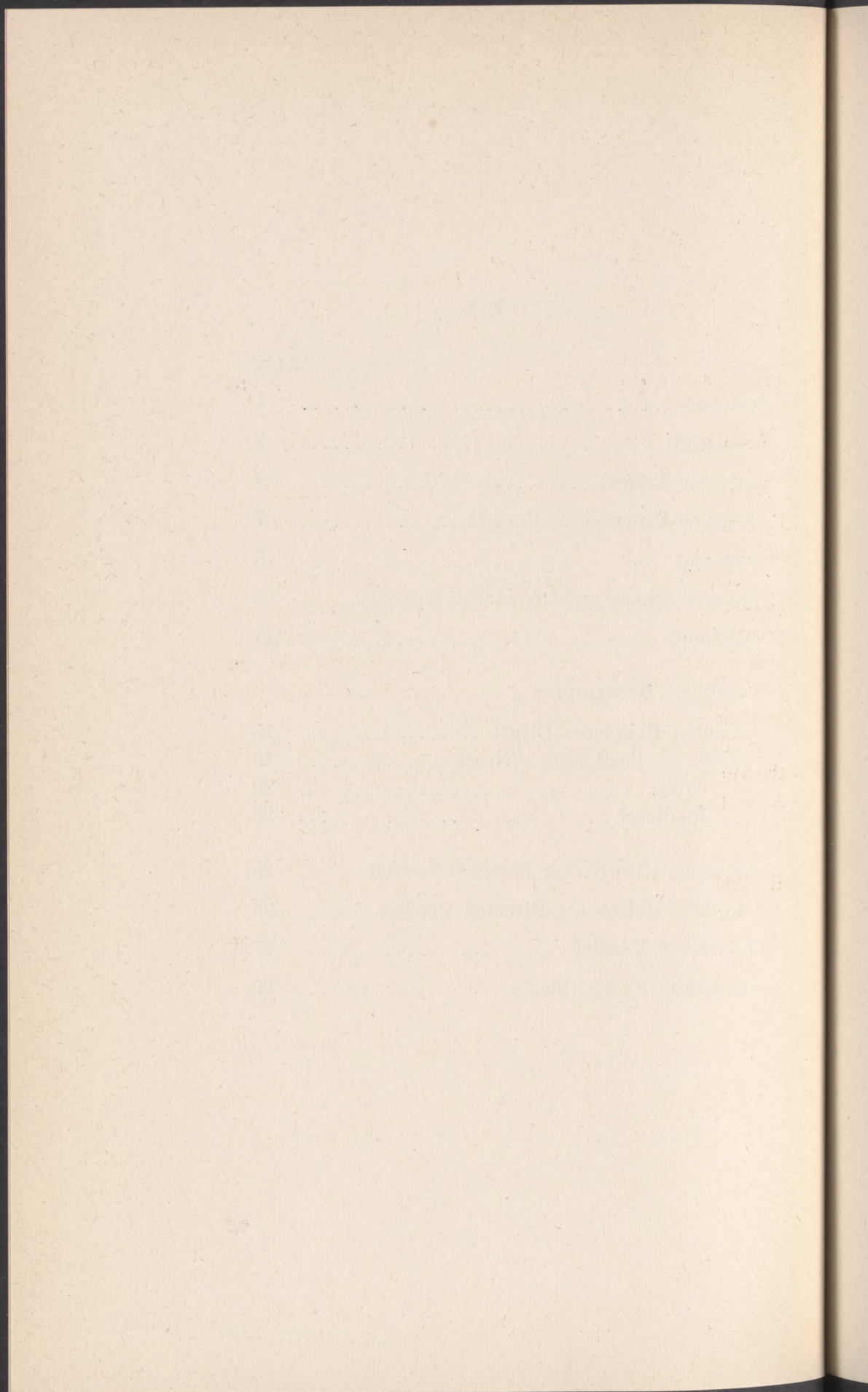


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SUMMONS.

THE STATE OF NEW JERSEY: 10

TO: STELLA B. RIDGWAY, Adminis-
(Seal) tratrix of the Estate of Hartley W. Ridg-
way, Deceased:

YOU ARE SUMMONED to answer the annexed
Complaint of William Ridgway, in an Action at Law
in the Supreme Court.

AND TAKE NOTICE that unless you file your
answer to said Complaint with the Clerk of the Su-
preme Court at Trenton within 20 days after ser-
vice upon you of this Writ and the annexed Com- 20
plaint, Plaintiff may proceed in the suit and Judg-
ment may be entered against you.

WITNESS: Thomas J. Brogan, Chief Justice of
the Supreme Court at Trenton, this 6th day of July,
A. D. 1944.

JAMES J. GAVIN,
Clerk.

HERBERT C. BARTLETT,
Attorney.

30

40

COMPLAINT.

NEW JERSEY SUPREME COURT.
CUMBERLAND COUNTY.

10

WILLIAM RIDGWAY,

Plaintiff,

vs.

STELLA B. RIDGWAY, Admin-
istratrix of the Estate of
Hartley W. Ridgway, De-
ceased,

20

Defendant.

Complaint.

Plaintiff, William Ridgway, of Mickleton, in the
County of Gloucester and State of New Jersey, says:

30 1. On August 19, 1939, Hartley W. Ridgway, now
Deceased, made, executed and delivered to the Plain-
tiff, William Ridgway, his Promissory Note of said
date for the sum of \$5,000.00 payable to Plaintiff or
Order one month from date.

2. On February 25, 1944, the said Hartley W.
Ridgway, died Intestate.

40 3. On March 17, 1944, Defendant, Stella B. Ridg-
way, was duly appointed Administratrix of the Es-
tate of Hartley W. Ridgway by the Surrogate of the
County of Cumberland and qualified, and is now act-
ing as such.

Complaint

4. Said Note is now the property of Plaintiff and has not been paid.

5. A copy of said Note is hereto attached.

6. Plaintiff presented a certified claim to said Administratrix, Stella B. Ridgway, on April 6, 1944, which claim, or a part thereof, has been disputed by said Defendant Administratrix by Notice served on Plaintiff dated June 9, 1944. 10

7. Plaintiff demands as damages FIVE THOUSAND DOLLARS (\$5000) with INTEREST from September 19, 1939.

HERBERT C. BARTLETT,
Attorney of Plaintiff.

