

76 WITNESS CONTINUING: I have calculated the amount of principal and interest due on that note, the total amount is Thirty Thousand Two Hundred and Seventy Dollars and Ninety Cents (\$30,270.90), made up of principal Twenty Seven Thousand One Hundred Eighty Seven Dollars and Fifty Cents, Five Dollars protest fees and the balance is interest. When the Bank of Bisbee bought that note, it paid the face value of it in cash. No part of the note has been paid, principal or interest. I could not tell the date when the Bank acquired this note without  
 77 looking at the record. I don't remember the date that we purchased it. It was some time four or five days after April 9th, the date of the note. It was during the month of April.

(WITNESS EXCUSED.)

C. O. ELLIS, being called as a witness on behalf of plaintiff, testified as follows:

I know the date when this note which has just been introduced in evidence, was acquired by the Bank of Bisbee. It was on  
 78 April 15, 1913. I handled the transaction.

(WITNESS EXCUSED.)

MR. ROSS: We will then offer the testimony given by Mr. Ellinwood on the subject of fees.

THE COURT: I understand that it has already been stipulated that that goes in.

MR. RICHARDSON: All that applies.

THE COURT: Do you intend to offer any further evidence?



MR. ROSS: No, sir. Only that that is already in in the other case.

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MR. RICHARDSON: The testimony offered by the defense is now offered with the same objections and same rulings.

The testimony offered in the case of John Slaughter vs. George F. Woodward, et al, No. 854, by agreement of the parties in open court during the hearing of that cause is now used and offered in this case, which agreement made in open court is as follows, to-wit:

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THE COURT: I suppose the evidence in the other case will be just the same, except that part referring to John H. Slaughter?

MR. ELLINWOOD: Will you stipulate that the same evidence go in in the other case?

MR. RICHARDSON: Except the John H. Slaughter part. He didn't talk with the cashier of the Bank of Bisbee. I think everything would be relevant except the conversation with John H. Slaughter.

MR. ELLINWOOD: It might not be relevant, but it would not hurt anything.

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MR. ROSS: We understand that the entire transcript of this case will be considered in in the Bank of Bisbee case?

THE COURT: Very well.

MR. RICHARDSON: That is agreed to.

THE COURT: It is stipulated that the evidence in this case may be considered as presented, subject to the same objections and



82 rulings of the court in No. 855, Bank of Bisee vs. George F. Woodward, et al, in addition to the other evidence as the parties may desire."

C. O. ELLIS, being called as a witness in behalf of plaintiff, testified as follows:

83 My name is C. O. Ellis. I live in Douglas. I am cashier of the Bank of Douglas. I am acquainted with Geo. F. Woodward, one of the defendants of this action. I have some knowledge concerning the promissory note which is set out in the complaint in this action. I brought the note with me.

(Counsel hands witness a paper) This is the note on which Jno. H. Slaughter—the property of Jno. H. Slaughter—belongs to him. I am acquainted with the signature of Geo. F. Woodward. That is his signature. It was signed in my presence.

MR. ROSS: We will offer this note in evidence.

84 THE COURT: Any objection, Mr. Richardson? The offer has been made, this is the reason I ask.

(On behalf of defendant, R. L. Slaughter, Mr. Richardson interposed the same objection which is hereinabove set out at length at page ..... hereof.

THE COURT: The objection is overruled.

The note was thereupon introduced in evidence, marked Exhibit "A" and permission given to substitute copy. This is the note involved in the case of Jno. H. Slaughter



vs. Geo. F. Woodward, et al., and set out in 85  
the record of that case on file in this court.

WITNESS CONTINUING: This note, together with two other notes were offered to us for discount by Mr. Woodward and Mr. Woodward and I negotiated all three of the notes. One of them due in three months; I negotiated for the Bank of Douglas, which note was subsequently paid, and a note payable in six months, which I negotiated for the Bank of Bisbee, and this note for Jno. H. Slaughter, all at the same time.

MR. RICHARDSON: Now I would like 86  
to add to the other objection the further objection to the introduction of the complete failure of consideration.

(OBJECTION OVERRULED.)

WITNESS CONTINUING: Mr. Slaughter then became the purchaser of this note and paid value for it.

It was thereupon admitted in open court by defendant, R. L. Slaughter, that the note had been duly protested and due notice of protest given. Certificate of protest was 87  
thereupon admitted in evidence subject to the objections theretofore interposed by defendant to the introduction of the note marked Exhibit "A," which objections were by the court overruled, it being unnecessary to set out said certificate of protest the same is omitted.)

WITNESS CONTINUING: I am able to state the amount Mr. Slaughter paid for this note. He paid the exact amount of the face value of the note, \$27,187.50. I have



88 not calculated the interest due on the note, but can do so in a short time. Since Mr. Slaughter purchased this note, we have held it for collection for Mr. Slaughter's account. Nothing has been paid on that note, either principal or interest. It was negotiated through Mr. Slaughter on April 15, 1913.

#### CROSS-EXAMINATION.

89 The Bank of Douglas was never the owner of this note. I have known Geo. Woodward for many years. In a general way I knew the circumstances surrounding the issuance of this note. I understood the notes were given as a payment on a contract for the purchase of some land and cattle. I did not know that the property had not been deeded over under that contract.

Q. Isn't it a fact that Mr. R. L. Slaughter, one of the defendants, the one here in court, discussed this matter privately with you at the time the note was made?

90 MR. ROSS: Unless he refers to a date prior, we will object.

MR. RICHARDSON: Prior to the execution of the note; prior to the making of the note; prior to the signing of the contract?

Q. Possibly he discussed the matter frequently with me two or three times a day. The Bank of Douglas received a commission from Geo. Woodward for negotiating this note, in the amount of two per cent per annum on the note for the length of time it was intended to run. That is the bankers'



discount, and would be exactly one and one-half on the part of this note. This note was negotiated on or about April 15th. I did not have the note in my possession from the 9th to the 15th. I could not testify exactly as to when I first became possessed of the note, but it was in a day or two, probably the day previous to the 15th I had a conversation with Mr. Jno. H. Slaughter, the purchaser of this note prior to the time I sold it to him. I told him we expected to have these notes offered to us and it involved an amount larger than we were able to loan on any one transaction, and asked him if he would like to purchase one of the notes. I say I told him it was a larger sum of money than we could loan on one transaction; that the whole transaction was larger than we cared to take.

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#### RE-DIRECT EXAMINATION

At the time I negotiated this paper I noted the language 'for payment under contract of even date.' I talked to Mr. Woodward about it and he told me that there wasn't any question, could be no question as to the negotiability of the notes because that had been agreed upon; it was fairly understood among all parties that negotiable notes would be given. I talked with Mr. D. A. Richardson prior to negotiating the notes as to their negotiability. I understood that he handled the transaction between Woodward and Slaughter as attorney for the Slaughters. He stated that the notes were negotiable; they were intended to be negotiable, and he also stated that if we decided that the notes were not negotiable he would under-

93



- 94 take to get new notes from his clients which were negotiable. I talked with Mr. Richardson, understanding that he acted for the Slaughters in this matter and had drawn the contract.

RE- CROSS EXAMINATION.

- 95 I didn't consult with Mr. Ross here regarding the negotiability of those notes until after I had negotiated them, and then I didn't consult him as our attorney. He didn't write me a letter concerning the negotiability of these notes in which he said he didn't think they were negotiable. He said he had investigated it upon the theory of the negotiable law of New York. As to that, Mr. Ross never expressed that those notes were not negotiable. He simply said this: That question might be raised. Of course it had been raised in my own mind. There was no reason other than the notation on the note that caused me to investigate their negotiability. I talked with Woodward about that.
- 96 I didn't talk to any of the other parties about it, whether they were negotiable or not. They were not right there in town. None of them were in town at the time I negotiated these notes, my recollection. I am quite positive that is true. I didn't talk about the matter with them before I negotiated the notes. It is not a fact that the notes were brought to me the day they were executed. I am quite certain that they were not brought in the next day. My recollection is that the makers of the notes left town that day or the day following. At any rate, I am certain that there



was none of them in town at the time I negotiated those notes, and I had no opportunity of talking to them. 97

This was quite an important transaction, not an every day occurrence. I would not consider it unusual to have three notes for \$27,000 each presented to be negotiated at one time, or out of the regular order of business. The notation on the note attracted my attention and caused me to make some investigation. I didn't receive a copy of the contract before I negotiated those notes. I didn't take Mr. Woodward's word for anything. 98

MR. RICHARDSON: I don't blame you for that. That is all.

#### RE-DIRECT EXAMINATION.

Upon negotiating these notes, we gave notice to the makers, the three Slaughters, that we had negotiated them. At about the time of the maturity of the first note, three months after it was given I heard from them, raising the question of the negotiability of the paper, or Woodward's non-performance of the contract. That first note was paid. 99

I calculated the total amount due for principal and interest to date on this note. Principal \$27,187.50, interest \$3,084.35, protest fee \$4.50, making a total of \$30,276.35. I know that amount was paid for protest fee.

(A copy of the note, Plaintiff's exhibit "A" was thereupon substituted for the origi-



100 nal and it was admitted by defendant R. L. Slaughter that the note had been protested.)

E. E. ELLINWOOD being called as a witness for plaintiff, testified as follows:

101 I am a practicing attorney and member of the Bar of this court and of the Supreme Court of the State of Arizona. I have been in the practice nearly twenty five years in the jurisdiction of Arizona. In a suit brought to collect a promissory note upon which approximately \$30,275 is due, I would consider that a reasonable attorney's fee would be ten per cent of the amount due. I am familiar with the cases now on trial and the work that has been required in presenting the case. I should say \$3,000 would be a reasonable attorney's fee in this case.

#### CROSS-EXAMINATION.

I am one of the attorneys for the plaintiff.

(Thereupon, plaintiff rested.)

102 R. L. SLAUGHTER, one of the defendants, being called as a witness on his own behalf testified as follows:

I am one of the defendants in this case. I live at Douglas, Arizona. I am one of the signers of that note, (referring to Exhibit "A.")

I am acquainted with Jno. H. Slaughter, the present owner of the note. I had some conversation with Mr. Ellis regarding the making of those notes and the contract which I proposed to enter into with Geo. F.



Woodward before I made the note. I explained the nature of our contract to him. 108

Q. Before you made the notes, state as near as you can, about what conversation you had with Mr. Ellis regarding the deal?

MR. ROSS: I think that if counsel intends to offer any contracts, the contract itself should be offered, and we will object to that when it is brought in. At the present time, I don't see the relevancy of this. We object to the question.

