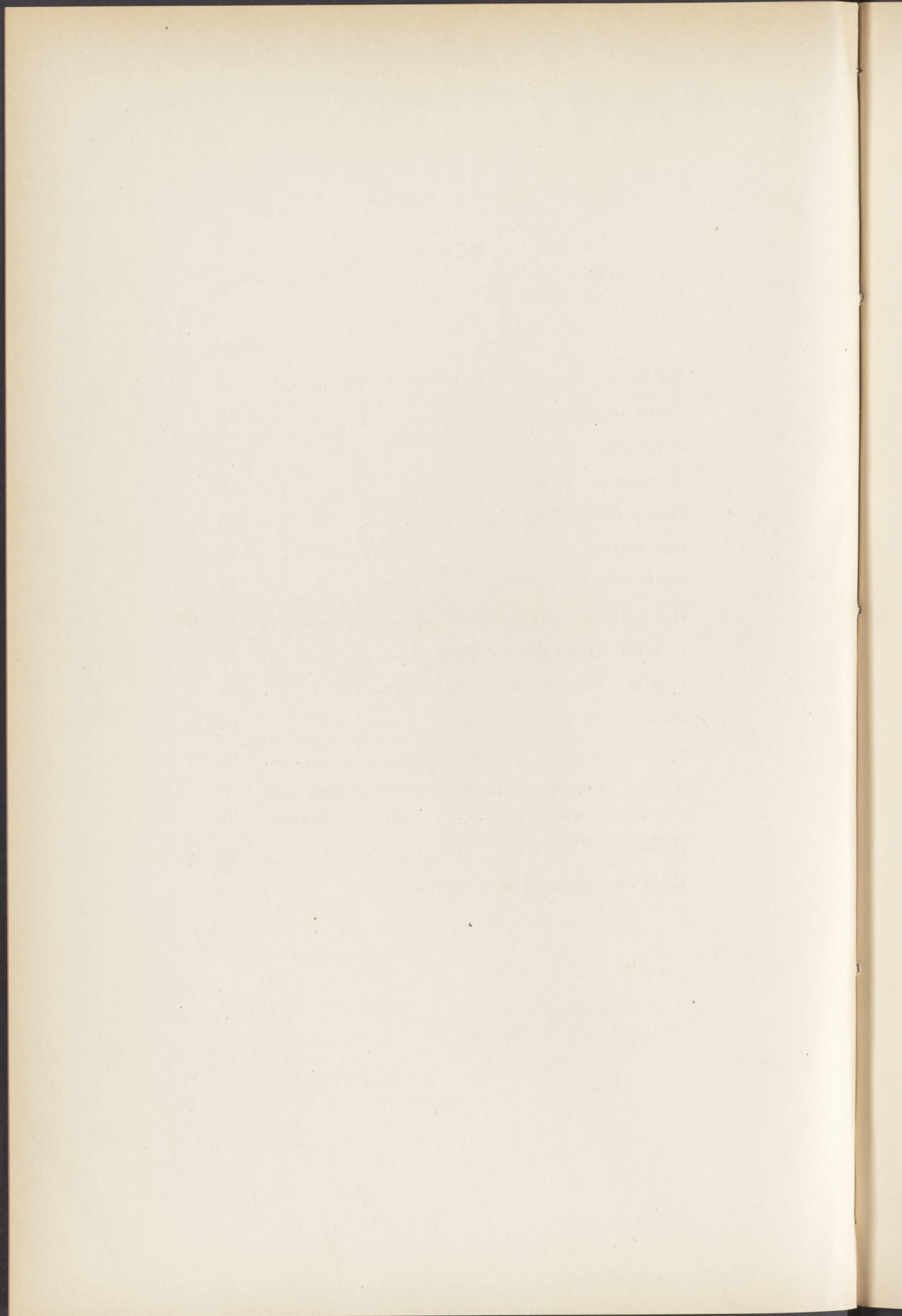


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Notice of Appeal.

Filed March 5, 1931.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

ALLIED TAR & CHEMICAL CORPORATION, a corporation,
Plaintiff,

v.

ALEXANDER E. JOFFE,
Defendant.

On Contract.

Notice of Appeal.

10

To Charles Taub, Esq., attorney for the defendant, Alexander E. Joffe, 57 Newark Street, Hoboken, New Jersey.

20

SIR:

PLEASE TAKE NOTICE that the plaintiff, Allied Tar & Chemical Corporation, a corporation, hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the Second Judicial District of the County of Hudson, rendered in the above-stated action on the 29th day of December, 1930.

