

# New Jersey Court of Errors and Appeals.

ELBERT H. TRAVIS,  
Plaintiff-Respondent,

*against*

GUSTAVA UNKART, individually  
and as Executrix of the Last  
Will and Testament of Mary  
E. Unkart, deceased,  
Defendant-Appellant.

Action at Law.

## BRIEF OF APPELLANT.

This is an appeal from a judgment entered in the Supreme Court from a verdict for the plaintiff directed by the Trial Judge.

### Grounds of Appeal.

The grounds of appeal are as follows:

(1) The Court erroneously directed a verdict for the plaintiff.

(2) That the Court refused to allow the case to go to the jury to determine the issue of fact which was involved therein. (Printed Case, p. 1.)

### Statement of Case.

This action was brought to recover the amount alleged to be due upon a certain paper purporting to be a promissory note signed by Mary E. Unkart and endorsed by Gustava Unkart.

The answer of the defendant admits the signatures of the parties to the note as alleged; also that payment was demanded; that it was not paid and was protested; and in defense of the action she sets up that the signatures to the said note were obtained by threats and duress; that there was no consideration; and that the signature and endorsement of the note was obtained by the plaintiff by false and fraudulent representations.

The evidence shows that one Frederick Unkart, a son of Mary E. Unkart, and a brother of Gustava Unkart, had at one time been in business with the plaintiff (p. 27, lines 1 to 10, Printed Case).

About the year 1911 or 1912, the plaintiff Travis got out of the firm (p. 37, lines 10 to 25).

At that time there was an accounting and there was found to be money due to Travis and his brother from the firm, and Unkart to get rid of the plaintiff and his brother gave each of them certain notes for the amount found to be due them from the firm (p. 37, lines 1 to 10).

There were two notes, one to the plaintiff and one to his brother. Afterwards the brother assigned his note to the plaintiff, and the plaintiff in 1913 instituted a suit in the Supreme Court against Mr. Unkart (p. 22, lines 3 to 15).

At the time the suit was started the brother Frederick Unkart did not live in the State, but was in Cleveland (p. 11, line 35).

The summons, however, was left at the house of Mrs. Unkart and the man who served it insisted that Mrs. Unkart was the wife of Frederick Unkart (p. 11, line 35).

The defendant Gustava Unkart upon coming home found this summons with her mother; then she went to see Mr. Travis, the plaintiff, whom she did not know previously, and he told her

that she, and her mother, had better advance the money to her brother; that her brother owned property in Tenafly (p. 9, lines 30 to 40).

She thereupon told Mr. Travis that her brother did not own the property in Tenafly and that she knew nothing about the note or the money (p. 9, lines 40, etc., p. 10, lines 1, etc.).

She also told the plaintiff that her brother did not live at Tenafly. The plaintiff said to her that if the brother did not own the property he had given it as security for bonds in the Custom House, and that it was a criminal offence and that he could be sent to State's Prison for it (p. 10, lines 1 to 10, also p. 15 lines 40, etc., p. 16, lines 1 to 25).

The testimony of the plaintiff was as follows:

“Q. You never complained to him? Never complained that you had given the first note to keep your brother out of State's Prison? A. Well, he said if I did not give him a note, he would see what he could do, whatever that might mean, to get money.

“Q. When was that? A. At the very beginning.

“Q. That is, just after the summons was served? A. Yes, sir.

“Q. He said he would see what he could do if you did not give a note? A. Yes; intimated that we would be responsible for it; that he would in some way inflict it upon the family” (p. 20, lines 4 to 18).

As a result of these threats the defendant Gustava Unkart endorsed a note to the plaintiff (p. 21).

This was a note which Mr. Travis had before the summons was served (p. 21, lines 20 to 30).

When this note became due the plaintiff told the defendant Gustava Unkart that he wanted some money (p. 19, lines 1 to 10).

That the note in suit was given simply because they did not want their brother to go to State's Prison (p. 19, lines 25 to 30).

Neither Mrs. Unkart nor Gustava Unkart received any consideration for the note (p. 10, lines 16 and 17; p. 15, lines 19 to 26).

The defendant's story differed very materially with respect to the conversation which took place between them from that of the plaintiff.

If the defense relied upon is a good defense to the action, there was sufficient evidence to have gone to the jury for its determination of the facts.

*Uvalde Asphalt Paving Co. v. Central Union Stockyards Co.*, 86 Atl. Rep., 425.

*N. J. Furniture Co. v. Board of Education*, 58 N. J. L., 646.

*Bower v. Bower*, 74 Atl. Rep., 522.

This brings us to the legal propositions involved and which were decided adversely to the defendant by the Trial Judge. These propositions are as follows:

(a) Assuming that the jury believed the defendant's story that the note in question was made and endorsed solely as a result of the plaintiff's threat to cause Frederick Unkart the son of the maker and the brother of the endorser to be prosecuted under the Federal Law for the crime of giving property at Tenafly as security for Custom House bonds signed by him in the course of his business, when in fact he did not own the property, was there a legal consideration?

(b) Was the note in question not procured by duress?

**POINT I.**

**The only consideration for the note in question was an illegal consideration.**

It is admitted by the plaintiff that neither of the defendants were indebted to him at the time the transaction took place. That his sole claim was against Frederick Unkart upon two notes given by Frederick Unkart for the purpose of purchasing the plaintiff's and the plaintiff's brother's interest in the firm of Unkart, Travis & Company.

It appears, and the jury were entitled to find, that the first endorsement of Gustava Unkart and the subsequent note made by her mother and endorsed by her were obtained by the plaintiff solely by reason of his threat to institute the prosecution of Frederick Unkart for violation of the Federal criminal statute.

The rule seems to be settled in this State that where no criminal proceedings are actually pending the actual commission of the crime alleged to have been compounded is one of the facts at issue and must be proved in order to make out the defense of illegality.

Also that the proof of the commission of the crime alleged to have been compounded need not be such as would be sufficient to convict on a criminal charge; but that a preponderance of proof is sufficient.

Manning *v.* Columbian Lodge, 57 Eq.,  
338, page 341.

Kane *v.* Hibernia Ins. Co., 10 Vr., 697.

It is submitted that the proof in this case does show by a preponderance of the evidence that Frederick Unkart was guilty of a crime against

the Federal Statute. Also it is shown that the contract was that the plaintiff would not prosecute or cause the prosecution.

Such contracts have been held to be void upon the ground of public policy.

See, Note, b, 26 L. R. A., page 49.

Also, Case, Note, 20 L. R. A., N. S., page 484.

*Den v. Moore*, 5 N. J. L., 551.

The defendant made out a case which showed that there was no valid consideration for the note in question and if the jury believed her evidence she would have been entitled to a judgment.

The case should have been submitted to the jury upon the issue, and the Court's failure so to do was erroneous.

## POINT II.

**The note in suit was obtained by duress, and the case should have been submitted to the jury upon that issue.**

The answer expressly averred that the note was obtained by threats and duress (p. 5, Paragraph 6 of Answer).

This case differs from the large number of the reported cases, particularly the cases discussed in this State in that the threat of imprisonment was not made either to or in the presence of Frederick Unkart. Also that Frederick Unkart was some distance away from Tenaflly and New York, to wit, in Cleveland, Ohio, at the time the threats were made. This is important for the reason that it was impractical for the defendants to ascertain promptly from him what he had to say, in the nature of a defense to the charge. This case also differs from all of the cases reported in this State

which I have been able to find, in that the debt due to the plaintiff from Frederick Unkart was in no way connected with the alleged criminal act, prosecution for which was threatened.

The plaintiff upon the trial relied upon the case of *Wright v. Remington*, 41 N. J. Law, page 48; same case affirmed 43 N. J. L., 452; and also, *Mullin v. Leamy*, 80 N. J. L., 484.

The case of *Wright v. Remington* is not in point, as it merely holds that a threat made by a husband to his wife that unless his wife would sign a note he would kill himself does not constitute duress and is not a defense to an action against the wife upon her note. That the Court had only this question in mind is evidenced from what Justice Reed says in his opinion at page 53, which is as follows:

“It may be that had the payees of the note or their agent threatened to take the life of the husband unless the wife signed the note, and she signed under the influence of the terror excited by such threats, it would have avoided the contract. But here the threats were made by the husband against his own life.”

The Court of Errors in affirming the opinion, says:

“By the common law, the defence of duress, indeed, embraces threats of personal injury to husband, wife, parent or child, but its scope does not include a threat of suicide. Obviously, in view of the facility of making a defence on that ground, the difficulty of meeting it, and the temptation to fraudulent imposition it would hold out to allow it, it would be against public policy to extend the defence to that kind of pressure.”

The case of *Mullin v. Leamy* cited by the plaintiff at the trial would appear to be somewhat in

point, but an examination of this opinion shows that the Chief Justice had in mind the facts of that particular case in writing the opinion. In that case the threat of indictment made to Duffy was made to him personally by the plaintiff, and the alleged indebtedness due to the plaintiff from Duffy grew out of an alleged criminal act which was the substance of the threat. It did not appear that the plaintiff knew or had any reason to suppose that the endorser of Duffy's note had any knowledge of the threat, or that the threat was in any degree the moving cause of the defendant endorsing Duffy's note.

In the case under consideration the threat was not made to the debtor, neither did the indebtedness grow out of the alleged criminal act.

In the case under discussion the threats were made to the person who sets them up as a defence, by the person who claims the benefit of the contract.

A case very much in point is the case of *Thompson v. Niggley, et al.*, decided by the Kansas Supreme Court in January, 1894, and reported in 26 L. R. A., page 803. In this case, the note in question was procured by the plaintiff from the defendants under a threat that unless the note was given by the defendants they would cause the prosecution of the defendant Michael Niggley for selling liquor in violation of the law.

The note was given to settle a supposed claim growing out of the accidental shooting of one Summers by the defendant Michael Niggley. At the trial of the case Niggley admitted that he had sold liquor in violation of the law, and the question which arose and which was discussed in this interesting opinion is whether or not a charge of duress can be maintained by showing threats to prosecute a person for an offence of which he is in

fact guilty. The Court held that written securities extorted by means of threats of prosecution for criminal offenses of which the party threatened was guilty in fact, but which were in no manner connected with the demand for which compensation was sought, may be avoided on the ground of duress.

In the case of *Adams v. Irving National Bank*, 116 New York, page 606 and 6 L. R. A., 491, it was held that money paid by a wife in settlement of her husband's debt upon the threat by the creditor to arrest the husband if the debt was not paid might be recovered back although there was lawful ground for arresting the husband.

The case of *Schoener v. Lissauer*, 107 New York, 111, was an action brought by the heirs at law of one Babet Marx to procure the cancellation and discharge of a mortgage executed by her. The Trial Court found that the execution of the mortgage had been procured by the defendants by their threats and menaces that unless she gave the mortgage they would cause her son to be sent to State's Prison for embezzlement which they charged was committed against them when in their employment, and for which he was under arrest and indictment on their complaint and about to be tried; that the defendant stated to the sister and uncle of the prisoner that he could regain his freedom in no other way than by the payment of two thousand dollars, and that if that sum was not paid, he would certainly have to go to State's Prison; that, after negotiations, the defendants communicated to the mother of the prisoner, through his sister, a statement that he would be sent to State's Prison unless the mother would pay one thousand dollars in cash and give a mortgage the defendants agreeing not to harass her for her said mortgage during

her lifetime; that if these terms would be complied with they would release the prisoner if in their power but if not he would be sent to State's Prison, that the mother's execution of the mortgage was the result of coercion created by the threats of the defendant and the belief that they would be carried into execution. The Court held that the defendants had a good defense to an action on the ground of duress and were entitled to have the mortgage cancelled.

In the case of Williamson-Halsell Frazier Company *v.* Ackerman, *et al.*, 77 Kansas, 502, 94 Pacific Reporter, 807; 20 L. R. A., N. S., 484 is very similar to the case under consideration.

This was an action brought by the plaintiff to recover on certain notes which it appear were given by the defendants Joseph J. Ackerman and his two children John H. Ackerman and Mary Sproat. Defendants offered testimony to show that prior to the giving of the notes John H. Ackerman was an employee of the plaintiff and that a representative of the plaintiff came to the father and informed him that John had embezzled four thousand dollars of the plaintiff's money; that he had obtained and had in his pocket a warrant for John's arrest for embezzlement, and that there was a Deputy Sheriff waiting to serve the warrant, and that unless the notes and mortgage were signed, the warrant would be served and John would be convicted and sent to State's Prison; but that if the notes and mortgage were signed, there would be no prosecution; and that after some discussion and after the sister who was frightened and crying had begged her father to save John; he signed the notes and a mortgage; that a few days afterwards a flaw was found in the mortgage and a representative of the plaintiff company came and de-

manded a corrected mortgage, and, when Mr. Ackerman, Sr., demurred, he was informed that a refusal meant a prosecution and the penitentiary for his son; that under these threats a corrected mortgage was executed. The Court said:

“The point for decision was whether the threats of arrest and prosecution of John put the father in fear, and thus overcame his will and rendered him incompetent to contract. If there is no free will in the execution of the notes and mortgage there is no contract nor any binding obligation. Under the modern theory, duress is to be tested, not by the nature of the acts or threats, but rather by the state of mind of the victim induced by such acts or threats.