(OBJECTION OVERRULED.) 104

WITNESS CONTINUING: Well, not being acquainted with any of the business men of the city of Douglas, and having become acquainted with Mr. Ellis, a banker, he having been referred to me before I went there, of course, I had confidential conversations, especially in respect to these business dealings, and all business dealings I had. I had no other place except your office and Mr. Ellis' or Mr. John Slaughter's out at his ranch, so I discussed the matter in the beginning, and I advised with him. One of the conversations with Mr. Ellis lead to the responsibility of Geo. F. Woodward. The responsibility as regarding the United States. Mr. Ellis thought it was fairly good, and I based the trade a good deal on the proposition, if he did make good on his trade in Mexico, it would help his responsibility on this side of the line, and he considered him a man of some wealth and means. The value of the cattle was discussed and the size of the ranch, and the situation, the Mexican question, and all those things, like friends 105



- 106 would discuss. Before the notes were made, I discussed the deal with Mr. Jno. H. Slaughter; the substance of the conversation I had with him was in regard first, to the advisability of making a purchase in the Republic of Mexico; second, the advisability of going so far from the border as this ranch is located, practically one hundred and fifty miles. Third, the responsibility of Mr. Woodward as a business man. I don't know how far to elaborate on that. Of course I advised with Mr. Slaughter, as I had with Mr. Ellis, as to the advisability of making the deal, and outlined it to him completely as to all the terms and what I thought, and what did they think and what was represented by Mr. Woodward, whether or not that would be a good or a bad deal. I had no one else to advise with in the country except those gentlemen. In my conversation with Mr. Slaughter we talked regarding the purchase price and the manner it was to be paid out. I first went down into Mexico and looked at the ranch and property of Geo. Woodward for a specific price, and I advised with Mr. Slaughter in regard to it and mentioned the price of the total holdings, and then on my return from being shown over the ranch by Mr. Woodward, and getting from him the specific terms, I went back to Mr. Slaughter's ranch and advised again with him about the price and the terms and the conditions. I described to him minutely the details of the proposition, and that I was inclined to accept the same, and asked his advice, and he said he thought it was a good deal, and advised me to go ahead with it.



Q. Has Mr. Woodward complied with his contract? 109

MR. ROSS: We desire to interpose an objection to the proof of any non-performance of the contract.

About three months after signing the notes I first knew that Jno. H. Slaughter owned this note in question. I fixed the time because it was after I had notified Mr. Ellis verbally and in writing that I did not intend to pay the notes unless the contract was fulfilled previous to their maturity. On the date of the first note becoming due and in paying that note, which I did not consider proper to pay, only for the reason that it was overdue paper by one day, and I told him that I had become cognizant of the fact that there was a shortage of land, shortage of cattle, a lack of desire apparently on Mr. Woodward's part to fulfill any part of the contract further than the small part originally fulfilled. That I would not—did not consider that I owed that note, but I would pay it on account of it being overdue paper, but the others I would not pay, or likely not to pay unless the contract was fulfilled in a reasonable maximum—I don't know the word I want to use there—proportionately. In other words, when the second note was due, if sufficient property had been delivered, I would go forward with the payment, and when the last note was due, a sufficient property and a desire to show a business dealing with Mr. Woodward on his part, even if some part was not fulfilled but lacking those things I would not pay it. 110 111



112 (COUNSEL SHOWS WITNESS A PAPER.)

That is the contract between me and Woodward.

(Said paper is now marked Exhibit "1" for identification.)

MR. RICHARDSON: I offer it in evidence.

113 MR. ROSS: We desire to object to that contract on the ground that it is not a matter which is material or relevant or admissible in this action, this being an action upon a negotiable promissory note, this contract being no part of the note, it is in no respect binding upon this plaintiff in this action.

THE COURT: The evidence shows so far that Mr. Ellis and Mr. Jno. Slaughter were cognizant of this contract and the terms thereof. Now, the question is whether Mr. Slaughter was a bona fide purchaser, and I could not tell without seeing that contract whether he had any knowledge of this paper or not. If he did have knowledge—

114 MR. ELLINWOOD: I do not understand that Mr. Ellis or Mr. Slaughter were cognizant of this contract. He said he discussed terms generally. There is nothing in the evidence that John Slaughter ever saw that contract or that Charley Ellis ever saw that.

THE COURT: My impression was that Mr. Ellis testified that he knew the terms.

MR. ELLINWOOD: The contract as finally made, I don't think that there is any evidence that either of those parties ever



saw this. He didn't testify that he ever read the contract. He said there was a general discussion. 115

MR. ROSS: He testified that he and Mr. Slaughter discussed the deal, but so far as Mr. Ellis was concerned, he didn't say that he ever saw it.

THE COURT: I will ask the witness a few questions.

EXAMINATION BY THE COURT.

Q. Mr. Slaughter, after this contract was signed, did you ever tell Mr. Ellis or Mr. Slaughter the terms of the contract? That is, before the note was given? 116

A. In this manner, if you will allow me.

Q. What is that?

A. In this manner. It is like this. I described the offer made to me, and stated that I was going to go up to the office and close the deal on those lines, which I clearly outlined and got advice on, if the contract was furnished, and I hurried back to them and notified them that I had closed the contract, did not change any of the conditions. 117

Q. Did you notify them at this time when you said you told them of the terms offered to you, of those terms, in the same way that they were afterwards put in the contract?

A. Yes, sir.

Q. Does this written contract represent the terms which you told them you were go-



118 ing to close, and which you told them afterwards you had closed?

A. All the same.

THE COURT: I think that testimony renders that permissible.

MR. ELLINWOOD: Note an exception.

MR. RICHARDSON: With leave of counsel, we will introduce a certified copy and not the original, the same as your note.

119 Said paper heretofore marked "Exhibit 1" for identification, is offered and introduced in evidence, and the same is in the words and figures following, to-wit:

#### CONTRACT.

KNOW ALL MEN BY THESE PRESENTS:

That whereas, George F. Woodward of Moctezuma, State of Sonora, Republic of Mexico, asserts that he is the owner of, and in quiet and peaceful possession of the following described property:

120 Two certain tracts of farming lands known as "LA HUERTA" and "EL TAMBOR" containing and consisting of four hundred and fifty (450) arces of farming lands more or less, together with a water right of sufficient volume to thoroughly irrigate said lands. Also, the following ranches or grazing lands, and that the title is free from all incumbrances that is to say:

1.

"POTRERO DE PIVIPA" approximate-



ly fifteen thousand (15,000) acres, exclusive property of George F. Woodward. 121

## 2.

"DEMACIAS DE BAZURA" twelve thousand five hundred (12,500) acres approximately exclusive property, of Geo. F. Woodward.

## 3

"DEMACIAS DE TEHUACHI" twelve thousand five hundred (12,500) acres approximately, exclusive property of George F. Woodward. 122

## 4

"FRACION I" five thousand (5,000) acres approximately, exclusive property of George F. Woodward.

## 5

"FRACION LL." Five thousand (5,000) acres approximately exclusive property of George F. Woodward.

Also, the said George F. Woodward asserts that he owns in conjunction with others, free and clear of all incumbrance, the following interests hereinafter specified in the following ranches or grazing lands to-wit: 123

## I.

Sixty-four (64 per cent) of the BAZURA and TEHUACHI Ranches, and also claims and asserts that while his record title only shows 64 per cent that as a matter of fact he is the sole owner of these two tracts. These two tracts contain approximately fifteen thousand (15,000) acres.



124

## II.

50 per cent in the Las Animas Ranch. This ranch contains five thousand (5,000) acres more or less. He also asserts that in connection with and in addition to his 50 per cent in this ranch that he holds two private deeds, which conveys this entire ranch to him.

## III.

125 "SANTA BARBARA DE BACACHI," an undivided 1-4 interest in this ranch and alleges: That he has negotiations pending to acquire the other three-fourths. This ranch contains approximately 20,000 acres.

## IV.

Also, that he owns 11-28 interest in the "PASTORILLA" ranch, that this ranch contains approximately 20,000 acres.

## V.

126 Also, that he owns fifty per cent in the "AGUA ZARCA" ranch. The other 50 per cent is owned by F. Vildosola, with whom George F. Woodward asserts to have a contract to purchase that interest. This ranch contains approximately 5,000 acres.

## VI.

George F. Woodward asserts that he owns an undivided 1-3 interest in the "HACIENDITA" or SAN JUAN" ranch. This ranch contains approximately 5,000 acres more or less.

The said George F. Woodward does hereby assert that the acreage of the said



ranch as herinabove set forth as a reason for this assertion that the survey of these ranches was by a direct ariel line, and that when the land is surveyed by chain measurement he guarantees that there will be not less than two hundred and fifty thousand (250,000) acres. 127

That the said George F. Woodward further asserts that he is the owner of free and clear of all incumbrances of every nature of four thousand (4,000) head of cattle, running on these said ranches. Also, a large number of horses, sheep, goats, hogs, and other live stock on the above said ranches, and also of saddles, harness, wagons, and ranch equipment, situated on said ranches. Also, a lot of bailed barbed wire, and wire fences, on said ranches and lands. 128

That said ranch lands, farming lands, stock and equipment is situated in the District of Moctezuma, State of Sonora, Republic of Mexico, in a south westerly direction from the towns of Cumpas and Moctezuma, in said district. And whereas, the said Geo. F. Woodward, hereafter referred to as the party of the first part is desirous of selling, all of the above described property, and does by these presents; contract to sell the same to the SLAUGHTER LAND & CATTLE COMPANY, a corporation, to be organized under the laws of the State of Arizona, and protocolized in the Republic of Mexico. Said corporation is to be organized by the following named persons: George M. Slaughter, George F. Woodward, R. L. Slaughter and W. B. Slaughter. That said corporation shall be known as the SLAUGHT- 129



- 130 ER LAND AND CATTLE COMPANY, and shall have a capital stock of two hundred and fifty thousand (\$250,000.00) Dollars to be divided into two thousand five hundred shares of the par value of one hundred (\$100.00) Dollars each. Immediately upon the organization of the said corporation, and the protocolization of the same in the State of Sonora, Republic of Mexico, the said corporation being referred to as the party of the second part, for and in consideration of the sum of one hundred and eight thousand seven hundred and fifty (\$108,750.00) Dollars, lawful money of the United States of America, to be paid to the said party of the first part by the said George M. Slaughter, R. L. Slaughter and W. B. Slaughter, as follows, to-wit: The sum of (\$27,187.50) cash, in hand paid. The receipt whereof is hereby acknowledged by the party of the first part and the further sum of \$27,187.50 three months from date hereof. And the further sum of \$27,187.50 six months from the date hereof, and the further sum of \$27,187.50 nine months from date hereof. Each of the deferred payments being evidenced by a promissory note of even date herewith, due three months, six months and nine months from the date hereof, bearing interest at the rate of 6 per cent per annum from date until paid. Said notes to be payable at the Bank of Douglas, in the City of Douglas, County of Cochise, State of Arizona.
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- 132

