(10)

New Jersey Court of Errors and Appeals

ASBURY PARK & OCEAN GROVE BANK, Body Corporate, *Plaintiff-Appellee,* vs. GABRIELE GIORDANO, *Defendant-Appellant.*	*Appeal from the Supreme Court.* from Judges Parker, Minturn and Black

STATEMENT OF THE CASE

(*Briefs*)

This case was tried in the District Court of Asbury Park. The plaintiff recovered judgment on note for $396.00. The defendant-appellant contends that:

The Supreme Court erred in granting the motion to dismiss said appeal, on the ground that it has no merits.

The defendant-appellant pointed out to the Supreme Court the following reasons to reverse said judgment:

1. The mortgage summoned in the District Court's proceedings has been concealed, so preventing defendant to plead on merits of the case.

2. The note and mortgage were executed without consideration; and its signatures were extorted by threats that if not given, plaintiff was ready to sell out the defendant.

3. That the defendant on appeal was compelled to execute the note and mortgage to satisfy a previous judgment, recovered by plaintiff from another promissory note, upon which he was indorser, and the plaintiff-appellee wilfully allowed the maker, real debtor, to disappear free.

4. That from which duress was the outgrowth of an action in "Torts," for conspiracy, slander and loss of credit standing against the actual plaintiff-appellee, sustained on its merits by His Honor Justice Lloyd, which denied a motion to strike out, and thereafter by the Supreme Court, which has granted the "Rule to Show Cause" why the judgment for nonsuit by default should not be opened—Giordano vs. Asbury Park and Ocean Grove Bank—and it lies pending depositions to cover the Rule. (See copy annexed.)

And being such note and mortgage executed upon an illegal consideration, the defendant in appeal respectfully contends therefore that the judgment of the District Court should be reversed.

Respectfully submitted,

G. GIORDANO.

New Jersey Supreme Court

GABRIELE GIORDANO,
Plaintiff,
vs.
ASBURY PARK & OCEAN GROVE BANK, Body Corporate,
Defendant.

Action at Law.
Pro. Rule to Show Cause.

WHAT AMOUNT TO SPECIAL DAMAGES.

Briefs, Statement of Facts

On motion to open judgment for nonsuit by default, plaintiff sued for damages for an alleged conspiracy, also for slander, also for loss of credit standing because of the acts of defendant. (Memo. by the Court, filed May 20, 1925. See p. 10.)

1. A conspiracy was planned to defraud a plaintiff as indorser. (See first count of plaintiff's complaint, annexed. P. 5, line 12.)

It should be consulted later on if the note was the real object upon which plaintiff would be defrauded, or whether the direct object was a plaintiff's real property; compelling to sell it; and as a result of the above mentioned conspiracy, plaintiff sustained considerable damages.

But in order to obtain compensation for any item of damage he must submit competent proof and evidence to the court and jury that he has sustained that damage, which meant pecuniary losses arose, pursued and resulted, as a legal consequence, previously intended by defendant, from his malicious words.

If the words are not on their face defamatory an allegation of facts showing them to be so. (Clark on pleading.)

Unless a question of fair comment or conditional privilege is raised, the plaintiff need not prove malice, all he needs to prove is the publication of the defamation, (see construction of the words used, second count of the complaint) as it is usually stated, the law implies the malice from the publication. Malice is usually a question for the jury. (Clark on Tort.)

The words spoken may not have been "actionable per se" but required proof of special damages to constitute a slander. (Clark on Torts.)

WHAT AMOUNT TO SPECIAL DAMAGES.

Special damages are those who are the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions. (Blacks' Law Dictionary.)

WHAT AMOUNT TO SPECIAL DAMAGES.

STATEMENT OF FACTS.

In 1904, plaintiff became a resident of Asbury Park with a few dollars; in 1906 became a depositor into the defendant's business; in 1907, with a few hundred dollars bought real property; in 1909, obtained title to it, and thereafter with the credit-protection of defendant improved, remodeled and built upon it, enjoying in the meantime the esteem and reputation as a good and honest citizen, and so far as concerned in paying his bills promptly, his prestige grew rapidly; it gave vamp to new enterprise, and the community predicted he would succeed.