20

To the within named Defendant:

The following is a True Copy of the Note referred to in the foregoing Complaint and upon which the same, in whole or in part, is founded:

\$5000.00 Vineland, N. J. Aug. 19, 1939

One Month after date I Promise to pay to the Order of WILLIAM RIDGWAY FIVE THOUSAND DOLLARS at VINELAND NATIONAL BANK AND TRUST CO. Value received without defalcation or discount, and all costs and an Attorney's Fee of ten per cent should it become necessary to collect this through an Attorney. 30

HARTLEY W. RIDGWAY

Due Address

If signers to this note cannot write, their mark should be witnessed by two persons known to the BANK and not signers to the note. 40

Amended Answer

(In margin):

Discount Day FRIDAY
 Paper for DISCOUNT should be Offered
 BEFORE 10 A. M.

- 10 Judgment will be claimed against the Defendant in the sum of FIVE THOUSAND DOLLARS (\$5000.-00) with Interest from September 19, 1939.

HERBERT C. BARTLETT,
 Attorney of Plaintiff.

 AMENDED ANSWER.

- 20 NEW JERSEY SUPREME COURT.
 CUMBERLAND COUNTY.

- | | | |
|----|---|--|
| | WILLIAM RIDGWAY, | {
Action at Law.
Amended Answer. |
| | Plaintiff, | |
| | vs. | |
| | STELLA B. RIDGWAY, Admin-
istratrix of the Estate of | |
| 30 | Hartley W. Ridgway, De-
ceased, | }
Defendant. |
| | Defendant. | |

Defendant, STELLA B. RIDGWAY, Administra-
 trix of the Estate of Hartley W. Ridgway, Deceased,
 residing in the Township of Landis, County of Cum-
 berland and State of New Jersey, says that:

Amended Answer

1. She has no information or knowledge sufficient to form a belief as to the allegations set forth in paragraph one of the Complaint, and therefore leaves plaintiff to his proofs.

2. Defendant admits the allegations contained in paragraph two. 10

3. Defendant admits the allegations contained in paragraph three.

4. Defendant denies that the note referred to in paragraph four has not been paid and leaves plaintiff to his proofs with respect to the other allegations contained in said paragraph.

5. Defendant admits that annexed to the Complaint filed herein is what purports to be a copy of a note but defendant leaves plaintiff to his proofs with respect thereto. 20

6. Defendant admits the allegations contained in paragraph six of the Complaint.

7. Defendant denies the allegations contained in paragraph seven. 30

FIRST SPECIAL DEFENSE.

Defendant as and for her first special defense alleges that there is no consideration in support of the note sued upon and mentioned in the Complaint.

SECOND SPECIAL DEFENSE.

Defendant as and for her second special defense
says that plaintiff is not a holder in due course of
the note mentioned and sued upon in the plaintiff's
10 Complaint.

THIRD SPECIAL DEFENSE.

Defendant as and for her third separate defense
says that the note, which has been sued upon by the
plaintiff was paid on or before October 1, 1942.

SAMUEL L. SHAPIRO,
Attorney for the Defendant.

20

30

40

POSTEA ON DIRECTION OF VERDICT.

NEW JERSEY SUPREME COURT.

CUMBERLAND COUNTY.

10

WILLIAM RIDGWAY,

Plaintiff,

vs.

STELLA B. RIDGWAY, Admin-
istratrix of the Estate of
Hartley W. Ridgway, De-
ceased,

Defendant.

Action at Law.
Postea on Direction of
Verdict.

20

This case was tried before Hon. Howard Eastwood, Circuit Court Judge, with a jury at the Cumberland Circuit Court on the 30th day of April, A. D. 1945.

The said Judge directed the jury to return a verdict against the Defendant and in favor of the Plaintiff for SIX THOUSAND SEVEN HUNDRED AND EIGHT DOLLARS AND THIRTY-THREE CENTS (\$6708.33), and the jury did accordingly return a verdict against the Defendant and in favor of the Plaintiff for the said sum of SIX THOUSAND SEVEN HUNDRED AND EIGHT DOLLARS AND THIRTY-THREE CENTS (\$6708.33).

30

HOWARD EASTWOOD,

Judge.

40

JUDGMENT.

NEW JERSEY SUPREME COURT.

10

WILLIAM RIDGWAY,

Plaintiff,

vs.

STELLA B. RIDGWAY, Admin-
istratrix of the Estate of
Hartley W. Ridgway, De-
ceased,

Defendant.

Action at Law.

On Postea.

Herbert C. Bartlett,
Attorney.

20

\$6708.33

68.68

\$6777.01

30

Judgment entered this fifth day of May, A. D.
nineteen hundred and forty-five in favor of plaintiff
and against the defendant for the sum of six thou-
sand seven hundred and eight dollars and thirty-
three cents damages and sixty-eight dollars and
sixty-eight cents costs.

THOMAS J. BROGAN,
Chief Justice.

I, James J. Gavin, Clerk of the Supreme Court
of the State of New Jersey, do certify that the fore-
going is a true copy of the Judgment entered in

40

Notice of Appeal and Grounds of Appeal

9

above-stated cause, which said Judgment is recorded in this office in Vol. 68 of Judgments, page 369. I further certify that said Judgment is not satisfied of record.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twelfth day of September, A. D. nineteen hundred and forty-five. 10

JAMES J. GAVIN,

(Seal)

Clerk.

NOTICE OF APPEAL AND GROUNDS OF
APPEAL.

NEW JERSEY SUPREME COURT.

CUMBERLAND COUNTY.

20

WILLIAM RIDGWAY,

Plaintiff,

vs.

STELLA B. RIDGWAY, Admin-
istratrix of the Estate of
Hartley W. Ridgway, De-
ceased,

Defendant.

Action at Law.
Notice of Appeal and
Grounds of Appeal.

30

TO: HERBERT C. BARTLETT, ESQ., AT-
TORNEY OF PLAINTIFF:

TAKE NOTICE that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

40

10

Notice of Appeal and Grounds of Appeal

1. Because the trial court erred in not directing a verdict against the plaintiff.

2. Because the trial court erred in directing a verdict against the defendant.

Dated: September 11, 1945.

10

SAMUEL SHAPIRO,
Attorney of Defendant.

[ENDORSED.]

20

Service of the above Notice of Appeal and Grounds of Appeal is hereby acknowledged this 12th day of September, 1945.

