

# New Jersey Court of Errors and Appeals.

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MECHANICS' BANK,  
Defendant in Error,  
Plaintiff Below,

vs.

ANNIE N. CHARDAVOYNE,  
Plaintiff in Error,  
Defendant Below.

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On Error to  
Supreme  
Court.

## Points for Defendant in Error.

This cause was referred by the Justice of the Supreme Court holding the Essex Circuit to his Honor, Judge Swayze for trial. By consent the cause was tried before Judge Swayze without a jury. The findings of fact and law appear in the decision, which is as follows:

The Court (SWAYZE, J.):

I. This is an action against William S. Chardavoyne and Annie N., his wife, upon a promissory note made by William to the order of Annie, and indorsed by her. The note is dated in Newark, July 28, 1899, and is payable at the Mechanics' Bank, Brooklyn, New York. I find the facts to be as follows:

Mrs. Chardavoyne, ten days or two weeks before July 28, 1899, intrusted her husband with a blank form of note, indorsed by her, to be filled up by her husband, and to be used at the German National Bank of Newark to

obtain a loan for Mrs. Chardavoyne. The German Bank refused to discount the note, and this refusal was reported the same day to Mrs. Chardavoyne, who paid no further attention to the matter and never authorized her husband to use the note for any other purpose. On July 28, 1899, the day the note bears date, Mr. Chardavoyne was at the Mechanics' Bank in Brooklyn, where this note was filled up by the president of the bank for the amount of money then due from Mr. Chardavoyne to the bank. The president of the bank says he thinks that at the time he filled up the note, it was not indorsed by Mrs. Chardavoyne, and that Mr. Chardavoyne offered to give Mrs. Chardavoyne's indorsement, which offer he accepted for the bank. He further says that he thinks that the note was not left with him by Mr. Chardavoyne at the time. The note was discounted on July 29th. I find that Mr. White, the president of the bank, did not know that Mrs. Chardavoyne had indorsed this paper in blank, and that he took the note in the regular course of business, in good faith, without any notice of any infirmity, and in payment of an indebtedness then due to the bank. The whole transaction took place in the Mechanics' Bank of Brooklyn, and the note is payable there.

The case, as far as concerns the effect of an indorsement by a married woman, is governed by the recent decision of the Court of Errors in the case of *Thompson v. Taylor*, 37 Vroom, 253. Counsel agreed that I might take the New York law from the printed statute books and reports, and I find that

the New York law makes valid a contract of this kind by a married woman. Judgment must be given for the plaintiff, unless Mrs. Chardavoigne has established some other defence than that of coverture. —

One ground of defence is that at the time this note was negotiated her husband was insane, and therefore had no longer any authority to act as her agent in filling up the blanks in this paper or in negotiating the same. The only proof of his insanity is an inquisition had in lunacy proceedings in the Court of Chancery. The proceedings were begun by petition filed August 3, 1899. The inquisition was had December 18, 1899, and the finding was that Mr. Chardavoigne had been of unsound mind for six months before that time, thus overreaching the date of this note and extending the period of Mr. Chardavoigne's incompetency back to the month of June. Mrs. Chardavoigne put her name upon the blank piece of paper, she says, "all of two weeks, perhaps ten days," before July 28th; and Gilbert Chardavoigne, her husband's father, accompanied the husband to the German Bank for the purpose of having the note discounted. She testifies, also, that she had to raise money after that date by mortgage upon real estate, which must be presumed to have been signed by her husband. She says her husband was miserable before the 28th of July. No physicians were called to testify as to his condition, nor was there any evidence except such as may arise from the finding of the jury on the inquisition in December, and the testimony of Mrs. Chardavoigne and her

father-in-law. The inquisition is only *prima facie* evidence of insanity. (Den v. Clark, 5 Halst., 217; Yauger v. Skinner, 1 McCarter, 389; Hunt v. Hunt, 2 Beasley, 161; Hill v. Day, 7 Stew., 150; Mott v. Mott, 4 Dick., 192. The inquisition having been had in December, must necessarily as against a third party be of little probative force as to Mr. Chardavoyne's condition in July; and in this case the finding of the inquisition is at variance with the conduct of Mrs. Chardavoyne herself and of her father-in-law, who was the applicant in the lunacy proceedings. Mrs. Chardavoyne, two weeks before the 28th of July, at a time when, according to the finding of the inquisition, her husband was of unsound mind, had intrusted him with this paper, indorsed in blank, for the purpose of securing money at the German Bank, and the father-in-law had accompanied him to the bank and had offered to indorse his note, without intimating that he was insane. Mrs. Chardavoyne gave a mortgage on her real estate, which the husband must be presumed to have signed, about the same time. The president of the bank, a business man of long experience, dealt with Mr. Chardavoyne evidently without suspecting that he was insane, and the bank surrendered its former securities and extended time to Mr. Chardavoyne in exchange for this note. These facts, and the failure to call the physicians to testify to the man's insanity, and Mrs. Chardavoyne's own testimony on the subject, are sufficient, in my judgment, to overcome the *prima facie* case which would otherwise be made by the finding of the inquisition, and I am unwilling

merely upon the strength of the inquisition to find that Mr. Chardavoyné was insane at the time of the negotiation of this paper.

Even if Mr. Chardavoyné was insane at the time the note was negotiated, in the absence of proof that that insanity was known to the bank or its officers, Mrs. Chardavoyné must be held by the ordinary contract of an indorser to have warranted the capacity of the maker of the note.

Edmunds v. Rose, 22 Vroom, 547.

It is urged, however, in opposition to this view that his agency to fill up and negotiate the note was revoked by his insanity. As against an innocent third party, I think Mrs. Chardavoyné, having intrusted this paper to her husband, with the intent that it should be filled up and negotiated as a note, and having left it in his possession after the German Bank had refused to discount it, is estopped to set up that he was not her agent or that the agency had been revoked. But it is proper to ask whether, under all circumstances, the insanity of the agent operates as a revocation of the agency. The text writers so state. Evans on Agency, 115, 116; Story on Agency, sec. 487. No cases are cited; cases are not likely to arise where a contract would be made with an agent who is obviously incompetent. Contracts with agents apparently competent, even though in fact *non compos*, may arise. Under the doctrine formerly held by the English courts, that contracts with a lunatic were void, contracts with an agent who was *non compos* would also be void. The modern

doctrine is that contracts with a lunatic are not necessarily void.

The law on this subject is discussed in the opinion of the Court of Errors in *Matthiessen & Wiechers Refining Company v. McMahon's Admrs.*, 9 Vroom., 536. The trial judge had instructed the jury that the contracts of lunatics and insane persons were invalid and not binding, *with a qualification* that if Matthiessen, acting as the agent of the company, dealing with McMahon or his agent *in the ordinary course of business, in good faith, without any knowledge of the insanity or mental disturbance of McMahon, and without the knowledge of such circumstances as would put a reasonably prudent man upon inquiry, made a bargain in good faith, then that would be a good bargain and neither McMahon nor his representatives could set up the insanity against it.* This instruction was approved by the Court of Errors. It is manifestly proper, as it protects a person dealing in good faith, without notice of the insanity, and making a fair bargain. While the case there referred to was a case of insanity of the principal, I see no reason why a different rule should be applied in a case of insanity of the agent, assuming it to be likewise unknown and undiscoverable to the other party to the contract.

Another ground of defence is that the only authority given by Mrs. Chardavoyne to her husband was to use this note for discount at the German Bank to procure a loan for herself, and it is urged that because he

misappropriated the note to his own purposes, she cannot now be held. The paper was indorsed by her with the intention that it should be used as a note by her husband to procure money. She cannot, under the circumstances of this case, charge an innocent third party with [notice that the only authority of her husband was to procure money for herself. The case is governed by the principle of *Duncan v. Gilbert*, 5 Dutch, 521; *Rogers v. Siple*, 6 Vroom, 86, and *Jackson v. First Natl. Bank*, 13 Vroom, 177. These cases were, it is true, cases of accommodation indorsements, and the present case is a case of misappropriation by an agent, but the same rule, I think, is applicable. *Camden Safe Deposit Co. v. Abbott*, 15 Vroom, 257; *Reed v. Abbott*, 16 id. 303. The case differs from a case like *Dowden v. Cryder*, 26 Vroom, 329. In that case the circumstances were such as to charge the plaintiff with notice of the agency. Here there was nothing in the case to charge the bank with notice of the agency. Mrs. Chardavoigne was, to all appearances, in the position of an accommodation indorser, and her contract as such by the laws of the State of New York was valid.

Nor can it be said that Mrs. Chardavoigne intended the note to be used in New Jersey only, where her contract of indorsement would be invalid, and that she is not bound because she never authorized it to be used in a jurisdiction in which it would be valid. I think she must be held to have intended to enter into a valid contract. She certainly intended to pledge her credit for the loan in-

tended to be secured upon this note, and she ought not to be allowed to set up that she intended to deceive anybody into loaning money on her credit in such a way that she could not be held liable for its payment.

I find in favor of the plaintiff, and that the defendants promised in manner and form as the plaintiff in its declaration complains; and I assess the damages at \$1,114.52, being the principal of the note and protest fees, besides interest from July 28, 1899, which must be added. This interest can be calculated by counsel.

NOTE.—Italics by the Court.

II.—The right to avoid a contract on the ground of insanity can only be exercised by the insane person, his guardian or representative.

Carrier v. Sears, 86 Mass. (4 Allen), 336.

III.—Where one of two innocent persons must lose in consequence of the unauthorized act or fraud of a third, he must bear the loss who caused the credit to be given which produced the loss.

Halstead v. Calvin, 6 Dick., 387.

It is respectfully submitted that the judgment should be affirmed.

ALBERT C. WALL,  
Of Counsel with Defendant in Error.

## New Jersey Court of Errors and Appeals.

ANNIE N. CHARDAVOYNE, Plaintiff in Error,	} In Error to New Jersey Supreme Court.	10
vs.		
MECHANICS BANK, Defendant in Error.	} Essex Circuit.	

### Brief of Plaintiff in Error.

This was an action brought against William S. Charda- 20  
voyne and Annie N. Chardavoyme, the plaintiff in error,  
by the Mechanics Bank, upon a promissory note, dated  
July twenty-eighth, eighteen hundred and ninety-nine,  
and made by William S. Chardavoyme, to the order of  
Annie N. Chardavoyme, payable at the Mechanics Bank,  
Brooklyn, New York, which note was endorsed in blank  
by Annie N. Chardavoyme ten days or two weeks before  
the twenty-eighth day of July, eighteen hundred and  
ninety-nine, and given by her to William S. Charda-  
voyme, her husband, to be filled in and signed by him, in 30  
case the German National Bank of Newark, N. J., at  
which bank the plaintiff in error kept her account, would  
discount the note, the proceeds thereof to be credited to  
her account with the bank. The German National Bank  
refused to discount the note, and this was reported to the  
plaintiff in error, who supposed the blank form to be of  
no further value and never authorized its use for any  
other purpose. On July the twenty-eighth, eighteen  
hundred and ninety-nine, Mr. Chardavoyme, whose account  
with the defendant in error was overdrawn, appeared at 40

the Mechanics Bank and offered the note in question, in its blank form and the same was filled in by the President of the defendant in error and signed by William S. Chardavoine and placed to his credit the next day. The plaintiff in error know nothing of this transaction until after the note became due and she received a letter from the bank, asking her to make payment of the note.

10 On the day of the date of this note, Gilbert Chardavoine the father of William S. Chardavoine, with the knowledge and consent of the plaintiff in error, signed a petition and made an affidavit to commence proceedings in the Court of Chancery of this State to have William S. Chardavoine, adjudged a lunatic, and on the eighteenth day of December, eighteen hundred and ninety-nine, a final decree was entered on an inquisition adjudging him a lunatic, unable to care for himself or to manage his property or affairs, and to have been in that condition for a period of six months and upwards then next preceding, thus reaching a period antecedent to the date of the note. The Court found that as the plaintiff in error had placed a mortgage on her property at about this time and had entrusted to the care of her husband this note, she had treated with her husband in a manner not consistent with the finding of the inquisition in the lunacy proceedings.

