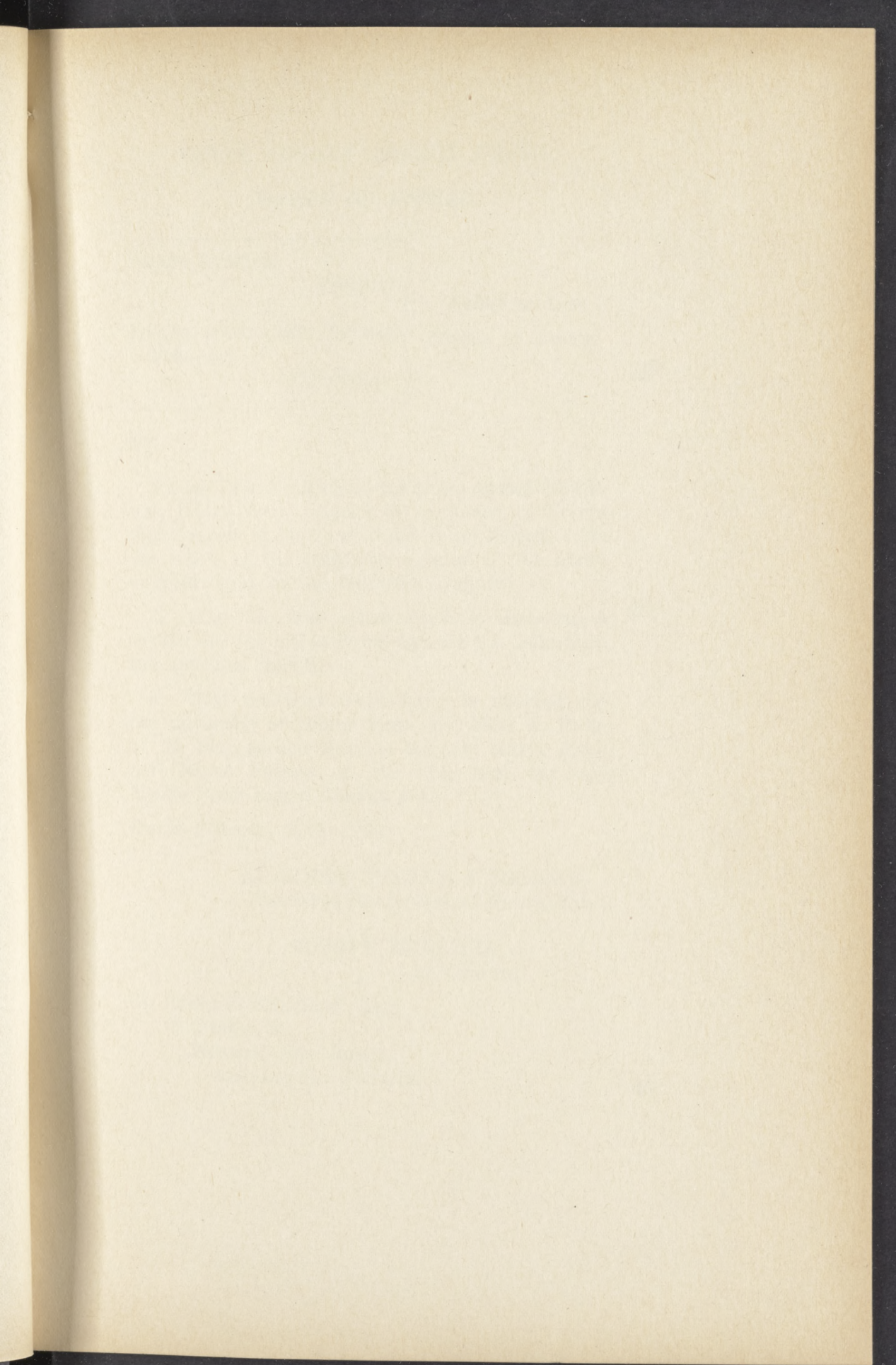
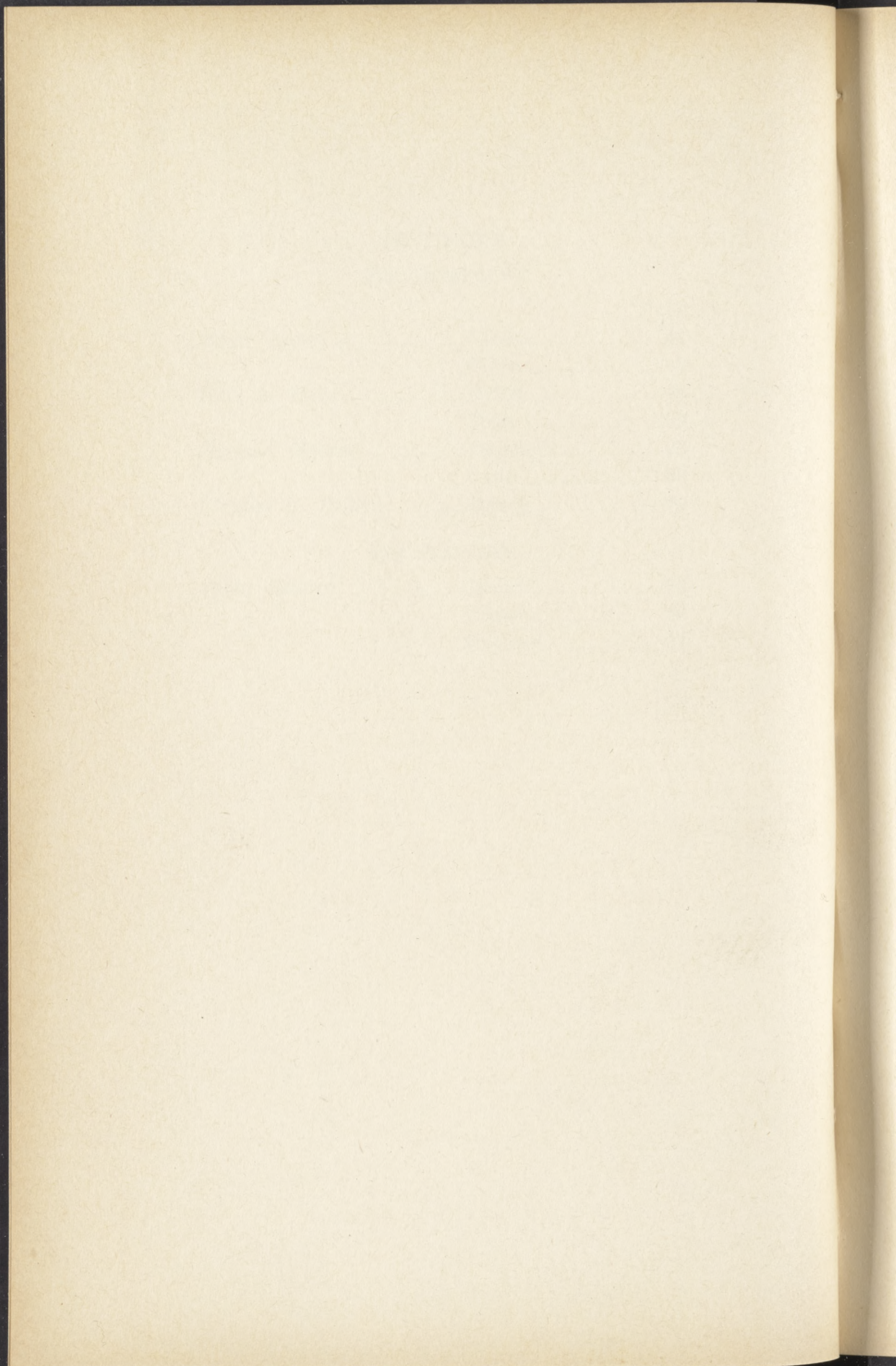


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ESSEX COUNTY CIRCUIT COURT.

NOTICE OF APPEAL.

ASHER MAURER,

Plaintiff,

vs.

HENRY HAHN AND HERMAN
POTOKER,

Defendants.

Action at Law
Notice of Appeal.

10

SIR:

Please Take Notice that the above named defendant, Henry Hahn, appeals to the Court of Errors and Appeals in the Last Resort in all Causes, from the whole of the judgment entered in the above entitled cause, on the following grounds:

1. That the trial court erred in directing a verdict for the plaintiff and against the defendant, the appellant herein.

20

2. That the trial court erred in striking out the testimony of Henry Hahn and Ellis A. Hahn of the conversation between the said Henry Hahn and Morez Potoker at the time that the said Henry Hahn signed Exhibit P-1.

Dated February 27th, 1930.

30

KRAEMER SIEGLER & SIEGLER,
Attorneys for Defendant Henry Hahn.

JOSEPH KRAEMER,
of Counsel.

To Philip J. Schotland, Esq.,
9 Clinton St.,
Newark, New Jersey,
Attorney for Plaintiff.

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SUMMONS.

The State of New Jersey to

Henry Hahn and Herman Potoker.

(SEAL)

You are Summoned to answer the annexed complaint of Asher Maurer in an action at Law in the Essex County Circuit Court. And take

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notice that unless you file your answer to said complaint with the Clerk of the said Essex County Circuit Court, at Newark, N. J. within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, Worrall F. Mountain, Esquire,
Judge of aforesaid Court, at
Newark, N. J. this 14th day of
May, nineteen hundred and
twenty-seven.

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JOHN H. SCOTT,
Clerk.

M. S. MAURER,
Attorney.

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COMPLAINT.

ESSEX COUNTY CIRCUIT COURT.

ASHER MAURER,

*Plaintiff,**vs.*

HENRY HAHN AND HERMAN

POTOKER,

Defendants.

Action at Law

COMPLAINT.

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The plaintiff, Asher Maurer, residing in the City of Newark, Essex County, New Jersey, respectfully shows that:

1. On November 5, 1926, Morez Potoker borrowed from the said Asher Maurer the sum of \$3,000.00 for a period of six months and gave as security therefor a note dated November 5, 1926 in the sum of \$3,000. payable in six months from date thereof at the Merchants & Manufacturers National Bank, Newark, N. J. a true copy of which note is hereto annexed as Schedule A.

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2. The said note was endorsed by Herman Potoker and Henry Hahn, defendants herein to the plaintiff as accommodation endorsers.

3. There was an arrangement that the said Morez Potoker was to pay \$500 on the fifth day of every month after November 5, 1926, until May 5, 1927 when the full amount shall have been paid off and to be evidenced by six checks one for each month, but not one of these checks was ever paid and the full amount of \$3,000. is still due and owing.

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4. Said note fell due on May 5, 1927, and was presented for payment at the Merchants Trust Company of Newark, New Jersey, formerly the Merchants & Manufacturers National Bank of

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Complaint.

Newark, N. J. but said note was protested on May 5, 1927 for non payment because the account had been closed and it appears that the said Morez Potoker had been adjudged a bankrupt heretofore and one Barnev Larkey had been appointed trustee. A true copy of the certificate of protest is annexed to the within complaint as Schedule B.

10

5. Notice of protest of said notes was duly mailed to Herman Potoker and Henry Hahn on May 5, 1927 at 6:00 P. M. and in addition notice of the protest was brought to the attention of Henry Hahn personally by Maurice S. Maurer for and in behalf of the plaintiff hereon on the morning of May 6, 1927 at 10:30 A. M. at the office of Henry Hahn, 9 Clinton Street, Newark, New Jersey and the said Henry Hahn admitted receipt of the notice of protest.

20

6. The said Morez Potoker also gave to the plaintiff herein as a pledge to secure the note a coal certificate for one share of stock in the New Jersey Coal Dealers Association. This certificate was offered by the Trustee in Bankruptcy for public sale and no bids could be obtained thereon as this certificate is valueless.

30

7. Said note and the checks are still the property of Asher Maurer, the plaintiff herein as well as the coal certificate which was given as a pledge to secure same and the full amount of \$3,000. with legal interest is still due and owing.

Wherefore, the plaintiff demands as damages from Henry Hahn and Herman Potoker the sum of Three Thousand Dollars (\$3,000.) with legal interest from November 5, 1926 and costs of suit.

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M. S. MAURER,
Attorney of Plaintiff.

SCHEDULE A.

Newark, N. J.

November 5, 1926.

\$3,000.

Six Months after date I promise to pay to the
 order of Asher Maurer, Three Thousand 00/00 10
 Dollars at Merchants & Manufacturers National
 Bank Value received with interest at — per cent,
 per annum.

No. Due May 5, 1927.

Morez Potoker

ENDORSERS:

Herman Potoker 20
 Henry Hahn
 A. Maurer

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PROTEST OF NOTE.

UNITED STATES OF AMERICA }
 STATE OF NEW JERSEY } ss.
 COUNTY OF ESSEX. }

10 On the 5th day of May, in the year of our
 Lord One Thousand Nine Hundred and Twenty-
 Seven at the request of the Merchants Trust Com-
 pany of Newark, I, Samuel P. Watson a Notary
 Public in and for the State of New Jersey, duly
 appointed commissioned and sworn, did present
 the original instrument, hereunto annexed, at
 Merchants Trust Co., Newark, N. J. to the book-
 keeper thereof and of him demanded payment who
 then and there refused to pay the same, saying
 20 account closed whereupon and before the hour
 of 6 P. M. on the said day I deposited in the post
 office at Newark, N. J. written notices of the dis-
 honor of the said instrument, addressed as fol-
 lows: with postage thereon prepaid.

Morez Potoker c/o Herman Potoker, 21 Joyce
 St., West Orange, N. J.

Herman Potoker, 21 Joyce St., West Orange,
 N. J.

30 Henry Hahn, 9 Clinton Street, Newark, N. J.
 A. Maurer, 21 William Street, Newark, N. J.

And because of the non payment of the said
 instrument as aforesaid, 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
 instrument as against all others whom it doth or
 may concern, for exchange, re exchange and all
 costs, charge, damages and interest already in-

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Protest of Note.

curred and to be hereafter incurred for want of payment of the said instrument.

Thus done and protested in the City of Newark, County of Essex and State of New Jersey, the day and year first above written.

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SAMUEL P. WATSON,
A Notary Public of New Jersey.

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ANSWER TO DEFENDANT HENRY HAHN.

ESSEX COUNTY CIRCUIT COURT.

10	ASHER MAURER, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;"><i>vs.</i></div> HENRY HAHN AND HERMAN POTOKER, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	} Action at Law Answer of Defendant Henry Hahn.
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The defendant, Henry Hahn, answering the complaint herein says:

- 20 1. He denies the allegations contained in paragraph No. 1 of the complaint, except as admitted by the first separate defense.
2. He denies the allegations contained in paragraph No. 2 of the complaint, except as admitted by the second separate defense.
- 30 3. He has no information with respect to the truth of the allegations contained in paragraph No. 3 of the complaint, and therefore neither affirms nor denies the same, and alleges that if an arrangement was made, as therein set forth, it was between the said plaintiff, and the said Morez Potoker.
4. He denies the allegations contained in paragraph No. 4 of the complaint, except as set forth in the second separate defense.
5. He admits the allegations contained in paragraph No. 5 of the complaint, but denies that the said notice was due and legal notice of the protest of the alleged note in question.

Answer of Defendant Henry Hahn.

6. He admits the allegations contained in paragraph No. 6 of the complaint.

7. He denies the allegations contained in paragraph No. 7 of the complaint.

FIRST SEPARATE DEFENSE.

10

1. On or about November 5th, 1926, this defendant signed a paper which the defendant, Morez Potoker, represented to be a guaranty for coal to be purchased by him in the course of his business as a wholesale coal dealer.

2. After this defendant had signed said paper in the form of a blank note, to be used as a guaranty for payment of coal to be purchased by said Morez Potoker, the said Morez Potoker unlawfully, and without the consent of this defendant, wrote in the writings and figures that appear in the copy annexed to the said complaint and marked "Schedule 'A'".

20

3. Said unlawful diversion and illegal alteration of said paper signed as aforesaid by this defendant, was with the knowledge of the plaintiff herein, and the said plaintiff is not a holder in due course and for a valuable consideration, but took said note with notice of the fact that the same had been diverted by the said Morez Potoker for a purpose other than the same was authorized, and that it was illegally altered, without the consent of this defendant.

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4. Said plaintiff, because of the notice of the said illegal diversion and illegal alteration of the said paper marked "Schedule 'A'" and because of his acquiescence therein, is not legally entitled to recovery on said paper.

40

Answer of Defendant Henry Hahn.

SECOND SEPARATE DEFENSE.

1. Said alleged note was payable in installments of five hundred (\$500.00) Dollars on the fifth day of every month after November 5th, 1926, until May 5th, 1927 when the full amount should have been paid off. Said payments were evidenced by six checks, one for each month, as set forth in paragraph No. 3 of the complaint. The first payment was due on December 5th, 1926, but said check was dishonored, and no notice given to this defendant of dishonor, for the non payment of said installment. The second payment was due on January 5th, 1927, but said check was dishonored, and no notice given to this defendant of dishonor for the non payment of said installment. The third payment was due on February 5th, 1927, but said check was dishonored and no notice given to this defendant of dishonor for the non payment of said installment. The fourth payment was due on March 5th, 1927, but said check was dishonored and no notice given to this defendant of dishonor for the non payment of said installment. The fifth payment was due on April 5th, 1927 but said check was dishonored, and no notice given to this defendant of dishonor for the non payment of said installment. The plaintiff is not entitled to recover for the installments of Five Hundred (\$500.00) Dollars each which fell due on December 5th, 1926, January 5th, 1927, February 5th, 1927, March 5th, 1927 and April 5th, 1927 respectively, for failure to give due notice of dishonor of said note to this defendant.

Answer of Defendant Henry Hahn.

THIRD SEPARATE DEFENSE.

1. The said plaintiff accepted said alleged note from the said Morez Potoker as security for the payment of a usurious loan, in that the said Morez Potoker paid the sum of Twelve Hundred (\$1,200.-00) Dollars as a premium for the making of said loan of Three thousand (\$3,000.00) Dollars by Asher Maurer, the plaintiff to him, the said Morez Potoker, and said plaintiff is therefore not a bona fide purchaser for value of said note and is therefore not entitled to recover, in any event, more than the true principal of said loan, without costs, as provided by an Act of the Legislature of the State of New Jersey, entitled "An Act Against Usury," Revision of 1877..

