No, sir, I do not.

By the Court.

40 Q. Well, you said, Mr. Gordon, that on examining this that you endeavored to find out what had been erased?

A. Yes, I have looked. I could not say particularly on that particular one but I have looked and tried to see what has been erased from them.

Q. Why was your interest aroused?

A. To see why it was erased.

Q. Did you take it up with the bank to find out why it had been erased?

A. No. It was curiosity, I suppose; I do not know 10 what else.

By Mr. Herbert W. Backes.

Q. Mr. Gordon, did you take this statement down to the bank and make some comparison with the books of the bank?

A. No, sir.

Q. You are sure about that?

A. Yes, sir.

Q. Did you accompany Mr. Buchman to the bank with 20 this statement?

A. I don't know.

Q. To make comparisons?

A. I am not positive about that.

Q. Do you remember this statement being around at that time?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Would you say whether or not it was shown? 30

A. I couldn't say; no, sir.

Q. You went to the bank, however, with Mr. Buchman?

A. Yes, sir.

Q. When was that?

A. It was right after we found out that the account was not straight down there. I could not say what date it was.

Q. Was that the first time that you had any knowledge of the existence of this note? 40

A. Yes, sir.

Q. When you went to the bank?

A. Yes, sir.

Q. You did not know anything about it before?

A. No, sir.

Q. Wasn't that the purpose of your going down there when you knew of the note?

10 A. Yes; that was the purpose.

The Court—Then you did know about it before you went to the bank?

The Witness—Yes; we had called the bank I think.

Q. In your business connections with the American Equity Corporation—what was your office with it?

A. Vice-president.

Q. Did you ever sign any paper in blank?

A. No, sir.

20 Q. Did you ever sign any checks in blank?

A. No, sir.

Q. Did you ever sign any notes in blank?

A. No, sir.

Q. Never?

A. No, sir.

Q. The checks and the notes were entirely filled out when you put your signature to them?

A. I never signed them in blank. I wanted to know what a check was for before I signed it.

30 Q. Were the amounts filled in?

A. Yes, sir.

Q. Were the amounts of notes filled in when your signatures were put to them?

A. Yes, sir.

Q. That was always the case and always the practice?

A. Yes, sir.

Q. Going back to these erasures that appeared on the various statements, can you tell us when you first noticed any erasures on statements?

40

A. No, sir, I could not.

Q. And you never went to the bank yourself to make any inquiry or to check up any bank statement?

A. No, sir.

Mr. Herbert W. Backes—That is all.

Redirect examination by Mr. Apgar.

Q. Mr. Teunan was your certified accountant, and 10 didn't he each month audit your accounts?

A. Yes, sir.

Q. Was it when he came to audit that you particularly had your attention called to this erasure and you then in some way endeavored to ascertain what were those things that were taken off, is that right?

A. Yes, sir.

Q. I think you have said in answer to Mr. Backes that you never knew anything about this \$4,500 note until, inquiring about the erasures, you found the note had 20 been placed to your credit?

A. Yes, sir.

Recross-examination by Mr. Herbert W. Backes.

Q. Didn't you receive, before you made this discovery, three or four statements from the bank with the vouchers attached?

A. We received the vouchers each month.

Q. Yes, but hadn't you actually received three or four 30 of them before discovery of this?

A. No, sir.

Q. You had not?

A. No, sir.

The Court—When did you go to the bank, Mr. Gordon?

The Witness—It was, I think, the last of June, 1927. I do not know just what the date was.

Q. Now, referring again to the maturity of that note, the note dated on June 21st, it being a three-month note,

would you say now that it was the latter part of June, which would only give you eight or nine days left in that month, that you went to the bank, or was it later on in the year?

A. I am not positive. I would think it was around the last of June or probably the first of July; right after we found it out.

10

By the Court.

Q. How did you find it out?

A. Through our auditor we found it out.

Q. When was that?

A. I think it was the last of June.

Q. Well then, if you went there the last of June, the two checks for \$1,000 each, dated July 7th and July 19th, had not gone through yet, had they?

A. I don't know. I am not positive when we went to
20 the Hightstown Bank. We went there, I know, as soon as we found out that the account was not right.

Q. What did you discover when you went there? Did you discover that the American Equity Corporation had been credited with \$4,431?

A. Yes, sir.

Q. And did you discover that any of that had gone out of the account?

A. I think it was all drawn out at that time.

Q. Then it must have been after July 19th that you
30 went there, was it not?

A. Yes, I guess it was. I am not positive when it was. We went down as soon as we discovered that the accounts were not right.

Q. Do you know that all of it had been drawn out?

A. I do, yes.

Q. Now, between June 24th and July 19th the American Equity Corporation had received several statements from the bank, had it not?

A. Not several. I imagine they received one on July
40 1st or June 1st.

Mr. Herbert W. Backes—Well, now, did you examine those statements?

The Witness—I think I did. I am not positive.

Q. When you examined the one of July 1st you discovered a credit of \$4,431 didn't you?

A. Yes, sir.

Q. Then what did you do? Did you think it came out of the air? 10

A. I did not discover it; no, sir; it was not on there.

Q. You just said you discovered it.

A. No, sir; I did not discover it.

By Mr. Herbert W. Backes.

Q. You do not know when you first discovered that there was forty-four hundred dollars to the credit of the American Equity Corporation, do you?

A. No, sir, I do not. 20

By Mr. Apgar.

Q. Now, Mr. Gordon, was it before or after the audit that Mr. Teunan made when he called for the supply of what was erased that you went to Hightstown?

A. It was after.

Q. But you cannot recall just when it was?

A. No; I do not remember.

Q. After you went down there was that the first thing, when you got to the bank, that you discovered the note and these charges? 30

A. That was the first, yes.

Q. Whatever date that was you cannot tell us positively?

A. No.

By Mr. Herbert W. Backes.

Q. That cannot be so. Did your Mr. Teunan disclose that by his audit?

A. No, sir. 40

Q. You knew nothing about it then before you went to the bank?

A. No, sir.

Q. It was flashed on you when you appeared in the bank for the first time?

A. I called the Hightstown Trust Company on the phone.

10 Q. Just immediately before you went down there?

A. Yes, sir.

Q. That was the first you heard of it?

A. Yes, sir.

Q. So it had not been disclosed by any audit made by your accountant?

A. No, sir.

Q. What was it that you heard and what was it that was disclosed that made you call the Hightstown Trust Company about this note?

20 A. Why, in the auditor checking up the notes we found it.

Q. That there was a forty-four hundred and some odd dollars credit to your account, is that right?

A. Yes, sir.

Q. Then you did hear about it before you had telephoned, when it was disclosed through the audit of your accountant?

A. Yes, sir.

30 Q. Wasn't the question clear before when I asked that and you said the audit did not disclose it?

A. You asked me if I had noticed it.

Q. Hadn't it been brought to your attention by your auditor, by your accountant?

A. Yes.

Q. That this situation existed?

A. Yes, sir.

Q. Now when was this?

A. I do not remember when it was.

40 Q. How long was it before you went down to the bank?

A. I think it was the same day; I am not positive.

Q. How long after you discovered it did you make your telephone call to the bank?

A. Right away, I think.

By Mr. Apgar.

Q. Was Mr. Fraser present at the time you discovered it? 10

A. No, sir.

Q. How long had he been gone?

A. That I could not say.

Q. Was it the fact that he had not been at the office for a day or two or three which caused inquiry into this account?

A. Yes, sir.

Q. And that was done when Mr. Teunan was there?

A. Yes, it was done when he was there.

Q. Had the fact of his disappearance anything to do with your desire to know from the bank about these accounts? 20

A. Yes, sir.

By Mr. Herbert W. Backes.

Q. I show you a letter dated August 15, 1927, addressed to Mr. H. G. Wikoff, of the Hightstown Trust Company, and which says, "This is to notify you that you are not to honor any checks, notes, drafts or other negotiable paper bearing the signature of John A. Fraser as treasurer and secretary of the American Equity Corporation, or any paper issued by the American Equity Corporation bearing his signature. Very truly yours. Vernon L. Buchman, president." And I call your attention to the fact that was dated on August 15, 1927, and ask you whether you had any knowledge of the sending of such a letter to the bank? 30

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Now does that refresh your memory then that round or about August 15, 1927, was the time your discovery of the note situation was first made?

A. No; I could not say it was.

Q. You have said that it was in the latter part of June, to the best of your recollection, that you went to the bank,
10 and now will you say that between the latter part of June and the fifteenth of August was the first time that the American Equity Corporation sent any notice to the Hightstown Trust Company not to honor the signature of Fraser?

A. To the best of my knowledge, yes.

Q. In other words, you had knowledge of this situation from the early part of July or the latter part of June; that is, you, personally, had that knowledge, and you failed either yourself as vice-president or through the
20 president of the corporation, or the corporation, in any way, to notify the bank not to honor the signature of Fraser. Is that correct?

Mr. Apgar—I object to that question.

The Court—He said there was no other notice.

Mr. Apgar—The way the question is framed it is endeavoring to make a charge of negligence when he has not stated positively that between the latter part of June and August fifteenth no other notice had been given.

30 The Court—He said in the first part of the cross-examination that it was the latter part of June when he went to the bank, and he changed it afterward and said he did not know when it was.

By the Court.

Q. When did you determine that this was not your signature?

A. When I went to the bank to look at the note.

40

Q. Well, you were not positive then, were you?

A. Yes, sir.

By Mr. Apgar.

Q. You had a conversation with Mr. Mount down there, didn't you when you went down to the bank and saw this note for the first time?

A. Mr. Wikoff.

10

Q. You and Mr. Buchman were both there?

A. Yes, sir.

Q. Mr. Buchman said it was his signature, did he not?

A. Yes, sir.

Q. Did you say you did not know whether it was your signature or not?

A. No, sir.

Q. What did you say?

A. I said it was not my signature.

(At 12:30 o'clock in the afternoon a recess was taken until 1:45 o'clock in the afternoon.)

(After recess.)

Vernon L. Buchman, sworn for the defendants.

Direct examination by Mr. Apgar.

Q. What is your occupation?

A. President of the American Equity Corporation, a small loan company.

Q. You reside where?

A. 411 Sanhican Drive, Trenton.

30

Q. How long have you been president of the corporation, of the American Equity Corporation?

A. Five and a half years.

Q. Were you an officer of the American Equity Corporation on January 15, 1923?

A. Yes, I was.

Q. Who was president at that time?

A. Mr. Kershaw at that time.

Q. Was Mr. Fraser at one time an officer of your company?

40

A. Yes, later.

Q. When? Can you tell us by looking at *Exhibit P-5*?

A. If I remember, I think Mr. Fraser came with us in I think, the latter part of 1923 or the first part of 1924.

Q. Did you open an account with the Hightstown Trust Company of Hightstown?

10 A. Yes, we did.

Q. I show you *Exhibit P-3*, which states, "In the future honor checks from this corporation signed by any two of the following signatures." That was deposited with the bank?

A. Yes, sir.

Q. At any time from the date of that letter down until the present time, or until August of 1927, were any checks or notes of the American Equity Corporation ever passed through the bank without having at least two signatures thereon?

20

A. No.

Q. You have heard the statement of Mr. Wikoff that they construed this letter of September 27, 1923, *Exhibit P-4*, as requiring two signatures one of whom might be Mr. Fraser. Is that right?

A. That is right.

Q. And in accordance therewith the checks were drawn in that way, the vouchers you have had returned were signed by two?

30 A. They were always signed by any two of the three officers.

Q. When did you first become aware of the fact that this note for \$4,500, marked *Exhibit P-7*, had been discounted at the Hightstown Trust Company?

A. August 15, 1927.

Q. What was the occasion of your then ascertaining it?

A. Our accountant, Mr. Teunan, was going over our books at that time, and we went over to the Hanover

Trust Company, that being the closest of our banks, to verify the notes in making a complete check-up.

Q. A note that had apparently been discounted by the Hanover Trust Company here in Trenton—

Mr. Herbert W. Backes—Objected to as immaterial.

The Court—I do not see how it is material.

Q. At the time that your accountant was checking up, 10 what was there if anything that called your attention to the fact that there was something probably wrong with the account as you had it upon the statement that you found in your office, of the Hightsown Trust Company, and which has been offered in evidence and marked P-2, and to which I call your attention?

A. Well, we did not know there was anything wrong until we found this forgery at the Hanover Trust Company. Then we immediately called up the Hightstown Trust Company and found there was a note there of 20 \$4,500 in excess of the amount our books showed that we owed them. That is how we found out about it.

Q. Can you tell me about whether that was on August 15th, the date of that letter that has been offered in evidence?

A. Yes; I think that is the exact date.

Q. Now, prior to that, had your attention been called to *Exhibit P-1*?

A. No; I did not know there was anything wrong up until that time. 30

Q. Was that about the first time that you saw that *Exhibit P-1* which has the erasures thereon?

A. No. I might have seen that *Exhibit P-1* a couple of days prior to that time, because on August 8th I was in Wilkes-Barre, Pennsylvania, and I did not return to the office until the following Friday, and it was likely that I saw that statement after I returned from Wilkes-Barre.

