NEW JERSEY COURT OF ERRORS AND APPEALS.

FIRST NATIONAL BANK OF ROSELLE, Plaintiff-Appellee, vs. JOHN F. DORVALL, Defendant-Appellant.	On Appeal from the Supreme Court. Brief for Defendant-Appellant.

THIS APPEAL BRINGS UP FOR REVIEW A JUDGMENT RENDERED IN THE ELIZABETH DISTRICT COURT IN FAVOR OF THE PLAINTIFF - APPELLEE, AND WHICH JUDGMENT WAS AFFIRMED BY THE SUPREME COURT.

This is a suit on a promissory note set forth in the State of the Case (Exhibit P. 1). (C., p. 28.)

The plaintiff at the trial of the above cause offered said note in evidence and rested. (C., pp. 10 and 11.)

The defendant was then called and testified in substance that the note was signed under the following circumstances: He testified that Walsh, who was cashier, vice-president and a director of the Roselle Bank, came to his house with Mr. Dietz and he (Walsh) told him that Mr. Dietz was indebted to the Roselle Bank on a note amounting to ten hundred and thirty-six ($1036) dollars, and that he (Dietz) was bankrupt and the bank was in bad with his paper; that property owned by Dietz was being foreclosed and he (Walsh) wanted to know if he (Dorvall) would entertain a proposition from him on behalf of the bank. Stating

his proposition, he (Walsh) asked Dorvall to endorse a note of Dietz's for the amount that Dietz owed the bank, at that time which was ten hundred and thirty-six or thirty-nine dollars, and that on the foreclosure sale Walsh said that he would bid in the property in Dorvall's name, and that the note would be renewed from time to time and Mr. Dietz allowed to make small payments on the note (referring to the ten hundred and thirty-six dollar note) (C., pp. 11 and 12), that Dorvall then told Walsh that he did not want to be held responsible for this thing, and that Walsh said that he would not be (C., p. 12). That Dorvall then told Walsh that it would be necessary for him to pay the money to the Sheriff and the amount of money that the property would be sold for, and that he, Dorvall, did not propose to put any money in the property himself; that Walsh told Dorvall that he would not be compelled to put up a dollar; that they would have the money there. (C., p. 12.)

Testifying further Dorvall said that he was to hold the property that was to be purchased in his name by Walsh, under his agreement with Walsh, for the Bank of Roselle, until the Bank of Roselle was paid the amount due it by Dietz, and upon that being done he was to give Dietz back the deed for the property (C., p. 19); that Dorvall and Walsh then arranged to meet at the Sheriff's office to attend the sale; that they met at the Sheriff's office and the property was struck off by the Sheriff to Dorvall; that Dorvall did not bid for said property; that Walsh did the bidding; that the Sheriff fees amounting to four hundred and fifty ($450) dollars was paid by the cashier's check for that sum, which check was made by Walsh's cashier to Dorvall, who was told by Walsh to endorse it over to the Sheriff; that Dorvall endorsed said check and delivered it to the Sheriff, that after the check

had been given to the Sheriff, Mr. Walsh produced a blank note (referring to Exhibit P. 1) and filled it out and asked Dorvall to sign it. Mr. Dietz was not there and Dorvall asked Walsh Why Dietz did not sign it, and he said, "Simply to show where this check is gone"; that Dorvall said that he did not want to be held responsible; that Walsh then said to Dorvall that he would not be held responsible, that it would take the same course as the other note, and that he would not be held personally responsible (C., p. 13); that at the first meeting held at Dorvall's house, the only note discussed was the ten hundred and thirty-six dollar note; that nothing was said about the four hundred and fifty dollar note until after Dorvall had given the cashier's check to the Sheriff, which was given at the request of Walsh, and that said note was signed in the Sheriff's office after the cashier's check was delivered to the Sheriff. (C., p. 14.) Dorvall testified (C., p. 16) that he did not receive anything from Walsh or the Bank of Roselle for his endorsement other than the cashier's check of Mr. Walsh, which he turned over to the Sheriff at the request of Walsh.

The plaintiff then in rebuttal called the president of the bank (C., pp. 20 and 21), who testified in substance to the fact that no authority was given to Walsh by the Board of Directors to enter into the transaction which he entered into with Dorvall. (C., p. 25.)

The only other witness called was Mr. Brown, the present cashier of the Roselle Bank, whose testimony pertained to the minutes of the bank (C., pp. 25 and 26). The above is in substance the testimony produced by the plaintiff and the defendant respectively.

On the above testimony the trial court gave judgment in favor of the plaintiff, finding as a matter of fact that the note, the subject of this suit, was

given by the defendant for the accommodation of Walsh and Dietz and that the same was endorsed to plaintiff for value. (C., p. 28.)

Appellant respectfully submits that the District Court erred in its determination of said action, in that it did not give judgment for the defendant, the appellant in this cause, and that the Supreme Court erred in affirming the judgment of the said district court, and that the decision of the Supreme Court in affirming said judgment is contrary to law.

At the close of the hearing before the District Court there remained in evidence uncontradicted and established, the testimony of the defendant Dorvall with respect to his agreement with Walsh who was acting for the plaintiff bank, the effect of this testimony was to establish that Dorvall was an accommodation maker and endorser of said note (exhibit P. 1) and he received no consideration. Dorvall testified that Walsh, the bank cashier, had agreed to produce the necessary money with which to pay the Sheriff's fees, and that in the Sheriff's office he produced the cashier's check made payable to the order of Dorvall who at the request of Walsh endorsed the check and also at the request of Walsh, delivered it over to the Sheriff (C., p. 12 and 13); that the property which was paid for by Walsh acting for the plaintiff bank and purchased in the name of Dorvall, was to be held in trust for the bank until such time as Dietz paid off the ten hundred and thirty-six dollar note held by the bank, at which time the property was to be reconveyed by Dorvall at the direction of the bank to Dietz (C., p. 19). After the check was delivered to the Sheriff, the note in question (Exhibit, p. 1) was first signed (C., p. 14) and until that time no conversation was ever had respecting the same (C., p. 14). No testimony was offered by the plaintiff to contradict the testimony of the defendant Dorvall.

The Supreme Court in affirming the judgment of the Elizabeth District Court decided (C., p. 34):

First: That the testimony of the defendant Dorvall pertaining to the agreement made with Walsh, the bank cashier, and himself, was inadmissible, immaterial and irrelevant.

Second: That Walsh, the bank cashier, did not have the authority to enter into said agreement with the defendant Dorvall.

Third: That there was evidence to support the finding of the district court.

POINT I.

The testimony of the defendant Dorvall pertaining to his agreement with Walsh, the bank cashier, was clearly material and relevant, and admissible in evidence.

The purpose of this testimony was to make out and establish that the defendant Dorvall was an accommodation maker and endorser of said note and it is well settled law that this testimony is relevant and admissible.

The cases on this subject holding that this line of testimony is competent and admissible set out in the order of the respective dates when they were decided are as follows:

Joseph Johnson v. *Christopher Martinus*, 9 Law, 144 (Supreme Court).

In the above case it was held as follows:

"In an action brought by the endorsee against an endorser of a promissory note,

payable to bearer, and endorsed in blank, the endorser will be permitted to show that it was the agreement at the time of the endorsement that he was not to be liable as endorser upon the note, and that his name was endorsed merely to enable the plaintiff to collect the money from the drawer."

In *Watkin* v. *Kirkpatrick,* 26 Law 84 Supreme Court, the court held as follows:

> "The overwhelming weight of authority in the American courts permit parol evidence to show no value received and to show that the defendant's contract differed from what the law would have implied in the absence of extrinsic evidence."

Then comes the leading case of *Chaddock* v. *Van Ness,* 35 Law 517, Court of Errors and Appeals. The Court held as follows:

> "Parol evidence may undoubtedly be given of the circumstances under which a note or its endorsement was made in order to show a want or failure of consideration."
>
> "As between the parties a liability can arise only from the facts and circumstances which occurred at the time of the transaction and parol evidence offered for the purpose is not objectionable on account of a tendency to vary a written contract when no contract arises except upon such evidence."

In the case of *Messmore* v. *Meyer,* 56 Law 31, Supreme Court, the facts concisely stated are as follows:

> "The defendants made a note to plaintiff at the request of one Simmons for the accommodation of plaintiff and Simons, the de-

fendants were not then indebted to the plaintiff or Simmons, but delivered the note to Simmons taking from him a receipt which stated that it was made for accommodation of plaintiff and Simmons, that at that time Simmons owed plaintiff seventy-five hundred ($7,500) dollars for which plaintiff held his overdue note; that plaintiff had told Simmons that he would not extend the payment of his overdue debt except upon a note of defendants; that Simmons delivered the note in suit to plaintiff who promised to discharge and surrender to Simmons his overdue note." The court held in this case that the note was an accommodation note and the defendants were not liable thereon. The evidence was apparently admitted without objection to show the circumstances under which the note was made and signed by the defendants.

In *Woolverton* v. *Van Sickle,* 57 Law 393, Court of Errors and Appeals, it was held that parol evidence was admissible to show that no consideration passed for the signature to the note and cited Chaddock v. Van Ness.

In *Middleton* v. *Griffith,* 57 Law, 442, Court of Errors and Appeals, it was held as follows:

> "Parol evidence to show a want of failure of consideration is admissible and cites Chaddock v. Van Ness."

