

New Jersey Court of Errors and Appeals.

AMHERST W. BELCHER,

Defendant in Error.

vs.

THE MANCHESTER BUILDING AND
LOAN ASSOCIATION,

Plaintiff in Error.

On Contract.

BRIEF FOR PLAINTIFF IN ERROR.

This writ brings up a judgment of the Passaic Circuit Court, entered on a verdict which the trial judge 10 directed the jury to find for the plaintiff.

The action was brought to recover the value of twenty shares of stock of the defendant, which was a Building and Loan Association, which stock was in the name of Plaintiff as a member of the Association. (See declaration—Case p. 5).

The evidence tended to show the following facts: The plaintiff's brother, Wm. H. Belcher, an Attorney at Law of Paterson, was President of the Defendant Association.

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The plaintiff lived at Rondout, New York, a considerable distance from Paterson, and made arrangements with Wm. H. Belcher whereby Wm. H. Belcher should cause plaintiff to become a member of the defendant and take twenty shares of the defendant in plaintiff's name. Pursuant to this arrangement Wm. H. Belcher, then President of the Association,

acting personally for his brother, the plaintiff, in the transaction, brought about the plaintiff's membership with the right to twenty shares of stock.

By the system or custom between the defendant and its members, a book in the name of A. W. Belcher was delivered to Wm. H. Belcher called the "Pass Book." This pass book showed the number of shares held by the plaintiff and contained the total payments for dues made by the member upon
 10 the shares as they were thereafter periodically made and so contained at all times the evidence of debt or claim that the member held against the Association, showing constantly what he paid in dues and what was due to him at any time; also containing what had been paid to the member and what he was entitled to withdraw. (Case p. 36).

No certificates of shares were issued (case p. 47), but the number of shares to which the member was entitled, was entered in the members' name, with
 20 their accounts, in the Defendant's Ledger (case p. 10); and also stated in the pass book given to the member as above stated.

The particular pass book of plaintiff was given upon plaintiff's membership to Wm. H. Belcher, but was burned in the fire at Paterson in 1902 (case p. 35).

All of the payments of dues required to be paid by the plaintiff were made by Wm. H. Belcher for the plaintiff, sometimes after they were due, but
 30 the dues were paid to June, 1902, so that the value of the twenty shares in June, 1902, was \$1,845.60 (case p. 11).

By the contract between the plaintiff and defendant, the plaintiff as a member had the right on March 27th, 1900, to withdraw \$800.00, being eighty or ninety per cent of the amount which he had then

paid in as dues; this withdrawal was called a loan made by the association to the plaintiff; and when the withdrawal or loan was made, the pass book containing the evidence of the amount between the Association and its member and held by the member was required to be transferred to the Association and held as evidence of the payment of the money withdrawn and as security for the loan; moreover, by the contract the plaintiff as such member also had the right on Nov. 15th, 1902, to withdraw the ¹⁰ sum of \$993.94, which was the total amount then due to him and subject to his right of withdrawal, in addition to the previous withdrawal or loan of \$800.00. If he chose to withdraw this \$993.94, such withdrawal was full payment to plaintiff and settlement of all accounts between plaintiff and defendant, and the evidence of such settlement was the surrender of the pass book from the member to the defendant. (Case p. 37-38).

Wm. H. Belcher, when he caused the pass book to ²⁰ be made out in the name of the plaintiff, at once took the book from the Company, always retained it in his possession, and always presented it to the Secretary of the Association for the purpose of having the Secretary enter the payments of dues in the pass book. These dues Wm. H. Belcher in person paid to the Secretary of the Association for the plaintiff, and presented the pass book of plaintiff in which the Secretary credited in the customary way the dues as they were paid. The Association by its ³⁰ officers never had any **direct** dealing whatever with the plaintiff, either by conversation, communication or otherwise, but all dealing between the Association and plaintiff was done by Wm. H. Belcher acting for the plaintiff, and the Secretary or officers

of the defendant other than Wm. H. Belcher, acting for the defendant.

On March 27, 1900, Wm. H. Belcher, then President of the Association, purporting to act for his brother the plaintiff, directed the Secretary of the Association to make the Association's check for \$800.00 payable to the order of plaintiff, being for the withdrawal or loan of \$800.00, which said plaintiff then had the right to make. The check was accordingly made. (Case p. 36, 37, 40). This check was delivered by the Association to the said Wm. H. Belcher, who transferred the pass book to the Association as security in the customary way. Wm. H. Belcher on or about March 30th, 1900, endorsed the check as follows:

“A. W. Belcher,

“W. H. Belcher, Atty.”

And upon this endorsement the bank paid the check to Wm. H. Belcher (See check Exhibit D-2, on extra 20 printed sheet).

Again, on Nov. 15, 1902, when the plaintiff was entitled to withdraw \$993.94 from the Association in addition to the \$800.00 previously loaned to him, and by said last withdrawal close his said accounts whereby said plaintiff and Association would be mutually released from any claim against the other, Wm. H. Belcher, then also President of the Association, still purporting to act for his brother, the plaintiff, directed the Secretary of the defendant to make 30 the defendant's check for \$993.94, being the amount then due to plaintiff, payable to the order of said plaintiff. This check for \$993.94 was made payable to the order of A. W. Belcher. It was delivered by the Association to Wm. H. Belcher who immediately endorsed it “A. W. Belcher, Wm. H. Belcher, Attorney,” and upon this endorsement the bank paid the

check to Wm. H. Belcher. (See check Exhibit D-1, on extra printed sheet). This last check for \$993.94 was the total amount due to plaintiff from the Association. He then had the right to draw it, and the pass book in the possession of Wm. H. Belcher was surrendered to the Company as evidence of the termination of their contract. The bank upon which the checks were drawn treated the \$800.00 and \$993.94 as payments between the defendant and the bank, charging the defendant therewith, and the defendant 10 on its books made the checks full payment of A. W. Belcher's claim (Case p. 41), and treated the account as closed (Case p. 12).

It is conceded, that A. W. Belcher had the right to withdraw the two sums for which the checks were drawn and close up by the last sum his affairs with the defendant, and, if he had personally withdrawn and received this money, he would thereby have received full payment and released the Association from all claim. 20

The defendant's liability therefore turns upon the question of Wm. H. Belcher's authority to cause the checks to be so made, endorsed and cashed as agent of the plaintiff.

The trial judge, after the evidence was submitted, refused to permit the question of agency to be determined by the jury, but directed the jury to find for the plaintiff for the sum of \$1,845.60 and interest (Case p. 50), to which the defendant below excepted. A verdict was rendered pursuant to the 30 Court's direction and judgment entered thereon.

This writ of error brings up this judgment upon due exception and assignment of error.

PROPOSITION OF PLAINTIFF IN ERROR.

THE JUDGE ERRED IN REFUSING TO PERMIT THE JURY TO DETERMINE THE QUESTION WHETHER WM. H. BELCHER WAS THE AGENT FOR THE PLAINTIFF, WITH AUTHORITY TO WITHDRAW SAID SUMS OF \$800.00 AND \$993.94 IN THE MANNER IN WHICH THEY WERE WITHDRAWN.

The case should have gone to the jury if there was evidence **tending to show**, either, 1st, that plaintiff had **in fact** given such authority to Wm. H. Belcher, or, 2nd, that plaintiff had given Wm. H. Belcher the **appearance** of such authority.

FIRST.—We contend that there was sufficient evidence to go to the jury tending to show that plaintiff had in fact given to Wm. H. Belcher this power to withdraw the money.

In order to make out a jury case, it is not necessary that the evidence should **directly** prove the agency, but the existence of the agency may be inferred from circumstances.

In *Dunn V. Hornbeck*, 72 N. Y. Ct. of Appeals, p. 80, 88, Folger, J., in reference to the character of the proof in such cases, says: "If the right of a jury to find the existence of an agency to do a particular act depended upon the direct proof thereof, their usual power, would be very much circumscribed in that regard. In this case the plaintiff expressly testifies that she did not, at any time, authorize her husband to receive the payment of the note. It is probable that she never, **in terms**, gave him such authority. But she had before testified that he always did her business; that he received the money, received it for her, and that the payments that were

made on account of the properties were paid to him; that the money was received by him and invested in other houses and lots, with her consent always. Furthermore, there is the proof of the arrangement under which the whole business was transacted. Now, an agency or authority to act for another in a certain way, and to a certain extent, may be implied from the nature and extent of his usual or former employment. As then, it was in proof that the husband was used to do the business of the plain- 10
tiff always, and to receive her money for her, and to take the payments made on account of the properties, it was a legitimate inference that there was a tacit authority so to do, in the case of this note, though there may not have been authority given in terms to receive the payment of it."

"Where the authority was not conferred by written instrument and the facts are in dispute, it is for the jury to determine under proper instructions from the Court, not only whether an agency exists, but if 20
so, what is its nature and extent. It is impossible to lay down any inflexible rule by which it can be determined what evidence shall be sufficient to establish an agency in any given case, but it may be said in general terms that whatever has a tendency to prove the agency is admissible even though it be not full and satisfactory, as it is the province of the jury to pass upon it."

Meechum on agency, p. 104, quoted and approved in Elliott v. Bodine, 30 Vroom 567.

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In Ford v. Linchan, 146 Mass., 283, where the only direct evidence denied the agency, it was held that it was proper for the jury to infer agency from the circumstances notwithstanding the positive denial of the witnesses.

Morton, C. J., says: "Whether he was so acting (as agent) is a question of fact for the jury, and we are of opinion that there was evidence at the trial which was properly submitted to them upon this issue.
 * * * * The **circumstances** of the parties makes it very improbable that he would or could make so large a gift. All the evidence points to the inference that he was acting for his father, and that both so **understood** it; and we think the jury might fairly draw this inference, **notwithstanding the testimony of the defendant and his son to the contrary.**"

In considering the above quotations, particular attention should be fixed upon the following deductions, viz.: that the right of the jury to find the existence of an agency does not require **direct** proof; that it may be inferred by the jury from circumstances, although there is an **express denial** of the agency by the party; that even if a particular authority is not in fact given in "express terms," nevertheless the jury may make "a legitimate inference that there was a **tacit** authority to do so"; that where an authority is not inferred by **written instrument** "it is impossible to lay down any inflexible rule by which it can be determined what evidence shall be sufficient to establish an agency in any given case, but it may be said in general terms, that **whatever** has a **tendency** to prove the agency, is admissible even though it be not full and satisfactory."

There were sufficient facts proven to go to the jury, which tended to show that there was at least a tacit understanding between plaintiff and Wm. H. Belcher that the latter was to have authority to withdraw the money from the defendant.

The plaintiff admits that about the time when he became a member of the defendant he began to send

money to Wm. H. Belcher with authority to invest it for plaintiff, and that the total of said sums amounted to about \$4,000.00, four years previous to August, 1905, (that is to say August, 1901) (Case p. 24).

The authority given to Wm. H. Belcher, with respect to this money sent by plaintiff for investment, was as general as possible. Plaintiff says, (Case p. 21 to 25) that he gave him the money to invest "generally"; that he had absolute confidence in his brother at the time and was willing to let him use his discretion; that he trusted him to do whatever he thought was right about the form of the investments; that Wm. H. Belcher kept in his possession all bonds, promissory notes or evidence of debt whatever it was, that he had no previous understanding how the sums were to be invested. Plaintiff says: "I gave him no directions at all, I generally furnished money to him on the idea that he had a place to put it then." Case p. 23, "Q. Well, he got the 20 mortgages and bonds or note, whatever he got from these investments always in his own possession, you always understood that? A. Yes, sir. Q. The Building and Loan Association book which contained the evidence of your shares and all that sort of thing, he kept all these papers in his possession always, you never asked him for them? A. No, sir. Q. I suppose you trusted him? A. That is the idea exactly." (Case p. 24, 25).

Again plaintiff says, that he first suspected that 30 there was something wrong when Wm. H. Belcher disappeared in August, 1905. Q. Up to that time you had supposed, I suppose, that your brother had always led a perfectly honest life? A. Yes, sir. Q. And you trusted implicitly in his business in-

tegrity and honor? A. Yes, sir. Q. And had not the slightest suspicion that he would do wrong? A. No, sir. Q. You would have trusted him, I suppose, with anything that you had up to that time? A. I did so. Q. And were perfectly willing to do so at the time? A. Yes, sir. Q. You would have had no hesitation in placing an indefinite sum in his hands? A. None whatever. Q. I don't know that you told us what your business was? A. I am a
 10 machinist. (Case p. 26). Q. You believed that he was a man of considerable property? A. I thought he had." (Case p. 27).

By this evidence it appears, that Wm. H. Belcher was given the most general powers to make the investments absolutely according to his discretion. The plaintiff never called upon Wm. H. Belcher during the number of years covered by these investments to deliver to the plaintiff the notes, bonds, or evidence of the investments. These were continually
 20 left in the custody of Wm. H. Belcher, evidently for the purpose of having them in his possession so that he could conveniently and at all times collect or call in any particular debt and re-invest it. Thus the authority given to Wm. H. Belcher to maintain the investments is admitted, and from that, the authority to receive payment on investments and re-invest is implied, since in order to maintain the investments, it was to be expected that they would expire
 30 and be reinvested. But the authority to receive payment more clearly appears from the fact that the bonds, notes or other evidence of debt were constantly left in the possession of Wm. H. Belcher, indicating that he still held them for collection, since it is to be presumed that the person who holds the evidence of a debt which is to be surrendered upon

payment, is the person authorized to receive the payment.

Wm. H. Belcher also continued to always have the pass book in his possession, by the transfer or surrender of which he could withdraw the money from the defendant, from which it is fairly inferred that it was understood between him and plaintiff that he was to use the same discretion with reference to this investment as the other investments.

Moreover, the plaintiff does not say that he ever ¹⁰ by express words or otherwise, gave Wm. H. Belcher to understand that the authority of Wm. H. Belcher as to withdrawing this money differed in any respect from that concerning the other investments. It must be presumed, that plaintiff and Wm. H. Belcher knew the terms of the contract made by plaintiff and the defendant, by which the plaintiff had the right to withdraw the two sums which were withdrawn, from which it is fairly inferred, that plaintiff by leaving the book with Wm. H. Belcher, whereby he could ²⁰ withdraw the money, intended to give him the means of so doing according to his discretion.

