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1871

Notice of Appeal.

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(Filed, Feb. 18, 1926.)

Monmouth County Circuit Court

HELEN E. VAN WAGGONER
COCKRELL,
Plaintiff-Respondent,

vs.

SADIE O'R. MCKENNA,
Defendant-Appellant.

Action at Law.

20

To: WILLIAM E. FOSTER, Esquire,
Attorney for Plaintiff-Respondent.

Take notice that the defendant-appellant, Sadie
O'R. McKenna, appeals to the New Jersey Court
of Errors and Appeals, from the whole of the
judgment entered in this cause.

30

PERKINS & DREWEN,
Attorneys for Defendant-Appellant.

40

Grounds of Appeal.

(Filed, Feb. 26, 1926.)

MONMOUTH COUNTY CIRCUIT COURT.

10 HELEN E. VAN WAGGONER
COCKRELL,
Plaintiff-Respondent,

vs.

SADIE O'R. MCKENNA,
Defendant-Appellant.

Action at Law.

On Appeal to the
New Jersey Court
of Errors &
Appeals.

20 To: WILLIAM E. FOSTER, Esquire,
Attorney for Helen E. Van Waggoner,
Plaintiff-Respondent.

Take notice that the defendant-appellant, Sadie O'R. McKenna, states the following, as the grounds of her appeal from the Monmouth County Circuit Court to the Court of Errors and Appeals, in the last resort in all causes:

30 1. That the Trial Court erroneously sustained objection to the following question, asked of the witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question:

“Did Mrs. McKenna, in connection with the making of this note, receive any money from Mr. Cockrell?”

Grounds of Appeal.

2. That the Trial Court erroneously sustained objection to the following question, asked of the witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question:

“Will you state to the jury the extent, what Mrs. McKenna had to do with this note?” 10

3. That the Trial Court erroneously sustained objection to the following question, asked of the witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question:

“Why was that request made by you of Mrs. McKenna?” 20

4. That the Trial Court erroneously sustained objection to the following question, asked of the witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question:

“Why was that request made by you of Mrs. McKenna?”

5. That the Trial Court erroneously sustained objection to the following question, asked of the witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question: 30

“What part, if any, did Mr. Cockrell have in the request made of Mrs. McKenna to sign this note?”

6. That the Trial Court erroneously sustained objection to the following question, asked of the

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Grounds of Appeal.

witness, Thomas P. McKenna, and erroneously declined to permit the witness to answer said question:

10 “Did any request of Mr. Cockrell made to you induce your request made to Mrs. McKenna that she sign the note?”

7. Because the Trial Court erroneously allowed the motion to strike out the answer “Yes sir”, given by the witness, Thomas P. McKenna, to the question last hereinabove stated.

20 8. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Thomas P. McKenna, to answer said question:

 “Did Mrs. McKenna receive any consideration, or anything of value, from you for the making of this note?”

9. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Thomas P. McKenna, to answer said question:

30 “Did Mrs. McKenna receive any consideration, or anything of value, from any other person, including Mr. Cockrell, so far as you know?”

10. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Thomas P. McKenna, to answer said question:

 “Did Mrs. McKenna have any dealings with Mr. Cockrell, so far as you know, with regard to making this note?”

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Grounds of Appeal.

11. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Thomas P. McKenna, to answer said question:

“Did Mr. Cockrell execute any release or relinquishment to you or Mrs. McKenna, so far as you know, for the making of this note by Mrs. McKenna?” 10

12. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question:

“Mrs. McKenna, did you, yourself have any dealings with Mr. Cockrell, concerning the making of this note by you?” 20

13. Because the Trial Judge erroneously sustained the motion to strike out the following answer: “No”, given by the witness, Sadie O'R. McKenna, to the question last hereinabove set forth.

14. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question: 30

“After you made this note, Mrs. McKenna, into whose custody was it delivered by you?”

15. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question:

“This note was not delivered by you to Mr. Cockrell?” 40

Grounds of Appeal.

16. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question:

10 “Did you receive any money, or anything of value from Mr. McKenna or Mr. Cockrell, or anyone, for the making and signing of this note?”

17. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question:

20 “At the time of your making and signing this note, did Mr. Cockrell, I mean Moncure Cockrell, the payee of the note, have any claim against you of any kind for a debt or any other matter whatsoever?”

18. Because the Trial Court erroneously sustained objection to the following question, and erroneously declined to permit the witness, Sadie O'R. McKenna, to answer said question:

30 “Did you, at any time, owe Mr. Cockrell any money, or anything else of value, Mrs. McKenna, prior to the making of this note?”

19. Because the Trial Judge erroneously excluded from the case any and all testimony as to the want of consideration between the defendant, Sadie O'R. McKenna, as the maker of the note, and Moncure Cockrell, as the payee of the note.

20. Because the Trial Court erroneously declined to permit the defendant to give any testimony that there was no consideration between the

40

Grounds of Appeal.

payee of the note and the defendant, Sadie O'R. McKenna, the maker of the note, for the making of the note.

21. Because the Trial Judge, having declined to permit the defendant to give testimony that there was no consideration for the making of the note in its inception, erroneously directed a verdict in favor of the plaintiff, and against the defendant. 10

22. Because the Trial Court committed an error in directing a verdict in favor of the plaintiff and against the defendant.

PERKINS & DREWEN,
Attorneys for Defendant-Appellant. 20

30

40

Complaint.

(Filed Feb. 2, 1923.)

MONMOUTH COUNTY CIRCUIT COURT.

10	HELEN E. VAN WAGGONER COCK- RELL, Plaintiff, <i>vs.</i> SADIE O'R. MCKENNA, Defendant.	}	Action at Law
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20 Plaintiff, a resident of the City of New York, State of New York, says that:

1. Heretofore and on or about December 30th, 1918, the defendant, Sadie O'R. McKenna, made and delivered her promissory note on that date for \$4,000.00, payable to the order of Moncure Cockrell, 4 months after date at number 52 Broadway, New York City, New York.

30 2. The Payee afterwards endorsed said note to the plaintiff of which the following is a copy:

\$4,000.00 New York City Dec. 30 1918
 Four months after date I promise to pay to
 the order of Moncure Cockrell
 Four ThousandDollars
 at 52 Broadway, New York City.
 Value received with interest at 6%.
 No. — Due —

(signed) SADIE O'R. MCKENNA.

(Documentary stamps)

(endorsed) Moncure Cockrell.

40

Complaint.

3. On the day the same fell due said note was presented for payment at the place where it was payable and payment was refused.

4. Notice thereof was duly given to the defendant, Sadie O'R. McKenna.

10

5. Said note is now the property of the plaintiff, and no part of said note has been paid, and there is now justly due and owing to the plaintiff the sum of \$4,000.00. with interest from April 30th, 1919.

Plaintiff demands judgment for the sum of \$4,000.00 with interest.

WILLIAM E. FOSTER,
Attorney of Plaintiff.

20

30

40

Answer.

(Filed Nov. 17, 1923.)

MONMOUTH COUNTY CIRCUIT COURT.

10	HELEN E. VAN WAGGONER COCK- RELL, Plaintiff, <i>vs.</i> SADIE O'R. MCKENNA, Defendant.	}	Action at Law.
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20 The defendant, who resides at Long Branch, in the County of Monmouth, State of New Jersey, answering the complaint of the plaintiff, says that:

FIRST DEFENSE:

(1) She denies all the allegations of the complaint.

SECOND DEFENSE:

30 (1) The plaintiff, who is the wife of Moncure Cockrell, the payee named in the note set forth in paragraph two of the complaint, is not the holder of said note in due course and for value.

(2) The defendant is a married woman, and the said note was and is a promise by defendant to pay the debt and to answer for the default and liability of another person.

(3) Neither directly nor indirectly, on the faith of said promise, did this defendant obtain any

Answer.

money, property or other thing of value for her own use, or for the use, benefit or advantage of her separate estate.

(4) There was no consideration for the making of the note, between the original parties thereto, in its inception.

10

PERKINS & DREWEN,
Attorneys for Defendant.

Reply.

(Filed Dec. 5, 1923.)

MONMOUTH COUNTY CIRCUIT COURT.

HELEN E. VAN WAGGONER COCK-
RELL,

Plaintiff,

vs.

SADIE O'R. MCKENNA,
Defendant.

20

Action at Law.

The plaintiff, Helen E. Van Waggoner Cockrell, replying to the answer, says that:

30

I. She denies all new matter alleged in the answer.

II. She denies as to paragraph (1) of the second defense that she is not the holder of said note in due course and for value. She denies paragraphs (2) and (3) of the second defense.

III. Plaintiff joins issue with the defendant.

WILLIAM E. FOSTER,
Attorney for Plaintiff.

40

Amended Reply.

(Filed, May 12, 1925.)

MONMOUTH COUNTY CIRCUIT COURT.

10	HELEN E. VAN WAGGONER COCK- RELL, Plaintiff, <i>vs.</i> SADIE O'R. MCKENNA, Defendant.	}	Action at Law
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20 The plaintiff, Helen E. Van Waggoner Cockrell, by way of an Amended Reply to the answer, says that:

1. She realleges all allegations, matters and things contained in her original reply.

2. Plaintiff replies that said note was made, dated, delivered and made payable within the State of New York and was intended by the parties thereto to be governed by the law of that State.

30 3. By a statute duly enacted by the Legislature of the State of New York and duly approved by the Governor thereof entitled "An Act relating to the domestic relations, constituting chapter fourteen of the consolidated laws" which became a law February 17th, 1909, with the approval of the Governor, passed, three-fifths being present, Article 4, Section 51, it was among other things enacted in words as follows:

Amended Reply.

“Section 51. *Powers of married woman.*
 A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife can not contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife. All sums that may be recovered in actions or special proceedings by a married woman to recover damages to her person, estate or character shall be the separate property of the wife. Judgment for or against a married woman, may be rendered and enforced, in a court of record, or not of record, as if she was single. A married woman may confess a judgment specified in section one thousand two hundred and seventy-three of the code of civil procedure.”

10

20

4. Said statute was in force in the State of New York at the time of the making and delivery of said note.

WILLIAM E. FOSTER,
 Attorney for Plaintiff.

30

We hereby consent to the filing of the foregoing amended reply as within time on condition that paragraphs 2, 3 and 4 thereof stand as denied by the defendant.

PERKINS & DREWEN,
 Attorneys for Defendant.

Dated: May 8th, 1925.

40

Judgment.

(Entered, Jan. 22, 1926.)

MONMOUTH COUNTY CIRCUIT COURT.

10	HELEN E. VAN WAGONER COCK- RELL, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">v.</div> SADIE O'R. MCKENNA, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	}	At Law.
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Judgment entered January 22, 1926.

20	Damages, \$5,694.95	
	Costs, 35.75	
	Total, \$5,730.70	

WM. E. FOSTER,
Attorney.

30 Judgment on verdict in the above entitled cause was entered in this court on the 22nd day of January in the year of our Lord one thousand nine hundred and twenty-six, in favor of the plaintiff, Helen E. Van Wagoner Cockrell, and against the defendant, Sadie O'R. McKenna, in an action at law for the sum of Five thousand six hundred and ninety-four dollars and ninety-five cents, damages, and Thirty-five dollars and seventy-five cents, costs of suit.