In *Vleit* v. *Eastburn,* 63 Law, 450, affirmed 64 Law, 627, Court of Errors and Appeals, it was held as follows:

> "As between the immediate parties to a promissory note its real character may al-

ways be shown. If the payee sues upon it, it may be proved that the note was really given for his accommodation, and cites *Messmore* v. *Meyer*."

Then come the negotiable instrument act, laws of 1902, 583, section 28 provides in part as follows:

> Absence or failure of consideration is matter of defense as against any person not a holder in due course.

Section 29:

> An accommodation party is one who has signed the instrument as maker, drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person.

Section 68:

> As respects one another, endorsers are liable *prima facia* in the order in which they endorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise.

The cases following the negotiable instrument act holding that parol evidence is admissible, are as follows:

> *Morgan* v. *Thompson*, 72 Law, 244, Court of Errors and Appeals, held as follows: "Since the passage of the negotiable instrument law evidence is admissible even between endorsers to show that as between themselves they have agreed to their liability other than as appears from the order of

the endorsement upon the note. As between the original parties the consideration of the note may always be inquired into and parol evidence is admissible for that purpose. A maker of a note can show the real transaction if sued upon it and cites *Chaddock* v. *Van Ness*."

In *Peoples National Bank* v. *Shepflin*, 73 Law, 29, Supreme Court, it was held as follows:

> "As between the immediate parties to a promissory note its real character may always be shown, if the payee sues upon it, it may be proved that the note was really given for his accommodation. Save for the law merchant the real character of a note might be shown even as against a holder in due course, and parol evidence is always admissible to show that the contract was void for want of consideration, and cites *Chaddock* v. *Van Ness*, and *Middleton* v. *Griffith*, and goes on to say that this is still the case under the negotiable instrument law, cites sections 24, 28, 29, 68 and 196."

In *Wilson* v. *Hendee*, 74 Law, 640, Court of Errors and Appeals it was held:

> "Even with respect to negotiable papers regular in form our decisions recognized the admissibility of parol evidence as between the immediate parties for the purpose of showing that a note or endorsement was made for the accommodation or without consideration or upon some condition that was not performed and cites *Chaddock* v. *Van Ness*."

In *Morris County Brick Co.* v. *Austin*, 79 Law, 273, Supreme Court, testimony was admitted to

show that the defendant endorsed the note to enable the company to get it discounted and the court held that from this testimony it was proper to infer that the defendant was an accommodation party, citing (*Vleit* v. *Eastburn,* 35 Vr., 627), and the court held that even though the defendant received some value his status as an accommodation endorser would remain unimpaired, and the court in construing section 29 of the negotiable instrument act, which defines an accommodation party as one who has signed the instrument as maker, endorser, accepter or drawer, without receiving value therefor, held as follows:

> "The language of the above statute has been criticised and if it must be construed to mean that one who loans his name to another upon a negotiable instrument and receives payment for the accommodation loses, as to that person, the right of an accommodation party, it would be subject to very just criticism, since such a conclusion would deprive an accommodation maker of his rights as against the person accommodated if he had received any consideration, however slight. A careful reading of the section shows that this construction is not necessary. The words are not 'without receiving value' but 'without receiving value therefor.' The struction of the sentence is such that the last word can only refer to the negotiable instrument itself not to the loan of the name by way of accommodation. The value received within the meaning of section 29 must precede or be contemporaneous with the obligation upon the note.
>
> If Austin loaned his name to the plaintiff corporation it acquired no right of action against him, cites *Messmore* v. *Meyer,* 27 Vr., 31.

The Supreme Court in the present case in deciding that the evidence was inadmissible, immaterial and irrelevant, cited *Foley* v. *Emerald Brewing Co.,* 32 Vr., 428, *Stiles* v. *Canterwater,* 19 Vr., 69, *Wright* v. *Remington* 12 Vr., 49.

These cases are not parallel cases with the case at bar and are very easily distinguished from it.

In the Foley case, which was decided before the passage of the negotiable instrument law, there was no defense made of failure of consideration, and this case is not an analogous case.

In the Vanderwater case there was no defense made of the failure of consideration, but it was attempted to vary the terms of a written contract by showing an agreement to renew the note. In the Remington case no defense was made of a failure of consideration."

It therefore appears that the cases cited by the Supreme Court are to be distinguished from the case at bar, because in the case at bar the testimony of the defendant Dorvall was not introduced for the purpose of varying the terms of the promissory note but was merely introduced for the purpose of establishing a failure of consideration, and that he was an accommodation maker and endorser of same, and it is submitted that the negotiable instrument law entirely changed the law which existed before the passage of said act with respect to the introduction of parol evidence to show an agreement under which a promissory note was signed, and it is contended that the doctrine laid down in the cases cited by the Supreme Court in the case at bar, would no longer be adhered to since the passage of the negotiable instrument law.

The cases following the passage of the negotiable

instrument law above cited clearly establishes the principle that the testimony of D'orvall, the defendant in the case at bar, pertaining to his agreement with Walsh, the bank cashier, is admissible in evidence.

POINT II.

"The bank cashier had the authority to enter into the agreement with defendant and perform the acts which he performed thereunder."

In the absence of knowledge to the contrary the defendant Dorvall had a right to assume that he was dealing with the bank and that Walsh the cashier had all the authority which he pretended to have in the transaction in which he was acting.

In *Campbell* v. *Mfg. National Bank,* the court held

> "There is no reason which is founded on principle that can be given for not applying the same rule of agency to a cashier as to other persons occupying fiduciary relations."
>
> No person can act as an agent in a transaction in which he has an interest or to which he is a party on the side opposite to his principle. This must be so when the party dealing with the agent has knowledge of the facts. So long as a person deals with the cashier in a matter wherein as between himself and the cashier, he is dealing with, or has a right to believe he is dealing with the bank, the transaction is obligatory upon the bank.
>
> The cashier is presumed to have all the authority he exercises in dealing with executive functions legally within the powers of the bank itself or which are usually or

customarily done or held out to be done by such an officer, but the test is whether it is with the bank and its business or with the cashier and his business. As to the former all presumptions are in favor of its regularity and binding force, in the latter case no such presumption arises.

In *Martin* v. *Webb,* 110 U. S., p. 7, the court held:

> "Directors cannot in justice to those who deal with the bank shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business, etc. They have something more to do than from time to time to elect the officers of the bank. That which they ought by proper diligence to have known as to the general course of the business in the bank they may be presumed to have known in any contest between the bank and those who are justified by the circumstances in dealing with its officers, upon the basis of that course of business."

The Supreme Court in the present case in deciding that the cashier did not have the authority to enter into the agreement wth the defendant cited, *Campbell* v. *Mfg. National Bank,* 38 Vr. 301, *Stokes* v. *Pottery Co.,* 46 N. J. Law 237. *Titus* v. *Cairo, etc., R. R. Co.,* 37 N. J. Law 98.

The Campbell case clearly holds that the cashier of the bank so far as the defendant Dorvall is concerned had the authority to perform the acts which he performed.

Dorvall believed that he was doing business with the bank and under the Campbell case the transaction is obligatory upon the bank. Walsh undoubtedly must be held as having acted as agent for the

bank because he procured the note delivered it to the bank, and the bank in bringing suit upon same ratified his acts, and ratified every act performed by its cashier, director and vice-president in said transaction.

31 Cyc., 1280, 31 Cyc., 1257, 1258, 1259. Canadian Imp. Co. v. Llea, 69 At. Rep. 455. *Bodine* v. *Berg*, 82 Law, 662.

The bank was charged with the knowledge acquired by its cashier pertaining to transactions within the scope of the bank's business.

Bodine v. *Berg*, 82 Law, 662, *William H. Groff* v. *Stitzer*, 75 Eq. 452.

In the *Titus* v. *Cairo, etc., R. R. Co.* and *Stokes* v. *N. J. Pottery Co.* cases, cited by the Supreme Court, in the case at bar, the question decided was that a president of the company did not have the power to perform the act which was performed by him. The cases on this point are very easily distinguished from the case at bar wherein the power of a cashier is at question. The powers of a cashier of a bank are much broader than the powers of a president of an ordinary corporation and are vested in him for the purpose of expediency in the transaction of the bank's business. The weight of authority of the cases take this view of a cashier's powers.

Assuming for the sake of argument that Walsh did not have the power to enter into the agreement testified to by Dorvall, it still clearly appears that there was no consideration for the note (Exhibit P. 1), and this defense is available against the plaintiff-appellee because the plaintiff-appellee paid no value for the note and was not a holder in due course, the cashier's check before the signing of the note, had already been applied by Walsh the cashier, toward the payment of the Sheriff's fees, and

if he had no authority to do so he misappropriated the bank's funds, the note was signed after the check was so applied and on the strength of the note, the bank did not advance any money.

Assuming further, for the sake of argument, that the note was for the accommodation of Walsh, Walsh received no consideration from the bank on this note, because before receiving same for the bank he had already applied the cashier's check towards the payment of the Sheriff's fees and the bank not being a third party to the transaction and not having advanced any money on the strength of the note, the defense of failure of consideration and accommodation endorser surely must be sustained.

POINT III.

"There was no evidence to support the finding of fact of the Trial Court."

