

## I N D E X

	PAGE
Writ .....	1
Complaint .....	2
Answer .....	5
Reply .....	6
Order to Amend Complaint.....	7
Rule for Judgment.....	8
Notice and Grounds of Appeal.....	9
Notice of Hearing of Argument.....	11
PLAINTIFF'S TESTIMONY:	
Charles F. Reid—Direct.....	14
Cross .....	18
Re-direct .....	20
Re-cross .....	22
Defendant's Motion for Non-suit.....	26
Exhibit P1, Bill of Sale.....	27
Exhibit P2, Bill of Sale.....	30
Exhibit P3, Bill of Sale.....	33
Exhibit P4, Bill of Sale.....	36

	PAGE
Exhibit P5, Bill of Sale.....	39
Exhibit P6, Bill of Sale.....	42
Exhibit P7, Application for Registration of Dealer .....	45
Exhibit P8, Associate Dealer's Agreement....	47

WRIT.

STATE OF NEW JERSEY, TO THE SHERIFF OF THE  
COUNTY OF ATLANTIC, GREETING:

We command you that if The First  
National Bank of Ocean City, New Jer-  
(L. S.) sey, a banking corporation, shall make  
you secure, you cause to be taken and 10  
delivered to it, one Dodge automobile,  
model 1927, manufacturer's serial number A-819070,  
engine No. C-885-312; one Dodge sedan automobile,  
model 1927, manufacturer's serial number A-818485,  
engine number C-885-304; one Dodge truck, model  
1927, manufacturer's serial No. A-818484, engine  
No. C-885-340; one Dodge truck, model 1927, manu-  
facturer's serial number A-817112, engine No. C-  
883-753; one Dodge truck, model 1927, manufac- 20  
turer's serial No. A-817109, engine No. C-883-646,  
and one Dodge truck, model 1927, manufacturer's  
serial No. A-816858, engine No. C-882-902; which  
Samuel T. Zelly and Eastern Motor Company took  
and unjustly detains as is said; and that you sum-  
mon the said Samuel T. Zelly and Eastern Motor  
Company to answer the annexed complaint of The  
First National Bank of Ocean City, New Jersey,  
a banking corporation, in an action at law in the  
Atlantic County Circuit Court and that you notify 30  
them that unless they file their answer to said com-  
plaint with the clerk of the New Jersey Supreme  
Court, at Trenton, New Jersey, within twenty days  
after service upon them of this writ and the  
annexed complaint, the plaintiff may proceed with  
the suit and judgment may be entered against them.  
Witness, HONORABLE WILLIAM F. SOOY, Judge of

the Atlantic County Circuit Court, at Trenton, New Jersey, this \_\_\_\_\_ day of January, nineteen hundred and twenty-seven.

Clerk.

Attorney.

10

COMPLAINT.

ATLANTIC COUNTY CIRCUIT COURT.

20 THE FIRST NATIONAL BANK  
 OF OCEAN CITY, NEW JER-  
 SEY, a banking corpora-  
 tion,  
*Plaintiff,*  
 v.  
 SAMUEL T. ZELLY and  
 EASTERN MOTOR COM-  
 PANY,  
*Defendant.*

Action at Law.  
Complaint.

30 The plaintiff, The First National Bank of Ocean City, New Jersey, a banking corporation, of the City of Ocean City, County of Cape May, and State of New Jersey, says that:

1. On or about January \_\_\_\_\_, 1927, plaintiff, The First National Bank of Ocean City, New Jersey,

was the owner of one Dodge automobile, model 1927, manufacturer's serial No. A-819070, engine No. C-885-312; one Dodge sedan automobile, model 1927, manufacturer's serial No. A-818485, engine No. C-885-304; one Dodge truck, model 1927, manufacturer's serial No. A-818484, engine No. C-885-340; one Dodge truck, model 1927, manufacturer's serial No. A-817112, engine No. C-883-753; one Dodge truck, model 1927, manufacturer's serial No. A-817109, engine No. C-883-646, and one Dodge truck, 10  
model 1927, manufacturer's serial No. A-816258, engine No. C-822-902, and said plaintiff still is the owner of said chattels and ever since said date has been, and is rightfully entitled to possession thereof.

2. On or about said date, while said automobiles and trucks belonging to the plaintiff, were located in a garage at the corner of Ninth Street and Ocean Avenue, in said City of Ocean City, the defendants 20  
did then and there wrongfully take said chattels and have ever since wrongfully detained the same.

3. Plaintiff demands possession of the said automobiles and trucks, together with damages for their unlawful detention.

*Attorney for Plaintiff.*

---

30

By virtue of the within writ, the plaintiff having given sufficient surety to prosecute the said suit with effect, etc., I made demand for the goods and chattels mentioned therein, which goods and chattels the defendant refused to deliver to the plaintiff; I then took part of the goods and chattels men-

tioned in the said writ, to wit: 4 Dodge cars bearing manufacturer's Nos. A-819070, A-818485, A-816258 and A-818484, and summoned the said defendant as within I am commanded, and also served a copy personally on Samuel T. Zelly, at the office of Eastern Motor Company, Arkansas and Arctic Avenues, Atlantic City, Atlantic County, New Jersey, and served Eastern Motor Company by delivering a copy personally to Harry Leiby, president  
10 of said company, at the office of Eastern Motor Company, Arkansas and Arctic Avenues, Atlantic City, Atlantic County, New Jersey; on January 22nd, 1927, and within 24 hours thereafter, said defendants did make a claim of property for the said goods and chattels and also filed with me a bond with sufficient surety to deliver said goods and chattels in as good condition as the same were at the time of making such claim, to the plaintiff or his lawful representative, if the same shall be adjudged  
20 to the plaintiff, and I therefore delivered said 4 Dodge cars to the defendant in accordance with the statute in such case made and provided.

JAMES CIMINO, *Sheriff*, by  
(Signed) HOWARD R. CLOUD,  
*Under Sheriff.*

Sheriff's fees \$6.74.

ANSWER.

ATLANTIC COUNTY CIRCUIT COURT.

<p>FIRST NATIONAL BANK OF OCEAN CITY, a corp., &amp;c., <i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>SAMUEL T. ZELLY and EASTERN MOTOR COM- PANY, <i>Defendants.</i></p>	}	<p>On Replevin. Answer.</p>	<p>10</p>
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Defendants, Samuel T. Zelly and Eastern Motor Company, a corporation of the State of New Jersey, doing business in Atlantic City, answering the complaint, say: 20

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.

DEFENSE.

1. The plaintiff was never the owner of the goods and chattels described in the complaint; was never in possession of them; and at the time of the alleged taking and detention, defendant, Eastern Motor Company, was the lawful owner and in lawful possession thereon. 30

COLE & COLE,  
*Attorneys of Defendants.*

## REPLY.

ATLANTIC COUNTY CIRCUIT COURT.

10

THE FIRST NATIONAL BANK,  
OCEAN CITY, N. J., a cor-  
poration, etc.,

*Plaintiff,*

v.

SAMUEL T. ZELLY and  
EASTERN MOTOR COM-  
PANY,

*Defendants.*

Action at Law.  
In Replevin.  
Reply.

20

Plaintiff denies every allegation in the answer.

WM. ELMER BROWN, JR.,  
*Attorney for Plaintiff.*

30



I hereby consent to the entry of the above order.

COLE & COLE,

*Attorneys for Defendants.*

10

RULE FOR JUDGMENT.

ATLANTIC COUNTY CIRCUIT COURT.

	FIRST NATIONAL BANK OF OCEAN CITY, a corp., &c.,	} In Replevin. Rule for Judgment.
	<i>Plaintiff,</i>	
	v.	
20	SAMUEL T. ZELLY, <i>et al.</i> ,	} Rule for Judgment.
	<i>Defendants.</i>	

This cause came on to be tried before Judge Sooy and a jury, at Atlantic City, on the 20th day of June, 1929, and, at the close of plaintiff's case counsel for the defendants moved for a non-suit and it was accordingly allowed;

30 It is thereupon, on motion of Cole & Cole, attorneys of defendants, ordered that plaintiff be non-suited, with costs to be taxed.

W. FRANK SOOY,  
*Judge.*

NOTICE AND GROUNDS OF APPEAL.

ATLANTIC COUNTY CIRCUIT COURT.

THE FIRST NATIONAL BANK  
OF OCEAN CITY, NEW JER-  
SEY, a banking corp., etc.,  
*Plaintiff,*

v.

SAMUEL T. ZELLEY and  
EASTERN MOTOR COM-  
PANY,

*Defendants.*

In Replevin.  
Notice and Grounds  
of Appeal.

10

20

*To the Within-named Defendants:*

Take notice that The First National Bank of Ocean City, New Jersey, a banking corporation, etc., plaintiff in the above-entitled cause, appeals to the New Jersey Court of Errors and Appeals, the court of last resort in all causes, from the judgment of non-suit entered in this cause, upon the following grounds:

30

1. Because the Court erred in ordering that plaintiff be non-suited.

2. Because the Court failed to submit the case to the jury.

3. Because the plaintiff had proven sufficient facts to require that the case be submitted to the jury.

4. Because the Court found that plaintiff did not have bills of sale issued by the agent or authorized dealer of the manufacturer of the automobiles as required by the Act of the Legislature of this State entitled "An Act relating to and regulating the sale and purchase of motor vehicles requiring the presence of manufacturer's number on same, requiring issuance of bill of sale and assignments of same and providing penalties therefor." P. L. 1919, Chapter 168, and the several supplements and amendments thereto.

WM. ELMER BROWN, JR.,  
*Attorney for Plaintiff.*

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[ENDORSED]

Service of the within notice acknowledged this 30th day of July, 1929.  
Cole & Cole,  
Attys. for Defts.

NOTICE OF HEARING OF ARGUMENT.  
NEW JERSEY COURT OF ERRORS AND  
APPEALS.

THE FIRST NATIONAL BANK  
OF OCEAN CITY, N. J., a  
banking corporation,  
etc.,

*Plaintiff-Appellant,*

v.

SAMUEL T. ZELLEY and  
EASTERN MOTOR Co.,  
*Defendants-Respondents.*

10

On Appeal.  
In Replevin.

20

Take notice of hearing of argument in the above-stated cause, before the above-named Court, to be holden at the State House, in Trenton, New Jersey, on the fifteenth day of October, 1929, at ten o'clock in the forenoon of said day, or as soon thereafter as the same can be heard by said Court.

Dated September 10, 1929.

Your ob't servant,

WM. ELMER BROWN, JR.,

*Atty. of Pltff.*

30

To COLE AND COLE, ESQS.,  
*Attys. of Defts.*

## TESTIMONY.

CIRCUIT COURT OF NEW JERSEY.  
ATLANTIC COUNTY.

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10 FIRST NATIONAL BANK OF  
OCEAN CITY, a corpora-  
tion,  
*Plaintiff,*

v.

SAMUEL T. ZELLEY and  
EASTERN MOTOR Co.,  
*Defendants.*

In Replevin.

20

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(The above-entitled case was tried June 20, 1929,  
before HONORABLE WILLIAM FRANK SOOY, Judge, and  
a jury.)

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## APPEARANCES:

WILLIAM ELMER BROWN, JR., Esq., for the plain-  
tiff.

30 MESSRS. COLE & COLE, for the defendants.

(Mr. Brown opened the plaintiff's case to the  
jury.)

(Mr. Cole opened the defendants' case to the  
jury.)

Mr. Brown: I offer in evidence, if the Court pleases, the six certified copies of bills of sale as recorded in the Cape May County Clerk's office.