An authority to withdraw the money in question from the defendant may be inferred from the general authority given to Wm. H. Belcher to invest, collect and re-invest in a course of dealing in which there are various transactions **with other persons**.

In *Whitehead v. Tuckett*, 2 English Ruling cases, 357 (15 East 400) it is held that: "Where an agent has acted for a principal in a course of dealing in ³⁰ which various transactions are had **with other persons**; an authority may be inferred, as between the principal and a **third party**, so as to charge the principal with an act of the agent within the scope of dealing, although the particular act was contrary to instructions.

The authority so inferred has been called a general authority, and has been said to be derived from a multitude of instances.

An agent, described as a broker, acting on behalf of a principal who was a wholesale grocer, was in the habit of buying and selling in his own name large quantities of sugar. He exercised his judgment as to the price, but from time to time received instructions from the principal as to a limit. There
 10 was a running account between the principal and the agent, and the latter had, in some cases at least, control of the bulk. The agent sold, and received payment for, a certain parcel of sugar upon terms which (as was alleged) were contrary to his instructions. Part of the parcel was delivered to the purchaser accordingly; but the rest remained in the warehouse of the agent, until his bankruptcy, when the principal took possession and refused to deliver to the purchaser. The purchaser brought an action
 20 of trover against the principal; and succeeded, on the ground that the sale was within the general authority of the agent as inferred from the course of business.

In this case Lord Ellenborough, C. J., said:

“Much of the argument in this case has turned upon the question whether Sill & Co. were invested with a general authority to sell the sugars; when this question is discussed, it may be material to consider the distinction between a particular and a general
 30 authority; the latter of which does not import an unqualified authority, but that which is derived from a multitude of instances; whereas the former is confined to an individual instance. Such was the distinction which governed the decision in *Fenn v. Harrison*, 3 T. R. 757, and in the MS. case cited. Now in that sense of the term ‘general authority,’ Sill &

Co. were general agents; for they bought and sold in a multitude of instances in their own names, paid and received the money in their own names, and blended their accounts of receipts and payments, without carrying each order to a separate account with the defendant; and although there was a communication between them and the defendant as to the price and time of sale, yet the world was not privy to that communication, and had therefore no means of knowing that there general authority was 10 controlled by the interposition of any check."

As further evidence of the general character of Wm. H. Belcher's authority over the investment in question, the plaintiff not only never indicated to Wm. H. Belcher that his authority was to be confined to the mere payment of the dues, but on the contrary, it was understood between them that Wm. H. Belcher should sometimes personally pay the dues for plaintiff and receive it from plaintiff from one to 20 six months afterwards. (Case p. 19).

From the foregoing considerations, there was sufficient evidence for a jury to find, that there was at least a tacit understanding between plaintiff and Wm. H. Belcher that Wm. H. Belcher should have the authority in question.

SECOND.—It was for the jury to determine whether there was not an apparent authority given to Wm. H. Belcher to withdraw the two sums of money in question from the fact that the pass book 30 which was the evidence of the debt was left in the custody of Wm. H. Belcher.

In the case of bonds and other securities, the rule is settled, that there may be inferred an **apparent**

authority to receive payment of a debt from the fact that the person who made the loan as agent retains possession of the securities.

The rule is laid down in *Williams v. Walker*, 2 Sandford (N. Y. Chancery) p. 325. In the opinion in that case, the language of Mr. Justice Story is quoted on page 331, with approval, viz.: "That an agent authorized to take a bond is not to be deemed as of course entitled to receive payment of the money
10 due under that bond. But if he is entrusted with the continued possession of the bond, an implication of such authority may be deduced from this fact, in connection with the other."

In *Haines v. Pohlmann*, 10 C. E. Green, p. 179, Chancellor Green cites *Williams v. Walker* *supra* with approval.

In *Doubleday v. Kress*, 50 N. Y., 410, Peckham J., referring to the rule in connection with **apparent** authority, on p. 413, 414, says: "The reason of the rule,
20 that one who has made the loan as agent and taken the security is authorized to receive payment when he retains the possession of the security, is founded upon human experience, that the payer knows that the agent has been trusted by the payee about the same business, and he is thus given a credit with the payer." Again on p. 414, 415, he says: "A payee who has given his agent credit with the payer by employing the agent in obtaining the obligation, and then by allowing him to retain its possession, clothes
30 him with **apparent** authority to receive the payments of interest and principal according to the tenor of the instrument."

In the latter case the instrument in question was a note.

In *Wheeler v. Northwestern Sleigh Co.*, 39 Fed. R. 347, 349, apparent authority to sell **stock** was inferred from its possession.

In *Merrit v. Cole*, 9 Hun. N. Y. 98, it was held that possession of a note if not evidence of title is still presumptive evidence of authority to receive payment.

See also *Crane v. Gruenewald*, 120 N. Y. 274.

The apparent authority of the agent is to be gathered from all the facts and circumstances in evidence 10
and is a question of fact for the jury. *Nicholson v. Golden*, 27 Mo. App., 132. *American & English Encyclopaedia of Law*, 2nd Ed. Vol. 1, p. 990.

In the present cases there was evidence of an "apparent" authority; that is to say, it **appeared** to the defendant acting with reason, that Wm. H. Belcher had authority to withdraw this money, from the fact that he had taken out the book and made all payments for plaintiff and constantly retained the possession of the pass book which was the evidence of 20
the amount which plaintiff had the right to withdraw at any time.

If the fact that an agent makes a loan and retains in his possession a bond, note, certificate of stock or other security, is evidence of an apparent authority to receive payment as held by the cases quoted, by the same reasoning, the fact of Wm. H. Belcher being originally entrusted with all this money which was given to the defendant and keeping possession of the pass book by which he could at 30
any time withdraw the money, appeared to the defendant as evidence of authority to withdraw it. The possession of the pass book in this case had a use similar to the bonds or notes in the cases quoted

and created a similar appearance of authority. The defendant had the right to presume, that the plaintiff knew the terms of the contract made between defendant and plaintiff. By this contract the plaintiff had the right to withdraw the two sums in question just as they were withdrawn, and according to the existing custom, these sums could be withdrawn by the mere transfer of the book in case of loan, or the surrender of the book in case of withdrawal of
 10 the whole sum due.

The appearance of authority was given to the defendants by the facts in this case, just as in the case of a bond, note, or other security. The defendant had appearing before it, the facts that the plaintiff had entrusted Wm. H. Belcher originally with all the money which had been paid; that the plaintiff had never directly treated with the defendant or given defendant cause to believe that plaintiff's apparent confidence in Wm. H. Belcher had changed:
 20 added to which, was the further fact that the plaintiff had constantly left with Wm. H. Belcher the possession of the pass book, by the simple transfer or surrender of which, according to the custom which was presumed to be known by the plaintiff, the money in question could be withdrawn.

From these facts an authority apparent to the defendant could be inferred, and the trial judge erred in directing the jury to find for the plaintiff.

THIRD.—Since Wm. H. Belcher had the power to
 30 withdraw the two sums withdrawn from the defendant Association, it is not important that the two sums were withdrawn in the form of the two checks made payable to A. W. Belcher and endorsed and cashed by Wm. H. Belcher as his Attorney.

If Wm. H. Belcher had the power to receive the two sums as agent of the plaintiff for the purpose of reinvesting it, it made no difference as far as the rights of the parties are concerned, whether Wm. H. Belcher took the money directly from the defendant association by way of cash, or took checks payable to A. W. Belcher, which he as agent of A. W. Belcher, by endorsement, converted into cash.

The power to receive the money is the only material question; the manner of receiving it is merely incidental; and it is implied, that plaintiff must have understood that Wm. H. Belcher would employ any **method** which he might see fit to withdraw the money; which was a matter of no concern to plaintiff, if plaintiff had the power to withdraw the money and reinvest it. "Authority given to an agent to do a specified thing carries with it the power to do whatever is necessary and proper to accomplish the object and purpose of the appointment." Elliot vs. Bodine 30 V., 567. 10

As a matter of fact, Wm. H. Belcher directed the Secretary of the Association to make the check payable to A. W. Belcher, and after the check was paid by the bank upon Wm. H. Belcher's endorsement as Attorney for A. W. Belcher, the bank and the defendant treated it as payment to A. W. Belcher and closed their accounts on that basis. 20

It is apparent, that, if Wm. H. Belcher had the authority to have the checks drawn to the plaintiff and collect the money by endorsing for plaintiff, it was payment to **A. W. Belcher**, and the bank and the defendant had a right to treat it as payment, and did in fact properly treat it as payment in closing their accounts with each other. 30

Our contention, that the right of Wm. H. Belcher to take the money included his right to take it by

endorsing the check, does not conflict with the case of *Gulick v. Grover*, 6 Vr. 462; nor the cases therein cited, which case was cited by counsel for plaintiff below.

Gulick v. Grover merely holds, that proof of an agent's authority however general respecting the transaction of the principal's business did not authorize, in that case, the giving of a note not made in the usual course of business so as to hold the principal liable. *Gulick v. Grover* also cites on page 470 the case of *Hay v. Goldschmidt*, cited in *Hogg v. Smith*, 1 Taunton, 349.

Allwood v. Mannings, 7 B. & C. 278.

Chitty on Bills, 29.

The latter cases hold, that where express power is given to an agent to receive all money that might become due to the principal and to transact all business, it will not authorize the agent to **endorse away** a bill taken by him under this power, and that the words **all business** must be confined to all business necessary for the receipt of the money.

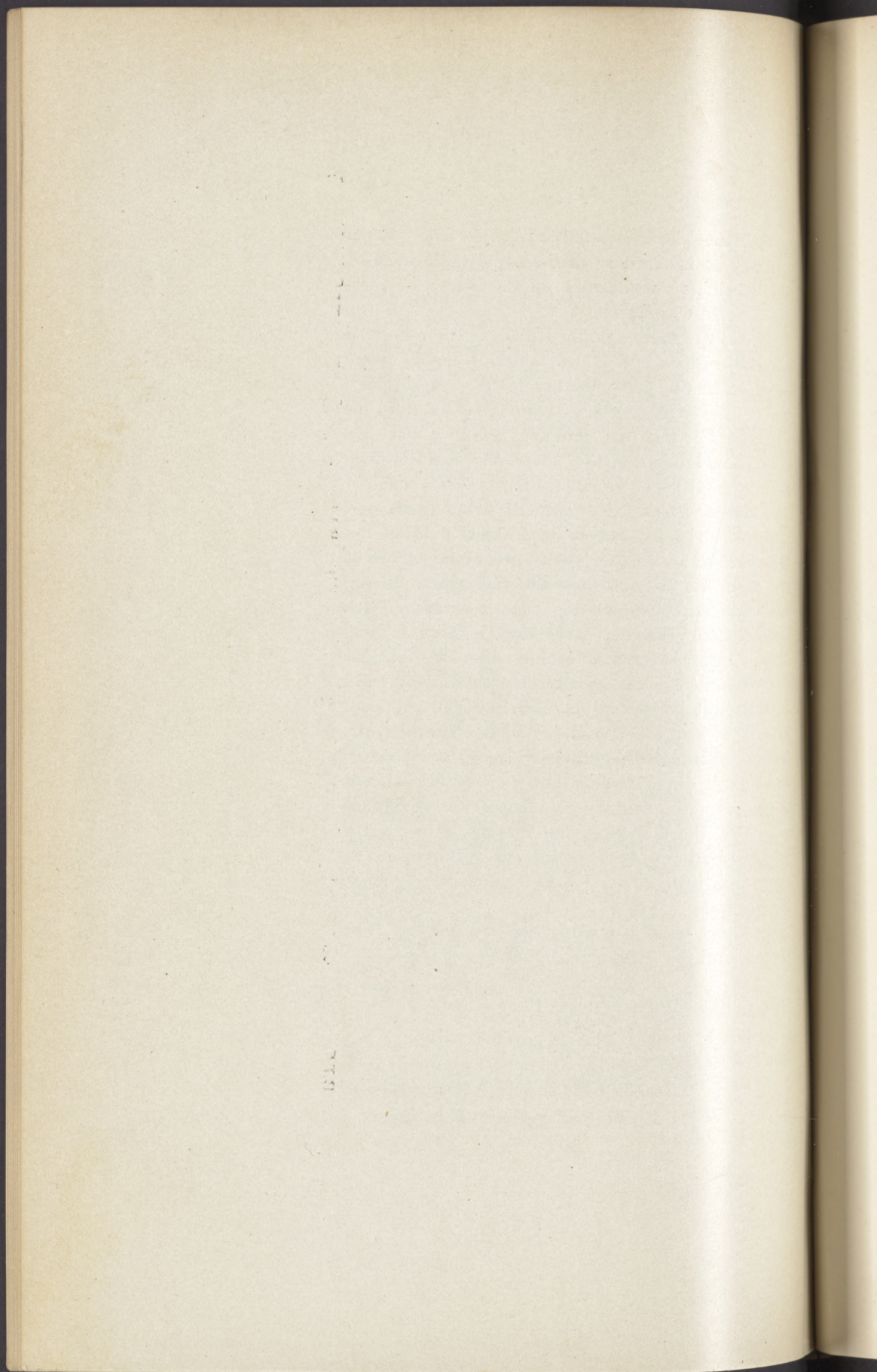
In *Gulick v. Holmes*, the object of the suit was to hold the defendant **liable** for notes made in defendant's name by his wife whose agency was held to be limited to making notes connected with the business. It was not a question whether the agent had authority to merely cash a check.

If the present case were one in which Wm. H. Belcher had made or endorsed commercial paper for the plaintiff and suit had been brought to hold plaintiff liable for such endorsement the case of *Gulick v. Grove* would have application, but it is beside the present question, which does not relate to any liability of the plaintiff by reason of the endorsement, but the present question is, whether, if Wm. H. Belcher

had authority to withdraw the money for the purpose of **reinvesting** it for his principal, it is not implied that it was understood between them that the agent could use any method of withdrawing the money; and, if the form of payment used was a check payable to the principal, the agent who was expected to immediately **reinvest** the proceeds, was not expected to endorse the check as an incidental means for that purpose.

