New Jersey Court of Errors and Appeals

Appeal From New Jersey Supreme Court.

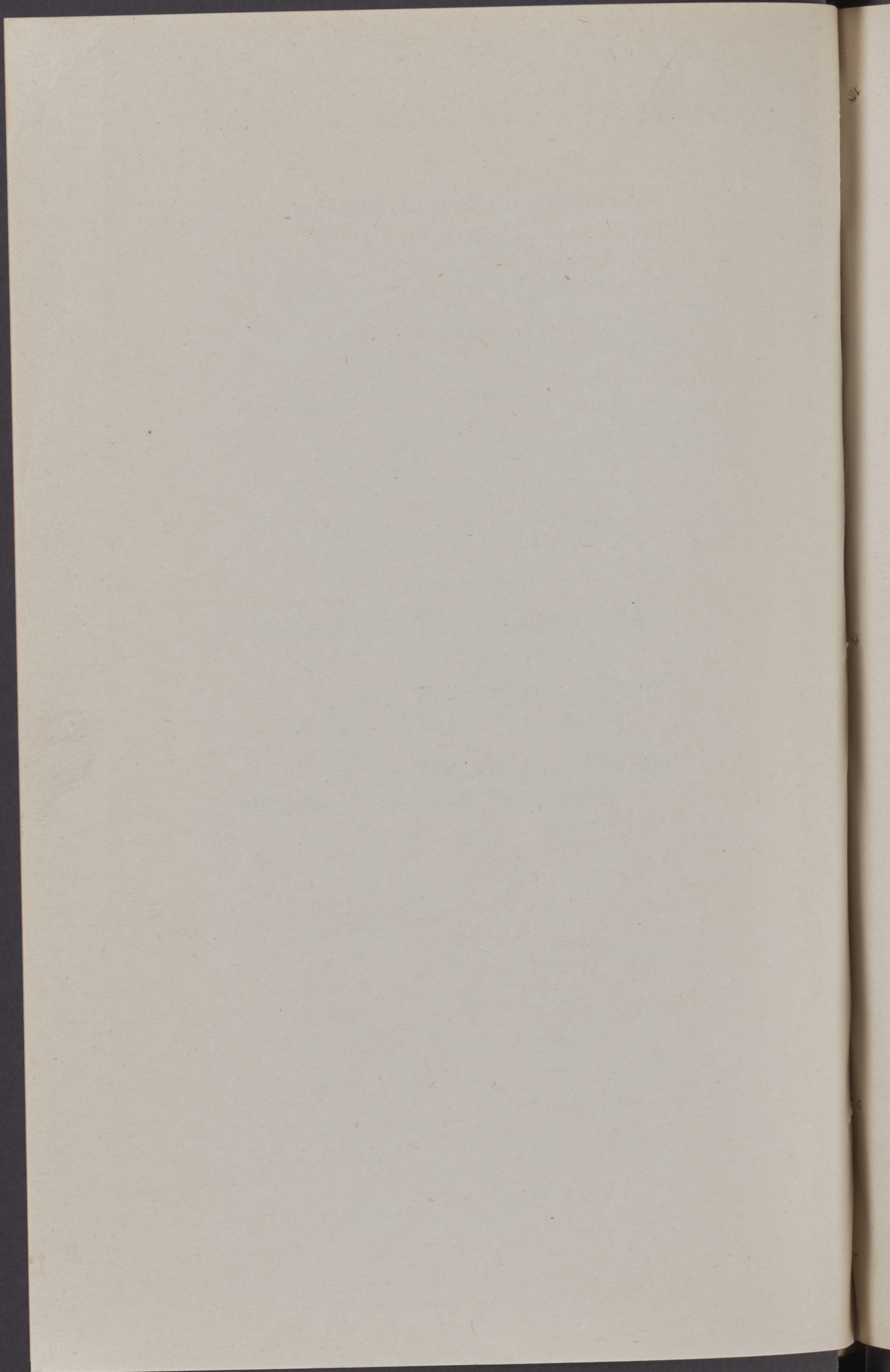
The First National Bank
of Freehold, N. J.,
Plaintiff-Appellant,
vs.
Abbie M. Rutter,
Defendant-Respondent.

STATE OF CASE.

VREDENBURGH & VREDENBURGH,
Attorneys for, and

SAMUEL CRAIG COWART,
of Counsel with Plaintiff, Appellant.

JOHN S. APPLEGATE & SON,
Attorneys and Counsel for Defendant, Respondent.



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The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	On Appeal. Transcript of Record

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Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law Notice of Appeal.

20

To John S. Applegate & Son, Attorneys of Defendant:

Take notice that the plaintiff appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

Dated December 8, 1917.

VREDENBURGH & VREDENBURGH,
Attorneys of Appellant.

30

Service acknowledged December 14, 1917.
Filed December 17, 1917.

40

JUDGMENT RECORD.

Summons issued June 16, 1917

Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law.

10

Abbie M. Rutter, the defendant in this case was summoned to answer unto the First National Bank of Freehold, N. J., body corporate, the plaintiff therein, in an action at law, upon the following complaint:

20

COMPLAINT.

Served June 18, 1917.

Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law. Complaint.

30

The plaintiff, The First National Bank of Freehold, N. J., body corporate, located at Freehold, N. J., says that:

1. It sues for the amount of a promissory note for $1,000 made by the defendant, Abbie M. Rutter,

40 to the order of John T. McChesney, bearing date

February 12, 1917, and payable three months after date at the First National Bank of Freehold, N. J.

2. The payee afterwards endorsed said note to the plaintiff.

3. On the day said note fell due it was presented for payment at the place where it was payable but was not paid.

4. Notice thereof was duly given to said John T. McChesney.

5. Said note is now the property of the plaintiff and is unpaid. 10

6. Plaintiff demands as damages the sum of $1,000 with interest from May 14, 1917, together with protest fees amounting to $1.54.

VREDENBURGH & VREDENBURGH,
Attorneys for Plaintiff.

The following is a true copy of the above note upon which this action is based.

20

$1000.00 Freehold, N. J., Feb. 12, 1917.

Three months after date I promise to pay to John T. McChesney or order One Thousand Dollars at the First National Bank value received. For my own use and benefit.

Due May 12 Signed Abbie M. Rutter
Endorsed J. T. McChesney

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ANSWER.

Filed July 5, 1917.

The Defendant answered as follows:

Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law. Answer.

10

The defendant residing at Freehold, County of Monmouth and State of New Jersey, answering the said plaintiff says:

1. She admits the allegations contained in paragraphs 1, 2, 3 and 5.

20

2. As to paragraph 4 defendant has no knowledge, information or belief.

FIRST DEFENSE.

1. Defendant further answering says that the said note set out in plaintiff's complaint is a renewal note of a similar note, and she denies that plaintiff is entitled to recover the value of said note with interest, from this defendant.

30

SECOND DEFENSE.

1. No notice of protest for non-payment was given this defendant.

THIRD DEFENSE.

1. Defendant at the time she signed said original note and renewals thereof was a married woman; that she signed the same as surety for the said John

40

T. McChesney at the request of the said plaintiff and

that she obtained on the faith of said contract of suretyship neither directly or indirectly, any money, property or other thing of value for her own use or for the use, benefit and advantage of her separate estate, of all of which the said plaintiff had knowledge.

FOURTH DEFENSE.

1. Defendant at the time she signed said original note and renewals thereof was a married woman; that she signed the same at the request of the plaintiff as surety of John T. McChesney; that the said note was received by the said plaintiff from the said John T. McChesney and discounted at his request and the proceeds thereof placed to his credit in his account in said plaintiff's banking institution and by him checked out for his own benefit, of all of which transactions the said plaintiff had actual knowledge, and the defendant never received any of the proceeds of said note, and that the said contract of suretyship so entered into by her was without consideration and altogether void.

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FIFTH DEFENSE.

1. That at the time defendant signed said original note and renewals thereof she was a married woman, and that she was without power to bind herself by contract so as to render her liable on said note or renewals thereof by reason of the provisions of Section 5 of the Married Women's Act. See New Jersey Compiled Statutes, Vol. 3, page 3226.

30

JOHN S. APPLEGATE & SON,
Attorneys of Defendant.

On September 13, 1917, Plaintiff moved to strike out answer, upon which motion the court reserved decision.

40

Monmouth Common Pleas Court.

The First National Bank of Freehold
vs.
Abbie M. Rutter.

To John S. Applegate & Son,
Attorneys of Defendant:

10 Take Notice that I shall apply to Hon. R. V. Lawrence, Judge of said Court on Monday next, September 24th, 1917, at nine o'clock A. M. for permission to reopen the hearing in the above cause for the purpose of introducing in the proceedings an affidavit made by the defendant in the proceedings in bankruptcy against J. T. McChesney on May 10, 1917, which affidavit was unknown to the plaintiff's counsel at the prior hearing.

VREDENBURGH & VREDENBURGH,
20 Attorneys of Plaintiff.

30

40

AFFIDAVIT OF PLAINTIFF.

Filed September 13, 1917.

Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law. Motion to Strike Out Defenses.

10

James W. S. Campbell, being duly sworn on his oath says, that he is and has been for many years past, Cashier of the Plaintiff's Bank, and was such cashier on February 12th, 1917, when the promissory note in the suit was made; that on February 13th, 1917, the said note was presented and offered to the Bank for discount by the payee; that the said defendant, Abbie M. Rutter, is the Maker thereof, and that the following is a true copy of the same, viz: 20

"Freehold, N. J.
Feb. 12, 1917.

"Three months after date I promise to pay John T. McChesney or order One Thousand Dollars at the First National Bank. Value received for my own use and benefit."

(Signed.) Abbie M. Rutter. 30

On the back of the note is endorsed in blank the signature of the payee.

Deponent further says that on February 13th, 1917, he discounted the said note at the request of the said McChesney, and placed the proceeds thereof, the sum of $985 to the credit of the said payee, to whose order the same was directed by the terms of the note to be paid; that at its maturity the note was not paid either by the Maker or the said endorser, 40

and due notice of its non payment and protest was sent to the said endorser and to the maker; that said note still remains wholly unpaid and is due to said Bank; that the whole amount of said One Thousand Dollars together with the interest thereon from the date of maturity of the note is claimed by the said Bank; and the deponent says that in his belief there is no defense of the action; that since the commencement of this suit the defendant has filed answer to
10 the plaintiff's Complaint, in which she admits the allegations of the Complaint contained in paragraphs 1, 2, 3 and 5, and sets up defenses, in substance, that the defendant was at the time she signed said note a married woman, and that she signed the same as surety for the said John T. McChesney, but, in said Answer does not deny that her said note contains on its face above the signature of the maker, the said words "For value received, for my own use and benefit." This deponent says that when
20 he placed the proceeds of the note to the account and credit of the said John T. McChesney, deponent was induced to do so upon the faith of the truth of the representation on the face of the note, that the same was given by the said defendant for value received for her own use and benefit, and that deponent, having as the officer of the Bank, paid its said money to the said McChesney in reliance upon the correctness of the defendant's said statement on her note that the same was given for her own use
30 and benefit, the defendant is legally estopped from denying as against the Bank (a party who has acted thereon) that it was not for her own use and benefit, and from setting up or defending that she signed it as surety for the said John T. McChesney. Deponent further says that the defendant's said Answer stating that said defendant signed the note as surety for the said McChesney directly contradicts the said representation made in the said note by her that it was given for her own use and benefit, and if
40 the Answer be true, such representation was a false

statement of fact, made by the defendant upon the face of her own note, and the said money paid by the Bank was obtained from it by false pretenses.

Deponent further says that the said note was, by its admitted terms, a principal obligation of the maker and not a suretyship, and the defendant as such principal is legally liable to pay said note in this action.

J. W. S. CAMPBELL.

Sworn and subscribed before me
this 1st day of September, 1917.
EDWARD G. FORMAN,
Master in Chancery of New Jersey.

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AFFIDAVIT OF DEFENDANT.

Filed September 25, 1917.

Monmouth Common Pleas Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law Motion to Strike Out Affidavit of Defendant.

10

State of New Jersey
County of Monmouth ss.

Abbie M. Rutter of full age being duly sworn according to law upon her oath says she is the defendant in the above entitled suit; that the defenses
20 interposed by her in said suit by way of answer are true; that the note set forth in plaintiff's complaint is a renewal note of a similar note; that at the time she signed said original note and the renewals thereof, including the note in question, she was a married woman, and that she signed the same as surety for John T. McChesney at the request of the said plaintiff and the said John T. McChesney; that she obtained on the faith of said contract neither directly nor indirectly, any money, property or other thing
30 of value for her own use or for the use, benefit and advantage of her separate estate; that the said original note was received by the said plaintiff from the said John T. McChesney and not from deponent; that it was discounted by the plaintiff at his request alone; that the proceeds thereof were placed to his credit in his account in said plaintiff's bank by it and were by him checked out for his own benefit and in no way for the use or benefit of the deponent, of all of which transaction the said plaintiff had
40 actual knowledge, and deponent never received any

consideration whatever for placing her signature upon said note or the renewals thereof; that the words appearing on said note, to wit "For my own use and benefit" were placed there by the said plaintiff and not by deponent, she having no knowledge of the legal effect thereof, nor was the same explained to her; that the said plaintiff caused the said words to be placed upon said note at the same time knowing that they were untrue and that the defendant had not received any benefit directly or indirectly from the proceeds of the said note, and that the said transaction was in no way for her benefit, but for the sole benefit of the said John T. McChesney. 10

Deponent further says that due notice of protest for non payment was never given this deponent.

Deponent further says that she has read the affidavit made by J. W. S. Campbell representing the said plaintiff. She denies that due notice of the non payment of the said note and protest was sent to her as alleged in said affidavit. She denies that when the said plaintiff placed the proceeds of the note in question to the account and credit of the said John T. McChesney that said plaintiff was induced to do so upon the faith of the truth of the representation appearing on the face of the note, namely, that the same was given by this deponent for her own use and benefit, on the contrary deponent says that the said J. W. S. Campbell and the said plaintiff had actual knowledge of the fact that said loan was being made by the said plaintiff direct to the said John T. McChesney, and that the said plaintiff knew that deponent was a married woman and that the said words were placed upon said note by said plaintiff for the sole benefit of itself and the said John T. McChesney. 20 30

Deponent further says that she is not estopped from denying that the said note was given for her own use and benefit and thereby taking advantage of the defense offered by the so called Married 40

Woman's Act as pleaded by this deponent, because the said plaintiff was in no way misled thereby, and furthermore because this deponent had no knowledge or information as to the legal effect of said expression, nor was she informed thereof by the said plaintiff or any other person.

Deponent further says as to the allegations of obtaining money under false pretences set forth in plaintiff's said affidavit, defendant again reiterates
10 that she obtained no money or other property or advantage directly or indirectly through the discounting of said note.

Deponent further says that her signature as maker of said note was in effect that of a contract of suretyship, the same being signed for the accommodation of the payee.

For the foregoing reasons deponent respectfully insists that she has a good and legal defense to the plaintiff's action and that the said answer and the
20 defenses therein contained should be permitted to stand in order that the evidence relating thereto may be taken and all the facts brought to the attention of the court or jury, as the case may be, in order that the plaintiff's right to recover against deponent may be legally determined.

ABBIE M. RUTTER.

Sworn and subscribed to
before me this 5th day of
September, 1917.
30 VIOLA E. PATTERSON, (L. S.)
Notary Public of New Jersey.

And afterwards, to wit, on the twenty-sixth day of September, nineteen hundred and seventeen, the decision of Judge Rulif V. Lawrence, on the rule to show cause was filed, which decision is as follows:

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Monmouth Common Pleas Court.

First National Bank of Freehold, N. J., Plaintiff, vs. Abbie M. Rutter, Defendant.	Action at Law. Order.

10

Plaintiff moved to strike out the defendant's answer on the ground that it constituted a frivolous and sham plea and disclosed no cause of action; upon which motion arguments for plaintiff and defendant by their respective counsel were duly heard, and the court being of opinion that the answer does not constitute a sham or frivolous answer, but discloses a cause of action, it is ordered that the plaintiff's motion be denied. 20

RULIF V. LAWRENCE, P. J.

Sept. 26, 1917.

This action was tried before Judge Rulif V. Lawrence, with a jury in the presence of the counsel of the respective parties at the Monmouth Common Pleas on December 5, and December 6, 1917. The case having been heard and submitted to the jury they returned a verdict in favor of the defendant for the sum of forty-three dollars and eighty cents, 30 costs of suit.

Judgment entered December 6, 1917.

State of New Jersey
County of Monmouth ss.

I, Joseph McDermott, Clerk of said County, do hereby certify that the foregoing is a true copy of complaint, answer and proceedings in the case of The First National Bank of Freehold, N. J., body 40

corporate, vs. Abbie M. Rutter, as the same remain upon file in my office.

(L. S.) IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said County this eighteenth day of December, A. D. nineteen hundred and seventeen.

JOSEPH McDERMOTT, Clerk.

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Monmouth Pleas Court.

The First National Bank of Freehold, body corporate,
Plaintiff,
vs.
Abbie M. Rutter,
Defendant.
} Action at Law.

10

Transcript of testimony taken on the fifth day of December, nineteen hundred and seventeen, before his Honor, Rulif V. Lawrence, Judge of the above mentioned Court, at the Court Room, Court House, Freehold, New Jersey.

APPEARANCES:

Ex-Judge William H. Vredenburgh of Vredenburgh & Vredenburgh, and Samuel C. Cowart, Esq., appearing for Plaintiff.

20

John S. Applegate, Jr., Esq., of John S. Applegate & Son, appearing for defendant.

JOSEPH T. LAIRD, a witness called on behalf of the plaintiff, was duly sworn according to law and testified as follows:

30

DIRECT EXAMINATION BY MR. COWART:

Q. Mr. Laird, what position do you occupy in the First National Bank of Freehold?
A. Assistant Cashier.
Q. Were you the assistant cashier on February twelfth, nineteen hundred and seventeen?
A. Yes, sir.
Q. I show you a note dated February twelfth, nineteen hundred and seventeen, made by Abbie M.

40

Rutter, payable to the order of John T. McChesney in three months from date in the sum of one thousand dollars at the First National Bank, received for my own use and benefit, made by Abbie M. Rutter as maker and endorsed by John T. McChesney, was that note discounted by you on that date?

A. It was discounted on February twelfth in renewal of a note due that day.

Q. And what was the date of that other note 10 that was renewed?

A. It fell due on February twelfth, dated three months prior.

Q. It was dated at what, —— dated in November, the other note?

A. You mean ——

Q. Was the other note dated in November that you were renewing, November tenth?

A. November tenth, yes, sir, in renewal of a note dated November tenth and due February tenth.

20 Q. Are you familiar with the signatures of Abbie M. Rutter and John T. McChesney?

A. I am.

Q. Are they their signatures?

A. That is the signature of Abbie M. Rutter and the signature of John T. McChesney.

Q. And the note was discounted and placed to whose credit?

A. Placed to the credit of John T. McChesney.

Q. By order of the note in question?

30 A. By order of the note in question.

Mr. Applegate—We object to that, the question is what in fact was done, not what the note ordered.

The Court—What in fact did you do, place it to the credit of McChesney?

Witness—Placed it to the credit of John T. McChesney.

.Q. When that note came due, what was the date of its coming due?

40 A. The note was dated February twelfth, drawn

for three months, due date being May twelfth, May twelfth being a half holiday it went over to May fourteenth and it was due May fourteenth, the due date, May fourteenth.

Q. Was it paid that day?

A. No, it was not.

Q. What became of it?

A. It was protested for non-payment.

Q. Was notice of protest sent by the bank to both the maker and endorser?

Mr. Applegate—That is objected to, the protest books will show.

The Court—Who sent the notices?

Witness—Mr. Maps, a Notary Public.

Q. The fact was that it was protested on that day for non-payment?

A. Handed to the Notary for protest.

Q. And is that the Notary's signature to the notice of protest (indicating)?

A. Yes, sir.

Q. And in that notice, he says that—

Mr. Applegate—That is objected to, if your Honor please.

The Court—Oh, yes, it speaks for itself.

Q. Now, has that note yet been paid?

A. It has not.

Q. What is the amount due, if anything, on that note?

A. One thousand dollars, the note's value, protest fees, one dollar and fifty cents, postage four cents, and interest from May fourteenth, nineteen hundred and seventeen.

Mr. Applegate—What is the total amount?

Witness—One thousand and one dollar and fifty-four cents and interest from May fourteenth, nineteen seventeen.

Mr. Cowart—I offer the note.

(Received in evidence and marked Exhibit P-1 for plaintiff).

Q. Did you receive this letter to the First National Bank or did your cashier receive this letter from Abbie M. Rutter?

A. Yes.

The Court—Why go into that?

Mr. Cowart—It is an acknowledgment of the receipt of the notice of protest.

The Court—Oh, all right.

Q. Did the First National Bank of Freehold, of 10 which you are cashier receive this letter of May fifteenth, nineteen hundred and seventeen, from Abbie M. Rutter?

A. Yes, sir.

Q. Is that her signature?

A. Yes, sir.

Mr. Cowart—I offer this.

(Received in evidence and marked exhibit P-2 for plaintiff.)

Mr. Cowart—I would like to read this letter.

20 "7117 Boyer Street, Mt. Airy, Philadelphia, May 15th, 1917. First National Bank, Freehold, New Jersey. Gentlemen:—In regard to a notice received from you this morning concerning a protested note which I suppose is the one I endorsed for my brother, John T. McChesney, now a bankrupt. I beg to say that my lawyer, Mr. John S. Applegate of Red Bank, N. J., said that you should look to the estate and put in your claim along with other 30 creditors and that under the circumstances I would not have to pay the note. Yours respectfully, Abbie M. Rutter."

Q. That letter was received by the bank after May fourteenth?

Mr. Applegate—That is objected to, if your Honor please, it is a matter of conclusion; the date of the letter appears, the date of the protest appears.

The Court—Yes.

40 Q. That's all.

Q. Mr. Laird, the note that has been marked in evidence exhibit P-1 for identification you say is a note given in renewal of the previous note?

A. Yes.

Q. This is not the original note?

A. No.

Q. This is the last note of a series of notes?

A. Yes. 10

Q. When was the first note given?

A. The first note was dated May eighth, nineteen fifteen and discounted on February ninth, nineteen fifteen.

Q. What is that date please?

A. The note was dated May eighth, nineteen fifteen, the original note.

Q. And due when?

A. No, excuse me, I am wrong in that, that is the due date, the note was dated February eighth, 20 nineteen fifteen.

Q. And due when?

A. Due May eighth, nineteen fifteen.

Q. And where is that note?

A. I don't know; it has been surrendered.

Q. To whom?

A. To John T. McChesney.

Q. And when?

A. When his bank book was written up.

Q. John T. McChesney was the endorser on that 30 note?

A. He was the endorser on that note.

Q. Mrs. Rutter was the maker?

A. Mrs. Rutter was the maker; yes.

Q. Now, if Mrs. Rutter was the maker of that note and McChesney was the endorser; why did you deliver the note to McChesney?

A. McChesney was the holder of the note, possessor of the note and we placed it to his credit.

40

Q. What has that got to do with it; Mrs. Rutter was the maker of the note?

A. Yes.

Q. And McChesney was the endorser?

A. It was drawn to McChesney's order.

Q. Under the circumstances, Mrs. Rutter would have been entitled to the note, wouldn't she?

A. Not necessarily, no.

Q. Why not; isn't the maker the last party to —

10 A. If a man makes a note, ——

The Court: He promises to pay this note.

Witness: Abbie M. Rutter promised to pay John T. McChesney and John T. McChesney was the possessor of the note at the time it was discounted.

Q. It was discounted for John T. McChesney?

A. For John T. McChesney.

Q. And you placed the proceeds of that original note to the credit of John T McChesney?

20 A. To the credit of John T. McChesney.

Q. And John T. McChesney checked the money out?

A. I presume so.

Q. Nobody else could check it out?

A. Nobody else could.

Q. Did you see that original note?

A. I presume I did.

Q. No; do you remember it?

A. No; I do not in particular, among the many

30 notes that I handle.

Q. Now, have you any of the notes that were given prior to this note?

A. No; we have not.

Q. They were all surrendered to John T. McChesney, were they?

A. Yes.

Q. The note that has been offered in evidence and marked exhibit P-1, as you have stated, was a renewal note?

40 A. A renewal note; yes.

Q. This was given to the bank by McChesney?

A. Yes.

Q. McChesney was the party who figured in the transaction with the bank?

A. He is the one that brought the note to the bank; yes.

Q. He is the one that brought the note to the bank?

A. Yes.

Q. Mrs. Rutter didn't bring it to the bank? 10

A. No.

Q. And then, as had been done with the previous notes, this note was placed to the credit of McChesney?

A. Or renewals of it.

Q. Now, as a matter of fact, there was no change of money at the time?

A. Not at the time of renewal.

Q. Of any of these renewals?

A. No. 20

Q. The actual money passed hands at the time the original note was given?

A. The original note.

Q. And all that was done when this renewal note was given to the bank was the bank placed the note to the credit of McChesney on one side of the page and charged him on the other; isn't that so?

A. That's right; he has received credit for the new note and the old note was charged to him.

The Court: And to whose credit did the original proceeds or discount of the first note go? 30

Witness: It went to the credit of John T. McChesney.

Q. And John T. McChesney checked it out?

A. Checked it out.

Q. Mrs. Rutter didn't actually appear in that transaction at all?

A. She appeared as owing John T. McChesney that money.

Q. The only way she appeared in this trans- 40

action was as maker of that note?

A. Yes.

Q. Did she receive any money from the bank?

A. Did she receive any money from the bank?

Q. In relation to the note or in relation to her signature?

A. She received no money from the bank; no.

Q. The protest notice which is attached to this note, I notice protest a dollar fifty, postage four
10 cents, a dollar fifty four cents; was there a notice sent to John T. McChesney?

A. To all parties on the note the notice of protest was sent.

Q. What is the charge for sending one notice?

A. Two cents for every name that appears on the note, we charge for postage.

Q. And the protest is one dollar and fifty cents no matter how many persons appear on the note?

A. It is one dollar and fifty cents for all amounts
20 over one hundred dollars.

Q. Were you present at the time that Mr. McChesney came to the bank and wanted to get the original note discounted?

A. My recollection of that is that he came in after three o'clock.

The Court: No, the question is, were you present, were you there?

Witness: I suppose I was, he comes in a good many times every day.

30 The Court: Well, to your recollection.

Witness: To the best of my recollection; yes.

Q. Did he have any conversation with you?

A. Not in particular; no.

Q. Did he have any?

A. No; except to ask me if we would discount his sister's note.

Q. What did you say to that?

A. I told him that we would.

Q. What else was said?

40 A. That is all I recall.

Q. Who gave him the note?
A. I don't recall.
Q. Did you hear him have any conversation with any other party in the bank concerning that note?
A. I don't recall any.
Q. At that time or any other time?
A. No.
The Court: Was Mrs. Rutter ever in the bank, so far as you know, with respect to the discount of this note? 10
The Witness: No; she was never in the bank.
The Court: Did you ever have any conversation with her at any time anywhere with respect to the discount of the note?
Witness: No.
Q. I think that's all.

REDIRECT EXAMINATION BY MR. COWART:

Q. You said just now, Mr. Laird, when Mr. John McChesney came in for the purpose of discounting this original note, he asked you if you would discount his sister's note? 20
A. That is my recollection of it.
The Court: By the way, Mr. Laird, at the time he asked you that, did he have a prepared note with him?
Witness: I don't recall whether it was a request or whether he presented the paper to me to that effect. 30
Q. Do you know where the original note was prepared?
A. No; I do not.
Q. Or the renewals?
A. The renewals were mostly drawn up at the bank.
Q. Who got them?
A. Well, some people are more careful about looking after their paper than others; we draw the paper for a good many of our customers. 40

Q. And did you draw them?

A. I will not say I drew all of them, I drew many of them; I do that for a good many people, the same as any lawyer would draw a blank. I drew the note and they tended to the execution of it.

