INDEX

TESTIMONY.

EXHIBITS.

SUMMONS AND STATE OF DEMAND.

Filed December 28, 1928.

DISTRICT COURT SUMMONS ON CONTRACT.

ESSEX COUNTY,
THE STATE OF NEW JERSEY. } *ss.*

(SEAL)

To any Constable of said County, or to the Sergeant-at-Arms of the First District Court of the City of Newark. SUMMON Michael J. Tansey to appear before the First District Court of the City of Newark, to be held at the City Hall, Broad street (ground floor), in said city, on the 8th day of January, nineteen hundred and twenty-nine at ten o'clock in the forenoon, to answer unto Philip Citrin and Samuel Elkin, trading as Citrin & Elkin in an action upon contract wherein the plaintiff demands from the defendant five hundred dollars. Hereof fail not.

WITNESS, CECIL H. MACMAHON, Esq., Judge of said Court at Newark, as aforesaid, the 28th day of December in the year one thousand nine hundred and twenty-eight.

LOUIS HECHT,
Clerk.

Summons.

FIRST DISTRICT COURT
of Newark, N. J.

SUMMONS ON CONTRACT.

Philip Citrin, *et al.*,

vs.

Michael J. Tansey.

Demand	$253.00
Summons	2.10
Mileage	.08
Listing Fee	1.50
Attorney's Fee (5%)	

Returnable January 8, 1929.

Citrin & Elkin, 403 E. Jersey St., Elizabeth, N. J.

Attorney for Plaintiff.

State of Demand.

FIRST DISTRICT COURT OF NEWARK.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs,* *vs.* MICHAEL J. TANSEY, *Defendant.*	*On Contract.* *State of Demand.*

COUNT ONE.

The plaintiffs, who are partners, demand from the defendant the sum of two hundred and three dollars upon a certain note, of which the defendant is the maker, the following of which is a true copy:

$203.00 Newark, N. J. Aug. 23, 1928

Three Months after date I promise to pay to the order of Nelson & Duchin Two Hundred and Three no/100 Dollars at National Newark & Essex Banking Co.

Value received with Int.

Due Nov. 23/28 Michael J. Tansey

Endorsements

Nelson & Duchin

Citrin & Elkin

Philip Citrin

Samuel Elkin

Judgment will be claimed for the sum of two hundred three ($203.00) dollars plus protest fees and interest and costs of suit to be taxed thereon.

State of Demand.

COUNT TWO.

The plaintiffs, who are partners, demand from the defendant the sum of fifty dollars upon a certain promissory note, of which the defendant is the maker, the following of which is a true copy:

$50.00 Newark, N. J. Sept. 5, 1928
Three Months after date I promise to pay to the order of Nelson & Duchin
Fifty and no/100 .....Dollars
at National Newark & Essex Banking Co.
Value received with Interest
Due Dec 5/28 Michael J. Tansey

Endorsements
Nelson & Duchin
Citrin & Elkin
Philip Citrin
Samuel Elkin

Judgment will be claimed for the sum of fifty dollars plus protest fees and interest together with costs of suit to be taxed thereon.

PHILIP CITRIN and
SAMUEL ELKIN,
Trading as Citrin & Elkin, *Pro Se.*

STATEMENT OF JUDGMENT.

THE FIRST DISTRICT COURT OF THE CITY OF NEWARK, N. J.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs,* *vs.* MICHAEL J. TANSEY, *Defendant.*	*On Contract.*

Statement of judgment in favor of plaintiffs.

Summons issued December 28, 1928, returnable January 8, 1929, judgment entered June 20, 1929.

Damages	$262.07
Costs	16.78
Execution	1.43

I do hereby certify that the above is a true statement of the amount of judgment and costs obtained in this court in the above named suit.

Clerk, First District Court of the City of Newark.
(SEAL)

BOND.

Filed June 24, 1929.

National Surety Company Appeal Bond in the sum of $564.56. Dated June 22, 1929.

Approved by

CECIL H. MACMAHON,
Judge.

NOTICE OF APPEAL.

Filed June 24, 1929.

THE FIRST DISTRICT COURT OF THE CITY OF NEWARK, N. J.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Respondent,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*On Appeal.* *Notice of Appeal.*

SIRS:

PLEASE TAKE NOTICE that the defendant Michael J. Tansey, hereby appeals to the New Jersey Supreme Court, from the judgment entered in the First District Court, Newark, New Jersey, in the above cause of action, on the 20th day of June, 1929.

Dated June 20, 1929.

MICHAEL J. TANSEY,
Attorney *pro se* for Defendant-Appellant.

To Messrs. Citrin and Elkin, or Benjamin Gershenson, Esq., attorney for plaintiffs or whom it may concern.

AFFIDAVIT OF SERVICE.

Filed June 24, 1929.

FIRST DISTRICT COURT OF THE
CITY OF NEWARK, N. J.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Respondent,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*On Appeal.* *Notice of Appeal.* *Affidavit of Service.*

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

I, CHARLES A. REID, Jr., being duly sworn according to law, upon my oath depose and say that on Friday, June 21st, 1929, I served a Notice of Appeal in the above entitled action on Benjamin Gershenson, attorney for plaintiffs-respondent, by leaving a true copy of the same with Miss Pollack, a stenographer in his office at One Broad street, Elizabeth, New Jersey.

CHARLES A. REID, JR.

Sworn to and subscribed before me
this 21st day of June, 1929.

ELLA TANSEY,
Notary Public of New Jersey.

SPECIFICATION OF DETERMINATIONS.

Filed August 29, 1929.

NEW JERSEY SUPREME COURT.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*Action Upon Contract.* *Specification of Determinations and Directions in Point of Law of the District Court with which Appellant is dissatisfied.*

Michael J. Tansey, defendant-appellant in the above cause herein sets forth a Specification of the Determinations and Directions of the District Court therein in respect to which he is dissatisfied in a point of law.