That for and in consideration of the payment of the said sum of \$108,750.00 lawful money of the United States of America to the party of the first part, paid in



manner and form and on the dates herein-  
above set forth. The said George F. Wood-  
ward, the party of the first part, does agree  
hereby as follows to-wit: 133

## 1.

To immediately as soon as the said  
SLAUGHTER LAND & CATTLE COM-  
PANY, party of the second part is protocol-  
ized in the State of Sonora, Republic of  
Mexico, to transfer each, every and all of  
his interests in the above lands described,  
and does hereby guarantee that not-  
withstanding the fact that the acreage as  
hereinabove set forth, does not equal two  
hundred and fifty thousand acres of land  
contained in the above tracts, or that the  
party of the first part will purchase at his  
own cost and expense land adjoining the  
above described tracts until the acreage shall  
be not less than two hundred and fifty thou-  
sand acres. That said land shall be deeded  
to the said party of the Second part, the  
SLAUGHTER LAND & CATTLE COM-  
PANY, free and clear from all incum-  
brances, of every nature. That perfect title  
to the said 250,000 acres shall be lawfully  
vested in the said SLAUGHTER LAND &  
CATTLE COMPANY, the party of the sec-  
ond part. 134

## 2.

That the SLAUGHTER LAND AND  
CATTLE COMPANY, the party of the sec-  
ond part will as soon as it is convenient at  
its own cost and expense have a survey made  
of all of the said lands hereinabove describ-  
ed, and that should it develop upon the 135



136 completion of such survey that there be less acres vested in the said SLAUGHTER LAND AND CATTLE COMPANY by virtue of the transfer, of the lands set forth, than 250,000 acres, then and in that case the said George F. Woodward the party of the first part shall have extended to him five years from this date, to purchase at his own cost and expense and transferred to the said SLAUGHTER LAND & CATTLE COMPANY, a sufficient number of acres of land adjacent, to and adjoining the lands herein described to equal a total of 250,000 acres.

137 It is further agreed, however, that should upon the completion of said survey, it should develop that the lands hereinabove described, contain an acreage of two hundred and fifty thousand (250,000) acres or more, land that the same is lawfully vested in the SLAUGHTER LAND & CATTLE COMPANY, party of the second part that the said George F. Woodward, party of the first part, shall be considered to have fully complied with his part of the contract in the transfer of the acreage to the SLAUGHTER LAND AND CATTLE COMPANY, party of the second part.

138 The said George F. Woodward, party of the first part does hereby agree to transfer by lawful bill of sale to the said SLAUGHTER LAND & CATTLE COMPANY, party of the second part all of the brands, recorded in his name or that he is the owner of, in whole or in part in the State of Sonora, and does hereby guarantee that shall be made by the said SLAUGHTER LAND AND CATTLE COMPANY, as soon



as possible, that there are less than 4,000 head of cattle on said ranch in the brand of George F. Woodward, party of the first part at his own cost and expense will purchase sufficient number of cattle to make up the said four thousand cattle. The cattle so purchased, if any, shall be approximately the same grade as the cattle herein referred to, as being in the brands of George F. Woodward, party of the first part. 139

## 4.

That the said George F. Woodward, party of the first part does hereby agree to transfer to the said SLAUGHTER LAND AND CATTLE COMPANY free and clear from all incumbrances of every nature whatsoever, all live stock owned by him in whole or part in the State of Sonora. That live stock as herein stated shall include, cattle, horses, mares, mules, jacks, burros, jennies, sheep, goats and hogs. 140

That the said George F. Woodward, party of the first part does hereby agree to immediately transfer to the said SLAUGHTER LAND & CATTLE COMPANY all of his right, title and interest in and to all ranch equipment, including saddles, bridles, harness, wagons, and vehicles of every nature and description. Also, all farming tools, and implements of every nature, situate on the lands hereinabove referred to as farming lands. And, also all of his rights, title and interest in and to the water rights and easements of every nature whatsoever. 141

## 6.

It is distinctly understood that the said



142 George F. Woodward, the party of the first part reserves to himself without obligation to convey as herein set forth, solely and alone, his hotel and city property situated in the city of Moctezuma, State of Sonora, Republic of Mexico, and the little orchard connected therewith, in the City of Moctezuma, and also, and solely shall retain a little farm called "BERIDEHUACHI," formerly owned by Ramon Arragon, containing about twelve or fifteen acres situated about one and one-half miles south of the City of Moctezuma.

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7.

The said George F. Woodward, party of the first part, does further obligate himself to purchase all of the interests of the Barrios heirs in the above described real estate, at his own personal cost and expense and to transfer the same and to vest the legal title of the same in the SLAUGHTER LAND & CATTLE COMPANY, free and clear of all incumbrances.

8.

144 The said George F. Woodward does hereby obligate himself to purchase all of the interests of the Vildosola heirs in and to the above described real estate at the lowest possible price at the expense of the SLAUGHTER LAND AND CATTLE COMPANY and to transfer and vest the SLAUGHTER LAND AND CATTLE COMPANY with the title, for said purchase is to be made as soon as possible at any event within a reasonable time.

9.

The said George F. Woodward, party of



the first part does further obligate himself to purchase all of the interests of any other heirs or co-owners, in the above lands at any price agreeable to the SLAUGHTER LAND AND CATTLE COMPANY, with the title, thereto, upon the payment to the said George F. Woodward the said purchase price. 145

## 10.

Should it develop upon the completion of the survey hereinabove referred to that there should be less than 250,000 acres of land, in the lands hereinabove described then and in that case the said George F. Woodward may pay to the said SLAUGHTER LAND AND CATTLE COMPANY, party of the second part, any sums of money that the said SLAUGHTER LAND AND CATTLE COMPANY shall have heretofore paid for the purchase of the Vildosola heirs and any other interests in the said lands hereinabove described, except the Barrios heirs, and when the said George F. Woodward, party of the first part shall have so refunded said purchase price to the said SLAUGHTER LAND AND CATTLE COMPANY, then the acreage so purchased by the said George F. Woodward may be counted as part of the land conveyed to the said SLAUGHTER LAND & CATTLE COMPANY, by the said George F. Woodward to complete the said 250,000 acres. 146 147

## 11.

That the said George F. Woodward shall not during a period of five years from this date acquire, own, or hold any brand of cattle or livestock whatsoever. Nor during the period of five years from this date shall the



- 148 said George M. Slaughter, R. L. Slaughter,  
or W. B. Slaughter, or either of them acquire  
or own any brand of live stock whatsoever in  
the district of Moctezuma, State of Sonora,  
Mexico, but that should the said George or  
either of the said Slaughters acquire any live  
stock during said period, that the said ac-  
quisition or purchase of such live stock be  
solely and alone on the account of and with  
the consent of the said SLAUGHTER LAND  
AND CATTLE COMPANY and shall be im-  
mediately transferred and conveyed to the  
149 said SLAUGHTER LAND & CATTLE COM-  
PANY.

## 12.

- That the said stock of the said SLAUGH-  
TER LAND AND CATTLE COMPANY  
shall be issued as soon as possible, and at any  
event as soon as it is protocolized in Mexico  
and becomes the owner of the said proper-  
ties hereinabove described, and when said  
stock is so issued, it shall become the property  
share and share alike of the said George M.  
Slaughter, R. L. Slaughter and W. B. Slaught-  
150 er, and that each of them, the said George  
M. Slaughter, George F. Woodward and R.  
L. Slaughter and W. B. Slaughter shall be-  
come equal owners in and to the entire cap-  
ital of stock of the SLAUGHTER LAND  
AND CATTLE COMPANY.

## 13.

It is distinctly understood that the said  
George F. Woodward, George M. Slaughter,  
R. L. Slaughter and W. B. Slaughter or eith-  
er of them at the knowledge or consent of  
either of the other may at any time at his



own personal cost and expense without any notice to any other person, protocolize and record this contract in the Republic of Mexico, for any purpose he may see fit. 151

14.

This contract shall be binding upon ourselves, our heirs, executors, administrators, successors and assigns jointly and severly.

Done at Douglas, this 9th day of April, A. D. 1913.

GEO. F. WOODWARD,  
GEO. M. SLAUGHTER, 152  
R. L. SLAUGHTER,  
W. B. SLAUGHTER.

WITNESS CONTINUING: Mr. Woodward, did not fulfill the terms of that contract by deeding over the property. He delivered possession of the ranch described in the contract, and such horses and cattle and ranch furniture as were on them, and brands, and the equipment and delivered the original deeds into my keeping, in a locked iron box, with which he said:

He did not give me a bill of sale to the cattle. He did not give a deed to the land, to the Slaughter Land and Cattle Company. I have requested him for a bill of sale for the cattle; he refused. I requested him to give a deed to the land, to me or to the Slaughter Land and Cattle Company. He refused absolutely. 153

Q. What thing of value did the Slaughter Land and Cattle Company receive under this contract? What would it be worth, what thing of value?



154 MR. ROSS: There is no evidence up to date that there was any failure of consideration or had been any failure of consideration at the time these notes were negotiated. Of course, this is all before the court, and it does not make any difference, but I want to object to this evidence of failure of consideration, was subsequent to the negotiation of the notes, and it is entirely immaterial.

155 THE COURT: I would state now, that the view the court takes of it. The court has already held on ruling on the demurrers that the notes on their face were negotiable. Now, if evidence is introduced which may or may not show that the plaintiff had actual knowledge of that, it would not keep him from being the holder in due course. I have not read that contract, and I don't know whether there is anything in that contract which would give him knowledge that the notes were not negotiable, but anything that occurred after the negotiation of the notes, would not affect the rights of the plaintiff. Now, I could not tell until I read that contract whether anything is set up in there  
156 which would affect him.

MR. ROSS: The relevancy of this is to find out whether the plaintiff is the holder in good faith.

THE COURT: I don't think there is anything in that contract which would make a person purchasing the note have actual knowledge of the existence of the contract.

MR. ROSS: Then I understand that you sustain the objection?

THE COURT: The objection is sus-



tained as to any evidence of the condition after the negotiation of the note. 157

MR. RICHARDSON: We except the court's ruling, for the reason, first: that the plaintiff had actual knowledge of the terms and conditions of the contract. Second: that the notes themselves show on their face that they were not to become due until the contract was performed, and at this time we offer the following proof: We offer to prove by this witness that the defendant, Woodward, party to that contract, after demand having been made upon him, and after the Slaughter Land and Cattle Company, the corporation referred to, in that contract had been organized, to transfer to the company the cattle and lands and other property mentioned in that contract; that the said Woodward refused to transfer the land or any of the personal property mentioned in the contract; that the consideration of the giving of those notes has wholly failed. 158

THE COURT: You offer the proof as made after the negotiation of the notes?

