

Court of Errors and Appeals.

THE MAYOR AND ALDERMEN OF JERSEY
CITY,

Plaintiffs in Error,

vs.

JOHN C. COPPER.

Defendant in Error.

In Error, &c.

Hudson Circuit.

POINTS FOR PLAINTIFFS IN ERROR.

The bonds and coupons upon which recovery is sought were not issued in accordance with section 130 of "An act to re-organize the local government of Jersey City" (P. L., 1871, p. 1094). That section provides that all bonds "Shall be issued and sold only on the concurrence of three members of the Board of Finance and Taxation, and under direction of said Board at public or private sale, as may seem to said Board best for the interest of the city." This bond was in the hands of the Treasurer. He was not directed to sell it, and was without power to do so. The sale could be made only by the Board of Finance and Taxation, or at least under their direction. Hamilton issued the bonds and they were not sold in accordance with the section cited of the city charter. This section applies to bonds issued under the act of 1873, as well as all others, (P. L. 1873, p. 812). The provisions of this section not having been complied with, the bond is without a legal inception and is the property of the city.

The plaintiff took the bond as collateral security for the payment of a sum of money, several hundred dollars below the face of the bond. If he can recover, it should only be in proportion to the amount which he advanced on the note for the payment of which the bond was given as security.

ALLAN L. McDERMOTT,

Attorney of Plaintiffs in Error.

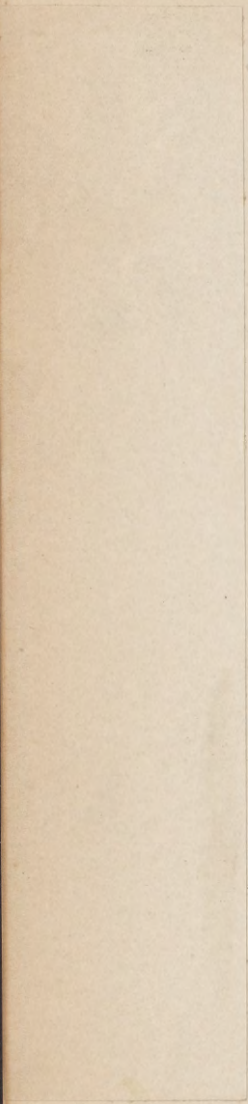
Journal of the Court of Errors and Appeals

Volume 10
Part 1
1845

Case No. 1000

The Court of Errors and Appeals, in the case of the State of New Jersey, against the executors of the will of John Smith, deceased, do hereby certify that the following is a true and correct copy of the opinion of the Court, as delivered on the 10th day of January, 1845.

It is the opinion of the Court, that the executors of the will of John Smith, deceased, are entitled to the residue of the estate of the said John Smith, after the payment of the debts and charges of the estate, and the satisfaction of the claims of the legatees and creditors of the said John Smith, as set forth in the will of the said John Smith, and in the decree of the Court of Chancery, in the said case, bearing date the 10th day of January, 1845.



New Jersey Court of Errors and Appeals,

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JOHN C. COPPER,

Def'd't in Error,

ads

THE MAYOR, &c., of JERSEY CITY.

On Error from
Hudson Circuit.

In Assumpsit.

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Brief of A. M. Hassell of Counsel for Defendant in Error.

Where the maker has perfected the instrument and left
it undelivered in a safe, desk or other receptacle it should
then be at his hazard, such papers are made for use and
not for preservation, the maker creates the risk of their
being cloigned by keeping them on hand and places them
on the same basis as negotiable papers which have been
put upon the market, when once issued the purchaser is
protected and the owner loses even though he had guard-
ed his property with bolt and bar.

30

Dan'l Neg Inst, vol. 1, chap. 26, sec. 839.

40

If there be lawful authority for the corporation to issue the bonds the omission of formalities and ceremonies or the existence of fraud on the part of the agents of the corporation issuing the bonds can not be urged against a bona fide holder seeking to enforce them.

Dan'l Neg Inst, vol. 2, chap. 48, sec. 3, p. 468, and cases cited in note 4.

