INDEX.

TESTIMONY.

EXHIBITS.

New Jersey Supreme Court

Universal Finance Corporation, *Plaintiff-Respondent,* *vs.* Michael Kuna, *et ux., et als., Defendants-Appellants.*	*On Appeal. Notice.*

NOTICE.

Filed Oct. 30, 1929.

To Michael G. Alenick, Esq., Attorney for Plaintiff-Respondent, Universal Finance Corporation.

Sir:

Take Notice that the defendants Michael Kuna and Eva Kuna appeal to the New Jersey Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause.

These defendants-appellants appeal on the following grounds, to-wit:

That the New Jersey Supreme Court erred in affirming the judgment of the First District Court of the City of Newark in the above entitled mat-

ter, whereas it should have reversed the said judgment of the First District Court of Newark.

JOSEPH ZEMEL,
Attorney for Appellants.

Dated October 29th, 1929.

Service of a true copy of the foregoing Notice is hereby acknowledged this 29 day of October, 1929.

MICHAEL G. ALENICK,
Attorney for Plaintiff-Respondent.

New Jersey Supreme Court

FIRST DISTRICT COURT OF NEWARK.

UNIVERSAL FINANCE CORPORATION, *Plaintiff,* *vs.* MICHAEL KUNA, EVA KUNA and FRED WALTER, *Defendants.*	*On Contract.* *Notice of Appeal.*

NOTICE OF APPEAL.

Filed July 10, 1929.

To Universal Finance Corporation, or to Michael G. Alenick, its attorney.

SIRS:

TAKE NOTICE that the defendants, Michael Kuna and Eva Kuna hereby appeal to the New Jersey Supreme Court from the judgment of the First District Court of the City of Newark, rendered against the said Michael Kuna and Eva Kuna in the above stated action on the 1st day of July, 1929.

JOSEPH ZEMEL,
Attorney for Defendants,
Michael Kuna and Eva Kuna.

Service of the foregoing Notice of Appeal is hereby acknowledged this 10th day of July, 1929.

MICHAEL G. ALENICK,
Attorney for Plaintiff.

(SEAL)

SUMMONS.

FIRST DISTRICT COURT SUMMONS.

ESSEX COUNTY, *ss.*

The State of New Jersey to any Constable in said County or to the Sergeant-at-Arms of the First District Court. Summon Michael Kuna, Eva Kuna and Fred Walter to appear before the First District Court of the City of Newark, to be held in the City Hall, Broad Street, (Ground Floor) in the said City, on the thirtieth day of April, nineteen hundred and twenty-nine, at ten o'clock in the forenoon to answer unto Universal Finance Corp., a corporation of New Jersey, 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 19th day of April, in the year one thousand nine hundred and twenty-nine.

LOUIS HECHT,
Clerk.

STATE OF DEMAND.

Filed April 19, 1929.

FIRST DISTRICT COURT OF THE CITY OF NEWARK.

UNIVERSAL FINANCE CORP., a corporation of New Jersey, *Plaintiff,* *vs.* MICHAEL KUNA, EVA KUNA, FRED WALTER, *Defendants.*	*On Contract. State of Demand.*

The plaintiff demand of the defendants the sum of Five Hundred Dollars ($500.00) on a certain promissory note, a true copy of which is as follows:

$500.00 Newark, N. J. 12/18/28.

Three months after date I promise to pay to the order of Fred Walter
Five Hundred Dollars.
Payable at Federal Trust Co.
Value Received.

MICHAEL KUNA
EVA KUNA

Due: 3-18-29.
with 6% interest.

Endorsed: Fred Walter, Universal Finance Corp. E. F. Hardy
Gen. Mgr.

State of Demand.

Plaintiff has demanded payment of same but defendants have failed and neglected to pay it.

The excess over $500.00 is hereby waived.

Judgment will be claimed in the sum of Five Hundred dollars and no cents ($500.00) together with lawful interest and costs of suit.

MICHAEL G. ALENICK,
Attorney for Plaintiff.

To the Defendant:

TAKE NOTICE that the plaintiff demand that the defendant shall file written specifications of defenses intended to be made in said action on or before the time specified for appearance in the process issued in said cause.