THE COURT: You offer the proof as made after the negotiation of the notes? 159

MR. RICHARDSON: Yes, sir.

THE COURT: The offer is refused.

MR. RICHARDSON: That is all.

CROSS EXAMINATION BY MR. ROSS.

Q. Mr. Slaughter, so far as you know, neither Mr. Ellis or Mr. John Slaughter ever



160 saw this contract or a copy of it before the 15th of April, 1914?

A. I don't know.

Q. Your discussions with Mr. Ellis and Mr. Slaughter were confined, were they not, to a discussion of the amount of land that you received, the location of the land, the amount of cattle, and the total price which you were supposed to pay for the property, were they not? You were getting their business advice as to whether or not it would probably be a good deal at the price that Woodward offered it? Wasn't that about the transaction with your uncle and Mr. Ellis?

161 A. Yes, that was a part, the principal part of it. I discussed it entirely with them, from every standpoint that a man could discuss any deal.

Q. And the Slaughter Land & Cattle Company has taken possession of the ranches turned over to them, and have taken over considerable cattle that was there on the ranch?

162 A. Yes, sir.

Q. All the ranch?

A. Yes, sir.

Q. And have sold some cattle, etc., and have carried on the business of a land and cattle company, excepting you have not got any deed or bill of sale, and you say you have not got all the land and all the cattle that you expected to get? That is about the substance of your testimony?

A. Yes, sir.



## RE-DIRECT EXAMINATION.

163

I received the possession of those things that were offered me for the Slaughter Land & Cattle company. I held possession by keeping sufficient men on the premises to keep anybody else from taking it away from me. Mr. Woodward, through his agents, has tried to get possession, to take it away from me.

MR. ROSS: This is all subsequent to the contract. I object to this line of examination.

164

THE COURT: Objection sustained subsequent to the negotiation of the notes.

MR. RICHARDSON: We offer to prove that while the defendant, Slaughter, has had possession of a part of that property since the signing of the contract and since April 15th, that he has held possession simply and alone by force of arms against Woodward and his agents.

THE COURT. The offer will be denied.

165

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(TITLE OF COURT AND CAUSE.)

## JUDGMENT AND ORDER OF SALE.

This cause came on regularly for trial before the court on the 13th day of February, A. D. 1915, plaintiff appearing by Messrs. Ellinwood & Ross, his attorneys, defendant R. L. Slaughter, appearing by Messrs. Richardson & White, his attorneys, and defendants Geo. F. Woodward, W. B.



166 Slaughter and Geo. M. Slaughter making no appearance. It appearing to the court that said defendants Geo. F. Woodward, W. B. Slaughter and Geo. M. Slaughter, being non-residents of and absent from the state of Arizona, had been duly served with Summons herein by publication and mailing thereof as provided by the Statutes of Arizona, and that their several defaults for failure to appear or answer herein within the time required by law had been heretofore duly entered in open court, the trial of said cause proceeded upon plaintiff's complaint, the first amended answer of the defendant, R. L. Slaughter and plaintiff's amended reply.

167 Oral and documentary evidence was introduced on behalf of plaintiff and plaintiff rested. Thereupon, oral and documentary evidence was introduced on behalf of the defendant R. L. Slaughter, and said defendant rested, whereupon said cause was submitted to the court for its decision and judgment.

168 The court thereupon having considered said cause, the evidence therein and the law applicable thereto, and being duly advised in the premises, announced its decision therein in open court in favor of the plaintiff and against the defendants, and ordered that judgment be rendered and entered in accordance therewith.

NOW, THEREFORE, in consideration of the premises and in accordance with said decision, it is,

Ordered, adjudged and Decreed that plaintiff have and recover from defendants



Geo. F. Woodward, W. B. Slaughter, Geo. 169  
 M. Slaughter and R. L. Slaughter, jointly and  
 severally in the principal sum of Twenty  
 Seven Thousand One Hundred and Eighty  
 Seven Dollars and Fifty Cents (\$27,187.50),  
 together with interest thereon as prayed in  
 the complaint, amounting to Three Thousand  
 Eighty Dollars and Forty Cents \$3,080.40),  
 its costs of protest in the sum of Five Dol-  
 lars (\$5.00) and its reasonable attorney's  
 fees herein in the sum of Three Thousand  
 Dollars, \$3,000.00); that is to say, in the  
 total sum of Thirty Three Thousand, Two 170  
 Hundred Seventy Two Dollars and Ninety  
 Cents (\$33,272.90), together with its costs of  
 suit taxed at  
 and that plaintiff have its execution therefor.

IT FURTHER APPEARING TO THE  
 COURT that heretofore, and prior to the  
 service of process herein upon defendants,  
 Geo. F. Woodward, W. B. Slaughter and Geo.  
 M. Slaughter, as aforesaid, a writ of gar-  
 nishment was duly issued therein which was  
 directed to and on August 28, 1914, was duly 171  
 served upon the Slaughter Land and Cattle  
 Company, the garnishee therein, a corpora-  
 tion organized and existing under the laws  
 of Arizona and having its principal office  
 at Douglas, in Cochise County, in said State,  
 and that said garnishee has made answer to  
 said writ, from which answer, and other-  
 wise, it appears that when said writ was  
 served upon said garnishee the said defend-  
 ants Geo. M. Slaughter and R. L. Slaughter  
 were the owners of an undivided three-  
 fourths' interest in the capital stock of said



172 garnishee, to-wit: Were the owners of an undivided One Hundred Eighty Seven Thousand, Five Hundred (\$187,500.00) Dollars par value of the capital stock of said garnishee, and that said defendant Geo. F. Woodward, owns or is entitled upon certain conditions to one-fourth of the capital stock of said garnishee of the par value of Sixty Two Thousand Five Hundred Dollars (\$62,500.00), Therefore it is,

173 FURTHER ORDERED, ADJUDGED AND DECREED, THAT FOR THE Purpose of satisfying said judgment against defendants Geo. F. Woodward, Geo. M. Slaughter and R. L. Slaughter, all of said shares of the capital stock of said The Slaughter Land and Cattle Company, garnishee herein, and every interest in said garnishee, owned or held by or to either of said defendants were entitled, either at law or in equity, on August 28, 1914, or which they or any of them, now own or are entitled to, namely an undivided One Hundred Eighty Seven Thousand, Five Hundred Dollars (\$187,500.00), par value of said stock owned  
174 by defendants Geo. M. Slaughter and R. L. Slaughter, and Sixty Two Thousand Five Hundred Dollars (\$62,500.00) par value of said stock, owned by defendant Geo. F. Woodward, or in which he has an interest or so much thereof as may be necessary to satisfy said judgment be sold under execution in favor of plaintiff herein against said defendants Geo. F. Woodward, Geo. M. Slaughter, and R. L. Slaughter, as by statute in such case made and provided.

ORDERED, ADJUDGED AND DE-



CREED, that said sale shall be conducted in all respects as other sales of personal property under execution, by the sheriff of said County that upon said sale the sheriff shall execute a transfer of such shares or interests to the purchaser thereat, making proper reference therein to this judgment; that the proper reference therein to this judgment; that the proper officers of said garnishee shall enter such sale and transfer on the books of said garnishee in the same manner as if the same had been made by said defendants Geo. F. Woodward, Geo. M. Slaughter and R. L. Slaughter themselves, and that execution issue in accordance herewith and as by statute in such case provided. 175

Done in open court this 13th day of February A. D., 1915.

ALFRED C. LOCKWOOD,  
Judge of said Court.

(TITLE OF COURT AND CAUSE.) 177

### JUDGMENT AND ORDER OF SALE.

This cause came on regularly for trial before the court on the 13th day of February, A. D. 1915, plaintiff appearing by Messrs. Ellinwood & Ross, his attorneys, Defendant R. L. Slaughter, appearing by Messrs. Richardson & White, his attorneys, and defendants Geo. F. Woodward, W. B. Slaughter making no appearance. It appearing to the court that said defendants,



173 Geo. F. Woodward, W. B. Slaughter and Geo. M. Slaughter, being non-residents of and absent from the State of Arizona, had been duly served with summons herein by publication and mailing thereof as provided by the statutes of Arizona, and that their several defaults for failure to appear or answer herein within the time required by law had been heretofore duly entered in open court, the trial of said cause proceeded upon plaintiff's complaint, the first amended answer of defendant R. L. Slaughter, and plaintiff's amended reply.

179 Oral and documentary evidence was introduced on behalf of the plaintiff and plaintiff rested. Thereupon, oral and documentary evidence was introduced in behalf of defendant R. L. Slaughter and defendant rested, whereupon said cause was submitted to the court for its decision and judgment.

180 The court thereupon having considered said cause, the evidence therein and the law applicable thereto, and being duly advised in the premises, announced its decision therein in open court, in favor of the plaintiff, and against defendants, and ordered that judgment be rendered and entered in accordance therewith.

NOW, THEREFORE, in consideration of the premises and in accordance with said decision, it is,

ORDERED, ADJUDGED AND DECREED, that plaintiff have and recover of and from defendants Geo. F. Woodward, W. B. Slaughter, Geo. M. Slaughter, and R. L. Slaughter, jointly and severally, in the prin-



cipal Sum of Twenty-Seven Thousand, 181  
 One Hundred and Eighty-Seven Dol-  
 lars and Fifty Cents (\$27,187.50), together  
 with interest thereon as prayed in the com-  
 plaint, amounting to Three Thousand  
 Eighty-Four Dollars and Thirty-Five cents,  
 (\$3084.35), his costs of protest in the sum of  
 Four Dollars and a Half (\$4.50) and his  
 reasonable attorney's fees herein in the sum  
 of Three Thousand Dollars (\$3,000.00);  
 that is to say in the total sum of Thirty  
 Three Thousand, Two Hundred Seventy-  
 Six Dollars and Thirty-Five Cents, (\$33, 182  
 276.35), together with his costs of suit  
 taxed at \$41.50, and that plaintiff have his  
 execution therefor.

