

NEW JERSEY COURT OF ERRORS AND APPEALS.

HERBERT A. RICE,

Defendant in Error,

vs.

R. C. BARRINGTON,

Plaintiff in Error.

On Contract. 10

BRIEF FOR PLAINTIFF IN ERROR.

I.

The suit was on the following printed promissory note: 20

"MOUNT HOLLY, N. J., Nov. 9, 1905.

"\$380.14 Three months after day I promise to pay to the order of Roger Brynes three hundred and eighty 14/100 dollars, at Mount Holly. Value received.

"R. C. BARRINGTON.

"Endorsed,

"ROGER BRYNES,

"DR. H. A. RICE."

30

The pleas were that the note was procured by fraud (8,9,10), and was without consideration and void in law.

The Trial Judge directed a verdict for the plaintiff below against the defendant's objection (81). The Trial Judge also refused to admit certain evidence against the defendant's objection (23, 24, 56, 57).

## II.

The note was given by Barrington to Byrnes. Byrnes and DeHaven were agents of the Mutual Reserve Life Insurance Company (30). The note was dated Nov. 9th, 1905. It was alleged to have been purchased by Rice Jan. 8th, 1906 (23). The attempt was made at the trial to show that Rice had purchased other similar notes from Byrnes (23, 24) and that he had learned that such notes had been fraudulently obtained. The Trial Judge refused to allow such question to be answered by Rice. The scheme by which the note was obtained and the consideration given for the same is found on page 29. Barrington was to receive rebates on his insurance and he was to pay less for his insurance than others were to pay. The Act of 1894, p. 334 makes such acts unlawful and hence the note was without consideration from the beginning as well as a fraud and void.

Besides, the note was not to be used (33, 34) and was to be reduced from time to time. The note was to be returned to Barrington (36, 39, 40, 41, 42), if upon his taking a medical examination, he wished to refuse the insurance. This he did (43, 44, 45, 46, 47, 48). He never afterwards heard from Byrnes or DeHaven (44). Of course, it is palpable that the entire plan was a fraud and that Byrnes and DeHaven meant to cheat Barrington. Rice was a friend and acquaintance of Byrnes and DeHaven. Byrnes and De Haven could not have put

this and similar notes in circulation without a confederate. Hence it became vitally important to cross-examine Rice as to his previous dealings in such notes. For, had he learned that other similar notes were a fraud, he, in all probability, knew that the note in suit was a fraud. His answer to the question overruled would have led to an exposure of the entire scheme.

There was inconsistency in the Court's rulings. It held that, if the relations of the original parties could be brought home to the plaintiff, the evidence would amount to something (32); that, if it could be shown that the note in question was a part of a system notes, the other notes would be relevant (58); that, if the defendant could show communications or conversation between the plaintiff and another person, or show his knowledge of transactions similar in character to the one in suit, it might indicate his knowledge of the class of paper Byrnes was putting in circulation (60). 10

These suggestions were in accord with the law, but they were completely nullified by overruling the question put to Byrnes (23, 24), also by the Court's statement that fraud cannot be shown in one transaction by its existence in another (58), also by the statement of the Court that the mere fact that plaintiff bought other notes would not be of the slightest consequence (69), also by finally holding what the necessity of protecting negotiable paper in the hands of an innocent holder was too important to permit the present case to go to the jury. It is quite as essential to protect the public against cheats and frauds as to sustain this note. Rice, being the regular endorsee of these notes from Byrnes and DeHaven, justifies the presumption that he was a part of 20 30

the scheme. In *New York Life Ins. Co. vs. Armstrong*, 117 U. S., 598 (1885), the Supreme Court of the United States held "A repetition of acts of the same character naturally indicates the same purpose in all of them; and, if, when considered together, they cannot be reasonably explained without ascribing a particular motive to the perpetrator, such motive will be considered as prompting each act."

10 Mr. Dunn testified (61) that he had told Rice that Byrnes had agreed not to negotiate the note, but to bring it for renewal and that at the end of the year there would be less than half of it to pay because of the commissions coming to him as one of the special agents, which commissions would lessen the note by half; that the note was procured from him by fraud and false representations (62). This was direct notice to Rice that Byrnes was dealing in these fraudulent notes. Instead of seeking Byrnes, as any innocent holder of such notes would, he compromised with Dunn and later purchased the Barrington note from the same Mr. Byrnes. 20 This evidence the Trial Judge admitted, notwithstanding he refused to allow Rice to be cross-examined about it. It is a rule of law that if one takes a note, with reasonable cause to know that fraud has been committed in the procurement of the same, he cannot recover thereon, 16 *Amer. & Eng. Cyc. of Law*, 904. The New Jersey Negotiable Instrument Act, 1902, p. 593, provides that notice to the holder is inferable when he had such knowledge of infirmities in the paper that his action in 30 taking the same amounted to bad faith. Had the Trial Judge allowed Rice to be cross-examined, his knowledge of the scheme and its fraudulent purpose could have been shown.

It was not necessary to prove express and direct notice of the fraud to make out the defense. "The nature of fraud is such that it can seldom be established by direct or positive evidence. Generally it must be inferred from the facts and circumstances attending the transaction. Hence, great latitude is allowed in the admission of evidence, and every circumstance in the condition and relation of the parties can be shown as well as every act or declaration of the party charged before, at the time of, or subsequently to the transaction, which bears such a relation thereto as might persuade the jury that the charge of fraud is, or is not well founded." 14 Amer. & Eng. Cyc. of Law, p. 195, 196; 39 Pa., 455. 10

"A charge of fraud in a particular transaction can be proved by evidence of other and independent frauds of the party charged in a similar transaction, if it appears that there is such a connection between the transactions as to authorize the inference that the frauds are both part of a general scheme or purpose to defraud." 14 Amer. and Eng. Cyc. of Law, 196, note 6, id. 197. Neff vs. Landis, 110 Pa. 204, where it is held that "evidence of fraud of a similar nature, perpetrated by the same person about the same time is admissable on the question of intent, as tending to establish a system, and to show that the fraud complained of is but one in a connected series." 20

The sameness of these notes, their procurement by the same parties in furtherance of the same scheme, and their endorsement to the same person would justify the inference that Rice knew of the fraud. 30

## III.

But, finally, is this note enforceable at all? It was plainly in violation of the act of 189<sup>5</sup>. If the note had been forged, it could not be collected because it was the creature of crime. But the note in question was a creature of crime. In *Nibert vs. Baghurst*, 2 Dick., 201, the Court refused to enforce a contract made on Sunday. See also *Gennart vs. Wuestner*, 8 Dick., 302. This case involved a question of the Vice and Morality Act. 10 *Reeves vs. Bertacher*, 2 Vr., 224 and *Spengler vs. Spengler*, 20 Dick., 176, are in point.

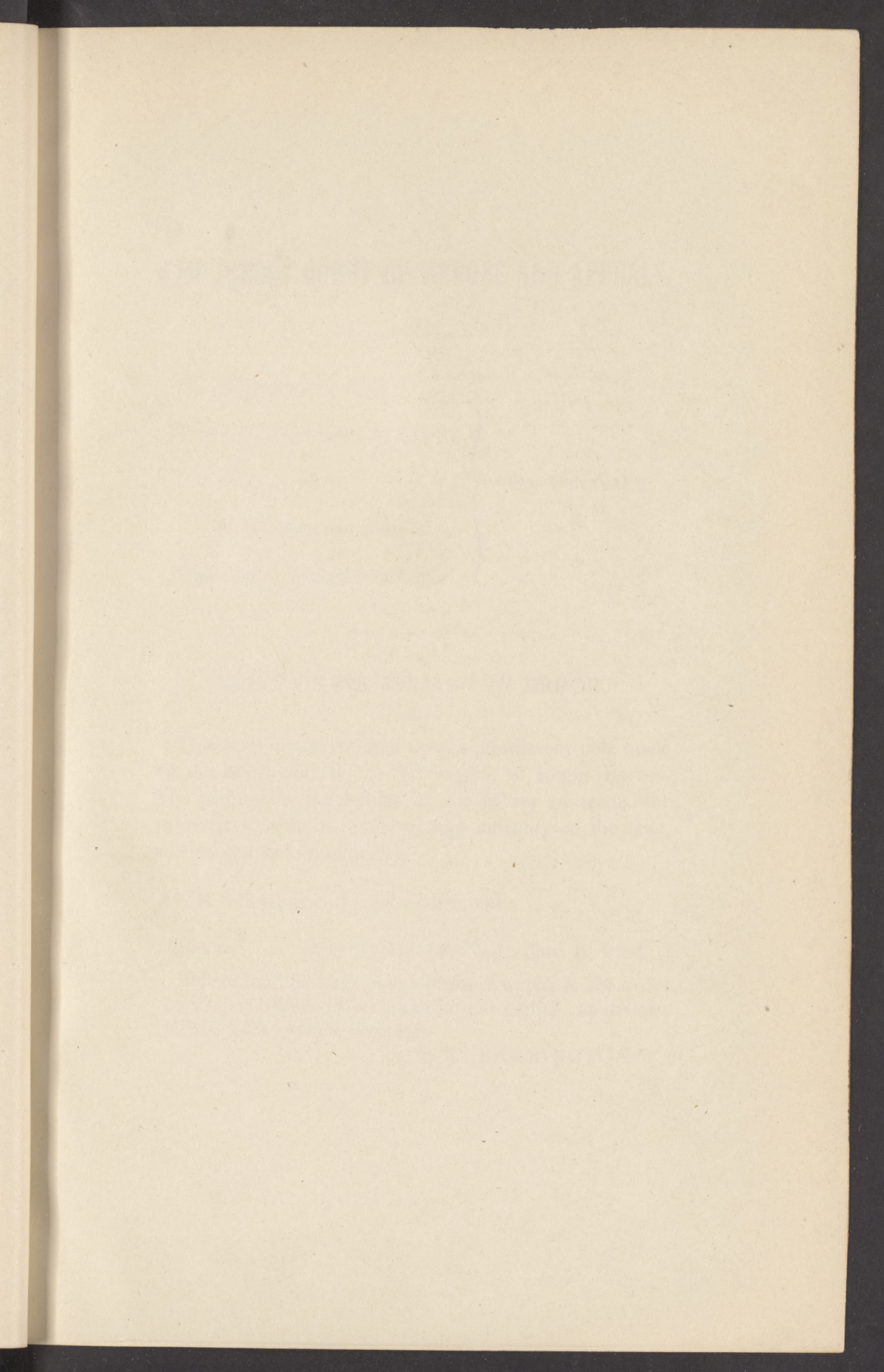
In *Atlantic City Water Works Co. vs. Reed*, 21 Vr., 665, it was held that "The contract or obligation itself was invalid" (p. 668). In *Justice vs. Logan Township*, 42 Vr., 107, it was held that a mandamus would not lie to compel an act which would be a violation of the law.

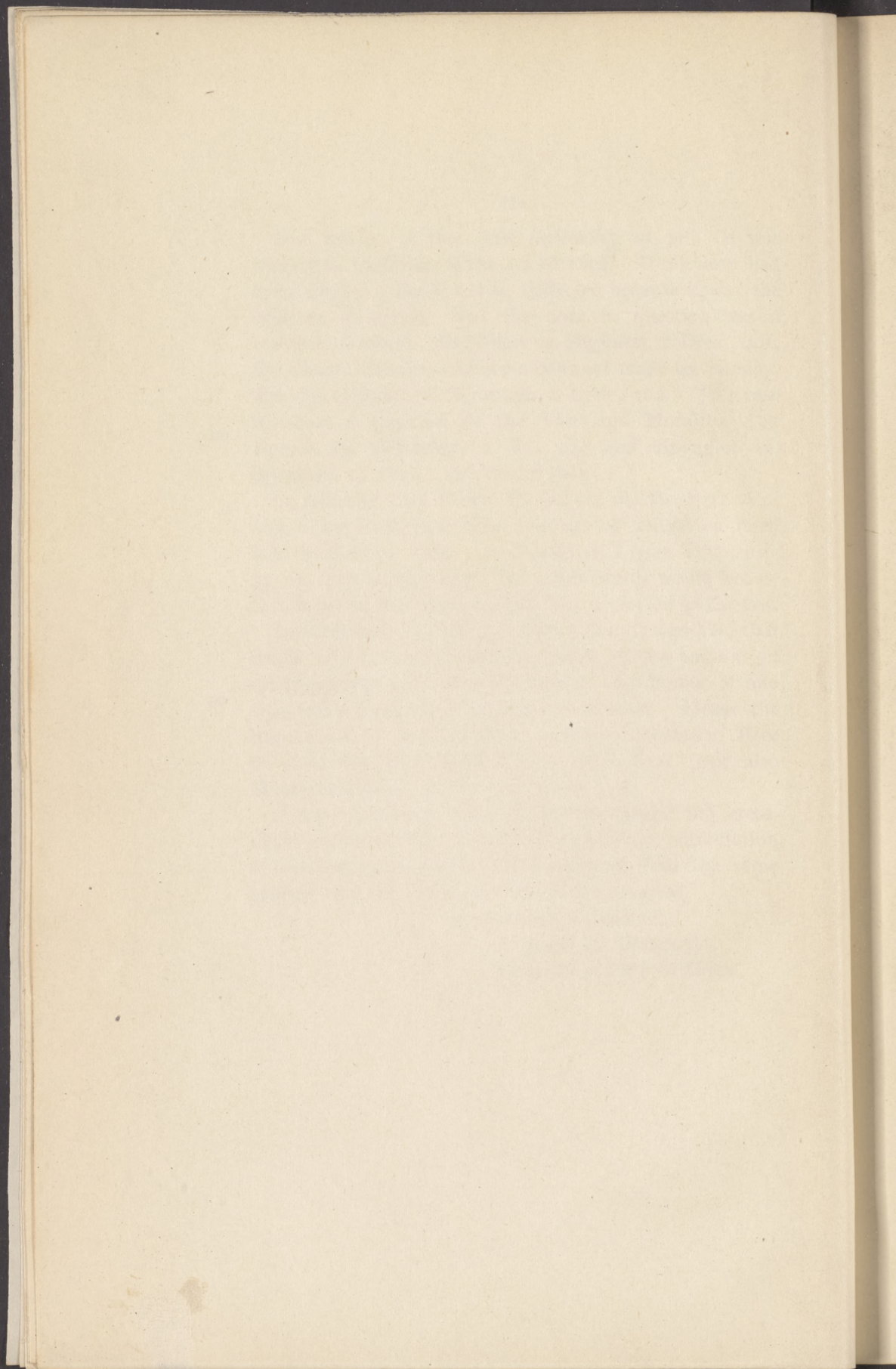
In *Steelman vs. Baker*, 8 Dick., 672, it was held that bonds of a railroad issued in excess of the amount of stock actually paid in are invalid in the hands of one 20 who was a director at the time of its issue. Hence the importance of permitting the cross-examination of Rice to show his knowledge of the transaction. See also *Minzesheimer vs. Doolittle*, 15 Dick., 394.