MICHAEL G. ALENICK,
Plaintiff's Attorney.

SPECIFICATION OF DEFENSES.

Filed May 16, 1929.

#127473.

FIRST DISTRICT COURT OF NEWARK.

UNIVERSAL FINANCE CORPORATION, *Plaintiff,* *vs.* MICHAEL KUNA, *et als.*, *Defendants.*	*On Contract. Specification of Defenses.*

The following is a specification of the defenses which the defendants Michael Kuna and Eva Kuna will interpose at the trial of this action.

1. These defendants did not make the note in question nor authorize its making.

2. These defendants received no consideration for the making of the said note.

3. The signature of these defendants to the said note was procured by fraud.

4. The paper writing purporting to be a note was not intended by these defendants as a promissory note. These defendants signed their names to a receipt and the said receipt was altered or forged and these defendants never intended that the said receipt or paper writing should operate

as a promissory note nor did they authorize any person or persons to make the same into a promissory note.

5. These defendants will further set up that the plaintiff is not a holder in due course of the said Instrument.

JOSEPH ZEMEL,
Attorney for Defendants,
Michael Kuna and Eva Kuna.

TRANSCRIPT OF CLERK'S DOCKET.

FIRST DISTRICT COURT OF NEWARK, NEW JERSEY.

UNIVERSAL FINANCE CORPORATION, a corporation of New Jersey, *Plaintiff*,

vs.

MICHAEL KUNA, *et als.*, *Defendants.*

Michael G. Alenick, Plaintiff's Attorney.

Plaintiff's Costs

Summons	$2.90
Mileage	.64
Listing	1.50
Atty. fee	25.00
	$30.04

863 Springfield Avenue, Irvington.
309 Union Avenue, Irvington.

A summons in the above stated cause was issued on the nineteenth day of April, 1929, returnable on the thirtieth day of April, 1929, wherein the plaintiff demands of the defendant the sum of five hundred dollars.

The plaintiff filed his state of demand April 19th, 1929.

The summons was served and returned as follows:

I served the within summons April 22, 1929, on the defendant Eva Kuna, by reading it to her and giving her a copy thereof.

The said defendants Michael Kuna and Fred Walter not being found, I served the within summons April 22, 1929, by leaving a copy thereof at their residence with a member of their family above the age of fourteen years informing them of its contents. M. B. Rose, Sergeant-at-arms.

April 30, 1929. This cause was adjourned to May 10, 17, 24 June 7, 21.

May 16, 1929. Specification of defenses filed.

June 21, 1929. The plaintiff and the defendant appearing, the cause was tried and determined at this time.

James S. Slavin, Stenographer.

Elmer F. Hardy sworn for plaintiff.

Note in evidence for plaintiff.

Michael Kuna, Eva Kuna sworn for defendant.

Receipt in evidence for defendant.

The evidence being closed the court reserved decision.

July 1, 1929. The evidence being closed the Court rendered judgment in favor of the plain-

tiff and against the defendants in the sum of five hundred dollars damages with costs, whereupon judgment is rendered in favor of the plaintiff and against the defendants in the sum of five hundred dollars damages with costs.

July 10, 1929. Notice of Appeal filed by Michael Kuna and Eva Kuna.

July 18, 1929. Appeal bond filed by Michael Kuna and Eva Kuna. $1.00.

I, Louis Hecht, Clerk of the First District Court of the City of Newark, do hereby certify that the foregoing is a true copy of the record and proceedings had in the within-stated cause of action, as taken from Docket #266, page #127473 of this Court.

LOUIS HECHT,
Clerk of First District Court
(Seal) of the City of Newark.

CERTIFICATE.

FIRST DISTRICT COURT OF NEWARK.

Universal Finance Corporation, a corporation of New Jersey, *Plaintiff,* *vs.* Michael Kuna, *et als.,* *Defendants.*	*On Contract. Certificate.*

I, Louis Hecht, Clerk of the First District Court of the City of Newark, County of Essex

and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the instruments on file and of all entries on the docket in the above entitled case on record in this office.