Mr. Cole: I have no objection to the offer, to certified copies. I don't know whether they mean anything or not.

The Court: The date of the record is what? 10

Mr. Brown: December 18, 1926. The date of the instruments is December 16, 1926.

(The papers offered are received in evidence and marked as exhibits for the plaintiff, P1 to P6, inclusive.)

Mr. Brown: I desire to offer in evidence the certificate of the Commissioner of Motor Vehicles of the State of New Jersey, certifying the issuance of automobilists' registration to Reid & Denight of Ocean City. 20

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

Mr. Brown: I offer in evidence agreement designated Associated Dealers Agreement between Eastern Motor Company and Reid & Denight, approved by the Dodge Brothers, Incorporated, dated August 28, 1926. 30

(The paper offered is received in evidence and marked as an exhibit for the plaintiff, P8.)

MR. REID, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

Mr. Cole: Having examined those bills of sale for the first time, I want to note on the record an objection that they are not admissible in evidence for the reason that they were not acknowledged in accordance with the Motor Vehicle Act, and I assume that may be involved in this case, though that can be ruled on a little later, I suppose.

Mr. Brown: It seems to me the objection comes too late. The bills of sale have been admitted. It is not the first time Judge Cole has had access to the bills of sale. They remained in Judge Cole's possession for some time.

20 The Court: The record shows they were admitted without objection; but Judge Cole thereafter, looking over the instruments, said that he wanted to object, and there has been no ruling at all excepting his objection of record.

Mr. Brown: Then I want to note that it is my claim that the objection comes too late.

Direct examination.

30

By Mr. Brown:

Q. Now, Mr. Reid, you are a member of the firm of Reid & Denight?

A. I was, yes.

Q. Will you examine these bills of sale that have

been offered in evidence marked P1 to P6, and tell me whether or not you recall those cars mentioned in those bills of sale?

A. Yes, sir.

Q. These bills of sale appear to be dated on the 16th day of December, 1926. Do you know where the automobiles are now?

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

Q. What became of the automobiles after these assignments were made? 10

A. Why, sometime in early January they were taken away from us by a gentleman who represented himself from the C. I. T., and I understood him to say to be delivered to Atlantic City —

Mr. Cole: I object to that.

The Court: Yes. Objection sustained.

Q. What time of the day were they taken from you? 20

A. Around eight o'clock in the evening.

Q. Were there other cars involved other than these six?

A. About thirty-two.

Q. After the cars were taken from you, did you find out where they were?

A. Yes, sir.

Q. And where were they?

A. They were delivered to the Seashore Husted store room, in the care of Eastern Motor Company. 30

Q. And did you later have anything to do with any one or more of the thirty-two cars of which these six were included, after they were taken from you?

A. Yes, sir, I sold one.

Q. Through what channel and for whom?

Mr. Cole: I object. That is not one of the cars involved in this suit.

Mr. Brown: But it shows there were thirty-two cars of which these six were part, and it is evidence of the fact that these cars were in possession of the Eastern Motor Company, the defendant in this suit.

10 The Court: Is there any dispute that the cars were in possession of the Eastern Motor Company? There didn't seem to be.

Mr. Cole: There is a dispute—when they were delivered to the Seashore Storage they were delivered there by the C. I. T.

The Court: And then came in possession of the Eastern Motor Company?

20 Mr. Cole: Finally, yes. There is no dispute about that at all. But they were not in possession of the Eastern Motor Company at the time they were delivered to the Seashore.

The Court: The C. I. T. took them from the possession of the Motor Company and delivered them to the Seashore Husted, and then the C. I. T. turned over possession to the Eastern Motor Company.

30 Mr. Cole: That is our claim.

The Court: That is your claim, yes. Now, is your contention different from that?

Mr. Brown: My contention is that the Eastern Motor Company—if the C. I. T. took these, the

Eastern Motor Company was in agreement with the C. I. T. in the taking.

The Court: Well, who was in possession at the time of the writ of replevin?

Mr. Brown: The Eastern Motor Company.

The Court: If there is no dispute, then, as to that, what is the difference who took them originally? 10

Mr. Brown: In fact, there was a writ of replevin in this suit by the Eastern Motor Company and a bond filed.

Mr. Cole: There is no dispute that we had possession of those trucks at the time this suit was brought, and I don't see, therefore, how this testimony becomes relevant. 20

The Court: I don't see it, either. It is admitted on the record now that at the time of the execution of this writ the goods and chattels mentioned in the writ were in possession of the Eastern Motor Company.

Mr. Brown: Right. If that is admitted, our case rests at this point.

Mr. Cole: I want to ask this witness some questions. 30

Cross-examination.

By Mr. Cole:

Q. Did you notice when you looked at these bills of sale that they were certified copies of the originals?

A. Yes, sir.

Q. They express a consideration of one dollar.  
10 Is that the true consideration?

Mr. Brown: I object, if your Honor please, for the reason that the Eastern Motor Company has no right to claim the consideration for the instrument. It is only the parties themselves who can attack that consideration, unless the Eastern Motor Company should attack this instrument upon the theory of fraud, and that could only be done, it would seem to me, in an application to the Court  
20 of Chancery to set aside the conveyance; but in this collateral way it does not seem to me the consideration can be questioned.

Mr. Cole: I do not agree with Mr. Brown at all. I have two cases on that subject.

The Court: I would like to see those cases.

Mr. Brown: And if that question is in Judge  
30 Cole's mind, it is not raised in the pleadings.

Mr. Cole: It does not have to be raised in the pleadings.

(In chambers.)

Mr. Cole (citing 98 Law, page 45; Laws of 1925,

page 287; 98 Law, page 842): We say, therefore, we have a right to show this transaction. Reid and Denight never had any title to pass to anybody under the statute or in any other way.

The Court: It seems to me in that situation when the proper time comes you have a right to show this was a chattel mortgage instead of a bill of sale, if you can; but it is not cross-examination of this witness.

10

(In court.)

Mr. Brown: My attention is called to the fact that in the defendants' opening it was admitted these cars could not be returned. If that is so I can prove the value now on that theory, but I thought that I was not in position to prove that.

The Court: These were all new cars?

20

Mr. Brown: They were all new cars.

Mr. Cole: Of course, we are not bound by any proof they offer as to value.

The Court: No, but I thought there might not be any dispute as to that. Of course, you have got to prove eventually what the value is.

Mr. Brown: I will do that now, with the Court's permission.

30

The Court: Yes.

Re-direct examination.

By Mr. Brown:

Q. Mr. Reid, how long had these cars been in possession of Reid & Denight prior to this assignment, about how long?

A. Not over a week or two.

Q. Were they new cars or used cars?

10 A. New.

Q. New cars?

A. We unloaded them out of the freight cars in Ocean City.

Q. Shipped to Ocean City from where?

A. From Detroit.

Q. Is that where the cars are manufactured?

A. Yes, sir—well, the Dodge factory. I don't know whether that is in Detroit.

Q. The Dodge factory?

20 A. Yes.

Q. What kind of cars were they?

A. I presume they were paneled trucks.

Q. Can you tell by examining the bills of sale?

A. No, sir; I cannot.

Q. Exhibit P1 describes a Dodge paneled truck.

A. That's right.

Q. What type of car is that?

A. Three-quarter paneled truck, like you see most of these grocery concerns have around the street.

30 Q. What was the value of those cars at the time that they were taken from the firm in January of 1927?

A. I would not like to say, but I think they sold for \$980 something; either \$980 something or \$1040; one or the other. I wouldn't say positively.

Q. Exhibit P2 describes car known as Dodge panel. Is that the same kind of car?

A. They were all the same.

Q. Of the same value?

A. Yes, sir.

Q. Exhibit P3 describes a Dodge panel.

A. That is the same kind of car.

Q. And of the same value as the first one you testified to?

A. Yes.

The Court: He says they are all the same. 10

The Witness: All alike.

Q. They were all alike?

A. Yes.

Q. And all of the same value?

A. Yes.

Q. Were any of these cars valued at less than \$900?

A. No, sir.

Q. What did the cars sell for, these cars? 20

A. That was the selling price.

Mr. Cole: I object.

The Court: It is an element which the jury may take in consideration in fixing the value of cars that had never been used, and of new cars. I will permit it.

Mr. Cole: Exception. 30

Mr. Brown: I think it was answered.

The Court: Cross-examine.

Re-cross examination.

By Mr. Cole:

Q. Do you know what cars are involved in this suit?

A. In which way do you mean? Could I pick them out?

Q. How?

10 A. What do you mean? Could I pick them out?

Q. No, but do you know at this minute which of the cars that you had in your possession are involved in this suit?

A. Why, they were six panel trucks. That is all I can tell you.

Q. Do you know the price of them without looking at any papers?

A. No, sir, I do not.

20 Q. Now, you said that they were taken away from your place at what time?

A. Around eight o'clock in the evening.

Q. On what day?

A. You have me there!

Q. Now, when you speak of the value of these cars as \$900, do you mean each of them has a value of \$900?

A. Yes.

Q. And how do you fix that value? How do you fix that value?

30 A. That is the manufacturer's selling price of the car.

Q. That is the manufacturer's selling price of the car?

A. They fix the price of the car; yes, sir.

Q. Did you have any agreement to purchase these cars with the manufacturers?

A. Through the Eastern Motor Company.

Q. Pardon me now. Did you have any agreement for the purchase of these cars with the manufacturers?

The Court: Directly.

A. No, sir.

Q. How do you personally know that these cars were shipped from where you say they were? 10

A. Well, there was a bill of lading sent to the bank that we had to lift before we could unload the cars.

Q. Where were the cars when you first saw them?

A. In the freight cars in Ocean City.

Q. And you say there was a bill of lading?

A. Yes, sir.

Q. What became of that?

A. We had to come to Atlantic City and make arrangements to pay for those cars before we could get it. 20

Q. Make arrangements to pay whom?

A. The Eastern Motor Company.

Q. And whom did you see when you made that arrangement?

A. It must have been Mr. Zellely.

Q. Well, do you claim that you bought these cars from the Eastern Motor Company?

A. Well, we bought through the Eastern Motor Company; yes, sir. 30

Q. I say, do you claim that you bought these cars from the Eastern Motor Company?

A. I suppose that would be it, yes, sir.

Q. Did you get any writing from the Eastern Motor Company?

A. Yes, we had generally a small receipt.

Q. Do you know where the receipt is?

A. No, sir.

Mr. Brown: It seems to me this is beyond the realm of cross-examination as to value.

The Court: Yes. I think the direct examination was solely as to value.

10 Q. Well, Mr. Reid, there has been offered here what purports to be an authority of some sort from the Commissioner of Motor Vehicles on an application made sometime in 1926. Now, do you know whether or not this authority that was granted was still in existence at the time you made the bill of sale?

A. Yes, sir.

Q. To the First National Bank?

A. Yes, sir.

20 Q. You know that of your own knowledge?

A. Yes, sir.

Q. Were you and Mr. Denight ever incorporated?

A. No, sir.

Q. Sure about that?

A. I couldn't get him to incorporate.

Q. What?

A. I couldn't get him to incorporate. I had the papers but he would not sign them.

Q. There was some talk about it, but never consummated?

30 A. I had the papers all drawn up but he would not sign them.

Q. I see. I notice that this writing called an Associate Dealers Agreement between the Eastern Motor Company and Reid & Denight, Inc.—and it is signed Reid & Denight, Inc.; Howard Denight, president. That is so, isn't it?

A. Yes, sir.

Q. And you are Mr. Reid?

A. Yes, sir.

Q. Did you know that he was signing that as president?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. When you were not incorporated?