30

BERLIN & BERLIN,
Attorneys of Plaintiff.

Service of a true copy is hereby acknowledged this 3rd day of March, 1931.

CHARLES TAUB,
Attorney of Defendant.

40

State of Demand.

Filed November 14, 1930.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

10

ALLIED TAR & CHEMICAL CORPORATION, a corporation,
Plaintiff,

v.

ALEXANDER E. JOFFE,
Defendant.

On Contract.
State of
Demand.

20

Plaintiff, Allied Tar & Chemical Corporation, a corporation, demands of the defendant herein, Alexander E. Joffe, the sum of Three Hundred (\$300.00) Dollars for that:

30

1. On the 25th day of February, 1930, the defendant Alexander E. Joffe made and delivered to the plaintiff Allied Tar & Chemical Corporation his certain promissory note of that date in the sum of Two Hundred Fifty (\$250.00) Dollars, payable to Allied Tar & Chemical Corporation, or order on demand after the date thereof, together with interest thereon at the rate of six per cent per annum, a true copy of which note is hereto attached and made part hereof.

40

2. Thereafter, and after the date of the aforementioned note the plaintiff demanded from the said defendant payment thereof, and the said note was duly presented for payment in accordance with the terms thereof and payment then and there demanded and refused.

State of Demand.

3. The aforementioned note has been ever since the delivery to the plaintiff, as aforementioned, and still is the property of the plaintiff and in its possession as holder thereof for full face value and no part of the said note has been paid. There is due on the aforementioned note the sum of Two Hundred Fifty (\$250.00) Dollars besides lawful interest thereon from February 25, 1930. 10

Wherefore judgment will be claimed in the sum of Two Hundred Fifty (\$250.00) Dollars besides lawful interest thereon from February 25, 1930.

BERLIN & BERLIN,
Attorneys of Plaintiff.

20

\$250.00

February 25th, 1930.

On Demand after date I promise to pay to The Order of Allied Tar & Chemical Corporation Two Hundred Fifty 00/00.....Dollars
At #1457 Broadway, New York City.

Value Received

ALEXANDER E. JOFFE. 30

40

Summons.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

STATE OF NEW JERSEY, } ss.:
 10 COUNTY OF HUDSON, }

The State of New Jersey, To any
 Constable or Sergeant-at-Arms of said
 (L. S.) County:

SUMMON Alexander E. Joffe to appear before the District Court of the Second Judicial District of the County of Hudson, Leo S. Carney, Judge, to be held at the Court Room, Town Hall, Town of Kearney, on
 20 the first day of December, One Thousand Nine Hundred and Thirty, at ten o'clock in the forenoon to answer unto Allied Tar & Chemical Corporation, a corporation, in an Action on Contract. Damage Three Hundred (\$300.00) Dollars.

WITNESS, LEO S. CARNEY, Esq., Judge of said District Court of the Second Judicial District, of the County of Hudson, aforesaid, the 22nd day of November, in the year One Thousand Nine
 30 Hundred and Thirty.

JAMES A. KELLY,
 Clerk.

BERLIN & BERLIN, Esqs.,
 Plaintiff's Attorneys,
 972 Broad Street, Newark, New Jersey.

Summons.

No. 19137

District Court of the
Second Judicial District
of the County of Hudson

—Before—

Leo S. Carney, Esq., Judge

10

SUMMONS ON CONTRACT

Allied Tar & Chemical Corporation, a
corp.

Plaintiff,

vs.

Alexander E. Joffe

Defendant.

20

Damage	\$300.00
Costs	3.60
Mileage	1.00

Returnable December 1 A. D., 1930
10 o'clock, A. M.

30

(A True Copy)

Filed November 14, 1930.

40

Transcript of Clerk's Docket.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

10	ALLIED TAR & CHEMICAL CORPORATION, Plaintiff,	}	<i>On Contract.</i> <i>Clerk's Transcript.</i>
	v.		
	ALEXANDER E. JOFFE, Defendant.		

Berlin & Berlin, Esqs., plaintiff's attorneys.

20

	Plaintiff's Costs	Defendant's Cost
Summons		
Mileage	2.10	
Listing Fee	1.00	
Bond	1.50	
		\$1.00

30

A summons in the above-stated cause was issued on the 22nd day of November, 1930, returnable on the 1st day of December, 1930.

The Constable returned the summons as follows, viz.:

The defendant Alexander Joffe could not be found and I served the within summons state of demand attached on him the 25th day of November, 1930, by leaving a copy thereof at his usual place of abode in the presence of a person

40

Transcript of Clerk's Docket.

of his family over the age of fourteen years
whom I informed of the contents thereof.