On the authority of the Campbell case it is contended that Walsh acted as agent for the bank and had no individual interest in said transaction and this being so, the trial court erred in finding that the note was given by the defendant for the accommodation of Walsh and Dietz. There is absolutely no testimony in the state of the case showing that Dietz was the accommodated party; Dietz was in bankruptcy at the time that the transaction took place.

The Supreme Court in affirming the judgment of the trial court on the ground that there was evidence to support the finding that the note was given for the accommodation of Walsh and Dietz necessarily found that Walsh acted as an individual in the transaction and not for the bank, and it is respectfully contended that in this respect the Supreme Court erred and if Walsh was acting for the bank as appears clearly throughout

the whole transaction, and had the power to perform the acts which he performed in the transaction, then it is contended that he could not have been individually accommodated but that any accommodation by the defendant must have been for the bank who was acting in the transaction through its cashier.

The findings of fact by the trial court that the note was made for the accommodation of Dietz and Walsh could not be predicated upon the evidence in the case. By reference to said note (Exhibit P. 1) it appears that the name of Walsh or Dietz does not appear thereon, and there is no testimony whatever which could possibly be construed in favor of the findings of the trial court.

Conclusion.

It is respectfully submitted that the testimony of the defendant Dorvall was admissible in evidence to show a failure of consideration, and under the authority of the cases cited under Point I, it clearly appears that Dorvall received no consideration for his endorsement. The property which was purchased in his name and which he was to hold in trust for the bank, he had absolutely no interest in, a resulting trust immediately arose in favor of the bank as soon as the property was purchased in the name of Dorvall, and the bank funds applied on account of the purchase price.

Thomas v. *Thomas*, 79 Eq., 462.

Dorvall was an accommodation payee of the cashier's check, he having been requested by the cashier to endorse same and deliver it over to the Sheriff, after this was done the note, the subject of this suit, was first signed, and at the time of the signing of the same, no value was received

therefor by Dorvall; the cashier's check having already been applied for the uses and purposes of the bank. Walsh, the cashier, represented to Dorvall that Dorvall was performing an accommodation for the bank, and Dorvall having no knowledge to the contrary had a right to assume that he was dealing with the bank and that Walsh merely acted in an official capacity, and the finding of fact by the trial court that Walsh as an individual and Dietz were the accommodated parties, cannot be sustained as a matter of law, and it is respectfully submitted that the Supreme Court in affirming the judgment of the trial court erred, and that the judgment should be reversed.

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[7504]

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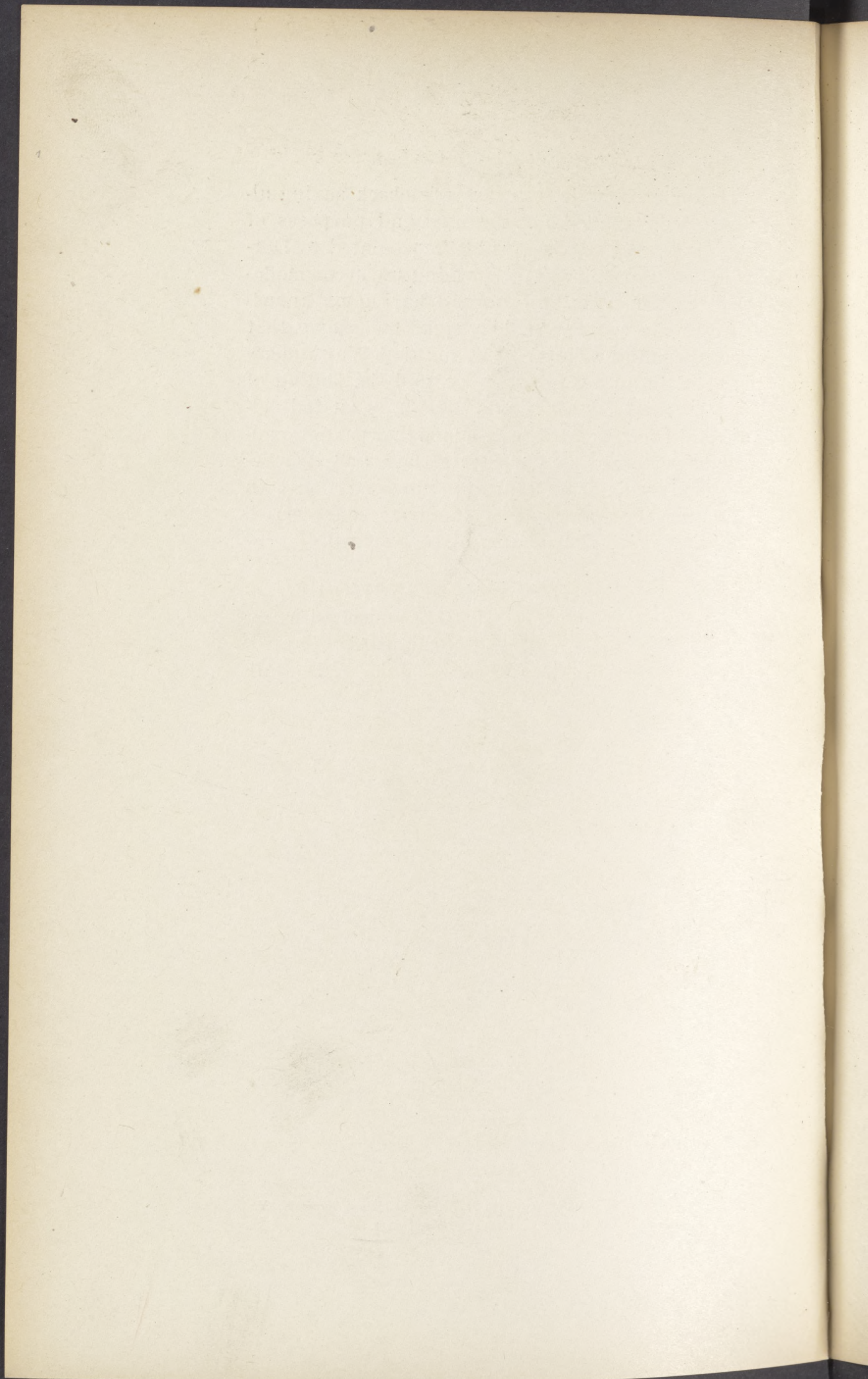

New Jersey Court of Errors and Appeals

FIRST NATIONAL BANK OF ROSELLE, Plaintiff-Appellee, vs. JOHN F. DORVALL, Defendant-Appellant.	Action at Law. On Appeal from the Supreme Court.

BRIEF FOR APPELLEE.

The First National Bank of Roselle contends that the judgment of the Elizabeth District Court should be sustained.

The evidence submitted to the Elizabeth District Court showed that on September 2, 1914, John F. Dorvall received a cashier's check for Four Hundred and Fifty ($450.00) Dollars and endorsed this over to the Sheriff of Union County and then signed a four months note for this sum payable to the First National Bank of Roselle. Dorvall attempted to show that Walsh had previously induced him to endorse a larger note made by his friend Dietz because "the bank was in bad with his paper"; but this affair of the larger note does not appear related to the Four Hundred and Fifty ($450.00) Dollar note, the giving of which appears as part of some plan to save the property of Dietz at a foreclosure sale on September 2, 1914. The defendant made an effort to prove that he was acting for the Roselle Bank in trying to save the property. The only testimony on this point appears on page nineteen (19) of the Record of the Case, line twenty-four (24). In speaking of his taking title to the property Dor-

vall said: "I was to hold it until the Bank of Roselle was paid the amount due them by Dietz and upon that being done I was to give Dietz back the deed for the property." Walsh had no authority to buy and sell real estate for the bank and Dorvall knew this. The evidence of Mr. Crane, President of the Bank, pages twenty-two (22) and twenty-three (23) of the record shows that the Bank considered the question of buying in the property but decided to take Dorvall's endorsement on the note of One Thousand Thirty-six ($1,036.00) Dollars instead, and that this was done, and that no authority was given to Walsh, the cashier, to buy the property at the sale. The close friendship between Walsh, Dietz and Dorvall appears through the whole transaction and the Court below properly held that the Four Hundred and Fifty ($450.00) Dollar note was signed by Dorvall to help Dietz save his property, while Walsh used his position with the bank as a means of getting the "bid money" for the Sheriff and made the transaction on its face appear as a loan to Dorvall.

The evidence shows that Walsh, the cashier, notwithstanding that the Bank's Committee had reported unfavorably on the proposition to buy in the Dietz property at the foreclosure sale, but had accepted the endorsement of Dorvall on the large Dietz note of One Thousand Thirty-six ($1,036.00) Dollars instead, undertook to use Dorvall's name and the Bank's money to save the Dietz property when it was offered for sale at the Sheriff's Office in Elizabeth on September 2, 1914. He drew up a Cashier's check to Dorvall's order for Four Hundred and Fifty ($450.00) Dollars to serve as the bid money and Dorvall signed a note for this sum payable four months after date. The Cashier's check was endorsed by Dorvall over to the Sheriff. The balance of the purchase price was to be raised

by a new mortgage to be negotiated by Walsh (see page twelve (12) of the Record). Assurances were given by Walsh, according to Dorvall, that Dorvall would not be held responsible for the payment of the Four Hundred and Fifty ($450.00) Dollar note. The new mortgage was never negotiated, and the property was resold at a loss so that the Four Hundred and Fifty ($450.00) Dollar bid money was never recovered.