10

A bond issued by the County of Hudson under Legislative Authority payable to blank or blank was feloniously stolen from the owners: In an action of Replevin by the real owner it was held he could not recover the bond of a holder who had subsequently bought it in the market bona fide for a valuable consideration.

Boyd vs. Kennedy, 9 Vr. 146 and cases cited.

20 See also City of Elizabeth vs. Force, 2 Stewart 588 and Reporters notes.

If the agent or officer is fully empowered to do certain acts by the corporation, but his instructions are not to exercise that power save in certain contingencies, the corporation will be bound *though he violate* such instructions, unless the fact that such contingencies have not transpired be a matter of public record.

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Dan'l Neg Inst, chap. 48, vol. 2, p. 480, cases cited in note 4.

That negotiable bonds are clothed with the attributes of negotiable paper in the hands of a bona fide holder.

See Dillon Munc Bonds, p. 10, notes and cases cited.

40 Boyd vs. Kennedy, 9 Vr. 146.

The holder of negotiable securities pledged as collateral security has the rights of a bona fide holder, in enforcing those securities.

Alliare vs. Hartshorne, 1 Zab 671.

Duncan Sherman & Co. vs. Gilbert, 5 Dutch 521, 13 Gray 7, 24 Barb 551.

10

The plaintiffs in error under the "General issue" were estopped from showing the special matter they allege.

Power in a Municipal corporation to issue bonds being shown the corporation as against a bona fide holder for value is estopped to deny that the power was properly executed.

Rodgers vs. Burlington, 3 Wall 654.

Cincinnati City vs. Morgan, 3 Wall 275.

20

In every species of assumpsit, in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law on the ground of fraud or otherwise shall be *specially pleaded*.

Chitty, vol. 1, 515, 516 and notes.

Little vs. Bolles, 7 Hal law 198.

30

On the point as to the amount recoverable:

We are Trustee for the principal and interest, to our debtor. The action is not on the bond but on the coupons, and this is not the Court to apportion the interest. 40

And again the contract as shown by the state of the case was made with us in the State of Pennsylvania where the rule obtains "that the holder of negotiable paper may recover of the maker the *full face value* irrespective of what he gave for it."

Moore vs. Baid, 30 Penna 138.

Gaul vs. Willis, 26 Penna 259.

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That the action is properly in assumpsit and that the coupons themselves draw interest.

See Dillon Munc Bonds, p. 12 note coupons.

And Aurora City vs. West, 7 Wall 82.

Court of Errors and Appeals.

THE MAYOR AND ALDERMEN OF JERSEY
CITY,

Plaintiffs in Error,

vs.

JOHN C. COPPER.

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*In Error, &c.
Hudson Circuit.*

20

STATE OF NEW JERSEY, *ss.*: The State of New Jersey to
Manning M. Knapp, Esquire, Judge of our
[L. s.] Circuit Court of Jersey City, in and for the
County of Hudson, or such Justice of the Su-
preme Court of the State of New Jersey as shall hold such
Circuit Court, and to the said Circuit Court, greeting: Be-
cause in the records and proceedings, and also in the giving
of judgment in a plaint which was in our Circuit Court
holden in Jersey City between John C. Copper, plaintiff,
and "The Mayor and Aldermen of Jersey City" (a muni-
cipal corporation of this State), defendant, of a plea of tres-
pass on the case upon premises, manifest error hath inter-
vened to the great damage of the said defendant, as by its
complaint we are informed, we being willing that speedy
justice should be done to the parties aforesaid in this behalf,
do command you distinctly and openly to send under your
seal the record and proceedings aforesaid, with all things
touching and concerning the same to our Judge of our
Court of Errors and Appeals, in tholast resort in all causes,
on the first Tuesday in November next, together with this 40

writ, that the record and proceedings being inspected we may further cause to be done thereupon what of right and according to law ought to be done.

Witness our Chancellor and President, Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-second day of September, A. D. one thousand eight hundred and eighty.

HENRY C. KELSEY,
Clerk.