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KRAEMER & SIEGLER,

*Attorneys for Defendant
Henry Hahn.*

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NOTICE OF MOTION.

ESSEX COUNTY CIRCUIT COURT.

10	ASHER MAURER, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;"><i>vs.</i></div> HENRY HÄHN AND HERMAN POTOKER, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	} Action at Law Notice of Motion.
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TO—

Kraemer and Siegler, Attorneys of defendant, Henry Hahn, 164 Market Street, Newark, N. J.

20 TAKE NOTICE that on Saturday July 9, 1927, at 10:00 A. M. (D. S. T.) or as soon thereafter as counsel can be heard, I shall move before the Judge of the above court, at the Court House, Newark, New Jersey, to strike out the answer and separate defenses of the defendant, Henry Hahn, filed in the above matter and for entry of summary judgment on the following grounds:

1. The said answer is sham and frivolous and is filed for the purpose of delay.
2. The first separate defense is false.
- 30 3. The first separate defense does not constitute a legal defense.
4. The second separate defense is sham.
5. The second separate defense does not constitute a legal defense.
6. The third separate defense is sham.
7. The third separate defense does not set up a proper legal defense.

And the plaintiff shall rely on the affidavits hereto annexed.

40

M. S. MAURER,
Attorney of Plaintiff.

AFFIDAVIT.

ESSEX COUNTY CIRCUIT COURT.

 ASHER MAURER,

Plaintiff,
vs.

HENRY HAHN, et al,

Defendants.

Action at Law

Affidavit.

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 STATE OF NEW JERSEY ss.
 COUNTY OF ESSEX.

Asher Maurer of full age being duly sworn according to law on his oath deposes and says:

"I am the plaintiff in the above entitled matter. 20
 On or about the third day of November, 1926, my brother Herman Maurer, came to me and explained to me that one Morez Potoker needed money and had asked my brother to raise it for him somewhere. My brother further explained to me that he had had dealings with him before on notes which had been endorsed by one Henry Hahn, a lawyer, in this city, and a Herman Potoker, son of said Morez Potoker. He told me that the notes have always been honored and that he had never any trouble. He told me that he was making the request at the suggestion and for Morez Potoker and that he would get me a note endorsed by Henry Hahn and Herman Potoker and also six checks payable every month at \$500. and that I would get the \$90. interest immediately. 30

"This was agreeable to me and I gave a check of \$3,000. to my brother, Herman Maurer, which check was made payable to Morez Potoker, a true copy of said check being hereto annexed as sched- 40

Affidavit.

ule A. This check was out of the funds of New Jersey Lamp Works, Inc., of which I am president, and which is chargeable against my account as a loan.

10 "I never saw or met Morez Potoker or Henry Hahn or Herman Potoker. All my dealings were through Herman Maurer who represented to me that he represented Morez Potoker. The note which I received from Morez Potoker through Herman Maurer, does not say anything about installment-payments. And the note itself is not payable in installments as evidenced by the copy hereto annexed. The checks which I received are not endorsed by Henry Hahn or Herman Potoker and they are not a party at all to the said checks.

20 "Some time in December 1926 I was informed that Morez Potoker went into bankruptcy and I immediately turned over the note to my son, Maurice S. Maurer, for him to attend to same for me.

30 "The next time that I heard anything pertaining to the said note was the sixth of May, 1927, the day after the note became due. I received a telephone call from my son, Maurice S. Maurer and he advised that he was at the office of Henry Hahn and that he had notified Mr. Hahn of the protest of the note and Mr. Hahn offered to pay me \$500. in cash and to give me a mortgage on certain property for the balance of \$2,500. payable in three years and my son asked me whether this was agreeable to me and I told him that I would accept such settlement.. I thereafter learned that he refused to go through with the arrangement and I authorized my son to institute suit.

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Affidavit.

“Several days thereafter Henry Hahn sent a letter to my son arranging an appointment at the office of Joseph Kraemer on Thursday, May 12, 1927 at 4:00 P. M. After that appointment my son advised me that an offer had been made to pay my note by a settlement of 70% which I accepted and told my son to accept but I never heard thereafter and I ordered my son to proceed at once with the suit. 10

“As stated before, I never met any of the parties, had no other dealings with any of the parties, was not informed, at all at any time pertaining to relationship between Henry Hahn and Morez Potoker nor of the consideration he may have gotten, if he did, for his endorsement nor did Herman Maurer say anything to me pertaining to same. 20

Sworn and subscribed to
before me this 24th day of
June, 1927.

A. MAURER.

MACLYN S. GOLDMAN,
Notary Public of N. J.

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AFFIDAVIT.

ESSEX COUNTY CIRCUIT COURT.

10	ASHER MAURER, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> HENRY HAHN, et al, <div style="text-align: right;"><i>Defendants.</i></div>	}	Action at Law Affidavit.
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STATE OF NEW JERSEY ss.
 COUNTY OF ESSEX.

Herman Maurer, of full age, being duly sworn according to law, on his oath deposes and says, that:

20 "On or about the latter part of October, 1926, Morez Potoker came to me at my residence, No. 223 Renner Avenue, Newark, New Jersey, and asked me for an addition loan of \$3,000. I had given Mr. Potoker several loans of \$3,000. prior to that date on notes which were endorsed by his son, Herman Potoker and by his friend, Henry Hahn. Two of the notes have already been paid off and a third note I still hold and at that time had not yet matured.

30 "I advised Mr. Potoker that, though I was willing to loan him further amounts, I did not have any money at that time available. He inquired whether I could get any money for him anywhere. I promised Mr. Potoker I would try to get it for him from someone because of the business dealings that I have been having with Mr. Potoker for quite a long time pertaining to the purchase of coal. .

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Affidavit.

"I then approached my brother, Asher Maurer at his place of business 21 William Street, Newark, N. J. and explained to him my previous dealings with Mr. Potoker and that I had received as security for loans from him, notes which were endorsed by his son, Herman Potoker, and his friend, Henry Hahn and which notes had been honored upon presentment and I told him that Mr. Potoker would give him the same kind of a security.

10

"My brother then told me that he would want the same arrangement that is, a note similarly endorsed with checks for monthly payments.

"I told my brother that this was agreeable to Morez Potoker who I was representing and for whom I made the request and my brother then gave me a check for \$3,000. a true copy of which is hereto annexed as Schedule A.

20

"I took this check and turned it over to Morez Potoker at my house, 223 Renner Avenue, Newark, N. J. and received from him a note dated November 5, 1926 to the order of Asher Maurer for \$3,000. and endorsed by Herman Potoker and Henry Hahn.

"At that time only Mr. Morez Potoker and myself were present and the note was filled in in my presence by Morez Potoker and I noticed that the endorsements were already on the back of the note. The said note was filled in by said Morez Potoker and made to the order of Asher Maurer payable in six months at the Merchants & Manufacturers National Bank and at the same time he also made out and gave me six checks to the order of Asher Maurer for \$500., each check payable

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Affidavit.

10 one every month. The note however did not have any statement in it whatsoever pertaining to any installment payments. A true copy of the said note which he gave me is hereto annexed as Schedule B. I then gave him the check of \$3,000. of Asher Maurer and he gave me the note and checks, a certificate and \$90. cash for the interest that is due for the loan.

20 "At no time have I spoken to or ever seen Mr. Henry Hahn in this transaction or any other transaction that I personally ever had with Morez Potoker. At no time did Morez Potoker ever meet or deal with Asher Maurer in the present transaction because I, at the request of Morez Potoker approached my brother, obtained his check and turned same over to Morez Potoker and was the go between for Morez Potoker in this matter.

"At no time did Morez Potoker advise me what understanding or arrangement there may have been between him and Henry Hahn except that I knew that his endorsement was an accommodation endorsement so that Mr. Morez Potoker could get credit on that endorsement as had been done previously in dealing with me."

30 HERMAN MAURER.

Sworn and subscribed to
before me this 24th day
of June, 1927.

MACLYN S. GOLDMAN,
Notary Public of N. J.

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AFFIDAVIT.

ESSEX COUNTY CIRCUIT COURT.

ASHER MAURER,

*Plaintiff,**vs.*

HENRY HAHN, et al,

Defendants.

Action at Law

Affidavit.

10

STATE OF NEW JERSEY ss.
COUNTY OF ESSEX.

Maurice S. Maurer, of full age, being duly sworn according to law on his oath deposes and says, that:

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"I am the attorney of the plaintiff herein: some time in the latter part of December, 1926, the plaintiff, my father, turned over to me a note, a true copy of which is hereto annexed as Schedule B. which is dated November 5, 1926, to the order of Asher Maurer for \$3,000. payable in six months thereafter at the Merchants & Manufacturers National Bank and which note is endorsed by Herman Potoker and Henry Hahn; and my father then advised me that the said Moriz Potoker had been adjudged a bankrupt. On or about the sixth day of January, 1927 Henry Hahn called at my office, 207 Market Street, Newark, N. J. at my request pertaining to another extraneous matter which I had to take up with him and at that time I informed him of this note and of the fact that this note would come due on May 5, 1927 and would undoubtedly be protested because of the bankruptcy of Morez Potoker. Mr. Hahn admitted his endorsement and admitted that he had endorsed

30

40

Affidavit.

10 this note in blank together with other notes and in the same manner as other notes which he had endorsed in blank for the said Morez Potoker and told me that the endorsements were accommodation endorsements without consideration to help Morez Potoker who was an old friend of his and as Henry Hahn expressed it 'almost like a father to me' Mr. Hahn requested that I wait a while pertaining to the note due to Asher Maurer.

20 "On February 8, 1927, Henry Hahn called at my office again pertaining to that other matter and I once more called his attention to the Asher Maurer note and he prayed for further extension of time. On April 20, 1927, two weeks before the Asher Maurer note would mature, I sent a registered letter to Henry Hahn, a true copy of which letter is hereto annexed as Schedule C. together with a true copy of the return receipt, herein mentioned as Schedule D, in which letter I informed him that the note of Morez Potoker dated November 5, 1926, in the sum of \$3,000, to the order of Asher Maurer on the Merchants & Manufacturers National Bank will come due on May 5, 1927 at which time it will undoubtedly be protested for non payment because the said Morez Potoker is

30 bankrupt and I further advised him that the note was endorsed by him and I was giving him this notice so that he may arrange to settle same before it is protested for non payment and I also advised him that I give him this notice so that there will be no question of his having notice of the note or the due date thereof. I received the return receipt but did not hear from Henry Hahn at all.

Affidavit.

"The note came due on May 5, 1927 and I presented it to the Merchants & Manufacturers National Bank and asked them to take care of the payment or, in the case of non payment the protest of the said note and the mailing of the notices of protest and I gave to the bank the addresses of the endorsers the address of Henry Hahn being No. 9 Clinton Street, Union Building, Newark, N. J. I called at the Merchants Trust Company, formerly the Merchants & Manufacturers National Bank on May 6, 1927 at 10:00 A. M. I received from the bank the original certificate of protest, a true copy of which is hereto annexed as Schedule E, together with the note and was advised that a notice of protest had gone out to every endorser about 6:00 o'clock on May 5, 1927. From the bank, I immediately went to the office of Henry Hahn, at No. 9 Clinton Street, Newark, N. J. and after waiting about a half hour for Mr. Hahn to appear, I personally and orally told Mr. Henry Hahn at his office on that morning, to wit, May 6, 1927, about 10:30 A. M. that the note of Morez Potoker to the order of Asher Maurer for \$3,000. which came due on May 5, 1927, had been protested for non payment and I showed him the original certificate and particularly the clause therein which says that notice had been mailed to the said Henry Hahn and then the said Henry Hahn admitted to me that he had gotten that notice of protest and he looked for it on his desk, found it among his papers and then showed to me the notice which he had that morning received."

"We then discussed the matter and Henry Hahn told me that he did not want to "beat" anybody out of his money and proposed a settlement. I called up my father on the telephone in Henry

Affidavit.

Hahn's presence and told him of the offer of settlement which was \$500. to be paid in cash and \$2,500 by a mortgage for three years and my father accepted the offer. Mr. Hahn then requested that I give him until 1:45 P. M. of that day to draw up the papers and an appointment was made for the early afternoon. Some time during the morning, I was notified that the office of Henry Hahn had called up and left a message that Mr. Hahn could not keep the appointment. I called Henry Hahn on the 'phone and spoke to him and he advised me that he could not go through with the settlement and asked for two or three weeks time to induce his wife to sign the mortgage. I told him that I could not accept that ridiculous explanation and he would have to make some arrangement shortly. I then received a letter from him dated May 9, 1927 arranging, an appointment at the office of Joseph Kraemer, on Thursday May 12, 1927 at 4 P. M. Mr. Joseph Kraemer, Mr. Henry Hahn and myself were present at that appointment and Mr. Hahn advised me that there were about \$12,000 worth of notes outstanding against which he had endorsed for Mr. Morez Potoker and for that reason he made an offer of about 70% to me. I took this up with my father thereafter and my father accepted the offer. I called up the office of Kraemer & Siegler and spoke to Joseph Kraemer advising him that my father would accept the settlement: he then advised me that he will get in touch with Henry Hahn and then let me know, but I never heard from him..

"On May 6th, 1927, I sent to Henry Hahn a registered letter confirming all that had happened

Affidavit.

on that day and annexed as Schedule F is the said letter and the registry receipt thereof.

“The said Henry Hahn had due and legal notice of protest of the said note has admitted to me his endorsement and that there is due to Asher Maurer the sum of \$3,000. and the answer filed by the said Henry Hahn in the within matter is entirely sham and frivolous and was filed for purpose of obtaining a delay. 10

Sworn and subscribed to
before me this 24th day
of June, 1927.

MAURICE S. MAURER

MACLYN S. GOLDMAN, 20
Notary Public of N. J.

30

40

AFFIDAVIT.

ESSEX COUNTY CIRCUIT COURT.

10	ASHER MAURER, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;"><i>vs.</i></div> HENRY HAHN, et al, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	}	Action at Law Affidavit.
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STATE OF NEW JERSEY ss.
 COUNTY OF ESSEX.

Samuel P. Watson, of full age being duly sworn according to law on his oath and says:

20 On May 5, 1927 at the request of the Merchants Trust Company of Newark, this deponent, a Notary Public of New Jersey, presented the original note of Moses Potoker dated November 5, 1926, in the sum of \$3,000, payable in six months at the Merchants & Manufacturers National Bank to the order of Asher Maurer, a true copy of the original instrument being hereto annexed at the Merchants Trust Company of Newark, New Jersey, formerly the Merchants & Manufacturers National

30 Bank of Newark, N. J. to the bookkeeper thereof and demanded payment and he then and there refused to pay same saying that the account had been closed:

40 "This deponent thereupon on May 5, 1927, before 6:00 P. M. of that date, deposited in the Post Office at Newark, N. J. written notices of the dishonor of the said instrument addressed as follows with postage prepaid thereon: To Morez Potoker c/o Herman Potoker 21 Joyce Street, West

Affidavit.

Orange, N. J. to Herman Potoker 21 Joyce Street,
West Orange, N. J., to Henry Hahn, No. 9 Clinton
Street, Newark, N. J., to Asher Maurer, 21
William Street, Newark, N. J.

“Because of the non payment of the said note
this deponent, at the request of the Merchants
Trust Company, protested as well as against the
drawer and endorsers and against all others whom
it may concern, the non payment of the said note
and all costs, charges and interest already incurred
for want of payment of said note, the protest fees
thereof amounting to \$2.46.” 10

SAMUEL P. WATSON

Sworn and subscribed to
before me this 23rd day
of June, 1927. 20

MACLYN S. GOLDMAN,
Notary Public of N. J.

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EXHIBIT D-1.
SCHEDULE A.

No. 4662 Newark, N. J. Nov. 3, 1926

Pay to the order of Morris Potoker \$3,000.00

Three Thousand no/100.....Dollars

10 To the West Side Trust Company,
Newark, N. J.

New Jersey Lamp Works, Inc.
A. Maurer,
President

Endorsed: Morris Potoker.

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SCHEDULE B.

\$3,000. Newark, N. J. November 5, 1926

Six Months after date I promise to pay to the order of Asher Maurer Three Thousand 00/100 Dollars at Merchants & Manufacturers National Bank. Value received with interest at—per cent per annum.

10

No. Due May 5, 1927.

Morez Potoker

Endorsements: Herman Potoker, Henry Hahn, A. Maurer.

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SCHEDULE C.

April 20, 1927.

Mr. Henry Hahn,
9 Clinton St.,
Newark, N. J.

Dear Sir:

10 Take notice that a note made by Morez Potoker dated November 5, 1926 in the sum of \$3,000. to the order of Asher Maurer on the Merchants & Manufacturers National Bank will come due on May 5, 1927 at which time it will undoubtedly be protested for non payment because the said Morez Potoker is bankrupt. This note was endorsed by you and I give this notice so that you may arrange to settle same before it is protested for non payment. I give you this notice so that there will
20 be no question of your having notice of this note or the due date thereof.

Very truly yours,

MAURICE S.. MAURER.

MSM:TK.
Registered Mail.

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SCHEDULE D.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the fact of this card.

HENRY HAHN,
(Signature or name of addressee.) 10

ELLIS A, HAHN,
(Signature of addressee's agent.)

Date of Delivery 4-22-1927.

Registered Article No. 190850.

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SCHEDULE E.

UNITED STATES OF AMERICA
 STATE OF NEW JERSEY ss.
 COUNTY OF ESSEX.

10 On the 5th day of May in the year of our Lord,
 One Thousand Nine Hundred and Twenty-Seven,
 at the request of the Merchants Trust Company
 of Newark, I, Samuel P. Watson, a Notary Public
 in and for the State of New Jersey, duly appointed,
 commissioned and sworn did present the original
 instrument, hereunto annexed at Merchants Trust
 Co., Newark, N. J. to the bookkeeper thereof, and
 of him demanded payment, who then and there re-
 fused to pay the same, saying account closed where-
 upon and before the hour of 6 P. M. on the said
 day I deposited in the post office at Newark, N. J.
 20 written notices of the dishonor of the said instru-
 ment, addressed as follows: with postage thereon
 prepaid.

Morez Potoker, c/o Herman Potoker, 21 Joyce
 St., W. Orange, N. J.

Herman Potoker, 21 Joyce St., W. Orange, N. J.

Henry Hahn, 9 Clinton Street, Newark, N. J.