Herbert C. Bartlett,
Attorney of Plaintiff.

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TESTIMONY.

NEW JERSEY SUPREME COURT.
CUMBERLAND COUNTY.

10

WILLIAM RIDGWAY,	}	Action at Law.
Plaintiff,		
vs.		
STELLA B. RIDGWAY, Admin- istratrix of the Estate of Hartley W. Ridgway, De- ceased,		
Defendant.		20

April 30, 1945.

BEFORE HONORABLE HOWARD EASTWOOD,
Judge, and a jury, Court House, Bridgeton,
New Jersey.

30

APPEARANCES:

HERBERT C. BARTLETT, ESQ., counsel for
the plaintiff.

SAMUEL L. SHAPIRO, ESQ., and DAVID L.
HORUVITZ, ESQ., counsel for the defendant.

(A jury is duly impaneled and sworn.)

40

(Mr. Bartlett makes an opening address to the jury on behalf of the plaintiff.)

(Mr. Shapiro makes an opening address to the jury on behalf of the defendant.)

10

WILLIAM RIDGWAY, the plaintiff, called in his own behalf, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

BY MR. BARTLETT:

- 20 Q. Mr. Ridgway, you are the plaintiff in this suit?
A. I am.
Q. Where are you living at the present time?
A. Mickleton.
Q. That is in what county?
A. I don't know the county.
Q. Is it in Gloucester County?
A. Gloucester County.
Q. Previous to the death of your son where did you live?
A. Vineland.
- 30 Q. Did you live with your son in Vineland?
A. What is that?
Q. Did you live with your son in Vineland?
A. Yes.
Q. What was the name of your son?
A. Hartley W. Ridgway.
Q. What business were you and your son engaged in in Vineland?
A. In the feed business.
Q. Did you have a retail store in Vineland?
- 40 A. Yes.

William Ridgway—Direct

Q. What was the name of the company that operated this store?

MR. HORUVITZ: I object to that. I think these matters involve transactions with the decedent, which under the statute the witness would be disqualified from answering. I don't know the relationship between this and the promissory note. 10

(Argument by counsel.)

MR. BARTLETT: I won't press that any further.

Q. Mr. Ridgway, was your son indebted to you on August 19, 1939?

MR. HORUVITZ: I object to that, your Honor. 20

THE COURT: Sustain the objection.

Q. Now, Mr. Ridgway, I show you a piece of paper and ask you what is that paper?

A. That is the paper.

Q. What kind of paper is that, Mr. Ridgway?

A. A note.

Q. Whose signature is at the bottom of that note? 30

MR. HORUVITZ: I object.

A. Hartley W. Ridgway.

THE COURT: That answer will be stricken. Please don't answer questions, Mr. Ridgway, while there is an objection being made by counsel.

MR. HORUVITZ: I object to the question as propounded as to whose signature appears on the note. 40

Unquestionably this note forms, as far as the plaintiff's suit is concerned, a part of a series or an entire transaction with the decedent. This gentleman is, therefore, precluded from testifying as to any part of the transaction.

10 (Argument by counsel.)

THE COURT: I see no objection to the witness at least identifying the signature and the Court construes it now that it will have no bearing upon the proof of the note itself.

I will allow the question to be answered and allow you an exception.

MR. HORUVITZ: Exception.

20

A. Hartley W. Ridgway.

Q. Was your son indebted to you when that note was given?

MR. HORUVITZ: I object to that, your Honor.

THE COURT: Objection sustained.

30 Q. Did your son speak to you and tell you about this note?

A. He did.

MR. HORUVITZ: I object.

THE COURT: Mr. Ridgway, did you understand my instructions not to answer questions when counsel on the other side makes an objection?

THE WITNESS: Yes, sir.

40

Edwin E. Tombleson—Direct

THE COURT: Please refrain from answering questions when the objection is pending.

(Objection sustained.)

Q. Mr. Ridgway, this note has been in your possession? 10

Q. Has it ever been paid?

A. No.

MR. HORUVITZ: I object.

THE COURT: Objection sustained.

MR. BARTLETT: Then that is all, cross-examine.

20

MR. HORUVITZ: No cross-examination.

EDWIN E. TOMBLESON, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

30

BY MR. BARTLETT:

Q. Mr. Tombleson, where do you reside?

A. Vineland.

Q. What is your occupation in Vineland?

A. Assistant cashier of the Vineland National Bank & Trust Company.

Q. How many years have you been connected with the Vineland National Bank & Trust Company?

A. Twenty-three.

40

Q. Do you know Mr. Ridgway the plaintiff in this suit?

A. I do.

Q. Did you know his son Hartley W. Ridgway?

A. I did.

10 Q. I show you a paper and ask you whether you can tell whose signature that is?

A. That is the signature —

MR. HORUVITZ: (Interrupting.) Just a moment. The answer is yes or no, your Honor.

THE COURT: The question is, state whose signature it is.

20 MR. HORUVITZ: Then I object to that, without showing that the witness is qualified.

THE COURT: Hasn't he previously testified —

MR. BARTLETT: (Interrupting.) I will ask him that. I will withdraw that question.

Q. Mr. Tombleson, Hartley W. Ridgway did his banking business at the Vineland National Bank?

A. He did.

30 Q. And you have seen his signature on other papers at the bank?

A. Yes.

Q. Are you acquainted with his signature?

A. Yes.

Q. Is that his signature?

A. Yes.

MR. BARTLETT: I offer this note in evidence.

40 MR. HORUVITZ: If your Honor please, I think

I should be entitled to the right of cross-examination.

MR. BARTLETT: I will have it marked for identification now and then later put it in evidence.

THE COURT: Mark it for identification. 10

(The note is received and marked Exhibit P-1 for identification.)

Q. Mr. Tombleson, as the assistant cashier of the Vineland National Bank were you acquainted with transactions at that bank between Hartley W. Ridgway and William Ridgway?

A. Yes.

Q. Can you tell us whether Hartley W. Ridgway 20
borrowed at the bank?

A. Yes.

Q. Who endorsed his paper?

MR. HORUVITZ: I object to "Who endorsed his paper?" I don't see how that would be relevant in this situation.

(Argument by counsel.)

THE COURT: I will sustain the objection and 30
allow you an exception.

Q. Did Mr. William Ridgway pledge certain securities with your bank?

MR. HORUVITZ: I object for the same reasons as assigned before.