It was manifestly erroneous not to permit the cross-examination of Rice and not to permit the exploitation of his dealing in similar notes procured from the same parties, and the judgment should be reversed.

Respectfully submitted,

JOHN W. WESCOTT,  
30 Attorney of Plt'f. in Error.





## NEW JERSEY COURT OF ERRORS AND APPEALS.

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HERBERT A. RICE,  
(Plaintiff) Defendant in Error, }  
vs. } ON CONTRACT.  
R. C. BARRINGTON,  
(Defendant) Plaintiff in Error, }

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### BRIEF OF DEFENDANT IN ERROR.

This is an action brought upon a promissory note made by the defendant, R. C. Barrington, to Roger Byrnes. The plaintiff is the holder in due course of trade, for value paid, without notice of any infirmity in the note, and bought before maturity.

The following is a copy of the note:

“\$380.14. MOUNT HOLLY, N. J., Nov. 9, 1905.

“Three months after date I promise to pay to the order of Roger Byrnes three hundred and eighty .14 dollars, at Mt. Holly, value received.

“R. C. BARRINGTON.”

Said note was endorsed: "ROGER BYRNES,"  
 "DR. H. A. RICE,"

and was not paid at maturity and was protested.

The plaintiff took the note in due course and paid value therefor. Of this there is no dispute; nor does the defendant dispute that the note was made and that he intended to pay it at maturity. The only defense set up by the defendant was the question of fraud. If there was any fraud in the inception of the contract it was not brought home to the plaintiff; nor did he have any knowledge of any fraud, if fraud existed. Therefore, he was entitled to judgment as rendered by the Court. The only attempt made by the defendant to prove fraud was by the evidence of Robert G. Dunn (page 55 of printed book), who testified that he had given a note to R. G. Byrnes, the payee, similar to the one in suit, and that the only fraud complained of was that this note was not to be negotiated for a year. At the maturity of the note the time was extended (Dunn testified<sup>65</sup>) so that he was not injured—nor was he—but paid the note in its entirety. No fraud in the contract was brought to the attention of the plaintiff, and unless the fraud, if any, was brought to the notice of the plaintiff, he, as an innocent holder for value, is entitled to receive on the negotiable instrument payment in full.

This fraud must be an actual fraud, brought to the notice specifically of the plaintiff. (*Joseph J. Read vs. Thomas Abbott*, 16 *Wr.*, 303; *Robert Hamilton vs. Joseph L. Vought*, 5 *Vr.*, 187.)

The holder of a note in due course holds the instrument free from any defect of title of prior parties, and

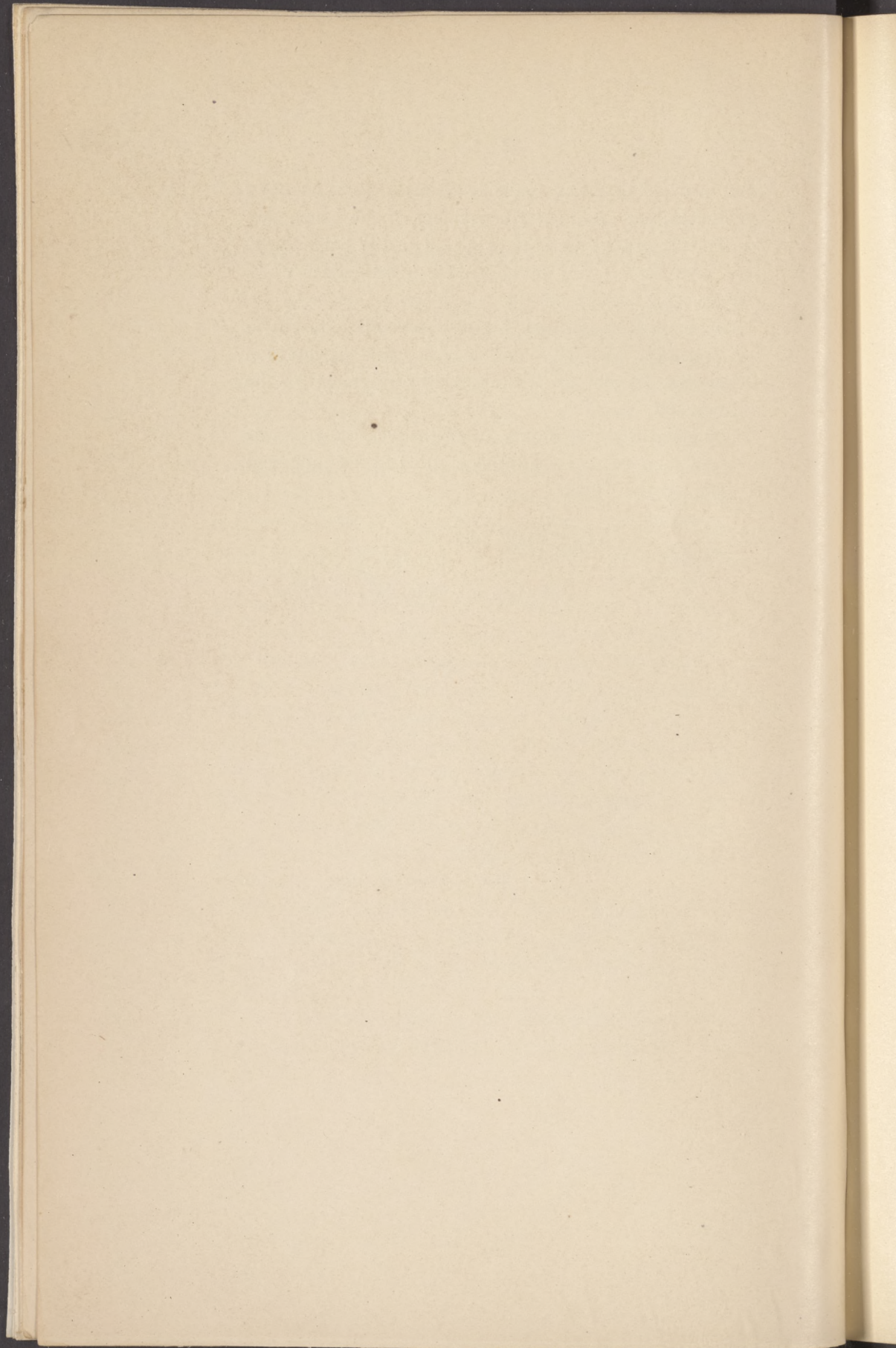
free from all defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (An act relating to negotiable instruments, P. L. 1902, p. 384, sec. 57.)

The plaintiff bought the note and paid full value therefor, and after trial the Court decided upon the question of law that the plaintiff was entitled to judgment for the full amount.

The plaintiff therefore avers that the writ of error was not well founded, and that he is entitled to the judgment as given by the Court.

Respectfully submitted,

FRED. A. REX,  
Attorney for Defendant in Error.



NEW JERSEY COURT OF ERRORS AND APPEALS.

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HERBERT A. RICE,  
Defendant in Error,

vs.

R. C. BARRINGTON,  
Plaintiff in Error.

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ON CONTRACT.

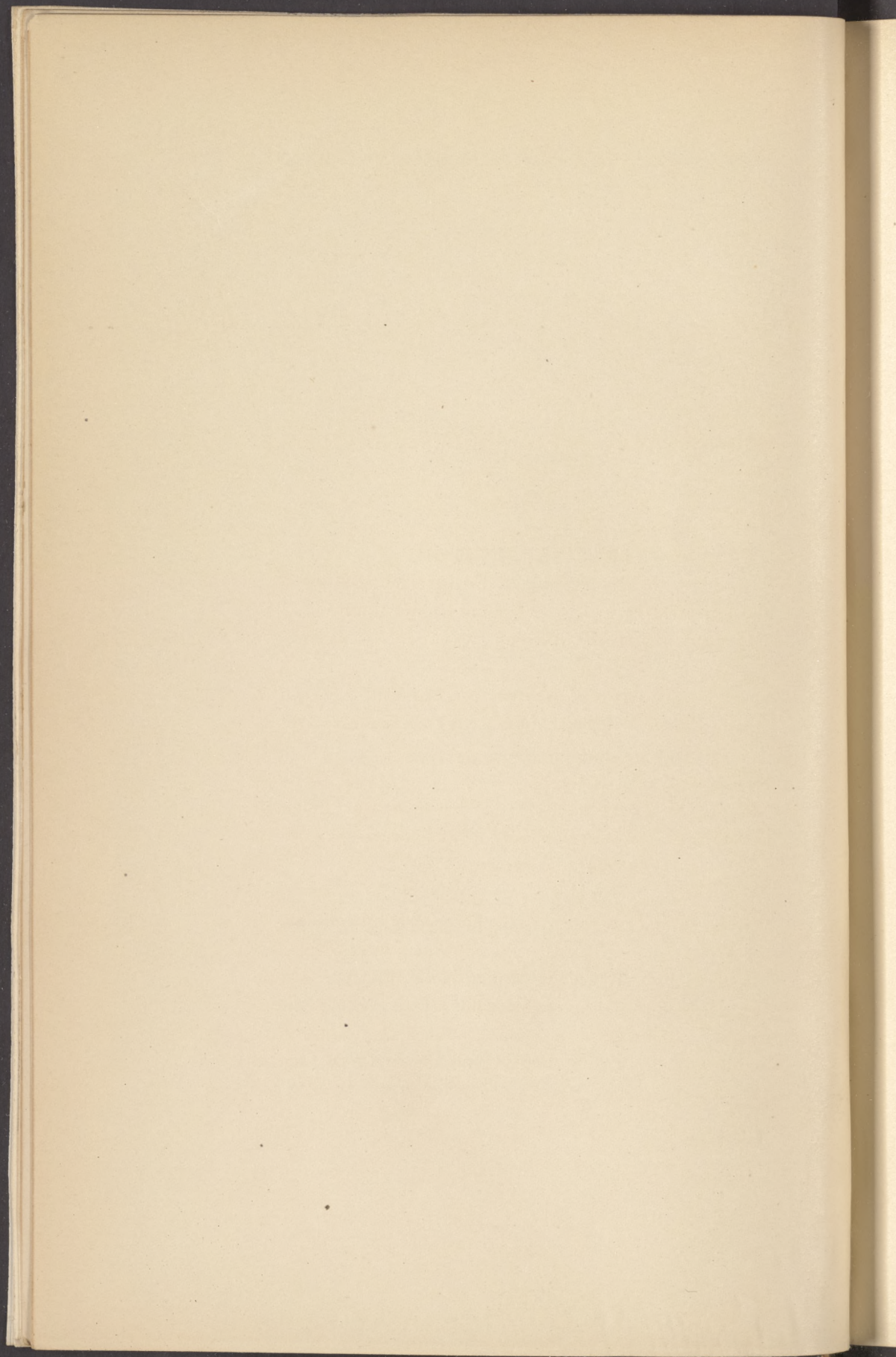
Error to Burlington County Circuit Court.

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FREDERICK A. REX, Esquire,  
Attorney for Defendant in Error.