IT FURTHER APPEARING TO THE  
 COURT that heretofore, and prior to the  
 service of process herein upon defendants,  
 Geo. F. Woodward, W. B. Slaughter, and  
 Geo. M. Slaughter, as aforesaid, a writ of  
 Garishment was duly issued herein, which  
 was directed to and on August 28, 1914, was  
 duly served upon The Slaughter Land and  
 Cattle Company, the Garnishee therein, a 188  
 corporation organized and existing under  
 the laws of Arizona, and having its prin-  
 cipal office at Douglas, in Cochise County,  
 in said State, and that said Garnishee has  
 made answer to said writ, from which  
 answer, and otherwise, it appears that when  
 said write was served upon said Garnishee,  
 the said defendants Geo. M. Slaughter and  
 R. L. Slaughter were the owners of an un-  
 divided three-fourths' interest in the capital  
 stock of said Garnishee, to-wit: Were the  
 owners of an undivided One Hundred



- 184 Eighty Seven Thousand Five Hundred Dollars (\$187,500.00), par value of the capital stock of said Garnishee and that said defendant Geo. F. Woodward owns or is entitled upon certain conditions to one-fourth of the capital stock of said Garnishee of the par value of Sixty Two Thousand Five Hundred Dollars (62,500.00), Therefore it is

FURTHER ORDERED, ADJUDGED AND DECREED, that for the purpose of satisfying said judgment against said defendants, George F. Woodward, George

- 185 M. Slaughter and R. L. Slaughter all of the said shares of the capital stock of said The Slaughter Land and Cattle Company, Garnishee, herein, and every interest in said Garnishee, owned or held by or to which either of said defendants were entitled, either at law or in equity, on August 28, 1914, or which they, or any of them, now own or are entitled to, namely an undivided One Hundred Eighty Seven Thousand, Five Hundred Dollars (\$187,500.00) par value, of said stock owned by defendants, Geo. M. Slaughter and R. L. Slaughter, and Sixty Two Thousand Five Hundred Dollars, (\$62,500.00) par value of said stock, owned by defendant, Geo. F. Woodward, or in which he has an interest, or so much thereof as may be necessary to satisfy said judgment, be sold under execution in favor of plaintiff herein against said defendants, Geo. F. Woodward, Geo. M. Slaughter and R. L. Slaughter as by statute in such case made and provided.

ORDERED ADJUDGED AND DECREED, that said sale shall be conducted in



all respects as other sales of personal property under execution, by the sheriff of said County; that upon said sale the sheriff shall execute a transfer of such shares or interests to the purchaser thereat, making proper reference therein to this judgment; that the proper officers of said garnishee shall enter such sale and transfer on the books of said Garnishee in the same manner as if the same had been made by said defendants Geo. F. Woodward, Geo. M. Slaughter and R. L. Slaughter themselves, and that execution issue in accordance herewith by statute in such case provided. 187

Done in open court this 17th day of February A. D. 1915. 188

ALFRED C. LOCKWOOD,  
Judge.

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(TITLE OF COURT AND CAUSE.)

MOTION FOR A NEW TRIAL AND ARREST OF JUDGMENT. 189

Comes now R. L. Slaughter, one of the defendants in the above entitled action personally, and moves the court for a new trial and arrest of judgment for the following reasons and each of them, to-wit:

I.

The court erred in sustaining plaintiff's motion to strike from defendant's answer for the following reasons:



190 (a) That the note involved in this action contains the following annotation: "For payment under contract even date."

(b) That such annotation was sufficient to put an ordinary prudent person on inquiry; that if followed up would have led to notice of the contents of the contract referred to in said annotation.

(c) That the annotation made the payment of the note conditional, and qualified the promise to pay.

191 (d) That the annotation made the payment of the note subject to and coupled with the terms of a written contract made contemporaneously with the note being a part of the same transaction.

(e) For the reason that the consideration for which said note was given had wholly failed.

(f) For the reason that the note shows upon its face that it is not a negotiable instrument.

192

## II.

That the court erred in admitting the note in evidence in this case, over the objection of the defendant for the following reasons, and each of them:

(a) That the note involved in this action contains the following annotation: "For payment under contract even date."

(b) That such annotation was sufficient to put an ordinarily prudent person on inquiry; that if followed up would have



led to notice of the contents of the contract 193  
referred to in said annotation.

(c) That the annotation made the payment of the note conditional and qualified the promise to pay.

(d) That the annotation made the payment of the note subject to and coupled with the terms of a written contract made contemporaneously with the note being a part of the same transaction.

(e) For the reason that the consideration for which said note was given had 194  
wholly failed.

(f) For the reason that the note shows upon its face that it is not a negotiable instrument.

### III.

That the court erred in sustaining objection to the defendants' evidence particularly that evidence tendered by the defendant to show a failure of consideration for the said note.

### IV.

195

That the judgment and decision are not justified by the evidence.

### V.

That the decision and judgment is not justified by and is contrary to the law.

### VI.

Upon the general ground that the court erred in admitting and rejecting evidence.

WHEREFORE, Defendant R. L. Slaugh-



196 ter prays that the Court will grant him a new trial in the above entitled action and arrest judgment therein, in order that justice may be done.

RICHARDSON & WHITE,  
Attorneys for the Defendant, R. L. Slaughter, personally.

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(TITLE OF COURT AND CAUSE.)

197 Minute Entry of January 16, 1915, Book 21, Page 357, same title and cause.

It is by the Court ordered that January 16, 1915, be and the same is hereby set for the hearing of law points herein.

This cause coming on at this time for hearing of law points. On stipulation of counsel filed in this cause, this date, it is by the Court ordered that the hearing of the law points herein be continued to January 30, 1915. And further ordered that  
198 this cause be and the same is hereby set for trial on the 3rd day of February, 1915.

Minute Entry of January 30, 1915, Book 21, Page 383, same title and cause.

It is by the Court ordered that the hearing on law points herein be and the same is hereby continued to February 3, 1915.

Minute Entry of February 3, 1915, Book 21, Page 389, same title and cause.

This cause coming on regularly for hearing on law points, this date. Plaintiff



present by its Attorneys, Ellinwood & Ross, Esqrs., and defendant R. L. Slaughter present in person and by counsel D. A. Richardson, Esq. 199

Come now John Mason Ross, Esq., counsel for Plaintiff and moved the Court that defaults be entered against the defendants Geo. F. Woodward, W. B. Slaughter and George M. Slaughter, and the Court ordered that said defaults be entered herein against each and all of said defendants and such default was duly noted and entered by the Clerk herein. Counsel for plaintiff then presented Demurrer to Separate Answer of Defendant R. L. Slaughter and Motion to strike from said answer allegations contained in Paragraph 6 thereof, which said motion and Demurrer were argued by respective counsel and submitted to the Court for decision and the same were by the Court taken under advisement. 200

Minute Entry of February 9, 1915, Book 21, Page 411, same title and cause.

The law points in this cause having been heretofore argued by counsel and by the Court taken under advisement, it is now by the Court ordered that the Motion to strike be granted and that the Demurrer be overruled and it is further ordered that the defendant be given until Saturday, the 13th day of February, 1915, at 10:00 A. M. of that day in which to amend. 201

Minute Entry of February 10, 1915, Book 21, Page 416, same title and cause.

It is by the Court ordered that Feb-



202 ruary 13, 1915, he and the same is hereby set as the date for the trial of this cause.

Minute Entry of February 13, 1915, Book 21, Page 424, same title and cause.

Upon stipulation of respective counsel in Open Court it was agreed that the evidence produced and given in the case of John H. Slaughter versus George F. Woodward, et al, No. 854, be accepted and admitted as evidence in this cause.

203 Plaintiff called as a witness M. J. Cunningham, who was duly sworn and examined and plaintiff further offered in evidence documentary evidence, which was objected to by counsel for defendant R. L. Slaughter, and the Court, after due consideration, admitted the documentary evidence, over the objection.

204 Plaintiff now called as witness C. O. Ellis, who was duly sworn and examined and Plaintiff rested. The evidence was declared closed and the cause was submitted to the court without argument and on motion of counsel for plaintiff, the court ordered that upon presentation of a written judgment by plaintiff and its approval and signing by the court, judgment will be rendered herein in favor of the plaintiff.

Minute Entry of February 17, 1915, Book 21, Page 434, same title and cause.

A formal, written judgment in this action having this day been presented to and approved by the court in accordance with the order heretofore made, it is ordered that judgment be rendered herein in favor of the



plaintiff in the sum of \$27,185.50 with interest in the sum of \$3,080.40, Protest fee in the sum of \$5.00; Attorneys fees in the sum of \$3,000.00 and \$39.10 costs, and that the capital stock owned by said defendant in and to The Slaughter Land and Cattle Company, Garnishee herein, be sold for the purpose of satisfying such judgment. 205

Minute Entry of February 27, 1915, Book 21, Page 457, same title and cause.

This cause coming before the court at this time for hearing on Motion for new trial herein, Plaintiff present by counsel John M. Ross, Esq., and defendants present by counsel D. A. Richardson, Esq. Said motion for new trial was argued by respective counsel and submitted to the court and the court being fully advised in the premises, ordered that said motion be and the same is hereby denied. 206

Come now counsel for defendants and presented and filed Notice of Appeal to the Supreme Court of the State of Arizona, from the judgment rendered herein on the 17th of February, 1915, in favor of plaintiff and against defendants and from the whole thereof; and from the order denying Defendants' Motion for new trial and arrest of judgment herein, whereupon the amount of Appeal Bond was fixed at the sum of \$500.00. 207

ALFRED C. LOCKWOOD,  
Judge of the Superior Court.

Minute Entry of March 22, 1915, Book 21, Page 505.



208 BANK OF BISBEE

vs.

GEO. F. WOODWARD, ET AL,  
855

On motion of D. A. Richardson, Esq., counsel for the defendants herein, it is by the Court ordered that the Court Reporter have Sixty (60) days additional time from this date in which to file his Transcript of the Evidence herein.

ALFRED C. LOCKWOOD, Judge.

209

(TITLE OF COURT AND CAUSE.)

#### NOTICE OF APPEAL.

Notice is hereby given that the above named Defendant R. L. Slaughter, appeals to the Supreme Court of the State of Arizona, from the judgment rendered in said court in the above entitled action on the 19th day of February, A. D. 1915, in favor of the above named plaintiffs and against the said R. L. Slaughter and others and from the whole thereof as well as from the order denying a motion for a new trial and in arrest of judgment.

210

RICHARDSON & WHITE,

Attorneys for R. L. Slaughter, one of the defendants.

#### APPEAL BOND.

KNOW ALL MEN BY THESE PRESENTS:  
That we, R. L. Slaughter as principal,



and B. A. Packard and E. W. Graves, as 211  
 sureties, all of Cochise County, Arizona, are  
 held and firmly bound unto John H. Slaught-  
 er, Plaintiff named in the above entitled ac-  
 tion, his executors, administrators, and  
 assigns, in the sum of five hundred dollars  
 (\$500.00), lawful money of the United States,  
 the said sum of five hundred dollars  
 (\$500.00), being double the amount of the  
 probable costs in this case, of both the  
 Supreme Court of Arizona, and the Superior  
 Court of Cochise County, Arizona, as esti-  
 mated by the clerk of the said Superior 212  
 Court, the said sum to be paid to the  
 above named defendant John H. Slaught-  
 er, his executors, administrators and as-  
 signs for which payment well and truly to  
 be made we bind ourselves, our and each of  
 our heirs, executors, administrators and as-  
 signs jointly and severally, firmly by these  
 Presents:

Sealed with our seals and dated this 3rd.  
 day of March, 1915.