Judgment entered this 22nd day of January, 1926.

FRANK B. JESS,
Judge.

Testimony.

MONMOUTH COUNTY CIRCUIT COURT.

HELEN E. VAN WAGONER COCK-
RELL,

Plaintiff,

against

SADIE O'R. MCKENNA,
Defendant.

10

Transcript of testimony taken in the above en-
titled cause before Jess, J., and a Jury, at the
Court House, Freehold N. J., on Friday, the
twenty-second day of January, A. D. 1926.

20

APPEARANCES:

WILLIAM E. FOSTER, Esq., for the Plaintiff.

JOHN DREWEN, Esq., for the Defendant.

Mr. Drewen: If your Honor please, I have a
motion at this time to make for the amendment
of the answer filed in this case. Has your Honor
the papers before you?

By the Court: No, I haven't. Is this the Cir-
cuit Court?

30

Mr. Drewen: Yes. The motion that I make is
that I be permitted to add to the defense "there
was no consideration for the note between the
original parties in its inception." I spoke to my
adversary as early as I could, yesterday morn-
ing, and it was my understanding there would be
no objection to it. Whether that is so, I don't
know.

40

Testimony.

10 Mr. Foster: If your Honor please, I told Mr. Drewen I would speak to my client. The objection I make to it is probably not important. I don't see where the defense of no consideration is a defense at all in this case. I don't care whether the original note was issued with or without consideration. To that extent I do not feel like conceding to any amendment to the answer whatsoever.

By the Court: This is a suit by the holder of the note in due course.

Mr. Foster: Yes, I do not care whether there is no consideration or not.

By the Court: How would that be a defense?

20 Mr. Drewen: In this way, if your Honor please, that the holder, the one suing, is not a holder in due course. If there was no consideration, she is not a holder in due course. If, as my adversary says, under all the circumstances of this case it doesn't avail me anything it doesn't do any harm. I don't think Mr. Foster is surprised by this. I would like to have that entered generally.

30 By the Court: You say here, the plaintiff is not a holder in due course, the second defense, the plaintiff is not a holder of the note in due course and for value.

Mr. Drewen: Yes.

By the Court: How would the defense that there was no consideration between the original parties to the note affect the question of whether the present plaintiff is a holder in due course?

40 Mr. Drewen: It wouldn't. I do say this, if the present holder of the note is a holder in due course and for value, it doesn't make any difference whether this note was bad at its inception.

H. E. Van Wagoner Cockrell, Plaintiff—Direct.

If we can show she wasn't a holder in due course, I think we have a right to avail ourselves of that defense against her.

By the Court: I will allow the amendment unless counsel says that the amendment takes him by surprise. 10

Mr. Foster: No, I cannot truthfully say that. I frankly felt it was covered by number three of his defense.

Mr. Drewen: As I understand it, the amendment is "there was no consideration for the note between the original parties in its inception."

Mr. Foster opened the plaintiff's case to the jury.

Mr. Drewen opened the defendant's case to the jury. 20

HELEN E. VAN WAGONER COCKRELL, the plaintiff in the above entitled cause, being duly sworn, according to law, upon her oath testifies as follows:

Direct examination by Mr. Foster.

Mr. Foster: I would like, if your Honor please, to have this note marked in evidence, the original note. 30

(Note marked Exhibit P-1.)

Q. Mrs. Cockrell, you are the plaintiff in this suit, are you not? A. Yes, I am.

Q. Where do you live? A. 344 South Boulevard, DeLand, Florida.

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. I show you this note, which is marked Exhibit P-1, and ask you if you have ever seen that before? A. Yes, I did.

Q. Do you recognize the signature of the name on the back of that note? A. Yes.

10 Q. Whose name is that? A. My husband's name.

Q. And that is his signature? A. Yes.

Q. Do you own and hold this note? A. Yes, I do.

Q. Has anything ever been paid to you on account of this note in any particular whatsoever? A. No, nothing.

Mr. Foster: Take the witness.

20 *Cross examination by Mr. Drewen.*

Q. Mrs. Cockrell, how long have you been married to Mr. Cockrell? A. About six and one-half years.

Q. What was the date of your marriage? A. May second.

Q. Nineteen what? A. Nineteen.

30 Q. Speak up loud so all these men can hear you. How did you come into possession of this note? A. Well, Mr. Cockrell and I had become engaged and I talked about an engagement ring and I showed him the kind of ring I wanted, it was the kind my sister had, a very beautiful ring. He said he couldn't give it to me right then but that he would get it and all the time we were engaged my friends would ask me when I was going to get my ring and I would tell them a little later, so finally in talking it over with Mr. Cockrell, he said I will give you a substantial gift until you get your ring, so on the evening of April

40

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

second, Mr. Cockrell met me at 37 Wall Street and he took these papers out of his pocket and said "Here is your wedding gift," and that is how I came into possession of the note.

Q. What papers do you speak of as the papers that Mr. Cockrell took from his pocket? A. Note, mortgage and two assignments. 10

Q. Did you get your ring? A. Not yet, because I haven't got my money.

Q. You are waiting for the proceeds of this note? A. I am still waiting.

Q. Now, Mrs. Cockrell, how do you fix the time as April second? A. This was something I didn't mention before, I didn't think it was necessary. On April second we went over to try and get our marriage license. Mr. Cockrell had been divorced and we couldn't get a marriage license without a copy of the decree. 20

Q. Where was it you went to get this certificate of marriage or license? A. I guess in the City Clerk's office.

Q. In New York? A. No, that was in West New York.

Q. That is over in Jersey? A. Yes, Hudson County.

Q. Where was it Mr. Cockrell met you at the time he handed you the note? A. He met me on the street at 37 Wall Street. 30

Q. By appointment? A. Yes.

Q. At what time of the day or night? A. It was between five and six o'clock, I think about five-thirty.

Q. Why was that place fixed upon—37 Wall Street? A. That is where we always met in the evening.

Q. Were you employed nearby? A. Yes. 40

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. Where? A. By Lee, Higginson Company, there was one entrance on Exchange Place and——

Q. That is all right. At the time you were what—nineteen years of age? A. I was twenty.
10 I was twenty-one the following November.

Q. How often had you been meeting Mr. Cockrell, every night or every other night? A. Mostly at noon every day and pretty near every night.

Q. Up to April second that was true? A. Yes.

Q. How long had that been the fact? A. Oh, several months.

Q. Prior to this night, on April second, had Mr. Cockrell said anything to you about this note? A. Not about the note, no.

Q. He just simply said you were going to get a present? A. Yes.
20

Q. And after you met him, were you still on the street when he handed you the note? A. Yes.

Q. Suppose you tell us exactly what happened when Mr. Cockrell met you on the street? A. He took these papers out of his pocket and said “here is your wedding gift.”

Q. Go ahead. A. I just took them.

Q. Was there anything else that you did with them? A. I carried them and we went and had dinner and when we had dinner I asked him how he came to have these things.
30

Q. Did you have dinner in New York City? A. It seems to me we did. I think we did.

Q. How long were you in Mr. Cockrell’s company that evening? A. We went over to Jersey and I think we stayed until about ten or eleven o’clock that night.

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. Where were you living at that time? A. With my brother in West New York.

Q. It was at your brother's home that Mr. Cockrell finally went with you, to your brother's home? A. Yes.

Q. You gave no money for this note? A. No. 10

Q. You paid over nothing by way of property, chattels or objects of value at all to Mr. Cockrell for this note? A. No, I did not.

Q. How long after you got this note from Mr. Cockrell was it that you removed the papers from the envelope? A. A little while after we got in the restaurant.

Q. That was how long after he gave them to you? A. Oh, about an hour.

Q. So you didn't know from the time you got these papers on the street until you took them out of the envelope in the restaurant what kind of a present it was that you received from Mr. Cockrell? A. No, I knew it was a wedding gift, but I didn't know what it was. 20

Q. It was in an envelope and when he gave it to you you didn't ask him what it was or you didn't know what it was? A. No.

Q. Did you open it in the restaurant before you got your supper or afterward? A. I don't remember whether I had supper that night or not. 30

Q. Whatever it was you had in the restaurant, at what stage of the festivities did you open the envelope and remove the note? A. It was while we were waiting to be served.

Q. And then you extracted these papers from the envelope? A. Yes.

Q. What did you say first to Mr. Cockrell? A. I said "how did you happen to have anything like this?" He told me then how he did. 40

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. I do wish, Mrs. Cockrell, you would tell us all that was said by you and Mr. Cockrell about these papers at the time that he presented them to you? A. I asked him how he happened to loan Mr. McKenna the money and he told me they
10 had had a fire down in Long Branch, and that they were a little pressed for money and they needed to repair the building that had been damaged, so he let Mr. McKenna have the money and he would get it right back.

Q. Go on. A. Well, there wasn't much more than that said.

Q. Nothing more than that said? A. No.

Q. You didn't get your marriage license that night, did you? A. No.

20 Q. When did you and he determine to become married, what was the date you had fixed for the ceremony? A. We hadn't fixed the date.

Q. Can you tell us when you would have been married if you had received your license that evening? A. As soon as we could, I think two or three days was required——

Q. You would have done it just as quickly as the law would have allowed you, that is right? A. Yes.

30 Q. That would be about three days afterwards? A. Yes.

Q. You observed didn't you at the time when you got this note that it wasn't payable until sometime in April? A. I didn't notice that.

Q. So that if you were depending upon this note for your engagement ring—you didn't notice the note wasn't due until two or three months after you contemplated marriage? A. As long as I got the ring it wouldn't make any difference.

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. Yes, but you didn't get it, did you? A. Not yet.

Q. How long did you have the note before you did anything toward reducing it toward the price of an engagement ring? A. Mr. Cockrell told me it had to be recorded, all these things had to be recorded. 10

Q. Never mind what Mr. Cockrell told you. All I want you to tell me is when you first did something? A. Something had to be recorded, so we had to send it down to be recorded.

Q. Not the note? A. I think the assignment had to be recorded.

Q. Confine your attention to the note and tell us when you first took steps to have the note reduced to money? A. When I took it to Mr. Roger Foster was the first steps I took. 20

Q. When was that, do you remember? A. June or July of 1919.

Q. That was seven or eight months after you got the note? A. No, not seven or eight months, from April to July.

Q. That is my mistake; I am all confused about the engagement ring. About three months after? A. Yes.

Q. Mr. Roger Foster is not this Mr. Foster? A. No. 30

Q. Did Mr. Roger Foster do anything about the note? A. Yes, he took it and looked it over and he went on a trip either to the West Indies or the South Sea Islands and he was gone for a long time and he didn't do anything on it. I got my papers from him in the fall of 1921, that was in 1920, the fall of 1920, and I worried along a little bit longer and someone told me about this Mr. Foster. 40

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. This Mr. Foster? A. Yes, I had made a mistake by going to the other so I went down to this Mr. Foster and talked about it.

Q. And you placed it in Mr. Foster's hands? A. Yes.

10 Q. And Mr. Foster brought suit? A. Yes.

Q. Now, Mrs. Cockrell, you gave some testimony in this action before trial in Mr. Foster's office? A. Yes.

Q. And you signed it and swore to it? A. Yes.

Q. I show you a paper purporting to be a transcript of such testimony and ask you if that is your signature there?

Mr. Foster: Yes, I admit that to be so.