THE COURT: Is this evidence to be tied up with 40
this particular note? Is it preliminary to that?

MR. BARTLETT: I am going to try to tie it up with this note.

THE COURT: I will permit it temporarily and if it is not tied up with the note I will strike it out later.

10

Q. Do you know what securities he pledged there, Mr. Tombleson?

MR. HORUVITZ: I don't want to continuously object, but if it is tied up it will be admissible, but otherwise not.

THE COURT: If this line of questioning is not tied up with the note which is the basis of the suit, you can move to strike it out.

20

Q. Were those his own securities?

A. Yes.

Q. Were they his own securities?

A. Yes.

Q. As the notes came due did the bank charge up against them and liquidate the note?

A. Yes.

MR. HORUVITZ: I object.

30

(Argument by counsel.)

THE COURT: It will be admitted temporarily and if it is not connected with the note it will be stricken along with the other testimony.

Q. Can you tell, Mr. Tombleson, how much the bank charged against the collateral of Mr. William Ridgway?

40

A. I imagine I think it was approximately —

MR. HORUVITZ: (Interrupting.) I object, the records are the best evidence.

THE COURT: Objection sustained.

10

Q. I show you a paper, Mr. Tombleson, and ask you what is that paper?

A. That is a letter from the Vineland National Bank & Trust Company.

Q. Who is it signed by?

A. J. P. Creamer, cashier.

Q. What does that letter set forth?

MR. HORUVITZ: I object to what it sets forth; let him read it.

20

THE COURT: I think the objection is well taken, and allow you an exception.

Q. I will ask you to read it, if you will, to yourself, and then I will question you.

(The witness reads the letter.)

Q. Now that you have read the contents, what is the total charged there on that note against the collateral of William Ridgway?

30

MR. HORUVITZ: Objected to, your Honor.

MR. BARTLETT: That is as far as I can go.

THE COURT: We haven't any idea as to who the letter is written by and what it is about.

40

Q. Who wrote the letter?

A. J. P. Creamer, cashier.

Q. To whom is it written?

A. Herbert C. Bartlett.

Q. What question was it in answer to?

10 MR. HORUVITZ: I object, your Honor.

THE COURT: Objection sustained.

MR. BARTLETT: Then I think those are all the questions I can ask of this witness.

CROSS-EXAMINATION.

BY MR. HORUVITZ:

20

Q. As I understand it, Mr. Tombleson, you testified that the signature as appeared on the note was the signature of Hartley W. Ridgway?

A. I did.

Q. When was the last time you saw the signature of Hartley W. Ridgway that appeared in transactions through your bank?

A. Just prior to his death.

Q. When did he die?

30 A. I am not sure.

Q. How can you say that you saw his signature prior to his death?

A. I came in contact with the signatures regularly of practically all items as they go through.

Q. You are in charge of the interpretation of the signatures in the bank to determine whether they are or are not the true specimens of the signatures of the makers of the check?

A. We go by our records on that.

40 Q. That is your guide?

A. That is our guide.

Q. Will you present your record of the signature card of Hartley W. Ridgway?

A. Would I?

Q. Yes.

(The witness hands a card to Mr. Horuvitz.) 10

Q. Now, it is true, is it not, Mr. Tombleson, that this is the record of the signature of Hartley W. Ridgway?

A. That is right.

Q. Will you compare the first letter of the first word, the first letter of the word "Hartley," the "H" with this "H," and tell me if you see any similarity or identification between the way the "H" is prepared? 20

A. The "H" doesn't exactly correspond.

Q. It doesn't exactly correspond, does it?

A. No.

Q. Look at the "y," which is the last letter of the word "Hartley," and tell me whether that corresponds?

A. I would say that it did.

Q. Do you see a similarity or is there a dissimilarity between the "y"?

A. I see a similarity. 30

Q. Do you see any dissimilarity?

A. It is not exact.

Q. That is right. Now, how many depositors do you have in your bank?

A. All told?

Q. Yes.

A. That would be hard to say. A great number.

Q. Well, approximately how many?

A. Around seven thousand.

Q. And you are the person who is called upon to 40

determine whether the signatures that appear on drafts or other negotiable instruments are, in fact, the true signatures of the depositors in your bank?

A. If there is any question it is taken up with me or one of the other officers.

10 Q. You hold yourself out as being able to identify true signatures?

A. I don't quite get the question.

MR. HORUVITZ: Mr. Stenographer, please repeat the question.

(The stenographer reads the question as follows: "Question: You hold yourself out as being able to identify true signatures?")

20 THE WITNESS: We have had considerable experience in identifying signatures on many paid items.

MR. HORUVITZ: I am asking you about you yourself.

THE COURT: What do you mean, Mr. Horuvitz, about signatures that might relate to anybody's signature?

30 Q. Do you hold yourself out as being able to identify signatures in the bank?

A. I do.

Q. And therefore your knowledge should not be confined to signatures as they appear in the bank but generally you would be able to identify signatures, is that correct?

A. I wouldn't take in that much territory.

Q. You just limit it to your bank?

40 A. I would.

Edwin E. Tombleson—Re-direct

Q. When was this signature card executed, Mr. Tombleson?

A. I do not know. I presume you refer to the date.

Q. Yes, sir.

A. I do not know.

Q. No date appears on there, incidentally. I have in my hand a piece of paper upon which appears three signatures. The last signature I just wrote as I was sitting in the courtroom. Will you look at the first two and advise me whether they are the same or different; that is, written by the same person? If you are unable to state, why you may say so. 10

A. You want an opinion?

Q. Yes.

A. I would say that two of them are written by the same person and that the "D" of the first had been confused. 20

Q. Would you say that all were written by the same person?

A. There is a question. I would say that two definitely were, and there is a question on the third.

MR. HORUVITZ: You wouldn't say whether the third was or not. I might say that I wrote all three signatures.

That is all.

30

RE-DIRECT EXAMINATION.

BY MR. BARTLETT:

Q. I suppose you have seen Hartley W. Ridgway's signature on other notes, other papers at the bank?

A. Yes, I have.

Q. And you have testified that that is his signature?

A. I did.

40

MR. BARTLETT: That is all. We had one other witness and she has been unable to be here this morning.

The plaintiff rests.

10

MR. HORUVITZ: I have a motion to make in chambers.

THE COURT: A ten minute recess will be taken.