1. The Court asked of defendant questions immaterial to the issue, relating to the age of defendant and the time he had been practicing law, and insisted on answers to such questions, which were calculated to and did have a tendency to prejudice the jury against defendant's case.

2. The Court impounded the evidence offered by defendant in Exhibits D. 1 and D. 2, and in a manner which was calculated to and did tend to influence the jury against defendant.

3. The Court refused to allow testimony to be given showing the defective condition of the

painting work done by the payees of the notes in question, for defendant, for the payment of which the notes were given.

4. The Court struck out evidence that some of the painting work of the payees of the notes in question, in payment for which said notes were given, had been left undone.

5. Although the plaintiffs admitted that the work for which the notes were given was incomplete and was defective in execution and in material and there was evidence on the part of the defendant that the plaintiffs were not innocent holders for value, before the maturity of the notes but in fact held the same for collection on behalf of the original payees, the Court illegally directed a verdict against the defendant.

6. In other respects appearing on the record the Determinations and Directions of the Court in point of law were illegal and prejudicial to the rights of the defendant-appellant.

Respectfully submitted,

MICHAEL J. TANSEY,
Defendant-Appellant, Attorney *Pro Se.*

TESTIMONY.

FIRST DISTRICT COURT,
NEWARK, N. J.

CITRIN & ELKIN,
Plaintiffs,

vs.

MICHAEL J. TANSEY,
Defendant.

June 20, 1929.

Before Hon. Cecil H. MacMahon, *J.*, and a Jury.

Appearances:

Benjamin Gershenson, Esq., for the plaintiffs.

Michael J. Tansey, Esq. and Francis J. Tansey, Esq., for the defendant.

(Mr. Gershenson made an opening statement to the jury on behalf of the plaintiffs, after which Mr. Michael J. Tansey made an opening statement to the jury on his own behalf.)

SAMUEL ELKIN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. Gershenson.

Q Mr. Elkin, you are one of the partners of the Citrin & Elkin company of Elizabeth? A I am.

Samuel Elkin, direct.

By the Court.

Q What business are they in?

By Mr. Gershenson.

Q What business are they in? A Painters' supplies.

Q Did Nelson & Duchin transfer these notes to you (showing witness papers)? A They did.

Q Originally they transferred other notes to you, isn't that so? A They did.

Q While they were in your possession they were renewed by Michael J. Tansey, the maker? A They were.

Q Both notes? A Yes, sir.

Q When did you receive the notes? A I don't know; it is a long time ago. Pretty near a day or two after the making of the notes.

Q Did you at that time know there was any dispute or anything about the notes? A I did not.

Q Did you receive notes before from Nelson & Duchin? A I did.

Q Before the notes were protested did you at any time get in touch with Mr. Tansey? A I did. I notified him that the notes would be due.

Q What did he have to say? A No answer.

Q And did you get in touch with him after that? A I did, after the notes were protested.

Q Did you have a conference at his office? A Yes.

Q With Nelson & Duchin? A Yes, sir, with Nelson & Duchin.

Q What happened? A Mr. Tansey offered me a note in settlement for both protested notes on account he didn't have any money. I refused to accept them.

Samuel Elkin, cross.

Q That was the only reason he gave? A Yes, that was the only reason he gave.

Cross examination by Mr. Tansey.

Q Didn't Nelson & Duchin in Mr. Tansey's office promise to finish their work properly?

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

The Court: Overruled. You brought it out.

A No.

By Mr. Tansey.

Q Didn't you say that you believed it should be done before anything was done about the notes? A I had nothing to say in the matter other than the fact that the notes were due. That is all I was interested in.

Q Did you write this letter to me of December 1, 1928? A I did.

Q And the note was due on the 23d of November before that, wasn't it? A I don't recall the exact date.

Q You know it was due some time before you wrote this letter? A Yes.

Q That was about the time you got the note, wasn't it? A No, sir. I received that note a day or two after you gave it to him, a day or two after the making of the note.

By the Court.

Q What did you give for the note when you got it? A That was a payment given to us for

merchandise sold to Nelson & Duchin. Your Honor, I had been accustomd to taking notes—

Q Just answer the question. It was given for what? A For merchandise; paints that was sold to Nelson & Duchin.

Q I am speaking about these two notes. Are you speaking of these two notes? A I am talking about the originals of these two notes. These notes were given as renewals for the original notes. They were reduced. Originally they were much higher than these.

Q If you would only answer the questions, we would find out something. What did you give for these two notes?

The Court: Show him these two notes.

A These two notes represented the payment of paint supplied to Nelson & Duchin.

Q And you received them when? Two days after they were dated? A Not these; I received the originals. These notes were given to me the date of the notes.

Q Just empty your mind, please. What were those two notes given you for? These two pieces of paper. A These two pieces of paper were given as renewals.

Q Of what? A Of other notes which were given to Nelson & Duchin through Michael J. Tansey for paint materials which I served to them.

Q When did you get these two? A The date of the making of the notes.

The Court: Give us the date, gentlemen.

The Witness: August 23 was one, and September 5 was the other.

By the Court.

Q They are payable how many days after that? A Three months after date, three months after date.

Q Did you give credit to Nelson & Duchin for the amount of these two notes? A I did.

The Court: That is all.

Mr. Tansey: That is all.

Mr. Gershenson: I offer these two notes in evidence.

The Court: All right; the notes are in evidence.

(The notes referred to were received in evidence and marked Exhibits P. 1 and P. 2.)

The Court: Plaintiff rests.

Mr. Gershenson: That is the plaintiff's case.

MICHAEL J. TANSEY, the defendant herein, called as a witness in his own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Francis J. Tansey.

Q Mr. Tansey, you are the defendant in this case? A Yes, sir.

Q The maker of these two notes? A Yes.