A. Maurer, 21 William Street, Newark, N. J.

30 And because of the non payment of the said
 instrument as aforesaid, I the said Notary at the
 request aforesaid, did Protest as well against the
 drawer and endorsers of the said instrument as
 against all others who it doth or may concern,
 for exchange, re-exchange and all costs, charges,
 damages and interest already incurred and to be
 hereafter incurred and to be hereafter incurred
 for want of payment of the said instrument.

Thus done and protested in the City of Newark,
 County of Essex and State of New Jersey, the day
 and year first above written.

40

SAMUEL P. WATSON,
A Notary Public of New Jersey.

SCHEDULE F.

May 6, 1927.

Mr. Henry Hahn,
9 Clinton St.,
Newark, N. J.

Dear Sir:

On Thursday May 5, 1927, the note of Morez Potoker to Asher Maurer for \$3,000. dated November 5, 1926 was due and was protested by the Merchants Trust Company for non payment and notice of protest was mailed to you by that day. 10

On Friday May 6, 1927, at 10:30 A. M. I called at your office and showed you the certified-of protest and the note and you then admitted to me that you had received the notice of protest and showed me the notice of protest which you had received in that matter that morning. We then discussed a settlement and it was arranged that you give a mortgage to Asher Maurer for a period of three years, to pay same which mortgage was to be for \$2,500 and the balance of \$500. shall be paid in cash. Thereafter on that day you advised me over the 'phone that you could not go through with that settlement and asked for two or three weeks time to induce your wife to sign a mortgage" as you stated. 20

This letter is to confirm the message which I gave you over the 'phone to the effect that I could not wait because of your failure to live up to your agreement and I am therefore instituting suit at once against you. 30

Very truly yours,

M. S. MAURER.

MSM:T.K.
Registered.

40

COPY OF REGISTERED RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the fact of this Card.

10

HENRY HAHN,
(Signature or name of addressee.)

F. SCHORR,
(Signature of addressee's name.)

Date of Delivery: May 7, 1927.

Registered Article
No. 1200998.

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ESSEX COUNTY CIRCUIT COURT.

ANSWERING AFFIDAVIT.

 ASHER MAURER,

Plaintiff,
vs.

 HENRY HAHN AND HERMAN
 POTOKER,

Defendants.

Action at Law

Answering
Affidavit.

10

 STATE OF NEW JERSEY ss.
 COUNTY OF ESSEX.

Henry Hahn, of full age, being duly sworn,
 according to law, upon his oath, deposes and
 says:

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I am the defendant in the above entitled cause.
 I have read the affidavits filed in behalf of the
 plaintiff for a summary judgment herein.

On or about November 1, 1926 Morez Potoker,
 a man with whom I had been acquainted and on
 friendly terms with for about twenty years and
 who was in the coal business told me he was in a
 position to buy some coal at reduced rates and to
 establish and maintain a good line of credit, if
 I would guarantee the payment of his coal pur-
 chases. He promised that out of the sales made by
 him he would pay off the bills so guaranteed by me
 and thus make it impossible for me to lose any
 money by reason of such guarantee.

30

I agreed to such guarantee and in accordance
 with said agreement, said Potoker gave me a form
 of blank note, which note I endorsed in blank to
 be used expressly as a guarantee of the coal to

40

Answering Affidavit.

be purchased by said Potoker and this is the note that plaintiff sues on excepting that the said Potoker filled the same in after its endorsement by me.

10 It was then understood and agreed between Potoker and myself that the note was only to be used for the purpose above stated. I did not authorize said Potoker to discount said note or to fill it in for the purpose of discounting it. The filling in of plaintiff's name and discounting there-
 20 of was without my consent and authorization and contrary to the agreement I had made with said Potoker when I endorsed the said note for the express purpose as aforesaid. The said Potoker filled in the blanks of said note, as now appears in the copy annexed to the complaint, all of which was done subsequent to my endorsement of the same for the express use and purpose, as aforesaid.

The arrangement for the payment of said note in six monthly installments of Five Hundred (\$500) Dollars each was also without my consent and contrary to the terms of the agreement I had made with said Potoker for the endorsement of the said note. I did not authorize the said Potoker to give these checks of Five Hundred (\$500) Dol-
 30 lars each to be applied to the payment of the said note, as alleged by plaintiff and the same was done without my knowledge. I received no notice of protest or dishonor of any of the six Five Hundred (\$500) Dollar checks, as given under said agreement on any of the alleged dates, the said checks were supposed to be due.

I admit attending certain conferences, the purpose of which was the attempt to arrive at a
 40 settlement, in order to avoid the embarrassment

Answering Affidavit.

and publicity of litigation: that I retained Kraemer & Siegler as counsel, to represent me at said conferences, which were attempts leading to settlement and for no other purpose which settlements failed to materialize.

HENRY HAHN. 10

Subscribed and sworn to
before me this 20th day of
July, 1927, at Newark, N. J.

RICHARD HARTSHORNE,
Master in Chancery of New Jersey.

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ORDER.

ESSEX COUNTY CIRCUIT COURT.

10	ASHER MAURER, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> HENRY HAHN AND HERMAN POTOKEK, <div style="text-align: right;"><i>Defendants.</i></div>	} Action at Law Order.
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20 Motion having been made by Maurice S. Maurer, attorney of plaintiff, Asher Maurer, upon due notice to Kraemer and Siegler, attorneys of the defendant, Henry Hahn, to strike out the answer filed in the above matter by the said Henry Hahn on the grounds that the said answer and separate defenses are sham and frivolous and improper in law and filed for the purpose of delay and for the entry of summary judgment and argument having been had in the matter, and it appearing to the Court that the said Answer and separate defenses are sham and frivolous and improper, it is thereupon, on this 26th day of July, nineteen hundred and twenty-seven,

30 ORDERED that the answer and separate defenses filed by the defendant, Henry Hahn, be and the same are hereby stricken out, and it is further

40 ORDERED that judgment final in favor of Asher Maurer against the defendant, Henry Hahn, be and the same is hereby entered in the sum of Three Thousand Dollars (\$3,000.) with protest fees in the sum of Two Dollars and Thirty-six Cents (\$2.36) and legal interest from May 5, 1927, in the sum of Thirty-Six Dollars (\$36.) making a total of Three Thousand Thirty-Two Dollars and

Order.

Thirty-Six Cents (\$3,032.36) together with costs of suit to be taxed.

Let this rule be entered in the minutes of the Court.

WM. A. SMITH, 10
Judge.

On motion of Maurice S. Maurer,
Attorney for plaintiff.

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ESSEX COUNTY CIRCUIT COURT.

NOTICE OF APPEAL.

10	ASHER MAURER, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> HENRY HAHN AND HERMAN POTOKER, <div style="text-align: right;"><i>Defendants.</i></div>	}	Action at Law Notice of Appeal.
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To Maurice S. Maurer, Esquire, Attorney for Plaintiff:

Sir:

20 Please Take Notice that Henry Hahn, one of the defendants in the above entitled cause, appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause on the following grounds:

1. Because the summary judgment herein illegally deprived this defendant of a trial by jury.
2. Because the Court erred in entering summary judgment for the amount of the full principal of the note, to wit, Three Thousand (\$3,000.00) Dollars and interest and protest fees, although said 30 note was payable in six monthly installments of Five Hundred (\$500.00) Dollars each, and there was default in the payment of each of the said installments, but no notice of dishonor of the said installments was given to this defendant the endorser of said note, except for the default in the last and sixth installment of Five hundred (\$500.) Dollars.

Respectfully yours,

40

KRAEMER & SIEGLER,
Attorney for Defendant Henry Hahn.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

10	ASHER MAURER, <i>Plaintiff Appellant,</i> <i>vs.</i> HENRY HAHN AND HERMAN POTOKER, <i>Defendants Respondents.</i>	}	Action at Law Notice of Appeal.
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To Messrs. Kraemer & Siegler, Attorneys for
 Defendant, Henry Hahn.

Gentlemen:

20 Please Take Notice that the plaintiff in the above
 entitled cause appeals to the Court of Errors and
 Appeals in the last resort in all causes in New
 Jersey, from the judgment of the Supreme Court
 entered in this cause ordering a trial on the fol-
 lowing ground.

1. That the Supreme Court erred in reversing
 the judgment of the Essex County Circuit Court,
 and ordering a trial.

Dated February 15, 1928.

30

Yours respectfully,

PHILIP J. SCHOTLAND,
Attorney for Plaintiff
Appellant.

ON VERDICT BY A JURY.

ESSEX COUNTY CIRCUIT COURT.

43172

ASHER MAURER, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div>	}	Action at Law On Verdict by a Jury	10
<div style="text-align: center; padding-bottom: 5px;"><i>vs.</i></div> HENRY HAHN, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>		Judgment Entered February 26, 1930. Damage ..\$3,481.96 Costs 108.62 <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> Total\$3,590.58	

Maurice S. Maurer, Attorney of Plaintiff.

This action was tried before Judge Nelson Y. Dungan, with a Jury at the Essex Circuit Court on February 26, 1930. 20

The cause having been heard and submitted to the Jury they return their verdict as follows:

They find in favor of the plaintiff Asher Maurer and against the defendant Henry Hahn for the sum of Three Thousand Four Hundred Eighty-One Dollars and Ninety-Six Cents (\$3,481.96) damage.

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of Three Thousand Four Hundred Eighty-One Dollars and Ninety-Six Cents (\$3,481.96) damage and costs which are taxed at One Hundred Eight Dollars and Sixty-Two Cents making in the whole the sum of Three Thousand Five Hundred Ninety Dollars and Fifty-Eight Cents. 30

Judgment Entered and Signed February 26, 1930.

WILLIAM S. GUMMERE,
Judge.

JOHN H. SCOTT,
Clerk. 40

CLERK'S CERTIFICATE.

STATE OF NEW JERSEY
 COUNTY OF ESSEX. ss.

I, JOHN H. SCOTT, Clerk of the County of Essex in the State of New Jersey,

10 DO HEREBY CERTIFY That the foregoing is a true and correct copy of all the pleadings in the Case of Asher Maurer, Plaintiff, vs. Henry Hahn, Defendant, together with a copy of the Judgment Record entered in Book 109 Circuit Court Judgment, page 540.

And the same is taken from and compared with Original Copies of all records together with a copy of the Judgment record and as the same now remains on the files of said Office.

20

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said County at Newark, N. J., this 13th day of March A. D., 1930.

(SEAL)

JOHN H. SCOTT,
Clerk.

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TESTIMONY.

ESSEX COUNTY CIRCUIT COURT.

Tuesday, February 25, 1930.

<p>ASHER MAURER,</p> <p style="text-align: center;"><i>vs.</i></p> <p>HENRY HAHN</p>	}	<p>Action at Law.</p>	10
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Before Hon. Nelson Y. Dungan, J., and
a jury.

For plaintiff appears Maurice S. Maurer
(by Philip J. Schotland).

For defendant appear Kraemer, Siegler & Siegler (by Joseph Kraemer). 20

(A jury is called and sworn.)

Mr. Schotland opens for plaintiff.

Mr. Kraemer opens for defendant.

MR. SCHOTLAND. The pleadings admit the indorsement and the protest and the non-payment; so I offer the note and certificate of protest in evidence. 30

THE COURT. They will be received.

(The same are received in evidence and marked Exhibits P-1 and P-2, same Schedule B, Schedule E accompanying affidavits for summary judgment, respectively.)

MR. SCHOTLAND. And we rest.

Adjourned until tomorrow, Wednesday,
February 26, 1930, at ten o'clock a. m. 40

Henry Hahn, Direct.

SECOND DAY.

Wednesday, February 26, 1930.

Met pursuant to adjournment.

10 Present, counsel as before stated.

HENRY HAHN, defendant, sworn in his own behalf.

DIRECT EXAMINATION by Mr. Kraemer.

Q Mr. Hahn, you are an attorney at law of this state?

A Yes, sir.

Q And you have lived here all your lifetime, have you not?

20 A Yes, sir.

Q I show you Exhibit P-1. That is your signature on the back of this (indicating)?

A Yes, sir.

Q "Henry Hahn?"

A Yes, sir.

Q Now, when you put your signature there what else appeared upon this paper?

A Nothing at all.

30 Q Tell us the circumstances under which you gave this paper with your signature on the back of it to Mr. Potoker.

MR. SCHOTLAND. I suppose that Mr. Hahn will be allowed to tell the circumstances under which he gave this paper to Potoker, the maker, provided he will connect it up with knowledge on the part of the plaintiff of those facts or of some facts to bring his right to introduce that evidence within the Negotiable Instruments Act.

40

Henry Hahn, Direct.

THE COURT. Of course, it will be entirely ineffective unless he does so. The testimony to that effect will be ineffective, as I have said, unless knowledge on the part of the plaintiff should appear.

MR. SCHOTLAND. I appreciate he cannot put his whole case in at once. 10

MR. KRAEMER.. I do not want my silence to be acquiescent, but I am proceeding under the fourteenth section of the Negotiable Instrument Act, which provides that where a note is diverted from its use and afterwards filled in, then the holder of the note can only recover if he shows that the note was filled in strictly according to the authority of the person who signed on it. 20

THE COURT. I suppose this is the important provision of section fourteen so far as this case is concerned (reading): "But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time." 30

MR. KRAEMER. In this case the payee received the note in incomplete form, took it.

MR. SCHOTLAND. No, I object to any such statement.

MR. KRAEMER. Well, that is our contention—perhaps I might state that. Our 40

Henry Hahn, Direct.

contention is that the payee, Maurer, obtained this note in its incomplete form.

THE COURT. Who was the payee?

10 MR. KRAEMER. Asher Maurer, the plaintiff—obtained this note in its incomplete form, and it was filled in at the time that he obtained the note from Morris Potoker.

THE COURT. Of course that all goes back subject to knowledge. It has been suggested—if he did, why, then he had knowledge of the situation.

20 MR. KRAEMER. Well, it is constructive knowledge under the act. I cannot say that he knows exactly what has occurred.

THE COURT. The evidence will be received subject to a motion to strike out if it is not shown to have been relevant.

Q (Question read.)

30 A In the latter part of 1926 Mr. Potoker, who was a client and a good friend of mine, came to my office. He wanted to get coal—he was in the coal business—and he said that it would be necessary for somebody to guarantee the account, and he asked me to put my name on the back of the note that he then had, and he would go to the coal company and get these little bills of coal that he was interested in buying, and he said he would sell this coal and collect the money, and the notes would be paid and that I would have no trouble about it. So, to oblige him and to guarantee the coal bill for him, I put my name on the back of these notes, put my signature on the back of the note, and Mr. Potoker left my office; but it was
40 distinctly understood between us—

Henry Hahn, Direct.

Q No, do not say what was distinctly understood. Say what was said between you.

A Mr. Potoker said, "I am going to use this with the coal company, or the people from whom I buy the coal, so that I can get the coal, and you will have no trouble whatsoever;" and that was the only reason why I put my name on the back of that paper. 10

Q Now, you spoke of notes. Is this P-1 that I show you one of the notes that you mentioned?

A Yes, sir.

Q Now, did you ever get any telephone call from Mr. Maurer, who is the plaintiff in this suit, with respect to this suit?

A I did. About a couple of months after I had put my name on the back of this note, which was entirely blank, Mr. Maurer called me up to his office. 20

Q You are speaking now of Mr. Maurer, the attorney?

A Maurice, Jr., of 207 Market street.

Q I am asking you if you received a call from Mr. Maurer, the plaintiff.

A Never. I never knew the man. Never saw him in my life.

Q Did anybody call your attention to the fact that this note had been discounted with Mr. Maurer? 30

A Never.

Q Before Mr. Maurer the attorney and the son of the plaintiff, called you on the telephone?

A I never heard that this note was discounted with anybody until I received a call, a couple of months after the note had been signed by me on the back, and then Mr. Maurer's son called me up on the telephone. 40

Henry Hahn, Cross.

Q Now, did you receive a call from anybody that the note had been discounted before you received the call from Mr. Maurer?

A Never.

CROSS EXAMINATION by Mr. Schotland.

10 Q Mr. Hahn, how long have you been practicing law?

A Since 1894.

Q Thirty-six years. And you put your signature on the back of a printed promissory note, this Exhibit P-1, in blank?

A Yes, sir.

Q Handed it to Mr. Potoker?

A Yes, sir.

20 Q Knowing that he was to fill out this paper and use it as a promissory note?

A No, it was a guarantee for coal. The coal company was to hold that for the payment of his bills.

Q This was a guarantee for coal?

A Yes, sir.

THE COURT. Is that note partly printed and partly written?

MR. KRAEMER. Yes.

30 MR. SCHOTLAND. Well, it is the regular printed promissory note, simply filling in—it is a printed form of a promissory note, simply filling in the maker and the payee and the date and when due and the amount; that is all.

Q Will you explain to the Court and jury how the indorsement of a promissory note in blank would act as a guarantee to pay for coal?

40 MR. KRAEMER. I do not think he

Henry Hahn, Cross.

ought to explain "how". Perhaps he can explain how he thought it would act as a guarantee. I object to the form of the question.

THE COURT. Well, Mr. Hahn is a lawyer of thirty-six years' standing, and he is the defendant in this suit, and I think that makes this question entirely proper. It may be that it involves a legal question and it might be improper as to that. 10

MR. KRAEMER. I merely object to the form of it.

MR. SCHOTLAND. If your Honor, please, even the element involving a legal question I submit becomes competent in this question, because of the fact that the defendant is a lawyer of so many years' standing, makes this claim, and because it is testimony in the absence of the defendant and tends to attack his credibility as to such a story being possible. 20

THE COURT. Well, as I understand Mr. Kraemer now, what he objects to is asking the defendant a legal question. Now, I suppose that technically his objection is all right as to the theory, but the defendant may certainly be asked the theory of the people who thought it was going to be his guarantee only. 30

MR. SCHOTLAND. That is the question.

THE COURT. I think it goes a little further than that.

(Question read.)

40

Henry Hahn, Cross.

THE COURT. You are asking him an abstract legal question.

MR. SCHOTLAND. I do not mean it in that sense.

10 THE COURT. When I first ruled that it was proper, I did not think you did, but as I now view the question, it is—

MR. SCHOTLAND. I will withdraw that question and reframe it.