Dated, July , 1929.

LOUIS HECHT,
Clerk of First District Court of Newark.

TRANSCRIPT OF TESTIMONY.

FIRST DISTRICT COURT, NEWARK, N. J.

UNIVERSAL FINANCE CORPORATION, a corporation of New Jersey,
Plaintiff,
vs.
MICHAEL KUNA, EVA KUNA, and FRED WALTER,
Defendants.

June 21, 1929.

Before: Honorable Cecil H. MacMahon, J.

Appearances:
Michael G. Alenick, Esq., for the plaintiff.
Joseph Zemel, Esq., for the defendants.
James S. Slavin, Stenographer.

ELMER F. HARDY, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows.

Direct examination by Mr. Alenick.

Q Mr. Hardy, are you connected with the Universal Finance Corporation? A Yes.

Q In what capacity? A General Manager.

The Court: Where is the note?

By Mr. Alenick.

Q I show you a note dated—

The Court: No, no, where was the note? The note is in evidence.

(The note was received in evidence and marked Exhibit P-1.)

By the Court.

Q How much is the total amount due on the note? A Five hundred dollars.

The Court: All right. Five hundred dollars. Cross-examine.

Mr. Alenick: The excess is waived, your Honor.

Cross examination by Mr. Zemel.

Q When did your company first get this note? A December 18, 1928.

Q How much did you pay for it? A Four hundred dollars.

By the Court.

Q You paid four hundred dollars? A Yes.

Mr. Alenick: I offer the note in evidence.
The Court: It is marked.
Mr. Alenick: Plaintiff rests.

MICHAEL KUNA, called as a witness on behalf of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. Zemel.

Q Mr. Kuna, I show you a note. Is this your signature on the note (indicating)? A Yes.

Q Mr. Kuna, how did you come to sign this paper? A Well, Mr. Walter came to me to sign a receipt.

Mr. Alenick: Your Honor, I would like to enter an objection.

The Court: Never mind.

By Mr. Zemel.

Q It was for a receipt? A Yes.

Q Did they give you any money when you signed that receipt? A No.

Q How much was the receipt supposed to be for? A (No answer.)

By the Court.

Q How much was the receipt supposed to be for? How much money. A No money at all. I signed a blank receipt.

Mr. Alenick: For the purposes of the rec-

ord I would like to enter a formal objection to this line of testimony and would like to have your Honor's ruling on it.

The Court: I will take the testimony subject to your objection.

Mr. Alenick: I pray an exception.

By Mr. Zemel.

Q Mr. Kuna, when you signed this paper was there writing on it? A No, all blank.

Q The printing was on it? A The printing was on it.

Q It was supposed to be a receipt? A Yes.

Q For two hundred dollars? A Yes.

Cross examination by Mr. Alenick.

Q Is Mr. Walter a good friend of yours? A Yes. I believed in him.

Q You believed in him? A Yes, I believed in him.

Q When he presented this paper for you to sign and asked you to sign it, you signed it? A. Yes, I signed it in blank. He took the paper from me.

Q You read English, don't you? A No.

Q What was your answer? A I don't read English.

Q Did you see any figures on this paper before you signed it? A No, it was all blank.

Q Can you read this figuring? A No; nothing on it.

Q I say, can you read this figuring? A No; it was blank. It was all blank.

Q Can you read what this says? A No; there was nothing on it.

Q There was nothing on it when you signed it? A No.

By the Court.

Q Can you read the writing on that note? A No; I can't see at all.

Q What? A I can't see at all; I had no eyeglasses.

Q When you have eyeglasses on can you read? A No, not much.

By Mr. Alenick.

Q You can read figures, can you? A Yes.

EVA KUNA, called as a witness on behalf of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. Zemel.

Q Mrs. Kuna, how did you come to sign this paper?

Mr. Alenick: Same objection.