“Neither the legality of the threatened arrest or prosecution nor the guilt or innocence of John upon the charge of embezzlement was a material question in determining whether there was duress; the conduct of John, whatever it may have been, was no excuse or justification for intimidating and coercing the father to pay John’s debt.”

*Galusha v. Sherman*, 105 Wis., 263.

Same case, 47 L. R. A., 418.

*Richardson v. Duncan*, 3 N. H., 508.

*Hartford Fire Ins. Co. v. Kirkpatrick*, 111 Ala., 456.

*Morse v. Woodworth*, 155 Mass., 233.

*Adams v. Irving National Bank*, 116 N. Y., 606.

*Henry v. State Bank*, 131 Iowa, 97.

Same case, 107 Northwestern, 1034.

There is also a very complete and elaborate set of notes on this subject in 20 L. R. A., page 485, etc. Also see,

*Sharon v. Geger*, 46 Conn., 189.

*Schultz v. Catlin*, 78 Wis., 611.

*Davis v. Luster*, 64 Wisconsin, 43.

*Sollinger v. Earle*, 82 N. Y., 393.

Am. & Eng. Enc. of Law, Vol. 10, page  
342.

From an examination of the foregoing cases it appears that there is a conflict of the rule in cases where the execution of a conveyance or contract which had a good consideration was obtained by threats of prosecution for an offense, the commission of which caused the threatened to become the debtor of the threatener. It would seem that New Jersey has adopted the rule that such threats when made to be alleged criminal do not constitute duress. It, however, seems that where the threats are not made to the person who it is alleged committed the crime, but to a person closely related to him, and such threats result in the making of a contract for the payment of money, that such threats do constitute duress of the persons to whom the threats are made. If the jury determine that the threats were such as to overcome the will of the person to whom the threats are made, it constitutes duress and is a good defense.

Again it would seem, from the cases above cited, that the rule, where the threat of prosecution is for a matter unconnected with the contract extorted by the threat, the transaction may be avoided for duress whether or not there was a good consideration.

The evidence presented a case which should have been submitted to the jury for their determination upon both the issues raised, namely, illegality of consideration and also duress.

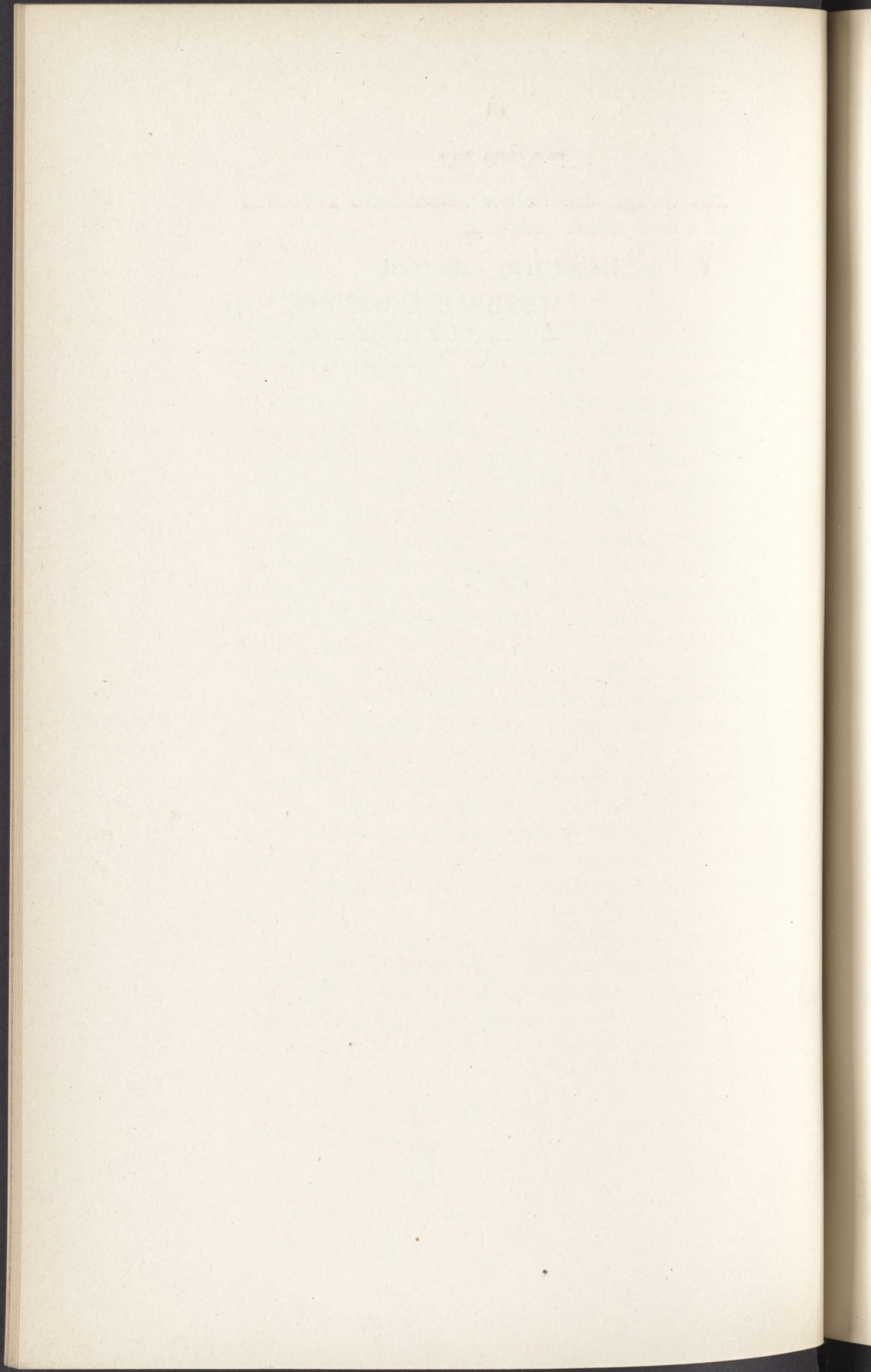
**POINT III.**

**The judgment below should be reversed  
and a new trial ordered.**

Respectfully submitted,

WENDELL J. WRIGHT,  
Attorney for and of Counsel  
with Defendant-Appellant.

[8124]



# New Jersey Court of Errors and Appeals.

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ELBERT H. TRAVIS,  
Plaintiff-Respondent,

*against*

GUSTAVA UNKART, Individually  
and as Executrix of the Last  
Will and Testament of Mary E.  
Unkart, deceased,  
Defendant-Appellant.

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Action at Law.

## **BRIEF FOR PLAINTIFF-RESPONDENT**

### **Statement of Facts.**

This is a suit on a promissory note executed by Mary E. Unkart (now deceased) to the order of the plaintiff, dated May 1st, 1914, payable on demand with interest at five per cent. (5%), which was indorsed by the defendant, Gustava Unkart, individually. The plaintiff demanded payment of the note on the 3rd day of May, 1915, and it not being paid, the same was protested, and payment again demanded on the 1st day of June, 1915, and it not being paid, was again protested. On June 9th, 1915, Mary E. Unkart died, leaving a will giving everything to her daughter (this defendant) and naming her sole Executrix thereof. This will was duly probated and the defendant qualified as Executrix. The defendant, by her answer, admitted the note, and claimed:

(1) That the signature of Mary E. Unkart, and the defendant were obtained by threats and duress;

(2) That there was no consideration for the same; and

(3) That the signatures were obtained by duress and fraudulent representations.

The plaintiff replied denying these defences.

The note in this suit is the third of a series of notes between the parties. The first series consists of two notes made by L. F. Unkart (defendant's brother), one of which was to the order of this plaintiff, and the other to the order of the plaintiff's brother, Frederick W. Travis, who assigned his note, after it became due, to the plaintiff; and suit was brought by the plaintiff against Mr. Unkart on the two notes (Case, pp. 21 and 22). After the summons was served on L. F. Unkart, the defendant called to see the plaintiff and it was arranged that she would indorse a new note executed by the brother, in consideration of which the plaintiff would drop the suit (Case, pp. 29 and 30). The plaintiff received a note signed by Travis Unkart & Company and indorsed by the defendant (Case, p. 31) and then stopped proceedings in the suit as agreed (Case, p. 35). This note was due May 1st, 1914, and is the first note indorsed by the defendant. In the latter part of April, 1914, the parties had another conversation (Case, p. 31) and the defendant agreed that if the plaintiff would not sue on that note, as he was prepared to do, she would get her mother to sign a note which she would indorse (Case, p. 32). This was done and the plaintiff received the note which is the one on which this suit is brought. All notes, save the note in suit, were surrendered by the plaintiff.

The Trial Court directed a verdict for the plaintiff for the full amount of the note with interest. The correctness of this ruling is brought to this Court for review.

#### POINT I.

**The judgment against the defendant, as Executrix, cannot enter into this controversy and therefore should be affirmed.**

The defendant is sued in two capacities, individually and as Executrix of the estate of Mary E. Unkart (her mother). Under the terms of the will she receives all the property which the mother died possessed of and is made sole executrix. The record does not contain any testimony showing that the note as it relates to Mary T. Unkart (the defendant's testatrix) was invalid for any reason whatever. All of the testimony as to the alleged duress, illegality, lack of consideration and false representations relates to the defendant entirely. In fact, the plaintiff never saw the defendant's mother and this is not denied and no claim is made to that effect. This leaves, therefore, the single question as to whether the verdict was properly directed against the defendant as an individual, and to this question, the following points are directed.

#### POINT II.

**The note sued on was given for a valuable and valid consideration, and is not tainted with duress, false representations or illegality.**

This suit being one on a promissory note under the negotiable instruments law, consideration is presumed (Compiled Statutes, 3734, Section 24).

See, also,

*Polhemus v. Prudential Realty Company*,  
74 N. J. L., 570, at page 58.

*McCormack v. Williams*, 95 Atl., page  
978.

In addition, the plaintiff gave up a cause of action he had against the brother in consideration of the defendant indorsing a new note to Mr. Travis (Case, pp. 12, 30-35). When this note became due, the plaintiff had a conversation with the defendant and threatened to sue her, and she agreed to have her mother make and she indorse a new note (the note now sued on), if the plaintiff would forebear from suing her (Case, p. 32). Forbearance on the part of one from asserting a legal right or pursuing a lawsuit against another person is a valid consideration for an undertaking of payment to the first person by a third person.

See:

*Baker v. D., L. & W. R. R. Co.*, 64 N. J.  
L., 53, at page 59.

*U. & G. Rubber Manufacturing Co. v.*  
*Conrad*, 80 N. J. L., 286.

At page 289 the Court says:

“We entertain no doubt that an agreement to forbear action at law against the Standard Company for the existing account would furnish a sufficient and legal consideration for the making of the bond. Such a promise where no period is fixed, imports that the forbearance shall be for a reasonable time, and (at least if followed by actual forbearance for a reasonable time) furnishes a sufficient consideration for the undertaking of a third party to pay the indebtedness” (citing cases).

See, also, 9 Cyc., title “Contracts,” 335.

In the case at bar, the plaintiff stopped the proceedings in his suit against the brother at the time he received the first note indorsed by the defendant individually. When this matured, he refrained from suing her on receipt of a new note made by her mother and indorsed by her. These facts are uncontroverted and we submit furnish a valid consideration for the giving of the notes.

At the trial, from the testimony of the defendant, it is evident that she regarded the defence of duress as her strong plea. Duress is defined by Clark on Contracts (1st Edition, p. 355), as

“actual or threatened violence or imprisonment, by reason of which a person is reasonably forced to enter into a contract. To affect the contract, however (a) it must have been against or of the contracting party or his or her wife, husband, parent, child or other very near relative; (b) it must have been inflicted or threatened by the other party to the contract or by one acting with his knowledge or on his behalf; (c) it must have induced the party to enter into the contract.”

The alleged duress which the defendant relies on is either (1) that in May, 1913, the plaintiff threatened to have her brother imprisoned if she did not indorse the note, or (2) that the plaintiff threatened to institute the prosecution of Frederick Unkart for violence <sup>of</sup> of the Federal Criminal Statute. The defendant's direct examination as to the conversations with the plaintiff about imprisonment is on pages 9 and 10 of the case and is as follows:

“Q. Will you please state how this note came to be given? A. Well, the first—the notice came to my mother—well, someone came to the house; of course my mother knew nothing about it; when I came home, she told me about it. Then I asked Mr. Travis—I did

not know Mr. Travis; I went to see Mr. Travis; he told me that we had better advance the money to my brother, and that my brother owned the property in Tenafly, and I said, of course, I knew my brother did not own the property, and I knew nothing about the note or the money, because he did not live there; he said if my brother did not own the property, he had given it when he signed bonds in the Custom House as if he had owned the property, and it was a criminal offense, and he could be sent to State's prison for it. So, of course, I told my mother what he had said, and naturally you would know how we would feel about it."

Her cross examination is on pages 16 and 17. The particular part that relates to the imprisonment is as follows:

"Q. Mr. Travis did not tell you that he was going to send your brother to State's prison, did he? A. Well, he intimated the same thing.

"Q. Intimated that somebody might send him to State's prison? A. Intimated that if he did not have the note, that would be the outcome of it.

"Q. He did not tell you the result of this suit he brought against your brother, that your brother would go to State's prison, did he? A. Yes, he made me understand that would be it.