20 Mr. Drewen: I ask it be marked for identification.

(Marked Exhibit D-1 for identification.)

Q. Now, Mrs. Cockrell, April second is the date on which you got this note and you say that is fixed in your mind because that is the time you went to the licensing authorities in West New York to get your license and were disappointed? A. Yes.

30 Q. And first you met Mr. McKenna on the—
A. Not Mr. McKenna, Mr. Cockrell.

Q. I beg your pardon, and had dinner. Where did you have dinner? A. I think it was a little Spanish restaurant, I don't remember the name of the street.

Q. Was it uptown or downtown? A. Downtown.

Q. How long were you in there? A. As long as we had dinner.

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. How long did that take? A. About an hour.

Q. And then you went where? A. Over to Jersey.

Q. And then where? A. To West New York.

Q. And then where did you go, to the Town Clerk? A. No, first I went to my brother's house and then we got into his car and I guess it was the City Clerk, he knew where to take us. 10

Q. And you tried to transact your business with the City Clerk and then you went back to your brother's home and stayed there for some time after that? A. Yes.

Q. That is right. Don't shake your head because the stenographer can't see you? A. Yes.

Q. I call your attention to the testimony which you gave in this matter— 20

Mr. Foster: What page?

Q. Page four, you read this testimony before you signed it? A. Yes.

Q. And I ask you if you were not asked this question: "How long were you in Mr. Cockrell's company on this evening of the day the note was presented to you?" Answer: "I could not say, I think about an hour." You were asked that question and made that answer? A. Yes, I did. 30

Q. How do you explain the fact now that you say it was five or six hours you were in his company? A. I had forgotten about it and when we got to talking it over it was brought to my mind.

Q. When you talked it over? A. Yes, Mr. Cockrell and I.

Q. It was out of your mind when you gave this testimony? A. Yes, it was.

Q. When did it come back to your mind? A. The last few days. 40

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

Q. When you were talking it over with somebody? A. Mr. Cockrell.

10 Q. Mr. Cockrell then reminded you of the fact that it was five or six hours that he was in your company that night? A. He didn't remind me of the fact, he reminded me of the incident of trying to get the license.

Q. He didn't speak to you of the incident until two or three days ago? A. No.

Q. Isn't it a fact that Mr. Cockrell sat right by you when you gave this testimony? A. Yes.

Q. Didn't he say anything to you then? A. I had a bad cold and he was so concerned about my cold, he didn't talk about it.

20 Q. When did you get over the cold that he was so concerned about? A. That was last year. When did I get over it?

Q. Yes. A. I testified to you and I went right home and went to bed.

Q. Mr. Cockrell didn't say anything to you then about the fact that you were some five hours off in your testimony as to the time you were in his company that night? A. No, not then.

30 Q. Then it suddenly occurred to you that this was the night on which you tried to get your license, it came back to you? A. Yes.

Q. That is right? A. Yes.

Q. Very clearly? A. Yes.

Q. You also testified in that examination your wedding was April thirtieth? A. Yes, that was wrong.

Mr. Foster: I object to that, if your Honor please; that testimony has been corrected before verified and I don't think that is proper.

H. E. Van Wagoner Cockrell, Plaintiff—Cross.

By the Court: I didn't hear the question.

Mr. Foster: The question was, she was married April thirtieth, I don't know whether it was correct or not. I am privileged to ask my client whether she gave that testimony or whether it was an error of the stenographer. 10

By the Court: She may answer whether that is true or not.

Q. The right date was May second? A. Yes.

Q. How did you make that mistake? A. Well, we got our license on the twenty-ninth of April and we were married on the second of May and Mr. Cockrell's birthday was on the first of May as I said "All right, let's celebrate our wedding anniversary on dad's birthday," so we have been celebrating it on the first of May for the past six years, so when you asked me I said April thirtieth. 20

Q. What has that got to do with it? A. Just because we decided to celebrate it on that day.

Q. Your explanation is you were married on May second and because you celebrated Dad's birthday on May first you made a mistake and said April thirtieth? A. We have been celebrating it for so many years I said April thirtieth instead of May second. 30

Q. So that Dad's birthday was very much more impressive thing than your wedding day?

A. No, Mr. Cockrell was very devoted to his father.

Q. Now, Mrs. Cockrell, Mr. Cockrell is a lawyer, isn't he?

Mr. Foster: I object to that; I don't think it is relevant at all. I don't care. Answer it. Yes, he is a lawyer. 40

*H. E. Van Wagoner Cockrell, Plaintiff—
Re-direct—Re-cross.*

A. Yes.

Q. And this note was due and payable according to its terms on April thirtieth, 1919, wasn't it? A. Yes.

10 Q. Are you sure, Mrs. Cockrell, you didn't get this note sometime after April thirtieth? A. Oh, positive.

Q. I see. A. Positive.

Q. Are you more positive about that than you are about the other things in this case? A. Yes.

Q. You are positively sure about that? A. Yes.

Q. Did you ever go to Mrs. McKenna about paying this note before you took it to Mr. Roger Foster's office? A. I never did.

20 Q. You never did that? A. No.

Q. Did you make any attempt to get it without the expense of having lawyer's services before you went to Mr. Roger Foster to collect it for you? A. Mr. Cockrell did, but I didn't.

Mr. Drewen: I think that is all.

Mr. Foster: That is the plaintiff's case, your Honor. Just one more question.

30 *Re-direct examination by Mr. Foster:*

Q. You have referred to Wall Street and other places, you meant in the City of New York? A. Yes.

Re-cross examination by Mr. Drewen:

Q. You were a stenographer, weren't you, Mrs. Cockrell, in the office of Mr. Cockrell and Mr. McKenna? A. Yes.

H. E. Van Wagoner Cockrell, Plaintiff—Re-direct.

Q. Where was their office located? A. 52 Broadway.

Q. When did your employment there terminate? A. Sometime in November of 1918.

Q. And Mr. Cockrell and Mr. McKenna had some business together of selling war material to the government? A. I understood they did. 10

Q. How long had you and Mr. Cockrell been keeping company before you terminated your employment at their office? A. Well, really steady company since the twenty-third of September.

Q. So that from the twenty-third of September until you left the office, in that period you had been keeping steady company with Mr. Cockrell? A. Yes.

Q. Did Mr. Cockrell ever say anything about this note before he gave it to you? A. No. 20

Q. He never mentioned it at all? A. No.

Q. You didn't tell us anything about the engagement ring in the testimony you gave before trial? A. No.

Q. You never mentioned it at all? A. No.

Re-redirect examination by Mr. Foster.

Q. Why didn't you mention it? A. I didn't think it was necessary then but I thought it might be well to tell it now. 30

Q. Where was Mr. McKenna's office at the time you received this note? A. At 52 Broadway.

Q. New York City? A. New York City.

Q. And that is the place where this note is payable, isn't it? A. Yes.

Q. How long did you know Mr. Cockrell, your present husband, before you married him? A. I was a baby, so I don't know how long it was.

T. B. McKenna, for Defendant—Direct.

Q. You knew him all your life? A. Practically all my life.

Mr. Foster: That is the plaintiff's case, your Honor.

10

Mr. Drewen: I offer in evidence what has already been offered and marked Exhibit D-1 for identification and ask that it be marked in evidence.

(Marked Exhibit D-1.)

DEFENDANT'S CASE.

20

THOMAS B. MCKENNA, a witness produced in half of the defendant, being duly sworn, according to law, upon his oath, testifies as follows:

Direct examination by Mr. Drewen.

Q. Mr. McKenna, you are the husband of Sadie O'R. McKenna, the defendant in this action? A. Yes, sir.

Q. And I show you Plaintiff's Exhibit P-1 and ask you if you have seen that note before? A. Yes, sir.

30

Q. Calling your attention to the fact that it is signed by Sadie O'R. McKenna, will you please tell the jury what Mrs. McKenna had to do with this note?

Mr. Foster: Just a moment, Mr. McKenna. Proceed.

A. I spoke to Mrs. McKenna at the time she signed the note—

40

T. B. McKenna, for Defendant—Direct.

Mr. Foster: I object to anything in the nature of hearsay testimony, what she did in regard to this note.

Q. I will reframe the question. By whom was this note delivered to Mr. Cockrell? A. By me. 10

Q. Where did you obtain the note from? A. From my house.

Q. From whom there? A. Mrs. McKenna.

Q. By whom is the body of this note written, can you tell? A. The body is in my handwriting with the exception of the date, the date is in the handwriting of Mr. Cockrell.

Q. Mr. Cockrell? A. Yes.

Q. You mean "30" the numerals? A. The numerals, yes.

Q. Did Mrs. McKenna, in connection with the making of this note, receive any money from Mr. Cockrell? 20

Mr. Foster: I object to the question as immaterial. I don't think it is important whether she received any money or not.

After discussion between counsel Court adjourned to 1:30 P. M. for lunch.

Freehold, N. J., Friday, Jan. 22, 1925. 30
1:30 P. M.

AFTER RECESS.

By the Court: I shall sustain the objection.

Mr. Drewen: I ask an exception to your Honor's ruling.

Q. Where was this note delivered, Mr. McKenna? 40

Mr. Foster: By whom, to whom?

T. B. McKenna, for Defendant—Direct.

Q. To Mr. Cockrell? A. It was delivered at our office at 52 Broadway. Mr. Cockrell and myself had an office on Broadway.

Q. It was in New York State? A. Yes, sir.

10 Q. Will you state to the Jury the extent, what Mrs. McKenna had to do with this note? A. She simply—

Mr. Drewen: I don't know whether this is objectionable?

Mr. Foster: I would like the right to object, to stop the witness from his answer. I don't know what she had to do with the note, I think the question is too broad.

By the Court: The objection is sustained.

20 Mr. Drewen: May I have an exception, if your Honor please?

By the Court: Yes.

Q. At whose request did Mrs. McKenna sign this note? A. At my request.

Q. Why was that request made by you of Mrs. McKenna?

Mr. Foster: I object to that on the same ground I objected before.

30 By the Court: Objection sustained. I am ruling that way with the understanding that under the stipulation in the case the married woman's act is not a defense under the law of New York.

Mr. Drewen: We haven't stipulated that.

By the Court: I understood counsel agreed that that was the substance of the law.

Mr. Drewen: I don't want to have any misunderstanding, I think that is clearly the law.

By the Court: I so understand it.

40 Mr. Foster: I do too.

T. B. McKenna, for Defendant—Direct.

Q. Why was that request made by you of Mrs. McKenna?

By the Court: Objection sustained.

Mr. Drewen: May I have an exception?

By the Court: Yes.

10

Q. What part, if any, did Mr. Cockrell have in the request made of Mrs. McKenna to sign this note?

Mr. Foster: I object, your Honor, on the same ground.

By the Court: Objection sustained.

Mr. Drewen: I ask an exception.

By the Court: Yes.

Q. Did any request of Mr. Cockrell made to you induce your request made to Mrs. McKenna that she sign the note? A. Yes, sir. 20

Mr. Foster: I move the answer be stricken. I was rising to object when the witness answered.

By the Court: The motion is allowed.

Mr. Drewen: I ask an exception.

By the Court: Yes.

Q. Did Mrs. McKenna receive any consideration or anything of value from you for the making of this note? 30

Mr. Foster: Objected to, your Honor, on the same ground.

