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**Notice of Appeal.**

Filed June 18, 1913.

New Jersey Supreme Court.

10

WILLIAM R. S. DAVIS,

*Plaintiff,*

*vs.*

SAMUEL CLARK,

*Defendant.*

To Messrs. Lintott, Kahrs and Young, Attorneys of  
*Plaintiff:* 20

Take Notice that the defendant appeals to the  
Court of Errors and Appeals from the whole of the  
judgment in this cause.

Dated June 7th, 1913.

JEROME T. CONGLETON,

*Attorney of Defendant and Appellant.*

30

Service of a copy of the within notice is hereby  
acknowledged this 7th day of June, A. D. 1913.

LENTOTT, KAHR & YOUNG,

*Attorneys of Plaintiff and Respondent.*

40

*Complaint.*

NEW JERSEY SUPREME COURT.

WILLIAM R. S. DAVIS,

*vs.*

SAMUEL CLARK, Impleaded, Etc.

*On Contract.*

*On Postea.*

10

Lintott, Kahrs & Young, attorneys.

As yet of the second day of March, A. D. nineteen hundred and twelve.

Witness, William S. Gummere, Esquire, chief justice.

William Riker, Jr., clerk.

20

ESSEX COUNTY, *ss.*

Samuel Clark and William Rotter, the defendants in this suit, were summoned to answer William R. S. Davis, the plaintiff therein, in an action upon contract, and thereupon the plaintiff by Lintott, Kahrs & Young, his attorneys, complains: For that the defendants heretofore, to wit, on the twentieth day of February, nineteen hundred and twelve, at Newark, in said county, were indebted to the plaintiff in twenty thousand dollars for goods sold and delivered by the plaintiff to the defendants at their request; and in the like sum for work done and materials furnished by the plaintiff for the defendants at their request; and in the like sum for money lent by the plaintiff to the defendants at their request; and in the like sum for money paid by the plaintiff for the use of the defendants at their request; and in the like sum for money received by the defendants for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendants' request of money due and owing from

30

40

*Complaint.*

the defendants to the plaintiff; and in the like sum for money due from the defendants to the plaintiff on an account stated between them and being so indebted, the defendants in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendants have disregarded said several promises, and have not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so have hitherto wholly refused, and still do refuse, to the damage of the plaintiff twenty thousand dollars, and therefore he brings his suit, &c. 10

Notic is hereby given that this action is brought to recover the amount due on a promissory note of which the following is a true copy. \$10,000.

Newark, N. J., December 20, 1911.

Sixty days after date I promise to pay to the order of William Rotter Ten Thousand.....Dollars 20  
at Merchants' National Bank, Newark, N. J.  
Value received.

(Signed) Samuel Clark.

(Endorsed) William Rotter, 862 So. 15th St., Newark, N. J.

*Complaint.*

UNITED STATES OF AMERICA, }  
 STATE OF NEW JERSEY. } ss.

10 On the nineteenth day of February, in the year of our Lord one thousand nine hundred and twelve, at the request of The Ironbound Trust Co. of Newark, New Jersey, I, Frederick Scharringhausen, Notary Public, in and for the State of New Jersey, duly appointed, commissioned and sworn, residing in the City of Newark, and State of New Jersey, did present the original note made by Samuel Clark payable at sixty days for \$10,000, dated December 20th, 1911, and hereunto annexed, at the Merchants' National Bank at Newark aforesaid to bookkeeper thereof and of him demanded payment thereof, who then and there refused to pay the same, saying the maker was not present, and had not there left funds for that purpose.

20 Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer and endorsers of the said note, as against all others whom it doth or may concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred, and to be hereafter incurred for want of payment of said note and on the 19th day of February, A. D. 1912, I gave notice of said non-payment, to the maker and endorsers thereof by depositing said notice  
 30 in the post office at Newark, N. J., directed and addressed to them at their residence or places of business, with postage prepaid thereon, before the hour of six P. M. of said day, viz: Samuel Clark, 173 Clinton Ave., Newark, N. J.; William Rotter, 862 South 15th St., Newark, N. J.; William R. S. Davis, 26 Taylor St., Newark, N. J.

*Postea.*

Thus done and protested in the City of Newark, and State aforesaid in the presence of John Doe and Richard Roe, witnesses, in *testimonium veritatis*.

FREDERICK SCHARRINGHAUSEN,  
*Notary Public.*

Protest No. 18833.

Page No. 18833.

10

Judgment will be claimed for the sum of ten thousand dollars with interest thereon from February 19th, 1912, protest fees and costs of suit to be taxed.

And the said defendant, Samuel Clark, by Sommer, Colby & Whiting, his attorneys, comes and defends the wrong and injury, when, etc., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this, he, the said defendant puts himself upon the country, etc.

20

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the County of Essex on the first Tuesday of April, in the year of our Lord, one thousand nine hundred and thirteen, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the fifth day of June, A. D. nineteen hundred and thirteen, before our said Supreme Court at Trenton comes the said plaintiff by his attorneys aforesaid, and the justice before whom, etc., having first sent hither his record had before him in these words, to wit:

30

Afterwards, to wit, at the Circuit Court holden at Newark, in and for the County of Essex, on the twenty-ninth day of May, 1913, before Frederic Adams, a Circuit Court Judge, to whom the within case was referred for trial by the Chief Justice of the Supreme

40

*Postea.*

Court holding said Circuit as will appear by the order of said Chief Justice of the Supreme Court bearing date the first day of April, nineteen hundred and thirteen, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, Samuel Clark, by their respective attorneys, within mentioned, and the jurors of the jury between the parties aforesaid, in the pleas aforesaid, being also summoned, come, all to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath that the said Samuel Clark was indebted to the plaintiff in the sum of ninety-eight hundred three dollars and seventy-three cents, the debt within mentioned, in manner and form as in the plaintiff's declaration alleged, and they assess the damages of the plaintiff on occasion of the detaining of the within debt over and above the costs and charges by said William R. S. Davis in this behalf expended the sum of ninety-eight hundred three dollars and seventy-three cents.

Therefore it is considered that the said plaintiff do recover against the said defendant, Samuel Clark, his said damages by the jury in form aforesaid found to ninety-eight hundred and three dollars and seventy-three cents and also fifty-two dollars and forty-two cents for his costs and charges aforesaid, by the court now here adjudged to the said plaintiff and with his assent, which said damages, costs and charges in the whole amount to ninety-eight hundred and fifty-six dollars and fifteen cents.

Judgment signed this fifth day of June, A. D. nineteen hundred and thirteen.

WILLIAM S. GUMMERE,  
C. J.

*Postea.*

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this eighteenth day of June, A. D. nineteen hundred and thirteen.

WILLIAM C. GEBHARDT,

(SEAL)

*Clerk.*

10

20

30

40

*Specification of Defenses.***Specification of Defenses.**

NEW JERSEY SUPREME COURT.

10	WILLIAM R. S. DAVIS,  vs. SAMUEL CLARK and WILLIAM ROT- TER,  	<i>Plaintiff,</i>     <i>Defendants.</i>	} <i>On Contract,          Specification          of Defenses.</i>
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The defendant, Samuel Clark, specifies the following as the defences intended to be made under the plea of the general issue filed in the above entitled action:

20 (1) That there was no consideration for the note given by this defendant, the subject matter of the above entitled action, and that the plaintiff had knowledge at the time of its execution and delivery, and before its negotiation to him, that the said note was without consideration.

30 (2) That there was no consideration for the said note because the property purporting to be transferred to this defendant as alleged consideration for said note, was before and at the time of the alleged transfer, this defendant's property, and that the said plaintiff had knowledge of the same at the time of its execution and delivery, and before its negotiation to him.

(3) That there was complete failure of consideration for the said note and that the said plaintiff had knowledge of such complete failure at the time of its execution and delivery, and before its negotiation to him.

40 (4) That in securing the execution and delivery of the said note by this defendant, fraud was practiced

*Specification of Defenses.*

upon him by the payee thereof, and that the said plaintiff had knowledge of said fraud at the time of its execution and delivery, and before its negotiation to him.

(5) That the said note was not an accommodation note, and that it was without consideration, and that the said plaintiff had knowledge at the time of its execution and delivery, and before its negotiation to him, that it was not an accommodation note and that it was without consideration.

10

SOMMER, COLBY & WHITING,  
*Attorneys of Defendant.*

20

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40

*William Boyd Harding, direct.*

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Thursday, May 29, 1913.

10

WILLIAM R. S. DAVIS

VS.

SAMUEL CLARK AND WILLIAM  
ROTTER.

*On Contract.*

Before Hon. Frederic Adams, J., and a jury.

20 For plaintiff appear Lintott, Kahrs & Young, by  
Joseph Kahrs; John R. Hardin of counsel.

For defendant, Samuel Clark, appears Jerome T.  
Congleton; Frank E. Bradner of counsel.

A jury is called and sworn.

At one o'clock, P. M., the court takes a recess of  
one hour.

AFTER RECESS.

30

Mr. Kahrs opens for plaintiff.

WILLIAM BOYD HARDING, sworn in behalf of  
plaintiff.

*Direct examination* by Mr. Kahrs.

Q Mr. Harding, you are employed by the Mer-  
chants' National Bank of this city?

A I am.

Q In what capacity?

40

A Well, at present assistant discount clerk.

*William Boyd Harding, direct.*

Q How long have you been employed by that bank?

A Six years.

Q And you are familiar with the signatures of the patrons of the bank?

A I am.

Q Are you familiar with the signature of Samuel Clark?

A Yes, sir. 10

Q Are you familiar with the signature of William Rotter?

A I am.

Q I show you this paper, purporting to be a promissory note signed by Samuel Clark, and ask you if that is his signature (paper shown to witness)?

*Mr. Bradner.* I would like to cross examine the witness, if your honor please, on his qualification. 20

*The Court.* You may do so.

*By Mr. Bradner.*

Q In what capacity are you employed in the Merchants' Bank?

A As a discount clerk.

Q Is Samuel Clark one of the customers of that bank?

A He is.

Q And he has been during the six years that you have been there? 30

A Yes, sir.

Q Have you ever seen him write his name?

A I have not.

Q Have you ever seen Mr. Rotter write his name?

A No, sir.

Q You judge the signature, then, from a comparison with something else?

A I do; I judge it from an authorized signature, signed in the presence of our officers. 40

*William Boyd Harding, direct.*

Q How do you know that that was his signature—the one in the office?

A Why, it was signed in the presence of officers of our institution.

Q Was it signed in your presence?

A No, sir; but we are authorized to carry on business under that signature, and I have the signature card in my pocket, which was signed in the presence  
10 of our officers.

Q But it was not signed in your presence?

A No, sir.

Q And you cannot swear that the signature on the card is Mr. Clark's signature, of your own knowledge?

A Not of my own knowledge.

*Mr. Bradner.* I object to it.

*Witness.* But how is a bank to transact business—  
20

*Mr. Kahrs.* Never mind, Mr. Harding.

*The Court.* The card is not offered.

*By Mr. Kahrs.*

Q You honor checks on that signature, do you?

A I do; yes, sir.

Q And have you honored many checks signed by Mr. Samuel Clark?

A I have had charge of the ledger in which his account is, and I have paid on it a number of times.

30 Q Do you discount notes on that signature?

A Yes, sir.

Q Have you discounted Mr. Clark's notes?

A Notes indorsed by him and also notes signed by him.

Q And that applies to Mr. Rotter, does it?

A No, sir; I never discounted notes signed by Mr. Rotter.

Q But you have honored checks signed by Mr. Rotter, have you?

40 A Yes, sir.

*William Boyd Harding, direct.*

Q And you know the signatures both of Mr. Clark and of Mr. Rotter in the ordinary course of your business, do you?

A Yes, sir.

*Mr. Bradner.* I object to the witness testifying to the signature on the ground that he is not qualified to prove it.

*The Court.* That involves this proposition, does it? That a witness called to prove a signature must have seen the party write that or some other signature. 10

*Mr. Bradner.* Some other signature, or seen him write frequently enough to become familiar with the signature. There is not even any evidence here that he knows that the Samuel Clark whose name is on this note is the same Samuel Clark who signed the checks or signed the card.

*The Court.* The witness is a *quasi* expert; that is to say, he is not called as an expert on handwriting; he is called as a person the nature of whose business would naturally acquaint him with the signatures of these two persons for business purposes. He may be expected to have a practical knowledge of that subject for business action. So that it does not seem to be quite an expert case or quite the ordinary case. I am inclined to think it is competent. I will so hold. 20

Counsel for defendant, Samuel Clark, object to this ruling of the court. 30

Objection noted as ground of appeal.

Q Look at that paper that I have just placed on the rail, and tell the court and jury if that is the signature of Mr. Samuel Clark, the maker of the note (paper shown to witness)?

A Yes, sir; it is.

Q Will you look on the reverse side, the other side of the note, and tell us if you recognize the signature of William Rotter? 40

*William Boyd Harding, direct.*

A I do.

*Mr. Kahrs.* Now, if your honor please, I desire to offer this note.

10 *Mr. Bradner.* I object to it on the ground that no proof has been made of the delivery of it to Mr. Rotter, the payee of the note. It has to go to him first. There cannot be a complete negotiation without delivery. The Negotiable Instruments Act, laws of 1902, page 583, on page 589, article 3, section 30, says (reading). Section 59 says (reading).

*The Court.* The person whom you first mentioned as holder, whom you have in mind as answering that description?

*Mr. Hardin.* The man who brings suit on it and produces it in court.

*The Court.* That is, Mr. Davis?

20 *Mr. Hardin.* Yes.

*Mr. Bradner.* My answer to that is that there is no proof that he is the holder.

Section 19 also says (reading).

30 These sections all show that delivery is an essential. It is of prime importance that the delivery of the note to the person to whom it should go should be proved, under this statute. When no delivery is proven, or I might conceive even, if that is not true, when it appears that the note is in the hands of a person in due course, the delivery might be presumed. But even that situation does not appear in the case. There is no proof in the case that there is a holder in due course. So far as appears, the title of the note is in Mr. Rotter.

*The Court.* Then your objection now is, not that there is no proof of delivery to Mr. Rotter, but that there is no proof that the plaintiff holds it in due course?

40 *Mr. Bradner.* I say both.

*Motion for Non-suit.*

*The Court.* (After further argument.) The 59th section says: "Every holder is deemed *prima facie* to be a holder in due course." If every holder is deemed *prima facie* to be a holder in due course, what more proof do you want? I think the presumption is sufficient.

Counsel for defendant Samuel Clark object to this ruling of the Court.

Objection noted as ground of appeal. 10

(Paper referred to is marked Ex. P. 1.)

*Mr. Kahrs.* The notice of protest, or, rather, the certificate of the notary, is attached to the note, and a copy of that was annexed to the pleadings. It was agreed by counsel that the notary need not be produced. I understand that it is admitted that the note was duly protested. Is not that so?

*Mr. Bradner.* My admission goes to this extent: that instead of producing the notary, his certificate may go in evidence. That proves what he could testify to. 20

## PLAINTIFF RESTS.

*Mr. Bradner.* If your Honor please, I move to nonsuit the plaintiff, on the ground that there is no proof that this note was ever delivered by Samuel Clark to Rotter, the payee. Also, upon the further ground that there is no proof that the plaintiff is the holder of the note. 30

*The Court.* You do not deny that, if he is the holder, he is presumed to be the holder in due course? You say there is no evidence that he is the holder?

*Mr. Bradner.* There is no evidence that he is the holder.

*Mr. Hardin.* He produces it.

*The Court.* Well, we produce it. He has all the points of possession in his favor. That is 40

*Samuel Clark, direct.*

something. *Prima facie* he holds what he possesses. I deny your motion.

Counsel for defendant Samuel Clark object to this ruling of the Court.

Objection noted as ground of appeal.

10 Mr. Bradner opens for defendant Samuel Clark.

SAMUEL CLARK, defendant, sworn in his own behalf.

*Direct examination* by Mr. Bradner.

Q Mr. Clark, where do you live?

A 173 Clinton avenue, Newark.

Q How long have you lived in Newark?

A Sixty-five years.

Q What is your business?

20 A Manufacturing jeweler.

Q How long have you been in that business, for some time?

A Fifty years.

Q Do you know Mr. William Rotter?

A I do.

Q And Mr. William R. S. Davis?

A I do.

Q How long have you known Mr. Rotter?

A About four years.

30 Q And how long have you known Mr. Davis?

A The same length of time.

Q Had you any previous knowledge of Mr. Davis before four years ago?

A No, sir.

Q Where did you meet Mr. Rotter?

A Mr. Rotter?

Q Yes.

40 A Met him at the office of the first company that was formed, on Market street. I have forgotten that number.

*Samuel Clark, direct.*

Q What was the name of the company?

A The New Jersey Company, I think, the one that was called the New Jersey Company.

Q There was one before the New Jersey Company?

A No, the New Jersey Company.

Q The New Jersey Phonograph Company?

A Yes, I think that is the name of it.

Q Where was the office?

A On Market street, near Mulberry street, on the lower side of Market. I have forgotten the number; 218 or 220, something like that. 10

Q Was that company at that time engaged in any business?

A Were they engaged in any business?

Q Yes.

A They had started to make cheap phonographs; yes, sir.

Q Did they have a plant for manufacture?

A No, sir; got it done outside; that is what they told me. 20

Q With whom did you talk?

A That is what they told me: they were getting them made outside.

Q You say they told you. Whom do you mean?

A Why, Mr. Rotter especially.

Q Anyone else?

A Yes, Mr. Jacobs was there and Mr. Davis was there.

Q At the time? 30

A Yes.

Q This same Mr. Davis, the plaintiff in this suit?

A Yes, sir.

Q Do you know anything about the People's Talking Machine Company?

A Yes, sir.

Q Were you connected with that company?

A Just after its formation.

Q You were not one of the incorporators, were you? 40

*Samuel Clark, direct.*

A No, sir.

Q Did you acquire some stock of that company?

A Yes, sir.

Q To what amount?

A \$25,000.

Q Can you tell me what was the total amount of paid up stock in the People's Company? Who were the holders of the stock?

10 A It was incorporated for \$150,000; I think it was all out but \$25,000 at the time I entered, and I bought \$25,000 from one of the—from someone; I have forgotten which one it was that held it.

Q How many of you were in the company?

A There were four in it before I went in, and I was the fifth one; Meisselbach was the sixth one.

Q He came in afterwards?

A He came in after I did.

Q And was there a board of directors?

20 A Yes, sir; we were all directors.

Q Now, after that company was formed was there any other company, that you know of?

A Yes, the Wizard was formed after that.

Q (*By the Court.*) The Wizard?

A The Wizard Phonograph Company.

Q (*By Mr. Bradner.*) What was the purpose of that formation?

A To manufacture the machines.

30 Q What kind of machines?

A Phonograph machines, for the People's Talking Machine. The People's Talking Machine was to be the holding company.

Q And the Wizard was what?

A The Wizard, the manufacturing company.

Q Now, Mr. Clark, do you know whether there was any manufacturing done?

40 A I know there was some done; yes, sir; I don't know how many machines were made, but there were quite a number made.

*Samuel Clark, direct.*

Q Actual orders?

A I don't know about the orders; I know that machines were made, for I saw quite a good many of them down there.

Q Where were they made?

A At Meisselbach's factory, or in J. C. Mundy's building. The room was hired by this Wizard Company.

Q Who was the president of the People's Company? 10

A William Rotter.

Q Can you say whether Mr. Davis was connected with it?

A He was secretary and treasurer.

Q Do you know whether there was any other company besides those you mentioned?

A I don't think there was.

Q Did you ever hear of the Consolidated Record Company? 20

A Oh, yes. That was an outside affair; it didn't belong—it wasn't in touch with this company at all; it was a company that was formed to make the cylinders for the machines.

Q (*By the Court.*) What was the name of that?

A The Consolidated Record Company.

Q (*By Mr. Bradner.*) They made the records?

A They made the records for the machines. That was what they were formed for, as I understood it.

Q You were not in that? 30

A No, sir.

Q Do you know who was?

A Mr. Rotter and Mr. Davis; I don't know anyone else.

Q Well, how do you know that they were connected with it?

A Well, they both told me so.

Q I call your attention to a sale of your stock of the People's Company. Can you tell me whether it is a fact that you sold out your stock? 40

*Samuel Clark, direct.*

A I did sell it out.

Q When did you make that sale?

A I think it was April, 1911.

Q What year?

A I can't be quite positive of that date.

Q What year?

A 1911.

Q April, 1911?

10 A Yes. I have the date in my pocket; I can give it to you.

Q Well, that is close enough. Was there any agreement in writing made to sell the stock?

A Yes, sir.

Q Have you got that agreement?

A No, sir.

Q Do you know where it is?

A No, sir.

20 *Mr. Bradner.* Are you able to produce it, Mr. Hardin?

(Paper produced by plaintiff's counsel.)

Q (*By the Court.*) Do you mean to be understood that you sold all of the \$25,000?

A Yes.

Q (*By Mr. Bradner.*) I show you a paper which consists of two sheets and purports to be made on the 11th day of April, 1911, and ask you whether that is the agreement in writing that you refer to (paper shown to witness)?

30 A That is the agreement, sir.

The paper identified by witness is offered in evidence and marked Ex. D. 1.

Q I observe, Mr. Clark, that this paper contains your signature and that of William R. S. Davis, A. F. Meisselbach and William Rotter. Were there not other gentlemen concerned in this transaction?

A Yes, sir.

Q Who were they?

40 A Mr. Jacobs.

*Samuel Clark, direct.*

Q Was there anybody else?

A Well, finally Mr. Roos, I understood, but I don't know positively that Mr. Roos came in.

Q Where was this paper, Exhibit D. 1, signed?

A Three of us signed down at the office, on Prospect street, or Congress street; Prospect street, I guess it was—the Ferry street station, the Mundy building there, where we had our office; I have forgotten whether it was Prospect street or what it was, but it was at the office in the building there we signed, or perhaps—no, we signed it just outside, on Ferry street. We went in to get a witness, because we had no witnesses at that time in the office, so we went over to a store on Ferry street—one of Meisselbach's friends and customers; we went in there to get him to witness our signatures. 10

Q Was Mr. Jacobs there at that time?

A Mr. Jacobs was home at his house at that time; he was not there. 20

Q Where was Mr. Roos?

A Mr. Roos had not come home from Europe, as I understood it; he was to be home the next week or ten days, something like that, from Europe.

Q In whose handwriting is this Exhibit D1?

A Mr. Rotter's.

Q Prior to signing the paper was there a meeting of the directors of the People's Company?

A Yes, sir; in the afternoon, and this meeting was continued along into the evening. 30

Q Was that a regular or special meeting?

A It was a regular directors' meeting.

Q Do you know whether there were any minutes kept of it?

A Supposed to be; yes, sir.

Q Who was the secretary?

A Mr. Davis.

Q Do you know where the minutes are?

A No, sir. 40

*Samuel Clark, direct.*

Q At that meeting was there any statement made by Mr. Rotter in the presence of Mr. Davis?

A Yes, sir.

Q What was it?

A That he offered his resignation, because he had a very fine offer, which he had accepted, from the Consolidated Record Company.

Q (*By the Court.*) His resignation as what?

10 A As president and manager of the People's and Wizard companies.

Q (*By Mr. Bradner.*) What office did Mr. Rotter hold?

A President and manager.

Q What did he have to do with this talking machine?

A He was the inventor.

Q And what did he have to do with the management of the business or the manufacturing?

20 A Well, he was the expert, criticizing the manufacture and its perfection, and so forth.

Q What was said there in Mr. Davis's presence between the parties relating to this proposed resignation of Mr. Rotter?

A We didn't wish to accept it, because we felt that without Mr. Rotter we would be in very bad shape.

Q Well, you say "we didn't wish to." Tell us what anybody said in the open meeting.

30 A Well, we simply objected to it; I can't give you the words, but we objected to his leaving us in such a position as that. Now, I do not remember the words that we used.

Q Did you at that time here Mr. Davis make any remark?

A No, sir; not that I remember; I don't remember his making any special remark.

Q Well, did you accept Mr. Rotter's resignation?

40 A No, sir.

*Samuel Clark, direct.*

Q What happened?

A A proposition was made by one of us—I think I made it myself; that I hoped that an arrangement could be made between the two companies so that we might retain him.

Q (*By the Court.*) What two companies?

A The Wizard and People's Companies, as one thing, and the Consolidated Record, on the other hand. They were the two that seemed to be conflict- 10  
ing. He was with the one and was going to leave to go to the other—counting the people's and the Wizard as one company. One was the holding and the other was the manufacturing, but it was practically one thing. There were only the six men.

Q (*By Mr. Bradner.*) Now, at that meeting, then, when you made that suggestion, can you say whether Mr. Rotter and Mr. Davis were at that time officers of the Consolidated Company? 20

A Yes, Mr. Rotter and Mr. Davis were officers, they told me, in the Record Company; they told me that before.

Q When Mr. Rotter made his announcement that he had a better offer from some company, did he say what company?

A Yes, sir; he said the Consolidated Record Company.

Q Now, go on and tell us everything that occurred there, Mr. Clark, leading up to the making of the agreement. 30

A Well, it took about two hours; I don't know that I could.

Q Well, it is very important, Mr. Clark. Try to recollect it and tell us.

A Mr. Rotter said that he did not believe he could do anything; that he had already accepted the position, and therefore could not remain with us; but if we thought best before receiving his resignation, he would endeavor, if the thing was placed in his hands 40

*Samuel Clark, direct.*

entirely, to bring about a consolidation between the two companies. He said he could not do it unless it was entirely in his own hands. That was why the agreement was made and why we all signed, because it was going to be worthless if it was not. Mr. Meisselbach at this time stated that if Mr. Rotter withdrew, he would withdraw as the manufacturer. That would leave four of us that knew nothing about the business having the business.

10

Q What did Mr. Davis have to say?

A Simply nothing, that I remember; I do not remember his saying a word at all.

Q (*By the Court.*) What was Mr. Meisselbach's function? Was he the manufacturer?

A Yes, sir; he was the manufacturer.