A. Well, we were to be incorporated the next 10 day.

Q. At the time?

A. No, sir.

Q. You had not been incorporated?

A. No, sir.

Q. You never were incorporated?

A. No, sir.

Q. And you knew he was signing that as president of this corporation?

A. Yes, sir.

Q. Who handed you or Mr. Denight this paper, this agreement, do you remember?

A. I think it was Mr. Robinson.

Q. What?

A. I think it was Mr. Robinson, a representative of the Dodge Agency, or Dodge Company.

Q. Can you recall who it was?

A. No; I would not like to say.

Mr. Cole: That is all.

20  
30

(Witness excused.)

PLAINTIFF RESTS.

## DEFENDANTS' MOTION FOR NON-SUIT.

Mr. Cole: Now, I move for a non-suit upon the broad ground, first, that the plaintiff has not proved a title either under the common law or under the Motor Vehicle Act, to sustain this suit. There is no authority in Reid & Denight to make the sale.  
10 In no event was Reid & Denight an authorized dealer of the manufacturer.

The Court: Reid & Denight, Incorporated, was appointed under certificate P8 as an authorized agent of Dodge Brothers, Incorporated, and the Eastern Motor Company.

Mr. Reid testified that Reid & Denight at the time of the appointment intended to incorporate and that he, Reid, knew that Denight signed the appointment as Reid & Denight, Incorporated, by  
20 Harry Denight, president.

He testified that Reid & Denight never were actually incorporated because Mr. Denight refused to sign the incorporation papers, and it is evident in the case that Reid & Denight individually or in partnership continued, they believing, under their appointment. They took out a license or authorization, whatever it may be called, from the Motor Vehicle Commissioner as authorized dealers and gave the bill of sale in question under the name of  
30 Reid & Denight. There is nothing in the evidence to show that either the Eastern Motor Company or the Dodge Brothers, Incorporated, ever recognized Reid & Denight as a co-partnership or as individuals as authorized agents.

It is true that Reid & Denight continued to do business for Dodge Brothers, Incorporated, and the

Eastern Motor Company, one or both; but they never changed the form of their appointment; never brought to the attention of either Dodge Brothers or the Eastern Motor Company, insofar as the evidence shows, that they were trading as a co-partnership instead of a corporation. There is no question in the case but that Reid & Denight misrepresented to the bank that they as partners were authorized agents, and it seems to me that even if by act and conduct of the Eastern Motor Company an estoppel as against them could be raised sufficiently to permit the plaintiff to recover, still there is nothing in the case to show that the Eastern Motor Company or the Dodge Brothers, Incorporated, or either of them, ever dealt with Reid & Denight other than as Reid & Denight, Incorporated; and, therefore, it seems to me that it must follow that the bill of sale is not sufficient upon which to establish title and right of possession in the plaintiff, and for that reason I will grant a non-suit and allow an exception.

Mr. Brown: Exception.

---

EXHIBIT P1.

KNOW ALL MEN BY THESE PRESENTS, that REID & DENIGHT, of Ocean City (person or firm making the sale) in the County of Cape May and State of New Jersey, party of the first part, in consideration of the sum of One Dollars, paid by 1ST NATIONAL BANK (purchaser) of Ocean City (city or town), in the County of Cape May and State of New Jersey, party of the second part,

has bargained, sold, granted, and conveyed and by these presents do bargain, sell, grant and convey unto the said party of the second part, their heirs, executors, administrators and assigns, Dodge Panel Truck (Motor vehicle), Dodge (make of car), 1927 (Model), A-818484 (Manufacturer's No.), C-885-340 (Engine No.), to have and to hold the same unto the said party of the second part, their heirs, executors, administrators and assigns forever, and  
 10 Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand  
 20 nine hundred and twenty-six.

Reid & Denight  
 By H. Denight

Signed, Sealed and Delivered  
 in the presence of  
 Witness—Two disinterested  
 persons.

C. Sickler

Betty MacKain

30 State of New Jersey, County of Cape May, ss. Be It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared *that* Reid & Denight, who, I am satisfied *that* the seller mentioned in the within instrument, and I having personally made known to them the contents thereof, *and* did thereupon acknowledge that they signed, sealed and delivered the same as *in* voluntary act

and deed for the uses and purposes therein expressed.

Louisa T. Corson, Notary Public. (Off'l Seal)

---

[Endorsed]

4369

BILL OF SALE FOR MOTOR  
VEHICLES

10

Reid & Denight  
to

First National Bank

Dated ..... 19...

Filed Dec. 18, 1926 at 9 A. M.

A. C. Hildreth, Clerk.

---

20

STATE OF NEW JERSEY

County of Cape May

I, A. C. HILDRETH, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

BILL OF SALE  
REID & DENIGHT  
to

30

FIRST NATIONAL BANK of Ocean City, N. J. as filed and recorded, on the 18th day of December A. D. 1926, in the Clerk's Office of the County of Cape May, Entered in Book 3 of Conditional Sales at page 493

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this Twentieth day of February A. D. nineteen hundred and twenty eight.

A. C. Hildreth  
Clerk.

(Seal)

10

[Endorsed]

## CERTIFIED COPY

OF

BILL OF SALE

Reid &amp; Denight

to

First National Bank of

Ocean City, N. J.

CAPE MAY COUNTY CLERK'S

20

OFFICE

Cape May Court House, N. J.

## EXHIBIT P2.

KNOW ALL MEN BY THESE PRESENTS, that Reid & DENIGHT, of Ocean City (person or firm making the sale) in the County of Cape May and State of New Jersey, party of the first part, in consideration of the sum of One Dollars, paid by 1ST NATIONAL BANK (purchaser) of Ocean City (city or town), in the County of Cape May and State of New Jersey, party of the second part, has bargained, sold, granted, and conveyed and by these presents do bargain, sell, grant and convey unto the said party of the second part, their heirs,

30

executors, administrators and assigns, Dodge Panel (Motor vehicle), Dodge (make of car), 1927 (model), A-818485 (Manufacturer's No.), C-885-304 (Engine No.) to have and to hold the same unto the said party of the second part, their heirs, executors, administrators and assigns forever, and Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend 10 the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand nine hundred and twenty-six.

Reid & Denight  
By H. Denight

Signed, Sealed and Delivered 20  
in the presence of  
Witness—Two disinterested  
persons.

C. Sickler

Betty MacKain

State of New Jersey, County of Cape May, ss. Be It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared *that* Reid & Denight, who, I am satisfied *that* the seller 30 mentioned in the within instrument, and I having personally made known to them the contents thereof and did thereupon acknowledge that they signed, sealed and delivered the same as *in* voluntary act and deed for the uses and purposes therein expressed.

Louisa T. Corson, Notary Public. (Off'l Seal)

[Endorsed]

4368

BILL OF SALE FOR MOTOR  
VEHICLES

Reid &amp; Denight

to

First National Bank

Dated ..... 19...

10

Filed Dec. 18, 1926 at 9 A. M.

A. C. Hildreth, Clerk.

## STATE OF NEW JERSEY

County of Cape May

20 I, A. C. HILDRETH, County Clerk, and Clerk  
of the Courts of Oyer and Terminer, Quarter Ses-  
sions, Common Pleas, and Circuit Court, in and  
for the County of Cape May, DO HEREBY CER-  
TIFY that the foregoing is a true and correct copy  
of

BILL OF SALE  
REID & DENIGHT

to

30 FIRST NATIONAL BANK of Ocean City, N. J.  
as filed and recorded, on the 18th day of December  
A. D. 1926, in the Clerk's Office of the County of  
Cape May, Entered in Book 3 of Conditional Sales  
at page 492

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court, at Cape  
May Court House, this Twentieth day of February  
A. D. nineteen hundred and twenty eight.

A. C. Hildreth  
Clerk.

(Seal)

[Endorsed]

CERTIFIED COPY  
OF  
BILL OF SALE  
Reid & Denight  
to  
First National Bank of  
Ocean City, N. J.  
CAPE MAY COUNTY CLERK'S OFFICE 10  
Cape May Court House, N. J.

---

EXHIBIT P3.

20

KNOW ALL MEN BY THESE PRESENTS,  
that REID & DENIGHT, of Ocean City, N. J., (per-  
son or firm making the sale) in the County of Cape  
May and State of New Jersey, party of the first part,  
in consideration of the sum of One Dollars, paid  
by 1ST NATIONAL BANK (purchaser) of Ocean  
City (city or town), in the County of Cape May  
and State of New Jersey, party of the second part,  
has bargained, sold, granted, and conveyed and by 30  
these presents do bargain, sell, grant and convey  
unto the said party of the second part, their heirs,  
executors, administrators and assigns, Dodge Panel  
(Motor vehicle), Dodge (make of car), 1927  
(model), A-819070 (Manufacturer's No.), C-885-  
312 (Engine No.), to have and to hold the same

unto the said party of the second part, their heirs, executors, administrators and assigns forever, and Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS  
 10 WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand nine hundred and twenty-six.

Reid & Denight  
 By H. Denight

Signed, Sealed and Delivered  
 in the presence of  
 Witness—Two disinterested  
 persons.

20 C. Sickler

Betty MacKain

State of New Jersey, County of Cape May, ss. Be  
 It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared that Reid & Denight, who, I am satisfied *that* the seller *is* mentioned in the within instrument, and I having personally made known to them the contents thereof and did thereupon acknowledge that they signed,  
 30 sealed and delivered the same as *in* voluntary act and deed for the uses and purposes therein expressed.

Louisa T. Corson, Notary Public. (Off'l Seal)

[Endorsed]

4367

BILL OF SALE FOR MOTOR  
VEHICLES

Reid & Denight  
to

First National Bank

Dated ..... 19...

Filed Dec. 18, 1926 at 9 A. M.

10

A. C. Hildreth, Clerk.

STATE OF NEW JERSEY

County of Cape May

I, A. C. HILDRETH, County Clerk, and Clerk  
of the Courts of Oyer and Terminer, Quarter Ses-  
sions, Common Pleas, and Circuit Court, in and  
for the County of Cape May, DO HEREBY CER- 20  
TIFY that the foregoing is a true and correct copy  
of

BILL OF SALE  
REID & DENIGHT

to

FIRST NATIONAL BANK of Ocean City, N. J.  
as filed and recorded, on the 18th day of December  
A. D. 1926, in the Clerk's Office of the County of  
Cape May, Entered in Book 3 of Conditional Sales  
at page 492 30

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court, at Cape  
May Court House, this Twentieth day of February  
A. D. nineteen hundred and twenty eight.

A. C. Hildreth  
Clerk.

(Seal)

[Endorsed]

CERTIFIED COPY

OF

BILL OF SALE

Reid &amp; Denight

to

First National Bank of

Ocean City, N. J.

10

CAPE MAY COUNTY CLERK'S  
OFFICE

Cape May Court House, N. J.

20

## EXHIBIT P4.

KNOW ALL MEN BY THESE PRESENTS,  
 that REID & DENIGHT, of Ocean City (person or  
 firm making the sale) in the County of Cape May  
 and State of New Jersey, party of the first part,  
 in consideration of the sum of One Dollars, paid  
 by 1ST NATIONAL BANK (purchaser) of Ocean  
 City (city or town), in the County of Cape May  
 and State of New Jersey, party of the second part,  
 30 has bargained, sold, granted, and conveyed and by  
 these presents do bargain, sell, grant and convey  
 unto the said party of the second part, their heirs,  
 executors, administrators and assigns, Dodge Panel  
 Truck (Motor vehicle), Dodge (make of car), 1927  
 (Model), A-817109 (Manufacturer's No.), C-883-  
 646 (Engine No.), to have and to hold the same

unto the said party of the second part, their heirs, executors, administrators and assigns forever, and Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS 10  
 WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand nine hundred and twenty-six.