By the Court: Objection sustained and exception granted.

Q. Did Mrs. McKenna receive any consideration or anything of value from any other person including Mr. Cockrell, so far as you know? 40

T. B. McKenna, for Defendant—Direct.

Mr. Foster: I object again on the same ground.

By the Court: I will make the same ruling. Sustain the objection and allow an exception.

10 Q. Did Mrs. McKenna have any dealing with Mr. Cockrell so far as you know with regard to making this note?

Mr. Foster: I make the same objection.

By the Court: Objection sustained.

Mr. Drewen: I ask an exception.

By the Court: Yes, these exceptions are allowed.

20 Mr. Drewen: I don't want to bother the Court but I assume these exceptions are being allowed.

By the Court: Yes, these exceptions are allowed.

Q. Did Mr. Cockrell execute any release or relinquishment to you or Mrs. McKenna so far as you know, for the making of this note by Mrs. McKenna?

30 Mr. Foster: I object, if your Honor please.

By the Court: Objection sustained.

Mr. Drewen: I ask an exception.

By the Court: Exception.

Mr. Drewen: That is all.

Mr. Foster: No questions.

S. O'R. McKenna, for Defendant.—Direct.

SADIE O'R. MCKENNA, the defendant in the above entitled cause, being duly sworn, according to law, upon her oath, testifies as follows:

Direct examination by Mr. Drewen.

Q. Mrs. McKenna, you are the defendant in this suit? A. Yes. 10

Q. And the wife of Thomas D. McKenna, the last preceding witness? A. Yes.

Q. I show you Plaintiff's Exhibit P-1, being promissory note in form and ask you if that is your signature to the note? A. Yes, that is mine.

Q. Mrs. McKenna, did you, yourself, have any dealings with Mr. Cockrell concerning the making of this note by you? A. No. 20

Mr. Foster: I move to strike the answer out.

By the Court: Mrs. Cockrell?

Mr. Foster: No, Mr. Cockrell.

Mr. Drewen: I said Mr. Cockrell.

By the Court: I sustain the objection.

Mr. Drewen: I ask an exception?

By the Court: Yes.

Mr. Foster: Does your Honor strike the answer out? 30

By the Court: Is the answer in?

Mr. Foster: Yes.

By the Court: If it is, it may be stricken out.

Q. After you made this note, Mrs. McKenna—

Mr. Foster: May I interrupt? Mrs. McKenna, refrain from answering until I have an opportunity to object. 40

S. O'R. McKenna, for Defendant.—Direct.

Q. After you made this note, Mrs. McKenna, into whose custody was it delivered by you?

10 Mr. Foster: If your Honor please, I object to that as being immaterial. I think she has already admitted it is her note and I don't think it is important at all as to whose custody she delivered it in.

By the Court: The objection is sustained.

Mr. Drewen: I ask an exception.

By the Court: Yes.

Q. This note was not delivered by you to Mr. Cockrell?

20 Mr. Foster: I ask an objection on the same ground previously given, basing my various objections on the argument before.

By the Court: Objection sustained.

Mr. Drewen: I ask an exception.

By the Court: Yes.

Q. I don't know whether I have asked this question or not. Did you receive any money or anything of value from Mr. McKenna or Mr. Cockrell or anyone for the making and signing of this note?

30 Mr. Foster: I object on the grounds previously stated.

By the Court: Objection sustained and exception granted.

Q. At the time of your making and signing this note, did Mr. Cockrell, I mean Moncure Cockrell, the payee of the note, have any claim against you of any kind for a debt or any other matter whatsoever?

40

S. O'R. McKenna, for Defendant.—Direct.

Mr. Foster: I make the same objection.

By the Court: Objection sustained.

Mr. Dreden: I ask an exception.

By the Court: Yes.

Q. Did you, at any time, owe Mr. Cockrell any money or anything else of value, Mrs. McKenna, prior to the making of this note? 10

Mr. Foster: Objected to, your Honor, on the same grounds.

By the Court: Objection sustained.

Mr. Dreden: I ask an exception.

By the Court: Yes, you may have an exception.

Mr. Dreden: That is all.

Mr. Foster: No questions. 20

Mr. Dreden: With the Court's permission I will read to the jury, defense Exhibit D-1, which was the testimony taken before trial.

Mr. Foster: I took certain objections. Shall we take them up after he gets through?

By the Court: Yes.

Mr. Dreden then read Exhibit D-1 to the Court and jury.

Mr. Dreden: As I understand it, the Court excludes from this case any testimony of want of consideration between Mrs. McKenna, the maker, and Moncure Cockrell. 30

By the Court: Yes.

Mr. Dreden: I ask an exception and the defense rests.

Mr. Foster: I move for a direction of verdict in this case. The plaintiff has taken the stand and proven the existence of the note, that she holds it, nothing has been paid on it

S. O'R. McKenna, for Defendant.—Direct.

10 and that it is an obligation of the defendant. There is no testimony offered by the defendant other than the plaintiff's depositions which is more or less or an accurate repetition of her testimony this morning. Upon that ground—there appears to be no defense interposed—I think there is no question for the jury and I would respectfully request that there be a direction of verdict in favor of the plaintiff.

By the Court: Do you wish to be heard on that motion, Mr. Drewen?

Mr. Drewen: No.

20

Charge of the Court.

(JESS, J.) Gentlemen of the Jury: This is a suit upon a promissory note. The note is for four thousand dollars and is dated December 30, 1918, drawn to the order of Moncure Cockrell, payable at 52 Broadway, New York City. As I have stated, it was dated December 30, 1918, and was, therefore, payable according to its terms four months after date—or on April 30th of that same year.

30

Now, it appears by the evidence in this case that this note, endorsed by the payee, Cockrell, was transferred to his wife, who is the plaintiff in this suit, and who is seeking in this suit to recover the amount due on this note, together with interest. She claims to be the holder in due course of the note. The law is that a holder in due course is a holder who has taken the instrument under the following conditions, first, it is

40

Charge of the Court.

complete and regular upon its face. Secondly, he became the holder of it before it was over due and without notice that it had previously been dishonored. Thirdly, that he took it in good faith and for value. Fourth, he had no notice of any infirmity of the instrument or defect in the title. The law also provides that the holder of any negotiable instrument may sue thereon in his own name, and that further, every holder of a negotiable instrument is presumed to be a holder in due course. The presumption in this case is that Mrs. Cockrell is a holder in due course. The only testimony bearing upon that question is the testimony of the plaintiff herself as to the circumstances under which she secured possession of this note.

The Act of this State, known as the Negotiable Instrument Act, from which I read with respect to the requirements as to what was necessary to constitute a holder in due course, is a uniform negotiable instrument act and is the same act that is in force in the State of New York. I mention that because this instrument was delivered in New York, made payable in New York, and, therefore, the rights of the holders are to be enforced in accordance with the law of the State of New York. That law is identical with the law of this State. Under those circumstances you have a situation where the plaintiff under the law, is presumed to be the holder of this note in due course, and there is no evidence in the case to rebut the presumption that she was such holder in due course. In view of the presumption taken in connection with her own evidence, as to the circumstances under which she acquired title to this instrument, I feel that the motion—

Charge of the Court.

Mr. Drewen: Before the motion goes, I know it is going against me, I want Mr. Foster to stipulate that the Negotiable Instrument Law of the State of New York is the same as the Negotiable Instrument Law of this State.

10 By the Court: Is there any dispute about that? I understood that was agreed in the case—that the laws were identical.

Mr. Foster: It is a uniform act in both states and it is my understanding they are identical but I——

By the Court: Well, gentlemen, it is impossible for me, of course, at this time to determine whether there is exact uniformity between the two acts.

20 Mr. Drewen: I will offer this in evidence.

Mr. Foster: I don't see the purpose of it.

Mr. Drewen: I am doing this with the Court's indulgence—I just overlooked it for the moment.

By the Court: You say the two acts are uniform?

Mr. Drewen: This is my point. If I have any chance at all it will be only by what the New York law says about it, and I can only do that by offering this book in evidence.

30 By the Court: You see, that should have been called to the Court's attention before this case was submitted to the jury. I understood there was no doubt about the uniformity of the statutes. If I have mischarged the jury as to the law with reference to the holder in due course I should like to know about it. It is important, because the law of the State of New York controls the situation.

40 Mr. Drewen: Section 54 of the New York law is identical with Section 28 of the New Jersey law, that is my whole point, that is all I want.

Charge of the Court.

By the Court: All right, then it is considered, as I understand it, for the purpose of this case, that the Court has correctly charged the jury on the assumption that the laws of the two states are identical.

Mr. Drewen: Yes, and that is admitted.

10

Mr. Foster: Yes, that is certainly admitted—that the Court has correctly charged as to that

Mr. Drewen: Do you want to have the New York law in evidence?

Mr. Foster: You are offering the book which has annotations in it.

By the Court: Let me make this suggestion. I understand your point would be to have it clear, that Section 54 of the New York Act is identical with Section 28 of the New Jersey Act and that the section reads as follows—

20

Mr. Foster: Also, I would like to have it stipulated that Section 94 of the New York Act which I have quoted in the argument to you is the same as the section in the New Jersey Act.

Mr. Drewen: I will take your word for it.

Mr. Foster: It is stipulated by and between counsel for the respective parties that Section 54 of the Negotiable Instrument Law of the State of New York and Section 28 of the Negotiable Instrument Law of the State of New Jersey are in terms and provisions identical, and also that Section 94 of the Negotiable Instrument Act of the State of New York is identical with the provisions on the same subject matter of the Negotiable Instrument Law of the State of New Jersey, and that the purpose of this stipulation is to dispense with the necessity of offering in evidence the laws of the State of New York.

30

40

Charge of the Court.

By the Court: Therefore, gentlemen, under the evidence, the presumption, and the law, I feel it my duty to grant the motion made by counsel for the plaintiff and direct you in this case to return a verdict for the plaintiff and assess the damages
 10 for the face of this note which is four thousand dollars, together with interest, which counsel have agreed amounts to \$1,694.95. Therefore, your verdict should be for the face of the note and interest, which amount to \$5,694.95.

Exhibit P-1.

(Offered at page 17.)

20

THE NOTE:

\$4000.

New York City, Dec. 30, 1918

Four months after date I
 promise to pay to the order of
 Moncure Cockrell

Four ThousandDollars
 at 52 Broadway, New York City.

30

Value received.

With interest at 6%.

(Signed) SADIE O'R. MCKENNA.

Endorsed:

Moncure Cockrell.

40

Exhibit D-1.

(Offered at p. 30.)

MONMOUTH COUNTY CIRCUIT COURT

HELEN E. VAN WAGGONER COCK- RELL, Plaintiff, <i>against</i> SADIE O'R. MCKENNA, Defendant.	}	10
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Examination of the plaintiff, Helen E. Van Waggoner Cockrell, before trial as a witness on behalf of the defendant, examination being held at the office of William E. Foster, attorney for plaintiff, No. 60 Broadway, New York City, New York, on the 12th day of January, 1925, testimony being taken in the presence of William E. Foster, as attorney for the plaintiff, and John Drewen of the firm of Perkins and Drewen, attorneys for the defendant. 20

It being stipulated by and between the attorneys for the respective parties that said testimony be taken without previous order or notice thereof as required by statute and that the same be taken in the absence of any Master in Chancery of the State of New Jersey or other officer designated by the statute aforesaid for the taking of testimony before trial. 30

It being stipulated that the witness sign the said testimony and swear thereto in affidavit form before an officer of the State of New Jersey authorized to take affidavits before the date of the trial hereof. 40

Exhibit D-1.