Q (*By Mr. Bradner.*) How did you fix upon the amount that was to be paid for your stock?

20 A It was suggested by Mr. Rotter.

Q And what was that?

A \$10,000. He said he would either pay it all in cash to each one of us or he would give us half in cash and half in stock of the new consolidated company.

Q When you say "each one of us," whom do you mean, whom do you refer to?

A Those that signed. The agreement shows that.

Q Well, Mr. Clark, you got the \$10,000, did you not?

30

A Yes, sir.

Q And delivered your stock?

A Yes, sir.

Q To whom did you make the delivery?

A To Mr. Rotter, in the presence of Mr. Meisselbach.

Q Was your stock in the shape of one or more certificates?

A I think there was more than one; I think there was one share in the Wizard, which entitled me to

40

*Samuel Clark, direct.*

vote in that company, and the 25,000 in one in the other company complete.

Q Well, after that—that was in April, 1911—did you have any further interest whatever in the People's Company or Consolidated Company?

A Not until I bought this stock, if you consider that.

Q You then had a new transaction—with whom?

A Mr. Rotter.

10

Q And when was that?

A That was in December, the date of the note. I have forgotten; I think it was the 19th; I think the 19th of December. It comes back to me now; I am quite sure it was the 19th.

*Mr. Hardin.* The 20th.

*Mr. Bradner.* Is the note dated the 20th?

*Mr. Hardin.* Yes.

Q You saw Mr. Rotter?

20

A Oh, yes.

Q What was the occasion?

A He asked me to come down there.

Q To come down where?

A To the office, the same office, on Congress street, if that is the place. I have forgotten the name of that street.

Q Is that the same office where this other agreement had been made?

A The same office where this agreement was drawn.

30

Q Where it was drawn?

A Yes, sir.

Q And you went down to see him?

A Yes, sir.

Q What time of the day was it?

A About five o'clock in the afternoon.

Q And whom did you see there in the office?

A Mr. Rotter.

Q Was anyone else there?

40

*Samuel Clark, direct.*

A No, sir.

Q What conversation took place between you?

A He told me now he was prepared to keep his promise with me to—

10 *Mr. Hardin.* I object to this—it is in the absence of Mr. Davis—unless I get some further light than I have got now. This question, as I understand it, relates to conversation between Mr. Rotter and Mr. Clark, not in the presence of Mr. Davis.

20 *Mr. Bradner.* I suppose we have a right, if your honor please, to prove, if we can, just what the transaction was between the original parties to this suit. We have got to go further, and bring it home to Mr. Davis, or we fail, of course, in making out any case against him. We cannot show the alleged fraud or failure of consideration without showing all the conversations between the original parties to this note.

*The Court.* Then you offer it contingent upon your connecting it with the plaintiff?

*Mr. Bradner.* Connecting it in this way, and we will bring enough evidence, as we consider, to give him notice of the fraud in this transaction.

*Mr. Hardin.* That is, presuming that there will be fraud shown.

30 *Mr. Bradner.* We have got to prove fraud. We do not deny that.

*The Court.* I think it is probably better for the understanding of the case that you pursue the natural order of events, subject to having your testimony struck out unless you establish connection.

*Mr. Bradner.* That was my idea, to take it up chronologically.

40 *The Court.* It is easier to understand it that way.

*Samuel Clark, direct.*

*Mr. Bradner.* That is the way I stated it to the jury, and I propose to take it up in that way.

(Plaintiff's objection noted as ground for appeal.)

(Question and answer read.)

*The Court.* Finish your sentence.

*Witness.* —to allow me to purchase stock which would place me in a better position than ever financially with the company. 10

Q What promise do you refer to?

A Why, he had made a promise to each one of us when we signed this agreement, a promise that was a gentleman's promise, as he called it at the time—a gentleman's promise to allow us to come back in the company on even better terms than we sold to him.

Q Can you say whether Mr. Davis heard him make that promise?

A He was there at the time; I don't know whether he heard it or not. He must have heard it, because he was not more than five or six feet away from him when he said it. 20

*By the Court.*

Q You are now speaking of the time when originally this gentleman's promise, so-called, was made?

A Yes, sir.

Q Your interview with Mr. Rotter at about five o'clock in the afternoon was an interview with him alone? No one else was there?

A Yes, that was alone. 30

*By Mr. Bradner.*

Q Well, is that all that was said at that time?

A At the time when Mr. Rotter and I were alone?

Q Yes, in December, 1911.

A In December, 1911—

*The Court.* Mr. Bradner is now going back to the original gentleman's agreement.

*Mr. Hardin.* No, he has left that.

*Mr. Bradner.* No, I have passed by that. 40

*Samuel Clark, direct.*

Q You say this gentleman's promise was made at the time that the agreement of sale was signed?

A Yes, sir.

Q I asked you whether you could say that Mr. Davis heard that?

A Yes, sir.

Q He was there at the time?

A Yes, sir.

10 *Mr. Bradner.* He said he did not know whether he heard it or not, he was close enough by.

Q Did Mr. Rotter say that in a low tone or a loud tone?

A Oh, no, he spoke it so that we could all hear.

*Mr. Hardin.* I would just as soon you would not lead the witness.

20 *The Court.* What the witness said was, first, that he did not know whether Mr. Davis heard it or not, and then that he must have heard it, because he was only five or six feet away.

Q Now, we will come back to December, 1911. After telling you that he was prepared to carry out his promise, what further, if anything, was said?

A He said now that he was prepared to do that, as I have just stated—

30 *Mr. Hardin.* This is being taken subject to my objection.

*The Court.* Yes.

(Plaintiff's objection noted as ground for appeal.)

*The Court.* This is the five o'clock, P. M., meeting, in December, 1911. Go on.

40 *Witness.* Then he told me that the proposition was to give me so much of the People's Company stock, 10,000 at par and 20,000, I think, at par, as a bonus, in the other company, the Record Company.

*Samuel Clark, direct.*

Q The Consolidated Record?

A Yes. So that I would be in both of those companies as he had originally agreed.

Q (*By the Court.*) The proposition was to give you \$10,000 of the People's stock at par and \$10,000, as a bonus, of the Consolidated stock?

A \$20,000, as a bonus, in the other.

Q (*By Mr. Bradner.*) Then at that time what did you know about the condition of the company? 10.

A Nothing whatever.

Q Well, when his proposition was made to you what did you say?

A I said if Mr. Whitehead was going in and he was sure that Mr. Whitehead would be our president—he said he had placed his \$10,000 with the company—why, I felt that that would be a very good thing.

*Mr. Kahrs.* I object to that, if your honor please. 20

*The Court.* On the same ground?

*Mr. Kahrs.* This witness started to say what he felt, not what anybody said or what was done.

*The Court.* I understood that this was what he said: "I said if Mr. Whitehead was to be our president."

*Mr. Kahrs.* The witness was just continuing by saying that "I felt, as long as"—

*Witness.* I think I did say that. 30

(Answer read.)

Q (*By the Court.*) That is what you said?

A Yes.

*The Court.* He said, "I felt that would be a very good thing."

Q (*Mr. Bradner.*) Mr. Clark, I would like to have you tell us just exactly what Mr. Rotter said to you on that occasion and what you said to him. Give us the entire conversation. 40

*Samuel Clark, direct.*

A I don't think I can do that, give you the entire conversation, any more than I could give you the entire action of the meeting that we had. I am giving you, as far as I can, everything that I remember that was done.

Q Give us what you remember, then.

A Well, I have already, have I not? If there is anything that you wish to know—

10 Q I am in a position where I cannot suggest it to you. You must rely upon your own memory, not upon mine. I would be pleased to do so, if they would let me.

A Well, I might go all over it again.

Q Well, you made some remark about Mr. Whitehead. I suggest that to you.

A Why, I have just said that Mr. Whitehead was going in with his \$10,000.

20 Q How did you know that?

A Why, Mr. Rotter told me so.

Q When did he tell you that?

A Right at that time. That was my inference, when I spoke of Mr. Whitehead. Maybe I didn't put it right exactly.

*The Court.* You said that Mr. Rotter said that Mr. Whitehead put in \$10,000.

*Witness.* Yes, I thought I said that.

30 Q Do you recall anything that was said about the business being done then?

A He said it was in good shape, better shape than ever.

Q Who said that?

A Mr. Rotter. There were only the two of us there now, you remember.

Q Did you and Mr. Rotter come to any agreement that evening?

40 A Yes, sir; I told him that I would take the offer, but could not pay him the money down; that I would

*Samuel Clark, direct.*

give him a two months' note for the amount, if he would not negotiate it without my consent.

Q What did he say to that?

A He said he would do it, and he accepted it.

Q Was the note made out?

A The note was made out and signed.

Q When was the note made out?

A The note was made out the next morning.

Q Why was that?

10

A Well, it was—I don't believe there was any—I think the stock books were not—

Q Just speak louder, please.

A The stock books were not at hand, and I was to leave the stock as security for my note until I should pay the note.

Q What stock do you refer to?

A The stock which he was to sell me for the \$10,000 which the note represented.

*Mr. Bradner.* Now I call for the stock.

20

(Papers produced by plaintiff's counsel.)

Q Did you at the same time the note was signed sign some other paper?

A I don't remember signing another paper. I think Mr. Rotter gave me a paper. Perhaps I did.

Q I show you a paper and ask you if you signed that (paper shown to witness)?

A Yes, sir; that is the delivery of the stock.

Defendant's counsel offer in evidence the paper identified by witness.

30

Marked Exhibit D. 2.

(Defendant's counsel reads Exhibit D. 1 and Exhibit D. 2.)

Q Now, Mr. Clark, I show you what purports to be certificate No. 39, for 100 shares of the People's Talking Machine Company (paper shown to witness). Have you ever seen that paper?

A I don't know that I have. That is made out to William Rotter, not made out to me.

40

*Samuel Clark, direct.*

Q Well, in the paper that you signed you assigned certificate No. 39. Did you see a certificate at that time?

A I saw a certificate at that time. I thought it was made out to Samuel Clark; it should have been made out to Samuel Clark. That is why I do not recognize it. My name does not appear.

10 Q When you signed the paper Exhibit D. 2 what was done with the certificates for the stock that you were buying?

A I handed the certificates right over with the note. They were made out at the time the note was made out.

Q Who made them out?

A Mr. Rotter.

Q (*By the Court.*) You handed them back as collateral?

20 A Yes, sir.

Q (*By Mr. Bradner.*) Then you say the certificate for the People's Talking Machine Company's stock was made out how, to whom?

A It was made out to me when I gave this note.

Q Now, I show you what purports to be certificate No. 6, for 20,000 shares of the Consolidated Phonograph Record Company (shown to witness).

30 A This is correct, sir; this is made out to me; but I guess they have given us the wrong one there, or else he put his name in instead of my name.

Q This certificate No. 6, for 20,000 shares, is made out to you?

A Yes, sir; and the other one should have been; I supposed it was.

Q (*By the Court.*) Is the Consolidated Record Company the same as the Talking Machine Company?

A No, sir.

*Mr. Bradner.* No, sir.

40 Q No. 39 is the certificate of the Talking Machine Company?

*Samuel Clark, direct.*

A Yes, sir.

Q This certificate No. 6 is the certificate of another company?

A Yes, sir; the one that manufactured the records.

Q (*By Mr. Bradner.*) This is certificate No. 6; you think that is correct?

A Yes, that is correct, and the other one would be correct were my name there instead of Rotter's. He has evidently made a mistake. 10

Q You did not endorse the certificate No. 6?

A No, sir.

Q Do you know what was done with it?

A Why, I gave him another paper with it—signed another paper.

Q Look at the top of Exhibit D. 2 (shown to witness). What is this paper fastened on the top of it—a little piece of brown paper?

A I am sure I don't know; I don't know why that was put there. 20

Q Can you say, Mr. Clark, whether there were two certificates of stock handed to you at the time the note was delivered or not?

A There certainly was; they were there on the desk, drawn up at that very time. I saw them taken out from the book.

Q Can you say whether those certificates of stock were pasted fast to Exhibit D. 2?

A No, sir; they weren't pasted fast at all when they were delivered to him. I didn't have them in my possession at all. 30

Q Well, tell me, is there not paste on the back of that brown paper? Isn't that a paster?

A It surely is. Something has been pasted fast there and torn loose from it.

*Mr. Bradner.* I offer certificate No. 6 in evidence.

(Marked Ex. D. 3.)

*Mr. Bradner.* I will ask counsel for the plaintiff whether certificate No. 39 is produced by the 40

*Samuel Clark, direct.*

plaintiff as the certificate that was mentioned in Exhibit D. 2?

*Mr. Hardin.* Yes, sir; the same certificate.

*Mr. Bradner.* Then I offer that in evidence. (Marked Exhibit D. 4.)

10 *Mr. Hardin.* I call your Honor's attention to the fact that the certificate No. 39, for 100 shares of the People's Talking Machine Company, is endorsed in blank by William Rotter, as of the date of December 20, 1911. It is made in the name of William Rotter, and is endorsed in blank by William Rotter—power of attorney—on the day that Mr. Clark says this transaction took place.

*Witness.* It would seem to me that that could be easily explained.

20 Q Well, Mr. Clark, did you see Mr. Rotter sign his name on the back of this certificate No. 39?

A I can't say that I did.

Q This is the one that is made out to him?

30 A I am quite sure that he did, but I can't be quite positive of it. I suppose that is the way that he intended me to have it, and have it transferred afterwards; that is the way that it seems to me now; but I thought it was made out to me at that time, but it evidently was made to him, and then he has assigned it to me, but without putting my name in there, so that I could put it to anybody I chose, or something of that kind. I can't tell you why it was done without being witnessed.

Q The signature on certificate 39 is "William Rotter, President." Is that the same William Rotter?

A Yes.

Q And "Louis Hanoeh, Treasurer."

A Yes.

Q Did you know him?

40 A I knew him; yes, sir; I do know him.

*Samuel Clark, direct.*

Q And on certificate No. 6 it is signed "William R. S. Davis, President." Who is he?

A He is this man that is suing the note.

Q And "William Rotter, Treasurer." Is that the same William Rotter?

A It is the same William Rotter.

Q Certificate No. 6 is made out on the 20th day of December. That was the same day that you signed the note? 10

A Yes, sir; it was done at the same time.

Q Did you see Mr. Davis sign this certificate?

A No, sir; he was not there.

Q What time in the day was it that you signed the note?

A I should judge it was about nine o'clock in the morning.

Q And when you got to Mr. Rotter's office who was there that morning?

A Mr. Rotter. 20

Q You did not see Mr. Davis there?

A No.

Q Do you recall whether Mr. Rotter had the certificates of stock ready for you?

A I think he did; I think he brought them that morning. That is the reason we could not finish the business the night before, because we could not get at these stock books.

Q Where were the stock books?

A I am sure I do not know; I suppose in the hands of Mr. Davis; I don't know. They may not have been. 30

*Mr. Bradner.* If your Honor please, this note shows title out of the plaintiff. It is endorsed by the plaintiff. The endorsement has not been stricken off.

*Mr. Hardin.* The plaintiff brought the suit and produces the note.

Q I show you Exhibit P. 1, Mr. Clark (shown to witness). Is that the note that you refer to, that you made on December 20th? 40

*Samuel Clark, direct.*

A It is very evidently the note.

Q Now, it appears to have been torn and pasted together. Do you know anything about that?

A No.

Q By what appears to be the same kind of brown paper as the paster. You do not know anything about that?

A I do not know anything about it.

10 Q At the time that you made the note was there any person present besides you and Mr. Rotter?

A No, sir.

Q Who wrote out the body of the note (paper shown to witness)?

A Mr. Rotter.

Q After you had signed it what was done with it?

A It was left with Mr. Rotter.

Q What was said then, after you had signed it?

20 A Something was said before I signed it, but nothing afterwards.

Q What was that?

A That was that it should not be negotiated, if that is what you refer to.

Q What you said before?

A Yes, that is what I said before.

Q (*By the Court.*) That is what you said?

A Yes, the note should not be negotiated. That evidence I have already given.

30 Q (*By Mr. Bradner.*) Well, I understood you to say something in addition to that before—that it was not to be negotiated.

*The Court.* Without his permission.

A Without my permission.

Q Without your consent?

A Yes.

Q Do you know whether the note ever was negotiated?

A I am not positive of it at all; they told me so.

40 Q Did you ever consent to it?

*Samuel Clark, direct.*

A No, sir.

Q After the note had been given did you see anything of Mr. Davis? After this note had been given to Mr. Rotter did you see anything of Mr. Davis?

A I saw him only the once—well, I saw him twice, once in the evening, and the next morning early at Mr. Kahrs's office.

Q Where was that?

A The evening was at my office and the next morning at Mr. Kahrs's office. 10

Q At what?

A At Mr. Kahrs's office.

Q Did you only see Mr. Davis on the two occasions?

A You said after I knew of his getting the note.

Q No, after this note had been given to Mr. Rotter, I said.

A Oh, yes. Mr. Davis came to my house two or three times to see me, once the latter part of January—or once the latter part of December and once early in January. 20

*By the Court.*

Q Will you mention the years, please?

A 1910 and 1911.

Q December, 1910?

A December, 1910, and January, 1911.

*By Mr. Bradner.*

Q The note is in December, 1911. Was it before or after the note? 30

A Well, then, it was 1911 and 1912.

Q Take the first occasion he came to see you. Did he state to you what his purpose was in coming to see you?

A Yes. Shall I tell you what it was?

Q Yes, tell us what he stated.

A He came and asked me whether he should invest more money in the Wizard Company and in the 40

*Samuel Clark, direct.*

People's Company; he wanted to know what I thought of it. Well, I told him I had already invested, or I had given my note, but I thought perhaps he had as much as he ought to carry; it was a pretty good thing, but, I said, "I think you have got all you want to carry."

Q Did you tell him to whom you had given your note?

10 A Oh, yes, I told him I had given it to Mr. Rotter.

Q Now, this was in the latter part of December?

A This was in the latter part of December.

Q This talk?

A Yes, and also—

Q Just stick to that time.

A Yes, the latter part of December.

Q What further was said?

20 A He told me that Mr. Rotter had told him some things that perhaps I ought to know, but he had promised Mr. Rotter that he would not tell what they were. I wormed out one or two little things, I have forgotten just what they were, but he said, "Now, Mr. Clark, Mr. Rotter ought to tell you what he has told me, and I will see if I cannot bring it about."

Q Well, how did he come to say that, Mr. Clark, do you know?

A Simply because I wormed some little things out of him. When he came to talk to me about it, it

30 Q I understand that he came there and asked you about investing in the People's Company?

A Yes, he wanted to know—he said that he had already invested \$5,000, and wanted to know if he should invest more. Well, I told him I had given my note for ten, but I thought that if he had five he had all that he could carry, or all that he ought to put in it.

40 Q Tell us what you said to him, if anything, about that note that you had given.

*Samuel Clark, direct.*

A Nothing more than I had given the note to Rotter for the stock, and it was coming due in February.

Q Is that all you said to him about it?

A That was the whole gist of that night's talk; yes, sir. I am quite ready to answer anything that may be called for there, but that was the whole gist of that night's talk.

*Mr. Kahrs.* Just answer the questions, Mr. Clark, please. 10

Q At that time when Mr. Davis came to see you had you made any inquiries of Mr. Whitehead?

A No, sir.

Q Well, did Mr. Davis come to see you again?

A Yes, sir; he came to see me along the first part of January.

Q What was said then?

A He said that he had seen Rotter, and he thought it was possible that Rotter would finally tell me, and I told him at that time that it would be a good thing if he brought about an engagement by which the three of us could have a conversation together and understand each other, and he said he would try and bring such an occasion about. 20

Q Well, at that time were you given any information as to what Rotter would have to say?

A No, sir.

Q Did you know what it was?

A No, I did not know any more than I had an idea that it was something— 30

Objected to.

Q Never mind about your idea, only what he said.

A All right. You asked me if I had any impressions, as I understood it.

*Mr. Bradner.* No, you cannot say that.

*The Court.* You may say anything that was said from which you derived impressions without stating what your impressions were. 40

*Samuel Clark, direct.*

Q You said something about Mr. Davis having already put in \$5,000. What did he have to say about that?

A He said that he had, he had invested \$5,000 in it.

Q And is that all that he said about that \$5,000?

A Yes, sir.

Q You had known Mr. Davis at that time for two or three years?

10 A Two or three years; yes, sir.

Q Did you know anything about his financial ability?

A I had some idea; yes, sir. He told me that the money that he had put in originally he had to borrow on bond and mortgage. Therefore I supposed he was not—

Q (*By the Court.*) You now refer to this \$5,000 that he said he had put in?

20 A No, sir; the original \$5,000 that he put in the People's, or he put in the first company that was formed; the New Jersey, I think, he put his in.

Q (*By Mr. Bradner.*) Well, he was one of the parties that signed the agreement to sell out to Rotter for \$10,000?

A Yes, sir.

Q Did you ever have any conversation with him about that after the agreement was made?

A Yes, sir.

30 Q When was that?

A I think at that time, at either one or the other of those meetings. He told me that he had not received his money until a very short time before that from Rotter, while I had received mine in the early part of the year; that he had held him over, he didn't get his.

Q Did he tell you how he got it, in what shape?

A No, sir.

Q Well, he came again to see you, did he?

40 A Yes, sir.

*Samuel Clark, direct.*

Q And Mr. Rotter came with him?

A Yes, sir; when he had made the arrangement with him to come.

Q And where did that meeting take place?

A In my office, in the Essex building.

Q What time of the day was that?

A Well, it was half-past eight in the evening.

*Mr. Hardin.* When?

Q When was that?

10

*By the Court.*

Q (Interposing.) He came with whom?

A He came with Rotter.

Q Mr. Rotter came with Mr. Davis?

A Yes, sir.

*By Mr. Bradner.*

Q When was that, what month?

A It seems to me it was in the latter part of January or the first part of February, 1912. 20

Q What occurred at that meeting? Tell us all you can about what was said then.

A Mr. Rotter told us, or told me in the presence of Mr. Davis—Mr. Davis remained there the whole time—that he could not sleep nights, because there was something on his mind; that he had been influenced by Mr. Meisselbach to do a thing that he felt was not right—that he knew was not right; that the story that he had had an offer from the Record Company was not so; that he and Meisselbach made up the story, and worked that on us on that evening to get our signatures; that the fact was that he did not have any offer from the Record Company. Mr. Davis, who was the president of the Record Company, sat there and assented to it. 30

Q (*By the Court.*) What do you mean by "assented to it"?

A He sat there—by his silence; he sat there and did not say that it was not so. 40

*Samuel Clark, direct.*

Q (*By Mr. Bradner.*) Was anything else said on this occasion?

A He said that he would tell this same story to all six of the directors, could we get them together, and he wished we could; that he had told this story to Mr. Kahrs, and if I would go over to Mr. Kahrs with him the next morning, why, we would talk the matter over with Mr. Kahrs; and we made the arrangement to go over to Mr. Kahrs the next morning.

10 Q On this occasion, on this evening at your office, was anything said about this promissory note that you had given?

A No, sir. I told them that, under the circumstances, I could not be a party to a doing of that nature; that if I paid this note it would make me a party to their doings; so I said, "I will not pay the note."

Q Did you afterwards go to Mr. Kahrs' office?

20 A Yes, sir.

Q When was that?

A The next morning, about nine o'clock, I think, or half-past nine, something like that.

Q What occurred there?

A I asked Mr. Kahrs if Mr. Rotter had made such a confession to him, and Mr. Kahrs said he had.

Q Who were there then?

A Mr. Kahrs, Mr. Rotter, Mr. Davis and myself.

30 Q This conversation, I assume, took place in the presence of the four gentlemen?

A Four of us together; yes, sir.

Q Go ahead and tell us what was said.

A That he had made a complete statement to him and that he felt very much better for doing it. And then I reiterated the statement—

*By the Court.*

Q This is what Mr. Rotter said?

40 A Yes, Mr. Kahrs said that Mr. Rotter had made the full statement to him and felt very much better for doing so.

*Samuel Clark, direct.*

Q And that Mr. Rotter felt better for doing so?

A Yes, sir; Mr. Rotter felt better; he got it off his mind. Then I made the statement—reiterated the statement that I made the night before, that, under the circumstances, I would not pay that note.

Adjourned until Monday, June 2, 1913, at ten o'clock, A. M.

10

SECOND DAY.

Monday, June 2, 1913.

Met pursuant to adjournment.

Present, counsel as before stated.

SAMUEL CLARK, defendant, resumes the stand in his own behalf.

20

*Direct examination* (continued) by Mr. Bradner.

Q Mr. Clark, on Thursday when we adjourned you had been testifying about a meeting at Mr. Kahrs' office. Do you recall that?

A Yes, we were.

Q Have you had any further conversation with Mr. Davis since the meeting at Mr. Kahrs' office?

A No, sir; no more than to say, "How do you do," or something of that kind. Do you want to know whether I wrote anything to him? I did write a letter—  
—one or two letters—to him.

30

Q You have written one or two letters to him?

A To him; yes, sir; and received one from him.

Q (*By the Court.*) That is, to Mr. Davis?

A Yes, sir.

Q (*By Mr. Bradner.*) Have you the letter that you received from him?

A No, sir.

Q Where is it?

40

*Samuel Clark, direct.*

A I suppose it was destroyed; I don't know.

Q Have you looked for it?

A Oh, yes.

Q Where have you looked?

A Looked among my papers, private desks, and so forth.

Q And you have not been able to find it?

A No, sir.

10 *Mr. Bradner.* I will ask Mr. Hardin if he has a copy of it?

*Mr. Hardin.* What is the date?

*Mr. Bradner.* We cannot tell the date.

*Mr. Hardin.* Well, approximately? Before or after suit started?

Q Was it before or after Mr. Davis started suit against you?

A It was after, after he started suit; yes, sir.

20 Q Did it relate to a proposed settlement, or something of that kind?

A Yes, sir.

*Mr. Bradner.* Well, if it did, we would not want it.

*Witness.* I wanted to avoid having the suit pressed.

Q Something about that?

A Yes.