CHARLES PARABOSCHI,
Constable.

The Plaintiff filed state of demand November 10
Fourteenth, 1930.

December first, 1930 this case was called for
trial and by various adjournments continued to
December Twenty-ninth, 1930.

December 29th, 1930, the Plaintiff and Defend-
ant appearing the cause was tried at this time.

On the part of the plaintiff, Hymen Senner,
and Alexander J. Saerafine was sworn and testi-
fied.

Check \$150.00 Feb. 25th, 1930. P. 1. 20

Check \$100.00 Jan. 28th, 1930. P. 2.

Notice of protest Nov. 3rd, 1930. P. 3.

On the part of the defendant, Alexander E.
Joffe and Arthur Koerner was sworn and testi-
fied.

The evidence being closed the court reserved
decision.

February 24th, 1931. The Court rendered
judgment in favor of the defendant and against
the plaintiff, whereupon judgment is entered in 30
favor of the defendant and against the plaintiff.

March 4th, 1931. Notice of appeal and bond
approved by Judge filed.

JAMES A. KELLY,
Clerk of the District Court of the Second
Justicial District of the County of Hudson.

SEAL

[District Court
Second Judicial District
Hudson County, N. J.]

40

Order Extending Time.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

10	ALLIED TAR & CHEMICAL CORPORATION, a corporation, Plaintiff, v. ALEXANDER E. JOFFE, Defendant.	}	<i>On Contract.</i> <i>Order.</i>
----	---	---	--

20 Application having been made for an extension of time for filing the state of case on appeal, the time for filing same will expire on March 21, 1931, and upon good cause being shown:

It is, on the 21st day of March, 1931, ORDERED, that the time for filing the same be extended from March 21, 1931 to April 1, 1931.

LEO S. CARNEY,
Judge.

30

40

Order Extending Time.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

ALLIED TAR & CHEMICAL CORPORATION, a corporation,

Plaintiff,

v.

ALEXANDER E. JOFFE,

Defendant.

On Contract.

Order.

10

Application having been made for an extension of time for filing the state of case on appeal, the time for filing same will expire on this 1st day of April, 1931, and upon good cause being shown:

20

It is, on this 1st day of April, 1931, ORDERED, that the time for filing the same be extended from April 1st, 1931 to 22nd day of May, 1931.

LEO S. CARNEY,
Judge.

30

40

Stipulation.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

10	ALLIED TAR & CHEMICAL CORPORATION, a corporation, Plaintiff,	}	<i>On Contract.</i>
	<i>v.</i>		
	ALEXANDER E. JOFFE, Defendant.	}	<i>Stipulation.</i>

The attorneys for the respective parties herein hereby join in a request that Honorable Leo S. Carney settle the state of facts for appeal herein, in accordance with Section 213B of the District Court Act.

BERLIN & BERLIN,
Attorneys of Plaintiff.

CHARLES TAUB,
Attorney of Defendant.

30

40

State of Case as Settled by Court.

Filed May 14, 1931.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF HUDSON COUNTY.

ALLIED TAR CHEMICAL CORP.

v.

ALEXANDER E. JOFFE.

*Docket
No. 19137.
State of
Case.*

10

The parties hereto, or their attorneys, having been unable to agree upon a state of the case, and having applied to me, Leo S. Carney, Judge of the within Court, do hereby settle the state of case as follows:

26

The case was tried by the Court without a jury and was an action on contract, brought by the plaintiff against the defendant, Alexander E. Joffe, to recover the amount claimed to be due on a certain promissory note dated February 25th, 1930, in the sum of Two Hundred and Fifty (\$250.00) Dollars, payable to the order of the plaintiff and signed by the defendant.

30

The plaintiff produced as witnesses, Mr. Herman Senner and Mr. Alexander J. Saeraine (one witness was an officer of the plaintiff corporation); and also produced the company's checks to show that the said Two Hundred and Fifty (\$250.00) Dollars was turned over to the defendant, Alexander E. Joffe.

The defendant, Alexander E. Joffe was sworn and testified and Arthur Koerner, a witness for the defendant, was also sworn and testified; the substance of their testimony being to the effect

40

State of Case as Settled by Court.

10 that the money advanced on account of the aforementioned note was not a loan, but was given in consideration of certain services that the said Alexander E. Joffe was to perform for the plaintiff and on behalf of the plaintiff, in an endeavor to secure a refinancing of the plaintiff's business; and that the said note was only given as a receipt by the defendant, to the plaintiff, as evidence of his good faith in the matter and to secure the performance of the said services.