10 ALLAN L. McDERMOTT,
Attorney.

The answer of Manning M. Knapp, Esquire, Judge of the Circuit Court within named, the record and proceedings of the plaint whereof mention is within named, with all things touching the same. I certify to the Court of Errors and Appeals at Trenton, at the day and year within
20 contained, in a certain schedule to this writ annexed, as I am commanded.

M. M. KNAPP. [L. s.]

HUDSON CIRCUIT COURT

OF THE FIFTH DAY OF AUGUST, IN THE YEAR OF OUR LORD
ONE THOUSAND EIGHT HUNDRED AND SEVENTY-NINE.

HUDSON COUNTY, *ss*: The Mayor and Aldermen of Jersey City, a municipal corporation of this State, the defendants 10
in this suit were summoned to answer John C. Copper, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff by Abram M. Hassell, his attorney, complains. For that whereas the defendants heretofore, to wit, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and seventy-nine, at Jersey City, in the County of Hudson, were indebted to the plaintiff in the sum of five hundred dollars, for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendants at their request; 20
and in five hundred dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the defendants at their request; and in five hundred dollars for so much money by the plaintiff before that time lent and advanced to the defendants at their request; and in five hundred dollars for so much money by the plaintiff before that time paid for the use of the defendants at their request; and in five hundred dollars for so much money by the defendants before that time had and received for the use of the plaintiff; and in five hundred 30
dollars for interest upon, and for the forbearance by the plaintiff to the defendants at their request, of divers large sums of money before that time due and owing from the defendants to the plaintiffs; and in five hundred dollars for so much money then and there found to be due from the defendants to the plaintiff on an account stated between them, and being so indebted, the defendants in consideration thereof then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendants have disregarded their said several promises, and 40

have not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so have hitherto wholly refused, and still do refuse to the damage of the plaintiff five hundred dollars, and, therefore, he brings his suit, &c.

A. M. HASSELL,
Attorney of Plaintiff.

10 Notice is hereby given that this action is brought to re-
cover the amount due on four certain coupons, issued by
said corporation by due authority of law, of which the fol-
lowing are true copies :

\$35.00. \$35.00.

The Mayor and Aldermen of Jersey City will pay to the bearer hereof on the first day of January, 1878, in the City of New York, thirty-five dollars in lawful money of the United States of America, being six months interest due on its bond, dated July 1st, 1873.

20 No. 430. JOSIAH HORNBLLOWER,
City Treasurer.

\$35.00. \$35.00.

The Mayor and Aldermen of Jersey City will pay to the bearer hereof on the first day of July, 1878, in the City of New York, thirty-five dollars in lawful money of the United States of America, being six months interest due on its bond, dated July 1st, 1873.

30 No. 430. JOSIAH HORNBLLOWER,
City Treasurer.

\$35.00. \$35.00.

The Mayor and Aldermen of Jersey City will pay to the bearer hereof on the first day of January, 1879, in the City of New Ycrk, thirty-five dollars in lawful money of the United States of America, being six months interest due on its bond, dated July 1st, 1873.

40 No. 430. JOSIAH HORNBLLOWER,
City Treasurer.

\$35.00.

\$35.00.

The Mayor and Aldermen of Jersey City will pay to the bearer hereof on the first day of July, 1879, in the City of New York, thirty-five dollars in lawful money of the United States of America, being six months interest due on its bond, dated July 1, 1873.

No. 430.

JOSIAH HORNBLOWER,
City Treasurer.

And the said defendants are further notified that the 10
coupons above set forth were originally annexed to and issued with as part and parcel of a certain bond called "seven per cent. forty year bond," by due authority of law issued by said defendants, a true copy of which is as follows :

No. 430.

\$1,000.

UNITED STATES OF AMERICA,

STATE OF NEW JERSEY.

20

THE CITY OF JERSEY CITY

Seven Per Cent.

FORTY-YEAR BOND.