A Well, Mr. Walter came to my store, and I say to him, "I am myself short of money." And he say, "All right. I got very good friends, but he rich fellow and he help my people; maybe he can help you." Mr. Walter came a couple of times to my store on Springfield avenue and he

promised me. He wanted to help. I don't know how much. One time—the first time he say to me, "I don't want to sign for you," and the next time he say to me, "Anyway, be good; sign a receipt. I have lost lots of money to people like that." And I believed in him. He give me the receipt. There was nothing on it; and he go and Villicco send it with Mr. Walter the money because I ain't got nothing.

By Mr. Zemel.

Q Did he send you any money? A He sent me two hundred dollars. I don't know how many days after.

Q He sent you two hundred dollars? A Yes.

Q Did you ever pay him back that two hundred dollars? A After he came—

Mr. Alenick: The same objection.

By Mr. Zemel.

Q Did you pay him back the two hundred dollars or not? A Yes.

The Court: Did she pay whom back?

The Witness: Mr. Villicco.

By Mr. Zemel.

Q You paid back Mr. Villicco the money?

The Court: Who?

Mr. Zemel: Mr. Villicco.

By the Court.

Q Was it Villicco or Walter you paid the money to? A Mr. Villicco.

Q Whom did you get the two hundred dollars from? A Mr. Villicco sent it with Mr. Walter.

Q Mr. Walter gave you the money and said Mr. Villicco sent it? A Yes.

Q That was after you signed this paper? A Yes.

Q When did you pay it back to Villicco? A In February.

By Mr. Zemel.

Q Is this the receipt you got when you paid it back? A Yes.

Mr. Zemel: I offer it in evidence.

Mr. Alenick: I object to it as it is not material to this case.

The Court: I will take it subject to your objection.

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

By Mr. Zemel.

Q When you signed this paper, Mrs. Kuna, what was it supposed to be? A He say to me I have to sign a receipt because he lost lots of money.

Q. Was it supposed to be a note? A He don't say nothing. I don't know that.

Mr. Zemel: That is all. Take the witness.

Cross examination by Mr Alenick.

Q Before you signed this paper, Mrs. Kuna, you told Mr. Walter you needed some money, is that right? A Yes, because he asked me—

Q Is that right?

The Court: That is her testimony. She wanted to borrow money. She spoke to Walter about it. Walter said, "I don't want to sign for you. I have lost a lot of money doing business that way. I know a man who will lend you the money. You will have to sign a paper for it." She then signed the note in blank, gave it to Walter, and Villicco send her two hundred dollars some time after. She said she paid it back. Is that the case?

Mr. Zemel: Yes. Defendant rests.

The Court: Send me your cases, gentlemen, in the form of a letter, and send a copy to the other side.

COURT'S CERTIFICATE.

FIRST DISTRICT COURT OF NEWARK.

UNIVERSAL FINANCE CORPORATION, *Plaintiff,* *vs.* MICHAEL KUNA, EVA KUNA and FRED WALTER, *Defendants.*	*Court's Certificate.*

I, Cecil H. MacMahon, Judge of the First District Court of the City of Newark, do hereby certify that Michael Kuna and Eva Kuna, two of the defendants in the aforesaid action, applied to me for the appointment of a stenographer to transcribe the proceedings at the trial of the afore-

said action and to take down the testimony therein.

I certify that James S. Slavin was designated as stenographer to act as aforesaid in the said case and was duly sworn according to law.

I do further certify that this transcript of the said proceedings and the said testimony made by the said stenographer is a correct state of the case upon appeal in the aforesaid action.

Dated, July 9, 1929.

CECIL H. MacMAHON,
Judge.

EXHIBIT P-1.

$500.00/00 *Newark, N. J. 12/18* 1928

Three months ..AFTER DATE ..*I*.. PROMISE TO PAY TO THE ORDER OF *Fred Walter* ... *Five Hundred no* ..... DOLLARS

~~100~~

PAYABLE AT *Federal Trust Co.* —
VALUE RECEIVED. *Michael Kuna*
Eva Kuna

NO. DUE *3-18-29*
with 6% interest.

Endorsements
Fred Walter Springfield, N. J. Box 224
Universal Finance Corp.
E. F. Hardy, Gen. Mgr. Treas.

(Note:- Capitals indicate part of note printed while Italics indicate part of note written in.)

EXHIBIT D-1.