Q. And that was a few days before the fifteenth?

A. Yes, sir.

Q. From anything that you learned from your accountant or otherwise did you then have this presented to you?

A. Well, immediately after we telephoned the Hightstown Trust Company and found this \$4,500 note against the company we naturally scrutinized the statements and
10 our particular attention was then drawn to these erasures.

Q. How soon after that was it that you went down to Hightstown?

A. I am not sure whether it was that same day, the fifteenth, but I do know that we wrote them a letter immediately upon finding out that there was a note for \$4,500, not to honor any more checks. Now whether I went to Hightstown that afternoon or the next morning I am not certain. It was either one of the two.

Mr. Apgar—Mr. Backes, didn't you offer that
20 letter? I know you read it.

Mr. Herbert W. Backes—I do not know as I did, but I have no objection to it.

The Court—I thought it had been offered.

(Letter referred to is marked *Exhibit P-13*.)

Q. Is this the letter, *Exhibit P-13*, that you wrote?

A. Yes, it is.

Q. When you went to Hightstown who went with you?

A. Mr. Gordon.

30 Q. Anybody else?

A. No, sir.

Q. Whom did you see there?

A. I saw Mr. Wikoff, and I also saw Mr. Mount.

Q. Mr. Wikoff was the witness this morning?

A. Yes. I went into his private office in the front and sat down with Mr. Wikoff and Mr. Gordon and myself.

Q. At that time was this note, *Exhibit P-7*, brought out?

A. Yes, sir.

Q. Was it examined by both you and Mr. Gordon?

A. Yes, sir.

Q. What was said by either as to his own signature?

A. I said that is my signature.

Q. What did Mr. Gordon say as to his signature?

A. He said that it was not his signature.

Q. Was there at that time anything said about this 10
Exhibit P-1, the mutilated statement?

A. As I recall it, Mr. Wikoff went out and got his ledger sheet and we compared it.

Q. At that time did you find what the difference was between this mutilated statement and what was said to be the correct statement?

A. Yes, I think we did. We asked Mr. Wikoff at that time to get us the correct statement, which he did.

Mr. Apgar—I think you offered these.

Q. Can you tell me from looking at this *Exhibit P-2* 20
for identification whether that was or was not the duplicate that they gave?

A. I am not sure that Mr. Wikoff gave it to me at that particular time, but we either received it at that particular time or within the next day or so.

Q. Now, at that conversation down there, was it found out by you or by Mr. Gordon that a correct statement, such as P-2 purports to be, would supply on the mutilated one, P-1, both the credit of this note and the debit of the four checks in question, aggregating \$4,431? 30

A. Yes, sir.

Q. At that time did you say anything about those four checks of \$2,000, \$431, \$1,000 and \$1,000, as to whether you folks had signed those checks and drawn them on the bank or not?

A. No. I think that I remarked at the time that there was forgery in evidence.

Q. But you did not specify as to what or anything of that kind, do you recall?

A. No, I do not know that I did.

Q. Now, the note with your endorsement thereon and with your signature as president, is your signature, is it not?

A. Yes, sir.

Q. Can you tell us under what circumstances you put your name on that note?

- 10 A. Yes. I was in Wilkes-Barre, at our other office, and we were doing quite a lot of work up there, and Mr. Fraser sent me a memorandum on a regular memorandum sheet that we used with any other office correspondence, together with a note with his signature on it. He sent it to Wilkes-Barre, and in this memorandum he said "We have a note for \$5,000 due at the Hightstown Trust Company, and what do you say if we pay off \$500 of it and renew it for \$4,500?" Not having the records, and borrowing money from three or four banks at the time,
- 20 I was not positive whether it was five thousand due there or at one of the other banks; and, looking the note over and seeing it was properly made out, although Mr. Gordon's signature was not on the note at that time, I signed the note and sent it back, with the understanding it was the renewal of a five thousand dollar note and we were paying off five hundred dollars, the usual amount we paid off on notes of that size, never less than ten per cent.

Q. You mailed that back to Mr. Fraser?

A. Yes.

30

By the Court.

Q. Did you endorse individually or as president at that time? Did you endorse individually and as president too?

A. Yes. I signed all three at that particular time.

- Q. Now, in this corrected statement, *Exhibit P-2*, there appears on June 21, 1927, a charge against you under the title, "Checks in detail," \$2,000. Did you at that time or about that time sign any check for \$2,000 on the
- 40 Hightstown Trust Company?

Mr. Herbert W. Backes—Objected to.

The Court—The same ruling and an exception allowed. Your objection will go to this whole line, Mr. Backes.

A. No, sir.

Q. Did you on or about June 24, 1927, sign a check as an officer of the American Equity Corporation upon the Hightstown Trust Company for \$431, payable to 10 anybody?

A. No, I did not.

Q. Did you on or about July 7, 1927, sign a check as an officer of the American Equity Corporation on the Hightstown Trust Company for \$1,000?

A. I did not.

Q. Did you on July 19, 1927, sign a check as an officer of the American Equity Corporation on the Hightstown Trust Company for \$1,000?

A. I did not.

20

Mr. Apgar—It seems to me there is a question I want to ask but it has escaped my mind.

The Court—You may do that later if you wish.

Mr. Apgar—You may cross-examine.

Cross-examination by Mr. Herbert W. Backes.

Q. Mr. Buchman, I call your attention to *Exhibit P-8*, which is the ledger sheet of the Hightstown Trust Company, and particularly to the item of June 22d, of \$4,431, which shows the proceeds of the discount, as is also recorded on *Exhibit P-9*, which was submitted to you, calling your attention particularly to the fact that the proceeds of that note was discounted on June 22d, as to a check of \$2,000, dated on June 21, 1927, and which shows on this ledger sheet here as being charged against your account for \$2,000. Will you say whether or not you signed that check? 30

A. No, I did not.

40

Q. You did not sign it?

A. No.

Q. Do you notice the fact that that check was charged against your account prior to the discount of the note?

A. I did not know anything about the check being charged to the account.

Q. Do you notice here that the \$2,000 check which
10 has been referred to a number of times in this testimony was charged to your account prior to the discount of the note? Do you also notice from this statement that your account showed on the date of the charging of the \$2,000 note a balance of—

Mr. Herbert W. Backes—May I check that up?

The Court—Yes.

Mr. Apgar—I will ask two or three questions I have forgotten.

20 By Mr. Apgar.

Q. Were there ever returned to you as an officer of the American Equity Corporation any checks that will correspond with these amounts of \$4,431, \$2,000, \$1,000? Have you in your returned vouchers anything to show when these checks were drawn as against your account?

A. No.

Q. And have you all of the checks for which there are stubs in your check book?

30 A. I have every check accounted for except four checks from the back of the check book. They are the only four checks. The checks in the check book follow in numerical order except three checks that were taken from the back of the check book, used as a duplicate check book, and those checks are accounted for.

Q. Four blank checks?

A. Yes; they are blank checks but they happen to be numbered checks.

By the Court,

Q. The check book was numbered consecutively?

A. Yes, and some have checks that you write the number on, but in this book all the checks are numbered all the way through. There are no checks there having a serial number on them. These checks are numbered and (indicating) these are the four checks here that are not accounted for, these three and this one here.

10

Q. And the stubs are numbered in that check book?

A. 2026, 2027, 2028 and 2029.

Q. And insofar as those checks are concerned, being filled out with ink and coming back as cancelled vouchers, you have never seen them?

A. I have not.

Q. And those four amounts that appear upon this corrected statement correspond in number, so far as the checks are concerned, with what is on that corrected sheet?

20

A. Yes, sir.

Q. Did you ever sign any checks in blank?

A. No, sir.

Q. Did you ever sign any notes in blank?

A. No, sir.

Mr. Apgar—Now, I think that is all.

By Mr. Herbert W. Backes.

Q. Now, I refer to the item of June 20, \$2,069.42, and ask you whether you are aware that when that check of 30 \$2,000 on June 21st was drawn against your account, that you had a balance of that amount in the bank, more than enough to cover the amount of the check?

A. Will you explain that again.

(Last question read.)

The Witness—No, I could not say that either, because I did not know at that time what our exact balance was.

Q. This statement here shows it?

40

A. Yes; that shows it.

Q. How many branch offices have you got?

A. We have three offices altogether.

Q. How much time did you spend around June 21, 1927, at the Trenton office?

A. At that particular time I was spending a great deal of my time in Wilkes-Barre.

10 Q. How much of your time were you spending here?

A. That is a hard question to answer, exactly, because I was going back and forth.

The Court—To the best of your recollection.

Q. What portion of the week?

The Court—One-third or one-quarter or one-half?

Mr. Apgar—Or how many days per week?

The Court—Yes.

A. Well, I would say at that particular time about a
20 third of the time possibly for a two-months period.

Q. Now, as president of this company, did you personally pay any attention to your records, as far as bank balances were concerned and as far as your bank statements were concerned?

A. Yes, I did.

Q. Did you check your bank accounts?

A. No; I left that up to the accountant.

Q. Did you, personally, check any of your bank accounts?

30 A. No.

Q. How often did your accountant check the bank accounts?

A. Our accountant checked the accounts monthly.

Q. And it was true, from the early part of June until August 15th that your accountant checked once a month?

A. That was the custom, to check monthly. I cannot say the exact date they checked, but our practice has always been to have the accounts checked monthly.

Q. Was that always followed up?

A. It was not complete at that time.

Q. It included a checking of your bank account and bank balance?

A. Yes, sir.

Q. It included a checking of the vouchers with the check books?

A. Yes, sir.

Q. And it included a checking of your vouchers with 10 the statements from the bank?

A. Yes, sir.

Q. And that was done regularly by your auditor?

A. Yes, sir.

Q. Who was your auditor?

A. Mr. Teunan.

Q. And he had been for how long prior to June 21, 1927?

A. He had been the only accountant we had ever had. He came with us as an accountant I think in the latter 20 part of 1923.

Q. Where did he make these check-ups?

A. In our office.

Q. Did he submit a report to you monthly.

A. No; he did not submit a detailed report to us monthly.

Q. A verbal report?

A. If there was anything that he thought he should call to our attention he did; but our books were checked. We knew that they were O. K. 30

Q. Had you ever seen any statements from the Hightstown Trust Company?

A. Sure.

Q. Did you check those yourself?

A. No.

Q. Under what conditions did you come to see them?

A. I would see them come in the office.

Q. Did you examine them at all?

A. Not from the point of checking them. I might

pick them up to see what our bank balance was at the bank but I did not do any checking because that was done each month and I relied upon the accountant.

Q. Do you remember seeing P-1 for identification?

A. Yes; I have seen this before.

Q. Do you remember when you first saw that?

A. Not the exact day.

10 Q. Well, with reference to the month?

A. I saw that in August; approximately August thirteenth or fourteenth.

Q. That was the first time that you saw it?

A. That is the first time that I saw it.

Q. So you did not see the statement for June until around August thirteenth or fifteenth?

A. No; I do not know that I did.

Q. When you saw that was your attention called to the erasures that appear on it?

20 A. No, I do not think it was on the thirteenth or fourteenth my attention was called to the erasures on it, until we found out there was a forgery in the Hanover Trust Company, and at that time we naturally scrutinized our statements very carefully.

Q. By a casual examination of that doesn't it appear that erasures had been made on that statement?

A. That was not unusual at the time.

Q. Looking at it now?

A. Yes; there are erasures there.

30 Q. Had other statements been submitted by the Hightstown Trust Company, with erasures appearing on them?

A. Yes; I have seen them.

Q. How often did you see those?

A. I could not answer that.

Q. Did you have an account, yourself, at the Hightstown Trust Company?

A. I did at one time, yes.

Q. Did you ever receive statements from them?

A. Yes.

Q. Did you ever receive statements from them with erasures on them?

A. I cannot answer that.

Q. Did you ever discover any erasures on any statement that was submitted to you of your own private account?

A. No; I cannot answer that I did. I do not recall 10 whether it was or whether it wasn't.

Q. Well, do you recall that you ever saw any erasures on any statements of your own?

A. No. I just answered that I do not recall if there were any on my own personal statement.

Q. But if there had been your suspicion would have been aroused as to something improper, would it?

A. The chances are that it would.

Q. Now, you have accounts at other banks?

A. Yes, sir. 20

Q. And statements similar to the statement of the Hightstown Trust Company have been submitted to you?

A. Yes, sir.

Q. Did you find erasures on those statements?

A. Yes, I have. I can produce statements that have, maybe.

Q. Did you find those regularly appearing on the accounts?

A. Yes, I would say that I did.

Q. Well, what bank? 30

Mr. Apgar—It seems to me that that is a question that is hardly admissible. I object to it on the ground I do not think it is relevant or pertinent to the issue.

Mr. Herbert W. Backes—I withdraw the question.

Q. Do you know who made the ink notation on that statement?

A. No, I do not know who made that, but I assume that they were made by our accountant; I do not know. 40

Q. Do you notice the word "July" on the top of this statement in ink, July 1st, do you know who wrote that?

A. No, I do not.

Q. Do you know whether or not you ever received statements from the Hightstown Trust Company with ink interlineation of dates or otherwise?