The Judge of the Elizabeth District Court found that this note was given by the defendant Dorvall for the accommodation of Walsh and Dietz and gave judgment in favor of the First National Bank of Roselle.

This judgment should be sustained:

1. Because there was evidence to support this finding of facts. See opinion of N. J. Supreme Court in *First National Bank of Roselle* v. *Dorvall,* November Term, 1915.

The facts established that Dorvall was not an accommodation maker for the bank, and the bank became a bona fide holder. The rule laid down in *Morris County Brick Co.* v. *Austin,* 79 Law, 273, cannot apply, as the Court found the fact to be that Dorvall signed the note to accommodate Walsh and Dietz.

2. Walsh, the cashier, was acting beyond the scope of his duties. He was not using the Bank's funds in the ordinary course of business but to serve his own private ends and assist a friend. A disclosure of the scheme to the President or Directors of the Bank would have frustrated it. *Campbell* v. *Manufacturers National Bank,* 67 N. J. L. 301. *Hillard* v. *Lyons,* 180 F. R. 685, *Earle* v. *Enos,* 130 Fed. R. 470.

Dorvall knew that it was not the usual duty of

Walsh, as cashier, to buy in property of this kind at foreclosure sales. Any reasonable man would have been put upon inquiry. He knew he was entering into some scheme to help Dietz. To bind the bank the act of its agent must be for the bank and not against its best interests. Dorvall knew by the very circumstances that he was acting for Dietz. The bank could have easily taken up the mortgage under foreclosure and would not send its Cashier scouting for a loan if it wanted to buy in the property.

3. The transaction was not a bank transaction and therefore the statements of the Cashier Walsh could not bind the bank.

"The declarations of an agent are only admissible against his principal when the agent is acting at least *prima facie* for his principal and within the scope of his actual or apparent authority." *Bank of New York* v. *American Dock & Trust Co.*, 143 N. Y. 559.

Point "2" contemplates an act by a Cashier in exceeding his authority or merely beyond the scope of his duties but this transaction with Dorvall went further.

(a) It was not a bank transaction but a private transaction. (b) It was a conspiracy between Walsh and Dorvall to save Dietz's property by using bank funds and covering up their tracks by placing a note with the bank so as to make it appear as a genuine loan. (c) It was taking a chance with the bank's money and in defiance of its instructions, as it had decided not to buy in the property. (d) It was a fraud against the bank.

An agent while committing a fraud against his principal cannot bind him by his agency.

4. The bank cannot be charged with knowledge acquired by its Cashier as the transaction was not

within the scope of the bank's business. See the U. S. National Banking Laws, U. S. R. S. 5137.

5. Nor was Walsh, the cashier, held out by the bank to have authority to buy real estate at Sheriff's Sales and negotiate mortgage loans nor to grant immunity to endorsers or makers of notes discounted by the bank. "It is not the duty of the cashier to make such contracts." *Earle* v. *Enos,* 130 F. R. 470.

6. The evidence offered by Dorvall attempting to show that he was not to be held responsible on the note was incompetent and inadmissable and must be ruled out and disregarded. It is an attempt to contradict the plain terms of a written instrument. The written instrument may not be controlled by parol testimony of this nature. *Gerli* v. *National Milling Supply Company,* 73 At. R. 252. *Earle* v. *Enos,* 130 F. R. 467 and 470. *Foley* v. *Emerald Brewing Co.,* 32 Vr. 431. *Wright* v. *Remington,* 12 Vr. 49.

Conclusion.

1. The Supreme Court below found evidence to support the finding of facts on which judgment was given for the plaintiff.

2. The Cashier's acts or words by virtue of which Dorvall claims immunity cannot bind the bank as the Cashier was acting beyond the scope of his duties.

3. It was not a bank transaction but a conspiracy against the bank.

4. The bank cannot be charged with the knowl-

edge of an act of an agent in a transaction beyond the scope of the Bank's business.

5. Nor is a Cashier held out by a bank to have authority to buy real estate or to perform acts against the bank's interest or beyond the scope of its business.

6. The parol testimony may not control the terms of the written instrument.

Respectfully submitted,

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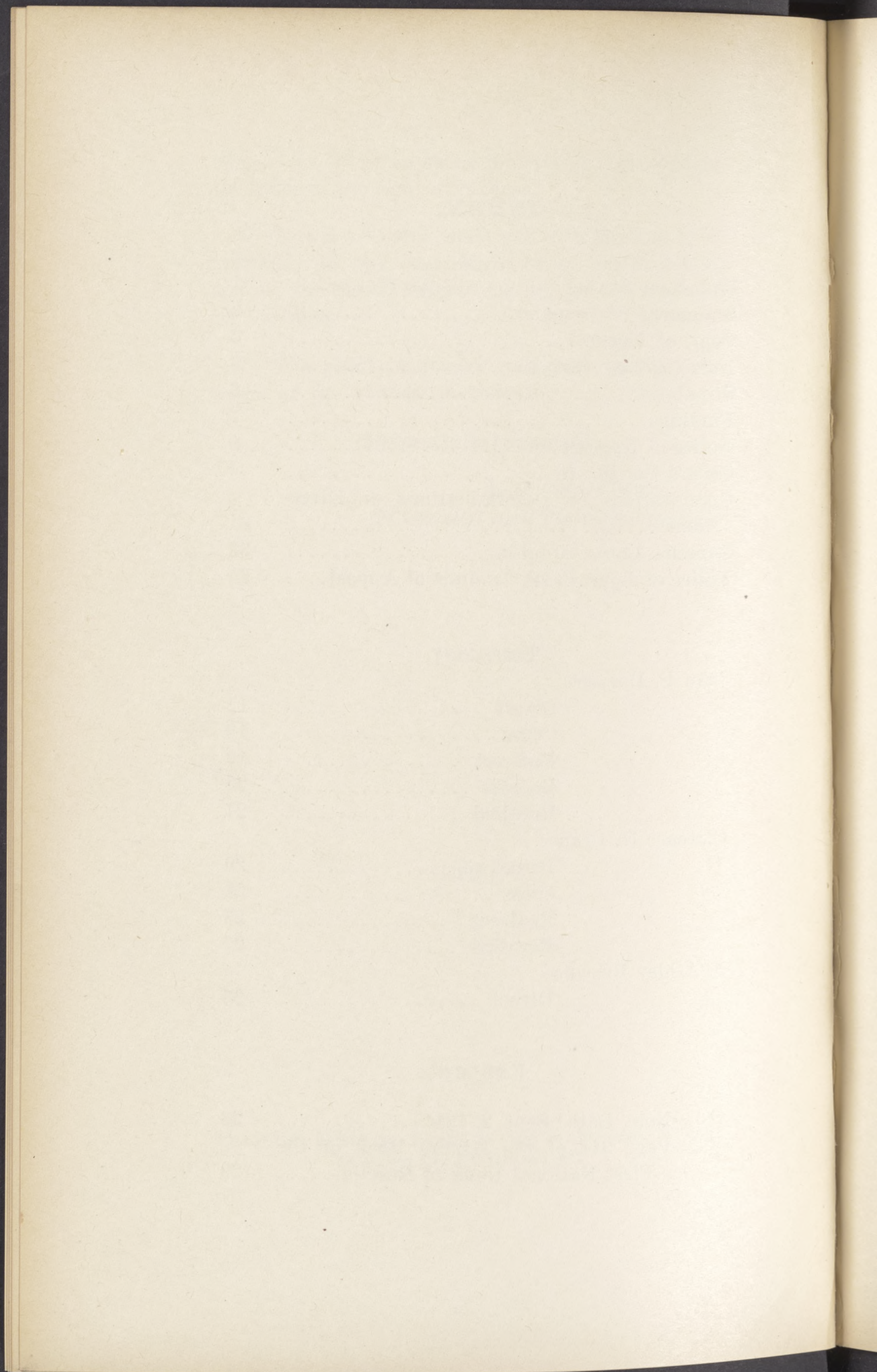
	Recalled	27
J. Ashley Brown:		
	Direct	25

EXHIBITS.

P-1—Note, Dated Sept. 2, 1914	28
P-2—Page 344 of the Minute Book of the First National Bank of Roselle	29



Summons.

THE STATE OF NEW JERSEY } SS.:
UNION COUNTY }

10

(SEAL) To any Constable of Said County or the Sergeant-at-Arms of the District Court of the City of Elizabeth, summon John V. Dorvall to appear before the District Court of the City of Elizabeth to be held at the District Court Room in the Union County Court House in said City, on the eleventh day of February, 1915, at ten o'clock in the forenoon, to answer unto First National Bank of Roselle (incorporated) in an action on contract Five hundred dollars and then and there have you this writ. Hereof fail not.

20

Witness, AL. J. DAVID, ESQUIRE, Judge of said Court at Elizabeth, aforesaid, the first day of February in the year One Thousand Nine Hundred and Fifteen.

GEORGE J. SMITH,
Clerk.

30

40

State of Demand.

ELIZABETH DISTRICT COURT.
Filed Feb. 2, 2, 1915.

FIRST NATIONAL BANK OF ROSELLE, INCORPORATED, Plaintiff, against JOHN F. DORVALL, Defendant.	On Contract. State of Demand

10

Plaintiff demands of defendant the sum of Five Hundred ($500.00) dollars, the amount due on a note of which the following is a true copy:

20

$450.00/100

Roselle, New Jersey, Sept. 2, 1914.