30 *Mr. Bradner.* Then I will not ask you about it.

Q Did you have any other conversations with Mr. Davis after you gave the note to Mr. Rotter than those that you have told us about?

A Other than the ones that I have already spoken of?

Q Yes.

A Yes, sir; I think there was one the latter part of January.

*Samuel Clark, direct.*

*By the Court.*

Q What year?

A It was after the 20th.

Q January of what year?

A It was—was that 1911 or 1912? I have forgotten.

Q Do you mean the year the note was given?

A It was the following year. That was December and this was January. 10

Q Do you mean the year the note was given?

A It was the following year. That was December and this was January.

Q The note was given December, 1911.

A Then this would be 1912.

Q You say after January 20, 1912?

A Yes, sir.

Q A conversation with Mr. Davis?

A Yes, sir. 20

*By Mr. Brädner.*

Q What was that conversation?

A With regard to the note, which Mr. Rotter told me on the 20th that he had sold to Mr. Davis.

Q He told you that?

A Mr. Rotter came to see me on the 20th at my house and told me that he had made this deal with Mr. Davis, he was taking the note.

Q It was before that that Mr. Davis had been in to see you and told you about what Rotter had done, or suggested to him? 30

A You mean that Rotter had told him some things?

Q Yes.

A Yes, sir. Those were previous meetings.

Q Well, after Mr. Rotter had told you that he had made a deal with Davis with the note, did you have any conversation with Davis about the note?

A Now, will you repeat that again?

Q (Question read.) 40

*Samuel Clark, direct.*

A Yes, sir; that is why he came down there to my house after the 20th.

Q How did you know that that was what he came down for?

A Because we talked about it; it was the principal thing.

Q What was that conversation, then, after the 20th, when Davis came to you?

10 *The Court.* After the 20th?

*Witness.* Yes, there was a meeting after the 20th.

*The Court.* Very well, go on and tell us about it. This was Davis who came down, was it?

*Witness.* Yes. He told me that he had seen Mr. Rotter and had purchased the note, which he knew that I had heard of through Rotter coming down on the 20th.

20 Q Well, what else did he say?

A And then he said this confession which Mr. Rotter was to make would come off at some future date, and I think he told me the date then, but I have forgotten what date that was.

Q Did he tell you what he gave for the note?

A Yes, sir; five thousand in stock and five thousand in cash was what he paid for the note, as I understood it.

Q What stock?

30 A The stock of the People's.

Q (*By the Court.*) The People's Talking Machine Company?

A Yes, sir.

Q (*By Mr. Bradner.*) Was that the same conversation in which something was said as to how he raised the money?

A I couldn't hear that.

Q What is that?

40 A I couldn't hear that.

*Samuel Clark, direct.*

Q Was that the same conversation when something was said as to how he raised the money?

A No, sir; that, as I remember, was testimony which I had given about the way he got his money to put in in the first place in the business.

Q I would like to get back, Mr. Clark, to the meeting in April, 1911, of the directors of the People's Talking Machine Company. I think you said that Mr. Davis was present at that time?

A Yes, sir.

Q Do you recall whether there was anything said about—

*Mr. Hardin.* Please do not lead the witness. Ask him what took place, if you want to, all you please, and let him do the testifying.

(Question read.)

*Mr. Hardin.* I object to the question, so far as it has gone, as suggestive of what took place and as being necessarily a leading question when completed. We have already been over this ground.

*The Court.* I cannot rule on an incomplete question. Finish your question.

Plaintiff's counsel object to this ruling of the court.

Objection noted as ground of appeal.

Q —about increasing the capital of the company?

*The Court.* Avoid the leading form as much as you can.

*Mr. Bradner.* I am trying to, but I have to direct his attention to the subject matter.

*The Court.* It is a great mistake to suppose that a leading question is always improper; it is not.

(Question read.)

Q —about increasing the capital of the company?

A There was not anything at that meeting said about increasing the capital.

*Samuel Clark, direct.*

Q Do you know whether the capital of the People's Company was increased?

A No, sir.

Q (*By the Court.*) You mean that you do not know?

A If it has been, I hadn't heard it. I don't know anything about it; I haven't heard that it was. I don't suppose it was. I knew the capital of the Wizard Company had been increased—the Wizard Company, which was the manufacturing company of the People's.

Q (*By Mr. Bradner.*) How do you know that?

A I saw the papers.

Q The original papers?

A I saw the papers from Trenton; I got copies of them; I had copies in my hands.

Q What was the occasion for you having any of those papers?

A I wanted to know the truth of the matter, whether there had been any increase or not, or whether the name had been changed. I was keeping my stock, which was the Wizard Company stock, and if they were going to change the stock of that company to the International, and increase the capital stock while I held stock under the name of the Wizard, I wanted to know it; so I obtained that information. They increased it from one million to five millions of dollars.

30 *Mr. Hardin.* I think there is another way to prove this increase, if there be such an increase. I do not myself know whether there was or not. You have got the books here, have you not?

*The Court.* If it is a matter of importance, it ought to be strictly proved. Strike out the witness' statement as to the amount of increase.

40 Q While you were connected with the People's Talking Machine Company, Mr. Clark, did you hold any office?

*Samuel Clark, cross.*

A Yes, sir; vice-president.

Q Did you perform any service?

A No, sir; not special.

Q How often did you go to the place of business of the company?

A Almost every day.

Q What was going on there?

A They were perfecting the machines and getting ready for the sale of the Wizard stock. 10

*By the Court.*

Q Just what do you mean by "perfecting the machines"?

A Why, they had not been perfected; there were little things about them which did not work exactly smooth and could be improved.

Q This was mechanical work?

A Mechanical work; yes, sir.

*By Mr. Bradner.*

Q Before you gave the note to Mr. Rotter did you make any investigation of the condition of the People's Talking Machine Company? 20

A No, sir.

*Cross examination by Mr. Hardin.*

Q Mr. Clark, you had been interested in the company before, had you not?

A Had I what?

Q You had been interested in the company before?

A Oh, yes, for a year. 30

Q And you knew Mr. Rotter?

A Yes, sir.

Q Was that the reason that you did not make any new investigation?

A I don't know as that was the reason. I had faith in the thing.

Q (*By Mr. Bradner.*) You had what?

A I had faith in the movement.

Q (*By Mr. Hardin.*) And you also had faith in Mr. Rotter? 40

*Samuel Clark, cross.*

A Yes, sir.

Q Going back to this time in April, 1911. Was there any other paper signed at that time, when you disposed of your stock originally, than the paper, Exhibit D. 1, identified by you the other day? I show you D. 1 (paper shown to witness).

A I don't recall any.

10 Q I show you a paper indorsed "Assignment," and ask you whether you recognize that as a paper signed by you (paper shown to witness)?

A That certainly is my signature; I suppose that is the correct paper.

Q Do you recognize that as a paper that you signed at that time?

A I had forgotten about it, but I guess it is so. That is very evident.

20 Q Now, this paper is dated April 15, 1911, and refers to stock certificates 15 and 17 in the Wizard Phonograph Company. I suppose that means the stock that you originally held in the Wizard Phonograph Company, which you disposed of at the time you made the first sale that you described the other day, in April, 1911, to Mr. Rotter?

A Yes.

Q And it also refers to stock of the People's Talking Machine Company. That is the other stock that you disposed of at the same time?

30 A Yes.

Q So that at the time you made this deal—so that at the time you made this sale to Mr. Rotter you had 250 shares of the stock of the People's Talking Machine Company and one share of the stock of the Wizard Phonograph Company?

A Yes, sir.

Q Had you got any stock—that is, the certificates—in both companies when you originally went in?

40 A No, sir; I had the People's before the Wizard was formed.

*Samuel Clark, cross.*

Q You were interested in the People's when the Wizard was formed?

A Yes.

Q How long after the People's was organized was the Wizard formed?

A I had been in about a year.

Q And you went in when?

A I went in in February, and I think this was April, was it not? A year and two or three months. 10

Q That is, you do not mean the February immediately preceding; you mean the February in the year preceding?

A Yes, a year and some months. It might have been I went in in January. I can't tell you that exactly, when I did go into the People's. I know it was in January or February, it seems to me; the year previous to when the Wizard was formed.

Q You evidently had some additional interest besides the one share of the Wizard stock which stood in your name, from this paper, did you not? 20

A At the time the paper was signed?

Q Yes.

A Yes, I had some stock, which I referred to only a few moments ago. That was preferred stock.

Q In which company?

A The Wizard.

Q And you sold that at the same time?

A No, sir. 30

Q (*By the Court.*) This one share, was that the common stock, Mr. Clark?

A That was the voting stock; yes, sir; that was the common stock, the voting stock.

Q (*By Mr. Hardin.*) Will you kindly look at this paper which you have identified, this assignment (paper shown to witness). I am talking about April, 1911, what you sold in April, 1911—we may be talking at cross purposes—not about any later case. 40

*Samuel Clark, cross.*

*Mr. Bradner.* You are not talking about the same date. The papers bear different dates; this is the 15th and the other is the 11th.

*Mr. Hardin.* One is the contract and the other is the assignment.

*Mr. Congleton.* D. 1 is dated April 11th, Mr. Hardin.

10 *Mr. Hardin.* I know it.

*Witness.* This is April 15th.

*Mr. Hardin.* Yes

Q Do you find any reference in that paper to other stock than that one share of the Wizard Company?

A (After examining paper.) I find reference to it, but I don't hold the stock. The People's Company held the stock, and I sold my interest in the People's Company.

20 Q Then you did not retain any interest in that stock?

A No, sir.

Q (*By the Court.*) You are now speaking of the preferred stock?

A No, sir; speaking of the People's Company now.

*The Court.* Perhaps I got off the question.

*Mr. Hardin.* There is only kind of stock in the People's Company. The confusion does not arise out of the People's Company.

30 *Witness.* You see, the People's Company was the holding company of the Wizard, and was holding a sixth interest in the Wizard Company—I mean in the People's Company—and the People's Company holding \$600,000 worth of the stock of the Wizard Company. Each one of those six was entitled to the proceeds, whatever it was, of the \$100,000 that was in the People's; that was Wizard stock, five hundred of which, or in that neighborhood, was common stock, the other hundred preferred.

40

*Samuel Clark, cross.*

Q (*By Mr. Hardin.*) Now, some suggestion has been made by your counsel to a difference in date between Exhibit D. 1 and the assignment paper that you have just been looking at. I ask you to look at Exhibit D. 1 and see whether the same stocks, both of the Wizard and of the People's, are not referred to in that Exhibit D. 1 (paper shown to witness)?

A (After examining paper.) I don't see the reference to that in this. 10

Q You do not?

A It may be here somewheres, but I seem to have skipped it, if it is.

Q It is on the first page. If you read the first page again you will probably find it.

*The Court.* Look down toward the bottom, about seven lines from the bottom, and you will find the statement that Samuel Clark and A. F. Meisselbach only own one share of the common stock of the Wizard Company. Before that you will find the reference to 250 shares of the common stock of the Wizard Company. 20

*Witness.* Yes, sir.

*Mr. Hardin.* Also 10,000 shares of the Wizard Company and 40,000 shares. Ten and forty make fifty, do they not?

*Witness.* This is 49,894 shares in this one. I do not see a reference to that number of shares in this other paper. If there are, point it out to me. 30

Q Well, as a matter of fact, Exhibit D. 1 was the contract that you made for the purpose of selling whatever interest you had in those two companies to Mr. Rotter, was it not?

A The controlling interest, not the preferred, which did not participate, or which did not have any voting power. What he wanted was the controlling power. He did not want to buy anything which I had an interest in which was outside of that. 40

*Samuel Clark, cross.*

Q What did you keep?

A I kept such stock as was preferred in the Wizard.

Q Did you have the certificates for it?

A I can't say that those certificates were in my name either. They were in the names of my children and my mother-in-law, and so on. Those certificates were small.

10 Q (*By the Court.*) You mean the preferred?

A The preferred, yes. They had no interest in the control of the company whatever.

Q (*By Mr. Hardin.*) Now you are speaking of the Wizard Company?

A I am speaking of the Wizard Company. The preferred stock had no voting power. All he wanted was the voting power.

20 Q I understood you to say that there was not any reference to the 49,894 shares in this Exhibit D. 1. I direct your attention to the middle of page 1 of this exhibit, and ask you whether it is there or not (indicating)?

A Yes.

Q And whether it does not describe the same thing as is in this other paper that I showed you?

A It is; surely it is; that is right.

Q D. 1 represents the contract that you made on April 11, 1911?

A Yes, sir.

30 Q And that was carried out a few days later?

A Yes, sir.

Q You got your cash?

A Yes.

Q And you executed the paper?

A Yes, sir.

Q This other paper that I have shown you?

A Yes, sir.

Q At the same time, and transferred the stock?

40 A I suppose it was at the same time, yes, sir.

*Samuel Clark, cross.*

Q A few days later?

A Oh, yes, it was right at that time, close to there somewheres.

Q Now, looking at these two papers, now that you have carefully inspected D. 1 again this morning and refreshed your memory, after the three or four days that we have been away from here, the two papers describe the same thing, do they not?

A I should say so; yes, sir. 10

*Mr. Hardin.* I offer in evidence this paper, entitled "Assignment, Samuel Clark to William Rotter," dated April 15, 1911. Is there any objection?

(No response.)

(The paper referred to is marked Ex. P. 2.)

Q Now, the shares of the preferred stock of the Wizard Company that you have referred to, that you put in other names, that stock is still owned, in so far as you know, in those names? It has not been transferred to anybody else? 20

A It has not been transferred, no.

Q And such shares of stock as are standing in those other names are shares of stock that are entirely outside of either one of these papers, D. 1 or P. 2?

A Yes, sir.

Q Do you know how many shares there were of that kind? 30

A No, I can't tell you.

Q Approximately?

A I don't remember. There was \$4,000 worth taken by myself and my friends.

Q And what ratio did the dollars bear to par?

A Fifty.

Q So that that meant \$8,000 worth of stock?

A No, sir; \$4,000 worth of stock; the fifty would be \$2,000. 40

*Samuel Clark, cross.*

Q Then you mean that the \$4,000 was paid for by \$2,000?

A Yes, sir. That was paid for by me to the People's Company for preferred stock which the People's Company received from the Wizard for a portion of their purchase.

Q After the Wizard Company was organized through the People's interest?

10 A Yes, sir.

Q That purchase was in addition to your original interest in the People's Company?

A Yes, sir.

Q Now, you originally came into the People's Company in the same ratio of cash to par, did you not?

*Mr. Bradner.* I object. I do not think it is material what he paid for his stock in the People's Company. He sold it.

(Question read.)

20

A No, sir.

*The Court.* One moment. There seems to be an objection to the question.

*Mr. Bradner.* We are not claiming any damage by reason of the People's Company stock. Our defense is not founded upon any deceit in the purchase of that stock from us. We claim no damages in this case as the result of any misrepresentations made to us by which we were induced to sell our stock in the People's Company, so that the value of the stock is of no importance in this case. The evidence has been brought out only on the theory that Mr. Rotter did induce us to sell our stock by stating that he would resign.

30

*The Court.* (After argument.) I will overrule the objection and receive the testimony.

Counsel for defendant, Samuel Clark, object to this ruling of the Court.

Objection noted as ground of appeal.

40

(Question and answer read.)

*Samuel Clark, cross.*

Q Did you pay for your stock in the People's Company a hundred cents on the dollar of its par?

A No.

Q What did you pay for the 250 shares?

A Twenty per cent.

Q \$5,000 cash for the 250 shares?

A Yes.

Q Then later, after you came into the People's Company, the Wizard Company was organized? 10

A Yes, sir.

Q And you bought from the People's Company the block of the Wizard stock still outstanding in the names of your relatives, as you have described, for \$2,000 in cash, representing \$4,000 in par of the Wizard preferred stock?

A Yes, sir.

Q Outside of what you acquired for that \$2,000 on the subsequent occasion, as interest in the People's Company, you had some further interest in the Wizard stock, did you not, at the time in April, 1911, when you made this sale? 20

A No.

Q These papers refer to a sale by you at the same time that you sold the 250 shares of the People's stock and the one share of the common stock of the Wizard Company of any and all interest you might have in and to 49,894 shares of common stock and 50,000 shares of the preferred stock of the Wizard Phonograph Company. That refers, I take it, to some indirect interest which the stockholders of the People's Company had in the right to dispose of the Wizard stock, as the owners of the Wizard stock? 30

A Yes, sir; entirely so—the People's stock.

Q That is what I mean. I asked you if you did not have some further interest?

A I didn't have any further interest after I sold—

Q No. At the time you made the sale you had 250 shares of this stock? 40

*Samuel Clark, cross.*

A That covered this.

Q That covered whatever interest there might be appurtenant to that stock in the Wizard Company?

A Yes, certainly.

Q And whatever it was that you sold on that occasion, it was the representative of what you had paid this \$5,000 for?

A Yes.

10 Q Now, you got that stock from Mr. Rotter originally?

A I think I did; yes, sir.

Q And when you sold to Mr. Rotter you just doubled your money?

A Yes, sir.

Q And you got cash on the spot?

A Yes, sir.

20 Q How long was it when you made your first purchase from Mr. Rotter prior to April, 1911—is that the occasion that you refer to as a little more than a year earlier, in the early part of the year 1910?

A Yes, sir.

Q Of course, when your conscience became aroused, after the confession of Mr. Rotter, you demanded of Mr. Rotter the stock back that you had sold to him and handed him back the \$10,000 that you got in cash, did you not?

A He already had it.

30 Q Had it from whom?

A He had it from me.

Q Where?

A Why, he had my note and all the stock.

Q And that is this note that is in suit?

A Yes, sir.

Q Have you paid that note to anybody?

A No, sir.

40 Q Have you handed back the \$10,000 to Mr. Rotter that you got for the stock you sold him?

A Surely not.

*Samuel Clark, cross.*

Q So that the situation is now that you are defending this note for \$10,000, and that you have received \$10,000 in cash, which you still have, for the stock that you sold to Mr. Rotter; that is the situation?

A Yes.

Q Then what do you mean that you say he already had your money?

A He had the stock—he has the stock and my note.

Q Well, suppose that you did not pay the note—you do not want to pay the note, you say—suppose you do not pay the note. You still have the \$10,000, have you not? 10

A I surely have.

Q And he has the stock?

A Yes, or somebody else has it.

Q Now, the difficulty that you find in this matter—the dissension that you find is in the transaction of April, 1911, when you sold your stock for \$10,000 to Mr. Rotter? 20

A Yes, sir.

Q That is the time you say you were deceived by Mr. Rotter?

A Yes, sir.

Q What did Rotter say at that time that you now make the basis of your claim of deceit? What statement did he make at that time?

A He said that he had a position offered him at a very much larger salary than the People's and Wizard Company could pay him, and that he had accepted it, and that that company offering him the situation was the Consolidated Record Company. 30

Q That was another one of these corporations that had been organized in the same interest. You had heard of it before?

A I had heard of it, but I had no interest in it.

Q And because he said that you sold your stock to him?

A That was the principal reason; there were other reasons. 40

*Samuel Clark, cross.*

Q Well, what were some of the other reasons?

A The next important reason was that Mr. Meisselbach, who was our manufacturer, said that if Mr. Rotter would not stay with us he would not. That removed both our inventor and critic and our manufacturer, and it left the four of us high and dry. So we concluded we had better sell.

Q And you did sell?

10 A We did sell.

Q If it had not been for those statements, you would have continued your interest?

A I surely would.

Q You do not know what the present worth of that stock is, today, do you?

A I do not know what it is worth to-day; I knew what it was worth then.

Q It was worth what you got for it then, was it not?

20 A Yes, and three times as much as I got for it.

Q Well, I suppose, then, you would be glad to have it back for the \$10,000 that you got for it?

A The situation is changed entirely, with Mr. Rotter out and Mr. Meisselbach out. If they had been out the thing would have been worth nothing to us. I was willing to take \$10,000, when I could just as well have had \$25,000 the week before.

Q But your grievance is that they would not go out?

30 A No, sir; it is that they said they were going out.

Q And they did stay?

A Yes. They didn't stay until after they got my stock.

Q But having now learned that they stayed, and, as you say, you were deceived, and they weren't going—having now found that out, you would like to get back?

40 A No, sir; I don't to get back with such men as that.

*Samuel Clark, cross.*

Q But you want to keep your \$10,000?

A I surely do.

Q And you do not want to pay this note?

A I am sure I will not, if I can help it.

Q When did you first find that Mr. Rotter did not go out of the company?

A Why, he did not go out at all.

Q When did you find that out, that he did not go out?

10

A Well, I haven't heard that he did go out.

Q Well, you expected that he was going out when he bought you out, did you not?

A Yes, we expected he was going out unless he made this consolidation.

Q What consolidation?

A With the Record Company.

Q When you sold this, however, you understood that, if he got the interest of all the rest of you, he was going to stay with the company?

20

A He thought he could make an arrangement so he could stay and take charge of both of them combined.

Q And the People's Phonograph Company continued until December, 1911, when you were again asked to take some of its stock?

A No, sir.

Q It did not?

A No, sir.

Q What became of it?

30

A It changed its name; they had the name changed to the International during that period; but I held my stock still as the Wizard Company.

Q Are you talking about the Wizard or the People's?

A I am talking about the Wizard.

Q Well, I am talking about the People's. I said the People's Company continued until December, 1911, when you were asked again to become interested in it?

40

*Samuel Clark, cross.*

A I understand it is continuing yet.

Q With Mr. Rotter and other gentlemen interested in it?

A Yes, sir; I understand so; I don't know how many of them.

Q And the Wizard Company continues also?

A Yes, sir; under the name of International.

Q Now, when you came back into the company,  
10 in December, 1911, as you tell us, without investigation, you bought a hundred shares of stock of the People's Company and 20,000 shares, par one dollar, of the Consolidated Phonograph Record Company, did you not?

A As I understood it, I bought the People's stock and the other stock was given as a bonus.

Q At any rate, you got the two bunches of stock?

A Yes, sir.

Q For the same money, or the same note?

20 A Yes, sir; the same price.

Q Now, I show you Exhibit D. 4, being certificate No. 39, for 100 shares of the People's Talking Machine Company, dated December 1, 1911, in the name of William Rotter, indorsed in blank, December 20, 1911, by William Rotter. You recall by this time, do you not, that that is the certificate referred to in that paper that we had here the other day, that you got at the time you gave this note?

A Yes.

30 Q And you voted on that stock at a meeting of the People's Company subsequently, did you not?

A No, sir.

Q Do you not recall having gone to Mr. Rotter to get a proxy to enable you to vote?

A Oh, I voted on his proxy. I didn't know it was this stock; I don't think it was.

Q He did not give you a proxy—you got a proxy on his own stock?

40 A On the stock that Mr. Davis had turned over to him, as I understood it. I think the proxy is here.

*Samuel Clark, cross.*

Q Well, Mr. Davis turned over the stock to Mr. Rotter when Mr. Davis got this note that is in suit, did he not? Did you not tell us that awhile ago?

A Yes, I think that is the time.

Q So that at the time you got that proxy you had already been informed that Davis had this note?

A Well, now, no, no, I did not know it then; I did not know it until the 20th of January.

Q Well, then, how did you get the notion that you were getting a proxy for Davis' stock, if you did not know that Davis had sold his stock to Rotter? 10

A Because Mr. Rotter still held it.

Q Still held what?

A Still held that stock.

Q Davis' stock, you mean?

A Yes, that stock that Davis had, as I understood it. I may be all twisted about those things.

Q I thought you told us the other day that Mr. Davis paid Mr. Rotter for this note \$5,000 in cash and his stock in the People's Company? 20

A I told you this morning.

Q Yes, this morning. That is the stock, is it not, that you said you thought Rotter was giving you a proxy on?

A Yes, he still held it then, as I understood it.

Q Who still held it?

A Rotter.

Q Under what circumstances? It was Davis' stock. 30

A I suppose he had not delivered it.

Q You mean that Davis never had the certificate?

A Yes.

Q At any time?

A Up to that time. I don't know that he ever had it; I didn't know anything about it.

Q You had your certificate, did you not?

A I had mine, but I don't know that he had his.

Q You knew at that time, did you not, that Davis had been paid by Rotter for the stock that he had 40

*Samuel Clark, cross.*

sold in April, 1911, at the same time that you sold—that he received his \$10,000?

A No, I did not.

Q You heard that later?

A I think I heard that later.

Q What was your purpose in procuring a proxy on Mr. Rotter's stock to vote at the People's Talking Machine Company meeting?

10 A I wanted to go there to the meeting to see what was going on; I had—

Q Did you not know that you were a stockholder?

A I knew that the stock was out of my hands; I didn't have it in my name, as it seems. I thought it was in my name, but—

Q You thought it was in your name at the time?

A I thought it was in my name yet. I wasn't voting on my own; I was voting on—

20 Q You also knew that if you had put stock in your name up as collateral security that you could still vote on it, did you not?

A I don't know that I did.

Q And the reason you went to Mr. Davis then—

A I believe that to be so, however.

Q You have borrowed money with collateral on other occasions, have you not?

A Not more than once or twice in my life, sir.

30 Q Do we understand, then, that you got this proxy from Mr. Rotter to enable you to attend this People's Talking Machine Company meeting—

A Yes, sir.

Q Believing that you had a right to be there as a stockholder, but feeling that you could not get there except with Mr. Rotter's favorable acknowledgment of your request for a proxy?

A Yes, sir.

Q And you got such a proxy?

A Yes, sir.

40 *Mr. Hardin.* Have you got that proxy here?

*Samuel Clark, cross.*

(Defendant's counsel produce paper.)

Q That is the proxy, is it (shown to witness)?

A Yes, sir.

Q That, I notice is for fifty shares?

A Yes.

Q You yourself owned 100 shares at the time?

A Yes.

*Mr. Bradner.* I object to that question.

10

*Witness.* Mine was to be 100 shares. I didn't have it.

*Mr. Bradner.* The question is, "You yourself owned 100 shares at that time"? That question is deciding the case.

*Mr. Hardin.* Oh, no.