In 1922, he was in a state of prosperity, and same property which originally was bought for few hundred dollars was worth at that time $25,000 or $30,000, partly encumbered for $2,850 first mortgage; at the same time had also a retail business insured for $3,000 with assets of $2,700 and liabilities of about $300; no other liabilities could be ascertained, and the note mentioned in this case of action, upon which he was a mere indorser, and other was a real debtor (maker).

In 1922, with the death of president of defendant, a former clerk-boy of 1906 succeed to be president-dictator of defendant; and then this cause of action arose with the absence of the proper motive to support a conditional privilege, but in order to assail the character of plaintiff, with his public slanderous statement: "The bank is ready to sell you out, Giordano," then debarred by its credit, debarred by its references; followed a sequel of over 20 District Court judgments against him, for bills not promptly

WHAT AMOUNT TO SPECIAL DAMAGES.

paid; followed acts of bankruptcy in levying his personal property, and posting it at a public sale; then his retail business was overthrown; followed, on July 23, 1923, a Kingsland foreclosure proceedings against his real property, for interest not paid when due, and saved in time by friends from Sheriff's sale; followed the defendant's institution a civil action, on June 30, 1925, maliciously and without probable cause, being for the same note, and being a plaintiff a mere indorser on the original note, and for it having had his personal property seized, and having allowed the maker, real debtor, to go free (see complaint) ; then on July 10, 1925, followed the Walling foreclosure proceedings, apparently for same cause, while the city tax collector sold his property for $775 for taxes in arrears and assessments; and then again with the aid of friends was saved, but the mortgages against his property were increased for over $8,000; his public credit ruined; his name badly beaten; his health impaired.

And the defense is estopped to deny it.

"An imputation of insolvency is not defamatory generally, since it does not bring one into hatred, contempt or ridicule, because one may lose his money by misfortune; but if it is made with reference to one who is engaged in trade or business, it is defamatory and actionable per se because a business man must have credit to succeed in his calling." (Clark on Torts.)

The plaintiff respectfully contends therefore that the words spoken should be sustained "actionable per see" and with "proof of special damages."

Respectfully submitted,

GABRIELE GIORDANO.

Dated Nov. 12th, 1925.

New Jersey Supreme Court
Monmouth County

GABRIELE GIORDANO,
Plaintiff,
VS.
ASBURY PARK & OCEAN GROVE BANK, Body Corporate of New Jersey,
Defendant.

Action at Law.
In Torts.

Plaintiff, Gabriele Giordano, residing at Asbury Park, New Jersey, says:

FIRST COUNT.

1. That on May 23, 1921, plaintiff sold to Nicola Oquilino of Asbury Park, N. J., an electric shoe machine, with finishing and stitching attachment therewith, in good order, for the sum of Three Hundred Fifty Dollars ($350.00), and said Aquilino gave a promissory note in payment thereof, payable monthly at the Asbury Park and Ocean Grove Bank, which note the said plaintiff indorsed and discounted.

2. Thereafter Aquilino used the said machine, from May, 1921, to September, 1922, and by his neglect in meantime broke the stitching clutch in said machine, other parts lost, and paid no attention to the note, which, after the same had been renewed several times without any payment, was protested in June, 1922.

3. At the end of August, 1922, plaintiff conferred with Irving Newman, Asst. Cashier of the defendant, and later with its President, where it was decided and AGREED to instruct its attorneys to start suit proceedings, obtain judgment, and force payment against the maker of said note.

4. On September 6, 1922, defendant in the District Court of the First Judicial District of Monmouth County recovered a judgment on the aforesaid note for Three Hundred Fifty-six Dollars and Five Cents ($356.05) against plaintiff as endorser and Aquilino as maker.

5. At the end of November, 1922, an execution was issued against Aquilino, but, by countermand of the defendant's attorney and president, the Constable returned the execution unsatisfied.

6. Another execution was issued against plaintiff, escorted by a following explicit and peremptory order:

7. That "the matter has been arranged between Aquilino's attorney and the defendant's attorneys." Aquilino was to pay in full adjustment $200.00, with understanding that plaintiff was requested to pay the balance in $202.68, then withdraw Aquilino's claim; and, in refusal to assent to it, then the attorney and president of the defendant instructed the Constable to make a levy upon plaintiff's estate, and sell him out for full amount of $402.68.

8. Such order meaning a conspiracy was planned for the purpose to defraud a plaintiff as endorser, the plaintiff thereby turned it down.

SECOND COUNT.