The plaintiff, HELEN E. VAN WAGONNER COCKRELL, testified as follows:

By Mr. Drewen:

Q. Now, Mrs. Cockrell, where do you reside?
10 A. Jacksonville, Florida.

Q. And what is the street address in Jacksonville? A. It is the St. Albans Hotel.

Q. You are the plaintiff in this action? A. Yes.

Q. And you are the wife of Moncure Cockrell?
A. Yes.

Q. When were you married, Mrs. Cockrell? A. May 2nd, 1919.

Q. And where were you married? A. In New
20 Jersey.

Q. When was the note upon which this suit is brought delivered to you? A. On April 2nd, 1919.

Q. And where? A. It was in the street, right outside of Lee Higginson's office. I think it is 37 Wall Street.

Q. And what were the circumstances under which the note was delivered at that place? A. We were going to be married very shortly and I met Mr. Cockrell and he wanted to present me with a wedding gift and he came along and said,
30 "Here's your wedding gift."

Q. What time of day was it? A. Between five and six in the evening.

Q. Did you have an appointment with Mr. Cockrell at that time? A. Yes.

Q. Where were you employed then? A. By Lee Higginson & Company.

Q. As a stenographer? A. Yes.

Exhibit D-1.

Q. Where did you reside at that time? A. I was living in Jersey at that time.

Q. Where was Mr. Cockrell residing then? A. Mr. Cockrell was residing on 75th or 85th Street. I don't remember which one.

Q. New York City? A. Yes.

10

Q. Do you know where Mr. Cockrell was engaged in business at that time? A. I do.

Q. Where? A. At No. 52 Broadway.

Q. New York City? A. Yes.

Q. How long before that was it that you had last seen Mr. Cockrell? A. I saw him most every day.

Q. In New York City? A. In New York City and in Jersey too.

Q. As I understand it, you were at that time engaged to Mr. Cockrell? A. Yes.

20

Q. How long had you been engaged? A. Since September 23rd, 1918.

Q. Now, how long were you in Mr. Cockrell's company on this evening of the day the note was presented to you? A. I could not say. I think about an hour.

Q. And was that hour spent with him on the street? A. I think we had dinner somewhere. I just don't remember.

30

Q. Did you say that after you met Mr. Cockrell he handed you the note and said "Here is the note?" A. "Here is my wedding present."

Q. There were other wedding presents that Mr. Cockrell gave you, were there not? A. Other wedding presents, other than a home after we were married—I don't believe there was anything else.

Q. Did you before this evening in question know that Mr. Cockrell was to hand you this note? A. No, I did not know.

40

Exhibit D-1.

Q. And it was immediately after your meeting him that he gave you the note on the street? A. Yes.

10 Q. What did you say after you received this note at that time? A. I thanked him profusely. I was very glad to get it.

Q. Was this note endorsed over by Mr. Cockrell? A. Yes, it is endorsed by Mr. Cockrell.

Q. Was this endorsement made in your presence? A. No, it was endorsed when he gave it to me, I suppose.

Q. And you say the date on which you received it was April 2nd? A. Yes.

Q. 1919? A. Yes, I am quite sure that was the date.

20 Q. Did Mr. Cockrell make any statement to you as to reducing this note into payment? A. Not at the time.

Q. Did he at any time subsequent to that? A. I don't remember.

Q. Well, after you received this note from Mr. Cockrell did you make any comment about it yourself? A. I took it for granted that I had almost the cash in my hands.

30 Q. Did you make any effort to collect it yourself? A. I gave it to my attorney to collect for me.

Q. When did you give it to your attorney? A. I gave it to him in the early part of 1922.

Q. It was in April, 1919 that you got it? A. Yes.

Q. Do you know how long after you gave this note to your attorney that suit was started on it? A. I do not know.

Q. Now, Mrs. Cockrell, from the time that you received this note on April 2nd, 1919, until you

Exhibit D-1.

gave it to your attorney in 1922, as you say, what had you done to collect it? A. I asked Mr. Cockrell several times if he would not press Mr. McKenna for the money. I felt it was mine. I took it to another lawyer named Foster but he never did anything on it I don't believe.

10

Q. Where was the other Mr. Foster located at the time? A. 55 Liberty Street.

Q. New York City? A. Yes.

Q. Go ahead. A. I don't believe Mr. Foster did anything about it and shortly after I gave it to him he took a trip to the West Indies. I went there to get it back but he was away.

Q. Did you ever go to either Mr. or Mrs. McKenna? A. No, I never did.

Q. How long did you and Mr. Cockrell converse or comment on the subject of this note on the night of April 2nd when you got it from him? A. I guess about ten minutes.

20

Q. What was said about it during that time?

A. I asked him about the note.

Q. What did you say? A. I asked him how he happened to have it and he told me about lending this money to Mrs. McKenna because they had had a fire in Long Branch and needed this money to rebuild the buildings that were burned down and damaged and that he felt just as soon as Mrs. McKenna was in a proper position she would repay this money.

30

Q. Did you make any comment to Mr. Cockrell about his presenting you with a claim of that kind? A. No, because I felt it was perfectly all right.

Q. What did you say about it? A. I thanked him for it.

Q. That is all that you said? A. Yes.

40

Exhibit D-1.

Q. That was the end of the subject on that night so far as Mr. Cockrell and you were concerned?

A. That night, yes.

10 Q. What did you then do with the note? A. I held it a little while until I went down to see Mr. Roger Foster about it.

Q. And that you say was when? A. I think it was the following June or July of 1919.

Q. And did you do that without in any way presenting the note to Mrs. McKenna for payment? A. Yes.

Q. Why didn't you go to see Mrs. McKenna? A. I don't know why I didn't. I only thought it was better to put it into an attorney's hands and get it that way.

20 Q. Why did you prefer to have an attorney's bill to pay rather than have Mr. McKenna pay this note directly without that expense? A. Well, I have been in the office with Mr. McKenna and knew just about how he conducted business and thought it better to put it into an attorney's hands.

30 Q. Why didn't you go to Mrs. McKenna? A. Well, I knew Mrs. McKenna consulted Mr. McKenna in everything she did and I thought it better to put it in my attorney's hands.

Q. That is your explanation of it? A. Yes.

Q. In connection with this note, did you ever write any letters to Mrs. McKenna? A. No.

Q. Or to Mr. McKenna? A. I never did.

Q. When did you cease to be employed in the office of Mr. McKenna? A. It was really Mr. Cockrell's also. Some time in November 1918.

40 Q. And in November 1918 were Mr. McKenna and Mr. Cockrell associated in business? A. Yes, I believe they were.

Exhibit D-1.

Q. Were they associated in the same office at the time that you left their employ? A. The same suite of offices.

Q. You were a stenographer there, were you not? A. Yes.

Q. You did stenographic work for Mr. Cockrell? A. Yes. 10

Q. And for Mr. McKenna? A. Yes.

Q. And you know as a result of your experience in the office with these men as stenographer that they were associated in business? A. Yes.

Q. That was so up to the time that you quit their employ in November 1918? A. Yes.

Q. Did you ever converse with Mr. Cockrell or did he make any statement to you about the adjustment of accounts or finances between himself and Mr. McKenna? 20

Mr. Foster: I object on the ground that it is immaterial, incompetent and irrelevant.

Exception.

A. No, I don't believe I ever did discuss that with him.

Q. Did Mr. Cockrell ever make any statement to you on the subject? 30

Same objection.

Exception.

A. Not that I remember.

Q. Would you say that it never occurred?

Same objection.

Exception.

A. I don't remember it occurring. 40

Exhibit D-1.

Q. Did Mr. Cockrell ever talk to you at all about his business relations with Mr. McKenna?

Same objection.

Exception.

10 A. He did not. Of course if I spoke to him he had to answer.

Q. Did you speak to him?

Same objection.

Exception.

A. I spoke to him.

Q. Now, Mr. Cockrell and Mr. McKenna were joint owners of a corporation, were they not?

20 Same objection.
Exception.

A. I don't know whether they were or not.

Q. What was the name of the business that Mr. Cockrell and Mr. McKenna were associated in?

Same objection.

Exception.

30 A. I believe it was the Merchandise Export Corporation.

Q. And you say that you did speak upon occasions to Mr. Cockrell about his business relations with Mr. McKenna?

Same objection.

Exception.

A. Yes.

Exhibit D-1.

Q. Was that before you received the note from Mr. Cockrell?

Same objection.

Exception.

A. I don't remember whether it was before or after. 10

Q. You don't remember?

Same objection.

Exception.

A. I don't remember.

Q. Was it about the time that you received this note?

Same objection.

Exception.

20

A. I think it was a little after the time, a month or so after.

Q. It was therefore about six months after you had been out of the employ of this company?

Same objection.

Exception.

A. No, it was not.

30

Q. You say you quit the employment in November? A. Yes.

Q. You got the note in April? A. Yes.

Q. It was a month after you got the note that you first spoke to Mr. Cockrell about it?

Same objection.

Exception.

A. I am just a little confused about it.

40

Exhibit D-1.

Q. What is the fact?

Same objection.

Exception.

10 A. I cannot say any definite time that I discussed that with Mr. Cockrell.

Q. Why did you state a moment ago that it was about a month after this note was given to you?

Same objection.

Exception.

Q. At first thought I thought it was but now that I think it over I don't think it is.

20 Q. You didn't change your testimony until after I asked you if it was about five or six months after you left the employ of this company that you spoke to Mr. Cockrell about it?

Mr. Foster: I make this objection on the ground that he has no right to impeach the testimony of his own witness.

A. Your next question kind of changed my memory about the thing.

30 Q. Were there any other clerks or stenographers employed by the company of Mr. McKenna and Mr. Cockrell at the same time that you were?

A. Yes.

Q. You, however, were the person that made out the weekly financial statement of the company's business? A. No.

Q. Did you ever do that? A. No. I never had anything to do with their finances. I just wrote their letters.

Exhibit D-1.

Q. Going back to this evening of April 2nd, 1919, Mr. Cockrell just met you on the street in front of the building and gave you the note? A. Yes.

Q. That was the first thing he did after you met him that evening? A. Yes. 10

Q. And you didn't know anything about the note before that evening, did you? A. No.

Q. Was anything else given to you by Mr. Cockrell that evening besides this note? A. I believe there was another paper or something. It was in an envelope and I don't remember whether there was another paper or just the note. The note was in an envelope, just a long envelope, and he told me all about it.

Q. It was in an envelope and he said, "This is your wedding gift." A. Yes, and then he handed it to me. 20

Q. Did you extract it from the envelope then? A. No, not right away. I just listened to what he told me about it.

Q. When did you first remove it from the envelope? A. I guess it was while we were out to dinner that night if I remember rightly.

Q. Did you remove anything else from the envelope? A. It seems that there was a mortgage there with it. 30

Q. Why do you say it was a mortgage? A. Well, because Mr. Foster has this mortgage on this property down in Deal and I believe the note was with this mortgage.