20 The plaintiff objected to the admissibility of any oral testimony concerning the liability of the defendant, and the same was overruled, on the theory that the true consideration of a note or negotiable instrument may be shown by parol evidence.

30 I found, as a matter of fact, that the defendant, Alexander E. Joffe, performed the services that was to have performed for the plaintiff, and that the said note was not given to secure a loan or advance by the plaintiff to the defendant, but on the contrary, was in the nature of a receipt, executed by the defendant in consideration of the services that he was to perform for the plaintiff and which he did perform; whereupon I gave judgment for the defendant upon such evidence.

An exception to the Court's ruling was prayed by the attorney for the plaintiff, and granted.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May, Nineteen Hundred and Thirty-one.

LEO S. CARNEY,
J.

Opinion.

Filed February 24, 1931.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF HUDSON COUNTY.

ALLIED TAR & CHEMICAL CO.

v.

JOFFE.

10

*Docket**No. 19137.**Opinion.*

From a consideration of the evidence adduced at the trial of this cause, a doubt has been created in my mind as to whether or not the amount sued for on the notes was actually loaned by the plaintiff to the defendant; in view of which doubt judgment should be resolved in favor of the defendant. 20

Accordingly, judgment will be entered in this cause in favor of the defendant.

Dated, February 24th, 1931.

LEO S. CARNEY,

J. 30

Exhibit P1.

ALLIED TAR AND CHEMICAL CORPORATION

Bayway, Elizabeth, N. J.

(Court Seal)

10

No. 3576

New York Feb 25th 1930

Pay to the order of Alexander E Joffe \$150 00/100
One hundred fifty 00/100.....Dollars

ALLIED TAR AND CHEMICAL CORP.

David W Blaine

Vice-Pres.

20

Alexander J Sarafan

Ass't Treas.

To the Manufacturers Trust Company
498 Seventh Avenue corner 37th Street
New York

(Endorsement)

Alexander E Joffe

30

(Bank Stamps)

40

Exhibit P2.

ALLIED TAR AND CHEMICAL CORPORATION

535 Fifth Avenue, N. Y.

(Court Seal)

No. 3518 10

New York Jan 28th 1930

Pay to the order of Alexander C Joffe \$100 00/100
One hundred 00/100.....Dollars

ALLIED TAR AND CHEMICAL CORP.

David W Blaine

Vice-Pres.

Alexander J Sarafan 20

Treas.-Ass't Treas.

To the Manufacturers Trust Company
498 Seventh Avenue corner 37th Street
New York

(Endorsements)

Alexander E Joffe

E. Alexander 30

(Bank Stamps)

Exhibit P3.

\$250 00/100

February 25th 1930

On demand after date I promise to pay to
the order of Allied Tar and Chemical Corporation
Two hundred fifty 00/100.....Dollars

10 At #1457 Broadway, New York City 3rd fl.
Brokers office

Value Received

(Court Seal)

ALEXANDER E JOFFE

(Endorsement)

Allied Tar & Chemical Corporation
Alexander J Sarafan Asst. Treas.

20 (Bank Stamps)

United States of America, }
State of New York, } ss.:
City of New York, }
County of New York, }

30 On the 3rd day of November, 1930, at the re-
quest of Manufacturers Trust Company, New
York City, I, the undersigned, a Notary Public
of the State of New York, duly commissioned
and sworn, did present the original *Promissory
Note*, hereunto annexed, to Alexander E. Jaffe
1457 Broadway, New York, N. Y. and demanded
payment thereof, which was refused.

40 WHEREUPON, I, the said Notary, at the request
aforesaid, did PROTEST, and by these presents do
publicly and solemnly PROTEST, as well against
the Drawer and Endorsers of the said *Promis-
sory Note*, as against all others whom it doth

Exhibit P3.

or may concern, for exchange, re-exchange and al costs, damages, and interest already incurred, and to be hereafter incurred for want of *payment (acceptance)* of the same.

THIS DONE AND PROTESTED in the City of New York. 10

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year first above written.

IRVING GINSBURG,

Notary Public,

(SEAL)

State of New York.

Notary Public, Kings Co. No. 81, Reg. No. 2080.

Cert. filed in N. Y. Co. No. 139, Reg. No. 2068. 20

Cert. filed Bronx Co. No. 4, Reg. No. 3203.

Cert. filed Queens Co. No. 50, Reg. No. 1521.

Commission expired March 30, 1932.

PROTEST

\$250

Alexander E. Joffe

New York, N. Y. Nov. 3rd, 1930

30

Fees and Expenses \$1.25

Specification of Determinations.