Q Mr. Hahn, will you please explain your theory as to how endorsing a printed form of promissory note in blank would act as a guarantee for the payment of coal?

20 A Instead of writing a paper saying I will guarantee an amount of \$600 or \$1000 of coal that Potoker was to buy, I thought I would put my name on the back of the note, and he could leave that with the company from whom he would buy. At that time he did not know from whom he was going to buy.

BY THE COURT.

Q What did you think was going to be done with the note?

30 A He was to leave it with the company in payment of his merchandise

Q Then you thought it was to be filled out as a note?

A It was to be filled out to secure his account and for no other reason; not as a note.

Q Was it understood by you that it was to be filled out as a note, for whatever purpose it was to be used, was it to be filled out as a note?

40 A It was to be filled out simply to secure his purchase of coal.

Henry Hahn, Cross.

Q You are not answering my question. Was it to be filled out as a note? Did you understand that the note part of it was to be filled out?

A No, sir; it was not to be filled out as a note. It was simply some paper as security instead of a guarantee; it was filled out as security for the payment of his bill as it became due. 10

BY MR. SCHOTLAND.

Q Will you explain the theory upon which, if it was not to be filled out as a note, it would act as security?

A In case the bill was not paid, then I would have to pay that amount of money.

Q Pay what amount of money?

A Whatever that coal bill amounted to. 20

Q Well, how? Where was there anything to indicate, if this paper was not to be filled out as printed, that you would have to pay anything at all to anybody at all? Show it to me.

A There is nothing on the paper excepting that it was handed to Potoker with that instruction and with that understanding.

MR. SCHOTLAND. I ask that that answer be stricken out.

THE COURT. It will be stricken out. 30

THE WITNESS. I would not have signed it under any other circumstances.

Q Will you please answer the question, Mr. Hahn?

A There is nothing on the paper to indicate that.

Q And will you give us any theory on which this paper could act as security for coal if it were not filled out in the form in which it is printed? Have you any theory upon which it 40

Henry Hahn, Cross.

could act as security for the payment of coal?
 A Nothing at all excepting I might give you the same paper and you were to use it in settlement of a claim, and if it was not settled you would be embezzling the note if you used it for any other purpose.

10 Q How could this paper be used unless it was filled out as a promissory note, can you explain that? Have you any theory?

A Nothing except that it could be given to the coal company and they would hold it as security for their account, and if it was not paid then I would have to pay that.

Q On what theory, Mr. Hahn, would a blank piece of paper act as security?

20 A Mr. Potoker would sign it and my name would be on the back of it, and it would be the security for the merchandise purchased.

Q Potoker would sign what?

A Sign this paper that I signed there (indicating).

Q Well, where would he sign it?

A Sign it here (indicating).

Q And to whom would it be given?

A To the coal company..

Q Well, would their name be filled in then?

30 A As soon as he finds out from which coal company he was going to buy it.

Q Then he was to fill in the name?

A He was to fill in the name of the company.

Q And was the amount purchased to be filled in?

A Yes, it was to be filled in by him, because he did not know how much he was going to buy, \$600 or \$1000 or \$900.

40 Q And was the time when he was to pay for that purchase to be filled in?

Henry Hahn, Cross.

A No; it was a continuing guarantee. It would continue while he always paid his bill promptly. He was to buy the coal, sell the coal, collect the money and reduce the obligation.

Q Now, Mr. Hahn, was that to be filled in as a promissory note to the coal company or someone else or not? 10

A It was to be filled in as a note to the coal company as security for his claim.

Q Why did you then tell the Court in answer to the Court's question, that it was not to be filled in as a note?

A Well, as a note, with practically a guarantee for his account, as a continuing guarantee.

Q Now Mr. Hahn, you know that a guarantee to guarantee the account of another person has to be in writing, do you not? 20

A Yes, sir.

Q And do you know that a continuing guarantee has to be in a form which would indicate that it is a continuing guarantee? Will you answer so the stenographer can record it?

A Sometimes it is, but there are times that it is not. When you have somebody's paper or some kind of a security—I might have given him a certificate of stock or something of that sort and endorsed it in blank. 30

Q Do you mean that this was to be filled in as a promissory note and used as collateral security for the payment of coal purchases is that what you mean?

A It was to be given as a guarantee, the same as if I had given him one of my stock certificates with my name endorsed on it in blank, and if he did not pay his coal bill this could be used.

Q That would be delivering a negotiable in- 40

Henry Hahn, Cross.

strument, properly endorsed, which could be cashed, wouldn't it, the illustration you are using?

A But only by the person to whom it was delivered.

10 Q Is that so, a negotiable instrument, endorsed in blank?

A For that purpose.

MR. SCHOTLAND. I do not want to go into an examination of law with the witness. He is interjecting these illustrations which sort of force the question, and I do not want to do that.

20 Q Well, now let us get this thing clear, Mr. Hahn. Was or was not this blank printed form of note which you endorsed, to be filled out by Mr. Potoker as a promissory note, to be payable by you in the event that he failed to pay what it was to be used for?

A Yes, sir.

Q It was. All right. Now, your understanding was that he was to use this note in order to purchase coal?

A Yes, sir; but he betrayed me and used it for some other purpose.

30 Q Will you please stop volunteering after you have answered my question?

A All right.

Q That is how we got into the legal examination, through your volunteering, and I want to avoid that. And when he sold the coal he was to pay the note so as to save you harmless, isn't that so?

A Yes, sir.

Q You made an affidavit in this case, did you not?

40 A When?

Henry Hahn, Cross.

Q Well, at any time. It does not make any difference when. Did you or didn't you make any affidavit?

A I made an affidavit; yes, sir.

Q Now, this is not the only note you endorsed for him in blank, is it? 10

A No, there were others.

Q How many others?

A Probably four or five of them.

Q And did you endorse them all under the same circumstances?

A I did.

Q Mr. Herman Maurer had one of these notes, did he not?

MR. KRAEMER. That is objected to. the witness has testified that he has endorsed four others. I do not think it makes any difference who had the other notes. 20

MR. SCHOTLAND. I do not suppose that I should be compelled to disclose what I am driving at, but I can assure the Court that I am aiming at something which is perfectly competent and material in asking him about this one other particular note which he said he endorsed under the same circumstances for the same purpose. 30

THE COURT. The only possible competency I can see is that it would appear, from questions that have been asked, that he had a conversation over the telephone.

MR. SCHOTLAND. No, this is a different party. His conversation over the telephone was with Mr. Maurer, the attorney, that he testified to on direct. 40

Henry Hahn, Cross.

THE COURT. This is another Maurer?

10 MR. SCHOTLAND. Yes. There are three Maurers: There is Asher Maurer, the plaintiff; there is Herman Maurer, the one I am now asking about; and Maurice Maurer, the attorney.

THE COURT. I will sustain the objection.

MR. SCHOTLAND. If your Honor please, I will state the purpose of it, if necessary.

THE COURT. I know it, I think.

20 MR. SCHOTLAND. The witness has just testified that he endorsed four other notes under the same circumstances, for the same purpose. I am asking him about Herman Maurer's note, because Herman Maurer's note he said was made in the same way. Herman Maurer's note was not paid. Herman Maurer brought suit and no such defense was pleaded as is here interposed, that it was an endorsement to be used as a guarantee, and I want to ask
30 him then why he did not plead that defense at that time, if it was all done under these circumstances, attacking the assertion now made on this particular note that that was the arrangement.

THE COURT. An exception may be noted to the ruling of the Court, because I still feel it would be incompetent in this case.

40 MR. KRAEMER. May I ask you to instruct the jury to disregard the statement

Henry Hahn, Cross.

made by counsel with respect to the other suit?

THE COURT. Of course, that statement by counsel is not evidence, and unless that statement of counsel should appear in the case in some other way, that statement will be disregarded. 10

MR. SCHOTLAND. My exception is noted both to the instruction and the ruling.

Q Then you say that your purpose in endorsing this paper in blank was to enable Mr. Potoker to purchase coal and make profits, and out of the sale of the coal he was to pay the obligation and save you harmless on the note, is that right? 20

A Absolutely. He was to pay that note after, with his money that he collected. 20

Q Now, then, for the purpose of carrying out your arrangement with him, did it make any difference to you whether he gave the note to a coal company or he discounted the note and paid cash for the coal?

A It made every difference in the world.

Q What difference?

A With the coal company, they would see that the account was paid, and, if the account was not paid, then naturally my name on the back of that note would stand for the payment of it; but I had such integrity and such confidence in the integrity of Mr. Potoker—and I never dreamed that he was going to betray me—that I never dreamed he was going to do this thing to me. Within twenty years that I knew him he used to buy coal and pay for it right on the minute, and he was always rated as a rich man; he had just done it this way, then he betrayed me and he double-crossed me. 30 40

Ellis A. Hahn, Direct.

Q In what way did he betray you and double-cross you, as long as you are volunteering that?

A By taking this paper that I gave him to buy coal with and to use it as a guarantee for coal and putting it in the hands of somebody that I never dreamed of and never saw in my life.

10 Q Do you know whether or not he used the proceeds of this paper to buy coal?

A I did not know a thing about it until I found out two months afterward, I guess.

ELLIS A. HAHN, sworn in behalf of the defendant.

DIRECT EXAMINATION by Mr. Kraemer.

20 Q Mr. Hahn, you, too, are an attorney of the State of New Jersey?

A Yes, sir.

Q You are a son to Mr. Henry Hahn, the defendant?

A Yes, sir.

Q Were you present when Mr. Potoker obtained the signature of your father to this Exhibit P-1?

A Yes, sir; I was.

Q Did you hear any conversation between the parties?

30 A Yes, I did.

Q Will you please tell us what you heard?

MR. SCHOTLAND. Well, I object to that, if your Honor please. It is hearsay as to us and, before we take up the time for any corroboration, I think that the defendant should put in the evidence to bring knowledge to the plaintiff.

40 THE COURT. The evidence will be received. An exception will be noted.

Ellis A. Hahn, Cross.

MR. SCHOTLAND. No, I do not want an exception. That is a discretionary matter for the Court.

Q (Question read.)

A Mr. Potoker had come into the office in response to a letter which I had sent to him.

Q Will you tell me what conversation you overheard? You are a lawyer; why don't you answer this question? 10

A Mr. Potoker said, "Mr. Henry Hahn, will you guarantee a coal account for me?" and Mr. Henry Hahn, after some persuasion said, "All right."

Q That is the conversation you overheard?

A That is the conversation I heard.

CROSS EXAMINATION by Mr. Schotland. 20

Q When?

A November 3, 1926.

Q That is all that took place?

A Some other matters took place in the office that day with Mr. Potoker.

Q I say, that is all that there was of the conversation between your father and Potoker?

A There was more than what I have stated, but it took quite some time until Mr. Potoker explained just how he wanted it for coal. 30

Q Tell us the whole of the conversation that you heard.

A Mr. Potoker saw me; then he went into my father's office, which is adjoining mine.

THE COURT. Won't you tell us what you heard?

THE WITNESS. Yes, your Honor.

A (continuing) And he went into my father's office and he said, "Mr. Hahn, will you guarantee 40

Ellis A. Hahn, Cross.

10 a coal account for me?" so my father said, "I don't know why I should do this." So then Mr. Potoker said, "Well, you know me for quite sometime and my business warrants my buying coal at this time. This company desires a guarantor." My father at first did not want to do it and finally, after a little persuasion on the part of Potoker, he signed his name on the back of this paper (indicating).

Q You said that was on November 3rd?

A November the 3rd.

Q How many such papers did he sign?

A One that day.

Q Had he ever, to your knowledge, guaranteed before that?

MR. KRAEMER. I object to that.

20 THE COURT. Objection sustained.

30 MR. SCHOTLAND. If your Honor please, the direct testimony of this witness is. His father was asked, "Will you guarantee a coal account for me?" and he said, "I don't know why I should do this," and he afterward was persuaded and he said, "Yes." I believe that is proper cross examination, asking this witness if he had any knowledge of whether his father had guaranteed any such accounts previously.

THE COURT. An exception may be noted.

Q Were you practicing law at the time of this conversation?

A Yes, sir.

Q And were you in the room with your father and Mr. Potoker?

A Well, I was at the door.

40 Q Standing there?

Ellis A. Hahn, Cross.

A Just standing there; that is all.

Q Did you take any part in the conversation?

A No, I took no part, because it was no affair of mine.

Q Did you see the note?

A I saw a note that he signed that day. 10

Q Well, do you know whether this note P-1 is the note (handing witness document)?

A (examining) I would say yes.

Q You would. And you are sure that that is the note he signed on November 3rd?

A Yes, I am sure.

Q Do you remember what day of the week it was?

A It was on a Wednesday, the day after Election.

Q You are positive of that? 20

A Yes, sir.

Q I call your attention to the fact that your father in his affidavit says that he signed this particular note on November 1st. That was Monday, the day before election, was it not?

Objected to.

Q Well, will that refresh your recollection as to whether you saw your father sign this note and heard this conversation on Wednesday, November 3rd? 30

MR. KRAEMER. I object.

THE COURT. The question may be answered.

A I am positive that it was on Wednesday, because I had written Mr. Potoker a letter on Tuesday to come down and see me..

Q All right. The particular note which was signed by an arrangement between your father and Mr. Potoker that your father was to guarantee, 40

Herman Maurer, Direct.

and that you saw him sign in blank—that you are positive took place on Wednesday, November 3rd?

A Yes, sir.

HERMAN MAURER, sworn in behalf of defendant.

10 *DIRECT EXAMINATION* by Mr. Kraemer.

Q Mr. Maurer, you are a brother of Asher Maurer, who is the plaintiff in this suit, are you not?

A Yes, sir.

Q Are you connected with the New Jersey Lamp Works, Inc.?

A Not now, I used to.

Q Were you connected on November 3, 1926?

20 A No, sir.

Q You were not connected?

A No.

Q On November 3, 1926, you had this check of the New Jersey Lamp Works for \$3000 made to the order of Morris Potoker?

A Yes, sir.

Q Is that right?

A Yes.

Q And you gave that to Morris Potoker?

30 A I did.

MR. SCHOTLAND. The check examined on, called for from the possession of the plaintiff and examined on, I insist be marked in evidence.

THE COURT. That was called for from the plaintiff?

M. SCHOTLAND. Yes.

40 THE COURT. It will be marked.

Herman Maurer, Direct.

(The same is received in evidence and marked Exhibit D-1.) Check.

Q On that day you received from Mr. Potoker this Exhibit P-1, is that right?

A Yes.

Q What was on the paper when you received it? 10

A It was the note, made out, with the exception, the name, to Asher Maurer.

Q You mean that the "six months" was made out?

A Everything was made out with the exception to Asher Maurer.

Q You have made an affidavit in this suit, have you not?

A Yes. 20

MR. SCHOTLAND. I do not know what the purpose of this is, but he is the defendant's witness.

Q This is your affidavit (handing witness document)?

A (Examining) Yes.

Q Signed on the 24th day of June, 1927?

A Yes, sir.

Q I call your attention to this part of your affidavit— 30

MR. SCHOTLAND. I object. You cannot cross examine your own witness.

THE COURT. I suppose it is to neutralize the testimony if counsel says he is surprised by his testimony.

MR. SCHOTLAND. I will withdraw my objection.

Q (Reading) "I took this check and turned it over to Morez Potoker at my house, No. 223 Ren- 40

Herman Maurer, Direct.

ner avenue, Newark, N. J., and received from him a note dated November 5, 1926 to the order of Asher Maurer for \$3000 and endorsed by Herman Potoker and Henry Hahn. At that time only Mr. Morez Potoker and myself were present and the note was filled in in my presence by Morez Potoker and myself were present and the note was filled in in my presence by Morez Potoker and I noticed that the endorsements were already on the back of the note. The said note was filled in by said Morez Potoker and made to the order of Asher Maurer payable in six months at the Merchants & Manufacturers National Bank and at the same time he also made out and gave me six checks to the order of Asher Maurer for \$500, each check payable one every month. The note, however, did not have any statement in it whatsoever pertaining to any installment payments. A true copy of the said note which he gave me is hereto annexed as Schedule B. I then gave him the check of \$3000 of Asher Maurer and he gave me the note and checks, a certificate and \$90 in cash for the interest that is due for the loan."

Q When you made that statement was your mind clearer as to the facts than it is now?

A Yes, sir.

MR. SHOTLAND. I object. There isn't anything different in that statement than what he was permitted to testify as far as he had been questioned part way, and there is nothing to justify the cross examination of his own witness with a question of that kind.

THE COURT. Yes. I do not know the reason why you should cross examine your

Herman Maurer, Direct.

witness, but I think that is susceptible of explanation, Mr. Schotland.

MR. SCHOTLAND. He stopped the witness when he asked him, "Was the note filled in?" and when the witness said, "All except the name of Asher Maurer." Then he reads his affidavit where he says that Potoker filled in the name of Asher Maurer in his presence. . 10

MR. KRAEMER. No.

THE COURT. Just read that part of the affidavit again.

MR. KRAEMER. (Reading) "At that time only Mr. Morez Potoker and myself were present, and the note was filled in in my presence by Morez Potoker, and I noticed that the endorsements were already on the back of the note. The said note was filled in by said Morez Potoker and made to the order of Asher Maurer payable in six months at the Merchants and Manufacturers National Bank and at the same time he also made out and gave me six checks to the order of Asher Maurer for \$500—" 20

THE COURT. Just what do you mean by that? 30

THE WITNESS. Only filled in was the name "Asher Maurer." The note was endorsed, made out and everything.

THE COURT. Was the "six months" in?

THE WITNESS. Yes. He did not know who would handle that note. Many times 40

Herman Maurer, Direct.

he went around with notes made out and did not know who would give him the money.

10 MR. KRAEMER. Then I repeat the question, if your Honor please, if his memory was better as to the facts at the time he made out the affidavit.

THE COURT. The question may be answered, although I cannot see anything inconsistent in the affidavit and his testimony given here. I do not understand the affidavit to state that at that time the "six months" was filled in.

20 MR. SCHOTLAND. It depends on where you put the comma as you read it.

MR. KRAEMER. There is no comma here.

MR. SCHOTLAND. No.

MR. KRAEMER. Perhaps I should give it to your Honor and let you read it. I may be mistaken (handing document to the Court).