(The following takes place in chambers.)

MR. BARTLETT: I wanted to offer that note into evidence after the testimony of Mr. Tombleson and would like to reopen my case for that purpose.

20

THE COURT: Any objection to the note being admitted?

MR. HORUVITZ: We object to the admission of the note into evidence on the ground that there is no proof of execution, and that the witness as presented by the plaintiff is not sufficiently competent to establish himself as an expert on signatures.

30

(Argument by counsel.)

THE COURT: The note will be admitted and marked as an exhibit for the plaintiff.

(The note previously marked Exhibit P-1 for identification is received in evidence and marked Exhibit P-1.)

40

MR. BARTLETT: We rest.

MR. HORUVITZ: We rest.

Now, if your Honor please, we move for a directed verdict on this theory: This is a suit instituted by William Ridgway against Stella B. Ridgway, Administratrix of the Estate of Hartley W. Ridgway, deceased. There is alleged among other things, the execution of the note, the death of the intestate. We admit the death of the intestate, there is no argument as to that, and the appointment of Stella B. Ridgway. 10

It is urged that the note has not been paid. There is no proof of the nonpayment of the note, neither is there any proof of the execution of the note which, I understand, in a situation like this is an element that must be proved.

20

(Argument by counsel.)

(A recess for lunch is taken from 11:45 a. m. to 1:00 p. m.)

AFTERNOON SESSION.

(The following also takes place in chambers.) 30

THE COURT: This suit is based upon a promissory note made by the defendant's decedent Hartley W. Ridgway to William Ridgway for five thousand dollars, dated August 19, 1939, payable one month after date to the order of the plaintiff William Ridgway.

The plaintiff testified, without objection on the part of the defendant, that the note had always been

40

in his possession, and the signature of defendant's decedent, Hartley W. Ridgway, was proven by a Mr. Tombleson, assistant cashier of the Vineland National Bank & Trust Company.

The defendant rested her case without offering any testimony whatever.

10 Motion has been made by the defendant for a directed verdict of no cause for action. Under the proofs and the provisions of the Negotiable Instruments Act of New Jersey I feel that I must refuse to grant defendant's motion.

Under the Negotiable Instruments Act, 7:2-24, it provides that: "Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party there-
20 to for value."

The note in question having been proven to be in possession of the plaintiff and the defendant's decedent's signature having been established, constitutes a prima facie case of the creation of an obligation by defendant's decedent to plaintiff for the full sum of five thousand dollars, together with interest thereon, from August 19, 1939, and no testimony was offered by the defendant as to payment of said note; in fact, there was no testimony offered by defendant
30 as to the validity of said note, its consideration or any other matter connected with the said note which is the basis of this suit.

The motion is, therefore, denied, and exception allowed.

MR. BARTLETT: Plaintiff asks for a directed verdict in the amount of the note, five thousand dollars, and interest to date of \$1,708.33 or a total of \$6,708.33.

Direction of Verdict

THE COURT: There having been no testimony offered by the defendant disputing the promissory note which is the subject of this suit, and the plaintiff William Ridgway having established by his testimony that the note had always been in his possession and the signature of the maker of the note, defendant's decedent, having been established by the testimony of Mr. Tombleson, assistant cashier of the Vineland National Bank & Trust Company, there is no question of fact involved in the case which would justify the submission of the case to the jury for its determination. 10

Therefore, the motion for a directed verdict in favor of the plaintiff against the defendant for the face amount of the note, \$5,000, together with interest thereon, from August 19, 1939, which interest is calculated at the sum of \$1,708.33, making a total of principal and interest due on said note of \$6,708.33, is directed to be entered. 20

MR. HORUVITZ: Exception.

THE COURT: Exception allowed.

(The following takes place in the courtroom.)

THE COURT: Ladies and gentlemen of the jury: 30
I regret the fact that you have been required to sit around a good part of today and, apparently, seemingly at least waste your time.

However, very important legal questions have been raised by both counsel in connection with the case that you were drawn to try and it has been, therefore, necessary at quite some length for counsel to argue the matter before the Court.

The respective motions that have been made by counsel to the Court have been disposed of and it 40

- will not be necessary for you to retire and deliberate on this case, because the Court has determined that under all the testimony that has been submitted that the plaintiff William Ridgway is entitled at your hands to a verdict against the defendant Stella B. Ridgway, Administratrix of the Estate of Hartley W. Ridgway, deceased, for the principal of the note made by Hartley W. Ridgway to William Ridgway for five thousand dollars, dated August 19, 1939, together with interest thereon at the rate of six per cent per annum from August 19, 1939 and I, therefore, direct you to return a verdict for \$6,708.33 which represents the total of the principal of the note, which is the basis of this suit, and interest of \$1,708.33 in favor of William Ridgway, plaintiff, against Stella B. Ridgway, Administratrix of the Estate of Hartley W. Ridgway, deceased, the verdict to be returned through your forelady.

The clerk will take the verdict.

(The clerk takes the verdict.)

STENOGRAPHER'S CERTIFICATE.

NEW JERSEY SUPREME COURT.

CUMBERLAND COUNTY.

10

WILLIAM RIDGWAY,

Plaintiff,

vs.

STELLA B. RIDGWAY, Admin-
istratrix of the Estate of
Hartley W. Ridgway, De-
ceased,

Defendant.

Stenographer's
Certificate.

20

I, Raymond W. Hurter, Official Court Stenog-
rapher of the County of Cumberland, do swear that
I did well and truly record stenographically the
proceedings had at the trial of the above-entitled
case, and that the foregoing is a true transcript of
my stenographic notes of such proceedings, which
trial was held before the Honorable Howard East-
wood, and a jury, in the County of Cumberland on
Monday, April 30, 1945, at Bridgeton, New Jersey.