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On these facts the trial Judge, sitting as a Judge and Jury, found that the prima facie case made by the inquisition and order appointing a guardian thereon were overcome, and that as the bank took the note as an innocent third party, judgment should be against the plaintiff in error and in favor of the defendant in error.

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First: It is submitted that while on July the fourteenth up to the eighteenth, during which period the plaintiff in error gave the note in question to her husband, and when the mortgage noted by the Trial Judge was made, the plaintiff in error may have treated William S. Chardavoine as sane, yet the fact that proceedings were instituted on July twenty-eighth, eighteen hundred and ninety-nine, by Gilbert Chardavoine and

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Dr. Walter S. Washington, making affidavits as to said William S. Chardavoyné's condition, and on the third of August, eighteen hundred and ninety-nine, a petition being filed in lunacy proceedings, shows that at that time she considered him in no condition to manage his affairs.

And whether she so treated him or not on that date, the fact that on the eighteenth day of December, eighteen hundred and ninety-nine, the inquisition was had, which found that William S. Chardavoyné had been of unsound mind for six months next preceding, on which 10 proceedings the letters of guardianship were issued, not only made a prima facie case but was conclusive on the defendant in error.

Hughes vs. Jones, L. R. A., Vol. 5, pp. 632-635.

1 Greenl. on evidence, Sec. 556.

Den. vs. Clark, 5 Hals., 217.

Yonger vs. Skinner, 14 N. J. Eq., 389-394.

Warren vs. Hall, 9 Ves., Jr., 609.

Am. & Eng. Ency. Law (2 Ed.), Vol. 16, 606. 20

Second: William S. Chardavoyné having been adjudged to have been a lunatic on July the twenty-eighth, eighteen hundred and ninety-nine, any contract made by him on that date would be presumed to be void, until capacity to contract is shown.

Warren vs. Hall, 9 Ves., Jr., 609.

Hughes vs. Jones, *Supra*.

Van Dusen vs. Sweet, 51 N. Y., 378.

Banker vs. Banker, 63 N. Y., 409. 30

Third: Until contradicted an inquisition of lunacy binds all the world, whether parties to the inquisition or not.

Hughes v. Jones, *Supra*, 1 Greenl. on Evid, Sec. 556.

Den. vs. Clark, 5 Halst., 217, Am. & Eng. Ency. of Law (Sec. Ed.), Vol. 16, p. 606. 40

Fourth : That no capacity to contract was shown. The mere fact that the plaintiff in error dealt with him, two weeks preceding the date of the note, as a sane man, is no proof of his sanity at the date of the note.

Fifth : General lunacy being established, the burden of showing capacity to contract is on the plaintiff, which capacity the plaintiff failed to prove.

The trial Judge holds that contracts of lunatics are voidable only, but not void. Who is the party to take  
10 advantage of this defect? Is the party with whom the lunatic dealt to be allowed to say whether the contract is void or voidable, or is the lunatic and those who stand in his place to be allowed this choice? We submit that the right belongs to the lunatic and those who stand in his place only.

If Mrs. Chardavoyne is to be held as an accommodation endorser only, and if one who endorses a note for the accommodation of another becomes merely a surety, then any defense available to the maker is also available to the  
20 endorser when the note is sued on and therefore the defense of insanity and the voidability of the note may be taken advantage of as well by the plaintiff in error as by William S. Chardavoyne, the lunatic.

Gunis vs. Wigley, 15 Cent. Rep., 729.

Noll. vs. Oberhellman, 2 Western Rep., 616;  
20 Mo. Appeals, 336.

Sixth : One who endorses a note for the accommodation  
30 of another makes the maker of the note the agent of the endorser.

Randolph on Commercial Paper, Vol. 1, Sec. 181. A lunatic cannot be an agent.

Am. and Eng. Enc. of Law, (Sec. Ed.) Vol. 1, 945.

Story on Agency, 9 Ed. Sec. 7..

Seventh : The plaintiff in error further submits that if  
40 insanity cannot be used as a general defense it can always

be set up where parties can be placed in statu quo. In this case the defendant in error gave up no rights when this note was taken, except the right to immediately commence suit against William S. Chardavoyné and there is no evidence that it was in any way prejudiced by this postponement. It is therefore now in an equally good position with respect to William S. Chardavoyné, as if the note had not been given, and consequently the plaintiff in error may take advantage of the defense of insanity.

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Eighth: Under the doctrine as established by the Courts of this State the plaintiff can recover only the amount of money which he has actually advanced on the strength of an endorsement. The bank advanced no money or thing representing money. It merely extended the time of payment, and by reason of the taking of the note has lost nothing but the costs of this action; it must therefore be limited in its recovery, as against the plaintiff in error, to the costs of suit in the Trial Court.

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Campbell vs. Nichols, 4 Vr., 81.  
Camden and Atlantic R. R. vs. Mays Landing,  
48 N. J. L., 587.  
Phillipsburg vs. Fullmer, 2 Vr., 52-55.

Ninth: As the bank lost nothing the doctrine of estoppel in pais does not apply and the defendant, Annie N. Chardavoyné, can deny that William S. Chardavoyné was her agent.

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Tenth: The Trial Judge held that it cannot be said by the plaintiff in error that she "intended the note to be used only in New Jersey, where her contract of endorsement would be invalid, and that she is not bound because she never authorized it to be used in a jurisdiction in which it would be valid."

The plaintiff in error does contend that she intended the note to be used only in New Jersey and only under the circumstances stated at the beginning of this brief, viz. to secure money for her own account to be placed to

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her credit at the German National Bank, in which case under the laws of New Jersey she would have been held, although an accommodation endorser.

She intended to pledge her credit only for that purpose and with no intent to deceive anyone and under circumstances by which no one could have been defrauded.

The plaintiff in error therefore respectfully submits that for the reasons aforesaid the trial Judge erred in finding for the defendant in error and against the plaintiff, and asks that the judgment be reversed.

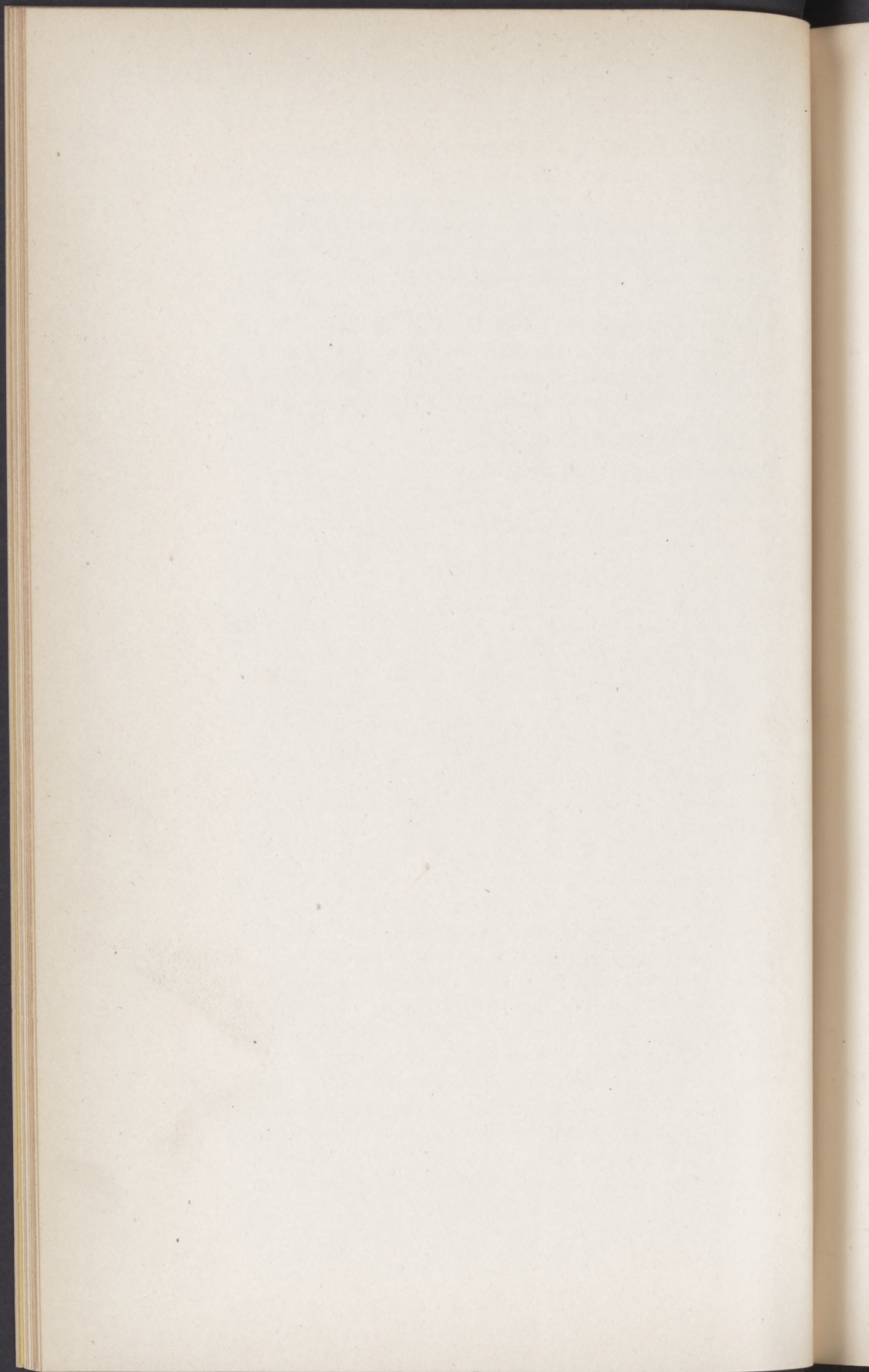
LAMBERT & STEWART,  
Attorneys of Plaintiff in Error.

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DECLARATION.

Filed May 14, 1900.

New Jersey Supreme Court, of the twenty-eighth day of  
May, in the year of our Lord Nineteen Hundred.  
Hudson County, ss.: 10

William S. Chardavoyne and Annie N. Chardavoyne, the defendants in this suit, were summoned to answer unto Mechanics Bank, the plaintiff therein, in an action upon contract, and thereupon the said plaintiff by Vredenburg & Garretson, its attorneys, complains for that whereas the said defendants heretofore, to wit: on the twelfth day of May, in the year of our Lord, 1900, at Newark, to wit: in the County of Hudson aforesaid, were indebted to the plaintiff in \$2,000, for the price and value of goods sold and delivered by the plaintiff to the defendants at their request, and in a like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendants at their request, and in a like sum of money for the price and value of work done and materials for the same provided by the plaintiff for the defendants at their request, and in a like sum of money for money lent by the plaintiff to the defendants at their request, and in a like sum of money for money received by the defendants for the use of the plaintiff, and in a like sum of money for money paid by the plaintiff for the use of the defendants at their request, and in a like sum of money for interest due from the defendants to the plaintiff for the plaintiff having forborne moneys due from the defendants to the plaintiff at the defendants' request for a long time then elapsed, and in a like sum of money for money found to be due from the defendants to the plaintiff on an account then and there stated between them; and the defendants afterwards, to wit: on the day and year last aforesaid, in the County aforesaid, in consideration of the premises, respectively promises to 40

pay the said several last mentioned moneys respectively to the plaintiff on request, yet the defendants disregarded their promises and have not paid any of the said moneys, or any part thereof, to the plaintiff's damage \$2,000, and thereupon it brings its suit, etc.

VREDENBURG & GARRETSON,  
Attorneys of Plaintiff.

NOTICE OF DEFENDANTS.

10 The following is a bill of particulars of the demand and copy of the protested note and certificate of protest whereupon the annexed declaration is founded.

\$1,113.16. Newark, N. J., July 28th, 1899.

Nine months after date I promise to pay to the order of Annie N. Chardavoine, Eleven hundred and thirteen and  $\frac{16}{100}$  dollars at Mechanics Bank, Brooklyn, N. Y., with interest from date.