Reid & Denight  
 By H. Denight

Signed, Sealed and Delivered  
 in the presence of  
 Witness—Two disinterested  
 persons.

C. Sickler

20

Betty MacKain

State of New Jersey, County of Cape May, ss. Be It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared *that* Reid & Denight, who, I am satisfied *that* the seller mentioned in the within instrument, and I having personally made known to them the contents thereof and did thereupon acknowledge that they signed, sealed and delivered the same as in voluntary act 30  
 and deed for the uses and purposes therein expressed.

Louisa T. Corson, Notary Public. (Off'l Seal)

[Endorsed]

4371

BILL OF SALE FOR MOTOR  
VEHICLES

Reid & Denight

to

First National Bank

Dated ..... 19...

10

Filed Dec. 18, 1926 at 9 A. M.

A. C. Hildreth, Clerk.

---

STATE OF NEW JERSEY

County of Cape May

I, A. C. HILDRETH, County Clerk, and Clerk  
of the Courts of Oyer and Terminer, Quarter Ses-  
sions, Common Pleas, and Circuit Court, in and  
20 for the County of Cape May, DO HEREBY CER-  
TIFY that the foregoing is a true and correct copy  
of

BILL OF SALE  
REID & DENIGHT

to

FIRST NATIONAL BANK of Ocean City, N. J.  
as filed and recorded, on the 18th day of December  
A. D. 1926, in the Clerk's Office of the County of  
Cape May, Entered in Book 3 of Conditional Sales  
30 at page 493

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court, at Cape  
May Court House, this Twentieth day of February  
A. D. nineteen hundred and twenty eight.

A. C. Hildreth

(Seal)

Clerk.

[Endorsed]

CERTIFIED COPY  
OF  
BILL OF SALE  
Reid & Denight  
to  
First National Bank of  
Ocean City, N. J.  
CAPE MAY COUNTY CLERK'S OFFICE 10  
Cape May Court House, N. J.

---

EXHIBIT P5.

20

KNOW ALL MEN BY THESE PRESENTS,  
that REID & DENIGHT, of Ocean City (person or  
firm making the sale) in the County of Cape May  
and State of New Jersey, party of the first part,  
in consideration of the sum of One Dollars, paid  
by 1ST NATIONAL BANK (purchaser) of Ocean  
City (city or town), in the County of Cape May  
and State of New Jersey, party of the second part,  
has bargained, sold, granted, and conveyed and by 30  
these presents do bargain, sell, grant and convey  
unto the said party of the second part, their heirs,  
executors, administrators and assigns, Dodge Panel  
Truck (Motor vehicle), Dodge (make of car), 1927  
(Model) A-816258 (manufacturer's No.) C-822-  
902 (Engine No.), to have and to hold the same

unto the said party of the second part, their heirs, executors, administrators and assigns forever, and Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand nine hundred and twenty-six.

Reid & Denight  
By H. Denight

Signed, Sealed and Delivered  
in the presence of  
Witness—Two disinterested  
persons.

20 C. Sickler

Betty MacKain

State of New Jersey, County of Cape May, ss. Be It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared that Reid & Denight, who, I am satisfied *that* the seller mentioned in the within instrument, and I having personally made known to them the contents thereof and did thereupon acknowledge that they signed, sealed and delivered the same as *in* voluntary act and deed for the uses and purposes therein expressed.

30

Louisa T. Corson, Notary Public. (Off'l Seal)

[Endorsed]

4372

BILL OF SALE FOR MOTOR  
VEHICLES

Reid & Denight

to

First National Bank

Dated ..... 19...

Filed Dec. 18, 1926 at 9 A. M.

A. C. Hildreth, Clerk.

10

---

STATE OF NEW JERSEY

County of Cape May

I, A. C. HILDRETH, County Clerk, and Clerk  
of the Courts of Oyer and Terminer, Quarter Ses-  
sions, Common Pleas, and Circuit Court, in and  
for the County of Cape May, DO HEREBY CER- 20  
TIFY that the foregoing is a true and correct copy  
of

BILL OF SALE  
REID & DENIGHT.

to

FIRST NATIONAL BANK of Ocean City, N. J.  
as filed and recorded, on the 18th day of December  
A. D. 1926, in the Clerk's Office of the County of  
Cape May, Entered in Book 3 of Conditional Sales  
at page 494 30

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court, at Cape  
May Court House, this Twentieth day of February  
A. D. nineteen hundred and twenty eight.

A. C. Hildreth  
Clerk.

(Seal)

[Endorsed]

CERTIFIED COPY  
OF  
BILL OF SALE  
Reid & Denight  
to

First National Bank of  
Ocean City, N. J.

10

CAPE MAY COUNTY CLERK'S  
OFFICE  
Cape May Court House, N. J.

20

## EXHIBIT P6.

KNOW ALL MEN BY THESE PRESENTS,  
that REID & DENIGHT, of Ocean City (person or  
firm making the sale) in the County of Cape May  
and State of New Jersey, party of the first part,  
in consideration of the sum of One Dollars, paid  
by 1ST NATIONAL BANK (purchaser) of Ocean  
City (city or town), in the County of Cape May  
and State of New Jersey, party of the second part,  
30 has bargained, sold, granted, and conveyed and by  
these presents do bargain, sell, grant and convey  
unto the said party of the second part, their heirs,  
executors, administrators and assigns, Dodge Panel  
Truck (Motor vehicle), Dodge (make of car), 1927  
(model), A-817112 (Manufacturer's No.), C-883-  
753 (engine No.), to have and to hold the same

unto the said party of the second part, their heirs, executors, administrators and assigns forever, and Reid & Denight (person or firm making the sale) does for their heirs, executors, administrators or assigns, covenant and agree to and with the said party of the second part to warrant and defend the said described motor vehicle hereby sold unto the party of the second part, their executors, administrators and assigns against all and every person or persons whomsoever. IN WITNESS 10  
 WHEREOF, *has* have hereunto set their hand and seal on this sixteenth day of December one thousand nine hundred and *twent*-six.

Reid & Denight  
 By H. Denight

Signed, Sealed and Delivered

in the presence of

Witness—Two disinterested  
 persons.

C. Sickler

20

Betty MacKain

State of New Jersey, County of Cape May, ss. Be  
 It Remembered, that on this sixteenth day of December, 1926, before me, a Notary Public of the State of New Jersey, personally appeared *that* Reid & Denight, who, I am satisfied *that* the seller mentioned in the within instrument, and I having personally made known to them the contents thereof and did thereupon acknowledge that they signed, sealed and delivered the same as *in* voluntary act 30  
 and deed for the uses and purposes therein expressed.

Louisa T. Corson, Notary Public. (Off'l Seal)

[Endorsed]

4370

BILL OF SALE FOR MOTOR  
VEHICLES

Reid &amp; Denight

to

First National Bank

Dated ..... 19...

10

Filed Dec. 18, 1926 at 9 A. M.

A. C. Hildreth, Clerk.

## STATE OF NEW JERSEY

County of Cape May

20 I, A. C. HILDRETH, County Clerk, and Clerk  
of the Courts of Oyer and Terminer, Quarter Ses-  
sions, Common Pleas, and Circuit Court, in and  
for the County of Cape May, DO HEREBY CER-  
TIFY that the foregoing is a true and correct copy  
of

## BILL OF SALE

REID &amp; DENIGHT

to

30 FIRST NATIONAL BANK of Ocean City, N. J.  
as filed and recorded, on the 18th day of December  
A. D. 1926, in the Clerk's Office of the County of  
Cape May, Entered in Book 3 of Conditional Sales  
at page 493

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed the seal of said Court, at Cape  
May Court House, this Twentieth day of February  
A. D. nineteen hundred and twenty eight.

A. C. Hildreth

(Seal)

Clerk.



AFFIDAVIT

State of New Jersey,  
County of Atlantic.

Chas F Reid being duly sworn according to law  
(name of owner)  
says that he he is the within named applicant (or  
if a corporation the.....of.....  
(title of office)

..... a corporation, the within  
10 (name of corporation)  
named applicant) that he he signed the applica-  
tion, knows the contents thereof, and hereby makes  
oath in due form of law that the statements and  
answers contained therein are true.

Subscribed and sworn to before me this 26th day of  
August, 1926.

Notary Public  
Charles F. Reid  
(Signature of Applicant)  
Notary Public  
(Notary Public)

20

Issued at Pville N. J.  
Date 8-26-26

Fee \$25.00

---

STATE OF NEW JERSEY

Department of Motor Vehicle Registration and  
Regulation #678

30 I, William L. Dill, Commissioner of Motor Ve-  
hicles, of the State of New Jersey, do hereby certify  
that the annexed is a true copy of the application  
of Reid & Denight, 9th Atlantic Avenue, Ocean City,  
New Jersey, to whom auto dealers registration  
number D-1781 was issued on the twenty-sixth day  
of August, 1926, as the same has been taken from  
and compared with the original, now remaining on  
file and of record in this office.

IN TESTIMONY WHEREOF: I have hereunto set my hand and affixed my Official Seal, at Trenton, this eleventh day of March, A. D., 1929.

Wm. L. Dill

(Seal)

Commissioner of Motor Vehicles

---

EXHIBIT P8.

10

ASSOCIATE DEALER'S  
AGREEMENT

Between

Eastern Motor Company

Dealer

Atlantic City

City, Town or Village

Atlantic

County

N. J.

20

State

AND

Reid and Denight, Inc.

Associate Dealer

Ocean City

City, Town or Village

Cape May

County

N. J.

State

30

EXPIRES DECEMBER 31st, 1926

No. C 662

(Dodge Bros. Motor Vehicles Seal)

Agreement, made between Eastern Motor Com-  
pany

(Strike out Inappropriate Lines)

a corporation organized and existing under the laws  
of N. J.

an individual

a partnership composed of the following named  
persons:

having a place of business at Arkansas and Arctic  
Street and Number

Av. Atlantic City Atlantic N. J., hereinafter  
City, Town or Village County State

10 called Dealer, and Reid and Denight, Inc.

(Strike out Inappropriate Lines)

a corporation organized and existing under the laws  
of N. J.

an individual

a partnership composed of the following named  
persons:

having a place of business at 9th Av. at Atlantic  
Street and Number

Av Ocean City Cape May N. J., hereinafter  
20 City, Town or Vilage County State

called Associate Dealer.

Whereas, Dealer has entered into an agreement  
with Dodge Brothers, Inc., a Maryland corpora-  
tion, having its principal place of business at  
Hamtramck (Detroit), Michigan, hereinafter called  
Manufacturer, for the sale by Manufacturer and  
the purchase by Dealer of Dodge Brothers motor  
vehicles and repair parts for resale within a terri-  
30 is located, and under said agreement Dealer is re-  
sponsible to Manufacturer for the thorough and  
continuous working of such territory for the sale  
of Dodge Brothers motor vehicles and repair parts,  
and for the maintenance therein of adequate ser-  
vice for the owners of Dodge Brothers motor ve-  
hicles; and

Whereas, Dealer, for the purpose of fulfilling its

obligations to Manufacturer under said agreement, desires to appoint Associate Dealer to aid Dealer in the performance thereof, and Associate Dealer desires to accept such appointment,

Now, therefore, in consideration of the premises and of the mutual undertakings hereinafter expressed the parties hereto agree as follows:

APPOINTMENT OF ASSOCIATE DEALER

10

Article I. Subject to the conditions hereinafter stated, Dealer hereby grants to Associate Dealer the right to purchase from Dealer Dodge Brothers motor vehicles and repair parts in quantity and variety and at times as hereinafter set forth, for resale by Associate Dealer within the following territory: Ocean City and Vicinity.