Phone Bigelow 1350-J
LOUIS FISCHER
Public Accountant
24 Maple Avenue
Irvington, N. J.

~~Jan.~~ Feb. 2-1929

Received of Mrs. Kuna $200.00 loaned by me. This settles account full.

DIONIMO F. VILLECCO.

MEMORANDUM OF COURT.

FIRST DISTRICT COURT Jul-1 1929

UNIVERSAL FINANCE CORP.
vs.
KUNA.

Case No. 127473

In this case, the defendants borrowed money and signed a note. They now claim that the note was blank when they signed it and that they thought they were signing a receipt for the money, which was loaned to them.

In my opinion, from all the evidence in the case, they knew that they were signing the note and if they were careless enough to sign the note with either the name of the payee or the amount not filled in, they are still liable to the plaintiff, who is a holder for value before maturity without notice of any defect in the note.

$500.00

SPECIFICATION OF DETERMINATIONS.

Filed July 30, 1929.

NEW JERSEY SUPREME COURT.

UNIVERSAL FINANCE CORPORATION, a corporation of New Jersey, *Plaintiff-Appellee,* *vs.* MICHAEL KUNA and EVA KUNA, *Defendants-Appellants.*	*Action at Law* *On Appeal* *Specification of Determinations.*

The following is a specification of determinations or directions of the First District Court of the City of Newark with respect to which the appellants are dissatisfied in point of law.

1. The District Court erred in giving judgment in favor of the plaintiff against these defendants-appellants in the sum of five hundred ($500.00) dollars and costs whereas it should have given judgment in favor of these defendants-appellants (*i. e.* Michael Kuna and Eva Kuna).

2. The District Court erred in ruling that these defendants-appellants are liable to the plaintiff on the instrument sued upon.

3. The District Court erred in its finding that these defendants-appellants signed the instrument and that these defendants-appellants were careless in signing the same.

Specification of Determinations.

4. The District Court erred in finding that the plaintiff-appellee was a holder of the instrument without notice of any defect therein.

Dated, July 23rd, 1929.

JOSEPH ZEMEL,
Attorney for Defendants-Appellants.

Service of a true copy of the foregoing Specification of Determinations is hereby acknowledged this ..... day of July, 1929.

MICHAEL G. ALENICK,
Attorney for Plaintiff-Appellee.

OPINION.

NEW JERSEY SUPREME COURT.

UNIVERSAL FINANCE CORP., *Plaintiff-Respondent,* *v.* MICHAEL KUNA, *et ux., et als.,* *Defendants-Appellants.*	*On Appeal.* *Opinion.*

Argued October 1st, 1929: Decided October 14th, 1929.

Before Justices PARKER, BLACK and BODINE.

For the Plaintiff-Respondent, MR. MICHAEL G. ALENICK.

For the Defendants-Appellants, MR. JOSEPH ZEMEL.

Per Curiam.

This suit was brought in the First District Court of Newark. The state of demand declares on a promissory note for $500.00. The following is a copy of the promissory note sued on.

$500.00/100 *Newark, N. J. 12/18* 1928
Three months After Date I Promise to pay to the Order of *Fred Walter Five Hundred no* Dollars Payable at *Federal Trust Co.*
Value received.

Michael Kuna
Eva Kuna

No. Due 3-18-29
with 6% interest

Endorsements

Fred Walter Springfield, N. J. Box 224
Universal Finance Corp.
E. F. Hardy, Gen. Mgr. Treas.
(Note: Capitals indicate part of note printed while italics indicate part of note written in.)