*Mr. Bradner.* I do not think that is quite a proper question to ask the witness: "You yourself owned 100 shares at that time"? That is the whole dispute in the case, whether we own it or not. If we own it and have acknowledged the ownership of it, then we ought to pay this note. That would be the end of it. Now he is asking the witness to say that he owns the stock. Mr. Clark's contention is that he does not own it and does not want it.

20

*The Court.* Let the proxy be marked in some way.

*Mr. Hardin.* It is for fifty shares. I will offer it. It has not anything to do with my case.

30

(The paper referred to is marked Exhibit P. 3.)

Q (Question read.)

*The Court.* At what time is that?

*Mr. Hardin.* January 13, 1912.

*By the Court.*

Q Do you understand the question, Mr. Clark?

A I understand the question; yes, sir.

Q You may answer the question. Did you own 100 shares yourself on January 31, 1912?

40

*Samuel Clark, cross.*

A When I should have paid this note and have received it in my name, then I would have owned it, but I didn't own it otherwise.

*By Mr. Hardin.*

Q I show you Exhibit D. 2 (paper shown to witness). Will you point out to me anything conditional that you find in that paper?

10 *Mr. Bradner.* We do not claim, if the court please, that there is any condition expressed in the note of collateral receipt, or assignment, rather, of the stock; we do not claim that there is a condition in any of the writings.

*Mr. Hardin.* It is just as well to have the witness say so, then.

*By the Court.*

Q The question is whether you see anything conditional in the terms of Exhibit D. 2?

20 A (After examining paper.) Yes, I see here that this thirty-nine shares is supposed to be owned by me: "I, Samuel Clark, the owner of the within certificate."

*By Mr. Hardin.*

Q Well, what is there conditional about that? I asked you to point out to me anything that there was of a conditional nature on that paper.

A When I should have paid the note—

Q Is that on the paper?

A Yes, sir.

30 Q All right. Point it out to me.

A "And upon the payment of said note the said certificate of stock is to be regarded—

*The Court.* "Reassigned."

*Witness.* —reassigned and redelivered to me, and the same to be my property absolutely." Showing it was not my property before that.

Q It was deposited by you as a pledge for the payment of the note, was it not?

40 A Certainly.

*Samuel Clark, cross.*

Q And it is recited as your property?

A When it should be paid; when it was paid it should be my property. That is what that says.

Q Did you ever give any notes in your business?

A Next to never.

Q Well, you are fortunate again. You do not regard yourself as owning this stock, because you had given a note for it, until the note was paid?

A The agreement states it. 10

Q I understand that. You did not regard yourself as the owner of this stock, because you had given a note for it, which note was not paid?

A Yes, sir; and that is what the agreement there says.

Q You had mortgaged the stock for the payment of the note?

A Practically that, yes; put it up as collateral.

Q And the collateral that you put up was your own, was it not? 20

A No, sir; not until I had paid for it.

Q Then it was not collateral, was it?

A Well, it was not collateral in the full sense of the term. It was not to become mine until I paid for it.

Q I show you Exhibit P. 1, which you identified the other day as the note you gave on this occasion (paper shown to witness). Is there anything conditional in that note?

A Not in the note. 30

Q That is an express promise to pay sixty days after the date of December 20, 1911?

A Correct.

Q Signed by you?

A That is right.

Q Now, when did you learn first that Mr. Davis had that note?

A On the 20th day of January.

*The Court.* 1912? 40

*Samuel Clark, cross.*

*Witness.* I suppose it was then, because the note had not become due.

Q You learned that before it had become due?

A Yes, sir.

Q Was anything said on that occasion to you—I mean now this first occasion when you learned that Mr. Davis had this note—was anything said to you on that occasion concerning the payment of the note?

10 A No, sir.

Q Did you say anything about the payment of the note on that occasion?

A No, sir.

Q Now, this note came due on the 19th day of February. Did you see Mr. Davis again between the 20th of January and the 19th of February, when this note became due?

A Yes, sir.

Q How many times?

20 A Three times, to my knowledge.

Q (*By the Court.*) Three times in all or three times after the 20th of January?

A After the 20th.

Q (*By Mr. Hardin.*) When was the first occasion after the 20th of January?

A It was within a very few days after that, perhaps two or three days; I don't know exactly.

Q Is that the time that Mr. Rotter came with him?

30 A No, sir.

Q Now, on this occasion, shortly after the 20th, was anything said between you with reference to the payment of this note?

A Let me understand that question.

Q (*Question read.*)

A Yes, sir.

Q Did you not on that occasion tell Mr. Davis, or propose to Mr. Davis, that when the note came due

40

*Samuel Clark, cross.*

he accept a payment of \$5,000 in cash and take a renewal for the balance?

A I think it was \$7,500.

Q You proposed to pay \$7,500 in cash and renew it for \$2,500?

A I think that was it. I know there was some amount of it that he said he would like to leave, and I said it was just as well, I would rather.

Q And that was the understanding when you separated? 10

A That it might be, yes.

Q I say that was the understanding when you and he separated on that occasion?

A That such a thing as that might be done.

Q That you would pay \$7,500 in cash and he would renew it for \$2,500?

A That is as I understand it and as I understood it then.

Q When did you next see him? Of course you knew then that he had the note? 20

A I knew it then; I knew it on the 20th. Mr. Rotter came to my house on the 20th and told me.

Q After the time when you discussed this, or made this arrangement about the payment of \$7,500 of this note and a renewal for \$2,500, when did you next see Mr. Davis after that?

A At the time when Rotter made the confession to us, which was some few days after that. 30

Q Now, on that occasion was there anything further said between you and Mr. Davis about the note?

A Yes, I said I wouldn't pay it, after the confession was made.

Q Because of the confession?

A Yes.

Q That was the reason?

A Yes.

Q That was the only reason you gave?

A Yes. 40

*Samuel Clark, cross.*

Q Now, when did you next see Mr. Davis?

A Early the next morning.

Q And at Mr. Kahrs's office?

A At Mr. Kahrs's office.

Q And was there any conversation then with reference to the note?

A Yes, sir.

Q And its payment?

10 A Yes, sir.

Q Well, what did you say or they say or anybody say about the payment?

A The only thing that was said about the note was said by me: that, as Mr. Rotter had made this confession, I would not pay the note.

Q And that was the only reason you gave?

A That was the only reason I gave them.

Q And that was the only reason you had?

20 A No, because of the things which that brought out—that confession brought out.

Q Things growing out of that knowledge of that confession, as you call it?

A That grew out of that.

Q That was the reason?

A Yes.

Q That confession?

30 A I think that I should say a little something there. I think there were some other things said at that meeting, when he made that confession, that bore upon this point.

Q Now, the confession, as you call it, was that Mr. Rotter had deceived you and the others in April, 1911, when you had sold your stock in the People's Phonograph Company and in the Wizard Company to him for \$10,000, by telling you that he was proposing to leave the company?

A Well, that was the first; that was the first thing that he said was not so.

40 Q Well, that is the confession, is it not, that you refer to, or that was a part of the confession?

*Samuel Clark, cross.*

A Yes, sir

*Mr. Hardin.* That took place on that occasion.

*The Court.* Are you going back to April?

*Mr. Hardin.* I am trying to identify it. He used the word "confession." I wanted to get what the confession was. The confession on Mr. Rotter's part, as I understand it from the witness, refers to what was stated in the meeting of April, 1911.

10

*The Court.* The meeting on the day before the meeting at Mr. Kahrs's office?

*Mr. Hardin.* No.

*The Court.* That was when the witness says that Rotter made the confession.

*Mr. Hardin.* Yes, and that referred back to the meeting in April, 1911. I asked him, when he referred to the confession, whether he meant the statements made by Rotter at the meeting in April, 1911. I understand him to say that he does so mean.

20

*Mr. Bradner.* I understand the witness to say that that was not all the confession; he had not given it all.

(Question read.)

Q At Mr. Kahrs's office did you not state that you would pay \$5,000 on this note, if it were renewed for the balance of \$5,000?

A No, sir.

Q To Mr. Davis?

30

A No, sir.

Q Now, have mentioned all the occasions when you saw Mr. Davis with reference to this note?

A Every one that I remember of. There are some things that have come to my mind that were said upon those occasions that I have not testified to.

*By the Court.*

Q But you have mentioned all the occasions?

A I have mentioned all the occasions.

40

*Samuel Clark, cross.*

Q You have mentioned all the interviews?

A Yes, sir.

Q As you now recall it?

A Yes, sir.

*By Mr. Hardin.*

Q Do you know Mr. Jacobs?

A Yes, sir.

10 Q He was one of the gentlemen originally interested in this company, was he not?

A Yes, sir.

Q In the People's Company?

A Yes, sir.

Q And he sold out at the same time as yourself?

A Yes, sir.

Q Do you recall a conversation with Mr. Jacobs at Mr. Rotter's house some time in March, 1912?

A Yes, sir.

20 Q Who were present?

A Mr. Jacobs, Mr. Rotter and myself.

Q And you were discussing that matter at this time?

A Yes, sir.

Q Or this matter at that time, rather. Did you not at that time say that your request to Mr. Rotter not to discount the note was not to discount it at the Merchants' National Bank, because you did not want it discounted at your bank?

30 A I may have said that, because I did not want it negotiated anywheres without my consent.

Q Did you not at that time say that your request not to discount it was a request not to discount it at the Merchants' National Bank?

A Why, no.

Q I did not get your answer.

A Not alone.

40 Q Do you recall a telephone conversation with Mr. Rotter about this note prior to the 20th of January, 1912, the day on which you say that Rotter

*Samuel Clark, cross.*

told you that he had sold the note to Davis about the note?

A No, I can't say that I remember such an occasion; it might have been that he called me on the telephone to tell me he was coming to my house that evening.

Q Did he not ask you over the telephone whether you had any objection to his disposal of that note, and did you not say to him that you had no objection provided it was not discounted at the Merchants' National Bank? 10

A No, sir.

Q Or words of that import?

A No, of course not.

Q At this meeting at Mr. Rotter's house, in March, when Mr. Jacobs was present, did you not say to Mr. Rotter and Mr. Jacobs that night, when Mr. Rotter asked you if it was not a fact that he had called you on the 'phone, asking you whether you had any objection if he discounted the note, and that you had replied that you had no objection? 20

A I didn't know that he was going to discount it or give it to anyone, so I couldn't have said that. It was done before I knew it.

Q Do you not recall that Mr. Rotter told you that he needed some money for the Record Company, and he wanted to dispose of this note, and that he asked you if you had any objection to his discounting it? 30

A Yes.

Q And did you not tell him that you did not want him to discount it at the Merchants' Bank?

A Yes, that was the place I didn't want him to discount it, but he wasn't to do it without my consent anywheres, so he asked me about that.

Q Your objection was to a discount at the Merchants' National Bank?

A That was one of them, yes.

*Samuel Clark, cross.*

Q And did you not tell him expressly that, if he could raise the money on the note elsewhere, you had no objection?

A No, sir.

Q On any occasion?

A No, sir; I should give my consent to it.

10 Q Well, do you not recall that he asked you whether you had any objection if he discounted the note, and you said no, but you did not want it done at the Merchants' National Bank?

A No, sir.

Q He did ask that question?

A Yes, he did, but I said, "Not without my consent."

Q When did he ask you that?

A He asked me that two or three times; he asked me within three days after he got the note.

20 *Mr. Hardin.* What did you tell him?

Q (*By the Court.*) You are speaking of Mr. Rotter now?

A Yes, sir. I told him under some circumstances I would permit it; but I didn't know when the thing came up and when it was done at all.

Q (*By Mr. Hardin.*) When Rotter told you that he had sold this note to Davis, just about January 20th, or thereabouts, 1912, you did not make any objection then to the transfer of the note?

30 A No.

Q And when Davis told you that he had the note and you arranged about this payment of \$7,500 on account and \$2,500 renewal, at that time you did not make any objection to the acquisition of the note by Davis?

A No, it was all done.

*Samuel Clark, re-direct.*

*Re-direct examination by Mr. Bradner.*

Q Mr. Clark, when Mr. Davis and Mr. Rotter came to your house and Mr. Rotter made the confession, what was the entire confession that he made?

A May I interrupt you?

Q Yes.

A They never came to my house; they came to my office.

Q They came to the office? 10

A Yes, sir.

Q They came together to your office?

A Yes, sir.

Q And that was after Davis had on one or two occasions said something to you about it?

A Yes; those meetings were at my house.

Q And when they came to your office and Mr. Rotter made confession, what did he say in Mr. Davis's presence? 20

A I have already testified to some things which he said there. Among them, that I had not testified to, and it slipped my mind on Thursday last, was that they made this arrangement to get our stock because they had an offer from John G. Gates, I think it was, the great financier, of \$500,000 for the controlling interest in the People's Company; \$2,500 of that was to be paid in cash—

Q (*By the Court.*) \$2,500?

A \$250,000 was to be paid in cash and \$250,000 was to be paid in the stock of the company—I understood that was at par—and they wanted to get a hold of our stock and cut us off from participating in the profit of that deal. 30

Q (*By Mr. Bradner.*) Did he say whom he meant by "they"?

A He and Meisselbach, he said, were the ones. He said that Meisselbach made that proposition to him. He had the offer—Mr. Rotter—from Mr. Gates, and Meisselbach, he told us, made this proposition 40

*Samuel Clark, re-direct.*

to him to buy this stock from us, and then they get the great proceeds which the company seemed to be worth at that time.

Q Well, go ahead and tell us all he said on that occasion.

A Then they made this plan, they got this plan—

Q (*By the Court.*) Is this what Rotter said?

10 A Yes, this is what Rotter said: that they then and there made this plan to get our stock, which I have recited before, to tell us that they were going to leave us, and therefore we would think the stock would be worth nothing and we would sell out, and they worked that very successfully.

Q (*By Mr. Bradner.*) Well, go ahead and tell us what he said.

*The Court.* Won't you go back and tell us just what Mr. Rotter said on that occasion?

20 Q There in the presence of Mr. Davis what did he say? You said he made a confession. Now, what did he confess?

A He confessed that they had made up this plan and carried it out.

Q Who had made it up?

30 A That Meisselbach and he, Rotter made up this plan and carried it out, and it was false; that he did not have any proposition from the Record Company, the Record Company never offered him anything like that; that he was one of the officers of that company then and Davis was the president.

Q Right there. When he made that confession that when he had stated to you and the others in April, 1911, that he had an offer of a larger salary from the Record Company, of which Davis was president, that it was false, what did Mr. Davis say?

A Mr. Davis said nothing; he was perfectly quiet about it.

40 Q Was Mr. Davis present when the statement was originally made?

*Samuel Clark, re-direct.*

A Yes.

Q I mean in April, 1911?

A Yes.

*By the Court.*

Q And also you mean that he was quiet on both occasions?

A Yes, sir; present on both occasions.

Q And quiet?

A Yes, sir. 10

Q He said nothing on either occasion?

A He said nothing on either occasion.

*By Mr. Bradner.*

Q Now, on this occasion when the confession was made had you made any investigation as to Mr. Whitehead's interest in this company?

A No, sir.

Q Have you ever made any investigation of that?

A Since. 20

Q Since when?

A Since the confession, almost immediately after.

Q After the confession was made did you attend a meeting of the people's Company?

A No, sir.

Q It was before that, was it?

A Before that.

Q I show you the proxy, Exhibit P. 3, and call your attention to the fact that it bears date the 31st day of January, 1912 (paper shown to witness). Now, looking at that, can you fix the time when the confession was made? 30

A As I have already said, Mr. Rotter informed me of selling that note on the 20th. Almost immediately after that, within a day or so, Mr. Davis came to my house and we talked it over, and within a day or two after that we had this meeting. So that, this being the 31st, it would be at least four or five days after we had that meeting. It would seem to me so.

*Samuel Clark, re-cross.*

*By the Court.*

Q That would be four or five days after the meeting that the confession came?

A Yes, sir.

Q That is what you mean?

A Yes, sir; somewhere about four or five days after the meeting.

*By Mr. Bradner.*

10 Q After the meeting of what?

A After the meeting of the People's Company which I attended.

Q Where did that meeting take place?

A At Mr. Kahrs' office.

Q And do you remember who were present?

A Mr. Hannoeh, Meisselbach, Mr. Whitehead—well, there were two or three others; I have forgotten who they were; I don't recall them. One was from Hahne & Company.

20 Q Was Mr. Davis there?

A I think so, yet I am not positive; I can't be positive of that—no, I think not.

Q Was Mr. Rotter there?

A Mr. Rotter was not there. I don't think Mr. Davis was there either.

Q You say Mr. Whitehead was there?

A Mr. Whitehead was there; yes, sir.

Q Well, is that the same Mr. Whitehead that you have referred to in your testimony?

30 A Yes, sir.

*Re-cross examination by Mr. Hardin.*

Q Do you know when Mr. Davis became president of the Record Company?

A No, sir.

Q Do you know that he was president in April, 1911?

A Of my own knowledge, no, only that he said so.

40 Q Do you not know that he did not become president of that company until the fall of 1911?

A No.

*Louis Hannoch, direct.*

LOUIS HANNOCH, sworn in behalf of defendant.

*Direct examination by Mr. Bradner.*

Q Mr. Hannoch, are you connected with the People's Talking Machine Company?

A Yes, sir.

Q In what capacity?

A President and treasurer at the present time.

Q Have you the books of the company with you?

A Which ones? 10

Q Well, have you the stock book?

A Yes, sir.

Q Showing the stockholders?

A (Witness produces book.)

Q I want to ascertain, Mr. Hannoch, who were the stockholders on December 19, 1911?

A Their names?

Q Yes, if you can get it from the books, the names and the numbers of the certificates. 20

*The Court.* That is the day before the note was given?

*Mr. Bradner.* That was the day the bargain was made.

A Well, I know nothing about the transactions previous to my going into it, in August, 1911.

Q You went in in August, 1911?

A 1911. I know nothing about the transactions previous to that.

Q (*By the Court.*) Well, you can tell us how things stood on December 19th of that year, can you not? 30

*Mr. Bradner.* December 19, 1911.

A Yes, I can give you the names of those in December, 1911. Do you want the names of those, all of them?

*Mr. Bradner.* Well, if there is not any objection to my asking you particular names, I can save time. 40

*Louis Hannoeh, direct.*

*Witness.* If you do do that, I can tell you directly.

*Mr. Bradner.* Have you any objection to that? He has not a long list of names there.

*Mr. Hardin.* What is the date of it?

*Mr. Bradner.* December 19, 1911.

*Mr. Hardin.* I object, because the stock books do not prove necessarily who are the owners.

10 *The Court.* It is some evidence.

*Mr. Bradner.* The stock book, under the Corporation act, is the best evidence.

*Mr. Hardin.* That is for the purpose of an election, but for the purpose of a contest over the ownership of stock, such as this is, it is not the best evidence.

*The Court.* I think it is some evidence. You may answer the question.

20 Q Who were the stockholders of record on December 19, 1911?

A The People's Company?

Q Yes. Give the names and the amount of the stock.

A Mr. Meisselbach, 260 shares; Mr. Hannoeh, 260 shares—

Q (*By the Court.*) Is that yourself?

A Yes, sir. —Mr. Rotter, 150 shares; Mr. Wadsworth, 30; Mr. Schneider, 25—

30 Q (*By Mr. Bradner.*) Is that Herman Schneider?

A No, that is Emil Schneider. —H. E. Jepson, 10; F. I. Liveright, 20; W. E. Corbin, 10; H. Hesslein, 20; W. B. Moore, 15; Richard Hahne, 15; B. S. Whitehead, 1—

Q That is \$100?

A \$100. —August Hahne, 30; Max Hesslein, 10; Albert J. Hahne, 75; W. E. Seidler, 50; A. H. Hannoeh, 25; George Lobsitz, 10.

Q What was the total amount of the capital?

40 A \$150,000.

*Louis Hannoeh, direct.*

Q Do you know how much was actually paid in?

A Well, \$44,600.

Q That was paid up?

A Paid in.

Q Can you tell us from your books whether Mr. Rotter had paid for his holdings?

A Mr. Rotter?

Q Yes.

A He did not pay anything for his holdings. 10

Q He did not pay anything?

A No, sir; not to us.

Q I did not hear you call the name of Mr. Davis. Was he or was he not at that time a stockholder?

A He was not.

Q Can you tell whether he afterwards became a stockholder?

A I don't know.

Q Is there anything on your books to show? 20

A There is not.

Q Have you a transfer book there showing what stock has been transferred?

A Yes, sir (producing book).

Q Will you look and see if there was any transfer of stock from Mr. Rotter after December 19, 1911?

A I have no transfer after December 17, 1911.

Q From Mr. Rotter?

A From Mr. Rotter.

Q To anybody?

A To anybody. 30

Q Have you anything on the books of the company to show that Mr. Samuel Clark is a stockholder?

A Not in the People's.

Q Not in the People's Company?

A No.

Q Have you control of the Consolidated Company also?

A I know nothing about that.

Q You are not connected with that? 40

*Louis Hannoeh, direct.*

A No, sir; never heard of it.

Q What business was the People's Company doing on December 19, 1911, Mr. Hannoeh?

A Very little.

Q What assets did that company have at that time?

A (Referring to memorandum.) On December 31, 1912—

10     *Mr. Bradner.* No

*Mr. Hardin.* 1911, you made, did you not?

*Mr. Bradner.* 1911.

*Witness.* I didn't have anything to do with the bookkeeping; we hired a bookkeeper to look after these books for us, because I didn't have time to attend to it, and I can't—we have in our safe in the office—I gathered up every possible paper that I thought could possibly relate to this case. I didn't expect to be asked about 1911, but the expert is here who handled our books, and will be able to answer the question possibly, if you call upon him.

20

Q Well, what can you say yourself?

A Well, we hadn't very much money.

Q Not very much money?

A No, very little money.

Q How much do you think you had?

A I don't think we had—about \$5,000.

30     Q What property did you own?

A We owned about two thousand finished machines and parts—enough parts to make up possibly three or four thousand more.

Q Do you know what they were worth, these finished machines and parts.

A The cost price?

Q Yes.

A About \$3 for the finished machine.

Q About \$3 apiece for a finished machine?

40

*Louis Hannoeh, cross.*

A More than that, \$3.30. That is what the manufacturer estimated the cost would be.

Q Did you have any orders?

A We had prospective orders; we had the assurance that there would be plenty of orders.

Q From whom did you have that assurance?

A From Mr. Rotter and from Mr. Delano, Mr. Clark's brother-in-law.

Q Was he connected with the business? 10

A No, sir.

Q What liabilities did you have?

A None—well, the only liabilities we had was what we owed the manufacturer, Mr. Meisselbach, for manufactured goods.

Q How much did you owe him?

A Oh, in the neighborhood of \$10,000.

Q Well, that would have wiped out your assets to pay him, would it not?

A Oh, yes. 20

*Cross examination by Mr. Hardin.*

Q You say your books show nothing from Mr. Rotter. Mr. Rotter was the inventor of this machine, was he not?

A He told me so.

Q Well, did not his stock go out to him for the—

A All of it.

Q For the property purchased?

A Yes, sir.

Q Now, when you said that the books showed no contribution by him, you mean that they show no cash contribution? 30

A I mean no cash, of course.

Q You do not mean to say that they got nothing from him?

A Oh, no. I thought the question was as to cash. He had patents and things of that kind that he received consideration for in the way of stock.

Q In fact all the stock of the company originally was awarded to him? 40

*Louis Hannoch, re-direct.*

A Belonged to him.

Q Whatever stock there was was transferred from him?

A Yes, sir.

Q And the consideration was patent rights, and so forth, that he turned over to the company?

A Yes, sir; that is where we got our original stock from.

10 Q This list of stockholders that you have given us is merely the list as you find it on the books?

A It is the complete list, so far as my interest is concerned, that is, the People's Company.

Q I say it is the list of stockholders as you find them on the books?

A Yes, sir.

Q You have no means of knowing as to the actual ownership of these certificates or shares?

A Except what is on the books.

20 Q If they had been transferred by the record owners to others, and such others had not presented them to you for re-transfer, you would not know anything about that?

A No, sir.

*Re-direct examination by Mr. Bradner.*

Q Have you the minutes of the People's Company, Mr. Hannoch?

A Yes, sir.

30 Q I show you a book (shown to witness). Is this the minute book of the People's Company?

A Yes, sir.

Q Will you turn to the minutes of the meeting of February 7, 1912?

A I have it.

Q What page is that?

A 41.

40 *Mr. Bradner.* I offer the minutes of that meeting in evidence. I will read it into the record. "People's Talking Machine Company. The an-

*Louis Hannoeh, re-direct.*

nual meeting of stockholders, February 7, 1912. The annual meeting of stockholders of the People's Talking Machine Company was held at the offices of the company, Room 501, 736 Broad street, Newark, N. J., and called to order at 10:30, A. M., Mr. Louis Hannoeh presiding as chairman. There were present Messrs. Meisselbach, Whitehead, Hannoeh, Wadsworth, Schneider, Clark and Albert Hahne, all being stockholders of the company with the exception of Mr. Clark, who appeared by proxy. Mr. Hannoeh stated that, if there were no objections, Mr. E. W. Woodruff would act as assistant secretary. The meeting then proceeded to the election of three directors to serve for the following year. On motion of Mr. Schneider, seconded by Albert Hahne, Messrs. Whitehead, Hannoeh and Meisselbach were nominated as directors. On the question being put, they were elected, as follows; By direct vote of stockholders, 556 shares, and by proxy, 334 shares, making a total of 890 shares. They were therefore declared elected, as there were 140 shares voted more than a majority. The secretary thereupon read his report, a copy of which is attached hereto, which was voted and seconded to be spread upon the minutes of the company. The secretary also presented a list of stockholders and subscribers to the company, which is hereto annexed and presented a report showing receipts and disbursements, and in general the financial condition of the company, such report, however, to be subject to correction by an expert accountant. The secretary then presented the notice for the annual meeting of the stockholders, which contains, among other things, a clause with reference to the purpose of creating the office of assistant secretary. On motion of Mr. Meisselbach, seconded by Mr. Hanna, it was moved and adopted, as per copy herewith. On

10

20

30

40

*Louis Hannoeh, re-direct.*

10 motion the meeting adjourned. Louis Hannoeh, Secretary." The list of stockholders, stock outstanding February 6, 1912, on page 45 of the minute book: "People's Talking Machine Company, 1911, August 1st. No. 26, Louis Hannoeh 260; August 1st, No. 27, A. F. Meisselbach, 260, August 15th, No. 28, Frank Wadsworth, 10; August 22d, No. 29, Emil Schneider, 10; October 7th, No. 30, Henry E. Jepson, 10; December 1st, No. 30, William Rotter, 100; December 1st, No. 41, William Rotter, 50; December 1st, No. 42, Emil Schneider, 10; No. 44, Emil Schneider, 5; 1912, January 26, No. 45, W. E. Corbin, 10; No. 46, Hardy Hèsslein, 20; No. 47, W. B. Moore, 15; No. 48, Richard Hahne, 15; No. 49, B. S. Whitehead, 1; No. 50, Frank I. Liveright, 10; No. 51, August Hahne, 30; No. 52, Max Hesslein, 10." This is carried out, "836 shares." "Subscription shares: Albert Hahne, 100; Albert Hannoeh, 50; Dr. Seidler, 50; Frank Wadsworth, 40; George Lobnitz, 10; F. W. Trimpore, 5." That is carried out, "225. Reserved, 259; in treasury, 150. Total 1500 shares.