In the case of *Hay v. Goldschmidt supra*, quoted ¹⁰ in *Gulick v. Holmes supra*, the authority was in writing and "the business" referred to was confined to the mere **receipt** of the money; so that when the agent received a bill in the name of his principal he had completed what he was authorized to do, and it was presumably understood that the bill was to be turned over to the principal. The agent in that case, however, paid his own debt by the endorsement of this bill, and thereby exceeded his authority. But in our case *Wm. H. Belcher* was to continue to keep ²⁰ investing plaintiff's money for an indefinite time, and, in order to have the means of changing investments, constantly kept possession of the notes, bonds and pass book, so that it is fairly to be inferred, that his agency to collect or withdraw outstanding investments was not merely to collect or withdraw and then immediately pay them to the plaintiff, but he was to maintain the investments by reinvestments.

And it is naturally to be inferred, that there was ³⁰ an understanding between plaintiff and *Wm. H. Belcher* that, when *Wm. H. Belcher* should call in any investment, he was not to go through the useless and unnecessary ceremony and trouble of delivering the money to the plaintiff for the mere purpose of hav-



New Jersey Court of Errors and Appeals.

AMHERST W. BELCHER,

Defendant in Error,

vs.

THE MANCHESTER BUILDING

AND LOAN ASSOCIATION,

Plaintiff in Error.

On Error.

Brief for Defendant in Error.

Statement of Facts.

The defendant in error in this action, Amherst W. Belcher, is, and at all of the times as referred to in the complaint in this action, was a resident of Rondout, City of Kingston, State of New York. William H. Belcher, a brother of the defendant in error, was at the time in the complaint referred to a resident of the City of Paterson, State of New Jersey, and the president of the plaintiff in error, The Manchester Building and Loan Association. In the month of January, 1896, the defendant in error, at the office of his brother, W. H. Belcher, in the City of Paterson, New Jersey, requested his brother, W. H. Belcher, to take out for him twenty shares of stock in The Manchester Building and

Loan Association (Book, pages 16, 17, folio 30). "He thought he would be the owner of twenty shares and would get the benefit of it at maturity; understood in a general way the system of issuing shares in this particular Building and Loan Association," (page 18, fols. 10-20). Saw his brother as often as once a month (page 20, fol. 10) and gave him different sums to cover the whole thing (page 19, fol. 10). Subsequent to the purchase of the twenty shares in The Manchester Building and Loan Association the defendant in error sent to his brother, W. H. Belcher, various sums of money amounting in the aggregate to four thousand dollars to invest generally on bond and mortgage, the income from which was to pay the dues in The Manchester Building and Loan Association on these shares of stock, (page 23). As evidence of the manner in which the defendant in error forwarded various sums to his brother, W. H. Belcher, to cover payment of dues to The Manchester Building and Loan Association, the defendant in error read in evidence a letter from W. H. Belcher to the defendant in error, which is set forth at page 29 of the Printed Case, as follows:

August 8th, 1899.

"Dear Zach:

I have received your letter with \$10.00, and check for \$100.00; you had a credit of \$12 on August and this check will pay now as follows: balance of August, 1899, \$8; for September, \$20; for October, \$20; for November, \$20; for December, \$20 and January, 1900, \$12, making a total of \$100."

The records of The Manchester Building and Loan Association, as testified from by the Secretary of the Association, show an account with the defendant in error, opened in January, 1896, upon which the dues had been paid in full to and including the month of June, 1902, at which time the account was closed, and the value of the shares at that time was \$1,845.60 (page 10, fol. 30 ; page 11, fol. 11).

The Manchester Building and Loan Association made two certain checks, one dated March 27, 1900, for the sum of \$800, and the other dated November 15th, 1902, for the sum of \$993.94, both payable to A. W. Belcher, this defendant in error, (page 28, folios 10, 20 and 30), to close out the account standing in the name of the defendant in error as the owner of twenty shares of stock in said Association; said checks were delivered to W. H. Belcher, brother of the defendant in error, endorsed "A. W. Belcher, by W. H. Belcher, Attorney" and presented at The First National Bank of Paterson, at which bank they were payable, where they were paid to W. H. Belcher; (page 41, folio 20).

The defendant in error did not withdraw the shares standing in his name, did not make a loan on them; did not receive any money or equivalent for them, (page 14, folio 20); did not endorse either of the checks. (Exhibits D-1 and D-2). (Page 28, folio 30 ; page 29, folio 10.)

In the early part of August, 1905, W. H. Belcher, brother of the defendant in error, left his home and family and for a long period of time, and down to the time of the trial of this action his whereabouts were unknown. The defendant in error, learning of the disappearance of his brother, became

solicitous concerning his Building and Loan investment and other investments, and wrote to the secretary of the company, to which he received a reply, set forth at page 15, folio 30, as follows :

“ Paterson, New Jersey, August 5th, 1905.
MR. AMHERST W. BELCHER, Rondout, New York.
Dear Sir :

Yours of August 5th received and noted. There are no shares standing in your name in this Association. There was a twenty share book in your name but the same was withdrawn and paid off in full, November 4th, 1902.

Yours truly,
GEORGE W. ALLEE,
Secretary.”

On August 12th, 1905, a demand was made by the defendant in error upon the plaintiff in error for the payment to him of all moneys due or growing due on the twenty shares of stock held by him.

The cause was tried at a term of the Circuit Court at Paterson, in and for the County of Passaic, June 26th and 27th, 1906, before Hon. Wilbur A. Heisley, and the Court directed the jury to find a verdict in favor of the defendant in error for the sum of \$1,845.60, with interest from August 12th, 1905.

The plaintiff in error assigns as error committed on the trial, the following :

1. That the said judge of said Circuit Court before whom said cause was tried, at and upon the

aforesaid trial of said issue, over an objection of plaintiff in error, permitted plaintiff below to testify that the plaintiff below was the owner of twenty shares of the capital stock of the defendant below.

2. That the said judge of said Circuit Court refused to allow George W. Allee, a witness produced by the defendant below, to answer the following question, viz: "Question. At the very time when this transaction took place (referring to the transaction whereby William H. Belcher received the two checks from defendant below for \$800, and \$993, respectively) did Mr. William H. Belcher say anything about his authority from his brother?"

3. That said judge of said Circuit Court refused to grant the motion of plaintiff in error to direct a verdict for the defendant below.

4. That said judge of said Circuit Court granted the motion of defendant in error to direct a verdict for the plaintiff below, and directed said verdict for the plaintiff below and thereby directed the jury to bring in a verdict for the plaintiff for the sum of \$1,845.60 with interest from August 12th, 1905.

POINT I.

The testimony of defendant in error to the effect that he was the owner of twenty shares of stock of the plaintiff in error, was properly admitted.

The question of the ownership of the twenty shares of stock of the plaintiff in error by the defendant in error, was not contested here. The real defence and the only defence as appears from the records, was that by two certain checks made payable to this defendant in error and delivered to a brother of the defendant in error, which checks the defendant in error never had seen prior to the trial of this cause, and which checks the brother of the defendant in error endorsed "A. W. Belcher, by W. H. Belcher, Attorney" and received the moneys thereon, that by such transaction the plaintiff in error discharged its obligation to the defendant in error to pay to him the sums due on the stock in question.

Plaintiff in error was asked :

Q. Were you the owner of twenty shares of the capital stock of the Manchester Building and Loan Association?

Mr. Harding :—Wait a minute. Counsel asks the witness if he is the owner of stock which seems to me to be a conclusion of law. He should ask how he became the owner and the situation under which he did become the owner, so that the Court can determine whether he is the owner or not.

The Court :—Is there a dispute about his ownership, originally?

Mr. Harding :—There is perhaps a question about it ; whether there is or not the witness should tell the circumstances.

The Court :—Objection overruled.

(Page 12, folio 30 ; page 13, folio 10.)

"Ownership and possession may each be proved by direct testimony of a witness to the fact, subject of course to cross examination."

Abbott Trial Ev., 2nd. Ed., page 735.

In the case cited below, "Trask, a witness examined for the plaintiff was asked whether she had been in possession of the farm since the deed to her, and the defendant objected that the inquiry called for an opinion on a question of law. The objection was overruled, and the witness answered that they, the plaintiff and her husband, had been on the place ever since. I do not perceive any well-grounded objection to the question, but the answer was the statement of a simple matter of fact and one in respect to which, upon the whole case, there was not the slightest question."

Knapp vs. Smith, 27 N. Y., 277.

Before calling the defendant in error as a witness in his own behalf, Absalom Grundy, the secretary of the plaintiff in error was sworn and testified that book 449 was the account number as well as the pass book number in the name of Amherst W. Belcher; the date of the opening of the account, as it appears on the ledger, was January, 1896; the account was for twenty shares, and that the dues were regularly paid to and including June, 1902. (Page 10, folios 20 and 30; page 11, folio 10.) The testimony, as given by the defendant in error, was corroborative of the testimony of the secretary of the association, and identified the defendant in error as the same party whose account

appeared on the ledger kept by the officer of the plaintiff in error.

The defendant in error had directed his brother to purchase the stock (page 17, folio 10) and had been advised in writing by the secretary of the plaintiff in error that there were twenty shares of stock in his name on the records of the Association, which were paid off in full in 1902. (Page 15, folio 30 ; page 16, folio 10.) And the testimony given by him to the effect that he was the owner of twenty shares of stock, was fact clearly within his knowledge and did not call for an expression of opinion.

“The title to property is ordinarily a simple fact to which a witness, having the requisite knowledge could testify directly.”

De Wolf vs Williams, 69 N. Y., 621 at 622.

“Witnesses may testify to facts, which are within their knowledge, even though the facts are such as a jury is eventually to determine.”

Pichler vs. Reese, 171 N. Y., 577 at 578.

If it could be said that technical error was committed, in permitting the witness to answer the question, such error was cured by the facts brought out on the lengthy cross examination conducted by the counsel for the plaintiff in error, as set forth at pages 16 to 28 of the printed case ; during which cross examination the witness explained in detail the manner in which he became the owner of the stock in question.

POINT II.

The objection to the testimony offered by the plaintiff in error as to statements made by W. H. Belcher, brother of defendant in error, at the time he received the checks in question, was properly sustained.

The account between the defendant in error and the plaintiff in error, with reference to the stock in question was opened in 1896. The plaintiff in error delivered to the brother of the defendant in error one of the checks referred to in 1900 and the other in 1902, four and six years respectively after the transaction by which the account was opened, and it is statements made at this time that the plaintiff in error sought to introduce as bearing upon the authority of the brother of the defendant in error, as the agent of this defendant in error to withdraw such sums at the times mentioned.

The evidence sought to be introduced was immaterial, irrelevant and incompetent as it appeared by the checks, which were delivered to the brother of the defendant in error, that the plaintiff in error, at the time that such checks were made out and delivered to brother of the defendant in error, did not seek to treat him as the agent of his brother irrespective of any statement which he may have made at the time in question, as the checks were made payable to the defendant in error and not to the brother, or so-called agent. It will be noted that William H. Belcher, the brother of the defendant in error, to whom the checks were delivered, was the president of the Association and counter-

signed said checks as such president, (page 28, folio 30), and it was testified to by George W. Allee, ex-secretary of the Association, a witness sworn in behalf of the defendant below, that William H. Belcher, the brother of this defendant in error, directed him to make out the checks.

Q. Did Mr. William H. Belcher direct you to make out these checks, the first check for \$800, and the subsequent check for \$993?

A. Yes, sir.

Q. Did he tell you to make them out?

A. Yes, sir.

Q. Did you make them out as he told you?

A. Yes, sir.

Q. Payable to the order of A. W. Belcher?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

(Page 40, folio 10).

From the testimony above quoted it will be seen that W. H. Belcher, president of the Association, the plaintiff in error, brother of the defendant in error, did not claim to be the agent of his brother for the receipt of the moneys due on the stock which his brother held in The Manchester Building and Loan Association, the plaintiff in error, as he directed the secretary to make the checks payable to his brother, and the checks were so made. If he had been authorized to receive payment of sums due upon this account it was a very simple matter for him, and those associated with him in the management of the affairs of the Association, to have had the checks made payable to him as agent, and the action upon their part in making the checks payable to the order of the principal,

and to no one else, leads to but one conclusion that William H. Belcher, brother of the defendant in error, was not authorized to receive payment of the account existing between the plaintiff in error and the defendant in error to the knowledge of William H. Belcher, and to the knowledge of the officers of the plaintiff in error. It is quite clear, therefore, that any statements which he may have made four and six years respectively after he was authorized to open the account with reference to his authority to withdraw moneys thereon, were wholly immaterial under the facts and circumstances as they appear in this case.

It has been held that :

“The declaration of an agent, although accompanying his acts, constituted no evidence of the extent of his authority.”

Story on Agency, Sec. 126.

Brigham vs. Peters, 1 Gray, 139.

Baker vs. Gerish, 14 Allen, 201.

Gifford vs. Ladrine, 10 Stew. Eq., 127, 628.

Farmers' Bank vs. Butchers' Bank, 16 N. Y., 134.

“An agency can neither be created nor proved by the acts or declarations of the assumed agent alone.”

People's Bank vs. St. Anthony Roman Cath. Church, 109 N. Y., 512.

An agent's authority cannot be shown by his own declarations.

70 Hun., 568.

27 N. Y., Sup. 255.

Same case in 7 Misc. (N. Y.) 165.

79 Hun., (N. Y.) 541.

30 N. Y., Sup., 224

Same case in 9 Misc. (N. Y.) 496.

“Neither the declarations of a man nor his acts can be given in evidence to prove that he is the agent of another or the extent of his authority.”

Stringham vs. St. Nicholas Ins. Co., 37 How. Pr. (N. Y.) 365 at 374.

“The declarations of an agent though accompanying his acts constitute no evidence of the extent of his authority.

Dowden vs. Cryder, 55 N. J. Law, 329.

Wolf vs. Benedict, 65 Hun., 624 N. Y.

Same case in 20 N. Y. Sup., 585.