ASSOCIATE DEALER AGREES TO PROMOTE SALES

20

Article II. Associate Dealer agrees at all times to work said territory thoroughly and continuously for the sale of Dodge Brothers motor vehicles and repair parts.

SERVICE STATION

Article III. (a) Associate Dealer agrees to maintain under its ownership and control a service station adequately equipped with special tools and equipment, and at such service station to furnish prompt, courteous and efficient service to the owners of Dodge Brothers motor vehicles.

30

## SERVICE STATION SIGN

(b) Associate Dealer agrees to return to Dealer promptly upon demand any service station sign loaned to Associate Dealer by Dealer.

SALES OF MOTOR VEHICLES, PRICE, PAYMENT, DELIVERY, TRANSPORTATION CHARGES, CONDITIONING CHARGES

10

Article IV. (a) Associate Dealer hereby orders from Dealer Dodge Brothers motor vehicles in the number specified in the following Schedule, for delivery in the monthly quantities therein specified, the apportionment between types to be based on the proportion in which the different types are delivered to Dealer by Manufacturer:

## 1926 Monthly Schedule

Jan.	Feb.	Mar.	April	May	June	July
Aug.	Sept.	Oct.	Nov.	Dec.	Total	
	12	12	12	14	50	

20

Associate Dealer may order additional motor vehicles from time to time, specifying the month in which they are to be delivered. Associate Dealer may cancel any order for motor vehicles, whether such order be included in the above Schedule or not, by notice in writing to Dealer received by Dealer on or before the twenty-fifth day of the calendar month preceding the month specified for delivery in the Schedule or other order.

30

(b) Dealer agrees to sell Associate Dealer Dodge Brothers motor vehicles on the terms in this Article IV specified. Dealer will endeavor to fill Associate Dealer's orders in so far as the supply of motor vehicles received by Dealer from Manufacturer, and the requirements of Dealer and Dealer's other as-

sociate dealers, allow; but Dealer is under no obligation so to do, and no failure on the part of Dealer to fill any order, whether such failure be within or beyond the control of Dealer, shall give to Associate Dealer any claim for damages or right of action of any kind.

(c) The amount to be paid by Associate Dealer for motor vehicles taken hereunder shall be Manufacturer's list price F. O. B. Manufacturer's factory at Hamtramck, Michigan, current at date of delivery by Dealer, less a discount of 22 per cent., plus the amount of any Federal or State sales or excise taxes reimbursed to Manufacturer by Dealer, plus loading charges paid to Manufacturer by Dealer, plus freight charges paid by Dealer. If motor vehicles are delivered by Dealer to Associate Dealer in condition for retail delivery, Associate Dealer shall pay, together with the amounts above specified, the cost to Dealer of such conditioning. Payment by Associate Dealer shall be made against delivery by Dealer. 10 20

(d) Except as herein otherwise provided, delivery of motor vehicles by Dealer to Associate Dealer shall be made directly to Associate Dealer at such place in the city, town or village where Dealer's place of business is located as Dealer may designate. At Dealer's option, delivery shall be made directly to Associate Dealer at Associate Dealer's place of business, or by delivery to Associate Dealer of a bill of lading duly endorsed. 30

(e) Any freight charges from Manufacturer's factory at Hamtramck, Michigan, which are not paid by Dealer and reimbursed to Dealer by Associate Dealer under the terms of paragraph (c) of this Article IV shall be borne directly by Associate Dealer. Associate Dealer shall also bear any transportation charges from the city, town or vil-

lage where Dealer's place of business is located to Associate Dealer's place of business.

### SECURITY TITLE

10 Article V. For the purpose of securing payment, title to Dodge Brothers motor vehicles shall remain in Dealer, notwithstanding delivery to Associate Dealer, until payment in full of the amounts and charges specified in Article IV.

### SALES OF REPAIR PARTS. PRICE, PAYMENT, DELIVERY, TRANSPORTATION CHARGES

20 Article VI. (a) Associate Dealer agrees to order and to maintain at all times a stock of Dodge Brothers repair parts of such quantity and variety as in the opinion of Dealer is necessary for the rendering of prompt and efficient service to such owners of Dodge Brothers motor vehicles as are likely to apply to Associate Dealer therefor, and for resale in connection with such service.

30 (b) Dealer agrees to sell Associate Dealer on the terms in this Article VI specified all Dodge Brothers current repair parts ordered by Associate Dealer and necessary for the purposes aforesaid, provided, however, that if for any cause, whether or not beyond its control, Dealer in its judgment at any time is unable to meet the reasonable requirements of Dealer and all Dealer's associate dealers and service stations, Dealer may limit the kind and amount of repair parts to be furnished to Associate Dealer as Dealer deems fair and reasonable in view of its own requirements and the requirements of all its associate dealers and service stations.

(c) The price to be paid by Associate Dealer for repair parts taken hereunder shall be Manufacturer's list price current at date of delivery by Dealer, less a discount of 30% per cent., except that where Dealer has established a net price to associate dealers, the price to be paid shall be such net price current at date of delivery by Dealer. Associate Dealer agrees to pay for repair parts on or before the fifteenth day of the calendar month following the date of delivery, and at the same time to pay any transportation charges due to Dealer from Associate Dealer in respect of such repair parts under the terms of paragraph (e) of this Article VI. 10

(d) Delivery of repair parts by Dealer to Associate Dealer shall be made as in paragraph (d) of Article IV provided with respect to delivery of motor vehicles, except that at Dealer's option delivery of repair parts shall be made by delivery to a carrier. 20

(e) Dealer will pay all transportation charges to Associate Dealer's place of business on one order of repair parts each month if such order is received by Dealer on or before the twenty-fifth day of the calendar month preceding the month specified for delivery. All other transportation charges from the city, town or village where Dealer's place of business is located to Associate Dealer's place of business shall be borne by Associate Dealer. 30

#### GENUINE PARTS

Article VII. Associate Dealer agrees to use and sell for replacements in Dodge Brothers motor vehicles only such repair parts as are manufactured, sold or approved by Manufacturer.

## CLAIMS OF SHORTAGE

Article VIII. (a) To expedite the adjustment of any claim of shortage, Associate Dealer agrees to make any such claim within ten days after receipt of the shipment.

## RISK OF LOSS OR DAMAGE

- 10 (b) Dealer shall not be liable for loss or damage to any motor vehicles or repair parts after delivery thereof by Dealer, but the risk of loss or damage shall be on Associate Dealer.

## CHANGES IN DESIGN AND PRICE

- 20 Article IX. It is understood that Manufacturer, in its agreement with Dealer in the preamble referred to, has reserved the right to change at any time without notice to Dealer and without liability to Dealer the design of any Dodge Brothers motor vehicle or part thereof and its list price of any Dodge Brothers motor vehicle or repair part. If any such change of design is made there shall be no obligation on the part of Dealer to make any similar change on any motor vehicle previously delivered by Dealer or to install or furnish therefor any other or different parts than were thereon when delivered by Dealer or to replace or exchange any
- 30 repair part previously delivered by Dealer or to reimburse Associate Dealer for any loss or damage sustained by Associate Dealer by reason of such change. If any such change in list price is made there shall be no obligation on the part of Dealer to make any allowance to Associate Dealer on motor vehicles or repair parts delivered by Dealer prior

to such change or to reimburse Associate Dealer for any loss or damage sustained by Associate Dealer by reason of such change.

WARRANTY

Article X. It is understood that the motor vehicles sold by Dealer to Associate Dealer under this agreement are purchased by Dealer from Manufacturer under the warranty of Manufacturer, and are sold by Dealer to Associate Dealer and shall in turn be resold by Associate Dealer under said warranty and no other, said warranty being the standard warranty of the National Automobile Chamber of Commerce reading as follows: 10

“Manufacturer warrants each new motor vehicle manufactured by it, whether passenger car or commercial vehicle, to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser, be returned to it with transportation charges prepaid, and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles. 20 30

“This warranty shall not apply to any vehicle which shall have been repaired or altered outside of its factory in any way so as, in its judgment, to affect its stability or reliability, or which has been

subject to misuse, negligence or accident, nor to any commercial vehicle made by it which shall have been operated at a speed exceeding the factory rated speed, or loaded beyond the factory rated load capacity.

“Manufacturer makes no warranty whatever in respect to tires, rims, ignition apparatus, horns or other signalling devices, starting devices, generators, batteries, speedometers or other trade accessories, inasmuch as they are usually warranted separately by their respective manufacturers.”

All parts questioned under this warranty shall be returned promptly by Associate Dealer to Dealer.

#### ASSOCIATE DEALER'S DEPOSIT

Article XI. For the purpose of securing the payment to Dealer of all indebtedness of Associate Dealer, however incurred, Associate Dealer agrees to deposit with Dealer, at the time this agreement is executed, the sum of Two hundred fifty dollars (\$250.00) and to maintain the deposit at that sum. The existence of this deposit in no way relieves Associate Dealer from the prompt payment of Associate Dealer's indebtedness; but if at any time any indebtedness of Associate Dealer is unpaid, Dealer is expressly authorized forthwith to deduct the amount of such indebtedness from the deposit. Associate Dealer agrees to restore to such deposit the amount deducted, within five days after notice from Dealer of any deduction. Dealer agrees to refund to Associate Dealer upon the termination of this agreement the amount of the deposit less any sums theretofore deducted or then owing by Associate Dealer to Dealer, with interest on the current balance of the deposit at the rate of six per cent. per annum.

ASSOCIATE DEALER'S REPORTS AND  
STATEMENTS

Article XII. (a) Associate Dealer agrees to send promptly and regularly to Dealer, on forms to be provided by Dealer, accurate weekly reports containing such information concerning the business of Associate Dealer as Dealer may require.

(b) Associate Dealer agrees to send to Dealer promptly on request at any time accurate and complete financial statements on forms to be provided by Dealer. 10

ACCOUNTING SYSTEM AND PROCEDURE

(c) In order to facilitate the rendering of such reports and statements and to insure their accuracy Associate Dealer agrees to use an accounting system and procedure acceptable to and approved by Dealer. 20

ASSOCIATE DEALER'S CAPITAL

Article XIII. Recognizing that any increase in the amount of business procurable will increase the amount of capital required to handle such business properly, Associate Dealer agrees to maintain the working capital actually employed in the business to be conducted by Associate Dealer under this agreement at such amounts as Dealer shall from time to time deem necessary for the proper handling of the business procurable. 30

## USE OF WORDS "DODGE," "DODGE BROTHERS," "GRAHAM," "GRAHAM BROTHERS," OR SIMILAR WORDS

Article XIV. It is recognized that Manufacturer is entitled to the exclusive use of, and the good will attached to, the words "Dodge," "Dodge Brothers," "Graham," and "Graham Brothers" as applied to motor vehicles, repair parts and service. Dealer is under obligation to protect Manufacturer in its said rights, and in pursuance of this obligation Dealer requires that Associate Dealer agree, and Associate Dealer does agree, as follows: Associate Dealer agrees not to use (or cause or allow to be used by others, in so far as Associate Dealer has any power to prevent such use) said words or any of them or any word or combination of words so nearly resembling any of them as to be liable to lead to confusion or uncertainty or to mislead the public, as part of any corporate or firm name, nor in any manner except as permitted by Dealer in connection with the business to be conducted under this agreement. Associate Dealer agrees that immediately upon the termination of this agreement (unless this agreement is succeeded by another similar agreement with Dealer or with another Dodge Brothers dealer or by a direct dealer's agreement with Manufacturer) Associate Dealer will remove and discontinue the use of any and all signs, stationery, advertising, and reading matter that might make it appear to the public that Associate Dealer was still handling or dealing in Dodge Brothers or Graham Brothers motor vehicles, repair parts or service; and after the termination of this agreement (unless succeeded by another agreement as aforesaid) Associate Dealer

will not use (or cause or allow to be used by others, in so far as Associate Dealer has any power to prevent such use) said words "Dodge," "Dodge Brothers," "Graham," and "Graham Brothers" or any of them or any word or combination of words so nearly resembling any of them as to be liable to lead to confusion or uncertainty or to mislead the public, either directly or indirectly in connection with any automobile, garage or service station business, or with any other business. 10

ASSOCIATE DEALER NOT AN AGENT OF  
DEALER OR MANUFACTURER

Article XV. (a) The relation created by this agreement between Dealer and Associate Dealer is that of vendor and vendee, and not of principal and agent.