20

*The Court.* What is the date of William Rotter, 100?

*Mr. Bradner.* William Rotter, December 1st, No. 30, 100 shares.

30 *The Court.* That is the date of the certificate?

*Mr. Bradner.* Yes, sir. And No. 41 is 50 shares. That is the date on this statement.

*Mr. Hardin.* No. 39 is the number here.

*Mr. Bradner.* That must be so, because there are two 30s here. I will put it in in a moment.

On page 47 is the treasurer's report. "People's Talking Machine Company. February 5, 1912, as for year ending December 31st."

40 Q That ought to be 1911, had it not? You say 1912?

*Louis Hannoch, re-direct.*

A Yes.

Q It ought to be 1911, the year ending December 31, 1911?

A Yes, sir.

*Mr. Bradner.* "Assets: Capital stock in treasury, common, \$15,000; capital stock subscribed, \$22,400; cash, \$139.73; due from International, \$764.98; loaned to International, \$17,900; International current account interest, \$560.27; International common stock, \$479,960; International preferred stock, \$64,000; total, \$600,724.98. Liabilities: notes payable, \$19,500; due International account of \$40,000, \$22,000." Carried out, \$41,500; balance, \$559,224.98; capital stock, \$150,000; surplus, \$409,224.98." 10

Q What does that "International" mean, Mr. Hannoch?

A It means the manufacturing company. 20

Q Was that formerly the Wizard Company?

A Yes, sir.

Q Now, if we take the stock certificate book—the statement in the minutes showed Mr. Rotter's certificate for 100 shares as No. 30. I think that is a mistake, is it not?

A Yes, sir. That was the one that was made out that Mr. Clark has.

*Mr. Bradner.* I move to strike that out, if the court please. 30

*The Court.* Strike it out.

Q What is the number on the stub?

A 39.

Q What does it call for?

A It calls for 100 shares of stock, issued for certificate No. 5, the same as No. 33, dated December 1, 1911, issued to William Rotter, to whom it was originally transferred, and which he signed.

Q He signed for that certificate? 40

*William R. S. Davis, direct.*

A Yes, sir. (Paper shown to witness.) That is the one.

Q D. 4 is the original certificate (shown to witness)?

A Yes, sir.

Q Signed by you as treasurer?

A Yes, sir.

Q Has that stock ever been transferred on the  
10 books of the company to Mr. Samuel Clark?

A No, sir.

Q It has not?

A No, sir.

*The Court.* To whom is the assignment?

*Mr. Bradner.* To nobody; it is assigned in blank.

*Mr. Hardin.* It is assigned in blank; the assignment is indorsed on the back in blank.

20 *The Court.* I notice the date of the blank assignment is December 20th.

*Mr. Bradner.* There is no date on it, is there?

*Mr. Hardin.* Yes, it is dated December 20th, the same date as the note.

DEFENDANT RESTS.

WILLIAM R. S. DAVIS, plaintiff, sworn in his own behalf in rebuttal.

30 *Direct examination by Mr. Hardin.*

Q Mr. Davis, where do you reside?

A 26 Taylor street.

Q Newark?

A Newark.

Q I show you Exhibit P. 1 (paper shown to witness). You are the holder of that note?

A Yes.

Q I notice it has your name on the back, "William R. S. Davis."

40 A Yes.

*William R. S. Davis, direct.*

Q And that is in your handwriting?

A Yes.

Q Did you deposit that note anywhere for collection?

A The Ironbound Trust.

Q And indorsed it on that occasion?

A Yes.

Q It came back to you protested?

A Yes.

10

Q When did you acquire that note?

A About the 20th, I think, maybe the 19th of January.

Q I show you what purports to be a check (paper shown to witness). Does that give you any assistance?

A January 18th.

*Mr. Hardin.* January 18, 1912.

(Check marked P. 4 for identification.)

Q From whom did you acquire it?

20

A The note?

Q Yes.

A Mr. Rotter.

Q William Rotter?

A Yes, sir.

Q The William Rotter whose name appears upon the back of it?

A Yes, sir.

Q What did you give him for it?

A I gave him stock of the People's Talking Machine Company to the amount of \$5,000, a check for \$4,000, and a note for \$1,100—for \$900, I should say.

30

Q (*By the Court.*) When you speak of the stock do you refer to par value, \$5,000?

A Yes, sir.

Q (*By Mr. Bradner.*) That is, 100 shares?

A No, it was fifty shares.

Q Fifty shares?

A Fifty shares.

40

*William R. S. Davis, direct.*

Q (*By Mr. Hardin.*) And how was the cash paid?

A By check.

Q I show you P. 4 for identification (paper shown to witness). Is that the check that paid the \$4,000?

A That is the check.

Q To whose order is it?

A William Rotter's.

10 Q Indorsed by him?

A Yes, sir.

Q Paid by the bank?

A I presume so. I never heard anything about it. It is stamped "Paid."

Q Your account was charged with it?

A Yes, sir.

Plaintiff's counsel offer in evidence the check identified by witness.

Marked Exhibit P. 4.

20 Q The note for \$900 is still outstanding?

A Yes, sir.

Q So that cash, \$4,000; stock, \$5,000, and note, \$900, make \$9,900. Was there any payment of \$100 additional, or arrangement about that?

A Yes, I was to receive that—it amounted to about \$50 in the net—as accommodation for discounting that note.

Q There was some interest due on the note?

A Yes, the interest amounted to about \$50.

30 Q After you bought that note from Mr. Rotter did you talk with Mr. Clark about it?

A I did.

Q More than once?

A About the note? Yes, I think so.

Q And did you tell him that you had it?

A Yes, sir.

Q What did he say to you when you told him that?

40 A He was perfectly satisfied, very glad that I held it, so that in case he wanted to take up part of it

*William R. S. Davis, cross.*

and let part of it stand, he thought we could come to some arrangement about it.

Q Did you subsequently discuss an arrangement?

A Yes, sir.

Q And did you make any arrangement about it?

A Well, there was no agreement in writing, or anything like that, but it was understood, yes.

Q Well, what was it?

A \$7,500 cash and \$2,500.

10

Q \$2,500 what?

A A new note.

Q Was that the arrangement carried out?

A No, sir.

Q Was the note otherwise paid?

A No, sir.

Q When did you become president of the Consolidated Record Company?

A About the middle or towards the last part of October.

20

Q What year?

A 1911.

*Cross examination by Mr. Bradner.*

Q What is your business, Mr. Davis?

A I am connected with the Sears, Roebuck Company of New York.

Q What business are they in?

A A mail order house, handling 'most everything.

Q How long have you been there?

30

A About two months—about a month and a half—about six weeks.

Q What business were you in in January, 1912?

A I was in the underwear business.

Q Where?

A 95 Eighth avenue, with the Cogswell & Boulter Company.

Q On your own behalf?

A No, I was employed by the Cogswell & Boulter Company. Is that what you mean?

40

*William R. S. Davis, cross.*

Q Yes.

A No, I was employed by the Cogswell & Boulter Company.

Q And how long have you been working for that company?

A About twelve or fourteen years.

Q In what capacity?

10 A Well, sort of a head of the stock, sort of shipping clerk, 'most anything.

Q How long have you lived in Newark?

A All my life.

Q Were you in any other business prior to that?

A Well, when I first left school I went with the American Undergarment Company, in the same line of business, down on Green street. They were on Broad street at that time.

20 Q This check is drawn on the Ironbound Trust Company. Have you got your bank book here with you?

A No, I haven't.

Q Or your check book?

A No.

Q How long have you carried \$4,000 in that bank?

A How long had I carried it there?

Q Yes.

A Well, not a great while.

30 Q How long before January 18th did you deposit the money?

A Well, I wouldn't like to say; I think it was about the 10th or 15th of January, something like that.

Q You made a special deposit of \$4,000?

A It was a single deposit; there was a single deposit made, rather, of \$4,000, if that is what you mean.

Q Was that deposit made for the very purpose of paying it to Mr. Rotter?

A No, sir.

40 Q Where did you get that money from?

*William R. S. Davis, cross.*

Objected to as immaterial.

(Question withdrawn.)

Q Did you get the money from Mr. Rotter?

A In payment for my stock.

Q In payment for your stock?

A Yes.

Q He owed you \$4,000?

A Well, he owed me the \$10,000.

Q And he had not paid any of it? 10

A No.

Q And he gave you \$4,000?

A Yes.

Q And you gave him the check, did you, back for it?

A No, I did not.

Q Gave it back in three days?

A I did when I bought this note, yes.

Q And he had agreed to buy your stock back in April, 1911, had he not? 20

A He had.

Q The same time when he agreed to buy Mr. Clark's stock?

A He did.

Q And agreed to give you \$10,000?

A He did.

Q And he had never paid you?

A He gave me a note for it.

Q When did that note become due? 30

A Well, I don't know. I think Mr. Kahrs has the note there. I am not positive about it.

Q And all you ever received from it was \$4,000?

A No.

Q What else did you receive?

A I received \$1,000 at another time.

Q When was that?

A Before that. The \$4,000 cleaned up the transaction.

Q Well, that did not pay \$10,000? 40

*William R. S. Davis, cross.*

- A But I was given \$5,000 worth of stock of the People's Company; I didn't care for all cash.
- Q He gave you \$5,000 worth of stock?
- A I requested it.
- Q You requested it?
- A Yes, sir.
- Q And did he turn that over to you?
- A He did.
- 10 Q Did you ever have a certificate for it?
- A I did.
- Q Where is that?
- A It was retransferred to him when I bought this note.
- Q Then you handed him back the same stock?
- A I did.
- Q What was the number of that certificate, do you know?
- 20 A I do not. You have it there likely. No, it isn't, either. I don't know where it is.
- Q Then you were a stockholder of the People's Talking Machine Company in January, 1912?
- A I was.
- Q Were you a stockholder in December, 1911?
- A December, 1911? No, I don't think so.
- Q Well, when did you get the certificate for \$5,000 worth of stock from Mr. Rotter?
- A At the time he cleaned up the transaction and gave me the check for \$4,000.
- 30 Q That was two or three days before January 18th?
- A Something like that, yes.
- Q And that was a certificate for 100 shares?
- A No, it was for fifty shares, wasn't it?
- Q Was it a certificate for fifty shares?
- A Well, I don't remember whether it was for fifty or for 100.
- 40 Q To whom was it made out, do you remember that?

*William R. S. Davis, cross.*

A The certificate?

Q Yes, that he gave you.

A No, I don't remember who it was made out to.

Q Did he assign it over to you?

A Well, he gave it to me.

Q He gave it to you?

A Yes.

Q Then you gave it back to him again when you bought this note? 10

A I did.

Q And what did you do with that paper, did you sign it? Did you put your name on it at all?

A You mean on the stock certificate?

Q Yes.

A Yes, I signed on the back of it there—a transfer, do you call it?

*Mr. Bradner.* Have you got that certificate?

I will call for it.

*Mr. Hardin.* Perhaps it is in that book. We will look and see. I do not know any more about it than you do. 20

Q Did you indorse the stock certificate back to Mr. Rotter, so that he could have it transferred back to him again on the book?

A No, I indorsed it over to him, and he could do what he liked with it.

Q Are you sure there was a certificate made out to you, Mr. Davis? 30

A Well, I wouldn't say whether it was made out to me or not.

*Mr. Hardin.* Mr. Hanooh, the secretary, states that that certificate has never come back to the company for transfer. So far as he knows, Mr. Rotter still has it.

Q Then the transaction was this: Mr. Rotter handed to you a certificate for fifty shares of stock of the People's Talking Machine Company?

A Yes. 40

*William R. S. Davis, cross.*

Q That certificate, you think, was made out to you?

A I wouldn't be sure whether it was or not; I don't remember.

Q Did you ever go to the company to have stock transferred to you on the books?

A No, I did not.

10 Q You held that certificate for two or three days, and then handed it back again to Mr. Rotter, did you not?

A Yes, sir.

Q And signed something?

A Yes. On the back of the certificate, you mean?

Q Yes, or anything relating to it?

A Yes.

Q Did you sign an assignment of it?

A Why, I think that is what it was.

20 Q Do you know where that assignment is?

A It was pasted on the certificate.

Q Do you know where the certificate is?

A I do not.

Q When you got the note from Mr. Rotter did you get anything else with it?

A No.

Q Did you get the certificate of fifty shares of stock?

A Oh, yes, I did; that is right.

30 Q You did?

A I did.

Q Was it pasted fast to the note?

A I think not.

Q Did you get anything else?

A I don't think so.

Q How long were you connected with the Consolidated Phonograph Record Company?

A How long have I been connected with it?

Q Yes.

40 A Since October.

*William R. S. Davis, cross.*

Q Not before that?

A Not before.

Q Not before October, 1911?

A That is it.

Q Were you not a stockholder prior to October, 1911?

A I was not.

Q And not connected with it in any way?

A No, sir. 10

Q You were connected, though, with the People's Talking Machine Company?

A Up till when?

Q Up till April, 1911.

A I was.

Q You were one of the directors?

A I was.

Q And you were present when the deal was made to buy out the stock?

A I was. 20

Q And you heard what Mr. Rotter had to say?

A I did.

Q Why did you not insist on payment for your stock at once?

A Because I was in no hurry for it.

Q You did not need the money?

A Yes, I needed the money.

Q How much had you paid for your stock?

A The same as Mr. Clark.

Q \$5,000? 30

A Yes, sir.

Q Then you were making \$10,000 on it?

A No, I was making \$5,000.

Q How long had you known Mr. Rotter prior to that?

A Well, I guess three or four years, two or three or four years, something like that.

Q And when you became connected with the Consolidated Phonograph Record Company, who were the officers of it? 40

*William R. S. Davis, cross.*

A Mr. Rotter, Mrs. Rotter, and I don't know who the other one was.

Q What office did Mr. Rotter hold?

A I think Mr. Rotter was the secretary.

Q What office did Mrs. Rotter hold?

A I don't know.

Q Did you buy some stock in that company?

A I did not.

10 Q Were you made president of the company?

A I was.

Q How could you be president without being a stockholder?

A Because I was given some stock in it.

Q Who gave you the stock?

A Mr. Rotter.

Q How many shares did he give you?

A I will have to look and see. (After examining stock certificate.) 500—no, I am mistaken; 5,000.

20 Q He gave you 5,000 shares?

A Yes.

*Mr. Hardin.* \$1 shares?

Q \$1 shares?

A Yes.

Q Did you know on the 20th day of December, 1911, that Mr. Clark had given this note to Mr. Rotter?

A Is that the day the note was made?

30 Q Yes.

A I didn't know it that day, no.

Q Did you know at that time that Mr. Clark was to have some stock of the Consolidated Phonograph Record Company?

A I did not.

Q You did not?

A I did not.

Q You did not know it on that day?

A I didn't know it any time.

40

*William R. S. Davis, cross.*

Q Will you be good enough to look at this certificate and tell me whether your name is signed to it (shown to witness)?

A Yes, sir; it is.

Q Certificate of stock to Samuel Clark?

A Yes, sir.

Q And you signed it?

A Yes, sir.

Q December 20, 1911? 10

A Yes.

Q How was that matter brought to your attention?

A Why, Mr. Rotter told me that he had given Mr. Clark this stock when he bought stock in the People's Talking Machine Company.

Q And he asked you to sign the certificate?

A Certainly.

Q Have you got here the books of the Consolidated Company? 20

A I have not.

Q Are you still the president?

A I am.

Q And who has charge of the books?

A Why, the books, I think, are at Mr. Rotter's house.

Q And they have not been brought here?

A No.

Q When did he tell you that he had made the deal with Mr. Clark and sold him some stock and asked you to sign a certificate? 30

A Why, just a few days or a day or so after he had done it.

Q Well, did he not tell you the same morning?

A No, I don't think so.

Q What time of the day did you sign this certificate?

A I can't tell you.

Q Where was the office? 40

*William R. S. Davis, cross.*

A The office was at Mr. Rotter's house at that time.

Q Where did you go to sign this certificate, D. 3?

A I think likely that was signed at Mr. Rotter's home.

Q Well, was it signed on the 20th of December or was it signed the night before?

A What is the date of this?

10 Q Dated the 20th.

A Then I presume it was signed the 20th.

Q Well, you have been here in the courtroom and heard the testimony, have you not?

A Yes, sir.

Q Did you not hear Mr. Clark testify that that note was signed in Mr. Rotter's office on the morning of the 20th?

A Yes, I guess I did.

20 Q Do you not know, then, that you signed that certificate the night before?

A I must have signed—well, no, I don't know as I did; it might not have been done then; it might have been done that morning. I don't know when that was signed.

Q Did you go to Mr. Rotter's house that morning to sign it?

A I don't remember.

30 Q And that is all Mr. Rotter told you, that he had sold something to Mr. Clark?

A He told me that Mr. Clark wanted to get back before this into the company—into the Phonograph Company.

Q I am asking you before you signed that certificate did Mr. Rotter tell you just what this transaction was with Mr. Clark?

A Yes.

40 Q Did he tell you that he had sold 100 shares of the People's Talking Machine Company to Mr. Clark for \$10,000?

*William R. S. Davis, cross.*

A I won't say that he told me how many shares he sold; he told me that Mr. Clark had purchased \$10,000 worth of stock of the People's Talking Machine Company.

Q Did he tell you that he was going to make him a present of this 2,000 shares of the Consolidated Company?

A He did.

Q You did not consider that the Consolidated was worth anything, did you? 10

A It was worth something, yes.

Q How much, the paper it was written on?

A It was worth more than that.

Q What did you know at that time, in December, about the People's Talking Machine Company?

A I knew nothing.

Q You did not know anything about the business?

A Nothing at all.

Q You did not know whether it was prosperous or not? 20

A I knew nothing about it.

Q You heard Mr. Rotter say at that meeting that he had had an offer from the Consolidated Phonograph Company?

*Mr. Hardin.* What meeting?

*Mr. Bradner.* April, 1911.

Q Did you not?

A I did. 30

Q You believed that, too, did you not?

A Certainly. Why shouldn't I?

Q When did you find out that was false?

A When did I find out it was false?

Q Yes.

A Why, I don't know when it was; quite awhile after that.

Q Had you found out when you went to see Mr. Clark, in the latter part of December, 1911, that what Mr. Rotter had stated was false? 40

*William R. S. Davis, cross.*

A I had not.

Q You went to see Mr. Clark?

A Yes.

Q Why did you go to see him?

A I went to see him for different things.

Q Why did you tell him that Mr. Rotter had some confession to make?

10 A I didn't tell Mr. Clark that Mr. Rotter had a confession to make.

Q You told him that something was wrong, did you not?

A I did not.

Q Did you not go to see Mr. Clark at all?

A I did.

Q Did you not go to see him three or four times before you got the note?

A Before I got the note? No.

20 Q You did not go to see him at all?

A No, sir.

Q Then what he said was not so?

A He didn't say I saw him before I got the note.

Q Did you not hear him testify last Thursday?

A Yes, sir.

Q Did you not hear him say that you were there twice before you got the note?

A No.

30 Q Did you make the arrangement to have Mr. Rotter go to Mr. Clark to make a confession?

A No, sir.

Q Why did you go there?

A I made arrangements for Mr. Rotter to go and see Mr. Clark.

Q Why did you go?

A Simply went along.

Q Is that all?

A That is all.

Q You were not interested at all?

40 A No.

*William R. S. Davis, cross.*

Q You were not interested in having Clark find out that he had been buncoed, were you?

A Mr. Clark wasn't buncoed.

Q Did you not consider at that time that Mr. Rotter had made a false statement?

A No.

Q Did he not make a false statement when he said he had had a larger offer from another company?

A Because he thought at that time, I presume, that he had one. 10

Q How did you know he thought so?

A I don't know anything about it.

Q When did Mr. Rotter offer this \$10,000 note to you?

A At the same time, or practically the same time, that the others received cash.

Q No, I am talking about Mr. Clark's note.

A I didn't get the question, then.

Q When did he offer that note to you? 20

A You mean what time?

Q Yes.

*Mr. Hardin.* The note in suit, you mean?

*Mr. Bradner.* The note in suit.

A About January—

Q You do not seem to know much about it.

A Show me the check, and then I will tell you the date.

Q That note, Exhibit P. 1. (shown to witness). 30

A All right. Let me see the check, and I will tell you the date. (Counsel hands paper to witness.) I would say about January 14th, 15th or 16th.

Q What did he say to you?

A He asked me if I would discount a note of a good, responsible business man here in Newark for \$10,000. I told him I had no money to do it with, and he suggested that if I would be willing to take up the terms that he offered he would take it that way, and the terms were, I already had the stock and he 40

*William R. S. Davis, cross.*

had the cash, and if I would give up the stock and cash and give him a note for \$900 I could have the note.

Q And when did you get the cash?

A Why, I got the cash the same time that I got the stock.

Q Well, when was that?

10 A Why, I told you before, a few days before, the 14th, 15th or 16th, somewheres along there in that month.

Q That was when you got the cash from him?

A Yes.

Q He was looking for cash, was he not?

A Not that I know of.

Q Did he give you a check for \$4,000?

A He did.

Q On what bank?

20 A The Merchants'.

Q Had you had any conversation with Mr. Clark before that time?

A Yes. Before this time that you are talking about now?

Q Yes.

A No.

Q You had not seen him at all?

A No, not for some time.

30 Q Had you seen him since you had signed the certificate for 2,000 shares of Record stock?

A I think I had.

Q Well, when Mr. Rotter said that he had a note of a responsible party, you knew who it was, did you not?

A I did not.

Q Did he have the note with him then?

A I don't know.

Q Did he show it to you?

A He did not.

40 Q When did he tell you it was Mr. Clark's note?

*William R. S. Davis, cross.*

A After he had seen Mr. Clark.

Q After he had seen Mr. Clark?

A Yes.

*Mr. Bradner.* I move to strike that out, if your Honor please. I asked for the time, not to fix it by someone else.

Q What day was it?

A I can't tell you. 10

Q How long before you gave the check?

A Two or three days.

Q Then it was two or three days before you gave the check that he made the suggestion to you. Did he at that time tell you whose note it was?

A When he made the suggestion to me?

Q Yes.

A No, he did not.

Q Of course you knew Mr. Clark?

A I certainly did. 20

Q And you knew Mr. Clark was good enough?

A I did.

Q You did not go to see Mr. Clark?

A At this time? No.

Q Before you took the note?

A No.

Q You did not go to ask him about it at all?

A No.

Q Mr. Rotter told you that he had sold some stock to Mr. Clark? 30

A He did.

Q That he had sold 100 shares of the People's Talking Machine Company to Mr. Clark?

A I will not say that he said 100 shares.

Q But he told you that was what the note was for?

A Yes.

Q That it was for the stock?

A Yes, sir. 40

*William R. S. Davis, cross.*

Q And did you not know it was for the same stock that was turned over to you, the 100 shares of stock, as collateral?

A Yes.

Q Then you must have known what it was for?

A Well, I didn't until it was turned over.

10 Q When he came to you with the note did he hand you at the same time the certificate for 100 shares of the People's stock?

*Mr. Hardin.* Do not deceive the witness. He has not said it was the same stock. You are putting it in his mouth.

Q Mr. Davis, when you received the note of Mr. Clark from Mr. Rotter, did you at the same time receive this certificate, No. 39, for 100 shares of People's stock?

A I think I did.

20 Q You are not sure about it?

A I am not sure about; I think I did.

Q Did you produce the certificate here today as your property?

A Yes, sir.

Q And the certificate for 2,000 shares of the other stock?

A Yes.

30 Q Now, when you got the collateral with the note, did not Mr. Rotter tell you that that note represented the price of the stock that he had sold to Mr. Clark?

A I don't know whether he did or not.

Q Did you not know what it was?

A I don't think I quite get what you mean.

Q Did you know that he, Rotter, got that note from Clark?

A Yes, for stock.

Q What stock?

A The People's Talking Machine Company.

Q Did you know how many shares?

40 A I did not.

*William R. S. Davis, cross.*

Q But you were told there were 100 shares deposited as collateral?

A I wasn't told there was 100 shares; I was told there was stock.

Q Did you look at it?

A I presume I did.

Q Have you got in your possession any assignment of it from Mr. Rotter?

A I think there is— Has Mr. Kahrs got one? 10

Q Well, you do not know?

A I think there was one pinned fast to the stock.

Q Have you any paper signed by Mr. Rotter assigning to you, or transferring to you, either one of these certificates of stock, Exhibit D. 4. and Exhibit D. 3?

A I think so.

Q Where is it?

A In Mr. Kahrs's possession, I think.

(Paper produced by plaintiff's counsel.) 20

Q Is this the paper that you refer to (paper shown to witness)?