The case was tried by the judge without a jury resulting in a judgment for the plaintiff for $500.00. The defendants file four specifications of determinations with respect to which, the appellants are dissatisfied in point of law. The fourth is the only one that calls for any discussion, viz.: The Court erred in finding that the plaintiff was a holder of the instrument without notice of any defect therein. An examination of the promissory note with the testimony explaining the same shows, that the following portions of the note were left blank, when signed by the defendants: *$500.00/00—Three months—Fred Walter—Five Hundred no—Federal Trust Co. with 6% interest.*

The claim of the defendants was that they signed a receipt for $200.00. The trial judge found as a fact, this was not so. The findings of fact by the trial court is supported by reliable evidence. With that conclusion of the trial court, on the testimony in the record, we concur. The testimony of the defendants is uncertain and unreliable. The case is controlled by the Uniform Negotiable Instrument Law, 3 Comp. Sts. of N. J., p. 3736; Sections 14, 15, 16. The Cases of Autographic Reg-

ister Co. v. Lirio, 140 Atl. 247; Maurer v. Hahn, 140 Atl. 273; Asbury Park Electric Supply Co. v. Megill, 102 N. J. L. 496 are not in point. They are distinguished on the facts.

The judgment of the First District Court of Newark is, therefore, affirmed.

RULE OF AFFIRMANCE AND REMITTITUR.

#416

NEW JERSEY SUPREME COURT.

UNIVERSAL FINANCE CORP., a Corporation of New Jersey, *Plaintiff-Appellee,* *vs.* MICHAEL KUNA, *et al.*, *Defendants-Appellants.*	*On Appeal from Judgment of First District Court of the City of Newark.* *Rule of Affirmance and Remittitur.*

This cause having been duly argued at the October, 1929, term of this court by Michael G. Alenick, attorney for and of counsel with plaintiff-appellee and Joseph Zemel, attorney for and of counsel with defendants-appellants, and the Court having considered the same and finding no error in the judgment of the First District Court of the City of Newark,

Rule of Affirmance and Remittitur.

It is thereupon ORDERED and ADJUDGED that the judgment of the First District Court of the City of Newark from which an appeal was taken to this Court, be and the same is hereby affirmed with costs; and that the record be remitted to the First District Court of the City of Newark to be proceeded in accordance with this judgment and practice in such case made and provided.

Entered Oct. 23, 1929.

On motion of

MICHAEL G. ALENICK,
Attorney for and of counsel
with Plaintiff-Appellee.

Dated: October , 1929.

A true copy.
FRED L. BLOODGOOD,
Clerk.

New Jersey Court of Errors & Appeals

UNIVERSAL FINANCE CORPORATION, a corporation of New Jersey, *Plaintiff-Appellee,* vs. MICHAEL KUNA, *et al.*, *Defendants-Appellants.*	On Appeal from Supreme Court.

BRIEF OF JOSEPH ZEMEL

ATTORNEY FOR DEFENDANTS-APPELLANTS.

This is an appeal by two defendants from a judgment of the Supreme Court affirming a judgment of the First District Court of Newark rendered in favor of the plaintiff and against all the defendants including the appellants, by the court, sitting without a jury.

Facts.

Plaintiff brought this action against Michael Kuna and Eva Kuna, the defendants-appellants, and against Fred Walter, to recover the amount due upon a paper purporting to be a promissory note made by the defendants-appellants, Michael Kuna and Eva Kuna, to the order of the defendant Fred Walter and endorsed by him to the plaintiff. The facts, as testified to by the witnesses at the trial, are as follows:

For the plaintiff one Hardy, its general manager, testified that there is $500.00 due upon the

note and it was received in evidence. On cross examination he testified that it received the note on December 18th, 1928, and paid $400.00 for it. It is written upon an ordinary printed blank. (Exhibit P-1, case, page 17, line 25).

The defendant Michael Kuna, testified that the signature was his (case, page 11, line 22), and that he signed it when Walter came to him to sign a receipt (case, page 11, line 24). That he signed a blank paper (case, page 11, line 39) and that there was no writing on it (case, page 12, line 18). That there was only printing and that it was supposed to be a receipt for $200.00 (case, page 12, line 19). He further testified that Walter was a good friend of his and that he believed in him. He also testified there were no figures on the paper when he signed it and that he could not read much, and that he could not read without his eyeglasses and that he had no eyeglasses (case, page 13, line 17).