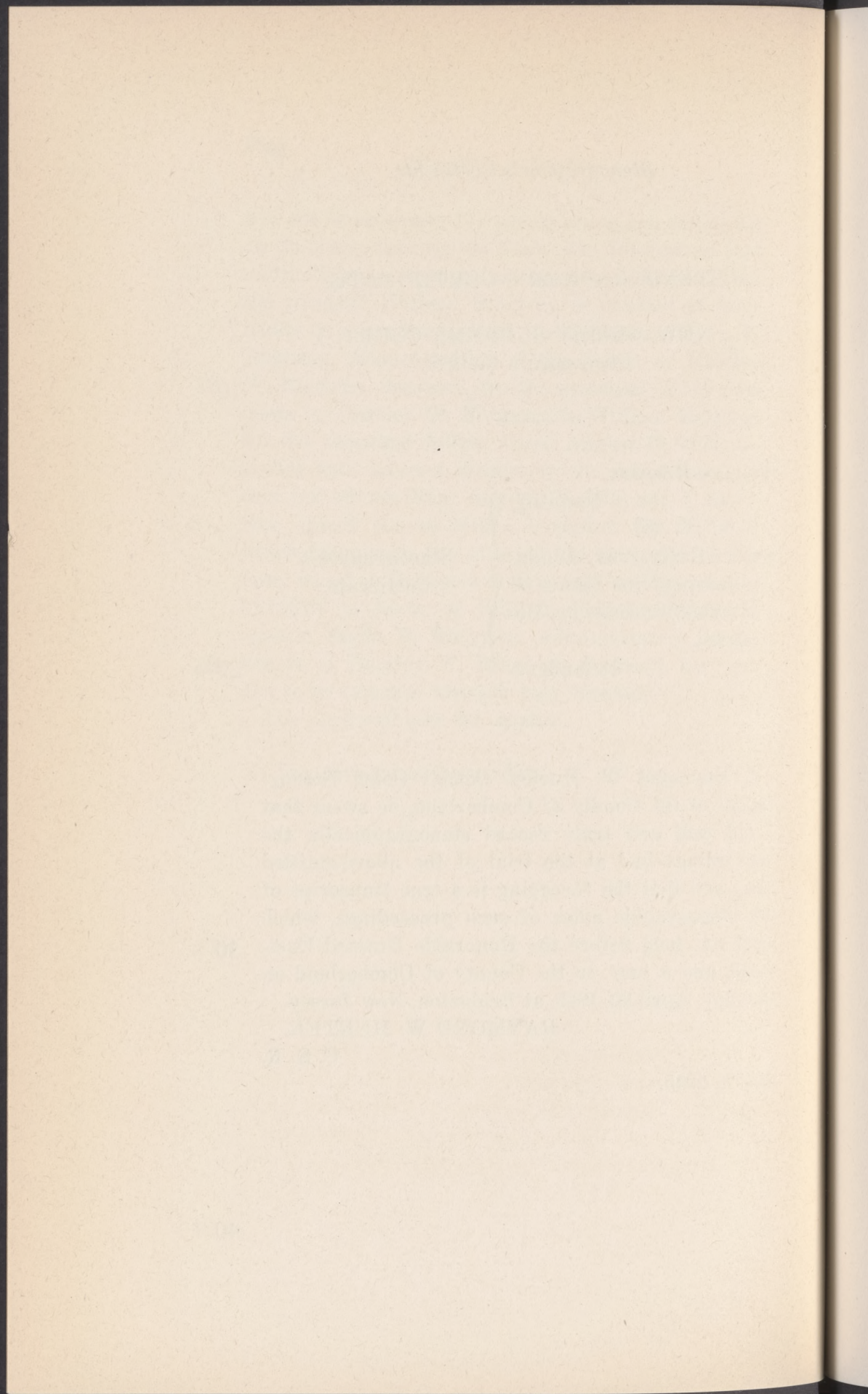
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RAYMOND W. HURTER,

C. S. R.

May 7, 1945.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILLIAM RIDGWAY,
Plaintiff-Respondent,

vs.

STELLA B. RIDGWAY, Administratrix of the Estate of
Hartley W. Ridgway, Deceased,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF OF DEFENDANT-APPELLANT.

FACTS.

This is a case involving a suit on a promissory note allegedly made on August 19, 1939, by Hartley W. Ridgway, now deceased, to the Plaintiff, William Ridgway, payable in one month from the date thereof at the Vineland, New Jersey, National Bank and Trust Company. The Defendant, Stella B. Ridg-

Brief of Defendant-Appellant

way, is the wife of the deceased, and is the Administratrix of his Estate. The answer filed by the Defendant contains a general denial of the allegations of the complaint, and sets up three special defenses. The first alleges that there was no consideration in support of the note, the second alleges that the Plaintiff is not a holder in due course, and the third alleges payment.

On the trial at the Circuit on April 30, 1945, the testimony of the Plaintiff was confined to the following:

- (1) that he was the Plaintiff
- (2) that he and his son, prior to the death of the latter, were engaged in the feed business
- (3) that the signature of Hartley W. Ridgway, the Administratrix's intestate, was at the bottom of the note.

It is to be noted at this point, that the Plaintiff did not testify as to any obligation owing on the note. One Edwin E. Tombleson was called as a witness for the Plaintiff and testified to the following:

- (1) That he was the assistant cashier of the drawee's Bank.
- (2) That he was acquainted with the signature of the decedent and that the decedent's signature appeared on the note that is the subject of this suit.

The Defendant offered no testimony at the trial, and at the conclusion of the Plaintiff's case, rested. Counsel for the Defendant then moved for a directed verdict. (R. 25, ll. 1-20.)

The reasons assigned on the motion were twofold.

Brief of Defendant-Appellant

First, there was no proof of non-payment. It is to be observed that the fourth paragraph of the Complaint (R. 3) affirmatively pleads that the note has not been paid. The second reason argued was that there was no proof of the execution of the note. The first paragraph of the Complaint (R. 2) affirmatively pleads the making, executing and delivery of the note.

The Court denied this motion and an exception was duly taken and allowed. The Plaintiff then sought a direction of verdict, whereupon the Court, over objection and exception, directed a verdict in favor of the Plaintiff and against the Defendant on the note in the sum of \$6,708.33.

The record is barren of any proof

- (1) Of the making, executing and delivery of the note
- (2) That any monies were due under the note
- (3) That the Plaintiff was a holder in due course
- (4) That the note upon the making, had any sum specified thereon.

Items 1 and 2 were specifically pleaded as stated hereinbefore.

ARGUMENT.

Both reasons assigned for reversal will be argued together.

“‘Delivery’ means transfer of possession, actual or constructive, from one person to another.” N.J.S.A. 7:1-2, and by “‘execution’ is meant both the signing and delivery of the instrument. The mere signing

Brief of Defendant-Appellant

does not constitute execution." 8 C. J. 42, 23 C. J. 278. *Trustees System Co. of Newark vs. Stoll*, 179 A. 372, 13 N. J. Misc. 490.