No.—Due April 28, 1900.

20 William S. Chardavoine.

Endorsed, Annie N. Chardavoine,  
William S. Chardavoine.

PROTESTED. The following is a copy of the Notary's certificate.

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

30 On the thirteenth day of April, in the year of our Lord Nineteen Hundred, at the request of Mechanics Bank of Brooklyn, New York, I, Walter D. C. Boggs, Notary Public, in and for the State of New York, duly admitted and sworn, dwelling in the Borough of Brooklyn, in the City of New York, did protest the original promissory note which is hereto annexed, to the Paying Teller of the Mechanics Bank, at its Banking House in the Borough of Brooklyn, City of New York, and then and there demanded payment thereof, which was refused. No account. Whereupon I, the said Notary, at the  
40 request aforesaid, did protest, and by these presents do

publicly and solemnly protest, as well against the maker and endorsers of the said note, as against all others whom it doth or may concern for exchange, re-exchange, and all costs, damages and interest already incurred, and to be hereafter incurred, for want of payment of the said note.

I further certify that I have this day deposited in the Post Office notice of this protest addressed to the maker and endorsers of the above mentioned. Thus done and protested in the Borough of Brooklyn, City of New York, aforesaid, in the presence of Richard Roe, witnesses. 10

In testimonium veritatis, W. D. C. Boggs, Notary Public. Protest fees, \$1.36.

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PLEAS.

Filed June 12, 1900.

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## New Jersey Supreme Court.

HUDSON CIRCUIT.

WILLIAM S. CHARDAVOYNE and ANNIE N. CHARDAVOYNE, ads. MECHANICS BANK.	}	On Contract. Pleas. 30
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And the said defendant, Annie N. Chardavoyne, by Lambert & Stewart, her attorneys, comes and defends the wrong and injury when, etc., and says that she did not undertake or promise in the manner and form as the said plaintiff hath above thereof complained against her, and of this she puts herself upon the country.

And for further plea in this behalf the said defendant, 40

Annie N. Chardavoine, by leave of the Court, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that at the time of the execution of the said note mentioned in said plaintiff's declaration, she was and still is the wife of William S. Chardavoine, and that the said note was given for a debt then owing by her said husband and co-defendant, and that she endorsed said note in blank as an accommodation endorser of the same; and that this de-  
 10 fendant did not directly or indirectly obtain any money, property or other thing of value for her own use, or for the use, benefit, or advantage of her separate estate.

And this the said defendant is ready to verify, wherefore she prays judgment if the said plaintiff ought to have or maintain its action thereof against her.

LAMBERT & STEWART,

Attorneys of Defendant.

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BILL OF EXCEPTIONS.

Filed February 2d, 1903.

Court of Errors and Appeals of the State of New Jersey.

30	ANNIE N. CHARDAVOYNE, Plaintiff in Error, vs. MECHANICS BANK, Defendant in Error.	}	On Contract. On Error. Bill of Exceptions.
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Be it remembered, that afterwards, to wit: on the seventh day of June, nineteen hundred and two, at a Supreme Court Circuit, holden at Newark, in and for the County of Essex, before his Honor William S. Gummere, Chief Justice of the State of New Jersey, the issue joined  
 40 in the above stated cause, between the parties (pro ut the

pleadings), came on to be tried and, by the consent of the parties in open court made, the same was referred to his Honor Francis J. Swayze, a jury having been duly waived by the parties; and the plaintiff appearing by Albert C. Wall, its attorney, and the defendant, Annie N. Chardavoynne, by Lambert & Stewart, her attorneys.

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## Essex County Circuit Court.

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SATURDAY, JUNE 7, 1902.

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MECHANICS BANK,  
 vs.  
 WILLIAM S. CHARDAVOYNE,  
 and ANNIE N. CHARDAVOYNE,

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Before  
 Hon. Francis  
 J. Swayze, J.,  
 without a  
 Jury.

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For plaintiff appear Vreedenburgh, Wall & Van Winkle.  
 For defendants appear Lambert & Stewart.

Mr. Wall. I understand that it is stipulated that the incorporation of the bank, which is the plaintiff, is admitted, and that the question of the New York law not allowing any such privilege as our law is to be subject to exception afterwards, when we request your Honor to decide whatever the fact is.

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The Court. Counsel agree that I should take the New York law on an examination of the New York statute?

Mr. Lambert. Yes, sir.

GEORGE W. WHITE, sworn in behalf of plaintiff.  
 Direct examination by Mr. Wall.

Q Mr. White, you are connected with the Mechanics Bank, the plaintiff in this suit? A Yes, sir.

Q In what capacity? A President.

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*Q* Do you know William S. Chardavoyne? *A* Yes, sir.

*Q* Have you the promissory note which is the subject of this suit? *A* Yes, sir (producing paper).

*Q* This is it? *A* Yes, sir.

Plaintiff's counsel offer in evidence the paper produced by witness.

10 *Mr. Lambert.* I object to the offer at the present time.

*The Court.* You had better prove the signatures first.

*Q* When did you first see that note, Mr. White?  
*A* I think on the 28th of July, 1899.

20 *Q* And what were the circumstances? *A* Mr. Chardavoyne owed us some money on a thousand dollar check of his which we had received on the Newark bank, and was returned to us not good, protested, and also for a balance of his account, which was overdrawn, and some interest, which made up the amount due, \$1,113.16.

*Q* Did Mr. Chardavoyne sign that note in your presence? *A* Well, I don't know whether he signed it; he gave it to me, I am sure; I don't know whether he signed it.

*Q* Was it signed when you first saw it? *A* I filled up the note, and he must have signed it afterwards.

*Q* You filled up the body of the note? *A* Yes.

30 *Q* Then the body of the note is in your handwriting?  
*A* Yes, sir.

*Mr. Wall.* I presume that that is admitted, anyway—that the signature of Mr. Chardavoyne as maker is admitted?

*Mr. Lambert.* Yes, we admit his signature.

*Q* Did you have any conversation with Mr. Chardavoyne as to the procuring of any indorser on the note?

Objected to.

40 *The Court.* I will receive it. It cannot

bind the indorser in any way, but the circumstances under which the note was taken, I think, may be shown. I will allow it.

Defendants' counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed and it is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court.

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(Question read.)

A He offered to give us his wife's indorsement, and I accepted it.

Q This transaction was at the bank in Brooklyn, was it not? A At the bank in Brooklyn; yes, sir.

Q That is where the note was filled up by you?

A Yes, sir.

Mr. Lambert. I object to all this testimony. 20

Mr. Wall. I wish to show that the contract was made in New York.

The Court. I do not understand why you object to all of it. I cannot allow a sweeping exception like that. I will allow an exception to my admission of the conversation. So far as he testifies that it was done in Brooklyn, I think it is clearly admissible. You except to that also, do you?

Mr. Lambert. No, sir; I except to the conversation with Mr. Chardavoyne concerning his wife. 30

The Court. I admit it, with the understanding that it does not bind the wife at all.

Q On this occasion referred to was the note indorsed by Mrs. Chardavoyne or by any one? A When I first saw the note?

Q Yes. A I think not.

Q You wrote everything on the face of the note, 40

except the signature of Mr. Chardavoyne? *A* Yes, sir; and the red ink matter.

*Q* You did not write the red ink matter? *A* No, sir.

Cross-examination by Mr. Lambert.

*Q* Mr. White, do you remember particularly the circumstances about this transaction when you filled up the note? *A* In what way, sir?

*Q* Do you remember the particular circumstances—  
10 just what took place at that time? *A* All I can remember about it is that I agreed to take this note with the indorsement of Mrs. Chardavoyne, and filled up the note for him.

*Q* Where was that done? *A* In the Mechanics Bank in Brooklyn.

*Q* And do you remember the time of day this transaction took place? *A* No, sir.

*Q* You don't remember that? *A* No, sir.

*Q* Mr. Chardavoyne was indebted to your bank in the  
20 sum of \$1,113.16, was he, at that time? *A* Yes, sir.

*Q* Which was an overdraft of his account, as I understand it? *A* An overdraft of his account and a check that had been returned to us not good, protested.

*Q* That is, a deposit that he had made? *A* Yes, sir.

*Q* Now, don't you recall that Mr. Chardavoyne came to your bank, and when you first saw this note it had the name of Annie N. Chardavoyne on the back, and the rest was blank? *A* No, sir.

*Q* You don't remember that? *A* No, sir.

30 *Q* Are you willing to say whether that was the fact or not, or don't you recollect? *A* I don't recollect.

*Q* Now, see if you can't recollect? *A* It is not our rule, sir, to take a blank note.

*Q* I am talking about this instance. Don't you remember that Mr. Chardavoyne called upon you to see something about his account, which was overdrawn; do you remember that? *A* I do not.

*Q* And don't you remember that you insisted upon the matter being adjusted immediately? *A* Perhaps I  
40 did; I don't remember it.

*Q* Do you remember what Mr. Chardavoyne said on this occasion especially? *A* No, sir.

*Q* Do you remember anything about his conduct on that occasion? *A* No, sir.

*Q* Don't you remember—

Mr. Wall. I object to this, your honor, as irrelevant. This is all before the time of giving the note.

The Court. Yes, but you have inquired into the circumstances under which the note was taken. I think he may cross-examine. 10

*Q* Don't you remember when Mr. Chardavoyne called of demanding immediate settlement of his account?  
*A* I do not; no, sir.

*Q* And don't you remember his taking this blank note out of his pocket, and saying to you that he had that note, but that he had no right to use the note there? *A* No, 20  
sir.

*Q* Remember his saying anything about that? *A* No, sir.

*Q* The note was filled up there by you? *A* Yes, sir.

*Q* Signed by Mr. Chardavoyne and left with you, was it not? *A* The note was left with me?

*Q* Yes, at that time. *A* At the time I filled it up?

*Q* Yes. *A* No, sir; I think not.

*Q* You are not positive about that? *A* No, sir.

30

Re-direct examination by Mr. Wall.

*Q* Mr. White, how long have you been president of the bank? *A* For nineteen years.

*Q* Do you remember ever taking any paper personally that the person who offered the paper said the indorsements were not good or—

Objected to.

Admitted.

(Question read.)

40

*Q* —or were invalidated in any way? *A* I never did such a thing in my life, sir.

ANNIE N. CHARDAVOYNE, one of the defendants, sworn in behalf of plaintiff.

Direct examination by Mr. Wall.

*Q* Mrs. Chardavoyne, saving all just exceptions as to the circumstances under which you signed this note, I ask you the simple question whether that is your signature (paper shown to witness)? *A* Yes.

The Court. This must be strict cross-examination; this is your client.

Cross-examination by Mr. Lambert.

*Q* Mrs. Chardavoyne, where did you sign this note?

Mr. Wall. I have asked the question in the language of the statute; I don't see how he can go outside of that.

The Court. All I will allow you to do on cross-examination is to show that her testimony is not credible, practically. If you want to make her your own witness, you must call her as your own witness.

*Q* Where were you when you signed—put your name upon this paper?

Objected to as not cross-examination.

*A* At my home.

The Court. I don't think I ought to allow that on the cross-examination of your own client. That is going into a substantive defence, which you may do by calling her as your own witness. Unless you say to me that you propose to show that it is not her signature, then I do not think it is worth while to cross-examine her.

Mr. Lambert. I claim the right to show the circumstances under which she signed this paper; also to show whether there was any other writing upon the paper, outside of her signature, when she signed it; also the purpose for which she signed it, and all the transactions incident to the matter at that time.

The Court. You may do that when you come to your case.

Mr. Lambert. No, I mean upon the cross-examination.

The Court. I decline to allow it on the cross-examination, in view of the fact that you do not contest the signature.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FRANCIS J. SWAYZE, [L. s.]  
Judge of the Circuit Court. 20

GEORGE W. WHITE, recalled in behalf of plaintiff.

Direct examination by Mr. Wall.

Q That note is dated on the 28th. Was it discounted on the 28th? A No, it was discounted on the 29th.