The condition of the above obligation is  
 such that whereas the above named plain- 218  
 tiff, John H. Slaughter, obtained judgment  
 against the above named defendant, R. L.  
 Slaughter, as prayed for in the answer of  
 said action, and for costs of suit, and there-  
 as the above bounden, R. L. Slaughter, is  
 desirous of appealing from the decision and  
 judgment of said Superior Court to the  
 Supreme Court of the State of Arizona.

Now therefore, if the above bounden, R.  
 L. Slaughter shall prosecute his appeal here-  
 in to effect and pay all costs which have ac-



- 214 crued in the Superior Court herein or which may accrue in the Supreme Court of Arizona, then this obligation is to be void, otherwise to remain in full force and virtue.

R. L. SLAUGHTER,  
B. A. PACKARD,  
E. W. GRAVES.

STATE OF ARIZONA. {  
COUNTY OF COCHISE. } ss.

- 215 B. A. Packard and E. W. Graves, the sureties whose names are subscribed to the foregoing bond, being duly sworn, each for himself deposes and says that he is a resident of Cochise County, Arizona, and is a free holder and worth in his own right and name \$500.00 over and above all his just debts and liabilities and over and above all property exempt from execution and forced sale.

B. A. PACKARD,  
E. W. GRAVES.

- 216 Subscribed and sworn to before me this 3rd. day of March, 1915.

(SEAL) D. A. RICHARDSON,  
Notary Public.

My commission expires, Nov. 16, 1916.

(TITLE OF COURT AND CAUSE.)

# STIPULATION.

It is hereby stipulated that pursuant to



the provisions of Paragraph 1256, R. S. 217  
 Arizona, 1913, the clerk of said court shall  
 transmit to the clerk of the Supreme Court  
 of Arizona, the following papers and por-  
 tions of the record in said cause, deemed  
 necessary to present the questions involved  
 on the appeal taken therein in behalf of R.  
 L. Slaughter, namely:

1. Complaint.
  2. Separate answer of R. L. Slaughter.
  3. Plaintiff's reply.
  4. First amended and separate answer 218  
 of R. L. Slaughter.
  5. Plaintiff's amended reply.
  6. Plaintiff's motion to strike.
  7. Plaintiff's specification of points on  
 demurrer and motion to strike.
  8. Stipulation dated January 14, 1915.
  9. Stipulation dated January 28, 1915.
  10. Transcript of reporter's notes.
  11. Judgment and order of sale.
  12. Motion for new trial and in arrest  
 of judgment.
  13. Certified copy of minute entries in 219  
 said cause.
  14. Notice of appeal.
  15. Certified copy of bond on appeal.
- Dated April 29, 1915.

ELLINWOOD & FOSS,

Attorneys for Plaintiff.

RICHARDSON & WHITE,

Attorneys for R. L. Slaughter, Defendant.



78.

No. ....  
IN THE  
**SUPREME COURT**  
OF THE  
STATE OF ARIZONA

GEORGE F. WOODWARD  
ET AL,  
R. L. SLAUGHTER,  
Defendants-Appellants

vs.

THE BANK OF BISBEE,  
a Corporation,  
Plaintiff-Appellee.

**ABSTRACT OF RECORD**

Filed this.....day of .....1915,  
at..... o'clock.....M.

.....  
Clerk.

RICHARDSON & WHITE,  
Attorneys for Defendants-Appellants.

ELLINWOOD & ROSS,  
Attorneys for Appellee.



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IN THE  
**SUPREME COURT** 1  
OF THE  
STATE OF ARIZONA

GEORGE F. WOODWARD  
ET AL,  
R. L. SLAUGHTER,  
Defendants-Appellants

VS.

THE BANK OF BISBEE,  
a Corporation,  
Plaintiff-Appellee.

2

**Abstract of Record**

IN THE SUPERIOR COURT OF THE  
COUNTY OF COCHISE, STATE  
OF ARIZONA.

THE BANK OF BISBEE,  
A CORPORATION,  
Plaintiff

VS.

GEO. F. WOODWARD, W.  
B. SLAUGHTER, GEO. M.  
SLAUGHTER, AND R. L.  
SLAUGHTER,

Defendants

PLAINTIFF'S  
COMPLAINT

3

Plaintiff complains of defendants and for  
cause of action, alleges:

I.

That plaintiff is a corporation duly or-



4 ganized and existing under the laws of the  
Territory (now State) of Arizona, and at all  
times mentioned was, and now is lawfully  
engaged in the transaction of a banking bus-  
iness at the City of Bisbee, County of Co-  
chise, State of Arizona; that the defendant  
Geo. F. Woodward is a resident of the City of  
Los Angeles, State of California; that de-  
fendant W. B. Slaughter is a resident of the  
City of Pueblo, State of Colorado; that de-  
fendant Geo. M. Slaughter is a resident of the  
City of Roswell, New Mexico; that defendant  
5 R. L. Slaughter is a resident of Big Springs,  
in the State of Texas.

## II.

That heretofore, and on the 9th day of  
April 1913, the defendants, W. B. Slaughter,  
Geo. M. Slaughter and R. L. Slaughter made  
and delivered to defendant Geo. F. Wood-  
ward, their certain promissory note in words  
and figures as follows, to-wit: \$27,187.50.

DOUGLAS, ARIZONA, APRIL 9, 1913.

6 Six months after date, for value re-  
ceived, we promise to pay to the order of Geo.  
F. Woodward, Twenty-Seven Thousand One  
Hundred and Eighty Seven 50-100 Dollars,  
at the Bank of Douglas, Douglas, Arizona,  
with interest thereon from date until paid, at  
the rate of six per cent per annum; the said  
interest, if not so paid, to be added to and be-  
come a part of the principal, and bear the  
same rate of interest. And in case suit or  
action is instituted to collect this note or  
any portion thereof, we promise to pay, be-  
sides the costs and disbursements allowed by  
law, such additional sum as the court may ad-



judge reasonable as Attorney's Fees in such 7  
suit or action.

W. B. SLAUGHTER,  
GEO. N. SLAUGHTER,  
R. L. SLAUGHTER.

For payment under contract of even date.  
No. ....

### III.

That thereafter, on or about April 15th,  
1913, defendant, Geo. F. Woodward, for  
value, endorsed and delivered said promissory note to plaintiff herein, and that plain- 8  
tiff at all times since has been, and is now,  
the legal owner and holder of said promissory note.

### IV.

That during banking hours, on the 9th  
day of October, 1913, said promissory note  
was duly presented by plaintiff at the Bank  
of Douglas, in Douglas, Arizona, for pay-  
ment, but the same was not paid.

### V.

That said promissory note was thereup- 9  
on and on said 9th day of October, 1913, duly  
protested for non-payment, due notice of  
which non-payment and protest was given to  
said defendants, Geo. F. Woodward, W. B.  
Slaughter, Geo. M. Slaughter and R. L.  
Slaughter as required by law; that in and  
about the protest of said promissory note  
plaintiff was required to, and did expend the  
sum of Five Dollars (\$5.00) as notary's fees.

### VI.

That the said promissory note has not,



- 10 nor has any part thereof been paid, and that the principal sum thereof, together with interest thereon from the 9th day of April, 1913, as the rate of six per cent (6 per cent) per annum, compounded as in said note provided, is now due and owing from defendants to plaintiff.

#### VII.

- 11 That in and by said promissory note it was stipulated and provided that in case suit or action was instituted to collect said note or any portion thereof, said defendants, besides the costs and disbursements allowed by law, would pay the plaintiff such additional sum as the court might adjudge reasonable as Attorney's fees in such suit or action, that it has been necessary for plaintiff to employ counsel for the purpose of instituting and prosecuting this action; that ten per cent (10 per cent) of the total sum of principal and interest due and payable upon said promissory note is a reasonable attorney's fee to be allowed plaintiff in the premises.

- 12 WHEREFORE, plaintiff prays judgment against the defendants.

1. For the sum of twenty-seven thousand, one hundred eighty-seven dollars and fifty cents (\$27,187.50), being the principal sum of said note, together with interest thereon from the 9th day of April 1913, at the rate of six per cent. (6 per cent.) per annum compounded as provided therein, from April 9th 1913, to the date of judgment herein.

2. For the sum of Five Dollars (\$5.00) notary's fees paid as aforesaid.



3. For the further sum of ten per cent 13  
(10 per cent) of the total of said principal  
and interest as attorney's fees in this action  
and for its costs of suit.

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.

---

(TITLE OF COURT AND CAUSE.)

SEPARATE ANSWER OF R. L.  
SLAUGHTER.

14

Now comes R. L. Slaughter one of the  
defendants in the above entitled action and  
for his separate answer to the complaint in  
said action.

I.

Admits that the plaintiff was a corpora-  
tion as alleged in the complaint and avers  
that this defendant is a resident of the City  
of Douglas, in the County of Cochise, State  
of Arizona.

15

II.

That on or about the 9th day of April,  
1913, this defendant and the defendants W.  
B. Slaughter and Geo. M. Slaughter made  
and executed a promissory note for the sum  
of twenty seven thousand, one hundred and  
eighty seven dollars and fifty cents (\$27,-  
187.50, payable to the order of the defendant,  
Geo. F. Woodward and that this defendant  
believes the instrument set forth in said com-  
plaint to be a true copy of said note.



16

## III.

This defendant denies on information and belief that on or about the 9th day of April, 1913, or at any other date the defendant, Geo. F. Woodward indorsed or delivered said note to the plaintiff or that the defendant is or at any time has been the owner or holder of said note and avers on information and belief that said defendant, Geo. F. Woodward transferred or purported to transfer the said note to the Bank of Douglas, a corporation or to one C. O. Ellis, cashier thereof, and that Bank of Douglas and the said Ellis had full notice and knowledge of the circumstances under which said note was acquired and that the several matters herein set forth and that if the said note was ever assigned or transferred to the said plaintiff the same was so assigned and transferred by the said Bank of Douglas, or the said Ellis and not in the due or ordinary course of business, but for the purpose of collection only.

17

## IV.

This defendant admits that the note executed by this defendant and his co-defendants as aforesaid was presented for payment and was not paid and that the same was thereafter protested, but this defendant has no knowledge as to what amount if any was expended for Notary's fees by reason of such a purpose.