Q. Why are you doubtful about it? A. I would just as soon not be doubtful.

Q. If these things, whatever they were, were given to you as a gift, how is it you cannot now

Exhibit D-1.

tell us clearly what they were that were handed you as a wedding gift? A. I was very young at the time and I didn't take things as seriously as I do now. I just kind of took things lightly.

10 Q. How old were you then? A. I think twenty years old.

Q. Did Mr. Cockrell tell you that you could not maintain a suit on this note until after you became twenty-one? A. I don't believe he did.

Q. He said nothing to you about it? A. I don't believe he did.

Q. That is that you could not maintain it in your own name? A. No.

20 Q. He didn't discuss it with you at all? A. No. I was twenty-one that same year. I was twenty-one that following November.

Q. Did you carefully examine at any time the other papers whatever they were, accompanying the note that was given you? A. I read them over.

Q. What were they? A. Well, there was a mortgage on this property down in Deal. Mr. Foster has the papers all here. And the note, and there was an assignment in with it.

30 Q. Did Mr. Cockrell explain to you at the time and relationship between the note and whatever other papers accompanied it in the envelope? A. He told me this note was given as security for the mortgage, I think.

Q. When did you last discuss the matter of this note with Mr. Cockrell prior to the present time? A. I discussed it about every day with him I suppose, very often.

Q. A moment ago when Mr. McKenna and I stepped out of the room was anything said by

40

Exhibit D-1.

Mr. Cockrell or by you with regard to the note and the papers that accompanied it? A. When you stepped out of the room?

Q. Yes. A. No.

Q. Mr. Cockrell, your husband, is the gentleman who is now sitting on my left? A. Yes. 10

Q. And Mr. Cockrell was with you in the room here during the absence of Mr. McKenna and myself from the room? A. Yes, he was here.

Mr. Drewen: I think that is all.

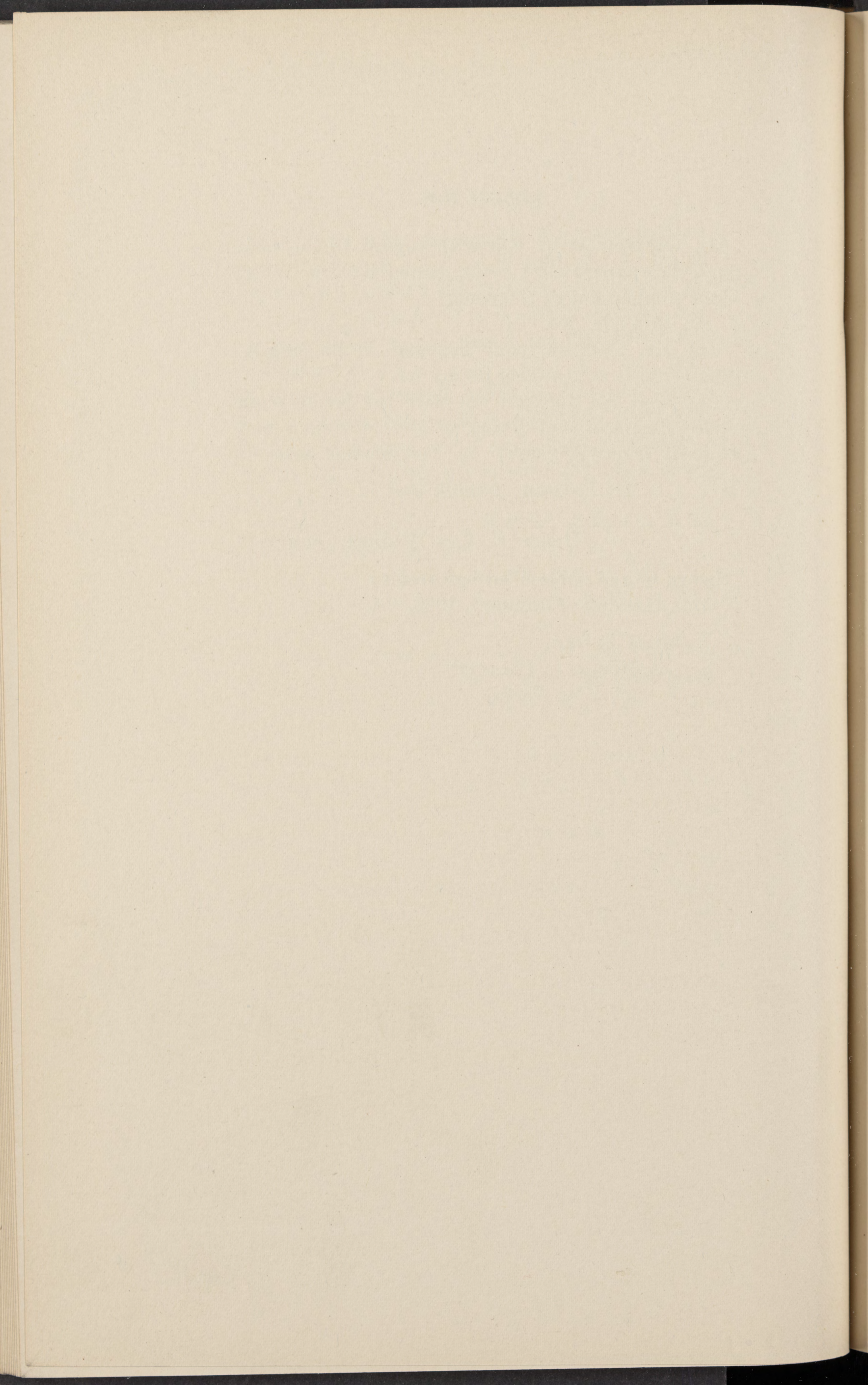
HELEN E. VAN WAGNER COCKRELL.

Sworn to and subscribed before me }
this 21st day of January, 1925. }

JONAS TUMEN, 20
A Master in Chancery
of New Jersey.

30

40



New Jersey Court of Errors and Appeals

HELEN E. VAN WAGONER COCK-
RELL,
Plaintiff-Respondent,

vs.

SADIE O'R. MCKENNA,
Defendant-Appellant.

Action at Law.

On Appeal
from Monmouth
Circuit.

BRIEF FOR DEFENDANT-APPELLANT.

This is a suit on a promissory note. The defendant, Sadie O'R. McKenna, is the maker of the note. One Moncure Cockrell is the payee. The plaintiff, Helen E. Cockrell, is the wife of the payee. Some time before the plaintiff and the payee were married, the payee made a present of the note to the plaintiff. It was a gift to her. In an examination before trial, the plaintiff gave one version of the bestowal of this gift upon her. In her testimony as a witness at the trial she gave quite another version. These versions conflict in very significant and interesting particulars. But they are entirely one in describing the transfer of the note to her as purely and simply a gift thereof. And the making of this gift, according to both versions, was a most casual and off-hand affair. And they are entirely one in this, also: That the passing of the note from the payee to the plaintiff was without any consideration whatever. The parties to this transfer of the note were not husband and wife at the time.

With the facts as above set forth, the plaintiff brought her suit on the note in the Monmouth County Circuit Court, against the defendant as maker.

And right here let us state the proposition of law upon which this appeal is based.

We contend that if there was no consideration for the passing of the note from the payee to the plaintiff, it would then be a good defense by the maker against the plaintiff's suit to show that there was no consideration for the making and delivery of the note by the defendant; that it was *nudum pactum* in its inception.

And though the evidence clearly and undeniably shows that there was no consideration for the passing of the note to the plaintiff, *and that the plaintiff, therefore, was not a holder in due course, the trial Judge would not permit the defendant to show that there was no consideration whatever for the making of the note by her.*

We say that was error, and that is what we complain of on this appeal.

The note was made in New York, and it was payable in New York.

The law of the State of New York on the subject here in question is identical with that of the State of New Jersey. On that very identity the trial Judge based his rulings against us in excluding our proffered defense, as appears by his statement to the jury when directing a verdict in favor of the plaintiff. (Case page 39, line 30).

Also, it was expressly admitted by counsel for the respective parties that the law of New Jersey on the subject is also the law of the State of New York (Case p. 41, lines 10-12).

To prevail in our contention on this appeal, we submit that we have to show three things.

1. That the plaintiff was not a holder in due course and for value.
2. That since the plaintiff was not a holder in due course and for value there was available to the defendant, as maker, the defense that there was no consideration for the making of the note by her.
3. That the defendant, having offered such a defense, was denied by the trial Judge a right to interpose it.

These will be considered in their order.

I.

Plaintiff was not a holder in due course and for value.

We can do nothing better in making this point than refer the Court to the testimony of the plaintiff at the trial (Case pp. 18-30). And to her examination before trial, which appears in the case as Exhibit D-1 (Case p. 43).

These are detailed narratives of the presentation of the note to her by the payee as a wedding gift. The presentation took place some time before they were married. But they were engaged at the time. She "gave no money for the note; paid over nothing by way of property or other thing of value" (Case p. 21, line 10). At the trial she testified that the purpose of the giving of the note was to enable her, with the proceeds thereof, to purchase an engagement ring. Her testimony before trial was quite different. Then she said nothing about an engagement ring, or the purpose of the note.

The note was given to the plaintiff in April, 1919; she did nothing to reduce the note to payment, and thus procure her engagement ring, until 1922, some two or three years after her marriage (Case p. 47, line 1). But our point here is simply to show that the note was a gift. And she said it was a gift. Her testimony before and at the trial simply supplies all the details of the making of the gift. How it can be said to be anything but a gift, we do not know. Nothing that attended the passing of the note to her could in any sense be regarded as "consideration sufficient to support a simple contract".

"Value is any consideration sufficient to support a simple contract."

Sec. 25, Neg. Inst. L., New Jersey.

Sec. 51, Neg. Inst. L., New York.

It is quite possible that the plaintiff on this appeal may make some effort to show that consideration can be extorted from the impending marriage of the parties. But even in that situation there is nothing for the plaintiff's argument. The note was not given in consideration of marriage. They were already engaged to be married; had been engaged for some time. Their troth was plighted long before the note appeared. And the plaintiff did not know anything about the note until she received it (Case p. 45, line 38). Marriage or no marriage, the note remains a gift, and nothing else.

Counsel for the plaintiff, we anticipate, will also make an effort to show love and affection as a consideration for the passing of the note to the plaintiff.

It seems to be clearly settled that:

"Natural love and affection or gratitude, which are called good, as distinguished from

valuable, consideration will not alone suffice to satisfy the promise contained in a bill or note”.

8 Corp. Jur., Sec. 379; many cases cited, including New York.

Corpus Juris cites no authority nor principle contrary to that above stated.

And in *Conover vs. Brown*, 49 Eq., at 169 (reversed on other grounds), our Court said:

“If the note was given for a valid consideration, it was, of course, a valid security without regard to the actual sealing of it. But I have already found, as matter of fact, that it had no money consideration, but was intended as a gift. If so, by the plainest principles, it cannot, as between strangers, be enforced, unless it is treated as a sealed instrument. ”

“Where a note was an accommodation payable as between the maker and payee, the third person seeking to hold the maker of the note has the burden of proving that he gave consideration for the note”.

Richards vs. Shaw, 77 N. J. Eq., 399.

The testimony in the case under this head, and the law seem to be too clear to warrant further comment.