30 THE COURT. I suppose it may be understood either way. (Reading) "The said note was filled in by the said Morris Potoker and made to the order of Asher Maurer payable in six months at the Merchants and Manufacturers National Bank." Of course, if it were "and was" in there it would make an entirely different change in the appearance and would then read, "The said note was filled in by the said Morris Potoker and made to the order of Asher Maurer 'and was' payable in six months at

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Herman Maurer, Direct.

the Merchants and Manufacturers National Bank." That would change the sense of it somewhat, perhaps, but I think it is susceptible of explanation, just as I have said. It may be construed as meaning that he at that time filled in the "six months" and he filled out "the Merchants and Manufacturers National Bank," but that I think is susceptible of explanation. 10

MR. KRAEMER. Well, that is a matter of argument. I personally think that when he said "made payable," not "payable to" but "made payable," it was "made payable" at that time.

THE COURT. That is your construction of it. 20

MR. KRAEMER. I do not think I am farfetched either in that.

THE COURT. The question may be answered.

MR. SCHOTLAND. What is the question?

THE COURT. Whether his memory was any better at that time than it is now. 30

Q Was your mind clearer about the facts of the case, the details of the case, when you made this affidavit than it is now?

A The same way.

Q Just the same right now as it was then?

A Yes.

MR. KRAEMER. I do not know whether this is an exhibit in the case or not without being formally offered. 40

Herman Maurer, Cross.

THE COURT. It may be so, if it is not.

MR. KRAEMER. Then I offer it in evidence. It is already a part of the court records in this case so it need not be marked.

10 (Documents considered marked Exhibit D-2.)

CROSS EXAMINATION by Mr. Schotland.

Q Mr. Maurer, when Mr. Potoker finally gave you this note, Exhibit P-1, in what condition was it?

A That my brother would give him three—

Q No, in what condition was this piece of paper when he gave it to you?

20 A A note.

Q How was it, compared to the way it looks now?

A The same way, with the exception that this name was not on, "Asher Maurer."

Q Well, when was that name put on?

A That night when I gave him the check.

Q That is what I am trying to find out.

A And made up the note.

Q Did you ever see this note before you gave Mr. Potoker the check?

30 A Yes, I did.

Q Oh, then when you say that at that time the name "Asher Maurer" was not in it, is that when you mean the name was not in it?

A Yes.

Q Well, now, when you gave Mr. Potoker the check and he gave you the note, was the name "Asher Maurer" in it then?

A No, he put it on.

40 Q Well, did he put it on after he gave it to you or before he gave it to you?

Herman Maurer, Cross.

A Before he gave it to me.

Q He put it on, that is, he filled in the name "Asher Maurer"?

A Yes, sir.

Q Then he gave you the note?

A Yes, sir. 10

Q And took the check?

A And took the check.

Q Now, then, who was there at the time?

A Nobody; only him and I.

Q Was that the only transaction you had with Mr. Potoker that way?

A No, I had a few other transactions. I bought coal of his and I lent him money at times.

Q I mean on notes of this kind, with Henry Hahn's endorsement.

A Yes; I had about three times. 20

Q Three times?

A Yes.

Q The same way?

A The same way.

Q Were they always done the same way?

A The same way.

MR. KRAEMER. I object; that is not cross examination.

THE COURT. The answer may remain. 30

Q At whose request did you procure this check from your brother for this note?

MR. KRAEMER. I object to that on the ground that it is not proper cross examination.

THE COURT. The question may be answered.

A Mr. Morris Potoker.

Q Did you tell your brother anything about 40

William B. Reilly, Direct.

Mr. Potoker having filled in the note with his name at the same time that you had given him the check?

A No, I did not.

10 Q Did you tell your brother anything at all about it, I mean as to the way the note was filled out?

A No. I brought the note down to him and I gave it to him.

Q When you gave your brother this note, Exhibit P-1, was it in the same condition or was it in some other condition than what it is now?

A It was in the same condition, the way it is now.

20 WILLIAM B. REILLY, sworn in behalf of defendant.

DIRECT EXAMINATION by Mr. Kraemer.

Q Mr. Reilly, you are a Deputy Clerk of the United States District Court?

A Yes, sir.

Q And have you in your possession the file of the bankruptcy proceedings of Morris Potoker?

A I have.

30 Q Will you please give me the order for the sale of the coal certificate?

A The order confirming the sale?

Q Yes.

A (Witness produces documents.)

Q Let me see that—"Order of Sale." I show you a Trustee—

MR. SHOTLAND. I object to this whole thing on the ground that it is immaterial. I do not see why we should load up this record with that.

40

William B. Reilly, Direct.

THE COURT. I do not know what it is, Mr. Schotland.

MR. SCHOTLAND. Suppose we assume, for the sake of argument—

THE COURT. Cannot you let Mr. KRAEMER go ahead and develop his case and, if any question is asked which you think is improper, you can object. 10

MR. SCHOTLAND. This particular phase of it, I know what he is aiming at.

THE COURT. I do not.

MR. SCHOTLAND. That is what he asked yesterday, for leave to amend his answer and include. It refers to a certificate of membership in the Coal Exchange, —I think that is the name of it—Newark, which he says was given as collateral security for the payment of this note, and he wants to set off some value of that collateral security. I submit that, as a matter of materiality, even if it has some value, you are not prepared to go to the collateral until you exhaust the principal security. That is why I say it is immaterial. 20 30

MR. KRAEMER. There has been a sale, your Honor.

THE COURT. You may proceed, Mr. Kraemer.

Q I show you the trustee's petition for the sale of certificate of stock, order of sale of certificate of stock, and order confirming sale of certificate of stock, and the order to show cause why the trustee 40

William B. Reilly, Direct.

should not sell the certificate of stock. Are these original papers taken from the files?

A They are.

10 MR. KRAEMER. I offer them in evidence, if your Honor please. I might state the purpose, if you think it is necessary.

THE COURT. I certainly do.

MR. KRAEMER. In the complaint in this case it sets out that the loan was secured by a pledge of a coal certificate.

20 Now, this coal certificate—I am referring to the sixth paragraph of the complaint (reading): “The said Morris Potoker also gave to the plaintiff herein, as a pledge to secure the note, a coal certificate for one share of stock in the New Jersey Coal Dealers Association. The certificate was offered by the Trustee in Bankruptcy for public sale, and no bids could be obtained thereon, as this certificate is valueless.” Now we propose to show that the certificate of stock was offered by the Trustee in Bankruptcy and was sold and bought in
30 by the plaintiff in this suit for \$5, subject to the claim against the certificate of stock, and to that extent I think it is perfectly material.

MR. SCHOTLAND. I do not want to take up any time to argue that. It is irrelevant, incompetent and immaterial.

THE COURT. The papers offered will be admitted in evidence.

40 (The papers referred to are received in evidence and marked Exhibit D-3.)

William B. Reilly, Direct.

MR. KRAEMER. If your Honor please, I would like to read the order confirming the sale of the certificate of stock and leave the rest of it go to the jury. (Reading): "In the Matter of Morris Potoker Bankrupt"———

10

MR. SCHOTLAND. If your Honor please, under your Honor's ruling, I thought the order was simply to show that there had been a sale. I see no reason to bring all this story of outside matters into evidence here.

MR. KRAEMER. If you will permit, I will read that part of the order then. I will save myself a long recital.

20

MR. SCHOTLAND. The order is confirming a sale for \$5.

MR. KRAEMER. I will read only the order then to the jury.

(Exhibit D-3 read to the jury.)

We rest, if your Honor please.

MR. SCHOTLAND. If your Honor please, I move for a direction of a verdict for the plaintiff. First, I move to strike out the testimony as to the arrangement between Mr. Hahn and Mr. Potoker under the reservation when that testimony was introduced, on the ground that there has been no testimony connecting knowledge of any such arrangement or of any incompleteness of the note with the plaintiff in this cause. The furthest that the testimony has gone is that the agent of the maker, Herman Maurer, acting for the maker, getting

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William B. Reilly, Direct.

10 somebody to discount the note for him, saw Morris Potoker complete the note at the time when he turned over the consideration to Potoker for him, but he was the agent of Potoker, acting for Potoker, had procured the purchase of the note by his brother on behalf of Potoker, and——

THE COURT. Can you refer me to the section of the Negotiable Instrument Act which provides for the presumptions which arise from possession of a note which is in due form?

MR. SCHOTLAND. Section 59.

20 MR. KRAEMER. May I refer your Honor to Section 52?

(Mr. Schotland reads Section 52, paragraphs 1, 2, 3 and 4.)

MR. SCHOTLAND. And, of course, Section 14 is presumptive that it is filled in as directed. And Section 59 is one of the sections to be considered.

THE COURT. What do you think that means as applying to this case?

30 MR. SCHOTLAND. I do not think that applies to this case at all, because here——

THE COURT. The plaintiff does not appear at all testifying in the case.

40 MR. SCHOTLAND. Well, that would depend upon your Honor's ruling on this motion to strike out that testimony. The presumption is, and the proof, so far as the case goes, is that he received a note,

William B. Reilly, Direct.

complete on its face, for which he gave a check for \$3000.

THE COURT. I thought that was the check of the company.

MR. SCHOTLAND. No, that is the plaintiff's check. 10

THE COURT. The plaintiff's check?

MR. SCHOTLAND. Yes.

THE COURT. his company was the New Jersey Lamp Works.

MR. SCHOTLAND. Yes, that is his company; he is the whole corporation. That is his corporation. That is what he gave for it; that is his check. 20

THE COURT. You say so, but what is the proof?

MR. SCHOTLAND. That is the proof the defendant put in. The defendant proved, when he called Herman Maurer as the witness, that he had procured this check and it was offered in evidence.

THE COURT. Of the New Jersey Lamp Works. 30

MR. SCHOTLAND. From his brother; he did not mention the New Jersey Lamp Works.

THE COURT. He certainly did.

MR. SCHOTLAND. Well, then, before making this motion, with your Honor's permission, may I withdraw making this motion until I put Mr. Asher Maurer, the plaintiff, on the stand? 40

Asher Maurer, Direct.

THE COURT. You may.

ASHER MAURER, plaintiff, sworn in his own behalf.

DIRECT EXAMINATION by Mr. Schotland.

10 Q Mr. Maurer, you are the plaintiff in this case?

A Yes, sir.

Q And you are the holder of this note, Exhibit P-1?

A Yes, sir.

Q I show you Exhibit D-1, check in the sum of \$3000, drawn by you, as president, on behalf of the New Jersey Lamp Works.

A Yes, sir.

20 Q Whose money does this check represent?

A Well, the check represents the New Jersey Lamp Works, but I am president, but I was charged with that money; that I gave for my personal business when I made this loan.

Q This money was charged to you, is that what you mean?

A Yes, this check was charged to my account in the company, and I loaned that of the company when I made this business.

30 Q When you purchased this note?

A Yes.

Q Now, when you received this note, Exhibit P-1, for the check, Exhibit D-1, in what condition was it—I mean the paper itself?

A The same condition it is now.

Q Did you know or were you told by anyone that this note had been endorsed in blank and was afterwards filled in?

40 A No, sir. My brother brought that note to me and six checks and a certificate of coal. I gave

Asher Maurer, Direct.

him the check and I took these papers and I put them right in the safe. The only time I looked at it was when the first check came back from the bank that he did not have no money there.

Q None of the checks were paid?

A No, sir.

Q And this coal certificate, was that worth anything?

10

MR. KRAEMER. I object to that.

A It was cancelled two years—

MR. SCHOTLAND. Just a moment.

THE COURT. What is the objection?

MR. KRAEMER. His opinion. He is not qualified as an expert as to the value of a certificate.

20

THE COURT. Well, he seems to be the owner of it, and our Courts seem to have gone a long ways in stating that the owner of an article is competent to testify to its value. Now, why isn't he equally competent?

MR. KRAEMER. I do not like to differ with your Honor, but I think that that applies to an article bought in the open market; the owner may testify as to value.

30

THE COURT. I will overrule the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Is it worth anything? Answer the question yes or no.

A No.

Q Did you try to ascertain from the company

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Asher Maurer, Direct.

by whom it was issued as to what it was worth?

A Yes, sir; I called up the company.

MR. KRAEMER. I object to that.

Q Wait a minute. Was this certificate in force when it was assigned to you?

10 Objected to.

Objection sustained.

Q Well, have you tried to cash it in with the company?

A It was cancelled by that company.

Q Did you try to cash it in with that company?

A I called them up and they told me it is cancelled.

20

MR. KRAEMER. I ask that that be stricken out.

THE COURT. It will be stricken out.

MR. SCHOTLAND. Is Mr. Broadvent here? The secretary of the association in charge of the books was here yesterday, under subpoena on the part of the defendants.

30

MR. KRAEMER. Under my subpoena? That is a mistake. That is not the fact. He was not here with my knowledge. I think it is the gentleman of the United States District Court that you have in mind.

MR. SCHOTLAND. No, I know Mr.

Reilly. I know Mr. Broadvent too.

Q Are you ready to deliver up this certificate to Mr. Hahn if he pays the note?

A Yes, sir; positive.

40

Asher Maurer, Cross.

MR. SCHOTLAND. All right. I will offer it in evidence for what it is worth. (Certificate is received in evidence and marked Exhibit P-2.)

CROSS EXAMINATION by Mr. Kraemer.

Q Did you say that these papers, consisting of the note, the five checks and the certificate, were delivered to you by your brother and then you gave him the check? 10

A It was delivered to me and then I gave him the check—no, sir, I gave him the check and then he brought me the papers.

Q You gave your brother the check first?

A Yes, sir.

Q Then he went to see Mr. Potoker and he came back with these papers, is that right? 20

A Yes, sir.

Q Now, when you gave your brother the check for \$3000 it was already made out to Morris Potoker, was it not?

A When he came for it, when I gave it to him I made it out to Morris Potoker.

Q Then you gave this check to your brother for \$3000 to make a loan to Morris Potoker, is that right? 30

A Yes.

Q And the loan was to be a three-thousand-dollar loan?

A Yes, sir.

Q Now, your brother came back and he gave you the note, the five checks, or six checks, for \$500 each?

A Yes, sir.

Q The certificate and \$90 in cash.

A \$90 in cash.

Q You forgot about that before, did you not? 40

Asher Maurer, Cross.

A Well, I was not asked.

Q That is the reason you say you did not say that before?

A I do not deny it. Sure, I received \$90 for six months' interest at six per cent.

10 Q You got that in cash?

A Yes, sir.

Q Was there any reason why you did not take the \$90 off the \$3000 and make this check for \$2910?

MR. SCHOTLAND. I object to that as argumentative and not proper cross examination.

THE COURT. I sustain the objection.

20 Q Did your brother tell you that the loan would be upon a six per cent basis?

A Yes, sir.

Q And that interest would be \$90 for six months?

A And I will collect a check every month for \$500.

Q Your brother told you that?

A Yes, sir.

Q And that this was a discount on which you were entitled to the \$90 in advance?

30 A Yes, sir.

Q But you did not take it off the check?

A No.

Q You gave the full \$3000?

A Yes, sir.

Q Made out to Morris Potoker. Now, how did you know about Morris Potoker?

40 A My brother came to me. He dealt with him before, he lent him money. He came to me and asked me if I got some money, he has got a man who needs \$3000. He loaned him money before.

Asher Maurer, Re-Direct.

He honored the notes signed by Mr. Hahn and Mr. Herman Potoker, but he did not tell me about the certificate.

Q Then you decided to make the loan?

A Yes, sir; I did.

Q And you gave your brother the check to consummate the loan? 10

A Yes, sir.

Q And your brother came back with the papers which you now have in court?

A Yes, sir.

RE-DIRECT EXAMINATION by Mr. Schotland.

Q Did you ask your brother to get you this note?

A No, sir. According to my understanding, Mr. Potoker gave him money before on the same notes. 20

Q I want to know whether you asked your brother to do anything for you in connection with this transaction, or whether he asked you to do something for Potoker in connection with this transaction?

A No, sir.

Q Well, now, which is it?

A He came to me and he made me that proposition: That he has got a man that he deals with, and then I gave him \$3000. 30

MR. SCHOTLAND. Now, if your Honor please, I renew my motion to strike out the testimony given by Henry Hahn and Ellis Hahn as to what may be termed a "secret" arrangement between himself and Morris Potoker, on the ground that it has not been connected up in any way with the holder of the note. The evidence in the

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Asher Maurer, Re-Direct.

case conclusively shows that the plaintiff was a bonafide holder for value before maturity. He got the note within a few days after it was made out, about the same time.

10 THE COURT. Will you tell me, Mr. Schotland— in what different situation is the testimony so far as the proofs are concerned from what it was upon the affidavits, upon a motion for summary judgment?

MR. SCHOTLAND. Yes. The difference is that there is the charge that the plaintiff received the note in an incomplete state.

20 THE COURT. Whose affidavit shows that?

MR. SCHOTLAND. Well, to tell you the truth, I do not know. I do not know why on the affidavits there was not a summary judgment.

THE COURT. Is there anything in the answering affidavit, or in the affidavits on the part of the plaintiff to show that the plaintiff knew—

30 MR. SCHOTLAND. Oh, I know the reason why the Supreme Court reversed that— it just occurs to me. On the face of the affidavit there was a remark slipped in which was put into Mr. Kraemer's brief, that Herman Maurer was the agent of Asher Maurer, instead of the agent of Morris Potoker. If he was the agent of Asher Maurer, of course then the whole jury question is opened up.

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Asher Maurer, Re-Direct.

THE COURT. In what affidavit is that?

MR. SCHOTLAND. It is not there. It is in his brief.

MR. KRAEMER. The Supreme Court thought well of the argument. 10

MR. SCHOTLAND. It slipped into his brief, and they thought it was a part of the affidavit.

MR. KRAEMER. No, I said it was a mere matter of argument.

MR. SCHOTLAND. That is the point. That is how that happened. Now, we have the full testimony. There is no question that anything else may be brought out which may raise a jury question nor change the situation as it appeared on the face of the affidavits at all, because the evidence is all here, and, in addition to the verbal testimony, the defendant saw fit to offer in evidence the affidavit of Mr. Herman Maurer, and that affidavit distinctly says, "I told my brother that this was agreeable to Morris Potoker, whom I was representing and for whom I made the request, and my brother then gave me a check for \$3000"— that is in the affidavit—acting for Morris Potoker. Now, I read those words from the affidavit. His direct testimony also is that he was acting for Potoker and at Potoker's request and not at his brother's request; and the testimony of the plaintiff is that he was not doing anything for him and that Herman Maurer was to act for Potoker. 20 30 40

Asher Maurer, Re-Direct.