A. I do not know.

10 Q. Do you remember ever seeing any?

A. I do not.

Q. Do you ever remember seeing any statements that appear except by their regular form of type?

A. I do not know that I do.

Q. Why was it that you did not discover these erasures on August thirteenth?

A. In the first place I was out of town, and we did not know that there was anything wrong until the accountant found it, and then we naturally scrutinized the
20 statements.

Q. That is your sole reason for it?

A. Yes, sir.

Q. There were other statements submitted to you during that time, is that so?

A. Yes, sir.

Q. Now, did you ever notice the fact that these statements show a final balance and that the statement for the following month carries on top the same amount as being brought forward?

30 A. Yes, sir.

Q. That is always so, isn't it?

A. Yes, sir.

Q. Did you notice any difference between the balance shown on the statement of June, to your company, with that of the statement of July, as to the balance that appeared on the June statement and the balance brought forward on the July statement?

A. I do not recall seeing that statement at the time.

Q. You do not remember seeing the July statement?

40

A. No.

Q. Do you know whether or not any erasures appeared on the July statement?

A. No, I did not at the time.

Q. Have you got your July statement here?

A. I guess it is there, isn't it?

Q. Perhaps it is.

A. It is P-1 for identification.

10

Q. Calling your attention to the fact that the balance on June 30, 1927, of \$2,678.23 appears in type, and the fact that the balance brought forward of June 30th, of the same amount, of \$2,678.23, the first letter of which appears in ink—had that ever been brought to your attention?

A. Not until we found out that there was a forgery.

Q. Then you noticed it for the first time?

A. Yes, sir.

Q. Now, you say that you went down to the Hights-
town bank with Mr. Gordon and you met Mr. Mount and
Mr. Wikoff and you went into Mr. Wikoff's private
office?

A. Yes, sir.

Q. And you had with you at that time the statement which is P-1 for identification and which has the erasures on it?

A. Yes, sir.

Q. You brought that with you, did you?

A. Yes, sir.

30

Q. Mr. Gordon saw it at that time?

A. Yes; he might have seen it before that time and he also saw it at that time.

Q. You are positive you had the statement with you, even though Mr. Gordon said that it was not there at the time of that meeting?

A. Well, I am not clear on that but I am reasonably sure that I did have the statement.

Q. And you checked that statement up with Mr. Wikoff and Mr. Mount?

40

A. I do not recall checking up the statement. The only thing that I do recall is that when Mr. Wikoff presented that note, I do recall that. I do not recall checking up the statement with him at that particular time.

Q. You said on your direct examination that your recollection was that he had brought in his ledger sheets and statements and that you then made comparison between that ledger sheet and this erased sheet which you had with you?

A. I think that is right, although it would not have been necessary to have had these bank statements at that particular time.

The Court—Not whether it was necessary or not. You are just asked for your best recollection as to what happened.

Q. Did you have your accountant with you?

A. No.

20 Q. You were quite aware of your situation without his assistance?

A. Yes, when they told us there was \$4,500 in notes charged against us, we knew that was not right, and, naturally, we knew there was something wrong.

Q. Now, you say that when you talked to Mr. Wikoff and Mr. Mount you said, "Yes, that is my signature." And Mr. Gordon said, that it was not his. Are you sure that was the statement Mr. Gordon made, or did Mr. Gordon say, "I do not think that is my signature?"

30 A. I do not know exactly what Mr. Gordon did say, because I knew I had signed the note.

Q. You said on your direct examination that Mr. Gordon said that it was not his signature. Now you say you do not recall what Mr. Gordon did say. Now, refresh your recollection. Don't you remember now that what Mr. Gordon said was, "I don't believe that is my signature."

A. I have heard Mr. Gordon say it was not his signature.

By the Court.

Q. No. You are asked for the conversation that took place at the bank on or about August fifteenth.

A. Well, as I recall, he said it was not his signature.

By Mr. Herbert W. Backes.

Q. You said a while ago you did not remember exactly what he did say. 10

A. I said as I recall; I am not just positive.

Q. Have you any recollection whatsoever of Mr. Gordon saying, "I don't believe that is my signature?"

A. I think that that is what he said, that it was not his signature.

Q. And do you recall saying to Mr. Gordon, "Whether it is your signature or not, Gordon, it is mine?"

A. I said it was my signature.

The Court—Listen to the question.

(Last question read.) 20

The Witness—Yes, I believe I did.

By the Court.

Q. Then there was apparently some doubt by Mr. Gordon as to whether or not it was his signature, wasn't there, if you made that statement?

A. Well, it might have been.

Q. I simply want to get exactly what happened.

A. Well, it might have been.

Q. I don't want "might." If you do not remember the 30 conversation, say so.

A. Well, I do not remember just exactly the words.

Q. No one can be expected to remember the exact words. Give us your best recollection of what the conversation was.

A. I do remember saying, "Whether or not that is your signature, it is mine." I do recall saying that.

Q. Now, doesn't that bring to your mind that there was question as to whether or not it was Mr. Gordon's signature? 40

A. Well, yes; my remarks would indicate that there was something there.

Q. Now, drawing your attention to that, does that remind you as to what the conversation was, as to whether he said, "It is not my signature," or "I do not think it is my signature," or whatever he did say?

A. I think he said that it was not his signature to
10 which I could have replied whether it was his or not it was mine.

My Mr. Herbert W. Backes.

Q. Mr. Buchman, do you remember whether any other conversation took place between you at that time?

The Court—Between who, Mr. Backes?

Mr. Herbert W. Backes—Between Mr. Buchman, Mr. Mount and Mr. Wikoff.

A. Well, Mr. Mount was not there. Any conversa-
20 tion that took place was between Mr. Wikoff, Mr. Gordon and myself.

Q. You say Mr. Mount was not there?

A. I recall that he brought in the note.

Q. Do you remember whether he said anything?

A. I do not think so.

Q. Do you remember any conversation that took place as to how the erasures appeared on the statement which you then had with you?

A. No; I cannot say that I do.

30 Q. Do you remember making the statement, "Mr. Fraser must have erased those figures?"

A. I might have made that statement; I do not recall.

Q. You have no recollection whatsoever?

A. No; I do not recall specifically saying that. It is probable that we discussed it but I do not recall making that remark.

Q. Well, do you know who erased the figures?

A. No.

Q. You have no idea who erased the figures?

A. Yes; I have an idea.

Q. What is your idea?

A. I have an idea they were erased by Fraser.

Q. But you do not recall making the statement that Mr. Fraser must have erased those figures?

A. I do not recall making the statement, although it is likely that we discussed it.

Q. You do not remember any other conversation that took place with you and Mr. Gordon and Mr. Wikoff, do you? 10

A. No, I do not. If I recall, we were not there very long, but I do not recall as to what other conversation we had.

Q. You saw the note on that day?

A. Yes, sir.

Mr. Herbert W. Backes—That is all.

Redirect examination by Mr. Apgar. 20

Q. What caused you to have an idea to suspicion Fraser?

A. Well, when we found the notes with forgeries on we naturally investigated—and the fact that he left his wife and family and we did not know where he was, and she was calling me, and she was advertising in the papers for him—and as soon as I got my affairs in Wilkes-Barre in shape and got home——

Q. Before August fifteenth for what length of time had Fraser been absent? 30

A. He left on August eighth.

Q. How do you fix that?

A. I had talked with him on the telephone on Friday or Saturday, and the fifteenth came on Monday. He was to get into Hazleton on the eighth, and on Tuesday, the ninth, he was to get into Wilkes-Barre; and I called Hazleton on the eighth and I found he had not arrived at one o'clock, which was the time the train got in, and

he did not get in that night, and I called the office the next morning, on Tuesday, August ninth, and when he did not arrive I got in touch with the main office and they said he had left.

Q. Have you ever seen Fraser since that Friday or Saturday preceding the telephone calls?

A. No; I never saw him from the time I left the office to go to Wilkes-Barre. That was somewhere around the first of August.

Q. Now, the fact that this mutilated statement shows a balance such as your stubs show, did that have anything to do with allaying your suspicions as to those mutilated sheets or not?

A. Well, I could only think one thing, and that is that they were done by Fraser.

Q. Prior to the time your accountant called your attention to it, was there anything other than the erasures that would arouse your suspicion?

A. I did not know about it prior to that until the accountant checked them.

Mr. Apgar—That is all.

Recross-examination by Mr. Herbert W. Backes.

Q. Was it ever brought to your attention on any of these examinations that in *Exhibit P-1* for identification the balances written in a heavier type than the body of the figures on that sheet?

A. It was not until we commenced to scrutinize it, and as far as we could find then there was a difference in type there.

Q. And it is quite apparent, isn't it?

A. Yes, it is.

Q. Now, you say you never signed any checks in blank. Did you ever examine your check book?

A. How? What do you mean?

Q. Did you ever examine your check book?

A. Why, yes.

Q. Did you ever notice that checks had been taken out of the back of it and used?

A. No, I did not notice it in this particular case.

Q. Did you ever examine the back of the check book to see whether any checks had been taken out?

A. I might have over a period of years or some time.

Q. Did you in this particular instance, here? 10

A. No, I did not.

Q. Your direct testimony was to the effect that you did not sign any checks on June twenty-first, June twenty-fourth, July ninth or July nineteenth, for the sums of \$2,000, \$431, \$1,000 and \$1,000, respectively?

A. That is right.

Q. Did you sign any checks prior to those dates for those sums?

A. No.

Q. Your testimony having been limited, that you 20 did not sign on those particular dates, you say you did not?

A. I did not sign any checks in that amount bearing those dates.

Q. At any time, either on that date or prior to it?

A. That is right.

Q. Were your checks signed by you when they appear in the check book or were they torn out and signed by you after they had been taken out of the check book?

A. In some cases they were signed in the check book 30 and in some cases they were taken out. For instance, if checks were made out on the typewriter; but mostly the checks that were written in ink were taken out.

Q. In whose handwriting were those checks?

A. These (indicating) are in Fraser's handwriting.

Q. Your balance was always carried in pencil notation or ink notation alongside of it?

A. Yes, sir.

By Mr. Apgar.

Q. Did you notice the last few words of Mr. Backes' question just a moment ago, as to checks signed on or about those dates, "or prior thereto?"

A. Yes, sir.

Q. And what is your answer as to that? Did you ever sign any checks for that amount?

10 A. I said that I did not sign any checks for that amount bearing those dates prior to that time. In other words, I did not sign them in advance.

Q. My thought was that his question meant had you ever prior thereto signed checks for that amount?

A. Oh, yes. I have signed checks for two thousand and a thousand and so on.

Q. Then how can you say that on those dates mentioned that you did not sign checks for those amounts?

20 A. They could not have been drawn to the order—I always knew who the payee was on those checks, and I know I did not sign any checks that were drawn that anybody could use or checks other than to pay out bills or for loan funds or dividends, which were the only things we used money for.

Q. You knew at that time no checks for these amounts had been drawn to anyone that had any legitimate debt against you. Is that right?

A. That is right.

30 The Court—Were there any dividend checks drawn, or any checks for any reason drawn, in those amounts bearing those dates either about that time or prior thereto?

Witness—No, not that I know of.

The Court—Apparently you do not know to whom those checks were drawn.

The Witness—No.

Mr. Apgar—There are no checks on this P-2 except the one purporting to be charged up June 17, 1927, for \$1,500.

Q. Do you know what that check was?

A. Well, that check was deposited in our loan funds account or else it was used to pay off a note. I am not certain just what it was except by the check.

Q. I turn to your check book and ask you to look at check 1641, dated June seventeenth, Hightstown Trust Company, Notes payable, \$1,500.

A. That is right.

10

Q. And that check you know you signed?

A. Yes, sir.

Q. Now, then there are no others in these exhibits, either the mutilated or the correct ones, that shows any amounts that equal a thousand dollars?

A. That is right.

Q. Does that help you in any way to be more certain as to whether you did or did not sign those?

A. Whenever I signed a check I knew what it was for and who it was made payable to and for what purpose. 20

By Mr. Herbert W. Backes.

Q. To whose order were these checks made payable, dated on June twenty-first and twenty-fourth and July seventh and nineteenth?

A. I don't know.

Q. I did not expect you did.

A. I didn't think so.

Q. You said a while ago it must have been made to some person to whom it could be readily cashed? 30

A. Certainly it was.

Q. Couldn't it have been made to the order of nearly any person and the endorsement forged on it?

Mr. Apgar—That is all speculation, your Honor.

The Court—Yes.

A. Yes; it is possible.

Mr. Herbert W. Backes—I wanted to show that it could have been a check that could have been made by these people and raised. 40

James Stanley Teunan, sworn for the defendant.

Direct examination by Mr. Brace.

Q. Mr. Teunan, where do you reside?

A. Pennington.

Q. What is your profession?

A. Public accountant and auditor.

10 Mr. Herbert W. Backes—We admit his qualifications.

Q. How long have you been practicing your profession in Trenton?

A. Nine and a half years.

Q. And you had a permanent connection with the American Equity Corporation, the defendant in this suit?

A. Yes, sir.

Q. There was a certain service which as a certified public accountant you were to render monthly?

20 A. Ordinarily it was monthly. We supplied certified statements quarterly or at various times in between. That is with quarters we made a check-up on the detail.