Delivery is in general presumed from possession of the bill or the note, but this presumption that a bill or a note was delivered, arising from possession of the instrument by the payee, may be rebutted. So the burden of proving delivery as part of the execution of the instrument is on the plaintiff, when the plea properly puts the execution in issue. 8 C. J. 1001. The answer (R. 5, Par. 1) alleges that the Defendant "has no information or knowledge sufficient to form a belief as to the allegations set forth in paragraph one of the complaint, and therefore leaves plaintiff to his proofs." The responsive pleading or plea, therefore, puts the execution and delivery in issue, neither of which was the subject of any proof on the part of the Plaintiff, and it was for the Plaintiff, in order to succeed to prove the execution of the instrument, including its delivery and the signature of the Defendant's intestate. 8 C. J. 958.

Had the Plaintiff pleaded that he was merely the holder of the note in question, a different situation may have been created, which may have brought the Plaintiff within the provision of cases holding that the proof and offer of a note establishes a prima facie case. Having expressly pleaded, however, the making, execution and delivery, he was duty bound to prove these allegations.

It is respectfully urged that the judgment of the court below be reversed.

SAMUEL L. SHAPIRO,

Attorney for Defendant-Appellant.

DAVID L. HORUVITZ,

Of Counsel with Defendant-Appellant.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

WILLIAM RIDGWAY,
Plaintiff-Respondent,

vs.

STELLA B. RIDGWAY, administratrix of the Estate of
Hartley W. Ridgway, deceased,
Defendant-Appellant.

ACTION AT LAW.

ON APPEAL FROM NEW JERSEY SUPREME COURT.

BRIEF OF PLAINTIFF-RESPONDENT.

FACTS.

1. The suit in this case was brought upon a Promissory Note given by Hartley W. Ridgway, now Deceased, to his father, William Ridgway, in the sum of \$5000.00 bearing date August 19, 1939, payable one month from date (a copy of the Note appears on page 3 of case).

Brief of Plaintiff-Respondent

2. Claim was made against the Estate of Hartley W. Ridgway and notice then given to Plaintiff that the claim was disputed.

3. Suit was brought in the New Jersey Supreme Court and tried at the Cumberland Circuit resulting on April 30, 1945, in a directed verdict for Plaintiff in the sum of \$6708.33 being Principal and Interest due on said Note.

DEFENDANT-APPELLANT RAISES TWO POINTS ON APPEAL:

1. Because the Trial Court erred in not directing a verdict against the Plaintiff.

2. Because the Trial Court erred in directing a verdict against the Defendant.

BRIEF OF ARGUMENT.

Point I.

Plaintiff had proved his case answering all requirements of our Statute.

“Every Negotiable Instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.”

Revision 7-2-24.

Brief of Plaintiff-Respondent

Plaintiff proved the signature of the maker of the Note by Edwin E. Tombleson, Assistant Cashier of the Vineland National Bank and Trust Company, and proved possession of the Note in Plaintiff, making out a prima facie case within the meaning of the Statute.

The Note on its face answered every requirement of the Statute: (1) Date, (2) Amount, (3) When payable, (4) Payable to order or bearer, (5) Certainty of same, (6) Promise unconditional.

Presentment for payment is not necessary in order to charge the person primarily liable on the Instrument.

Rev. 7-2-70.

“Where Plaintiff produces at the Trial the Promissory Notes upon which the action is instituted and proves the signature of the payees and endorsers (the making of the Notes having been admitted in the Answer) and rests it is not error for the Trial Court to refuse to grant a motion to non-suit based upon the grounds that the Plaintiff had offered no proof of value given for the Notes, no proof of consideration to the maker and no proof that the Plaintiff is a holder in due course as the Negotiable Instrument Law provides in Section 24 (3 Compiled Statutes, p. 3741) that every Negotiable Instrument is presumed to have been issued for a valuable consideration and every person whose signature appears thereon to have been a party for value; and in Section 59 (3 Compiled Statutes, p. 3741) that every holder is deemed prima facie to be a holder in due course until it is shown that his title to Instrument is defective.”

Penbrook Trust Co. vs. Wiegand & Co., 100
N. J. Law 353.

Point II.**Because the Trial Court erred in directing a verdict against Defendant.**

Plaintiff was entitled to a directed verdict against Defendant. He had proved his Note, and it was then up to the Defendant to put in her defense, if any.

The Revision of New Jersey bears out Plaintiff's contention: "Possession of Note is prima facie proof of ownership."

Merchants Bank v. Roosnia, 2 N. J. Misc. Reports, p. 690.

The present case comes within the case of *Trustees System Company of Newark vs. Lisena*, 106 N. J. Law, p. 549.

"When Plaintiff in a suit on a Promissory Note proves the Note and offers the same in evidence, he establishes a prima facie case entitling him to go to the Jury. The Note speaks for itself and gives inherent evidence of validity."

Quoting further from the same case, on page 552:

"Our Negotiable Instrument Act (Comp. Stat., p. 3734) provides, in Section 24, that every Negotiable Instrument shall be deemed prima facie to have been issued for a valuable consideration, and that every person whose signature appears thereon is deemed to have become a party thereto for value. Therefore, when the Plaintiff proved the Notes in suit, offered them,

Brief of Plaintiff-Respondent

and rested, he established a prima facie case; and that entitled him to go to the Jury. *Polhemus v. Prudential Realty Corp.*, 74 N. J. L. 570-580; 67 Atl. Rep. 303. The notes spoke for themselves. They gave inherent evidence of validity."

The *Polhemus v. Prudential Realty Corp.*, cited supra, holds that:

"A Plaintiff who has made a prima facie case within the scope of the foregoing principles has shown in himself a right of action which entitles him to go to the Jury. A non-suit is then rightly refused.

When a Defendant has put in a plea denying the truth of the Plaintiff's declaration, but wholly abstains from supporting his plea by evidence, virtually resting his case on the evidence of the Plaintiff, the prima facie evidence of the Plaintiff not merely entitles him to go to the Jury, but, in the absence of all discrediting circumstance, becomes decisive of the issue. In such a case a direction of a verdict for the Plaintiff is not erroneous."