Four months after date, for value received I promise to pay to the order of Myself—Four Hundred and fifty and 00/100 (and interest) dollars at THE FIRST NATIONAL BANK OF ROSELLE.

No. 4292 due Jan. 4. John F. Dorvall.

Said note was endorsed by the said defendant and delivered to plaintiff on or about September 2d,
30 Nineteen Hundred and fourteen for value and plaintiff still owns said note; that the same was protested on the 4th day of January, Nineteen Hundred and fifteen and the protest fees thereon amounts to one ($1.81) dollar and eighty-one cents.

Plaintiff will claim judgment for the sum of four hundred and fifty-one ($451.81) dollars and eighty-one cents, besides interest from September 2d, Nineteen Hundred and fourteen at six per cent.

N. R. LEAVITT,
40 Attorney for Plaintiff.

Copy of Docket.

IN THE DISTRICT COURT OF THE CITY OF ELIZABETH.

STATE OF NEW JERSEY, }
COUNTY OF UNION, } ss.:

10

FIRST NATIONAL BANK OF ROSELLE,
Plaintiff,

against

JOHN F. DORVALL,
Defendant.

20

In an action upon contract.

Demand, $500.

Attorney of Plaintiff, N. R. Leavitt.

Attorney of Defendant, D. S. Feinswog.

A summons was issued in the above stated cause February 1 A. D. 1915, returnable February 11 A. D. 1915, at 10 o'clock A. M., and was returned by the Constable as follows: 30

I served the within summons February 3, 1915, on the defendant by reading it to him and giving him a copy.

O. CONLEN,
Constable.

Demand filed February 2; adjourned to February 25. March 15, 1915, Frank J. Burns was sworn as 40

stenographer. Clarence H. Crane and J. Ashley Brown were sworn for the plaintiff. John F. Dorvall was sworn for the defendant. Exhibit P was put in evidence by the plaintiff. Court gave judgment in favor of the said plaintiff and against the 10 said defendant in the sum of four hundred and sixty four dollars and forty cents and costs ($464.40.)

Judgment reopened by consent of parties and argument heard, on March 27, 1915, on rule to show cause and judgment given in favor of the plaintiff and against the said defendant in the sum of four hundred and sixty-four dollars and forty cents and costs.

20 Bond and Notice of Appeal filed April 1, 1915.

(Bond and approval of same by Judge of District Court, returned, but not printed in this book.)

30

40

Rule to Show Cause.

ELIZABETH DISTRICT COURT.

FIRST NATIONAL BANK OF ROSELLE, against JOHN F. DORVALL,	Rule to Show Cause.

10

This matter being opened to the Court by David S. Feinswog, attorney for defendant, upon an application for a rule to show cause why a new trial should not be granted in the above entitled cause, and sufficient reason appearing.

It is, on this 22d day of March, 1915, ordered, that the First National Bank of Roselle, show cause before this Court at Elizabeth, on the 26th day of March, 1915, at 10 A. M. of said day or as soon thereafter as the matter may be heard, why a new trial should not be granted in the above entitled cause, or a judgment ordered in favor of the defendant, John F. Dorvall, instead of the plaintiff.

20

And it is further ordered, that a copy of this order be served upon the attorney for said plaintiff within two days from date. And it is further ordered that in the meantime, and until the further order of the Court, all proceedings in said cause and on the execution issued on the judgment, be and are hereby stayed.

30

And it is further ordered that the granting of the within rule to show cause shall not be a waiver of any grounds for appeal existing in favor of the defendant, and that the time within which such appeal may be taken shall not be computed until this rule to show cause has been disposed of.

Filed March 22, 1915.

WM. F. VOSSELER.
Judge.

40

Stipulation.

ELIZABETH DISTRICT COURT.

Filed March 26, 1915.

10

FIRST NATIONAL BANK OF ROSELLE, against JOHN F. DORVALL,	On Contract. Stipulation.

An order to show cause why new trial should not be had, in the above entitled action, returnable before Hon. William F. Vosseler, Judge of the District Court, at the Court House in the city of Elizabeth, on Friday, March 26th, 1915, at the hour of 10 A. M. in the forenoon of said day, and the parties hereto by their respective counsel desiring another day for the argument on said rule.

20

It is therefore stipulated and agreed that the argument on the said rule to show cause returnable as aforesaid, be and the same is hereby adjourned until Saturday, the 27th day of March, 1915, at the hour of 9 A. M. in the forenoon of said day at the Court House in the city of Elizabeth.

30

Dated, March 25th, 1915.

N. R. LEAVITT,
Attorney of Plaintiff.

DAVID S. FEINSWOG,
Attorney of Defendant.

40

Findings.

FIRST NATIONAL BANK OF ROSELLE, Plaintiff, against JOHN F. DORVALL, Defendant.	Findings.

10

Judgment re-opened by consent of parties and argument heard, on March 27th, 1915, on rule to show cause and judgment given in favor of plaintiff for four hundred and sixty-four dollars and forty cents.

20

Finding: I find, as a matter of fact, that the note the subject of this suit, was given by the defendant for the accommodation of Walsh and Deitz and that the same was endorsed to plaintiff for value.

Filed March 27, 1915.

WM. F. VOSSELER, *J.*

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40

Notice of Appeal.

ELIZABETH DISTRICT COURT.

Filed April 1, 1915.

FIRST NATIONAL BANK OF ROSELLE, against JOHN F. DORVALL,	On Contract. Notice of Appeal

10

To Nathan R. Leavitt,
Attorney of Plaintiff.

20 Dear Sir:

Take notice that the defendant appeals from the determination of the Court in this action, whereby a judgment was rendered in favor of the plaintiff and against the defendant to the New Jersey Supreme Court.

Dated, March 31, 1915.

30

DAVID S. FEINSWOG,
Attorney of Defendant.

40

Clerk's Certificate.

STATE OF NEW JERSEY, }
COUNTY OF UNION, } SS.:

I, GEORGE J. SMITH, Clerk of the District Court of the City of Elizabeth, DO HEREBY CERTIFY the foregoing to be true and correct copies of—a certain State of Demand, Summons, Notice of Appeal and Bond, Stipulation, Findings and Rule to Show Cause in the cause of the First National Bank of Roselle, v. John F. Dorvall also a true and correct copy of the judgment record as the same is recorded in Book 51 of Records of said city, on page 271.

10

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this third day of April, A. D., 1915.

20

GEORGE J. SMITH,
Clerk.

30

40

Testimony.

ELIZABETH DISTRICT COURT.

First National Bank of Roselle, Plaintiff, against John F. Dorvall, Defendant.	}

10

Transcript of stenographer's notes of testimony taken in the above entitled matter, before Hon. William F. Vosseler, Judge (*pro tem*) of the Elizabeth District Court, at the court house, Elizabeth, N. J., on Monday, the 22d day of March, 1915, at the hour of 11.45 A. M.

20

Appearances:

Mr. N. R. Leavitt, Attorney for Plaintiff.
Mr. David Feinswog, Attorney for Defendant.

It was stipulated and agreed by and between counsel for the respective parties that "the cashier, Mr. Walsh, has been connected with the Roselle National Bank as Vice-President, Director and Cashier, for three or four years, and that he had severed his connection with that firm, on February 1st, 1915, and that he is no longer connected with the firm."

30

Mr. Leavitt: I offer in evidence a note bearing date September 2d, 1914, made by

40

John F. Dorvall to the order of himself for $450.

Note received in evidence and marked "Exhibit P 1" for plaintiff.

Plaintiff rests. 10

JOHN F. DORVALL, on behalf of the defense, being duly sworn according to law, on his oath deposes and says:

Direct examination by Mr. Feinswog:

Q. Mr. Dorvall, you are the defendant in this case? A. I am. 20

Q. That is your signature to that note (handing paper to witness)? A. Yes, sir.

Q. And that is your endorsement? A. Yes, sir.

Q. Will you kindly state to the Court under what circumstances; state first with whom you had the transaction relative to that note and under what circumstance you came to make it? A. Why, Mr. Walsh was at my house with Mr. Dietz, who was a tenant of the house recently foreclosed and of which Mr. Walsh was the owner, and he told me 30 that Mr. Dietz—that the Roselle Bank had loaned Mr. Dietz some money on a note amounting to a hundred and thirty-six or a thousand and thirty-six dollars and that he was bankrupt (interrupted)——

Q. And that who was bankrupt? A. That Deitz was bankrupt and the bank was in bad with his paper, and on this foreclosure he wanted to know if I would entertain a proposition from him on behalf of the bank. Well, I told him I would like to hear his proposition. He asked me if I would en- 40

dorse a note of Dietz's for the amount that Dietz owed the bank at that time, which was ten hundred and thirty-six or thirty-nine, I am not positive which, and that at the time of the sale Walsh would bid in the property and would put the deed in my 10 name, and that this note would be renewed from time to time and Mr. Dietz allowed to make small payments on the note.

Q. What note is that? A. The ten hundred and thirty-six dollar note—or thirty-nine, I am not sure which.

The Court: I don't quite understand what you are getting at. You seem to be starting in the middle.

Mr. Feinswog: I want to make it clear 20 first. I am coming down to this note now.

Mr. Leavitt: I want to make myself plain here. I am not objecting to this testimony because there is no jury. If there was a jury I would object to it.