A Yes, sir.

Q Where is Mr. Rotter's signature on that?

A Mr. Rotter had nothing to do with it.

Q He did not have anything to do with it. Well, isn't this Exhibit D. 2. an assignment signed by Mr. Clark?

A Exactly.

Q As collateral? 30

A Exactly.

Q Well, how did Mr. Rotter transfer over the collateral to you?

A When he gave me the note he gave me the collateral and the paper pinned fast to it.

Q And that is all he gave you, is it not?

A I think so, yes.

Q Tell me, Mr. Davis—you are a business man—how would you get that certificate made out to Mr. Clark? 40

*William R. S. Davis, cross.*

A How would I get that?

Q How would you get that transferred?

A How do you mean, how would I get it transferred?

Q On the books of the company.

A Why, this stock was given as a bonus. I really had nothing to do with this at all. That was a present, you might say.

10 Q You did not consider that anything?

A I consider it something, yes.

Q What did you know about the People's Talking Machine stock at that time?

A I didn't know anything, I told you.

Q You did not know anything at all, whether it was worth a dollar or par?

A I didn't know anything about it.

20 At one o'clock, P. M., the court takes a recess of one hour.

AFTER RECESS.

WILLIAM R. S. DAVIS, plaintiff, resumes the stand in his own behalf.

*Cross examination* (continued) by Mr. Bradner.

30 Q Mr. Davis, in the course of your cross examination, I think, you volunteered the statement that you took the note after Mr. Rotter had seen Mr. Clark; when I asked you to fix the time when you took it, you said it was after Mr. Rotter had seen Mr. Clark. Do you remember saying that?

A Yes, sir.

Q Did Mr. Rotter tell you that he had to go and see Mr. Clark about it?

40 A There was an understanding between Mr. Rotter and Mr. Clark that the note wasn't to be discounted, without his approval, at the Merchants' Bank.

*William R. S. Davis, re-direct.*

Q I do not ask you that.

A What do you mean, then?

Q Did Mr. Rotter tell you that he had to see Mr. Clark before he could turn that note over?

A No.

Q Why do you say it was after Mr. Rotter had seen Mr. Clark?

A Because of this arrangement that Mr. Clark made with Mr. Rotter when he gave the note, that the note should not be discounted or go out of his possession unless Mr. Clark gave his permission. 10

Q Mr. Rotter told you that?

A Yes.

Q Did you go and ask Mr. Clark before you took the note whether he consented to its going out of his—

A No, sir.

*Mr. Bradner.* That is all. 20

*Re-direct examination by Mr. Hardin.*

Q You saw Mr. Clark after you had the note?

A I did.

Q Did Mr. Clark make any objection of any kind to your having it?

Objected to.

A He did not.

*Mr. Bradner.* There has been some evidence of some offers of compromise, which went in without any objection; but I object to anything afterwards to ratify the note. I do not understand that offers of settlement are evidential. 30

*Mr. Hardin.* I am not talking about compromise.

Q (Question read.)

*The Court.* You may answer the question.

A No.

Q When was it that you first saw Mr. Clark after you had the note? 40

*William R. S. Davis, re-direct.*

A Where was it?

Q Yes.

A At his house.

Q And when was it?

A About two or three days after I got the note.

Q And at that time did you tell him that you had the note?

A Yes.

10 Q What did he say?

A Perfectly satisfied.

Q Was it on that occasion or on a later occasion when you arranged, as you told us, about the proposal to pay \$7,500 in cash and renew for \$2,500?

A At a later time.

Q How much later?

A I would say a week or ten days.

Q And where was that?

A At Mr. Clark's house.

20 Q Had you before the time that you saw Clark at which you told him you had the note been in communication with Clark about Mr. Rotter in any way?

A No, sir.

Q Had you told Mr. Clark prior to that time that Mr. Rotter had made a confession to you?

A No, sir.

Q Did you talk with Clark about Rotter?

A Only in a general way.

Q Was it before or after you had the note?

30 A After.

Q What did you say to him, if anything, about Rotter?

A Well, I can't tell you what I said, because I don't remember, but there was nothing—it was only in the matter of talking about the company's business.

Q Which company's business?

A The People's Phonograph.

40 Q (*By Mr. Bradner.*) People's Talking Machine Company?

*William R. S. Davis, re-direct.*

A People's Talking Machine Company, I meant.

Q (*By Mr. Hardin.*) Now, you sold your stock, you say, in April, 1911, to Rotter, at the same time that Clark sold his?

A Yes, sir.

Q From that time forward, how long was it before you again owned any stock in the company?

A Until I bought Mr. Clark's note.

Q Had you extended the time of payment of Rotter's note, given to you in April, 1911? 10

A I had.

Q More than once?

A I think twice.

Q What was it you finally got from Rotter in satisfaction of the note?

A You mean the final settlement?

Q Yes.

A I got fifty shares of stock of the People's Talking Machine Company and \$5,000 in cash. 20

Q Now, then, what became of the certificate for fifty shares?

A Why, I gave that to Mr. Rotter when I bought the stock, or when I bought the note, rather, I mean.

Q And it has not been in your possession since?

A It has not.

Q Have you in your possession any other certificate than the certificate No. 39—I mean now of the People's Talking Machine Company—Exhibit D. 4, that you received as collateral for the Clark note (paper shown to witness)? 30

A That is all I have; I have no other certificate of stock. In that company, you mean?

Q Yes, the People's Talking Machine Company. At the time you received the note, Exhibit P. 1, the Clark note for \$10,000, what other papers besides that did you receive at the same time?

A The collateral that he had put up.

Q Now, meaning by that what? 40

*William R. S. Davis, re-cross.*

A The certificate of stock of the people's Talking Machine Company and the certificate of stock of the Consolidated Phonograph Record Company.

Q That is, Exhibit D. 4 and Exhibit D. 3, that you have in your hand?

A You mean marked that way up at the top? Yes, 3 and 4.

Q Did you receive any other paper?

10 A And this one (indicating).

Q And that is Exhibit D. 2?

A D. 2.

Q Those papers have been in your possession or in the possession of your counsel ever since?

A In Mr. Kahrs' possession.

*Re-cross examination by Mr. Bradner.*

Q Mr. Davis, are you not mistaken when you say you had nothing to do with Mr. Rotter after April, 20 1911, until you got this note of Mr. Clark's.

*Mr. Hardin.* He did not say that.

A That Rotter wasn't mentioned.

*Mr. Hardin.* He said that he did not have anything to do with the People's Talking Machine Company.

Q I understood you to say that you had nothing to do with Mr. Rotter.

A No, I didn't say that.

Q Now, you saw Mr. Clark at his house a few 30 days after you got the note?

A Yes, sir.

Q Why did you go to see Mr. Clark?

A Why, I went down to see him to tell him that I had the note, which he already knew. I knew that he knew it, but I went down to tell him that I had it, and went down to see what he wanted to do about the payments on it, meeting the payment of it.

Q That is the only reason you went to see him?

40 A That is the only reason.

*William R. S. Davis, re-cross.*

Q And then when you went to see him you made an arrangement to go there to meet him with Rotter, to have Rotter make a confession?

A I didn't get the question.

Q At that time did you make the arrangement with Mr. Clark to meet him and Mr. Rotter together?

A No, sir.

Q And then when Mr. Rotter went to Mr. Clark and made the confession, you just happened to be there? 10

A The arrangement was made at another meeting, when I was to Mr. Clark's house at another time.

Q Then you said that you would have Mr. Rotter come along?

A I said I would try and have Mr. Rotter meet Mr. Clark.

Q Now, when you heard that confession from Mr. Rotter, why did you not repudiate the whole thing? 20

A Why didn't I repudiate it?

Q Yes.

A No reason at all; in fact, I didn't hear any great confession.

Q You did not hear any confession?

*The Court.* Any great confession, did you not say?

*Witness.* Yes.

Q No great confession. You did not hear any great confession? 30

A No, sir; I did not.

Q You did not think it was a great confession?

A I did not; in fact, the question—the prominent question—

Q One moment. Mr. Davis, when Mr. Clark heard that confession, did he not say immediately that he would not pay that note?

A He did not.

Q He did not say that to you?

A Not then. 40

*William R. S. Davis, further direct.*

Q He did say it a few days afterwards, in Mr. Kahrs' office?

A The day after.

Q Was it at the annual meeting of the company?

A How is that?

Q Was it at the annual meeting of the company that he said he would not pay the note?

A No.

10 Q Were you not there?

A Yes.

Q You were at the annual meeting of the company?

A No, I was not.

Q What day were you at Mr. Kahrs' office?

A You mean the date?

Q Yes.

A I can't tell you; I will say, though, that it was either Friday or Saturday.

20 Q Was it the day before you went to Mr. Kahrs' office that you were told by Mr. Clark that he would not pay the note?

A No, it was at Mr. Kahrs' office that Mr. Clark said he would not pay the note.

Q Did he not tell you that before that time?

A No, sir.

*Further direct examination by Mr. Hardin.*

30 Q You say you did not hear any great confession. What did you hear? What did Mr. Rotter tell Mr. Clark?

A Well, as near as I can remember, Mr. Rotter told Mr. Clark—Mr. Clark told me the last time I was to his house that there were certain accusations made against Mr. Rotter, and that he was going to make trouble for the company—

Q Who was going to make trouble?

40 A Mr. Rotter. —and I don't remember what else there was, and I said that, if that was so, I thought that Mr. Rotter ought to be made acquainted with

*William R. S. Davis, further direct.*

the fact, because I didn't believe that he knew it was so; and on the strength of that arrangement was made whereby Mr. Rotter, myself and Mr. Clark met at his office a day or so after this.

Q What did you hear at that meeting?

A Why, just what I have told you: that Mr. Rotter was going to make trouble for the concern and—well, that was about it.

Q What did you hear Mr. Rotter say to Mr. Clark about this? 10

A I didn't hear him say anything, except we would go to Mr. Kahrs the following day and let Mr. Kahrs answer the question, that he knew all about it.

Q Was the question defined? Did Mr. Clark ask him any question?

A No, I don't think he asked him any particular question.

Q (*By the Court.*) Are you now speaking of the interview at Mr. Kahrs' office or the other interview? 20

*Mr. Hardin.* Before Mr. Kahrs' office?

A Before Mr. Kahrs' office.

Q (*By Mr. Hardin.*) Was it the day before, do you recall?

A I think it was the day before, because I know the next noon we went there. I think this took place on Friday noon, if I remember right. I had an engagement at the bank, and I was quite anxious to get away before one o'clock, because I was to meet Mr. Jacobs there to get the pay-roll for the factory, and that is the reason I think it was Friday, because Friday was the day we drew our money. 30

Q Now, at this meeting in Mr. Kahrs' office was any proposition made by Mr. Clark to you about the payment of this note?

A Yes.

Q What did he then propose?

A Five and five, five cash and a new note for five.

Q Five what? 40

*William Rotter, direct.*

A \$5,000, do you mean?

Q I asked you what he proposed?

A He said something about paying \$5,000 in cash and a new note for \$5,000.

Q What did you say to that proposition?

A I told him that I wanted \$7,500 and a new note for \$2,500, as the arrangements were before.

Q And what did he say then?

10 A I think that is when he made the exclamation, he said he would not pay the note at all.

*Further cross examination by Mr. Bradner.*

Q Then, Mr. Davis, there was an arrangement made, too, with Mr. Clark and Mr. Rotter together, was there not?

A Yes.

Q Did you not say this morning that you just happened to go along?

20 A I said nothing of the kind.

Q Did you not testify this morning that you just happened to go along?

A No.

WILLIAM ROTTER, sworn in behalf of plaintiff in rebuttal.

*Direct examination by Mr. Hardin.*

Q Mr. Rotter, where do you reside?

A 845 South Thirteenth street.

30 Q You have lived there for some time?

A Well, a little over a year in that particular place.

Q And before that had you lived in Newark?

A Yes, about twelve years, I think.

Q You were interested in the organization of the People's Talking Machine Company?

A I was.

40 Q Do you recall the meeting in April, 1911, which was attended by other gentlemen interested in that company?

*William Rotter, direct.*

A I do.

Q Well, who were there, if you recall?

A Mr. Clark, Mr. A. F. Meisselbach, Mr. Davis and myself.

Q As the outcome of that meeting, you bought certain stock, or made a contract for the purchase of certain stock, of those gentlemen in the People's Talking Machine Company?

10

A I did.

Q I notice the contract refers also to the Wizard Phonograph Company. Was that another company?

A Yes, that was another company.

Q Organized subsequent to the People's Talking Machine Company?

A Subsequent to the People's Talking Machine Company.

Q I show you Exhibit D. 1 (paper shown to witness). Do you recognize that as the contract made on that occasion?

20

A Yes.

Q You bought among other stock under that contract some stock of Mr. Davis', did you not?

A Bought everybody's.

Q Did you pay Mr. Davis for his stock under that contract in cash or by note?

A In the beginning I didn't give him either cash or note; I told him he has to wait a few days. After that he came around and I gave him a note.

30

Q I show you a paper (paper shown to witness).

A That is the one.

Q A note for \$10,000, dated April 20, 1911?

A Yes, sir.

Q To the order of William R. S. Davis?

A Yes, sir.

Q Signed by yourself?

A Yes, sir.

Q It is dated April 20th. Can you tell about what time you gave it to him?

40

*William Rotter, direct.*

A Well, as I said before, this transaction took place April 11th. For a few days I didn't give him anything; I told him he would have to wait a few days; and a few days later he came around and I offered him the note; I asked him to take it as a personal favor, he said all right, he would accept it.

10 Plaintiff's counsel offer in evidence the paper identified by witness.

Marked Exhibit P. 5.

Q I show you a paper purporting to be signed by William R. S. Davis (paper shown to witness). Do you recognize that as a paper received from Mr. Davis?

A Yes.

Q That was one of the extensions?

A Yes.

20 Plaintiff's counsel offer in evidence the paper identified by witness.

Marked Exhibit P. 6.

Mr. Hardin reads Exhibit P. 5 and Exhibit P. 6.

Q Now, how was that \$10,000 note, Exhibit P. 5, subsequently retired by you?

A I gave other notes.

Q Did you pay anything on account in cash in the month of November, 1911?

30 A I gave Davis \$1,000 in November, November 15th, on account.

Q Does that check represent that payment (paper shown to witness)?

A Yes.

Q And at that time how was the balance of the note paid?

A I offered Mr. Davis to give him \$4,000 more in cash, and, in fact, that was—\$4,000 in cash and \$5,000 stock. That made the \$10,000.

40 Q Now I show you a check for \$4,000, dated January 17, 1912 (paper shown to witness).

*William Rotter, direct.*

A That is my check.

Q That represents the \$4,000 paid in cash?

A Yes.

*Mr. Hardin.* I offer these two checks in evidence.

(Marked respectively Exhibit P. 7. and Exhibit P. 8.)

Mr. Hardin reads Exhibit P. 7.

Q That check, Exhibit P. 7, was debited against your account in the Merchants' Bank, on which it was drawn?

10

A Yes.

Mr. Hardin reads Exhibit P. 8.

Q That check was also charged against you?

A Yes.

Q Now, what else was there remaining after these checks had been paid on this original note of \$10,000?

A Remaining as to what?

20

Q How much remained unpaid?

A Nothing; it paid up all.

Q Well, there was cash only for \$5,000?

A I gave \$5,000 stock.

Q Were any notes surrendered at that time?

A Well, all these notes.

Q Mr. Davis had your notes?

A Yes, sir.

Q And he surrendered them?

A Sure.

30

Q I show you notes for \$5,000 (shown to witness). Will you look at them and tell me whether they are the notes that were so surrendered?

A Yes.

Q At the time this stock was taken by Mr. Davis, in January?

A Yes.

*Mr. Hardin.* I offer these notes in evidence. They are all dated November 8, 1911. There are three for \$1,000 and one for \$2,000. The first

40

*William Rotter, direct.*

\$1,000 note that I offer is payable on demand, to the order of William R. S. Davis, signed by William Rotter.

(Marked Exhibit P. 9.)

*Mr. Hardin.* The second one is at three months after date, for \$1,000, to the order of William R. S. Davis, payable at 26 Prospect street, Newark, N. J., signed by William Rotter.

10

(Marked Exhibit P. 10.)

*Mr. Hardin.* The third one is for \$1,000, payable five months after date, to the order of William R. S. Davis, at 26 Prospect street, Newark, N. J., signed by William Rotter.

(Marked Exhibit P. 11.)

*Mr. Hardin.* And the last one is for \$2,000, payable seven months after date, to the order of William R. S. Davis, payable at 26 Prospect street, Newark, N. J., signed by William Rotter.

20

(Marked Exhibit P. 12.)

Q On January 17, 1912, at the time this check for \$4,000 was given, these notes were surrendered, as I understand you?

A Yes.

Q Did you at that time deliver to Mr. Davis a certificate of stock?

A I did.

Q For how many shares?

30

A Fifty.

Q Have you that certificate in your possession now?

A I have.

Q When did you get it back?

A At the time I discounted the note.

Q Discounted what note?

A Mr. Clark's note.

Q Will you produce that certificate, please?

A (Witness produces paper.)

40

*William Rotter, direct.*

Q This certificate No. 41, for 50 shares of the People's Talking Machine Company.

A Yes, sir.

*Mr. Hardin.* If your Honor please, this stock certificate corresponds with stub No. 41 in the stock book that was here this morning, and that stub I will read, inasmuch as Mr. Bradner read the others. Certificate No. 41, for 50 shares, was issued, without being filled out; it is in lead pencil. "Certificate No. 5 the same as No. 33;" dated in ink, "December 1, 1911; issued by William Rotter," blank; "dated December 1, 1911; from whom transferred, original. Received the above certificate. See surrender below. William Rotter." 10

Q That certificate, I notice, is made out to your order?

A Yes, sir.

Plaintiff's counsel offer in evidence paper identified by witness. 20

Marked Exhibit P. 13.

Q At the time of its delivery to Mr. Davis, as you have described, was there any transfer on it?

A Yes.

Q Transferred in blank?

A Yes.

Q And what is the date of that transfer?

A January 17, 1912. 30

Q That is the same date, is it not, as your check for \$4,000, Exhibit P. 8?

A Exactly.

Q Now, when did you say you got this certificate back again?

A When I discounted the note for Mr. Davis.

Q And can you tell us when that was?

A When that was?

Q Yes. 40

*William Rotter, direct.*

A Well, it was the 18th or 19th; I don't remember exactly the date.

Q I show you the check (paper shown to witness).

A The 18th or 19th, just as I say.

Q What did you hand to Mr. Davis on that day?

A What did I do?

Q The day that you say you discounted the note—  
That is the expression you used.

10

A Yes, sir.

Q —what did you hand to Mr. Davis on that day?

A I handed him the note and—

Q I show you Exhibit P. 1 (paper shown to witness). Is that what you mean by "the note"?

A Yes, that is the note I handed, and I handed the assignment that I originally got from Mr. Clark.

Q I show you Exhibit D. 2 (paper shown to witness). Is that the paper that you refer to?

20

A Yes, that is the assignment. And I handed him the People's stock as well as the Consolidated Record stock.

Q I show you Exhibit D. 4 (paper shown to witness). Is that the certificate of stock?

A That is the certificate.

Q How many shares?

A 100.

30

Q And I show you Exhibit D. 3, for Consolidated Phonograph Record Company stock (paper shown to witness). Is that the certificate that you refer to, and that you handed him?

A Yes.

Q At the time you handed those papers to Mr. Davis, have you any recollection as to whether this little brown paper up in the corner was on Exhibit D. 2 as it appears there now?

A I put it on because we had it all together, and we had paste in the shop and I pasted it together.

40

Q Was that transfer attached as I now attach it to Exhibit D. 4 at the time you handed these papers to Mr. Davis?

*William Rotter, direct.*

A Yes.

*Mr. Hardin.* Your Honor will see that the evidence of paste on the back and the fold of the papers relate exactly each with the other, so that the thing explains itself.

Q I also notice that this note, Exhibit P. 1, has a piece of brown paper on the back of it. Do you recall whether you have seen that before?

A Yes, sir. 10

Q What did you put that there for?

A It seems to me now that I have put the thing together with this, and after I must have separated it, and for precaution that it shouldn't get torn, I pasted another piece of paper on. That is as near as I can remember.

Q Now, at the time you handed these papers to Mr. Davis that you have just identified what did you receive from him?

A I got from him \$5,000 stock which he bought from me and I got— 20

Q I show you Exhibit P. 13 (paper shown to witness). Is that the paper that you mean?

A Yes, sir.

Q Was it accompanied by any transfer or writing of any kind by Mr. Davis?

A Yes, he asked me to come over to Mr. Kahrs's office for the whole transaction, and at that place it was transferred. 30

*Mr. Bradner.* You said Mr. Kahrs's office?

*Mr. Hardin.* Yes. Mr. Kahrs is a witness to this.

*Mr. Bradner.* I thought he said Mr. Clark's office.

*Witness.* No, Mr. Kahrs's.

*Mr. Hardin.* You do not want me to call Mr. Kahrs, do you?

*Mr. Bradner.* No, I will admit that that is Mr. Kahrs's signature as a witness. 40

*William Rotter, direct.*

(Mr. Hardin reads Exhibit P. 13.)

*Mr. Hardin.* That makes, if your Honor please, a sort of a double transfer on the back of the certificate, No. 41, Exhibit P. 13, this last paper that I have read being pasted fast over the blank transfer.

10 Q I notice that Mr. Davis's signature also appears on the margin under the other transfer. Do you recall when that was written?

A Yes, sir.

Q When was it?

A I believe the same time, as near as I can remember.

Q What else did you get?

A I got the note for \$900. It was supposed to be another \$1,000, but \$100 was allowed for discounting the note, so I got a note for \$900.

20 Q That note you still have?

A I do.

Q Have you got it with you?

A Yes (producing paper).

*Mr. Hardin.* I offer that note in evidence.

(Marked Exhibit P. 14.)

(Mr. Hardin reads Exhibit P. 14.)

Q That note has not been paid and is still held by you?

A Yes.

30 Q Now, did you receive anything else besides the stock and the note for \$900?

A I got his check for \$4,000.

Q Referring to Exhibit P. 14 (paper shown to witness)?

A Yes.

Q You collected that check through the bank?

A I did.

Q And got the money for it?

A Yes.

40 Q And kept it?

*William Rotter, direct.*

A Yes.

Q Where did you get this \$10,000 note of Clark's that you sold to Mr. Davis, as you have described?

A When did I get it or where?

Q When and where, both?

A I got it at the office of the People's Talking Machine Company and the Wizard Phonograph Company, on December 20th.

Q What year? 10

A 1911.

Q That is the day of its date?

A Yes.

Q Had you arranged for it earlier than that?

A Had I what?

Q Had you arranged for it earlier than that? Had there been any previous interview with Mr. Clark out of which this grew?

A Well, I think it was the evening before. 20

Q And what did the note represent?

A The note represented \$10,000 People's Talking Machine Company stock and \$20,000 the Consolidated Phonograph stock.

Q You say it represented this stock. How did it represent it?

A How?

Q Yes.

A Simply sold it.

Q Who sold it? 30

A I did.

Q To whom?

A To Mr. Clark.

Q And this was in payment for it?

A That was the payment for it.

Q Can you identify the People's Talking Machine Company certificate which was part of the sale to Mr. Clark?

A Yes.

Q What number is it? 40

*William Rotter, direct.*

A 39.

Q And it is Exhibit; D. 4?

A Yes, sir.

Q You referred to the stock of another company. What company was that?

A The Consolidated Phonograph Record Company.

10 Q Certificate No. 6 (paper shown to witness)?

A Yes.

Q Exhibit D. 3. I notice that this certificate D. 3 of the Consolidated Phonograph Record Company, No. 6, for 20,000 shares, at \$1 each, is made out in the name of Samuel Clark and carries no indorsement. Is that the original certificate delivered to you by Mr. Clark?

A Yes.

20 Q Now, certificate D. 4, of the People's Talking Machine Company, is made out in your name?

A Yes.

Q And carries your indorsement in blank?

A Yes.

Q Is that also the original certificate?

A Yes.

Q Did Mr. Clark secure this note?

A Mr. Clark offered voluntarily all these stocks as collateral security.

Q And you retained them all with the note?

30 A I put it away in the safe deposit vault.

Q Now, did you have any conversation with Mr. Clark after this note was given and before it was transferred to Mr. Davis with reference to this note?

A Yes.

Q When and where?

A At the same office, the company's office.

Q And when?

A It must have been the last part—well, that was the first week in January, approximately.

*William Rotter, direct.*

Q And what was the conversation you had with him?

A I called up Mr. Clark on the 'phone and asked him to come down, and he did come. I told Mr. Clark that I am about to negotiate with the Burt Billard Ball Company in Springfield, New Jersey, a deal whereby I am buying out the complete output, of the celluloid output, for the manufacture of records, and that the party agreed, or we agreed, I and the Burt Billard Ball Manufacturing Company, that I would put up \$5,000 in the bank out at Millburn, I believe it was, or the bank of the Burt Billard Ball Company, \$4,000 to be drawn as the stock was delivered, the goods, and \$1,000 to hold in the bank as permanent security; and on the strength of that deal I needed money; and I told Mr. Clark that "Inasmuch as I promised you that I would not negotiate this note without first letting you know, that is why I called you on the 'phone and asked you for your permission." And Mr. Clark said, "I have nothing against it. The only thing I want to ask you is, don't discount it in the Merchants' National Bank, because I might have to borrow money there to pay up that note." And I said, "Mr. Clark, I am glad you told me that, because it was really my intention to go there"—knowing that Clark is a depositor there and I am also a depositor there.

*The Court.* What bank is that?

*Mr. Hardin.* The Merchants'.

*Witness.* The Merchants' National Bank. Mr. Clark practically was satisfied.

*The Court.* Tell us what he said. That is your conclusion. Tell us what he said.

*Witness.* Mr. Clark said, "As long as you don't go to the Merchants', I have no objections."

Q Did you talk with him again before you disposed of this note to Mr. Davis?