THE COURT. I think we can consider this question of striking out the evidence under your motion to direct a verdict. I understand you join both motions?

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MR. SCHOTLAND. No, I had withdrawn the motion to direct a verdict until I got a ruling on the motion to strike out this testimony before, because—

THE COURT. In what different situation would that put the consideration of this matter by the Court?

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MR. SCHOTLAND. I was just explaining. Before that I was not sure whether I wanted to preclude myself from putting Mr. Asher Maurer on the stand. Now I have put him on the stand and I do not need that precaution, and I can just put them now together, as your Honor suggested.

THE COURT. I think so.

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MR. SCHOTLAND. Then I move for a direction of a verdict for the plaintiff, on the ground that the defendant has not made out a legal defense to the action of the plaintiff. The defendant admitted the endorsing of the note; he admitted the receiving of the notice of protest in due time—that is, it is alleged—giving the dates and showing it was properly protested; and he admits he received it. His only defense that he attempts to set up—and, of course, on this motion I am not going to discuss the credibility or probability of the character of the story—on this motion we will simply

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Asher Maurer, Re-Direct.

assume that that was the fact, I suppose, for the purpose of the motion—the only defense that he attempts to set up is this: That he made an arrangement with the maker of this note that he would loan this maker his endorsement on this note, in blank without limit as to time, without limit as to amount, without limit as to who the payee should be; but he says the arrangement was the payee was to be a coal company from whom he would purchase coal, and that his endorsement on the note was to be used as a guarantee for the payment of the coal. That is his defense. 10

In order that that defense may be usable at all as against the plaintiff, he has to show that when the plaintiff received this note it was not complete on its face—there was some defect on its face—and that he therefore is open to have that defense interposed against him. He is not a bonafide holder with the defense barred. He has to show that in order to establish that defense. But before I deal with whether he has shown it legally or not, he has fallen down on the factual part of the defense. He does not know whether or not Potoker used the proceeds of this note to pay for coal. He said so. 20 30

Now, as to the legal end of it, the evidence is clear, it is undisputed. There is no allegation from the defendant that the plaintiff was present at the time when this alleged conversation making this so-called guarantee arrangement was made, no allegation that the plaintiff, or anybody rep- 40

Asher Maurer, Re-Direct.

resenting him, was present, nor is there any allegation that he had knowledge as to that part of it. There is no proof whatever that that arrangement was brought home to the plaintiff by anyone. There is no proof whatever that the plaintiff even knew that this note was not made out in regular form, because it was complete on its face when it was delivered to him; and that evidence, if your Honor please, bears so much greater force because it is the evidence introduced by the defendant himself; it is the defendant himself who introduced the evidence proving that, although he personally signed his name on the back of this printed form of note, in blank, he proved affirmatively that the maker of the note, the one to whom he entrusted the note to fill it out according to his arrangement, filled it out completely as it is now before it ever got to the hands of the plaintiff. He proved that by the testimony of the only witness that he called on that point, Mr. Herman Maurer, and he proved even more strongly than the oral testimony of Mr. Herman Maurer that he was acting for Potoker and doing this at Potoker's request: The fact that Herman Maurer was Potoker's agent and therefore that Asher Maurer could not be held or bound by any knowledge which Herman Maurer had ascertained at the time when he delivered the check by introducing in evidence the affidavit, it went a little further than the oral testimony and squarely shows that he was the agent for Morris Potoker, for whom he was acting in the matter.

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The exact language is "I told my brother that this was agreeable to Morris Potoker, whom I was representing and for whom I made the request, and my brother then gave me a check for \$3000."

There are no two ways of looking at it. 10
 There is no other witness. There is no other testimony. That is the only testimony in the case: That the note was complete on its face when delivered to the plaintiff, that it was delivered for value before maturity, that the plaintiff had no knowledge whatsoever of any infirmities in the note, and that there were no infirmities appearing on the face of it. I therefore cannot see what question there is left under the Negotiable Instrument Act, and I 20
 respectfully submit that there should be a judgment directed for the plaintiff.

MR. KRAEMER. I base my answer to the argument on Section 14, 52 and 59 of the Negotiable Instrument Act. Section 14 provides that where the instrument is wanting in any material particulars, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein, and a signature on a blank paper by the person making the signature, in order that the paper may be converted into a negotiable instrument, operates as a prima facie authority to fill it up as such for any amount. I just want to emphasize the point: "Delivered by the person making the signature, in order that the paper may be converted into a negotiable instrument," then that prima facie presumption 30
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10 applies. It must be filled up strictly in accordance with the authority given, and within a reasonable time. I call your Honor's attention to the words "strictly in accordance," not "in accordance with," but "strictly in accordance with." "But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands and he may enforce it as if it had been."

20 Now, then, the whole point is, is the plaintiff in this case a holder in due course? Now, the Court of Errors and Appeals in this case and in the case of Fidelity Union against Decker held that a person cannot be a holder in due course unless he receives the instrument complete upon its face, and your Honor's ruling in this case will depend in all probability upon the fact as to whether Asher Maurer received this instrument complete upon its face. That result will depend on the question of whether Herman Maurer was his agent or the agent of Morris Potoker. Now, this particular affidavit that 30 Mr. Schotland has referred to, in which Herman Maurer says he was the agent of Potoker, was before the Supreme Court and was before the Court of Errors and Appeals, and if that proved the fact that he was the agent, the case would not be before your Honor now. It would have been disposed of in both Courts. That self-serving statement, or hearsay, or conclusion of law is not evidence, and whether or not 40 Herman was the agent for Potoker or was

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the agent for his brother when he conveyed that \$3000 check to the lender, and obtained for the lender the note, the checks, the certificate and the the \$90, that is a pure factual question, which I will argue, if we get the chance, before the jury.

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THE COURT. What evidence is there in the case, do you think, showing that Morris was the agent of Asher?

MR. KRAEMER. Your Honor, probably means Herman was the agent?

THE COURT. Herman, yes.

MR. KRAEMER. Asher says: "I gave him my check to procure a \$3000 note from Potoker"—that is his testimony.

20

THE COURT. As I understand his testimony, Asher says that his brother came to him with the proposition—

MR. KRAEMER. That is true..

THE COURT. (Continuing) that he loan this money to Mr. Potoker. He says in his testimony that he obtained this check from his brother at the request of Mr. Potoker, that he obtained this money from his brother at the request of Mr. Potoker.

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MR. KRAEMER. That is Herman Maurer's testimony.

THE COURT. Yes.

MR. KRAEMER. I am referring now to Asher. Asher testified that he got the note and the certificate of stock and the five checks after he had given the check to

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Herman Potoker, who entrusted him with this check.

10 THE COURT. Is there any more to that than the fact that he had entrusted his brother with the check for the purpose of getting the note

MR. KRAEMER. Then afterwards the note was filled out. It was after that that the note was filled out. According to the information of all sides, according to the testimony of all sides, the check was made out first. With the check Herman went to Morris.

20 THE COURT. Is there any proof which would warrant the jury in finding that there was any agency on the part of Herman from his brother Asher, except to deliver to Potoker this three-thousand-dollar check and to return to Asher the note

MR. KRAEMER. To receive the note.

THE COURT. To receive the note?

30 MR. KRAEMER. That is all the agency that I intend to prove; and to that extent he was an agent in my opinion and in my theory of the case, to receive this note which is the issue in this case, and that note was then filled out and he was by at the time it was filled out.

THE COURT. There is no presumption of agency arising from the fact that Herman was the brother of Asher, is there?

40 MR. KRAEMER. Oh, no, I am not contending that. That is not a presumption.

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It may be taken into consideration with all the other facts in the case, that Asher did not see Morris Potoker at all; that the only person with whom he dealt was his brother Herman to whom he entrusted his check, and telling his brother to bring back a note that was thereafter filled out, five checks and this certificate. 10

There was a borrower and a lender in this transaction. The lender, Potoker, wholly represented himself; he was there all the time. When the check was delivered, the note filled in, the checks for \$500 each given and the certificate given, that was the lending transaction. One principal was there; the other principal was not there. 20
Somebody must have been acting for him. Somebody received the note for him. Somebody saw that it was filled out properly. Somebody saw that he received five checks, or six checks, of \$500. Somebody saw that he got the \$90, and that he got a certificate. That somebody was his agent, protecting his interest, showing that the check was delivered as a quid pro quo, and to that extent Herman was surely the agent for Asher. He could not have occupied any other relation there because this one trans- 30
action required two parties: One party acted as a principal and Potoker as a borrower; and the lender of that transaction was Asher Maurer, acting through his brother, Herman Maurer.

Now, I frankly state to your Honor that is my theory of the case. If I am wrong about it, it will be just as well to dispose 40

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of the matter right now. My contention is that the note was delivered to Asher Maurer incomplete on its face, because he received it through his agent.

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There is one more point that I want to make to your Honor, and it is this: The question as to when delivery was made is very important. When was delivery made of this note—at the time when that three-thousand-dollar check was turned over at this conference between Morris Potoker and Herman Maurer, or was delivery made thereafter when Herman turned it over to his brother Asher, the plaintiff in this case?

20

THE COURT. Would it be admitted that the note was turned over by Herman to Asher prior to its maturity?

MR. KRAEMER. Oh, yes.

THE COURT. That is admitted?

MR. KRAEMER. Oh, yes.

THE COURT. That the note was turned over by Herman to Asher prior to its maturity?

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MR. KRAEMER. Oh, surely.

I was speaking of the physical delivery of the note. My contention is that that may be of some importance in determining the question of agency. My contention is that delivery of that note was made at this conference or at this transaction—which ever you may want to call it—between Morris Potoker and Herman Maurer, that the three-thousand-dollar check was turned

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over to Morris Potoker, and Morris in turn turned over his note and securities and checks. There was the delivery.

The delivery was to whom? The delivery was by Morris Potoker to Herman Maurer, acting for his brother.

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THE COURT. Mr. Kraemer, the attorney of the defendant, has very properly said that this case has narrowed down to a question of whether or not there is any proof to go to this jury on the question of whether or not Herman Maurer was the agent of his brother, Asher Maurer, who is the plaintiff in this case. I think that is entirely correct, because, if not, if the evidence does not so show, then Asher Maurer was the holder in due course of this note, because when it actually came to him the undisputed proof is that it complied with the requirements of Section 52 of the Negotiable Instruments Act; it would constitute a holder in due course in that it was complete and regular upon its face; that he became the holder of it before it was overdue, and without notice that it had been previously dishonored; of which there is no proof, of course. Also that he took it in good faith and for value. Also that at the time it was negotiated to him he had no notice of any infirmity in the ~~construction~~ ^{INSTRUMENT.} ~~tion~~. The undisputed proof is that he personally had no notice of any infirmity in the ~~construction~~ ^{INSTRUMENT,} and he would be chargeable only by the notice of an infirmity which came to him from his duly authorized

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Asher Maurer, Re-Direct.

agent, assuming that there was an infirmity in the note.

10 As I understand the proofs, the brother, Herman Maurer, had had previous transactions with Mr. Potoker, the maker of the note, and had himself loaned him money upon these previous occasions; that at this time, for some reason or other, he did not loan his own money to Mr. Potoker, but says that he applied to his brother Asher, who is the plaintiff in this suit, for the money, and that he received from his brother, at the request of Potoker, the check, the three-thousand-dollar check, which paid for this note.

20 It is true that having made known the request of Potoker to his brother Asher, and the acquiescence of his brother Asher, he received from his brother Asher this check for \$3000 for the purpose of delivering it to Mr. Potoker. He did deliver it to Mr. Potoker and received from Mr. Potoker this note, and delivered it to his brother. He says that he was acting for Mr. Potoker. His affidavit, which is marked in evidence in this case, is to the effect that he was acting for Mr. Potoker; and the only act on the part of Herman which related to his brother Asher at all was the receiving from Asher of the check for the \$3000, to be delivered to Mr. Potoker at Mr. Potoker's request, and of course then returning to Mr. Asher Maurer the note in question.

40 I think we are not concerned with a con-

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sideration upon this question of the testimony of Mr. Hahn at all. Mr. Hahn says that his endorsement was placed upon this note for an entirely different purpose. Nor are we concerned with what was put in this note at the time Mr. Potoker received the check and turned over to Mr. Herman Maurer the note, because if there was not a thing in this note, if it was just in exactly the same condition as it was when Mr. Potoker obtained the endorsement of Mr. Hahn, and it was all filled in, every word of it, at the time of the passing of the check, if Mr. Herman Maurer was not the agent of Asher Maurer, that would make no difference, provided Asher Maurer received it in a condition which was complete upon its face. It seems to me the uncontradicted testimony shows that, and that there is no testimony in the case which would justify the jury in finding that in the transaction Herman Maurer was the agent of Asher Maurer.

This necessarily results in directing the jury to find a verdict in favor of the plaintiff and against the defendant for the full amount of this note, \$3000, with interest from May 5, 1927, to this 26th day of February, 1930, at six per cent, which amounts to \$479.50.

MR. SCHOTLAND. And \$2.46 protest fees.

THE COURT. Amounting with protest fees to \$3481.96, and an exception to that ruling as ground of appeal will be noted on the minutes.

STIPULATION.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	ASHER MAURER, <i>Plaintiff-Respondent.</i> <i>vs.</i> HENRY HAHN, <i>Defendant-Appellant.</i>	}	ACTION AT LAW On Appeal STIPULATION.
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20 It is hereby stipulated and agreed by and between the counsel for the respective parties hereto, that the contents of the documents from the United States District Court marked "Exhibit D-3" and the coal certificate marked "Exhibit P-2" received in evidence at the trial of the above-entitled cause, in the Essex County Circuit Court, and the recognizance on appeal, dated September 17th, 1927, wherein Henry Hahn and The Metropolitan Casualty Insurance Company of New York are sureties; the Sheriff's return, on summons and complaint, together with the designation of deputy for service; stipulation Essex County Circuit Court, dated July 6th, 1927; affidavit of service of notice of appeal, dated August 11th, 1927; notice of motion of Essex County Circuit Court dated September 22nd, 1927; order staying execution, dated September 24th, 1927; order cancelling recognizance dated September 27th, 1928; recognizance of appeal dated February 28th, 1930, wherein Henry Hahn and The Metropolitan Casualty Insurance Company of New York are sureties, shall and may be omitted from the printed state of the case.

30 Dated: March 27th, 1930.

40 PHILIP J. SCHOTLAND,
Attorney for Plaintiff-Respondent.

 KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant-Appellant.

81 MAY.T.1930

ESSEX COUNTY CIRCUIT COURT.

Order, Notice, Rule and Memorandum
On Motion Directed to the Printed State of Case.

ASHER MAURER,

Plaintiff,

Action at Law

—vs—

HENRY HAHN,

Defendant.

ORDER.

Application upon due notice having been made for an order striking out pages 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39 and 40 of the State of the Case on appeal from the judgment of this Court to the Court of Errors and Appeals as prepared by the defendant-appellant on the ground that they are improperly attached and made a part of said State of the Case, and the Court having heard the argument of counsel and being of the opinion that said application be granted:

It is, on this 9th day of May, 1930, on motion of Philip J. Schotland, Attorney for Plaintiff in the above-entitled cause ORDERED that pages 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39 and 40 be stricken out of the State of the Case on appeal in the above-entitled cause.

NELSON Y. DUNGAN,
Circuit Court Judge.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ASHER MAURER,
Plaintiff-Respondent,

—vs—

HENRY HAHN,
Defendant-Appellant.

Action at Law

On Appeal

NOTICE

SIR:

PLEASE TAKE NOTICE that on Tuesday, May 20th, 1930, at 10:30 o'clock in the forenoon (daylight saving time) or as soon thereafter as counsel can be heard, at the State House, Trenton, New Jersey, we shall move the Court of Errors and Appeals for an order setting aside the order of his Honor Nelson Y. Dungan, Circuit Court Judge, entered herein on May 9th, 1930, a copy of which order is hereto annexed, and for the inclusion in the State of Case herein on appeal of pages 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39 and 40, on the ground that the same are properly part of the record on appeal and material in the consideration and determination of the point made on the appeal by the appellant, that the said Circuit Court judge at the trial below, under the principle of stare decisis, was bound to submit the case to the jury, because the Supreme Court and the Court of Errors and Appeals, when said record was before them on a previous appeal of this case, held that from the facts appearing therein the case should have been submitted; and further, that the facts appearing in said record are substantially the same as those before the jury at

the trial below, from the judgment of which this appeal is taken.

Dated: May 10th, 1930.

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant-Appellant.

To PHILIP J. SCHOTLAND, Esq.,
9 Clinton Street,
Newark, New Jersey.
Attorney for Plaintiff-Respondent.
Filed May 14, 1930.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ASHER MAURER,
Plaintiff-Respondent,

—vs—

HENRY HAHN,
Defendant-Appellant.

On Appeal

RULE

Kraemer, Siegler & Siegler, attorneys for the appellant herein having moved that the order of the Honorable Nelson Y. Dungan, Judge of the Essex County Circuit Court, striking out pages 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39 and 40 from the printed state of case herein, be set aside and that said pages be included in the printed state of case, it is 29th day of May, 1930.

ORDERED, that the same be considered in conjunction with the main appeal herein, and that counsel for the respective parties have twenty (20) days to file their briefs.

On motion of

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant-Appellant.

Let the above rule be entered:

E. R. WALKER, *C. & P. J.*

I hereby consent to the above rule, as to form.

PHILIP J. SCHOTLAND,
Attorney for Plaintiff-Respondent.

A true copy

JOSEPH FITZPATRICK,
Clerk.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ASHER MAURER,
Plaintiff-Respondent,

—vs—

HENRY HAHN,
Defendant-Appellant.

Action at Law
Motion of Appeal

MEMORANDUM.

This is an application to set aside the order of Judge Dungan striking out from the printed State of Case affidavits filed by the plaintiff and the defendant on an application in proceedings which resulted in a summary judgment in favor of the plaintiff and against the defendant. They are part of the pleadings and judgment record certified by the Circuit Court clerk on this appeal. This motion is to set aside the order of Judge Dungan, so that the affidavits on the proceedings for summary judgment be retained in the printed State of Case, because in our opinion they are necessary for a proper consideration of the present grounds of appeal.