But there is a curious passage contained in the statement made by the Court to the jury when directing plaintiff's verdict. The Court told the jury all the elements necessary to make the plaintiff a holder in due course. And one of these he stated, was that “she took it in good faith and for value” (Case page 39, line 8). And then the Court added this: “* * * every holder of a negotiable instrument is presumed to be a holder in due course. The presumption in this case is that Mrs. Cockrell is a holder in due course. *The*

only testimony bearing upon that question is the testimony of the plaintiff herself as to the circumstances under which she secured possession of the note."

Well, how could such a presumption, by any possibility, be more adequately rebutted than by the testimony of the holder "herself as to the circumstances under which she secured possession of the note"?

The trial Court's treatment of this question left the holder of the note protected, not by any presumption which the law may be said to give her, but by something like a vested right, which nothing inferior to a constitutional provision could take from her.

It is, perhaps, the Court's mind on the subject, as thus disclosed, that explains his refusal to permit the maker to introduce the defense she offered.

II.

The plaintiff, not being the holder in due course and for value, the defendant was entitled to show as a defense that there was no consideration for the making of the note by her.

The law, common to New York and New Jersey, is as follows:

"Absence or failure of consideration is a matter of defense *as against any person not a holder in due course*; the partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount, or otherwise".

Sec 28, Neg. Inst. L., New Jersey;
Sec. 54, Neg. Inst. L., New York.

At the trial it was agreed and admitted by Court and counsel that the Negotiable Instruments Law of the two States is identical. And as to the identity in both States of the section last above quoted under this point, there was a special stipulation (Case p. 41, line 27).

Now, if want of consideration is a defense "against any person not a holder in due course," then we were certainly entitled to that defense as against the plaintiff. We were entitled to it on the basis of the Court's definition of a holder in due course, as stated by him to the jury in the direction of the plaintiff's verdict. Was the plaintiff a holder in due course? If she was not, the Court wrongfully deprived us of our defense. The law, identical in both States, thus defines a holder in due course:

"A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and legal upon its face.
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.
3. That he took it in good faith and FOR VALUE.
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument, or defect in the title of the person negotiating it".

Sec. 52, Neg. Inst. L., New Jersey;

Sec. 91, Neg. Inst. L., New York.

We are concerned with the third element of this definition. All the circumstances of the bestowal

of the note upon the plaintiff, as told by the plaintiff herself in both versions given by her, may leave the element of "good faith" seriously in doubt. But this much is certain: *She did not take the note for value.*

And there is another provision of the Negotiable Instruments Law, common to both New York and New Jersey:

"In the hands of any holder, *other than a holder in due course*, a negotiable instrument is subject to the same defenses as if it were not negotiable".

Sec. 58, Neg. Inst. L., New Jersey;

Sec. 97, Neg. Inst. L., New York.

The plaintiff, therefore, being, as we believe we have demonstrated, a holder "other than a holder in due course," the note for every purpose of the trial below and of the present argument, was, and is, a non-negotiable note. And it is only "every *negotiable* instrument that is deemed *prima facie* to have been issued for a valuable consideration" (Sec. 24, Neg. Inst. L., New Jersey; Sec. 50, Neg. Inst. L., New York).

If the note is not a negotiable instrument, then the plaintiff, as holder, is not entitled even to the presumption which the Court accorded her. But he did not only accord her the presumption; the practical effect of his exclusion of our defense was to hold the presumption inviolate against the possibility of rebuttal.

In a suit brought by the payee, we do not think it would ever have occurred to the trial Court to deny our right to show want of consideration in the making of the note. But the instrument, in the hands of the plaintiff, *was of no higher quality than it would have been in the hands of the payee.* She took it not for value, and, therefore, stood in the payee's position.

What fair or cogent answer could be made to our contention on this head we do not know, but at the trial counsel for the plaintiff wished a stipulation as to the provisions of Section 94 of the uniform Negotiable Instruments Act of the State of New York (Case p. 41, line 31). Section 94 of the Act as it exists in New York, is Section 55 of the New Jersey Act. They are identical. The section reads as follows:

“The title of a person who negotiates an instrument is defective within the meaning of this act, when he obtained the instrument, or any signature thereto, by fraud, duress or force, or fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as to amount to a fraud”.

What the plaintiff hopes to show by this section, possibly, is that the title of the payee of the note is not defective, within the meaning of the provision, and, therefore, everything is well with the note as he passes it on to the plaintiff.

This section, the one preceding and the one following it, are inter-related. They constitute one aggregate provision of the Negotiable Instruments Law. They do not in any sense concern the question now in dispute. They provide for the protection of the transferee, who has *paid value* for an instrument to which the transferrer had defective title. Such a transferee shall be deemed a holder in due course only as to the value actually paid by him prior to his being charged with notice of the defective title of the transferrer. These sections have no effect upon a case like the present, where the transferee *paid no value whatever*. That is governed by the other sections of the Act above set forth.

III.

The defendant was illegally deprived of her defense of want of consideration.

The defendant signed the note at the request of her husband. This request was made *at the instance of the payee*. But the trial Court would not permit us to show how, or why, the husband requested the defendant to sign the note; *nor would the Court permit us to show the absolute want of any consideration affecting either the maker or her husband, in connection with the making of the note.*

The grounds of appeal, from the first to the nineteenth, are all based upon rulings of the trial Court, excluding questions by which we sought to prove the defense mentioned. We approached it in every way we knew how. We sought to show that the defendant received no money or thing of value; that the payee remitted no claim or demand of his against her; that he had none such to remit. In a word, we sought by our defense to exclude from the making of the note any vestige of consideration, as the law defines consideration. But in no instance was our testimony admitted.

Then, at the close of the testimony, in order that there may be no doubt about it, we asked the Court if we were to understand that he excluded from the case any testimony of want of consideration for the making of the note. The Court stated that he did exclude all such testimony (Case p. 37, lines 28-33).

Having thus been denied our right to make a proper defense, there was, of course, nothing in the evidence making it possible for the defendant to resist the direction of a verdict against her.

This exclusion of the defendant's evidence of her defense, which is made the subject of our grounds of appeal, we respectfully submit, was erroneous, and that the judgment of the Monmouth Circuit should be reversed.

PERKINS & DREWEN,
Attorneys for Sadie O'R. McKenna,
Counsel Defendant-Appellant.

123 MAY. T. 1926

New Jersey Court of Errors and Appeals

HELEN E. VAN WAGONER
COCKRELL,
Plaintiff-Respondent,

vs.

SADIE O'R. MCKENNA,
Defendant-Appellant.

Action at Law.
ON APPEAL FROM
MONMOUTH
COUNTY CIRCUIT
COURT.

**REPLY BRIEF
FOR DEFENDANT-APPELLANT.**

In opening his argument under Point One in his brief, counsel for plaintiff says:

“In attempting to argue that the plaintiff was not a holder in due course and for value, consideration need only be had of the question of value, *as it is not denied that the plaintiff was holder in due course.*”

It is firmly denied that the plaintiff was a holder in due course. The question of value is vital to the consideration of her status as such a holder. As shown in our main brief, one of the elements necessary to constitute the plaintiff a holder in due course is that she took the note in good faith “*and for value.*” Plaintiff cannot be considered a holder in due course without having given value for the note.

On page three of his brief, counsel deals with the question of the note as a wedding gift and

considers it in connection with the marriage. His assertions under this head are fiat assertions. There is nothing in the facts even to justify so much as comment of the kind he makes. He says this:

“By reason of the testimony, namely that the plaintiff received the note as her wedding gift, which was really in *contemplation* of her impending marriage, the defendant contends that she is not a holder thereof for value.”

Counsel is careful at this point not to say “in consideration of her impending marriage”. But the giving of the note by the payee was not even in “contemplation” of the marriage, as we show clearly by reference to the testimony in our main brief. The engagement was of long standing and all pre-nuptial commitments had been made *without any knowledge on the part of the plaintiff of even the existence of the note*. The testimony admits of no doubt whatever as to this. We especially refer to the testimony given by the plaintiff in her examination before trial, in which she tells how surprised she was when the note was delivered to her.

All dictum relative to the love and affection arising out of the ties of blood and kin have no application here. The only relation we have here, and out of which counsel is trying to create a legal consideration, is that of “the heart of a man to the heart of a maid”. And when the man made to the maid a gift of the promissory note, it was a gift, and a gift only, however much he may have had for her the “grande passion”.

There is no case in this State, or in New York, or elsewhere, so far as we can find, where the love and affection that thrives in the bowers of Eros have been held to constitute consideration sufficient to make a valid contract.

The cases cited by counsel in this connection have no application whatever to the facts presented by this appeal.

On page five of his brief, counsel refers to the Married Women's Act. This has no bearing on the case whatever. The Married Women's Act, as liberalized by the statutes of the State of New York, has no effect on a situation where there is *no consideration* at all. The sole effect of the New York statute is simply to hold, where there is consideration, that the contract shall be binding on a married woman, even though the consideration does not inure to her sole and separate estate. The act certainly does not *dispense with consideration*.

The reference in the brief, at the top of page six, to plaintiff's statement concerning the story told to her by the payee relative to the lending of money to Mr. McKenna after a fire that the latter had had, simply emphasizes the harm done by the trial judge in refusing to allow either the defendant, or her husband, the said Thomas P. McKenna, to state the fact of the absence of consideration for the making of the note.

Under Point "Two" (there are two points thus designated in plaintiff's brief), on page nine, counsel refers to the fact that the defendant did not wish to be heard on the motion requesting a verdict in favor of the plaintiff. There was nothing to say as to the motion. As the case then stood, as the result of the trial Court's exclusion of our defense, there was nothing that could be done. We

had been so completely and entirely deprived of our proper position before the Court as to be without any standing whereon to object to the motion to direct a verdict. The harm had then all been done. That is the very gravamen of the trial Court's error.

The grounds for reversal argued by us on this appeal are directed to the exclusion of our proper defense, which exclusion it was that made the direction of a verdict the only fate which the conduct of the trial Court placed in store for the defendant. The cases cited by the plaintiff's counsel have no bearing on the question in issue. The simple circumstance is that we offered a valid and proper defense. The trial Court persistently excluded it. We excepted to his ruling in each instance, and from these rulings we appeal.

Counsel says, at the conclusion of his brief, that we failed to take exceptions to the trial Judge's charge. There was no charge; there was only a direction to the jury that they return a verdict for the plaintiff.

PERKINS & DREWEN,
Counsel for Defendant-Appellant.

123 MAY 1 1926

New Jersey Court of Errors and Appeals

HELEN E. VAN WAGNER COCK-
RELL,
Plaintiff-Respondent,

vs.

SADIE O'R. McKENNA,
Defendant-Appellant.

Action at Law.

On Appeal
from Monmouth
Circuit.

BRIEF FOR PLAINTIFF-RESPONDENT.

This action was brought by the Plaintiff, Helen E. VanWagoner Cockrell, on a promissory note, she being the transferee thereof and the defendant, Sadie O'R. McKenna being the maker. Trial was had in the Monmouth County Circuit Court and resulted in a judgment for the Plaintiff for \$5730.70, a verdict having been directed by the trial Judge (Judge Jess) in favor of the plaintiff at the end of the defendant's case.