"Q. Just what did he say? A. Just what I told you; just what I told you, that he would use the property as owning it, and that he must own it because he signed bonds in the Custom House as owning the property" (Case, p. 16, fols. 15 to 30).

Her testimony on cross examination immediately following this quotation is very distinct (Case, p. 16, fol. 30). The direct examination of the plaintiff as to this matter is on pages 29, 30 and 31,

and the cross examination on page 38. It is very interesting to compare the testimony of these two parties as to the conversations about the imprisonment. In the direct testimony of the defendant, she says nothing as to any threat of imprisonment. In her cross examination, the testimony most favorable to her is that the plaintiff "intimated" that he was going to send the brother to State's prison, not that he said so (Case, p. 16, fols. 10 to 20), and later under further cross examination, the exact conversation as detailed by defendant contains no threat or intimation of any threat of imprisonment of the brother (Case, p. 16, fols. 30, 17, fol. 20). This last statement tallies exactly with the direct examination of the plaintiff and his cross examination.

This conversation about the imprisonment took place in 1913 (at the time of the execution of the second series of notes). The defendant did not testify on direct examination that anything was said or any threat made about imprisonment of any one at the time of the giving of the note in the suit (May, 1914). The only reference to it is on her cross examination at page 15 where referring to the first note she indorsed, her testimony is as follows:

"Q. Now, you say that on that occasion (time of giving note now sued on) Mr. Travis told you that your brother would have to go to State's prison? A. He did from the first time, I suppose. I suppose the same thing held good all through."

Duress does not make a contract void but only voidable at the option of the party and his or her conduct is to be considered in determining whether he has ratified or disaffirmed it (Clark on Contracts, p. 363). Assuming that the testimony shows that the first note the defendant indorsed was taint-

ed with duress, she certainly ratified that contract in endorsing the second note.

Nowhere in the record is there any testimony on the part of the defendant that the plaintiff threatened the imprisonment of her, or her brother or mother if these notes were not signed and indorsed by the mother and the defendant. The defendant, in her direct testimony does not say positively that the plaintiff said he would send her brother to State's prison if the notes of his (her brother) were not paid. In one part of her cross examination (Case, p. 16, line 12) she says the plaintiff intimated that if "he did not have the note that would be the outcome of it."

The case is absolutely devoid of any testimony showing any threat on the part of the plaintiff to institute a prosecution of Frederick Unkart for violation of the Federal Criminal Statute. There is nothing in the direct testimony of the defendant showing that the plaintiff intended to institute such a proceeding nor is there any reference to it in the testimony of the plaintiff. All of the cases on duress cited in the appellant's brief show that there was a clear threat of imprisonment of a party for a crime, if the note or other instrument was not given. There was also no doubt of the commission of the crime.

In *Thompson v. Niggley* (Kansas Case, 26 L. R. A., Old Series, 803, at p. 804), the defendant Niggley admitted that he had been selling liquor in violation of the law.

In *Adams v. Irving National Bank*, 116 New York, 606, at pages 607 and 8, the husband of the defendant had obtained certain moneys from the defendant fraudulently, and an officer of the bank told the plaintiff that it was the intention of the bank's attorney to arrest the husband of the defendant on board a steamer.

In *Schoener v. Lissauer*, 107 New York, 111, at page 115, the execution of the mortgage had been procured by threats to the defendant that her son would be sent to State's prison for the offenses of larceny and embezzlement committed against the plaintiff.

In *Williamson-Halzell, Frazier Company v. Ackerman et al.*, 94 Pacific, 807. The notes sued on in this case were given because of the embezzlement by the defendant's son from the plaintiffs.

In this case, the testimony as to the threat is entirely absent. The strongest testimony there is, is that of an "intimation."

The cases in New Jersey that bear on the subject of duress are:

*Sooy Ads State*, 38 N. J. L., 324, at page 329.

*Wright v. Remington*, 41 N. J. L., page 48, affirmed by this Court in 43 N. J. L., 452.

*Mullin v. Leamy*, 80 N. J. L., 484.

These cases discuss the general principles of duress and show conclusively that there must be a clear threat of imprisonment if that is the character of duress complained of. In this case there is no such testimony. All the cases seem to hold that the application of the doctrine is not extended to relationship beyond that of parent and child. In this case the alleged conversation as to imprisonment was against the brother of the defendant.

The defendant is seeking to avoid the contract, and therefore she must place the plaintiff in the same position that he was before making the contract. This would mean that she should return to the plaintiff, the note of Unkart, Travis & Company indorsed by her which he delivered when she delivered to him the note of her mother indorsed by her.

This she has never offered to do, therefore, I submit that she is not in a position to have the contract set aside.

*Henninger v. Heald*, 52 N. J. E., 431.

*Roberts v. James*, 83 N. J. L., 492.

I submit that there is no testimony showing that either note the defendant indorsed was tainted with duress or based on misrepresentation.

*As to the Note Being Illegal.*

Taking the defendant's testimony at its very strongest, the most that can be said is that she may have feared that her brother might have been guilty of some irregularity against the Government, but not against Mr. Travis. A summons was left at the house in Tenafly (which was the summons in the suit against the brother) and the defendant then (Case, pp. 11 and 12) went to see Mr. Travis for the first time, and then a week later, stated that if he (Travis) did not push the suit against the brother, the matter would be adjusted by another note (Case, p. 12). When this note matured in 1914, the plaintiff demanded that it be paid and she then agreed to have her mother make a new note which she would indorse (the note now sued on), if he would forbear from bringing any suit against her. At each step of the proceeding there was a definite consideration running from Travis to the defendant: (a) when the first note was given, stopping of the civil suit against the brother; (b) when the second note was given, the forbearance on the part of the plaintiff from suing on the first note and the delivery to the defendant of the first note and the notes against the brother.

The appellant in her brief states (under Point I):

“Where no criminal proceedings are actually pending the actual commission of the crime al-

leged to have been compounded is one of the facts at issue and must be proved in order to make out the defense of illegality. Also that the proof of the commission of the crime alleged to have been compounded need not be such as would be sufficient to convict on a criminal charge, but that a preponderance of proof is sufficient" (p. 5 of Brief).

The cases cited support these principles, but in this case there is no testimony showing what crime had been committed by the brother of the defendant. The plaintiff on his examination (Case, p. 42, fol. 15) admitted that he knew that if Fred Unkart had given a bond at the Custom House and did not own property which he mentioned in his bond, he was guilty of a crime against the United States. There is nothing in the record showing what the crime was or that the knowledge by the plaintiff of the commission of the crime by the brother had any bearing on the giving of the note save the testimony of the defendant as to the "intimation" about imprisonment. In fact the plaintiff didn't know that the brother did not own the real estate until the conversation with the defendant in 1913 when the first note was indorsed by the defendant.

The appellant further states that "it is shown that the contract was that the plaintiff would not prosecute or cause the prosecution." There is not a vestige of any testimony in the entire record to sustain this statement. The character of the testimony offered as to the imprisonment has already been discussed.

### POINT III.

**The Trial Court acted properly in directing a verdict for the plaintiff.**

Taking the whole record, the salient facts are as follows:

(a) The suit was started against the brother in 1913 on the notes he executed.

(b) The defendant agreed to indorse the note made by her brother if the suit was dropped by the plaintiff and this was done.

(c) There was a conversation in April or May, 1913, about the brother signing the Custom House bonds and representing that he owned real estate, and if he did not own the real estate that he had possibly committed a State's Prison offense in stating that he did.

(d) There was no conversation that the plaintiff threatened to imprison the brother or the defendant or her mother either for the debt or for the violation of the United States Statute, if the notes were not indorsed or signed.

(e) There was no testimony as to any conversations about imprisoning the brother or the defendant or her mother at the time of the execution and delivery of the note sued upon (about May, 1914).

(f) There is uncontroverted testimony that the plaintiff refrained from pressing his suit against the brother when he received the note indorsed by the defendant and that he also refrained from bringing a suit against the defendant in consideration of the defendant indorsing the note made by her mother (the note sued upon). All of these statements are uncontroverted. As to whether the mother and defendant were accommodation parties has no bearing in the case. Where the facts are uncontroverted, the Court is under a duty to direct a verdict:

"The Court is justified in controlling a jury in its verdict by a binding instruction in a case in which the testimony will not support a verdict other than that which is directed."

Vandegrift Construction Co. v. Camden,  
&c., Railway Company 74 N. J. L., 669.  
Loper v. Somers, 71 N. J. L., 657, 662.

If the jury found a verdict in favor of the defendant, the Court would have been obliged to set it aside as being unsupported by the testimony and against the weight of evidence and contrary to law, hence the action of the Court was proper and in accordance with law.

In *Belcher v. Manhattan Building & Loan Association*, 67 Atl. Rep., 399, at page 401, it is stated:

“The Trial Court directed a verdict for the plaintiff, it being already found that the facts touching the authority of the agent were not in dispute. It is almost superfluous now to justify the direction when the facts are not in dispute, and the inferences from them are not in doubt the question at issue is one at law for the Court and the direction of a verdict is not erroneous (citing cases).”

The facts in this case are not in dispute and the testimony of both parties agrees as to what the conversation was about the imprisonment. Only one inference can reasonably be drawn from the testimony of the defendant, which is that there was the conversation about imprisonment, but nothing was said as to imprisonment relating to the collection of the note, nor was there any threat of criminal prosecution of the brother by the plaintiff if the notes made by the brother were not paid. The plaintiff on being advised by the defendant that her brother did not own any property was probably surprised and remarked that “he must have owned it, as he signed Custom House bonds stating that he owned it, and must know that was illegal” (Case, p. 29, fol. 30), but he said nothing as to imprisoning the defendant or her mother or brother because

of the failure to pay the brother's note or to indorse new notes, nor was there any conversation wherein the plaintiff said he would institute a criminal prosecution against Frederick Unkart because of his making affidavits in the Custom House that he owned property.

**The judgment against the defendant individually and as Executrix should be affirmed, with costs.**

Respectfully submitted,

HENRY T. STETSON,  
Attorney for Plaintiff-Respondent,  
226 Main Street,  
Orange, New Jersey.

## INDEX.

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	PAGE
Notice of Appeal .....	1
Judgment Record .....	2

### TESTIMONY.

#### Gustava Unkart:

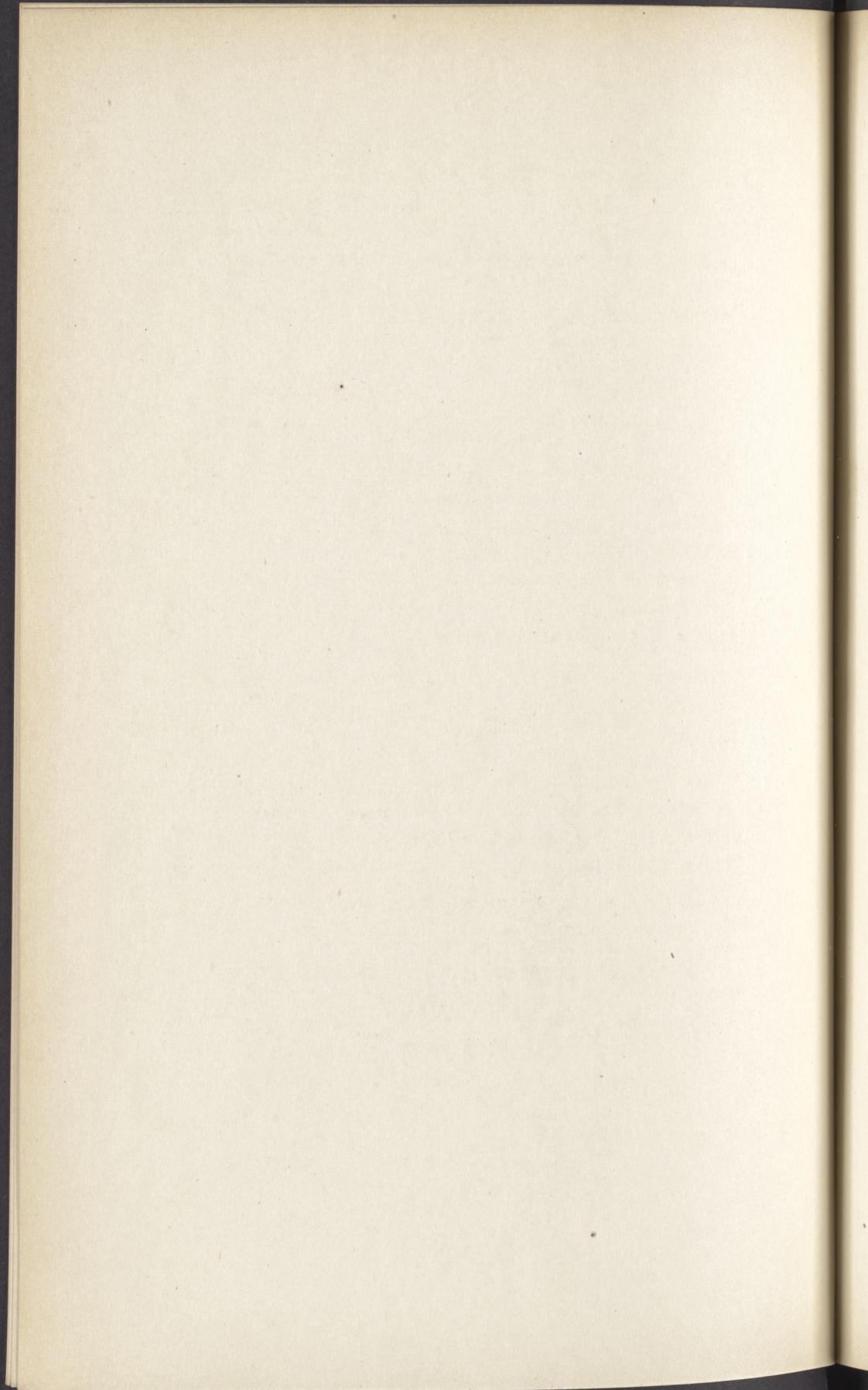
Direct .....	9
Cross .....	10

#### Elbert H. Travis:

Direct .....	26
Cross .....	35

### EXHIBITS.

	Offered Page	Printed Page
Exhibit P1.—Promissory Note, dated May 1st, 1914 .....	8	54
Exhibit P2.—Notice of Protest...	8	54
Exhibit P3.—Certificate of Lien, dated May 16, 1911 .....	26	26
Exhibit P4.—Letter from Miss Unkart to Mr. Travis .....	26	26



Notice of Appeal.