18

## V.

This defendant denies on information and belief that ten (10 per cent) per cent of the total amount due on said note is a reasonable attorney's fee and avers that he has no



knowledge as to what sum would be a reasonable attorneys fee in this action. 18

## VI.

Further answering this defendant avers that on or about the 9th day of April, 1913, this defendant and the defendants Geo. M. Slaughter and W. B. Slaughter made and entered into a certain contract in writing to the defendant Geo. F. Woodward by the terms of which the said Woodward agreed to sell and convey to the SLAUGHTER LAND & CATTLE COMPANY, a corporation to be thereafter organized by the defendants in this action, setting large tracts of land in the Republic of Mexico and certain cattle and horses and other personal property in consideration of certain sums of money to be paid to the said Woodward, certain of said payments to be evidenced by promissory notes. 19

That pursuant to said contract this defendant and his co-defendants, Geo. M. Slaughter and W. B. Slaughter did sign and deliver to the said Woodward certain promissory notes, one of which is the promissory note set forth in said complaint; that the said Woodward wholly failed to transfer and convey to the said SLAUGHTER LAND & CATTLE COMPANY, a corporation which is duly organized in accordance with said contract, the said tracts of land or any thereof all said personal property excepting a small portion thereof and has ever since failed and refused to carry out said contract or to transfer and convey said property though demand has been made of the said Woodward that he perform said contract, that the 21



- 22 sole consideration of the said promissory note thereon executed by this defendant and the said Geo. M. Slaughter and W. B. Slaughter was the agreement on the part of the said Woodward to sell and convey said property as aforesaid and by reason of the failure and refusal of the said Woodward to sell, transfer or convey the said property, the consideration of said note has wholly failed.

WHEREFORE defendant prays judgment that plaintiff take nothing by this action and for costs.

23

RICHARDSON & PATTEE,

Attorneys for defendant, R. L. Slaughter.

STATE OR ARIZONA }  
COUNTY OF COCHISE } ss.

- 24 R. L. Slaughter being duly sworn deposes and says that he is one of the defendants in the foregoing entitled action and that he has read the foregoing answer and knows the contents thereof and that the matters therein stated are true to his own knowledge excepting as to matters therein stated on information and belief and as to those matters that he believes them to be true

R. L. SLAUGHTER,

Subscribed and sworn to before me this 16th day of September, 1914.

D. A. RICHARDSON,

(SEAL)

Notary Public.

My commission expires Nov. 16, 1916.



(TITLE OF COURT AND CAUSE.)

25

## REPLY.

Comes now Plaintiff in said action, and replying to the answer of defendant, R. L. Slaughter herein, demurs to said answer upon the ground that the same does not state facts sufficient to constitute defense to Plaintiff's complaint herein.

WHEREFORE, Plaintiff prays judgment as to the sufficiency of said reply.

ELLINWOOD & ROSS,

26

Attorneys for Plaintiff.

Further replying to said answer, this Plaintiff denies that defendant Geo. F. Woodward transferred or purported to transfer the note set out in the complaint herein to the Bank of Douglas or to C. O. Ellis, Cashier of said Bank; denies upon information and belief that said Bank of Douglas or the said Ellis had full, or any notice or knowledge of the circumstances under which said note was acquired or of any of the matters set forth in said answer.

27

Alleges that this plaintiff became the owner and holder of said promissory note in good faith and for value, in due course and before maturity, without any notice or knowledge of any of the matters and things set up in said defendant's answer herein, and without any notice or knowledge of any infirmity in said note, or of any defense or claim of defense thereto, or of any equities between the makers thereof and defendant Geo. F. Woodward, and without notice or



- 28 knowledge of any defect in his title thereto, either as alleged in said answer or otherwise.

Denies that said note was not assigned and transferred to this plaintiff in the due and ordinary course of business, or that it was so assigned or transferred for the purpose of collection only, either as alleged in said answer or otherwise. Denies that this plaintiff at or before the endorsement and transfer of said note to it by the said George F. Woodward, had any notice or knowledge of any of the terms or conditions of the alleged agreement set up in Paragraph 6, of said answer, or had any notice or knowledge of the consideration of said note, except as stated therein, or of any failure of such consideration either as alleged in said answer or otherwise.

- 29 This defendant is without knowledge or information as to the truth or falsity of the allegations of said answer to the effect that Geo. F. Woodward failed or refused to perform his alleged contract with said defendant R. L. Slaughter, either as alleged in said answer or otherwise, and therefore denies said allegations and asks that strict proof thereof be required.

30 Denies upon information and belief that the contract mentioned in Paragraph VI of said answer is substantially set out therein; denies upon information and belief that the sole or any part of the consideration of the promissory note herein sued upon was otherwise than, or different from, that set out in said note; denies that any failure on the part of said Woodward to perform any agree-



ment between him and the remaining defendants herein would or could constitute a failure of consideration of said note, either as alleged in said answer or otherwise; denies that such consideration or any part thereof had failed at or before the time when plaintiff became the owner and holder of said note, or has since failed, either as alleged in said answer or otherwise. 31

Denies upon information and belief, each and every, all and singular, the remaining allegations of said answer, except as hereinabove qualified or admitted. 32

WHEREFORE, Plaintiff prays judgment in accordance with the prayer of complaint herein and for costs.

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.

---

(TITLE OF COURT AND CAUSE.)

FIRST AMENDED SEPARATE ANSWER 33  
OF R. L. SLAUGHTER.

Comes now R. L. Slaughter, one of the defendants in the above entitled action and for his first amended separate answer to the complaint herein, alleges:

I.

Admits the residences of the parties as alleged in said complaint, except that this defendant is a resident of the City of Douglas, County of Cochise and State of Arizona.



84

## II.

Admits that on or about the 9th day of April, A. D., 1913 that this defendant and the defendants W. B. Slaughter and Geo. M. Slaughter, made and executed a promissory note for the sum of Twenty-seven Thousand One Hundred Eighty-seven and 50-100 Dollars (\$27,187.50), payable to the order of the defendant, Geo. F. Woodward, and that this defendant believes the instrument set forth in said complaint to be a true copy of said note.

35

## III.

Denies on information and belief that on or about the 9th day of April, 1913, or at any other date, the defendant Geo. F. Woodward, for value endorsed or delivered the promissory note to the plaintiff and avers on information and belief that if the said note was at any time endorsed or transferred said promissory note to the plaintiff, the plaintiff took the same with full notice and knowledge of the purpose for which same was given and the consideration thereof and of all the circumstances under which said note was made.

36

## IV.

Admits that said note was presented for payment and was not paid and was thereafter protested, but alleges that this defendant has no knowledge respecting the amount, if any, paid for notary fees on account of such proceedings.

## V.

This defendant denies on information and belief that ten per cent (10 per cent) of



the total amount due on said note is a reasonable attorneys fee and avers that he has no knowledge as to what sum would be a reasonable attorneys fee in this action. 37

## VI.

Further answering this defendant avers that on or about the 9th day of April, 1913, this defendant and the defendants Geo. M. Slaughter and W. B. Slaughter made and entered into a certain contract in writing with the defendant Geo. F. Woodward by the terms of which the said Woodward agreed to sell and convey to the Slaughter Land & Cattle Company, a corporation to be thereafter organized by the defendant in this action, certain large tracts of land in the Republic of Mexico and certain cattle and horses and other personal property in consideration of certain sums of money to be paid to the said Woodward, certain of said payments to be evidenced by promissory notes. 38

That pursuant to said contract this defendant and his co-defendants, Geo. M. Slaughter and W. B. Slaughter, did sign and deliver to the said Woodward certain promissory notes, one of which is the promissory note set forth in said complaint; that the said Woodward wholly failed to transfer and convey unto the said Slaughter Land & Cattle Company, a corporation which is duly organized in accordance with the said contract, the said tracts of land or any thereof and said personal property, excepting a small portion thereof and has ever since failed and refused to carry out the said contract or to 39



40 transfer and convey said property, though  
demand has been made of the said Wood-  
ward that he perform said contract; that the  
consideration of said promissory note, when  
executed by this defendant and the said Geo.  
M. Slaughter and W. B. Slaughter, was the  
agreement on the part of the said Woodward  
to sell and transfer said property as afore-  
said and by reason of the failure or refusal  
of said Woodward to sell, transfer or convey  
the said property, the consideration of said  
note has wholly failed, all of which said facts  
41 the plaintiff herein was advised before his  
alleged purchase of said note.

WHEREFORE, defendant prays judg-  
ment that Plaintiff take nothing by this ac-  
tion and for costs.

RICHARDSON & PATTEE,

Attorneys for Defendant, R. L. Slaughter.

STATE OF ARIZONA, }  
COUNTY OF COCHISE. } ss.

42

R. L. SLAUGHTER, being duly sworn  
deposes and says; that he is one of the de-  
fendants in the foregoing entitled action  
and that he has read the foregoing answer  
and knows the contents thereof and that the  
matters herein stated are true to his own  
knowledge, excepting as to matters therein  
stated on information and belief and as to  
these, he believes it to be true and that the  
same are true in substance and in fact.

R. L. SLAUGHTER.



Subscribed and sworn to before me this 48  
11th day of February, A. D., 1915.

D. A. CHAPSON,

(SEAL)

Notary Public.

My commission expires Nov. 16, 1916.

---

(TITLE OF COURT AND CAUSE.)

AMENDED REPLY.

44

Comes now plaintiff in said action, and by way of amended reply to the answer of defendant R. L. Slaughter:

1. Specially demurs to the following portions of said answer, to-wit:

(a) The following language in paragraph III thereof; "And said Bank of Douglas and the said Ellis had full notice and knowledge of the circumstances under which said note was acquired and that (of) the several matters herein set forth."

45

(b) All of the allegations of paragraph VI of said answer.

For the reason that it appears from the complaint herein that this action is based upon a negotiable promissory note and that the allegations of said answer hereinabove mentioned do not state facts sufficient to constitute a defense to such an action, and are wholly irrelevant as a defense herein.

2. Demurs to said answer upon the ground that the same does not state facts



46 sufficient to constitute a defense to plaintiff's complaint herein.

WHEREFORE<sup>th</sup> Plaintiff prays judgment as to the sufficiency of said reply.

ELLINWOOD & ROSS

.....  
Attorneys for Plaintiff.

47 Further replying to said answer, this Plaintiff denies that defendant George F. Woodward transferred or purported to transfer the note set out in the complaint herein to the Bank of Douglas or to C. O. Ellis, Cashier of said Bank; denies upon information and belief that said Bank of Douglas or the said Ellis had full, or any notice or knowledge of the circumstances under which said note was acquired or of any of the matters set forth in said answer.

48 Alleges that this plaintiff became the owner and holder of said promissory note in good faith and for value, in due course and before maturity, without any notice or knowledge of any of the matters and things set up in said defendant's answer herein, and without any notice or knowledge of any infirmity in said note, or of any defense or claim of defense thereto, or of any equities between the makers thereof and defendant George F. Woodward, and without notice or knowledge of any defect in his title thereto, either as alleged in said answer or otherwise.