V. CLAUDE PALMER, Esquire,  
Attorney for Plaintiff in Error.

JOHN W. WESCOTT, Esquire,  
Of Counsel with Plaintiff in Error.





error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twelfth day of April next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done  
10 thereupon for correcting that error what of right and according to the law and custom 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 twenty-third day of March, nineteen hundred and seven.

V. CLAUDE PALMER,

S. D. DICKINSON,

Attorney.

Clerk.

The answer of Frank T. Lloyd, Esquire, Judge of the  
20 within-named Circuit Court. The record and proceedings of the plaint whereof mention is made within, with all things touching the same, I certify to the Judges of our Court of Errors and Appeals of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

FRANK T. LLOYD,

Judge.

NEW JERSEY, ss:

The State of New Jersey to the Sheriff of  
(L. S.) Burlington, Greeting:

We command you to summon R. C. Barrington to be and appear before a Circuit Court of the County of Burlington, to be held at Mount Holly in and for said County, on the twenty-first day of May instant, to answer unto Herbert A. Rice in an action upon contract, wherein the plaintiff demands eight hundred dollars, and have you <sup>10</sup> then and there this writ.

Witness the Honorable Charles E. Hendrickson, Judge of our said Circuit Court, at Mount Holly aforesaid, the tenth day of May, A. D., one thousand nine hundred and six.

FREDK. A. REX,

Attorney.

WATSON T. SOOY,

Clerk.

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Burlington County Circuit Court of the twenty-first day of May, in the year of our Lord nineteen hundred and <sup>20</sup> six.

Burlington County, ss:

R. C. Barrington, the defendant in this suit, was summoned to answer unto Herbert A. Rice, the plaintiff therein, in an action upon contract; and thereupon the said plaintiff, by Frederick A. Rex, his attorney, complains for that whereas the said defendant, R. C. Barrington, on the ninth day of May in the year of our Lord one thousand nine hundred and six, in the County of Burlington aforesaid, and <sup>30</sup> within the jurisdiction of this Court, was indebted to the plaintiff in the sum of eight hundred dollars, for the price

and value of goods sold and delivered by the plaintiff at his request; an in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at his request; and in the like sum of money for the price and value of work done, and materials for the same provided by the plaintiff for the defendant at his request; and in the like sum of money for money lent by the plaintiff to the defendant at his request; and in the like sum of money for money had and received by the de-  
10 defendant for the use of the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at his request; and in the like sum of money for interest due from the defendant to the plaintiff for the plaintiff's having forborne moneys due from the defendant to the plaintiff at the defendant's request, for a long time then elapsed; and in the like sum of money for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and the de-  
20 fendant afterwards (to wit) on the day and year last afore- said, in the county aforesaid, in consideration of the prem- ises, respectively promised to pay the said several last men- tioned moneys respectively to the plaintiff on request; yet the defendant disregarded his promises, and has not paid any of the said moneys, or any part thereof, to the plain- tiff's damage eight hundred dollars, and thereupon he brings his suit, etc.

FREDERICK A. REX,  
Attorney for Plaintiff.

30 Notice to Defendant: The following is a bill of particu- lars of the demand and copy of the promissory note where- upon the annexed declaration is founded:

\$380.14.

Mount Holly, N. J., Nov. 9, 1905.

Three months after date I promise to pay to the order of Roger Byrnes three hundred and eighty 14-100 dollars, at Mount Holly. Value received.

R. C. BARRINGTON.

Endorsed, Roger Byrnes, Dr. H. A. Rice.

Note ... ..	\$380.14
Protest ... ..	1.56

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 \$381.70 10

Judgment will be demanded for the sum of three hundred and eighty dollars and seventy cents, together with interest thereon from February 9, 1906, to date of judgment, together with costs of suit.

FREDERICK A. REX, Attorney.

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To the within-named defendant:

In case the within summons and declaration are served upon you personally, then take notice that if you intend<sup>20</sup> to make a defense to this action, you must file an affidavit of merits within ten days from the date of the service hereof upon you, and that unless you file such affidavit, judgment by default will be entered against you at the end of said ten days; and that, in case you file said affidavit, unless you file a plea or demurrer within twenty days from the date of service hereof upon you, judgment by default will in such case be entered against you at the end of said twenty days.

In case the within summons and declaration are served<sup>30</sup> upon you by the leaving of a copy at your dwelling house or place of abode, then take notice that unless you appear

and file a plea or demurrer within twenty days after the date of service hereof upon you, judgment will be entered against you.

FREDERICK A. REX, Attorney.

BURLINGTON COUNTY CIRCUIT COURT.

Herbert A. Rice,

Plaintiff,

vs.

On Contract.

<sup>10</sup> Richard C. Barrington,  
Defendant.

Pleas.

And the said defendant, by Jacob C. Hendrickson, his attorney, comes and defends the wrong and injury, when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

And for a further plea in this behalf the said defendant,  
<sup>20</sup> by leave of the Court here, for this purpose first had and obtained, says that he ought not to be charged with the said debt by virtue of the said promissory note because he says that the said promissory note in the said bill of particulars annexed to said declaration mentioned, was obtained from the said defendant by the said plaintiff and others in collusion with him, by fraud, covin and misrepresentation, that is to say, by the said plaintiff and others in collusion with him falsely and fraudulently representing  
<sup>30</sup> and surrendered up to the said defendant in the due course of business when he, the said defenant, should have successfully undergone a satisfactory medical examination

required for the issuance of the policy of life insurance in payment of which the said note was given, and the said policy of life insurance had been returned as undelivered business; and the said defendant, relying and placing confidence in the false and fraudulent representations so as aforesaid made to him by the said plaintiff and others in collusion with him, did undergo a satisfactory medical examination, and did return the policy of life insurance issued to him; and thereupon the said plaintiff, and others in collusion with him, falsely and fraudulently represented <sup>10</sup> to the said defendant that the said note had passed out of the control and custody of the said plaintiff and others in collusion with him, to wit, at Mount Holly, in the County of Burlington, and within the jurisdiction of this Court aforesaid, wherefore he, the said defendant, says that the said promissory note in the said bill of particulars annexed to said declaration mentioned, was without consideration and was and is void in law, and this the said defendant is ready to verify, wherefore he prays judgment whether the said plaintiff ought to have or maintain his action thereof <sup>20</sup> against the said defendant.

And for a further plea in this behalf, by like leave, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said promissory note in the said bill of particulars annexed to said declaration mentioned was without consideration by the payee named therein, or by any other person for him, and the same was not obtained by the said plaintiff for a valuable consideration, and the said plaintiff was not and is not a bona fide holder in due <sup>30</sup> course, for value, before maturity of said promissory note, to wit, at Mount Holly aforesaid, and this the defendant

is ready to verify, wherefore the said defendant prays judgment whether the said plaintiff ought to have or maintain his aforesaid action thereof against the defendant.

And for a further plea in this behalf, by like leave, the defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that the said promissory note in the said bill of particulars annexed to said declaration mentioned, was obtained from the said defendant by the said plaintiff  
10 and others in collusion with him by false and fraudulent representations made to him, the said defendant, whereby the said defendant, relying and placing confidence in the said false and fraudulent representations, made as aforesaid, was induce to execute and deliver said promissory note, to wit, at Mount Holly aforesaid, wherefore the said defendant says that the promissory note in the said bill of particulars annexed to said declaration mentioned, was without consideration and was and is void in law, and this  
20 the said defendant is ready to verify, wherefore he prays judgment whether the said plaintiff ought to have or maintain his aforesaid action thereof against the defendant.

JACOB C. HENDRICKSON,  
Attorney for Defendant.

## BURLINGTON COUNTY CIRCUIT COURT.

10

Herbert A. Rice,

Plaintiff,

vs.

R. C. Barrington,

Defendant.

On Contract.

Replication.

And the said plaintiff as to the plea of the said defendant by him first above pleaded, whereby he puts himself upon the country, doth the like.

And the said plaintiff as to the plea of the said defendant by him secondly above pleaded the plaintiff says that by reason of anything by the defendant in that plea alleged, he ought not to be barred from having or maintaining his aforesaid action against him, because he says that the said promissory note was not obtained by fraud, covin or misrepresentation, and that the said note was given for a valuable consideration and is valid in law, and this he, the said plaintiff, prays may be inquired of by the country, etc.

And the said plaintiff as to the plea of the said defendant by him thirdly above pleaded, the plaintiff says that he, by reason of anything by the defendant in that plea alleged

ought not to be barred from having or maintaining his aforesaid action against him, because he says that the said note was given for a valuable consideration and was obtained by the plaintiff for a valuable consideration and that the plaintiff is and was a bona fide holder of same in due course for value before maturity of said note; and this he, the said plaintiff, prays may be inquired of by the country, etc.

And the said plaintiff as to the plea of the said defendant  
10 by him fourthly above pleaded the plaintiff says that he, by reason of anything by the defendant in that plea alleged, ought not to be barred from having or maintaining his aforesaid action against him because he says that said note was not obtained from the defendant by the plaintiff and others in collusion with him by false and fraudulent representations, and that said note is not without consideration and is not void in law, and this he, the said plaintiff, prays may be inquired of by the country, etc.

FREDERICK A. REX,  
Attorney for Plaintiff.

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BURLINGTON COUNTY CIRCUIT COURT OF THE  
eighteenth day of February, A. D. 1907, as yet of the <sup>10</sup>  
December Term, 1906.

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Herbert A. Rice,  
Plaintiff,

Defendant.

vs.

On Contract.

R. C. Barrington,

Rule for Judgment.

This cause being regularly on the list for trial at the December Term, nineteen hundred and six, of this Court, and <sup>20</sup> being set down for trial at this time, and being called and both parties appearing, and the cause being moved by the plaintiff and a jury being empaneled and sworn, and the evidence of said plaintiff and defendant being submitted, the said jury, on the nineteenth day of February, A. D. 1907, under the instruction of the Court by their foreman, say that they find in favor of the plaintiff and against the defendant, and assess the damages of the said plaintiff at the sum of four hundred and ten dollars and twenty cents.

It is therefore, on this nineteenth day of February, A. D. <sup>30</sup> 1907, ordered and adjudged that judgment final be now entered in favor of said plaintiff, Herbert A. Rice, and

against the said Defendant, R. C. Barrington, for the sum of four hundred and ten dollars and twenty cents, besides costs of suit to be taxed.

On motion of Fred A. Rex, attorney for plaintiff.

Rule actually entered this thirteenth day of March, 1907.

WATSON T. SOOY, Clerk.

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BURLINGTON COUNTY CIRCUIT COURT.

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Herbert A. Rice,  
Plaintiff,

vs.

On Contract.

R. C. Barrington,  
Defendant.

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Appearances :

For the plaintiff, Frederick A. Rex, Esquire.

20 For the defendant, V. Claude Palmer, Esquire and Eckard P. Budd, Esquire.

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Transcript of shorthand notes of the evidence given in the above cause at the trial before his Honor, Frank T. Lloyd, Judge of the Burlington County Circuit Court, at Mount Holly, on the eighteenth day of February, nineteen hundred and seven.

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HERBERT A. RICE, Sworn for Plaintiff.

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DIRECT EXAMINATION.

By MR. REX.

Q. Doctor, where do you live?

A. Philadelphia.

Q. What is your business?

A. I am a dentist.

Q. Do you know Roger Byrnes?

A. Yes, sir.

Q. I show you what purports to be a promissory note<sup>20</sup>  
signed by R. C. Barrington, dated Mount Holly, for  
\$380.14. I will ask you if you are the owner of that?

A. I am.

Q. When did it come into your possession?

A. I purchased it from Mr. Byrnes.

Q. You paid value for it?

A. I did, sir.

Q. Has it ever been paid?

A. No, sir.

Q. Still due?

30

A. Still due and uncollected.

Q. What owing on it?

A. \$380.14.

Q. What is owing on it, \$380?

A. \$380.14, I said. I paid—

Q. Never mind what you paid.

#### CROSS-EXAMINATION.

By MR. BUDD.

Q. You said that you know Roger Byrnes?

A. Yes, sir.

10 Q. How long have you known him?

A. About five years.

Q. Where does he live?

A. Philadelphia, his present address.

Q. What is his business?

A. Mr. Byrnes is a man connected with various enterprises.

Q. Is he in the insurance business?

A. I don't know whether he is or not.

Q. Was he?

20 A. I don't know, at the time.

Q. Do you know whether he has ever been in the insurance business?

A. I know he has been at one time. I don't know whether he is now or not. I know he is working on a patent for the ventilation of the Subway in New York now.

Q. Do you know George W. De Haven?

A. Yes, sir.

30 Q. Do you know whether he was engaged in the insurance business?

(Objected to.)

THE COURT: I don't see that you are being helped any by the investigation as to Byrnes or as to other parties.

Q. How often have you seen Mr. Byrnes in the last five years?

A. Oh, I have seen Mr. Byrnes a great many times. He sustained a fracture of the jaw—

Q. How many notes have you bought of Mr. Byrnes in the last five years?

10

(Objected to. Objection sustained.)