New Jersey Supreme Court.

ELBERT H. TRAVIS,  
Plaintiff-Respondent,

*against*

GUSTAVA UNKART, Individually  
and as Executrix of the Last  
Will and Testament of Mary  
E. Unkart,  
Defendant-Appellant.

10

20

To Henry T. Stetson, Esq., Attorney for Plaintiff:

Take notice that the defendant appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals on the following grounds:

30

(1) That the Court erroneously directed a verdict for the plaintiff and against the defendant.

(2) That the Court refused to allow the case to go to the jury to determine an issue of fact involved therein.

WENDELL J. WRIGHT,  
Attorney for Appellant.

40

**Judgment Record.**NEW JERSEY SUPREME COURT,  
BERGEN COUNTY.

10	ELBERT H. TRAVIS  <i>v.</i>  GUSTAVA UNKART, Individually and as Executrix, etc., of Mary E. Unkart, deceased.	}	On Postea.  Horace & Henry T. Stetson, Attorneys.
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20 Gustava Unkart, individually and as Executrix, etc., of Mary E. Unkart, deceased, the defendant in this cause, was summoned to answer unto Elbert H. Travis, the plaintiff therein, in an action at law upon the following complaint:

(Summons issued January 12th, 1916.)

The plaintiff, by his attorney, Henry T. Stetson, respectfully shows to this Court and alleges:

30 First: That he resides at 153 West Second Street, in the City of Mt. Vernon, County of Westchester, State of New York.

40 Second: That he sues for the amount of a promissory note for two thousand, six hundred and seventy-six dollars (\$2,676) made by Mary E. Unkart to him, dated the first day of May, 1914, payable on demand with interest at the rate of 5%, at the office of the Columbia, Knickerbocker Trust Company, 125th Street and Lenox Avenue, New York City, which note was before its delivery to the plaintiff, indorsed by the defendant, Gustava Unkart, a copy of which is hereto annexed.

Third: The plaintiff demanded payment of said note on the 3rd day of May, 1915, at the place where it was made payable, to wit: the Columbia, Knickerbocker Trust Company, 125th Street and Lenox Avenue, City of New York, and the same was not paid, whereupon it was protested and notice of protest sent to the defendant, Gustava Unkart, and to the maker, Mary E. Unkart, and the fees of the protest amounted to one and 36/100 dollars (\$1.36), which the plaintiff was compelled to pay.

10

Fourth: That on the 9th day of June, 1915, the said Mary E. Unkart departed this life, leaving a last will and testament, which was admitted to probate before the Surrogate of Bergen County, on the 23rd day of June, 1915. That in said will, the defendant, Gustava Unkart, was named as Executrix, and that she thereupon qualified, and is now acting as such, her right thereto never having been revoked.

20

Fifth: That on the first day of June, 1915, the payment of said note was again demanded at the place where it was made payable, to wit: the Columbia, Knickerbocker Trust Company, 125th Street and Lenox Avenue, New York City, and the same was not paid, and that the same was duly protested, and notice of protest was sent to the defendant, and the fees for the protest of the same amounted to one and 36/100 dollars (\$1.36), which the plaintiff was compelled to pay.

30

Sixth: That the plaintiff still owns said note and it has not been paid, and the whole amount is due and owing thereof, with interest on the sum of two thousand six hundred and seventy-six dollars (\$2,676), at 5 per cent. from the first day of May, 1914, to the first day of June, 1915, and on the sum of two thousand, six hundred

40

and seventy-eight and 72/100 dollars (\$2,678.72) with interest thereon at 6 per cent. from the first day of June, 1915, together with the costs and disbursements of this suit.

Attorney for Plaintiff,  
Office and P. O. Address,  
No. 2 Rector Street,  
New York City.

10

Copy of note referred to in foregoing complaint.

\$2676.00 New York, May 1st, 1914.

On demand after date I promise to pay to the order of E. H. Travis Twenty-six hundred seventy-six 00/100 Dollars at Office Col. Knickerbocker Trust Co. 125th St. & Lenox Ave. With interest 5%.

20

Value received.

No. Due (Signed) MARY E. UNKART.

Indorsed "Gustave Unkart."

(Filed Feb. 9, 1916.)

The defendant individually and as Executrix of Mary E. Unkart, deceased, says:

30

(1) She has no knowledge of the allegation in Paragraph First of the complaint.

(2) She admits that a paper purporting to be a promissory note in substance as alleged in the second paragraph of the complaint was signed by Mary E. Unkart in her lifetime and endorsed by the defendant as an individual, and that the copy annexed to the complaint is a true copy of the paper writing referred to.

40

(3) She admits the third paragraph.

(4) She admits the fourth paragraph.

(5) She admits the fifth paragraph.

(6) She says that the signature of Mary E. Unkart to the said paper and the endorsement of the defendant individually upon said paper was obtained by threats and duress.

(7) She says that there was no consideration for the making, execution or delivery of the said paper writing which was ever received by the said Mary E. Unkart in her lifetime or by this defendant individually or as Executrix of Mary E. Unkart, deceased.

10

(8) That the signature of the said Mary E. Unkart to the said paper writing and the endorsement thereof by this defendant individually was obtained by the plaintiff herein by false and fraudulent representations.

20

(9) Plaintiff for the purpose of procuring the signature of the said Mary E. Unkart to said paper and the endorsement thereon by this defendant individually falsely represented to this defendant that the said Mary E. Unkart and this defendant were liable to pay an alleged debt due from one Frederick Unkart to the said plaintiff.

WENDELL J. WRIGHT,  
Attorney for Defendant.

30

(Filed Feb. 25, 1916.)

The plaintiff replying to the answer of the defendant, respectfully alleges:

1. He denies all the matter alleged in paragraph numbered and designated (6) in said answer.

2. He denies all the matter alleged in paragraph numbered and designated (7) and further alleges

40

that the note referred to in parargraph designated (2) of the complaint was executed by the defendant and Mary E. Unkart in her lifetime for a good and valuable consideration.

3. He denies all of the matter alleged in paragraph numbered and designated (8) of said answer.

10 4. He denies all of the matter alleged in paragraph numbered and designated (9) of said answer.

This plaintiff, therefore, prays that the answer of the defendant may be dismissed and judgment be awarded to this plaintiff for the relief demanded in the complaint.

HENRY T. STETSON,  
Attorney for Plaintiff.

20

(Filed Mar. 16, 1916.)

This case was tried before Judge Luther Campbell (he being designated by law to hear said case), with a jury at the Bergen Circuit on April 6th, 1916.

30 The jury rendered a general verdict by direction of the Court against the defendant and in favor of the plaintiff for the sum of two thousand, nine hundred and fifty-eight and 79/100 dollars (\$2,958.79), as follows:

Amount of note	\$2,676.00
Interest from May 1st, 1914, to June 1st, 1915, at 5 per cent.	144.95
Interest from June 1st, 1915, to April 6, 1916, at 6 per cent.	136.48
Protest fee on note	136.48
	<hr/>
40 Total	\$2,958.79

Whereupon it is adjudged that the plaintiff recover of the defendant, the \$2,958.79 sum of two thousand nine hundred and 51.76 fifty-eight dollars and seventy-nine cents and his costs, which are taxed at \$3,010.55 the sum of fifty-one dollars and seventy-six cents, making in the whole the sum of three thousand and ten dollars and fifty-five cents.

10

Judgment entered April 13, 1916.

WM. S. GUMMERE,  
C. J.

---

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

20

[SEAL.] In testimony whereof I have set my hand and seal of said Court at Trenton, this third day of May, A. D. nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,  
Clerk.

30

40

BERGEN COUNTY SUPREME COURT,  
 Before—Hon. LUTHER A. CAMPBELL, Judge, and a  
 Jury.

ELBERT H. TRAVIS,  
 Plaintiff,

10

*v.*

GUSTAVA UNKART, individually  
 and as Executrix of the Last  
 Will and Testament of Mary  
 E. Unkart, deceased,  
 Defendant.

20

Transcript of shorthand notes of testimony taken  
 at the trial of the above entitled cause, at the Court  
 House in Hackensack, N. J., on April 6th, 1916.

For the Plaintiff, HENRY T. STETSON;  
 WILLIAM H. OSBORNE, of Counsel.  
 For the Defendant, W. J. WRIGHT.

The Court: Is there any objection to the amount  
 involved?

30

Mr. Wright: No.

The Court: And no objection to the formalities?

Mr. Osborne: That is all admitted. I offer in  
 evidence a promissory note, dated May 1st, 1914,  
 to the order of E. H. Travis, the plaintiff, for \$2,676,  
 together with the notice of protest.

Papers marked Exhibits P1, and P2.

40

The Court: How much further does the admis-  
 sion go, that the plaintiff is the holder of the note?

Mr. Osborne: That is all in the pleadings, and  
 all admitted.

The Court: The amount is what I had in mind; is that admitted also?

Mr. Osborne: Yes, those are all admitted by the pleadings. Judge Wright, we have computed the interest at \$256.45.

Mr. Wright: I have not computed it; I assume that your computation is correct—subject to correction.

Mr. Osborne: The interest is \$256.45, making the total, with the protest fees, \$2,934.84.

The Court: That seems to be correct, if your figuration of interest is correct.

Plaintiff Rests.

GUSTAVA UNKART, sworn in her own behalf, testifies as follows:

Direct examination by Mr. Wright:

Q. Miss Unkart, you are the Gustava Unkart who is the defendant in this suit? A. I am.

Q. I show you this note which has been marked P1; that is your name on there? A. That is my name.

Q. The endorsement? A. Yes.

Q. That is your mother's signature as maker? A. Yes.

Q. Will you please state how this note came to be given? A. Well, the first—the notice came to my mother—well, someone came to the house; of course my mother knew nothing about it; when I came home, she told me about it. Then I asked Mr. Travis—I did not know Mr. Travis; I went to see Mr. Travis; he told me that we had better advance the money to my brother, and that my brother owned the property in Tenafly, and I said, of course, I knew my brother did not own the property, and I knew nothing about the note

or the money, because he did not live there; he said if my brother did not own the property, he had given it when he signed bonds in the Custom House as if he had owned the property, and it was a criminal offense, and he could be sent to State's prison for it. So, of course, I told my mother what he had said, and naturally you would know how we would feel about it.

10 Q. What is your brother's name? A. Lewis Unkart.

Q. Was he in business with Mr. Travis at that time, prior to that time? A. I believe it was before that; I don't know.

Q. Did you ever receive anything for this note, you or your mother? A. No; never.

Cross examination by Mr. Osborne:

20 Q. Miss Unkart, your brother and Mr. Travis were partners, as I understand, in business in New York? A. So I understand, too.

Q. What was the firm name? A. As I understand, Unkart, Travis & Company.

Q. When was that? A. I could not tell you.

Q. Well, ten years ago? A. I could not even tell you that; I haven't any idea.

30 Q. You were at that time living in Pittsburgh? A. That I could not say either, because I don't know when it was made. I lived in Pittsburgh four years and a half.

Q. That was between what years? A. I came to New York in 1910; before that.

Q. Did you know that your brother was indebted to Mr. Travis? A. No.

Q. You did not know that? A. No.

40 Q. Mr. Travis did not tell you that? A. I never saw Mr Travis until that time he told me about the note

Q. How did you happen to go to Mr. Travis?

A. Because he sent that summons to Court to my mother.

Q. And that was a summons in a suit brought by Mr. Travis against your brother, is that right?

A. As I understand it at this time, it was, that my brother owed him.

Q. You haven't got that summons here, with you, have you? A. I don't know.

10

Q. You haven't got it?

Mr. Wright: I haven't got it.

Q. It was a suit against your brother by Mr. Travis, is that right? A. As I understand, yes.

Q. Do you remember about what the amount was? A. I do not.

Q. Was it over \$2,500? A. No, it was less than that; the original amount you mean?

Q. I mean the original amount? A. Without interest? It seems to me it was \$2,100 or \$2,200; I don't know.

20

Mr. Osborne: Well, it was a suit for over \$2,000 against Fred?

Mr. Wright: There was a summons and complaint against Fred.

Q. When you got that summons, when the summons was left at your house, of course it was left there for your brother? A. The man insisted that my mother was his wife; so she was frightened.