Q. Go ahead. A. That he would bid in the property and put the thing in my name, and he would negotiate a thirty-five hundred dollar mortgage, and I told him that I did not want to be held respon- 30 sible for this thing and he told me that I would not be. Then I told him it would be necessary for him to pay the money to the sheriff and the amount of money that the property would be sold for, and that I didn't propose to put any money in the property myself. He told me that I would not be compelled to put up a dollar; that they would have the money there; which they did, and which was this money, representing this note (indicating).

Q. What arrangements did you make with respect 40 to the sale at the sheriff's office with him; did you

arrange to meet him at the sheriff's office? A. Yes, he said he would attend the sale.

Q. Was he there? A. Yes, sir.

Q. The property was struck off by the sheriff, was it? A. It was.

Q. Who bought in the property? A. Mr. Walsh.

Q. Did you participate in that deal that day? A. I did not. 10

Q. Property bought in whose name? A. My name.

Q. Who paid the sheriff's fees? A. The National Bank of Roselle—check.

Q. How was it paid? A. The check, if I remember, was a cashier's check for four hundred and fifty dollars; that was this man Walsh, cashier of the bank, made to me, which I was told to endorse over to the sheriff. 20

Q. Who told you to endorse it over to the sheriff? A. Mr. Walsh.

Q. Did you so endorse it, and deliver it to the sheriff? A. I did.

Q. With respect to the time of the endorsement and delivery of that check to the sheriff, when was this note signed? A. After the check had been given to the sheriff.

Q. How did it come about that you signed it? A. Why, I didn't know anything about it. Mr. Walsh produced this blank note and filled it out and asked me to sign it, Mr. Dietz was not there. I asked him why Dietz did not sign it and he said, "Simply to show where this check is gone." I said, "I don't want to be held responsible." He assured me I would not be held responsible; that it would take the same course as the other note and I would not be held personally responsible; and it was a man to man deal; I took his word, and we shook hands. 30

Q. When you said that you had this arrange- 40

ment at your house, who was present? A. Mr. Dietz and Mr. Walsh.

Q. Just what notes were discussed at that time? A. The ten hundred and thirty-six dollar note.

Q. Anything said at that time about your signing this present note? A. There was not.

10

Q. When were you first requested to sign this note? A. After I have given the check to the sheriff, William H. Wright.

The Court: That was the bank's check?

A. Yes, sir.

Q. Was there anything said as to how—in what manner—he was going to pay the sheriff—in cash or check? A. Simply told me that he would have the money there.

20

Q. Did you ever do any business with the First National Bank of Roselle before? A. Never.

Q. Ever have an account there? A. No, sir.

Q. Never had any business transactions? A. No, sir.

Mr. Leavitt: As I said before, your Honor, I have not objected to this evidence so far because there is no jury present. I now move to strike it out.

30

The Court: On what ground can you strike it all out?

Mr. Leavitt: On the ground that the note is made by the defendant and check in payment thereof was issued to his order; if his defense is failure of consideration, the only thing he can show is that he didn't receive the money; this action is brought against the maker of the note and the only failure of consideration that they can insist upon is the failure of the defendant to receive the money.

40

Now, on the other hand, assuming that the

evidence that Mr. Dorvall has given is true, if the cashier of a bank tells a maker of a note that he will never be liable under that (interrupted)——

Mr. Leavitt: Not only is it not competent evidence, but it is in violation of the national banking laws and makes him a conspirator. 10

Mr. Leavitt: And we move to strike that out.

Mr. Feinswog: I will ask the Court to reserve any ruling until I am heard on that point.

The Court: But this is so plain.

Mr. Feinswog: I have authorities to show the other way. The evidence and the defense is that Mr. Dorvall was used by the bank for a purpose; when he testified that Walsh was the cashier. 20

Mr. Leavitt: It is unreasonable to suppose that the bank would want a man like Dorvall when they had a cashier to attend to the business.

The Court: That might be so or not; it would simply be a matter of fact. Go on.

Mr. Feinswog: Mr. Leavitt doesn't seem to take notice of the fact that the defence in this case is not only failure of consideration, but accommodation maker. And I contend that if Mr. Walsh, who was vice-president, director and cashier of this bank, made this agreement with the defendant in this case whereby the defendant was not to be liable on any one of these notes, that he was doing that as an accommodation for the bank, and I contend that he had a right to make that agreement, and the cases provide so. The case of *Campbell* v. *Manufacturers' National* 30 40

Bank, in 67 Law, provides as follows (reading): "While a cashier of a bank is presumed to have all the authority he exercises in dealing with executive functions, legally within the powers of the bank, or which are usually done or held out to be done by such an officer, still the test is whether the transaction is with the bank and its business, or with the cashier personally and in his business. As to the former, all presumptions are in favor of its regularity and binding force. As to the latter, no such presumptions arise."

10

Mr. Feinswog: I want to ask just one more question.

The Court: Yes.

20

Q. Did you ever receive any consideration from Mr. Walsh or the Bank of Roselle for your endorsement?

Mr. Leavitt: I object.

Q. Did you ever receive anything from Mr. Walsh or the Bank of Roselle for your endorsement, other than the cashier's check of Mr. Walsh? A. No, sir.

30

Cross-examination by Mr. Leavitt:

Q. Do you know any of the directors of the First National Bank of Roselle? A. I do not, sir.

Q. Well, perhaps you don't know who they all are. Do you know Henry Krouse? A. Yes, sir.

Q. Do you know Mr. Clarence H. Crane? A. I do not.

Q. Do you know Mr. Krouse? A. I've known him for a great many years; didn't know he was connected with the bank.

40

Q. Meet him quite often? A. I saw him this morning here; not before in two or three months.

Q. Did you ever say anything to the directors about this four hundred and fifty dollar note? Didn't you think it peculiar for a cashier of a bank to ask you to sign a note and tell you that you would not be liable? A. Think it peculiar? 10

Q. Yes. A. Well, I know Mr. Walsh for a long time, and I didn't give it any consideration as to whether it was peculiar or not. I have implicit confidence in Mr. Walsh.

Q. How long have you known Mr. Walsh? A. Ever since he struck a place in the National Bank in Westfield.

Q. How long ago? A. Twelve or fourteen years.

Q. Very friendly? A. Yes, sir. 20

Q. Do you know Mr. Dietz? A. I do.

Q. How long have you known him? A. Ever since he has been in Westfield; perhaps ten years or so.

Q. Very friendly with Mr. Dietz? A. Yes, sir.

Q. When you first came into this transaction, didn't you do it to help Mr. Dietz out? A. I did not.

The Court: Did he say who this Mr. Dietz was?

Mr. Leavitt: The owner of the property under the foreclosure. 30

A. Mr. Walsh was the owner, Mr. Leavitt, not Mr. Dietz.

Mr. Leavitt: Mr. Dietz lived in the house.

Q. Mr. Dietz lived in that house, did he not? A. Yes, sir.

Q. And he was the owner of the property? A. No, sir. If he was I would have known of it.

Mr. Feinswog: He was the owner of the property. 40

The Court: Dietz was the owner of the property and lived there?

A. He lived there; yes, sir.

10 The Court: You don't know whether he was the owner or not?

A. I know he wasn't.

The Court: Can you agree?

Mr. Feinswog: We will admit that Dietz was the holder of the legal title of the property and it happened to be in the name of Walsh.

Mr. Leavitt: Even after this deed there was

20 a mortgage made by Dietz to another man.

Cross-examination (*continued*):

Q. You know Dietz family very well? A. I know Mr. Dietz; not Mrs. Dietz, or the children.

Q. Ever engage in any business transaction with Mr. Dietz? A. No, sir; only having sold the place to him years ago.

Q. You sold him the house he lives in? A. Yes,

30 sir.

Q. And you have continued friendly with him ever since? A. Yes; yes, sir.

Q. Now, you were friendly with the cashier of the Roselle Bank; did you ever have any business transaction with him? A. Sold him a house.

Q. Do you know his family very well? A. I know his family; yes.

Q. Isn't it a fact, Mr. Dorvall, that Mr. Walsh told you that he was in a hole? A. No, sir.

40 Q. And asked you to help him—Walsh—out? A. No, sir.

John F. Dorvall—Redirect

Q. That Walsh had discounted a note for Dietz and that Dietz had been—and that a petition had been filed in bankruptcy against Dietz? A. He told me he was bankrupt.

The Court: Mr. Walsh told Mr. Dorvall that Dietz was bankrupt? 10

A. Yes, sir. I have stated right here what he said; that the bank was in bad with this paper.

Q. That's why the bank needed your endorsement? A. I don't know anything about that. I am telling you because Walsh was cashier of that bank I did it to help the bank and as a favor to Walsh.

Redirect examination by Mr. Feinswog: 20

Q. Mr. Dorvall, just one question. What arrangement did you have with Mr. Walsh with respect to the purchase of the property in your name? What were you to hold it for? A. I was to hold it until the Bank of Roselle was paid the amount due them by Dietz and upon that being done I was to give Dietz back the deed for this property.

Q. The amount due the bank is what? A. On the note, ten hundred and thirty-nine dollars, and whatever he owed the bank. 30

Q. Do you know whether the Westfield Bank was interested in this property? A. The Westfield Bank had, I think, a claim of two hundred and thirty and some odd dollars.