RECROSS EXAMINATION BY
MR. APPLEGATE:

10 Q. And Mr. McChesney would come and get the note?

A. Sometimes he would and sometimes I sent it to the store with one of the boys.

Q. Mrs. Rutter never came?

A. Mrs. Rutter never came.

Q. Calling your attention to the note marked exhibit P-1, in whose handwriting is that note?

A. That is my handwriting.

Q. And in whose handwriting are the words, 20 "For my own use and benefit?"

A. All the handwriting with the exception of, "Abbie M. Rutter" and "John T. McChesney" are my own handwriting.

Q. So that before the note left your institution and before it had been signed by Mrs. Rutter the words, "For my own use and benefit" were on it?

A. Yes.

Q. And that is true of the original note, also?

A. Yes.

30 The Court: Did you prepare the original note?

Witness: I cannot tell you whether it was or not.

The Court: Those renewals or any of these notes involving this transaction having upon them, "For my own use and benefit" were written on in the bank, is that what you say?

Witness: The whole form of the note was prepared at the bank, the whole note was drawn up, the same as to the amount, the date and 40 the form of the note; yes.

REDIRECT EXAMINATION BY MR. COWART:

Q. But the question that Mr. McChesney gave to you when he came in was, "Would you discount that note?"

Mr. Applegate: I object to that as repetition and as leading.

The Court: He has already said, Mr. Cowart, that when Mr. McChesney came in he asked if they would discount his sister's note; I think that is understood. 10

Q. Now, when that discount was made under the terms of that note, John T. McChesney being the holder of the note, do you usually, when the discount is made, put it to the credit of the payee of the note?

Mr. Applegate: That is objected to, to what he usually does.

The Court: I don't know that it has any particular value as evidence because the question here is, what did they actually do, and he told what they did; why do you want him to tell the custom? 20

Mr. Cowart: Well, I want to show the practice in the bank.

(Argument follows).

The Court: Well, I will allow it.

A. We put the credit to whoever owns the note should have credit for the note, whoever is the possessor of the note; it is presumed he got it for value. 30

Q. So when a note has on it it is directed by the maker to be paid to a certain party and that party presented it to the bank, you would discount it for that party?

Mr. Applegate: That is objected to; this is his own witness and that is leading.

The Court: Yes.

Q. Now, when these proceeds were put to the credit of John T. McChesney, why did you put them to his credit? 40

A. It was at his request, he brought the note in for discount to go to his credit and it was placed to his credit.

The Court: Do I understand, Mr. Laird, that McChesney had been in; he discussed this question with you before the note was brought in?

Witness: I don't recall that he was.

The Court: What is your best recollection as to
10 that circumstance; had the note been prepared before he asked for this loan?

Witness: No, it had not; he applied for a loan in this form.

The Court: Then you told him that an endorser would be necessary?

Witness: No, didn't tell him anything.

The Court: You didn't tell him anything?

Witness: No, he asked us if we would discount his sister's note, and we told him we would.

20

RECROSS EXAMINATION BY MR. APPLEGATE:

Q. "For my own use and benefit;" let me call your attention to these words once more, you say they are in your handwriting?

A. Yes, they are in my handwriting.

Q. Why did you put those on the note?

A. Because that is the proper form for a married
30 woman to give a note.

Q. You knew, when this note was given that Mrs. Rutter was a married woman?

A. Yes.

Q. And that you knew when the original note was in the bank?

A. Yes.

Q. And you put those words, "For my own use and benefit," on the original note because you did know ——

40 A. To make it a legal note in proper form for a

married woman to execute and promise to pay.

Q. You also knew when the proceeds of that note were placed to the credit of Mr. McChesney that Mrs. Rutter was not getting ——

A. I didn't know that, no.

Q. You knew that you were not giving it to her?

A. We knew that we were not giving it to her but we didn't know what was between Mrs. Rutter and her brother; whether it was to be assigned to him or to protect for money she had advanced to him or what. 10

Q. But you knew at the time you put the proceeds of the original note to Mr. McChesney's account that Mrs. Rutter was not getting those proceeds?

A. Yes.

Q. That's all.

REDIRECT EXAMINATION BY MR. COWART:

20

Q. You didn't know what the arrangement was, then, between Mrs. Rutter and her brother as to the proceeds of this note?

Mr. Applegate: Don't lead your own witness, Mr. Cowart.

The Court: He has already stated he didn't know.

Q. Would you have discounted that note for Mrs. Rutter or anyone else unless she stated in it that it was for her own use and benefit? 30

Mr. Applegate: That is objected to as absolutely immaterial.

A. No, I would not.

Q. Did you, in discounting that note, put faith in the statement in it over her signature that it was for her own use and benefit?

Mr. Applegate: That is objected to, it calls for a conclusion of this witness.

A. Yes.

The Court: It is pretty close to the border line. 40

Was that the reason you accepted the note for discount?

Witness: That is the reason we accepted the note for discount for John McChesney.

Q. Would you have discounted this note unless she had these words in over her signature?

A. No, I would not.

RECROSS EXAMINATION BY
10 MR. APPLEGATE:

Q. You say you relied and placed full faith upon the words "for my own use and benefit," that appeared on the note; now, how can you say that truthfully when you knew at the time you discounted the note that you were giving the proceeds of that note to Mrs. Rutter?

A. Giving the proceeds of the note to Mrs. Rutter would not certify whether she was receiving
20 value for it or not.

Q. Not when the words on the note said, "For my own use and benefit?"

A. No.

Q. You knew that the proceeds of the note were not being placed to her own use and benefit, didn't you?

A. The proceeds of the note were put to the credit of McChesney.

Q. You knew that, didn't you?

30 A. Yes.

Q. Now, then how can you say that you discounted that note upon the faith of those words?

A. Well, we did.

Q. That is your answer still, is it?

A. Sure.

Q. That's all.

The Court: In other words, you are accepting the form of the note as a legal way, as you saw it, in binding this married woman, is that
40 what you mean, you had no knowledge as to

any arrangement between Mr. McChesney and Mrs. Rutter?

Witness: I knew of no arrangement, no.

The Court: You were discounting the note in the form which you conceived to be the legal form to bind Mrs. Rutter?

Witness: Yes, to bind Mrs. Rutter.

REDIRECT EXAMINATION BY MR. COWART:

10

Q. And you didn't know in what way it was for the use and benefit of Mrs. Rutter except that she so stated in the note?

A. No, sir.

Mr. Applegate: We admit the protest.

Mr. Cowart: Do you admit the reception of the notice of protest by the maker?

Mr. Applegate: We admit the receipt of the protest on the fourteenth or fifteenth day of May, nineteen hundred and seventeen, and in order that there may be no misunderstanding about it, we withdraw our point as to there being no notice of protest. Now, if your Honor please, I ask for a non-suit on this note because it appears from the plaintiff's own evidence that the defendant is entitled to the benefits of the Married Woman's Act. It appears that at the time the note was given, both the original note and the present note, and I think that this transaction, so far as this suit was concerned, must really date or be looked at from the time the note was given, that it appeared at that time that Mrs. Rutter was a married woman, that she signed the note as the accommodation maker for John T. McChesney, that the bank knew that she was an accommodation maker or surety and that she received no benefit or thing of value.

20

30

40

The Court: Suppose John McChesney had paid her fifty dollars for this endorsement.

Mr. Applegate: Well, the burden is upon the plaintiff.

The Court: Well, I am not so sure it is on the plaintiff to show that she received no benefit; the mere fact that she didn't receive any benefit from the proceeds, is not conclusive, she may have had some arrangement with
10 Mr. McChesney.

Mr. Applegate: The fact that it appears that the bank knew she was a married woman places the burden upon the bank of showing that she is not entitled to the benefits of the Married Woman's Act.

The Court: I think, Mr. Applegate, that in view of the fact that this note, under the evidence, was signed in the form which indicated, at least superficially, that she had re-
20 ceived a benefit and she signed it such form that that may alter the general principle with respect to the burden; I am going to adopt that rule in this case and I shall deny your motion. You may have an exception and proceed with your defense.

Mr. Applegate: Your Honor will allow me an exception.

The Court: Yes.

30 JOHN T. McCHESNEY, a witness called on behalf of the defense, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Mr. McChesney, you are the brother of Mrs. Rutter, are you?

A. Yes, sir.

Q. You are living in Freehold?

40 A. Yes.

Q. Been in business here for some time?

A. Yes, sir.

Q. You are the John T. McChesney whose name appears on the back of the note that has been offered here in evidence?

A. Yes, sir.

Q. You are familiar with the transaction concerning that note?

A. Yes.

Q. That note is the last of a series of notes, isn't it? 10

A. I presume it is, yes.

Q. And the original note which has been testified to was given some time in February, nineteen hundred and fifteen, wasn't it? February the eighth, nineteen fifteen?

A. Yes, sir.

Q. That original note was for one thousand dollars the same as the note which is being sued upon? 20

A. Yes, sir.

Q. Who procured that note to be discounted?

A. I did.

Q. Tell us what you did.

A. I asked my sister first if she would go on a note for me and she said she would if the bank would accept it; I went down to the First National Bank of Freehold and Mr. Laird came to the window and I told him what I wanted.

Q. What did you tell him? 30

A. I asked him if he would discount my sister's note, take my sister's endorsement for one thousand dollars, and if my memory serves me right, he turned to Mr. Campbell who sat at the desk in back and put the thing up to him. I suppose Mr. Campbell said that, —— as I remember, of course, it is a good while ago, as I remember Mr. Campbell drew up a note which read, "For my own personal use and benefits." He said that was the only way that a married woman could endorse, so I took that note, 40

took it up to my sister; she looked at it and said, "Well, that looks as though I was getting the money on it."

Mr. Cowart: I object to any conversation now between Mrs. Rutter and Mr. McChesney in the absence of the officers of the First National Bank of Freehold; I object to it on the ground that is stated in the Craig case, if your Honor please. In the Craig case there 10 was an effort between the husband and the wife to testify to a conversation between them and the Court decided that under these circumstances she couldn't set up any secret understanding with her husband by which she shall occupy towards the bank the position of a mere accommodation endorser.

The Court: That is not this case, Mr. Cowart —that is not applicable to this situation— under that case. Your point now is addressed 20 to this question. The point is not well taken because that is not the situation here. It is not admitting testimony of a secret arrangement between Mrs. Rutter and Mr. McChesney that the question propounded now involves. Your objection is over ruled.

Mr. Cowart: I take an exception.

The Court: You may have an exception.

Mr. Cowart: On the ground that no secret understanding between these two parties and 30 a conference between them as to this note is binding upon the plaintiff except admissions against interest.

The Court: Mrs. Rutter has a right to show how she came to sign that note under the circumstances.

A. I told her that Mr. Campbell said that that was the only way that she could endorse.

Q. When you say endorsed, you mean maked, signed?

40 A. Well, maked; yes.

Q. What else happened?

A. I took the note she signed, she signed it and I took it back to the bank and I think I done business with Mr. Laird and Mr. Laird took the note and gave me credit.

The Court: Gave you credit where?

Witness: To my account.

Q. You received the actual proceeds of the note?

A. Yes.

Q. And you checked it out for your own use and benefit? 10

A. Yes, sir.

Q. Your sister got no part of the proceeds of that note?

A. No.

Q. You gave her nothing for her name on the note?

A. No.

Q. She got nothing for her name on the note?

A. Nothing. 20

Q. When you went to the bank to have your note discounted or to ask the bank if they would discount your note, did they intimate whether or not they would discount your note signed only by yourself?

A. Didn't ask them that.

Q. You knew that they would not?

A. Yes, sir.

Q. And you knew that you would have to have an endorser, is that it, someone else on the note?

A. Yes, sir. 30

Mr. Cowart: Well, I object to that, he is leading his witness.

Q. And with that knowledge you asked the bank what?

The Court: Mr. McChesney, I wish you would give the exact conversation as you now can recall it and as much as you can recall with respect to this proposed discount, whether it be with Mr. Laird or Mr. Campbell, the conversation at the bank. 40

Witness: After I got the consent of my sister that she would sign the note, I went down to the bank.

The Court: Was that the first conversation with the bank; had you been there before?

Witness: No, not that I remember of; I went into the bank and Mr. Laird was at the window and I asked him if they would accept a note for one thousand dollars with my sister's
10 endorsement, and he turned to Mr. Campbell and talked to him about it. Mr. Campbell, as I can remember now, drew up a note.

Q. Did Campbell say anything?

A. He drew up a note and as I remember, came to the window with the note and handed it to me and said, "This is the only way your sister can endorse, the only way a married woman can endorse."

The Court: Now, he handed you that note, did he?

20 Witness: As I remember, Mr. Campbell drew the note up.

The Court: Then what did you do with the note?

Witness: Then I carried it up to my sister.

Mr. Applegate: Then this conversation with respect to her asking you concerning the words upon the note occurred?

Witness: I took the note to her to have her sign it and she said, "Well, that looks as
30 though I was getting the money." I said, "Mr. Campbell says that is the only way that you can endorse it." She signed it and I took it back to the bank and was given credit for it.

The Court: Did she ever receive any benefit for the endorsement or making the note?

Witness: Not from me.

Q. You stated that you never gave Mrs. Rutter any part of the proceeds of this note and you never
40 gave her anything for signing the note?

A. No, sir.

Q. And you never gave her anything as security for the note?

Mr. Cowart: That is leading.

A. I did not, no.

Q. As security or otherwise?

A. No.

Q. That's all.

CROSS EXAMINATION BY MR. COWART: 10

Q. Now, Mr. McChesney, before you went to the bank at all you had seen your sister, hadn't you?

A. Yes, sir.

Q. And you asked her if she would enable you to get one thousand dollars?

A. Yes.

Q. And she said she would in the bank?

A. She said she would sign a note if the bank would accept it. 20

Q. And then after she had agreed to that, you went to the bank; the bank didn't ask you to go first to your sister and get her to accommodate you in any way, either as maker or endorser?

A. No, not at all.

Q. You went to your sister first?

A. Yes, sir.

Q. Then you went to the bank?

A. Yes, sir.

Q. And didn't you ask Mr. Laird whether he would discount your sister's note? 30

A. I did; I think that is what I have testified to before.

Q. Did you have a note in your hand when you went to the bank?

A. No, I did not.

Q. Do you think that they drew a note there?

A. As my recollection serves me, Mr. Campbell drew the note up.

Q. Drew the note up? 40

A. Yes.

Q. And the proposition then was to discount your sister's note, wasn't it?

A. Yes.

Q. And Mr. Campbell said that as a married woman the only way in which they would be willing to discount your sister's note would be for her to state in it that it was for her use and benefit, didn't he?

10 A. Yes, sir; he wrote it out in the note.

Q. And you then took that note to your sister and told her that they would not discount that paper under any other form except for her to state within it that it was for her use and benefit; you explained that to her, didn't you?

A. I didn't explain that, she read it over and she said, "That looks as though I was getting the money." "Well," I said, "Mr. Campbell said that is the only way that they can accept your signa-

20 ture."

Q. Then she knew from your explanation to her that the money would not be paid over by the bank under any other consideration than for her to state in it that it was for her use and benefit.

Mr. Applegate: I object to that, if your Honor please.

The Court: I think I will allow that; of course, the question is already answered by the previous testimony that he told her that Mr.

30 Campbell said that that was the only way in which they would accept the note. I think that it is a superfluous question on the whole.

Mr. Applegate: Not only that, but a person is not qualified to say what another person knew.

The Court: (After argument) I think you realize the force of his objection, Mr. Cowart.

Mr. Cowart: No, I do not.

The Court: Well, ask the question.

40 Q. You did explain to her, then, that the money

would not be passed over on that note unless it stated in the note as a maker and as an original promissor that it was for her own use and benefit?

A. Well, she read the note just as I tell you, that is all the conversation there was; she read the note.

Q. What was the original language in that particular note?

A. I am trying to tell you, Mr. Cowart.

Q. Didn't you tell me the other day that that note had in it, "For my own personal use and benefit?" 10

A. Oh, you mean the language on the note?

Q. Yes, the language on the note.

A. As I remember, the first note read, "For my own personal use and benefits."

Q. So it had the word "personal" in it in addition to the present language in the present note?

A. In addition to this language, yes.

Q. It had the words, "For my own personal use and benefits?" 20

A. Yes.

Q. Then you took that note to the bank and it was discounted and the money was placed to your credit in your bank account?

A. Yes, sir.

Q. And how many renewals were there of that containing practically the same language?

A. Well, they were three months apart.

Q. That original note was renewed and discount-fifteen; it was dated February eighth, but discounted on February ninth, wasn't it? 30

A. I cannot tell about that.

Q. It was renewed and discounted on May twelfth, nineteen hundred and fifteen, wasn't it?

A. Very likely.

Q. And then renewed again and discounted on August tenth, nineteen hundred and fifteen?

A. It was renewed from that time up to the present protest.

Q. And all of those renewals, some eight of those 40

subsequent renewals, eight in number, all had that same language in it, didn't they, or practically the same language?

A. Yes, sir.

The Court: Do you think that would make any difference, whether it was personal use and benefit, or my use and benefit?

Mr. Cowart: Well, I think that makes it a little stronger.

10 Q. Now, are you positive, Mr. McChesney, that when you went to the bank on that day, February eighth or February ninth, February eighth is probably the date, that you said to Mr. Campbell, that you asked whether they would discount a note endorsed by your sister?

A. No, not Mr. Campbell, to Mr. Laird.

Mr. Applegate: That has been asked four times, if your Honor please, on the record.

Q. Now, you said on your direct examination
20 that Mr. Campbell said, "This is the only way a married woman can be an endorser;" now, did Mr. Campbell use any such language?

A. As near as I can remember, that is ——

Q. Where were you when Mr. Campbell said that?

A. Standing at the window.

Q. You were standing at the window?

A. Yes.

Q. And he was standing at the window?

30 A. Yes, he came up from his desk to the window with the note, as I remember it.

Q. Did you state to Mr. Campbell at that time that Mrs. Rutter would be in funds, you thought, to take care of that note before it came due or at the time it came due?

A. No conversation to that effect that I can remember, nothing said about that as I remember.

Q. Do you say that you didn't say so?

A. I have no recollection of it, Mr. Cowart.

40 The Court: Was anything said by officials of

the bank to you with respect to the payment of the note?

Witness: When it should be paid?

The Court: Yes.

Witness: No, sir.

The Court: There seems to have been a number of renewals of this note, three or four.

Mr. Cowart: Eight renewals.

The Court: And you say nothing was said to you about reducing the note or payments upon it? 10

Witness: No, I paid the discounts each time.

The Court: Each time you paid the discount and put in a renewal for the full amount, did you?

Witness: Yes, sir.

Q. Had your sister loaned you money before this note was discounted?

Mr. Applegate: That is objected to, if your Honor please, it is absolutely immaterial, 20 whether his sister had loaned him money before this note was discounted.

The Court: I don't see why you object unless you want to show that in some manner she received a benefit of this note, then you can have it. I will allow you to answer the question.

Mr. Applegate: Your Honor will allow me an exception?

The Court: Yes. 30

Q. Had your sister loaned you money before this note was discounted?

Mr. Applegate: That is objected to for the reasons given.

The Court: Objection is over-ruled, you may have an exception.

A. Not that I remember of.

Q. Didn't she loan you on February eighteenth, nineteen hundred and ten, the sum of one thousand dollars? 40

A. No, sir; not that I remember.

Q. Well, you gave a chattel mortgage to her to secure a note for one thousand dollars, dated February tenth, nineteen hundred and ten, for the sum of one thousand dollars and two hundred and thirteen dollars and fifty cents for interest.

A. Well, she didn't loan me the money.

Q. You said so in your own chattel mortgage and she said so in her affidavit to that chattel mort-
10 gage; I show you a certified copy.

The Court: What did she do, just endorse a note for you at that time, was that mortgage given to you to secure ——

Mr. Applegate: He borrowed one thousand dollars from Mr. Rutter.

Witness: My brother-in-law gave me a check for the money.

Q. I show you a certified copy of a chattel mortgage made by John T. McChesney to Abbie M.
20 Rutter, dated February third, nineteen hundred and seventeen, and recorded ——

A. I remember that all right, I remember the mortgage.

Q. And do you recall that you stated in there —

Mr. Applegate: Wait a minute, please, if you are going to offer that, so that we may get our objection to it, I think it should be done and not the witness asked if he has any recollection of things in it. Are you going to offer
30 that mortgage?

Mr. Cowart: Not yet.

Mr. Applegate: Then I object to any reference to the mortgage.

The Court: You cannot ask or discuss the contents of the mortgage until it is in.

Mr. Cowart: I offer the chattel mortgage then.

Mr. Applegate: I object to the chattel mortgage because it appears on its face. It is dated February third, nineteen hundred and
40 seventeen, after this transaction, after this

note was made and it cannot have anything to do with this transaction.

The Court: How is that proper.

Mr. Cowart: The loans that were set forth in this chattel mortgage were such that they were prior to this note.

Mr. Applegate: But the chattel mortgage was given subsequent to this note.

The Court: You had better confine your examination with respect to the previous loans. 10

Mr. Cowart: That is what I am.

The Court: I know, but you must not ask him what she swore to, you may ask him specifically did she loan him on such a date so much money, on such another date so much money and so on.

Mr. Cowart: But I can ask him too, I think, if your Honor please, whether in this chattel mortgage to her he set forth a loan of a certain promissory note on a certain loan, a certain promissory note under seal for twelve hundred and thirteen dollars and fifty cents, dated February third, nineteen hundred and seventeen, made by John T. McChesney, payable on demand to the order of Abbie M. Rutter, with interest from date. 20

Mr. Applegate: That is since the date of this note.

Mr. Cowart: That is a note given for a prior date. 30

Mr. Applegate: Certainly it has nothing to do with this note.

Mr. Cowart: That is another note.

The Court: Wouldn't it be better, gentlemen, to cut across lots and get right down to what he did, what the relationship was in this matter?

Q. Do you deny, then, that your sister had loaned you one thousand dollars in February, nineteen ten? 40

A. She didn't loan me any money, no.

Q. She didn't loan you that money at that time?

A. No, sir.

The Court: Who was it loaned you?

Witness: Mr. Rutter gave me his check.

The Court: That is her husband?

Witness: Yes, I met him in Philadelphia and he gave me a check for one thousand dollars.

Q. Didn't you, on February third, nineteen hun-
10 dred and seventeen, before this present renewal note was given, didn't you give to your sister a note for twelve hundred and thirteen dollars and fifty cents for money loaned by her, which you stated was loaned on February tenth or February eighteenth, nineteen hundred and ten?

A. What was the date of this?

Q. February eighteenth, nineteen hundred and ten?

A. I know, but the date of ——

20 Q. The date of the giving of this mortgage was February third, nineteen hundred and seventeen.

A. You drew it up yourself.

Q. Did you give her on February third, nineteen hundred and seventeen, before the giving of this last renewal note, didn't you give a note to your sister for twelve hundred and thirteen dollars and fifty cents?

A. Exactly so, yes.

Q. Then your sister had been loaning money to
30 you before the giving of this original note?

Mr. Applegate: That is objected to because it is immaterial whether she had or not.

The Court: The objection is over-ruled.

Mr. Applegate: I ask for an exception.

The Court: Allowed.

A. Just as I told you, Mr. Cowart, she didn't loan it to me, my brother-in-law loaned it to me; what arrangements were afterwards between my brother-in-law and her, I don't know.

40 Q. Did you give her a note on February third for

that very debt?

A. Yes, but she didn't loan me the money.

Q. To secure a loan of one thousand dollars on February third, nineteen hundred and ten?

The Court: By Mr. Rutter.

Q. You say that that note was given to Mrs. Rutter for the amount loaned you by Mr. Rutter?

A. Yes, sir.

Q. By whose direction was that given to her?

A. (Witness does not answer). 10

Q. Why did you give the note to her for Mr. Rutter's loan to you?

A. I had understood that that was an agreement between him and her.

Q. You understand that that was an agreement between him and her?

A. Yes.

Q. Well, then, she was to receive the benefit of that note, wasn't she?

Mr. Applegate: That is objected to, it is a conclusion of the witness and not of law. 20

The Court: Oh, yes, it is a pure conclusion, Mr. Cowart.

Q. Did your sister make you another loan on February third, nineteen hundred and seventeen, of one thousand dollars?

A. Yes, sir.

Mr. Applegate: We object to that for the same reason.

The Court: Was that afterwards? 30

Mr. Cowart: No, it was before the giving of this last renewal note.

The Court: I will permit an answer.

Mr. Applegate: Your Honor will allow me an exception?

The Court: Yes.

Q. On February third, nineteen hundred and seventeen, before the giving of this last renewal note, your sister made you another loan of one thousand dollars, didn't she? 40

A. I don't know what date that renewal was made, I don't remember the date.

The Court: Well, the date of the renewal was February twelfth, nineteen hundred and seventeen.

Q. The date of your other loan from your sister was on February third, nineteen hundred and seventeen, wasn't it, before the giving of this last renewal note?

10 A. I don't know what the date was, you know you were there and drew it up.

Q. Well, did you know, too, you know it was on February third?

A. I have not anything in my mind, I am pretty sure it was in the forward part of February, but about dates, I don't know.

Mr. Cowart: Mr. Applegate, did Mrs. Rutter produce the original notes?

Mr. Applegate: She has not got them.

20 Q. What became of all these other notes, the original notes, all the other notes except this one?

A. I burned them up.

Q. So that is the reason you cannot produce them here?

A. Yes.

Mr. Applegate: How long ago was that, Mr. McChesney?

Witness: About July last, that I burned them up.

30 The Court: You filed a petition in bankruptcy, didn't you, Mr. McChesney?

Witness: Yes.

Q. And when was that with respect to this note?

A. The thirtieth of April.

Q. Nineteen hundred and seventeen?

A. Yes, sir.

Q. In that bankruptcy proceeding you were examined, weren't you, in the bankruptcy court?

A. Yes, sir.

40 Q. And you gave testimony there as to these

notes of Mrs. Rutter's, didn't you?

A. I suppose I did, I don't remember just what questions were asked me, now.

Q. Did you state in that testimony the following: "Question. You executed a mortgage to Abbie M. Rutter dated February third, nineteen hundred and seventeen, in the sum of three thousand two hundred and thirteen dollars and fifty cents, at the time of the execution of this mortgage, how much did you get from Abbie M. Rutter? Answer. One 10 thousand dollars. Question. And what is the balance owing for? Answer. Money that she loaned me." Didn't you testify in that bankruptcy court that all these three notes that Mrs. Rutter put in her claim for were for money that she loaned you?

A. Very likely I did, I don't know, whatever the ——

Q. "Q. Then she loaned you another thousand dollars in November, nineteen hundred and sixteen, is that true? A. November, nineteen hundred and 20 sixteen, I don't know, I don't think it was in November, I think it was in February, nineteen hundred and fourteen, I am not sure about that, but I think it was in February, nineteen hundred and fourteen, to the best of my recollection. Q. Did she give you that thousand dollars in cash or how? A. She gave in notes." Now, that referred to one of the renewals of this original note, didn't it?

A. I presume it did.

Q. And didn't you give her an unrecorded 30 thousand dollar mortgage to secure that original thousand dollar loan that she made you?

A. That my brother-in-law gave me.

Q. Have you got that thousand dollar mortgage now?

A. I have not got it.

Mr. Cowart: Have you got it, Mr. Applegate?

Mr. Applegate: Yes, we have it here.

Q. I produce an unrecorded chattel mortgage made by you to Abbie M. Rutter, dated February 40

eighteenth, nineteen hundred and ten, given to secure the sum of one thousand dollars, lawful money of the United States in one month from the date hereof, together with the lawful interest thereon from date and signed "John T. McChesney," is that your sister's signature to that, "Abbie M. Rutter?"

Mr. Applegate: We admit the signature, there is no dispute about the mortgage at all.

Q. And in that chattel mortgage ——

10 Mr. Applegate: I object to that, Mr. Cowart, if you are going to refer to the contents of the mortgage.

Mr. Cowart: I offer the chattel mortgage in evidence.

Mr. Applegate: I object to the chattel mortgage. Here is a chattel mortgage given in nineteen hundred and ten to secure a note, if the Court please, that has nothing to do with this transaction, this is a note given in nine-

20 teen hundred and ten and I don't see how it can possibly be material.