(Filed June 6, 1931.)

NEW JERSEY SUPREME COURT.

10

ALLIED TAR & CHEMICAL COR-
PORATION, a corp.,

Plaintiff-Appellant,

v.

ALEXANDER E. JOFFE,

Defendant-Appellee.

On Appeal from
the District Court
of the Second
Judicial District
of Hudson
County.

Specification of
Determinations.

20

The following is a Specification of the Determinations or directions of the District Court of the Second Judicial District of the County of Hudson, with respect to which the plaintiff-appellant is dissatisfied in point of law:

1. The District Court erroneously entered judgment in favor of the defendant-appellee, to which ruling an exception was taken and duly
30 allowed; judgment should have been rendered in favor of plaintiff-appellant for one or more of the following reasons suggested in behalf thereof:

a. The District Court erred in finding that the promissory note signed and made by the defendant-appellee, to the plaintiff-appellant, was not given to secure a loan or advance by the plaintiff-appellant, to the defendant-appellee;
40

Specification of Determinations.

b. The District Court erred in finding that the said promissory note was in the nature of a receipt;

c. The District Court erred in finding that the said promissory note was executed by the defendant-appellee in consideration of services that he was to perform for the plaintiff-appellant. 10

2. The District Court erroneously admitted over the objection of the plaintiff-appellant oral testimony concerning the liability of the defendant-appellee on the aforementioned promissory note; the objection to the admission of such oral testimony should have been sustained for one or more of the following reasons suggested in behalf thereof: 20

a. The oral testimony so erroneously admitted involved an issue collateral to the issue involved in the cause;

b. The oral testimony so erroneously admitted varied and contradicted by parol or extrinsic evidence a written promissory note; 30

c. The oral testimony so erroneously admitted was offered to show a parol agreement not to enforce payment of a written promissory note;

d. The oral testimony so erroneously admitted was offered to set up in bar a parol contemporaneous agreement not to enforce a written promissory note.

Specification of Determinations.

3. The District Court erroneously rendered a verdict for the defendant-appellee, instead of rendering a verdict for the plaintiff-appellant.

Dated, June 2, 1931.

10

BERLIN & BERLIN,
Attorneys for Plaintiff-Appellant.

SAMUEL H. BERLIN,
Of Counsel.

Service of a copy of the within is hereby acknowledged this 3rd day of June, 1931.

20

CHARLES TAUB,
Attorney of Defendant.

30

40

**Notice of Appeal to Court of Errors and
Grounds of Appeal.**

NEW JERSEY SUPREME COURT.

ALLIED TAR & CHEMICAL COR-
PORATION, a corporation,
Plaintiff-Appellee,

v.

ALEXANDER E. JOFFE,
Defendant-Appellant.

On Appeal from
the New Jersey
Supreme Court.

Notice of
Appeal.

10

To Messrs. BERLIN & BERLIN, Attorneys of Allied
Tar & Chemical Corporation, Plaintiff-Appel-
lee, 972 Broad Street, Newark, New Jersey.

20

Sirs:

PLEASE TAKE NOTICE, that the defendant-
appellant, Alexander E. Joffe, appeals to the
Court of Errors and Appeals of New Jersey from
the whole of the judgment entered in this cause
in the New Jersey Supreme Court.

TAKE FURTHER NOTICE, that the follow-
ing are the grounds of said appeal:

30

(1) Because the Supreme Court erred in giv-
ing judgment for the plaintiff-appellee, Allied Tar
& Chemical Corporation, a corporation, instead
of to the defendant-appellant, Alexander E. Joffe.

(2) Because the New Jersey Supreme Court
reversed the judgment of the District Court of
the Second Judicial District of the County of
Hudson, whereas, it should have affirmed the
same.

40

*Notice of Appeal to Court of Errors and
Grounds of Appeal.*

10 (3) Because the New Jersey Supreme Court erroneously held in reversing the judgment of the District Court aforesaid, parol evidence could not be received by the trial court to show that the note sued upon was paid by the rendition of services in pursuance of the oral collateral agreement made at the time of the giving of the note sued upon.

Dated, February 6th, 1932.

CHARLES TAUB,
Attorney for Alexander E. Joffe,
Defendant-Appellant.

20 ANTHONY P. LA PORTA,
of Counsel.

A copy of the above notice of appeal is hereby acknowledged to have been served upon us this 8th day of February, 1932.

30 BERLIN & BERLIN,
Attorneys for Allied Tar & Chemical Corp.,
Plaintiff-Appellee.

A true copy.