The principle is well established by a long line of authorities that the declarations of an agent when made as a part of the original transaction as between the agent and a third party will not establish his agency, or bind the principal, when such declarations are not within the actual or apparent scope of his authority and the rule as laid down is clearly applicable to the point in question; the plaintiff in error here sought to introduce evidence

of statements made by the agent four and six years respectively after the original transaction, the opening of the account, which statements are clearly inadmissible, and ruling of the trial court is further supported by the fact that the transaction as between the alleged agent and this plaintiff in error, which resulted in the delivery to the so-called agent of the two checks in question was not treated by the officials of the plaintiff in error as a transaction between the plaintiff in error and the so-called agent, but was treated as a transaction between the Association and the principal. The very act of the officials of the Association in making the checks payable to the principal is conclusive evidence of this fact. The ruling of the trial Court upon the question here presented should be sustained.

POINT III.

There was no dispute as to the facts ; the question here presented is purely a question of law ; the Court did not err in directing a verdict for the plaintiff below.

“When the facts are undisputed, the question whether the agent has a requisite authority to bind his principal is a question of law for the Court, whether such authority is sought to be sustained by a previous authorization or by subsequent ratification. Under the admitted or uncontroverted facts in these cases, the judge properly instructed the jury that the plaintiffs could not recover on these notes.”

*Gulick and Holmes vs. Grover &
Vroom 463 at 473.*

The only question in the case and the real question at issue is whether or not W. H. Belcher, a brother of the defendant in error, and the president of the plaintiff in error, was authorized to endorse and receive the moneys on two certain checks drawn by the plaintiff in error to the order of the defendant in error, and endorsed "A. W. Belcher, by W. H. Belcher, Attorney."

The checks were made payable at The First National Bank at Paterson, N. J., and so endorsed were presented at the bank by W. H. Belcher and paid to him (page 41, folio 20). Amherst W. Belcher, the defendant in error, had authorized his brother to purchase twenty shares of stock for him in the Association (pages 16, 17, folio 30). "He thought he would be the owner of twenty shares and would get the benefit of it at maturity; understood in a general way the system of issuing shares in this particular building and loan association, (page 18, folios 10 and 20); saw his brother as often as once a month and gave him different sums of money to cover the whole thing (page 19, folio 10). The defendant in error did not withdraw the shares standing in his name; did not receive any money or equivalent for them (page 14, folio 20); did not endorse either of the checks (Ex. D-1 and D-2), (page 28, folio 30), (page 29, folio 11), and never authorized anybody to withdraw said shares. (Page 30, folio 20.)

The oral evidence is on part of three witnesses. Absalom Grundy, present secretary of the Association was first sworn in behalf of the defendant in

error, and testified to the account between the Association and the defendant in error.

Defendant in error was then sworn in his own behalf. Plaintiff in error produced the witness, George W. Allee, ex-secretary of the Association, who identified the checks hereinbefore referred to and the checks were then introduced in evidence. The testimony of the present secretary of the Association, Grundy, also the testimony of the plaintiff below, was not contradicted in any particular and there was therefore no question of fact for the jury to determine.

The plaintiff here will argue to this Court that the evidence introduced by the plaintiff below, being to a large extent his own testimony, it was a question for the jury as to whether or not it would believe him. The rule that the credibility of a witness who was a party to the action must be submitted to the jury is not an absolute and inflexible one, and where his evidence is not contradicted by direct evidence nor by any legitimate inferences from the evidence, is not improbable, nor in its nature surprising or suspicious, there is no reason for denying to it conclusiveness.

Hull vs. Littauer, 162 N. Y., 569.

The defence to an action upon a promissory note was usury and the endorser gave the evidence to establish it without contradiction. It was said that "It was the duty of the Court in such a case to dismiss the complaint or non-suit the plaintiff or direct a verdict for the defence. It is a mistake to suppose that because the evidence came from the defendant after the plaintiff had rested, the case

must go to the jury * * * the witness was not impeached or contradicted. His testimony is positive and direct and not incredible upon its face. It was the duty of the Court and jury to give credit to his testimony.

Lomer vs. Meeker, 25 N. Y., 361.

“The mere fact that the plaintiff, who testified to important particulars, was interested, was unimportant in view of the fact that there was no conflict in the evidence or anything or circumstances from which an inference against the fact testified to by him could be drawn.”

Kelly vs. Burroughs, 102 N. Y., 93.

The principle is well established that where the facts are not in dispute, the testimony of the witness not in its nature surprising or suspicious, the question presented is purely a question of law and it is the duty of the Court to direct the jury to find the verdict.

Hull vs. Littauer, supra.

In the case at issue there was no conflict of testimony; the facts were practically conceded, and there was therefore no question to submit to the jury.

The plaintiff below was entitled to the verdict as directed by the Court.

The defendant below relied solely upon an implied authority given by the plaintiff below to his brother William H. Belcher, the nature of which

would authorize the defendant below to pay the checks upon the endorsement of William H. Belcher; to establish such authority the defendant below relied upon the testimony of the plaintiff below, as set forth in his cross examination, to the effect that he had entrusted other sums of money to his brother to invest generally on bond and mortgage and that he had implicit confidence in his brother; all of this evidence would have been relevant and of the utmost importance to the defendant below if it had relied upon the agent possessing such authority at the time of the payment to him. It is evident that it did not rely upon his having authority to receive the sums due as it elected to deal with the principal and made its checks payable to him and having so elected is bound by its act. ~~X~~To justify the payment upon the endorsement of W. H. Belcher, it must show authority to endorse and receive money, and such authority cannot be inferred from the circumstances, or established by statements of the alleged agent.

“ A letter of attorney to ask, demand and receive of the East India Company all money that might become due the principal on any account whatsoever, and to transact all business, will not authorize the attorney to endorse away a bill taken by him under this power. The words ‘all business’ must be confined to all business necessary for the receipt of money.”

Hay vs. Goldschmidt, cited in Hogg vs. Smith, 1 Taunt., 349, and cited in Gu-

lick and Holmes vs. Grover, 33 N. J. Law, 463.

Hogg vs. Smith, 1 Taunt., 349.

Atwood vs. Munnings, 7 B. & C., 278.

Chitty on Bills, Sec. 29.

The plaintiff by power of attorney constituted one English to "ask, demand, recover and receive from the Commissioners of his Majesty's navy all such salary, wages, etc., as there was, or thereafter should be due to him for his services in any of his Majesty's ships * * * and acquittances, releases and other discharges in his name to make with the usual clause of general ratification and all general power in the premises. English received from the Commissioners of his Majesty's navy on account of the plaintiff two bills payable to plaintiff's order. English endorsed the drafts in the plaintiff's name and issued them to the defendant. The action was trover; it was held that the authority was strictly confined to receiving the debt and that the attorney by receiving the bills performed all that he was to do and ought to have kept them in his possession for the plaintiff."

Hogg vs. Smith, *supra*.

There was a power of attorney to ask payment and receive from the East India Company all moneys that might be due, etc., and to transact all business, with the usual general power and clause of ratification. The attorney received an India bill payable to plaintiff's order, endorsed it in his name, and procured it to be discounted by the de-

fendant and received of the India Company the money due on the bill. The action was to recover the money, and the Court was of the opinion that the instrument gave no authority to the agent or attorney to endorse the bill and that the words "all business" must be confined to "all business necessary for the receipt of the money."

Hay vs. Goldsmith. Cited in *Hogg vs. Smith, supra.*

Where the power is to ask, demand, receive and receipt for any and all pay and allowances due me from the government of the United States on account of my services in the army, etc., and sign my name to any receipt, pay roll, voucher or other acquittance of said due, with full power to execute and deliver all needful instruments and papers, and to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises with the usual ratifying and confirming clause, it does not authorize an attorney to endorse drafts payable to his principal or order upon the Assistant Treasurer of the United States.

Halsinger vs. Natl. Corn Exchange Bank, 37 How. Pr. (N. Y.), 203.

The same rule was applied in

Jacoby & Co. vs. Payson, 91 How. Pr. (N. Y.), 480.

It would therefore seem that if a power of attorney as broad as that referred to in the cases cited above will not warrant the payment of

moneys due on a check endorsed by the agent, that the plaintiff in error cannot successfully urge here that the payments of the moneys due on the two checks in question to W. H. Belcher, brother of the plaintiff below was in any manner warranted or justified.

It was not urged on the trial below, and we assume that the question will not be urged here, that the principal or defendant in error ratified the acts of the agent in receiving payment upon the checks in question. The plaintiff below was asked :

Q. Were the dues regularly paid by you upon these shares ?

A. Yes, sir.

Q. Up to what time ?

A. To the first of last August.

(Page 14, folio 10.)

Q. What do you mean by saying that they were paid regularly ?

A. I mean that I sent money to my brother to pay them.

Q. When did you first begin at all to look into the matter of these shares having been taken out of your name, was it last summer ?

A. With reference about them, do you mean ?

Q. Yes.

A. It was about the first part of last August.

Q. What was it that caused you to look into it then particularly ?

A. The disappearance of my brother from this city.

Q. Then you began to suspect, I presume, that something might be wrong ?

A. I wanted to make sure that my interests were being protected.

Q. Up to that time I suppose you had supposed your brother had always led a perfectly honest life?

A. Yes, sir.

(Page 25, folio 30. Page 26, folios 10-20.)

Q. Mr. Belcher, did you ever make any demand upon The Manchester Building and Loan Association for the money due upon these shares?

A. Yes, sir.

Q. What date?

A. I cannot recollect.

Q. About what time?

A. I think it was the last of August.

The Court :—Is it in writing?

Mr. Reynolds :—Yes, sir.

Mr. Harding :—The defendant is a company; we will admit that this was received; it is dated on the 12th of August, 1905.

The Court :—Was received by the defendant?

Mr. DeYoe :—Yes.

Q. On what date did you receive it?

Mr. Harding :—I suppose about the date.

The Court :—Let it be marked.
(Marked Exhibit P-1.)

This testimony stands uncontradicted and it will therefore be seen that the defendant in error used due diligence in investigating the condition of his investment in the Manchester Building and Loan Association and promptly made a demand for all

moneys due him on account of the twenty shares of the stock which he held in the Association.

Gulick & Holmes vs. Grover, 4 Vroom, 463 at 471.

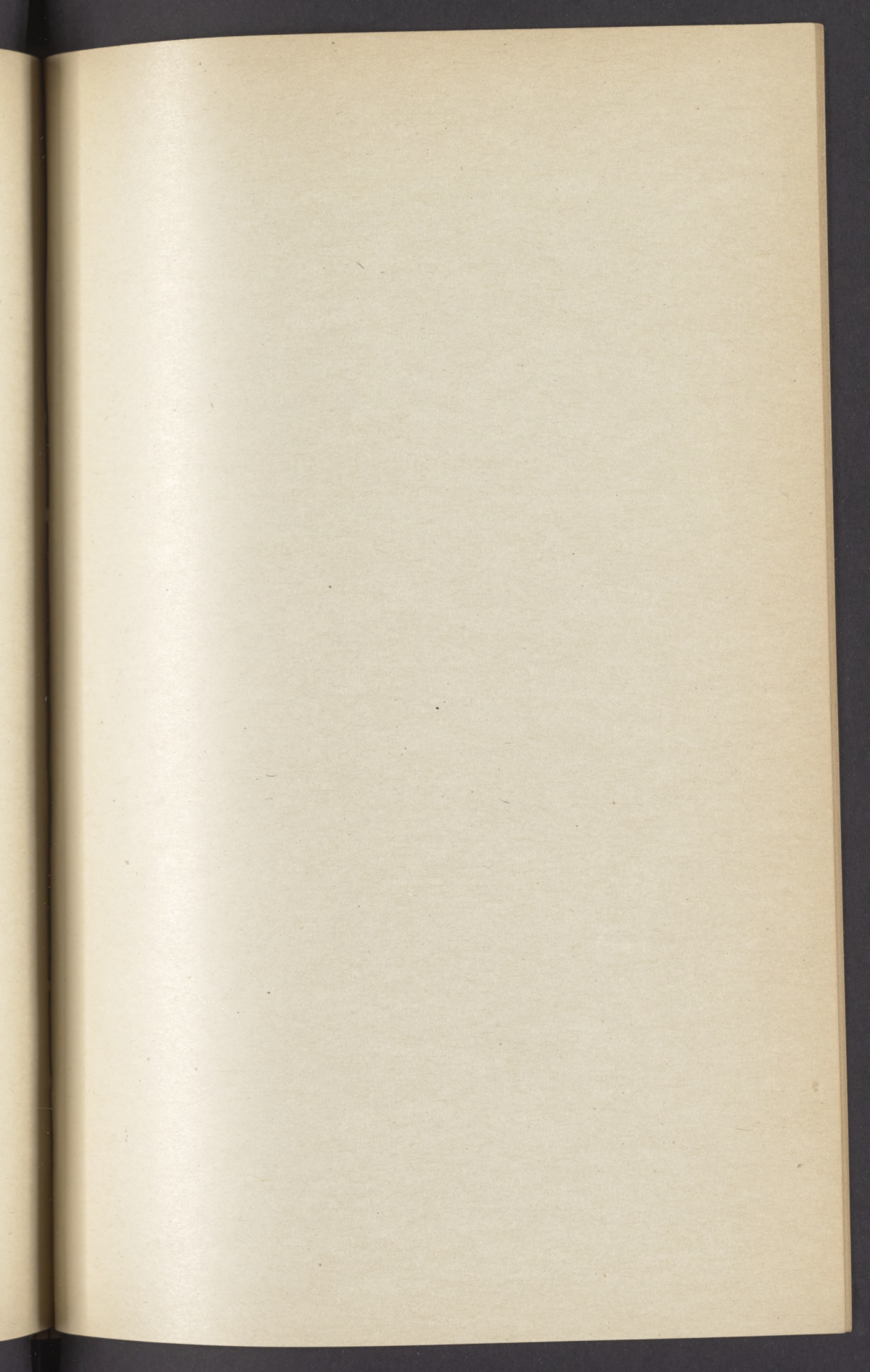
POINT IV.