Q. Did they appear at the sheriff's sale? A. Yes, sir.

Q. Did they bid? A. Yes, sir, up to the date of sale. They were represented by an attorney.

Q. Why didn't they bid then, if you know? A. They were called off by Mr. Walsh. 40

Q. By whom?

Mr. Leavitt: Your Honor understands I am objecting to this.

The Court: All right.

10 *Recross-examination by Mr. Leavitt*:

Q. Mr. Dorvall, you own considerable property in Union County? A. I own my own home.

Q. You're in the real estate business? A. Yes, sir.

Q. How long? A. Fourteen or fifteen years.

Q. You have deposited money in banks before and discounted notes? A. Yes, sir.

The Court: Did you get the money on this
20 note?

A. Your Honor, I got a check for the bank for four hundred and fifty dollars. Mr. Walsh's check as cashier of the Roselle Bank, to pay the sheriff on account of the property.

Mr. Feinswog: What happened to this deed? Did he give it out? I mean was the property actually conveyed to Mr. (inter-
30 rupted)——

Q. No, it was never carried out.

Clarence H. Crane, being first duly sworn according to law on his oath deposes and says:

Direct examination by Mr. Leavitt:

Q. Mr. Crane, you are the president and director
40 of the First National Bank of Roselle? A. Yes, sir.

Q. You have lived in Roselle for how many years? A. Thirty-five or over.

Q. You were a director of the First National Bank on September 2, 1914? A. Yes, sir.

Q. Do you remember the Dorvall note for $450? A. I know there was a note of that description; yes, sir. 10

Q. Was Walsh present at that meeting? A. Well, I wouldn't be positive about that. I think the minutes will show.

Q. The minutes are here? A. Yes, sir.

Q. Will you tell the Court what was said at the time that note was discounted, at the meeting? A. I cannot. I am not on the committee; I don't know anything about it.

Q. Well, was there anything said? You have heard the testimony about the sheriff's sale? A. Yes, sir. 20

Q. Was there anything said about a sheriff's sale?

> Mr. Feinswog: I object to it. It would not be binding on this defendant.
>
> Mr. Leavitt: Then, I will have to withdraw the witness.

Q. Do you know Mr. Dorvall? A. Never saw the gentleman before I saw him on the stand here. 30

Q. At any meeting of the Board of Directors was any authority given to Mr. Walsh to buy any property?

> Mr. Feinswog: I object to it on the same ground, that no action of the Board of Directors is binding on this defendant.
>
> Objection overruled; exception allowed.

A. Not to my knowledge.

Q. Did the cashier of the bank submit that note in any other way than in the regular course of busi- 40

ness? A. Not to my knowledge; I'm not on that committee.

Q. By the "committee" you mean the discount committee? A. Yes, sir.

Q. When did you first hear of real estate in connection with the Dietz note? A. The first that I heard of—I didn't hear it at all—I saw the sales of property by the sheriff with Mr. Walsh's name attached to it. I went to one of the directors of the bank and said, "What does this mean? It doesn't look very well for our cashier to be linked up to a thing like this. Let's find out about it." That man was Mr. Krouse, and he went to Mr. Walsh and asked him about it.

Q. Don't tell what Krouse said? A. That's the first I knew of any deal on at all.

Q. Now, tell us what happened afterwards. What did you do in connection with the Dietz note? (If the Court please, there are two notes.)

The Court: I understand that.

Q. What happened after that? A. You say, what occurred?

Q. Yes, what happened? A. There was a committee appointed to go to Westfield and investigate Mr. Dorvall and also look over this property to see whether we wanted to buy this property or whether we would accept Mr. Dietz's endorsement.

Q. What happened after that? A. The committee said they would rather have Mr. Dorvall's endorsement than to have the property. Then Mr. Dorvall's endorsement was taken.

Mr. Feinswog: I object to that as hearsay evidence.

The Court: You must make your objections at the proper time.

Mr. Feinswog: I understood that my objection stood.

The Court: But your objection was on another ground.

Mr. Feinswog: I ask that that objection stand. 10

The Court: Objection allowed to stand. And overruled. Exception granted.

Q. What happened after that? A. Well——

Mr. Feinswog: I object, on the ground that it is too indefinite.

The Court: Yes, make your question a little more definite, Mr. Leavitt.

Q. What note was his endorsement taken on? 20 You know there were two notes? A. I suppose the endorsement was taken on both notes.

Q. Well, was it the note for a thousand dollars or the four hundred and fifty dollar note? A. I supposed it was both notes.

Q. Was there any proposition made by anyone, by the bank, to buy in the property at the sheriff's sale? A. There must have been a proposition of that kind. 30

Q. And after getting the proposition and investigating Dorvall, the directors decided to take Dorvall's endorsement? A. Yes, sir.

Cross-examination by Mr. Feinswog:

Q. Mr. Crane, Mr. Walsh has been transacting the executive business of the bank as cashier right along? A. Yes, sir.

Q. As cashier? A. Yes, sir.

Q. And vice-president? A. Yes, sir. 40

Q. And a member of the Board of Directors? A. He couldn't be vice-president without being a director.

Q. Yes, I know; and in this action that you took with respect to Dorvall, Walsh participated, and he was a member of the committee, wasn't he? A. No, sir.

Q. Nothing to do with that? A. No, sir; not that committee.

Q. Did he have charge of anything at all on the Dietz property, this arrangement? A. In what way?

Q. Did he have authority to look after that property and transact the business of the bank? A. Never heard of any such authority being given him.

The Court: Do you know whether any authority was given?

A. No, sir.

Q. Has the cashier of the bank authority to transact that business?

Mr. Leavitt: I object; the laws provide what cashiers may and may not do.

Question withdrawn.

Q. Mr. Crane, Mr. Walsh has conducted business of this kind before as cashier of the bank, hasn't he? A. Don't know of anything.

Q. Has Mr. Walsh the right to take notes and issue cashier's checks? A. What do you mean by that?

Q. Has he a right to issue cashier's checks? A. Yes, sir.

Q. Has he a right to take notes for cashier's checks? A. I couldn't answer.

Q. You don't know anything about this second note, as to how it was produced? A. Only what I heard here to-day.

Clarence H. Crane—Redirect
J. Ashley Brown—Direct

Redirect examination by Mr. Leavitt:

Q. How many meetings have you missed, of the Board of Directors, in 1914?

Mr. Feinswog: I object to it. 10
Question withdrawn.

Q. I'll simply ask you if you know whether authority had been given to Walsh by the Board of Directors to buy property in relation to the Dietz matter? A. Never heard of any.

Q. If it had been given you would know about it? A. I think I would.

Q. Just a minute. Did you give the reason why the bank did not want to buy this property? A. I did not. 20

Q. Will you just tell us why?

Mr. Feinswog: I object to it, on the ground any reason of the bank in connection with this matter will not bind this defendant.

Mr. Leavitt: I will have to withdraw it, then.

J. Ashley Brown, being first duly sworn according to law, on his oath deposes and says: 30

Direct examination by Mr. Leavitt:

Q. You are the cashier of the First National Bank of Roselle? A. Yes, sir.

Q. Have you at my request looked through the minutes of the National Bank since September, 1914, and found therein any reference to a Dorvall note? A. I have looked through them and have found no reference except where the finance committee—will I read this? 40

Mr. Feinswog: I object to it on the ground that any proceedings had by the Board of Directors would not bind this defendant. Any action taken by the Board of Directors would not bind this defendant.

Question withdrawn.

10

Q. Have you looked through these minutes since September, 1914? Have you found any reference therein authorizing the cashier to purchase any real estate in the Dietz transaction?

Mr. Feinswog: I object to the question on the same ground.

The Court: I will admit it.

Exception allowed.

20

A. No reference made to that at all—to the purchase of that property.

Q. Going back to the minutes of December 8, 1914, the report of the Finance Committee, what do you find in that report as shown by these minutes, in the Dorvall note matter?

Mr. Feinswog: Same objection.

The Court: I will admit it.

30 Exception allowed.

A. I found that the note discounted for J. H. Dorvall, endorsement by himself, and the amount four hundred and fifty dollars.

Mr. Feinswog: I object, if the Court please, on the further ground that examination is being made on testimony taken from a book which is not in evidence.

40 The Court: I will admit it in evidence.

Mr. Feinswog: I object to its admission in

evidence on the ground that it is immaterial and cannot bind this defendant.

The Court: I will admit it in evidence.

Exception allowed.

(Book admitted in evidence, page 344 thereof, and marked Exhibit P 2 for plaintiff.) 10

The Court: Did the amount of this note then go to the credit of Mr. Dorvall?

A. I was not cashier of the bank at that time. I understand——

JOHN F. DORVALL, recalled: 20

Examination by Mr. Feinswog:

Q. Mr. Dorvall, did you, during this business arrangement, did you do business with any other member of the Roselle National Bank other than Mr. Walsh? A. I did not.

CLARENCE H. CRANE, recalled: 30

Examination by Mr. Leavitt:

Q. After you had investigated this property, did you instruct Mr. Walsh not to buy the property and to accept Dorvall's endorsement instead?

Mr. Feinswog: I object to the question.

The Court: He has already answered that question.

Mr. Leavitt: I was afraid he had not. 40

Testimony closed.

Mr. Feinswog sums up.

Mr. Leavitt sums up.

The Court: There will be a judgment in favor of the plaintiff for the sum of Four hundred and sixty-four dollars and forty cents.