FRED L. BLOODGOOD,
Clerk.

Filed, Feb. 10, 1932.

FRED L. BLOODGOOD,
Clerk.

40

Opinion of Supreme Court.

(Filed 11/20/31.)

Unofficially Reported in 157a 117.

NEW JERSEY SUPREME COURT,
No. 412, OCTOBER TERM, 1931.

10

ALLIED TAR & CHEMICAL
CORPORATION,
Plaintiff-Appellant,

v.

ALEXANDER E. JOFFE,
Defendant-Appellee.

20

Submitted October Term, 1931; decided November 18th, 1931.

Appeal from District Court.

Before Justices Campbell, Lloyd and Bodine.

For appellant, Samuel H. Berlin.

For appellee, Anthony P. LaPorta.

PER CURIAM:

30

This was an action upon a promissory note, in which the defendant-appellee, was the maker and the plaintiff-appellant was the payee. The defense appears to have been that the note was not in fact what upon its face it appeared to be, namely, a promise, to pay a sum certain, but was a mere receipt for moneys advanced by the plaintiff to the defendant for services to be performed by the latter. Oral testimony to this effect was offered by the defendant and accepted by the trial 40

Opinion of Supreme Court.

court "on the theory that the true consideration of a note or negotiable instrument may be shown by parol evidence."

10 Acting upon such proof the trial court found, "that the defendant * * *, performed the services that were to have been performed for the plaintiff, and that the said note was not given to secure a loan or advance by the plaintiff to the defendant, but on the contrary was in the nature of a receipt, executed by the defendant in consideration of the services that he was to perform for the plaintiff and which he did perform * * *."

The result was that the court below gave judgment for the defendant.

20 We conclude that the acceptance of this proof was erroneous and contrary to the principle of *Naumberg v. Young*, 44 N. J. L. 331, which has been consistently followed by our courts.

The judgment below is reversed.

30

40

Rule for Reversal and Remittitur.

NEW JERSEY SUPREME COURT,

No. 412, OCTOBER TERM, 1931.

ALLIED TAR & CHEMICAL COR-
PORATION, a corporation,
Plaintiff-Appellant,

v.

ALEXANDER E. JOFFE,
Defendant-Appellee.

On Appeal from
District Court of
the Second Judi-
cial District of
the County
of Hudson.

10

Rule for Reversal
and Remittitur.

This cause having been brought to a hearing on appeal from the District Court of the Second Judicial District of the County of Hudson at the October Term, 1931, of this Court, and the Court having heard Charles Taub, Esq., of counsel with the appellee, and Berlin & Berlin, Esqs. (by Samuel H. Berlin), of counsel with the appellant, and having duly considered the questions brought up by this appeal:

26

It is, on this 24th day of December, 1931, on motion of Berlin & Berlin, Esqs., of counsel with said appellant, ORDERED that the judgment of the District Court of the Second Judicial District of the County of Hudson entered on February 24, 1931, from which the appellant appealed, be and the same is hereby in all things reversed, with costs of appeal to be paid by said appellee.

30

It is further ORDERED that the record in this cause be remitted to the District Court of the Second Judicial District of the County of Hudson for further proceedings thereon, according to law and the practice of that Court.

Entered Jan. 2, 1931.

For the Court,

LUTHER A. CAMPBELL,

Presiding Justice.

40

On motion of

BERLIN & BERLIN.

1. The first of these is the

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fourth of these is the

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New Jersey Court of Errors and Appeals

ALLIED TAR & CHEMICAL COR-
PORATION, a corporation,
Plaintiff-Appellee,

v.

ALEXANDER E. JOFFE,
Defendant-Appellant.

On Appeal from
the New Jersey
Supreme Court
Reversing the Dis-
trict Court of the
Second Judicial
District of the
County of Hudson.

BRIEF ON BEHALF OF ALEXANDER E. JOFFE, DEFENDANT-APPELLANT.

Statement of Facts.

This is an appeal from the decision of the New Jersey Supreme Court wherein and whereby a judgment of the District Court of the Second Judicial District of the County of Hudson was reversed. The material facts as represented by the findings of the trial court and as substantially stated by the Supreme Court are these:

Alexander E. Joffe, the defendant-appellant, was hired and engaged by the plaintiff-appellee, hereinafter called the Chemical Corporation, to perform certain services to procure a refinancing of its business. He performed the services that he undertook to render to the Chemical Corporation and received therefor the sum of \$250 in two installments, namely: \$100 and \$150. These installments were paid to him in advance prior to his rendering the services. The Chemical Cor-

poration in order to secure itself against the non-performance of the services procured from him a promissory note in the sum of \$250 and altho the services were performed (which fact the trial court below found was established by sufficient proof) nevertheless, the Chemical Corporation now seeks to recover back the \$250 represented by the note sued upon and particularly mentioned in the trial Court's special finding of facts.