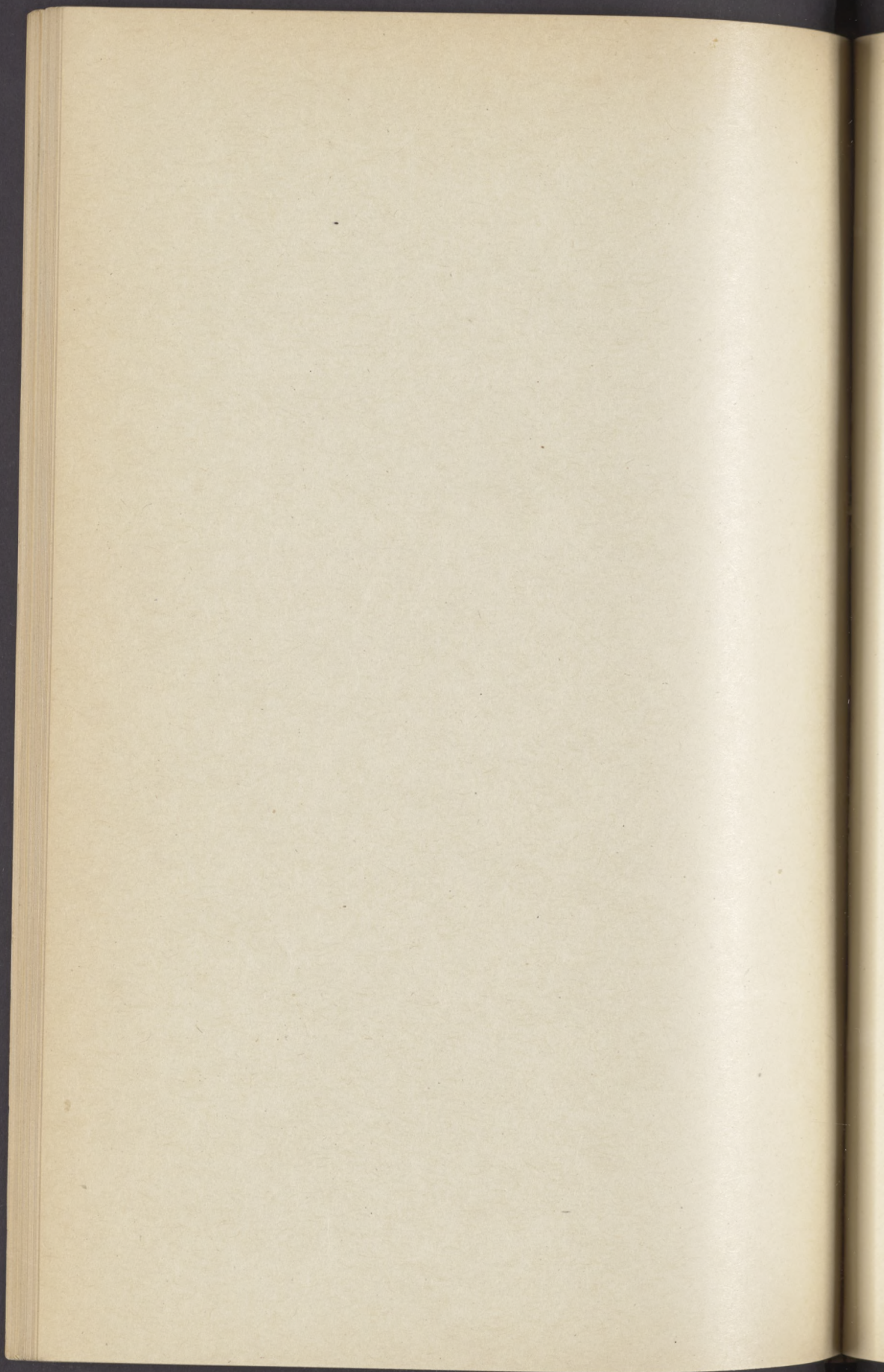
The judgment of the Circuit Court should be affirmed with costs to the defendant in error.

All of which is respectfully submitted.

JOHN H. REYNOLDS,

Attorney for and of Counsel for Defendant in Error.



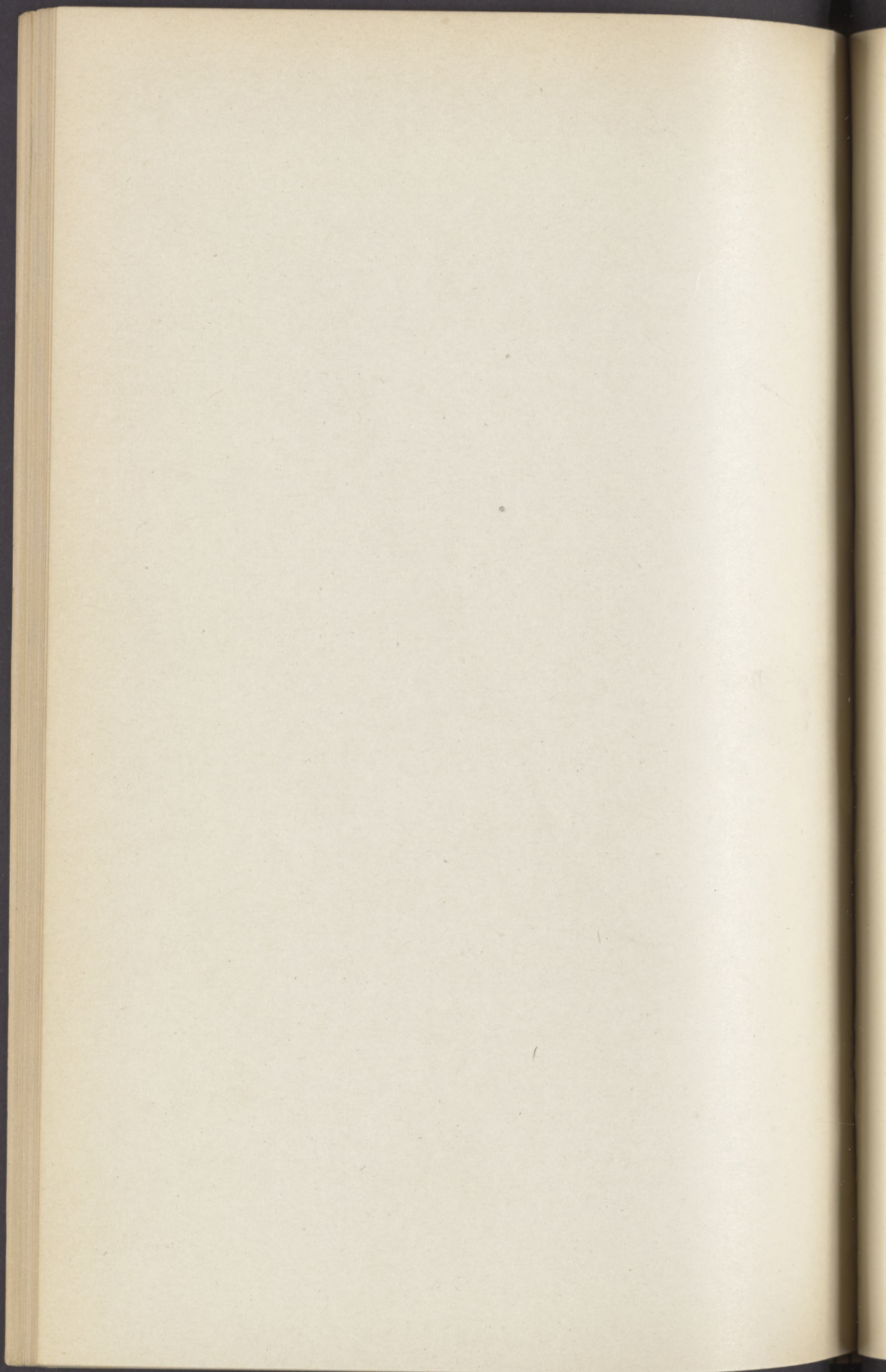


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New Jersey Court of Errors and Appeals.

THE MANCHESTER BUILDING AND

LOAN ASSOCIATION,

Defendant-Appellant,

v.

AMHERST W. BELCHER,

Plaintiff-Respondent.

On Contract.

10

Writ of Error.

NEW JERSEY, SS. :

[SEAL]

The State of New Jersey, to Wilbur A. Heisley, Esq., Judge of our Circuit Court, at Paterson, in and for the County of Passaic, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, Greeting : 20

Because in the record and proceedings, and also in the giving judgment in a plaint, which was in our Circuit Court, holden at Paterson, in and for the County of Passaic, between Amherst W. Belcher, plaintiff, and The Manchester Building & Loan association, defendant, of an action upon contract, manifest error hath intervened, to the great damage of the said defendant, as it is said ; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy jus- 30

tice done to the parties aforesaid in this behalf, do
 command you distinctly and openly to send, under
 your seal, the record and proceedings 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 causes, at Trenton, on the
 fourth Tuesday of July, inst., together
 with this writ, that the record and proceedings
 aforesaid being inspected, we may cause to be
 10 further done thereupon, for correcting that error,
 what of right, and, according to the law and cus-
 tom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of
 our said Court of Errors and Appeals, at Trenton,
 aforesaid, the fifth day of July, , nineteen
 hundred and six.

J. W. DEYOE,

S. D. DICKINSON,

Att'y.

Clerk.

20

30

Return.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. } SS.

I, Wilbur A. Heisley, Judge of our Circuit Court in and for the County of Passaic, do hereby in the schedule hereto annexed send to our Judges of our Court of Errors and Appeals in the last resort in all causes, the record and proceedings mentioned in the within Writ of Error, with all things touching and concerning the same, as I am within commanded. 10

[SEAL] In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court this eighteenth day of July, A. D., nineteen hundred and six.

WILBUR A. HEISLEY.

J. 20

PASSAIC COUNTY CIRCUIT COURT.

Of the thirteenth day of March, in the year of
Our Lord, nineteen hundred and six.

Passaic County, ss.

10 The Manchester Building and Loan Association,
a corporation under the laws of the State of New
Jersey, the defendant in this suit, was summoned to
answer Amherst W. Belcher, the plaintiff therein, in
an action upon contract, and thereupon the plaintiff,
by John H. Reynolds, his attorney, complains
for that whereas the defendant, heretofore, to wit,
on the first day of March, in the year of Our Lord,
one thousand nine hundred and six, at Paterson, in
said county, became and was indebted to the
plaintiff in the sum of forty-five hundred dollars for
money lent by the plaintiff to the defendant at its
request ; and in the like sum for money paid by
the plaintiff for the use of the defendant at its re-
quest ; and in the like sum for money received by
20 the defendant for the use of the plaintiff, and in
the like sum for interest for the forbearance by
the plaintiff at the defendant's request of money
due and owing from the defendant to the plaintiff ;
and in the like sum for money due and owing
from the defendant to the plaintiff on an account
stated between them, the same to be paid by the
defendant when it should be thereunto afterwards
requested. Yet the said defendant though often
requested so to do has not as yet paid the said sum
30 of forty-five hundred dollars above demanded, or any
part thereof, to the said plaintiff, but hitherto has
wholly refused and still does refuse to the damage of
the said plaintiff of forty-five hundred dol-
lars, whereby and by reason of the same remaining

unpaid an action is accrued to the plaintiff to demand the said moneys from the said defendant and therefore he brings his suit, etc.

Notice is hereby given that this action is brought to recover the amount due to the plaintiff from the defendant of the value of twenty shares of the stock of the said defendant, being the ninth series 1896, as follows:—eight hundred dollars and interest thereon at six per cent. from March 26th, 1900, this date, and nine hundred and ninety-three dollars and ninety-four cents and interest thereon from November 15th, 1902, to this date; the above mentioned eight hundred dollars being unlawfully withdrawn from the said shares by the defendant on the twenty-sixth day of March, nineteen hundred, and the said sum of nine hundred and ninety-three dollars and ninety-four cents being the remainder of the value of said shares on November 15th, 1902, at which date the same was unlawfully withdrawn by the said defendant and the said shares of stock belonging to this plaintiff were cancelled by the said defendant and which the said defendant has refused to pay to this plaintiff.

The plaintiff will claim damages against the defendant on the sum of eight hundred dollars and interest from March 26th, 1900, and for the sum of nine hundred and ninety-three dollars and ninety-four cents and interest from November 15th, 1902.

And the said defendant, by J. W. De Yoe, its attorney, comes and defends the wrong and injury, when, &c., and saith that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself upon the country, &c.

Samuel Rogers, being duly sworn according to

law, on his oath says : that he is the President of the Manchester Building and Loan Association, the defendant in the above entitled action ; that the foregoing plea is not intended for the purpose of delay and that the affiant believes that the defendant has a just and legal defense to the action on the merits of the case.

Therefore let a jury thereupon come before the Court aforesaid, at Paterson aforesaid, the fourth
 10 Tuesday of April then next ensuing, by whom, &c., who neither, &c., to recognize, &c., because as well as, &c., and the same day is given to the parties aforesaid at the same time and place.

And the jurors of the jury whereof mention is within made are respited from day to day until Wednesday the twentieth-seventh day of June, A. D. nineteen hundred and six, being of the April term for said year.

At which last mentioned day before the Court
 20 aforesaid, at Paterson aforesaid, come the said parties aforesaid, by their respective attorneys aforesaid, and the jurors of the jury whereof mention is above made being summoned also come, who to speak the truth of the matters and things contained being chosen, tried and sworn upon their oaths, under the direction of the Court retain their seats and say that the said defendant is guilty in the manner and form as the said plaintiff hath
 30 above complained against it and that they assess the damages of the plaintiff as against the defendant at the sum of one thousand nine hundred and forty-four dollars and ninety-eight cents.

Therefore it is considered that the said plaintiff do recover against the said defendant his said damages and also the sum of forty-one dollars and

twenty-nine cents for costs and charges by him about his suit in this behalf expended and now here taxed and by the Court here adjudged to him with his assent.

Which said damages, costs and charges in the whole amount to the sum of one thousand nine hundred and eighty-six dollars and eighteen cents.

And the defendant in mercy, &c.

Damages	\$1,944.89	
Costs	41.29	10
	<hr/>	
	\$1,986.18	

Judgment entered and signed June 30th, A. D. 1906.

WILBUR A. HEISLEY,

J.

20

30

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } SS.

10 I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Amherst W. Belcher vs. The Manchester Building and Loan Association, a corporation, etc., lately pending in our Circuit Court in and for said county, as the same is taken from and compared with the original recorded in Book "W" of Circuit Court Judgments on pages 164, etc., and now remaining on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Courts and County this seventeenth day of July, A. D., nineteen hundred and six.

