

keeper who opened the store, and if he got this message at all it was not when nor under the circumstances he testifies to. Plaintiff and Cohen further say that a condition of the order was immediate delivery and the terms C. O. D. But plaintiff goes further and says he did deliver the stove about 9 A.M., and that when he took out this stove from defendant's warehouse, he took out three other stoves at the same time, and on his way to Cohen's with the stove in question, left the other three stoves at defendant's shop (defendant's storage premises were on Mance street, his shop on St. Lawrence Boulevard). This part is manifestly false, and was so held by the Court below, because one of the *considérants* of the judgment is that the sale and delivery were made in the afternoon. The Court evidently took plaintiff's story that he left the three stoves at defendant's shop before he delivered the one to Cohen and it is reliably proved by the defence that the three stoves were not delivered in defendant's shop till about 2.30 P.M. This is not an insignificant fact, but a most important one, and in my opinion, destroys the evidence and good faith of plaintiff, his wife and his relative Lichovitz, who is supposed to have received and signed for the stove in the morning. Plaintiff's bad faith is further shown by his statement that when he left the store early in the morning in order to deliver the stove to Cohen, he left a 14 years old boy, a son of the defendant's partner Nutkin, in charge of the store in his absence. The fact is this boy was a high school scholar, and was attending school, and only came to defendant's store about 6 P. M., when called there to mind the place when defendant and his bookkeeper went out to go to Cohen's to investigate in the evening.

Another peculiar fact about the transaction is that al-