When the Chemical Corporation, plaintiff-appellee, sued on the note which is the subject matter of this appeal, the defendant-appellant showed that the note was conditionally delivered; that there was no consideration for this note other than the performance of services by him which were thereafter performed; that he had performed and rendered services representing the amount of the face value of the note sued upon and had complied with the terms and conditions upon which the note was delivered to the Chemical Corporation. The trial Court so found and accordingly rendered judgment against the plaintiff-appellee, the Chemical Corporation, and in favor of the defendant-appellant, Alexander E. Joffe.

The Chemical Corporation, plaintiff-appellee, objected to the admissibility of any oral testimony concerning the facts and circumstances showing the payment of the face amount of the note by the services rendered by the defendant-appellant, Joffe, under which the promissory note sued upon was given. The court overruled the objection on the theory that the true consideration of a note or negotiable instrument may be shown by parol evidence. The decision, we contend, was correct altho the theory upon which the decision was based is questionable; but it is an elementary rule of this court and there are a number of cases

to the effect that where a judgment is correct altho the theory upon which the judgment is based is wrong and where the facts are sufficient on which the judgment can stand it will not be disturbed.

The grounds of this appeal are as follows:

(1) Because the Supreme Court erred in giving judgment for the plaintiff-appellee, Allied Tar and Chemical Corporation, a corporation, instead of to the defendant-appellant, Alexander E. Joffe.

(2) Because the New Jersey Supreme Court reversed the judgment of the District Court of the Second Judicial District of the County of Hudson, whereas, it should affirmed the same.

(3) Because the New Jersey Supreme Court erroneously held in reversing the judgment of the District Court aforesaid, parol evidence could not be received by the trial Court to show that the note sued upon was paid by the rendition of services in pursuance of the oral collateral agreement made at the time of the giving of the note sued upon.

LAW.

The Supreme Court erred in reversing the District Court in holding that parol evidence could not be received by the Trial Court to show that the note sued upon was paid by the rendition of services in pursuance of an oral collateral agreement made and given at the time of the note sued upon.

In *Stephen's Evidence Article 90*, it is stated:

"The parties may prove 'the existence of any separate, oral agreement as to any matter on which a document is silent, and WHICH IS NOT INCONSISTENT WITH ITS TERMS, if, from the circumstances of the case, the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them.'"

Showing mode of performance of an obligation by the rendition of services is not inconsistent with the terms of the promissory note, especially when the services have been fully performed.

The Court of Errors and Appeals in the case of *Hamond v. Cadmus*, 10 N. J. L. J. 245, held that the mode of payment of an obligation could be shown by parol evidence. The opinion is brief and is as follows:

"Appealed on the ground that the court below admitted parol testimony concerning a note. Plaintiffs were owners of timber land in Burlington county. Land was laid out in

parcels and sold. Cadmus bought about twenty parcels and gave a note in payment; an agreement, however, was made for the payment of the note by cut timber, and that the note should not be negotiable. The rule of evidence is, that contemporaneous evidence cannot be admitted to vary a written instrument. In this case the testimony was not admitted for the purpose of varying the terms of the contract; its only effect was to show that the lumber had been accepted in payment of the note, not to vary its terms. Judgment affirmed."

You may show by parol evidence that according to a contemporaneous agreement that a note sued upon was paid either by money or by services.

In *Buchanan v. Adams*, 49 N. J. L. 636; 10 Atl. 662, this court held that in defense of an action upon a promissory note, when it is between the parties to the note, and where the object is to show that the note has been satisfied, evidence is admissible to show that, contemporaneously with the making of the paper, it was agreed between the parties to it that MERCHANDISE SHOULD BE TAKEN IN SATISFACTION OF THE AMOUNT TO BECOME DUE, coupled with proof that the merchandise was delivered according to the agreement.

Chancellor MCGILL speaking for this Court said:

"This testimony (referring to the contemporaneous agreement) supplemented by proof that such agreement was executed, on the part of the defendants, by the delivery of more than sufficient lumber to pay the note,

was admitted for the purpose of showing that the lumber was in fact received in payment and satisfaction of the note, and not for the purpose of varying the terms of the written promise to pay."

This case seems to be of considerable weight and on all fours with the case *sub judice* and therefore should control the disposition of same.