Know all men by these presents that the Mayor and Aldermen of Jersey City, a municipal corporation of the State of New Jersey does hereby, for value received, acknowledge itself to be indebted and firmly bound unto 30
or bearer in the sum of one thousand dollars, lawful money of the United States of America, to be paid at the office of the City Treasurer of Jersey City, on the first day of July, *anno domini* one thousand nine hundred and thirteen, with interest thereon at the rate of seven per cent. per annum from the date hereof, payable semi-annually on the first day of every January and July hereafter, until this bond is paid, on presentation and surrender of the proper coupon hereto attached. This bond is executed and issued in conformity with a resolution 40

Therefore, to try the issues above joined let a jury come before the said Circuit Court at Jersey City aforesaid, on the seventeenth day of September in the year of our Lord eighteen hundred and eighty, who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day be given to the parties aforesaid, at which day before the said Circuit Court come the said parties by their attorneys aforesaid. And the jurors of the jury above mentioned also come, who, to speak the truth of the matter aforesaid,
 10 being chosen, tried and sworn, and thereupon the said parties consent that the issues of fact be tried by the Hon. Manning M. Knapp, Judge of the said Court, and thereupon the said Judge did determine upon such issues that the said defendants did undertake and promise in manner and form as the said plaintiff has within complained against them, and the said Judge did assess the damages of the said plaintiff, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, at one hundred and seventy-one dollars and thirty-
 20 eight cents over and above his costs and charges by him about his suit in that behalf expended.

Therefore, it is considered that the said plaintiff do recover against the said defendants his damages as aforesaid in form aforesaid found, and also thirty-four dollars and eighty-two cents for the costs and charges by the said Court now here adjudged to the plaintiff, and with their assent, which said damages, costs and charges in the whole amount to two hundred and six dollars and twenty cents. And the defendants in mercy, &c.

30 Judgment signed May 20, 1882.

M. M. KNAPP,
Judge.

HUDSON CIRCUIT COURT.

JOHN C. COPPER <i>vs.</i> THE MAYOR AND ALDERMEN OF JERSEY CITY.	}	<i>In Case.</i> 10
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Be it remembered that at a Circuit Court held at Jersey City, in and for the County of Hudson, before the Hon. Manning M. Knapp, Judge of the said Court, according to the form of the statute in such case made and provided, on the seventeenth day of September, A. D. eighteen hundred 20 and eighty, came on to be tried the issue in the above stated case, joined between the said John C. Copper and The Mayor and Aldermen of Jersey City (*pro ut* the same), at which day before the said Judge came, as well as the said John C. Copper, and the said The Mayor and Aldermen of Jersey City, by their respective attorneys aforesaid, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issue in manner aforesaid respectively joined.

And thereupon, to maintain the said issue on his part, 30 the plaintiff proceeded as follows :

Mr. A. M. Hassell for plaintiff, Mr. Allan L. McDermott for defendant.

It is admitted by defendant that the resolution referred to in the bond is in Book A., page 130.

Plaintiff reads a copy of the resolution.

John E. Scott, a witness sworn on behalf of the plaintiff testifies as follows: I am City Clerk of Jersey City; have 40

been City Clerk since 1870; was City Clerk when these bonds were issued; I know the signatures thereon; that is the signature of Charles H. O'Neil, the then Mayor, and my own signature, and it is the signature of Ezra E. Carman, Comptroller; the signature to the coupon is a *fac simile* of the Treasurer's, Josiah Hornblower; these are all genuine signatures.

Q. Have you any record of these bonds in your possession as City Clerk?

10 A. No, sir.

Q. What was the usual course when these bonds came into your possession; what did you do with them?

A. The bonds were first signed by the Mayor on the requisition of the chairman of the Committee on Finance of the Board of Finance and Taxation; after the Mayor signed I signed, then the Comptroller; then I affixed the seal; then I delivered the bond to the City Treasurer, taking a receipt.

Q. Is that the seal of the city to this bond?

20 A. Yes, sir.

Q. Were those formalities gone through with in this case?

A. Yes, sir.

Q. Have you that receipt book you speak of?

A. Yes, sir.

Q. Turn to it and see about the bond No. 430.

A. (Looking at book) I have a receipt here Jan. 3, 1874, for bond 430, together with other bonds, signed by Alexander D. Hamilton, Treasurer.

30 Q. As I understand you all the requisite formalities in the case of bonds were performed in this case that are necessary or that are usual in any case that has come under your notice?