Q. I understood you that you were in the dental business, a dentist?

A. Yes, sir.

Q. Where is your office?

A. 803 Perry Building, Sixteenth and Chestnut streets, Philadelphia.

Q. How long have you been engaged in the dental business? How long have you been a dentist, rather? 20

A. Going on eight years.

Q. And had your office in this building during that time?

A. No, I was seven years Crozer Building, 1420 Chestnut street.

Q. When you bought this note from Mr. Byrnes where was your place of business?

A. I was in the Crozer Building.

Q. How did you know Mr. Byrnes had this note?

A. He told me he had it.

30

Q. Who was with him?

A. No one was with him at the time.

Q. De Haven was not with him?  
(Objected to. Objection overruled.)

A. He was not with him; no, sir.

Q. Did you ever meet Byrnes in company with De Haven?

(Objected to.)

THE COURT: Upon this occasion, you mean, with respect to this note?

10

MR. REX: No, he says did he ever see him.

THE COURT: It is important to know whether it was at any time when this note was presented, or at some other time.

MR. BUDD: Well, I will go at it in another way.

Q. Did you ever see Byrnes and De Haven together at any time when this note, this Barrington note, was discussed between you?

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MR. REX: I object, unless it was prior to the purchase.

THE COURT: Well, I assume that it was prior to the purchase.

MR. REX: I don't want to assume it. I want it to appear so.

30 THE COURT: Prior to the purchase of the note?

(Question repeated.)

Q. Before you bought it? Did you have any talk with De Haven relative to this note before you purchased it?

A. I didn't know Mr. De Haven in connection with this note.

Q. Didn't know Mr. De Haven in connection with this note at all?

A. No, sir.

Q. You knew Mr. De Haven was in the insurance business, didn't you?

A. I did not. 10

Q. Did not?

A. I didn't know that he was; I knew that he had been.

Q. When did you that he was in the insurance business?

A. It is very hard for me to fix the date, if you want that positively.

Q. What conversation took place between Byrnes and you in reference to this note?

MR. REX: At what time. 20

A. I didn't introduce the note to him. He simply incidentally spoke of having a note to sell, and I purchased it from him. I don't remember the details of the conversation at all.

Q. He said he had a note to sell?

A. Yes, sir.

Q. Don't you remember any details of the conversation?

A. No.

Q. Did you ask him how he got it? 30

A. No, sir.

Q. Didn't ask him what it was for?

A. No, sir.

Q. Didn't ask him anything about the note?

A. No, sir.

Q. Did you ask him anything about the man that made the note?

A. I looked up the man's record before I purchased the note.

Q. Looked it up?

A. Yes, sir.

10 Q. Where did you look it up?

A. I believe it was in Bradstreet's or Dunn's, either one of those, I don't know which.

Q. Then you didn't purchase the note the first time it was spoken of?

A. No, sir.

Q. How many conferences did you have about the purchase of this note before it was bought?

A. I think there was only two.

Q. Only two?

20 A. Yes.

Q. Now then at the first conversation, then—or where did this first conversation take place?

A. All these conversations took place in my office.

Q. In your office?

A. Yes, sir.

Q. Did Mr. Byrnes come there to get his teeth fixed?

A. Yes, sir.

Q. Came there to have his teeth fixed?

A. Yes, sir.

30 Q. During this course of time he was having his teeth fixed he told you he had this note to sell?

A. Yes, sir.

Q. Was he in the chair at the time?

A. No, sir.

Q. Were you working on mouth when he told you about this?

A. No, sir.

Q. What part of the operation was it that he mentioned about the note?

A. Mr. Byrnes sustained a fracture of the jaw, and it was necessary for him to come to my office on various occasions, and it was merely a casual glance sometimes made in his mouth. At times I had to scrape the alveolar process to remove the necrosed bone from his jaw; and it is very hard for me to fix any definite date of the operation.

Q. Do you remember whether he was in the dental chair when he spoke about the note?

A. No, sir; no, I do not.

Q. Do you have more than one office?

A. I have two offices.

Q. Was it in the front or back office?

20

A. It was in my operating room, the back office.

Q. Who else was there?

A. No one else was there.

Q. How did he bring up the subject?

A. I really don't remember now.

Q. Don't remember?

A. No, sir.

Q. Don't remember what he said at all when he brought the subject up?

A. No, sir.

30

Q. How did you know that he had the note?

A. He told me he had it.

Q. How did he tell you?

A. Simply mentioned it in a casual sort of way.

Q. How did he mention it? What did he say?

A. Mr. Budd, it is a very inconsistent thing for me to remember all of that detail.

Q. It is what?

A. It is a very inconsistent thing. I don't remember. I didn't try to remember any details of the conversation.

Q. Didn't try to remember?

10 A. No, sir.

Q. He told you he had this note, if I understand you?

A. Yes, sir.

Q. Did you ask him how he got it?

A. No.

Q. Did you ask him what it was for?

A. No, sir. You asked me those questions before.

Q. Did you ask him anything about the party?

A. No, sir.

20 Q. Then that was all that was said or that he told you, that he had this note?

A. To the best of my—

Q. Did you ask him what he would sell it for?

A. Yes, sir.

Q. What did he tell you he would sell it for?

MR. REX: I object, unless it was shown that there was some fraud. He had a right to purchase it at any price. It was a sale, the same as any other chattel.

30 THE COURT: I think the inquiry is a competent one. He has been called to prove that he paid a consideration for the note. Counsel have a right to show what the consideration was.

A. I gave him at the rate of 5 per cent. discount.

Q. What.

A. About the rate of 5 per cent. discount, \$361.14.

Q. What did he say, he would sell it to you at about the rate of 5 per cent. discount?

A. It was sold at that rate.

Q. Well, had you bought other notes of him?

A. Yes, sir.

Q. Was that the usual discount that you paid him?

(Objected to.)

10

THE COURT: The objection is sustained. We can't try but one note.

Q. Then you paid 5 per cent. discount for the note?

MR. REX: He didn't say that; he said he paid at about that rate.

Q. What amount did you pay for the note?

20

A. \$361.14.

Q. The amount that was on the check there, \$361.14?

A. Yes, sir.

Q. Then at the first interview you found out that Mr. Byrnes had this note, and at the second interview you bought the note and paid him for it?

A. Yes, sir.

Q. When was that?

A. On January 8 I bought the note. The first interview was some days before that. I don't remember the exact date.

Q. Well, you had purchased a note from Mr. Byrnes

30

before this date, which you had found out from the party had been fraudulently obtained from him, had you not?

(Objected to. Objection sustained as not cross-examination.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

FRANK T. LLOYD, Judge. (Seal.)

10

(Paper shown witness and he is asked:)

Q. Is that your signature on the back, the words "Dr. H. A. Rice?"

MR. REX: I object to any questions upon these papers not being relevant to this issue at all.

THE COURT: How are they relevant, Mr. Budd?

20 MR. BUDD: This is a note that I just asked him about.

MR. REX: That has been ruled out.

MR. BUDD: This is the note that we claim that he had notice of fraud, and which antedated our note.

THE COURT: It is not contended that the note in suit has any connection with that note.

30 MR. BUDD: Yes, sir.

THE COURT: In what way?

MR. BUDD: It is contended that if this man knew that this man was dealing in fraudulent notes and purchased our note—

THE COURT: Don't you see that is a matter for defense if it is competent at all; it is undoubtedly a matter for defense.

MR. BUDD: Then your Honor rules it out as cross-examination?

10

THE COURT: I do; I don't undertake to indicate my ruling when the question arises properly.

Q. How did you pay the money?

A. By check.

Q. And this the check that your counsel has?

A. Yes; I handed it to my counsel.

Q. Where did you draw the check?

A. In my office.

Q. And paid the check to him and took the note? 20

A. Yes, sir.

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DR. R. C. BARRINGTON, Sworn for Defendant.

DIRECT EXAMINATION.

By MR. BUDD:

Q. Where do you reside, Doctor?

A. Mount Holly. 30

Q. A practicing physician here?

A. I am; yes.

Q. Been practicing medicine how long about?

A. Twenty-five years.

Q. You are the defendant in this suit?

A. I am.

Q. And it is your note that is sued on and the matter in dispute here to-day?

A. Yes.

Q. Do you remember the date when this note was given, Doctor?

10 A. Yes, the note was given on November 9, 1905.

Q. Now to whom was the note given?

A. The note was given to Roger Byrnes, in the presence of a man calling himself George W. De Haven.

MR. REX: I object to the last part of the answer as not being responsive.

THE COURT: Let the words "in the presence of a man named George W. De Haven" be stricken out.

20 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

FRANK T. LLOYD, Judge. (Seal)

Q. Was any one present when you gave this note to Mr. Byrnes?

A. Yes, sir.

(Objected to. Objection overruled.)

30

Q. Who was it?

A. George W. De Haven.

Q. What was this note given for?

(Objected to.)

THE COURT: Well, it must be followed by the proofs that the opening claimed that they would make.

MR. REX: Is not that getting it to the jury hindhand foremost.

THE COURT: It might be.

10

MR. REX: It strikes me, your Honor, under our negotiable instrument act, the fraud must first be brought home to him. The owner of the note, if there was any fraud, I don't know.

THE COURT: It must be brought home, but there is no rule as to the time and manner in which it must be brought.

MR. REX: The mere fact that he gave this note—I<sup>20</sup> don't know what he gave it for, haven't any idea—

THE COURT: If the defense fails to bring home to the plaintiff the evidence of the issuance of the note and the manner in which it obtained circulation, it goes for nothing, of course.

MR. REX: All right then.

THE COURT: The question is admitted on the undertaking of the defendant to bring the—<sup>30</sup>

MR. BUDD: I understand the law to be that we prove

fraud without any regard to the plaintiff. If we prove fraud then it is incumbent upon the plaintiff, the burden of proof is upon the plaintiff to show that he is an innocent holder.

THE COURT: Well, he has undertaken to establish that in advance. He has met that burden.

Q. What was this note given for.

A. It was given for insurance.

10 Q. Who had been talking to you relative to insurance?

(Objected to.)

THE COURT: How is that important.

MR. BUDD: Why, that is where the fraud comes in.

THE COURT: I know, but get at the fraud promptly, without wandering into the realms of conversation.  
20

MR. BUDD: The answer would not wander into the realms. I was trying to avoid asking a leading question.

Q. Did Mr. De Haven and Mr. Byrnes talk to you relative to insurance before this note was given?

MR. REX: I object. That is a leading question.

THE COURT: No, I think not; did they talk to him  
30 with respect to the subject. It is admitted.

A. Well, the conversations—

By THE COURT:

Q. Did they talk about insurance on this occasion?

MR. BUDD:

Q. What did Mr. Byrnes say to you relative to the insurance?

MR. REX: I object. It matters not what Mr. Byrnes said; it cannot possibly bind this plaintiff.

THE COURT: Mr. Rex, I have already stated that<sup>10</sup> the evidence of relations between these parties amounts to nothing unless it is brought home to the plaintiff. Unless it is brought home it is of no effect.

(Question repeated.)

A. Am I allowed to tell the story that he told me?

THE COURT: Just say what he said to you. Answer the question.

20

A. He offered me a plan of insurance whereby I was to be made one of a number of men who were to act in the capacity of so-called executive agents for this insurance company. We were to receive the contract of insurance at much less than the ordinary figure through our connection in that capacity. The agreement was that each man to take out \$10,000 of insurance and send to the Company the names of ten men who likely insurable each year. For them we would get commissions and concessions in the premium each year, so that at the end<sup>30</sup> of the year our returns from our action as executives would more than pay the premium.

Q. How many interviews did you have with Mr. Byrnes?

A. With Mr. Byrnes I had one interview.

Q. Who brought Mr. Byrnes there for this interview?

A. George W. De Haven, professing to be the general—

(Objected to.)

THE COURT: Just answer the question. Who  
10 brought him there?

Q. Had you had previous interviews with De Haven?

A. Yes; I had.

(Objected to. Objection overruled.)

THE COURT: It is merely preliminary, whether he had interviews.

Q. What did De Haven and Byrnes on this interview  
20 represent themselves to be?

(Objected to. Objection sustained as leading.)

Q. What did Byrnes represent himself to be?

THE COURT: It is a construction that the witness is asked to put upon language of the parties. He can say what was said.

Q. Whom did Mr. Byrnes and Mr. De Haven say  
30 that they represented in the insurance business?

A. They represented the Mutual Reserve Life Insurance Company.

Q. In what capacity did each say that he represented it?

A. Mr. Byrnes was the general agent, so called, for the company, and George W. De Haven claimed to be the general manager of the offices of the company in Philadelphia.

Q. Did you sign this note and receive a receipt from Mr. Byrnes for it?

A. I did.

Q. Is that the receipt? (Paper shown witness.)

A. This is the receipt that I got for the payment of 10 the note.

By THE COURT.

Q. You mean for the payment of the note or the giving of the note?

A. For the giving of the note, I mean.

By MR. BUDD.

Q. The note was for \$380.14, and this receipt is \$570.20. You received a receipt from Mr. Byrnes acknowledging the receipt of \$570.20?