Q Will you please tell your story? A Nelson & Duchin engaged to do some paper hanging in my farm down in Colt's Neck, New Jersey, and I had an arrangement with them to pay them for the work. Of course, I do not object to paying them. As the work went on, it developed

that they weren't doing the work as they should do it, and when these notes came on for payment, I said to them, "Now, Nelson, this work isn't suiting me. I don't want you to get paid before the work is finished." Well, he promised he would do something. I said, "Well, I don't want to pay you until this work is done." I said, "There is some objection to the way you are doing it." I said, "When I went down there myself I didn't like the work. You are using kerosene for linseed oil. The paint you put on looked like white wash," and so on. I said, "I will give you these notes, and if something develops in the meantime, the notes won't be paid." I said, "Don't transfer these notes." He said he wouldn't.

By the Court.

Q Which notes are you talking about? A The notes in evidence. These are not renewal notes.

Before these notes came due it developed he had not done his work. The wall paper which he put on came off. The wall paper was not properly matched, as is shown by this piece of paper here (showing). The wall paper came off the walls in great strips. Of course, the paint was poor, and various other things. I said to Nelson & Duchin, "I don't hope to pay you." A short time after that I received this letter from Citrin & Elkin, which was after the notes became due.

Q Do you offer it in evidence?

The Defendant: I offer it in evidence.

(The paper referred to was received in evidence and marked Exhibit D. 1.)

The Witness: And they then called me up and said, "We have a note here for collection," and they went on to say that they had a note for collection; that it was Nelson & Duchin's note. I said, "You haven't given anything for that, have you?" They said, "We will allow credit for it, but if it is not paid, we will charge it back."

I said, "Don't you give him credit for it, because he hasn't done his work right."

They came into my office—

The Court: Well, now, use names.

By the Court.

Q Whom are you talking about? A This man here came in (indicating), and his partner, Citrin—

Q Who were you talking to over the telephone? A He said his name was Citrin, and afterwards Elkin came in one day and then Citrin and Elkin came in another day with Nelson and Duchin. Nelson said he was going down to finish the work. I said, "You won't get your money, Nelson, until you finish your work." He promised faithfully that he would go down. He said he would send a man down to finish the wall papering, and so forth. I didn't go down until about ten days after; he hadn't done a thing. He has not done a thing there since. The work is not done right. This is the wall paper, which I offer in evidence, showing that it is poorly matched and put on any old way at all and not at all up to his agreement.

Q You are offering one scrap of paper to show it was poorly matched with something else, is that right? A Yes, to show that is the type

of matching he did. I am offering that as part of my case.

Cross examination by Mr. Gershenson.

Q Where was the work done? A The work was done on my farm at Colt's Neck. I have here the tenant of the farm, who can testify as to the condition of the work. As I say, they quit work. They never did a thing. And Citrin and Elkin are endeavoring to collect this note for Nelson & Duchin; that is all there is to it. They haven't given anything for it except—

The Court: Don't argue about that. How do you know they have not given anything for it?

The Witness: Because they said so.

By the Court.

Q Who said so? A Both Citrin and Elkin told me they had it for collection; if it was not paid they would charge it back.

Q When? A That was when they came to my office.

Q When? A Some time after getting this letter dated December 1, 1928.

Q How long have you been practicing law, Mr. Tansey? A I think about the same time your Honor.

Q I asked you how long you had been practicing law. A I can't recall. Does your Honor remember about the time.

The Court: Do not ask questions; answer them.

Michael J. Tansey, cross.

Q How old are you? A What?

Q How old are you? A I am over twenty-one.

Q How old are you? I will commit you for contempt. You are impudent.

The Defendant: I object to the Court's question.

Q You can't object on the witness stand. A At any rate, I would like to have my objection noted.

Q You cease functioning as a lawyer when you take the witness stand. That is why another lawyer asks questions. I will ask you once more: how long have you been practicing law? A Thirty years.

The Court: That is all.

By Mr. Gershenson.

Q When was it, Mr. Tansey, that either Citrin or Elkin said they were going to allow credit? A They didn't say they were going to allow credit.

Q When was it that Mr. Citrin was at your office? A They said—

The Court: Answer the question.

By the Court.

Q When was it that Mr. Citrin was at your office? A The man who said he was Citrin was at my office along about the time this note came due; a short time after.

Michael J. Tansey, cross.

By Mr. Gershenson.

Q What does he look like? A I can't remember.

Q Was he tall or short? A I can't remember whether this man's name is Citrin or this man's name is Elkin.

The Court: That will do.

By Mr. Gershenson.

Q You say these notes were put in for collection? A Yes.

The Court: Don't misunderstand this witness. He says a man who said he was Citrin said he held the notes for collection.

By Mr. Gershenson.

Q You never related that conversation to me, though, did you, Mr. Tansey, as many times as I have spoken—

The Court: Do not answer the question. I object to it.

By Mr. Gershenson.

Q These notes were sent back because of insufficient funds, isn't that so? A Your letter doesn't say so.

The Court: Just answer the question. If there is anything attached to the notes that says that, it would appear with the notes.

Mr. Gershenson: I offer these protest slips, together with the notes.

Mr. Francis J. Tansey: I object to the offer, your Honor.

The Court: They are immaterial. I decline to receive them.

Mr. Gershenson: That is all.

The Court: That is all. Leave the stand. Where is the piece of wall paper?

(The paper referred to was offered and received in evidence and marked Exhibit D. 2.)

WILLIAM A. TANSEY, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Michael J. Tansey.

Q Mr. Tansey, you are the tenant on my farm at Colt's Neck? A Yes.

Q You have occupied the farm there for something over a year, have you? A Yes.

Q Were you there when Nelson & Duchin attempted to do some paper work, paper hanging? A Yes.

Q You occupy the house? A Yes.

Q Can you tell us whether this Exhibit D. 2 is part of the wall paper of the house? A That is part of the wall paper of the house, yes.