From this judgment the defendant now appeals and although numerous grounds of appeal are set forth, they may in fact be reduced to one, namely; that the trial court excluded from the case any testimony of want of consideration between the Defendant, who was the maker of the note, and Moncure Cockrell the husband of the plaintiff and the payee and the transferrer of the note to the plaintiff. Counsel for the defendant stated that he did not wish to be heard on the motion for a direction of the verdict (case p. 38 line 16). Also, he took no objection to the trial judge's charge in directing the jury to return a verdict in favor of the plaintiff.

Comments Upon the Three Points of the Defendant's Brief

Point 1.

In attempting to argue that the plaintiff was not a holder in due course and for value, consideration need only be had of the question of value as it is not denied that the plaintiff was holder in due course.

The questions asked on the trial by the defendant's counsel and objected to, had to do almost entirely with the question as to whether or not the defendant had received from the payee of said note any consideration such as "money" inducement &c.

Defendant's counsel contends that his witnesses should have been permitted to answer these questions on the ground that the plaintiff was not a holder of said note for value, and bases his contention solely upon the testimony given by the plaintiff herself at the trial and at an examination before trial, wherein it appears that her prospective husband, the payee of said note, delivered the same to her with a certain mortgage and assignments thereof, as collateral security, on April 2, 1919, several weeks before the maturity of said note, and upon the **evening** when the plaintiff and her prospective husband were on their way to New Jersey to procure a license in order that they might be married as soon as they could (case p. 22 line 25).

Up to that time the plaintiff had received no engagement ring from her prospective husband, as he had promised her when they became engaged. This ring was to be the kind her sister had "a very beautiful ring" (case 18 line 32) and plaintiff finally talked the matter over with her

prospective husband (case p. 18 line 37) and he told her that he would give her a substantial gift until she should get her ring, and therefore, upon the very night when they proposed to obtain their marriage license, and in pursuance to a previous promise to the plaintiff, Mr. Cockrell in lieu of the ring presented her with the defendant's note endorsed by him and secured by a mortgage, which as the plaintiff testified (case 46 line 27) she "took it for granted that I had almost the cash in my hands."

The plaintiff also testified that she had not received her ring, because as yet, she had not received the proceeds of this note. By reason of this testimony, namely that the plaintiff received the note "as her wedding gift", which was really in contemplation of her impending marriage, the defendant, contends that she is not a holder thereof for value.

It is apparently the defendant's belief that value which is in any consideration sufficient to support a simple contract, can be only such a thing as money and that there is not such thing existing in our law as a good or meritorious consideration. Considerations such as love and affection, parental duty &c. have always been considered by the laws of our State and elsewhere as sufficient consideration to support a simple contract and to quote the Statute from defendant's brief "value is any consideration sufficient to support a simple contract (Sec. 25 Neg. Inst. L.N.J.) (Sec. 51 Neg. Inst. L. N. Y.). The cases are too numerous to cite wherein it appears that instruments of conveyance and other instruments have been held valid upon good or meritorious consideration. See *Conover vs. Brown* 49 Eq. 169 reversed on other grounds 50 Eq. 753. *Shotwell vs. Sturble* 21 Eq. 31. *Matthews vs. Hoagland* 48 Eq. 455. *Corle vs. Monkhouse* 50 Eq. 537 25A 157.

Commenting upon the case of Conover vs. Brown above, Vice Chancellor Pitney held that the consideration of love and affection was sufficient to authorize a Court to enforce the note. This case was subsequently reversed by this Court in 50Eq. 753 upon other grounds, and in its opinion stated that the complainant had a complete right at law to enforce payment of his note.

This case involved a somewhat complicated state of facts but so far as these facts are applicable to the case under consideration it was a question as to whether or not the Court of Chancery would reform the note in litigation, by treating it as a sealed instrument, or in other words supplying a seal. The necessity of supplying the seal being to establish the fact *Prima Facie* that a consideration existed. The Court did supply this seal and among other things, in its opinion, stated that the payment of debts, provisions for a wife and children, **marriage** or purchase are considerations for which the Court had supported such defects (meaning a seal). A meritorious consideration is a good consideration but must be sufficiently manifested in writing.

The quotation in the defendant's brief from 8 Corp. Jur. Sec. 379 is not exactly quoted, although substantially so, nor are the other quotations from it on page 5 correctly quoted in many particulars, as a close perusal will show, although materially the misquotations do not effect the issue. The cases cited thereunder from New York have no bearing whatsoever upon a state of facts similar to the ones at hand. Attention, however, is particularly called to the following; 8 Corp. Jur. Sec. 379, namely, that a good consideration as distinguished from a valuable one "will not **alone** suffice to support the promise contained in a bill or note".

The word "alone" has peculiar significance in

the present case. For if any doubt remains at this point as to whether or not the consideration passing from the plaintiff to her husband, was merely a good or meritorious and not a valuable consideration it is not true that the plaintiff surrendered in consideration of said note, which was presented to her in lieu of the ring previously promised, something of value, namely her state of single blessedness. She was not questioned as to whether or not she would or would not have married her present husband, if he had not transferred said note to her, and consequently there is nothing in the record to show what might or might not have happened if she had not received her substantial wedding gift. The fact is that she did receive her gift, she did marry her present husband, and unfortunately finds herself now in the position of being opposed when she attempts to collect the value of the said gift. She did testify that she had received nothing else in the way of a wedding gift from her husband except her home.

The law being clear on the point that the plaintiff is presumed to be a holder in due course for value, this presumption can only be overcome by introducing evidence to show directly that she paid nothing of any nature whatsoever which can be construed as value for the note in question. No evidence of this nature was introduced or even attempted to be introduced by the defendant at the trial.

It will also be noticed from the answer in the pleadings (case P. 10 Second Defense Paragraph 2 Line 33 &c.) that the defendant pleaded but did not press our married woman's act, notwithstanding the fact that this note was **made, executed, delivered and made payable** within the State of **New York** and notwithstanding the fact that the uncontradicted testimony shows that Mr.

and Mrs. McKenna had previously sustained a fire loss in Long Branch and that plaintiff's husband had loaned to Mrs. McKenna "this money to rebuild the buildings that were burned down and damaged." (Case P. 47 line 26 &c.).

Simply to continue this reasoning to its logical conclusion, and assuming that a good consideration is not ~~alone~~ sufficient to satisfy the promise contained in a note, do we not come to the conclusion that, in addition to a good or meritorious consideration we have an actual valuable consideration coupled with the surrender by the plaintiff of her hand in marriage.

In other words, the defendant has utterly failed and in fact has not attempted to rebut the presumption, that the plaintiff was the holder of this note in due course and for value.

Therefore the legal presumption, not having been rebutted, the same continued to exist and the burden of proof continued to remain upon the shoulders of the defendant until the close of her case at the trial in the Court below.

Referring to the case of Richards vs. Shaw, referred to on page 5 of defendant's brief, the opinion was written by Vice Chancellor Garrison. The complainant Richards, although many days were consumed on the hearing failed to testify in his own behalf, but attempted to prove his case by the testimony of one Hogancamp, who swore that he or the bank of which he was President had purchased the note in controversy, for a substantial sum of money, and had transferred the same to Richards for a valuable consideration. The reason for the Vice Chancellor stating the quotation referred to in the defendant's brief, was that he concluded that the bank of which Hogancamp was President had not paid a valuable consideration for the note and that Hogancamp by reason of being its President was charged with full

knowledge thereof and that Richards took the note from Hogancamp without transferring anything of value therefor. Consequently it is respectfully submitted that this case has no bearing whatsoever, upon the case in hand, other than to further the plaintiff's points.

Point II.

The defendant also claims that under her view of the case, the plaintiff, not being the holder for value, she was therefore entitled to show in defense that no consideration passed to her for the making of the note. The plaintiff is ready to concede this point, provided that it is held that the plaintiff was not the holder in due course and for value, which is certainly not so in the instant case.

Section 55 of N. J. Negotiable Instruments Act is the same as section 94 of N. Y. Act and is clearly quoted on page 9 of the defendant's brief and there seem to be only two cases in New York which have directly construed this section. They are

Broderick Rope Company vs. McGrath
81 Misc. 199,

which in part concludes as follows:

“Failure of consideration is not one of the defenses specified in Section 94 of the Negotiable Instruments Law which throws upon the plaintiff the burden of establishing his bona fide position.” The law reads as follows: Section 94, page 5467, Consolidated Laws of New York) “The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtains the instrument or any signature thereof by fraud, duress or force and fear or other unlawful means or for an illegal consideration or when he negotiates it in

breach of faith or under such circumstances as amounts to fraud.”

Under a plea of want of consideration for notes sued upon, is it error to allow evidence of a collateral agreement that the notes were to be paid in a particular way or out of a particular fund.

Watkins vs. Peters (1897 N. Y.)
21 Misc. 613.

This Watkins case is similar to the present one inasmuch as the defendant alleged want of consideration but attempted to prove not want of consideration but a counter-claim or set-off. The court below whose decision was reversed in the Watkins case admitted evidence as to the counter-claim or set off on the ground that it might **tend to show** that there was no consideration for the note. This was held to be improper.

Point III.

That defendant was deprived of her defense of want of consideration of course, is true, but her right to interpose this defense, is predicated entirely upon the fact that the plaintiff was not the holder of said note in due course and for value. The evidence clearly shows this not to be the case.

Point 1.

It may now be well, although possibly needless, to repeat that in this case the plaintiff was presumed to be the holder of said note in due course and for value and while, this is a rebuttable presumption, none of the testimony introduced nor any of the questions asked by plaintiff's counsel at the trial tended in any manner whatever to refute this presumption.

Plaintiff very frankly told her story as to how the note became hers and that story itself, counsel respectfully urges, has every ear mark of the

truth. She also testified (case page 22 line 4 &c. and P. 47 line 26 &c.) that they (meaning Mr. and Mrs. McKenna) had had a fire at Long Branch and that they were a little pressed for money and that they needed to repair the building that had been damaged, so that he (Mr. Cockrell) let Mr. McKenna have the money and he would get it right back.

This testimony was brought out by the defendant's counsel on cross-examination of the plaintiff and it will be noted that the defendant very carefully refrained from attempting to disprove this statement; no denial thereof was made and no questions asked by counsel concerning this subject or of any consideration or monies which passed to the maker of the note, the defendant, herein, from the payee of the note.

Point 2.

For a separate point, the plaintiff urges that the defendant's counsel at the trial stated that, he did not wish to be heard on the motion requesting the direction of the verdict in favor of the plaintiff (case p. 38 line 16 &c.) and, therefore, failed to bring to the attention of the trial Judge, the reasons he now assigns in this Court for a reversal. It is, therefore, respectfully contended that having failed to bring his reasons to the attention of the Lower Tribunal "this case" is not open for consideration in "a Court of Review." *Yetter vs. Gloucester Ferry Co.* 76 N. J. L. at page 251 citing *Trade Insurance Company vs Barracliff* 16 Vroon 543. *Ottawa Tribe vs. Munter* 31 Vroon 459. *Zelliff vs. North Jersey Street Railway Company* 40 Vroon 541.

Defendant's counsel as heretofore stated also failed to take objection to the Trial Judge's charge.

For the reasons herein stated, the plaintiff respectfully submits that the judgment of the Monmouth County Circuit Court should be affirmed.

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