30

Q. What did you do with the summons? Was your brother home? Was he there? Did he come home that night? A. He did not live in Tenaffy.

Q. Where did he live at that time? A. Cleveland.

Q. Cleveland? When you got that summons, you went to Mr. Travis? A. He was the nearest one to get at.

40

Q. You told Mr. Travis on that occasion that you or your mother or both of you would give him a note, provided he would not push this suit against your brother? A. Well, I could hardly have told him that—

The Court: Did you tell him that?

Question read to the witness.

10

The Court: You are asked whether you did say that or whether you did not say that?

A. I did not say it on that occasion.

Q. On what occasion did you say it? A. I might have said it a week later.

20

Q. Then a week later you said to Mr. Travis that if he did not push this suit against your brother, you would give him your note, or your mother's note? A. I don't think that I said I would give him my note.

Q. What did happen? What note was given or signed, do you remember? A. My brother's note.

Q. Had your brother signed a note after this suit was brought? A. Well, no, I guess not.

Q. Had he signed a note before the suit was brought? A. Yes.

30

Q. Did you endorse that note?

Mr. Wright: I object to this as immaterial, if the Court please?

The Court: How is it material?

40

Mr. Osborne: Well, the defense here is that there was no consideration. All I am trying to do is to bring out the circumstances so far as this witness has gone, that her brother had been sued for a certain amount of money, and that she probably said she would give a note. Now, it is all in line. This is the first note he

gave—I want to find out why she endorsed it. This is not the note in suit.

The Court: This first note you speak about, when was that given, do you know, madam? Was it before this time you have spoken of when you found the summons in a suit at your home?

Witness: Why, Mr. Travis had a note; the first time I saw him, he had a note in his pocket; showed it to me.

10

The Court: The first time you saw Mr. Travis regarding this matter was directly after you found this summons at your mother's home?

Witness: Yes, that was directly after.

The Court: Is that the note you are speaking of?

Mr. Osborne: I am speaking now of a note or notes that the brother made before this, on which the suit was based. There were several notes in the history of this litigation. I am simply starting with the first note.

20

Q. Your brother made two notes, did he not, before this summons was served upon him? A. Mr. Travis had one note, that is all I know.

30

Q. He made one note; did you ever see the note that he made? A. No.

Q. You did not indorse that note, did you? A. I did not.

Q. After the summons was served and when you went to Mr Travis, you then made a note, did you? A. I could not make any note; I did not have anything to make a note on.

Q. Did your mother make a note? A. Mr. Travis has the note; he knows when it was made.

40

Q. Did you indorse a note? A. Yes, I know I indorsed my mother's signature.

Q How many notes did you sign? How many notes, Miss Unkart, did you indorse? A. I indorsed two.

Q. Two notes. When was the first of those two notes made? A. I don't know.

10 Q. When did you deliver this note that is in suit here? When did you deliver that? It is dated May 1st; do you remember when you delivered it? A. I suppose it was around May 1st; I don't know.

Q. Don't you remember that it was not delivered until about the first day of July? A. No, I know it wasn't delivered the first day of July.

Q. When was it delivered? A. I don't know; it was before that time, because I wasn't in New York City at that time.

20 Q. When you indorsed the first note, did Mr. Travis give you the note that your brother had signed? A. No.

Q. He did not? A. No.

Q. Where is that note, do you know? A. I think it is in Mr. Wright's office.

Q. How did it get in Mr. Wright's office? A. Why, I had it and wanted to keep it.

Q. Why did you want to keep it? A. Naturally wanted to save it; I don't know.

30 Q. Did Mr. Travis give you an assignment of his claim against your brother? A. What is that?

Q. Did he give you any paper writings at all?

The Court: You mean at the time this note in question was left there?

Mr. Osborne: At the time the first note was endorsed?

40 Q. You got no paper writings whatever from him? A. No.

Q. Are you sure about that? A. No.

Q. You did get from him your brother's note;

that you got from him; he gave that up, didn't he?

A. After my mother signed the note, he returned all the other notes.

Q. And you told Mr. Travis that if he would stop this suit against your brother, that you would deliver your mother's note, is that right? A. I don't remember good.

Q. Now, come down to the time when this note in suit was delivered; it is dated May 1st, 1914; you saw Mr. Travis at that time, didn't you? A. Well, if it was May 1st; I don't remember the date exactly.

10

Q. You saw him before you gave him the note? A. I saw him the day I gave him the note.

Q. What did you tell him? A. I really could not recall.

Q. Do you know why you gave him this note? A. Why, yes, because my mother did not want my brother to go to prison.

20

Q. What was the conversation you had with Mr. Travis at that time, at the time of the delivery of this note in suit? A. I really don't know.

Q. Your mother had already signed a note hadn't she? A. She signed but one note.

Q. You had already endorsed the first note? A. Yes.

Q. Did you at the time that you delivered this note in suit get back the first note that you endorsed? A. I suppose so; he gave me some notes.

30

Q. Where is the note? Where is the first note? A. Why, I have got it up here; do you want it in Court?

Q. I want to know where it is; you have it home, have you? A. Do I have to tell him? I think it is in Mr. Wright's office.

Q. Now, you say that on that occasion, Mr. Travis told you that your brother would have to

40

go to State's prison? A. He did from the first time, I suppose. I suppose the same thing held good all through.

Q. What did he say about that? A. He said that my brother had signed bonds in the Custom House as owning the property, it was a State's prison offense.

10 Q. Your brother had to sign certain affidavits or something in which he had to represent himself as being an owner of real estate, is that right? A. I suppose so, whatever signing a bond in the Custom House is.

Q. Mr. Travis did not tell you that he was going to send your brother to State's prison, did he? A. Well, he intimated the same thing.

20 Q. Intimated that somebody might send him to State's prison? A. Intimated that if he did not have the note, that would be the outcome of it.

Q. He did not tell you the result of this suit he brought against your brother, that your brother would go to State's prison, did he? A. Yes, he made me understand that would be it.

30 Q. Just what did he say? A. Just what I told you; just what I told you, that he would use the property as owning it, and that he must own it because he signed bonds in the Custom House as owning the property.

Q. Mr. Travis practically told you this: He said he knew your brother was good for the money because he owned some property, is that right? You said no; am I right so far? A. He said my brother represented he owned the property.

40 Q. He said, I know your brother owns this property in Tenafly; didn't he say that to you? A. He did not use those kind of words; it wasn't about the house practically.

Q. What did he say about your brother owning

this property? He said you brother did own it, didn't he? A. Yes.

Q. You then said to him that your brother did not own it, is that right? A. Yes.

Q. Then for the first time, so far as you know, Mr. Travis learned for the first time that your brother did not own that property, is that right? A. Well, you know I had not known Mr. Travis before, so of course I don't know.

10

Q. You gave him the information that your brother did not own this property, didn't you? A. Yes.

Q. And then Mr. Travis said to you, why, he must own it because he has made these bonds or sworn to these affidavits in connection with his business, that is right, isn't it? A. Yes.

Q. And then you said to Mr. Travis again, that your brother did not own the property, is that right? A. I don't know whether I said it over again or not; once was enough.

20

Q. Then he, Mr. Travis, told you that your brother, in swearing to these affidavits or making these bonds and representing himself as owner of this property, had committed a State's prison offense, is that right? A. Yes.

Q. That was after the summons had been served at your house? A. Yes, sir.

Q. Where were you living for three or four years before that, in Pittsburgh? A. A suburb of Pittsburgh.

30

Q. How many years? A. Four and a half.

Q. Your mother and your brother lived together here in Tenafly, didn't they? A. Yes.

Q. And your brother supported your mother? A. No, he did not; I helped to support my mother.

Q. You helped support her? How much did you contribute to your mother's support? A. About \$25 a month.

40

Q. A month? A. Yes.

Q. And your brother did the rest, is that right?

A. I suppose what there was.

Q. Did he have any other business than as partner in this concern? A. None as I know of.

Q. He managed the concern, didn't he? A. I wasn't here; I don't know.

10 Q. Do you know, as a matter of fact, that the money that your brother drew and the money represented by this note, went to the support of your mother, or a large portion of it? A. I don't think so; when I was paying so much for the support of my mother and my mother had a small income of her own at that time, I don't think she needed it.

Q. How much income did she have? A. About \$300; nearly.

Q. A year? A. Yes; it varied, perhaps.

20 Q. At the time that this first note that you endorsed became due, you met Mr. Travis at the Grand Central Station, do you remember that? A. I did not meet him at the Grand Central Station.

Q. You met him somewhere? A. Met him at No. 2 Stone Street.

Q. New York? A. Yes.

Q. When was that? A. Whatever the date that says; I don't know; I suppose in May.

30 Q. Probably around the middle of April, 1914? A. I could not swear to that.

Q. The note that you had endorsed was becoming due, wasn't it? It was overdue at that time, is that right? A. It was not overdue in April, if it was signed in May.

Q. Just about due at that time; is that your recollection? A. Well, it was whenever Mr. Travis sent for me to meet him.

40 Q. When you met him, he told you that he wanted the money, that he wanted to be paid, didn't he?

Mr. Wright: This is all in May, 1914?

Mr. Osborne: Yes, about the middle of April.

Q. He said he wanted to be paid, is that right?

A. I don't recall his words, whether he said he wanted to be paid; he wanted some money; that is all I know.

Q. You said to him, if you don't press me on this note, I will get my mother to make a note and I will endorse it, is that right? Do you remember that? A. No. 10

Q. You don't remember that? A. No, I don't remember.

Q. Will you swear that you did not say that? A. I really could not say what I had said.

Q. That summons was served about the middle of May, 1913, wasn't it? A. If it says so, it was. 20

Q. And after Mr. Travis had told you, as you say, that your brother might be guilty of a State prison offense, in having made these bonds or whatever they were, did you ever call Mr. Travis' attention to that assertion of his later? A. That I could not say either.

Q. Why did you give this note that we are suing on? What did you give it to him for? A. Simply because my mother did not want my brother to go to State's prison. 30

Q. That is your only reason? A. Certainly.

Q. Your brother is not in State's prison now, is he? A. No, sir, he is in Cleveland, as far as I know.

Q. Don't you know where he is? A. I suppose; it was the last time I heard from him, he was in Cleveland.

Q. When did you learn? When did you first learn that your brother would not go to State's prison? A. I haven't learned any different. 40

Q. Did you say anything to Mr. Travis about this State prison matter when you gave this note in suit? A. That I could not say either.

Q. You never complained to him? Never complained that you had given the first note to keep your brother out of State's prison? A. Well, he said if I did not give him a note, he would see what he could do, whatever that might mean, to get  
10 money.

Q. When was that? A. At the very beginning.

Q. That is, just after the summons was served?  
A. Yes, sir.

Q. He said he would see what he could do if you did not give a note? A. Yes; intimated that we would be responsible for it; that he would in some way inflict it upon the family.

Q. What did he say? What did he actually say  
20 at that time? A. Do I have to answer that question?

The Court: Tell us exactly what he said. If you cannot say exactly what he said, in entirety, say what you can of it in substance.

The Witness: I will have to tell you the same thing over again, what he said about signing the bond in the Custom House and he would see what he could do.  
30

The Court: This first note that has been spoken of, who made the note, who signed it? It does not appear to me who signed it.

Mr. Osborne: That was signed by Unkart, Travis & Company; that was the firm.

The Witness: Was it? I don't know.

Mr. Stetson: The first note was signed  
40 by Unkart, Travis & Company and endorsed by Miss Unkart. The second note, the one on which the suit was brought, was signed

by Mrs. Unkart and endorsed by the defendant.

The Court: That is correct, is it?

The Witness: If he says the first note was signed by Travis & Company; I don't know. The second note was signed by my mother.

The Court: The first note was not signed by your mother? 10

The Witness: No, was not signed by my mother.

The Court: The first note was given somewhere about the time this summons had been served, is that correct?

The Witness: I should judge it would have been—knowing the note was the note that he had, that had been given a time before. 20

The Court: And the note that Mr. Travis had, that had been given to him before the serving of the summons?

The Witness: Yes, sir.

The Court: And when did your signature go upon it, before the serving of the summons or after?

The Witness: After.

The Court: Then it was when that note became due, as you recall, that this note which we are interested in now in this suit, was signed by your mother and endorsed by you, is that correct? 30

The Witness: Yes.

Mr. Wright: The first note was the note on which the action was brought against Fred Unkart.

Mr. Osborne: No, the very first note that we brought suit on. 40

Mr. Wright: That is what I said; the first one is the one you brought suit on.

10 Mr. Stetson: No, sir; that was the note made by Mr. Fred Unkart. There were two notes there; one made to Mr. Travis and one made to Mr. Travis' brother. Mr. Travis' brother assigned his note after it became due to him, and he instituted a suit in the Supreme Court against Mr. Unkart. Then it was after that suit was started that this conversation took place between Miss Unkart and the plaintiff; so there were really, if you analyzed the whole transaction, there were really three series of notes; the first series is what we may call the note given by Mr. Fred Unkart to Mr. Travis, and another note by Mr. Fred  
20 Unkart to Mr. Travis' brother.

The Court: There was one note then that was given by Mr. Fred Unkart to Mr. Travis who is the plaintiff in this action?

Mr. Stetson: Yes, sir.