Cross-examination by Mr. Lambert.

Q The note was received by your bank, and what is the practice then; it goes before the board of directors, doesn't it? A It is left to my discretion. 30

Q How do you know it was discounted on the 29th?

Mr. Wall. Is this proper?

The Court. I think so.

Q How do you know? A I referred to our books yesterday.

Q Have you got your books here? A No, sir. I have got a memorandum of it. 40

Mr. Lambert. I ask that that be stricken out, then. The books should be produced.

Q (By Mr. Wall) When did you make the memorandum? A Yesterday.

The Court. I decline to strike it out.

10 Q (By Mr. Lambert.) May this note not have been handed you on the 28th and entered up as discounted on the 29th?

Objected to.

Admitted.

A No, sir; I think not.

Q You don't know, do you, that that is not the fact?

A I judge not.

Q But your recollection is not definite at all upon the matter? A It is three years ago; I can't—

20 Q But it is possible that this note was handed you on the 28th and entered up as discounted on the 29th?

A No, sir; I think not.

Plaintiff's counsel offers in evidence the note identified by witness.

Marked Ex. Pl.

Plaintiff rests.

Mr. Lambert opens for defendants.

30

ANNIE N. CHARDAVOYNE recalled in behalf of defendants.

Direct examination by Mr. Lambert.

Q Now, Mrs. Chardavoyné, where were you when you put your name upon the back of this piece of paper?

A I was at my home.

Q And where do you reside? A James street, Newark.

40 Q And under what circumstances did you put your

name upon this piece of paper? Let me ask you first, was anything else written upon the paper when you signed it? *A* No, sir; nothing else.

*Q* For what purpose did you put your name on that paper? *A* I was needing money.

*Q* Where did you keep your account at that time? *A* At the German National Bank in Newark; and my account was very short, and I needed to raise money, and I signed the paper; I was sick myself, and I signed the paper and I asked my husband, and he went to go with his father down to the bank and ask if they would discount that paper. 10

*Q* What is his father's name? *A* Gilbert Chardavoyne.

*Q* Was there any other writing upon that paper when you indorsed it? *A* No, he was to fill it in afterwards if they consented to discount it.

*Q* How long had you had an account in the German Bank of Newark? *A* Two or three years anyway.

*Q* Had you ever had notes discounted there? *A* I don't think so. 20

*Q* Now, what was the result; did you get the note discounted? *A* No, they refused it.

*Q* How did you learn that they refused? *A* Well, when they came back to dinner, at dinner-time they said so.

*Q* That was on the same day you put your name upon the back of it? *A* Yes, sir.

*Q* Was the paper that you signed that day ever returned to you? *A* No, sir. 30

*Q* Did you pay any further attention to the matter? *A* No.

*Q* Did you ever authorize your husband to use it for any other purpose? *A* No.

*A* Were you required to do anything to raise money after you found that you couldn't get this money from the bank? *A* Yes.

*Q* What did you do? *A* I made an attempt at once to put a mortgage on my house, and that would take some weeks and— 40

Objected to as immaterial.

Mr. Lambert. It is only material as to fixing the date.

Q This note is dated July 28th. How long before that time did you put your name upon that piece of paper? A Well, I think all of two weeks, perhaps ten days; in that neighborhood.

Q What happened in the meantime to your husband?

10 A He had had— You mean the business trouble?

Q Yes. A He had had business troubles in New York.

Q Were any proceedings taken here against your husband after that time?

Objected to.

The Court. In what view is that offered?

Mr. Lambert. To show that what he did, he was actually incapacitated to do at the time.

20 The Court. You can show his condition, but I do not think this is material.

Q What was his condition on July 28th, the date of this note—his mental condition? A Well, he was very miserable.

Q Well, what was the result of his condition? A We had to have the doctors, and the ultimate result was that he had to be sent away for a while.

Q Sent away where? A To the asylum.

30 Q What doctors examined him? A Dr. Washington and Dr. Staehlin.

Objected to.

The Court. The offer apparently is to show that the man was insane at the time this paper was put in circulation. Wouldn't that be competent?

Mr. Wall. Mrs. Chardavoyne's contract doesn't run only with the insane man's.

40 The Court. I am not sure. Perhaps she represents the competency of the maker.

Mr. Wall. It was given to an innocent third party.

The Court. Still I think I ought to receive the testimony, in view of the fact that she trusted this note to her husband in blank. It may have a bearing on the question of the *bona fides* of it. I think I ought to receive that testimony.

Mr. Wall. I would like to take an exception to that part of the testimony which touches the sanity of the maker of the note. 10

Exception allowed; let it be sealed, and it is sealed accordingly.

Judge of the Circuit Court.

Q What physicians examined Mr. Chardavoine?  
A Dr. Washington and Dr. Staehlin.

Q What was Dr. Washington? A He was the County Physician. 20

Q Of this county, Essex County? A Essex County.

Q Who made the application to have your husband declared a lunatic, you or who? A His father.

Q Gilbert Chardavoine? A Yes, sir.

Q Were you with your husband when Dr. Washington examined him? A I don't think I was the first time; I was afterwards, when he came to see him.

Q How long did he examine him before the petition was made to have him incarcerated as a lunatic, or don't you remember? A I don't remember, but I think it was a month anyway, maybe longer. I dont quite understand you. 30

Do you mean—

Q Before his father made the affidavit and signed the application to have him declared incompetent; how long before that did Dr. Washington examine him, if you recollect? A I don't recollect that.

Q Did you ever have any knowledge of your husband going to Brooklyn at the time he went and left this note with the bank there? A No, sir. 40

*Q* Did you ever authorize him to go to Brooklyn to the Mechanics Bank and take this note, and deliver it to them to secure the payment of any debt. *A* No, sir.

*Q* Were you obligated in any way to the Mechanics Bank? *A* No, sir.

Objected to as immaterial.

Excluded.

*Q* Did you authorize your husband to use this note at  
10 any place except the German National Bank? No, sir.

*Q* And if you had had the note discounted at the German Bank, what was to be done with the money?

Objected to as immaterial.

Mr. Lambert. If this was for his benefit?

The Court. Well, she says she indorsed the note to have it discounted for her own benefit, and it was misappropriated.

20 Mr. Lambert. I didn't understand that she had said it was for her own benefit.

Cross-examination by Mr. Wall.

*Q* Was your husband committed to an asylum? *A* Yes, sir.

*Q* When? *A* I can't give you just the date.

*Q* How long was he there? *A* Oh, six or seven months, I guess.

*Q* Do you remember when he get out? *A* It was--  
I think it was in one of the spring months, March or  
30 April, along there.

*Q* Did he go willingly or did a court direct him to go?

Objected to as not the best evidence.

*A* I know there was court proceedings; I don't understand about it.

Mr. Wall. Was it under a regular commission?

40 Mr. Lambert. Yes; we have got the transcript here; we have got all the papers here.

The Court. A proceeding out of chancery?

Mr. Lambert. Out of chancery.

Mr. Lambert. It is a singular thing that Gilbert Chardavoyne made this application, swore to it, on the very day this note was dated, the 28th of July, and Dr. Washington made his examination on the 29th.

Mr. Wall. Then these proceedings were not instituted before the 28th of July?

Mr. Lambert. They were instituted on the 28th. The commission finds on December 14th that for six months before that time and upwards, he had been of unsound mind and unable to transact business.

*Q* Do you remember the conversation that you had with Mr. Chardavoyne at the time you handed him this slip of paper? *A* Yes, I sent him to the German Bank to see if the German Bank would discount it.

*Q* Why did you send him to the German Bank? 20

*A* My account was there.

*Q* There was nothing said about any other bank, eh?

*A* Nothing; I didn't expect him to go anywhere else.

*Q* Had you ever heard of this Brooklyn bank? *A* I don't know whether I had or not; I don't think so.

*Q* Hadn't Mr. Chardavoyne ever given you any checks on the Brooklyn bank? *A* No.

*Q* Hadn't you ever seen any? *A* Not that I know of now; not that I remember.

*Q* How do you fix exactly the day that you sent Mr. 30 Chardavoyne to the German National Bank? *A* Well, I know it was about two weeks before he was so miserable, and before his father—it may not have been quite that long—before his father had seen Dr. Washington, and before all this trouble came to the house, that the doctors were there, and so on.

*Q* You don't know when that was? *A* I can't tell you exact.

*Q* Are you prepared to swear that he was miserable, as you call it, before the 28th of July? *A* Yes; through 40

the spring months; through April and May, I guess it was, or through the late winter months; there was a great deal of trouble here with water and a great deal of typhoid fever, and Mr. Chardavoine was sick; he was miserable, having these fevers. His case went to the Board of Health, and they came there to see about it. He had malarial fever—fevers every other day—and he was wretched; he kept around the house; he wasn't out for some time, *and he was never right afterwards.*

10 Q Did you ascribe to that illness his subsequent derangement of mind? A No; I think it was that and his troubles afterwards.

Q I understand that his mind was not deranged at the time he was miserable, as you say? A Well, he was not well; I didn't think there was anything special the matter with him.

Q In your judgment, he was not insane at that time?

20 Objected to.  
Mr. Lambert. What time do you refer to?

A You mean at the time he had the typhoid trouble?

Q Yes. A No, I didn't; although he was delirious a great deal, and the sickness that he had before that—not long before—he was delirious for days.

Q He was not delirious when you gave him this slip of paper, was he? A He was able to go about then.

30 Q What day did you say it was that you gave the slip of paper to him to go to the German Bank? A I can't remember the date; I don't know what date it was.

40 Q It might have been around July 28th, might it not? A No; it was before that, because they refused to discount my note, and then I applied for a mortgage on my property, and that took so long to get it through with that I had to raise money some other way; so I borrowed \$500 from my brother-in-law, Theodore Chardavoine, and \$500 from Mr. Thomas Rosewell, of Sussex County, with the understanding that just as soon as my mortgage come I would repay it, and I paid Thomas Rosewell on the

27th or 28th of July, and that is the reason I know it was that time.

*Q* And what did you say to Mr. Chardavoyne when you signed that slip of paper? *A* I told him to go to the German Bank and see if they would discount a note for me, and they had heard of his New York troubles, and they refused.

*Q* Did he know that you had been depositing at the German National Bank? *A* He knew it.

*Q* Are you prepared to swear that you used the words "German National Bank"? *A* I know I did. 10

*Q* Didn't you just say, "go to the bank and have this discounted"? *A* No; I know I sent him to the German Bank.

*Q* Did you care where he got the money as long as he got it? *A* I didn't think anything about it; I knew what I had told him to do, and that is all I thought he would do.

*Q* Isn't it quite possible that you didn't use the name of the German National Bank in speaking to him? *A* I know I did use it, because I sent him right there. 20

*Q* You are perfectly certain that you said to him to go there and nowhere else? *A* I don't know that I said nowhere else, but I know I said to go to my bank, to the German Bank.

*Q* And when he came back, what did you ask him? *A* I asked him what the bank did, and he told me they refused. He came back at dinner-time.

*Q* And did you ask him for the note? *A*. No, sir; I didn't think it was of any value whatever, and I never asked for it. 30

*Q* You didn't tell him he was not to go anywhere else with it, did you? *A* I don't know whether I did or not, but of course I didn't expect him to go anywhere else with it.

*Q* You wanted the money? *A* Yes, I wanted the money.

*Q* And it was a matter of indifference to you where the money came from? *A* Yes, it was; I wanted it from my own bank. 40

*Q* Why were you so particular to name your own bank? *A* Well, I expected to get it there, and I didn't suppose I could get it anywhere else, and I did mention my bank and expected him to go there for it.

*Q* You signed that piece of paper with the idea that that was to be an indorsement on a note which he was to sign, didn't you? *A* I signed that with the express understanding that he was going down to my German Bank to get me the money, if they would do it.

10 *Q* To get you the money on that slip of paper, after he had filled it out in such a way that your name appeared as an indorsement on the back of it; is that correct? *A* He was not to fill it out until he found out that they would do it, and if they would do it, he was to leave it there.