To permit the operation of the parol evidence rule in the case *sub judice* would be allowing the plaintiff-appellee to become unjustly enriched; for he received services without paying any compensation therefor. Yet, there are a number of cases among which is the case of *Middleton v. Griffith*, 57 N. J. L. 442, which held that you may show by parol evidence that the note sued upon was paid either in money or by services. The court there said:

"Parol testimony is admissible to establish between the parties a contemporaneous agreement, as to the mode of payment which has been executed in satisfaction of a promissory note. Such an executed agreement then becomes payment of the note. And such an agreement does not alter or vary the contract."

"The only rule under which the evidence of a contemporaneous agreement is admissible, is that it must be such an agreement that when executed it works a performance or satisfaction of the contract and extinguishes its obligation."

It has been held in *Van Vliet v. Jones*, 20 N. J. L. 340, if there is no recital on the face of a bond and mortgage, showing that it was in-

tended merely as collateral security to a debt of the mortgagee, the creditor may prove that fact by parol.

This rule was entirely complied with by the execution of the services rendered by the defendant-appellant, Joffe, to the Chemical Corporation, plaintiff-appellee.

Conclusion.

In conclusion we respectfully submit that the Supreme Court should be reversed and that the trial Court should be affirmed for the reasons that the evidence of the oral agreement contemporaneous with the execution and delivery of the note sued upon was admissible inasmuch as the agreement had become executed resulting in extinguishment of the note by rendition of the services and so found by the trial Court.

Respectfully submitted,

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PRESS OF FREMONT PAYNE, INC., 80 WASHINGTON STREET, N. Y.

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New Jersey Court of Errors and Appeals

ALLIED TAR & CHEMICAL CORP.,
a corporation,

Plaintiff-Appellee,

vs.

ALEXANDER E. JOFFE,

Defendant-Appellant.

*On Appeal
from the
New Jersey
Supreme
Court.*

BRIEF OF THE PLAINTIFF-APPELLEE, ALLIED TAR & CHEMICAL CORPORATION.

State of Facts.

The facts are sufficiently set forth in the opinion of the Supreme Court. See page 23 of printed state of case herein.

ARGUMENT.

I refer your Honors, if you will, to the opinion of the Supreme Court, page 23 of the printed state of case herein, in order to understand clearly, the principles of law laid down in the opinion of the Supreme Court which is the subject matter of this appeal. The defendant on page 14 of his Brief filed herein says that:

“THE SUPREME COURT ERRED IN REVERSING THE DISTRICT COURT IN HOLDING THAT PAROL EVIDENCE COULD NOT BE RECEIVED BY THE TRIAL COURT TO SHOW THAT THE NOTE SUED UPON WAS PAID BY THE RENDITION OF SERVICES IN PURSUANCE OF AN ORAL COLLATERAL AGREEMENT MADE AND GIVEN AT THE TIME OF THE NOTE SUED UPON.”

I respectfully submit that that statement does not correctly state what the Supreme Court sitting as a reviewing tribunal determined. I submit to your Honors that it appears from the opinion of the Supreme Court that the Justices of that Court held that the acceptance of proof "that the note was not in fact what upon its face it appeared to be, namely a promise, to pay a sum certain, but was a mere receipt for moneys advanced by the plaintiff to the defendant for services to be performed by the latter."

"* * * was erroneous and contrary to the principle of *Naumberg v. Young*, 44 N. J. L. 331, which has been consistently followed by our Courts."

I refer your Honors to the following cases which uphold the doctrine that bills, notes and other instruments of a similar nature are not subject to be varied or contradicted by parol or extrinsic evidence. 22 *Corpus Juris*, 1089, 1091, Secs. 1443, 1445; 2 *Parsons on Notes & Bills*, 501; *Kean v. Davis*, 20 N. J. L., 425 (reversed on other grounds, 21 N. J. L. 683); *Wright v. Remington*, 41 N. J. L. 48, 43 N. J. L. 451; *Meyer v. Beardsley*, 30 N. J. L. 236; *Gerli v. National Mill Supply Co.*, 78 N. J. L. 1; 80 N. J. L. 464; *Middleton v. Griffith*, 57 N. J. L. 442; *Church v. National Newark*, 97 N. J. L. 237; *Beers v. Broad & Market Bank*, 102 N. J. L. 5; *Foley v. Emerald Brewing Co.*, 61 N. J. L. 428; *Stiles v. Vanderwater*, 48 N. J. L. 67.

Conclusion.

For the reasons above, it is respectfully submitted that the decision of the Supreme Court should be affirmed.

Respectfully submitted,

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Of Counsel.