A. Yes, sir.

Q. How did you pay that?

A. How did I pay it?

Q. Yes, that \$570.20?

A. I paid that with a note.

Q. Did you pay anything else?

A. Nothing else.

Q. Did you pay \$570.20 as set forth in this receipt?

A. I did not.

MR. BUDD: We offer this receipt.

MR. REX: I object to that being offered.

THE COURT: The objection is not sustained.

(Paper marked Exhibit "D-1.")

Q. Was Mr. De Haven present when you signed the note?

A. Yes, sir.

Q. Was he present when you received the receipt?

10 A. He was. They were there together.

Q. Did he take part in the conversation which Mr. Byrnes had with him and yourself?

A. He did.

MR. REX: I object to what De Haven did.

THE COURT: No; the statement of the witness is that they were there together and the conversation was together. Now the question is whether or not De Haven  
20 took part himself in the conversation.

A. He did; yes, sir.

Q. What, if anything, was said, Doctor, at that time about the negotiating of this note?

MR. REX: I object. Now the reason I object to, that, your Honor, here is a note which speaks for itself, is given as negotiable paper. Now, what difference—how can it alter that?

30

THE COURT: It cannot have that effect unless it is brought home to the plaintiff.

(Question repeated.)

MR. REX: Said by whom?

THE COURT: Well, I suppose by any one of the three who were then present.

A. The conversation that took place on the part of both the gentlemen, as to the fact that the note was not to be negotiated in the regular channels; that the proceeds and return from this— 10

THE COURT: Don't draw your conclusions, Doctor. It is what actually was said. You see you are putting a construction on somebody else's words. That you are not permitted to do. You must give their words.

A. Their words in effect were—

MR. REX: I object to what the effect was.

THE COURT: Well, I suppose the witness is giving 20 the substance of the language.

A. I can only give the substance of the language; and the substance of the language was that the note was not to be used, but was to be adjusted from time to time from the returns coming to me as a member of this advisory board.

Q. What if any agreement did they enter into relative to the payment of these returns on this note?

(Objected to.) 30

THE COURT: Well, what was said. Counsel cannot

get in an agreement in omnibus form. It has got to be put in the language of the parties, where it is a verbal agreement.

Q. Doctor, just state as near as you can remember what was said by either Mr. De Haven or Mr. Byrnes at that time as to what would be done with this note?

MR. REX: I object. The note was drawn to Byrnes, and there is no evidence at all that De Haven had any control of the note after it was given, whatever he said.

THE COURT: No; but the two were present.

MR. REX: Supposing De Haven said, "This shan't be negotiated;" it does not bind Byrnes.

THE COURT: It depends upon Byrnes' relation to it. What was said there, whatever was said by either in the presence of all may be stated.

A. Byrnes said that the note was not to be negotiated.

Q. Go ahead. Tell what else he said.

A. That the note would be adjusted and could be renewed and need not be paid at the end of three months; that it could be—after a year the returns from my action on this Board would pay more than half the premium.

By THE COURT:

Q. What do you mean by the premium, the amount of the note?

A. The amount of the note.

By MR. BUDD:

A. After you had given this note, Doctor, did Mr. Byrnes and Mr. De Haven leave?

A. They left soon after.

Q. Did you see them again concerning the matter?

A. After they left I happened against a gentleman who had much more knowledge of the insurance business than myself, and I inquired—

(Objected to.)

10

THE COURT: Yes; not what was said by him.

A. I got the impression—

THE COURT: No; you can't give your impressions. You may state relevant facts or relevant conversations.

Q. Did you see Byrnes again?

A. The following morning I called upon Byrnes—

Q. And what did you say to him?

A. —And demanded that my note be returned because<sup>20</sup> I had no—

(Objected to.)

THE COURT: You may state the conversation, if that includes the reason.

MR. REX: Oh, if that was part of the conversation; yes.

30

A. I demanded my note, asked that my note be given back, because I had—

By THE COURT:

Q. Did you state the reason why you demanded it back?

A. I did, that I had no faith in the Company or in the representations of the agents; that I wanted the note back again. He said that the note had been sent to New York, that he could not return it.

By MR. BUDD.

Q. Did he say where it had been sent to New York?

10 A. To the home office of the Company in New York.

Q. What Company.

A. The Mutual Reserve Life Insurance Company. I insisted that the note be given me, but he said that the note was out of his possession.

Q. Then what did you do?

A. I had to leave Mr. Byrnes. And on the same day, later, I was called upon by George W. De Haven. De Haven came to me and said: "That note can only be re-  
20 turned to you—"

(Objected to. Objection sustained.)

MR. BUDD: Objection sustained?

THE COURT: As to what De Haven said to him; yes.

MR. BUDD: I don't want to talk after the Court rules, but I simply want to call your Honor's attention to the fact that these two men were together in this scheme to  
30 get this insurance. De Haven brought Byrnes there; the note is given to Byrnes; they are agents of the Company; he saw Mr. Byrnes, he objected, and now the next man

he sees is De Haven, and he has a conversation with him in reference to the note.

THE COURT: Have you shown, or can you show, that De Haven was Byrnes' agent?

MR. BUDD: We can show that they were both agents of the Company.

THE COURT: Yes, that is true; or, at least, that may be true. 10

MR. BUDD: We want to show that De Haven called first and he himself brought Byrnes and introduced him. That is what we want to show.

THE COURT: Yes, but that does not make him the agent, nor does the fact that they are there together make him the agent. You are now talking of a conversation with a man who must have some relation to this man by whom this note is held to make him responsible. 20

Q. Did Mr. Byrnes say anything to you as to what you could do to get your note back?

MR. REX: I object. That does not have any bearing upon the question of fraud. This was after the note was given. The fraud must be at the inception or at the time of the making. What took place afterwards cuts no figure in the making of this note. It cannot possibly. 30

MR. BUDD: There are two kinds of fraud that the books lay down, and particularly two kinds of fraud that

the act of 1902 lays down. One is the fact that it was—  
there is the act that says when it is fraud in the inception,  
and here is the section that shows when title is defective.  
(Indicating statute.)

THE COURT: Now, Mr. Budd, the question is  
whether or not after this note had passed out of the  
hands of Byrnes, there were any communications between  
Byrnes and the defendant.

10 MR. BUDD: Yes; but supposing it has not passed  
out of the hands of Byrnes. The plaintiff has shown that  
Byrnes lied. The plaintiff already has made his principal  
a liar in the presence of the Court.

MR. REX: I trust your Honor will take note of this  
statement. It does not appear that it has passed out of  
his possession at all.

THE COURT: Does it appear when Byrnes sold this  
20 note?

MR. REX: Yes, January 8th; but it doesn't show that  
the note was still in Byrnes' possession. He had sent it  
over to his home office for some reason, according to the  
defendant's own story. It was not in his possession then.  
When it came back into his possession he then sold it.  
The presumption is that it came immediately back to him,  
or at least he sold it as soon as it came back to him.

THE COURT: At all events this note was afterwards  
30 in the hands of Byrnes, and sold by him to the plaintiff.  
Knowing that fact, the title to this note anterior to that,  
I think, is permissible.

MR. REX: Anterior to the selling of it?

THE COURT: Yes. Now this is at a time, I understand, after the note was given, but before it was sold.

MR. BUDD: Exactly. But he says, "I will tell you how you can get it back." Now, if he could get it back it was not in his possession.

THE COURT: I understand that, but it shows the relation of the parties. It might throw light on whether <sup>10</sup> or not it was immediately put in circulation.

(Question repeated.)

A. Mr. Byrnes did not.

Q. Who did?

A. Without saying—

(Objected to.)

THE COURT: Well, we will find out that much. Who <sup>20</sup> did say anything to you about getting it back?

A. The next man I saw—

THE COURT: Just one moment. Answer that question. Who did say anything?

A. George W. De Haven.

Q. When?

A. The following forenoon.

Q. How soon after you had seen Mr. Byrnes?

A. Within a few hours.

Q. Did Mr. De Haven come to you after you had seen <sup>30</sup> Mr. Byrnes and introduce the subject himself?

A. He did.

Q. Did you say anything to De Haven at that time?

(Objected to.)

Q. Before he mentioned it to you?

By THE COURT: You can answer that. It has not gone very far yet.

A. Nothing before he opened the subject.

Q. What did he say to you?

10

(Objected to.)

MR. BUDD: Now we have shown that the defendant had a talk with Mr. Byrnes, we have shown now that Mr. Byrnes left, we have shown that Mr. De Haven comes, and without Dr. Barrington saying a word to him, that De Haven immediately opens up the subject that had been left with Byrnes, and proceeds to tell Dr. Barrington what can be done. I therefore claim that by that act De Haven  
20 becomes the agent of Byrnes, and what De Haven said becomes admissible in this case.

(Argument by counsel.)

THE COURT: I am inclined to think that the preliminary relation of these two men is such that the jury may infer that there was a relationship between them; that the jury may find that there was a confederacy between them. I will admit it.

30 Q. Now state what Mr. De Haven said?

A. Mr. De Haven said the only way I could get the note would be by undergoing a medical examination, and

then if I refused to accept the policy when it came, that he would return that as undelivered business and return to me the note.

Q. Did you see Mr. Byrnes again at any time?

A. I did not see Mr. Byrnes again.

Q. Now, was there anything else said between you and De Haven at that time?

A. That was the substance of all that was said.

Q. Did De Haven see you again?

A. De Haven called on me several times consecutively 10 on the days following the 9th of November, when the note was given to him, and insisted that I should undergo this medical examination. I—

MR. REX: I object to that, your Honor, as having positively no bearing upon this question of fraud.

MR. BUDD: It is part of the same.

THE COURT: But how is it relevant? He has already stated that he came to him and wanted him to under- 20 go an examination in order to get his note back; that was the only way to do it. There is no advantage in the repetition of it.

Q. He renewed those statements?

A. He renewed those statements, and I finally, in the conversation with him, I asked him if he would send me a letter over his signature, stating why I underwent this medical examination.

Q. Did you receive a letter from him? 30

A. I received a letter from him.

(Witness is shown letter and he is asked.)

Q. Is this the letter, addressed to Dr. R. C. Barrington, and signed George W. De Haven, to which you have reference?

(Objected to on the same grounds. Objection overruled.)

A. It is.

Q. And is that the envelope in which the letter came?

A. Yes.

10 Q. And what is the date of the letter?

A. November 23.

Q. What year.

A. 1905.

Q. And the letter was from where?

A. It was from, I believe, Salem, New Jersey.

MR. BUDD: We offer that letter in evidence and the envelope.

(Reads letter as follows:)

20 Salem, N. J., Nov. 23, 1905.

Dr. R. C. Barrington,

Mount Holly, N. J.

My dear Sir:—

In relation to the conversation I had with you the other day I have to say that it will be necessary for you to complete your application by being examined immediately, and if you are accepted by the Company I will deliver your policy. If you do not then wish to accept same I will return it to the Company as undelivered business and have  
30 your note returned to you.

Yours truly,

GEORGE W. DE HAVEN.

The envelope is postmarked Salem, of the same date, and the letter-head is The Mutual Reserve Life Insurance Company, and also the envelope.

(Letter and envelope marked Exhibit "D-2.")

Q. After receiving this letter did you do anything, Doctor?

A. After receiving that letter I was examined by a physician here and sent word to that effect to De Haven, that I had been examined, and the reason why I was examined.

(Objected to.)

Q. Did you keep a copy of the letter that you sent to De Haven?

A. Yes, sir; I did.

Q. And is that the copy of the letter that you sent to De Haven? (Paper shown witness.)

A. Yes.

20

MR. REX: I object to any evidence—

THE COURT: Objection sustained. You can't prove a letter in that way. It is on the ground that it is secondary evidence.

MR. BUDD: We call upon the other side for the letter from Dr. Barrington to De Haven.

MR. REX: We don't know him.

30

THE COURT: A call cannot be made at this time, and be made the basis of secondary evidence.

MR. BUDD: Does your Honor rule that we cannot show the copy that he sent to De Haven?

THE COURT: Yes.

Q. Did you notify De Haven that you had followed his advice and taken the examination?

A. I notified De Haven that I had followed his advice and had been examined, and for the reason that I wanted my note returned.  
10

MR. REX: I object. I want the last part of that answer stricken out.

By THE COURT:

Q. The reason, was that communicated to De Haven?

A. It was, yes, sir; the reason why I was examined. I thought it was important to let him know.

THE COURT: It cannot be stricken out. I think that  
20 whatever he said in relation to the subject matter of the insurance, and if that included this reason, if that also was stated, it is part of the conversation called for.

By MR. BUDD:

Q. Did you hear anything from De Haven in answer to that letter that you sent him?

A. I heard nothing more from De Haven than that.

Q. Did you hear anything more from Mr. De Haven about the matter?

30 A. Never anything more.

Q. Or from Byrnes?

A. Or from Byrnes.

Q. What was the next that you knew concerning the matter?

THE COURT: And when?

A. Naturally after that, as I heard nothing, I made several efforts to find the man.

(Objected to.)