Q What is the condition of the wall paper in the house? A Well, some rooms is about two-thirds off.

Mr. Gershenson: If your Honor please, we don't deny that the condition was good,

bad or indifferent. We don't know anything about it. We admit all that.

The Witness: The wall paper is in bad shape all the way through the house.

By Mr. Tansey.

Q You say it was in bad shape. What was it? A It was loose. It fell off in strips; came down in strips.

Q Throughout the house? A Throughout the house. And one part of it came off altogether, practically, in one room.

By the Court.

Q Do you know Philip Citrin? A I do not.

Q Do you know Samuel Elkin? A Well, I don't know whether I know them or not. I seen people down there painting, but I don't know what the name was.

Q You don't know Philip Citrin or Samuel Elkin? A No.

The Court: That is all. I don't care to hear any more of your testimony.

By Michael J. Tansey.

Q What is the condition of the paint? A Bad.

The Court: If you object to that, I will sustain the objection.

Mr. Tansey: Grant me an exception.

By Mr. Tansey.

Q Is that the condition of the paint all the way though?

The Court: That is objected to. Sustained. Don't answer the question.

By Mr. Tansey.

Q Is there some of the painting left undone?

A Yes.

The Court: That is struck out.

Mr. Tansey: Your Honor will grant me an exception?

The Court: No.

Mr. Tansey: I don't need any, any how.

If your Honor please, we are ready, without repeating questions and objections, to give testimony that this work is not completed, is still undone, and that what has been done is very defective—in line with what we have shown.

The Court: You are admitting that?

Mr. Gershenson: Yes.

Mr. Tansey: That is my case.

The Court: Gentlemen of the jury, I am going to direct a verdict in this case.

In the first place, the defendant is an attorney for thirty years; I assume he knows what a promissory note is and what it means, and also that you can't add anything to a written instrument by parole evidence.

He says he gave these notes to the payees and told them that they must not transfer them and they said they wouldn't. In no part of the defendant's case does he connect the plaintiffs with this story. He would have you believe, in opening the case, that the people who hold the notes now talked to him. And he got on the stand and he

admits he doesn't know Citrin and doesn't know Elkin. An unidentified man who said he was Citrin told him certain things. Now, as the case stands, the plaintiffs hold these notes, having taken them before maturity for value. The law under those circumstances is that it makes no difference whether the work has been done or there is any defense to the note as between the two original parties. It is commercial paper.

In order to protect the holders of commercial paper where it is in the hands of a holder in due course for value, these defenses are not available. Therefore, I direct you to bring in a verdict for the full amount for the plaintiffs. You will bring in a verdict for the plaintiffs for $262.07.

(The jury rendered a verdict for $262.07.)

Mr. Tansey: Your Honor will grant me an exception.

Will you let me have my exhibits, please?

The Court: No, I will impound them.

Mr. Tansey: I except to your Honor's impounding the exhibits. I except to your Honor's tone in doing so.

Certificate of Stenographer and Judge.

I, James S. Slavin, a stenographer duly appointed to report stenographically the evidence given before the First District Court, of Newark, New Jersey, in the case of Citrin and Elkin *vs.* Michael J. Tansey, do hereby certify that the foregoing is a true and correct transcript of the evidence given on the twentieth day of June, 1929, before the Honorable Cecil H. MacMahon, Judge of the First District Court, Newark, in said matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of June, 1929.

JAMES S. SLAVIN.

I, Cecil H. MacMahon, Judge of the First District Court, Newark, New Jersey, do hereby certify that the foregoing is a transcript of the evidence given upon the trial of the case of Citrin and Elkin *vs.* Michael J. Tansey, on the twentieth day of June, 1929, as certified to by James S. Slavin, the stenographer appointed to report such evidence stenographically.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 5th day of July, 1929.

CECIL H. MACMAHON,
Judge.

EXHIBIT D. 1.

CITRIN & ELKIN

Manufacturers PAINTS — Distributors WALL PAPER

403 East Jersey St.
ELIZABETH, N. J.

Dec. 1, 1928

Mr. Michael J. Tansey,
164 Market St.,
Newark, N. J. RE:$208.72

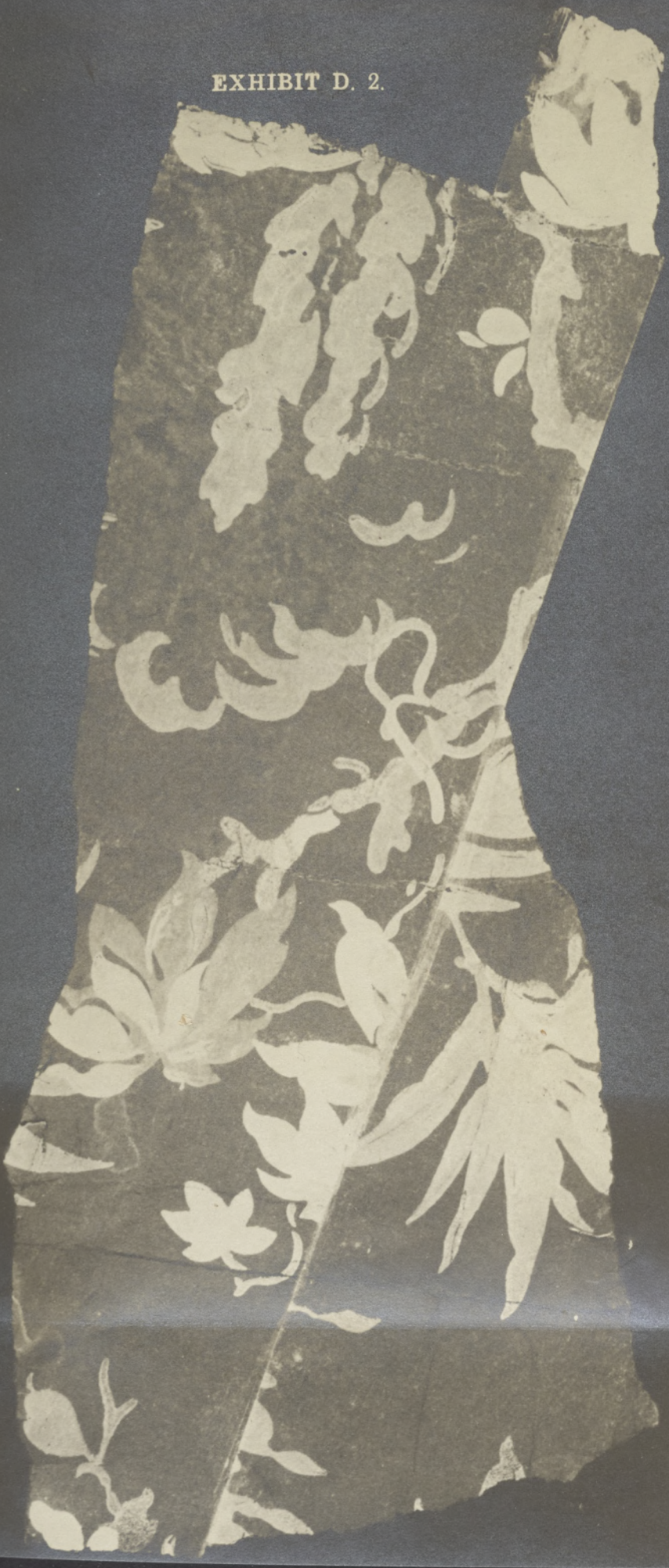
Dear Sir:

A note on which you are the maker payable to Nelson & Duchin has been given to us by them was presented to your Bank for payment and returned to us unsatisfied.

We will expect a check from you for the above amount by Nov. 7, 1928.

Very truly yours,
SAMUEL ELKIN.

EXHIBIT D. 2.



OPINION OF SUPREME COURT.

Filed October 14, 1929.

NEW JERSEY SUPREME COURT.

No. 421, October Term, 1929.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin,
Plaintiffs-Respondents,

vs.

MICHAEL J. TANSEY,
Defendant-Appellant.

Submitted. Decided.

On appeal from District Court.

For defendant-appellant, Michael J. Tansey, Esq., and Francis J. Tansey, Esq.

For plaintiffs-respondents, Benjamin Gershenson, Esq.

Before Justices Parker, Black and Bodine.

Per Curiam: A suit was brought upon two promissory notes, which the defendant had given to Nelson and Duchin, who were doing painting and paperhanging work on his farm at Colts Neck. These notes were given to the plaintiffs in payment for paint and merchandise.

The defendant offered himself as a witness in an attempt to show that the plaintiffs were not holders in due course for value. His testimony was to the effect that a man who said he was

Citrin, whom he could not identify, said that the notes were put in for collection.

The district court judge quite properly took the case from the jury and directed a verdict for the plaintiff.

The testimony of Mr. Tansey was not legal evidence, such as would bind the plaintiffs. Parties to a suit can not be deprived of their legal rights by the statements of some one whom somebody thought might be one of the parties to the suit.

The testimony of Mr. Tansey respecting the giving of the notes violates the parol evidence rule and was quite properly dealt with by the learned district court judge.

The judgment appealed from will be affirmed with costs.

NEW JERSEY SUPREME COURT.

PHILIP CITRIN and SAMUEL ELKIN, trading as CITRIN & ELKIN,	:	
Plaintiffs-Appellees,	:	ON APPEAL.
vs.	:	RULE OF AFFIRMANCE AND REMITTITUR.
MICHAEL J. TANSEY,	:	
Defendant-Appellant.	:	

This cause having been duly argued before our Supreme Court, at the October Term, 1929, and the Court having considered the same and finding no errors in the judgment of the Court below.

It is ORDERED AND ADJUDGED that the judgment of the Court below be affirmed, with costs, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered March 13, 1930
On Motion of
Benjamin Gershenson

NOTICE OF APPEAL.

Filed March 18, 1930.

NEW JERSEY SUPREME COURT.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs,* *vs.* MICHAEL J. TANSEY, *Defendant.*	*On Appeal.* *Notice of Appeal.*

To Benjamin Gershenson, Esq., attorney of plaintiffs.

TAKE NOTICE, that the defendant hereby appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause by the New Jersey Supreme Court, affirming the judgment of the First District Court of the City of Newark.

Dated March 17, 1930.

MICHAEL J. TANSEY,
Attorney for Defendant, *pro se.*

Service of a true copy of the within notice of appeal in the above entitled matter is hereby acknowledged this 18th day of March, 1930.

BENJAMIN GERSHENSON,
Attorney for Plaintiffs-Respondents.

AFFIDAVIT OF SERVICE.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*On Appeal.* *Grounds of Appeal.* *Affidavit of Service.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

I, CHARLES A. REID, JR., being duly sworn according to law, upon my oath depose and say that on Wednesday, April 16, 1930, I served grounds of appeal in the above entitled action personally on Benjamin Gershenson, Esquire, attorney for plaintiffs-appellees, by leaving a true copy of the same with him in his office at No. One Broad street, Elizabeth, New Jersey.

CHARLES A. REID, JR.

Sworn to and subscribed before me
this 16th day of April, 1930.

ELLA TANSEY,
Notary Public of New Jersey.

GROUNDS OF APPEAL.

Filed April 16, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*On Appeal.* *Grounds of Appeal.*

To Benjamin Gershenson, Esq., attorney for plaintiffs-appellees.

SIR:

PLEASE TAKE NOTICE that the following are the grounds set forth by the defendant-appellant, as the grounds of appeal in the above entitled cause:

1. Because the Supreme Court erred in affirming the judgment of the First District Court of the City of Newark.

Dated April 15, 1930.