The plaintiff, who is the respondent here, sued the defendant on a promissory note and obtained a summary judgment before Judge Smith, sitting in the Essex County Circuit Court. From this the defendant appealed. The Supreme Court reversed the summary judgment and remanded the case for trial. The Court of Errors and Appeals affirmed the Supreme Court, and the case came on for trial before Judge Dungan, who directed a verdict in favor of the plaintiff and against the defendant, from which the present appeal is taken.

In the Supreme Court Justice Parker wrote the opinion for the Court reversing the summary judg-

ment, and the following quotation from his opinion will indicate the facts in the case as set forth in the affidavits, all but one of which Judge Dungan has ordered stricken from the record on this appeal, (104 N. J. Law 254) :

“ The plaintiff’s brother, Herman Maurer, came to him and recommended a loan to Morez Potoker on his endorsed note of \$3,000. at six months. The plaintiff acceded, gave Herman his check of \$3,000. to the order of “Morris” Potoker, which was delivered by Herman to the latter and cashed. Herman brought back to plaintiff a note dated November 5th, 1926, by Morez Potoker as maker, payable at six months at a bank in Newark, and to the order of Asher Maurer. It was endorsed in blank “Herman Potoker, Henry Hahn” (the appellant). Everything seemed regular enough but the affidavits disclose the following matters of the fact, which could be accepted as true by a jury: that Herman Maurer was the agent of plaintiff to deliver the check and accept the note; and consequently that the knowledge of Herman of any infirmity in the note was the knowledge of Asher, the plaintiff; that when Herman went with the plaintiff’s check to Herman Potoker to get the note, that paper was in the following condition: the date was blank, the amount was blank, the time was blank, the payee’s name was blank, and there was no signature of the maker. On the back Herman saw the endorsements (as the statute now calls them) of Herman Potoker and Henry Hahn, - - - This of course presented a typical situation of filling up blanks in an incomplete instrument. It

further appeals, and from Herman Maurer's own affidavit, that in his presence, Morez Potoker, the maker filled in the date, time to run, payee's name, the amount, signed it, and delivered it to Herman as agent of the plaintiff, and that Herman then delivered the check."

The Supreme Court found that the above facts, and other facts gathered from the affidavits at least raised a fair jury question as to the circumstances under which the note was endorsed in blank, and thereafter delivered, and for that reason the judgment was reversed.

The Court of Errors and Appeals in its per curiam opinion affirmed the judgment of the Supreme Court, although it disagreed in certain other propositions of law, and held (145 Atl. 316, not yet officially reported),

" The facts in this case are fully stated in the opinion of the Supreme Court, and we concur in the view therein expressed that the facts which were before the trial judge raised a jury question as to the circumstances under which the note in controversy was endorsed in blank and thereafter filled in and delivered, and therefore the awarding of a summary judgment in favor of the plaintiff and against the defendant by the trial judge was erroneous."

After the reversal and the remand to the Circuit Court, the case came on for trial before Judge Dungan, and the witnesses before Judge Dungan testified to substantially the same facts as were incorporated in their affidavits which were considered by the Supreme Court. Judge Dungan, however, held that there was no testimony in the

case that Herman Maurer was the agent of Asher Maurer, the plaintiff, in acquiring the note in question, and therefore directed a verdict against the defendant. Our contention is that Judge Dungan was bound by the doctrine of stare decisis to submit the case to the jury, and that is one of the grounds of appeal. See *Migliaccio, et al v. Public Service R. R. Co.* 8 Misc. Rep. 280.

We submit that this Court should have the affidavits which were before the Supreme Court in the previous appeal, and upon which the Supreme Court decided that a jury could find as a fact that Herman Maurer was the agent of the plaintiff to deliver his check and accept the note in question, so as to determine whether or not the facts before the Supreme Court and the facts before Judge Dungan at the trial were so similar in legal effect as to require of Judge Dungan the submission of the case to the jury on the principle of stare decisis.

Respectfully submitted,

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant-Appellant.

JOSEPH KRAEMER,
Of Counsel.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ASHER MAURER,
Plaintiff-Respondent,

—vs—

HENRY HAHN,
Defendant-Appellant.

ACTION AT LAW

On Appeal

MEMORANDUM
IN BEHALF OF
DEFENDANT-
APPELLANT.

FACTS

This is an appeal from the plaintiff's judgment entered on a directed verdict in the Essex County Circuit Court. The plaintiff sued the defendant, Henry Hahn, as the endorser of a promissory note for Three Thousand (\$3,000.00) Dollars made by one Morez Potoker to the plaintiff, dated November 5th, 1926 and due May 5th, 1927. On July 26th, 1927, on the plaintiff's motion to strike out the defendant's answer as sham and frivolous, an order was entered accordingly and for summary judgment, in favor of the plaintiff. From this judgment the defendant, Henry Hahn appealed to the Supreme Court, the judgment was reversed, and the case remanded to the Essex County Circuit Court for trial on the issue raised by the defendant's answer. From this judgment of the Supreme Court the plaintiff appealed to the Court of Errors and Appeals and the judgment of the Supreme Court was affirmed. Whereupon the case was brought on for trial before Judge Nelson Y. Dungan and a jury at the Essex County Circuit Court, and a verdict directed in favor of the plaintiff and against the defendant for the amount of the note, interest and costs. From the judgment entered on this verdict the plaintiff now appeals to this Court.

This appeal is based upon the error of the learned trial judge in directing a verdict for the plaintiff and against the defendant upon evidence substantially as follows: The plaintiff offered the note and the certificate of protest in evidence and rested. The defendant showed that on November 3rd, 1926, at the request of Morez Potoker, a friend and client, he put his name on the back of a blank form of a note which Mr. Potoker, who was in the wholesale coal business, requested as a guarantee for coal about to be purchased by him in his business, upon the express understanding between the defendant and the said Potoker that it was to be used only as a guarantee for the purchase of coal contemplated by him. When the defendant signed this blank form of note there was nothing on the face of it, and it was in that condition when he delivered it to Potoker to be used for the purpose of a guarantee for the purchase of coal. The defendant did not know that the paper had been diverted from its authorized use and filled in as it now appears, plaintiff's Exhibit P-1, which is the same as Schedule B (page 27 State of Case), and discounted with the plaintiff until he received word several months thereafter from Mr. Maurice S. Maurer, the plaintiff's son, an attorney-at-law.

Ellis A. Hahn, the defendant's son, a lawyer, corroborated his father that the note was signed merely as a guarantee for coal to be purchased by Potoker, because, as Potoker put it, "This company desires a guarantor". (Page 60 State of Case, line 5).

Herman Maurer, the ^{PLAINTIFF'S} ~~defendant's~~ ^{DEFENDANT} ~~plaintiff~~ brother, was called by the ~~plaintiff~~, and he testified that on November 3rd, 1926, he had a check of the New Jersey Lamp Works for Three Thousand (\$3,000.00) Dollars to the order of Morez Potoker, and that on that day he received from the said

Potoker the note in question, and that the note was made out, with the exception, "the name of Asher Maurer" (page 63 State of Case). This Herman Maurer had made an affidavit in behalf of his brother, the plaintiff, on the application for summary judgment, and in that affidavit he swore:

" I took this check and turned it over to Morez Potoker at my house, 223 Renner Avenue, Newark, N. J. and received from him a note dated November 5th, 1926 to the order of Asher Maurer for \$3,000.00 and endorsed by Herman Potoker and Henry Hahn.

At that time only Mr. Morez Potoker and myself were present and the note was filled in in my presence by Morez Potoker and I noticed that the endorsements were already on the back of the note. The said note was filled in by said Morez Potoker and made to the order of Asher Maurer, payable in six months at the Merchants & Manufacturers National Bank and at the same time he also made out and gave me six checks to the order of Asher Maurer for \$500.00, each check payable one every month."

This affidavit was introduced on behalf of the ^{DEFENDANT} ~~plaintiff~~ for the purpose of neutralizing the testimony that at the time he received the note only the name of the payee was left out, and that the name of Asher Maurer, plaintiff, was filled in. From the affidavit it appears that at that time the note was blank, because he there says, "The note was filled in in my presence and * * *," "The said note was filled in by said Morez Potoker and made to the order of Asher Maurer, payable in six months at the Merchants & Manufacturers

National Bank and at the same time he also made out and gave me six checks to the order of Asher Maurer for \$500.00, each check payable one every month". This witness, Herman Maurer, delivered the note to his brother, the plaintiff, Potoker's six checks of Five Hundred (\$500.00) Dollars each, and a certain coal certificate given as collateral security. Asher Maurer, the plaintiff, testified in rebuttal to the circumstances of the loan, and that he gave his brother, Herman Maurer, the check of Three Thousand (\$3,000.00) Dollars to consummate the loan, page 81 State of Case, line 10). Upon this evidence the learned trial court directed a verdict in favor of the plaintiff on the ground that there was no evidence that Herman Maurer was the agent for his brother, the plaintiff, Asher Maurer.

The defendant's contention below and here is that upon this evidence the case should have been submitted to the jury for their determination as to whether or not, when Herman Maurer delivered to Morez Potoker the check of his brother, the plaintiff, for Three Thousand (\$3,000.00) Dollars, and received from him in exchange his note, with the defendant's endorsement thereon, his six checks of Five Hundred (\$500.00) Dollars each, to represent the installment payments of the note, and the coal certificate pledged as collateral security, he was acting as the agent for his brother, the plaintiff. Upon the jury's determination whether or not Herman Maurer was the agent for his brother, Asher Maurer, the plaintiff, depended the ultimate decision of the case. For if Herman was the agent for his brother Asher Maurer, the plaintiff, then his knowledge of the infirmity of the note when he received it in its incomplete and unfilled condition, was the knowledge of Asher Maurer, the plaintiff. Consequently he could not be deemed

as a holder for value, and could not recover a judgment, because on the uncontradicted testimony of the case the note had been diverted from its authorized use and illegally filled in by Morez Potoker, from whom the plaintiff acquired possession, and the knowledge of these facts was legally attributable to the plaintiff.

ARGUMENT

The learned trial judge should have submitted the case to the jury on this evidence on the principle of *stare decisis*, because the Supreme Court and the Court of Errors and Appeals both held that on these facts a jury question was presented. It was for that reason that the summary judgment was reversed in the Supreme Court, and it was for that same reason that the Court of Errors and Appeals sustained the Supreme Court. The opinion of the Supreme Court appears in 104 N. J. Law 254, and the opinion of the Court of Errors and Appeals was not officially reported, but appears in 145 Atl. 316.

Justice Parker, who wrote the opinion for the Supreme Court on this point says as follows:

“ Recurring to the facts, we gather from the affidavit of appellant Hahn, that he was asked by the maker, a friend of his, to guarantee the payment of some purchases of coal which he expected to make, and which he said could be made on very advantageous terms with the aid of Hahn's endorsement, and that Hahn endorsed a blank note with the express agreement that it was to be used only as a guarantee in the purchase of coal; that he gave no authority to fill in the note for any purpose of discounting it; and that the insertion of

plaintiff's name was contrary to his authority.

On the above facts, which at least raised a fair jury question as to the circumstances under which the note was indorsed in blank and thereafter filled up and delivered, etc."

The Court of Errors and Appeals concurs with the Supreme Court in the conclusion "that the facts which were before the trial judge raised a fair jury question as to the circumstances under which the note in controversy was endorsed in blank and thereafter filled in and delivered, and therefore the awarding of a summary judgment in favor of the plaintiff, and against the defendant was erroneous." It disagrees with the Supreme Court in the ruling that a payee may not be a holder in due course. But on the specific question as to whether or not Herman Maurer was the agent for Asher Maurer, Justice Parker in his Supreme Court opinion, after a recital of the facts, says:

" Everything seemed regular enough but the affidavits disclose the following matters of fact, which could be accepted as true by a jury: that Herman Maurer was the agent of plaintiff to deliver the check and accept the note; and consequently that the knowledge of Herman of any infirmity in the note was the knowledge of Asher, the plaintiff; that when Herman went with the plaintiff's check to Morez Potoker to get the note, that paper was in the following condition: the date was blank, the amount was blank, the time was blank, the payee's name was blank, and there was no signature of the maker. On the back Herman saw the endorsements (as the statute now calls them) of Herman Potoker and Henry Hahn.

See C. S. 3742, sec. 63. This of course presented a typical situation of filling up blanks in an incomplete instrument. It further appears, and from Herman Maurer's own affidavit, that in his presence, Morez Potoker, the maker, filled in date, time to run, payee's name, the amount, signed it, and delivered it to Herman as agent of plaintiff, and that Herman then delivered the check."

The record shows that the facts which were before Judge Smith on the application for a summary judgment, and which consisted of the affidavits of Asher Maurer (page 13 State of Case), Herman Maurer (page 16 State of Case), and Maurice S. Maurer (page 19 State of Case), for the plaintiff, and Henry Hahn for the defendant, are substantially the same as the facts which were before Judge Dungan in the trial below when the verdict was directed for the plaintiff. If anything at all the facts before Judge Smith, who allowed the summary judgment, were more favorable to the plaintiff than the facts which were before Judge Dungan, who directed the verdict.

The Supreme Court, on the facts before Judge Smith, held "that there was a fair jury question as to the circumstances under which the note was endorsed in blank and thereafter filled out and delivered, and that the case should have been submitted to the jury, and that the jury could find that Herman Maurer was the agent of the plaintiff, Asher Maurer, to deliver the check and accept the note, and that Morez Potoker, the maker, delivered the note to Herman as the agent of the plaintiff. The Court of Errors and Appeals concurred that these facts raised a fair jury question, and that therefore the direction of verdict

in favor of the plaintiff and against the defendant by the trial judge was erroneous.

We submit that on the principle of *stare decisis* Judge Dungan was bound by the decision of the Supreme Court and the Court of Errors and Appeals to submit the case to the jury, and that his refusal and failure so to do constituted error.

Not only the observance of the doctrine of *stare decisis*, but the facts in the case, the permissible inferences therefrom, and the pertinent provisions of the Negotiable Instruments Act required its submission to the jury. The critical question before the Court was whether or not Herman Maurer was the agent of Asher Maurer, the plaintiff. His self-serving denial in his affidavit did not establish that fact, for notwithstanding his affidavit the Supreme Court and the Court of Errors and Appeals, held that the facts in the case required their submission to a jury.

The transactions between Morez Potoker, the maker of the note, and Asher Maurer, the plaintiff, was that of a lender and borrower. Morez Potoker represented himself in this transaction. He came prepared to borrow Three Thousand (\$3,000.00) Dollars on his papers, which he then converted from a guarantee for coal to a negotiable instrument. He was prepared to exchange this note for Three Thousand (\$3,000.00) Dollars, and he had with him Ninety (\$90.00) Dollars to cover the interest or the discount on the note for a period of six months, and a certificate of membership in a coal dealers association, as collateral. The note which he had in his possession was either totally or partially blank. When it left the hands of Henry Hahn, after he had endorsed it on the back as a guarantee for coal to be purchased by Potoker, it was altogether in blank. When Potoker pre-

sented it to Herman Maurer, the name of the payee was blank, if the testimony at the trial should be considered, or if his affidavit, which was offered in evidence, the name of the payee, the amount of the note, and the place of payment was left blank. Herman Maurer was there with the check of Three Thousand (\$3,000.00) Dollars (Schedule B) from his brother, Asher Maurer, the lender. He was there to see that for the Three Thousand (\$3,000.00) Dollar check of his brother, the plaintiff, he received a note, five checks, Ninety (\$90.00) Dollars in cash, and the certificate of membership in the coal dealers association, and before he turned over the Three Thousand (\$3,000.00) Dollar check, he saw to it that the note was filled in. Now, from this set of facts, which are the substantial facts in the case on this point, whom did Herman Maurer represent? According to the plaintiff he was acting as the agent for Potoker. According to our contention, he was there acting as the agent for his brother, the plaintiff. The learned trial judge held that from these facts only one inference was permissible, and that is, that Herman Maurer, the plaintiff's brother, acted as the agent for Morez Potoker, the borrower. We contend that the facts of this transaction, by the very nature of the transaction, show that Herman Maurer was the agent for his brother, the plaintiff; that the transaction required two parties, one a borrower, the other a lender; that the borrower, Morez Potoker, was there in person taking care of himself; that the lender, Asher Maurer, the plaintiff, was there represented by his brother, Herman Maurer, whom he had entrusted with the check of Three Thousand (\$3,000.00) Dollars to be turned over to Morez Potoker, the borrower, when he should deliver the *quid pro quo*, his note, the five checks, the

interest or discount of Ninety (\$90.00) Dollars, and his collateral, the coal certificate. At least from these facts it was a fair question for the jury.

Section 14 of the Negotiable Instruments Act is as follows: (3 C. S. page 3736):

“ 14. FILLING BLANKS. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein; and a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount; in order, however, that any such instrument when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time; but if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purpose in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. (P. L. 1902, p. 586). ”

As applied to the facts in this case, its terms required that the plaintiff should show either that the note was filled up strictly in accordance with the authority given and within a reasonable time, or that the plaintiff acquired it as a holder in due course after completion.

Section 52 of the Negotiable Instruments Act is as follows: (3 C. S. page 3741):

“ 52. HOLDER IN DUE COURSE. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face.

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value.

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.”

As applied to the facts in this case, in order that the plaintiff should have the status of a holder in due course, he was required to show that he took the instrument complete and regular upon its face. If the case had been submitted to the jury and they found that Herman Maurer was the agent of Asher Maurer, the plaintiff, when he took the note from Morez Potoker, the plaintiff could not be deemed as a holder in due course, because admittedly, when Herman Maurer acquired the note, from Morez Potoker, it was not complete upon its face, at least the name of the payee was blank, and filled in at the time.

Section 59 of the Negotiable Instruments Act is as follows: (3 C. S. page 3741):

“ 59. HOLDER IN DUE COURSE: PRESUMPTION AND BURDEN OF PROOF. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course; but the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (P. L. 1902, p. 594).”