*Q* But you gave it to him for the purpose of having your name appear as the indorsement on a promissory note, didn't you? *A* I gave it to him for the purpose of having my money.

20 *Q* Isn't that true? *A* I don't quite know what you mean.

*Q* You didn't give him that slip of paper for the purpose of showing him your signature, did you? *A* No, sir.

*Q* You gave it to him so that your name on the back of it would be an indorsement on a promissory note, didn't you? *A* I didn't expect him to take that anywhere else; I expected him to take it to my bank; I didn't expect him to take it anywhere else; and if he  
30 didn't get it there, I expected him to bring it back to me; I didn't expect him to go anywhere else with it.

*Q* (By the Court.) But you expected him to fill it up and sign his name on the face of it, didn't you? *A* Yes, sir.

Redirect-examination by Mr. Lambert.

*Q* You say that you borrowed a thousand dollars, \$500 from each of two different people? *A* Yes, sir.

*Q* How many days after you sent him to the German  
40 Bank did you borrow that, do you remember? *A* It was

a very little while. I had to have it right at once; my mortgage took so long to draw the papers, I had to have it before I could get the mortgage.

*Q* I show you a check. "Newark, N. J., July 27th. Pay to the order of Thomas Rosewell. Annie N. Chardavoyne. \$500." Is that your check? (shown to witness). *A* Yes, sir.

*Q* What was it given for? *A* This is for the money I borrowed of him; I paid it back on the 27th.

*Q* How many days did you have the money before 10 you paid it back? *A* I think I had it two weeks.

*Q* You think you had that money two weeks? *A* I think so.

*Q* And you paid it back with this check? *A* Yes, sir.

*Q* And you got the money from where to pay this check? *A* Through the mortgage money.

*Q* The mortgage from whom? *A* The Firemen's Insurance Company.

*Q* Of Newark? *A* Yes, sir.

20

Defendants' counsel offer in evidence the check identified by witness.

Marked Ex. D1.

*Q* Now, I show you two other checks, one dated August 1, 1899, to the order of Theodore S. Chardavoyne, for \$250, and another dated the same date, August 1, 1899, to the order of Theodore S. Chardavoyne, for \$250 (shown to witness). Are those your checks? *A* Yes, sir. 30

*Q* For what purpose were those checks given? *A* I gave those checks to pay Theodore his \$500 that he had loaned me.

*Q* That you borrowed from him? *A* Yes, sir.

*Q* Some two weeks prior? *A* Yes, sir.

Defendants' counsel offer in evidence the two checks identified by witness.

Marked Ex. D2 and Ex. D3.

40

Recross-examination by Mr. Wall.

*Q* Mrs. Chardavoyne, did you know that there was such a bank as the Mechanics' Bank of Brooklyn in existence on July 28th? *A* Well, I am not positive whether I did or not; if I did, it was only because I had heard my husband speak the name.

*Q* Didn't you know that your husband owed that bank money at about that time? *A* Well, I don't know whether I knew it then or not; I can't remember; I can't  
10 tell you.

*Q* Won't you try and recollect that, Mrs. Chardavoyne? (Witness pauses.) Well? *A* I can't tell you when I knew it. I knew later on that he owed the Brooklyn bank, but I didn't know any of the circumstances; I didn't know anything about it, and I don't know that I knew it was the Mechanics' Bank. I knew it was a Brooklyn bank.

*Q* Isn't it possible that you knew that on July 28th? *A* No, I am sure I didn't.

20 *Q* Did you ever see that gentleman before (indicating)? *A* I think he called at our house one night.

*Q* And did he speak in your presence about the indebtedness of your husband to the Brooklyn bank? *A* No, he didn't. I didn't meet him at all; if I did, it was only to say, "Good evening." We were on the sidewalk, coming home from some place, and I saw him on the sidewalk in front of the house with my husband. I don't know whether I was introduced to him or not.

*Q* You knew he came from a Brooklyn bank, didn't  
30 you? *A* I don't know whether I did or not.

*Q* When was that? *A* I couldn't give you the date; I don't know when it was.

Further direct-examination by Mr. Lambert.

*Q* When did you first have knowledge, as near as you can tell, that there was a note with your indorsement in the Brooklyn bank? *A* Well, I don't know; I don't think I knew it until I had a letter from them saying I owed it.

*Q* Is that the letter (shown to witness)? *A* That is the letter.

Defendants' counsel offer in evidence and read letter identified by witness, dated May 4, 1900, addressed to Mrs. Annie N. Chardavoyne, Newark, N. J., and signed "G. W. White, President."

Marked Ex. D4.

10

*Q* So far as you know, that is the first you knew of that note being in the bank? *A* So far as I know.

*Q* Your husband never told you of it? *A* No, sir.

Mr. Wall. I don't know that that is competent. If they are going to dispute the protest of the note, that is not the proper way to do it.

The Court. The declaration seems to contain a certificate of the notice of the protest, and it seems to be in compliance with the statute. 20

Mr. Lambert. If her husband was home, perhaps the notice of protest was served on him. I am not going to require them to make proof of protest. The only purpose of this is to show that she had no notice, and didn't know that there was any such note in existence until she got this letter.

The Court. It is merely for the purpose of fixing the date?

Mr. Lambert. Yes, sir; the date when it 30 came to her knowledge.

I offer this transcript and the papers concerning the lunacy proceeding in evidence.

Mr. Wall. I object to the admission of that part of the transcript which states that he has been in the same state of lunacy for the space of six months.

The Court. My impression is that where there is a formal inquisition and finding, that this is admissible evidence. I don't mean to 40

say that it would bind you, and I don't mean to say that the indorser does not warrant the sanity of the signer of the note. I don't mean to say that. I only receive it for what it shows as *prima facie* evidence.

Marked Ex. D 5.

GILBERT CHARDAVOYNE, sworn in behalf of defendants.

10

Direct examination by Mr. Lambert.

*Q* Mr. Chardavoyne, where do you reside? *A* In Newark.

*Q* And where did you reside in July, 1899? *A* Stanhope.

*Q* Where is Stanhope? *A* Well, it is in Sussex County.

*Q* And were you at your son's house during July, 1899? *A* I was there in 1899, yes, sir; in July, somewhere about the 1st of July.

20

*Q* Did you accompany your son to the German National Bank on any occasion? *A* I did.

*Q* And on what occasion? *A* Why, his wife wanted some money, had some money to raise, I believe, and—

Objected to.

*Q* No; never mind that. Did you hear the statement made by the wife at the time before you and he started to the bank? *A* I did.

30

*Q* Did you see the paper that was signed by her? *A* I did.

*Q* What was on the paper? *A* Just her name across the back.

*Q* Was there any other writing on the paper? *A* None other.

*Q* What instructions did she give after she wrote that? *A* She wanted some money; she wanted him to go around to the German National Bank; she said she went over her bank book and she was low; that she hadn't

40

much deposit there; she wanted to see how much they would loan her on a note of that kind, and let it go to her deposit in that bank, so she could draw against it.

*Q* Whom did she tell that to? *A* To myself and her husband.

*Q* Did you go with William S. Chardavoigne to the bank? *A* I did.

*Q* What relation are you to him? *A* He is my son; I am his father.

*Q* And what was the result? *A* Well, they didn't do 10 it, because they said they thought they couldn't do it.

*Q* Did you hear them make that statement? *A* I did.

*Q* Who was it you talked with at the bank? *A* The president of the bank; it was in the president's office—talking to him.

*Q* Talking to some one in the president's office? *A* Yes, sir.

*Q* Did you go back to dinner at your son's house that day? *A* I did.

*Q* Was any statement made to Mrs. Chardavoigne in 20 your presence by your son? *A* She asked what the bank would do about it, and he said they didn't like to make the loan—didn't like to raise the note.

*Q* Did you offer to do anything at the bank in order to secure the loan? *A* I went down with that intention, if they would do it, to indorse the note for her.

*Q* And wouldn't they take your indorsement? *A* He said they wouldn't make the loan; they couldn't make the loan.

*Q* They wouldn't take your indorsement? *A* No, sir. 30

*Q* They evidently don't know you as well as I do, or they would have taken it. *A* No, they didn't know me.

*Q* Now, Mr. Chardavoigne, you signed the petition to have your son declared a lunatic? *A* Yes, sir.

*Q* How long prior to that time did you go to the bank to get this note discounted? *A* I think it must have been two or three weeks; I couldn't say exactly; I couldn't tell, and yet—I had no memorandum with me—I know it was some time in the fore part of July.

Cross-examination by Mr. Wall.

*Q* How do you fix it, Mr. Chardavoyné? *A* Well, I came down a few days after the 4th of July, and I was down there for a little while, a few days, probably a week; I couldn't tell you.

*Q* Was that the note that Mrs. Chardavoyné handed to your son (shown to witness)? *A* It looks like the same piece of paper.

*Q* You don't know that it is the same, do you?

10 *A* Well, all I know, that it had her name across it, just like that, and it looks like the same piece of paper.

*Q* Did you examine this side of it? *A* I was looking at it.

*Q* Well, look at it again? *A* I will look at it but I am sure.

*Q* You are sure of what? *A* Well, I think it is the same or one just exactly like it.

*Q* (By Mr. Lambert.) You saw her sign her name, did you? *A* Yes, sir.

20

Defendants rest.

Plaintiff rests.

ADJOURNED.

## New Jersey Supreme Court.

30

MECHANICS BANK

vs.

WILLIAM S. CHARDAVOYNE,  
et al.

On Contract.

Request for  
finding of facts.

First: That the note on which the action is brought  
40 was indorsed by Annie N. Chardavoyné for the purpose

of having it discounted at the German National Bank, in the City of Newark, and that the money which she expected to receive on said note was to be credited by said bank to her account kept with said bank. That said note was indorsed in blank by said Annie N. Chardavoyne, and given by her to her husband, William S. Chardavoyne, for the above purpose only. That said note was given to said Chardavoyne about two weeks before it was used by him at the Mechanics Bank in Brooklyn. That on the same day said Annie N. Chardavoyne gave said note to her husband, he went to the German National Bank and requested them to discount the note; that they refused. That he so reported to his wife and that the said Annie N. Chardavoyne thought that said note was of no further value and could be used by no one. 10

Second: That the note was kept by William S. Chardavoyne for two weeks after he had reported to his wife that the German National Bank would not discount the same; that the said William S. Chardavoyne, without the knowledge or consent of his wife, took said note to the Mechanics Bank in Brooklyn, that the President of said bank at once filled out said note and kept it, and that Annie N. Chardavoyne knew nothing of the use of the note until she received notice of protest from the notary of said bank. That there was no arrangement between Annie N. Chardavoyne and the bank or the bank or between Annie N. Chardavoyne and her husband, that the note should be used for the purpose for which it was used, or for any other purpose except to be discounted at the German National Bank and there credited to her account. 20 30

Third: That the inquisition was instituted at the time of the making of the note. That the inquisition shows that William S. Chardavoyne was a lunatic when Annie N. Chardavoyne indorsed said blank note, and also at the time of the making of the note. That the inquisition was not contradicted.

The Court refused so to find, to which refusal the

defendant prayed an exception and the same was allowed and is sealed accordingly.

Judge of the Circuit Court.

That the bank was in no way injured by the extension of time for Chardavoyne to pay the note.

The Court refused so to find, to which refusal the defendant prayed an exception, and the same was allowed  
10 and is sealed accordingly.

Judge of the Circuit Court.

That there is no proof that the bank accepted the note because it had Mrs. Chardavoyne's signature on it.

The Court refused so to find, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

20

Judge of the Circuit Court.

#### REQUEST FOR FINDING OF LAW.

In a collateral action the letters of guardianship of a lunatic are themselves conclusive of the regularity of the proceedings resulting in their issuance, as well as of the insanity upon the person upon whose estate they are issued.

30

"Minnesota Loan & Trust Co. vs. Beebe,  
Vol. 2, L. R. A., pp. 418-419."

The Court refused to so hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]

Judge of the Circuit Court.