MICHAEL J. TANSEY,
Attorney for Defendant-Appellant, *pro se.*

Service of a true copy of the within grounds of appeal is hereby acknowledged this day of April, 1930.

Attorney for Plaintiffs-Appellees.

AFFIDAVIT OF SERVICE.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin,
Plaintiffs-Appellees,
vs.
MICHAEL J. TANSEY,
Defendant-Appellant.

Notice of Argument.
Affidavit of Service.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

I, CHARLES A. REID, JR., being duly sworn according to law, upon my oath depose and say that on Saturday, April 26, 1930, I served notice of argument in the above entitled cause personally on Benjamin Gershenson, Esq., attorney for plaintiffs-appellees, by leaving a true copy of said notice with him in his office at No. One Broad street, Elizabeth, New Jersey.

CHARLES A. REID, JR.

Sworn and subscribed to before me
this 30th day of April, 1930.

ELLA TANSEY,
Notary Public of New Jersey.

NOTICE OF ARGUMENT.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*On Appeal.* *Notice of Argument.*

SIR:

TAKE NOTICE, that the argument of the issue joined in this cause will be moved before the New Jersey Court of Errors and Appeals on the third Tuesday of May, 1930, at Trenton, New Jersey, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

MICHAEL J. TANSEY,
Attorney for Defendant-Appellant, *pro se.*

To Benjamin Gershenson, Esq., attorney for plaintiffs-appellees, or whom it may concern.

Sat below: Justices Parker, Black and Bodine.

Service of a true copy of the within notice of argument is hereby acknowledged this day of April, 1930.

.....
Attorney for Plaintiffs-Appellees.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin,
Plaintiffs, Resp

vs.

MICHAEL J. TANSEY,
Defendant. Appellant

DEFENDANT'S BRIEF.

The plaintiffs sued defendant on two promissory notes—one for $203, dated August 23, 1928, payable three months after date with interest, and the other for $50.00 dated September 5, 1928, payable three months after date with interest, both to the order of Nelson and Duchin and alleged to have been endorsed by them to plaintiffs. The plaintiffs' evidence was that the notes were renewals of notes received by them from Nelson and Duchin for painters' supplies; that they were received about a day or two after making the notes, and that they did not know at the time there was a dispute. They notified defendant that the notes would be due and he made no answer; that they got in touch with him again after notes were protested; had a conference at his office with him and Nelson and Duchin; that Mr. Tansey offered a note in settlement of both protested notes because he had no money and they refused to accept it. Wrote letter of December 1st, Ex. D. 1.

> A note on which you are maker payable to Nelson and Duchin has been given to us by them was presented to your bank for payment and returned to us unsatisfied. We will

expect a check from you for the above amount by Nov. 7, 1928.

The defendant's case was that he gave the notes to Nelson and Duchin for painting and paperhanging work on his farm at Colts Neck, New Jersey. They were not to be paid until the work was finished. He said to Nelson and Duchin the work is being done improperly. I will give you these notes but do not transfer them. They said they would not. If anything should develop in the meantime, they will not be paid. They are not renewals, they are original notes.

Before notes became due, it developed they had not done their work. The wall paper which they put on came off in great strips; it was not matched properly, Ex. D. 2. The paint was poor and the work unfinished. Defendant notified Nelson and Duchin of the facts and that he would not pay the notes. A short time after this, defendant received letter Ex. D. 1; then Citrin and Elkin called up defendant at his office and said, We have a note here for collection; that it was Nelson and Duchin's note. Defendant said, "You haven't given anything for that, have you?" They said "We will allow credit for it, but if it is not paid we will charge it back." Defendant said, "Don't you give them credit for it because they have not done their work right." Man on phone said his name was Citrin. Afterwards, sometime after getting letter of December 1, 1928 (D. 1) Citrin and Elkin both came to office with Nelson and Duchin, Nelson said he was going down to finish his work, he would send a man down to finish the wallpapering, &c. He never went down or sent a man and the work was never finished or properly done.

Both Citrin and Elkin told defendant when they came to the office that they had the notes for

collection and if not paid they would charge them back to Nelson and Duchin.

Plaintiffs admitted that the work was not completed, and what was done was very defective. The Court assumed in charging the jury that the only conversation by defendant with plaintiffs was on the phone when he talked with a man who said he was Citrin, whereas the fact was that defendant talked afterwards with both Citrin and Elkin in his office with Nelson and Duchin, and they then said they had the notes for collection, if it was not paid they would charge it back.

It is plain they gave nothing for the notes but were merely trying to collect for Nelson and Duchin (p. 17 Case).

By force of Section 59 of the Negotiable Instruments Act (L. 1902, p. 594) every holder of a promissory note is deemed *prima facie.*

> "To be a holder in due course, *i. e.* among other things that he took the note in good faith, and for value without notice of any infirmity in the instrument, or defect in the title of the person negotiating it, but that section further provides that when it is shown that the title of the person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims, acquired the title as holder in due course."
>
> *DeJonge & Co.* v. *Woodport Hotel & Land Co.,* 77 N. J. L. 233-235.

It was not denied that the notes were given to the payees for work which was defective and that the payee promised not to transfer (negotiate) the notes, and promised to have the work properly done before the notes came due, but did not do anything further about it. This showed defective title in the payee of the notes and by reason of failure of consideration it was encumbent on

plaintiffs to offer evidence to show that they took the notes in good faith, and for value without notice of any infirmity in the instrument or defect in the title of the persons negotiating it. No such evidence was offered but evidence in fact was given that they had given no value for the notes but merely held them for collection, and they were subject to all the defendant's equities against the payees. Under the circumstances the Court could not legally direct a verdict.

There was evidence from which the jury could have found that plaintiffs were not holders in due course. Where there is any evidence to support the action, no matter how meager, a verdict should not be directed.

Overend v. *Kiernan, et al.,* 137 Atl. 881.

> Absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.
>
> *Cockrell* v. *McKenna,* (Err. & App.) 134 Atl. Rep. 687-688.

If the plaintiffs took the notes for collection to be charged back if not collected, they were mere collectors for the payees and not holders in good faith and for value.

Sutter v. *Security Trust Co.,* 95 Eq. 44.

Title is defective when the note is negotiated in breach of faith (promise not to negotiate) or such circumstances as amount to a fraud.

L. 1902, p. 593, sec. 55.

There was no proof of the signature endorsements of Nelson and Duchin. This was necessary to make a case for plaintiffs; mere proof of payment of value raises no presumption that the endorsers' names are genuine.

Beckley v. *Evans* (Err. & App.), 20 Vr. 442.

The questions by the Court to defendant as to how old he was and how long he had practised law, had no relevancy upon the issue presented, and should not have been asked and answer insisted upon over defendant's objection.

U. S. Agency v. *Metropolitan Lumber Co.*, 137 Atl. 432.

Their asking in the offensive manner of the Court and his threat to commit for contempt was an abuse of his discretion in the conduct of the trial, and was calculated to wrongly influence the jury against defendant, and although the case was taken from the jury yet the harmful attitude of the Court toward defendant is plainly indicated, and shows that due consideration was not given to defendant's testimony tending to show plaintiffs were not holders in due course for value.

The impounding of evidence offered by defendant was done without any apparent reason, and in such an offensive manner that the defendant objected.

This was likewise an unwarranted abuse of the Court's discretion.

Stein v. *Goodenough*, 73 L. 812-816.

It is respectfully submitted that the verdict of the jury should be set aside and a new trial granted.

MICHAEL J. TANSEY,
Defendant of Counsel, *pro se.*

New Jersey Court of Errors and Appeals

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*Action at Law.* *On Appeal.*

BRIEF OF PLAINTIFFS-APPELLEES.

GROSSMAN & KWALICK,
Attorneys for and of Counsel
with Plaintiffs-Appellees.

The Henry Cook Printshop, Elizabeth, N. J.

New Jersey Court of Errors and Appeals

PHILIP CITRIN and SAMUEL ELKIN, trading as Citrin & Elkin, *Plaintiffs-Appellees,* *vs.* MICHAEL J. TANSEY, *Defendant-Appellant.*	*Action at Law.* *On Appeal.*

BRIEF OF PLAINTIFFS-APPELLEES.

This appeal brings up for review by this Court the judgment of the First District Court of the City of Newark, in a suit instituted by the appellees to enforce the payment of two notes held by them (Case, pp. 3 and 4).

This cause was tried before the First District Court of the City of Newark, before the Judge thereof, and a jury impaneled to try the same as demanded therefor by the defendant-appellant.

In the course of the case, the Court, on its own motion, directed a verdict in favor of the plaintiff (Case, p. 22).

The points urged by the appellant are six in number (Case, pp. 8 and 9).

Points one and two are directed to the effect upon the jury of certain actions on the part of the Court. In view of the fact that the jury did not deliberate upon the evidence, but was directed to bring in a verdict for the plaintiff below, these points present no ground for appeal.

Point three is directed to the refusal of the Court below to allow testimony to be given

showing the defective condition of the work done by the payees of the notes in suit, and point four is directed to the action of the Court in striking out evidence that some of the work done by the payees of the notes had been left undone.

Points three and four become immaterial and present no cause for review in view of the fact that the plaintiffs below admitted that the work done by the payees was very defective, and that some of the work agreed to be done by the payees was not completed (Case, p. 22, ll. 15 to 24).

Thus it appears that the only legal ground set forth in the case for reversal is point five (Case, p. 9, ll. 12 to 20) inasmuch as point six sets forth no specific ruling of the Court below to which objection was made, and under well-established rules of law, the general objection set forth in point six on page nine of the printed case cannot be the basis of any review by this Court.

The brief of the appellees will therefore be directed to the propriety of the action of the Court below in directing a verdict for the plaintiffs below.

In this connection it is necessary to determine the status of the evidence at the close of the case, for upon that alone could the Court below have directed its verdict.

POINT ONE.

The action of the Court below was proper under the state of the case as it existed at the close of the defense.

The evidence on the part of the plaintiffs below disclosed that they received the notes a day or two after the making of the same (Case, p. 11, ll. 19 to 21) and further disclosed that at that

time they had no knowledge of any dispute or anything about the notes (Case, p. 11, ll. 22 to 24). Plaintiffs' case further disclosed that the plaintiffs below acquired the notes in payment for merchandise sold to the payees, and that the plaintiffs below gave credit to the payees of the notes for the amounts of the same as against the indebtedness due from the payees to the plaintiffs (Case, p. 12, l. 39 to Case, p. 14, l. 21).

At this point of the case plaintiffs had established a prima facie case in view of the provisions of Sections 24, 25, 26 and 57 of the Negotiable Instruments Act (3 Compiled Statutes, pp. 3738 and 3741).

Section 24 of the Negotiable Instrument Act expressly provides that every negotiable instrument is deemed prima facie to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value.

Marine Trust Company v. *St. James' Church*, 85 N. J. Law, page 276;
Shupe v. *Taggart*, 93 N. J. Law, page 123.

Section 25 provides that value is any consideration to support any simple contract, an antecedent or pre-existing debt constitutes value and is deemed such whether the instrument is payable on demand or at a future time.

Section 26 provides that where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Section 57 provides that a holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses avail-

able to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

By virtue of these provisions of the Negotiable Instrument Act, and the foregoing decisions, it is apparent that the plaintiffs below established a right to recover against the defendant below.

The defense in this case attempted to be interposed was a lack or failure of consideration.

This defense was not available to the appellant.