9. Plaintiff said that two days after the day aforesaid, on December 2, 1922, the president of the defendant furthermore, bitterly excited, appeared in public bank where plaintiff was called, and, in presence of several persons, his declaration directed against plaintiff was of nature "slanderous actionable per se" that "the bank is ready to sell you out, Giordano."

10. Plaintiff avers, that the aforesaid words were false and malicious, and were used in defamatory sense, to wit: meaning thereby that plaintiff attempted to extract from Aquilino over $400.00, the maker of said note, which note was obtained through an unfair transaction for an old machinery's negotiating it, through the bank, but the bank has decided to sell him out as endorser, if it still persisted in refusing the attorney's decision: $200.00 in settlement thereof.

11. Plaintiff avers that by reason of the speaking of such remarks, in presence of several persons, among whom were acquaintances of said plaintiff, and being so suspected to be a worthless person, and to cause him to be an object of scorn among his

fellow-citizens, said plaintiff has been greatly injured in his good name and credit, and brought plaintiff into public disgrace with many in his community seeing his business slowly sinking.

12. Plaintiff claims that for such action suffered for three months a nervous breakdown, with the loss of his constitutional right of life.

THIRD COUNT.

13. Plaintiff says, that on the day aforesaid that the president of the defendant spoke of a threatening statement in public direction of plaintiff: that "the bank is ready to sell you out, Giordano," and, since then, plaintiff lost his credit with defendant, which credit helped plaintiff to build up a successful position, under the late president of the defendant, in the last 16 years, then in view of such proceeding, it was a necessity, from which there was no escape for plaintiff, demanding an extension of a few days for payment thereof.

14. And, on December 15, 1922, defendant through its attorneys and president assigned said judgment to plaintiff for true amount of Four Hundred Two Dollars and Sixty-eight Cents ($402.68), which plaintiff said meaning, paid as endorser, and forced by defendant to do so.

15. Plaintiff maintains, that at that time the defendant recovered judgment against maker and endorser of said note, the maker was in position of $1,000.00 in personal estate, then in meantime the plaintiff as endorser was forced to pay the defendant, the maker sold out his estate (April 10, 1923) before plaintiff could obtain judgment against it (May 17, 1923) plaintiff disclosed that he has been defrauded.

And, therefore, prays and demands as damages:

For First Count ..... $ 5,000.00
For Second Count $10,000.00
For Third Count ..... $ 5,000.00
And interest therefrom.

Plaintiff,
GABRIELE GIORDANO.

Filed July 10, 1924

New Jersey Supreme Court
Monmouth County

GABRIELE GIORDANO,
Plaintiff,

vs.

ASBURY PARK & OCEAN GROVE BANK, Body Corporate of New Jersey,
Defendant.

Action at Law.
Answer.

The defendant, a body corporate of the State of New Jersey, answering the plaintiff's complaint, says that:

1. It denies the truth of the matters contained in the plaintiff's complaint.

FIRST DEFENSE TO FIRST COUNT:

Defendant says that the first count of plaintiffs complaint does not set forth or disclose any cause of action.

FIRST DEFENSE TO SECOND COUNT:

Defendant says that the second count of plaintiff's complaint does not set forth or disclose any cause of action.

SECOND DEFENSE TO SECOND COUNT:

Defendant says that the statements alleged to have been made by its officers or agents were justified and privileged, if spoken.

THIRD DEFENSE TO SECOND COUNT.

Defendant says that the words alleged to have been spoken, if spoken by president of said bank, were not spoken in connection with his trade or business; that they did not impute want of integrity or honesty of the plaintiff, and are not slanderous in any respect, and were not said in defamatory sense.

FOURTH DEFENSE TO SECOND COUNT:

The allegations of the second count of plaintiff's complaint do not allege special damages, and do not allege words from which malice might be imputed, or from which any defamatory sense could be imputed.

FIFTH DEFENSE TO SECOND COUNT:

The plaintiff does not allege that the president of the bank was directed or authorized to speak the alleged words, set forth in the complaint.

ANSWER.

FIRST DEFENSE TO THIRD COUNT:

Defendant says that the third count of plaintiff's complaint does not set forth or disclose any cause of action.

The allegations of first count, second and third counts, singly or taken together, do not set forth any cause of action, any facts or statements from which any inference of conspiracy, libel or fraud can be taken.