Denies that said note was not assigned and transferred to this plaintiff in the due and ordinary course of business, or that it



was so assigned or transferred for the purpose of collection only, either as alleged in said answer or otherwise. Denies that this plaintiff at or before ~~the~~ <sup>the</sup> ~~transfer~~ <sup>tender</sup> ~~ment~~ <sup>ment</sup> and transfer of said note to it by the said George F. Woodward, had any notice or knowledge of any of the terms or conditions of the alleged agreement set up in paragraph VI of said answer, or had any notice or knowledge of the consideration of said note, except as stated therein, or of any failure of such consideration either as alleged in said answer or otherwise. 49

This defendant is without knowledge or information as to the truth or falsity of the allegations of said answer to the effect that George F. Woodward failed or refused to perform his alleged contract with said defendant R. L. Slaughter, either as alleged in said answer or otherwise, and therefore denies said allegations and asks that strict proof thereof be required. 50

Denies upon information and belief that that contract mentioned in paragraph VI of said answer is substantially set out therein; denies upon information and belief that the sole or any part of the consideration of the promissory note herein sued upon was otherwise than, or different from, that set out in said note; denies that any failure on the part of said Woodward to perform any agreement between him and the remaining defendants herein would or could constitute a failure of consideration of said note, either as alleged in said answer or otherwise; denies that such consideration or any part thereof had failed at or before the time when 51



52 plaintiff became the owner and holder of said Note, or has since failed, either as alleged in said answer or otherwise.

Alleged upon information and belief, that Slaughter Land & Cattle Company, the corporation mentioned in said answer, has accepted from defendant George F. Woodward, part performance of the contract between said Woodward and defendant, W. B., George M., and R. L. Slaughter, mentioned in the answer herein, and has acquiesced in such part performance and has not objected thereto, and has not brought any action  
53 against the said Woodward for the specific performance of said contract, or for any breach thereof, but on the contrary, has received from said Woodward under said contract, large numbers of cattle and a large amount of personal property, and has sold and disposed of large numbers of such cattle and received on account thereof approximately Fifty Thousand Dollars (\$50,000) as plaintiff is informed and believes, which amount said Company has at all times since retained, and does now retain; that by reason  
54 of the facts aforesaid, the defendant, R. L. Slaughter is without right or capacity to rescind said contract or to complain of non-performance thereof by the said Woodward or to assert any want or failure of consideration for the promissory note set out in the complaint herein.

Plaintiff alleges upon information and belief that in consideration of the execution and delivery of the promissory note set out in the complaint, and of other like notes as provided in the contract mentioned in said



answer, defendant R. L. Slaughter and each 55  
 of the other defendants herein received and  
 had issued to him one-quarter (1-4) of the  
 capital stock of said Slaughter Land & Cat-  
 tle Company, which stock each of them or  
 his assigns still retains; that by reason of the  
 facts aforesaid, defendant R. L. Slaughter  
 has received from Slaughter Land & Cattle  
 Company, and still retains the full consider-  
 ation for which he signed and delivered the  
 promissory note herein sued upon.

Denies upon information and belief, each 56  
 and every, all and singular, the remaining al-  
 legations of said answer, except as herein-  
 above qualified or admitted.

WHEREFORE, Plaintiff prays judg-  
 ment in accordance with the prayer of com-  
 plaint herein and for costs.

ELLINWOOD & ROSS,  
 Attorneys for Plaintiff.

(TITLE OF COURT AND CAUSE.) 57

#### MOTION TO STRIKE.

Comes now the above named plaintiff,  
 and moves the court to strike from the separ-  
 ate answer of R. L. Slaughter, the following  
 allegations contained therein, to-wit;

1. The following allegation contained in  
 Paragraph 3 of said answer, "And avers on  
 information and belief that said defendant,  
 Geo. F. Woodward transferred or purported  
 to transfer the said note to the Bank of



58 Douglas, a corporation, or to one C. O. Ellis, cash or thereof, and that said Bank of Douglas and the said C. O. Ellis had full notice and knowledge of the circumstances under which the said note was acquired, and that the several matters herein set forth, and that if the said note was ever assigned or transferred to the said plaintiff, the same was so assigned and transferred by the said Bank of Douglas or the said Ellis, and not in due or ordinary course of business but for the purpose of collection only."

59 2. All of the allegations contained in Paragraph 6 of said answer.

In support of the said motion, plaintiff shows to the court that the above entitled action is brought for the collection of a negotiable promissory note, and that the above mentioned allegations contained in said answer are wholly irrelevant, and that no evidence in support would be admissible in this action.

60 This motion is based upon the complaint in said action, and the separate answer of defendant R. L. Slaughter filed therein.

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.

---

(TITLE OF COURT AND CAUSE.)

SPECIFICATION OF POINTS ON PLAINTIFF'S DEMURRER AND MOTION TO STRIKE.

1. The complaint is based upon a negoti-



able promissory note of which plaintiff is a holder in due course. 61

2. The defense of failure of consideration of such an instrument is not available against a holder in due course.

3. Defendant's answer shows that under the contract alleged therein, the Slaughterers were required to give Woodward negotiable paper.

4. The answer is insufficient because it does not allege that Woodward had breached his contract when plaintiff became the holder of the note sued upon, or that the consideration had then failed in whole or in part, or that plaintiff then had notice of such breach or failure of consideration. 62

5. The answer is insufficient because it does not appear therefrom that the contract therein alleged in any respect qualified or conditioned the promise to pay contained in the note sued upon.

6. It appears from the answer that Slaughter Land & Cattle Company, for whose benefit the alleged contract was made has accepted part performance thereof by Woodward, and that defendant R. L. Slaughter is without right or capacity to plead failure of consideration for said contract, the same having been made for the benefit of said company, and having been accepted and ratified by it. 63

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.



64 (TITLE OF COURT AND CAUSE.)

STIPULATION.

It is hereby stipulated between said plaintiff and defendant, R. L. Slaughter, that the order of the court heretofore made in said cause setting the hearing of law points for January 16, 1915, shall be vacated, and said hearing continued to and until January 30th, 1915, and that said cause may be set down for trial before the court on February 3rd, 1915.

65 Dated January 14th, 1915.

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.

RICHARDSON & WHITE,  
Attorneys for Defendant R. L. Slaughter.

---

(TITLE OF COURT AND CAUSE.)

STIPULATION.

66

The above named plaintiff and defendant R. L. Slaughter hereby stipulate that upon the filing hereof, the court shall enter an order vacating the orders heretofore made, setting the law points in said cause for hearing January 30, 1915, and the trial of said cause for February 4, 1915, and that the law questions shall thereupon be set down for hearing on February 3rd, 1915; that upon the announcement of the court's decision upon the law questions, said cause shall be set down for trial before the court upon the



merits upon the earliest date convenient to the court and to plaintiff herein. 67.

Dated January 28, 1915.

ELLINWOOD & ROSS,  
Attorneys for Plaintiff.

RICHARDSON & WHITE,  
Attorneys for Defendant R. L. Slaughter.

---

(THE BANK OF BISBEE Case.)

(TITLE OF COURT AND CAUSE.) 68

ABSTRACT OF REPORTER'S  
TRANSCRIPT.

M. J. CUNNINGHAM, being called as a witness for plaintiff, testified as follows:

I am the cashier of the Bank of Bisbee, plaintiff of this action. I have in my possession a certain promissory note executed by Messrs. Slaughter to Geo. F. Woodward or order and set out in the complaint in this action. The Bank of Bisbee is the present owner and holder of that note. 69

MR. ROSS: It will be admitted that this is Geo. F. Woodward's genuine endorsement.

MR. RICHARDSON: Yes, sir.

Mr. ROSS: We offer this note in evidence, and ask permission to substitute a copy.

MR. RICHARDSON:

The defendant R. L. Slaughter objects on the following grounds: First,



- 70 that the notation 'for payment under contract of even date' is sufficient to put purchaser of this note on inquiry that would lead to notice of the contents of the contract. Second, that the contract referred to and the note were made at one and the same time, and are parts of the same transaction and contract. Third, that the note, under the contract, would not be payable until the performance of the contract. Fourth, that under the contract, the note is not due and payable.
- 71 Fifth, that the purchaser knew of the contents of the contract, and the circumstances surrounding the execution of the note at the time it was made."

(Objection overruled.)

MR. RICHARDSON: We have no objection to it being withdrawn. Said note was thereupon admitted in evidence as plaintiffs' exhibit "A." A photographic copy of the front and back of said note is as follows:



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Exhibit "A."

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- 76 WITNESS CONTINUING: I have calculated the amount of principal and interest due on that note, the total amount is Thirty Thousand Two Hundred and Seventy Dollars and Ninety Cents (\$30,270.90), made up of principal Twenty Seven Thousand One Hundred Eighty Seven Dollars and Fifty Cents, Five Dollars protest fees and the balance is interest. When the Bank of Bisbee bought that note, it paid the face value of it in cash. No part of the note has been paid, principal or interest. I could not tell the date when the Bank acquired this note without  
77 looking at the record. I don't remember the date that we purchased it. It was some time four or five days after April 9th, the date of the note. It was during the month of April.

(WITNESS EXCUSED.)

C. O. ELLIS, being called as a witness on behalf of plaintiff, testified as follows:

- I know the date when this note which has just been introduced in evidence, was acquired by the Bank of Bisbee. It was on  
78 April 15, 1913. I handled the transaction.

(WITNESS EXCUSED.)

MR. ROSS: We will then offer the testimony given by Mr. Ellinwood on the subject of fees.

THE COURT: I understand that it has already been stipulated that that goes in.

MR. RICHARDSON: All that applies.

THE COURT: Do you intend to offer any further evidence?



MR. ROSS: No, sir. Only that that is already in in the other case.

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MR. RICHARDSON: The testimony offered by the defense is now offered with the same objections and same rulings.

The testimony offered in the case of John Slaughter vs. George F. Woodward, et al, No. 854, by agreement of the parties in open court during the hearing of that cause is now used and offered in this case, which agreement made in open court is as follows, to-wit:

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THE COURT: I suppose the evidence in the other case will be just the same, except that part referring to John H. Slaughter?

MR. ELLINWOOD: Will you stipulate that the same evidence go in in the other case?

MR. RICHARDSON: Except the John H. Slaughter part. He didn't talk with the cashier of the Bank of Bisbee. I think everything would be relevant except the conversation with John H. Slaughter.

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MR. ELLINWOOD: It might not be relevant, but it would not hurt anything.

MR. ROSS: We understand that the entire transcript of this case will be considered in in the Bank of Bisbee case?

THE COURT: Very well.

MR. RICHARDSON: That is agreed to.

THE COURT: It is stipulated that the evidence in this case may be considered as presented, subject to the same objections and