10

I find, as a matter of fact, that the note, the subject of this suit, was given by the defendant for the accommodation of Walsh and Dietz, and that the same was endorsed to plaintiff for value.

Mr. Feinswog prays an exception to the ruling of the court.

Exception allowed.

20

Exhibit Marked P-1.

For Plaintiff.

March 25th, 1915, G. J. Smith, Clerk.
First National Bank vs. John F. Dorvall.

30

Roselle, New Jersey.

$450.00/100 Sept. 2, 1914.

Four months after date, for value received I promise to pay to the order of Myself........ Four Hundred and fifty and 00/100 (and interest) dollars at THE FIRST NATIONAL BANK OF ROSELLE.

No. 4292 Due Jan. 4.

JOHN F. DORVALL.

40

Endorsed: John F. Dorvall.

Exhibit P-2.

Page 344 of the Minute Book of the First National Bank of Roselle.

The following accounts have been closed:

Savings.
Anna Vonah 105
Helen Ebert 99.15
1608 Savings accounts.
1294 check accounts.

A motion was duly made and carried that the statement be received and filed and the special report spread on the minutes.

The Finance Committee reported the following notes and bills rec. to have been passed upon and discounted since the last regular meeting:

Maker.	End.	Time.	Amt.	Reduc
R. M. Fraunfelter	Self	3M	130	
	Walter Schwartz ...			
L. A. Dietz	J. F. Dorvall.......	4M	1,057	31
American Hay Co.	F. L. Lewi..........	2M	40	
Thos. Dunder	Tuthill Co.	2M	222	24
	B. F. Tuthill........			
	C. C. Waite.........			
A. P. Morris	Self	3M	150	
C. L. Bell	F. A. Vanderweg....	3M	63	
Shedd Elect. Co.	Selves	3M	468	
Has. Barker, Inc.	Sherr Elect. Co.....	4M	158	18
	A. B. Morre.........			
Jas. Cattano	A. Cattano	1M	25	
A. Tomosulo	S. J. Le Vecchio....	3M	175	
Ajax Chem. Co.	Dr. H. Bruening....	2M	3,109	82
	H. W. Evans.......			
	A. B. Flagg.........			
	L. H. Phelps........			
	Selves			
Union Mtr. Co.	R. H. Howes........	2M	100	
T. Gerlach	Book Roselle Park Bl.	90D	450	
L. M. Titus	J. W. Titus.........	3M	100	
Newark Sec. H. Mch. Co.	A. P. Morris........	3M	550	

Exhibit P-2

L. Beemer	G. L. Beemer........	3M	205		25
ccarelli & Alessi	A. Kolodzay	4M	450		50
M. Avery	Leonard Happ	3M	90		
ngold Elect. Plat. Co.	A. P. Morris........	2M	122	51	74
D. Van Pelt	East Pa. Coal Co....	30D	950		
Coon	S. G. Coon..........	2M	150		
Cristiani	C. H. Bunn.........	3M	70		
	D. J. Farren........				
E. Scott	Tuthill Co.	2M	200		
	C. C. Waite........				
	B. F. Tuthill.......				
Woodruff	Same as above......	3M	58	62	
Thomas					
Thomas	H. Israel	3M	507	50	100
	M. Megerhoff				
Westenfelder	P. Westenfelder	2M	75		25
C. Pierson	Book Roselle Bl.....	1M	100		
t. ind. Roselle Pk.		Demand	548	02	
Birdsall	W. W. Birdsall.....	3M	650		50
	H. Krouse				
W. Rewalt	J. B. Woodruff......	3M	35		15
. Times Ptg. Co.	H. Lazarus	3M	550		100
is Wooley	M. Levine	3M	25		25
S. Lee	W. J. Lee..........	3M	580		70
L. Bell	20 sh. Prov. Lum. Co.	3M	329	87	25
F. Proudfoot	Ins. Policy Already Pledged	Demand	200		
Amer. Fruit Co.	Selves	2M	150		50
F. Dorvall	Self	4M	450		
A. Brigham	G. Tipping	1M	50		10

I DO HEREBY CERTIFY the foregoing transcript as the state of the case for appeal in the above stated cause.

Dated April 7, 1915.

WM. F. VOSSELER,
Judge Pro Tem of the District
Court of the City of Elizabeth.

Specifications of Determinations or Directions.

NEW JERSEY SUPREME COURT.

FIRST NATIONAL BANK OF ROSELLE, Plaintiff-Appellee, against JOHN F. DORVALL, Defendant-Appellant.	On Contract. On Appeal from the District Court of the City of Elizabeth.

10

To:

WILLIAM C. GEBHARDT, Esq.,
Clerk of Supreme Court.

20

and

NATHAN R. LEAVITT, Esq.,
Attorney of Plaintiff-Appellee.

Sirs:

The following is a specification of the determination or directions of the District Court of the City of Elizabeth with respect to which the appellant is dissatisfied in point of law:

30

1. The Court gave a judgment for the plaintiff despite the fact that there was no evidence in the case to support such a judgment.

2. The Court gave a judgment for the plaintiff despite the fact that the Court found that the note in question upon which the action was brought was an accommodation note.

40

3. The Court gave a judgment for the plaintiff despite the fact that the Court found and determined the existence of a fact or facts which necessitated a judgment for the defendant.

10

4. The Court gave a judgment for the plaintiff despite the fact that the Court should have as a matter of law, decided the action in favor of the defendant, it being clearly proven that the defendant was an accommodation maker of said note, and received no consideration therefor.

5. The Court gave a judgment for the plaintiff despite the fact that the findings of fact or facts by the Court and the giving of a judgment for the plaintiff could not be predicated on the evidence.

20

6. The Court erred in admitting in evidence over the objection of defendant's counsel, oral and documentary evidence, which was absolutely irrelevant, immaterial and incompetent.

7. The Court erred in giving a judgment for plaintiff.

30

8. The Court at the close of the trial should have on the evidence adduced, given a judgment in favor of the defendant, and not having done so, in that respect erred.

Dated April 12th, 1915.
Filed April 12, 1915.

Yours truly,
DAVID S. FEINSWOG,
Attorney of Defendant-Appellant.

40

Supreme Court Opinion.

NEW JERSEY SUPREME COURT,

JUNE TERM, 1915.

10

First National Bank of Roselle, vs. John F. Dorvall.

Argued June Term, 1915; decided November Term, 1915.

20

Appeal from Elizabeth District Court.

Nathan R. Leavitt, for plaintiff.

David S. Feinswog, for defendant.

Argued before Justices Parker, Minturn and Kalisch.

Per Curiam:

The suit was on a promissory note made payable by defendant to himself for $450.00 at the First National Bank of Roselle. The consideration for the note was a check for that amount which the cashier of the bank delivered to the defendant, and which he in turn delivered to the Sheriff of Union County for the purpose of discharging the Sheriffs' fees upon an execution then in the Sheriffs' hands against one Dietz, whose property was about to be sold by the Sheriff to satisfy the execution.

30

The plaintiff at the trial proved the making of the note and rested. The defence consisted of an effort to show that the defendant gave the note as an accommodation to the bank for the purpose of saving Dietz's property, the latter at the time being heavily indebted to the bank.

40

This defense was predicated upon a conversation between Mr. Walsh, the bank cashier, and the defendant, who was a friend of Dietz, at or about the time that the defendant made the note. It has been held by this court that the rights and obligations of the endorser of a negotiable promissory note cannot be varied by parol testimony of his
10 oral agreement made before or at the time of his endorsing the note.

Foley v. *Emerald Brewing Co.,* 32 Vr., 428.
Stiles v. *Canderwater,* 19 Vr., 69.
Wright v. *Remington,* 12 Vr., 49.

The testimony between Walsh and defendant therefore was immaterial and irrelevant, even if we assume that the power of Walsh as cashier, to enter into such an agreement had been fully established,
20 which as we view the case it had not.

Campbell v. *Man. Natl. Bank,* 38 Vr., 301.
Stokes v. *N. J. Pottery Co.,* 46 N. J. L., 237.
Titus v. *Cairo, etc., R. R. Co.,* 37 N. J. L., 98.

The salient fact in the case was found, however, by the Court to be that the note was given by de-
30 fendant for the accommodation of Walsh and Dietz.

This finding, which there was evidence to support, we are not at liberty to review, and warrants the judgment below, which will be here affirmed.

40

Notice of Appeal.

NEW JERSEY SUPREME COURT.

FIRST NATIONAL BANK OF ROSELLE, Plaintiff-Appellee, vs. JOHN F. DORVALL, Defendant-Appellant.	Notice of Appeal

10

To Nathan R. Leavitt, Attorney of Plaintiff-Appellee:

PLEASE TAKE NOTICE that the defendant-appellant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds: 20

1. The Supreme Court erroneously decided that the testimony of the defendant, John F. Dorvall, pertaining to the agreement made with Walsh, the bank cashier, was inadmissible, immaterial and irrelevant.

2. The Court erroneously decided that Walsh, the bank cashier, did not have the authority to enter into said agreement and perform the acts which he performed thereunder. 30

3. The Court erroneously decided that there was evidence to support the finding of the district court, holding that the note was given for the accommodation of Walsh and Dietz.

4. The Court erred in affirming the judgment of the District Court.

Dated November 18, 1915. 40

DAVID S. FEINSWOG,
Attorney of Defendant-Appellant.