Defendant reserved the right before the trial, or at the trial of said cause, for leave to strike out the plaintiff's complaint as being improper and setting forth no cause of action.

(Signed) DURAND, IVINS AND CARTON,
Attorneys for Defendant.

Filed July 26, 1924.

New Jersey Supreme Court
Monmouth County

GABRIELE GIORDANO, *Plaintiff,*
VS.
ASBURY PARK & OCEAN GROVE BANK, Body Corporate, *Defendant.*

Action at Law. Reply. Motion to Strike Out the Answer as Disclosing No Ground of Defense.

Plaintiff moved to strike out the defendant's answer filed in this cause, as admitting the facts alleged, and disclosing no ground of defense.

1. Defendant on "Second Defense to Second Count" arises, claiming:

"Defendant says that the statements alleged to have been made by its officers or agents were justified and privileged if spoken" (alluding on judgment-execution, obtained by defendant against plaintiff as indorser.)

Plaintiff in return: "Distinction between maker and indorser."

REPLY.

2. The maker is primarily or unconditionally liable. The indorser's liability is only conditional one, to pay if the maker did not.

3. The indorser would not be liable merely by reason of non-payment of the debt, for that was not his contract. It must be shown that the debt is not collectible. If the principal (maker) is able and solvent to pay the debt, the contract of the guarantor, or indorser, is not broken, and hence he would not be liable (W. U. Moore on Negotiable Instruments and Simonton on Guaranty and Suretyship.)

4. "In an action of slander a justification or discharge must be specially pleaded" (Andrew Stephens Pleading, p. 236.)

5. It is sometimes necessary for the public welfare that an individual's reputation be damaged without liability. Privilege is therefore a kind of justification. But this is the extent of the privilege; for it a party or his agent will pass beyond the prescribed limits to asperse and villify another by words or written, he is without protection and, as in other cases, must abide the consequences of his misconduct.

In the following cases the privilege is absolute, that is, the parties are protected even though they act from an improper motive, and have no belief in the truth of the statements they make:

(A) The Chief Executive of the United States, and of each State, and members of the Federal and State Legislatures, while acting in their official capacities.

(B) Judges, juries, parties, counsels and witnesses as to relevant statements in the course of judicial proceedings.

(C) Reports of naval and military officers in the course of their official duty.

(G. L. Clark on Torts)

Plaintiff therefore prays alternative relief, with special damages, and the Court may determine at the trial in submitting the facts to the jury for recovery.

GABRIELE GIORDANO,
Plaintiff.

(Filed August 8th, 1924)

New Jersey Supreme Court

GABRIELE GIORDANO,
Plaintiff,
vs.
ASBURY PARK & OCEAN GROVE BANK, body corporate,
Defendant.

On Motion to Open Judgment of Nonsuit by Default.

Plaintiff sued for damages for an alleged conspiracy, also for slander, also for loss of credit standing because of the acts of defendant.

The cause being at issue and regularly on the Circuit list for trial, plaintiff failed to appear when the case was called, and defendant asked and obtained a nonsuit.

The Circuit Court Judge later allowed a rule to show cause why the judgment should not be opened and plaintiff allowed to present his case, and made the rule returnable before himself at the Court House in Freehold, heard the same, and ordered the rule discharged.

Plaintiff now applies to this court for a similar rule.

This being a Supreme Court issue, a Circuit Court Judge is without jurisdiction to hear and determine such a rule, and his action in discharging it was therefore nugatory.

The matter has never been lawfully heard.

Plaintiff may take a rule to show cause returnable before this court at the next October term, with leave to both parties to take depositions for and against the rule.

Filed May 20, 1925.

EDWARD J. KELLEHER,
Clerk.

Rule to Show Cause filed June 11th, 1925. Affidavit in support averring sickness.

NEW JERSEY COURT OF ERRORS AND APPEALS

ASBURY PARK AND OCEAN GROVE BANK,
Body Corporate,
Plaintiff-appellee,

vs.

GABRIELLE GIORDANO,
Defendant-appellant.

ON APPEAL FROM JUDGMENT OF THE SUPREME COURT

BRIEF OF PLAINTIFF-APPELLEE.