Second: That until contradicted, an inquisition of lunacy binds all the world, whether parties to the inquisition or not.  
40

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court.

Third: Contracts made by lunatics are presumed to be void until capacity to contract is shown by satisfactory evidence.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court.

Fourth: That general lunacy being established, the burden of showing capacity to contract is on the plaintiff.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly. 20

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court.

Fifth: That no capacity to contract was shown.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court.

Sixth: That where the date of the transaction is overlapped by the finding of a jury in a lunacy proceeding the inquisition is presumptive evidence of insanity at the time of the transaction. 30

Seventh: A lunatic cannot be an agent.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court. 40

Eighth: That one who indorses a note for the accommodation of another makes him the agent of the indorser.

Ninth: That insanity is a defence to a contract by a lunatic if the parties can be put in statu quo.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. s.]

Judge of the Circuit Court.

10

Tenth: That a person indorsing a note for the accommodation of another becomes merely a surety, and any defence available to the maker is available to the indorser when the note is sued on.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. s.]

Judge of the Circuit Court.

20

Eleventh: That under the doctrine established by the Courts of this State, the plaintiff can recover only the amount which it has actually advanced on the strength of the indorser, which in this case is nothing.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. s.]

Judge of the Circuit Court.

30

Twelfth: That the amount which the plaintiff actually lost by the taking of the note cannot exceed the costs of this action.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. s.]

Judge of the Circuit Court.

Thirteenth: That as the bank lost nothing the doctrine  
40 of estoppel in pais does not apply, and the defendant,

Annie N. Chardavoyne, can deny that William S. Chardavoyne was her agent.

The Court refused so to hold, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Judge of the Circuit Court

Fourteenth: The Court is asked to render judgment in favor of the defendant, Annie N. Chardavoyne, and against the plaintiff, the Mechanics Bank, for the costs of suit.

The Court refused so to find, to which refusal the defendant prayed an exception, and the same was allowed and is sealed accordingly.

FRANCIS J. SWAYZE, [L. S.]  
Circuit Judge.

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PLAINTIFF'S EXHIBITS

\$1,113.16.

Newark, New Jersey, July 28th, 1899.

Nine months after date I promise to pay to the order of Annie N. Chardavoyne, eleven hundred and thirteen  $\frac{16}{100}$  dollars at Mechanics Bank, Brooklyn, N. Y., with interest from date.

William S. Chardavoyne.

No.— April 28, 1900.

Endorsed, Annie N. Chardavoyne,  
William S. Chardavoyne.

20

30

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DEFENDANTS' EXHIBITS.

No. ———

Newark, N. J., July 27, 1899.

The German National Bank of the City of Newark.

Pay to the order of Thomas Rosewall, Five hundred dollars.

.....  
I. R. S.  
.....

\$500.

Annie N. Chardavoyne. 40

Endorsed—Pay order of The White Rock, Lime and  
Cement Co.

Thomas Rosewall.

Pay order of the New York National Exchange Bank.  
White Rock, Lime and Cement Co., per Thos. Rosewall,  
Treasurer.

Pay to the order of any bank, banker or trust company  
endorsement, (August 2, 1899.) Guaranteed.

10 New York National Exchange Bank.

No. XX. Newark, N. J., August 1st, 1899.

The German National Bank of the City of Newark.

Pay to the order of Theodore F. Chardavoyné, Two  
hundred and fifty dollars.

.....  
I. R. S.

20 .....

\$250.

Annie N. Chardavoyné.

Endorsed—Theodore F. Chardavoyné,  
George H. Lambert.

No. XXX. Newark, N. J., August 1st, 1899.

The German National Bank of the City of Newark.

Pay to the order of Theodore F. Chardavoyné, Two  
hundred and fifty dollars.

.....  
30 I. R. S.

.....

\$250.

Annie N. Chardavoyné.

Endorsed—Theodore F. Chardavoyné.

Pay to Merchants Natl. Bank, Newark, N. J., or  
order.

Riker Bros.

George W. White, President, Geo. W. Chauncey,  
Vice-President, Chas. E. Wheeler, Cashier.

40 Mechanics Bank, Brooklyn, N. Y., May 4, 1900.

Mrs. A. N. Chardavoyne, Newark,  
Madam :

We would ask your attention to payment of note made by W. S. Chardavoyne, dated July 28, 1899, for \$1.113.16 and interest, and endorsed by you, due April 30th and protested.

Yours resp.,

G. W. White, Pt.

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PETITION AND AFFIDAVIT FILED AUGUST  
3, 1899.

In Chancery of New Jersey.

TO HIS HONOR ALEXANDER T. MCGILL, CHANCELLOR <sup>20</sup>  
OF THE STATE OF NEW JERSEY.

The petition of Gilbert Chardavoyne of Stanhope, in the County of Sussex, respectfully shows that William S. Chardavoyne of the City of Newark, in the County of Essex and State of New Jersey, who is the son of your petitioner, is now and for some time past has been so far deprived of his reason and understanding that he is rendered altogether unfit and unable to govern himself <sup>30</sup> or to manage his affairs, as by the affidavits hereto annexed appears. And your petitioner therefore prays that a commission, in the nature of a writ of de lunatico inquirendo, may now issue out of this Honorable Court to inquire of the lunacy of the said William S. Chardavoyne, directed to such persons as your honor shall think fit. And your petitioner shall ever pray, &c.

HAYES & LAMBERT,

Sol'rs of Petitioner.

GEORGE H. LAMBERT of Counsel. 40

STATE OF NEW JEESEY, }  
 COUNTY OF ESSEX. } ss.

Gilbert Chardavoyné, being duly sworn on his oath, says that he is the petitioner named in the foregoing petition and that the matters and things therein set forth are true; and further, that he is the father of the said William S. Chardavoyné who was born on the twentieth day of March, 1856; that during the fall and winter of the year eighteen hundred and ninety-seven said William S. Chardavoyné was very ill, and during ten days of that illness was unconscious; that after his recovery deponent observed that his memory was failing him; that about one month since said William Chardavoyné became involved in serious business difficulties in the City of New York, which had worried him greatly, and he has gradually become more forgetful since that time until the present time, and that deponent believes that said William Chardavoyné is now unable to manage his estate.

Deponent further says that the estate of said William S. Chardavoyné amounts to about Two Thousand Dollars, and deponent believes it to be necessary that a guardian should be appointed for said William S. Chardavoyné to care for him and manage his affairs.

Sworn to and subscribed }  
 this Twenty-eighth day of }  
 July, A. D. 1899, before }  
 me at Newark, N. J. }

GILBERT CHARDAVOYNE.

F. B. STEWART, Notary Public of New Jersey.

30

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

Walter S. Washington, being duly sworn according to law on his oath, says that he is a practicing physician in the City of Newark, in said County and State, and for several years past has been County Physician for said County of Essex, that he has made an examination of William S. Chardavoyné named in the foregoing petition, as to his mental condition; that said William S. Charda-

40

voyne has delusions and hallucinations and loss of memory; that his mental derangement is gradually growing worse and he is now in such mental condition that he is unable to intelligently transact business of any kind, and deponent further says that in his opinion said William S. Chardavoyne is not of sound mind and is not fit for the government of himself, or the management of his property.

Sworn to and subscribed this Twenty-ninth day of July, A. D. 1899, before me at Newark, N. J. F. B. STEWART, Notary Public.	}	10  WALTER S. WASHINGTON.
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FILED AUGUST 17, 1899.

## In Chancery of New Jersey.

IN THE MATTER OF THE ALLEGED LUNACY OF WIL- LIAM S. CHARDAVOYNE.	}	On Petition, &c.  ORDER.
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This matter being opened to the Court by George H. 30  
 Lambert of Counsel with the petitioner and upon read-  
 ing the duly verified petition of Gilbert Chardavoyne  
 and affidavits of said Gilbert Chardavoyne and Dr. Walter  
 S. Washington :

It is on this third day of August, eighteen hundred  
 and ninety-nine, ordered, that upon filing the said petition  
 and affidavits, a commission in the nature of a writ of de  
 lunatico inquirendo do issue out of, and under the seal of  
 this Court, agreeably to the prayer of the said petition to  
 inquire of the lunacy of the said William S. Chardavoyne, 40

be directed to the Honorable Frederic Adams and Dr. Joseph Fewsmith and Arthur Devine of the County of Essex who, or any two of them, of whom the said Frederic Adams shall be one, are hereby appointed commissioners for the purpose aforesaid.

Respectfully advised, JOHN R. } By the statute,  
 EMERY, Vice-Chancellor. } H. C. PITNEY, Master.

10

FILED DECEMBER 19, 1899.

.....  
 : Seal of the Court :  
 : of Chancery, :  
 : State of New Jersey. :  
 .....

NEW JERSEY : ss.

The State of New Jersey to Honorable Frederic  
 20 Adams, Dr. Joseph Fewsmith and Arthur Devine of the  
 County of Essex and State of New Jersey.

GREETING—Know ye, that we have assigned you, and  
 any two of you, of whom you, the said Honorable Fred-  
 eric Adams, shall be one, and you are hereby assigned  
 to inquire, by the oaths and affirmations of good and  
 lawful men of said County of Essex, by whom the  
 truth of the matter may be better known, whether  
 William S. Chardavoyne of the City of Newark, in the  
 County of Essex and State of New Jersey, is a lunatic or  
 30 unsound of mind, so that he is not fit for the government  
 of himself, his lands and tenements, goods and chattels;  
 and if so from what time, after what manner, and how;  
 and if the said William S. Chardavoyne being in that  
 condition, has alienated any lands and tenements or not,  
 and if so what lands and what tenements, to what person  
 or persons, where, when, and after what manner, and how;  
 and what lands and tenements, goods and chattels yet re-  
 main to him, and of what value the lands and tenements  
 by him alienated, as well as those by him retained are,  
 40 and of what person or persons as well as the lands and

tenements so alienated as the lands and tenements by him retained are held and after what manner, and how much the issues and profits thereof are worth by the year; and what is the value of his goods and chattels and personal estate; and who are his nearer heirs and of what age.

And therefore we command you, or any two of you as aforesaid, that at a certain day or place, which you or any two of you as aforesaid shall for that purpose appoint, you diligently make inquisition in the premises; and that you cause reasonable notice of the time and place by you appointed for that purpose to be given said William S. Chardavoyne; and that you send the inquisition, which you shall thereupon make, under your seals, or the seal of any two of you as aforesaid, and the seals of those persons by whom it shall be made, distinctly and plainly, and without delay, to our Chancellor, in our Court of Chancery, together with this our writ. 10

And we command, by the tenor of these presents, the Sheriff of the County of Essex as aforesaid, that at certain days and places, which you, or any two of you, as aforesaid, shall make known to him, he cause to come before you, or any two of you, so many and such good and lawful men of said County of Essex, each of whom is a citizen of this State and resident in said County of Essex, above the age of twenty-one years and under the age of sixty-five years, as you shall direct, by whom the truth of the matters aforesaid may be better known and inquired into. 20

Witnesseth, Alexander T. McGill, Chancellor, at Trenton, the eighteenth day of August, eighteen hundred and ninety-nine. 30

LEWIS A. THOMPSON, Clerk.

HAYES & LAMBERT, Solicitors.

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NEW JERSEY, ESSEX COUNTY, ss.:

I, George Virtue, Sheriff of the County of Essex, hereby certify and return that I have duly summoned the following names, twelve good and lawful men of the said 40

County, qualified by law to serve as Jurors mentioned in the hereto annexed writ: John Geohring, James Hodge, Herbert H. Ehlers, James C. Bonneau, Stephen W. Peany, George O. Hill, Joseph Cox, Charles Muenster, Horace T. Lyon, Sigmund Spiegel, Henry L. Garrabrant and Philip A. Reinhardt.

Summoned by me December 18, 1899.

GEORGE VIRTUE, Sheriff.