(b) Neither Associate Dealer nor any agent or employee of Associate Dealer shall represent itself or himself to be an agent of Dealer or Manufacturer for any purpose, and none of them shall have any right or authority to bind Dealer or Manufacturer in any respect or for any purpose. 20

AGREEMENT NOT ASSIGNABLE

Article XVI. Each of the parties hereto agrees not to attempt to sell or assign this agreement or any right or interest hereunder. Any attempted assignment of either party's rights or interest hereunder, in whole or in part, shall be void, and neither the whole nor any part of either party's rights or interest hereunder shall be assigned or transferred by operation of law. 30

## TERMINATION OF AGREEMENT

10 Article XVII. (a) Immediately upon an attempted assignment of this agreement by Associate Dealer, or an assignment by Associate Dealer for the benefit of creditors, or the admitted insolvency of Associate Dealer, or the institution of voluntary or involuntary proceedings against Associate Dealer in bankruptcy or for a receivership, or the dissolution of Associate Dealer (if a corporation or partnership), or the admitted insolvency of any member of Associate Dealer (if a partnership), or the death of Associate Dealer (if an individual), this agreement shall terminate without notice from either party. Associate Dealer agrees that immediate notice in writing of any event in this paragraph specified shall be given to Dealer.

20 (b) Immediately upon an attempted assignment of this agreement by Dealer, or the termination of the agreement between Dealer and Manufacturer in the preamble referred to, this agreement shall terminate without notice from either party. Dealer agrees that immediate notice in writing of either event in this paragraph specified shall be given to Associate Dealer.

30 (c) Either party may terminate this agreement, with or without cause, at any time, by written notice to the other party specifying the date of termination, either delivered personally to the other party at least thirty days prior to the date therein specified or deposited in any United States Post Office at least thirty days prior to the date therein specified with registered postage prepaid and addressed to the other party at its place of business above stated. The personal delivery, or receipt through the mails by Dealer or mailing by Dealer, of such

notice shall act as a cancellation of all orders for motor vehicles and repair parts not then actually delivered by Dealer.

(d) Unless terminated as in paragraphs (a), (b) or (c) of this Article XVII provided or for legal cause, this agreement shall continue in force through the 31st day of December, 1926, and shall terminate at the end of that day by limitation.

NO DAMAGES ON ACCOUNT OF                    10  
TERMINATION

(e) Neither party shall be liable to the other for damages of any kind on account of any such termination, whether damages result from loss of investment or of present or prospective profits, or from inability to meet obligations, or from any other cause.

TRANSACTIONS AFTER TERMINATION            20

(f) Neither the acceptance of any order nor the delivery of any merchandise nor the referring to Associate Dealer by Dealer of any inquiry nor any other act of Dealer after the termination, however effected, of this agreement shall be construed as a renewal of this agreement or a waiver of the termination; but nevertheless any such orders or deliveries or other transactions shall be governed by terms identical with the terms of this agreement. 30

SALE TO DEALER AFTER TERMINATION

Article XVIII. (a) Associate Dealer agrees to sell and deliver to Dealer, free of incumbrances, all new and unused current Dodge Brothers motor vehicles

and all new Dodge Brothers current repair parts, which motor vehicles and repair parts in Dealer's judgment are in good merchantable condition and not of a design superseded in Manufacturer's practice by another design and which at the effective date of the termination of this agreement are owned by Associate Dealer, and any or all roadside bulletins, bulletin location leases, service station signs, and other signs and stationery and literature bearing the words "Dodge Brothers" or "Graham Brothers," which at the effective date of the termination of this agreement are owned by Associate Dealer.

10 (b) Dealer, upon the termination of this agreement, shall have an option to purchase all such motor vehicles and repair parts and an option to purchase any or all such roadside bulletins, bulletin location leases, service station signs and other signs and stationery and literature, such options to be exercised by notice in writing to Associate Dealer, Associate Dealer's personal representatives, successors or assigns, delivered personally or deposited in any United States Post Office addressed to Associate Dealer's place of business above stated within fourteen days after the effective date of termination; provided, however, that upon the termination of Dealer's agreement with Manufacturer in the preamble referred to before the exercise by Dealer of said options, Dealer's said options shall terminate.

20 30 (c) The price to be paid by Dealer to Associate Dealer on any such purchase of motor vehicles or repair parts shall be the then current Dealer's price net to Associate Dealer, plus any sales or excise tax theretofore reimbursed to Dealer by Associate Dealer in respect of the merchandise in question, plus (in the case of motor vehicles) freight and

other transportation charges (not including demurrage paid by Associate Dealer. The price to be paid by Dealer to Associate Dealer on any such purchase of roadside bulletins, bulletin location leases, service station signs and other signs and stationery and literature shall be the net cost to Associate Dealer of the merchandise in question less depreciation at the rate of twenty-five per cent. per annum of such cost.

(d) Associate Dealer agrees that upon request at 10 any time after notice of termination by either party or after termination, Dealer shall immediately be afforded full opportunity to inspect and inventory Associate Dealer's stock.

(e) Associate Dealer's obligations under this Article XVIII shall be binding upon Associate Dealer's personal representatives, successors and assigns; and the provisions of this Article XVIII shall inure to their benefit.

20

#### CHASSIS

Article XIX. The phrase "motor vehicle" or "motor vehicles" wherever herein used shall be taken to include chassis.

#### GRAHAM BROTHERS TRUCKS AND REPAIR PARTS

Article XX. The phrases "Dodge Brothers mo- 30 tor vehicle," "Dodge Brothers motor vehicles," "motor vehicle," "motor vehicles," "Dodge Brothers repair parts," "repair part" and "repair parts," wherever herein used, shall be taken to include Graham Brothers trucks and Graham Brothers repair parts. With respect to Graham

Brothers trucks and repair parts the phrase "Manufacturer's list price F. O. B. Manufacturer's factory at Hamtramck, Michigan" and any similar phrase shall be taken to mean Graham Brothers' list price F. O. B. Detroit.

FAILURE TO ENFORCE AND EXCESS  
PERFORMANCE NOT WAIVER OR  
CONSTRUCTION

10

Article XXI.\* No failure on the part of Dealer or Associate Dealer to exercise any right, or to insist on the performance of any obligation of the other party, hereunder, shall be deemed a waiver of any right or of the performance of any obligation in the future; and neither such failure to exercise or enforce, nor any performance in excess of that called for by this agreement, shall be taken to be a construction or variation of this agreement by  
20 the conduct of the parties.

MARGINAL NOTES NOT PART OF  
AGREEMENT

Article XXII. The marginal notes printed hereon in red ink are for reference purposes only and are not part of this agreement.

ILLEGALITY AND UNENFORCEABILITY

30

Article XXIII. (a) If it shall be found that any portion of this agreement violates in any particular any law of the United States of America or of any State of the United States of America having jurisdiction in the premises, such portion or portions of this agreement shall be, and are hereby declared

to be, of no force and effect and this agreement shall be treated as if such portions had not been inserted herein.

(b) The illegality or unenforceability of any provision or provisions of this agreement shall not affect the enforceability of the remaining provisions hereof.

PRIOR AGREEMENTS CANCELLED  
RELEASE

10

Article XXIV. This agreement cancels and supersedes all prior agreements between the parties, and the parties hereby mutually release each other from all obligations and liabilities under or on account of such prior agreements except only the obligation of Dealer in respect of money which Associate Dealer has deposited with, or paid out for account of, Dealer, and the obligation of Associate Dealer to pay for merchandise actually sold to Associate Dealer, and to reimburse Dealer for money paid out for account of Associate Dealer.

20

WHAT LAW GOVERNS

Article XXV. This agreement is to be construed and enforced in accordance with the law of the State above mentioned as the State in which Dealer's place of business is located.

EXECUTED IN QUADRUPLICATE

30

Article XXVI. This agreement shall be executed in four counterparts, each of which shall be deemed to be an original instrument.

WHEN APPOINTMENT BECOMES  
EFFECTIVE

Article XXVII. The appointment of Associate Dealer evidenced by this agreement shall become effective only upon the approval of such appointment by Manufacturer at Hamtramck, Michigan, by its General Sales Manager, his signature being affixed hereto, or his name being inscribed hereon by  
10 his direction by a person thereto duly designated.

ASSOCIATE DEALER HAS NO RIGHTS  
AGAINST MANUFACTURER

Article XXVIII. Manufacturer is not a party to this agreement, and Associate Dealer shall have no rights against Manufacturer under this agreement or otherwise.

Dated August 28th, 1926.

20

Eastern Motor Co.

Dealer

By S. T. Zelle

Title Treas

Reid and Denight, Inc.

Associate Dealer

By Howard Denight

Title President

Approval of the appointment evidenced  
by this agreement is recommended by

30 Hanson Robinson,

District Representative

8/28/26

Appointment approved by Dodge Brothers, Inc.  
at Hamtramck, Michigan.

Jno. R. Lee,

General Sales Manager, Dodge Brothers, Inc.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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THE FIRST NATIONAL BANK OF OCEAN CITY, NEW  
JERSEY, a corporation, etc.,  
*Plaintiff-Appellant,*

v.

SAMUEL T. ZELLY and EASTERN MOTOR Co.,  
*Defendants-Respondents.*

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IN REPLEVIN.

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ON APPEAL FROM ATLANTIC CIRCUIT.

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BRIEF OF APPELLANT.

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FACTS.

This is a suit in replevin to recover the possession of six Dodge automobiles, or in case they cannot be returned, then damages for their value and for their detention. The trial was had in the Atlantic County Circuit on June 20, 1929.

The plaintiff-appellant offered in evidence six certified copies of bills of sale as recorded in the

Cape May County clerk's office, Plaintiff's Exhibits P1 to P6 (State of the Case, pages 27 to 42). Said bills of sale were made by Reid & Denight to plaintiff-appellant on December 16, 1926, and by virtue thereof the six automobiles in question were sold and conveyed to plaintiff-appellant.

Plaintiff-appellant also offered in evidence a certificate of the Commissioner of Motor Vehicles of this State, certifying the issuance of auto dealer's registration D1781 to Reid & Denight, the grantors named in said bills of sale (see Exhibit P7, State of the Case, pages 45 and 46).