A I did.

*William Rotter, direct.*

Q And when was that?

A I was one evening up to Mr. Clark's house with reference to this case of this Consolidated Phonograph Record Company, and I believe I spoke to him as to the advisability of remaining a close corporation between ourselves, without selling any further stock, something like it, and that I would advance to this company all the money, so that we don't have to sell any stock on the outside; and in the course of this conversation I mentioned that Mr. Davis—that I had discounted a note of Mr. Davis's—I might have been asked by Mr. Clark whether I discounted it or not, but I know it was in the course of that evening that I told Mr. Clark that I discounted a note for Davis; and he said, "I am very glad, because, if that is the case, I might be able to make arrangements with Mr. Davis in case I can't pay the entire amount."

20 *The Court.* Perhaps the witness did not understand the question. I thought you asked him whether he saw Mr. Clark again before Davis had the note or before the transfer of the note.

*Witness.* Before the transfer?

*The Court.* Was that what you asked?

*Mr. Hardin.* Yes.

*Witness.* I understood after the transfer.

*Mr. Hardin.* Then you misunderstood the question.

30 *Witness.* I did.

Q Did you talk with Mr. Clark about the disposition of this note between the occasion that you have described on the telephone—at a meeting following your telephone conversation and the time you disposed of the note to Mr. Davis?

A Before I disposed of it, you mean?

Q Yes.

A I guess I did, but I have only a few faint recollections.

40

*William Rotter, direct.*

Q At any rate, after you had arranged to transfer it to Mr. Davis you had the conversation with him that you have described?

A Yes.

Q Did you later see Mr. Clark in company with Mr. Davis?

A Yes.

Q About this note, I mean.

A About that note? No. 10

Q Well, what was the occasion?

A Now, wait a minute. There was—yes, I guess I seen him after that at Mr. Kahrs' office.

Q You saw Mr. Clark in Mr. Davis' presence at Mr. Kahrs' office?

A Yes.

Q Had you seen Mr. Clark and Mr. Davis together before that?

A With reference to the note or for any other purpose? 20

Q For any other purpose.

A Yes.

Q And had the note been discussed at the earlier meeting, or was it discussed for the first time in Mr. Kahrs' office?

A The first time in Mr. Kahrs' office.

Q Do you recall what was said about the note on that occasion at Mr. Kahrs' office?

A It was the question about terms, how it was to be paid, \$5,000 in cash and \$5,000 in renewal— 30

Q Who said anything about paying \$5,000 in cash and \$5,000 in renewal?

A Who said that?

Q Yes.

A That was the conversation between Mr. Davis and Mr. Clark. And Mr. Davis insisted that he must have \$7,500 in cash and he will give him—

Q What did Mr. Clark say? Did he say anything about how he wanted to pay it? 40

*William Rotter, direct.*

A Well, as near as I can recollect, he finally consented.

Q To what?

A To the \$7,500 in cash and \$2,500 a new note; I think he said it would inconvenience him, but if it has to be, he will do it.

Q Now, was anything further said about the note on that occasion?

10 A No.

Q Now, you refer to an earlier occasion, before you went to Mr. Kahrs' office, or before you were in Mr. Kahrs' office with Mr. Davis. How long before the Kahrs' office interview was that one at the office of Mr. Clark, in the Essex building?

A Repeat that.

Q You have referred to an earlier meeting.

A Yes, sir.

20 Q You say the note was not discussed there, but I want to know when this earlier meeting was at Mr. Clark's office.

*The Court.* He said it was the first week in January, did he not?

*Mr. Hardin.* No, I am speaking about the meeting he has last mentioned, after he sold the note. He referred to a meeting in the Essex building; he said there was nothing said about the note; but I want to know when that was with reference to the meeting in Mr. Kahrs' office.

30 *Witness.* What was the question?

Q Do you remember attending a meeting at which Mr. Davis was present with Mr. Clark, at Mr. Clark's office, in the Essex building, a little before this meeting in Mr. Kahrs' office?

A Before the meeting in Mr. Clark's office?

Q Mr. Kahrs' office.

A Do I understand a meeting before in Mr. Clark's office—

40

*William Rotter, direct.*

Q Do you remember meeting in Mr. Clark's office a day or two before—I do not know just when it was—shortly before the day on which you met with Mr. Davis and Mr. Clark in Mr. Kahrs' office?

A I didn't get it yet.

Q Well, I expect the confusion is between Kahrs and Clark. Do you remember meeting in a room in the Essex building?

A I do. 10

Q When was that meeting with reference to this—

A When was it?

Q Yes.

A That must have been around the middle of February, as near as I can recollect.

Q Now, was it before the meeting in Mr. Kahrs' office?

A Yes.

Q How long before?

A A day. 20

Q The day before?

A Yes.

Q And who were present?

A Let me understand that. How long before what?

Q How long before the meeting in the lawyer's office?

A Was I in Mr. Clark's office?

Q Yes.

A The following day we went to Mr. Kahrs' office, 30  
yes.

Q Yes.

A Exactly.

Q Who were present in the office in the Essex building?

A Mr. Davis, myself and Mr. Clark.

Q And how did that meeting come about?

A Well, I received a letter from Mr. Davis. I was not at home at that time, and when I came home I found the letter. I read that— 40

*William Rotter, direct.*

Q You cannot tell us the contents of the letter.

A No. I read certain accusations made by Mr. Whitehead to Mr. Clark against me, and as soon as I came back he wanted me to call him up on the 'phone. When I got back I called up Mr. Davis on the 'phone in the factory where he worked and asked him to come down that evening, I would meet him downtown, and he said—I told him, "I got your letter.

10 What is it about"?

Q Never mind about your conversation with Mr. Davis.

A Then Mr. Davis said, "I wrote you that letter because I want you to know about the accusations."

*The Court.* Tell us about the meeting in the Essex building which followed, where you and Clark and Davis were together.

20 *Witness.* Yes. Well, Mr. Davis made the arrangements, and when I got into the office I said to Mr. Clark, "Mr. Clark, what are those accusations"? And he recited—I don't remember just exactly the wording, but that I was supposed to make trouble with the company, or something similar. And I said, "Mr. Clark, I have nothing to say on that. Whatever transaction took place was up in Mr. Kahrs' office"—

Q Whose office?

30 A Mr. Kahrs, of Lintott, Kahrs & Young. —"and we will go there to-morrow morning, and I will let you put the question to Mr. Kahrs and let him answer. I am not going to answer the question."

Q Well, what was the question? What was it if you remember, that Mr. Clark said to you?

A Well, as I said before, that Mr. Whitehead was supposed to have told him that I had made or was supposed to be making some trouble for the company, something that I couldn't catch on—just repeat just the words.

40

*William Rotter, direct.*

Q Was the same matter discussed in Mr. Kahrs' office the next morning?

A Oh, yes, sure. And then, after we got through with that, we spoke about company affairs, and in the course of conversation I told Mr. Clark that the proposition that has been put up to me in April, 1911, has not matured, and that—I couldn't recall exactly, but I believe that I mentioned that I was very much worried and couldn't sleep after I realized that I obligated myself, at the request of Mr. Clark and Mr. Meisselbach, to the extent of \$50,000 to buy them out before I ever had anything in writing from those people that was supposed to buy out the Record proposition, under which I understood the patent, and that kept me worried and kept me up nights; and I told him also I went over to Meisselbach, and I told him a day or two later, I told him, "Mr. Meisselbach, you and Mr. Clark were insisting upon my buying you out, and now I am left in the lurch; this proposition has not materialized as it was put up to me by a certain promoter." 10 20

Q This all refers to April, 1911?

A Yes, exactly.

Q This was the time that you bought Mr. Clark's stock?

A Yes, sir. Well, that was the general conversation. We drifted from one thing into another, and, among other things, I also told Mr. Clark that Mr. Meisselbach finally, seeing that he is one of them who put me, as they say, in a hole, to obligate myself on \$50,000, that he always considered himself a very honorable man, that he saw necessary to help me out; and he did, inasmuch as he advanced the money to pay up, with the understanding, in case nothing will materialize, then we take it all back. 30

Q Now, you carried out the arrangement ultimately with Mr. Clark and Mr. Jacobs and Mr. Davis and Mr. Ross? 40

*William Rotter, cross.*

A Yes.

Q All except Mr. Meisselbach?

A No, Mr. Meisselbach, too, in the beginning, and then after I had put it up to him that he was the man, as well as Mr. Clark, who urged me for hours in succession, without giving me a chance to breathe, that I should buy the stock, and I could make a big thing and I could make a fortune out of it, the next day I found out the whole proposition is for nothing.

10

Q Did you explain it to Mr. Clark on this occasion when the proposition was made that you referred to, in April, 1911?

20

A Yes. Certain people have sent a certain young man by the name of Carl Dahlgren to me and offered—this man Dahlgren was supposed to sell stock for the Phonograph Company, and he came back to me and he said that he had certain people, very wealthy people, financial people, but they were not interested in the phonograph proposition, but they considered that the record proposition is a much bigger one, because there are several million phonographs on the market, and supplying them with records will be a big proposition, and they offered to buy out my proposition for \$75,000 in cash and offered me \$10,000 in salary.

Q (*By the Court.*) Is this something that you told Mr. Clark?

30

A Yes, sir. And this thing never matured, and on this deal I was urged to buy—on this deal the two gentlemen, between Mr. Clark and Mr. Meisselbach, made an attempt to relieve me out of the \$75,000—at least \$50,000 out of the \$75,000.

*Cross examination by Mr. Bradner.*

Q Mr. Rotter, then you do not think you made much of a deal, did you, in April, 1911?

A I guess I didn't.

Q When did you find out that you had made a  
40 mistake?

*William Rotter, cross.*

A The very next day.

Q Did you tell Mr. Clark?

A Mr. Clark wasn't around. I went over right straight to Meisselbach on the other side—we kept on Prospect street and he is on Congress street—I went through the yard and told him about it.

Q You mean the next day after the deal was consummated?

A Yes, sir. 10

Q After the meeting?

A After the meeting.

Q After the agreement was signed by you to purchase from Meisselbach, Davis and Clark?

A Yes.

Q The next day you found out that you had made a mistake?

A Yes.

Q Well, after that you went and paid Mr. Clark, did you not? 20

A After that I did pay Mr. Clark.

Q Yes.

A Four days later, when Mr. Meisselbach agreed to advance the money.

Q Then, when you found out that you had made a mistake, you made an arrangement with Mr. Meisselbach to raise the money for you?

A When I found out I had made a mistake I put it up to him; and he postponed it for another day, and on that other day we had a very long conversation, and he finally said, "Well, if that is the case, I will"— 30

Q Tell what was said.

A —"I will raise the money."

Q Then Mr. Meisselbach raised the money that was paid to Mr. Clark, did he?

A Yes, exactly.

Q And paid to Mr. Jacobs?

A Exactly. 40

*William Rotter, cross.*

Q And Mr. Roos?

A Yes.

Q Did you pay Mr. Roos, too?

A Yes.

Q But you did not pay Mr. Meisselbach?

A No, he turned back—

Q And at that time you did not pay Mr. Davis?

A No, I postponed it till later to Mr. Davis.

10 Q Did you tell Mr. Davis that you had discovered that you made a mistake?

A Did I tell Mr. Davis?

Q Yes.

A Well, I didn't tell Mr. Davis, because it was still hanging; it wasn't altogether off; it was postponed; it was postponed for such a length of time that I couldn't take care of this \$50,000; it was postponed for some six weeks.

Q Well, you did not pay Mr. Davis?

20 A Not at that time, no; I asked him to wait. I didn't have any money to pay him.

Q And then he gave you a paper, Exhibit P. 6, extending the time until July, did he not (paper shown to witness)?

A I suppose so.

Q Well, do you not know?

A Yes, that is right.

Q I observe that the paper is dated the 15th day of April.

30 A Yes.

Q In which Mr. Davis—

A Was supposed to get his money.

Q —extends the time until the 11th day of July?

A Yes.

Q Now, you gave him a note on the 20th day of April for \$10,000. Why did you do that?

A I think he demanded it, I think so.

40 Q Well, how could he demand it, Mr. Rotter, if he had already given you a sealed agreement extending the time until July?

*William Rotter, cross.*

A He extended the time, but he had no note for it, I suppose.

Q This paper is—

A If you let me see the paper, I can give perhaps a better explanation.

Q (Reading Exhibit P. 6.) Now, I have read that to you. Mr. Davis signed that agreement and delivered it to you?

A Yes, sir. 10

Q What were the other valuable considerations referred to in it?

A I don't remember exactly.

Q You do not know what they were?

A No. I think it was just a matter of form.

Q And five days after that you gave him the note for \$10,000?

A Why, I had to give him something; if I didn't give him the money, I had to give him the note. I had this paper where he extends, but he didn't have anything. 20

Q He had your offer to pay?

A Yes, sir.

Q And he extended the time?

A Yes, sir.

Q That is the only explanation you can give for giving this note?

A That is all I can remember now.

Q This note was not given after this suit was brought, was it? 30

A No.

Q What was the use of giving him a note that he could not use? It was no use to him, was it?

A Yes, sir; you give some evidence to a man if you owe him money.

Q Did he not have the agreement to pay?

A Yes. The chances are he was advised to ask for a note, or he makes up his own mind.

Q When this note was finally handed back to you, why did you not tear it up? 40

*William Rotter, cross.*

A I never tear up papers.

Q There is nothing on it to show that Mr. Davis ever had it, is there?

A I file away every piece of paper.

Q There is not anything on any of these notes that you say you gave to Mr. Davis, which you produce, to show that he ever had them; not a single one of them is indorsed? Look at them (shown to witness).

10

A No, I know they are not.

Q Now, you did not settle with Mr. Davis on July 11th?

A I didn't, no.

Q You did not do anything with him until—

A November, when I gave him \$1,000.

Q And between July 11th and November 8th your note for \$10,000 came due?

A Yes.

20

Q What did you do with that, anything?

A I gave him a smaller note. At that time I asked him would he accept part stock and part cash, and he consented.

Q This note came due August 20th, did it not?

A About.

Q And when this note came due he asked you for the money, did he not?

30 A No, before this note came due I met him and told him I wouldn't be in a position to pay at the maturity of this note, that I am asking for an extension of time again, and at the same time asking him—explained to him that, inasmuch as no deal has ever matured, that I am not in a position to give him the entire amount, but would give him half of it and half in stock, to which he consented.

Q You did not carry out that proposition for some time, did you?

A Not at any time.

40 Q You did finally give him some notes in November, did you not?

*William Rotter, cross.*

A Yes.

Q And you gave him a check for \$1,000 on November 15th?

A Yes.

Q In the meantime had you made Mr. Davis a proposition of 5,000 shares of Consolidated Phonograph Record stock?

A No, that was much later; that was in October, I believe. 10

Q In October?

A Yes.

Q So that before you gave him a check for \$1,000 and before you gave him the notes you had made Mr. Davis a present of 5,000 shares of stock?

A After, I said.

Q He says it was October, does he not?

A October, 1911.

Q Yes. 20

A And these arrangements with reference to notes was made in August.

Q You made the arrangement in August?

A Yes, sir.

Q But you did not carry it out until November?

A No.

Q Did you put that arrangement in writing?

A What arrangement?

Q The arrangement to give the notes?

A To give the notes? 30

Q Yes, that arrangement to pay \$5,000 and to give \$5,000 in stock. 30

A No.

Q You did not put that in writing?

A Not that I recall.

Q Why did you make Mr. Davis a present of 5,000 shares of stock?

A As a bonus in connection with the purchase of the \$5,000 of the People's Talking Machine Company stock. 40

*William Rotter, cross.*

*Mr. Kahrs.* The jury cannot hear that.

*Witness.* I told long ago that was some time in August or September, I think it is, that if he takes so much of this stock that I will give him a bonus, which I did.

10 Q That is, if he would take half of his notes in stock of the People's Talking Machine Company, you would give him a bonus of stock of the Record Company?

A No.

Q That was not it?

A No, if he buys \$5,000 worth of stock in the People's Talking Machine Company I would give him a bonus of Record stock.

Q Then you gave him the bonus?

A Part of it.

20 Q And immediately proceeded to elect him president of the Record Company, did you not?

A Yes. I had to have somebody.

Q Why did you make him president?

30 A Because this Record Company has only actually—which was originally organized for the purpose of supplying the People's Talking Machine Company and the Wizard Phonograph Company with records, and we have never done anything on it, on the advice of the original directors, and never did any business, so it remained as we organized it originally, I and two other gentlemen, as incorporators, and then when I thought I was doing something, that I wanted to be active in making the records, then I found the necessity of having a regular board of directors.

Q What was Mr. Davis's occupation at that time?

A Where?

Q Was he not working somewhere?

A Certainly he was.

Q In a clerical position?

A Where, in the company?

40 Q Somewhere else?

*William Rotter, cross.*

A Somewhere else, yes.

Q His time was occupied all day, was it not?

A Yes.

Q What time did he have to act as president?

A Evenings.

Q Meet at your house in the evenings?

A Yes, sir.

Q And you and Mr. Davis became pretty intimate,  
did you not? 10

A Intimate?

Q Yes.

A In a business way always.

Q Then when you came to November 8th, you then  
had an arrangement with him that he would take  
\$5,000 in cash and \$5,000 in stock?

A Yes.

Q You had that arrangement then?

A When, November 8th?

Q Prior to November 8th. 20

A Why, yes, sure; in October, I guess; I don't re-  
call just how long it was.

Q Then you gave him the four notes, three for  
\$1,000 and one for \$2,000?

A I did.

Q That is \$5,000. That, I suppose, was intended  
to represent the cash?

A Yes, sir.

Q Did he at that time give you back the note for 30  
\$10,000?

A Sure.

Q It was then distinctly understood, was it not,  
when he gave you back the note for \$10,000, that you  
should pay the \$5,000 represented by the four notes  
and give him stock of the People's Talking Machine  
Company?

A Yes.

Q Well, on November 15th you gave him a check  
for \$1,000; is that right (paper shown to witness)? 40

*William Rotter, cross.*

A Yes.

Q What was that for?

A On account of the \$5,000.

Q Did you take up a note with it?

A Did I take what up?

Q Did you take up a note with it?

A With this \$1,000?

10 Q Yes.

A I suppose I did.

Q Do you not know?

A Well, that is how I usually do business; when I pay I ask for the note.

Q Why did you pay \$1,000 on November 15, 1911—why did you pay it at that time?

20 A Because he comes to me telling me that he needs money very much and whether I could accommodate him—that was before Thanksgiving Day—whether I could accommodate him, and I told him I will do all in my power to give him \$1,000. That was some time before, a week before, and at that time I gave him \$1,000.

Q Now, I understand you in your direct examination to say that these notes were all surrendered to you when you—

A When I paid.

Q —when you settled with Mr. Clark?

A Well, not all in one lump.

30 Q I mean when you settled with Mr. Davis, in January?

A Yes, but not in one lump. The one for \$1,000 was surrendered first.

Q Oh, that was surrendered first?

A Oh, yes, I should say so.

Q That was surrendered first?

A Yes.

Q Which one?

A This one (indicating).

40 Q The one payable on demand?

*William Rotter, cross.*

A On demand, yes.

Q And that had not been used by Mr. Davis?

A No.

Q And there is no credit on it, nothing to show that it has been paid?

A Except that it is in my possession.

Q Well, there is nothing to prevent you from making it up and putting it in your pocket, so far as Mr. Davis is concerned?

10

A Do what?

Q You could make it up and put it in your pocket, so far as Mr. Davis is concerned?

A I didn't get that.

Q As a business transaction, is there anything on that note to show that you paid it?

A Except that I have possession of it.

Q And that is all?

A That is all.

Q There is not anything on any of these notes to show that you paid them?

20

A No, except possession.

Q Have you any receipt from Mr. Davis to show what you paid to him?

A Only checks, returned checks.

Q Have you any receipt to show that you performed your agreement of April 11, 1911, to buy his stock?

A The notes and the returned checks.

Q That is all?

30

A That is all.

Q And the notes are not indorsed by Mr. Davis?

A Wait a minute. I guess I have—I must have—no, I don't remember having anything except my return checks that I paid him and the notes.

Q When you came up to January 17th, you gave Mr. Davis a check for \$4,000, did you not?

A Yes.

Q What else did you give him?

40

*William Rotter, cross.*

A The stock, \$5,000 stock.

Q Mr. Rotter, how did you convince Mr. Davis that 50 shares of stock were worth \$50,000?

A I didn't convince him at all.

Q You did not try to convince him?

A No.

Q You had sold your 250 shares for \$10,000, had you not?

A Yes, sir.

Q And you gave him back 50 shares of stock?

A Yes.

Q And you did not have any conversation about it before?

A Oh, yes, we have had conversations, talked about the company's affairs.

Q Was there any reason for doing that?

A Doing what?

Q Selling him back 50 shares of the stock that you had bought from him?

A Yes, there was a reason, sure.

Q What was the reason?

A The reason was I was anxious to get started in the record business, and it cost money to get started, and I didn't feel I could go out outside and raise money, and I anticipated to sell a certain amount of stock and advance the Record Company and immediately take up the manufacture of records, and that was the reason.

Q Was that the reason you gave him the bonus of the Record stock?

A No, that was the reason for selling him the People's Talking Machine Company stock.

Q You bought his stock at forty cents on the dollar?

A Yes, to my sorrow.

Q And you agreed to sell it back to him in two or three months for a hundred cents, or some part of it?

A Yes.

*William Rotter, cross.*

Q In the meantime what had been done to increase the value of that stock?

A In the mean time there has been procured some valuable patents.

Q Who procured them?

A The company.

Q Well, what company?

A The Wizard, or, rather, the International Phonograph Company. 10

Q The International Company?

A Yes, which is the same thing as the People's.

Q You did not transfer to Mr. Davis any of the International stock, did you?

A Well, the International and the People's is practically the same thing, because the one is controlled by the other.

Q Mr. Davis, as president of the Consolidated Phonograph Company, signed Exhibit D. 3, did he not? 20

A He did.

Q That is the certificate made out to Mr. Samuel Clark?

A Exactly.

Q Did you tell Mr. Davis when you asked him to issue that certificate that you had made the sale to Mr. Clark?

A I certainly did.

Q What? 30

A I certainly did.

Q And you told him just what you had sold him?

A Sure.

Q You told him you had sold him 100 shares of stock of the People's Company?

A Exactly.

Q And gave him a bonus of—

A 20,000 shares.

Q 20,000 shares in the Record Company?

A Yes, I did. 40

*William Rotter, cross.*

Q You told him that?

A Sure.

Q Why did you tell him that?

A It came naturally. If you go to a man and ask him to sign a certificate for 20,000 shares, I think it is very natural he should ask you, "Why, what does that mean."

Q What business was it of his?

10 A Nothing more than gentlemanlike.

Q Did you hear Mr. Davis testify that you did not tell him?

A That doesn't matter.

*Mr. Hardin.* He did not so testify.

*Witness.* That doesn't matter. Maybe he was balled up; but I am not balled up; I know what I did.

20 Q Do you think he was a little balled up on the witness-stand?

A Yes, I think he was a whole lot.

Q But you are not?

A No.

Q You are calm and collected?

A Yes, sir.

Q And you know what you are saying?

A Yes, sir.

Q And that is the reason you know about what you told him about Mr. Clark?

30 A Yes.

Q Because it was a gentlemanly thing to do?

A Yes, sir. I told Mr. Clark a good many things.

Q Did you tell Mr. Davis at that time that you were going to take Mr. Clark's note?

A No. I told him I did take it.

Q Did you have the note when you asked him to sign the certificate?

A No, I got the note next day, I believe.

*William Rotter, cross.*

Q Then if you told Mr. Davis when you asked him to sign the certificate—You did not have the note then?

A No, I couldn't have had it.

Q But you told him that you had made an agreement with Mr. Clark?

A Something similar.

Q You did not tell him then that you had a note?

A I couldn't tell him that, because I didn't have it. I got the note when I had the certificate turned over to Mr. Clark. 10

Q Why did you not have a new certificate made to Mr. Clark of the People's Talking Machine Company?

A I gave to Mr. Clark this certificate, which is my property, and signed it over in blank, and it was up to him to go down to the secretary and treasurer and demand a certificate in his own name. That is customary. 20

Q He could have gone there and done that?

A He could have done that at any time, if he had possession of it, but he volunteered it as collateral security.

Q You mean that Mr. Clark offered to leave this certificate with you as collateral security?

A Yes, he didn't ask me for it.

Q He did not want to take them away until the note had been paid?

A He didn't want to take them, of course not.

Q And you did not demand them? 30

A No.

Q When you told Mr. Clark that you needed this money to make a deal for celluloid, I think, at Springfield—

A Yes, Springfield, New Jersey.

Q —was that over the telephone?

A When I spoke to Mr. Clark?

Q Yes.

*William Rotter, cross.*

A I only asked Mr. Clark to come down; I didn't give him any reason at all.

Q And when he came down did you tell him you needed \$4,000?

A No, I needed \$5,000.

Q At that time did you have \$5,000 in the bank?

A Did I have?

Q Did you have \$5,000?

10 A Approximately.

Q Why could you not use that to buy celluloid?

A It would be very bad policy to take out the last \$5,000 and leave it in the Millburn bank there, and leave myself without a cent, when I have got \$5,000 more to expend before I can finish the business; I need \$5,000 to commence the business and \$5,000 more to finish it.

20 Q Can you tell me how you got any money out of this transaction with Mr. Davis to buy celluloid?

A He was to deliver it to me within thirty days.

Q You told Mr. Clark you needed money?

A Yes.

Q And that is the reason you wanted to negotiate this note?

A Yes.

Q And you had at that time \$5,000 in the bank?

A Yes.

Q Now, why could you not use that money?

30 A Why couldn't I use my money?

Q Yes.

A Because I couldn't take out the last \$5,000 and put it in the Billard Ball Company, and leave myself penniless to equip a shop. I had to equip a laboratory.

Q Did you not leave yourself penniless when you gave the check to Mr. Davis the next day?

A No, I had \$5,000.

Q And you gave him \$4,000?