The Court: Both original notes were individually by Fred Unkart, one given to Elbert H. Travis, who is the plaintiff in this action, is that correct?

30 Mr. Stetson: Yes, sir.

The Court: The other was given to the brother of Elbert H. Travis and by him assigned to Elbert H. Travis?

Mr. Stetson: Yes, sir, assigned, because it was after maturity.

The Court: Then Elbert H. Travis brought action upon the one note which had been made payable to him directly and as assignee of his brother as to the other note?  
40

Mr. Stetson: That is all in the one suit.

The Court: Then what is the situation?

Mr. Stetson: It was after that that the summons and complaint had been served by Mr. Travis on Mr. Unkart who lived at this house with his mother, and where this conversation which the defendant has testified to took place, an alleged conversation about a so-called fraud.

The Court: And those notes were past due at that time, because the suit had been started? 10

Mr. Stetson: Yes, sir.

The Court: When was the first time that she put her name on?

Mr. Stetson: The note dated May 1st, 1913, which was a note of Unkart, Travis & Company, Incorporated; which at that time had been incorporated; and endorsed by Miss Unkart. Then when that note matured, some time around the middle of April, as Miss Unkart has testified, the plaintiff had some conversation with her; he said he wanted his money; then she gave this note in the suit, endorsed by the mother. 20

The Court: Then Unkart, Travis & Company, did they take up or supposedly take up the two preceding notes of Fred Unkart?

Mr. Stetson: Yes, sir. 30

The Court: One to the plaintiff—

Mr. Stetson: Yes, sir, and this note in turn paid a second note.

The Court: All right, I understand.

Q. I want to be certain about this: You got back your brother's two notes, didn't you? You got those back, and got back the note, the first note that you endorsed, and you have them in your possession now, or in Judge Wright's possession? 40

The Court: That is correct, is it?

A. Yes, sir, somewhere; I think I gave them to him, everything.

Q. But you got them from Mr. Travis, didn't you? A. I did.

Q. And you got the first two notes that your brother signed? You got those at the time that you endorsed the first note? A. No.

10 Q. When? A. When my mother's note was given.

Q. You got them all at some time later? You got all the notes back when this note was made, this note that we are suing on, is that right? A. Yes.

Q. Will you swear that you did not get from Mr. Travis the agreement or assignment of all his claims against your brother? A. I got no agreement from Mr. Travis.

20 Q. Did you get an assignment from him? Did you get a letter from him? Did he give you any paper outside of these notes? A. I had so many letters from Mr. Travis, I don't know what you are referring to.

30 Q. Isn't it a fact that he gave you a paper which provided that you could use this claim against your brother or against any share that your brother might have in your mother's estate? You are sure he did not give you a letter of that kind? Don't you remember? A. I don't quite understand what you mean.

Q. Where are all these letters of Mr. Travis that Mr. Travis wrote to you? A. In Tenafly, N. J.

Q. Why didn't you bring them here? A. Because I haven't been in Tenafly.

Q. What? A. I did not come from Tenafly.

40 Q. Well, you knew that this case was going to be tried? You were here yesterday? A. Yes, but I did not go to Tenafly.

Q. Didn't you consider that the letters that Mr. Travis wrote you were of any importance in this suit? A. Why, no.

Q. Not at all? Didn't Judge Wright tell you he had been served with notice to produce all those letters? A. No.

Q. He did not? A. No.

By Mr. Wright:

10

Q. Do you know whether your mother raised money on her property to give to your brother Fred to invest in Unkart, Travis & Company? A. Yes.

Q. Do you know how much he raised? A. One thousand dollars in December of the same year; I don't know which year.

Q. Do you know how much, if anything, your brother used to support your mother—his moneys? A. Very little; it would not pay his own board in an ordinary family.

20

Q. Well, do you know in dollars and cents, how much he gave her? A. No; he provided the meat that was used in the house, and that was all; the only thing he did; that I am sure of.

By Mr. Osborne:

Q. Will you look at the signature of Gustava Unkart, on that paper (showing); is that your signature? A. (referring): It looks like my signature.

30

Q. Did you sign it? A. I did.

Mr. Osborne: I will have it marked for identification.

Marked Exhibit P3, for identification.

Q. Look at the signature on this paper, P3, for identification; is that your signature? A. (referring): Yes.

40

Q. That is a letter undated? A. Yes.

Mr. Osborne: Mark that.  
Marked Exhibit P4, for identification.

Defendant Rests.

ELBERT H. TRAVIS, sworn in his own behalf,  
testifies as follows:

10 Direct examination by Mr. Osborne:

Mr. Osborne: I offer in evidence Exhibit  
P3, for identification.

Marked Exhibit P3, in evidence.

Mr. Osborne: Also Exhibit P4, for iden-  
tification.

Marked Exhibit P4, in evidence.

20 Mr. Osborne: Exhibit P3, gentlemen, is  
the letterhead of Unkart, Travis & Com-  
pany, Incorporated, Custom House brokers  
and general forwarders, 2-4 Stone Street,  
New York. Dated "New York, May 16th,  
1911. This is to certify that I hereby give  
E. H. Travis a lien as collateral for note is-  
sued against my interest in vault located in  
Greenwood Cemetary, Brooklyn, N. Y., L.  
F. Unkart. Gustava Unkart."

30 P4, is a letter from Miss Unkart: "My  
dear Mr. Travis: I appreciate your kind-  
ness in offering to come to Tenaffy, but if it  
is all the same to you, I will meet you  
thursday, May 14th, at 4 o'clock. If that is  
not convenient, any afternoon except wed-  
nesday. I most certainly thank you for  
giving up the note to me, and will explain  
reason when me meet. Thanking you for  
your consideration, I am, very truly yours,  
Gustava Unkart.

40 "P. S. If I don't hear from you I will ex-  
pect to see you on thursday at 225 E. 23rd  
Street, New York City."

Q. Mr. Travis, was Unkart, Travis & Company a partnership at one time, or was it always incorporated? A. At the time I was connected with it, it was merely a partnership.

Q. When was it incorporated? A. I could not say; it was some time after I withdrew.

Q. Who were connected with the concern? A. Well, there were three of us originally.

10

Q. Who were they? A. Myself, Mr. Unkart and another man by the name of James Finnigan.

Q. Who put the money into this concern? A. Mr. Finnigan and I originally; he got out and I then was—

Q. How much money did you put in? A. How do you mean, when we started?

Q. Altogether, yes? A. Altogether, I could not say.

20

Q. Well, was it thousands or hundreds? A. Well, just what do you mean? I put in this money on the note; that did not go in the concern; that was another matter. I put in the concern when it was started \$500.

Q. Then did you put in any money after that? Who carried it? Was it a success? Was the business a success? A. No, it was not.

Q. What were you bond brokers? A. Custom House brokers.

30

Q. Did you have anything to do with the management? A. Nothing whatever.

Q. Who managed it? A. L. F. Unkart.

Q. He is the man that we have been talking about? A. Yes.

Q. Did he put any money into it? A. No.

Q. Who carried the rent and all that kind of thing? The office rent? A. That is the money I put in from time to time.

40

Q. How much did you put in altogether? A. As I say, I kept no record of that. This note repre-

sents as near as I could figure it, the money I put in, and would not be included in the partnership.

Q. You had some kind of accounting with Unkart and he made you a couple of notes? A. Yes.

Q. Made a note to you and your brother? A. Yes.

10 Q. What was the amount of those notes? A. Well, I don't exactly know the figures. My interest was, that I put in something around nine hundred dollars. I persuaded my brother to put in something like twelve hundred or thirteen hundred.

Q. These notes ran over two thousand dollars? A. Yes.

Q. Unkart gave these two notes, didn't he? A. Yes.

20 Q. And that was on an accounting between Unkart and your brother and yourself? A. Yes.

Q. He was found to be indebted to you and made notes? A. Yes.

Q. Now, you brought suit on those notes? A. Yes.

Q. After you had brought suit on those notes, did you see Miss Unkart? A. Yes.

30 Q. About how long after? This (indicating) is your attorney, Mr. Stetson, here? A. Yes.

Q. About how long after you brought suit? A. Well, I don't know exactly. She stated at the time the summons was served, I received a letter from her.

Q. Was it a week or ten days? A. Yes, something like that.

40 Q. She says that you told her that her brother would go to State's prison and that you would interest yourself, as I understand her, in seeing that he got there, unless she or her mother made notes to you or paid his debts; did you so say to her? A. No, nothing of that sort.

Q. What was the conversation that you had when you first saw her? Did you send for her or did she come in to see you? A. I had a letter from her, asking that I meet her.

Q. What was the conversation? Where did it take place? In Stone Street, New York? A. Yes.

Q. About what was the conversation? A. It was a considerable conversation. You mean relative to this particular point?

10

Q. I mean that exactly.

The Court: Relative to the suit you had started about the giving of a note.

Q. What did she say? A. In regard to this particular point, which brought it up—rather new to me. As I remember it, it was just this way: She would make it appear that her brother had no money whatsoever, and so told me. I had always been told by him, during the course of the time I was connected with him, that he owned a piece of property over in Tenafly that he and his mother lived on, and she had made the remark that her brother had no money whatsoever, and I differed with her to the extent that I told her that he owned the property that he had been living on. She said that wasn't so. "Well," I said, "he not only told me that, but he has been signing bonds as owner of that property." "Well," she said, "he never owned it." "Well," I said, "I don't see how he could sign bonds. He must know that was illegal." "Well," she said, "I don't know anything about that. He never owned the property," and that is as much as I know of any such conversation.

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30

Q. Now, what did she come in for? What did she say about the indebtedness, of the suit? A. Well, she seemed to be anxious about something, and I told her I did not know her at the time; it was the first time I ever met her. I told her that

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I could not deal with her. I did not feel there was any reason for dealing with her. Well, she told me that she wanted the proceedings stopped on the suit; she did not want any suit. Her mother and she were living in Tenafly and they wanted no suit whatsoever. Well, I told her that I had a claim against the brother and not she. Well, she made the statement at that time that she was the one that was going to settle it; she wanted her mother to go to the extent of turning some property over to her that she would sell it or mortgage it and pay me the money. I would not agree to that. I told her I did not consider that would be fair to either she or her mother, to take property and sell it for there was danger, I told her, that if the property was thrown on the market that way, it would practically be sacrificed, and I would not hear of that. Then we talked about a settlement. I told her I looked to her brother for payment, and she seemed to be still willing to assume the responsibility of it. I told her that if she would get her brother to sign a note and she endorsed it, why it would be perfectly satisfactory to me, and I would drop all efforts to collect the money until the note became due, that her brother made.

Q. That suit was against the brother alone? A. Yes.

Q. That ended that conversation. Did she bring a new note? A. No, I think we both opened up communication with her brother, who at that time was at Cleveland. I told him about what had been done, this conversation I had with the sister, and I expect she did, too. I have letters from her to that effect. He sent me a note after some months, which was dated at the time that he made it, which was somewhere along in June or July.

Q. This note was signed by Unkart, Travis &

Company, Incorporated? A. Just a minute. In that way I would lose four or five months interest, at that rate, and I made out a note myself, dated it back myself and sent it on to him.

Q. May 1st, 1913? A. May 1st, 1913, that is right.

Q. Then it was signed by Unkart, Travis & Company, Incorporated? A. Signed by Unkart, Travis & Company, and sent on to his sister for endorsement as agreed upon between her and he and I.

10

Q. She endorsed it, did she? A. She endorsed it.

Q. You got that from the sister? A. Yes.

Q. That came to you from the sister; did she bring it in personally or mail it? A. Well, that I don't remember. We had several meetings; I could not say—several letters and communications; I really don't know how I got it.

20

Q. When did you next see her with reference to this matter? A. Well, that note was to run a year, and just previous, probably a week or two before it became due, I wrote out to the brother and also to her, to the effect that the note was about to become due and I was looking for payment, and I got a letter, a couple of letters, from Fred, stating that he was without funds whatsoever; and also a letter from Miss Unkart, making an appointment to meet her down at the Grand Central Station. That was three or four days previous to May 1st; probably about the 27th.

30

Q. That is in 1914? A. Yes.

Q. Around the latter part of April? Then you saw her there at that time? A. Yes.

Q. What was the conversation? A. Well, she told me that she was still without cash, and would not be able to meet the note if I should make a demand upon her when due; well, I told her I

40

was very much pressed for money; that is, I needed money; I was prepared to make an effort to get it. She then made a statement to the effect that it would be no good to sue her, that she had no property whatsoever of her own; it would be foolish, and she would attempt to get it if I would not sue her at that time; she would attempt to raise it in some way within the next year, if I would accept another note. Well, I told her I did not feel that the brother was responsible—would be responsible in a year; at least, I did not feel any more responsibility about him anyway, and did not want to wait a year; wanted to have it collected then; wanted to sue him and her then. Well, she said if I would not sue, she would have her mother, who was in possession of the property, sign a note which she would endorse, which was to run a year; another note, and that was to become due in May, 1915, and that is the note—

Q. This is the note in this suit? A. Yes.

Q. She delivered that note to you later? A. Yes.

Q. About when? It is dated May 1st; was it delivered May 1st? A. About that time.

Q. This note in suit, we are suing on now—  
A. About May, 1914.

30 Q. Did you deliver to Miss Unkart two notes that her brother had made originally, on which you brought suit? A. Well, not just then.