The Court: It is in line with Mr. Cowart's theory that by reason of the previous relations between the parties the endorsement of this note resulted in some benefit to her. I will allow it to be marked.

(Received in evidence and marked P-3 for plaintiff).

The Court: If the bank can show that Mrs.

30 Rutter received any benefit from this transaction, I shall tell the jury that they shall return a verdict against her. Mr. Cowart has now proposed or at least he attempts to show, he is trying to put up some sort of an idea that she has received a benefit through these previous transactions.

Q. Is that your signature to that chattel mortgage?

Mr. Applegate: We admit the chattel mortgage

40 so far as the signature is concerned.

Q. Now, in that chattel mortgage your sister swears that the just and full sum of one thousand dollars is loaned by her to the said John T. McChesney, doesn't she?

The Court: That speaks for itself, Mr. Cowart, undoubtedly it does.

Mr. Applegate: That chattel mortgage is dated what?

Mr. Cowart: Dated February eighteenth, nineteen hundred and ten. I also offer a certified copy of the chattel mortgage from John T. McChesney to Abbie M. Rutter, dated February third, nineteen hundred and seventeen, and recorded in Book 111 of Chattel Mortgages, page 330, in the Monmouth County Clerk's office, on February fifth, nineteen hundred and seventeen. 10

The Court: Did you give notice to the other side to produce the original?

Mr. Applegate: Well, we have the original, there is no dispute about that. 20

The Court: Why not let the original go in?

Mr. Cowart: I offer the original.

The Court: I assume that is objected to.

Mr. Applegate: On the same grounds, yes.

The Court: The objection is over-ruled.

(Received in evidence and marked P-4 for plaintiff).

Q. I think that's all.

Mr. Applegate: That's all. 30

ABBIE M. RUTTER, the defendant, being duly sworn according to law, on her own behalf, testified as follows:

DIRECT EXAMINATION BY MR. APPLEGATE:

Q. Mrs. Rutter, you formerly lived in Freehold?

A. Yes, sir.

Q. And you had been in business here for how 40

many years?

A. Thirteen years.

Q. And what was the nature of the business?

A. It was a ladies' store, dry goods and notions.

Q. Are you married?

A. Yes, sir.

Q. And when were you married?

A. March seventh, nineteen hundred and seven.

Q. And on the date that the original note, which
10 is the subject matter of this suit was given, I think it was February eighth, nineteen hundred and fifteen, were you a married woman?

A. Yes, sir.

Q. And were you a married woman at the date that the subsequent renewals, including the note of February twelfth, nineteen hundred and seventeen, were given?

A. Yes, sir.

Q. Will you state, please, the circumstances con-
20 nected with the giving or the signing by you of the note of February the eighth, nineteen hundred and fifteen?

Mr. Cowart: The circumstances in the presence of the bank officer?

Mr. Applegate: I don't care.

The Court: It doesn't make any difference.

A. My brother came to me and asked me; he said he was in great need of money and he seemed to be in a great deal of distress about it and he said he
30 had asked the bank if they would discount a note with my endorsement.

Mr. Cowart: Your Honor understands that I object to the conversation between the two on the ground that it was not in the presence of the bank officers.

The Court: The objection is over-ruled and you may note an exception.

A. And at first I was not very willing to do it and finally I told him I would and later he brought
40 a note drawn up with these words, ready for me to

sign, with these words, "For my own use and benefit," and I objected to signing it because I said, "That is not so, I am not to be benefited by this in any way whatever;" and he said, "Well, Mr. Campbell says that is merely a matter of form and it is the only way by which a married woman can endorse a note," and still I hesitated about it because it seemed to me like it was a lie and he seemed to be in such distress and I thought that inasmuch as it was a matter of form, that I would sign it. 10

Mr. Cowart: I object to any expression of opinion.

The Court: Strike out what her thought was. You did sign it?

Witness: Yes, I signed it.

Q. At the time you signed, or at any subsequent time did you receive anything of value upon the faith of your contract of suretyship?

A. Not one cent in any way or form from anybody. 20

Q. Did you receive anything of value directly or indirectly?

A. No, sir; not one cent.

Q. From Mr. McChesney or any other person?

A. From Mr. McChesney or anyone else, it has never been anything but an annoyance to me.

Q. Did you receive all or any part of the proceeds of the note?

A. Not one cent.

Q. At the time you signed the note, the original note or any of the subsequent notes, that is, the renewals, did Mr. McChesney or any other person, that is, any person representing the bank or any other person, explain to you your rights as a married woman? 30

A. No, sir.

Q. Did you know what your rights were?

A. I did not.

Q. I think that's all.

The Court: Was your brother indebted to you 40

at the time you signed this note?

Witness: I had an unrecorded chattel mortgage for one thousand dollars, which was given on February tenth, it was my husband's check to him, but the mortgage was drawn to me because my husband was going to make me a present of one thousand dollars in some security and he let it go in that way, he said he will let it go in that way, my
10 brother applied to me for the money but I didn't have the ready money and my husband did have, so he gave me his check and the mortgage was drawn in my name.

The Court: By the direction of your husband?

Witness: Well, I don't know, I am not prepared to say; Mr. Rutter met my brother in Philadelphia and gave him the check.

Q. Well, it was not your loan to your brother, that thousand dollars?

20 A. No, it was my husband's loan and he said, "I will make you a present of that."

The Court: At the time you signed this note, of which the note in suit is a renewal, what reason did you have?

Witness: Simply because he wanted to be accommodated, he was in need of money and he wanted me to help him out, and he said he felt sure at the end of three months, at the time the note was due, he could secure suffic-
30 ient from his books to pay that note off and I expected that at that time that note would be paid.

The Court: He was indebted to you at that time in one thousand dollars, wasn't he?

Witness: Only for this unrecorded mortgage which I held, which I felt was security, this had nothing whatever to do with that.

40

BY THE COURT:

Q. At that time, were you informed by your brother that he would be obliged to close his business unless you did sign the note in question?

A. He said that he was afraid he would have to if he couldn't raise this money to pay off some bills.

Q. Well, did you have in mind at that time the fact that he already owed you one thousand dollars?

A. I did. 10

Q. Did your signature to this last note have anything to do with this proposed debt or his proposed debt to you?

A. This thing we are talking about?

Q. Yes.

A. Nothing whatever, because I felt I was secured with that chattel mortgage, not knowing that the chattel mortgage should have been recorded to make it valuable.

20

BY MR. APPLEGATE:

Q. Did you have any knowledge, Mrs. Rutter, at the time you endorsed this note for your brother, that is, the note of February eighth, nineteen hundred and fifteen or any other of the subsequent notes, that by doing so, you might stand a better chance of being repaid either that debt or any other previous debt?

A. No, I did not. 30

Q. Did you think of that at all?

A. No, the only thought was to help him out of his trouble; I felt and he said he felt that he could go on and pay off all his claims, and nothing was said about this other and I only felt, just to help him along, I thought he had gotten along into this condition and that this help would enable him to go on and make some money.

Q. Did you feel at that time that it was going to help him pay you back or anything of that kind? 40

Mr. Cowart: I object.

The Court: Objection sustained.

Mr. Applegate: On what ground, if the Court please?

The Court: In the first place, I don't see why they objected, because that is their theory, that is precisely your theory, Mr. Cowart, now, she certainly must be permitted, under the circumstances, since you are going to try
10 the case on that theory, to explain.

Mr. Cowart: Yes, but she has already said to the Court that she had it in mind, the debt he owed her.

The Court: She has not said anything of the sort. I think I will permit the answer to that question over your objection.

Mr. Cowart: I think the question is leading anyway, your Honor; it is a leading question.

The Court: Of course, the Court's question of
20 the reason she had for signing this note has been answered, isn't that comprehensive of her answer?

Mr. Applegate: Yes, sir; but they have attempted to show that the reason she signed this note was to carry McChesney along and help him pay her back.

The Court: I will permit an answer to that question.

A. If I had any thoughts?

30 The Court: No, no, did you feel at that time —

Witness: The only thing I thought about was that it would be a benefit to him in continuing his business.

The Court: But did you think it would be any benefit to you?

Witness: I cannot remember that I did.

The Court: That's all.

Q. That's all.

40

CROSS EXAMINATION BY MR. COWART:

Q. You knew it would be a benefit to you, didn't you, if you kept him running in business; that he would be able to pay you your debt, the debt that he owed you?

A. Well, I suppose if I thought anything about it, that he would be better able if he continued in business to pay me than he would if he had to lose everything right there, but I cannot remember that 10 I had anything of the sort.

Q. You just now said to the Court that you had in mind the fact that your brother already owed you one thousand dollars and that he borrowed the money to continue him in business, you must have had in mind, then, that it would be a benefit to you?

A. Well, I said I thought it would be a benefit to the business and whatever was a benefit to the business would be a benefit to me in the end, but it wasn't because of that, it was because I wanted to 20 see him go on in business.

Q. Because you wanted to see him go on?

A. I wanted to accommodate him.

Q. You wanted to accommodate him so as to help him make good in paying his debts, isn't that so?

A. Yes.

Q. To you and all other creditors?

A. Well, meanwhile I was thinking of the creditors who were likely to close his business if he 30 didn't pay them.

Q. But if his business was closed you would not get your money from him?

A. Well, I don't know if I had or I had not any idea how much the business would bring, I felt that inasmuch as it was a first mortgage, that the business ought to easily bring the amount of that mortgage; I always felt that way about it.

Q. Didn't you swear in the chattel mortgage that this money was loaned in two chattel mort- 40

gages?

Mr. Applegate: The mortgages speak for themselves.

Q. Didn't you swear in this unrecorded chattel mortgage that he owed you the just and full sum of one thousand dollars loaned by you to the said John T. McChesney?

Mr. Applegate: What is the date of that, Mr. Cowart?

10 Mr. Cowart: That is dated February eighteenth, nineteen hundred and ten.

A. My recollection of signing that is this, that that mortgage was offered to my husband in Philadelphia and that he said that Mr. Burtis said that the next time I came to town would be sufficient time for me to sign that mortgage and it was some weeks later, I couldn't say just exactly how long, when I came down to Freehold and I met Mr. Burtis in his store and I didn't read that over because I

20 supposed a mortgage was a mortgage and I cannot remember that I looked it over and I signed it where he told me to sign it.

Q. Aren't you mistaken in that last statement, you say the mortgage was brought to you and then for several days or weeks afterwards you left it unsigned until you came here to Freehold and then made the affidavit; aren't you mistaken about that?

A. I didn't say it was brought to me.

Q. You said it was brought to your husband?

30 A. Yes.

Q. This mortgage bears date of February eighteenth, nineteen hundred and ten; your affidavit is dated February eighteenth, nineteen hundred and ten.

A. That is a mistake of Mr. Burtis, because I was not here until some time later; I think it was fully a month.

Q. That affidavit says that you made the affidavit on the very date there, on the date of the execution

40 of this mortgage?

A. Well, I knew very little about those things, my husband managed that and he said, "Mr. Burtis said this needs your signature, and Mr. Burtis said some time when you were in Freehold would do;" it would be all right to sign it then, and I went to his store and Mr. Burtis, I don't remember whether he was there or whether he came in later, and I signed it before Mr. Burtis and I cannot remember whether, —— I don't think I read it over and I supposed a mortgage was a mortgage and I didn't suppose there was anything in it that should not be there. 10

Q. You swore it was a loan made by you to John T. McChesney, therefore, why did you swear here differently if it was a loan made by your husband?

A. My husband was going to make me a present of that; I told you when you were acting as my counsel that that was a present from my husband.

Q. But you swore in the affidavit that it was money loaned by you? 20

A. Well, it is a mistake.

Q. You know the solemnity of an affidavit, don't you?

A. Well, ——

Q. You were in business for thirteen years in Freehold?

A. Yes.

Q. You had all kinds of transactions with notes and checks, didn't you?

A. Yes, I didn't have much to do with notes. 30

Q. You had something to do with notes?

A. Yes.

Q. And you banked them in banks and discounted them, didn't you?

A. Yes.

Q. Now, you made another affidavit in relation to this sum in reference to another chattel mortgage made on February third, nineteen hundred and seventeen, and you say in there that the true consideration of said mortgage is as follows: "Namely to 40

secure payment of the sum of three thousand two hundred and thirteen dollars and fifty cents, of which said sum one thousand dollars thereof is for cash this day loaned by deponent, to said John T. McChesney and is secured by his note bearing even date herewith, made payable on demand to deponent's order; one thousand dollars additional thereof is for cash loaned and advanced by deponent to said John T. McChesney on February eighteenth, nine-
10 teen hundred and ten" (reading from affidavit) "and two hundred and thirteen dollars and fifty cents is for balance of unpaid interest thereon. The remaining thousand dollars of said amount is to secure the payment of a certain promissory note dated November tenth, nineteen hundred and sixteen;" that is the preceding renewal of this very note, isn't it?

A. Yes, the note that you wanted to see last winter before you drew up this mortgage.

20 Q. Yes, for one thousand dollars made by deponent, payable in three months from date thereof to the order of John T. McChesney at the First National Bank of Freehold, which note was discounted at said bank and the proceeds paid to the said John T. McChesney; this mortgage being also given to secure payment of any and all renewals of said notes and all costs and expenses of collecting the same, and said twelve hundred and thirteen dollars and fifty cents being also secured by a promissory note
30 of even date herewith referred to in the condition of said mortgage;" and then you say at the close that the full sum of three thousand two hundred and thirteen dollars and fifty cents with lawful interest thereon from the third day of February, A. D. 1917, is due?

A. What is the date of that, please?

Q. That is dated February third, nineteen hundred and seventeen, before this last renewal note was given in the bank.

40 A. Well, anything that I signed was under your

direction last February third, at my house, you remember, and I told you the full facts of the case and probably I did not comprehend fully; you should have protected me against signing anything that was not as it should be.

Q. Didn't you inform me that you had loaned this money to your brother?

A. Which money do you refer to?

Q. All this money?

A. No, I cannot tell you that, I had endorsed a note for him. I went up to you and I asked you how I could best secure myself, that he was sick, quite sick, and I told you that I had an unrecorded mortgage, told you the date of it and told you I had endorsed a note for him. I told you that he wanted me to make another loan and I didn't feel like doing it and I said I came to you to ask you how I could best secure myself; that Mr. Donahay has a mortgage which was written after mine was written. I understood that Mr. Donahay's mortgage was put on record and I felt that having an old mortgage, Mr. Donahay's should not come in ahead of mine. Now, then, in case of his death or in case things came to a crisis, is there any way by which I could secure myself and you said, "As things are, there is no way by which you can secure yourself unless you loan him this amount; then take a chattel mortgage if he is willing to give you a chattel mortgage for this unrecorded mortgage, for this note that you have endorsed and for the loan that he wants to make at the present time," and I was then very undecided about whether to make that loan and I said, "Will that make me secure?" You said, "Absolutely secure, there is no Judge or no Jury but what would give you a perfect claim;" and you fully understood that that was a note that I had endorsed. Now, if you wrote that differently, why, you should not have done it.

Q. Now, Mrs. Rutter, when you made that statement to me, didn't I tell you that the only amount

that you were absolutely secure for was the cash you had advanced at that time, one thousand dollars?

A. No, sir, you didn't, you gave me to understand if I made this last loan it would make me absolutely secure for the entire amount.

Q. You actually had this in two chattel mortgages; I didn't draw this chattel mortgage, (indicating) did I, this first chattel mortgage, that is unrecorded?

10 A. No, Mr. Burtis drew it, I suppose.

Q. You said in that chattel mortgage here, money loaned by you; you said in this chattel mortgage here, money loaned by you; you understand the use of the English language, don't you?

A. Why, sometimes, I do.

Q. And you understand that when you say money is loaned by you that it means that money is loaned by you, don't you?

A. Well, yes, if I have a chance to say, but that
20 paper, I tell you, was drawn up ——

Q. Didn't you go over each of those affidavits?

The Court: Why dwell upon it; Mrs. Rutter has already given her version, she says the thousand dollars was not loaned directly by her, it was loaned by her husband.

Q. You put in a claim, didn't you, in the bankruptcy estate of John T. McChesney, your brother, who is the payee on this particular note, and the claim is sworn to by you on May tenth, nineteen
30 hundred and seventeen, that was before this note was protested, four days before it was protested, and that claim was filed on May twenty-eighth, nineteen hundred and seventeen, after this note was protested, and didn't you, in that claim (I show you the claim) didn't you swear in that affidavit or in that claim that the consideration of said debt is as follows: "Said moneys were actually loaned and paid to said John T. McChesney by this deponent and secured by three promissory notes, of which the an-
40 nexed are true copies, amounting in all to the sum

of thirty-two hundred and thirteen dollars and fifty cents;" etc. "That no part of said debt has been paid, that there are no set offs or counter claims to the same; that the only security held by this claimant to said debt is the following, namely, the said chattel mortgage that has been recorded." Didn't you swear in that claim that the money was actually loaned to John T. McChesney by you?

A. That was a mistake about that money being loaned. 10

Q. Who made the mistake?

A. I suppose Mr. Applegate did and I think he can explain it to you, can't you, Mr. Applegate?

Q. Don't ask Mr. Applegate any questions; that was your sworn claim, wasn't it, against your brother's estate on these three notes, including this very note, wasn't it?

A. Well, I signed my name to that, and if that includes that note as cash it was a mistake in my doing it because I had told Mr. Applegate that it 20 was a note that I had endorsed and I felt that this had been explained.

Q. Not in your claim in the bankruptcy court, you didn't say that you had endorsed a note, on the contrary you put in the schedules this note as one of the three notes, "one thousand dollars, Freehold, New Jersey, November tenth, nineteen hundred and sixteen, three months after date I promise to pay to the order of John T. McChesney one thousand dollars at the First National Bank of Freehold, New 30 Jersey. Value received. Signed Abbie M. Rutter, endorsed John T. McChesney.

The Court: Pardon me, Mr. Cowart, you say that is the same note you are suing on?

Mr. Cowart: That is the preceding renewal for this very note.

The Court: And the words "for my own use and benefit" do not appear on that note?

Witness: No, they did not put that in.

The Court: You say that this claim includes 40

this note in suit?

Mr. Cowart: This proof of claim included this very renewal of this very note in suit.

Q. Why didn't you or your attorney put in there "For my own use and benefit?"

A. I don't know.

Q. Didn't you know that if you put that in you would not get your claim against John T. McChesney on that particular note?

10 A. I didn't know but what it was all, —— every note was alike.

The Court: Well, Mrs. Rutter, why was that note included, the one to which Mr. Cowart just referred, dated November tenth, nineteen hundred and sixteen?

Witness: Why was that included?

The Court: Yes?

Witness: Because at Mr. Cowart's suggestion last May, when Mr. Cowart was going to draw

20 up that mortgage for me, he suggested it. I went to Mr. Cowart for advice last winter.

Mr. Cowart: Why was it that the note of November tenth, nineteen hundred and sixteen, was included in your proof of claim in the bankruptcy proceedings against your brother?

Wtness: Well, I suppose it was because, —— well, I didn't understand.

The Court: Well, now, pardon me, apparently

30 Mr. Cowart has a proof of claim that you made out and which was filed in the bankruptcy proceedings against your brother; that proof of claim included three notes, apparently, which you swore were for moneys loaned by you to your brother; how did it come that the three notes were included in the proof of claim?

Witness: Well, I suppose ——

The Court: If you were merely an accommo-

40 dation maker of one?

Witness: I acted on the advice of Mr. Cowart by having that included in one.

Mr. Cowart: Not in this.

Witness: No, not in this but I supposed that was the proper thing to do, I took the papers to Mr. Applegate.

The Court: When were you first advised that you were not legally liable upon this note upon which the bank is now suing?

Witness: Not until some time in May, this year. 10

The Court: What had happened then which brought that advice to you?

Witness: My brother had gone into bankruptcy.

The Court: Who advised you at that time?

Witness: Mr. Applegate.

The Court: Didn't you know before that, that you, as an accommodation maker or endorser of a note, were not liable?

Witness: No, sir. 20

Q. Didn't you file this very claim after your letter of May fifteenth, nineteen hundred and seventeen, when you said in there that John S. Applegate had advised you that you were not liable on that note?

A. Yes, this was signed after that letter was written.

Q. No, your claim was made out on May tenth, nineteen hundred and seventeen; it was filed on May twenty-eighth, nineteen hundred and seventeen, 30 after this letter was written and with the advice of your counsel?

A. I remember, yes, that was done after —— that is the first paper I signed, is it, Mr. Applegate?

Mr. Applegate: I cannot tell you now, I don't know.

A. What is the date of that?

Q. The date of it was May tenth, nineteen hundred and seventeen, and it was sworn to on May tenth, nineteen hundred and seventeen. Now, you 40

allowed your counsel to file that claim, in which you swore that this was money loaned by you to your brother, on the twenty-eighth of May, after you had got his advice on it, how do you explain that?

A. Well, I suppose that I thought that that had to be put in that paper in that way, in that document; I supposed it had to appear in that way for I fully explained the entire situation to Mr. Applegate.

10 Q. Now, Mrs. Rutter, you are an intelligent woman, you were in business for thirteen years, used to all kinds of business possibly as a woman, just as well as a man, just the same as a man and you know the English language just the same as a man and you knew that when you swore to it, unless you swore to it that it was for money loaned, you would not get your claim against your brother, didn't you?

A. No, I did not; I was in a very great hurry and I think I overlooked that fact that they said cash

20 instead of a note that I endorsed.

Q. It doesn't say cash at all, it says money loaned.

A. Well, money loaned, I didn't fully comprehend that or I never would have signed it.

Q. Isn't that as plain as the nose on your face?

The Court: Mr. Cowart, it speaks for itself.

Witness: But it was a mistake, my signing that paper; it was a mistake.

Mr. Cowart: Of course it was a mistake, if you

30 want to set up this other defense.

Mr. Applegate: There is no dispute about the truth of this thing at all; they admit it, themselves, that there was money loaned.

The Court: That is a pure matter of argument.

Q. Now, when this original note of February eighth, nineteen hundred and fifteen was brought to you by your brother, John McChesney, you have said that he stated to you that the note had to be in the form in which he presented it to you with those

40 words, "For my own use and benefit" and unless it

contained those words, the bank officials would not discount it, didn't he?

A. Yes.

Q. Now, you knew, then, that the bank would not part with its money unless you signed the note in that shape as maker and represented to the bank that it was for your own personal use and benefit, didn't you?

A. Why, I supposed that they would not advance the money unless I put my name on that paper and I did it very reluctantly. 10

Q. You knew that they would not part with their money, didn't you?

A. Yes, I suppose I did.

Q. And that language was clear to you, wasn't it, the language, as your brother says, was "For my own personal use and benefit?"

A. I am not sure that it said "personal."

Q. Well, he says it was, but I don't care whether it was in that form or whether you said in the notes 20 "For my own use and benefit." You said one or the other in the note, didn't you?

A. I put my name to that, yes, after protesting against it.

Q. And you knew at the time that you did that that your brother or you would not get the accommodation in the bank unless you put that in and left it in there?

A. Yes.

Q. So you knew the circumstances? 30

A. Yes.

Q. You knew the fact of your signing that note, didn't you?

A. Yes.

Q. You knew what it meant?

A. Yes.

Q. You knew that the bank would not part with its money unless you put it in there, didn't you?

A. Yes.

Q. And all these subsequent renewals that were 40

made after this original note had practically the same language in them, didn't they?

A. I think they did, I cannot be positive about that.

Q. And you signed the last renewal of that note on February twelfth or fourteenth, twelfth, I think it was, you signed that last renewal after you had executed with your brother that chattel mortgage of February third?

10 A. No, I signed it before, right in your presence in my home on Broad Street, you wanted to see the note before you drew up that paper and you saw it, that I signed it, this note.

Q. You mean to say that you signed any note in my presence that was given in renewal of this John McChesney note that is in suit now; do you mean to say that you brought home any note in any of those transactions signed by you?

A. Yes, you saw it at my house last February
20 third.

Q. Saw this note that was in the bank?

A. Before this mortgage was signed.

Q. Saw this note that was in the bank?

A. Yes, sir.

Q. How would I see it in your house when it was in the bank?

A. Because you were there and you requested me to have that note there because you couldn't write up a note, you said it was necessary for me to have
30 three different notes and it was necessary for you to see them before it was included in the mortgage.

Q. Did I say it was necessary for me to see a note or the copy of the note?

A. I don't remember that, but you wanted to be sure there was a note and you saw it and that note was made and signed before, well, on February third, and it was not put in the bank until several days later when it was due, it was sent in advance of the time that the note expired, the note was issued
40 at your request.

Q. I don't want you to state a thing that you are not sure is true, but do you mean to say you brought home the note of February twelfth which is in suit now and that I gave you any advice at your house on that particular note?

A. Yes, sir; you gave me the advice at your house the night before.

Q. That note itself was brought home?

A. That note was not brought home, that note was at my house and you came to my house. 10

Q. How did you get possession of that note?

A. I went to the bank and got it.

Q. You went to the bank?

A. I went to the bank and Mr. Laird drew it up.

Q. And took the note from the bank?

A. Yes.

The Court: You mean before the last renewal was given you took it and showed it to Mr. Cowart; now, bear in mind the last renewal was February twelfth, nineteen hundred and 20 seventeen.

Witness: I had that note in my possession a week.

The Court: Now, bearing in mind that the last renewal now, and the one upon which they are suing in this suit was February twelfth, nineteen hundred and seventeen, do you say that you showed that to Mr. Cowart before you delivered it to the bank?

Witness: Yes, sir; I had it in my possession a 30 week before it was due, simply that Mr. Cowart could see it before he drew up this mortgage; my brother was sick and I went to the bank myself and Mr. Laird handed it to me. I don't know who wrote it up, I cannot be positive about that.

Mr. Cowart: A note, you say, dated February twelfth?

The Court: No, she says now that she had a renewal note before the previous one fell due 40

on the twelfth of February in her possession for a week, and that was the one.

Witness: Yes, sir; that is right.

Mr. Cowart: She executed the second chattel mortgage on February third, nineteen hundred and seventeen, now, that was nine days before the execution of the last renewal note.

Mr. Applegate: No, it was dated ahead.

Mr. Cowart: Now, in her chattel mortgage she swears that she is securing the note dated November tenth, nineteen hundred and sixteen, which was the preceding renewal note.

The Court: You say it was the preceding renewal, but there is nothing yet in the case to show it was.

Q. So, Mrs. Rutter, aren't you mistaken that you brought anything except a copy of the note of November tenth, nineteen hundred and sixteen, which was the preceding renewal of this note?

A. No, sir.

Q. What would I have to do that for with a subsequent renewal of the note when what we were securing was a note already in the bank and discounted, dated November tenth?

A. How would I know what you wanted to do with it; it was at your suggestion.

Q. You were not trying to secure a subsequent renewal, were you, of the note?

A. You wanted to see a copy of the old note, or the new note, you wanted to see it in order to write up that mortgage as it should be written up, in order to write up the note for my brother to sign, to give me for that in case I had to pay that note.

The Court: Did you tell Mr. Cowart at that time that that note was an accommodation?

Witness: Yes, we were talking about it.

Mr. Cowart: Yes, that is inserted in the mortgage.

The Court: Did Mr. Cowart advise you at that time that you were not legally liable on the

note?

Mr. Cowart: No, sir.

Q. Now, you say it was not explained to you what was meant by that language, "For my own use and benefit," haven't you been giving other notes containing practically the same language just about the time that even this original note was given?

A. I cannot remember that I gave one at that time but it was explained to me that it was a matter of form and the only way that a married woman could endorse or be an accommodation maker. 10

Q. I show you a note dated April first, nineteen hundred and fifteen, for one thousand dollars, signed by Abbie M. Rutter as maker, payable to the order of Charles McChesney for one thousand dollars with interest from date; this note being "For my own use and benefit and is a personal business transaction?"

A. Yes, that was a different thing, that was for business between Mr. McChesney and I.

Q. Yes, but you knew what that language meant, didn't you? 20

A. Yes, I knew what that language meant because that was for a different transaction, that was for personal business between Mr. McChesney and I, that was altogether different.