A. Yes, sir.

Q. They were merely signed by the proper officers and then turned over by you to the Treasurer?

A. Yes, sir; on the written order of the chairman of the Finance Committee of the Board of Finance and Taxation.

40 (Plaintiff offers the receipt book in evidence.)

Cross-examined :

Q. Is there any further record of the issuing of these bonds in your office?

A. No, sir.

Q. There is no record kept in your office of any receipt by the City Treasurer for the bonds?

A. Yes, sir.

Q. (By Mr. Hassell) Where are such receipts kept?

A. With the Treasurer or Comptroller; it is after it has passed out of my hands. 10

Q. Does anything remain to be done after it has passed out of your hands?

A. Only to sell it and get the money.

Q. Is there any record in your office of the announcement of the fact that this bond was stolen by the City Treasurer?

(Objected to.)

20

A. The Board of Finance caused notices to be printed giving the numbers of all bonds stolen by Hamilton, and I was furnished with a number of those for distribution; that's all.

Q. (By Mr. Hassell) There is no record in your office of the bonds having been stolen?

A. No, sir.

Q. What did you do with those notices?

A. I gave them out to parties who came in the office, 30 different ones; I can't mention any particular one; I know I had quite a number, and they are all gone.

Q. Did you mail them anywhere?

A. No, sir.

Q. Have you got one of those notices?

A. I have, at my office; I had one left and I pasted that in a book in which I kept everything of that kind.

Q. Is there any further record of any action taken by the city authorities in your office?

A. No, sir.

40

(The bond and coupons are offered in evidence by plaintiff, and are marked as exhibits.)

John C. Copper, the plaintiff, sworn in his own behalf, testifies as follows:

Direct-examination by Mr. Hassell.

I am the plaintiff; reside in Philadelphia; have resided
 10 there all my life; this bond and coupons were given to me
 as collateral for a note on which money was paid; those
 coupons were a part of that bond; they were given to me
 in August, 1873, I think—no, 1875; I think it was the 31st
 of August; I could only have remembered that by refer-
 ring to the note, however; this is the note dated August
 31, '75.

Q. How much money did you advance on this security?

A. The amount of the note, \$772.96, in cash.

Q. At the time you advanced this money what knowl-
 20 edge had you, if any, of any defect in this security?

A. None whatever; the broker I showed it had no
 knowledge of it.

Q. What broker did you show it to?

A. Frank Drexel, of Drexel & Co.

Q. And on their recommendation you took it?

A. On their acknowledging that the coupon was worth
 \$103 on every hundred.

Q. How did you come to get it?

A. From a man named Camden, a note broker; I could
 30 not produce him here; his testimony has been taken *de*
bene esse.

Q. After you had taken this bond did you have the cou-
 pons presented for payment?

A. I did; I sent them through my bank—the Western
 National Bank; they were returned to me with word, and
 with a printed notice, stating that they were part of some
 stolen bonds, and upon inquiry I found it was by their own
 treasurer that they had been stolen; that was the first inti-
 mation I had that they were stolen; no part of the coupons
 40 have ever been paid.

Cross-examined:

Q. What is your business?

A. Importing materials for books.

Q. How long have you known Mr. Camden?

A. At least ten years.

Q. Were you in business with him?

A. Never.

Q. Did you ever have any other business transactions with him besides this? 10

A. I loaned him money to help him at one time.

Q. Who brought you this bond?

A. He brought the bond with the gentleman with him, Mr. Sharpe, I had never been acquainted with Mr. Sharpe before, but I had knowledge of him.

Q. Was that the first knowledge you had that that bond was in the city when Sharpe and Camden came to you?

A. The very first; probably Mr. Camden had been to me the day before and spoke about the purchase of the bond, I am not certain about that, Mr. Camden took the 20 bond to Drexel, and Camden reported to me; then when I found Sharpe did not pay the interest I then sent the bond down by the clerk to see if it could be sold, and he reported it could be sold, and that the bond was worth 103; that probably was three years after August thirty-first, I think was the first time I saw the bond; probably the day before; there were other coupons attached than these here now; I do not know what became of them; Mr. Sharpe always took the coupons and gave me the interest; I saw Sharpe probably two years ago; when I found the bond was stolen 30 I went to Sharp, he expressed great surprise at that; he stated that he got it from some other party; I was determined that my character should be cleared about that, and took Sharpe to the cashier of the bank, who had taken the coupons to collect, and Mr. Sharpe stated to the cashier that he was quite ignorant of it; Sharpe has been to my place of business 6 or 8 times.