Plaintiff-appellant next offered in evidence an associate dealer's agreement between Eastern Motor Co., one of the defendants-respondents herein, and "Reid & Denight, Inc." Said agreement was dated August 28, 1926, and purported to appoint said "Reid & Denight, Inc.," an associate dealer for the sale of Dodge Brothers motor vehicles for the period expiring December 31, 1926 (see Plaintiff's Exhibit P8, State of the Case, pages 47-66). It will be noted that said agreement was approved by Dodge Brothers, Inc., the manufacturer of said automobiles, which approval is in the form as prescribed in said contract (State of the Case, p. 66). Also said agreement is signed by Reid and Denight, Inc., by Howard Denight, president. The only witness called was Charles F. Reid. He testified that he was a member of the firm of Reid & Denight (State of Case, p. 14, line 33). Said firm consisted of the witness, Charles F. Reid, and one Howard Denight. Mr. Reid said that at the time that the associate dealer's agreement was entered into with Eastern Motor Co., the name "Reid and Denight, Inc.," was assumed and used because the firm of Reid & Denight was to be incorporated the next day (State of Case, p. 25, line 10). Said firm

was not incorporated because he, Reid, could not get Denight to complete the incorporation. The incorporation papers had been drawn up, but not executed (State of Case, p. 24, lines 22 to 32). After the making of said associate dealer's agreement, said firm continued to do business under the firm name of Reid & Denight. In fact, said firm did business thereafter with defendant-respondent Eastern Motor Co.

The automobiles in question were purchased through said Eastern Motor Co. and arrangements were made to pay Eastern Motor Co. for them. In fact, said Eastern Motor Co. gave to Reid & Denight a receipt showing the transaction (State of Case, p. 23, lines 1 to 36). Said automobiles were shipped from the Dodge factory at Detroit to Reid & Denight, at Ocean City, N. J. (State of Case, p. 20, lines 14 to 20).

It is perhaps important to note that the associate dealer's agreement (Exhibit P8) was delivered to the firm of Reid & Denight by a representative of Dodge Brothers, Inc. (State of Case, p. 25, lines 21 to 28). At the close of plaintiff-appellant's case a motion for non-suit was made "upon the broad ground, first, that the plaintiff has not proved a title either under the common law or under the Motor Vehicle Act to sustain this suit. There is no authority in Reid & Denight to make the sale. In no event was Reid & Denight an authorized dealer of the manufacturer" (State of Case, top of page 26). The Court granted the motion for non-suit upon the ground that "Reid & Denight, Inc.," was not Reid & Denight, the co-partnership, was appointed under Exhibit P8 as the authorized agent of Dodge Brothers, Inc., and the Eastern Motor Co.; that there was nothing in the evidence to show that either the Eastern Motor Co. or the Dodge

Brothers, Inc., ever recognized Reid & Denight as a co-partnership, or as individuals, as authorized agents; that Reid & Denight, the co-partnership, had no authority, therefore, to execute said bills of sale conveying said automobiles to plaintiff-appellant; and that the said bills of sale were not, therefore, sufficient upon which to establish title and right of possession in the plaintiff-appellant. To this ruling an exception was taken (State of Case, pages 26-27).

This is an appeal to review that ruling, and four grounds have been assigned for reversal (State of Case, pages 9 and 10), all of which will be argued in this brief as though they were one.

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#### ARGUMENT.

##### 1. WHAT CONSTITUTES LEGAL TITLE TO A MOTOR VEHICLE OR AUTOMOBILE UNDER THE LAW OF THIS STATE?

By Act of the Legislature of this State (P. L. 1919, page 357), it is provided that "It shall be unlawful to sell or purchase any motor vehicle except in the manner and subject to conditions hereinafter provided." By amendment to said Act (P. L. 1925, page 287), Section 4 of the Act of 1919 is amended to read as follows:

"In all sales or purchases of a motor vehicle directly from the manufacturer or through an agent or agency or authorized dealer of such manufacturer there shall be issued to the purchaser a manufacturer's bill of sale, which bill of sale shall contain the manufacturer's num-

ber on the engine or motor of the motor vehicle so sold; *provided, however*, that before any dealer shall be authorized to issue these original or duplicate bills of sale they shall first obtain a permit from the Department of Motor Vehicles. This permit shall be issued at the discretion of the commissioner and without charge to the applicant and may be revoked by him at any time if in his judgment sufficient care has not been taken by the dealer in ascertaining the antecedents of the car, so as to safeguard the purchaser from the purchase of or having in his possession any car that has been stolen or otherwise fraudulently acquired; *and provided, further*, that such certificate may in the discretion of the Commissioner of Motor Vehicles empower such dealer or agent to issue such a bill of sale to a purchaser of an automobile of a make for which he is not the authorized agent, but of which he is the actual owner."

Said Act of 1925 also provides that "The term 'Manufacturer's Bill of Sale' as used in this Act, shall mean the original Bill of Sale issued by the manufacturer of the motor vehicle, or his agent, or his authorized dealer, or a duplicate thereof issued by the manufacturer, or his agent, or his authorized dealer." A dealer's permit was issued to Reid & Denight by the Commissioner of Motor Vehicles of this State as is required by the Act of 1925. This was certified to by said Commissioner and his certificate was marked in evidence in this case as Exhibit P7.

2. DID THE BILLS OF SALE MADE BY REID & DENIGHT GIVE TO PLAINTIFF-APPELLANT GOOD TITLE AND RIGHT OF POSSESSION TO SAID AUTOMOBILES?

Some question was made by defendants during the trial of this case that the bills of sale were of no value because they were not acknowledged in accordance with the Motor Vehicle Act (State of Case, top of page 14). There is no requirement of the Motor Vehicle Act which requires the original bill of sale to be acknowledged. It is only assignments of an original bill of sale to which an acknowledgment is required. The principal objection to said bills of sale, however, seems to be that they are not made by a duly authorized dealer of the manufacturer. In substantiation of this point, defendant-respondent contends that Reid & Denight, the co-partnership, grantors in said bills of sale, were not the duly authorized dealer of the manufacturer, and that Reid & Denight, Inc., as a corporation, were in fact so appointed. It will be borne in mind that when said associate dealer's agreement (Exhibit (P8) was executed by Eastern Motor Co. and approved by Dodge Brothers, Inc., "Reid & Denight, Inc." was not an incorporated company. It was merely a corporation in the making. No corporate seal of said "Reid & Denight, Inc.," is attached to said agreement. An examination of said agreement will disclose that in the very beginning thereof it is recited that the purpose of making said agreement was the fulfilling of the obligations of Eastern Motor Co., dealer, to Dodge Brothers, Inc., manufacturer, imposed by agreement made between them for the sale of Dodge Brothers products, within the

territory allotted to said dealer, and for that purpose said Eastern Motor Co. desired to appoint an associate dealer to aid it, the dealer, in the performance of said obligations.

In Article I of said agreement, the dealer, Eastern Motor Co., granted to the associate dealer, referred to therein as "Reid & Denight, Inc.," the right to purchase from it, Dodge Brothers motor vehicles and repair parts.

In Article V of said agreement, said associate dealer obligated himself to purchase from said Eastern Motor Co. a specified number of Dodge Brothers motor vehicles; and in subdivision "A" of Article IV of said agreement, the dealer, Eastern Motor Co., agreed to sell said associate dealer the motor vehicles on the terms therein specified. In Article X of said agreement it is stipulated that said motor vehicles are sold by Eastern Motor Co., the dealer, to said associate dealer "*and shall in turn be resold by associate dealer*" under the warranty of the manufacturer. It is important to observe the relationship which was created between said Eastern Motor Co. and its associate dealer by virtue of said associate dealer's agreement. It is also important to note that Eastern Motor Co. by said agreement put said associate dealer under obligation not only to buy said motor vehicles, but also to sell same to the public. The territory allotted to said associate dealer within which he was to make said sales was in "Ocean City and vicinity." It was further provided in said agreement (Article XXVII) that the appointment of said associate dealer should become effective only upon the approval of such appointment by the manufacturer by its general sales manager. The agreement in this instance was so approved. By such agreement and its approval, the

associate dealer named therein became an authorized dealer of the manufacturer, as required by the Act of 1925. The trial Court in this case, however, held that said associate dealer's agreement did not appoint Reid & Denight, the co-partnership, as associate dealer. This prompts the question who, then, was so appointed? It is agreed that there was no corporation known as "Reid & Denight, Inc." It was merely a partnership consisting of Reid and Denight assuming the name of "Reid & Denight, Inc."

In 30 Cyc. page 399, it is said:

"According to one line of decisions, if business associates attempt, but fail, to incorporate themselves, their association is a partnership, although it professes to be a corporation and deals with persons as such, unless they expressly stipulate that they will be liable only as a corporation. Another line of decisions holds that if persons make a *bona fide* attempt to incorporate under a constitutional statute, and assume and exercise the powers which the pretended corporation was authorized to exercise, and do this unchallenged by the State, they are not liable as partners to those dealing with them as a corporation. If, however, the statute under which the incorporation is attempted is unconstitutional, if there is an assumption of powers which a constitutional statute does not confer upon the particular association, if the pretended corporation is a fraud upon the law, or if the defects in the incorporation proceedings are very great there is but little hesitation, even on the part of courts, whose decisions generally are in this second line, to hold those who are associated as such pretending incorporators and stockholders liable as partners."

Also in 10 Cyc. page 270, the following is to be found:

“The obligee in the contract being innocent, and not being aware of the fact that the corporation has not been called into existence, if the promoters assume to hold it out to him as an existent body capable of contracting, and if they assure him that as its agents they have a right to bind it by the contract into which they induce the obligee to enter, and if in point of fact the corporation is not yet existent, then the promoters will be liable to the obligee to make good the contract, on the theory that they have been guilty of a breach of warranty of their agency. The importance of this principle lies in the fact that unless the promoters can be thus charged no one is liable, and the innocent third parties whom they have duped into making the contract and the advance under it must be compelled to bear the loss; since, as already seen, the corporation is not ordinarily bound by contracts made in its behalf by its promoters before it comes into existence, but is at liberty to ratify or reject them as it may see fit.”

The above legal principles were recognized in the case of *Hill v. Beach*, 12 N. J. Eq. page 31. Chancellor Williamson in speaking for the Court in that case, page 36, said:

“How, then, is such a body to be regarded and treated by our laws? How is it to be dealt with by our courts? Here are four individuals, who have assumed the name of ‘The Belleville Quarry Company.’ They have purchased property in New Jersey, which they have agreed

shall belong to this company. Although it does not stand in the company's name, it is held in trust for them. These individuals have carried on business here under this assumed name. They have made contracts, and have contracted debts as 'The Belleville Manufacturing Company.' They are not a domestic corporation, and cannot be sued as such. They are not a foreign corporation, for it is perfectly manifest upon the face of their proceedings, that their attempted organization under the general law of New York respecting corporations was a fraud upon the law of that State. These individuals, then, must be treated and dealt with by the law as partners trading under the name they have assumed. Although their object in taking the name they did, was to avoid personal responsibility, the law will not allow them so to escape. A court of equity, as well as a court of law, will treat them as partners.'

Under this authority of law, Eastern Motor Co. could hold Reid & Denight, the co-partnership, responsible to it under said associate dealer's agreement. It could demand that said co-partnership assume the obligations of said agreement. Under these circumstances and in view of the fact that by said associate dealer's agreement said Eastern Motor Co. appointed "Reid & Denight, Inc.," the unincorporated partnership as its associate dealer to sell motor vehicles to the unsuspecting public, it is fair, we submit, to charge said Eastern Motor Co., the dealer, and said Dodge Brothers, Inc., the manufacturer, with knowledge of the fact that no such corporation existed at the time of the making of said agreement. In view of the law above quoted, it is

further submitted that the effect of said associate dealers agreement (Exhibit P8) was to appoint Reid & Denight, the co-partnership, not only the associate dealer of Eastern Motor Co., the dealer, but also as the authorized dealer of Dodge Brothers, Inc., the manufacturer, as contemplated in the Act of 1925. This being so, it is submitted that the bills of sale held by plaintiff-appellant (Exhibits P1 to P6, incl.) in every respect conformed to the requirement of the law relating to the sale of automobiles.