The Court: What do you mean, you were doing business for Mr. McChesney and gave that note for it?

Witness: Yes, sir.

Q. You knew when you signed notes like that what the language meant, didn't you? 30

A. Yes, sir.

Q. And you signed other notes all dated the same date, there were three other notes, there were four notes?

A. There were four notes for one thousand dollars each.

Q. Dated February first, nineteen hundred and fifteen, and in all of them you put in language that bound you as a married woman, didn't you? 40

A. Yes, because that was in payment ——

Q. Well, you knew what it meant, didn't you?

A. I knew what it meant, yes.

Q. Then you knew what it meant when you renewed all these other notes, didn't you, subsequent to this?

A. No, that is different, those are not parallel cases.

Q. But you knew what the language meant?

10 A. I knew what the language meant, but it has a different meaning on a note like that.

Q. You said you didn't know what that meant.

The Court: Mr. Cowart, she has a number of times either on direct or cross examination said that when her brother brought that note in she told him that that was not true, she was merely accommodating him, she was not getting any personal benefit from it and she therefore knew exactly what the language

20 meant; if you want a declaration from the Court that I believe she knew, I will give it to you, she undoubtedly knew what the language meant because she demurred when her brother brought her the note.

Mr. Cowart: But she said in her testimony that it was not explained to her that a note with that language in it was required of a married woman and what her rights were.

The Court: As an accommodation maker, yes.

30 Mr. Cowart: Well, with that language in it and what her rights were as a married woman; she must have known all that by her giving other notes.

Witness: If I made a statement like that it was a misunderstanding, the question was, "Did I know my rights as a married woman in regard to paying the note;" and I didn't know at that time, —— what I meant to have you understand was that when that was written

40 on the note and I objected to it and said,

"That is not for my own use and benefit," when I did that, I meant that it was not for my own use and benefit and my brother said, "It is a matter of form and the only way by which a married woman can endorse a note."

Q. And you knew they would not discount the note unless you so represented to the bank?

A. Yes.

Q. And in the face of that representation and your knowledge that that was the condition imposed by the bank, you put your signature to the note, didn't you? 10

A. Yes, because my brother said he had sufficient on his books and he was quite sure he could collect sufficient money, that is, for that note to pay it off when due three months later. Well, I presumed when he went in bankruptcy that that money was still on his books and that is the reason why I thought that that note should be paid with the money that was on his books for that money, a great deal of it, I suppose, is still on the books, that is the reason I signed this note, because he assured me that he felt quite confident he could in three months pay that note off from the moneys he had on his books. 20

Q. And you knew, therefore, that it was a benefit to you by securing your own debt?

A. No, my only thought was of helping him out of his trouble.

Q. Well, Mrs. Rutter, knowing the fact that the bank would not part with its money unless you signed the note in that form and you put your signature to the note in that form, do you now claim that that was a falsehood on your part? 30

A. Well, as long as it was understood by the officers of the bank and understood by my brother and I had objected to signing in that way, I was told that that was a matter of form and the only way that a married woman could sign a note, I don't see why that would come under the head of falsehood.

40

Q. Well, you knew it would be a falsehood, didn't you?

The Court: She has answered that, Mr. Cowart.

REDIRECT EXAMINATION BY
MR. APPLEGATE:

Q. Mrs. Rutter, whatever may appear in the chattel mortgages that have been shown to you and
10 the affidavits included in them, whatever may appear in the proof of claim that you filed in bankruptcy as to your loaning money to your brother upon the note which is the subject matter of this suit, the truth is what, did you or didn't you loan this money to your brother or did you sign the note as an accommodation maker?

A. I signed the note as an accommodation maker.

Q. Did you loan any money to your brother at
20 that time on this note?

A. No, sir.

Q. No matter what appears in these papers that have been shown you?

A. No.

30

40

RECROSS EXAMINATION BY MR. COWART:

Q. Now, let me show you an affidavit —— just a minute.

Mr. Cowart: I offer the original claim of Abbie M. Rutter against the estate of John T. McChesney, bankrupt, dated May tenth, nineteen hundred and seventeen, filed May twenty-eighth, nineteen hundred and seventeen. (Received in evidence and marked P-5 for plaintiff).

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REDIRECT EXAMINATION BY
MR. APPLEGATE:

Q. Mrs. Rutter, I show you a paper entitled, "In the District Court of the United States for the District of New Jersey; in the matter of John T. McChesney, bankrupt, proof of claim and power of attorney of Abbie M. Rutter, creditor."

Mr. Cowart: Now, if your Honor please, —

10 Mr. Applegate: I have not finished my question yet.

The Court: Finish the question.

Q. This proof of claim is dated the twenty-second day of October, nineteen hundred and seventeen, and I ask you if that is your signature subscribed to the paper down here?

A. Yes, sir, that is it.

Q. That is your signature?

A. Yes.

20 Mr. Cowart: One minute, I object now, if your Honor please.

The Court: There is nothing to object to, he is simply identifying the paper, he has not offered it.

Q. This proof of claim which I have shown you and which you have just identified was made at whose suggestion or request?

Mr. Cowart: I object.

The Court: I cannot rule on the objection until
30 I get the evidence before me and I can tell.

A. This last paper that I have seen?

Q. This one that I have just shown you was made at whose suggestion or request?

A. At yours.

Mr. Applegate: Now, we offer this.

The Court: I assume that you filed, after your discovery of the inclusion of the note in question as a debt, you filed a supplemental proof of claim with the Referee in Bankruptcy,
40 with which you eliminated this note?

Mr. Applegate: As a correction of the original affidavit.

Mr. Cowart: We object to the admission of such a paper for the reason that it is an endeavor to introduce into this testimony an admission by this defendant in her own interest outside of this Court and not in the presence of these parties; the first claim was properly admitted for the reason that it was an admission against interest but the second claim cannot be admitted for the reason that it is an admission to —— 10

The Court: Why, Mr. Cowart, all this line of testimony only goes to credibility, now, the more affidavits you have in, the less you should object. I will allow the paper to go in.

Mr. Cowart: I ask for an exception.

The Court: Allowed.

Mr. Cowart: If your Honor please, I would like to offer these notes of Charles McChesney. 20

The Court: You are offering those to show her familiarity with the terms of a married woman's note.

(Plaintiff offers in evidence two promissory notes dated April first, nineteen hundred and fifteen, for one thousand dollars, made payable to the order of Charles McChesney, at the National Freehold Banking Company," containing the following language, "Value received with interest from date, this note being given for my own use and benefit and is a personal business transaction.") 30

(First note received and marked exhibit P-6 for plaintiff).

(Second note received and marked exhibit P-7 for plaintiff).

RECROSS EXAMINATION BY MR. COWART:

Q. Mrs. Rutter, when you made the last loan to 40

John McChesney, for one thousand dollars on February third, nineteen hundred and seventeen, you did that again, didn't you, to tide him over on his affairs and help him in his business?

A. Yes, sir, and at your advice.

Mr. Applegate: That is objected, if your Honor please, not recross examination.

Mr. Cowart: It is an omitted question, then.

Mr. Applegate: All right, then, I will withdraw
10 the objection.

Q. And you knew that you were trying, then, to help yourself get the benefit of having him continue in business in order to make both your prior notes good, didn't you?

A. I was trying to help him continue his business for his own benefit and whatever benefit it might be to me.

Q. And you took your security of that chattel mortgage of February third, nineteen hundred and
20 seventeen, for the purpose of securing all of these three notes, didn't you?

A. Yes, at your suggestion.

Q. That's all.

REDIRECT EXAMINATION BY
MR. APPLEGATE:

Q. Have you received anything from the bankruptcy matter on account of the note that is in this
30 suit?

A. Not one cent.

Q. Or on any other note?

A. Not one cent.

Q. That's all.

The Court: Has the estate of your brother been settled in bankruptcy?

Witness: No, not so far as I know.

Mr. Applegate: We rest, if your Honor please.

40

JAMES W. S. CAMPBELL, a witness on behalf of the plaintiff was duly sworn according to law and testified as follows:

DIRECT EXAMINATION BY MR. COWART:

Q. Mr. Campbell, what is your position in the First National Bank of Freehold?
A. Cashier.
Q. And Mr. Laird is the assistant cashier? 10
A. Assistant cashier.
Q. Joseph T. Laird?
A. Junior.
Q. I show you the note in suit in this case, February twelfth, nineteen hundred and seventeen, that is the renewal, isn't it, of a note, of an original note dated February eighth, nineteen hundred and fifteen?
A. It is.
Q. What were the circumstances, as you recall 20 them, under which the original note of February eighth, nineteen hundred and fifteen, was discounted?
A. Mr. McChesney came in the bank after the close of business, just after three o'clock, Mr. Laird brought a note back to my desk made by Abbie M. Rutter, endorsed John T. McChesney, and said to me, "Mr. McChesney would like to have credit for it." After some consideration and inspecting the note, the note was a regular blank note of the bank 30 without, "For my own use and benefit" written into it, I accompanied Mr. Laird back to his window and said to John McChesney, if that was his sister's note she should so state in the note and my recollection is that Mr. McChesney asked if we would prepare the note as it should be and either myself or someone in the bank did draw up such a note which was brought to the bank the next day and put to Mr. McChesney's credit.
Q. Mr. McChesney says that he came into the 40

bank at the time of seeing the bank in regard to discounting his sister's note and that you said, "This is the only way that a married woman can endorse;" did you say any such thing as that?

A. No such thing at all, the first knowledge I had of the note was when the note, as I say, was presented to me signed by Mrs. Rutter on the regular blank without any written matter in it whatever.

Q. Did Mr. McChesney say to you at that time
10 anything about payment of this note, taking care of it?

A. Mr. McChesney volunteered the statement, as I recall, that possibly the note would be taken up at or before maturity.

Q. By whom, did he say?

A. I don't know that he said by whom, I naturally supposed that he ——

Mr. Applegate: I object to what he supposed and I ask that that be stricken out.

20 The Court: Strike it out.

Q. Did he say anything about Mrs. Rutter taking up the note?

A. I am not clear about that.

Q. Then the note was discounted on February ninth, nineteen hundred and fifteen, and then it had in it the words similar to the words in the present note, "For my own use and benefit?"

A. Yes.

Q. The note as originally presented to you by
30 Mr. Laird was signed by her as maker?

A. Yes.

Q. Did you ask Mr. McChesney to secure his sister as an endorser in any form?

A. I did not, I made no suggestion to him whatever, my conversation was very brief.

Q. Or as maker in any form?

A. Never suggested to him anything except say to him if that was his sister's note she must so state in the note.

40 Q. Then when the note was discounted, the pro-

ceeds of that note were credited to whose account?

A. John T. McChesney.

Q. Why did you credit it to his account?

Mr. Applegate: That is objected to, if your Honor please, as to why it was done.

The Court: I think I will allow that.

Mr. Applegate: I ask for an exception.

The Court: Allowed.

A. At his request and because he was the owner of the note. 10

Q. About these subsequent renewals of that note, some eight in number, did they all contain the same representation by Mrs. Rutter?

A. There is no doubt about it, I would not have accepted it otherwise.

Q. Would you have discounted that note with her as maker unless she inserted in it a statement that it was for her own use and benefit?

A. No, I would have refused it otherwise.

Q. Did you know at the time when you discounted this note that there was any reason to believe that Mrs. Rutter had no interest or benefit from the discounting of that note? 20

A. None whatever.

Q. Did you rely upon her statement in that note as true in discounting the note?

A. On the statement of Mrs. Rutter made after the note had been filled up, as I recollect, it was filled up by somebody in the bank, I cannot say whom. 30

Q. And you relied upon the correctness of the statement?

A. In connection with the statement that I had made to John McChesney and the fact that the note was brought back there in proper form.

The Court: Did you ever have any conversation with Mrs. Rutter herself?

Witness: I never had any conversation with Mrs. Rutter in my life about anything.

The Court: You said you relied upon the state- 40

New Jersey State Library

ment of Mrs. Rutter, you mean the statement in the note?

Witness: The statement in writing in the note.

Q. Did you have any knowledge as the officer of the bank that her statement was untrue at that time?

A. No, I had no reason to doubt it, these people had a reputation at that time in town, Mrs. Rutter was a successful business woman, had been in business here a long time and was responsible.

10 Q. That's all.

A. I had not the slightest idea that there was any camouflage in that note or desire to deceive the bank.

CROSS EXAMINATION BY MR. APPLEGATE:

Q. Mr. Campbell, you knew that Mrs. Rutter was a married woman?

A. Yes.

20 Q. When she signed the note in question, the original note and the renewals?

A. Yes.

Q. You knew she was married?

A. Yes.

Q. You knew and it was a fact you would not discount Mr. McChesney's note without he had some responsible endorser or party on the note with him, would you?

A. Yes.

30 Q. That was true, wasn't it?

A. Yes.

Q. And you told McChesney so, didn't you?

A. No.

Q. Didn't you tell McChesney that you would not discount his own note?

A. McChesney never asked me to discount a note, the note is as the circumstances I have related.

Q. Didn't ask you because he knew you would not do it?

40 A. I don't know anything about that, sir.

Q. Well, you would not do it anyway, would you?

A. No.

Q. You did tell him that you would discount a note if signed by his sister?

A. No, I told him if that was his sister's note and it would state so in the note, that I would discount it.

Q. And then McChesney went to his sister and got the note signed by her? 10

A. Well, it came back signed.

Q. And brought it back to your bank?

A. Yes.

Q. And it had upon it the words, "For my own use and benefit?"

Q. You discounted the note?

A. Yes.

Q. And you placed the proceeds to the credit of McChesney?

A. Yes. 20

Q. And McChesney checked out those proceeds?

A. Yes.

Q. You knew, therefore, that Mrs. Rutter was not receiving those proceeds, "For her own use and benefit?"

A. I knew she was not receiving those proceeds, I knew ——

Q. You didn't take the trouble before you discounted that note to go to Mrs. Rutter and ask her if she had received anything of value for her contract with McChesney, did you? 30

A. No, sir.

Q. It was at your suggestion that the words, "For my own use and benefit" were written on the note?

A. Under circumstances as I have related them, yes.

Q. Well, it was your suggestion?

A. Yes.

Q. And you do that in the course of all notes 40

that are to be signed or endorsed by married women?

A. Notes that are signed by married women, made by married women.

Q. Irrespective of whether they are going to receive the proceeds of the discount or not?

A. True.

Q. That is true, isn't it?

A. Yes.

Q. So that to that extent the placing of those words, on these notes, and this note in question, is a matter of form at the bank?

A. Not a matter of form, it means something.

Q. It means to you and to the bank that unless those words are there you couldn't recover on the note, doesn't it?

A. I understand so.

Q. And that is the reason why you put them on the note?

A. Yes.

Q. Because, according to your understanding, you can recover under such cases?

A. I don't understand the last question.

Q. Because, according to your understanding, if these words are on the note you may recover on the note at law?

A. Yes.

Q. And without those words on the note, you think you could not recover?

A. That is my understanding.

Q. And you know you could not, don't you?

A. That is my understanding.

Q. And, therefore, that is the reason why you insist upon those words appearing on the notes signed by a married woman, isn't that true?

A. That is true.

Q. You knew that Mr. McChesney was in business in this town, didn't you?

A. Yes.

Q. And in business for himself?

A. Yes.

Q. Had he other notes in your bank at that time?

A. He had.

Q. And they were all endorsed by other people, were they?

A. He had collateral.

Q. He had collateral for the notes?

A. Yes.

Q. He had collateral because the notes alone were not good in your judgment, isn't that true? 10

A. I think that that is true of all banks requiring security.

Q. There are people whose names you will take upon a note without any security, isn't that so?

A. Yes.

Q. But you would not do that in the case of Mr. McChesney, would you?

A. No.

Q. Therefore you insisted upon security in his case, didn't you? 20

A. I didn't ask him for any security.

Q. You would not have discounted the note without security, would you?

A. I didn't take that as security at all, I took that as Mrs. Rutter's note.

Q. But you paid out the money to Mr. McChesney, didn't you?

A. Yes.

Q. And you knew McChesney was going to get that money? 30

A. Yes, and supposed he was the owner of the note.

Q. What made you suppose he was the owner of the note?

A. He had possession of it.

Q. Was that the only reason?

A. That is all.

Q. As a matter of fact you knew he was not the owner, didn't you?

A. No, I didn't suppose he stole it. 40

Q. You knew that the proceeds were going to him, didn't you?

A. Yes.

Q. You knew that his name appeared on the back of the note as the endorser?

A. Yes, as the owner of it, too.

Q. And you knew that Mrs. Rutter did not receive the proceeds?

A. I didn't know anything about what arrangement Mrs. Rutter had with John McChesney.

Q. And you didn't inquire?

A. I didn't inquire; I have not got time to inquire of every note that comes along.

Q. And because you have not got time is one of the reasons why you place upon the notes of married women, "For my own use and benefit," to save you all the trouble of inquiring?

A. I did not for one moment suppose they were trying to deceive the bank or I would not be here just now.

Q. And were you trying to deceive Mrs. Rutter when you discounted the note?

A. I did not, in no way or shape.

Q. You knew that Mrs. Rutter was the accommodation maker at the time, didn't you?

A. No, sir.

Q. You really say that, do you mean that?

A. I say that in all truth.

Q. If you thought that Mrs. Rutter was the real maker of that note, what did you think that she was receiving?

A. I didn't know what she was receiving.

Q. She wasn't going to receive the proceeds, was she?

A. No.

Q. What did you think she was receiving?

A. I didn't know what arrangement she had with Mr. McChesney at all.

Q. What would make her the real maker unless she had received the proceeds?

A. She had to receive some.

Q. She had to receive the proceeds of the note to make her the real maker, didn't she?

A. Well, it was placed to Mr. McChesney's credit, there is no denying that.

Q. Mr. Campbell, you know that it is the law, don't you, as a banker, that if a married woman makes a note which is her own note, for use in her business, that she is liable on it?

A. Yes. 10

Q. And you know if she makes a note as a surety or accommodation maker she is not liable on it unless she receives something for her own use and benefit, isn't that so?

A. Yes.

Q. Therefore, if a married woman makes a note as maker and is going to receive the proceeds of the note herself as she was the maker of the note, what necessity would there be of writing on that note, "For my own use and benefit?" 20

A. So there would be no question about it.

Q. Was that the only reason that was in it?

A. So you would not have to prove it.

Q. You knew you would have to put those words on that note in case she was an accommodation maker in order to make her liable?

A. I thought she would have to do it in any event.

Q. You didn't think she would have to do that in case she was the real maker? 30

A. Yes.

Q. It is not the law where a married woman is the real maker of the note that she has to have those words on it?

A. I don't know the law.

Q. Is that your understanding?

A. My understanding is that it should be on all notes made by married women.

Q. Even though she receives the benefit?

A. Yes, sir; so that it would avoid the necessity 40

of proof, that is my understanding.

Q. And that is the reason why you put the words on the note?

A. Yes.

Q. Simply because it was your understanding and as a matter of form?

A. No, not a matter of form, because it means what it says.

Q. Have you filed any proof of claim for the bank against McChesney, the bankrupt?

A. I have not.

Q. McChesney was an endorser on this note, wasn't he?

A. Yes.

Q. You would have a right to file a proof of claim with the bankruptcy, wouldn't you?

A. Would we?

Q. Yes?

A. I suppose so.

Q. You still have a claim against McChesney, haven't you, upon his endorsement?

A. I suppose we have.

Q. There is no doubt about it, is there?

A. I don't know, I have not asked counsel about it.

Q. You mean to say you, as a practical banker, don't know that you still have a claim against McChesney, you can sue either one or both?

A. Yes, I suppose so.

Q. If McChesney had not been a bankrupt, you could put in a claim against him?

A. Yes.

Q. And you know that you could file a proof of claim against McChesney, the bankrupt?

A. Not after a claim has already been filed.

Q. You don't think you could?

A. How can you file two claims for the same note?

Q. Is that your understanding of it?

A. That is my understanding of it.

Q. That's all.

Mr. Cowart: That's all.

Mr. Applegate: I would like to make a motion for a direction of a verdict in favor of Mrs. Rutter upon these grounds: That the plaintiff is barred from recovering in this suit because of the fact that it appears that Mrs. Rutter is a married woman and under the statute, which your Honor is familiar with, she is given a defense to this suit. Now, if it appeared in this case that this note was just the plain, ordinary promissory note of Mrs. Rutter without the words, "For my own use and benefit," written thereon, under the admissions in the case and the testimony, Mrs. Rutter would not be responsible because it plainly appears from all the evidence that Mrs. Rutter was a surety, she made this promissory note at the request of McChesney and it would not make any difference what the bank knew or what the bank thought about the transaction, if it appeared, as a matter of fact, that Mrs. Rutter was the accommodation maker or surety of Mr. McChesney, that would end this case because of the statute in question which provides that no married woman shall be liable on any contract of guarantee, surety, or promise to pay the debt of another. But this case has a further point. It appears that upon the note are the words, "For my own use and benefit." Now, our contention is that that does not change the principle of law involved. The plaintiffs will contend, as they already have contended, upon the motions to strike out the pleadings in this case which were made before your Honor, that the defendant, Mrs. Rutter, is estopped from setting up that, as a matter of fact, she did not receive anything of value directly or indirectly; in other words,

that she is estopped from contradicting the statement that appears upon this note, "For my own use and benefit." Our reply is that she is not estopped.

(Argument for non-suit follows.)

The Court: Motion for non suit denied.

(Summing up by counsel on either side.)

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Gentlemen of the Jury: This case has taken some time and has been very carefully tried and apparently all available evidence that has any material bearing upon the case has been presented by either one side or the other. The case is of importance, as one of the counsel has said, but you will not approach this case, gentlemen, with this idea: that merely because the note in question was discounted 10 by the plaintiff bank and it advanced upon that note the principal less the discount, that that fact, standing alone, justifies you in returning a verdict against the defendant. In other words, gentlemen, you are not to approach this case with the layman's idea that because money has been extracted from the plaintiff bank it ought to be repaid, and that the defendant, being the person brought into court and asked to pay it, should be required to pay it without regard to any other evidence in the case, and with- 20 out regard to the law. I can realize that among laymen that impression might prevail, and without regard to the legal questions involved or to the facts, they would simply assist in giving back to the bank that which it gave in this transaction. Now, of course you cannot approach the case and consider it from that simple standpoint. You are to be guided, gentlemen, by the rules of law applicable to the case, as the court will endeavor to give them to you, and then you must ascertain the facts, because 30 that is your province, in accordance with such rules of law. In other words, what I am endeavoring to have you do, gentlemen, is to finally determine this case, not from the standpoint of sympathy or prejudice, but from the standpoint of the law and the evidence in this case as you find it.

It has been a principle of law for a great many years, coming down to us and finally recognized by the statute, that a married woman cannot be an accommodation surety or guarantor or become liable 40

for the payment of the debt of another as an endorser or surety unless it be shown that she received a benefit from such suretyship or endorsement. In other words, gentlemen, a married woman, under the law of this state, does not occupy the same position as a man. A man may endorse without receiving any benefit from the endorsement and he is liable on such endorsement; a married woman cannot. Therefore, primarily you must keep in mind,
10 gentlemen, what is the exact law in this state upon this subject, and I am, therefore, going to read the statute to you.

"Any married woman shall, after the passing of this act, have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, which contracts shall be legal and obligatory, and may be enforced at law or in equity by or against such married woman in her own name apart from her hus-
20 band; provided, that nothing herein shall enable such married woman to become an accommodation endorser, guarantor or surety, nor shall she be liable on any promise to pay the debt or answer for the default or liability of any other person; provided further, however, that if on the faith of any endorsement, contract of guaranty or suretyship, promise to pay the debt or to answer for default or liability of any other person, any married woman obtains, directly or indirectly, any money, property or other
30 thing of value for her own use or for the use, benefit or advantage of her separate estate, she shall be liable thereon as though she were unmarried, anything herein contained to the contrary notwithstanding."

Now I am concerned, gentlemen, in having that law maintained in its integrity in this court. The justice of the law—the reason for the law—with that I have no concern; it is the law. And starting with that as the rule, then you apply the facts as you find
40 them in this case. I am not concerned whether this

bank lost money, because the bank was charged with knowledge of this law. I am concerned, however, whether this defendant perpetrated a fraud upon this bank; if she did perpetrate a fraud, then she has no right to interpose this defense. It is our duty to endeavor to have the scales evenly balanced. If this had been a simple question, gentlemen, of a married woman signing a note as an accommodation endorser, or as an accommodation maker—because it makes no difference; she had a right to show that 10
although her name appeared as the maker of the note that in fact she was merely an accommodation maker—if, therefore, it had been a simple case of her having become an accommodation endorser, guarantor, surety or maker and the bank had taken the note and in the circumstances had discounted it, she would, under this law, have had the right to come into this court and show that she was a married woman at the time, and I should not have had the slightest hesitation in deciding this case on the 20
law without submitting it to the jury. But in view of the form of this note, containing the expression, "For my own use and benefit," which the defendant admittedly signed, and in view of the further fact that a married woman is not to be permitted to use this privilege—this protection—for the purpose of defrauding either a banking institution or any other person, it is my conception that it is for you to say as a fact whether Mrs. Rutter did perpetrate a fraud upon the plaintiff bank when she signed the note 30
and allowed it to be discounted in the form in which it was signed. It is my duty to say to you, however, gentlemen, that if Mrs. Rutter intended to perpetrate a fraud upon the bank by signing a note containing the words, "For my own use and benefit," but in fact it was not for her own use and benefit, if the bank itself knew at the time that that note was to be discounted not for her own use and benefit, then the bank was not misled and her motive in signing made no difference and she would not be 40

estopped in such circumstances, she would not be prevented in this suit from setting up this prohibition in what we call "The Married Woman's Act." I repeat, if the bank was not misled, if it was in possession of present information from which it knew that Mrs. Rutter was not receiving any benefit, that the note was not for her use and benefit—and I might state to you parenthetically that it made no difference whether the words were "For my own
10 personal use and benefit" or "For my own use and benefit"—if the bank was not misled, by reason of present information which it had that she was not receiving any benefit from the note, then she is not estopped from coming into this court and taking advantage of Section 5 of the "Married Woman's Act," namely, that which I have just read to you.

A married woman cannot, of course, permit a commercial paper bearing upon its face a declaration such as that which is involved in this suit to be
20 placed in circulation and to come into the hands of an innocent holder who loans money upon it, and then come in and say that she never received any benefit or advantage. I have been unwilling and am now unwilling to go to the extent that counsel for the defendant does when he insists that because this statute prohibits a married woman from making such a contract, namely, that of guaranty or suretyship, that no matter what fraud she may intend, she nevertheless can take advantage of this statute be-
30 cause the contract itself is prohibited by the legislative act.

Therefore, in my view of the law, the reason for this case going to you is for you to determine whether the defendant did perpetrate a fraud upon this banking institution. Now the evidence, gentlemen, has been gone over with more or less detail by counsel in summing up. It is my duty, however, to say to you that you are not to take statements of counsel with respect to the evidence or the testi-
40 mony of this or that witness as a finality, because

your recollection of the evidence and what the several witnesses testified to must prevail; and therefore if counsel have quoted witnesses as testifying to the things which they set up, it is your recollection as to whether the witnesses did so testify which must prevail.

I may say to you, gentlemen, in comment, that if Mr. McChesney went to the plaintiff bank on the day in question and asked for a loan and they said to him, "We will not loan you the money without security," and he offered his sister, a married woman, as such surety, and the bank officials knew that the sister was a mere surety, a mere accommodation maker, and they then loaned the money on that note after she had signed it in the form which they had prepared for McChesney on the faith of this security which they had accepted, there can be no verdict against the defendant in this case, because that is the law. In other words, it would be a simple transaction of their accepting with knowledge of a married woman's endorsing or accommodation making of a note from which they knew she was receiving no benefit, but were loaning the money to McChesney as a transaction of their own. Then, I say, there can be no recovery against the defendant in this case under the law.