10

By virtue of a commission in the nature of a writ de lunatico inquirendo, under the seal of the Court of Chancery of the State of New Jersey, bearing date at Trenton, the eighteenth day of August, eighteen hundred and ninety-nine, to us whose names are hereunder written, directed, to inquire whether William S. Chardavoyne of the City of Newark, in the County of Essex and State of New Jersey, be a lunatic or not; these are therefore to will and require you to cause to come and appear before

20 us twelve good and lawful men of the said County of Essex, above the age of twenty-one years and under the age of sixty-five years, on Monday the eighteenth day of December next, at ten o'clock, in the forenoon of the same day, at the Court House in said City of Newark, then and there upon their oaths and affirmations to inquire of the lunacy of the said William S. Chardavoyne, and of all such other matters and things as shall be given them in charge by virtue of the said commission, and thereof fail not at your peril.

30 Given under our hands and seals the twenty-second day of November, eighteen hundred and ninety-nine.

To the Sheriff of the County of Essex.

FREDERIC ADAMS,	L. S.
JOSEPH FEWSMITH,	L. S.
ARTHUR DEVINE,	L. S.

FILED DECEMBER 19, 1899.

The execution of the within writ will appear by the panel hereto annexed.

40

GEORGE VIRTUE, Sheriff.

Take notice, that a commission to inquire as to your alleged lunacy, issued out of and under the seal of the Court of Chancery of New Jersey to us directed, as commissioners, will be executed at the Court House in the City of Newark, in the County of Essex, on the eighteenth day of December instant, at 10 o'clock in the forenoon.

Dated, August 22, 1899.

To William S. Chardavoine.

FREDERIC ADAMS,	L. S.	10
J. FEWSMITH,	L. S.	
ARTHUR DEVINE,	L. S.	

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

John E. Helm, being duly sworn according to law, upon his oath says: that he is a law student in the office of Hayes & Lambert of the City of Newark, in said County of Essex and State, that on the Sixth day of December instant this deponent served the original, of which the above is a true copy, upon William S. Chardavoine by reading the same to him and delivering said notice to him personally. 20

Sworn and subscribed to before me this Sixteenth day of Decem- ber, 1899, at Newark, N. J.	}	JOHN E. HELM.
EDWARD H. DURYEE,		
Master in Chancery of N. J.		

FILED DEC. 19, 1899.

30

## In Chancery of New Jersey.

IN THE MATTER OF THE ALLEGED LUNACY OF WIL- LIAM S. CHARDAVOYNE.	}	On Petition, &c.
		Inquisition.

NEW JERSEY, ESSEX COUNTY, ss.:

An inquisition, taken at the Court House at Newark, 40

in the County of Essex and State of New Jersey, on the eighteenth day of December, eighteen hundred and ninety-nine, before Frederic Adams, Esquire, Dr. Joseph Fewsmith and Arthur Devine, Commissioners, by virtue of a commission in the nature of a writ de lunatico inquirendo issuing out of and under the seal of the Court of Chancery of the State of New Jersey, bearing date at Trenton, the eighteenth day of August, eighteen hundred and ninety-nine, to inquire of the lunacy of

10 William S. Chardavoyne of the City of Newark, in the County of Essex aforesaid, in the said commission named, upon the oaths and solemn affirmation of good and lawful men of the said County; that is to say, upon the oaths of John Goehring, James Hodge, Herbert H. Ehlers, James C. Bonneau, Stephen W. Peany, George O. Hill, Joseph Cox, Charles Muenster, Horace T. Lyons, Sigmund Spigel, Harry L. Garrabrant, Philip A. Reinhardt, who being duly summoned and charged upon their respective oaths, say that the said William S. Chardavoyne, at the

20 time of taking this inquisition, is a lunatic and of unsound mind, and does not enjoy lucid intervals, so that he is not capable of the government of himself, or his estate, and that he has been in the same state of lunacy for the space of six months last past and upwards; and the jurors aforesaid, upon their respective oaths further say that they find that the said William S. Chardavoyne, at the time of taking this inquisition, is seized of and entitled to no real estate; and also that the said William S. Chardavoyne has not alienated any lands or tenements

30 during his lunacy aforesaid, to the knowledge of the said jurors. And the said jurors, upon their respective oaths aforesaid, further say that the said William S. Chardavoyne is at the time of taking this inquisition, also possessed of and entitled unto goods, chattels and personal estate consisting of one horse, valued at \$60; one wagon, valued at \$50; one set harness, valued at \$25; gold watch and chain, valued at \$75; clothing, valued at \$100; and 400 shares of stock of the Newark Novelty Company of no value. And lastly, that Annie N. Chardavoyne,

40 his wife, aged 35 years or thereabouts, and Roland N.

Chardavoine, his only child, aged 14 years or thereabouts, are the only nearer heirs of the said William S. Chardavoine.

IN TESTIMONY WHEREOF, well as the said Commissioners as the jurors aforesaid, have to this inquisition set their hands and seals the day and year first above written.

FREDERIC ADAMS,	L. S.	
JOSEPH FEWSMITH,	L. S.	
ARTHUR DEVINE.	L. S.	10
JOHN GOEHRING,	L. S.	
JAMES HODGE,	L. S.	
HERBERT H. EHLERS,	L. S.	
JAMES C. BONNEAU,	L. S.	
STEPHEN W. PEANY,	L. S.	
GEORGE O. HILL,	L. S.	
JOSEPH COX,	L. S.	
CHARLES MUENSTER,	L. S.	
HORACE T. LYON,	L. S.	
SIGMUND SPIEGEL,	L. S.	20
HENRY L. GARRABRANT,	L. S.	
PHILIP A. REINHARDT,	L. S.	

FILED DECEMBER 30, 1899.

## In Chancery of New Jersey.

IN THE MATTER OF THE ALLEGED LUNACY OF WIL- LIAM S. CHARDAVOYNE.	}	Final Decree.	30.
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Upon opening this matter to the Court this day by George H. Lambert, of Counsel with the petitioner, and it appearing that the commission made in this matter has been duly executed and returned into this court with an inquisition thereto annexed taken before Frederic Adams, 40

Esquire, Doctor Joseph Fewsmith and Arthur Devine, Esquire, the three commissioners in the said commission named, bearing date the eighteenth day of August, eighteen hundred and ninety-nine, by which the jurors who passed upon that inquiry have found that the said William S. Chardavoine of the City of Newark, in the County of Essex, was, at the time of taking that inquisition, a lunatic and of unsound mind, and does not enjoy lucid intervals, so that he is not capable of the govern-  
 10 ment of himself, or his estate, and that he has been in the same state of lunacy for the space of six months last past and upwards, and at the time of taking said inquisition, he was seized of and entitled to the personal estate as is mentioned in the said inquisition.

It is thereupon on this thirtieth day of December, eighteen hundred and ninety nine, on motion of George H. Lambert, of counsel with the petitioner, ordered and decreed by the Chancellor that the clerk of this Court transmit to the Orphans' Court of the County of Essex  
 20 a certified copy of all the proceedings in the case, agreeable to the statute in such case made and provided.

And it is further ordered that an allowance of five dollars to the said Frederic Adams, and of five dollars to the said Dr. Joseph Fewsmith, and of five dollars to the said Arthur Devine, for their services as commissioners, be included in the taxed costs.

Respectfully advised, }  
 S. M. DICKINSON, } ALEX. T. MCGILL, C.  
 Adv. Master. }

30

.....  
 : Seal of the Court :  
 : of Chancery :  
 : of New Jersey. :  
 : .....

I, Lewis A. Thompson, Clerk of the Court of Chancery of the State of New Jersey, the same being the Court of  
 40 record, do hereby certify that the foregoing is a trans.

cript of all the proceedings in the matter of the lunacy of William S. Chardavoyné, now on the files in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Trenton, this second day of January, A. D. Nineteen Hundred.

LEWIS A. THOMPSON, Clerk.

Transcript filed January Fifth, 1900.

10

FILED JANUARY 5, 1900.

## Essex County Orphans' Court.

IN THE MATTER OF

WILLIAM S. CHARDAVOYNE,  
A LUNATIC.

ORDER.

20

This matter being opened to the Court by George H. Lambert, of Counsel with Gilbert Chardavoyné, the petitioner, and a transcript of all the proceedings in said cause under the seal of the Court of Chancery having been filed in the office of the Surrogate of the County of Essex, from which it appears that the said William S. Chardavoyné has been lawfully declared a lunatic, and the Court having made inquiry into the circumstances of the case, and request being made for the appointment of a guardian for said lunatic.

30

It is on this fifth day of January, Nineteen Hundred, ordered that the guardianship of the person and property of the said William S. Chardavoyné be committed to Annie N. Chardavoyné, the wife of said William S. Chardavoyné, and that letters of guardianship be granted accordingly, the said guardian first entering into bond in the sum of Three Hundred Dollars for the faithful execution of her office according to law.

J. FRANKLIN FORT,

Judge.

40

## New Jersey Supreme Court.

ESSEX CIRCUIT.

October 18, 1902.

10	<p style="text-align: center;">MECHANICS BANK,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">WILLIAM S. CHARDAVOYNE,</p> <p style="text-align: center;">ET AL.</p>	}	Decision.
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For the plaintiff, Albert C. Wall.

For the defendants, Lambert & Stewart.

THE COURT (Swayze, J.) This is an action against William S. Chardavoyne and Annie N., his wife, upon a  
 20 promissory note made by William to the order of Annie, and indorsed by her. The note is dated at Newark, July 28, 1899, and is payable at the Mechanics Bank, Brooklyn, New York. I find the facts to be as follows:

Mrs. Chardavoyne, ten days or two weeks before July 28, 1899, intrusted her husband with a blank form of note, indorsed by her, to be filled up by her husband, and to be used at the German National Bank of Newark, to obtain a loan for Mrs. Chardavoyne. The German Bank  
 30 refused to discount the note, and this refusal was reported the same day to Mrs. Chardavoyne, who paid no further attention to the matter and never authorized her husband to use the note for any other purpose. On July 28, 1899, the day the note bears date, Mr. Chardavoyne was at the Mechanics Bank in Brooklyn, where this note was filled up by the president of the bank for the amount of money then due from Mr. Chardavoyne to the bank.

The president of the bank says he thinks that at the time he filled up the note it was not indorsed by Mrs. Chardavoyne, and that Mr. Chardavoyne offered to give  
 40 Mrs. Chardavoyne's indorsement, which offer he accepted

for the bank. He further says that he thinks that the note was not left with him by Mr. Chardavoyne at the time. The note was discounted on July 29th. I find that Mr. White, the president of the bank, did not know that Mrs. Chardavoyne had indorsed this paper in blank, and that he took the note in the regular course of business, in good faith, without any notice of any infirmity, and in payment of an indebtedness then due to the bank. The whole transaction took place in the Mechanics Bank of Brooklyn, and the note is payable there. 10

The case, as far as concerns the effect of an indorsement by a married woman, is governed by the recent decision of the Court of Errors, in the case of *Thompson v. Taylor*, 37 Vroom, 253. Counsel agreed that I might take the New York law from the printed statute books and reports, and I find that the New York law makes valid a contract of this kind by a married woman.