### 3. EASTERN MOTOR CO. IS ESTOPPED FROM DENYING THE TITLE AND RIGHT TO POSSESSION OF PLAINTIFF-APPELLANT.

Eastern Motor Co., by virtue of said associate dealer's agreement, appointed "Reid & Denight, Inc.," its associate dealer for the purpose of selling Dodge automobiles to purchasers in and about Ocean City, and it thereby agreed to deliver to said associate dealer said automobiles for that purpose. Said agreement further required said associate dealer to purchase at least a certain number of automobiles for sale. The automobiles in question were delivered to Reid & Denight, the co-partnership, for sale to prospective purchasers. Reid & Denight, the co-partnership, was obligated to pay Eastern Motor Co. for the cost of said automobiles in the manner required by said associate dealer's agreement. Said automobiles were sold to the First National Bank of Ocean City, plaintiff-appellant herein, for a valuable consideration, and after delivery thereof were left in the public garage owned by Reid & Denight. It was from there that the automobiles were taken early in January, 1927,

around the hour of eight o'clock in the evening, and found their way into the possession of Eastern Motor Co. It is now said by Eastern Motor Co. that the First National Bank of Ocean City is not entitled to the possession of said automobiles because they have bills of sale made by Reid & Denight, the co-partnership, and not by "Reid & Denight, Inc.," and they admit that there is no corporation by the latter name. They, in effect, charge the First National Bank of Ocean City, the purchaser, with the duty of ascertaining whether or not Reid & Denight, the co-partnership, was the authorized dealer of Eastern Motor Co. and the manufacturer, Dodge Brothers, Inc. The associate dealer's agreement was not of public record. Reid & Denight were conducting business as a co-partnership. The Eastern Motor Co. put them into position of making these sales to the bank, and under these circumstances it certainly must be said that the Eastern Motor Co. cannot deny the authority of Reid & Denight, the co-partnership, to make said bills of sale. To say otherwise would be to hold that as between Eastern Motor Co. and Reid & Denight, the co-partnership, the associate dealer's agreement was binding and of legal effect, but as between Reid & Denight, the co-partnership, and the purchaser, said agreement was not binding and of no legal effect. Applying all the doctrines of estoppel, it is contended by plaintiff-appellant that said Eastern Motor Co. cannot deny the legality of said bills of sale and thus benefit by its own acts to the detriment and harm of plaintiff-appellant. In any event, this was a matter for the jury to decide.

It is respectfully submitted that for the reasons above stated, the trial Court erred in granting defendant's motion for non-suit, and that, therefore,

the judgment so entered should be reversed and the case sent back for a re-trial.

WM. ELMER BROWN, JR.,  
*Attorney for Plaintiff-Appellant.*

and

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Mr.

MacCrellish & Quigley Co., Printers, Trenton, N. J

# NEW JERSEY Court of Errors and Appeals

THE FIRST NATIONAL BANK OF  
OCEAN CITY, NEW JERSEY, A  
CORPORATION, ETC.,

*Plaintiff-Appellant,*

*vs.*

SAMUEL T. ZELLY AND EASTERN  
MOTOR CO.,

*Defendants-Respondents*

On Appeal from  
Atlantic Circuit.

## RESPONDENTS' BRIEF

### STATEMENT

This is an action in replevin, and the question before the trial court was, did the appellant have the title to or right of possession of certain automobiles? At the close of the plaintiff's case a non-suit was granted upon the ground that appellant had not shown title or right of possession. The court's reason for reaching this conclusion will be found on page 26.

## ARGUMENT

**The Non-Suit Was Justified Regardless of the Reasons Therefor Assigned by Either the Court or Counsel.**

This court is not interested in the reason given by the trial court for granting the non-suit.

*Sypherd v. Myers*, 80 Law, 321

*Breintnall v. Sadler*, 82 Law, 405.

**Plaintiff Was Never in Possession of the Automobiles. Plaintiff Produced No Evidence to Show That it Had Title to the Automobiles.**

Plaintiff relied upon certified copies of certain bills of sale purporting to have been made by Read & Denight to it. The court concluded that these did not vest title in appellant. Chapter 168 of the Laws of 1919 being an act to regulate the sale and purchase of motor vehicles has been interpreted by numerous opinions, some in the Supreme Court and some in this court. In *Security Credit Corporation vs. Whiting Motor Co.*, 98 Law, page 45, the Supreme Court quoted liberally from this act and on page 47 said:

"We have cited the provisions at length because they show clearly the intent of the Legislature to secure owners of automobiles against theft or robbery by requiring title papers to be with the machine, and to secure the continued power to identify the machine by its number. The importance of these provisions is apparent when the claim of title by estoppel is set up. They require an actual title documentary to be shown, not a title by estoppel in pais."

The act was under consideration by this court in *Row v. Bonham*, 99 Law 290, and it affirmed the judgment in the Supreme Court on the opinion of that court. It is said:

"This act makes it unlawful to sell or purchase any motor vehicle except in the manner and sub-

ject to the conditions therein provided. One of the conditions is that in all sales or purchases of a motor vehicle direct from the manufacturer or through an agent or agency of such manufacturer there shall be issued to the purchaser a manufacturers' bill of sale containing the manufacturers' number on the engine or motor of the vehicle sold. \* \* \* These provisions are obviously intended to assist in protecting automobiles from the danger of theft."

This court in *Shinn v. Cohen*, 99 Equity 418, affirmed the decree of the Court of Chancery which invalidated a mortgage given as part consideration for the purchase of a motor truck, and which invalidation was grounded upon the fact that no bill of sale had passed as required by the act. The decree was affirmed on the opinion of the Vice Chancellor which opinion cites a number of cases interpreting the act.

Section 1 and Section 4 of the Act of 1919 have been amended by Chapter 89 of the Laws of 1925. Section 1 defines manufacturers' bill of sale as follows:

"The term manufacturers bill of sale as used in this act shall mean the original bill of sale issued by the manufacturer of the motor vehicle or his agent, or his authorized dealer, or a duplicate thereof issued by the manufacturer, or his agent or his authorized dealer."

Section 4 reads:

"In all sales or purchase of a motor vehicle directly from the manufacturer or through an agent or agency or authorized dealer of such manufacturer, there shall be issued to the purchaser a manufacturers bill of sale which bill of sale shall contain the manufacturers number on the engine or motor of the motor vehicle so sold, provided, however, that before any *dealer* shall be authorized to issue these originals or duplicate bills of sale they shall first obtain a permit from the Department of Motor Vehicles," etc.

It is our contention that there was non-compliance with the quoted provisions. The bills of sale purport to be made by Read & Denight, sellers, to First National Bank, purchaser, and they are signed "Read & Denight, by H. Denight." These are not nor do they purport to be *manufacturers* bills of sale, or duplicates thereof.

Appellant was forced to rely upon an agreement between Eastern Motor Company and Reed & Denight, Inc. It should be noticed that this agreement purports to be between Eastern Motor Company, dealer, and Reed & Denight, Inc., associate dealer. Dodge Bros., the manufacturer, is no party to the agreement. Article 4 of the agreement provides "For the purpose of securing payment, title to Dodge Bros. motor vehicles shall remain in dealer notwithstanding delivery to associate dealer until payment in full of the amounts and the charges specified in Article 4." Article 15 provides:

"The relation created by this agreement between dealer and associate dealer is that of vendor and vendee, and not of principal and agent. Neither associate dealer, nor any agent, employe of associate dealer shall represent itself or himself to be an agent of dealer or manufacturer for any purpose, and none of them shall have any right or authority to bind dealer or manufacturer in any respect or for any purpose."

The agreement is plainly one between two corporations. The bills of sale at best were made by a copartnership. Now the act says that the bill of sale required must be one "issued by the manufacturer of the motor vehicle or his agent or his authorized dealer." The bills of sale were not issued by the manufacturer or by its agent, or authorized dealer, so far as the case discloses. If this be so, then under the cited cases there was nothing open to the trial court but to non-suit. The contention below was that Reid and Denight, Inc., was the same as Reid & Denight, copartnership, and that it or they was or were an *authorized dealer* of the manufacturer. Article 28 of the agreement provides:

"Manufacturer is not a party to this agreement and associate dealer shall have no rights against manufacturer under this agreement or otherwise."

The agreement does not pretend to make Reid and Denight, Inc., or as a copartnership either the agent or the authorized dealer of the manufacturer. The trial court rested its conclusion upon the fact that giving to the agreement its largest effect in favor of appellant, the manufacturer recognized only Reid and Denight, Inc., as one with authority to sell or give a bill of sale. The court said there was nothing in the case to indicate that the manufacturer knew anyone other than the corporation and there can be no presumption that it would have approved of Reid and Denight, a copartnership, as either its agent or authorized dealer.

There is nothing in the case to warrant the claim made at the trial, and repeated in the brief of appellant, that Reid and Denight, a copartnership, and Reid and Denight, Inc., were identical. This could not be so either in fact or in law.

On the record Eastern Motor Co. was the "*authorized dealer*" contemplated by the statute.

By the agreement, Reid and Denight, Inc., was made an *associate dealer* of the motor company, not of Dodge Bros., manufacturers. Article 15 quoted above expressly provides that *associate dealer*, Reid & Denight, Inc., "*shall not represent itself or himself to be an agent of dealer or manufacturer for any purpose,*" etc.

This language forbids a conclusion that Reid & Denight, Inc., or Reid and Denight, copartnership, could be "an authorized dealer of the manufacturer," as required by statute to justify either in executing a bill of sale. Throughout the agreement Reid and Denight, Inc., is referred to as *associate dealer* of Eastern Motor Co. and not *the authorized dealer of the manufacturer*.

The appointment purporting to be approved by Dodge Bros., Inc., manufacturers, is that of Reid and Denight, Inc., *associate dealer* of Eastern Motor Co.

But there was no proof that any one with authority to bind Dodge Bros., Inc., approved the appointment. There was no proof of the signatures of those purporting to sign. The agreement did not, *per se*, carry authenticity.

The trial court assumed that Reid and Denight, a co-partnership, had procured a permit from the Department of Motor Vehicles as required by the act. Not so. No permit was offered nor a copy thereof.

Exhibit P-7 is a copy of the supposed application. It is without signature and does not name the car to be sold or manufacturer's name, clearly required by the act by implication. Sec. 4. Moreover, the affidavit dated Aug. 26th (two days in advance of the agreement) states that Chas. F. Reid is the applicant. The commissioner certifies that the registration was issued to Reid and Denight on Aug. 26th.

As the registration was not produced we cannot know what cars and what makes for which Reid and Denight were authorized to execute a bill of sale. This is fatal to the bills of sale offered.

But counsel asserts that Eastern Motor Co. is estopped from raising the foregoing points.

Security Credit, etc. v. Whiting, etc., *supra*, is to the contrary. It says:

"They (the provisions of the act) require an actual title documentary to be shown, not a title by estoppel in pais."

The judgment should be affirmed.

Respectfully submitted,

COLE & COLE,  
*Attorneys of Respondent.*