Q. There was an audit made quarterly and a mere check-up monthly?

A. Yes, but if we were busy with other work it often went over a month, particularly at the end of the year and at the half-year.

Q. On June 30, 1927, did you make a check-up?

A. No.

30 Q. What was the first date following that that you did make a check-up?

A. August eighth was the first date.

Q. And the period which you were covering then in your check-up was the period ending July thirty-first?

A. It was from May thirty-first to July thirty-first.

Q. And at that time did there come under your observation the mutilated statement from the Hightstown Trust Company that has been marked P-1 for identification?

A. Yes.

Q. Was that the first time you had seen that?

A. Yes.

Q. Now, in the course of the audit which you were making at that time—Is it correct to call that an audit or a check-up?

A. That was a check-up, on August eighth.

Q. In the course of that check-up did anything come to your attention that made it seem to you important to 10 verify certain matters with the banks?

A. On August ninth they did. I was a little bit suspicious.

Q. On August ninth?

A. On August ninth, yes.

Q. At that time had you made any verification of the balance shown by the statement P-1, and the balance in the bank?

A. Yes.

Q. And how was that done by you? 20

A. Well, we took the cancelled checks that were received from the bank and we checked the checks against the original records to reconcile the balance shown on here with the books of original entry and also with the check book, and we further compared that balance with the balance in the check book as well as the books of original entry. There were quite a few erasures on the statement and we checked all the vouchers that came back against those charges on the statement and also checked all deposits in detail and saw that every figure that ap- 30 peared on this statement was accounted for on the books of original entry.

Q. And also the check book?

A. And also the check book. We accounted for all the check numbers between those two periods. To go further than that we accounted for all revenue that was received at that time as well as the checks.

Q. And those accounts tallied correctly?

A. Absolutely; they balanced.

Q. When you say you checked them with the check book do you mean you took each voucher and compared it with its stub?

A. No. We compared the checks returned by the bank. We used the vouchers that are returned by the bank and examined them to see if they have gone through the bank, and we checked those against the books of
10 original entry, and we reconcile it from the books of original entry and when we arrive at our balance we check it with their check book balance. Mr. Fraser also made his reconciliation, which appears on the back of this statement and that was checked with that.

Q. Then what had occurred which led you to think that a verification was necessary from the banks?

A. I went there on the morning of August eighth and Mr. Fraser was not there and I asked where he was and they told me he had started on a trip to Hazelton and
20 Wilkes-Barre for the purpose of checking up some of the detail in the branch offices, which was customary quite frequently with Mr. Fraser to do that. I think there was a phone call came through from Wilkes-Barre regarding Mr. Fraser and they did not seem to have heard from Mr. Fraser. They had not heard from him and I was suspicious that something was wrong.

The Court—From any reason, or just the fact that they had not heard from him?

The Witness—Just the fact that they had not
30 heard from him. So I called Mr. Buchman on the telephone at Wilkes-Barre and asked him if he wanted a detailed check-up made at that time. I told him that the records as far as we had gone over them were in good shape and there was nothing apparently wrong, the balance showed nothing apparently wrong, and Mr. Buchman said "Wait until I get back Friday. I do not think there is anything wrong with the books. Something has probably happened to Mr. Fraser." So

we let it go until Friday and I did not see Mr. Buchman Friday, not until Monday morning.

Q. Then what did you and Mr. Buchman do with relation to outside verification?

A. I spoke to Mr. Buchman as to the detail that was necessary to be made to check on everything, particularly the loan balances, that if there was anything wrong it would require a confirmation of all the loan balances, and I said, "We will take the easiest course, the check balances and notes payable balance and they are the easiest to confirm and we will confirm the notes receivable." So we went over the books again and made a list of the cash balance and a detailed schedule of the notes. I said, "We will call the Hanover Trust Company, that being the nearest bank, and find out whether our confirmations check up there." And we called the Hanover Trust Company and I asked for the amount of the notes that they held with the American Equity Corporation signature and they told me there was a difference and I said to Mr. Buchman that we had better go over to the Hanover Trust Company and check up on those notes and examine them, and we went over and saw the notes and Mr. Buchman determined that a certain one was a forgery. So I said, "Now, we will take the next bank. You better go back to the office and call the Hightstown Trust Company," and I think Mr. Buchman called the Hightstown Trust Company on the telephone and there was \$4,500 in excess of the funds, of the books of original entry, and I instructed Mr. Buchman then to write a letter to all the banks notifying them not to honor any checks that came through with Mr. Fraser's signature; and I told him to go to the Hightstown Trust Company and inspect the note and determine whether or not it was a forgery.

Q. Did you verify the bank balance as of July thirty-first?

A. We verified the Hanover Trust, at the same time I was over there when we verified the notes.

Q. When did you verify the Hightstown Trust Company?

A. I cannot say the exact date. I had instructed Mr. Buchman to get a duplicate of that statement and we immediately confirmed that.

Q. Do you remember a telephone conversation with the Hightstown Trust Company of July thirty-first.

10 A. I do not just recall whether we did or not.

Q. When the corrected account came in from the Hightstown Trust Company the corrected account showed the balance of July thirty-first to be the same as the mutilated account had shown?

A. Yes, the balance of July thirty-first was the same.

Q. Now, since that time have you had any occasion to check up the vouchers with the checks issued from the check book?

A. Yes, we checked them up.

20 Q. What situation did you find there with regard to the checks taken out of the check book?

A. We found that all the checks were accounted for in numerical order excepting that there was, I believe, two duplicate checks that had been issued, that is where the original check was mutilated, and there were two torn out of the back and used in their place, and I think there was one sent out to another bank account for the purpose of getting the checks printed up.

30 Q. How many were missing from the back of the book?

A. There were seven missing altogether, and the four were unaccounted for.

Q. Did you ever see those four in your examination of the documents in the office of the American Equity Corporation?

A. I did not.

Q. Did you ever have any information which would account for them?

A. No, sir.

Cross-examination by Mr. Herbert W. Backes.

Q. Let me understand you correctly as to the number of times that you made examination of the books of the American Equity Corporation?

A. We made a report quarterly and certified to the accounts quarterly. It was our agreement that during that period if we wanted to bring the audit up to date that we did it. In other words we usually went in at the end of the month and made a check-up in the detail work for just the month and we would go in about the third or fourth month and make a check-up. During June and July we are extremely busy and we let these monthly audits go over for a month until we get rid of the pressure of business. 10

Q. Prior to July thirty-first when was the last time you made an examination of the books?

A. We were in there I suppose around June twelfth, making the report for May thirty-first; that is for the month's period of May thirty-first. 20

Q. So you would say approximately from June twelfth to July thirty-first you did not examine any of the books of this company?

A. I would not say that. I would say that possibly from around June twentieth until August eighth there had been no examination made.

Q. What was it that took place on July thirty-first? Did you make an examination then?

A. No. We made it as of July thirty-first. 30

Q. But you did not make the examination until August eighth?

A. That is correct.

Q. So that from about June twentieth until August no examination was made by you?

A. That is correct.

Q. Now, when you made these examinations did you have all the statements that were received from the Hightstown Trust Company?

A. Yes.

Q. And that you did each particular time?

A. Every time we were there.

Q. And you took all those statements with the vouchers that you had also received?

A. Yes, sir.

Q. And you also checked the vouchers with the check
10 book?

A. No, not in detail with the check book; no, sir.

Q. What sort of a check did you make with the records appearing in the check book or either the vouchers or statements of the bank?

A. We checked the original vouchers with the original checks that were returned by the bank and checked them against the books of original entry and by that method determined the outstanding checks and also the balance in the bank and the balance that should be there.

20 Mr. Herbert W. Backes—I move that be stricken out as not responsive.

(Last question read.)

The Witness—I do not quite get the question.

The Court—Read the question.

(Last question again read.)

The Witness—Can you shorten the question?

The Court—What check did you make as between the check book and the statement of the bank and vouchers returned by the bank?

30 The Witness—We reconciled the balance and checked the balance with the bank's statement and the check book.

Q. Then you checked back the vouchers you received from the bank against the stubs on the check book?

A. No, sir; against the checks, the original entry.

Q. Then you made no check whatsoever against the records in the check book?

A. No detailed check.

Q. What kind of a check?

40

A. Comparison of balances.

Q. How did you compare those balances?

A. By our reconciliation of the general cash book, we tied it up with the check book balance.

Q. Did you make any attempt to check the number upon the voucher with the number that appeared upon the stubs in the check book?

A. We accounted for all numbers; yes, sir. 10

Q. How is that?

A. We accounted for all check numbers.

Q. Then you made a check of your vouchers with the stubs in your check book to account for the check numbers, didn't you?

A. Not literally, Mr. Backes.

The Court—Did you account for the check numbers?

The Witness—The check stubs are entered in the check book in numerical order and we checked 20 the checks from the bank in the general cash book to account for the numbers.

Q. How often did you look at the check book of the American Equity Corporation?

A. Once a month, or when we made our examination.

Q. What did you look at it for?

A. For the balance and the checks that were used in the book.

Q. So the purpose in looking at it was to see what the balance that appeared on the check book was in comparison with the balance you had, whether or not any checks had been taken out of the back of the book? 30

A. Yes.

Q. And that was the only purpose of examining that check book?

A. That is all.

Q. When were those checks taken out of the back of the check book?

A. I could not say.

By the Court.

Q. When previously had you examined the books?

A. That I cannot say. It was some time in June when we were making the May thirty-first audit.

Q. You said you were there on June twelfth?

A. I said somewhere between the first of June and the twentieth, that we were there several times.

10 Q. Now, were those seven checks in the back of the book at that time?

A. That I cannot answer without referring to my records.

By Mr. Herbert W. Backes.

Q. Have you got your records here to show whether or not there were any checks missing from the back of the book at the time you made your audit or examination previous to August eighth?

20 A. No; I haven't any of those records here.

Q. Do you know whether or not there were any checks missing from the back of the book?

A. I cannot recall.

Q. At the time of the examination previous to the one you made in June there were checks missing from the back of the book?

A. No.

Q. Do you ever remember that there were any checks missing in the check book of the American Equity Cor-
30 poration?

A. Yes; there were checks missing when I made the examination in August.

Q. That is the only time that you ever remember they were missing?

A. I could not say without referring to my papers.

The Court—Well, you do not remember it now.

The Witness—No; I do not.

Q. You say that there were four of the checks in the back of the book that were numbered which you cannot
40 account for?

A. That is correct.

Q. Now, you also made the statement, as I understand it, that you paid no attention whatsoever to the stubs in the book in your audit at all; that they mean nothing to you.

A. We pay no attention to them except occasionally to find out whether the account has been charged—but they mean nothing whatsoever. 10

Q. And that same thing would appear if there were missing checks anywhere in the check book, that same situation would exist if there were missing checks anywhere in the check book, and if the stubs were there it would make no difference to you?

A. No; it is what the checks would account for in numerical order.

Q. Now, you say that it was not until August ninth that you were first suspicious that there was anything wrong? 20

A. That is correct.

Q. And it was on August eighth you first commenced the examination of these records?

A. That is correct.

Q. Now, you saw the statement of the Hightstown Trust Company marked P-1 for identification?

A. Yes, sir.

Q. And noticed the erasures that appear on it?

A. Yes, sir.

Q. Did that mean anything to you when you saw those 30 erasures?

A. Not necessarily.

Q. As an auditor and examiner of books erasures on statements-submitted by banks mean nothing to you?

A. No. They occur very frequently.

Q. Does it frequently occur that a bank will submit a statement with five erasures appearing on one sheet?

A. I would not say as to that, Mr. Backes.

Q. Have you any recollection of any other statements that were submitted by the Hightstown Trust Company that had five erasures appearing on any one of the sheets?

A. I would not say that there were five, no.

Q. Have you any recollection of one that had three erasures appearing on one of the sheets?

A. I could not recall.

10 Q. Have you any recollection of any one having two erasures on the sheet?

A. I cannot recall.

Q. Have you any recollection of any of the statements of the Hightstown Trust Company that were given to the American Equity Corporation that had no erasures at all?

A. Yes.

Q. How often did you have those statements with erasures?

20 A. I could not say particularly as to the Hightstown Trust Company.

Q. I am speaking about the Hightstown Trust Company. All your answers have been as to the Hightstown Trust Company. Now, can you say how many times you have found any statements of the Hightstown Trust Company that had no erasures on them?

A. (Indicating.) I found those.

Q. And those are the only ones?

30 A. I cannot say definitely as to that. I think there are others. I would have to look at the statements again to refresh my memory.

Q. The erasures themselves upon the statements meant nothing to you?

A. Not with these banks here.

Q. Did the difference in the type which showed the total of the balance of June thirtieth, this type appearing in the body of the statement, mean anything to you?

A. It did afterward, yes.

Q. Well, on the examination of it?

40

A. Well, yes. In fact that is the reason that we compared the detail of all of these items shown on here.

Q. Just because you noticed the difference in the type?

A. Not because I noticed the difference in the type but on account of the general appearance of the statement, the erasures and everything on the statement.