Section 64 of the District Court Act (2 Compiled Statutes, p. 1972) provides that in actions on contract, whether under seal or not, the defendant may set up as a defense in abatement of the damages to be recovered by the plaintiff a defect in or partial failure of the consideration of the contract sued on. The defendant may also recoup all damages which he may have sustained by reason of any cause of action arising out of the contract or transaction set forth in the plaintiffs' demand or connected with the subject of the action, provided notice of such claim for recoupment of damages shall be filed with the Clerk—before the return day or final hearing.

No such notice of recoupment was filed, and the statutory steps by which such a defense could be asserted not having been invoked, the defense itself was not available.

But aside from the fact that the defendant below did not lay the proper statutory foundation to interpose the defense attempted to be interposed, the records show that at the close of the defendant's case, the defendant had interposed no legal evidence which would destroy or raise a legal question affecting the status of the

plaintiffs below as bona fide holders in due course of the notes in suit.

The defendant's evidence disclosed that he was the maker of the notes and delivered them to the payees before the completion of the contract in connection with which the notes were given. No evidence was offered as to the terms of the contract between the appellant and the payees of the notes in suit, and the notes in suit must be deemed to have been issued for a valuable consideration in view of the provisions of Section 24.

The only evidence on behalf of the defendant affecting the consideration for the notes is that on Case, p. 14, l. 31, to Case, p. 15, l. 35, and that evidence was to the effect that after the notes had been given, but before the maturity thereof the appellant discovered that the work agreed to be done by the payees was improperly done, and the appellant complained of that fact to the payees of the notes.

The defendant attempted to prove that somebody, who said his name was Citrin, called up and said that they had the appellant's notes for collection (Case, p. 16, ll. 4 to 26). There is no proof however in the defendant's case that it was the appellee Citrin who called the appellant and gave the appellant that information, and therefore there was no legal evidence before the Court below that the appellees held the notes in suit for collection only.

But even assuming that the appellees merely held the notes in suit as security for a debt due them from the payees, they would still be bona fide holders in due course of the same and entitled to protection as such.

In *Allaire* v. *Hartshorne*, 21 N. J. Law, page 665, it was held that a party taking a negotiable instrument in payment of, or as security for a precedent debt is a bona fide holder for a valuable consideration and entitled to protection as such, and in *Armour* v. *McMichael*, 36 N. J. Law, page 92, it was held that a person who takes a note before its maturity, in payment of, or as security for a precedent debt is a bona fide holder of it for value, and entitled to protection as such.

Assuming further that the defense of absence or failure of consideration was presented properly in the trial court, still there was no evidence upon which the defendant was entitled to go to the jury in view of the fact that the defendant had failed to establish to what extent there had been an absence or failure of consideration.

Section 28 of the Negotiable Instrument Act (3 Compiled Statutes, p. 3738), lays down the rule that absence or failure of consideration is a matter of defense as against any person not a holder in due course, and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise.

The defense interposed in the trial court was absolutely barren of any evidence as to the extent of the failure of consideration, and there was no legal evidence upon which the jury could have determined the extent of the failure of consideration.

That only could have been determined by the trial court and jury by proof by the defendant of the amount of the contract made by the appellant with the payees of the notes in suit, the amount paid thereon, and the cost of completing the unfinished work, and the cost of doing over the

work defectively done. No such proof was offered on behalf of the defendant, and the trial court properly excluded from consideration in the case the offered evidence as to the failure of consideration, for the reason that there was no proof in the case to show that the payees were not entitled, under the terms of the contract with the appellant, to the delivery of the notes in suit at the time when the same were delivered to the payees, and there is no evidence as to the failure of consideration and to the extent thereof.

The Court below very properly excluded from its consideration the evidence offered as to failure of consideration for the reason that no evidence was offered by the defendant which would destroy the position of the appellees below, namely that of bona fide holders in due course for value of the notes in suit.

The evidence as to failure of consideration was not available for consideration by the trial court until and unless the defendant should have first established below that the appellees were not bona fide holders in due course for value.

The plaintiffs below were further entitled to recover on the notes in suit even though they merely held the notes in suit as security for the payment of a debt due them from the payees, for the reason that Section 27 of the Negotiable Instrument Act (3 Compiled Statutes, p. 3738), provides that where the holder has a lien on the instrument arising either from contract or implication of law, he is deemed a holder for value to the extent of his lien, and the proof on behalf of the appellees was that they gave credit to the payees for the full amount of the notes in suit, and therefore even if the appellees took the notes by way of security for the payment of the

indebtedness due them, they had a lien thereon to the full amount thereof by reason of the fact that they gave credit for the full amount thereof to the payees (Case, p. 14, ll. 9 and 10).

Allaire v. *Hartshorne*, 21 Law *supra;*
Armour v. *McMichael, supra.*

Some evidence was attempted to be offered by the appellant at the trial below that the notes in suit were negotiated in violation of an agreement not to transfer the same (Case, p. 15, ll. 15 to 20). Such evidence was illegal, and was properly excluded from consideration by the trial court in view of the fact that the same was hearsay, and violated the rule laid down in *Naumberg* v. *Young*, 44 N. J. Law, page 331. This evidence was further properly excluded from consideration by the trial court by reason of the fact that the appellant had failed to dislodge the appellees from their position of bona fide holders for value in due course, and the agreement not to negotiate not having been endorsed on the notes in suit, the appellees took title to the same without being charged with the burden thereof.

Appellant in his brief raises for the first time a new point that there was no proof of the signature or endorsements of Nelson and Duchin. The notes in suit were offered in evidence and no objection thereto was made by the appellant (Case, p. 14, ll. 9 to 24). However the case does show that Nelson and Duchin transferred the notes to the appellees (Case, p. 11, ll. 11 to 12).

SUMMARY.

It is respectfully submitted that the action of the trial court in directing a verdict in favor of the plaintiffs below was proper in view of the

state of the case at the close of the defendant's case.

Respectfully submitted,

GROSSMAN & KWALICK,
Attorneys for and of Counsel
with Plaintiffs-Appellees.