THE COURT: Yes, not what you did not succeed in doing; tell us what happened. 10

Q. Did you go to Philadelphia?

A. I went to Philadelphia.

Q. At the office that they had given?

A. Yes, and tried to find those men, but was unable to find either of them. They were always out when I called.

Q. Did you find either one?

A. Didn't find either one.

MR. REX: I object to that line of examination, this gentleman insinuating that these men were running away from him. That he went to the office is all right, but that they were not there when he called I don't think is proper. 20

THE COURT: Isn't it a fact?

MR. REX: I presume it is a fact.

THE COURT: It doesn't seem to me the question or answer is susceptible of the meaning that counsel implies 30 to them, and it seems to me is competent to show what this witness did with respect to the matter.

Q. What was the next that you heard and when?

A. I next received by registered mail a letter without anything on it to designate from whom it came, and on opening it found it was a policy of insurance from that Company, the Mutual Reserve Company. I at once returned it to—

By THE COURT:

Q. How soon was that after your statement to De Haven that you had been examined?

10 A. The exact date—

Q. Well, about how long?

MR. BUDD: He can give the date from this next paper, which I will identify.

A. 12, 6, '05.

Q. And the other is what? The other is postmarked when?

MR. BUDD: The 23d was the letter from De Haven.  
20 The 27th was the day when he replied, and this is the 16th day of December.

Q. The former is in November, and the last in December?

MR. BUDD: Yes, in December.

By MR. BUDD:

Q. Whose name was on this envelope?

MR. REX: I object to anything that occurred after  
30 this note was sold.

THE COURT: Well, that is all anterior to that.

MR. BUDD: This is January 8th.

MR. REX: What year?

MR. BUDD: The year after.

MR. REX: Well, then, it doesn't cut any figure.

THE COURT: Do I understand this conversation relates to November and December preceding?

MR. REX: Yes.

10

MR. BUDD: But it precedes your check of January 8, 1906.

MR. REX: All right.

Q. What name was on this letter?

A. The name was Sanders—the first name I forget—of Swedesboro, New Jersey. I didn't know a Mr. Sanders there, and knew nothing of the contents of the envelope till <sup>20</sup> I opened it and found the insurance policy.

Q. Then you received a registered letter that had on the outside Mr. Sanders' with some name?

A. Yes.

Q. And upon opening it you found the policy of this Mutual Reserve Company?

A. Yes.

Q. Was there any letter with it?

A. There was no letter, nothing but the bare policy.

Q. What did you do with it?

30

A. I handed it to the postmaster and had it registered back to the man that sent it.

Q. And is that the receipt that you got from the post-office at that time for the return to Sanders? (Paper shown witness.)

A. Yes; that is the postmaster's receipt.

Q. Was the package that was contained in this registered receipt that you sent back the policy that you had received?

A. The same policy.

Q. You didn't take it out of the post office?

10 A. Didn't take it out of the post office.

MR. BUDD: I offer this in evidence and ask that it be marked.

MR. REX: I object. We don't have any relation to Sanders.

THE COURT: I am inclined to think that the chain of circumstances are sufficient to argue that agency may have existed, that the policy was in response to a letter  
20 written by the Doctor to De Haven.

(Receipt marked Exhibit "D-3.")

MR. BUDD: This is a receipt for registration, 12, 16, 1905, from R. C. Barrington, addressed to W. Elmer Sanders, Swedesboro, New Jersey, "Postmaster, per B."

Q. After you returned that did you send any word to De Haven?

30 A. After returning it I sent word to De Haven that the policy had been sent back from whence it came, and I wanted him to complete his agreement with me and return the note.

Q. Did you hear anything from De Haven in return?

A. Nothing.

Q. Did you hear anything from—

A. I heard nothing from De Haven nor Sanders.

Q. Nor Byrnes?

A. Nor Byrnes nor any of the rest.

Q. Then you heard nothing from anybody until summons was served on you by the Sheriff?

A. Before that the note turned up, before summons was served on me, the note turned up at the Mount Holly 10 National Bank.

Q. And you didn't pay it and the note was protested?

A. I didn't pay it. I told the Bank the circumstances and didn't pay it.

Q. And the note was protested.

A. The note was protested.

Q. And suit was brought?

A. Yes, then suit was brought. I heard from—after the note was protested, the next I heard I think was from Mr. Rex bringing suit.

20

#### CROSS-EXAMINATION.

By MR. REX:

Q. Doctor, at the time of the negotiation about this insurance you gave this note at that time for the insurance, did you?

A. For the insurance?

Q. Yes.

A. Yes.

Q. And you didn't mark on this note in any place at 30 all that it was not negotiable, did you?

A. That is a weakness that I admit I made.

Q. And you intended to pay it, didn't you?

A. I intended to follow the verbal agreement that was interwoven with that note in my mind.

Q. I didn't ask you about any agreement. I asked you if you did not intend to pay the note when you gave it?

A. I never protested a note before.

Q. I didn't ask you that.

A. The reason I protested it—

10 (Objected to.)

THE COURT: Answer the question, Doctor.

(Question repeated.)

A. Yes, the note was given in good faith at the time.

Q. Just answer my question, won't you, please?

THE COURT: I think he has answered it.

Q. Now after you gave the note to Mr. Byrnes you say you called on him?

20 A. I called on him within six hours and demanded its return.

Q. Didn't you say the next day?

A. I called on him but I couldn't find him. I saw him the following morning. That is a few hours.

Q. When did you next see Mr. Byrnes?

A. The following morning.

Q. And you said to him what? What did you say to him?

30 A. I said that I had inquired into the Company and into the representations made by them, and I was dissatisfied to continue the contract and didn't want any insurance with them.

Q. So that notwithstanding the fact that you had given your note and that Byrnes had taken your insurance, it was then you became dissatisfied, was it, afterward?

A. I had received nothing at the time I saw Mr. Byrnes, when I demanded my note.

Q. I understand that, but you had given your note?

A. He had my note in his hands; yes. He had my note with him.

Q. And you made yourself liable?

10

THE COURT: That is a question of construction.

Q. And you knew exactly what you were giving it for, did you? Just answer the question, won't you, please?

A. I didn't know what I was giving it for at the time I gave it.

Q. You mean to say that you, an intelligent gentleman like you, gave a note and didn't know what you were giving it for?

A. I thought I was giving it for substantial insurance. 20

Q. And you only demanded it back when you got an idea in your head that it was not substantial?

A. When I was perfectly satisfied that it was not valuable.

(Question repeated.)

A. Yes, that was so. I had thoroughly become—

Q. Then you had a subsequent conversation. That is the only conversation you ever had with Byrnes about it, isn't it?

A. I had a very long heart-to-heart talk with Mr. 30 Byrnes.

Q. Undoubtedly. You wanted your note back?

A. Undoubtedly. And he lied to me and said he had sent it away at the time.

Q. He hadn't it in his possession?

A. He said he hadn't it.

Q. So therefore he couldn't give it back?

A. Yes; he could if he told the truth.

Q. Did he have it in his possession or not, so far as you know?

A. I believe firmly that he had it in his possession.

10 Q. And he didn't give it back to you?

A. No.

Q. And the only reason that you wanted it, that you gave to him, was that the Company was not good?

A. That he was a rascal and that the Company was not good.

Q. That is the only reason? Answer that, will you?

A. Yes.

Q. Now, you never saw him again, did you?

A. Never saw him again. I tried hard to.

20 Q. I understand, but you never did see him. Now you have spoken of Mr. Haven. When did you see him?

A. I haven't seen Mr. De Haven since the conversation held when he wanted me to be examined in order to bind this agreement.

Q. Now, how would your examination, Doctor—you are a medical gentleman—how would your physical and medical examination to the insurance company warrant any agent in returning to you any money which you had paid for insurance? How did that get into your mind?

30 A. Because he lied to me and said that was the only way to get the note back.

Q. Now as a medical man—no doubt you have exam-

ined for insurance companies—does it strike you that the way to get your money back is to be examined and take out a policy?

A. He claimed that the note had been sent out of his possession.

Q. Now, my dear sir, won't you please answer my question?

THE COURT: Mr. Rex, do I understand that the witness says that the note was to come back to him in case he took out the insurance? 10

MR. REX: Yes.

THE COURT: Did I understand that?

MR. REX: Yes; that is what he says.

THE COURT: I understand the letter the other way. Let me see that letter please.

(Letter examined by the Court.) 20

(Question repeated.)

THE COURT: I don't understand that there is any evidence upon which that question is predicated. The witness' position as introducing this paper is that this insurance was to be issued, and then if he didn't want it he was to get his money back; not that the way to get the note back was to take out the insurance; it is just the other way about. 30

MR. REX: Your Honor will see that the first attempt

is to show fraud in the issuance of this to Byrnes. There has evidently been no fraud as far as Byrnes is concerned. He said he gave him the note and gave it to him with the understanding that he was to have this insurance, which he got. Now Byrnes never made any assertion as to return or anything of the kind; but De Haven came along according to the Doctor's idea, and says, "Now the only way you can get your money back is to be examined and take out a policy and send it back and you will get your note. Now  
10 here is an intelligent gentleman who no doubt has been connected—

THE COURT: If you mean to ask him what his conception of that form of doing business is, it is competent.

MR. REX: That is all.

(Question repeated.)

A. Not ordinarily, but those men had the note in their  
20 possession.

Q. One moment. That answers the question.

A. I have qualified the answer.

MR. BUDD: No, no, he has a right to answer.

THE COURT: That seems to call for an opinion, Mr. Rex. He has a right to explain.

THE WITNESS: But I thought that my note was in the hands—

30

THE COURT: Not what you thought, Doctor. But go on.

A. In the hands of men who were not honorable.

MR. REX: I object to that sort of an address to the jury. The Doctor turned around, I noticed, that time quite promptly, and I object to that sort of an answer. It is not responsive and it is not right.

(Question repeated.)

THE COURT: You said not under ordinary circumstances? 10

A. Not under ordinary circumstances. I pondered a good deal before undergoing that medical examination. I hesitated, as you will see, about undergoing that.

THE COURT: Doctor, you see you are not answering the question. If you have any explanation to your answer, not ordinarily, to make, make it, but don't go into history.

A. I consulted with friends, that as long as they had my note in their hands, perhaps I might as well go on and 20 take them at their words; but that was a factor influencing my doing that.

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ROBERT G. DUNN, Sworn for Defendant.

DIRECT EXAMINATION.

By MR. BUDD:

Q. Where do you reside, Mr. Dunn?

A. Burlington, New Jersey. 30

Q. Are you in business over there?

A. Yes, sir.

Q. What business?

A. Dry goods and furnishing business.

Q. How long have you been a resident of Burlington?

A. Thirty years.

Q. Were you insured in this Mutual Reserve Life Insurance Company of New York?

A. Yes, sir.

Q. Did you give a note in payment of your insurance?

10 (Objected to.)

THE COURT: What are you trying to do, establish a character for this Company?

MR. BUDD: No; if I did I am afraid that we would have to enlarge the State's prison.

Q. Is that the note that you gave for the insurance?

20 THE COURT: I ask for any justification for the admission of that.

MR. BUDD: We are going to identify Mr. Rice. Mr. Rice comes to Burlington with this note here, and what was said by Mr. Dunn and Mr. Rice at that time. Now this is most material and relevant, and I cannot ask it without I ask these preliminary questions.

MR. REX: It is not relevant at all. He might have had a hundred notes. We are suing on one note.

30

THE COURT: Let me understand the situation. The note you have is what?

MR. BUDD: The note we have is the note of Robert G. Dunn, January 19, 1905, a three-months' note, and came due in May, before the Barrington note was given. On May 10th Dr. Rice comes to Burlington with this note. It is endorsed by Dr. Rice. Then and there Mr. Dunn informs him of the fraud that had been perpetrated upon him by Roger Byrnes, the whole circumstances, and then and there effects a compromise with Dr. Rice on this note. It becomes most material, I think, as showing his knowledge of this fraud that these men were engaged in. How could we bring proof to the plaintiff?

THE COURT: Is it contended that anything was said by the plaintiff as to the note in suit at that time?

MR. BUDD: No; the note in suit was not in existence. This was May 10, 1905, and the note in suit was in November, 1905. (Argued.)

(Objection sustained.)

MR. BUDD: Do you rule out this testimony?

20

THE COURT: Yes.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

FRANK T. LLOYD, Judge. (Seal)

MR. BUDD: Do I understand, then, that your Honor will not allow us to show by Mr. Dunn anything that was said to him. Dr. Rice when he came with this note on May 10, previous to the Barrington note, as to the fraudu-

lent manner in which that note was obtained from him?

THE COURT: Yes, you cannot show fraud in one transaction by its existence in another.

MR. BUDD: Yes, if your Honor will pardon me, may I just read your Honor some authorities.

THE COURT: Certainly, I will be glad to hear them. If it could be shown that this is part of a system of notes  
10 it would be different, but there must be some connection.