Q. Then you were suspicious when you saw the erasures that appeared on the statement?

10

A. Oh, yes.

Q. Now, in the check-up of the records of this company I notice that on June twenty-second, according to the statement of the bank, which appears here as *Exhibit P-8*, that there was credited to the account of the American Equity Corporation \$4,431?

A. I did not find it out until we got the duplicate statement from the Hightstown Trust Company.

Q. Then you did discover that fact?

A. Yes, sir.

20

Q. And you notice that appears on June twenty-second?

A. Yes, I do now.

Q. Do you also notice, or did you notice in checking the various checks of the corporation that there appeared on June twenty-first a check for \$2,000, which you say you are unable to account for?

A. I did when I got this duplicate statement.

Q. Did you notice the fact that that check of \$2,000 was charged to the account of the American Equity Corporation on June twenty-first?

30

A. Yes; I do now.

Q. The day previous to the discount of the \$4,500 note?

A. Yes, sir.

Q. Did you also notice that as to that date the American Equity Corporation had sufficient funds in its account to pay this check dated June 21st, of \$2,000?

A. No; I did not notice that.

40

Q. You never checked that?

A. No, I did not.

Q. So you cannot say then that this \$2,000 check, dated June 21, 1927, was charged against the proceeds of that note?

A. I could not say as to that.

10 Q. Don't these records show that it was charged not against the proceeds of the note but the balance that was in the account of the American Equity Corporation?

A. From making an audit of those statements there I could not say.

Q. Will you look at that statement there and answer whether or not that record does not show it?

A. Well, I can say this—

The Court—You are asked whether or not the records do not show it.

20 The Witness—Well, according to this statement it shows on the close of business June twenty-first they had a balance of \$127.84.

Q. And it shows also that a two thousand dollar check on that date had been charged against it?

A. Yes, sir.

The Court—And that the next day the proceeds were credited.

The Witness—It shows the proceeds of a note credited there.

Mr. Herbert W. Backes—That is all.

30

Redirect examination by Mr. Brace.

Q. You testified I think when the vouchers that came back from the bank had been checked against the stubs as to their numerical sequence—

A. Yes.

Q. That all was accounted for except four that were in the back of the book?

A. That is right.

Mr. Brace—We offer the check book.

40 (Marked *Exhibit D-1.*)

The Court—I notice, Mr. Backes, that you referred to the statement with the erasures on as P-1 for identification. Was that not offered?

Mr. Herbert W. Backes—It was marked for identification. We will offer it.

(Statement referred to is marked *Exhibit P-14*.)

Q. Mr. Teunan, I show you again *Exhibit P-1*. Are there any erasures or alterations in that statement which were not necessary to be made by Mr. Fraser to carry out this apparent purpose of his? 10

A. Yes.

Q. Will you point them out?

A. There seems to be two or three of them here on July first. (Indicating.) There is an erasure there, one there and one there. There are three of them.

Q. Are there any others?

A. No; there are no more on this P-14.

Q. Does the corrected statement, P-2 for identification, show a correction or erasure? 20

A. Yes; it shows one under July first and one under July eighth.

Q. Were those made by you?

A. No, sir.

Mr. Brace—That is all.

By Mr. Herbert W. Backes.

Q. You do not know who made those erasures?

A. No; I do not. 30

Q. You say they were not made by you?

A. They were not made by me but I have checked these back against this one and they do not appear on that (indicating).

Mr. Apgar.—That is all. We rest.

John W. West, sworn for the plaintiff in rebuttal.

Direct examination by Mr. Theodore Backes.

Q. Mr. West, what is your occupation at the present time? 40

A. State banking examiner in the Department of Banking and Insurance.

Q. How long have you been such an examiner?

A. Since the fifteenth day of October, 1926.

Q. What was your occupation prior to that time?

A. Assistant secretary and treasurer of the Hightstown Trust Company.

10 Q. Were you assistant treasurer from the organization of the company?

A. Yes sir.

Q. Do you know H. D. Gordon?

A. Yes, sir.

Q. Have you ever seen him write his name?

A. Yes, sir.

Q. Is Mr. Gordon here in the court room?

A. Yes, sir.

20 Q. I show you *Exhibit P-1* and ask you whose signature appears on that, if you know?

Mr. Apgar—I object to that because that signature is one that he has heard testified to in the court room by Mr. Gordon himself as being his genuine signature, so why ask this man whether it is Mr. Gordon's signature, when Mr. Gordon has admitted it?

Mr. Theodore Backes—All right.

30 Q. I show you *Exhibit P-7* and ask you to look at the second signature of endorsement on the back of that note and state whose signature that is.

Mr. Apgar—I object to that, in the way the question is asked. It is written out there. I also object to it on the ground that this man is not shown to be an expert in any way, shape or manner.

The Court—I understood the question by Mr. Backes is withdrawn and he is starting to frame another one.

Q. You have testified that you have seen Mr. Gordon write his name?

A. Yes, sir.

Q. How many years have you known Mr. Gordon?

A. I could not say exactly; a number of years; before the Hightstown Trust Company had started, I know that.

Q. Did Mr. Gordon have an account in the Hights- 10
town Trust Company?

A. Yes, sir.

Q. Now, look at the second signature on the back of *Exhibit P-7* and tell us whose signature that is?

Mr. Apgar—I object to that question on the ground—I ask the privilege of examining first as to this witness' qualifications.

The Court—Yes.

By Mr. Apgar.

20

Q. What did you say your business had been prior to getting on the stand here, for the last seven years?

The Court—He said he was at present a bank examiner for the State of New Jersey, and up until 1926 had been connected with the Hightstown Trust Company, since its inception.

Q. Have you ever made a particular study of handwriting or comparisons of false and genuine signatures?

A. Yes.

Q. State first where and when.

30

A. Through my banking experience and after it practically all the time.

Q. What do you mean by your banking experience? Tell us what your experience is?

A. Passing upon the payment of checks and notes as they came through in the usual course of business.

Q. You had no occasion to analyze signatures or pass upon signatures in that way, did you?

A. Yes, I have in my time.

40

Q. Tell us when for instance?

A. I do not know the exact instances but I know I have checked, picked out signatures in the last twenty-five years I have been in that business, that were not just right.

Q. Wasn't it general observation and forming conclusions from that?

10 A. I was familiar with signatures as they came in the bank.

Q. Have you ever qualified in courts as an expert in handwriting?

A. No.

Q. Is this the first time?

A. I could not say as to that. I have been in court several times on different things.

Q. But you have not been called upon to compare handwriting and testify as to genuine and false signatures,
20 have you?

A. I would not say there wasn't any case.

Mr. Apgar—I renew the objection.

By Mr. Theodore Backes.

Q. Prior to your connection with the Hightstown Trust Company, were you connected with any other bank?

A. I was connected with the First National Bank until 1899.

30 Q. And until you went with the trust company?

A. No; there was an intervening period of possibly a year and a half.

Mr. Theodore Backes—Well, there is an objection.

The Court—I think I will have to sustain the objection.

Mr. Theodore Backes—I will try to qualify him.

Q. How many times have you seen the signature of
40 Mr. Gordon?

A. It would be pretty hard to say; a good many times, but I could not say as I know the exact number.

Q. How long has Mr. Gordon had an account in the Hightstown Trust Company to your knowledge?

A. Well, I could not be certain as to the exact date, but I think shortly after the trust company opened up; but just when the American Equity Corporation came in I could not say. 10

Q. Now, prior to your connection with the trust company may I ask whether Mr. Gordon had an account in the First National Bank of Hightstown, with which you were connected, as you testified?

A. I cannot recall.

Q. Can you give us an idea about how many times you have seen Mr. Gordon write his name?

A. That is a pretty hard question.

Q. Well you have testified that you have seen him write it? 20

A. Yes, but as to how many times I could not say. Probably it might have been——

Q. Are you familiar with his signature?

A. Yes, sir.

Q. Would you know his signature if you saw it?

Mr. Apgar—I object.

A. I would.

Mr. Apgar—I object and I move to strike out the answer.

The Court—Well, it may stand. 30

Mr. Theodore Backes—Now, I submit that the gentleman certainly is qualified to the extent at least of his ability to testify to this particular signature, because he says he has seen him write it and he is familiar with it. He was connected with the bank and saw the signature and saw Mr. Gordon write his own name. I think I have a perfect right to ask him to take a look at what purports to be the signature, and say whether or not that is or is not the genuine signature of Mr. Gordon. 40

The Court—I do not think he is competent, Mr. Backes, to testify as to whether or not that is the genuine signature of Mr. Gordon. It might look like Mr. Gordon's signature; it might be an excellent piece of penmanship, but it seems to me that it would take an expert to determine whether or not it was actually the signature of Mr. Gordon. It might look like the signature of Mr. Gordon—and it looks like it to the court, I am perfectly frank to say that. It may be a forgery. I do not know whether it is a genuine signature or not.

10

(After discussion.)

Mr. Theodore Backes—I will withdraw the question.

Q. Look at the signature on *Exhibit P-7* and tell us in whose handwriting that signature is.

20

Mr. Apgar—I object to the question in the manner in which it is framed.

The Court—Yes.

Mr. Apgar—Secondly, it seems to me he is not qualified.

The Court—Objection sustained.

Q. Look at the second signature on the back of *Exhibit P-7* and state if you know, in whose handwriting that is?

A. In my opinion it is——

30

Mr. Apgar—Wait. You can answer yes or no.

The Court—Yes. Answer yes or no.

(Last question read.)

A. I would say yes.

Q. Whose handwriting is it?

Mr. Apgar—I object to the question now.

The Court—(After discussion.) I think the witness should state upon what he bases it.

The Witness—I base it on the fact of having seen his signature and passing upon it numbers

40

of times, how many I cannot say, during the usual course of banking business.

Q. Have you also seen him write his signature?

A. I have.

Q. Now, tell us whose signature that is.

Mr. Apgar—I object.

The Court—The objection will be sustained.

Q. In whose handwriting is that signature? 10

Mr. Apgar—I object to that.

The Court—I do not think the witness is qualified.

Mr. Theodore Backes—May I have an exception to this ruling?

The Court—Certainly.

Mr. Theodore Backes—That is all.

Mr. Apgar—No questions.

Abijah Mount, sworn for the plaintiff in rebuttal. 20

Direct examination by Mr. Herbert W. Backes.

Q. Mr. Mount, what is your occupation?

A. Assistant secretary and treasurer of the Hightstown Trust Company.

Q. How long have you been such?

A. Since October 15, 1926.

Q. Do you know Mr. Gordon?

A. I do.

Q. How long have you known him?

A. I have known him since I have been employed by 30 the trust company and a few years prior to that time; I do not know just how many.

Q. Has Mr. Gordon a personal account at your bank?

A. He has had, yes.

Q. Has he at the present time, do you know?

A. I think his balance has been withdrawn. My records would show.

Q. Do you know how he signs his name?

Mr. Apgar—I object to that because he might sign it twenty different ways. I cannot see the relevancy of the question just as it is framed.

Mr. Herbert W. Backes—I will try to bring it out later on.

The Court—He may answer the question if he can.

10 A. "H. D. Gordon."

Q. He always signs it that way?

A. As far as I know.

Q. Have you ever seen it signed in any other way?

A. I do not recall.

Q. As the assistant secretary and treasurer, what have you to do with the making up of statements of the Hightstown Trust Company?

A. I have nothing to do with it directly.

Q. Is it done under your supervision at all?

20 A. No.

Q. Not under your supervision at all?

A. No.

Q. Can you tell me as to the custom, if you know it, of the Hightstown Trust Company in making a statement, as to fixing the amount which shows as to the balance on the statement and the amount which appears on the statement for the following month as being the balance brought forward.

30 Mr. Apgar—I object to that question, first, on the ground that the custom cannot be introduced into evidence unless it is universally used in banking circles.

The Court—The question is objectionable as framed. He may tell what the Hightstown Trust Company did in this instance.

Q. What does the Hightstown Trust Company do as to setting forth the figure which shows the balance on a certain month and setting forth the figure that shows the balance being brought forward for the following month?

40

Mr. Apgar—If your Honor please, it seems to me that is objectionable, because they have introduced two or three statements, and doesn't that show what the Hightstown Trust Company does.

(After discussion.)

Mr. Herbert W. Backes—What I want to show is the fact that while the type is set up they use that same figure to show the balance, or use the same type, to carry it over to the following month. 10

The Court—They do not dispute that.

Mr. Apgar—There is no objection to that, if that is what you want. That shows clearly.

Q. Now, were you present at a conversation that took place at your bank on or about August 15, 1927, between Mr. Wikoff, Mr. Gordon and Mr. Buchman?

A. I was.

Q. And were there just the four of you present?

A. Four, yes. 20

Q. Do you remember any statement having been made by Mr. Gordon as to whether or not the signature which appears upon the note, *Exhibit P-7*, was or was not the signature of Mr. H. D. Gordon?

Mr. Apgar—I object to that because if he wants to contradict Mr. Gordon he must put the language in the question.

The Court—Objection sustained.

Q. Did Mr. Gordon at that time say that he was not sure whether or not it was his signature? 30

A. He did.

Q. Did he at that time say that it was not his signature?

A. He did not.

Mr. Herbert W. Backes—That is all.