Q. What did you give him in return for the bonds?

A. Cash.

Q. Did you pay any commission to Camden? 40

A. No.

Q. Did you ever purchase any bonds or notes or other papers of Camden before this?

A. Never.

Q. Have you had any similar transactions with him since?

A. No.

Q. Why did you send the bond to the Bank twice, or to Drexel?

10 A. I did not send it twice, I sent it once, Camden took it once, and reported that they pronounced it first-rate.

Q. Has there been any payments to you on this note?

A. No payments on the note at all; interest was paid but none on the principal; about \$70 interest I think has been paid.

Q. Give all the conversation you had with Camden when he came and informed you he had this note?

20 A. It was five years ago; he came to know if I had money to spare; that Sharpe wanted money; I had known of Sharpe; that he had been a glass merchant in Philadelphia; had been unfortunate and wanted money; he said for about three months; I said I had it to spare for that time.

Q. Didn't it seem strange that a man reduced in circumstances should want to borrow 75 per cent. of the value of a bond worth 103 per cent.

30 A. Not the least; Camden and Sharpe were both together when I got the bond; I don't remember which of them handed me the bond; I took the bond as security collateral to the note; upon payment of that note with interest Sharp could have the bond; this took place in Philadelphia.

Plaintiff offers in evidence deposition of R. L. L. Camden.

At this point the plaintiff rests and it is agreed between the counsel of the respective parties that the case shall be submitted to the Judge of said Court, as well upon the issues of fact as upon the issues of law, and the jurors aforesaid are discharged. The following statement of facts was
40 then agreed upon:

The plaintiff brings this action against the Mayor and Aldermen of Jersey City, to recover on four coupons attached to a bond called a seven per cent. 40 year bond of \$1,000. Issued (if at all) under an act of the Legislature and the supplements thereto, and in pursuance of certain resolutions of the Board of Finance and Taxation of Jersey City, all of which acts and supplements thereto, and resolutions of said Board are recited in the Body of said bond, and bearing the seal of said corporation and genuine signature of all proper officers. The bond and coupons when issued were payable to _____ or bearer.

The bond bears date July 1st, 1873.

The coupons attached run for the full period of 40 years, those on which this action is brought were past due when the action was brought, and are for \$35 each, or \$140 in all, the coupons were due respectively January 1, 1878, July 1, 1878, January 1, 1879, July 1, 1879.

The plaintiff claims the above sum of \$140, with interest on each past due coupon, from date when due to time of entering judgement. 20

The signature seals and execution of this bond and these coupons attached were genuine and lawful.

The defendants and the Board of Finance and Taxation of Jersey City, had the lawful authority to issue said bond and coupons, and were it not for the criminal act of the City Treasurer as hereinafter set forth, no defense would be offered to this action on account of any want of authority, or lack of legal formalities in the issuing and execution of said bond and coupons.

The ground of the defense to this action is founded in 30 the criminal act of Alexander Hamilton who was lawfully acting, and was in fact the treasurer of the defendants, and as such officer while this bond and these coupons, together with a large number of others of the same series, were lawfully in his custody, instead of negotiating the sale of this and the other bonds and coupons and accounting to the defendants for such sale and negotiation as was in fact his duty as such City Treasurer, contrary to his duty in the premises, he embezzled said bonds and coupons, absconded and appropriated the proceeds thereof to his own 40

use, and the defendants have never received any benefit or advantage therefrom.

After the embezzlement the defendants advertised their loss, but the plaintiff did not know of the facts or their loss until after he had purchased the bond and coupons.