[SEAL]

20

JOHN J. SLATER,
Clerk.

30

Q. How long have you been the secretary?

A. Since the 6th of January of this year.

Q. Have you charge of the general books of account of the association?

A. Yes, sir.

Q. Have you the ledger book with you?

A. I have.

Q. Do you know whether there was or is any entry shown in the book in the name of Amherst W. Belcher?

10

A. I have.

Q. Have you the book with you—will you produce it?

(Witness produces book.)

A. That book is in the name of Amherst W. Belcher.

Q. What was the number?

20

A. Book 449—that is the account number as well as the passbook number; this account is on page 405 of the individual ledger.

Q. What was the date of opening that account, Mr. Grundy?

A. As it appeared—January, 1896.

Q. How many shares were there?

A. Twenty shares.

Q. Up to what time does it appear that the dues were regularly paid upon the shares?

30

A. Up to and including July, 1900.

Q. What then?

A. Then there is a skip of three months, then \$80 were paid.

Q. Then from that time on?

A. Regularly until June, 1902, inclusive.

Q. And how much appeared to be due upon that account in June, 1902?

A. Profits and—

Q. What was the value of the shares at that time?

A. \$1,845.60, but a loan had been taken out.

Q. Never mind that now. That was the total value of the shares at that time as shown by the books?

A. Yes, sir. 10

Q. Do you know where Amherst W. Belcher lived?

A. From hearing it, yes, at Rondout, New York.
Cross Examination by Mr. DeYoe.

Q. How long do you say you had been secretary of the association?

A. The date is January 6, of this year.

Q. Who was secretary before you?

A. George W. Allee.

Q. How long was he secretary? 20

A. Eighteen years.

Q. He was secretary during the period covered by that book?

A. Yes, sir.

Q. Do you say that from the appearance of the book the shares were paid regularly?

A. Yes, sir.

Q. Why do you say that?

A. Because the amounts are entered regularly, in the months' spaces provided. 30

Q. You have no personal knowledge of it?

A. Not other than what I got from this book.

Q. Don't you know it was the custom to enter

them regularly although they had been paid irregularly?

A. Well, that is beyond me.

Q. You don't know?

A. No, sir.

Q. Then you cannot say whether they were paid regularly or not?

A. No, sir.

Q. The account shows it is closed?

A. Yes, sir.

10 Q. Withdrawn?

A. Yes, sir.

Q. And by "closed" that it has been paid off and settled?

A. The words on the ledger from which I get my knowledge are simply "Withdrawn July, 1902".

Q. What does that mean?

A. And underneath that, in led pencil, there is marked "Ck".(meaning check) No. 1927, showing that it had been paid by check 1927 of the association.

20

AMHERST W. BELCHER sworn in his own behalf.

Direct examination by Mr. Reynolds.

Q. Mr. Belcher, are you the plaintiff in this suit?

A. Yes, sir.

30 Q. Where do you live?

A. I live in the City of Kingston, New York.

Q. Is that Rondout, New York?

A. Rondout is part of Kingston.

Q. Were you the owner of twenty shares of the

capital stock of the Manchester Building & Loan Association ?

MR. HARDING.—Wait a minute; counsel asks the witness if he is the owner of stock, which seems to me to be a conclusion of law; he should ask him how he became the owner and the situation under which he did become the owner so that the Court can determine whether he is the owner or not. 10

THE COURT.—Is there a dispute about his ownership originally ?

MR. HARDING.—There is perhaps a question about it whether there is or not; the witness should tell the circumstances.

THE COURT.—Objection overruled.

To which ruling of the Court defendant's counsel prays an exception. 20

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

WILBUR A. HEISLEY, [SEAL]

J.

Q. Are you the owner of certain shares of stock in the Manchester Building and Loan Association?

A. Yes, sir.

Q. How many?

A. Twenty.

Q. Were the dues regularly paid by you upon these shares?

A. Yes, sir.

Q. Up to what time?

10 A. Up to the first of last August.

Q. Did you ever withdraw any of those shares?

A. I did not.

Q. Did you ever receive any money for those shares?

A. I never did, sir.

Q. Did you ever receive any equivalent whatever for those shares?

A. No, sir.

Q. Did you ever make a loan on those shares?

20 A. No, sir.

Q. Did you suppose on the first day of August of this year that you were still paying money on them?

MR. HARDING.—Objected to.

Objection sustained.

Q. Mr. Belcher, did you ever make any demand upon the Manchester Building and Loan Association for the money due upon these shares?

30

A. Yes, sir.

Q. What date?

A. I cannot recall the date.

Q. About what time?

A. I think it was last August.

THE COURT.—Is it in writing?

MR. REYNOLDS.—Yes, sir.

MR. HARDING.—The defendant is a company; we will admit that this was received; it is dated on the 12th of August, 1905.

THE COURT.—Was received by the defendant?

MR. DEYOE.—Yes.

10

Q. On what date did you receive it?

MR. HARDING.—I suppose about the date—

THE COURT.—Let it be marked.

Marked Exhibit P-1.

Q. Before that time did you write to the Manchester Building and Loan Association? 20

A. I did; yes, sir.

Q. Did you receive an answer?

A. I did; yes, sir.

Q. From whom?

A. The Secretary, Mr. Allee, I believe.

Q. Is that the letter?

A. Yes, sir.

Q. The letter is dated August 5th—this is a letter dated August 5th, 1905, dated “Paterson, New Jersey, Mr. Amherst W. Belcher, Rondout, New York, Dear Sir: Yours of August 5th received and noted. There are no shares standing in your name in this association. There was a twenty-share 30

book in your name, but the same was withdrawn and paid off in full November 4, 1902. Yours truly, George W. Allee, Secretary." I offer that in evidence.

Marked Exhibit P-2.

Cross Examination by Mr. Harding.

Q. What is your age ?

A. Sixty-one.

10 Q. What was your brother, William H. Belcher's, age ?

A. At this time—I think about fifty-four. I am not certain about it.

Q. Did you say that dues were regularly paid by you for twenty shares of the defendant—you don't mean that you personally paid the defendant any dues, do you—you did not go personally ?

A. No, sir ; I did not.

20 Q. What do you mean by saying they were paid regularly ?

A. I mean that I sent money to my brother to pay them.

Q. That is what you mean ?

A. Yes, sir.

Q. Well, you never saw any officers of the company when the shares were taken out, did you ?

A. No, sir.

Q. Who made the arrangement for you about taking out the shares in the first place ?

30 A. W. H. Belcher.

Q. Your brother ?

A. Yes, sir.

Q. Will you tell us how he came to take out

shares for you—what arrangements you had with him about taking out shares?

A. I had a verbal arrangement—I asked him to do so for me.

Q. Well, when did you ask him to do so?

A. I think in January, 1896.

Q. Where was it that you asked him to do this?

A. In his office in this city.

Q. What did you know about the Manchester Building and Loan Association at that time?

A. Nothing. 10

Q. You never had heard of it until your brother spoke of it?

A. I had heard of it through printed matter; yes, sir.

Q. Did he or not ask you to or advise you in any way to make this investment?

A. He did not; no, sir; the investment was made of my own free will; I asked him to do it for me.

Q. Did you know he was an officer in that company at the time? 20

A. No, sir.

Q. You did not even know that?

A. No, sir.

Q. You had heard of this company then?

A. Yes, sir.

Q. And heard of this company from other sources than your brother's information?

A. Yes, sir.

Q. From other sources?

A. Yes, sir. 30

Q. Did you come from Kingston here to Pater-son, purposely to authorize him to make the investment?

A. No, sir.

Q. What ?

A. No, sir.

Q. Were you here for business ?

A. I came here to visit my parents occasionally when they were living, and on such occasions I called on my brother as a rule.

Q. Tell us what you have said to your brother about making this investment ?

10 A. I don't remember the words that I used in the matter, but in talking over the matter I thought it would be a good thing to have some shares ; I asked him to make an investment for me, but the words used I cannot tell you.

Q. What kind of an investment ?

A. Twenty shares of stock in the association.

Q. What did you consider the investment would be ; what did you consider the contract would be between you and the Building and Loan Association ?

20 A. I thought I should be the owner of twenty shares and would get the benefit of it at maturity.

Q. You fully understood, did you, the system of issuing shares of this particular Building and Loan Association ?

A. I did, in a general way ; yes, sir.

Q. Where did you get your information from ?

A. From the working of other associations.

Q. Did your brother tell you about this Association ?

A. No, sir.

30 Q. He did not tell you particularly about it ?

A. No, sir.

Q. When did you understand your shares were to mature ?

A. Whenever they had earned enough money, I suppose.

Q. Do you mean to say that in that interview you did direct him to take out twenty shares for you?

A. Yes, sir.

Q. Did you give him anything towards the purchase of it?

A. Yes, sir.

Q. How much?

A. I cannot recall how much, but I gave him different sums at different times.

Q. Did you have any particular arrangement with him as to how much you were going to give him at any particular time? 10

A. No, sir.

Q. So, then, I infer from what you say that you gave him different sums, I suppose, to cover the whole thing?

A. Yes, sir.

Q. That he may have paid and advanced for you before?

A. I cannot remember about that. 20

Q. Well, for instance, how near after the first sum that you paid him, how long a time was it from the first sum that you paid him until you paid him the next sum?

A. I cannot say, I don't know.

Q. There was no regularity?

A. No, sir, no regularity.

Q. It might have been 1, 2, 3, 4, 5 or 6 months as it happened?

A. It might have been, yes, sir. 30

Q. Well, if that is so, then you must have understood between you that he would sometimes pay to you and you would pay him afterwards?

A. Yes, sir.

Q. That is when the money became due for the dues in January, say, by arrangement between you and your brother your brother would advance the dues for you, he might do that for several months?

A. Yes, sir.

Q. And did it for several months?

A. I cannot say.

Q. And you were supposed afterwards to have paid him up for what he paid you on your dues?

A. That is the idea, that such was the case.

10 Q. Well, about how often did you see your brother during this period, or about the time when the book was taken out, about the time when the shares were taken from the company?

A. I cannot say as to that.

Q. Give me a general notion of about how often you saw him?

A. I think I saw my brother as often as once a month.

Q. Where would you see him?

20 A. Here—my mother was sick at that time, and I came here frequently to see her, and I saw my brother as a rule when I saw her.

Q. Had you seen your brother quite frequently before these twenty shares were taken out?

A. Yes, sir; quite frequently.

Q. Did you have any business relations with him before these shares were taken out?

A. Nothing more than appertained to family matters—about our parents jointly.

30 Q. Did you have any business relations with him except this matter of the Building and Loan Association after the first twenty shares were taken?

A. Yes, sir.

Q. You had them after that?

A. Yes, sir.

Q. Well, what were those business relations?

A. Those relations were—

Q. State them in your own way?

A. I gave him money to invest for me, thinking that he could do it to better advantage than I could—and I suppose that I had money enough here invested in the last few years, the interest of which was sufficient to pay my dues in the association.

Q. Pay your dues in the association?

A. Yes, sir, for I think four years previous to last August I depended upon the interest of the money he was supposed to have invested, for him to pay those dues, and for that period of 4 years no money passed between us at all; it was understood between us that the interest that was to be due me was to be applied to the payment of these shares in the association, and I supposed it was being done. 10

Q. Well, now, that meant, as I understand you then, that you gave him money to invest for you generally? 20

A. Yes, sir.

Q. In fact, how did he invest that other money?

A. I cannot say as to that, I supposed it was on first mortgage.

Q. On mortgages?

A. Yes, sir.

Q. Bonds?

A. I don't know the terms.

Q. Did you have absolute confidence in your brother at that time? 30

A. Yes, sir.

Q. So that you were willing to let him use his discretion?

A. Yes, sir.

Q. I suppose you thought that he would safeguard your interests carefully in making investments and make good investments, and he could take either bond or mortgage—

A. I did not know what he was doing exactly, but I suppose it was a matter of mortgage.

Q. You trusted him to do whatever he thought was right about the form of the investments?

10 A. That was the idea exactly.

Q. I suppose also he kept the evidence of debt in your favor, whatever it was ; if it was a bond, he kept the bond?

A. I supposed he did.

Q. You never asked him for that?

A. No, sir.

Q. If it was a promissory you supposed he would keep that in his possession?

A. Yes, sir.

20 Q. Did you ever have any account from him at all—first of all let me ask you what was the first considerable sum that you gave him to invest?

A. I don't remember ; I think it was \$1,000.

Q. Will you tell me about when that was?

A. I think it was about five years ago, I think it was, but I cannot say positively about that ; my memory does not serve me well in the matter.

Q. In what way did you give him that—did you send it by check?

30 A. No, sir ; I handed him the money personally in some cases, and in some cases I sent it by express, and in some cases I sent it by check.

Q. I mean the first payment of \$1,000?

A. I sent that by express.

Q. Did you have any previous understanding with him as to what he was to do with it?

A. To invest it generally in the manner I have spoken of.

Q. Did he acknowledge the receipt of your money?

A. In every case.

Q. He did not tell you how he had invested it at the time?

A. Not at that time, no, sir.

Q. He held it for investment, I suppose—he could not invest it at once? 10

A. I don't know.

Q. You did not give him any special directions?

A. I gave him no directions at all; I generally furnished money to him on the idea that he had a place to put it then.

Q. Will you tell us about how many times afterwards you sent money to him for investment?

A. No, sir, I cannot.

Q. Did I understand you to say that some time ago you thought you had sent him enough so that the income from the money that you sent him to invest would be sufficient to pay the dues of the Building and Loan Association? 20

A. Yes, sir.

Q. What would be the dues a year—\$240 a year at 6 per cent. that would mean something like over \$4,000?

A. Yes, sir.

Q. After you sent him the money do you mean to say that you really believed and understood that he had been using the income to pay these dues? 30

A. Yes, sir.

Q. For how long a time did you suppose he was paying the dues out of the income?

A. I think about four years now.

Q. That would be 1902?

A. Yes, sir.

Q. But I suppose up to that time you had been gradually giving him these sums of money to invest for you?

A. Yes, sir.

10 Q. From what you did, you think you must have sent him somewhere in the neighborhood of \$4,000—beginning when would you say?