Q. Well, you did? A. I did; not at the time she gave me that note.

Q. At the time she gave you the 1914 note that we are suing on? A. I had not delivered those two back notes; she did not ask for them; I had forgotten about them. They had been superseded by the other note entirely.

40 Q. You don't know where they are? A. Yes, I gave them to her later.

Q. Did you deliver the first note that was endorsed by her? A. Turned that over at the time I made this one.

Q. Did you give her any letter or memorandum assigning your claim against her brother? Do you remember anything about that? A. Yes, I gave her what purported to be an assignment. The way it happened was this: she told me that the money—

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Mr. Wright: I object to any testimony in regard to that. It is not the best evidence.

Mr. Osborne: We have given you notice to produce.

Mr. Wright: Not to produce any assignment. The notice you gave me was to produce letters.

20

Witness: That was a letter, in the form of an assignment.

Mr. Wright: Notice to produce her letters, written to him.

Mr. Osborne: Well, she says they are all in Tenafly, and she did not bring them.

Mr. Wright: The assignment is not a letter by any means. This is the first I ever heard of an assignment.

30

The notice provides (reads): There is no notice to produce an assignment. We have a miscellaneous lot of letters, junk, nothing of any value.

Q. This was a letter? A. It was no legal form of assignment.

The Court: What do you say, that you have not produced all the letters?

Mr. Wright: I produced some letters. I don't know; there may be some more let-

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ters. She has not made a careful examination.

The Court: She says, apparently, that she has some letters that may be included in this demand.

Mr. Osborne: It was not prepared by a lawyer; it was a letter written to her.

Witness: Written at the time.

10

The Court: The only question in my mind, gentlemen, is this: As I understand the contention, it was not in the shape or form of an assignment, but it was in the shape of a letter or a series of letters, and the question is whether or not this demand would not be sufficient to require her to produce all the letters that she had. She says she has not because she has some in Tenaffly; it may be among those in Tenaffly. This letter. She ought to have an opportunity to produce it, if it is produced.

20

Mr. Wright: I, of course, have not been given any notice of such a thing as an assignment.

The Court: It may be necessary to take a recess in order to produce that primary evidence, if it can be produced.

30

Witness: I don't think it is important anyhow. It is not a document; it is merely a memorandum.

The Court: If you do not think it is of any importance, there is no use of bothering with it.

Have you any objection to his detailing now what he wrote in any letter to her?

40

Mr. Wright: I could not object to what he wrote in any letter, if it is a letter.

The Court: That is what I understand it is.

Mr. Wright: His question is about some assignment.

The Court: I understand Judge Wright is not objecting to his testimony as to what he may have written in any letter. What the effect is, is another question.

Q. You mentioned a letter that you wrote to her about which we have just been talking; was that a letter? A. Well, I called it an assignment; it wasn't. I don't know anything about legal—it wasn't in legal form. If I may be permitted to describe it—it was merely something—a claim that I had against the brother; that I was to turn over to her that she might use when the estate had to be settled. 10

Q. Did you mail her this? A. No, I handed it to her. 20

The Court: When was that, do you remember Mr. Travis?

Witness: At the time she gave me her mother's note, endorsed by her.

The Court: That is just the last note that we are concerned in?

Witness: Yes.

Q. After you had received the first note, endorsed by Miss Unkart, did you stop proceedings? A. Yes. 30

Q. You did not press the brother any further? A. I notified Mr. Stetson that I had come to a settlement.

Cross examination by Mr. Wright:

Q. You became satisfied that the brother had nothing, didn't you? As a matter of fact, you knew that Fred Unkart had nothing? A. What do you mean? 40

Q. At the time you brought suit?

The Court: The first suit?

A. No, I wasn't satisfied at all at that time. I thought he had property in Tenaffly.

Q. When did you find out that he wasn't good for anything, financially? A. I never found out exactly, except he has never met any of my demands for payment of the notes I had. I don't know what property he possesses today.

10 Q. Never made any effort to find out? A. No, sir.

Q. This money which is represented by this piece of paper you say was money that you had put in the firm of Unkart, Travis & Company? A. No, sir, I did not say that.

Q. What did you say about that? A. Money loaned to Unkart, Travis & Company.

20 Q. Well, money loaned to Unkart, Travis & Company; you put it in Unkart, Travis & Company, either as a loan or something? A. Yes.

Q. The parties in interest there were yourself, Mr. Unkart and Mr. Finnigan? A. Not at that time, no sir.

Q. At the time you put it in? A. He had gotten out a year or so before. That extended over a period from time to time; as money was needed they called upon me to supply it. I could not supply it, and my brother supplied it.

30 Q. Who got out of the firm? A. When?

Q. You say somebody got out of the firm? A. Well, it varied; more than one got out. Finnigan got out and I got out.

Q. When did you give the money? A. To whom?

Q. To the firm? A. At various times.

Q. Well, before you got out or after? A. Before I got out.

Q. Who was in the firm before you got out? A.

40 L. F. Unkart and I.

Q. Just Unkart and yourself? A. Yes.

Q. When you got out and instituted an accounting, you found that there was money due you and Unkart gave you some notes for it? A. I and my brother.

Q. To get rid of you? A. Yes.

Q. That is the way he got out of the firm? A. Yes.

Q. The day that he gave you those notes—how long was it before 1913? A. How do you mean? How long was what? 10

Q. When you got out of the firm? A. Why, I think that was when I did get out around that time.

Q. You got out in 1913? A. At the time of those notes, yes—that is, the first notes. I don't recall exactly about that; it may be in 1912; I have forgotten the year.

Q. How long did you and your brother have those notes of Fred Unkart's before you started suit? A. I had them two years. 20

Q. So that you had two notes before you got out about 1911? A. Yes.

Q. Nothing paid on them? A. No, sir.

Q. Did you ask Unkart to make some payment on those notes? A. Not until they were due.

Q. Well, when they became due, you asked him to pay them, didn't you? A. Yes, sir.

Q. What did he tell you? A. I don't know as he told me anything. I did not see him. He was in Cleveland. 30

Q. You knew he was in Cleveland at that time? A. Yes.

Q. But you started suit against him, had the papers served, and then Miss Unkart came to see you? A. Yes.

Q. She was quite excited because the papers had been served at the house in Tenafly, was she not? A. I did not notice that. 40

Q. She told you that,—what did she tell you, when she first came? A. She asked me what this paper was.

Q. What did you tell her? A. I told her a summons in a suit.

Q. What else did you tell her about it? A. About that? Nothing.

10 Q. Yes. A. Nothing.

Q. Told her what the suit was about? A. Yes, told her I had a claim against her brother on notes.

Q. Accruing out of the old business, Unkart, Travis & Company, did you tell her that? A. I might have told her that; I don't remember just what; merely told her it was a claim, I believe; don't remember the details of the conversation.

Q. What had she said about her property at Tenafly at that time? A. Whose property?

20 Q. About his property at Tenafly? A. Well, she made the statement I have already stated—her brother did not own the property. I said he did; I was going to attempt to collect on that property.

Q. Then when you found out that he did not own it, what did you say? A. Well, I never found out that he did not own it.

Q. Well, she told you he did not own it, didn't she? A. Yes.

30 Q. Then what did you say to her? A. I told her it was funny, if he did not own it, how he could sign bonds for the Custom House.

Q. Didn't you tell her he had been signing Custom House bonds and had been using that property as security and that it was a State prison offense and that you wanted your money and was going to have the money. A. Absolutely not.

40 Q. You did not say that or anything like that? A. Never used such language to her.

Q. You say positively that you did not tell her that if you did not get your money from somebody,

you were going to make trouble anyway? A. Absolutely not; never talked to the young lady like that, never in my life.

Q. Didn't say anything like that? A. Nothing like that.

Q. So you think she just came down there and voluntarily offered to pay you this money that she did not owe and had nothing to do with? A. Well, we were talking the thing over; we had quite a little conversation; she mentioned that she felt more or less obligated to pay it; that her mother had been supported by her brother. She said the money undoubtedly—if not all the money—had gone toward her support; there had been part of it used for her support, and she felt she was more or less liable.

10

Q. Don't you know, as a matter of fact, that Mrs. Unkart got him money by mortgaging her house at Tenafly and putting a thousand dollars in Unkart, Travis & Company? A. No, I don't know.

20

Q. You don't know that? A. I do not.

Q. Don't you know that he borrowed the money from his mother to put in the business while you were in business? A. He did not; not five cents.

Q. He did not put anything in the business? A. Not five cents.

30

Q. Never put any money in the business at all? A. Not five cents.

Q. The business needed money, did it not? A. Yes, sir.

Q. So that you knew very well that he was not very responsible financially? A. That wasn't it at all; he wasn't supposed to put money in.

Q. In 1913? That was the time this suit was started, when you had the first conversation with her, when you say she endorsed the note made by Unkart, Travis & Company, Incorporated? Who

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drew this paper, marked Exhibit P3? A. (referring): L. F. Unkart.

Q. Is that his handwriting? A. Yes.

Q. Did you have anything to do with drawing it? A. No.

Q. You suggested it be drawn? A. No.

10 Q. How did you come to get it? A. Well, they had owned some vaults—a vault over in Brooklyn.

Q. How did you come to get this paper? A. Did you ask for it? A. I asked for some security for the note. This is the only security—if that is of any value—that there was.

Q. And Unkart did give you this paper which purports to be an assignment of his interest in the vault, didn't he? A. Well, both of them did.

20 Q. Both of them? A. Both L. F. and Gustava Unkart.

Q. She is a witness to it? A. No, she was not a witness to it.

Q. Your counsel says she is? A. Well, I am testifying.

Q. Did you see her sign it? A. He told me she signed it, and that is her signature.

Q. Did she tell you what she signed for? A. Yes.

30 Q. Did you read it? A. Yes.

Q. You notice it reads, "I hereby give a lien on my interest," don't you? A. Well, I did not notice that particular thing. It might have been.

Q. And that matter went on for a year, is that right? A. Yes.

40 Q. About April, the latter part of April, 1914, you started in to collect this note? A. I made a demand; told her the note was about to become due.

Q. He was in Cleveland, at that time, wasn't he? A. Yes.

Q. Then what did you tell her about payment, about getting her mother's signature to the note?

A. I told her, as she endorsed it, she was responsible with her brother for payment of the note.

Q. Why didn't you take another note signed by her? A. Why, I had taken enough notes, I thought.

Q. You did not think he was worth very much, did you? A. That wasn't it; I was tired of taking notes. I had three notes, something like that.

10

Q. Well, you had had another note, hadn't you? A. Another note?

Q. Yes. A. Which note do you refer to?

Q. In 1914 you took another note? A. What note is it that you mean? Another note; what note were you referring to?

Q. I am asking you about April, 1914, why you did not at that time, take another note from Fred Unkart? A. It was at her suggestion that I took her mother's note.

20

Q. Well, you knew that Fred Unkart was a man without money; why didn't you ask to have his signature to it? A. Well, I thought I would have a little change, I suppose. I don't know exactly just why that was. I felt that the mother owned some property and she told me—

Q. Did you tell her that if she would get her mother to give you a note endorsed by her, that you would not bother Fred, and that you would not bother her mother for money so long as her mother lived? A. I told her that?

30

Q. Didn't you say that to her? A. That I wouldn't bother the brother or mother as long as her mother lived.

Q. Yes? A. I don't remember that conversation, sir.

40

Q. Will you say that you did not promise her, that if she gave you a note made by the mother,

that you would not make any claim on it or bother her as long as her mother lived? A. No, for a year; she gave me this demand note, and that held for a year. I could have made a demand at any time. I told her I would not present it for a year, which I did not.

10 Q. And didn't you tell her you would not present it, or would not make any trouble about it, so long as her mother was alive? A. No.

Q. You did not tell her that? A. I did not.

Q. And then it was after that note was given by the mother that you turned over to her these old notes, is that right? A. Yes.

20 Q. You knew, as a matter of fact, did you not, that if Fred Unkart had given a bond down at the Custom House, and did not own property, which he mentioned in his bond, that he was guilty of a crime against the United States Laws? A. Why, naturally.

Q. You knew that? A. Naturally.

By Mr. Osborne:

Q. Mr. Travis, you did nothing to enforce this note that we are now suing upon during Mrs. Unkart's lifetime, did you? A. Well, I will not say that.

30 Q. You did not bring any suit on it until her death, after her death, did you? A. I don't know exactly when she died. I did not bring a suit for a year. It was a demand note and I held off for a year as I promised to do. That note was not presented for a year, although it was a demand note.

Q. Did you ever have any conversation with Mr. Unkart himself about what he did with the money that he drew out of the concern?

40 Mr. Wright: I object to the conversation he had.

The Court: How is that competent? It is entirely hearsay?

Mr. Osborne: I will withdraw it.

Q. Look at this letter; did you receive that from L. F. Unkart? A. (referring): Yes.

Mr. Osborne: I offer this letter in evidence

Mr. Wright: I object to it. It is immaterial; has no value. He has testified to the substance of it.

10

Mr. Osborne: This is a letter from Unkart and not—I suppose it comes under your Honor's ruling?

The Court: He is not objecting upon that ground.

Mr. Wright: We are not bound by anything that Unkart said.

20

Q. Mr. Travis, do I understand you right, that the note that Miss Unkart endorsed, the first note that she endorsed, that was made after you had served the summons on her brother, after you brought suit against the brother? A. Oh, yes.