Quoting further from *Polhemus v. Prudential Realty Corporation*, 74 N. J. Law at page 581:

"II. We now come to the second inquiry, whether when the Defendant below abstained from offering any evidence in support of his plea the Plaintiff had already proved such facts as warranted the direction of a verdict in his favor. In considering this question, we are not asked what would have been proper had the Defendant done anything in the way of rebut-

Brief of Plaintiff-Respondent

ting the Plaintiff's case or setting up an affirmative defense either under general principles of law or under any provision of the Negotiable Instrument Act of 1902. *We are merely to inquire* whether a direction was proper and lawful under existing circumstance.

The Defendant below put in his plea denying the truth of the Declaration and thus so far as pleading goes, made his defense. *He wholly failed, however, to support his plea by evidence going to the point of issue. He virtually rests his case on the evidence of Plaintiff.*"

Polhemus v. Prudential Realty Company,
74 N. J. Law, p. 581.

In *Dolin v. Darnell*, 115 N. J. Law, p. 508, in which case Plaintiff was non-suited and the non-suit sustained in this Court it was shown: That the Plaintiff was not in possession of the Notes either personally or by his agent nor was he the beneficial owner thereof and therefore was not entitled to maintain the action.

Quoting from p. 510, *Dolin vs. Darnell*:

"It was stipulated at the Trial of the Dolin case that Plaintiff did not come into actual physical possession of the Notes until approximately three months after the institution of the suit."

Furthermore, at the Trial, the Plaintiff admitted that he had *no interest* in the Notes whatsoever and therefore the allegation of ownership in the Complaint was not true.

No such situation exists in the present case. Plaintiff was in possession of the Note so testified and produced the same at the Trial.

Brief of Plaintiff-Respondent

The principle is well stated in *Dolin vs. Darnell*, at page 515: The chief reliance of Plaintiff (in *Dolin v. Darnell* trying to overcome the non-suit) is the case of *Newell v. Rosenberg*:

“Now it will be noted in that case the Court cited with apparent approval *Hovey v. Sebring*, 24 Mich. 232, wherein the rule applicable to the present case we think was correctly stated. It is that while the production of the Notes upon the Trial in ordinary cases raises the presumption that the state of facts which authorized the Plaintiff to prosecute the suit in his name existed at the time suit was commenced, yet the Defendant may as here rebut this presumption and defeat the action by showing conclusively that the state of facts existing at the time of the suit was instituted did not authorize the Plaintiff to sue.”

Dolin v. Darnell, 115 N. J. Law, at pp. 515-516.

“It is well settled on a general rule that possession of such Note by the Plaintiff producing it on the Trial is prima facie evidence of his title, or his right to sue upon it, and that the Plaintiff need not be the real or beneficial owner to entitle him to recover.”

Hovey v. Sebring, 24 Mich. 232.

**No evidence presented by Plaintiff that contravenes
Sec. 2-79-2 Revised Statutes as to suits against
one in a Representative Capacity.**

The only proofs put in evidence were:

1. Testimony of Plaintiff he was in possession of the Note and production of the Note at the Trial.
2. Testimony of Edwin E. Tombleson, Assistant Cashier of the Vineland National Bank and Trust Company as to signature of maker. None of this testimony related to any transaction with or statement by decedent.

“The items of Appellant’s claims which were disallowed by the Orphans’ Court were based on Promissory Notes to her order made by decedent. The Appellant produced the Notes and testified that she was the holder thereof. Testimony by her as to the consideration for the Notes would have brought in conversations or transactions with the Deceased and upon objection by exceptants was excluded. The ruling was correct of Section 4 of the Evidence Act (Compiled Statutes, p. 2218, Revision 2-97-2) governs.”

In re Broderson, 112 N. J. Equity, page 534.

Again on page 536 of *Broderson* case:

“The signature of the decedent was proved by disinterested witnesses. Beyond this there was no evidence presented of any consequence. The question is what presumptions arise from the Note. . . . It is the general rule that a Promissory Note is presumed to have been given in

Brief of Plaintiff-Respondent

settlement of maker's debt to payee 8 C. J. 992. Undoubtedly the giver of a Promissory Note raises the presumption that the amount named in it is then owing by the maker to the payee."

John Lucas & Co. vs. Bradley, 246 Federal Rep. 693.

Section 24 of the Uniform Negotiable Instrument's Law (Compiled Statutes, p. 3738, Revision 7-2-24):

"Every Negotiable Instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have been a party thereto for value. The presumption was enforced in *Penbrook Trust Co. vs. Wiegand & Co.*, 100 N. J. Law, p. 353, and *First National Bank v. Keown*, 9 N. J. Misc. R. 892, 156 Atlantic Rep. 3. The Notes in question contain the usual words 'value received'."

In re Broderson, 112 N. J. Eq. at page 536.

See

Provost v. Robinson, Executor, 58 N. J. Law 222;

Wolverson v. VanSyckel, 57 N. J. Law 393;

Vai Wagener, Admr. v. Bourette, 74 N. J. Eq. at page 847.

Defendant had her chance to challenge Plaintiff's claim by putting in a defense, this she failed to do; and on the evidence presented Plaintiff was entitled to a verdict for the amount of his Note with Interest.

Respectfully submitted,

HERBERT C. BARTLETT,
*Attorney for and of Counsel
with Plaintiff-Respondent.*

Bill for Plaintiff-Defendant

Settlement of matter's debt to payee R. L. J. 1932.
Plaintiff bills the defendant in Plaintiff's Note
and assigns the possession that the defendant owned
in it is being made by the defendant to the payee.
John Jones & Co. vs. Plaintiff. The Plaintiff
Bill 1932.

Section 24 of the Uniform Commercial Code
and the law of the United States (1932) Section
1-2-24:

Every transferee of a negotiable instrument is deemed
prima facie to have been issued for a valuable
consideration, and every person who acquires
a negotiable instrument in good faith and for value
thereof for value. The provisions of this section
shall not apply to a transfer of a negotiable instrument
to a transferee who is a party to the instrument.
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shall not apply to a transfer of a negotiable instrument
to a transferee who is a party to the instrument.

Plaintiff and her estate to Plaintiff's
estate for the purpose of the estate (this is added to the
estate of the estate of Plaintiff's estate) and the
estate of the estate of Plaintiff's estate is added
to the estate of the estate of Plaintiff's estate.

Respectfully submitted,
HERBERT C. BARTLETT
Attorney for Plaintiff

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