Cross-examination by Mr. Apgar.

Q. Mr. Mount, from the very time that Mr. Gordon was there when you had this signature, you knew that he objected to that note and his signature, did you not? 40

A. Well, it was sort of questionable in his mind.

Q. Din't your bank understand at that time that he denied his signature and that he was not responsible?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you get from him at any time, either during
10 that conversation or afterward, a statement that it was his signature?

A. No, sir.

Q. Then he did leave in your mind, did he not, a doubt as to whether that was or was not a correct signature?

A. Yes, sir.

Q. There was no admission by him that it was his signature?

A. No, sir.

20

Henry G. Wikoff, recalled for the plaintiff in rebuttal. Direct examination by Mr. Herbert W. Backes.

Q. Mr. Wikoff, at the meeting held on August fifteenth at your office between Mr. Buchman, Mr. Mount, Mr. Gordon and yourself, did Mr. Gordon say that the signature which appeared on the note, *Exhibit P-7*, was not his signature?

A. He did not.

Q. Did Mr. Gordon at that time say that he was not
30 sure whether or not it was his signature?

A. He did.

Cross-examination by Mr. Apgar.

Q. Mr. Wikoff, you knew that from the very time of that conversation that this note was in question, did you not?

A. Not that signature of Mr. Gordon, no.

Q. Not the signature of Mr. Gordon?

A. No, sir.

40

Q. He did not say that it was his signature, did he?

A. No.

Q. But you knew he questioned it, didn't you?

A. Not until that day.

Q. From the time you had that conversation until the present time you have always known that Mr. Gordon questioned that signature and has never admitted it, haven't you?

10

A. Yes, sir; that is right.

Mr. Apgar—That is all.

Mr. Herbert W. Backes—That is all. We rest.

We are willing to submit this matter without argument if the other side is.

The Court—I would like very much to have argument, particularly on the legal phases.

Mr. Apgar—(After discussion.) It seems to me that insofar as Mr. Gordon is concerned, that unless there is proof positive that he signed this note he could not be held as one of the endorsers on it, and on his behalf I make a formal motion that he should be discharged, there being no proof.

(After argument.)

The Court—I will hold the motion.

30

40

Exhibits

EXHIBITS P-1-2-3,
being signature cards, are missing.

EXHIBIT P-4.

10

Member Trenton Credit Association
Authorized Capital, \$1,000,000.00
AMERICAN EQUITY CORPORATION
Industrial Loans
Wilkinson Building
Opposite Post Office
Phone 6925

Licensed by the State
Banking Dept.

203 East State Street
Trenton, N. J.

Sept. 27, 1923.

20 Hightstown Trust Co.,
Hightstown, N. J.

Gentlemen:—

At a regular meeting of the Board of Directors of this company, held Sept. 18, 1923, the following resolution was passed.

****EXTRACT****

“On motion, duly seconded, Mr. Fraser was authorized to sign checks of the Corporation as Asst. Treasurer. Broad St. and Hightstown banks to be notified. Motion carried.”

30 You will please honor checks when signed J. A. Fraser
Asst. Treasurer.

[L. s.]

Yours very truly,
American Equity Corporation,
Vernon L. Buchman,
President.

Attest:

J. A. Fraser
Secretary

40

EXHIBIT P-5.

AMERICAN EQUITY EXTENSION CORPORATION
Investments

Wilkinson Building 203 East State Street
Opposite Post Office Trenton, New Jersey
Phone 6925

Oct. 8, 1924. 10

Hightstown Trust Co.,
Hightstown, N. J.

Gentlemen:—

Please find enclosed check for \$107.50, being \$100.00 on note due Oct. 10th and interest for 90 days on note for \$500.00.

A new note for \$500.00 to cover the balance due is also enclosed.

Yours very truly,
American Equity Extension Corporation 20
J. A. Fraser
Secretary

F-E.

EXHIBIT P-6.

Register No. 701	Due Sept. 21, 1927.	
	Amount 4500.	
Maker	Endorser or collateral	30
	Vernon L. Buchman	
	H. D. Gordon	
	J. A. Fraser	
American Equity Corp.	American Equity Corp.	
Vernon L. Buchman		
Date Time	Interest Proceeds	
Month day Month Days	69. 4431.	
June 21 3		
Payable at this bank	Hightstown Trust Co.	
	Hightstown, N. J.	

40

EXHIBIT P-7.

\$4500.00

June 21, 1927

Three months after date we promise to pay to the order of Vernon L. Buchman, H. D. Gordon and J. A. Fraser Forty-five hundred Dollars At Hightstown Trust Co., of Hightstown, N. J.

10

American Equity Corporation

Value received

Vernon L. Buchman, Pres.

No. 701

Due Sept. 21

J. A. Fraser, Treas.

(Endorsements)

B

Vernon L. Buchman

G

H. D. Gordon

F

J. A. Fraser

American Equity Corporation

Vernon L. Buchman

20

President

J. A. Fraser

Treasurer

No. 505

United States of America }
State of New Jersey }

ss.

On the 21st day of

30

Sept., one thousand nine hundred and twenty-seven, at the request of the Hightstown Trust Co. of Hightstown, I, Henry G. Wikoff, Notary Public, duly commissioned and sworn, residing in the City of Hightstown and State of New Jersey, presented the original note hereunto annexed, made by American Equity Cor., dated June 21, 1927, at Hightstown for \$4,500 at the Hightstown Trust Co. of Hightstown, and demanded payment thereof which was refused. Whereupon I, the said Notary at the re-

quest aforesaid, did protest, and by these presents do publicly and solemnly protest against the drawers and endorsers of said note and all others concerned, for all costs, charges, damages, and interest already incurred, and to be hereinafter incurred for want of payment of the same, and on the 21st day of Sept., 1927, I mailed at Hightstown, N. J., notices of protest for non-payment to the maker and endorsers of the said note directed as follows: American Equity Cor., Wilkinson Bldg., Trenton, N. J., Vernon L. Buchman, c/o Am. Equity, Trenton, N. J., H. D. Gordon, c/o Am. Equity, Trenton, N. J., J. A. Fraser, c/o Am. Equity, Trenton, N. J.

\$4,500.

Fee	2.40
Postage	.08

\$4,502.48

In testimony whereof, I have hereunto set my hand and affixed my seal in the Town of Hightstown aforesaid.

H. G. Wikoff,
Notary Public.

[L. s.]

Protest
American Equity Cor.
For the
Hightstown Trust Co.
of Hightstown, N. J.

Sept. 21, 1927. 30

Note	\$4,500.
Fee	2.40
Postage08
	\$4,502.48

Henry G. Wikoff,
Notary Public.

Name American Equity Corp.
Address Wilkinson Bldg., 203 East State,
Trenton, New Jersey.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
1,602.42	Jun 20 '27	50.00—	50.00—		Jun 20 '27	408.87	Jun 20 '27	1,911.29*
1,911.29					Jun 20 '27	158.13	Jun 20 '27	2,069.42*
2,069.42	Jun 21 '27	22.00—	45.00—	23.00—			Jun 21 '27	1,979.42*
1,979.42	Jun 21 '27	2,000.00—			Jun 21 '27	148.42	Jun 21 '27	127.84*
127.84	Jun 22 '27	1.06—	35.00—	15.00—			Jun 22 '27	76.78*
76.78					Jun 22 '27	4,431.00	Jun 22 '27	4,507.78*
4,507.78	Jun 23 '27	5.00—			Jun 23 '27	123.65	Jun 23 '27	4,626.43*
4,626.43	Jun 24 '27	431.00—	5.00—	10.56—			Jun 24 '27	4,336.04*
	Jun 24 '27	37.50—			Jun 24 '27	193.61	Jun 24 '27	4,479.65*
4,336.04					Jun 24 '27	143.61	Jun 24 '27	4,479.65*
4,479.65	Jun 25 '27	65.00—	23.00—	5.00—			Jun 25 '27	4,886.65*

Hightstown Trust Co.
Hightstown, N. J.

EXHIBIT P-8.

EXHIBIT P-8.

EXHIBIT P-9.

In Account With
 HIGHTSTOWN TRUST CO.
 Hightstown, N. J.

Name American Equity Corporation,
 Address Wilkinson Bldg.,
 Trenton, N. J.

Date	Checks in Detail		Date	Deposits	
	Balance brought forward		May 31 '27	1,568.66	
			Jun 3 '27	100.66	
			Jun 9 '27	40.00	
Jun 13 '27	40.00—		Jun 14 '27	254.15	
Jun 15 '27	35.56—		Jun 15 '27	108.98	
			Jun 15 '27	189.02	
			Jun 15 '27	15.00	
Jun 16 '27	65.00—		Jun 16 '27	130.50	
Jun 17 '27	1,500.00—		Jun 17 '27	851.01	
Jun 18 '27	15.00—				
Jun 20 '27	50.00—	50.00—	Jun 20 '27	408.87	
			Jun 20 '27	158.13	
Jun 21 '27	22.00—	45.00—	23.00—		
Jun 21 '27	2,000.00—		Jun 21 '27	148.42	
Jun 22 '27	1.06—	35.00—	15.00—	June 22 '27	4,431.00
Jun 23 '27	5.00—		Jun 23 '27	123.65	
Jun 24 '27	431.00—	5.00—	10.50—		
Jun 24 '27	37.50—		Jun 24 '27	193.61	
			Jun 24 '27	143.61	
Jun 25 '27	65.00—	23.00—	5.00—		
Jun 27 '27	70.00—	50.00—	5.00—	Jun 27 '27	75.24
Jun 28 '27	5.00—	22.00—	45.00—		
Jun 28 '27	70.75—		Jun 28 '27	159.25	
Jun 29 '27	2.00—		Jun 29 '27	168.67	
			Jun 29 '27	165.64	
Jun 30 '27	312.50—		Jun 30 '27	205.03	
	Duplicate				
			Balance	Jun 30 '27	4,678.23

Please examine this statement upon receipt and report at once if you find any difference, so that this bank may know definitely whether their books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

EXHIBIT P-10.

A regular meeting of the Executive Committee of the Board of Directors of the Hightstown Trust Company was held at the Banking House on Friday morning, June 24th, 1927, at 10 o'clock A. M.

The meeting was called to order by Vice-President
10 Harvey Wyckoff.

Present—Vice-President Harvey Wyckoff, Directors Bennett, Conover, Harry J. Gross, Stults, and Treasurer Wikoff.

The minutes of the Executive Committee meeting of June 17th, 1927, were approved as read.

Bills purchased were examined by the committee and discussed in detail. It was voted that purchase of Bills Nos. 576 to 735 inclusive be approved.

The overdrafts were read for last week.

20 The following applications of officers and directors were granted, each being voted on separately—

Maker	Amount	Time
Abijah Mount	\$500.00	8 days
D. I. Messler	200.00	20 days
Harvey Wyckoff	2,500.00	2 months
D. I. Messler	1,100.00	On Demand

Adjourned.

C. Stanley Stults,
Secretary.

30

40

EXHIBIT P-11.

A regular meeting of the Executive Committee of the Board of Directors of the Hightstown Trust Company was held at the Banking House on Friday morning, December 11th, 1925, at 10 o'clock A. M.

The meeting was called to order by Chairman Messler.

Present—Vice-President Harvey Wyckoff, Directors 10
Conover, Messler, Stults, and Treasurer Wikoff.

The minutes of the Executive Committee meeting of December 4th, 1925, were approved as read.

Bills purchased were examined by the committee and discussed in detail. It was voted that purchase of Bills Nos. 1826 to 1925 inclusive be approved.

Application of Abraham Katz for a loan of \$200.00 was approved by the committee.

Application of American Equity Corporation, Trenton, N. J., for a line of \$5,000.00 was also approved by 20 the committee.

It was regularly moved, seconded, and carried that we join the Trenton Chapter of the American Institute of Banking, and that we forward our check for \$10.00 to the Treasurer, Mr. W. Harry Bloor, Trenton Trust Company, Trenton, N. J.

The following applications of officers and directors were granted, each being voted on separately—

Maker	Endorser	Amount	Time
C. B. Probasco		\$2,000.00	On Demand 30
Cleveland Patterson			
	Chas. E. Rue	300.00	1 month
Jos. H. Black, Son			
& Company	Walter C. Black	3,000.00	3 months
Adjourned.			

C. Stanley Stults,
Secretary.

EXHIBIT P-12,

being signature made by Harry D. Gordon in court, is missing.

EXHIBIT P-13.

10 Vernon L. Buchman, Pres., J. A. Fraser, Sec'y and Treas.
H. D. Gordon, Vice Pres.

AMERICAN EQUITY CORPORATION
Under State Banking Department
Financial Service

Member National and State	Office Hours :
Industrial Lenders Ass'n	9:00 A. M. to 5:00 P. M.
Trenton Chamber of Commerce	Saturday, 1:00 P. M.
Wilkinson Building	203 East State Street
Opposite Post Office	Trenton, New Jersey
20 Telephone 6925	

August 15, 1927.

Mr. H. G. Wikoff,
Hightstown Trust Co.,
Main St.,
Hightstown, N. J.