It appears that McChesney did go to the bank and have a conversation with the assistant cashier, and as a result of what was then said the assistant cashier consulted with the cashier. It is not my recollection of the testimony—and there your recollection must prevail—that Mr. McChesney took a note the form of which the officer of the bank objected to. My recollection of the testimony is that when Mr. McChesney went to the bank he had no note, but asked if they would discount his sister's note. Now you must determine what that transaction was and what was meant. Did he mean when he conversed with the banking officer that they were to loan him the money with his sister's note as a

security, or did he mean that they were to loan the money to the sister? Now you must take the circumstances just as they occurred. If the bank was loaning the money to the sister it may be—I don't know; it is mere comment of the court—that you will naturally inquire why they did not place the money to her credit. If they had made a check to her on this note being presented and discounted, it was wholly immaterial what she did with the check
10 afterwards; she could have given it to McChesney and she would have been absolutely bound by this transaction—there is no question about that. It is a matter of law. There is a long line of cases in this state holding that very principle. Therefore, you may inquire, if the transaction was as the bank claims, that the loan was made to her on her note and they were discounting her note, why the proceeds were placed to the credit of McChesney. Now understand, you are not bound by the court's com-
20 ment. I am simply saying it for the purpose of illustration of the law as I understand it. If I am wrong in the law the party affected by it has a perfect right to appeal, but you must take the law from me because that is my function, just as it is your function to ascertain what the fact is.

Therefore, gentlemen, the concrete question for you to determine is this: Was the bank deluded by the defendant, did the defendant practice a fraud upon the bank by signing the note in the form in
30 which it was in the circumstances? Now if she did, the bank is entitled to recover the full amount of this claim with protest fees and interest. If, on the other hand, the bank knew the transaction, knew that the loan was not being made to her, knew that it was making the loan to McChesney and that she was signing this note as an accommodation maker without any benefit to her, then there can be no recovery against her.

Now, gentlemen, there is still another phase to the
40 case which it will be your duty to consider. You will

observe that in this statute there is a proviso that if, on the faith of any endorsement, contract of guaranty or suretyship, promise to pay the debt or to answer the default or liability of any other person, any married woman obtains, directly or indirectly, any money, property or other thing of value for her own use or for the use, benefit or advantage of her separate estate, she shall be liable thereon as though she were unmarried. Now if you find in the evidence in this case that Mrs. Rutter did obtain any money, 10
property or other thing of value for her own use, directly or indirectly, or for the use, benefit or advantage of her separate estate, she would be liable on this note. The bank claims that there is evidence in the case which justifies such a finding, but you must be satisfied by a fair preponderance of the proof, that is, the greater weight of the evidence, that she did derive the benefit under this statute or in the manner indicated by the statute. Counsel for the defendant claims that it is in evidence that she 20
received no benefit, but I am leaving that question to you, gentlemen, for you to find. It is my duty to say to you that a mere hope is not such a benefit as is contemplated under the proviso of this statute. I do that as a matter of law.

So that, gentlemen, I think now you understand the rules of law applicable to this case. I may say that the burden is upon the plaintiff to show by a fair preponderance of proof that she did receive the benefit of the character contemplated by this proviso 30
in the statute. Therefore, if you should arrive at the conclusion that there was no fraud and fail to find that the plaintiff has carried the burden of satisfying you by the greater weight of the evidence that she did receive a benefit, she is entitled to a verdict in her favor.

On the question of fraud, gentlemen, it is furthermore my duty to say to you that it does not necessarily follow that the fraud must involve active moral turpitude on the part of the defendant. It 40

does not necessarily follow that she must have deliberately intended to defraud this banking institution by signing the note in the manner in which it was signed. But if she deliberately signed the note and placed it in the possession of her brother so that this bank innocently—assuming it had accepted the note with a dependence and a reliance upon the truth of the statement thereon contained—assumed that it was for her own use and benefit when it was not,
10 that would be a character of fraud included in the principle of law which I have laid down.

Therefore, gentlemen, the case is left with you to determine whether, with respect to the two questions that I have endeavored to impress upon you, there was fraudulent conduct upon the part of the defendant, or did she receive a benefit in the manner or in any wise indicated by the statute? Now if the bank was fraudulently imposed upon, she should be required to pay this note; because a married woman
20 cannot be permitted to take advantage of a beneficial statute such as this in such circumstances; or if she received a benefit, she is estopped from invoking this statute. Unlike the class of criminal cases in which you have been sitting this term, the rule of reasonable doubt does not apply. The rule which does apply in civil cases is that the party carrying the affirmative of the proceedings must satisfy you by a fair preponderance of the proof; that is to say, not necessarily by the greater number of witnesses
30 in the case, but the greater weight of legal, credible evidence.

There have been some suggestions by counsel on each side of this case with respect to the character of some of the witnesses. You are not to allow such comments to arouse any prejudice in your minds one way or the other. The presumption of law is that all witnesses in this case are of good character; excepting in the single instance will you consider the question of credibilty apparently involved in Mrs.
40 Rutter's act in making some affidavits, as I will call

them, in the bankruptcy proceedings which were subsequently brought against the brother, where it does appear that she included one of the renewals of this very debt for which the original note was given, in an affidavit proving the claim before the referee in bankruptcy, and that subsquently she filed another correcting the first sworn paper. If such conduct has any bearing, in your opinion, upon your right to believe her present testimony, you have a right to so consider it; because the only effect of that testimony goes to her credibility. But you will bear in mind that to affect her credibility it must be upon some material point in the case; as, for example, whether she received a benefit from the making of this note, if she did. There is no question that she did not receive the immediate proceeds of this discount in question. That is admitted by the bank, because they say that they put the proceeds to the account of her brother and he checked them out. Therefore, the effect of that testimony upon her credibility must be upon some material point in the case involving the real issues.

I may say that I have been requested by counsel to charge you in certain respects, more particularly with respect to the doctrine of estoppel, and I decline to do so except as I have already charged you: that if you find there was a fraud perpetrated by Mrs. Rutter upon the bank, she is now estopped to take advantage of this section of the Married Woman's Act. If you find that she received a benefit from the making of this note she is now estopped from resorting to the provisions of the Married Woman's Act. If you find that the bank was entirely familiar with the circumstances and knew when the note was prepared that she was not receiving any benefit but was an accommodation maker, then she is not estopped. The court prefers to rest its charge upon those statements of the law.

Mr. Cowart: Your Honor stated that a part of the facts in the case was that you did not recall any-

thing in the testimony which showed that a note was already prepared and brought to the bank by Mr. McChesney. Your Honor will recall Mr. Campbell testified such a note was brought and submitted to him, signed by her as maker, and that he objected to the paper as it was then made.

The Court: Mr. Cowart, the jury will recall what the testimony was. The recollection of the jury as to what the witnesses testified, as I have already
10 charged them, must prevail in considering the evidence.

Mr. Cowart: I want to except first to that part of your charge where you stated that you recollected that it did not appear in the evidence that a note was first brought to the bank by Mr. McChesney and submitted to the bank for discount, signed by Mrs. Rutter as maker.

Secondly, I want to except to that part of the charge where you say the burden of proof that she
20 received a benefit was upon the plaintiff and not upon the defendant.

Mr. Applegate: May I first make the formal exception to the Judge permitting the jury to find for the plaintiff; in other words, sending the case to the jury.

The Court: That is, practically, denying the motion for nonsuit?

Mr. Applegate: Yes. Also the court leaving to the jury the question of fraud; that is, as to whether
30 Mrs. Rutter had perpetrated the fraud; and also whether or not Mrs. Rutter had received anything of value or benefit; on the theory that it plainly appears in the case that Mrs. Rutter did not receive anything of value or benefit, and that therefore there was nothing to leave to the jury on that question; that it was upon the plaintiff to show that the defendant had received something of value, directly or indirectly, for the benefit of herself or her separate estate; and the plaintiff not having shown any-
40 thing at all except this mere hope that has been re-

ferred to, that carrying along the business of Mr. McChesney she might get something, there was not any evidence at all to go to the jury upon that question.

The Court: Gentlemen of the jury, as a supplemental charge, in view of the exceptions, which the court has considered, I desire to say to you that in my main charge I cast upon the plaintiff bank the burden of proving that the defendant did receive some benefit. I have concluded to withdraw that from your consideration, in view of the fact that there is apparently no evidence in the case, except that relating to the so-called hope of the brother of the defendant continuing in business, of any direct benefit received through this accommodation making, if it was an accommodation making. I prefer to leave the case to you without discussion as to the burden of proof being upon the plaintiff bank in the particular mentioned, because of the status of the evidence, all the evidence, at the close of the case.

Mr. Applegate: Your Honor, may I take an exception to the supplemental charge of your Honor because your Honor has still left it to the jury to decide that there was nothing of value received by Mrs. Rutter; my contention being that that was not a question for the jury at all because there was no evidence in the case.

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PLAINTIFF'S REQUESTS TO CHARGE.

1. That if the jury believe under the evidence that the note in suit was signed by the defendant and was presented to the bank for discount in February, 1917, and that the bank through its cashier then discounted it, and paid its proceeds to the credit of the payee, and that the note expressed on its face the words, "For value received, for my own use and benefit," that the bank having acted thereon to its injury, the defendant is estopped in law from denying the truth of her representation in the note, and from defending that the note was not given for her own use and benefit but that she was only a surety thereon for the payee.

2. That if the jury believe, under the evidence, that in May, 1917, after the bank had discounted the note and passed the proceeds to the credit of McChesney, that the defendant made claim under oath as a creditor of McChesney in bankruptcy, for the proceeds of said note, that such act was the act of a creditor of McChesney and was an adoption and ratification by the defendant of the act of the bank in discounting said note and passing its proceeds to McChesney, and is inconsistent with and repugnant to her defense in this suit that she was a surety for McChesney, the plaintiff is entitled to recover.

3. That if the jury believe that John T. McChesney, the brother of the defendant Abbie M. Rutter, on or about February 8, 1915, the date of the original note for which the note in suit is a renewal, brought the original note to his sister, the defendant, containing the words, "for my own personal use and benefit," or "for my own use and benefit," and to be signed by her as maker, and said that was the only way in which the bank was willing to discount the note, and she signed the note as maker and allowed the bank to discount it and place the proceeds to the credit of her brother, she thereby consented to that disposition of the proceeds of the

note, and by her representation induced the bank to pass over its money by her own direction as maker, and she is estopped from afterwards denying that it was discounted for her own use and benefit and the plaintiff is entitled to recover.

4. That if the jury believe the testimony of McChesney that before going to the bank on February 8, 1915, the date of the original note, McChesney arranged with his sister, the defendant Mrs. Rutter, to borrow $1,000 on a note to be discounted at the bank, and if they believe the testimony of Mr. Campbell, cashier of the plaintiff bank, that said McChesney, when he presented himself at the bank, asked if they would discount "his sister's note," and produced her note signed by her as maker payable to his order; and if they believe the testimony of Mr. Campbell and Mr. Laird that the bank refused to discount the note, on the ground that it was a married woman's note, and she should declare in it that it was for her own use and benefit; and if you believe that a note was then so prepared and taken by McChesney, as he says, to his sister, and she signed it as maker, with these words or similar words in it, and if you believe from the testimony that Mrs. Rutter then handed the note to her brother for discount, it then became a negotiable note, and the maker became liable upon it to any bona fide holder for value who received it before maturity, in the usual course of business, from the person to whom it was entrusted, and the bank was warranted under the terms of the note to place the proceeds of discounting the same to the credit of the holder of the note, John T. McChesney, and the plaintiff is entitled to a verdict for the amount of its claim.

The plaintiff, by its counsel, prays an exception to the refusal of the court to charge as requested.

(Objection noted for plaintiff as ground of appeal.)

EXHIBIT P-1 FOR PLAINTIFF.

$1000. Freehold, N. J. Feb. 12 1917.

Three months after date I promise to pay to John T. McChesney or order One thousand Dollars at The First National Bank.

value received For my own use and benefit

Abbie M. Rutter.

10 Due May 12

(Endorsed) John T. McChesney.

United States of America, }
State of New Jersey. } ss.

On the 14th day of May in the year of our Lord one thousand nine hundred and seventeen, at the request of the First National Bank of Freehold, the holder of the original Note, hereunto annexed, I,
20 William F. Mapps, Notary Public, duly commissioned and sworn, residing at Freehold, did present the said Note to J. W. S. Campbell, Cashier of said Bank at their Banking House and demanded of him payment for the same to which he replied he could not pay it for the want of funds of the Maker, wherefore I duly gave notice to the maker and indorser of the non-payment thereof. Whereupon, I the said Notary, at the request aforesaid, did Protest, and by These presents do publicly and solemnly Protest, as well
30 against the Drawer and Indorser of said Note as against all others whom it doth or may concern, for exchange re-exchange, and all Costs, Charges, Damages and Interest already incurred, and to be hereafter incurred for want of payment of the said Note.

Thus done and protested at Freehold, in the County of Monmouth, State of New Jersey.

(L. S.) IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notary seal.

40 W. F. MAPPS, Notary Public.

EXHIBIT P-2 FOR PLAINTIFF.

7117 Boyer St., Mt. Airy, Phila.
May 15th, 1917.

First National Bank,
Freehold, N. J.

Gentlemen: In regard to a notice received from you this morning concerning a protested note which I suppose is the one I endorsed for my brother, John T. McChesney, now a bankrupt—I beg to say that my lawyer, Mr. John S. Applegate of Red Bank, N. J., said that you should look to the estate, and put in your claim along with other creditors, and that under the circumstances I would not have to pay the note.

Yours respectfully,
ABBIE M. RUTTER.

May 17, 1917

Mrs. Abbie M. Rutter,
Mt. Airy, Phila.

My dear Mrs. Rutter:—

Referring to your communication of the 15th say, the note for $1000 protested the 14th is your note indorsed by and discounted for John T. McChesney and that the bank will look to you for its payment.

Perhaps you and your attorney have not understood each other if you quote him correctly.

Very respectfully,
J. W. S. CAMPBELL, Cashier.

EXHIBIT P-3 FOR PLAINTIFF

John T. McChesney to Abbie R. Rutter	Chattel Mortgage for $1000. dated February 18, 1910. Not Recorded.

Know all Men by these Presents, that I, John T.
10 McChesney of the Town of Freehold in the County of Monmouth and State of New Jersey, party of the First Part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar, to me duly paid by Abbie R. Rutter of the Town of Mt. Airy, County of and State of Pennsylvania, party of the Second Part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do bargain
20 and sell unto the said party of the second part, her executors, administrators and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in the store now occupied by me as a candy and fruit store known as Nos. 27 and 29 West Main Street, Freehold, New Jersey, and in the buildings occupied by me in the rear of said store.

To have and to hold all and singular the said goods and chattels above bargained and sold, or intended so to be, unto the said party of the second
30 part, her executors, administrators and assigns forever. And I, the said party of the first part, for myself, my heirs, executors, administrators, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, her executors, administrators, and assigns, against me the said party of the first part, and against all and every person and persons whomsoever, shall and will warrant and forever defend.

Upon Condition, that if I, the said party of the
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first part, shall and do well and truly pay unto the said party of the second part, her executors, administrators and assigns the just and full sum of One Thousand Dollars lawful money of the United States in one month from the date hereof, together with lawful interest thereon from the date hereof, then these presents shall be void, And I, the said party of the first part, for myself, my heirs, executors, administrators and assigns, do covenant and agree to and with the said party of the second part, her executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the first part shall, at any time before the day of payment herein provided for remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against me or permit or suffer any judgment to be entered up against me then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and I, the said party of the first part do hereby authorize and empower the said party of the second part, her executors, administrators and assigns, with the aid and assistance of any person or persons, to enter any dwelling-house, store and other premises, and such other place or places whatsoever, in which the said goods and chattels, or any of them, are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto me, the said party of the first part, my heirs, executors, administrators or assigns.

In Witness Whereof, I, the said party of the first part have hereunto set my hand and seal the eigh-

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teenth day of February, in the year of our Lord One Thousand Nine Hundred and Ten.

JOHN T. McCHESNEY. (L. S.)

Signed, Sealed and Delivered
in the presence of
W. RYALL BURTIS.

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10 State of New Jersey, } ss.
County of Monmouth, }

Abbie R. Rutter, the mortgagee in the foregoing mortgage named, being duly sworn on her oath says that the true consideration of the said mortgage is as follows, viz.: the just and full sum of One Thousand Dollars this day loaned by me to the said John T. McChesney; the deponent further says that there is due on said mortgage the sum of One
20 Thousand Dollars besides lawful interest thereon from the eighteenth day of February, 1910.

ABBIE R. RUTTER.

Sworn and subscribed this eighteenth
day of February, A. D., 1910 before me,
W. RYALL BURTIS,
Notary Public of N. J.

SCHEDULE.

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The following is the Schedule referred to in the foregoing mortgage:

One Bay Horse, about sixteen years old.

One Gray Horse about six years old.

Three Delivery Wagons.

One Buggy Wagon.

Three sets Single Harness.

All Ice Cream Machinery, tools and all implements used in the manufacturing, preparing and
40 keeping Ice Cream.

All Candy Machinery, tools and implements used in the manufacturing of candy and confectionery.

One Fairbanks-Morse Gasoline Engine and Electrical Dynamo.

Six ''Silent Salesman'' show cases.

One Soda Fountain and Counter and all implements used therewith.

All Stock and fixtures in Store, Engine House, Candy Factory and Barn and all Stock and fixtures hereafter purchased to replenish same.

All personal property of whatever kind and description now contained in the store occupied by the said John T. McChesney as a candy and fruit store, known as Nos. 27 and 29 West Main Street, Freehold, N. J., and in the buildings occupied by the said John T. McChesney in the rear of said store.

JOHN T. McCHESNEY.

State of New Jersey, }
County of Monmouth, } ss.

Be it Remembered, That on this eighteenth day of February, in the year of Our Lord One Thousand Nine Hundred and ten before me, the subscriber, an Attorney at Law of the State of New Jersey, personally appeared John T. McChesney who, I am satisfied is the grantor in the within Chattel Mortgage named, and I, having first made known to him the contents thereof, he did then acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

W. RYALL BURTIS,
Atty at Law of N. J.

(Mortgage Not Recorded)

EXHIBIT P-4 FOR PLAINTIFF

John T. McChesney to Abbie M. Rutter	Chattel Mortgage for $3213.50, dated February 3, 1917. Recorded in Book 111, Chattel Mortgages, page 330, February 5, 1917.

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Know All Men By These Presents: That John T. McChesney, of the Town of Freehold, in the County of Monmouth and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned and in consideration of the sum of one Dollar to him duly paid by Abbie M. Rutter, of Mt. Airy, in the City of Philadelphia, County of
20 Philadelphia, and State of Pennsylvania, party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell, unto the said party of the second part, her executors, administrators and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in my possession in my stores at Long Branch and Freehold, New Jersey,

30 To have and to hold all and singular the said goods and chattels above bargained and sold or intended so to be, unto the said party of the second part her executors, administrators and assigns forever.

And he, the said party of the first part, for himself, his heirs, executors and administrators, all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, her executors, administrators and assigns, against
40 him, the said party of the first part, and against all

and every person or persons whomsoever shall and will warrant and forever defend.

Upon condition that if he, the said party of the first —— shall and doth well and truly pay unto the said party of the second part, her executors, administrators and assigns, according to the terms and conditions thereof three certain promissory notes viz:

(1) A certain promissory note under seal for $1000, dated February 3, 1917, made by said John T. McChesney payable on demand to order of said Abbie M. Rutter, with interest from date. 10

(2) A certain promissory note under seal for $1213.50, dated February 3, 1917, made by John T. McChesney payable on demand to order of said Abbie M. Rutter, with interest from date.

(3) A certain promissory note dated November 10, 1916, for $1000 made by said Abbie M. Rutter as accommodation maker, payable in three months from date thereof to order of said John T. McChesney, at First National Bank of Freehold, N. J., and discounted at said Bank and the proceeds paid to said McChesney, and shall pay any and all renewals of said notes and interest due and to grow due thereon and all costs and expenses of collecting the same, then these presents shall be void. 20

And he, the said party of the first part, for himself, his heirs, executors, administrators and assigns, doth covenant and agree to and with the said party of the second part, her executors, administrators and assigns, that in case default shall be made in the payment of the said sums above mentioned, or in case the said party of the first part shall, at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against him, or permit or suffer any judgment to be entered up against him, then the said sums of money mentioned shall become instantly due and payable and then it shall and may 30 40

be lawful for, and he, the said party of the first part doth hereby authorize and empower the said party of the second part, her executors, administrators and assigns, with the aid and assistance of any person or persons, to enter his dwelling-house, stores and other premises and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto him, the said party of the first part, his heirs, executors, administrators or assigns.

IN WITNESS WHEREOF I, the said party of the first part have hereunto set my hand and seal the third day of February, in the year of our Lord one thousand nine hundred and seventeen.

Sealed and delivered in
the presence of
Samuel C. Cowart.

John T. McChesney (L. S.)

SCHEDULE

All the goods and chattels in my Long Branch Store, in Hicks Building, 179 Broadway:

1 electric cash register, 1 cash register, 1 butter milk cooler, 1 fibre orange and lemonade cooler, 56 chairs, 3 round show pans, 14 display nickel plate pans, 2 egg beaters, 1 electric mixer, 4 bowls nickel plated covers, 1 jar for crushed fruit, 1 sanitary cone holder, 7 paper roll holders, 1 paper bag rack, 6 electric ceiling fans, 6 electric rheostats, 1 check holder, ice cream dishes, 3 doz. soda spoons, 1 cider & extract press, 1 coffee mill and pulleys, 2 gas machine pumps, 1 hot soda urn, 3 steel portable soda

tanks, 2 Stronsky ice cream cans, 12 C. ice cream
cans, 1 hot water stove & boiler, oil tank and vault,
tin taffy pans, 2 tumbler drainers, extra grates for
heater, 4 candy stoves, 4 cone irons & tin gas stove,
1 aluminum kettle, 2 copper kettles, 1 drop machine,
2 pairs extra rolls, 3 pieces shafting, 9 wood pulleys,
10 hangers, 3 belts, 2 clutches, 1 candy thermometer,
1 syrup percolator, toy moulds, 1 awning, 1 bench
warmer, 1 vanilla bean cutter & extra plates, 5
punch cans, 5 gal., 12 graduates (1 set) 16 N. P. 10
candy pans, soda fountain, 3 show cases, 20 tables,
52 tungsten lamps, all lighting fixtures, all glass
globes & gas lights, 3 ice cream cabinets, 1 clock, 1
safe, 2 bottling cylinders, 1 oil engine, 1 ice cream
freezer, 1 peanut roaster, 1 dynamo & instruments,
4 marble slabs, 2 childrens sets tables & chairs, 6
small mirrors, 1 computing scales, 2 store scales, 1
platform ice scale, 1 shop spring balance, 2 shop old
spring balance, 1 corn popper, 1 shelf ladder, 1 glass
funnel, 42 drinking glasses, 3 brushes, 24 soda hold- 20
ers, 4 trays, 80 candy jars (tablets) 14 candy jars
(ring) 4 large, 3 medium, 34 small jars (tall &
round) 50 glass dishes for show cases, 33 soda
glasses, Gem ice cream spoon, 2 bon bon stands, 2
covered candy dishes, 2 cake stands, 1 pint agate
measure, 1 quart measure, ½ quart measure, 1 gal.
measure, 4 Stransky pails, 1 agate funnel, 3 dippers,
3 strainers, 2 graters, also wall mirrors and wall
cases, also the following, viz, all wall mirrors and
fixtures, including marble base & wainscoting and 30
cross partition and window backs; also 17 tables
(onyx top) 6 electric light fixtures, all electric
lamps, 6 electric fans, 1 gas range, 1 refrigerator, 1
kitchen cabinet, lot of kitchen utensils, dishes and
silver ware, awning, 1 toledo combination scale, 1
coffee urn, 1 Victrola, and lot records, stock of candy
and raw materials; also all other goods and chattels
hereafter placed in said store to renew any goods
and chattels worn out and destroyed and to renew
the stock of goods in said store, as soon as placed 40

therein, also the good will of said business.

Also all the following goods and chattels in and about my store in Freehold at Nos. 27 and 29 Main Street, known as the Laird building, described as follows:—1 Fairbanks-Morse Gas Engine, 1 galv. water tank, 1 dynamo, 1 ice crusher, ½ compartment wash tray, lot of ice cream cans, lot of shafting and pulleys, small ice cracker, 2 ice cream freezers, 1 ice cream mixer, 3 ice cream storage boxes, 5 candy makers tables, 1 cocoanut grater, 2 coffee perculators, 1 candy makers stove and 2 copper kettles, 10 candy makers trays, 1 cream whipper, large gas range, fireless cooker, large ice box, small ice box, 100 chairs, 24 onyx top tables, 3 cash registers, 1 copper kettle, 10 glass show cases, 4 pair scales, 2 soda water fountains, complete with all fixtures and fittings, iron safe, grey horse, 1 jagger wagon, 1 top wagon, 2 sets single harness, all shelving, counters and mirrors, lot of legal blanks, stock of stationary, stock of postal cards, Kodak supplies, stock of cigars, lot of pennants, stock of candy, 1 Victor Talking machine and records, 1 auto truck, 1 Buick (5 passenger) auto, 1 ice cream house, 1 garage, pair Elk Antlers, also all other goods and chattels hereafter placed in said store to renew any goods and chattels worn out and destroyed, and to renew the stock of goods in said store, as soon as placed therein, also the good will of said business. Also one combination peanut roaster and corn popper.

WITNESS.
S. C. Cowart. John T. McChesney (L. S.)

County of Monmouth }
State of New Jersey } ss.

Abbie M. Rutter, the mortgagee in the foregoing mortgage named, being duly sworn on her oath says

that the true consideration of said mortgage is as follows, viz: namely: to secure payment of the sum of $3213.50 of which said sum $1,000 thereof is for cash this day loaned by deponent to said John T. McChesney and is secured by his note bearing even date herewith made payable on demand to deponent's order; $1,000 additional thereof is for cash loaned and advanced by deponent to said John T. McChesney on February 18, 1910, and $213.50 is for balance of unpaid interest thereon, the remaining $1,000 of said amount is to secure payment of a certain promissory note dated November 10, 1916, for $1,000 made by deponent as an accommodation maker payable three months from date thereof to order of John T. McChesney at the First National Bank of Freehold, N. J., which note was discounted at said Bank and the proceeds paid to said John T. McChesney, this mortgage being also given to secure payment of any and all renewals of said notes and all costs and expenses of collecting the same, the said $1213.50 being also secured by a promissory note of even date herewith, referred to in the condition of said mortgage, and deponent further says that there is due and to grow due on said mortgage the sum of thirty-two hundred and thirteen dollars and fifty cents, besides lawful interest thereon from the third day of February A. D. 1917.

Abbie M. Rutter

Sworn and subscribed this 3rd
day of February A. D. 1917
before me, at ———
Samuel C. Cowart,
Master in Chancery of N. J.

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State of New Jersey } ss.
County of Monmouth }

Be It Remembered that on this third day of February in the year of our Lord one thousand nine hundred and seventeen, before me, the subscriber, a master in Chancery of said state, personally appeared John T. McChesney, who, I am satisfied, is the mortgagor mentioned in the within indenture, to
10 whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

SAMUEL C. COWART,
Master in Chancery of N. J.

Received and recorded February 5th, A. D. 1917 at 7.40 A. M.

JOSEPH McDERMOTT, Clerk.

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EXHIBIT P-5 FOR PLAINTIFF.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

In the Matter of John T. McChesney, Bankrupt.	Proof of Claim. Filed May 28, 1917.	10

County of Monmouth, State of New Jersey, } ss.

At Freehold in the county of Monmouth and State of New Jersey, on the tenth day of May, 1917, came Abbie M. Rutter of Mt. Airy, in the City of Philadelphia, County of Philadelphia, and State of Pennsylvania, and made oath, and says that the said John T. McChesney, by whom a petition for adjudication of bankruptcy has been filed, was, at and before the time the petition in bankruptcy was filed herein, and still is, justly and truly indebted to the said claimant in the sum of three thousand two hundred and thirteen dollars and fifty cents: that the consideration of said debt is as follows: said moneys were actually loaned and paid to said John T. McChesney by this deponent and secured by— 20

Three promissory notes of which the annexed are true copies, amounting in all to the sum of three thousand two hundred and thirteen dollars and fifty cents. (See Schedule). 30

That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that the only security held by this claimant for said debt is the following:

Mortgage on goods and chattels, made by John T. McChesney to Abbie M. Rutter, dated February 3rd, 1917, recorded in the Clerk's office of Monmouth 40

County in Book 111 of Chattel Mortgages, pages 330 &c., in the sum of $3,213.50.