A. I think in 1896.

Q. Beginning in 1896?

A. Yes, sir.

Q. From about the time you took out about the twenty shares in the Building and Loan Association?

A. Yes, sir.

20 Q. And you kept on giving him different sums up till about 1902?

A. Yes, sir.

Q. And you now think you had given him about \$4,000?

A. Yes, sir.

Q. Can you tell anything about what amounts these payments were made, and give us an idea when they were made—I mean the sums that you sent your brother to invest?

30 A. I cannot do that; I think I have a number of checks that show one and two and three hundred dollars, but I cannot remember the dates.

Q. Well, he got the mortgages and bonds or note, whatever he got from these investments,

always in his own possession, you always understood that?

A. Yes, sir.

Q. The Building and Loan Association book, which contained the evidence of your shares and all that sort of thing, he kept all those papers in his own possession always, you never asked him for them?

A. No, sir.

Q. I suppose you trusted him?

A. That is the idea exactly; may I explain—I have written to him asking him for statements with regard to my building and loan matter. 10

Q. You have spoken about having some business relations with reference to your father's estate, was it before anything was said about the Building and Loan Association?

A. I meant business relations with reference to the care of our parent.

Q. Oh, the care of your parents?

A. Yes; I don't think I said that, but I meant it. 20

Q. Is Mr. W. H. Belcher your only brother?

A. No, sir; I have three other brothers.

Q. Your counsel has produced a letter dated the 5th of August, 1905, which says that the twenty shares standing in your name were withdrawn and paid off in full November 4, 1902; then you said that you saw some of the officers of the defendant—you understood then it was paid off to your brother at that time?

A. I did not know who it was paid to; I did not learn that. 30

Q. When did you first begin at all to look into the matter of these shares having been taken out in your name; was it last summer?

A. With reference about them, do you mean?

Q. Yes.

A. It was about the first part of last August.

Q. What was it that caused you to look into it particularly then?

A. The disappearance of my brother from this city.

Q. Then you began to suspect, I suppose, that something might be wrong?

10 A. I wanted to make sure that my interests were being protected.

Q. Up to that time you had supposed, I suppose, that your brother had always led a perfectly honest life?

A. Yes, sir.

Q. And you trusted implicitly in his business integrity and honor?

A. Yes, sir.

20 Q. And had not the slightest suspicion that he would do wrong?

A. No, sir.

Q. You would have entrusted him, I suppose, with anything that you had up to that time?

A. I did so.

Q. And were perfectly willing to do so at the time?

A. Yes, sir.

Q. You would have had no hesitation in placing an indefinite sum in his hands?

30 A. None whatever.

Q. I don't know that you told us what your business was.

A. My business?

Q. Yes.

A. I am a machinist.

Q. Had your brother disappeared before you came down here to look into the matter of these shares in the Building and Loan Association?

A. I did not come.

Q. You merely wrote?

A. Yes, sir.

Q. You understood that he had disappeared before your wrote?

A. I saw that by the papers.

Q. When had you last seen him before you wrote the letter inquiring about this stock? 10

A. I think I saw him about a month previous to that letter.

Q. What time did you hear he had disappeared—can you give the date?

A. No, sir.

Q. How long before this letter dated August 5, 1905?

A. Two or three days.

Q. Have you ever heard from him since?

A. No, sir. 20

Q. I suppose you are as ignorant as the rest of us as to where he is?

A. I certainly am if you are.

Q. I suppose up to the time of your brother's disappearance, like a good many of the rest of us you thought he was well-to-do and had plenty of means?

A. Yes, sir.

Q. You believed that he was a man of considerable property?

A. I thought he had. 30

Q. Having corresponded with your brother so frequently, I suppose, of course, you are familiar with his handwriting?

A. Yes, sir.

Q. I show you a check drawn to the order of A. W. Belcher for \$993.94, it purports to bear the endorsement A. W. Belcher, W. H. Belcher, Attorney, and ask you if that endorsement is the handwriting of your brother, W. H. Belcher?

A. I think it is.

Q. You have no doubt about it?

A. No, sir.

10 Q. I show you check dated March 27, 1900, payable to the order of A. W. Belcher for \$800., likewise endorsed, purporting to be endorsed A. W. Belcher, W. H. Belcher, Attorney, and I ask you if that is his signature?

A. That is his signature.

Q. You have no doubt of that?

A. No, sir.

Q. I offer those two checks in evidence.

Marked Exhibit D-1 and Exhibit D-2.

20 Re-Direct Examination by Mr. Reynolds.

Q. These checks that were produced, Mr. Belcher, they are both of them made to the order of A. W. Belcher?

A. Yes, sir.

Q. That is signed on the back, A. W. Belcher, is that your signature?

A. No, sir.

Q. Did you ever see that check before?

A. I have only a moment ago.

30 Q. This check dated November 15, 1902, made to the order of A. W. Belcher, \$993.94, signed by John C. Roe, treasurer, and countersigned by W. H. Belcher, president, on the back of that is endorsed, A. W. Belcher; did you write that?

A. I did not, no, sir.

Q. Did you ever see that check before?

A. Never, until a moment ago.

Q. Mr. Belcher, you sometimes sent money to your brother to pay these shares in advance, didn't you?

A. Yes, sir.

Q. Did you do that often?

A. I cannot say how often, but I generally sent money as I could spare it, or as it was needed.

Q. Sometimes it was in advance, and sometimes to pay up arrears for a month or two? 10

A. I don't remember ever having an arrear.

Q. This is a letter from Mr. Belcher, did you ever receive that letter?

A. Yes, sir.

Q. Is that a letter you received from your brother?

A. Yes, sir.

Q. Is that your signature?

A. No, sir. 20

Q. Is that his signature?

A. Yes, sir.

Q. W. H. Belcher?

A. Yes, sir; I suppose it is.

Q. This is the letter: "August 8, 1899, Dear Zach: I have received your letter with \$10, and check for \$100; you had a credit of \$12 on August (this is dated August), and this check will pay now as follows: Balance of August, 1899, \$8; for September, \$20; for October, \$20; for November, \$20; for December, \$20, and January, 1900, \$12.00 making a total of \$100." (Showing that Mr. Belcher at times at least sent money to pay up these shares in advance.) 30

MR. HARDING:—I don't want counsel to make an argument on that, and I ask that that remark be stricken from the records.

THE COURT:—It is not evidence, of course ; it is simply a statement of the counsel and the jury is not to accept that unless it is supported by the letter itself.

10

MR. REYNOLDS:—I have no objections to that part being stricken out.

THE COURT:—Strike it out.

Letter is marked P. A. 1½.

Q. Did you ever authorize anybody to withdraw that money from those shares in the Manchester Building & Loan Association ?

20

A. No, sir.

Q. Did you ever authorize your brother to do it ?

A. No, sir.

Q. When these checks were shown to you, when you saw that your brother W. H. Belcher had endorsed them as your attorney, had you ever authorized him to do that ?

MR. HARDING.—Objected to ; he has already answered that ; he said he never did.

30

RECESS TILL 2 O'CLOCK.

AFTER 2 P. M.

MR. HARDING.—Your Honor, I understand that one of the gentlemen on the jury is a member of the defendant association, and I feel that it is my duty to announce that to counsel on the other side, to give him the privilege of trying the case with eleven jurymen, if he objects to him; I don't know whether it is true even; I understand it is Mr. Martin. I understand, Mr. Martin, that you are a member of the defendant association. 10

JUROR MARTIN.—I have been a member of the association.

Q. Are you now?

A. I have got some stock in it, yes, sir.

MR. HARDING.—I don't think it is fair to try it if counsel has any objection. 20

MR. REYNOLDS.—I have known Mr. Martin a long time and I personally have no objection to his acting on the jury at all.

MR. ABSALOM GRUNDY recalled.

Direct Examination by Mr. Reynolds. 30

Q. What is your business?

A. School Principal.

Q. Did you ever study law?

A. Yes, sir.

Q. For how long?

A. Before I was admitted?

Q. Yes.

A. About seven and one-half years.

Q. When were you admitted to the bar?

A. February 3rd, years ago.

Q. Where did you study law?

A. In the office of William H. Belcher.

Q. While you were there were you familiar with the way in which the business of the Manchester Building and Loan Association was conducted?

10 A. The part of it that was transacted in that office, yes, sir.

Q. What part of it was transacted in that office?

A. Well, it was the city office of the association.

MR. HARDING.—You did not fix the date, Mr. Reynolds; what time is it you are talking about?

20 MR. REYNOLDS.—He said he was admitted to the bar three years ago, and prior to that he had studied in Belcher's office for seven and a half years.

THE WITNESS.—I think that it is as nearly as I can remember.

30 Q. Well, did you as an employee or as a student in Mr. Belcher's office, have anything to do with the collection of moneys?

A. Yes, sir.

Q. Were there any stockholders that paid dues to Mr. Belcher?

MR. HARDING.—Objected to.

THE COURT.—How is that material?

MR. REYNOLDS.—To show the custom that there was in that office of receiving moneys by means of the president of the association instead of being paid to the secretary. I want to show there was a custom there of Mr. Belcher receiving money for the association in substantially the same manner in which it was received from his brother, the plaintiff in this suit. 10

THE COURT.—Yes, but supposing that is so, is not the evidence offered so far by the plaintiff to the effect that he was not representing the association, but was representing the plaintiff; now, suppose in addition to that he also represented the plaintiff to some extent by reason of his—what was it—president of the association? 20

MR. REYNOLDS.—Yes.

THE COURT.—Of his being president, what effect would that have upon the situation? Your client says he sent the money to his brother, not as president of the association, but as his brother, to make payments.

MR. REYNOLDS.—I only want to establish that as the custom in that office because it was the city office of the As- 30

sociation, the business in the city was transacted right there.

THE COURT.—I don't see how it changes the situation; how do you claim it can affect the situation?

10 MR. REYNOLDS.—Merely that Mr. Belcher, the plaintiff in this suit, was one of a great many who did the same thing in regard to the payment of money to William H. Belcher who was in actual charge of the Paterson office of the Manchester Building and Loan Association.

20 THE COURT.—I think if they should dispute that he paid the money to the Building and Loan Association, then perhaps it would be competent to show that you paid it to W. H. Belcher, not simply as the representative of the plaintiff, but also as the representative of the defendant; but at the present time there is no dispute about the receipt of the money; the testimony tends to show they did receive it; the dispute relates to the paying out.

30 MR. REYNOLDS.—That is true, but I think it was material to show that W. H. Belcher was not only acting for the people from whom he received the money but he was also acting for the Association.

THE COURT.—I don't see how, at this day, it is material, because the evi-

dence shows, as far as you have gone at least, that the Association received the money.

MR. REYNOLDS.—I think we will reserve that.

No cross examination.

PLAINTIFF RESTS.

MR. GEORGE W. ALLEE, sworn in behalf of the defendant, testified as follows. 10

Direct Examination by Mr. Harding.

Q. You were formerly the Secretary of The Manchester Building and Loan Association, the defendant in this suit, were you not?

A. Yes, sir.

Q. Were you its secretary in 1896?

A. Yes, sir. 20

Q. And down until the beginning of this year, were you not, continuously?

A. Yes, sir.

Q. You knew William H. Belcher?

A. Yes, sir.

Q. And do you recall the time when he took 20 shares of the defendant out in the name of his brother A. W. Belcher?

A. Yes, sir.

Q. A book, the usual book, was issued when that was taken out? 30

A. Yes, sir.

Q. And I understand that book was burned in the great fire of 1902?

A. Yes, sir.

Q. This book that was taken out is called what—
is that the technical name for it?

A. It is called the pass book.

Q. It shows the number of shares, doesn't it,
the book shows the number of shares that the mem-
ber has?

A. Yes, sir; and the total payment of shares.

Q. In other words it is the evidence of debt that
the member holds against the association showing
10 constantly what he pays and what is due to him?

A. And also sometimes as to what he owes.

Q. Will it show that?

A. Yes, sir.

Q. It is the evidence of his claim?

A. Yes, sir.

Q. Of whatever is paid him?

A. Yes, sir.

Q. And whatever he is entitled to?

A. Yes, sir.

20 Q. You are familiar with the fact that \$800 wa
taken out, withdrawn from the association by the
owner, are you not?

A. Yes, sir.

Q. When was that taken out?

MR. REYNOLDS.—1900, I think it
was.

30 Q. This \$800 was taken out, as I understand, in
the year 1900, March 27th?

A. Yes, sir.

Q. I show you a check which has been marked
Exhibit D-2, dated on the 27th day of March, 1900,
payable to A. W. Belcher for \$800, is that the

check which represents that amount taken out at that time?

A. Yes, sir.

Q. By whose direction was that amount taken out?

A. William H. Belcher.

Q. He had the right, I understand, to take that money out at that time?

MR. REYNOLDS.—I object to that as a conclusion. 10

MR. HARDING.—I mean the member had the right, the member who held the book had the right to withdraw \$800.

A. Yes, sir.

Q. A. W. Belcher had the right to withdraw it?

A. Yes, sir.

Q. Any member, as I understand, had the right at that time to withdraw a certain percentage on all they had put in? 20

A. Yes, sir.

Q. And what percentage was it?

A. 80 or 90 per cent.

Q. And when they withdraw that sum of money, such a sum of money, the Association, I believe, required a transfer of the book that you have spoken of, that was issued?

A. Yes, sir.

Q. So you took that as a transfer? 30

A. Yes, sir.

Q. The transfer, I suppose, was the evidence of payment and held as security?

A. He assigned the book as security for that loan.

Q. And that was the evidence of the payment?

A. Yes, sir.

Q. Now, do you also recall the payment that was made on the 15th of November, 1902, by a check made out to the order of A. W. Belcher for \$993-.94, which is endorsed A. W. Belcher by William H. Belcher, Attorney?

10 A. Yes, sir.

Q. That was a withdrawal, as I understand, of that sum of money, \$993—and was the book transferred in the same way at the time that that \$993 was made out?