Dear Sir:

This is to notify you that you are not to honor any checks, notes, drafts or other negotiable paper bearing the signature of John A. Fraser as Treasurer or Secretary of the American Equity Corporation nor any such paper issued by the American Equity Corporation bearing his signature.

Yours very truly,

B-E

Vernon L. Buchman,
President
American Equity Corporation.

EXHIBIT P-14.

In Account With
 HIGHTSTOWN TRUST CO.
 Hightstown, N. J.

Name American Equity Corporation,
 Address Wilkinson Bldg.,
 Trenton, N. J.

Date	Checks in Detail		Date	Deposits
	Balance brought forward		May 31 '27	1,568.66
			Jun 3 '27	100.66
			Jun 9 '27	40.00
Jun 13 '27	40.00—			
			Jun 14 '27	254.15
Jun 15 '27	35.56—		Jun 15 '27	108.98
			Jun 15 '27	189.02
			Jun 15 '27	15.00
Jun 16 '27	65.00—			
			Jun 16 '27	130.50
Jun 17 '27	1,500.00—		Jun 17 '27	851.01
Jun 18 '27	15.00—			
Jun 20 '27	50.00—	50.00—	Jun 20 '27	408.87
			Jun 20 '27	158.13
Jun 21 '27	22.00—	45.00—	23.00—	
Jun 21 '27			Jun 21 '27	148.42
Jun 22 '27	1.06—	35.00—	15.00—	
Jun 23 '27	5.00—		Jun 23 '27	123.65
Jun 24 '27		5.00—	10.50—	
Jun 24 '27	37.50—		Jun 24 '27	193.61
			Jun 24 '27	143.61
Jun 25 '27	65.00—	23.00—	5.00—	
Jun 27 '27	70.00—	50.00—	5.00—	Jun 27 '27 75.24
Jun 28 '27	5.00—	22.00—	45.00—	
Jun 28 '27	70.75—			Jun 28 '27 159.25
Jun 29 '27	2.00—			Jun 29 '27 168.67
				Jun 29 '27 265.64
Jun 30 '27	312.50—			
			Jun 30 '27	205.03
			Balance	Jun 30 '27 2,678.23

Please examine this statement upon receipt and report at once if you find any difference, so that this bank may know definitely whether their books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

In Account With
 HIGHTSTOWN TRUST CO.
 Hightstown, N. J.

Name American Equity Corporation,
 Address Wilkinson Building, 203 East State Street,
 Trenton, N. J.

Date	Checks in Detail	Date	Deposits
	Balance brought forward	Jul 22 '27	1,334.44
		Jul 28 '27	500.00

Balance	July 30 '27	1,834.44
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Please examine this statement upon receipt and report at once if you find any difference, so that this bank may know definitely whether their books agree with your own. If no error is reported in ten days the account will be considered correct. All items are credited subject to final payment.

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New Jersey Court of Errors and Appeals

HIGHTSTOWN TRUST COMPANY,
Plaintiff-Appellant,

v.

AMERICAN EQUITY CORPORA-
TION, VERNON L. BUCKMAN,
H. D. GORDON and J. A.
FRASER,

Defendants-Respondents.

Action at Law.
On Appeal from Mer-
cer County Circuit
Court.

FACTS

This appeal is from the judgment of the Mercer County Circuit Court on a verdict of "no cause for action" rendered in favor of the defendant by the court, sitting without a jury.

The suit was brought by the Hightstown Trust Company, which was the holder of a promissory note of the American Equity Corporation in the sum of \$4,500 endorsed by the defendants Vernon L. Buckman, H. D. Gordon and J. A. Fraser, individually, the three endorsers being officers of the American Equity Corporation.

The American Equity Corporation banked at the Hightstown Trust Company for a number of years, where it had been granted a line of credit of \$10,000. At the time the above-mentioned note of \$4,500 was presented for discount, its line had not been exhausted, and the proceeds thereof was credited to its account without any formal action of the board. When the note became due, the American Equity Corporation refused to pay the same, claiming that they

had not authorized its issuance nor had they received the benefit of the proceeds of the discount.

It appears that J. A. Fraser, the treasurer of the company, who by virtue of his office had charge of the financial affairs thereof, disappeared and apparently embezzled funds of the company. The evidence shows that the note was regular upon its face, was signed by the proper officers of the company and was in the possession of the bank, where it had been discounted. The only irregularity in the note being the charge of H. D. Gordon, one of the endorsers, that his endorsement was not his signature.

It appears from the evidence that statements of the account, together with the returned vouchers, had been regularly made by the bank to the American Equity Corporation and at the time of the trial the officers of the corporation produced all the vouchers of their company with the exception of four (which they claim they did not have) and which made up a sum totalling the amount of the proceeds of the discount of the \$4,500 note. There was also produced by the corporation one of the bank's statements (*Exhibit P-14*—page 115), which apparently had been altered by Fraser, there being erased the entry of the discount and the checks which were used to exhaust the proceeds thereof. There was produced in evidence and proven by the officers of the bank, the protested note.

To prove payment of the proceeds of the note, the bank produced its ledger sheet (*Exhibit P-8*—page 110) showing the charges against the account which exhausted the proceeds.

ARGUMENT

The court, in its findings, held that the checks dated June 21st for \$2,000, June 24th for \$431, July 7th for \$1,000 and July 19th for \$1,000, were used to exhaust the proceeds of the discount and were forgeries both as to the maker and payee. It is recognized that it was incumbent upon the bank to show that the proceeds of the discount were disbursed and it is the contention of the appellant that the bank sustained this burden by producing its ledger sheet,

and showing the checks charged against the account of the American Equity Corporation by which the proceeds were exhausted. It is common practice for banks to keep no records except the general ledger statement showing the deposits and charges against a bank account. At the end of each month vouchers are returned to the depositors and proof was made that they were so returned to the American Equity Corporation (page 28, line 30; page 29, line 30; page 32, lines 4 to 23). The only proof indicating that there were any irregularities with the checks was the testimony of the defendants Buckman and Gordon, officers of the American Equity Corporation, that they did not sign checks for the amount of the four checks above mentioned on or about the days that they were dated. It is the contention of the appellant that proof was made by it of payment by the testimony of its officers and the production of the ledger sheets aforesaid showing the charges of the amounts of the checks (*Exhibit P-9*, page 110). No proof of forgery was presented by the defendants and the burden rested upon them of proving forgery if it existed.

It is submitted that from the evidence produced the court could not hold the bank liable by concluding from these facts that the checks had been forged.

It is also contended that it was error of the court in finding that the four checks above mentioned were not among those returned or examined by the auditors, and no explanation has been made in regard to them, for the testimony of Mr. Wickoff (page 28, line 30, to page 29, line 30; page 32, lines 4 to 23) shows that all the vouchers were returned to the American Equity Corporation at its office in the Wilkinson Building. Fraser was its treasurer, the responsible financial officer, and the delivery of the vouchers together with the statement to the American Equity Corporation at its office certainly was proof of the return of the vouchers. Fraser disappeared and undoubtedly with money of the American Equity Corporation. It is to be presumed that it was he who altered the statement sent out by the bank and destroyed the four vouchers, done for the purpose of covering up his defalcations. Without positive proof, the presumption must be that the checks of the corporation

were regularly signed by the proper officers and payment properly made by the bank in the regular course of its business. There was no duty on the part of the bank to see that the proceeds of the corporation's account were applied to the uses of the corporation.

“A bank which discounts notes of a corporation depositor and places the proceeds to the credit of the corporation upon whose checks they are drawn out in the regular course of business cannot be required to know that such proceeds are properly applied to the uses of the corporation; and the fact that a portion of such proceeds is not so applied will not invalidate the notes where the bank was not in collusion as to the diversion.” 7 *Corp. Jur.* 719 citing *Hailey First Nat. Bank v. G. & C. Min. Co.*, 89 *Fed.* 439 (mod. on other grounds 95 *Fed.* 23; 36 *CCA* 633).

The appellant contends that the bank became the holder of the note in due course and for value when it credited the proceeds to the account of the defendant and when the amount of the credit was absorbed by subsequent withdrawals. Its contention is that every duty that is owed by a bank to its depositor was complied with and that it sustained the burden of proving it was the holder in due course for value when it showed by the production of its statements that the note had been discounted the proceeds credited and withdrawals regularly made by checks regularly honored and paid. There was presented the best and only proof of the bank's transactions with its depositor and if a depositor is permitted to set up as a defense that he never signed checks, without producing them and allowing the bank an opportunity of inspecting them, all banks would be at the mercy of unscrupulous customers. It would be very easy indeed for an individual to destroy his vouchers, claim they were never returned to him by the bank, and claim he never signed checks for the amounts charged against his account.

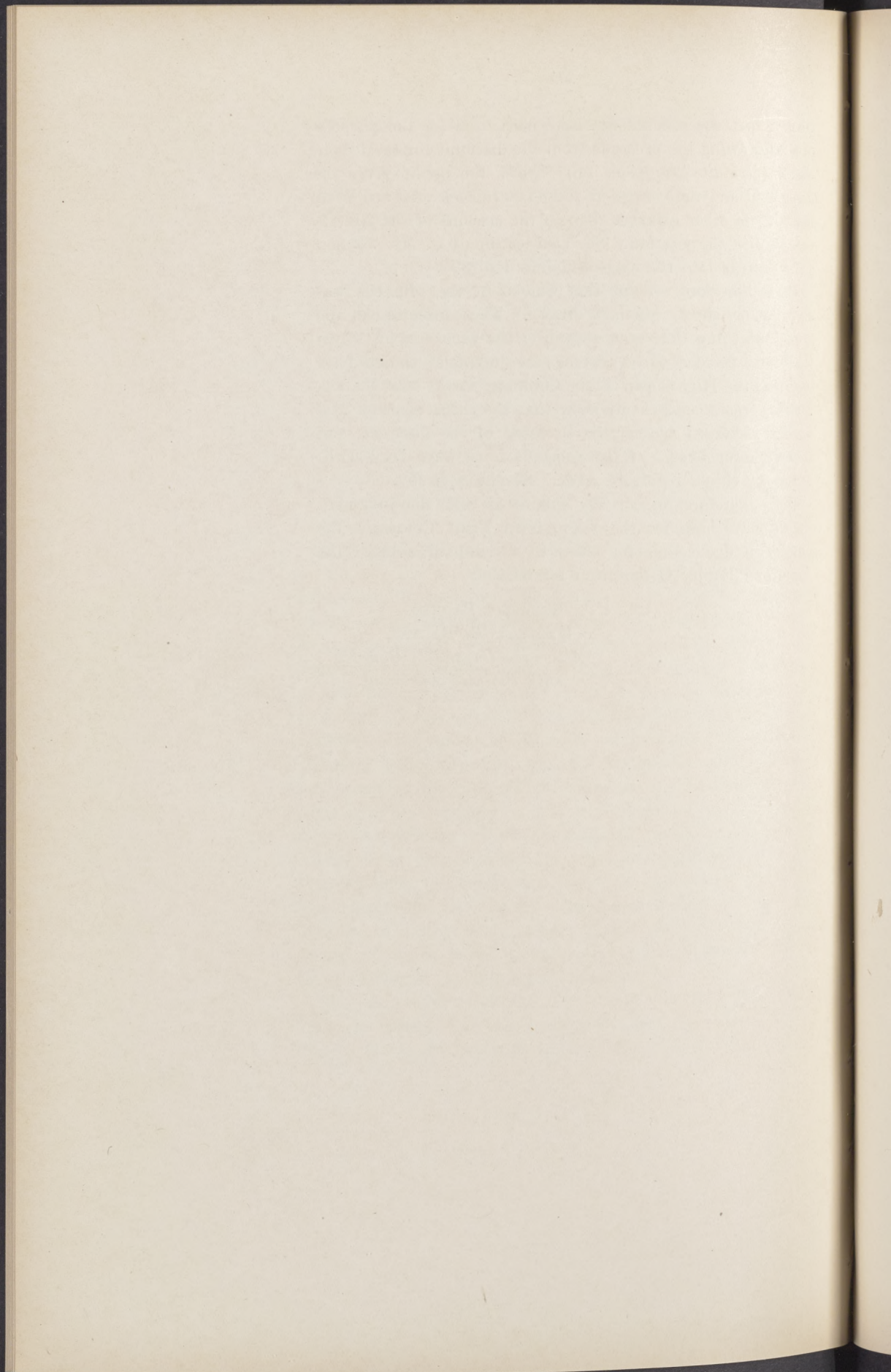
The court found that the four checks were used to withdraw the proceeds of the discounted note. It is submitted that as far as the check dated June 21st for \$2,000 is con-

cerned that check could not have been used for the purpose of withdrawing the proceeds from the discount for the ledger sheet (*Exhibit P-8*, page 110) shows the credit given on June 22d and the charge of the \$2,000 check on June 21st, made from other balances then in the account of the American Equity Corporation. See also testimony of Mr. Teunon (p. 93, lines 1 to 10; page 94, lines 1 to 29).