The plaintiff was a *bona fide* purchaser of said bond and coupons for value before maturity from one John Sharp, a merchant in Philadelphia, State of Pennsylvania, where the plaintiff now lives, and has lived and carried on business for the past 40 years.

Demand of payment on said coupons was made by the plaintiff on the defendants at the proper time and place, and the defendants refused payment.

The plaintiff's negotiation with Sharp by which he, the plaintiff, became the possessor of said bond and coupons, took place in the City of Philadelphia, State of Pennsylvania. The plaintiff took Sharpe's note (marked Exhibit A) on demand of peculiar form according to Pennsylvania form, and with a recital therein, that the bond and coupons were given as collateral security to the note, on failure of payment of note plaintiff is authorized to realize on the collateral for best price he can obtain, and apply proceeds in payment of the debt.

The plaintiff advanced on the faith of the collateral security, to the said Sharp, the sum of \$772.96, on August 31, 1875, no part of which has been paid.

The plaintiff would not have advanced the money to Sharp, except for his faith in the bond and coupons, and before loaning the money, he made enquires through two persons, one his clerk, the other a Mr. Camden, who by plaintiff's direction, went to the banking house of T. Drexel and Co., of Philadelphia, to make enquiry, and was there told that the bond and coupons were genuine, and valued and worth in the market 103 at that time.

That the plaintiff does not now know what has become of said Sharp, who since this transaction became bankrupt, and when last heard from was in the city of Chicago, Illinois, but who, when written to by plaintiff since this action was brought, has failed to respond.

The bond and coupons and note are offered in evidence.

Counsel for plaintiff and defendants agree to the above state of facts.

A. M. HASSELL,
Attorney for Plaintiff.
 A. L. McDERMOTT,
Attorney for Defendants.

10

BILL OF EXCEPTIONS.

And thereupon the counsel for the defendants requested the said Judge to find upon the state of facts agreed upon that the plaintiff was not entitled to recover from the defendants the amount of his bill presented, or any part thereof; and his Honor the Judge, refused so to hold or find, but on the contrary held and found that as a matter of law, the plaintiff was entitled to recover the sum of one hundred and seventy-one dollars and thirty-eight cents. ²⁰

And thereupon the said defendants, by their counsel, pray a bill of exceptions to the aforesaid ruling of said Court, and ask that this, their bill of exceptions, may be sealed, and it is sealed accordingly.

M. M. KNAPP,
Judge.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the ninth day of November, in the year of our Lord, one thousand eight hundred and eighty-one, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, come the
 10 said, "The Mayor and Aldermen of Jersey City," by Allan L. McDermott, their Attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and in the judgment aforesaid, there is manifest error in this, to wit:

Because the said Judge refused to find, upon the state of affairs agreed upon, that the plaintiff was not entitled to recover from the defendants the amount of his bill presented or any part thereof.

There is also manifest error in this, to wit: That by the
 20 record aforesaid, it appears that the judgment in form aforesaid was given for the said plaintiff against the said defendants; whereas, by the law of the land, judgment ought to have been given for the said defendants against the said plaintiff.

Therefore the said plaintiffs in error pray that the judgment aforesaid, by reason of the aforesaid errors, appearing in the record and proceedings aforesaid, be reversed, annulled, and for nothing holden, and that the said plaintiffs in error may be restored in all things they have lost on
 30 occasion of said judgment.

ALLAN L. McDERMOTT,
Attorney.

Common joinder in error duly filed.

[EXHIBIT A.]

PHILADELPHIA, August 31, 1875.

\$772 $\frac{96}{100}$

On demand I promise to pay to the order of John C. Copper seven hundred and seventy two, $\frac{96}{100}$ dollars, without defalcation for value received, having deposited here- 10
with as collateral one thousand dollars (\$1.000) Jersey City Bond, which I authorize the holder of this note, upon the non-performance of this promise at maturity, to sell either at the Brokers Board, or at public or private sale, without demanding payment of this note or the debt due thereon and without further notice, and apply proceeds, or as much thereof as may be necessary, to the payment of this note and all necessary expenses and charges, holding myself responsible for any deficiency.

F. F. SHARP. 20