A. No, sir, that was an actual withdrawal of the stock.

Q. The holder had the right, the member had the right to withdraw that sum of money at that time?

20 A. Yes, sir.

Q. According to the contract under which he went in?

A. Yes, sir.

Q. And after that sum of money was withdrawn the book was then given up to the company, wasn't it?

A. The book was then surrendered.

Q. The book that he held showing the amount that was due to him was then surrendered to the company?

30 A. Yes, sir.

Q. Now, do you mean to say that in both these cases when this \$800 check was paid and when the \$993 check was paid that there was such an assignment and delivering up of the book?

A. Yes, sir.

Q. In each case ?

A. Yes, sir.

Q. Who held the book ?

A. The secretary—which book do you mean—the transfer book ?

Q. No, the members' book which contained his account ?

A. The secretary retained possession of that.

Q. Who held possession of it in the meantime ?

A. William H. Belcher. 10

Q. Did William H. Belcher always have possession of the book, except when the secretary had it ?

A. Yes, sir.

Q. When payments were entered into the book did William H. Belcher have it—I mean payments of dues—well, never mind that ; Do you know whether or not that William H. Belcher had possession of that book—I mean now the member's book—during the whole time from when it was issued until the final settlement ? 20

A. Yes, sir ; he did.

Q. Now, when the \$800 check was paid do you know that William H. Belcher then had the book in his possession—when it was paid ?

A. He claimed to have it—I suppose it was there—in his desk.

Q. There was an assignment made of it ?

A. Yes, sir.

Q. Did you ever have any dealing whatever directly with A. W. Belcher ? 30

A. No, sir.

Q. Did you know at the time where he lived ?

A. Yes, sir ; I knew he lived at Rondout, that was his address.

Q. Did Mr. William H. Belcher direct you about making out these checks? The first check for \$800, and the subsequent check for \$993?

A. Yes, sir.

Q. Did he tell you how to make them out?

A. Yes, sir.

Q. Did he make them out as he told you?

A. Yes, sir.

Q. Payable to the order of A. W. Belcher?

A. Yes, sir.

10 Q. Both of them?

A. Yes, sir.

Q. And they were endorsed A. W. Belcher by William H. Belcher, attorney.

A. Yes, sir.

Q. At the very time when this transaction took place, did Mr. William H. Belcher say anything about his authority from his brother?

MR. REYNOLDS.—Objected to.

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MR. HARDING.—An authority (to make the loan is admitted) to take out the book and make the loan is admitted. The general authority is also admitted on the part of Mr. Belcher to carry out the whole transaction so far as that is concerned. Now, in connection with that, as I understand it, the declaration that should be made by the agent who is admitted for a certain purpose is competent in evidence as an act done in pursuance of his agency; possibly not as a declaration, but as an act done in pursuance of his agency. It

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don't perhaps bind the other side as a statement of a fact that he was the agent, but the fact that he makes the statement that he had a power is an act done in pursuance of the agency. I have two cases here (continues argument).

THE COURT.—I sustain the objection.

To which ruling of the court, the defendant's counsel prays an exception. 10

Exception allowed. Let it be sealed, and it is sealed accordingly.

[SEAL]

WILBUR A. HEISLEY,

J.

Q. I understand that these two checks, one for \$800, and the other for \$993.94, were paid by the bank on which they were drawn? 20

A. Yes, sir.

Q. And were treated as payments by the Building and Loan Association?

A. Yes, sir.

Q. For these amounts?

A. Yes, sir.

Q. And the Association on the books of the Company made these checks payment of A. W. Belcher's claim?

A. Yes, sir. 30

Cross Examination by Mr. Reynolds.

Q. Mr. Allee, you say that there was an assign-

ment of this book and account, and, of course, the shares with them at the time the loan of \$800 was made?

A. Yes, sir.

Q. What kind of an assignment was it?

A. The regular assignment of all book loans in a book for that purpose, a book of assignments it is called.

Q. Was that signed by Mr. Belcher?

10

A. It was signed A. W. Belcher.

Q. Where is that book now?

A. I presume it is in the secretary's charge.

THE COURT.—You say you loaned—were these sums drawn as loans?

MR. REYNOLDS.—The first one is put forward as a loan made upon the security of that book; supposed to be made to A. W. Belcher.

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MR. HARDING.—It is merely a withdrawal of money that he has paid in.

THE COURT.—It is not a loan, is it, it is an absolute withdrawal isn't it, a payment on account, isn't it?

MR. REYNOLDS.—It is more than that, your Honor; they borrow money from the association and they agree to pay interest upon that loan at any time they may pay that loan back on paying the interest, and then that loan will be cancelled and carried the shares on the security; it is actually a loan.

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THE COURT.—That applies to the

\$800 you claim now, how about the \$993?

MR. REYNOLDS.—That, I believe it is claimed, was an absolute withdrawal, but the first one of \$800, there was more due upon those shares when that \$800 loan was made than the \$800; it was in no sense a withdrawal, it was a loan which was to be repaid afterwards, or upon the maturity of the shares was deducted from the amount due upon it, and I think the rules of the Association require that any assignment of that book shall be in writing, and this is the first I have ever heard that there was such an assignment. As the witness has testified that this assignment was made in writing I move that all his testimony in regard to the assignment should be stricken out, and that the assignment, the actual assignment, be produced.

THE COURT.—What do you say to that, Mr. Harding?

MR. HARDING.—Counsel is pretty late in asking such a thing as that now; I put it in as a not very important matter. I don't think it is of any importance.

THE COURT.—Strike out all the testimony regarding the assignment.

Q. You were the secretary of this association for a number of years?

A. Yes, sir.

Q. How did you receive your money from the various stockholders?

A. Some paid it themselves and at other times other people paid for other stockholders.

Q. Can you name any of the stockholders who paid in money for others?

Objected to as immaterial. Objection sustained.

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Both sides rest.

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Motion to Direct a Verdict for the Defendant.

MR. HARDING.—For the purpose of expediting this case I have delayed making one point as a basis for the motion for non-suit, and make two points now for a direction for a verdict in favor of the defendants. I say that one might probably have been made on a motion for non-suit before the last evidence was put in.

10

The first point I make is that the evidence shows that the plaintiff clothed William H. Belcher with an apparent authority to receive these two sums of \$800 and \$900 and odd dollars; when I say apparent authority, I mean, of course, such an authority as appeared to the defendant to give the defendant the right to pay these two sums of money to William H. Belcher.

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Now, without taking a great deal of time I may say that this point is in line with that class of cases which hold that where a principal gives another, the agent, the authority to invest money and leaves the evidence of the debt which has been invested, in the hands of the agent, the person who is the debtor to whom the loan has been made has the right to pay back that money or any part of it to the agent, because it appears to the debtor that the agent had the right to receive the debt, from the fact that he was entrusted by the prin-

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cipal to make the loan and is left with the evidence of security in his own hands. One of the old cases that has been cited in the old cases is the case of Williams vs. Walker, in 2nd Sandford's, Chancery, New York ; quoted also in a New Jersey case which I have here.

(Argument continued.)

10 (Citing also the case of Haines v. Coleman, 25 New Jersey Equity, p. 179.)

Now, that principle being established, it seems to me the facts in this case justify us in asking for a direction of a verdict. The evidence is undisputed ; the facts are undisputed that the evidence of this debt, whatever it was, simply was contained in these books, or the book that was given over to William H. Belcher ; the book stated the amount of shares, and stated the amount of payments that had been made, and was the only evidence which the holder had to show what his duty was at any time ; the evidence also goes on to show that the holder had the right at any time to withdraw, as he did withdraw, this \$800, call it a loan or whatever you please ; and also had the right to withdraw the whole sum of money which was done in this case.

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Now, then, you have the case parallel to the case that I have cited. William H. Belcher, by a conceded fact in the case, having power to make this invest-

ment such as it was, taking the evidence of the debt, and holding it, and according to the rules of the company being required to give it back to us when the loan was made, or the other amount of money was withdrawn ; it seems to me, on principle, the case is the same as the cases which I have cited except for the fact that in one case you have a book and in the other case you have a bond, promissory note, or anything else.

10

THE COURT.—Was the book the evidence of the debt or was the certificate of stock the evidence of debt ?

MR. HARDING.—No certificates of stock were ever issued—that is all there is ; it is a fact that they never were issued.

Now, the next point is that the evidence shows that according to the authorities that there was the actual authority given to William H. Belcher to receive this money.

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There is, as I understand it, from the cases, a well-established principle, that a person who clothes the agent with an authority to do certain things which appear to the public, cannot restrain his liability as he sees fit. In other words, I understand this to be the rule that where in several instances a principal allows an agent to act for him within a certain line, and another person deals with that agent, who is a third person

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even, not a party to the previous transactions—he will be held to deal with the agent, who, as he had powers with respect to the subject in which he deals—the case of Whitehead against Tucket, which is an English case, I will read the syllabus of that case, which has been generally followed in this country.

(Argument continues.)

10

MR. REYNOLDS.—There is only one point that I insist upon, and that is, that there is no evidence whatever in this case that a payment was made by the Manchester Building and Loan Association on this account to William H. Belcher. They gave checks to Mr. Belcher to the order of A. W. Belcher—Mr. Belcher took those to the bank, and the bank paid the money to Mr. Belcher, it was the bank's authority for paying that money, but the Manchester Building and Loan Association did not pay the money to William H. Belcher; it paid a check to William H. Belcher.

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THE COURT.—The bank was simply the medium through which the payment was made. They had a fund of this defendant in its possession, against which the defendant drew a check.

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MR. REYNOLDS.—The checks themselves are evidence that the association did not consider William H. Belcher the agent for the purpose of receiving this

money ; otherwise they would have made it to his order.

MR. HARDING.—This is the point ; on the question of actual authority I don't see how we can be prevented from having that question to go to this jury, because we have the evidence in the case, all the circumstances from which we have a right to argue to the jury that there was actual authority ; that is the point, and while it is true that the first question is probably a question of law, which, of course, I think your Honor should direct upon, still the jury ought to decide the other question, because we are entitled to have the jury say whether or not there was actual authority given to William H. Belcher from all the circumstances in the case ; you cannot take that from the jury as against us, and that is why I suggest that inasmuch as your Honor cannot decide it at present, we had better argue it, since the case is through. 10 20

THE COURT.—I will deny your motion and grant you an exception.

To which ruling of the Court the defendant's counsel prays you an exception.

Exception allowed ; let it be sealed, and it is sealed accordingly. 30

[SEAL] WILBUR A. HEISLEY,
J.

Motion to Direct Verdict for Plaintiff.

MR. REYNOLDS.—I think it is the privilege of the plaintiff in this case in view of the law that has been cited, that the Court direct the jury to bring in a verdict for the plaintiff.

Adjourned until Wednesday, June 27, 1906.

June 27, 1906.

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Continued pursuant to adjournment.

Appearances as before noted.

THE COURT.—I have been thinking over the motion of the plaintiff for a direction. I am inclined to think that the Court is under the duty of directing a verdict for the plaintiff.

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To which ruling of the Court the defendant's counsel prays an exception.

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

[SEAL] WILBUR A. HEISLEY,
J.

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THE COURT.—Gentlemen of the jury : The value of these shares was \$1,845.60 in June, 1902 ; and it has not been paid since that time, and that is what the verdict must be ; take a verdict for \$1,845.60, with interest from August 12, 1905.

To which ruling of the Court the defendant's counsel prays an exception.

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

[SEAL] WILBUR A. HEISLEY,
J.

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NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

MANCHESTER BUILDING AND

LOAN ASSOCIATION,

Appellant,

vs.

AMHERST W. BELCHER,

Respondent.

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Assignments of Error.

The said Manchester Building and Loan Association comes by J. W. DeYoe, its attorney, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment aforesaid there is manifest error in this, to wit :

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1. That the said judge of said Circuit Court before whom said cause was tried, at and upon the aforesaid trial of said issue, over an objection of plaintiff in error, permitted plaintiff below to testify that the plaintiff below was the owner of twenty shares of the capital stock of the defendant below. (*Vide* said bill of exceptions.)

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2. That the said Judge of said Circuit Court refused to allow George W. Allee, a witness produced by the defendant below, to answer the following

question, viz : "Question. At the very time when this transaction took place, [referring to the transaction whereby William H. Belcher received the two checks from defendant below for \$800 and \$993, respectively] did Mr. William H. Belcher say anything about his authority from his brother?" (*Vide* said bill of exceptions.)

3. That said Judge of said Circuit Court refused to grant the motion of plaintiff in error to direct a verdict for the defendant below. (*Vide* said bill of exceptions.) 10

4. That said Judge of said Circuit Court granted the motion of defendant in error to direct a verdict for the plaintiff below and directed said verdict for the plaintiff below, and thereby directed the jury to bring in a verdict for the plaintiff for the sum of \$1,845.60 with interest from August 12, 1905. (*Vide* said bill of exceptions.)

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J. W. DEYOE,
Attorney of Plaintiff.

Joinder.

Joinder in error in the usual form.

30

MAN

W. H. Belcher,
President

MANCHESTER BUILDING AND LOAN ASSOCIATION.

March 27th, 1900

No.....1442 Paterson, N. J.,

THE FIRST NATIONAL BANK.

A. W. Belcher,

Pay to the order of.....

Eight hundred 00 | 100

800,00 | 100

..... Dollars, \$.....

Manchester Building and Loan Association.

George W. Allee

John C. Roe

Secretary.

Treasurer.

W. H. Belcher,
President.

{ two }
{ cent }
{ stamp }

Check bears the following endorsements :

" A. W. Belcher

W. H. Belcher Atty"

The imprint of an oval rubber stamp, containing a large figure three (" 3 "), and the date " Mar 30 1900".

Also the mark " Ex D2."

MANCHESTER BUILDING AND LOAN ASSOCIATION

1727
No.

Nov. 15th. 1902.
Paterson, N. J.,

THE FIRST NATIONAL BANK,

A. W. Belcher.

Pay to the order of

Nine hundred and Ninety Three 94 | 100 993 94 | 100
..... Dollars, \$.....

Manchester Building and Loan Association.

W. H. Belcher,
President.

George W. Allee
.....

John C. Roe
.....

Secretary.

Treasurer

Check bears the following endorsements :

" A. W. Belcher

W. H. Belcher Atty

W. H. Belcher"

The imprint of an oval rubber stamp, containing a large figure three (" 3 "), and the date " Nov 18 1902. "

Also the mark " Ex D 1. "