It is therefore evident that \$2,000 of the proceeds was absorbed by checks regularly drawn. The contention of the appellant being that even assuming the theory upon which the court decided to be correct, the judgment should have been for the Hightstown Trust Company for at least \$2,000, for the proofs conclusively show that the check of June 21st was not charged against the proceeds of the discount, and that therefor \$2,000 of the proceeds must have been withdrawn by checks regularly made. See *Exhibit P-9*.

It is therefore respectfully submitted that the judgment should have been for the Hightstown Trust Company, the holder in due course for value of an unpaid note of the American Equity Corporation for \$4,500.

THEODORE BACKES,
HERBERT W. BACKES,
Attorneys for and of Counsel
with Plaintiff-Appellant.



New Jersey Court of Errors and Appeals

HIGHTSTOWN TRUST COMPANY, <i>Plaintiff-Appellant,</i>	} Action at Law. On Appeal from Mercer County Circuit Court.
<i>vs.</i>	
AMERICAN EQUITY CORPORATION, VERNON L. BUCHMAN, H. D. GORDON, AND J. A. FRASER, <i>Defendants-Respondents.</i>	} Brief of Defendants-Respondents.

FACTS

At the conclusion of the testimony before the trial judge the facts of the case were shown to be as follows: 10

1. The note on which the suit was brought (Ex. P-7 on page 108) had been offered by the plaintiff and the genuineness of all signatures thereon had been admitted except that of the payee-endorser, H. D. Gordon. The plaintiff's testimony on this point had consisted of the statement of Henry G. Wikoff, the Treasurer of the Hightstown Trust Company, "I believe it to be Mr. Gordon's signature" (page 24, line 32) and the effort of plaintiff's counsel to get before the court the opinion of the witness, John W. West (pages 96 to 101) was rejected by the court on the ground that West was not qualified to give opinion testimony. No comparison between the signa- 20

tures of H. D. Gordon on the signature cards (Ex. 1-2-3) and his endorsement on the note (Ex. 7 on page 108) in the manner permitted by statute of 1900 (P. L. 1900, page 367) was offered to the court. Opposed to this was the flat denial of H. D. Gordon that his name on the back of the note had been written and by him (page 47, line 23).

10 2. Plaintiff had produced a copy of the bank's ledger sheet relating to defendants' account which showed (Ex. P-9 as amplified) that on June 22nd defendants' account had been credited with \$4,431.00 (presumably the proceeds of the note), and that the account had been charged on June 21st with \$2,000.00; on June 24th with \$431.00; on July 7th with \$1,000.00; and on July 19th with \$1,000.00; the total of these four charges exactly balancing the credit. The plaintiff had offered no testimony whatever as to the character of the vouchers, whether checks or otherwise, on which these four charges were based, 20 or as to the signatures thereon, or otherwise, but contented itself with offering these ledger entries, made by itself, and allowing these entries to speak for themselves without any further explanation other than to say that in the ordinary course of business it believed these vouchers, assuming there were any, had been returned to the defendant with its other vouchers, but presented no positive proof to this effect, as appears in the testimony of plaintiff's witness Wikoff on page 32:

30 Q. Mr. Wikoff, you have just testified to a difference in the balance as shown between the original and the mutilated statement as of June 3, 1927. Were the vouchers and statement forwarded to the American Equity Corporation at that time?

A. Yes. They were.

Q. Have you any record which shows that?

A. Yes, sir.

Q. Where is that?

A. On the ledger sheet.

Q. It is the practice to put a ledger stamp on here, is it not?

A. Yes.

Q. Is that mark there?

A. Yes, sir.

Q. Where? On June 30, 1927, vouchers returned, what does that mean?

A. It means the statement has been made and the vouchers returned to the party to whom they belong. 10

Q. By whom is that done?

A. By Miss Probasco.

Q. You do not do that personally, do you?

A. No.

It is self-evident that this testimony was directed to the custom of this bank and related only to vouchers generally and did not attempt to be specific as to the four vouchers in question. 20

The defendant admitted the receipt of all vouchers other than the four above referred to, and these four it not only denied ever having received, but both Vernon L. Buchman, the President of the defendant company (on page 65) and H. D. Gordon, Vice-president (on pages 44-45-46), categorically denied that they had ever signed such vouchers, and gave valid reasons for remembering that they had not.

ARGUMENT

With these facts before the court the issue between the two parties, on being reduced to its simplest terms, may be fairly stated as follows: 30

a. Was the promissory note on which the suit was brought a valid obligation in the hands of the plaintiff; and

- b. Was the plaintiff a holder thereof for value.

The Validity of the Note

The plaintiff offered the note and the signatures of of the officers of the company on the note, and the personal endorsements were admitted except as to one endorsement of H. D. Gordon, and the plaintiff produced no evidence which the court admitted as to the genuineness of Gordon's signature, in opposition to which the testimony presents Mr. Gordon's direct
 10 denial that this was his signature. At this point the plaintiff had complied with the making out of a prima facie case as approved by the court of Errors and Appeals in *Penbrook Trust Co. vs. Weigand* (100 N. J. L. 353), except the material and vital omission of proving the endorsement of H. D. Gordon. Gordon being named as one of the payees in the note itself, no title to the note could be transferred without the genuine endorsement of Gordon and lacking evidence of the genuineness of Gordon's endorsement
 20 the plaintiff, at the time it rested, had not made out a prima facie case. At this point the 23rd section of the Negotiable Instruments Act (3 Compiled Statutes, page 3738) came into operation and no right to enforce payment could be acquired through or under such signature.

The decision of the Court of Errors in *Rivara vs. D. L. & W. Railroad Co.* (98 N. J. L. 290) is directly in point, the only distinction being that the paper involved in the Rivara case was a check instead of a note.
 30

Was Plaintiff a Holder for Value

The plaintiff, being unable to establish that the endorsement of H. D. Gordon, one of the original payees, was genuine, then attempted to establish a cause of action against the other defendants on the theory that it had paid to the defendant, American

Equity Corporation, the face of the note less discount, or a net amount of \$4,431.00. In such a situation the burden of proving this payment was clearly on the plaintiff and it attempted to sustain this burden by showing merely that the account of the American Equity Corporation had been credited with the proceeds of the note. It offered no proof whatever that the American Equity Corporation ever knew that this credit had been extended to it. Even if it should be fairly assumed from the testimony that Fraser knew of the granting of this credit and that Fraser was an officer of the corporation, yet, under such circumstances, notice to Fraser was not notice to the corporation. 10

Camden Safe Deposit and Trust Co. vs. Lord, 67 N. J. E. 489.

Deal vs. Sieling, 102 N. J. L., 585.

Having thus failed to bring home to the American Equity Corporation any knowledge that it had been credited with the proceeds of the note to the amount of \$4,431.00, plaintiff, nevertheless, attempted to show that the American Equity Corporation had actually received this amount, and the proof it submitted was the production of its own ledger sheets on which there were four charges entered with an aggregate total equal to the amount of this credit. The vouchers on which these charges were based were not produced, were not described, and were totally unaccounted for. No one on behalf of the plaintiff is able to say that these four vouchers were actually included among the other vouchers which were returned to the American Equity Corporation, and the plaintiff's Treasurer was unable to produce any record whatever as to the nature of these withdrawals, or how they were made, or through what route they came to be presented to the bank (page 36, line 30 to line 37 on page 37). In brief the plaintiff has not produced any evidence 30

whatever that the four withdrawals totalling the amount of the credit were valid ones.

“A bank giving credit for the amount of the note is not a holder in due course when such credit is not absorbed by an antecedent indebtedness or exhausted by subsequent withdrawals.”

Branan's Negotiable Instrument Law, page 386.

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6 *A. L. R.*, page 252.
22 *L. R. A.* 718.

“The relation between a bank and its depositor is that of debtor and creditor, and the implied contract on the part of the bank is that it will distribute the money standing to the credit of the depositor only on his order and in conformity with his directions.”

Mechanics National Bank vs. Horter, 63 *N. J. L.*, 578.

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Forged Checks

That the four withdrawals which the plaintiff is unable to account for were made on forged checks is a fair inference to be drawn from the testimony, it having been shown (testimony of Vernon L. Buchman on pages 66 and 67) that four checks had been removed from the back of the defendant's check book and were unaccounted for, and the same witness stated (on bottom of page 64 and page 65) that he had not signed any checks corresponding to the

30 four disputed withdrawals. Gordon, the only other officer of the company who, with Fraser, was empowered to sign checks, testifies likewise as to himself (pages 44-45-46). The trial judge who heard the testimony stated in his conclusions (page 14),

“But the evidence clearly shows and I am satisfied that if there were withdrawals they were by means of forged checks, forged both as to the maker and payee.”

That such a conclusion was a proper and reasonable inference from the testimony is beyond argument, but in order to render a judgment in favor of the defendant it was not necessary to find that these checks were forged because the defendant in its pleadings never alleged that they were forged, but merely “that the plaintiff never paid to this defendant the proceeds of the discount of said note or any part thereof.” (page 6). 10

Time of Withdrawals

The exact dates on which the withdrawals were made is not a material element, for it is not essential to find when they were made, but whether they had ever actually been made at or upon any valid check or order of the defendant. And there is no presumption whatever that these four checks of the corporation were regularly signed by the proper officers or that payment was properly made by the bank in the regular course of its business, for the officers have testified positively that they never signed these checks, and the bank presents no evidence whatever as to how or why these amounts were paid, or even that they ever were paid at all—the only evidence being that these four amounts were arbitrarily charged to the account of the American Equity Corporation, the why and how thereof being left entirely to conjecture with not a scintilla of evidence that the withdrawals were regularly made on valid checks. 20 30

Disposition of Proceeds

While undoubtedly a bank cannot be expected to follow the defendant's disposition of funds paid out

by it on a check of a corporation depositor as is argued in the plaintiff's brief, the doctrine is and generally applies only to the following of the cash after it is properly been paid out by the bank upon valid checks. It does not in the least relieve the bank from the necessity of paying out money only upon the valid check, note, draft, or other order or promise for the payment of money properly validated by the authentic signatures of such officers as
 10 are authorized to sign the same.

SUMMARY

The defendants respectfully submit:

A. That the plaintiff failed to prove that it had good title to the note by its failure to prove the genuineness of the signature of the payee-endorser, H. D. Gordon. Mr. Gordon testified positively that he never endorsed the \$4,500.00 note, and that the signature is not his. It was, therefore, a discredited note and the plaintiff never acquired title to it, and the finding of the Court to that effect, has evidence
 20 to sustain it, and therefore, it will not be disturbed.

B. That the plaintiff failed to prove that when it placed the proceeds of the note to the credit of the American Equity Corporation the latter corporation had any notice thereof which was binding upon it.

C. That the crediting of the account of the American Equity Corporation of the proceeds of the note was not payment of those proceeds to the corporation.

D. That the lack of knowledge on the part of
 30 the American Equity Corporation of the fact that the proceeds of the note had been placed to its credit threw upon the plaintiff the burden of proving that the proceeds of the note were actually paid to or upon the valid order of the Equity Corporation, and that the plaintiff has failed to sustain that burden.

E. The testimony of the defendants that no four checks, aggregating \$4,431.00, were ever issued by it is uncontradicted. The Court also found that the withdrawals from the account of the American Equity Corporation, by the four checks, aggregated \$4,431.00, which equaled the proceeds of the above mentioned note placed to the credit of the American Equity Corporation, and such withdrawals being upon those four checks, the Bank had no right to charge them against the account of the American Equity Corporation. This finding of fact, as to the forged checks, is conclusive thereof and the evidence certainly sustains it. 10

F. Defendants never having alleged that the four last mentioned checks were forged were, therefore, under no obligation to prove that fact.

G. That the finding of the court below in favor of the defendants was justified by the preponderance of the evidence presented to it at the trial. Certain facts are found by the Court. There being any evidence to support those findings, the Court in banc will not disturb them. With these findings of fact by the Trial Court, no other judgment could have been rendered than that which was rendered by the Court, and such judgment should, therefore, be sustained. 20

Respectfully submitted,

FREDERIC R. BRACE,

W. HOLT APGAR,

Attys. for Defendants- Respondents. 30

10 The testimony of the defendant - that no four
 check amounting \$1,500.00 were ever issued by
 the defendant. The Court also found that
 the defendant's account of the amount of the American
 Bank's account for the four checks - \$2-
 50.00 - which is the amount of the proceeds of
 the above mentioned checks is the result of the
 American Bank's calculation, and such with
 the defendant's own testimony, and such with
 the defendant's own testimony, the Bank had
 failed to show that such the amount of the
 10 American Bank's calculation. This finding of fact
 is in the amount of \$2,500.00, and the
 evidence certainly sustains it.

15 The defendant's own testimony shows that the four
 checks mentioned above were issued and therefor
 under no objection to prove that fact.
 20 That the finding of the Court below in favor
 of the defendant was justified. The proposition
 that the evidence presented to the trial Court
 in this case was found by the Court. There being any
 evidence to support the finding, the Court is
 bound to accept the same. With these findings of
 fact by the Trial Court no other judgment could
 have been rendered, that which was rendered
 in the Court and such judgment should therefore
 be sustained.

Respectfully submitted,

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W. HOLT ALLEN

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 Respondent