The plaintiff introduced into evidence the note. Under this provision he was presumed to be a holder in due course. But when the defendant proved that Morez Potoker's title to the instrument was defective because instead of filling it up strictly in accordance with the authority given, he had diverted it from its authorized use, and converted it to a negotiable instrument, these facts cast upon the plaintiff the burden to prove that he or some person under whom he claimed acquired the title as a holder in due course. This resolved itself to the crucial question whether or not Herman Maurer was the plaintiff's agent in acquiring the note in question, for Herman Maurer admittedly had taken the note when it was incomplete and irregular upon its face, and if Herman Maurer was the agent of the plaintiff, then the plaintiff was not a holder in due course, as required by Section 52 of the Negotiable Instrument Act. The plaintiff, Asher Maurer, thereupon in rebuttal testified as to the circumstances under which he acquired the note, and on cross-examination he testified (page 80 State of Case, line 34):

“ Q. Now, how did you know about Morez Potoker? A. My brother came to me. He dealt with him before, he lent him money. He came to me and asked me if I got some money, he has got a man who needs \$3,000. He loaned him money before. He honored the notes signed by Mr. Hahn and Mr. Herman Potoker, but he did not tell me about the certificate.

Q. Then you decided to make the loan?

A. Yes, sir, I did.

Q. And you gave your brother the check to consummate the loan? A. Yes, sir.

Q. And your brother came back with the papers which you now have in court?

A. Yes, sir.”

Herman Maurer, the brother testified (page 62 State of Case, line 23) :

“ Q. On November 3, 1926, you had this check of the New Jersey Lamp Works for \$3,000. made to the order of Morez Potoker? A. Yes, sir.

Q. Is that right? A. Yes.

Q. And you gave that to Morez Potoker?

A. I did.

Q. On that day you received from Mr. Potoker this Exhibit P-1, is that right?

A. Yes.

Q. What was on the paper when you received it? A. It was the note, made out, with the exception, the name, to Asher Maurer.

Q. You mean that the ‘six months’ was made out? A. Everything was made out with the exception to Asher Maurer. ”

(Reference has already been made to the affidavit of this witness which was offered in evidence for the purpose of discrediting him, Exhibit D-2, page 16 State of Case, from which it appears, as stated by Justice Parker in his opinion, speaking for the Supreme Court, that the date was blank, the amount was blank, the time was blank, the payee's name was blank, and there was no signature of the maker.)

This is substantially all the testimony in the case bearing on the question of agency. From that testimony the learned trial judge held that there was no evidence that Herman Maurer was the agent of Asher Maurer, and therefore directed a verdict for the plaintiff. If from the testimony it could reasonably be inferred that Herman Maurer was the agent of Asher Maurer, the plaintiff, then a jury question was presented. The Supreme Court, or identically the same facts as disclosed by the affidavits used on the application for summary judgment, held:

“ Everything seemed regular enough, but the affidavits disclose the following matters of fact, which could be accepted as true by a jury: that Herman Maurer was the agent of the plaintiff to deliver the check and accept the note; and consequently that the knowledge of Herman of any infirmity in the note was the knowledge of Asher, the plaintiff.” MAURER v. HAHN, 104 N. J. Law 254. ”

The Court of Errors and Appeals, when the case was before it on the appeal from the Supreme Court, concurred in that part of the Supreme Court's opinion. This Court has held that where fairminded men might honestly differ as to the

conclusions to be drawn from the facts, whether controverted or uncontroverted, the question at issue should go to the jury. *McCARTHY v. METROPOLITAN LIFE INSURANCE CO.*, 75 N. J. Law 887, 69 Atl. 170, *MONTCALVO, et al v. WAHL*, 97 N. J. Law 554, 117 Atl. 621.

The differences in the conclusions of the learned trial judge and the justices of the Supreme Court on the appeal on this precise question as to whether or not the agency of Herman Maurer for Asher Maurer could be inferred from these facts demonstrates the correctness of our contention that a typical jury question was presented, and that the learned trial judge erred in taking the question from the jury and directing a verdict against the defendant.

For this reason we respectfully submit that the judgment should be reversed.

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant-Appellant.

JOSEPH KRAEMER, *of Counsel.*

Cozzolino Printing Co., 265 Halsey St., Newark, N. J.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ASHER MAURER,

Plaintiff-Respondent,

—vs—

HENRY HAHN,

*Defendant-Appellant.*On Appeal from the
Essex County
Circuit Court.BRIEF OF PLAINTIFF-RESPONDENT
FACTS

This suit was brought on a promissory note for Three Thousand (\$3,000.00) Dollars, made by Morez Potoker, to the plaintiff, dated November 5, 1926, and due May 5, 1927, and endorsed by Henry Hahn, the defendant. The evidence established the following facts: That Henry Hahn claimed to have endorsed as an accomodation for Morez Potoker, a blank note which Potoker told him he would use as a guarantee in the purchase of coal, he Potoker being a retail coal dealer. (State of Case, Page 46, Lines 25-40). Potoker asked Herman Maurer, brother of the plaintiff, to discount his note for Three Thousand (\$3,000.00) Dollars, payable in six months and endorsed by Henry Hahn and Herman Potoker, and promised to pay the note by means of monthly checks each in the sum of Five Hundred (\$500.00) Dollars. Herman Maurer had previously discounted notes for Potoker, similarly endorsed, but turned this note down because he had no money available at that time with which to discount it. (Exhibit D-2, State of Case, Page 16, Lines 20-33). Potoker asked Herman Maurer to try to get someone else to discount the note for him, and Herman Maurer promised to do so. Herman Maurer, in fulfillment of his promise to Potoker, asked his brother, Asher Maurer, the plaintiff, to discount

this note, assuring him that Potoker, at whose request he sought to have the note discounted, had always theretofore paid his notes when due. Asher Maurer agreed to discount the note on the proposed terms. (State of Case, Page 16, Line 33—Page 17, Line 18). Herman Maurer advised Potoker that he had succeeded in getting the note discounted, and delivered Asher Maurer's check to Potoker; and Potoker filled in the name of Asher Maurer as payee on the note, this being the one blank when Herman Maurer saw the note. (State of Case, Page 63, Lines 9-16). Herman Maurer took the completed note to Asher Maurer without telling him that his name had been filled in by Potoker after the note was endorsed. (State of Case, Page 69, Line 40—Page 70, Line 18.)

The defense which was interposed at the trial was that Potoker had not filled in the blank note which Hahn had endorsed, in accordance with the arrangement he had made with Hahn; and therefore, it was contended that plaintiff could not recover thereon, not being a holder in due course, because Herman Maurer had seen Potoker complete the instrument, and that Herman Maurer had acted as agent for his brother, the plaintiff. As counsel for defendant-appellant stated at the trial:

“The result will depend on the question of whether Herman Maurer was his agent or the agent of Morris Potoker.” (State of Case, Page 88, Lines 26-29.)

and restated on Page 4 of his brief. The learned trial judge stated that:

“It seems to me the uncontradicted testimony shows that, and there is no testimony in the case which would justify the jury in finding that, in the transaction

Herman Maurer was the agent of Asher Maurer.

"This necessarily results in directing the jury to find a verdict in favor of the plaintiff and against the defendant, for the full amount of this note." (State of Case, Page 95, Lines 21-30).

From his direction this appeal was taken.

Defendant-appellant saw fit to include in the state of case the Notice of Motion to strike out defendant's answer, the affidavits of both parties used on that Motion, the order for judgment for the plaintiff, the notice of defendant's appeal from that order to the Supreme Court, the order for reversal by the Supreme Court, and the notice of plaintiff's appeal from that reversal.

The learned trial judge ordered these to be stricken from the State of Case on May 9, 1930. Defendant appeals from this order also, and by order of this Court, dated May 29, 1930, this appeal is to be considered in conjunction with the appeal from the judgment entered for the plaintiff.

Argument

I

THE ORDER OF MAY 9, 1930, STRIKING FROM THE STATE OF CASE PAGES 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39, and 40 was proper and should be affirmed.

These pages contain a record of the proceedings on the motion to strike out defendant's answer. The result of these proceedings was a decision by the Supreme Court, *Maurer v. Hahn*, 104 N. J. L. 254, 140 Atl. 273, affirmed by this Court in *Maurer v. Hahn* (Not Yet Officially Reported) 145 Atl. 316, that on the pleadings and affidavits the plain-

tiff was not entitled to summary judgment. It was ordered that the case take the ordinary course, and be tried on the evidence to be produced in open court. This appeal was taken from the result of that trial. Nowhere throughout that trial was any reference made to the effect of the decision previously rendered, that plaintiff was not entitled to summary judgment, as binding the trial judge to allow the jury to pass on the case. The affidavits and the record of the previous proceedings were not put in evidence nor presented to the trial judge, except the affidavit of Herman Maurer. (Exhibit D-2, State of Case, Pages 16-18), which the defendant put into evidence on his own case. No attempt was made to show that the facts set forth by the affidavits were similar to the facts set forth at the trial, for the reason that they were not similar. Defendant argued only that the facts in evidence at the trial were sufficient to raise a question of fact for the jury. His argument is summed up by the learned trial judge:

"The Court. Mr. Kraemer, the attorney of the defendant, has very properly said that *this case has narrowed down to a question of whether or not there is any proof to go to this jury on the question of whether or not Herman Maurer was the agent of his brother Asher Maurer, who is the plaintiff in this case.*" State of Case, Page 93, Lines 11-18).

Defendant might have raised the question of stare decisis by putting into evidence all the affidavits formerly used and the decision of the Supreme Court. He did not do so; and it is submitted, they are therefore no part of the record of what occurred in the court below, for they go to no issue raised below. Defendant's reason for including them he states to be:

"We submit that this Court should have the affidavits which were before the Supreme Court in the previous appeal, and upon which the Supreme Court decided that a jury could find as a fact that Herman Maurer was the agent of the plaintiff to deliver his check and accept the note in question, so as to determine whether or not the facts before the Supreme Court and the facts before Judge Dungan at the trial were so similar in legal effect as to require of Judge Dungan the submission of the case to the jury on the principle of stare decisis." (Memorandum On Motion Directed to the Printed State of Case, Page 8).

That is an admission that defendant seeks to raise a point here, he did not raise below. For if he had argued stare decisis below, the affidavits would have necessarily been presented to the trial court as the foundation of the argument. It is settled law that no point may be raised for consideration by this court that was not raised below.

Allen v. City of Paterson, 99 N. J. L., 489, 123 Atl. 884.

Punk v. Botany Worsted Mills, (Not Yet Officially Reported) 147 Atl. 458.

It is submitted therefore that the order of the trial judge in striking out of the State of Case pages 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 33, 34, 35, 36, 37, 38, 39, and 40 was proper and should be affirmed, and that the rule of stare decisis is not available to the defendant on this appeal.

II

IT WAS NOT ERROR FOR THE LEARNED TRIAL JUDGE TO DIRECT THE VERDICT FOR THE PLAINTIFF.

This suit was against an endorser on a note. The defense pleaded was, that the note had been signed by the endorser when incomplete and had not been filled up in accordance with the authority given. The proof as to the breach of authority was the testimony of the defendant and Ellis Hahn, his son. They both testified that Mr. Hahn signed the note to be used as a guaranty for the payment of coal which Potoker was to purchase. There was no proof that Potoker did not use the proceeds of the note to purchase coal. The defendant himself testified that he knew nothing about the disposition of the proceeds:

“Q. Do you know whether or not he used the proceeds of this paper to buy coal?”

“A. I did not know a thing about it until I found out two months afterwards.”
(State of Case, Page 58, Lines 10-14).

The defendant also admitted that the name of the payee, the amount, the due date, all were to be filled in by Potoker as he found necessary:

“Q. Well, now let us get this thing clear, Mr. Hahn. Was or was not this blank printed form of note which you endorsed, to be filled out by Mr. Potoker as a promissory note, to be payable by you in the event that he failed to pay what it was to be used for?”

“A. Yes, sir.” (State of Case, Page 54, Lines 17-23).

Therefore, not having proved that the proceeds of this note were not put up with the coal company, no diversion and no defect in title were actually proven.

Even if defect in title were established, plaintiff proved, and defendant admitted that plaintiff took the note before maturity, for value, as a completed instrument, without personally knowing that it was not completed when signed by the defendant, and without knowledge of any defect in title. Under Section 52 of the Negotiable Instruments Act (Compiled Statutes, Vol. 3, Page 3741) he would become a holder in due course. This Court having decided in *Maurer v. Hahn* (Not Yet Officially Reported) 145 Atl. 316, that a payee may be a holder in due course if he fulfills all the requirements thereof, therefore, even if the note was signed by defendant while incomplete and was not filled up in accordance with the authority given by defendant, plaintiff could recover the full amount thereof, unless he is chargeable with the knowledge of Herman Maurer, for then he would not have taken it when it was complete on its face.

“ but if such instrument after completion is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.” (Compiled Statutes Vol. 3, Page 3736, Sec. 14).

He cannot be charged with this knowledge personally, for Herman Maurer's uncontroverted testimony was that, he did not tell him how the note was filled in but gave it to him completed. (State of Case, Page 70, Lines 8-16).

The question then is, was there any evidence to show that Herman Maurer was Asher's agent so as to charge Asher with constructive notice. Asher Maurer's testimony is to the effect that Herman Maurer acted for Potoker in this matter,

and not for him. (State of Case, Page 81, Lines 17-31); and Herman Maurer testified to the same effect:

“Q. At whose request did you procure this check from your brother for this note?”

“A. Mr. Morris Potoker.” (State of Case, Page 69, Lines 31-32, and Line 39), and

the statements contained in this affidavit (Exhibit D-2) which defendant offered in evidence, were:

“He inquired whether I could get any money for him anywhere. I promised Mr. Potoker I would try to get it for him from someone.” (State of Case, Page 16, Lines 33-36).

“I told my brother that this was agreeable to Morez Potoker who I was representing and for whom I made the request.” (State of Case, Page 17, Lines 18-21).

“At no time did Morez Potoker ever meet or deal with Asher Maurer in the present transaction because I, at the request of Morez Potoker approached my brother, obtained his check and turned same over to Morez Potoker and was the go between for Morez Potoker in this matter.” (State of Case, Page 18, Lines 16-22).

This was all offered as testimony on behalf of the defendant and he must stand bound by it, especially as no proof was offered by him contradictory to it.

Potoker vs. Klein, (Not Yet Officially Reported) 143 Atl. 376⁵.

When both alleged principal and alleged agent deny the existence of any relationship between them it

is clear that agency has not been established by their testimony, no matter whose witnesses they are. All the testimony is one way. Defendant states at page 14 of his brief that substantially all the testimony as to agency is to be found in the testimony of Asher Maurer that he gave Herman his check to get the note, and of Herman Maurer that he took Asher's check and got Potoker's note. This is neither all the testimony—as it omits the denial of agency by both parties—nor is it any evidence of agency, because it does not tie up Herman as acting either for his brother or Potoker. All it shows is that he was the person through whose hands the check and note passed. It does not disclose as whose agent he carried these papers from borrower to lender. The other facts referred to above do so disclose: Potoker asked Herman Maurer to get him a loan, Herman asked his brother Asher Maurer to make the loan to Potoker, and Herman attended to the details of getting the money for the person who asked him to do so, namely: Morez Potoker.

It is submitted that the defendant not only failed to establish any diversion of the note from its authorized use, but also failed to show that the plaintiff, Asher Maurer, had knowledge of the infirmity in the note. Without such proof of knowledge, no defense was established.

Fidelity Union Trust Co., Inc. v. Decker Bldg. Material Co. (Not Yet Officially Reported) 148 Atl. 717.

The evidence being all one way, and being the testimony of the witness for the party against whom the verdict was directed, there was no disputed factual question for the jury to consider and, therefore, it was proper for the learned trial judge to direct the verdict for the plaintiff.

Potoker v. Klein (Not Yet Officially Reported) 143 Atl. 375.

Merchant's Securities Corporation v. Snyder (Not Yet Officially Reported) 148 Atl. 773.

III

THE DOCTRINE OF STARE DECISIS IS NOT APPLICABLE TO THIS CASE.

The defendant contends that because the Supreme Court and this Court formerly held that *on the affidavits* the plaintiff was not entitled to summary judgment, the trial court was in error in directing a verdict for the plaintiff *on the evidence produced at the trial*. As has been pointed out before, defendant did not raise this point in the court below. He did not offer all the affidavits for the consideration of the trial court, he made no effort to show the similarity between the testimony and the affidavits, and he therefore can point to no ruling in the record where the trial court refused to apply the doctrine of stare decisis when he should have. This argument is, it is submitted, unavailable to defendant-appellant.

Furthermore, the doctrine has no applicability to the instant case. The decision of the Supreme Court which this Court affirmed was as stated in the opinion filed in this Court:

"We concur in the view therein expressed that *the facts which were before the trial judge* raised a fair jury question."

Maurer v. Hahn (Not Yet Officially Reported). 145 Atl. 316.

That, it is submitted, is not a decision that the facts which were before the trial court, from which this appeal was taken, raised a jury question. What the affidavits then showed could be considered but what the oral testimony might show

in the future could not. The situation is different from that in *Michaccio v. Public Service Ry. Co.*, (Not Yet Officially Reported) 149 Atl. 829, where a rule of law on liability, laid down by this Court, was disregarded by the trial Court on the second trial. But in the instant case the rule of law, laid down by this Court, was followed, namely: that a payee may be a holder in due course. The differences between the affidavits and the testimony, while not brought out at the trial, were vital. The defendant, Hahn, failed to show the diversion which his affidavit indicated he might show; and especially did the facts change in that Herman Maurer became the defendant's witness, whereas his affidavit had been used on the motion by plaintiff. His testimony as defendant's witness bound the defendant to the fact in the case destructive to the defense, that he was not Asher Maurer's agent.

Potoker v. Klein (Not Yet Officially Reported) 143 Atl. 375.

That fact shifting from plaintiff's to defendant's case changed the situation completely and made the existence of any difference of opinion as to that fact impossible. No jury would be justified to disregard the unimpeached and uncontradicted evidence of defendant's witness, in defendant's favor. Had the argument of *stare decisis* been raised below, it is submitted that this difference would have made it inapplicable and the trial court would have had to rule solely on the evidence produced before it.

It is respectfully submitted therefore that the judgment under review should be affirmed.

Respectfully submitted,

PHILIP J. SCHOTLAND,
Attorney and of Counsel with
Plaintiff-Respondent.

Cozzolino Printing Co., 265 Halsey St., Newark, N. J.