This is an appeal from a judgment of the Supreme Court entered October 8, 1925, dismissing an appeal from a judgment recovered by the plaintiff-appellee and against the defendant-appellant in the District Court of the First Judicial District of the County of Monmouth, in a suit on a note made by said Giordano, defendant-appellant, to said Asbury Park and Ocean Grove Bank, plaintiff-appellee.

The Asbury Park and Ocean Grove Bank, plaintiff-appellee, brought suit against Gabriele Giordano in the District Court of the First Judicial District of the County of Monmouth, to recover, the amount of a certain promissory note made by Gabriele Giordano for Three Hundred and Ninety-six Dollars, dated October 26, 1924, and payable two months after date to the order of the Asbury Park and Ocean Grove Bank, at the Asbury Park and Ocean Grove Bank, together with protest fees, interest and costs of suit. Judgment was entered in the trial court in favor of the plaintiff and against the defendant.

The only defense set up by the defendant in the trial court was that he had given a mortgage to secure the payment of the note sued on and that the plaintiff before it

would be entitled to sue upon the note must foreclose its mortgage which had been given to secure the note.

Giordano, the defendant-appellant, appealed from the judgment of the District Court of the First Judicial District of the County of Monmouth to the Supreme Court. The plaintiff was served with notice of appeal and state of the case as settled by the trial court, but was served with no further papers in the case.

It appears from a per curiam opinion filed in the Supreme Court that the defendant-appellant made application to the Supreme Court to have his appeal listed for hearing, but the plaintiff-appellee was not served with a notice of such motion.

The following is a copy of the per curiam opinion filed by the Supreme Court:

> "If there appeared to be any substantial merit in this application we should refuse to consider it unless a notice to the plaintiff below, or on the return of a rule to show cause. But an examination of the appeal papers shows that the suit was against defendant on a promissory note, and that the defense, which was admitted in point of fact, was that a mortgage had been given to secure the note, and was held by the bank and defendant therefore claimed that no action at law would lie on on the note until the mortgage had been first foreclosed. This is the sole point in the state of the case as settled by the District Court, and it is devoid of merit because of the act of 1880 requiring prior foreclosure applies only to bonds and mortgages for the same indebtedness and does not apply to notes. This has been the uniform understanding of the bar and courts for many years.
>
> It is suggested now that the note and mortgage was procured by duress but there is no such point mentioned in the state of the case and we cannot consider it.

The application is denied."

It appears from the foregoing opinion that the Supreme Court considered the appeal upon its merits and found that the defense set up by the defendant in the trial court was devoid of merit and denied the application of the defendant-appellant to list his appeal for hearing. The plaintiff-appellee gave notice to the defendant-appellant that it would move to dismiss the appeal of the defendant-appellant at the October Term, 1925, of the Supreme Court. The motion to dismiss the appeal was heard by the Supreme Court on October 8, 1925, and the Court entered an order on that day dismissing the appeal.

The defendant-appellant now appeals to this Honorable Court, but has failed to served upon the plaintiff-appellee a statement of the case.

It is respectfully submitted by the plaintiff-appellee that the appeal is not properly before this Court and for that reason the appeal should be dismissed.

Assuming, however, that the matter is properly before the Court, then we submit that the reasons pointed out by the defendant-appellant for reversal are unsound in law and have no merit.

We will discuss the reasons for reversal in the order in which they have been advanced by the defendant-appellant.

POINT No. 1.

The Plaintiff-appellee respectfully submits that it is not necessary to forclose a mortgage given to secure a note before the note can be sued upon. The Statute of 1880 requiring prior foreclosure has no application to a note, but has reference to bonds and mortgages only.

POINTS Nos. 2 and 3.

The defendant-appellant did not set up in the trial court a failure of consideration for the giving of the note

and mortgage. The plaintiff-appellee had previously recovered a judgment against the defendant-appellant, and the note there sued upon was given in satisfaction of that judgment, therefore there was ample consideration.

POINT No. 4

Point No. 4 has no application whatsoever to the case now before the Court, and therefore it will not be discussed.

For the foregoing reasons the plaintiff-appellee respectfully submits that the judgment of the Supreme Court should be affirmed.

DURAND, IVINS & CARTON,
Attorneys for Plaintiff-Appellee.
JAMES D. CARTON,
Of Counsel.

New Jersey Court of Errors and Appeals

ASBURY PARK & OCEAN GROVE BANK, Body Corporate,
Plaintiff-Appellee,
vs.
GABRIELE GIORDANO,
Defendant-Appellant.