Plaintiff Rests.

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Mr. Osborne: I move for a direction of a verdict in favor of the plaintiff for the full amount claimed. Judge Wright in his opening of the case to the jury rested largely upon the question of fraud or duress, but in his pleadings he also alleges lack of consideration.

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The Court: As I understand your defense, as you intended to urge it in this trial, it was duress, want of consideration and obtaining signatures of both maker and endorser by fraud; am I correct in that?

40

Mr. Wright: Yes; threats and duress; no consideration; false representations, which practically is fraud.

10 Mr. Osborne: Taking the defendant's testimony at its strongest, she says under cross examination that she went to Travis and said that papers had been served, the summons had been served, and that her brother owned no property, and Travis said that he does own property; I know he owns property; he owns property in Tenafly to which she said, you are mistaken; he does not; he is worthless, has nothing. He said, why, I know he has, because he makes bonds or signs affidavits every day here in his business, in which he swears he owns property, and that Travis then said to her, if he doesn't own property and if he does make these bonds, why he is in danger of going to State's  
20 prison. But even under her testimony that is entirely disassociated from the matter in hand. That was a mere casual portion of the conversation. Suppose Mr. Travis had said that the man will go to State's prison if he has done this thing. She does not say in any portion of her testimony that he threatened to send the man to State's prison on account of this debt or on account of the other matter. There isn't any proof whatever in the  
30 case of duress or of fraud, none whatever. But taking into consideration her claim, what did she do? She endorsed the first note; never said anything to him about it, about her claim of fraud or duress; she endorsed the second note, the note now in suit. Nothing is said. There are letters from her thanking him for his kind consideration. Now, what did Travis do on obtaining those notes? He did just exactly what he promised; he dropped  
40 the suit against the brother; he stopped pursuing the brother; it was a case of forbearance, and

that is ample consideration. I think we are entitled to a direction.

The Court: I will hear what Mr. Wright has to say on each one of those three items.

Mr. Wright: I don't think you could direct a verdict in this case because it seems to me it is a question of fact. Mr. Osborne's statement of the testimony is not accurate. She did testify that the reason she gave this note, endorsed the note, the reason her mother did that was because he told her that he would proceed, or made threats that he would put her brother in prison, repeated that a number of times, and that was what she understood, what he said to her. That was the reason she gave the note. If that was the reason she gave the notes and the notes passed upon that consideration, then it involved an illegal consideration. That is our contention.

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The Court: Do you concede that to be the testimony? If that is the testimony—

Mr. Osborne: Oh, yes; I think even if she testified—well, I don't agree with you that that was her testimony.

The Court: I am saying, assuming now that is the finding that should be found from the testimony, would that amount to duress then?

Mr. Osborne: Suppose he said I will put your brother in State's prison unless you make this note; I think it shows by the evidence that she made a new note?

30

The Court: What would be the consideration of the new note? Would it be founded upon a false consideration?

Mr. Osborne: I don't agree with Judge Wright in his version of the testimony. There is nothing in this case that shows—

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The Court: I am only giving you the benefit of the best that I can draw from the testimony. I am

saying that if it was a question of fact and the fact was that the testimony was of the character and extent he suggests, then whether that would not amount to duress. That is, if the statement was that the plaintiff in this action would take proceedings which would place the brother in State's prison if a note then under consideration was not endorsed or signed, wouldn't that be duress?

10

Mr. Osborne: Well, I have said all that I can say, your Honor, on the subject.

The Court: All right, Mr. Wright, I will hear you on the next subject.

Mr. Wright: That is also under consideration; that would be an illegal consideration, in addition to being duress. The note would be obtained under duress, and there wasn't any legal consideration.

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The Court: Assuming for the moment that duress has not been made out, then what do you say about no consideration?

Mr. Wright: Then I say there is no evidence of consideration at all. It is very plain that is the consideration of the original note.

30

The Court: No, you don't understand me. Suppose that you have not made out your defense of duress; suppose it is not shown that the note was given under duress, or threat, then what have you to say as to what the testimony may disclose as to want of consideration? Do you say still that there is no consideration?

Mr. Wright: Yes.

The Court: Wherein?

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Mr. Wright: There was no consideration, because the only consideration was the debt of another person, who had no interest in it; never received anything of value.

The Court: Well, upon the first note she was

then no different from an accommodation endorser, was she?

Mr. Wright: On the first notes, your Honor will recall that the notes of Unkart were to these two Travis brothers; she was not on those at all. Those were separate and distinct matters. On them he brings an action. In that action papers were served in Tenafly, with the result that she comes down there, and, of course, why she went there, what took place there is a very important factor. She goes and signs—she draws a new note for the purpose of having the litigation discontinued. Under a certain set of facts, she might be an accommodation endorser. Under another set of facts, it would be a fraudulent endorsement, or an illegal endorsement, because the facts are improperly stated to her, or under duress when she made it. Her endorsement would not be that of an accommodation endorser. Her endorsement would be an illegal endorsement and void. Those are the facts right here, and what she testified to was that she went down the first time, that they had this conversation about this State prison business. That was the reason she endorsed the note.

The Court: Upon this question of duress or false representation, it strikes me, Mr. Wright, that it came to her attention at the time she went down and entered into the arrangement with him upon which she endorsed this note of Unkart, Travis & Company; if what she said and done at that time did not amount to duress and there were no false representations, then she was and did become an accommodation endorser.

Mr. Wright: If she went voluntarily, with full knowledge of the facts, put her name on the back of that note, of course she was an accommodation endorser.

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The Court: Very well; then she cannot complain of want of consideration, can she?

Mr. Wright: Presumably not; individually, from that standpoint.

10 The Court: Let us go a step further. That is where the mother, who is now deceased, comes in, and that seems to have been at a time when this note which we are just talking about became due, upon which Miss Unkart was an endorser. We will assume for the present argument, that duress has not been shown, nor has fraud, and that Miss Unkart was an accommodation endorser upon the first note we spoke of; she became, at least, an accommodation endorser upon the second note. That is the one that is now in question and we are concerned in. If there was a  
20 consideration, a proper legal consideration upon her first endorsement, for instance, assuredly her second endorsement, evidenced by the renewal of the obligation, was the valuation at maturity. If the note fell due and if she had notice, she was simply protecting herself when she became an endorser for the second time. On that note her mother became an accommodation maker.

30 Mr. Wright: Under a certain set of facts, it is true. She would not become an accommodation endorser, as a matter of fact. I think she would be an endorser for value, assuming a certain set of facts, on the second note, because she would be liable—assuming that the first note was endorsed by her as accommodation endorser, with full knowledge of all the facts.

The Court: I am perfectly willing to agree with you on that—

40 Mr. Wright: Then she would be liable. Then she would become an endorser for value.

The Court: What would her mother become?

Mr. Wright: Under a certain set of facts, her mother would become an accommodation maker.

The Court: Doesn't it all simmer down to this: That they were \_\_\_\_\_ as to that second transaction?

Mr. Wright: Oh, yes. She testified that is the reason why her mother made the note. She did not want her son to get into trouble. She testified with respect to both notes, and that was the reason. That was the reason both notes were made, to keep her brother out of prison, and that is the inference she understood from what Mr. Travis said, that he was going to start proceedings to see that he went there.

10

Mr. Osborne: She testified to no conversation about the State prison except in the first conversation.

20

Mr. Wright: She testified to it in both. I dispute that fact with you. That was the reason she went home and told her mother what Travis had told her.

The Court: Well, I don't remember, gentlemen. At the very best, if at the time of giving the second note, which was the mother's note, there was no evidence which amounted to a fraudulent representation or duress directed toward each and which moved the mother, the mother's estate cannot complain now that there was no consideration, because, from what you have already stated, the mother became an accommodation maker of that note; so that we can apply the same argument from the first to the last.

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Mr. Wright: You have got to take the whole thing, with the illegal consideration of fraud and duress.

Mr. Osborne: May I be heard one minute on the question of duress? There is a case of Wright against Remington—

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The Court: Yes, I have that Court of Errors opinion here.

Mr. Osborne: This is the Supreme Court opinion.

The Court: That is found in 43 Law.

Mr. Osborne: Was that an affirmance?

10 The Court: Yes, at page 451. There are two notes involved in that, gentlemen. There was the note of the wife, I think. (Reads.) "The plaintiff-in-error signed, with her husband, and as surety for him, in Illinois, two promissory notes, payable to the order of Kent & Keith, which were delivered to that firm, and by it endorsed to the defendant-in-error, after maturity. Under the law of that State, the contracts were enforceable against her. Suit was brought against her there-  
20 on here, and she sets up two defences—one, that she signed the note under duress of her husband's threat of suicide, and the other, that when she signed them, the payees promised that she should not be called upon to pay them. The Supreme Court held—and I think rightly—that both of these defences were unavailable. By the common law, the defence of duress, indeed, embraced threats of personal injury to husband, wife, parent or child, but its scope does not include a threat  
30 of suicide. Obviously, in view of the facility of making a defence on that ground, the difficulty of meeting it and the temptation to fraudulent imposition it would hold out to allow it, it would be against public policy to extend the defence to that kind of pressure.

40 "As to the other defence, it is enough to say, that to admit proof of a parol contemporaneous promise, on the part of the payees, that the wife should not be called upon to pay the notes, would be in violation of the familiar rule of evidence

which excludes parol evidence to contradict the terms of written instruments."

Those are the two points held by the Court of Errors, and the judgment of the Supreme Court was affirmed. If this is to be taken, gentlemen, as a correct exposition of what the common law is as to duress, then from the testimony before us in this case, could it be said that there was duress, as far as the defendant Gustava Unkart is concerned individually? This expression is by the Court of Errors, "By the Common Law, the defence of duress, indeed, embraced threats of personal injury to husband, wife, parent or child." The duress complained of here, if it has been shown, was not a threat of personal injury, but a threat of imprisonment of a brother.

10

Mr. Wright: Your Honor has given much more weight to duress than I ever thought of giving to it.

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The Court: I want to find out how much weight you are giving to it.

Mr. Wright: I am not prepared to argue that it is duress. I think it is very close to the line.

The Court: You are falling back on a fraudulent representation?

Mr. Wright: No, I am falling back on the representation made that that was a fraudulent, illegal consideration, and that there is no consideration for the note. The promise of forbearance from criminal prosecution is an illegal consideration. That is the only consideration that there was to those notes.

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The Court: As distinguished from a voluntary offer to be assured, as it were.

Mr. Wright: Yes. It is an illegal consideration, against public policy, to agree to forebear.

40

The Court: Then, if I understand you aright,

we may not pay any attention as to the question of duress?

Mr. Wright: I am not so sure that it is duress. It is a close question. I think the other question is not even close, if those are the facts; then there is no consideration whatsoever for the notes, because the only consideration would be the promise to forebear from criminal prosecution.

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The Court: Have you anything further that you wish to advance in the matter, Mr. Osborne?

I am inclined to do this: I am inclined to give the question a little consideration between now and the time you sum up. I am going to take a recess at this time for one hour, so that we will lose no time.

We will take our recess now until twenty minutes before two.

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After Recess.

Mr. Stetson: In support of the application on the motion for a direction of a verdict, I would refer your Honor to the cases of Wright against Remington, in 41 N. J. L., page 48, which was affirmed by the Court of Errors and Appeals in 43 N. J. L., page 452; also the case of Mullin against Leamy, 80  
30 N. J. L., page 484. These cases seem to support the doctrine that duress must be practiced on the party who sets it up. Your Honor has examined those cases during recess.

The Court: Have you any cases that you wish to cite, so as to go upon the record, Mr. Wright?

Mr. Wright: Nothing specially on the record, no sir. The case I called your attention to a few minutes ago, was 26 L. R. A.

40

The Court: I want to give you an opportunity to have whatever benefit there may be gotten from the decision.

From what consideration I have been able to give the matter during the recess hour, I am inclined to think that the motion for a direction should prevail, for the reason urged, and upon the cases that you have presented to me, and being of that mind, I will direct a verdict for the plaintiff and against the defendant. As to the amount, however, Mr. Wright—

Mr. Wright: I have not had a chance to figure that up. I assume Mr. Travis figures it correctly.

The Court: I suppose this bargain, as it were, as between counsel and the Court, will be satisfactory, that if I direct for the sum as stated this morning, and it is found that the item of interest is incorrect, that I may then, upon being satisfied of that, make a correction in the verdict in that respect. Will that be satisfactory to counsel and save time now?

Mr. Stetson: Yes, sir.

The Court: With this understanding, gentlemen of the jury, by direction of the Court, you will find a verdict in favor of the plaintiff and against both defendants in this action in the sum of \$2,934.81.

Mr. Wright: My objection is noted and I take an exception to your Honor's ruling.

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**Exhibit P1.**

\$2676.00

New York, May 1st, 1914.

On demand after date I promise to pay to the order of E. H. Travis Twenty-six hundred seventy-six 00/100 Dollars, at Office Col. Knickerbocker Trust Co. 125th St. & Lenox Ave.

Value received

10 With interest 5%

No. . . . Due . . .

(Signed) MARY E. UNKART.

(Endorsed) : Gustava Unkart.

**Exhibit P2.**

Notice of protest in usual form.

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Exhibits P3 and P4 will be found at page 26 of the case.

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[7855]

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