MR. BUDD: Yes, but we show from this man that he tells him the whole circumstances, and this plaintiff already—

THE COURT: Mr. Budd, suppose you go at it this way. I don't want an offer of proof, but suppose you direct your questions and we will get down to the point where it is important as to whether the evidence is good  
or not.

20

MR. REX: Do I understand your Honor is going to allow a lot of questions to go to the jury and then on them?

THE COURT: No; I am going to allow counsel to identify what he is now attempting to get at, but not get the substance of it before the jury at this time. I must know whether the thing is pertinent before I rule upon it,  
and I cannot always tell without some evidence.

30

Q. I show you a note dated Burlington, January 19, 1905, signed Robert G. Dunn, and ask you if that is your

signature to that note?

A. It is.

Q. And to whom was that note given?

A. Roger Byrnes.

Q. For what was that note given?

A. Insurance.

Q. After you gave that note what was the next that you knew or heard concerning the note?

(Objected to.)

10

THE COURT:

Q. Did you have any conversation with Doctor Rice about it?

A. I had never met Doctor Rice, then.

Q. Did you after that have any conversation?

(Note shown witness and he is asked:)

By MR. BUDD:

Q. What name is on the back of the note under the name of Roger Byrnes?

20

A. Dr. Rice.

Q. Dr. H. A. Rice?

A. Yes, sir.

Q. When was the next you saw that note after it had been given by you to Mr. Byrnes?

(Objected to.)

THE COURT: Answer that question, when was the next you saw the note?

30

A. The tenth day of May Dr. Rice brought it to my store.

THE COURT: This is 1904?

MR. BUDD: 1905. This is before.

Q. Now on May 10, 1905, Dr. Rice comes in your store in Burlington with this note?

A. Yes, sir.

Q. Which he had endorsed and which was in his possession?

A. Yes, sir.

10

THE COURT: Now, Mr. Budd, suppose you let me have the authorities that you want to call my attention to. We have evidently got to the point where you want this conversation in.

Q. Now my next question is, when he brought this note did you say anything to him about it?

THE COURT: Or the Doctor to him?

20 MR. BUDD: Or the Doctor to him, and what did you say?

(Mr. Budd argues.)

THE COURT: I am inclined to think that the defendant may show communications of conversations between the plaintiff and another person; it may show his knowledge of transactions similar in character to this; if they do, that may indicate his knowledge of the class of 30 paper that the man Byrnes was putting in circulation.

Q. Did he have the note with him?

A. Yes, sir.

Q. Had you ever seen him before?

A. No, sir.

Q. What did you tell Rice about the note and protest, etc.?

A. I told him I let the note go to protest because it was gotten by false representations.

Q. What did he say to that?

A. He said he knew nothing about that.

Q. What did you tell him it was gotten for? 10

A. Insurance.

Q. What did you tell him they agreed to do?

A. They agreed—Byrnes agreed to not negotiate the note, but to bring it for renewal and at the end of the year there would be less than half of it to pay.

Q. Did you tell him that the commissions—about the commissions?

A. Yes, sir.

Q. Now that last, what did you tell him about the commissions? 20

A. That the commissions coming to us, acting as that advisory board, as one of those, would lessen it by half.

Q. In other words, you told Dr. Rice, that—

MR. REX: I object. Don't tell what he said.

THE COURT: No, no; let the witness testify.

Q. Did you tell him anything about that they agreed to renew the note?

A. Yes, sir. 30

Q. What did you tell him about that?

A. I told him that was the reason I let it go to protest,

because they hadn't lived up to their agreement.

Q. About renewing the note, did you tell Dr. Rice anything about what had been told you about renewing the note?

MR. REX: I object to that sort of leading. Let him tell what took place.

THE COURT: Let him give the conversations.

10 A. I think my conversation covers that.

Q. Did you tell Dr. Rice how long you were told you would have to pay it?

A. Yes, sir.

Q. How long?

A. One year.

Q. What did Dr. Rice say to this, if anything?

A. To what?

Q. To what you told him?

A. That it was gotten by fraud and under false repre-  
20 sentations. He said he knew nothing about that.

By THE COURT:

Q. Well, tell what further happened, if anything?

A. Then he wanted to know if we couldn't compromise it.

By MR. BUDD:

Q. Whose suggestion was it to compromise?

A. Dr. Rice's.

Q. Not yours?

A. No, sir.

30 Q. What went on then? What did you say to him?

A. I had no thought of paying it when he suggested that.

Q. Well, what occurred?

A. I asked him what would be satisfactory. He said pay part and give notes for the balance. I says "You pay the interest and discount and protest?" He says "Never mind that."

By THE COURT:

Q. What was the interest, if any, at that time?

A. On the new notes?

Q. No, on that note that he was then talking to you<sup>10</sup> about.

A. The note was then about thirty days past due.

Q. What was the amount of it?

A. \$279.00.

By MR. BUDD:

Q. Well, you refer to the interest on the new notes, don't you, Mr. Dunn?

A. Yes; the new notes.

Q. You were to settle them how, by payment of what?

A. I paid \$100.00, a new note for three months for<sup>20</sup> \$100.00 and a six months' note for \$79.75, I think was the amount.

Q. What did you tell him now about interest?

A. I said I wouldn't pay any interest or discount. I says, "How about interest?" He says, "Never mind that."

Q. That is on the new notes?

A. Yes, sir; on the new notes.

(Objected to as leading.)

MR. BUDD: I thought that the Judge had got the<sup>30</sup> idea that the interest was as to this old note.

Q. I say, what was the interest with reference to?

A. The interest or discount on the new notes. I gave a note in bank.

By THE COURT:

Q. In the settlement that you made did you pay interest on the note or did you pay the discount up to the maturity of the new notes?

A. No, sir.

10 Q. Either?

A. Neither.

By MR. BUDD:

Q. What did you pay?

A. Simply the face of the note.

Q. And how long had you to pay it in from that date?

A. Three and six months.

Q. Three and six months?

A. Yes, sir.

(Witness is shown a paper dated May 10, 1905, signed  
20 Robert G. Dunn, and is asked if that is his signature to that note.)

A. Yes, sir.

Q. And is that the six months' note that you speak of that you gave Mr. Rice at that time?

A. Yes, sir.

Q. Is that Dr. Rice's name on the back of that note?

A. Yes, sir.

Q. And you paid that note when it came due?

A. Yes, sir.

30 Q. And that was the note that was the final payment of this note?

A. Yes, sir.

Q. What did Dr. Rice do with this original note that day?

A. He gave it to me for——

Q. He gave it to you for the——

A. For the other notes.

Q. For the other notes and \$100.00?

A. Yes, sir.

Q. And have you ever seen Dr. Rice since that time until to-day?

A. No, sir.

10

#### CROSS-EXAMINATION.

By MR. REX:

Q. Mr. Dunn, you gave that note, didn't you?

A. Yes, sir.

Q. You expected to pay it, did you not?

A. Expected to pay it at the end of the year.

Q. At the end of the year?

A. Yes, sir.

20

Q. And the fraud that you complain of is that they negotiated it before the end of the year?

A. Yes, sir.

Q. That is the fraud you complain of?

A. Yes, sir; after agreeing verbally not to.

Q. I say after agreeing. That is the only fraud that you complain of, that they negotiated it before the year?

A. Yes, sir.

Q. Now, Mr. Rice came along, didn't he?

A. Yes, sir.

30

Q. You told him that, didn't you?

A. Yes, sir.

Q. Well, he told you if that was the case he knew nothing about it, but you could still renew it, didn't he?

A. He told me, as I said, that he would compromise it; used that word.

Q. He said he knew nothing about these negotiations being extended to a year, did he not? Didn't he say to you that he knew nothing?

A. Knew nothing about that; yes, sir.

Q. And then he offered to carry out that agreement  
10 to renew it, didn't he?

A. Offered just the words I stated, to compromise it.

Q. Just answer that question. He offered to renew the note by paying so much cash and renew the balance, didn't he?

A. Yes, sir.

Q. And he did do that?

A. Yes, sir.

Q. And he didn't charge you any interest?

A. No, sir.

Q. So you were not harmed any, were you?  
20

A. Not in that; no, sir.

Q. What were you harmed in by Dr. Rice?

A. Nothing at all.

Q. That is what I thought.

#### REDIRECT EXAMINATION.\*

By MR. BUDD:

Q. Didn't you also complain to Dr. Rice that—

30 (Objected to.)

THE COURT: You have no right to ask that way.

Q. Mr. Rex asked if the only thing you complained of of misrepresentation was the fact that they negotiated the note before the end of the year. Did you also explain—

(Objected to. Objection sustained.)

Q. Did you not complain of some other misrepresentation to Dr. Rice?

(Objected to. Objection overruled.)

10

MR. REX: He has already stated why that was.

THE COURT: Well, he may answer it again.

A. I told Dr. Rice the circumstances about the commissions was to reduce that and I was not to pay over half; it was to lessen it by half.

Q. Then you considered yourself defrauded as to the commissions?

(Objected to. Objection sustained.)

20

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GEORGE STEAD, sworn for defendant.

DIRECT EXAMINATION.

By MR. BUDD:

Q. You reside in Mount Holly?

A. I do.

30

Q. How long have you lived here, Mr. Stead?

A. About thirty years.

(Note shown witness and he is asked if that is his signature on the note.)

A. That is.

Q. To whom was that note given?

A. Roger Byrnes.

Q. And whose name is upon the back of that note?

A. That is Roger Byrnes and Dr. H. A. Rice.

Q. When was that note given?

10 (Objected to.)

A. November 8th, 1905.

MR. REX: I object to the offer of that.

THE COURT: It seems to be in exactly the same category.

MR. REX: Unless there is some evidence that this man apprised Dr. Rice of the fraud.

20 MR. BUDD: I told you I had no further evidence except Mr. Dunn of that.

THE COURT: What is the purpose now?

MR. BUDD: To show that he bought other notes of Mr. Byrnes of the same character.

30 MR. REX: I object to anything that is brought here in the way of notes unless it is to prove a fraud of some kind. Now, if this gentleman can carry any testimony which will show that Mr. Rice had a knowledge of a fraudulent transaction, if there was a fraudulent transac-

tion, that is all right; but merely showing a note that he found an objection to, possibly, and paid, probably—I don't know—I submit that is not relevant to fight this note with.

THE COURT: I don't see any basis upon which it can be introduced. The mere fact that he bought other notes would not be of the slightest consequence.

MR. BUDD: I want to identify his signature to this note. 10

THE COURT: Whose?

MR. BUDD: Mr. Stead's.

THE COURT: What purpose is there in getting the signature if you can't get the note in evidence?

MR. BUDD: Well, we might get the note in evidence later. 20

THE COURT: Well, you may have the note identified if that is all there is to it.

MR. PALMER: It is only for the identification of the signature, not for the purpose of offering the note at this time. We merely want to identify the signature.

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NO CROSS-EXAMINATION.

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EDGAR EWAN, sworn for the defendant.

DIRECT EXAMINATION.

By MR. BUDD:

Q. Are you employed in the Farmers' Bank of New Jersey?

A. Yes, sir.

Q. How long have you been employed there?

A. About five years.

10 Q. Are you acquainted with the signature of George D. Worrell, of Mount Holly?

A. Yes, sir.

Q. Acquainted with his signature?

A. I am.

Q. Does the signature pass through your bank and often come under your observation?

A. Every day.

(Paper shown witness and he is asked if that is the signature of George D. Worrell.)

20

(Objected to on the same ground.)

THE COURT: Well, it is harmless at this point. If counsel want the benefit of the Court's ruling on a subsequent matter, and this is preliminary to it, there can be no harm in this answer being made.

A. I think it is.

\_\_\_\_\_

30

NO CROSS-EXAMINATION.

\_\_\_\_\_

MR. BUDD: The note of Robert G. Dunn that was introduced, we offer the note in testimony and ask to have it marked.

(Note marked Exhibit D 4.)

The note reads as follows:

“\$279.75. Burlington, N. J., January 19, 1905.

Three months after date I promise to pay to the order of Roger Byrnes Two hundred and seventy-nine and 75-100 Dollars, at Burlington, New Jersey, value received.

Robert G. Dunn, 10

Roger Byrnes,

Dr. H. A. Rice.”

I also offer the note that Dunn testified that he made the last payment to Rice, for \$79.75. We offer that in evidence.

(Note marked Exhibit D 5.)

The note reads as follows:

“Burlington, N. J., May 10, 1905.

Six months after date I promise to pay to the order of Dr. H. A. Rice Seventy-nine and 75-100 Dollars, payable 20 at Mechanics' National Bank, without defalcation, value received.

Robert G. Dunn.

Dr. H. A. Rice.”

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BOTH SIDES REST.

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## MOTION FOR DIRECTION.

MR. REX: May it please the Court, I ask that the Court direct a verdict in this case for the plaintiff. The plaintiff is the holder of a negotiable note made by the defendant to Roger Byrnes, and was bought from Byrnes by the plaintiff for value, he at the trial producing a check which paid for the note. Now, in order to defeat the plaintiff of his right of recovery as a legal proposition—not for the jury—all he has to do is to prove the note and  
10 the non-payment of it that it is still owing, which has been done. The only defense possible to the defendant is that the note is a fraudulent note.