*William Rotter, cross.*

A Yes, sir; but I had to have \$5,000 more; I needed \$10,000 to start with.

Q You said on direct examination that you needed \$4,000?

A I didn't say so. I needed \$5,000 for the Billard Ball Company only.

Q Well, if you needed \$5,000, you had that in the bank?

A Yes, sir. 10

Q And you did not use that?

A No.

Q And you gave Mr. Davis a check for that \$4,000?

A Not out of this \$5,000.

Q Out of this money?

A On that bank, but not that money. After I paid Mr. Davis I still had \$5,000.

Q You mean to say that you had \$14,000 on January 17, 1912, in the Merchants' bank?

A I can tell you better when I look at my pass-book. 20

Q Your pass-book will not show.

A Well, I have an idea; just to refresh my mind as to just how much I put in. (Referring to book.) In the neighborhood of \$14,000.

Q Well, how extensive a neighborhood do you refer to?

A Well, that I had about close to \$10,000 in the bank at that time.

Q Then you had plenty of money? 30

A Well, I had this \$10,000. I paid Mr. Davis \$4,000 out of the \$10,000.

Q Well, you got that right straight back again. It never went out of your bank for a minute, did it?

A Oh, yes, it did.

Q Do not your books show that one met the other? Have you looked at them?

A It may be so, but I do not remember.

PLAINTIFF RESTS.

*Samuel Clark, direct.*

SAMUEL CLARK, defendant, recalled in his own behalf in surrebuttal.

*Direct examination* by Mr. Bradner.

Q Mr. Clark, did you hear Mr. Rotter's testimony?

A Yes, sir.

10 Q Did you hear his testimony to the effect that he called you up on the 'phone and had you come to see him and told you that he needed money?

A That was correct.

Q Did he tell you anything about buying celluloid?

A Not that I remember of; no, sir.

Q Did he tell you how much money he needed?

A No, sir.

CROSS EXAMINATION WAIVED.

20 DEFENDANT SAMUEL CLARK RESTS.

Adjourned until to-morrow, Tuesday, June 3, 1913, at ten o'clock, A. M.

30

40

*Motion to Direct Verdict.*

## THIRD Day.

Tuesday, June 3, 1913.

Met pursuant to adjournment.

Present, counsel as before stated.

(By order of the Court, the jury withdraws.)

Plaintiff's counsel ask the Court to direct a verdict  
for plaintiff upon the following grounds: 10

(1) That there having been no attempt to rescind  
or to return the \$10,000 received by the defendant  
Clark in April, 1911, for his stock, the defense of want  
of consideration, under the second specification of  
defenses, must necessarily fail.

(2) That there is no evidence in the case to sup-  
port the defense of failure of consideration.

(3) That there is no evidence in the case to sup-  
port the defense of fraud. 20

(4) That the plaintiff is a holder in due course,  
and that there is no evidence in the case which shows  
any such knowledge on the part of plaintiff, or notice  
of any defect in the title of Rotter, from whom the  
plaintiff got the note in question, as would deprive  
plaintiff of the right to recover as a holder in due  
course.

*Mr. Hardin.* It seems to me, if your Honor please,  
that the case is left entirely free of any circumstances  
which, within the meaning of the Negotiable Instru- 30  
ments act, could have put Davis on his guard before  
he acquired this note, and that the note was pur-  
chased for value, without notice of defect, and that  
after the plaintiff acquired it nothing happened that  
can defeat plaintiff's right of recovery. So that, on the  
whole case, therefore, the right of recovery by the  
plaintiff is so clear as to require, under the rules  
of law applicable to the case, that a verdict should be  
directed for the plaintiff. The specifications of de-  
fenses limited the defenses to failure of consideration 40

*Motion to Direct Verdict.*

and fraud, of which the plaintiff had notice, and the proof has not sustained the defense against the plaintiff. I therefore move for the direction of a verdict for the plaintiff.

10 *The Court.* (After argument.) It seems to me that, your motion being to direct a verdict for the full amount, I could not overlook the fact that your client did not pay the full amount, at least to the extent of the \$900 note.

*Mr. Hardin.* Then I will modify my motion, and ask your Honor to direct a verdict for \$9,100.

20 *The Court.* (After further argument.) In the case of *Holcomb vs. Wyckoff*, 6 Vroom, 35, it seems to be assumed that the holder when he acquired the note took it without notice of any previous infirmity, and he took it before maturity. He seemed to be in an unassailable position, therefore. But in that case, where the holder received the note from the payee, although he was himself *bona fide*, by reason of the infirmity of the note between the original parties, the law contented itself with saving him harmless and allowing him to recover only what he was out of pocket. The opinion is by Judge Depue, and it says this: "In an action by an indorsee against the maker, the course of proceeding at the trial is to prove the making of the note and its indorsement, from which a consideration for the note will be implied. Upon proof being made that the note was obtained by fraud, or was  
30 fraudulently put in circulation, the plaintiff, to recover, must show that he bought it before maturity, *bona fide*, and for value. Where the evidence shows that the plaintiff is a *bona fide* holder before maturity, for the full value of the note, or where he has taken it from a precedent holder who has given full value, and to whose rights he has succeeded by virtue of the indorsement, he may recover the full amount of the note, without regard to defenses to which it might be  
40 settled law in this state that, where the note is valid

*Motion to Direct Verdict.*

between the original parties, and has been transferred by indorsement, to pass the legal title, no defects in the contract of indorsement will affect the indorsee's right to recover the full amount of the note. In the case first stated, the indorsee, or some prior holder whom he represents, having paid full value on the transfer, obtains an equity to recover of the maker, who has put negotiable paper in circulation, the full consideration he, or a precedent holder, has paid for it. In the case last stated, the note being valid in its inception, and the maker being liable on the instrument for the full sum named therein, he cannot avail himself of defects in the consideration upon which the contract of indorsement was made. But the case reserved presents the question whether the notes, being fraudulent and void as between the original parties, and having come to the hands of the plaintiff for a consideration less than their full value, he can recover beyond the consideration he actually paid." The court said he could not.

It seems to me that, under the evidence, the plaintiff is a holder in due course, under the definition in section 52 of the Negotiable Instruments act in all its branches, and that, assuming *Holcomb vs. Wyckoff* to be still in force, he is therefore cut down in his right to recover on the note to the amount that he paid for it, which would seem to be, not \$10,000, but \$9,100.

Do counsel think there is some question of fact as to whether the plaintiff is a holder in due course which ought to go to the jury? It is not quite clear to me yet what the question of fact is. The note is complete and regular on its face. The holder got it before it was due. If it is a question of fact, it must arise either under the third or fourth subdivision—either the proposition that he took it in good faith and for value, or that he took it without notice of any infirmity or defect. He took it for some value. Therefore that would leave the question whether he took it

*Verdict.*

in good faith, and, under the fourth subdivision, that at the time it was negotiated he had no notice of any infirmity in the instrument; that is, in the \$10,000 note, not in the transaction of April, which was ten months before, and the connection of which with the note is rather shadowy, in my mind.

10 What is there to impugn Mr. Davis' good faith, Mr. Bradner, as a question of fact to go to the jury? I may be unappreciative of your earnest argument on that branch of the case, but I do not quite see.

*Mr. Bradner.* I concede, of course, if your honor please, that if there are mere suspicious circumstances, that would not be enough.

20 *The Court.* I have a vivid recollection of the case of *Aldrich vs. Peckham*, 45 Vroom, 711, a case which I tried at the circuit, and where the Court of Errors, speaking by the mouth of Mr. Justice Garrison, concluded that the court had made a mistake. The opinion says: "Bad faith, not merely notice of suspicious circumstances, is necessary to defeat recovery by the holder of a negotiable note whose rights accrued before maturity." I let the case go to the jury practically on the ground of suspicious circumstances, and the court says that was wrong.

(After further argument.) I am going to grant your motion, Mr. Hardin.

Counsel for defendant, Samuel Clark, object to this ruling of the court.

30 Objection noted as ground of appeal.

*The Court.* Have you figured your interest?

*Mr. Hardin.* \$9,100, with interest from February 19, 1912—\$9,803.73.

(The jury returns into court.)

*The Court.* Gentlemen of the jury. After consideration of some legal aspects of this case, the court directs you to render a verdict in favor of the plaintiff and against the defendant, Samuel Clark, for the sum of \$9,803.73.

40 (Verdict accordingly.)

*Grounds of Appeal.*

**Grounds of Appeal.**

Filed October 17, 1913.

**New Jersey Court of Errors and Appeals**

WILLIAM R. S. DAVIS,

*Plaintiff, Respondent,*

vs.

SAMUEL CLARK,

*Defendant, Appellant.*

10

The appellant states the following grounds of appeal:

1. The court permitted the witness William Boyd Harding, to prove the signatures of Samuel Clark and William Rotter on the promissory note shown to them. 20
2. The court admitted in evidence the promissory note without proof that it had been delivered to the payee of the note.
3. The court admitted the promissory note in evidence without proof that the plaintiff was in fact the holder of the note.
4. The refusal of the court to grant the motion to nonsuit. 30
5. The court erroneously granted a motion on behalf of the plaintiff to direct a verdict for the plaintiff.
6. The court directed the jury to render a verdict in favor of the plaintiff and against the defendant Samuel Clark, for the sum of Nine thousand eight hundred three and 73/100 dollars.

JEROME T. CONGLETON,

*Attorney of Appellant.*

40

Exhibit P. 1.

EXHIBIT P. 1.

\$10,000. Newark, N. J., December 20, 1911.

Sixty days.....after date I promise to pay to the order of William Rotter.

10 Ten Thousand.....xx/100 Dollars at Merchants National Bank, Newark, N. J.

Value received.

N. Due. SAMUEL CLARK.

Endorsed

WILLIAM ROTTER,  
862 So. 15th St.,  
Newark, N. J.

20 Wm. B. S. DAVIS,  
26 Taylor St.

UNITED STATES OF AMERICA, } ss.  
STATE OF NEW JERSEY.

30 On the nineteenth day of February in the year of our Lord One Thousand Nine Hundred and Twelve, at the request of THE IRONBOUND TRUST COMPANY OF NEWARK, NEW JERSEY, I, FREDERICK SCHARRING-HAUSEN, Notary Public, in and for the State of New Jersey, duly appointed, commissioned and sworn, residing in the City of Newark, and State of New Jersey, did present the original note made by Samuel Clark payable at sixty days for \$10,000 dated December 20, 1911, and hereunto annexed, at the Merchants National Bank at Newark aforesaid to Bookkeeper thereof, and of him demanded payment thereof, who then and there refused to pay the same; saying the maker was not present, and had not there left funds  
40 for that purpose PAYMENT STOPPED.

*Exhibit P. 1.*

Whereupon, I, the said Notary, at the request aforesaid, did Protest and by these presents do publicly and solemnly Protest as well against the Drawer and Endorsers of the said note as against all others whom it doth or may concern, for exchange, re-exchange and all costs, charges, damages and interest already incurred, and to be hereafter incurred for want of payment of said note and on the 19th day of Feb., A. D. 1912, I gave notice of said non-payment to the Maker and Endorsers thereof by depositing said notice in the Post Office at Newark, N. J., directed and addressed to them at their residences or places of business, with postage prepaid thereon, before the hour of 6 P. M. of said day, viz:

WILLIAM R. S. DAVIS,  
26 Taylor St.,  
Newark, N. J.

10

SAMUEL CLARK,  
173 Clinton Ave.,  
Newark, N. J.

20

WILLIAM ROTTER,  
862 So. 15th St.,  
Newark, N. J.

Thus done and protested in the City of Newark, and State aforesaid in the presence of John Doe and Richard Roe, witnesses, *in testimonium veritatis.*

FREDERICK SCHARRINGHAUSEN,  
*Notary Public.*

30

Protest No. 18833 Page No. 18833

40

*Exhibit P. 2.*

EXHIBIT P. 2.

KNOW ALL MEN BY THESE PRESENTS, that I, Samuel Clark of the City of Newark, County of Essex and State of New Jersey, in consideration of One Dollar lawful money of the United States of America and other good and valuable considerations, to me in hand paid, the receipt whereof is hereby acknowledged, do hereby sell, assign and transfer unto William Rotter of the said City of Newark, 250 shares of the capital stock of the Peoples Talking Machine Company, a corporation organized and existing under and by virtue of the laws of the state of New Jersey, represented by the certificate of the said Company No. 15 & 17 and one share of the common stock of the Wizard Phonograph Company, a corporation also organized and existing under and by virtue of the laws of the state of New Jersey, represented by certificate of said company number 2 and do hereby irrevocably constitute and appoint the said William Rotter, my attorney, to transfer the said stock on the books of the said companies, with full power of substitution in the premises; I do further sell, assign and transfer unto said William Rotter any and all interest I may have in and to 49,894 shares of common stock and 50,000 shares of preferred stock of said Wizard Phonograph Company, and do further assign, transfer unto said William Rotter, any and all other right, title and interest which I now have or at any time in the future may have in and to said Peoples Talking Machine Company and said Wizard Phonograph Company, by virtue of my holdings and interest in and to the above mentioned shares of stock or of any other right and interest which I now or in the future may have.

AND in further consideration of the above I do remise and release and forever discharge, and by these presents do for myself, my heirs, executors and ad-

*Exhibit P. 2.*

ministrators, remise, release and forever discharge the said Peoples Talking Machine Company and Wizard Phonograph Company their successors and assigns and said William Rotter, his heirs, executors, administrators and assigns, of and from all manner of action, cause of action, suits, debts, dues, sums of money, accounts, reckonings, covenants, contracts, controversies, agreements, premises, damages, judgments, claims and demands whatsoever, in law or in equity which against them or either of them I ever had, now have or which I, my heirs, executors, administrators and assigns hereafter can, shall or may have, for upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents. 10

IN WITNESS WHEREOF I have hereunto set my hand and seal this 15th day of April, A. D. Nineteen hundred and Eleven.

SAMUEL CLARK. (SEAL) 20

Signed, sealed and delivered in the presence of

AUGUST F. MEISSELBACH.

30

40

*Exhibit P. 3.*

## EXHIBIT P. 3.

KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, being the owner of 50 shares of capital stock of the People's Talking Machine Company, do hereby constitute and appoint Samuel Clark my true and lawful attorney, in my name, place and stead

10 to vote upon the stock owned by me or standing in my name as my proxies, at the annual meeting of the stockholders of the said company, to be held at the company's principal office, No. 763 Broad St., Room 501, Newark, New Jersey, on the seventh day of February, Nineteen hundred and twelve, at ten o'clock in the forenoon, and on such other day as the meeting may be thereafter held by adjournment or otherwise, according to the number of votes I am now or may then be entitled to cast, hereby granting my said at-

20 torneys full power and authority to act for me and in my name at the said meeting or meetings, in voting for Directors of said Company or otherwise, and in the transaction of such other business as may properly come before the meetings, as fully as I could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorneys or substitutes may do in my place, name and stead.

30 IN WITNESS WHEREOF I have hereunto set my hand and seal this thirty-first day of January, Nineteen hundred and twelve.

Witness

WM. ROTTER. (L. S.)

*Exhibits P. 4—P. 5.*

EXHIBIT P. 4.

IRONBOUND TRUST COMPANY

No. 9 Newark, N. J., Jan. 18, 1912.

Pay to the order of William Rotter

Four thousand 00/1.....Dollars 10

\$4000 00/100

WM. R. S. DAVIS.

Endorsed

Wm. Rotter,  
Merchant's National Bank,  
Newark, N. J.  
Jan. 19, 1912.

4.

20

EXHIBIT P. 5.

\$10,000 00/100 April 20, 1911.

Four months after date I promise to pay to the order  
of Wm. R. S. Davis

Ten thousand 0/100.....Dollars 30  
at Merchants National Bank.

Without defalcation for value received.

No.... Due..... WM. ROTTER.

40

*Exhibit P. 6.*

## EXHIBIT P. 6.

## THE WIZARD PHONOGRAPH CO.

Office and Factory

26 Prospect Street.

Office of President.

10

Newark, N. J.,

191 .

In consideration of one dollar lawful money of the U. S. of America paid to me in hand, by William Rotter of Newark, N. J., the receipt whereof is hereby acknowledged, and other valuable considerations, I, William R. S. Davis of Newark, N. J., hereby extend the time for payment of \$10,000 for stock in the Peoples Phonograph Co. and for stock in the Wizard Phonograph Co. and for all and every interest, I now have, or will have in the aforesaid Companies from 30 days as agreed in an agreement dated April 11, 1913, and signed by myself, A. F. Meisselbach, Samuel Clark and William Rotter, to July 11, 1911, and promise not to demand the payment above mentioned before said eleventh day of July, 1911.

20

In witness whereof I hereby set my hand and seal this fifteenth day of April, 1911.

WM. R. S. DAVIS. (SEAL)

30 Signed sealed and delivered in presence of

40

*Exhibits P. 7—P. 8.*

EXHIBIT P. 7.

No. 859. Newark, N. J., Nov. 15, 1911.

MERCHANTS NATIONAL BANK

Pay to the order of Wm. R. S. Davis....\$1000 00/100

One thousand 00/100.....Dollars

WM. ROTTER. 10

Endorsed:

WM. R. S. DAVIS.

Credit

Ironbound Trust Company,

Newark, N. J.

Nov. 15, 1911.

Rufus Keisler, Jr., Treasurer.

20

EXHIBIT P. 8.

No. 896. Newark, N. J., January 17, 1912.

MERCHANTS NATIONAL BANK.

Pay to the order of Wm. R. S. Davis.....\$4000

Four thousand 00/100.....Dollars

WM. ROTTER. 30

Endorsed:

For deposit

WM. R. S. DAVIS.

Credit

Ironbound Trust Company,

Newark, N. J.

Jan. 18, 1912.

Rufus Keisler, Jr., Treasurer.

40

EXHIBIT P. 9.

\$1000.00 Newark, N. J., Nov. 8, 1911.

On demand.....after date I promise to pay to the order of Wm. R. S. Davis.....

One thousand.....xx/100 Dollars

10 Payable at 26 Prospect St., Newark, N. J.

Value received.

No..... Due..... WM. ROTTER.

EXHIBIT P. 10.

\$1000 00/100 Newark, N. J., Nov. 8, 1911.

20 Three months.....after date I promise to pay to the order of Wm. R. S. Davis.....

One thousand.....xx/100 Dollars

Payable at 26 Prospect St., Newark, N. J.

Value received.

No..... Due..... WM. ROTTER.

EXHIBIT P. 11.

30

\$1000.00 Newark, N. J., Nov. 8, 1911.

Five months.....after date I promise to pay to the order of Wm. R. S. Davis.....

One thousand.....00/100 Dollars

Payable at 26 Prospect St., Newark, N. J.

Value received.

40 No..... Due..... WM. ROTTER.



*Exhibits P. 12—P. 13.*

ized officers and to be sealed with the Seal of the Corporation at Newark, N. J., this first day of December, A. D. 1911.

(SEAL)

(The People's  
Talking Ma-  
chine Company  
1910)

LOUIS HANNOCH,  
*Treasurer.*

10

WM. ROTTER,  
*President.*

Shares \$100 each.

Endorsed:

FOR VALUE RECEIVED, hereby will assign and transfer unto .....  
Shares of the Capital Stock represented by the within  
Certificate, and do hereby irrevocably constitute and  
appoint.....to transfer the  
said Stock on the books of the within named Corpora-  
tion with full power of substitution in the premises.

20

WM. ROTTER,  
WM. R. S. DAVIS.

Dated January 17, 1912,  
in presence of

P. S.—FOR VALUE RECEIVED, I hereby sell, assign  
and transfer unto WILLIAM ROTTER Fifty (50) shares  
of the Capital Stock represented by the within Certifi-  
cate and do hereby irrevocably constitute and appoint  
WILLIAM ROTTER to transfer the said Stock on the  
books of the within named Corporation with full  
power of substitution in the premises.

30

WM. R. S. DAVIS. (L. S.)

Dated January 18th, 1912.

In presence of

JOSEPH KAHRS.

40

Exhibit D. 1.

EXHIBIT P: 14.

\$900 00/100 Newark, N. J., January 18th, 1912.

February 21st after date I promise to pay to the order of William Rotter.....

Nine hundred and 00/100.....Dollars

10

at office of Joseph Kahrs, Room No. 501, Prudential Building, 763 Broad St., Newark, N. J.

Value received.

No..... Due..... WM. R. S. DAVIS.

EXHIBIT D. 1:

Telephone connection.

20

THE WIZARD PHONOGRAPH CO.

Office and Factory

26 Prospect Street.

Office of Treasurer.

Newark, N. J.,

191

This indenture made this 11th day of April, 1911, by and between Samuel Clark, Wm. R. S. Davis both of Newark, N. J. and A. F. Meisselbach of Little Silver, N. J., hereinafter called party of the first part, and Wm. Rotter of said Newark, N. J., and hereinafter called the party of the second part, Witnesseth: that

30

Whereas, the party of the first part are stockholders and directors of the Peoples Talking Machine Company, a corporation of N. J., and stockholders and directors of the Wizard Phonograph Company, also a corporation of N. J. and

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*Exhibit D. 1.*

Whereas, that the party of the first part each one individually own and possess (250) two hundred and fifty shares of general stock (\$100.00) par value in the aforesaid Peoples Talking Machine Company and also holds and equal interest in 49,894 shares \$10.00 par value of Common stock of the Wizard Phonograph Company, and controlled by the Peoples Talking Machine Company and an interest in 10,000 shares of Preferred stock \$10.00 par value of the Wizard Phonograph Company and also controlled by said Peoples Talking Machine Company, and an interest of 40,000 shares of preferred stock \$10.00 par value, and now held by said Wizard Phonograph Company, and that said Wm. R. S. Davis holds 99 shares of Common stock, and Samuel Clark and A. F. Meisselbach each one share of Common stock of said Wizard Phonograph Company, and this indenture further witnesseth, that in consideration of one dollar U. S. money in hand paid each to the other, the receipt whereof is hereby acknowledged, and in further consideration of the promises and covenants made to each other, the party of the first part each one individually, severally and jointly, hereby agree and promise to assign, deliver and transfer, all of their right, title and interest in the above mentioned stocks, and holdings to William Rotter for the sum of Ten thousand dollars cash to each person of the party of the first part, the total payment being \$30,000 cash and the party of the second part agrees to buy the above mentioned stocks, and holdings and all their interest in said stocks from the said party of the first part for the sum of \$30,000.00, and the party of the first part hereby agrees to assign and transfer the above mentioned stocks, holdings and interest within 30 days from the date hereof to said party of the second part, and the said party of the second part hereby agrees to buy from and pay to said party of the first part the above mentioned interest and holdings and stocks within 30 days from the date hereof.

*Exhibit D. 2.*

In witness whereof the said parties hereunto set their hands and seals first above written.

SAMUEL CLARK, (L. S.)  
 WM. R. S. DAVIS, (L. S.)  
 A. F. MEISSELBACH, (L. S.)  
 WILLIAM ROTTER. (L. S.)

Signed, sealed and delivered in presence of

C. D. LIMING.

Witness to all.

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## EXHIBIT D. 2.

I, Samuel Clark, the owner of the within Certificate numbered (39) thirty-nine of the People's Talking Machine Company for one hundred (100) shares of Capital stock of said Company, and also owner of another Certificate hereto attached and numbered (6) six of the Consolidated Phonograph Record Company for 20,000 shares of Capital stock of the Company last mentioned, which I have purchased from William Rotter for Ten thousand 00/100 dollars (\$10,000 00/100) represented by promissory note bearing date December 20th, 1911, payable sixty days after said date, do hereby acknowledge the receipt of said Certificates of stock, and do hereby assign transfer and deliver said Certificates to William Rotter to be held by him as collateral security for the payment of said note, and upon the payment of said note the said Certificates of stock is to be reassigned and redelivered to me, and the same to become my property absolutely.

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SAMUEL CLARK.

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*Exhibit D. 3.*

EXHIBIT D. 3.

Incorporated under the Laws of the  
State of New Jersey.

Number 6. Shares, 20,000.

10 CONSOLIDATED PHONOGRAPH RECORD CO.  
Capital Stock \$125,000.

Full paid Non-Assessable

This Certifies that Samuel Clark is the owner of  
Twenty thousand. . . . . Shares of ONE DOLLAR each  
of the Capital Stock of CONSOLIDATED PHONOGRAPH  
RECORD Co. transferable only on the books of the Cor-  
poration by the holder hereof in person or by Attor-  
20 ney upon surrender of this Certificate properly en-  
dorsed.

IN WITNESS WHEREOF, the said Corporation has  
caused this Certificate to be signed by its duly au-  
thorized officers and to be sealed with the Seal of the  
Corporation, this twentieth day of December, A. D.  
1911.

WILLIAM ROTTER,  
*Treasurer.*

(SEAL)

30 WM. R. S. DAVIS,  
*President.*

Shares \$1.00.

Exhibit D. 4.

EXHIBIT D. 4.

Incorporated under the Laws of the  
State of New Jersey.

No. 39

100 Shares.

THE PEOPLE'S TALKING MACHINE  
COMPANY

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Capital Stock \$150,000.00.

This certifies that William Rotter is the owner of  
One hundred Shares of the Capital Stock of THE  
PEOPLE'S TALKING MACHINE COMPANY transferable  
only on the books of the Corporation by the holder  
hereof in person or by Attorney upon surrender of  
this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has  
caused this Certificate to be signed by its duly au- 20  
thorized officers and to be sealed with the Seal of the  
Corporation at Newark, N. J., this first day of De-  
cember, A. D. 1911.

LOUIS HANNOCH,  
*Treasurer.*

(SEAL)

WM. R. S. DAVIS,  
*President.*

FOR VALUE RECEIVED, I hereby sell, assign and  
transfer unto ..... 30  
Shares of Capital Stock represented by the within  
Certificate, and do hereby irrevocably constitute and  
appoint .....  
to transfer the said Stock on the books of the within  
named Corporation with full power of substitution  
in the premises.

WM. ROTTER.

Dated December 20, 1911.

In presence of

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