Reply to Brief of Plaintiff-Appellee. Appeal from Supreme Court.

Defendant replying to Brief of Plaintiff-Appellee, page 2nd, paragraph 2nd, which states as follows:

The Plaintiff was served with Notice of Appeal and State of the Case as settled by the Trial Court, but was served with no further papers in the case.

Thus, on page 3, paragraph 2nd, Plaintiff states: That the Defendant-Appellant now appeals to this Honorable Court, but has failed to serve upon the Plaintiff-Appellee a statement of the case.

Defendant, in replying, contends that it has no other State of the Case in this matter, it has only the State of Case as settled by the Trial Court, and which Plaintiff-Appellee, on page 2nd, paragraph 2nd, admits having been served; thus Defendant's briefs (10 pages) to which is the present cause of Plaintiff's answer.

Further, on page 2, paragraph 3rd, Plaintiff states: It appears from a per curiam opinion filed in the Supreme Court that the Defendant made application to the Supreme Court to have his appeal listed for hearing, but the Plaintiff-Appellee was not served with a notice of such motion.

The defendant-Appellant, therefore, prays this Honorable Court to cause to be made an investigation in the Clerk's Office of the Supreme Court, from which record should result the correctness of the Defendant's proceedings in the matter.

The Plaintiff-Appellee was served through the officer with a notice for argument.

In conclusion, it appears that Plaintiff-Appellee endeavors every improper effort to gain, and to avoid any pleading against the 4th point of Defendant's brief, which are the real merits of the case.

But statements not denied are admitted. (Rule 34.)

Plaintiff, on page 4, stated that "Point No. 4 has no application now before the Court."

Instead appears as indestructible axiom that Point No. 4 is listed in this term as Cause No. 61, and this Honorable Court could not decide on its merits this cause without the intervention of Cause No. 61, and vice versa.

The present Appeal listed as Cause No. 23 is the "Corpus Delict" of Cause No. 61.

And the doctrine of estoppel prevents a plaintiff to deny it.

Respectfully,

GABRIELE GIORDANO.

District Court

OF THE FIRST JUDICIAL DISTRICT OF THE COUNTY OF MONMOUTH.

ASBURY PARK AND OCEAN GROVE BANK, Body Corporate of New Jersey,
Plaintiff Appellee,
vs.
GABRIELE GIORDANO,
Defendant Appellant.

On Contract
On Appeal

STATE OF THE CASE SETTLED BY COURT.

Durand, Ivins & Carton, Attorneys of Plaintiff Appellee.
Gabriele Giordano, Pro Se.

The parties hereto, or their Attorneys, having been unable to agree upon a state of the case for appeal, and having applied to me, Judge of said Court, within the time limited by law, I do hereby settle the case as follows:

The action was brought to recover the amount of a certain promisory note, of which the following is a true copy:

"Asbury Park, N. J., October 26, 1924. $396.00.
"Two months after date I promise to pay to the order of the Asbury Park and Ocean Grove Bank Three Hundred and Ninety-six Dollars at the Asbury Park and Ocean Grove Bank of Asbury Park. Value received.
No. 33001. "*Signed*, Gabriele Giordano.
"*Endorsed*, Gabriele Giordano."

The note was not paid at maturity.

The defendant contended that no action could lie on the note for the reason that he had given a mortgage to the plaintiff to secure the payment of all his obligations to the Bank. He demanded production of the mortgage, but plaintiff's witness, E. Earl Farry, cashier, produced at the trial, stated that the mortgage in question could not be found. Both sides agreed that the mortgage was given to secure the obligations of the defendant.

On this state of facts, the defense was that no suit could be brought upon the note, but that the mortgage should be foreclosed instead. The defendant contended that, the mortgage was executed upon express condition that in default of payment of said note when due, the mortgagee might institute foreclosure proceedings. I ruled that the giving of the mortgage did not preclude the plaintiff from bringing suit on the original obligation, namely the note; and that the mortgage was simply additional security.

I gave Judgment for the plaintiff in the amount of $401.23, being the amount of the note with legal interest.

Exception to the Court's rulings was prayed and granted.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of March, 1925.

WARD KREMER,
Judge of the District Court of the First Judicial District of the County of Monmouth.

(Seal of the Court.)

Attest:
(*Signed*) HARRY M. WILSON,
Clerk