Now, suppose there was an agreement made by the payee, Byrnes, that he would take this note, and he had given value for it, evidently—according to all the testimony he had given a policy of insurance, as he agreed to do, take it for granted he did say, “Your premiums will cut this down;” suppose he did say that—here is an intelligent gentleman who gives a note for three months. Does  
20 the Court for one minute say it is a fraud or intimation of fraud to say to him, “You give me your note for three months and I will give you the policy for it?” What does he first with it? Whether he owned it or the bank owned it or I owned it, he could have gone to the bank and has it discounted; he could he could have gone anywhere and had it discounted or he could sell it like any other chattel. He sold it. Now, what was the fraud complained of? What was the fraud, even to Byrnes? Now just see what a trifling fraud, if it  
30 is possible to call it fraud, to set up. Even take DeHaven—I don’t know him, but even if he cuts any figure here. They get together. Now, Dr. Barrington wants to be in-

sured. Now, that doesn't make any fraud. They promise him some things, but everything they promise him they give him, except they don't give him dividends. Why? That is easily explained. As soon as he gives the note he begins to think it over. He goes and inquires of some one socially and he says, "I wouldn't take that sort of insurance. Go into some good company and take insurance. I would stop that." It is too late to stop it after you have made the transaction. The note is out of Byrnes' hands and he couldn't stop it. Now, DeHaven comes along and <sup>10</sup> says, "If you will go and get examined and take out the policy I will get your money back." Now, what man of intelligence would even dream of such a thing, and even if he did say so it was not a fraud in the inception of the contract. The contract was finished. It was out of Byrnes' hands. He could not have done anything with it. We don't know where it was. He said it was up in the home office, in New York.

THE COURT: No; the vice of that argument, or the infirmity of it is, I think, that Byrnes is the man who afterwards did negotiate it to Rice; so that anything anterior <sup>20</sup> to that negotiation would be knowledge in Byrnes.

MR. REX: Well, now, put it in Byrnes if you want to. Suppose Byrnes did all this; suppose Byrnes was a villain. I don't know him. I say suppose he was. Suppose all this had been. On the origin of the contract it was a bona fide contract. He was to give a note for something he was to receive and did receive. He went into it openly, properly and right. Byrnes may have deceived him, I don't know; <sup>30</sup> but that deception was never brought home in this transaction to Dr. Rice. Now the nearest they come to that—

THE COURT: I don't think it is contended exactly that that is brought home in the sense that he had specific knowledge of any violation of agreement or breach of faith. I understand it is a reliance upon the statute which casts the burden, after it is proven that a note has been improperly put in circulation, upon the plaintiff. Now, whether the plaintiff has met that in such a legal way as the Court can pass upon it, is a question.

MR. REX: I think right there, Dunn himself—what did  
10 Dunn say? Now, the only evidence at all in this case—

THE COURT: I think as far as Dunn is concerned there is very little there to put anybody on guard.

MR. REX: That is the point exactly. Dunn says he got all he was entitled to.

THE COURT: Well, the throwing off of interest is such a slight thing that anybody might do it. But the only  
20 importance in Dunn's statement was that he called attention to the fact that he had been improperly used.

MR. REX: No; he didn't. Let me call Your Honor's attention to that. What he said was, he said to me emphatically that the only thing that he complained about was that they negotiated the note. Is that a fraud?

THE COURT: He said also in violation of the agreement on Byrnes' part, I think he said.

30 MR. REX: No; he said this—

THE COURT: He had previously testified—am I

right about that?—that he previously had an agreement with Byrnes. I think he had previously testified that this note was agreed not to be used, and that in view of that, when Rice finds it out he recognizes it, that there was something in it at least, and threw off the interest.

MR. REX: No; I beg pardon. He didn't throw off the interest at all. What he did was this: As soon as Dunn said to him, "These men were frauds, or words to that effect, that they were not to negotiate this note for a year, he says Rice told him, "Well, I never knew anything about that." Now, to any man's mind that would not be a fraud. It would not put him on guard for fraud.

THE COURT: No; it is not necessarily fraud, but it is a circumstance.

MR. REX: If Your Honor will permit me, I will show you my view of it. That could not be construed into a fraud. But what does Rice do? He says, "I knew, of course, nothing about that; but if that is a fact I will renew the note. You pay part of it and renew the note." And Dunn did it. Now, he had nine months instead of twelve months, that is all, to pay it. Now, when it came to the question of interest, that had nothing to do with Dunn's position or renewal or anything about it. He says, "I don't think I ought to pay the interest." Rice says, "That is such a small matter we won't quarrel about that."

THE COURT: Well, the two conversations must be taken together; that is to say, it is a circumstance that the jury must take together.

MR. REX: Now, the point is that no fraud has been shown at all, not the slightest. The mere fact that a man had a lot of notes printed; that is done every day. The mere going and having a few notes printed; that is done every day.

THE COURT: The circumstances of the issuing of the Dunn note vary from this. There was no promise then that there should be any reduction of premiums by commission on the note.

10

MR. BUDD: Oh, yes, there was.

MR. REX: He testified to this: That the note was not to be negotiated, and Byrnes said to him, "Your premiums will more than half pay the note."

MR. BUDD: Not his premiums, but what he would get from this advisory board would more than half pay it, and that he would apply these on that note.

20

THE COURT: What I was getting at is this: I didn't understand Dunn to say that there was, as explained by him then, an explicit agreement that the note would be reduced by any payments of any kind coming to him.

MR. REX: I don't think he did. That was my understanding.

THE COURT: No, I didn't understand that. He did understand, as a sort of prospectus statement, that he  
30 would get so much of this back, and in the course of a year—they would carry it for a year, and in the course of a year it would reduce it about half.

MR. REX: Suppose they did; suppose it would reduce it to five cents; would that be a fraud?

THE COURT: The point I am getting at is that it does not strike me that Dunn made any statement that would imply that this note was taken upon any condition that he would have to pay less than the face of it. No matter about getting premiums or any other item; while he might get premiums the effect would be to reduce the note, but not its payment.

10

MR. REX: What he said was, he made arrangements that the note would not be negotiated, and Byrnes said to him, "By the time the note is due you will probably receive or will receive enough premiums to reduce it one-half." Suppose he did. Now, if there had been any fraud about it Dunn would not have paid that note; if there had been anything at all.

THE COURT: I would very much rather not pass upon this thing to-night. I would like to look into it a<sup>20</sup> little myself.

Adjourned till February 19th, 1907, at 10 A. M.

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Mount Holly, N. J., February 19, 1907.

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Trial of the cause resumed at 10 A. M.

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(Argument at side bar.)

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MR. BUDD: If your Honor please, I want to ask leave to recall Dr. Barrington to testify to a matter that he

inadvertently omitted yesterday. The matter contains two sentences that were said to Byrnes at the time of the conversation. The attempt was made to get it in yesterday and at the time objections were being made by Mr. Rex and there was just one portion of that conversation with Byrnes that was omitted, I think, and I would like to have an opportunity to recall Dr. Barrington to testify to the remaining part of that conversation.

10 MR. REX: Ordinarily I would not object to anything of that kind, but we were arguing yesterday afternoon, as you know, and at the end of the argument, which was a legal proposition simply, Dr. Rice, my client, was there, and I asked him whether he would come back and he made some remarks about not wanting to come back, and it was agreed to, as I understood it, that he was not to come back, and he is not back. Now, that is the only reason I object to reopening the case, and I think it would not do any good at all, and it might do harm, and I object to re-  
20 opening the case.

THE COURT: Did both sides rest yesterday?

MR. REX: Yes, sir; that is the way I understood it.

THE COURT: Mr. Budd, I am not inclined to think that it would be just fair to reopen the case in the absence of the plaintiff.

MR. BUDD: The plaintiff is absent of his own volition.  
30

THE COURT: Very true, but he had a right to assume

that the testimony was closed when you said it was. He is entitled to be here when the testimony is offered, and he is entitled to rely on the status of the case as it was at the close of the day.

MR. BUDD: It is not a very material point. It is just one point of the conversation that was omitted.

THE COURT: It is not the materiality or immateriality, but it is just the situation the case is in. I don't think it should be reopened under the circumstances. <sup>10</sup>

(Mr. Rex renews his motion for a direction of a verdict for the plaintiff and argues and cites authorities.)

MR. BUDD: I have a motion to make in the matter and I would like to move to direct a verdict in favor of the defendant on the ground that the plaintiff has not proved title to the note, and that in order for the plaintiff to recover in this case it was necessary for him to prove the endorsement of Roger Byrnes, and that without proving <sup>20</sup> the endorsement of Roger Byrnes he has not proven that the title to the note is in him; that there is nothing in the testimony showing that the endorsement of Roger Byrnes is proved, and that therefore the plaintiff is powerless to recover; and I make a motion to direct a verdict in favor of the defendant on that ground.

THE COURT: The proof is that the plaintiff proved the signature of Byrnes on the back of the note; proved it was his handwriting. <sup>30</sup>

MR. BUDD: No, sir.

THE COURT: Yes, he did. Well, at least Byrnes adopted it by turning it over. Even if somebody else had signed it it would be the same. I don't feel any doubt about the title to the note.

The Court has admitted the testimony concerning the Dunn note with great misgivings as to its competency, but with the view to give the defendant and the parties in the case the full benefit of all the evidence that would be adduced, and in order that the case might be reviewed,  
10 if at all, in its completest form. The tendency of the Courts to sustain negotiable paper in the hands of innocent holders is so firmly established in the commercial world and the necessity of upholding it so essential to the commercial progress of the community that I am quite clear that the question presented in th's case, it not being contended that the plaintiff paid full value for the paper, becomes one of law for the Court, and not of fact for the jury, and a verdict will be directed for the plaintiff for the amount of the note with interest.

20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

FRANK I. LLOYD, Judge. (Seal.)

MR. BUDD: I also ask an exception to the statement of the Court that a verdict will be directed for the amount of the note with interest, because that is again the law. The law of the State of New Jersey, in several cases which  
30 I can quote to your Honor, says that where fraud is proved in the inception of the note the only amount recoverable is the amount that was paid at the time of the payment with

interest; that he cannot recover the amount of the note with interest. If your Honor would like to hear any authorities I will produce them.

THE COURT: I would like very much to hear such an authority.

(Mr. Budd cites authorities.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)<sup>10</sup>

FRANK I. LLOYD, Judge. (Seal.)

THE COURT: (To the jury.) Gentlemen, under the facts of this case as the Court understands them, they constitute a question of law rather than of fact for your determination, and it is my duty to direct you in the case to render a verdict for the plaintiff for the face of the note, \$410.20.

MR. BUDD: I want now to take the exception that I<sup>20</sup> took in the room after your Honor announced your ruling; also an exception to the other requests that I made, that your Honor did not charge, only the amount paid with interest at this time.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

FRANK I. LLOYD, Judge. (Seal.)

## NEW JERSEY COURT OF ERRORS AND APPEALS.

Herbert A. Rice,  
Defendant in Error,

vs.

<sup>10</sup> Richard C. Barrington,  
Plaintiff in Error.

On Contract.  
Assignment of Error.

And now on this day the plaintiff in error comes into Court and assigns the following causes of error:

First: Because the Trial Judge refused to allow plaintiff's counsel to ask witness, Herbert A. Rice, on cross-examination, the following question: "Well, you had purchased a note from Mr. Byrnes, before this date, which you had found out from the party had been fraudulently obtained from him, had you not?"

Second: Because the Trial Judge ordered the words, "In the presence of a man named George W. DeHaven," to be stricken out of the answer of witness, Doctor R. C. Barrington, in response to the question, "Now, to whom was the note given?"

Third: Because the Trial Judge in the direct examination of Dr. Robert G. Dunn ruled out the question, "Is that the note that you gave for the insurance?"

Fourth: Because the Trial Judge unlawfully directed a verdict for the plaintiff.

Fifth: Because the Trial Judge directed a verdict for the plaintiff.

Sixth: Because the Trial Judge directed a verdict for the amount of the note with interest.

Seventh: Because the Trial Judge admitted improper evidence offered by the plaintiff over the objection of defendant's counsel.

Eighth: Because the Trial Judge overruled proper and legal evidence presented by the defendant.

Ninth: Because the verdict is contrary to law and evidence.

V. CLAUDE PALMER, 10  
JOHN W. WESCOTT,  
Attorneys for Plaintiff in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Herbert A. Rice,

Defendant in Error,

vs.

On Contract.

Richard C. Barrington,

Joinder in Error.

20

And afterwards, the said Herbert A. Rice, by Frederick A. Rex, his attorney, comes into Court and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matter aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, &c.

FREDERICK A. REX, 30  
Attorney for Defendant in Error.

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NEW JERSEY

COURT OF ERRORS AND APPEALS

IN SENATE, JANUARY 18, 1884.

REPORT OF THE CLERK OF THE COURT OF ERRORS AND APPEALS, FOR THE YEAR 1883.

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