Deponent further says that at the time of the execution and delivery of said chattel mortgage this deponent did pay to the said John T. McChesney the sum of one thousand dollars in cash, receiving said chattel mortgage as security for said sum of one thousand dollars represented by the note in like sum of February 3rd, 1917, and also as security for the payment of the two other promissory notes herein referred to. And deponent further says that said promissory notes and said chattel mortgage were given without any intent or purpose on the part of said John T. McChesney or this deponent to hinder, delay or defraud his creditors or any of them, but on the contrary the same were given in good faith and for a present fair consideration, and without any knowledge on the part of this deponent of the insolvency or bankruptcy, at the time, of said John T. McChesney. And deponent says that by virtue of said chattel mortgage she is entitled to a prior claim to the extent of one thousand dollars with interest thereon against the assets enumerated in the schedule attached to said chattel mortgage over and above the claim of the general creditors of the said bankrupt and over and above all other creditors of said bankrupt other than those who may have valid liens duly executed and prior in time covering the same property as enumerated in deponent's said mortgage.

Sworn and subscribed to
before me this 10th
day of May, 1917.

ABBIE M. RUTTER.

VIOLA E. PATTERSON,
(Seal) Notary Public of N. J.

To John S. Applegate & Son:

Abbie M. Rutter, the creditor in the within proof of debt named does hereby authorize you, or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid, at a court of bankruptcy, whenever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for her and in her name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for her to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of Creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and of money due her under any composition, and for any other purposes in her interest whatsoever, with full power of substitution; and she requests that all notices to which she may be entitled shall be addressed to said attorneys.

IN WITNESS WHEREOF the said Abbie M. Rutter has hereunto set her hand and seal the tenth day of May, A. D. 1917.

ABBIE M. RUTTER (Seal)

Signed, sealed and delivered
in the presence of
Viola E. Patterson.

State of New Jersey,
County of Monmouth, ss.

Be It Remembered, That on this tenth day of May, in the year of our Lord One Thousand Nine Hundred and Seventeen, before me, the subscriber, a Commissioner of Deeds of New Jersey, personally appeared Abbie M. Rutter, who I am satisfied, is the person mentioned in the within power of attorney,
10 to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

VIOLA E. PATTERSON,
(Seal) Commn. of Deeds of N. J.

SCHEDULE.

20 $1000. Freehold, N. J. February 3, 1917.

On demand I promise to pay to the order of Abbie M. Rutter, the sum of One Thousand dollars, with interest from date, value received, being for cash loaned me this day.

Witness my hand and seal, the date aforesaid.

This note is secured by my chattel mortgage of this date.

JOHN T. McCHESNEY (L. S.)

30 $1213.50 Freehold, N. J. February 3, 1917.

On demand I promise to pay to the order of Abbie M. Rutter, the sum of Twelve hundred and thirteen 50-100 dollars, with interest from date, value received. This note is given for cash loaned to me on February 18, 1910, and is secured by my chattel mortgage to you of this date.

Witness my hand and seal, the date aforesaid.

JOHN T. McCHESNEY (L. S.)

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$1000.00 Freehold, N. J. November 10, 1916.

Three months after date I promise to pay to the order of John T. McChesney one thousand dollars, at the First National Bank of Freehold, N. J.
Value received
Due

(Signed) ABBIE M. RUTTER
(Endorsed) JOHN T. McCHESNEY.

CHATTEL MORTGAGE ATTACHED. 10

I hereby certify the above to be a true copy of the claim of Abbie M. Rutter against the Estate of John T. McChesney, Bankrupt, on file in my office.

CHARLES H. BUTCHER, Referee.

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$1000. Freehold, N. J. April 1, 1915.

Three years after date I promise to pay to the order of Charles H. McChesney, at The National Freehold Banking Company One thousand Dollars. Value Received, with interest from date; this note being for my own use and benefit, and in a personal business transaction.

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Due

ABBIE M. RUTTER.

Endorsed
CHARLES H. McCHESNEY.

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EXHIBIT P-7 FOR PLAINTIFF

$1000. Freehold, N. J. April 1, 1915.

Four years after date I promise to pay to the order of Charles H. McChesney at The National Freehold Banking Company One thousand Dollars. Value received, with interest from date; this note being for my own use and benefit, and in a personal business transaction.

Due

ABBIE M. RUTTER.

Endorsed

CHARLES H. McCHESNEY.

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EXHIBIT D-1 FOR DEFENDANT.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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10 In the Matter of John T. McChesney, Bankrupt. } Proof of Claim. Filed November 16, 1917

County of Monmouth, State of New Jersey, } ss.

At Freehold in the county of Monmouth and State of New Jersey, on the twenty-second day of October, 1917, came Abbie M. Rutter of Mt. Airy, in the City of Philadelphia, County of Philadelphia, and State
20 of Pennsylvania, and made oath, and says that the said John T. McChesney, by whom a petition for adjudication of bankruptcy has been filed, was, at and before the time the petition in bankruptcy was filed herein, and still is, justly and truly indebted to the said claimant in the sum of two thousand two hundred and thirteen dollars and fifty cents: That the consideration of said debt is as follows:

Two promissory notes, both dated February 3rd, 1917, of which the annexed are true copies, aggre-
30 gating the said sum of two thousand two hundred and thirteen dollars and fifty cents. Said moneys were actually loaned and paid by deponent to the said John T. McChesney. (See Schedule).

A third promissory note in the sum of one thousand dollars dated November 10th, 1916, set forth in said schedule, this deponent signed as surety for the said John T. McChesney and at his request and the request of the First National Bank of Freehold, and which the said John T. McChesney did have dis-
40 counted at said bank, and deponent never received

any thing of value directly or indirectly on the faith of her said contract as surety, and deponent is informed that for the reason she was a married woman and received no benefit from her said contract at the time said note was signed by her, she is not liable thereon, all of which deponent has pleaded in her answer to a suit instituted against her by the said First National Bank of Freehold to recover on said note, which said suit is still pending, not having as yet been tried. And deponent further says that through inadvertence and mistake she did include in her original proof of claim filed in the bankruptcy of said John T. McChesney the said promissory note upon which said suit is pending as aforesaid, and the question of liability of deponent thereon has not yet been decided, and deponent did erroneously and inadvertently, without any intention on her part to deceive any person, state in said proof of claim so filed as aforesaid that the amount of said moneys represented by the said three promissory notes were actually loaned and paid to the said John T. McChesney by this deponent and secured by said three promissory notes, whereas the truth was and is, as deponent has recited in this her present affidavit, that she loaned and advanced moneys to said John T. McChesney only upon two promissory notes, and that the note of one thousand dollars dated November 10th, 1916, was discounted by the said John T. McChesney at the First National Bank of Freehold and to him the said bank did pay the proceeds thereof, and deponent therefore at this time disclaims any interest in said note and any right to include the same in her claim against said bankrupt's estate.

That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that the only security held by this claimant for said debt is the following:

Mortgage on goods and chattels, made by John T. McChesney to Abbie M. Rutter, dated February 3rd,

1917, recorded in the Clerk's office of Monmouth County in Book 111 of Chattel Mortgages, pages 330 &c.

Deponent further says that at the time of the execution and delivery of said chattel mortgage this deponent did pay to the said John T. McChesney the sum of one thousand dollars in cash, receiving said chattel mortgage as security for said sum of one thousand dollars represented by a note in like sum
10 of February 3rd, 1917, and also as security for the payment of the said promissory notes herein referred to. And deponent further says that said promissory notes and said chattel mortgage were given without any intent or purpose on the part of said John T. McChesney or this deponent to hinder, delay or defraud his creditors or any of them, but on the contrary the same were given in good faith and for a present fair consideration, and without any knowledge on the part of this deponent of the insolvency
20 or bankruptcy, at the time, of said John T. McChesney. And deponent says that by virtue of said chattel mortgage she is entitled to a prior claim to the extent of one thousand dollars with interest thereon against the assets enumerated in the schedule attached to said chattel mortgage over and above the claim of the general creditors of the said bankrupt and over and above all other creditors of said bankrupt other than those who may have valid liens duly executed and prior in time covering the
30 same property as enumerated in deponent's said mortgage. ABBIE M. RUTTER.

Sworn and subscribed to before me
this 22nd day of October, 1917.
STEPHEN H. McDERMOTT,
(Seal) Notary Public of New Jersey.

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To John S. Applegate & Son:

Abbie M. Rutter, the creditor in the within proof of debt named does hereby authorize you, or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid, at a court of bankruptcy, whenever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be apponted by the Court for holding such meeting or meetings, or at which such meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for her and in her name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for her to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and of money due her under any composition, and for any other purposes in her interest whatsoever, with full power of substitution; and she requests that all notices to which she may be entitled shall be addressed to said attorneys.

IN WITNESS WHEREOF the said Abbie M. Rutter has hereunto set her hand and seal the 22nd day of October, A. D. 1917.

ABBIE M. RUTTER. (Seal)

Signed, sealed and delivered
in the presence of
Stephen H. McDermott.

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State of New Jersey,
County of Monmouth, } ss.

Be It Remembered, That on this 22nd day of October, in the year of our Lord One Thousand Nine Hundred and Seventeen, before me, the subscriber, a Notary Public of N. J., personally appeared Abbie M. Rutter, who I am satisfied, is the person mentioned in the within power of attorney, to whom I first made known the contents thereof, and thereupon she acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

STEPHEN H. McDERMOTT,
(Seal) Notary Public of N. J.

(County Clerk's Certificate Attached.)

SCHEDULE.

$1000. Freehold, N. J. February 3, 1917.

On demand I promise to pay to the order of Abbie M. Rutter, the sum of One thousand dollars, with interest from date, value received, being for cash loaned me this day.

Witness my hand and seal, the date aforesaid.

This note is secured by my chattel mortgage of this date.

JOHN T. McCHESNEY (L. S.)

$1213.50 Freehold, N. J. February 3, 1917.

On demand I promise to pay to the order of Abbie M. Rutter, the sum of Twelve hundred and thirteen 50-100 dollars, with interest from date, value received. This note is given for cash loaned to me on February 18, 1910, and is secured by my chattel mortgage to you of this date.

Witness my hand and seal, the date aforesaid.

JOHN T. McCHESNEY (L. S.)

$1000.00 Freehold, N. J. November 10, 1916.

Three months after date I promise to pay to the order of John T. McChesney one thousand dollars, at the First National Bank of Freehold, N. J.

Value received

Due

(Signed) ABBIE M. RUTTER

(Endorsed) JOHN T. McCHESNEY.

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I hereby certify the above to be a true copy of the claim of Abbie M. Rutter against the Estate of John T. McChesney, Bankrupt, on file in my office.

CHARLES H. BUTCHER, Referee.

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JUDGMENT

Monmouth Common Pleas Court.

11624—19—301. October Term 1917.

The First National Bank of Freehold, vs. Abbie M. Rutter.	Action at Law. Judgment by verdict. Judgment entered Dec. 6, 1917.

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Damages ————

Costs $43.80

John S. Applegate & Son,
Attys. of Deft.

Judgment in the above entitled action was rendered on this sixth day of December in the year of our Lord one thousand nine hundred and seventeen in favor of the defendant Abbie M. Rutter and against the plaintiff, the First National Bank of Freehold. Action at Law. Judgment by verdict for the sum of forty-three dollars and eighty cents costs of suit.

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Judgment entered and signed Dec. 6, 1917 12:40 P. M.

Judgment recorded in Book 28 of Monmouth Common Pleas Judgments, page 117.

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NOTICE OF APPEAL.

Served December 14, 1917
Filed December 17, 1917

Monmouth Common Pleas Court.

First National Bank of Freehold, New Jersey, body corporate, Pltff., vs. Abbie M. Rutter, Deft.	Action at Law. Notice of Appeal.

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To John S. Applegate & Son, Attorneys of Defendant:

Take notice that the plaintiff appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause.

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VREDENBURGH & VREDENBURGH,
Attorneys of Appellant.

Dated December 8, 1917.

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GROUNDS OF APPEAL.

Served January 8, 1918.
Filed January 8, 1918.

New Jersey Supreme Court.

The First National Bank of Freehold, N. J., body corporate, Plaintiff (Appellant) vs. Abbie M. Rutter, Defendant (Respondent)	Action at Law. On Appeal. Grounds of Appeal.

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The following are the grounds of plaintiff's appeal in the above stated cause:—

1. The verdict was against the weight of evidence.

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2. The verdict and judgment were for the defendant, whereas they should have been for the plaintiff for the sum of $1,001.54 and interest thereon from May 14, 1917 to December 6, 1917.

3. The charge of the Court was erroneous in law and as to material facts.

4. The Court admitted illegal evidence for the defendant.

5. The trial judge erred in failing to charge the jury, as requested by plaintiff's counsel, that the

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defendant, Abbie M. Rutter, was estopped in law from setting up any defense under the 5th section of the Married Woman's Act for the reason that the note on which suit was brought was signed by her as maker and expressly stated therein that it was "for value received for her own use and benefit."

6. The trial judge erred in declining to grant the motion of the plaintiff's attorney to strike out the answer of the defendant wherein she claimed 'that being a married woman she was without power to

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bind herself by contract so as to render her liable on

said note by reason of the provisions of Section 5 of the Married Woman's Act, N. J., Compiled Statutes of New Jersey, Vol. 3, page 3226,'—and he should have granted said motion on the ground that the Married Woman's Act did empower her to bind herself by contract for her own use and benefit and the defendant was estopped from setting up such defense by her own representation in her note that it was 'For value received for her own use and benefit,' on which statement the plaintiff relied when it discounted the note and credited the proceeds to her brother, John T. McChesney, to whom she made the note payable; and the trial judge should have directed the jury to return a verdict for the plaintiff for the full amount of said note and interest and protest fees.

7. The trial judge failed to charge the jury that a married woman may be bound by an estoppel the same as any other person and that if she represents that a note is made by her for her own use and benefit, she will be estopped, as against one, who in good faith has contracted with her in reliance upon her statements, and has paid money on their strength, from afterwards asserting that she is a surety and not the principal in the transaction; that she is estopped as any other person by causing the lender to believe that a state of facts exists which does not, or that the transaction is one thing, while in fact it is another; that it would nullify our statute to hold that a married woman can not estop herself by a representation as to the character of the contract into which she invites another to enter, and upon the faith of which the person with whom she contracts has parted with money or some other thing of value; that in the present case Mrs. Rutter's representation in the note that it was 'for value received, for her own use and benefit,' and her subsequent denial of the same after the Bank had paid over its money on the strength of her first statement, constituted a fraud upon the bank, the fraud consist-

ing in the denial of what she had previously affirmed, and the trial judge should have so charged.

8. Section 5 of the Married Woman's Act expressly provides that:—"if on the faith of any endorsement, contract of guaranty or suretyship, promise to pay the debt or to answer for default or liability of any other person, any married woman obtains directly or indirectly any money, property or other thing of value for her own use or for the
10 use, benefit or advantage of her separate estate she shall be liable thereon, as though she were unmarried, anything herein contained to the contrary notwithstanding."

The defendant on page 55 of testimony testified that when she signed, as maker, the original note of February 8, 1915, of which the note in suit was the eighth renewal, that her brother, John T. McChesney, the payee, already owed her $1,000. for money loaned, and that he told her he would be obliged to
20 close his business unless she signed the note in question, and, she testified, that when she signed the note in question, she had in mind at that time the fact that he already owed her $1.000. This was an admission on her part that she signed the note and obtained the money from the plaintiff Bank for the very purpose of loaning it to her brother in order that he might continue to carry on his business, which was a distinct benefit and advantage to her separate estate, because, as she believed, it would
30 enable him to pay her back the money he already owed her. She, therefore, represented in her note that it was for her own use and benefit.

The trial judge, in charging the jury, characterized this fact as a mere hope and stated that the burden of proof was upon the plaintiff to prove that the defendant did receive some benefit and also charged that there was apparently no evidence in the case, except that relating to the so-called hope of the brother of the defendant continuing in busi-
40 ness, of any direct benefit received by the defendant,

which charge was erroneous in fact and in law.

It was erroneous in fact, because the testimony showed that on February 18, 1910, five years before the giving of the original note in question, the defendant had loaned her brother, John T. McChesney, one thousand dollars, and he still owed it to her at the time of the giving of the original note in question, on February 8, 1915, and the testimony showed that for over two years after the discounting of the note in question John T. McChesney continued in business. It also appeared that on February 3, 1917, nine days before the last renewal of the note in question, the defendant, Abbie M. Rutter loaned her brother another $1,000. in cash to assist him in his business, and at the time of the making of the last loan, on February 3, 1917, he owed her, in addition to the note in question, $2,213.50 so that when the last renewal note of February 12, 1917, was given to the Bank, it was distinctly to her advantage, and to the advantage of her separate estate, to make the renewal note on which suit was brought, in order to enable John T. McChesney, her brother, to continue in business and to pay his debts, including the obligation, which he owed to her. The fact that he did continue his business for over two years after discounting the original note showed that the transaction did not result in a mere hope of its continuance, but in the actual continuance of the business, which was a distinct advantage to her separate estate, if she had shown proper diligence in collection of the debt due her, and the advantage of which she lost by her own laches.

This part of the judge's charge was also erroneous in law because he stated in effect that the defendant must receive a direct benefit and that apparently there was no evidence in the case of her receiving such benefit. The 5th section of the Married Woman's Act in question does not require that a married woman shall receive a direct benefit, and it does not require that she shall directly receive any

money or property or other thing of value to exclude her from the protection of the statute. If she obtains indirectly any money, property or other thing of value to the advantage of her separate estate, it is sufficient to prevent her from taking advantage of the act in question. It can not be successfully denied in this case, that the continuance in business of her brother, as already stated, was a distinct advantage to her separate estate. She so admitted it in her own note, and swore (page 78) "I was trying to help him continue his business for his own benefit and whatever benefit it might be to me." "

The trial judge also erroneously charged as follows: "It is my duty to say to you however, gentlemen, that if Mrs. Rutter intended to perpetrate a fraud upon the Bank by signing a note containing the words, "For my own use and benefit," but in fact it was not for her own use and benefit, if the bank itself knew at the time that that note was to be discounted not for her own use and benefit, then the bank was not misled and her motive in signing made no difference and she would not be estopped in such circumstances, she would not be prevented in this suit from setting up this prohibition in what we call "The Married Woman's Act."

The Judge erred for the reason that the note being a negotiable note, the fact that the proceeds of the note were credited by direction of the maker of the note to the payee, John T. McChesney, did not impress the Bank with any knowledge or information that the note was not made for her own use and benefit, and, as she expressly so stated, the Bank officers were readily misled by it, for the reason that they did not know what other transactions there might be between the brother and sister, which made the note for her own use and benefit. Therefore, if she had the intention of defrauding the Bank and made this statement in the note for that purpose, she was undoubtedly prevented from taking advantage of the 5th clause of the Married Woman's Act, because

the Act cannot be used for perpetration of a fraud.

9. The trial judge erred by admitting in evidence on the part of the defendant, although objected to by counsel for plaintiff, one or more conversations between the defendant, Abbie M. Rutter, maker of the note, and her brother, John T. McChesney, the payee of the note, in regard to the form of the note and in which conversations, (which were at the date of the original note of February 8, 1915) she claimed that she objected to signing it, because it contained the words "For my own use and benefit," on the ground that she was not to be benefited. These conversations were not in the presence of any officers of the Bank and it did not appear in the testimony that her objection to the use of these words was brought to the attention of the Bank, or its officers, at any time prior to discounting the note, or at the time of discounting it, or at any time afterwards, until the trial of this case, although the note was renewed eight times with the same words stated therein, "For my own use and benefit." The counsel for plaintiff objected to this testimony on the ground that as the Bank officers had no knowledge of these conversations or of what had transpired between the brother and the sister at the time of the giving of the note, such testimony was illegal and incompetent and not binding upon the plaintiff, as no private understanding between the maker and the payee on the note could be binding on the Bank, as they were practically one person dealing with the Bank.

The trial judge also erred in allowing the defendant to introduce in her defense a claim marked Exhibit D-1 in this case, filed by her in the Bankruptcy Court on November 18, 1917, in the bankruptcy matter of her brother, John T. McChesney, in which she attempted to contradict her sworn statement in her prior claim, filed May 28, 1917, against her brother, John T. McChesney, in which prior claim she had sworn that she had loaned the money on this note in question to her brother, John

T. McChesney. This testimony was objected to by counsel of plaintiff as illegal and incompetent on the ground that the second claim was filed after this suit was commenced and was an attempt to deny her previous admission in the first claim, which was an admission against interest, for the reason that she had sworn in her first claim, that "said moneys were actually loaned and paid to said John T. McChesney by deponent," which was an admission that the note in question, as stated therein, was made for her own use and benefit.

10. The trial judge erred in failing to charge the jury that the defendant was estopped from setting up the defense under the fifth clause of the Married Woman's Act for the reason:

(1) That the note itself and each renewal thereof represented that the loan was made "for her own use and benefit."

(2) For the reason that she had filed in the bankruptcy proceedings against her brother, John T. McChesney, her claim for $3,213.50 on May 28, 1917, after the last renewal of the note in question came due and was protested, and after she had been advised by counsel that she had a defense to the note in question, which was part of her claim and in said claim she swore that the said John T. McChesney was still "justly and truly indebted to her, the said claimant, in the sum of $3,213.50, that the consideration of said debt was as follows: said moneys were actually loaned and paid to said John T. McChesney by this deponent, and secured by three promissory notes," copies of which notes were annexed and included the last renewal of the note in question.

11. The trial judge erred in charging the jury by stating that he had no recollection that James W. S. Campbell, Cashier of the Bank, testified that a note was brought and submitted to him, signed by Abbie M. Rutter, as maker, and that he objected to the paper as then made, which was a material fact in

controversy in said cause, whereas said Campbell did in fact so testify.

12. The trial judge erred in refusing to charge the jury in accordance with the following requests of plaintiff's counsel:—

PLAINTIFF'S REQUESTS TO CHARGE.

1. That if the jury believe under the evidence that the note in suit was signed by the defendant and was presented to the bank for discount in February, 1917, and that the bank through its cashier then discounted it, and paid its proceeds to the credit of the payee, and that the note expressed on its face the words, "For value received, for my own use and benefit," that the bank having acted thereon to its injury, the defendant is estopped in law from denying the truth of her representation in the note, and from defending that the note was not given for her own use and benefit but that she was only a surety thereon for the payee.

2. That if the jury believe, under the evidence, that in May, 1917, after the bank had discounted the note and passed the proceeds to the credit of McChesney, that the defendant made claim under oath as a creditor of McChesney in bankruptcy, for the proceeds of said note, that such act was the act of a creditor of McChesney and was an adoption and ratification by the defendant of the act of the bank in discounting said note and passing its proceeds to McChesney and is inconsistent with and repugnant to her defense in this suit that she was a surety for McChesney, the plaintiff is entitled to recover.

3. That if the jury believe that John T. McChesney, the brother of the defendant Abbie M. Rutter, on or about February 8, 1915, the date of the original note for which the note in suit is a renewal, brought the original note to his sister, the defendant, containing the words, "for my own personal use and benefit," or "for my own use and benefit," and to be signed by her as maker, and said that was the only way in which the bank was willing to discount

the note, and she signed the note as maker and allowed the bank to discount it and place the proceeds to the credit of her brother, she thereby consented to that disposition of the proceeds of the note, and by her representation induced the bank to pass over its money by her own direction as maker, and she is estopped from afterwards denying that it was discounted for her own use and benefit and the plaintiff is entitled to recover.

4. That if the jury believe the testimony of McChesney that before going to the bank on February 8, 1915, the date of the original note, McChesney arranged with his sister, the defendant Mrs. Rutter, to borrow $1,000. on a note to be discounted at the bank, and if they believe the testimony of Mr. Campbell, cashier of the plaintiff bank, that said McChesney, when he presented himself at the bank, asked if they would discount "his sister's note," and produced her note signed by her as maker payable to his order; and if they believe the testimony of Mr. Campbell and Mr. Laird that the bank refused to discount the note, on the ground that it was a married woman's note, and she should declare in it that it was for her own use and benefit; and if you believe that a note was then so prepared and taken by McChesney, as he says, to his sister, and she signed it as maker, with these words or similar words in it, and if you believe from the testimony that Mrs. Rutter then handed the note to her brother for discount, it then became a negotiable note, and the maker became liable upon it to any bona fide holder for value who received it before maturity, in the usual course of business, from the person to whom it was entrusted, and the bank was warranted under the terms of the note to place the proceeds of discounting the same to the credit of the holder of the note, John T. McChesney, and the plaintiff is entitled to a verdict for the amount of its claim.

VREDENBURGH & VREDENBURGH,
Attys. of Plaintiff.

Dated January 7, 1918.

Feb. Term 1918.

The First National Bank of Freehold,
Appellant,
vs.
Abbie M. Rutter,
Respondent.
} Opinion. 10

Submitted March 21, 1918; decided June 5, 1918.

Defendant, a married woman, executed a promissory note for the benefit of her brother and which he discounted at the plaintiff bank. It bore the words "value received. For my own use and benefit" on the face; but in fact she received no benefit of it and the bank officials, as the jury could find, knew this 20 before advancing money on it. Held, (1) that there was no basis for a claim that defendant was estopped from denying that her separate estate was benefited; (2) that the hope of bettering her brother's financial affairs by the proceeds of the note, so that he might perhaps repay other moneys that he owed her, was not the "benefit" to her, contemplated by the statute.

Appeal from Monmouth Common Pleas. 30

Before Gummere, Chief Justice, and Justices Parker and Kalisch.

For the plaintiff-appellant, Vredenburgh & Vredenburgh and Samuel C. Cowart.

For the defendant-respondent, John S. Applegate.

The opinion of the court was delivered by PARKER, J.

Defendant is a married woman.

The action is upon a promissory note signed by 40

her and made to the order of her brother, John T. McChesney, to whose credit the proceeds were placed, defendant not getting any of the money so raised. The jury found a verdict for defendant and plaintiff appeals.

The special facts of the case are as follows: Defendant is a married woman running a little business of her own. Her brother, McChesney, wished to borrow money from the plaintiff bank, which refused
10 to discount his note. Then he asked the bank people if they would lend on his sister's note and they said they would. The note was drawn with defendant as maker, to the order of McChesney and endorsed by him and discounted to his account. The assistant cashier said in his testimony that he knew Mrs. Rutter was not getting the proceeds of the note at the time they were placed to McChesney's credit. The bank people knowing the dangers of a married woman's paper, wrote on the note after the words
20 "value received," the further words "For my own use and benefit." Mrs. Rutter swore that she saw those words but that she received no benefit from the making of the note, that it was purely for her brother's accommodation, and that the statement on the note was false. It was a jury question on the evidence whether the bank people knew or had reason to know that she was receiving no benefit from the note.

In this condition of things the question of law
30 raised at the trial was whether she was estopped by the statement on the note from denying that she received any benefit for the use of her separate estate. Defendant claimed that she being disabled by law from contracting for her brother's sole benefit, could not enable herself by any false statement of fact; and admitting that she could, plaintiff knew the actual facts and hence no estoppel arose. The trial judge left it to the jury to say whether the bank was deceived by the words on the note or put
40 them there only to make the paper apparently good;

and the jury evidently found that the bank officers knew that she was only an accommodation maker. So the question whether she could estop herself is one that in this case we need not pass upon; for if the bank officers knew the words were false they were not entitled to advance money on her account as if they believed them true.

It is suggested that she did get some benefit for her separate estate by the signature because she knew her brother was in financial difficulties and would be in a better position to look after his debts, including one that he already owed her. But this, in our judgment, is altogether too remote and shadowy to be considered as coming within the description of "money, property, or other thing of value for her own use, benefit or advantage of her separate estate" that the statute mentioned. In fact it is against just such transactions as this that the law is intended to guard.