Judgment must be given for the plaintiff, unless Mrs. Chardavoyne has established some other defence than that of coverture. 20

One ground of defence is that at the time this note was negotiated her husband was insane, and therefore had no longer any authority to act as her agent in filling up the blanks in this paper or in negotiating the same. The only proof of his insanity is an inquisition had in lunacy proceedings in the Court of Chancery. The proceedings were begun by petition filed August 3, 1899. The inquisition was had December 18, 1899, and the finding was that Mr. Chardavoyne had been of unsound mind for six months before that time, thus overreaching 30 the date of this note and extending the period of Mr. Chardavoyne's incompetency back to the month of June. Mrs. Chardavoyne put her name upon the blank piece of paper, she says, "all of two weeks, perhaps ten days," before July 28th; and Gilbert Chardavoyne, her husband's father, accompanied the husband to the German Bank for the purpose of having the note discounted. She testifies also that she had to raise money after that date by mortgage upon real estate, which must be presumed to have been signed by her husband. She says her husband 40

was miserable before the 28th of July. No physicians were called to testify as to his condition, nor was there any evidence except such as may arise from the finding of the jury on the inquisition in December, and the testimony of Mrs. Chardavoyné and her father-in-law. The inquisition is only *prima facie* evidence of insanity. *Den v. Clark*, 5 Halst., 217; *Yauger v. Skinner*, 1 McCarter, 389; *Hunt v. Hunt*, 2 Beasley, 161; *Hill v. Day*, 7 Stew., 150; *Mott v. Mott*, 4 Dick., 192. The inquisition

10 having been had in December, must necessarily as against a third party be of little probative force as to Mr. Chardavoyné's condition in July; and in this case the finding of the inquisition is at variance with the conduct of Mrs. Chardavoyné herself and of her father-in-law, who was the applicant in the lunacy proceedings. Mrs. Chardavoyné, two weeks before the 28th of July, at a time when, according to the finding of the inquisition, her husband was of unsound mind, had intrusted him with this paper, indorsed in blank, for the purpose of

20 securing money at the German Bank, and the father-in-law had accompanied him to the bank and had offered to indorse his note, without intimating that he was insane. Mrs. Chardavoyné gave a mortgage on her real estate, which the husband must be presumed to have signed, about the same time. The president of the bank, a business man of long experience, dealt with Mr. Chardavoyné evidently without suspecting that he was insane, and the bank surrendered its former securities and extended time to Mr. Chardavoyné in exchange for this

30 note. These facts, and the failure to call the physicians to testify to the man's insanity, and Mrs. Chardavoyné's own testimony on the subject, are sufficient, in my judgment, to overcome the *prima facie* case which would otherwise be made by the finding of the inquisition, and I am unwilling merely upon the strength of the inquisition to find that Mr. Chardavoyné was insane at the time of the negotiation of this paper.

Even if Mr. Chardavoyné was insane at the time the note was negotiated, in the absence of proof that that

40 insanity was known to the bank or its officers, Mrs. Charda-

voyne must be held by the ordinary contract of an indorser to have warranted the capacity of the maker of the note.

Edmonds v. Rose, 22 Vroom, 547.

It is urged, however, in opposition to this view, that his agency to fill up and negotiate the note was revoked by his insanity. As against an innocent third party, I think Mrs. Chardavoyne, having intrusted this paper to her husband, with the intent that it should be filled up and negotiated as a note, and having left it in his possession after the German Bank had refused to discount it, is estopped to set up that he was not her agent, or that the agency had been revoked. But it is proper to ask whether, under all circumstances, the insanity of the agent operates as a revocation of the agency. The text writers so state. Evans on Agency, 115, 116; Story on Agency, sec. 487. No cases are cited; cases are not likely to arise where a contract would be made with an agent who is obviously incompetent. Contracts with agents apparently competent, even though in fact *non compos*, may arise. Under the doctrine formerly held by the English courts, that contracts with a lunatic were void, contracts with an agent who was *non compos* would also be void. The modern doctrine is that contracts with a lunatic are not necessarily void.

The law on this subject is discussed in the opinion of the Court of Errors in *Matthiessen & Wiechers Refining Company v. McMahan's Admrs.*, 9 Vroom, 536. The trial judge had instructed the jury that the contracts of lunatics and insane persons were invalid and not binding, *with a qualification* that if Matthiessen, acting as the agent of the company, dealing with McMahan or his agent *in the ordinary course of business, in good faith, without any knowledge of the insanity or mental disturbance of McMahan, and without the knowledge of such circumstances as would put a reasonably prudent man upon inquiry, made a bargain in good faith, then that would be a good bargain, and neither*

*McMahon nor his representative could set up the insanity against it.* This instruction was approved by the Court of Errors. It is manifestly proper, as it protects a person dealing in good faith, without notice of the insanity, and making a fair bargain. While the case there referred to was a case of insanity of the principal, I see no reason why a different rule should be applied in a case of insanity of the agent, assuming it to be likewise unknown and undiscoverable to the other party to the

10 contract.

Another ground of defence is that the only authority given by Mrs. Chardavoyne to her husband was to use this note for discount at the German Bank to procure a loan for herself, and it is urged that because he misappropriated the note to his own purposes, she cannot now be held. The paper was indorsed by her with the intention that it should be used as a note by her husband to procure money. She cannot, under the circumstances of this case, charge an innocent third party with notice that

20 the only authority of her husband was to procure money for herself. The case is governed by the principle of *Duncan v. Gilbert*, 5 Dutch, 521; *Rogers v. Shipley*, 6 Vroom, 86, and *Jackson v. First Natl. Bank*, 13 Vroom, 177. These cases were, it is true, cases of accommodation indorsements, and the present case is a case of misappropriated by an agent, but the same rule, I think, is applicable. *Camden Safe Deposit Co. v. Abbott*, 15 Vroom, 257; *Reed v. Abbott*, 16 id. 303. The case differs from a case like *Dowden v. Cryder*, 26 Vroom, 329.

30 In that case the circumstances were such as to charge the plaintiff with notice of the agency. Here there was nothing in the case to charge the bank with notice of the agency. Mrs. Chardavoyne was, to all appearances, in the position of an accommodation indorser, and her contract as such, by the laws of the State of New York, was valid.

Nor can it be said that Mrs. Chardavoyne intended the note to be used in New Jersey only, where her contract of indorsement would be invalid, and that she is not

40 bound because she never authorized it to be used in a jur-

isdiction in which it would be valid. I think she must be held to have intended to enter into a valid contract. She certainly intended to pledge her credit for the loan intended to be secured upon this note, and she ought not to be allowed to set up that she intended to deceive anybody into loaning money on her credit in such a way that she could not be held liable for its payment.

I find in favor of the plaintiff, and that the defendants promised in manner and form as the plaintiff in its declaration complains; and I assess the damages at \$1,114.52, 10 being the principal of the note and protest fees, besides interest from July 28, 1899, which must be added. This interest can be calculated by counsel.

FILED JANUARY 31ST, 1903.

NEW JERSEY COURT OF ERRORS AND  
APPEALS IN THE LAST RESORT. 20

.....  
SEAL  
OF  
THE COURT.  
.....

The State of New Jersey to our  
Supreme Court of our said State,  
GREETING :

Because of the record and proceedings and also on the giving of judgment in a plaint which was in our Supreme Court, holden at Newark, in and for the County of Essex, between the Mechanics Bank, plaintiff, and Annie N. Chardavoyne and William S. Chardavoyne, defendants, in an action upon contract, manifest 30 error hath intervened to the great damage of the said Annie N. Chardavoyne, as by her complaint we are informed.

We being willing that speedy justice should be done to the parties aforesaid, in this behalf, do command you distinctly and openly to send under your seal, the record and proceeding aforesaid with all things touching and concerning the same, to our judges of our Court of Errors and Appeals in the last resort in all cases, at Trenton, on the tenth day of January, next, together with 40

this writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what is right and according to the law and custom of the State of New Jersey, ought to be done.

Witness William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, aforesaid, the Twenty-second day of December, Nineteen Hundred and Two.

10

S. D. DICKINSON, Clerk.

LAMBERT &amp; STEWART, Attorneys.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed as within we are commanded.

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WM. S. GUMMERE, C. J.

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FILED FEBRUARY 5, 1903.

## New Jersey Court of Errors and Appeals.

30	ANNIE N. CHARDAVOYNE, Plaintiff in Error,	}	On Error.
	vs.		Order
	MECHANICS BANK, Defendant in Error.		Extending Time

This matter being opened to the Court by Lambert & Stewart, Attorneys for Plaintiff in Error, and no cause being shown to the contrary;

It is thereupon, on this twenty-first day of January,  
 40 Nineteen Hundred and Three, ordered that the time

within which the Writ of Error in the above entitled action shall be returnable shall be extended to the Thirty-first day of January, Nineteen Hundred and Three.

We consent to the entry of the above order.

VREDENBURGH, WALL & VAN WINKLE,  
Attys. of Deft.

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## New Jersey Court of Errors and Appeals.

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ANNIE N. CHARDAVOYNE, Plaintiff in Error,	}	On Contract.
vs.		Assignment in Error.
MECHANICS BANK, Defendant in Error.		

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Afterwards, that is to say on the thirty-first day of January, in the year of our Lord One thousand nine hundred and three, before the Court of Errors and Appeals in the last resort in all causes in New Jersey, comes the said Annie N. Chardavoyné by Lambert & Stewart, her attorneys, and says that in the record and proceedings aforesaid, and in the giving the judgment aforesaid, there is manifest error in this, to wit:

First: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold that "in a collateral action the letters of guardianship of a lunatic are themselves conclusive of the regularity of the proceedings resulting in their issuance, as well as of the insanity of the person upon whose estate they are issued," although duly requested so to hold by the plaintiff in error. 30

Second: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that until contradicted an inquisition of lunacy binds all the world, whether 40

parties to the inquisition or not," although duly requested so to hold by the plaintiff in error.

Third: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold that "contracts made by lunatics are presumed to be void until capacity to contract is shown by satisfactory evidence," although duly requested so to hold by the plaintiff in error.

10 Fourth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that general lunacy being established, the burden of showing capacity to contract is on the plaintiff," although duly requested so to hold by the plaintiff in error.

Fifth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that no capacity to contract was shown," although duly requested so to hold by the plaintiff in error,

20 Sixth. In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that where the date of the transaction is overlapped by the finding of a jury in a lunacy proceeding, the inquisition is presumptive evidence of insanity at the time of the transaction," although duly requested so to hold by the plaintiff in error.

30 Seventh. In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold that "a lunatic cannot be an agent," although duly requested so to hold by the plaintiff in error.

Eighth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the trial, refused to hold "that insanity is a defense to a contract by a lunatic if the parties can be put in statu quo," although duly requested so to hold by the plaintiff in error.

40 Ninth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the trial, refused to hold "that a person endorsing a

note for the accommodation of another becomes merely a surety, and any defense available to the maker is available to the endorser when the note is sued on," although duly requested so to hold by the plaintiff in error.

Tenth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that under the doctrine established by the Courts of this State, the plaintiff can recover only the amount which it has actually advanced upon the strength of the endorser, which in this case is nothing," although duly requested so to hold by the plaintiff in error. 10

Eleventh: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that the amount which the plaintiff actually lost by the taking of the note cannot exceed the costs of this action," although duly requested so to hold by the plaintiff in error.

Twelfth: In that upon the trial, of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to hold "that, as the Bank lost nothing, the doctrine of Estoppel in Pais does not apply, and the defendant, Annie N. Chardavoyné, can deny that William S. Chardavoyné was her agent," although duly requested so to hold by the plaintiff in error. 20

Thirteenth: In that upon the trial of the said cause the Judge before whom the same was tried, at the conclusion of the said trial, refused to render judgment in favor of Annie N. Chardavoyné and against the plaintiff, the Mechanics Bank, for the costs of suit, although duly requested so to do by the plaintiff in error. 30

Fourteenth: In that upon the record aforesaid judgment was given in favor of the said plaintiff and against the said defendant, Annie N. Chardavoyné, whereas by the law of the land such judgment ought not to have been given.

Fifteenth: In that for divers and other reasons the said judgment is irregular and erroneous and should be reversed and set aside, and the said Annie N. Chardavoyné prays that judgment aforesaid for the errors afore- 40

said and for other errors therein may be reversed and annulled and altogether for nothing holden, and that she may be restored to all things which she has lost by occasion of the said judgment.

LAMBERT & STEWART,  
Attorneys and of Counsel with Plaintiff in Error.

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## New Jersey Court of Errors and Appeals.

ANNIE N. CHARDAVOYNE, Plaintiff in Error,	}	Upon Contract.
vs.		Joinder in
MECHANICS BANK, Defendant in Error.		Error.

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And hereupon the said Mechanics Bank, as aforesaid, by Vredenburgh & Garretson, its Attorneys, comes into Court and says there is no error, either in the record and proceedings aforesaid or in the giving the judgment aforesaid; and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

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VREDENBURGH, WALL & VAN WINKLE,  
Attys. Deft. in Error.

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