This disposes of the fundamental points in the case. The other minor points discussed in the brief are either not properly before us, or are not such as to require special mention. We find no error properly brought up that should lead to a reversal, and the judgment is therefore affirmed.

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The First National Bank of Freehold, N. J., Plaintiff-Appellant, vs. Abbie M. Rutter, Defendant-Appellee.	In Error to Monmouth County Common Pleas Court. Remittitur.

This cause having been duly argued in the February Term, Nineteen hundred and eighteen, of this court by Messrs. Vredenburgh & Vredenburgh, of counsel for plaintiff-appellant, and John S. Applegate & Son of counsel for the defendant-appellee, and the court having inspected the record and judgment below and considered the causes assigned for error;

It is thereupon ordered that the judgment of the said Monmouth County Common Pleas Court be in all things affirmed with costs and that the record and proceedings be remitted to the said Monmouth County Common Pleas Court to be proceeded with in accordance with this judgment and the practice of said court.

Entered June 15, 1918,

On Motion of

JOHN S. APPLEGATE & SON,

Attorneys of Defendant-Appellee.

The First National Bank of Freehold, N. J., a body corporate, Plaintiff-Appellant, vs. Abbie M. Rutter, Defendant-Respondent.	Action at Law On appeal from Supreme Court Notice and Ground of Appeal.

10

To JOHN S. APPLEGATE & SON,
Attorneys of defendant-respondent.

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals of the State of New Jersey from the judgment of affirmance by the New Jersey Supreme Court of the judgment rendered by the Monmouth County Court of Common Pleas against the plaintiff and in favor of the defendant, upon the following ground:

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The Supreme Court affirmed the judgment of the Court of Common Pleas of the County of Monmouth, whereas upon one or more of the grounds of appeal filed by the plaintiff in the said Supreme Court it should have reversed the said judgment and have awarded a **venire de novo.**

Dated July 10, 1918.

(Signed) VREDENBURGH & VREDENBURGH,
Attorneys for appellant.

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Endorsed

Service of within notice, etc., is hereby acknowledged July 12, 1918.

JOHN S. APPLEGATE & SON,
Attorneys of defendant-respondent.

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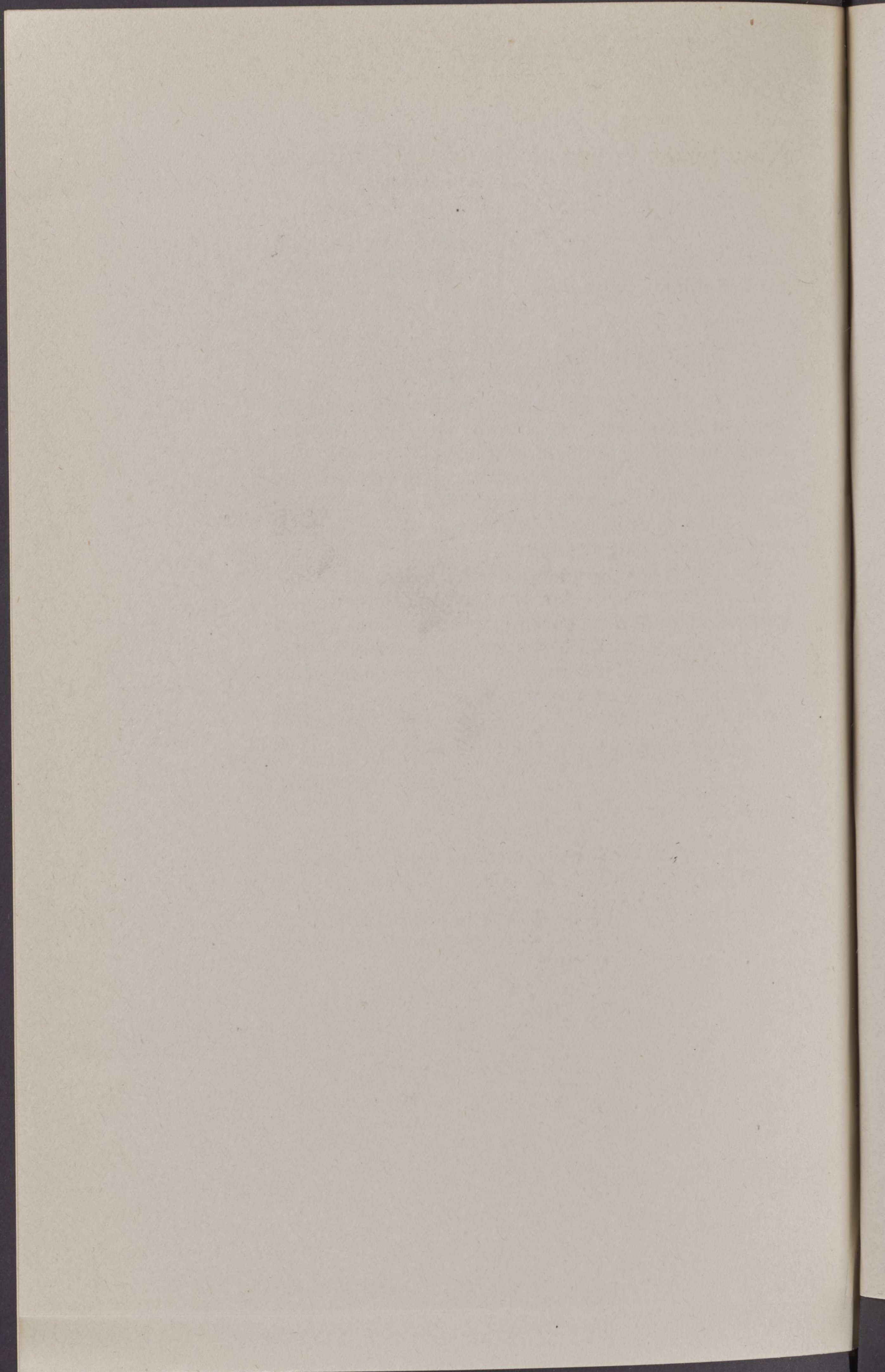


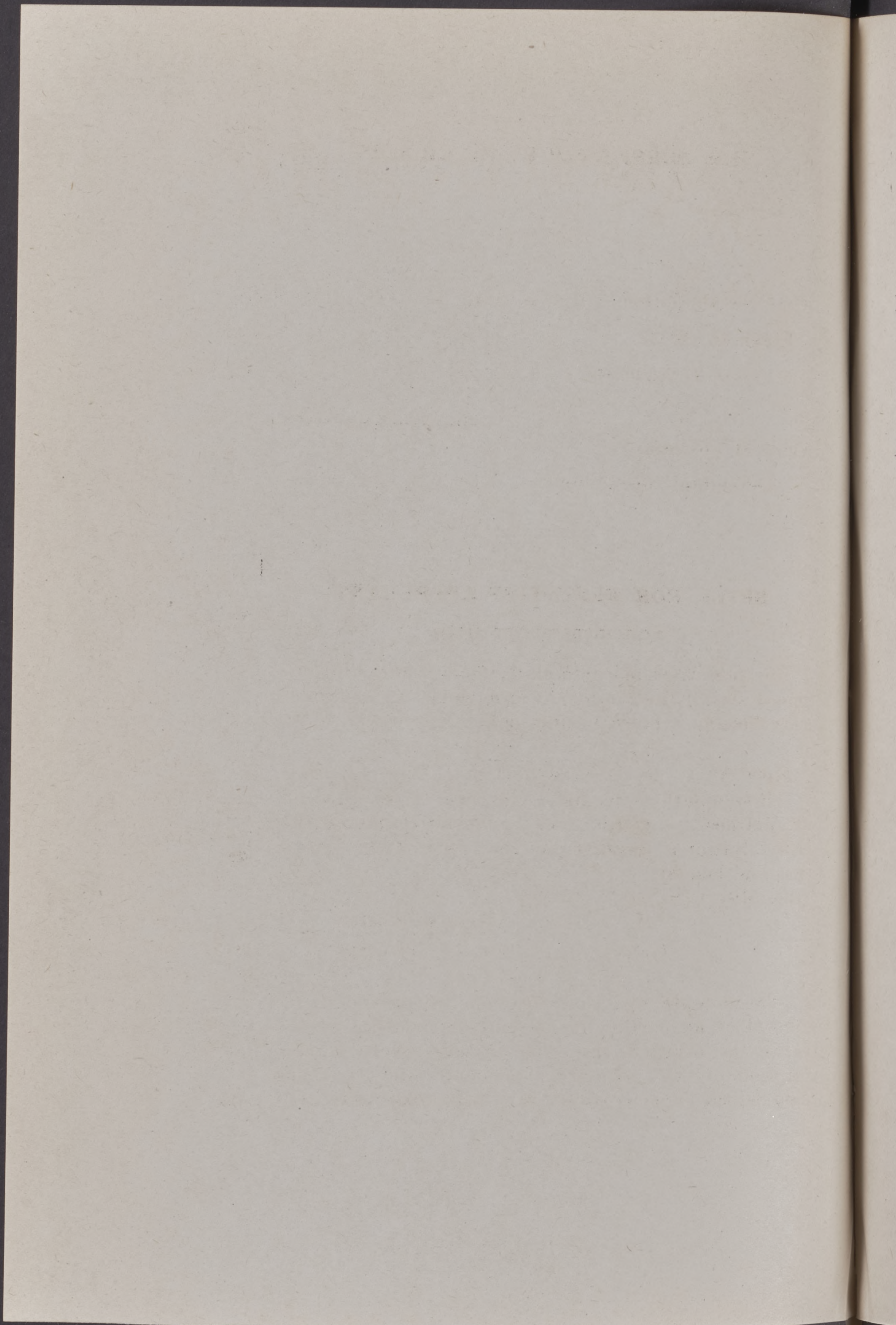
New Jersey Court of Errors and Appeals

First National Bank of Freehold, N. J., Plaintiff-Appellant, vs. Abbie M. Rutter, Defendant-Respondent.	On Appeal from Supreme Court.

Brief for Plaintiff-Appellant.

VREDENBURGH & VREDENBURGH,
Attorneys of Plaintiff-Appellant.

SAMUEL C. COWART and GILBERT COLLINS,
of Counsel for Plaintiff-Appellant.



NEW JERSEY COURT OF ERRORS
AND APPEALS

First National Bank of
Freehold, N. J.,
Plaintiff-Appellant,
vs.
Abbie M. Rutter,
Defendant-Respondent.

On Appeal
from
Supreme Court.

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BRIEF FOR PLAINTIFF-APPELLANT

Statement of the Case

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The plaintiff sued defendant in the Court of Common Pleas of the County of Monmouth on a promissory note of which the following is a copy:

"$1000.00 Freehold, N. J., Feb. 12, 1917.
Three months after date I promise to pay to John T. McChesney or order One Thousand Dollars at the First National Bank, value received. For my own use and benefit.
Due May 12

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Abbie M. Rutter"
(endorsed) "John T. McChesney."

The defense was that the note was given in renewal of an earlier one of like tenor; that at the time the original and renewal notes were signed, defendant was a married woman, and that she signed the same as surety for the endorser, and that

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by reason of the provisions of Section 5 of the Married Women's Act, (Comp. Stat. 3226), she was not liable upon the note on which the action was brought.

The trial court submitted the case to the jury on the question of whether or not the plaintiff knew, at the time of discounting the original note, that it was not given for the maker's own use and benefit, instructing the jury that if it had such knowledge,
10 the verdict should be in favor of the defendant. The verdict was in favor of the defendant and judgment was entered accordingly. The plaintiff appealed to the Supreme Court which Court affirmed the judgment of the Common Pleas on the opinion of Parker J., printed at page 141 of the Case.

The plaintiff has appealed to this Court.

Grounds of Appeal

20 The only ground of appeal in this Court is that the Supreme Court affirmed the judgment of the Common Pleas, whereas upon one or more of the grounds of appeal filed by the plaintiff in the Supreme Court, it should have reversed the judgment and have awarded a **venire de novo** (Case P. 145).

The grounds of appeal in the Supreme Court will be found on Page 132 et seq. They are too diffuse for helpful quotation in a brief. Except No. 9, which
30 relates to the admission of evidence, under plaintiff's objection, and will hereinafter be dealt with; they all so far as available on appeal relate to the trial Judge's response to the plaintiff's requests to charge, which were refused except as charged, and to the refusal to charge as requested—to which refusal exception was duly taken. (Case P. 103). Those requests were as follows:

"1. That if the jury believe under the evidence
40 that the note in suit was signed by the defendant

and was presented to the bank for discount in February, 1917, and that the bank through its cashier then discounted it, and paid its proceeds to the credit of the payee, and that the note expressed on its face the words, 'For value received, for my own use and benefit,' that the bank having acted thereon to its injury, the defendant is estopped in law from denying the truth of her representaton in the note, and from defending that the note was not given for her own use and benefit but that she was only a surety thereon for the payee. 10

2. That if the jury believe, under the evidence, that in May, 1917, after the bank had discounted the note and passed the proceeds to the credit of McChesney, that the defendant made claim under oath as a creditor, of McChesney in bankruptcy, for the proceeds of said note, that such act was the act of a creditor of McChesney and was an adoption and ratification by the defendant of the act of the bank in discounting said note and passing its proceeds to McChesney, and is inconsistent with and repugnant to her defense in this suit that she was a surety for McChesney, the plaintiff is entitled to recover. 20

3. That if the jury believe that John T. McChesney, the brother of the defendant, Abbie M. Rutter, on or about February 8, 1915, the date of the original note for which the note in suit is a renewal, brought the original note to his sister, the defendant, containing the words, 'for my own personal use and benefit,' or 'for my own use and benefit,' and to be signed by her as maker, and said that was the only way in which the bank was willing to discount the note, and she signed the note as maker and allowed the bank to discount it and place the proceeds to the credit of her brother, she thereby consented to that disposition of the proceeds of the note, and by her representation induced the bank to pass over its money by her own direction as maker, and she is estopped from afterwards denying that it was dis- 30 40

counted for her own use and benefit and the plaintiff is entitled to recover.

4. That if the jury believe the testimony of McChesney that before going to the bank on February 8, 1915, the date of the original note, McChesney arranged with his sister, the defendant Mrs. Rutter, to borrow $1000 on a note to be discounted at the bank, and if they believe the testimony of Mr. 10 Campbell, cashier of the plaintiff bank, that said McChesney, when he presented himself at the bank, asked if they would discount 'his sister's note,' and produced her note signed by her as maker payable to his order; and if they believe the testimony of Mr. Campbell and Mr. Laird, that the bank refused to discount the note, on the ground that it was a married woman's note, and she should declare in it that it was for her own use and benefit; and if you believe that a note was then so prepared and taken 20 by Mr. McChesney, as he says, to his sister, and she signed it as maker, with these words or similar words in it, and if you believe from the testimony that Mrs. Rutter then handed the note to her brother for discount, it then became a negotiable note, and the maker then became liable upon it to any bona fide holder for value who received it before maturity, in the usual course of business, from the person to whom it was entrusted, and the bank was warranted under the terms of the note to place the 30 proceeds of discounting the same to the credit of the holder of the note, John T. McChesney, and the plaintiff is entitled to a verdict for the amount of its claim."

The evidence claimed to be illegally admitted, (under exception), which forms the subject of Ground of Appeal No. 9 in the Supreme Court was thus brought out.

1. Defendant's witness McChesney, the endorser, who discounted the note, was proceeding to give 40 testimony of a conversation between him and his

sister, the defendant, when he was interrupted by plaintiff's counsel with an objection on grounds stated at page 36 of the case. The objection was overruled, exception was taken, and the whole conversation was admitted. Beginning at page 35 of the Case, it appears that witness said he showed the defendant the original note, which had been drawn up by Mr. Campbell, cashier of the plaintiff, and which, like the note in suit, read: "For my own personal use and benefit." He testified that the defendant looked at the note and said, "Well, that looks as though I was getting the money on it." At this point, the objection was interposed. After argument and ruling, the witness continued, (Case p. 36) "I told her that Mr. Campbell said that that was the only way that she could endorse." Q. "When you say endorsed, you mean maked, signed?" A. "Well, maked; yes." Later he again stated the conversation thus: (Case p. 38) "I took the note to her to have her sign it, and she said, 'Well, that looks as though I was getting the money.' I said, 'Mr. Campbell says that is the only way you can endorse it.' She signed it, and I took it back to the bank and was given credit for it."

The defendant was called as a witness in her own behalf. The objectionable part of her testimony, with the objection and ruling, is as follows: (Case p. 52)

Q. "Will you state, please, the circumstances connected with the signing or the giving of the note of February 8th, 1915?" (the original note)

Mr. Cowart: "The circumstances in the presence of the bank officer?"

Mr. Applegate: "I don't care."

The Court: "It doesn't make any difference."

A. My brother came to me and asked me; he said he was in great need of money and he seemed to be in a great deal of distress about it and he said he had asked the bank if they would discount a note with my endorsement.

Mr. Cowart: Your Honor understands that I object to the conversation between the two on the ground that **it was not in the presence of the bank officers.**

The Court: The objection is over-ruled and you may note an exception.

A. And at first I was not very willing to do it and I finally told him I would and later he brought a note drawn up with these words, ready for me to
10 sign, with these words, 'For my own use and benefit,' and I objected to signing it because I said, 'That is not so, I am not to be benefited by this in any way whatever;' and he said, 'Well, Mr. Campbell says that it is merely a matter of form and it is the only way by which a married woman can endorse a note,' and still I hesitated about it because it seemed to me like it was a lie and he seemed to be in such distress and I thought that inasmuch as it was a matter of form, that I would sign it.

20 Mr. Cowart: I object to any expression of opinion.

The Court: Strike out what her thought was. You did sign it?

Witness: Yes, I signed it." (Case pp. 52 and 53).

2. The plaintiff had offered in evidence (Case p. 75) a verified claim of the defendant against the estate in bankruptcy of her brother, John T. McChesney, filed May 28th, 1917. This claim is exhibit P-5 (Case p. 117). It includes the note then held by
30 the plaintiff, of which the one in suit is a renewal, (Case p. 121) and in it defendant deposed that the consideration of the debt for which claim was made, including said note, was moneys "actually loaned and paid to said John T. McChesney." To meet this evidence, defendant was permitted, under objection and exception, to put in evidence a supplemental proof in bankruptcy, in which the note, so included in the original claim was eliminated, (Case pp. 76 and 77); Exhibit D-1, (Case p. 124).

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It was verified October 22, 1917, after the commencement of the present suit.

Argument

I

The Supreme Court, in the opinion read by Parker, J., (Case p. 140) rested its decision solely on the ground that if the plaintiff knew the actual facts no estoppel arose, (Case p. 142, line 33) **et seq** and declared that the question whether the defendant could estop herself was one that in that case that they need not pass upon, (Case p. 143, Line 3). 10

We submit that the question of estoppel cannot be thus avoided and that when a married woman deliberately asserts therein that a promissory note signed by her, is for her own use and benefit, she is estopped from denying the assertion, as against a bank or other endorsee discounting the note for the payee. 20

In the case in hand, there **was no competent evidence that the plaintiff's officers knew of the real relations between the maker and payee of the note;** but, unfortunately, the verdict is conclusive on that point on appeal, as there was no request for a direction of verdict in favor of the plaintiff. We submit, however, that the question is fairly raised by the refusal to charge the several requests submitted by the plaintiff. The plaintiff did part with full value for the note on the faith of the assertion by the defendant that it was given for her own use and benefit. The plaintiff's officers were not bound to make any inquiry on that subject. 30

Public policy requires that banks should be protected in discounting commercial paper of a married woman containing such an assertion, and their right to recovery ought not to depend upon parol and contradictory testimony of what their officers may have learned **aliunde.**

Parker, J., thinks that the benefit that the de- 40

fendant gained from helping her brother to raise funds to carry on his business, so that he would be better able to repay her a debt already existing, was too "remote and shadowy," to be worth consideration; but as Chief Justice Beasley said, (speaking for the Court of Errors and Appeals) in **Perkins v. Elliott,** 23 N. J., Eq. P. 526, 535, "In testing the wife's right to act as a **feme sole,** the only question is whether she is to derive any benefit from the
10 transaction, for if such benefit is to accrue, her right to bind herself is unquestionable. In the absence of fraud or imposition, this Court cannot attempt to measure the adequacy of the interest which has induced her action. Whenever her rights or her property are involved she has a competency to contract, and consequently must decide for herself as to the value of that which she will acquire by an outlay of her money, or as an equivalent for her engagements."
20 In **Vliet v. Eastburn,** 64 N. J. Law, P. 627, a married woman was held on her note for $2080, although all she received was $80 bonus on each of three or four renewals of the note. It is worth noting that in that case, although a majority of the Judges voted for affirmance, rested their opinion, as expressed by Gummere J., on the receipt of this bonus as a consideration for the note, Dixon J., rested his vote on the agency of the payee to discount the note, and we think it is still open for this Court to hold
30 that when a married woman's note is discounted by the payee, the holder may recover from the maker, although no consideration passed to her from the payee. This was the view expressed by Vice Chancellor Pitney, (though **obiter**) in **Hackettstown National Bank v. Ming,** 52 N. J. Eq. p. 156. He said, (p. 161) "Reason and justice require that a married woman, who avails herself of the advantages of the statute law emancipating her from the business trammels, which the Common Law throw around
40 her, and enters into mercantile transactions, should

be bound by her acts and representations made in respect thereto to the same extent as a single woman or a man."

The case of **First National Bank of Belmar v. Shumard,** 103 Atlantic Reporter, P. 1001 does not militate against our argument. In that case it was held by the Supreme Court, (Swayze J., **loq)** that a married woman could not be held upon an accommodation endorsement, although she represented herself as still a widow, at the time she endorsed the note, signing her widowed name. Of course, her representation that she was not a married woman could not change the fact, and under the Married Women's Act, she was incapable of becoming an accommodation endorser. A married woman may endorse a note, and if, to any purchaser of the note, she represents that she is an endorser for value and not for accommodation, she should be held liable on her endorsement, notwithstanding her coverture.

This is well illustrated in a leading case in Indiana, where the Married Women's Act is similar to ours, **Ward v. Berkshire Insurance Co.,** 108 Ind. p. 301. The Court said:

"It is argued with much ability and ingenuity that the question is one of power and that the legal incapacity of coverture cannot be removed by fraudulent representations. This argument is plausible but unsound. The assumption which constitutes its foundation cannot be made good. The question is not one of power but of fact * * * * It is one thing to make a representation respecting the capacity to contract and quite another to represent that the contract is of a given character." If a married woman should seek credit by representing that goods were for her personal use, and thus obtain credit from a merchant, we suppose no one would contend that such a representation was as to her capacity to contract, and the real case before us is not different in any legal aspect from such a case. It is very clear to our minds that a represen-

tation that money sought as a loan is for the use and benefit of the wife, is not a representation that the wife has capacity to contract, for it is not in any sense a denial of the existence of the disability of coverture, but is merely an affirmation of the fact that the contract into which she proposes to enter is a contract for her benefit. Our statute and our decisions declare that a married woman is bound 'by an estoppel like any other person.' It may be doubtful whether this rule would not require it to be held that she might bind herself by a representation as to her capacity to contract, but however this may be, it is quite clear that, under this rule, she is bound by a representation as to the character of the contract into which she seeks to enter, and from which she asserts she will receive a benefit. In discussing this question it was said in **Vogel v. Leichner,** 102 Ind. 55, 'that she is to be estopped as any other person by causing the lender to believe that a state of facts exists which does not, or that the transaction is one thing, while in fact it is another.' ''

This ruling was followed in later Indiana cases culminating in **Taylor v. Hearn,** 131 Ind., p. 537, where the others are cited. The same doctrine is held elsewhere. **Nott v. Thompson, 35** S. C., p. 461 466; **Scott v. Taul,** 115 Ala., p. 529; **Comings v. Leedy,** 114 Mo., p. 454; **Hart v. Church,** 126 Cal., 471 and cases cited; Herman on Estoppel, pages 448, 452 and 480; 15 Am. & Eng. Enc. of Law (2nd Edition) pp. 800 and 801 and notes, and 21 Cyc 1347.

Assuming that we have satisfied this Court that the defendant would be estopped, by her assertion in the original note and each renewal that the same was given for her own use and benefit, from denying liability on the suit, if the plaintiff had no knowledge that the assertion was false, and discounted the note on the faith of the assertion; and assuming that there was evidence to go to the jury on the question of knowledge, we proceed to discuss the

legality of the evidence to which objection was taken.

II

The challenged evidence was clearly objectionable and may have influenced the jury adversely to the plaintiff; indeed it must have done so.

1. As to the conversation between the defendant and her brother:

The following facts are undisputed:

At the time of the giving of the original note, namely, February 8th, 1915, John T. McChesney was engaged in business in Freehold. The defendant held a chattel mortgage, securing a loan of a thousand dollars, which mortgage covered stock and fixtures, (Exhibit P-3, p. 106).

She admitted in her testimony, (Case p. 67) that she knew that the words, "For my own use and benefit" meant that the bank would not part with its money unless she made that representation as maker of the note.

She admitted that when she signed the original note, (Case p. 55) she did so to help her brother in his business, and that she had in mind the fact that he already owed her a thousand dollars. The note was renewed eight times, each renewal containing the same words.

On February 3rd, 1917, shortly before the last renewal, defendant made her brother another loan of a thousand dollars in order to help him in his business and took back another chattel mortgage covering not only the store in Freehold, but another in Long Branch (Exhibit P-4, Case p. 110). This mortgage covered the "good will" of the business, (Case p. 114), and secured her original loan, the new loan and the note then running in the plaintiff's bank. (Case p. 111).

True, she speaks of this as having been by her as "accommodation maker," but she evidently recognized this as a primary liability as far as the bank

was concerned. She testified on the subject as follows: (Case p. 78)

"Q. And you knew that you were trying, then, to help yourself get the benefit of having him continue in business in order to make both your prior notes good, didn't you?

A. I was trying to help him continue his business for his own benefit **and whatever benefit it might be to me.**

10 Q. And you took your security of that chattel mortgage of February third, nineteen hundred and seventeen, for the purpose of securing all of these three notes, didn't you?

A. Yes, at your suggestion."

A very strong argument might be made that the renewal note given after this time, was intended by the defendant to be her own obligation founded on good consideration, to wit, the chattel mortgage; but we are now considering the legality of the evidence 20 admitted, under objection, on the question of the knowledge of plaintiff's officers of the character of the original note.

Mr. Laird, the plaintiff's assistant cashier, testified (Case p. 26) that in the original transaction John T. McChesney asked him if the bank would discount his **sister's note,** and he said it would. He does not remember whether McChesney brought with him a note already drawn (Case p. 27) but the witness drew the note that was actually discounted, 30 writing in the words, "For my own use and benefit," which he considered proper to insert in the note of a married woman, when she was giving the note for her own use and benefit, and that the bank would not have discounted the note if it did not contain that statement. (Case pp. 31 and 32) He further testified that he did not know that the defendant was not getting the money. He knew that the proceeds were passed to the brother's credit, "but we did not know what was between Mrs. 40 Rutter and her brother." (Case p. 31)

Mr. Campbell, plaintiff's cashier, testified as follows: (Case p. 79).

"Q. What were the circumstances, as you recall them, under which the original note of February eighth, nineteen hundred and fifteen, was discounted?

A. Mr. McChesney came into the bank after the close of business, just after three o'clock. Mr. Laird brought a note back to my desk made by Abbie M. Rutter, endorsed John T. McChesney, and said to me, 'Mr. McChesney would like to have credit for it.' After some consideration and inspecting the note, the note was a regular blank note of the bank without, 'For my own use and benefit' written into it, I accompanied Mr. Laird back to his window and said to John McChesney, if that was **his sister's** note she should so state in the note and my recollection is that Mr. McChesney asked if we would prepare the note as it should be, and either myself or someone in the bank did draw up such a note which was brought to the bank the next day and put to Mr. McChesney's credit."

* * * * * *

(Case pp. 81 and 82)

"Q. Did you know at the time when you discounted this note that there was any reason to believe that Mrs. Rutter had no interest or benefit from the discounting of that note?

A. None whatever.

Q. Did you rely upon her statement in that note as true in discounting the note?

A. On the statement of Mrs. Rutter made after the note had been filled up, as I recollect it was filled up by somebody in the bank, I cannot say whom.

Q. And you relied upon the correctness of the statement?

A. In connection with the statement that I had made to John T. McChesney and the fact that the

note was brought back there in proper form.

The Court: Did you ever have any conversation with Mrs. Rutter herself?

Witness: I never had any conversation with Mrs. Rutter in my life about anything.

The Court: You said you relied upon the statement of Mrs. Rutter, you mean the statement in the note?

Witness: The statement in writing in the note.

10 Q. Did you have any knowledge as the officer of the bank that her statement was untrue at that time?

A. No, I had no reason to doubt it, these people had a reputation at that time in town, Mrs. Rutter was a successful business woman, had been in business here a long time and was responsible.

Q. That's all.

A. I had not the slightest idea that there was any camouflage in that note or desire to deceive the 20 bank.''

McChesney's testimony (Case p. 34 **et seq**) did not really controvert that of the bank officials. It is only by inference that it can be gathered from it that the bank officials understood that his sister's name was to be put on the paper by way of accommodation. At various times he used the word ''endorse,'' ''endorser,'' and ''endorsement.'' It is evident that he is not attempting to exactly reproduce the conversation nearly three years after it 30 took place. Indeed, when stating his conversation with his sister, as to what Mr. Campbell had said, he changes the word ''endorse'' to ''make'' or ''maked,'' as the printer has it.

It is plain, therefore, that the testimony admitted, under objection, was prejudicial to the plaintiff; for from it the jury might infer, and evidently did infer that the bank officials knew that the defendant was signing merely for her brother's accommodation. It was surely incompetent to prove such 40 knowledge by McChesney's statement to his sister,

and the trial Court should have excluded the testimony.

If the testimony be resorted to to establish a secret arrangement between the defendant and her brother, that she was to be an accommodation maker, it was equally objectionable. Van Syckel J., in **First National Bank of Elizabeth v. Craig,** 1 N. J., L. J., p. 153. Case cited for the plaintiff to the trial court.

2. As to the amended claim in bankruptcy. 10

Of course, it was competent for the defendant to testify that she made a mistake in including in her claim as originally filed, the note then held by the plaintiff--though it is more than doubtful in view of the chattel mortgage (Exhibit P-4), which secured this very note, that she did make a mistake; but to permit her, against objection, to offer in evidence the self-serving statement contained in the amended proof of claim (Exhibit D-1) was not warranted under the well settled rules of the law of evidence. 20

The judgment should be reversed and a **venire de novo** awarded.

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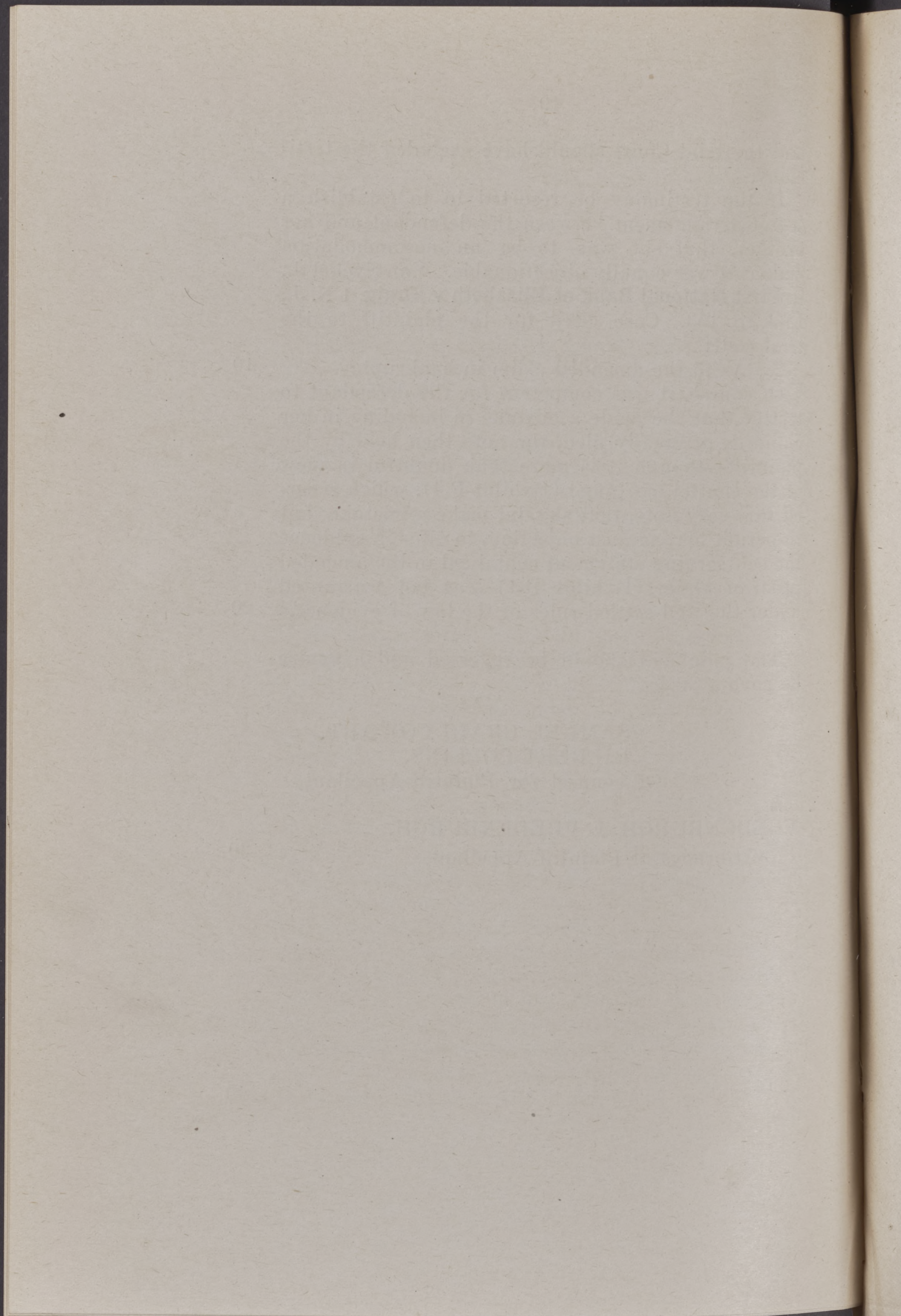

New Jersey Court of Errors and Appeals.

THE FIRST NATIONAL BANK OF FREEHOLD, N. J., Plaintiff-Appellant, vs. ABBIE M. RUTTER, Defendant-Respondent.	**Action at Law.** **Brief on the Part of Defendant-~~Appellee~~** Respondent

The above suit was brought by appellant in the Monmouth Common Pleas Court on a promissory note of which the following is a true copy:

$1000.00 Freehold, N. J., Feb. 12, 1917.

Three months after date I promise to pay to John T. McChesney or order one thousand 00 dollars at The First National Bank, value received. For my own use and benefit.

Due May 12. (Signed) Abbie M. Rutter.

(Endorsed) J. T. McChesney.

The defense pleaded and relied on at the trial was that defendant was a married woman; that her contract evidenced by the note was that of a surety or accommodation maker, and under the 5th section of the Married Woman's Act Vol. 3 Comp. Stat. of N. J. page 3226, the contract was void.

The plaintiff's insistence was that defendant was estopped from availing herself of the benefit of the Married Woman's Act because she had represented to the plaintiff that the note was made by her, for value received, for her own use and benefit, which representation was evidenced by the words "Value received for my own use and benefit" written on the note over her signature, and that plaintiff relying on that representation as true had received the note from the endorser who was also the payee and discounted it for him, paying to him the proceeds thereof.

To that contention defendant's reply was that she was not estopped from denying liability on the note because first, to so hold would in effect be a repeal of the statute in question, and second, the plaintiff was not in fact misled by the words "value received, for my own use and benefit" as written on the note, the plaintiff having knowledge that the note was not for defendant's use or benefit, but for the benefit of payee and

endorser, and that defendant had obtained nothing of value directly or indirectly upon the faith of her contract of suretyship.

The case was sent to the jury to determine whether plaintiff had been misled by the conduct of defendant in signing the note with the words "value received, for my own use and benefit," and whether defendant had received any benefit for her signature in the manner indicated by the statute.

The jury returned a verdict for the defendant. An appeal was taken to the Supreme Court where the judgment was affirmed. (Case page 141).

ARGUMENT.

1.

If plaintiff had knowledge that defendant was a married woman at the time she signed the note, that she signed as surety and received no benefit for the use of her name, no estoppel exists.

"There can be no estoppel where there was no misrepre-
"sentation and the opposing party was not mislead or was
"lacking in good faith."

First National Bank of Elizabeth v. Craig, 1 N. J. L. J. 153.
McComick v. Stephany, 61 N. J. Eq. 208.
Mutual Life Ins. Co. vs. Norris, 31 N. J .Eq. 583.

Plaintiff contends that there was no evidence to go to the jury as to whether plaintiff had knowledge that defendant was a mere surety, and without such knowledge defendant would be estopped by reason of her alleged misrepresentation.

No request was made for a direction of a verdict in favor of plaintiff, but plaintiff contends that its requests to charge which were refused and exceptions taken, fairly raise the question. Assuming such to be the case out of an abundance of caution, it is insisted on the part of defendant that there was competent evidence to go to the jury on that question and the verdict is conclusive.

The original note was discounted for John T. McChesney, the endorser, and the proceeds placed to his credit in plaintiff's bank, and he checked out the same to his order. (Page 24, lines 15-25; page 25, lines 30-40). The renewal notes followed the same course. McChesney was given credit for each renewal and charged with the previous note.

The note sued on was prepared by one Joseph T. Laird, plaintiff's assistant cashier. He wrote in the note the date, the amount, and the words, "For my own use and benefit," and the orginal note of February 8, 1915, was also prepared

at plaintiff's bank in the same manner. (Page 28, lines 10-40; page 79, lines 25-40).

The bank officials never talked with Mrs. Rutter with respect to note. (Page 27, lines 5-15; page 28, line 12; page 81, line 31).

According to Mr. Laird, the plaintiff's assistant cashier, McChesney at the time the original note was given came to the bank (page 25, lines 1-10) and asked witness if the bank "would discount his sister's note" (meaning defendant) and witness replied "we would." (Page 26, lines 35-40; page 27, line 25; page 30, line 18).

Mr. Campbell, plaintiff's cashier, testified that McChesney went to the bank after the close of business and Mr. Laird brought a note to witness. The note was made by Abbie M. Rutter, endorsed John T. McChesney. Mr. Laird said Mr. McChesney would like to have credit for it. The note was an ordinary blank note of the bank without the words "for my own use and benefit" written into it. Witness accompanied Laird back to cashier's window and told McChesney "If that "was his sister's note she should so state in the note, and my "recollection is that Mr. McChesney asked if we would pre-"pare the note as it should be and either myself or someone "in the bank did draw up such a note, which was brought to "the bank the next day and put to Mr. McChesney's credit." (Page 79, lines 20-40.)

Witness stated he would not have discounted the note with defendant as maker "unless she inserted in it that it was for her own use and benefit." (Page 81, lines 15-20). That he did not know that there was any reason to believe at the time he discounted the note that defendant had no interest or benefit from the discounting. (Page 81, line 20). That he relied upon the correctness of the statement on the note in connection with his talk with McChesney and the fact that the note was brought back to the bank in proper form. (Page 81, lines 30-40). That the procceds of the note were credited to McChesney's account at his request, and he was the owner of the note. (Page 81, line 9). That witness had no knowledge at time note was discounted that defendant's statement appearing on the note was not true. (Page 82, line 5). Witness knew defendant was a married woman and would not discount McChesney's note without a responsible party on the note with him. (Page 82, lines 1-30).

Witness knew defendant was not receiving the proceeds of the note when they were placed to the credit of McChesney. (Page 83, line 21). Didn't inquire before discounting the note whether defendant had received anything of value for her contract with McChesney. (Page 83, line 25). It was at the suggestion of witness that the words "for my own use and benefit" were written on the note. (Page 83, line 32). That course was followed by the plaintiff's bank as to all notes

signed by a married woman whether they were to receive the proceeds of the discount or not. (Page 84, line 1-10). Witness further stated that the words "for my own use and benefit" were placed on notes of married women because he thought that unless they so appeared recovery could not be had on the note. (Page 84, line 10-35). Witness had notes of McChesney discounted in his bank secured by collateral, but he would not take McChesney's notes without security. (Page 85, lines 1-20). The only reason why witness supposed the note in question was McChesney's was because the latter had possession of it. (Page 85, lines 30-35). He didn't inquire what arrangement defendant had with McChesney. (Page 86, line 10). Witness's understanding was that the words "for my own use and benefit" should appear on all notes of married women even though she received a benefit therefrom, in order to avoid the necessity of proving that she had received a benefit. (Page 87, lines 30-40).

John McChesney, the brother of defendant, testified he asked defendant if she would go on a note for him; she said she would if the bank would accept it, and witness then went to plaintiff's bank and asked Mr. Laird if he would discount witness's sister's note, "take my sister's endorsement for $1,000 "and if my memory served me right, he turned to Mr. Camp-"bell who sat at the desk in back and put the thing up to him. "I suppose Mr. Campbell said that—as I remember of course, "it is a good while ago, as I remember Mr. Campbell drew up "a note which read 'for my personal use and benefit.' He said "that was the only way that a married woman could endorse, "so I took the note, took it up to my sister; she looked at it "and said 'Well that looks as though I was getting the money "on it' * * * I told her that Mr. Campbell said that that "was the only way that she could endorse." (Page 35, lines 20-40; page 36, lines 1-40). Witness took the note to plaintiff's bank where it was discounted and the proceeds placed to his credit. (Page 37, line 10). Defendant got no part of the proceeds of the note and nothing for her name on the note. (Page 37, lines 10-20).

"The Court: Mr. McChesney, I wish you would give "the exact conversation as you now can recall it and as much "as you now can recall with respect to this proposed discount, "whether it be with Mr. Laird or Mr. Campbell, the conver-"sation at the bank."

"Witness: After I got the consent of my sister that she "would sign the note I went down to the bank."

"The Court: Was that the first conversation with the "bank? Had you been there before?"

"Witness: No, not that I remember of, I went into the "bank and Mr. Laird was at the window and I asked him if "they would accept a note for $1,000 **with my sister's endorse-"ment,** and he turned to Mr. Campbell and talked to him about

"it. Mr. Campbell, as I can remember now, drew up a note."

"Q. Did Campbell say anything?"

"A. He drew up a note and as I remember came to the "window with the note and handed it to me, and said, 'This is " 'the only way your sister can **endorse**, the only way a mar- " 'ried woman can **endorse.**' "

On cross examination witness was asked—"And didn't "you ask Mr. Laird whether he would discount your sister's "note? A. I did, I think that is what I have testified to be- "fore." (Page 39, line 30). Also, "Q. And the proposition "then was to discount your sister's note, wasn't it? A. Yes. "Q. And Mr. Campbell said that as a married woman the only "way in which they would be willing to discount your sister's "note would be for her to state in it that it was for her use and "benefit, didn't he? A. Yes, sir; he wrote it out in the note." (Page 40, lines 2-10.)

"Q. Now are you positive, Mr.McChesney, that when you "went to the bank on that day, February 8, 1915, that you said "to Mr. Campbell, that you asked whether they would discount "a note **endorsed** by your sister? A. No, not to Mr. Camp- "bell, to Mr. Laird."

"Q. Now you said on your direct examination that Mr. "Campbell said, 'This is the only way a married woman can " 'be an **endorser.**' Now did Mr. Campbell use any such "language? A. As near as I can remember, that is —" (Page 42, lines 10-25.)

We submit there was at least a jury question presented as to whether or not the plaintiff knew, or was put upon inquiry, that defendant was surety only and had obtained no benefit or thing of value for her signature, and as to whether or not plaintiff was actually misled by the alleged misrepresentation of defendant. If not misled, it could not invoke the doctrine of estoppel.

"Parties dealing with a married woman are bound to take "notice of her coverture and to inquire whether a contract or "the consideration thereof is for her benefit, or for the benefit "of her estate, and one which under the statute, she may law- "fully make."

21 Cyc 1313.

McChesney testified that he requested the bank to discount his sister's note "take my sister's **endorsement** for "$1,000," and that the officials having drawn up the note informed him "that was the only way a married woman could "endorse." The officials of the bank testified they used no such language, but that McChesney asked them if the bank would discount his sister's note; that they thought it was his sister's note she was making as principal.

It was clearly the purpose of the bank's witnesses in their

testimony by the use of the words "discount his sister's note" to distinguish between that expression and that of McChesney's "take my sister's endorsement" or "discount a note endorsed "by my sister." They asserted that the former meant that the defendant would sign as a principal only, the latter, as a surety or accommodation party.

This contradictory testimony, material as it was, on the question of knowledge on the part of the plaintiff as to whether defendant was a mere surety and received nothing for the use of her name, certainly presented a jury question as did the conduct of the officials as described by themselves and the inferences to be drawn therefrom as to whether they were misled by the conduct of defendant, or whether as a fact they were entitled to invoke the doctrine of estoppel. The bank officials knew defendant was a married woman. They filled in the note writing in the words "for my own use and benefit" without consulting the defendant. They always insisted that a note to be signed by a married woman should bear the words "for "my own use and benefit" because they thought that made the transaction legal and binding whether she actually received anything or not. They discounted the note and placed proceeds to the credit of McChesney. They made no inquiry as to whether defendant had signed as surety or principal, or whether she was obtaining anything of value for her signature. They thought, and so testified, that the words on the note "for "my own use and benefit" carried liability."

II.

The question of estoppel so far as invoked by plaintiff would seem to be effectually disposed of, in view of the findings of fact comprehended by the verdict. Its materiality is important only in view of plaintiff's contention of the admission at the trial of illegal evidence, and the suggestion made on its part that there was no evidence to go to the jury on the question of knowledge. For if defendant would not be estopped by her assertion that the note was given for her own use and benefit, even without knowledge to the contrary on the part of the plaintiff the question of knowledge and of the admission of illegal evidence becomes immaterial. It is insisted, therefore, that the trial judge should have directed a verdict for defendant.

Defendant's contract is one of surety although her name appears as maker, and she may show in evidence that her contract in form that of a principal debtor, is in fact one of suretyship.

Vliet v. Eastburn, 35 Vr. 627.
Peoples National Bank vs. Schepflin, 44 Vr. 29.

Defendant obtained no benefit on the faith of her contract and it was altogether void under the second provision of the 5th section of the Married Woman's Act That statute disqualifies a married woman from entering into a contract of suretyship unless she receives a benefit upon the faith of such contract. If she receives no benefit she is as incapable of binding herself as though the statute expressly prohibited her from entering into such contract, and no act of hers can validate it. Defendant's contract falls within the second provision of the statute limiting her power as a married woman to contract, and not within the general purview of the act authorizing married women to contract. Invoking the doctrine of estoppel is but seeking to impose upon her indirectly a liability, which the statute prohibits. The object of the act was to protect a married woman from the very hardships which are now attempted to be imposed upon defendant. Bishop v. Bourgeois, 13 Dick. Ch. 417, 427.

In Vliet v. Eastburn, 35 Vr. 627, 645, decided in 1900, Chief Justice Gummere speaking for the Court of Errors and Appeals said, "Under the provisions of this statute a contract of surety-"ship entered into by a married woman is altogether void unless upon the faith of such contract, she obtains money, prop-"erty or other thing of value for her own use or for the bene-"fit etc. of her estate." * * * "Where the law prohibits "the making of a contract a false representation of the fact which avoids the contract will not render it obligatory."

"The touchstone which will solve all questions as to the "wife's liability is whether her undertaking, whatever be its "form, is in fact a promise to pay the debt of another. If this " be the case, an estoppel will not be worked to charge the wife "on a surety contract which she is incapable of making at com-"mon law, and from liability under which she is expressly re-"lieved by the very words of the statute."

Bishop v. Bourgeois, supra.

"To hold that a married woman is estopped from showing "the truth would validate every contract made by her, if she "had been induced to incorporate in it a statement that it was "to pay her own debt. Such an admission is only evidence as "such and liable to be overcome by proof of the opposite."

Cooley v. Barcroft, 14 Vr. 363.

In Sherwin v. Sternberg, 49 Vr. 557, the Court of Errors and Appeals affirming the decision of the Supreme Court reported in 48 Vroom 117, said,

"The expression of the Supreme Court that Rose Stern-"berg was estopped by the contents of the contract from de-"nying that she had an interest in the business, was obviously

"not intended to mean that a married woman could estop her-
"self by anything contained in a contract, if, in fact, she was
"powerless to make a contract because of her position as
"surety."

"But if a contract, although made in fact by a married
"woman is one that she is disabled by law from making, it
"never becomes her promissory note, and the rules of the law
"merchant can have no applicancy to it."

Peoples National Bank v. Schepflin, 44 Vroom 29.

"The case of a married woman is like the case of an in-
"fant except so far as her incapacity has been removed. **It
"has not been removed so as to enable her to become an ac-
"commodation endorser** and to that extent she is incapable as
"an infant is incapable, although liable for her torts."

First Nat. Bank of Belmar v. Shumard, 103 Atl. Rep. 1001.

The case of Vliet v. Eastburn, supra, is cited by plaintiff in support of its contention. In that case the married woman obtained directly a money consideration upon the faith of her contract of suretyship, which made her liable the same as an unmarried woman as provided by the statute, but the majority of the court as already indicated treated such contract as void where the married woman did not obtain something of value upon the faith of her contract.

In Hackettstown Nat. Bank vs. Ming, 52 N. J. Eq. 156, also relied on by plaintiff, Mrs. Ming, a surety on a note, received the proceeds thereof from the bank where it was discounted. She thereby became a principal and primarily liable, no estoppel was necessary to charge her. Plaintiff's proposition that when a married woman's note is discounted by the payee, the holder may recover although no consideration passed to her from the payee is contrary to the married women's act and to the rule established by the decisions of this state. Bishop v. Bourgeois supra, at page 424. Plaintiff's view would even estop a married woman from showing that her contract was one of surety. Such is not the law.

As to the Indiana cases cited on plaintiff's brief, it is the statute law of that state as declared in those cases, that a married woman shall be bound by an estopel in pais like any other person (Sec. 5117, Rev. Stat. Ind. 1881), and the rule of law illustrated in those cases is made to rest on that statutory declaration. See Ward v. Berkshire Ins. Co., 108 Ind, 301, and Voreis v. Missbaum, 131 Ind. 267. They are not in point.

The alleged benefit derived by defendant from her signature, namely, because she knew her brother was in financial difficulties and hoped that the proceeds of the note would en-

able him to continue in business and better her chance to be paid his indebtedness was not sufficient to require the trial Judge sending the case to the jury. It was but a hope at best.

In Perkins v. Elliott, 23 N. J. Eq. 526, 535, cited on plaintiff's brief, the contract operated directly upon the wif'e separate estate by express words, and was enforceable in equity under recognized equitable principle. It was beneficial to her in relieving the lands in which she had an interest, from an incumbrance. The case was decided in 1872 before the enactment of the statute in question.

The defendant acquired nothing. The brother never paid his debt to her. As the testimony shows he became a bankrupt. If as a proximate result of defendant's contract of suretyship the brother had succeeded in business and paid his debt to defendant, there might be some force in plaintiff's contention. The words of the statute are, "obtains directly or in-"directly any money, property or other thing of value." Defendant obtained nothing.

"The wife's possible share in the surplusage of her hus-"band's personalty in case he should die interstate and leave "any, is too remote to operate as a beneficial consideration for "her promissory note given to pay his debts incurred for the "purchase money of personal property acquired by him."

Bishop v. Bourgeois, supra.

It is submitted that upon the uncontradicted facts, namely, that defendant was a married woman, that her contract was one of suretyship, and that she received nothing of value upon the faith of that contract, her contract was void and the Court should have directed a verdict in her favor.

III.

Assuming defendant would be estopped from denying liability, if plaintiff had no knowledge that her assertion appearing on the note was false, and assuming there was evidence to go to the jury on the question of knowledge, it becomes necessary to discuss plaintiff's further grounds of appeal.

1. As a further ground of appeal, plaintiff complains that testimony of conversation between defendant and her brother as to the form of the note was illegally admitted and that the plaintiff was prejudiced thereby. (Case pages 36, 38, 52).

The evidence was properly admitted as showing defendant's state of mind at the time she signed the note, upon the question of misrepresentation and fraud and as to whether she signed as surety or principal and whether she received any benefit. It was not offered nor admitted to prove knowledge. Defendant was entitled to tell what representations her brother made to her to induce her to sign the note, and what her con-

tract was. The case of First National Bank of Elizabeth v. Craig, 1 N. J. L. J. 153, relied on by plaintiff in its brief in support of its contention that the testimony was inadmissible, is not an authority for that proposition. In that case the wife received the proceeds of the note she had indorsed as accommodation endorser. She informed the bank that she wished the note discounted for herself. The proceeds of the note being paid to the wife she became in fact a principal, not a surety. No secret arrangement between her and her husband tending to change her contract with the bank was permissible. The evidence under discussion was not to show any secret arrangement between defendant and her brother, but to establish what the real contract was.

As to McChesney's testimony that he told his sister the cashier of the bank had said "that was the only way that she could endorse," "that it was merely a matter of form"; that was not harmful to the plaintiff, for McChesney had already testified that the cashier had told him that. His previous testimony as to what the officials of the bank said to him was admissible as evidence of that fact, and his testimony that he told his sister what the officials had told him was admissible as evidence of the fact that he did tell his sister and tended to prove what induced her to sign the note. They denied that they told McChesney they would take a note **endorsed** by his sister. The evidence did not tend to show knowledge on the part of the bank officials. McChesney's previous direct testimony of conversation with the bank officials was evidence of knowledge on their part. His evidence as to what he told his sister merely tended to prove what induced her to sign.

"When the statements of a third person to a witness are "admitted in evidence not to prove the truth of the fact stated "but to show what it was that called the attention of the wit- "ness to a fact stated by her, or that fixed the fact in her "recollection, such statements are not hearsay but original "and independent facts and therefore admissible in evidence."

State v. Fox, 25 N. J. L. 566.

Furthermore, the objection to the alleged illegality of the evidence in question was waived by plaintiff upon cross examination by examining defendant thereon and having witness substantially repeat the same. (Case page 66, line 35; case 73, lines 1-40; case page 40, line 10-40).

"Error in the admission of evidence offered by one party "is cured where practically the same evidence is afterward "introduced by the adverse party or elicited on cross examina- "tion.

38 Cyc 1432.

2. As a further ground of appeal plaintiff complains of the admission in evidence of the amended claim in bankruptcy. (Case pages 76, 77.)

Plaintiff placed in evidence a proof of claim of defendant made in the bankruptcy of her brother (exhibit P5, page 117) for the purpose of showing she had made the claim in that proof that she had loaned money to her brother on the note in question, whereas she testified to the contrary at the trial, and insisted that she signed the note as a surety without consideration. (All of which went merely to the credibility of the witness). Defendant testified that the statement in the proof of claim was an error. (Case page 63, lines 10-31; page 66, line 32). Defendant put in evidence a supplemental proof of claim (Exhibit D1), alleging that the statement in P5 as to money loaned by defendant to her brother was made inadvertently and through error.

If the original proof of claim was admissible for the purpose of attacking defendant's credibility the supplemental proof of claim was admissible in repelling that attack, and in support of defendant's credibility. As the testimony shows there was in fact no doubt as to the nature of the transaction. It was not contradicted by plaintiff that defendant did sign the note as a surety, and that she did not loan money to her brother on the note.

3. The requests to charge (case page 103), were properly refused because they assume plaintiff had no knowledge of real nature of defendant's contract. That was a question of fact for the jury.

The judgment should be affirmed.

JOHN S. APPLEGATE & SON,
Attys. of Defendant-Respondent.