Mrs. Eva Kuna testified that Walter came to her store; that she told him she was short of money; that thereupon he told her he had a very good friend who would help her (case, page 13, line 38). That he further told her that he had lost lots of money to people and requested a receipt. That she believed in him. That she signed the receipt blank and that a Mr. Villicco sent her $200.00 some days later (case, page 14, line 20). She further testified she re-paid Mr. Villicco the $200.00 and produced the receipt for the re-payment of the $200.00 from Mr. Villicco, which was received in evidence. She further testified that the paper was supposed to be a receipt (case, page 15, line 29).

The District Court, having given judgment against these appellants, an appeal was taken to the New Jersey Supreme Court and the Supreme Court affirmed the judgment of the District Court by a *per curiam*. (Case. Page 21.)

The appellants in this court assign only one ground of appeal, to wit: That the New Jersey Supreme Court erred in affirming the judgment of the District Court whereas it should have reversed the said judgment. (Contained in the Notice of Appeal. Case. Page I.)

In accordance with the procedure suggested by Chancellor Walker in the opinions of the cases of State vs. Metzler, 94 N. J. L. 418; State vs. Fischer, 95 N. J. L. 419; and Smith vs. Cruse, 101 N. J. L. 82. The appellants will rely in this court upon the specification of causes for reversal filed in the Supreme Court, and for convenience and so that this court may see just what was argued in the court below, the points will be presented in this brief in the same manner as there presented, except that Point 5 is added for the purpose of supplementing Points 1 and 3 and for the further purpose of showing wherein it is believed the Supreme Court erred in its opinion.

The Law.

POINT I.

Under this point will be considered Specification I. "That the District Court erred in giving judgment in favor of the plaintiff against these defendants-appellants in the sum of $500.00 and costs, whereas it should have given judgment in favor of these defendants-appellants."

I. Both at common law and under the uniform Negotiable Instruments Act, these defendants-appellants are not liable.

1. The instrument in question was never executed or delivered by the appellants. The uncontradicted testimony is that the appellants signed the paper in blank with only the printing on it; and that it was intended to be a receipt for Mr. Villicco, who was to loan them $200.00. As the paper was incomplete when the appellants handed it to Walter, and as the appellants never authorized anyone to fill in a promissory note, there was neither execution nor delivery of the paper sued on. Inasmuch as the appellants never authorized any one to fill in a promissory note over their signature, any such filling of blanks is a forgery. In order to constitute a forgery it is not necessary that the signature of the instrument be false. The instrument may be altered so that it is not the instrument signed by the maker; and if this be fraudulently and falsely done, it is forgery.

2. Of course it is elementary law that no contract is complete until delivery; and delivery means more than a mere manual change of possession. Delivery is mainly, if not entirely, a question of intent; and in order that there be a valid delivery, it is essential that there be a change of possession coupled with the intent of giving effect to the instrument as a contract.

3. The rule at common law is well stated and illustrated in the case of Foster vs. MacKinnon (1869), L. R. 4 C. P. 704. The defendant had put his signature on the back of a paper believing that it was a guaranty. A promissory note had been written on the front of the paper. The court says:

> "In the case now under consideration, the defendant, according to the evidence, if believed, and the finding of the jury, never intended to endorse a bill of exchange at all, but intended to sign a contract of an entirely different nature. It was not his design, and, if he were guilty of no negligence, it was not even his fault that the instrument he signed turned out to be a bill of exchange. * * * To make the case clearer, suppose the bill or note on the other side of the paper, in each of these cases, to be written at a time subsequent to the signature, then the fradulent misapplication of that genuine signature to a different purpose would have been a counterfeit alteration of a writing with intent to defraud and would therefore have amounted to a forgery. In that case the signer would not have been bound by his signature for two reasons.

> First, that he never, in fact, signed the writing declared on; and secondly, that he never intended to sign any such contract. In the present case, the first reason does not apply, but the second reason does apply. The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived not merely as to the legal effect but as to the actual contents of the instrument."

4. A party whose signature to a paper is obtained by fraud as to the character of the paper itself, and who is ignorant of such character and has no intention of signing it, is no more bound by it than if it were a total forgery, the signature included.

5. The inquiry in this case goes back of all questions of negotiability or of the transfer of the supposed paper to a purchaser. The paper is not in law or in fact what it purports to be, namely, the promissory note of the proposed maker. Nor is it material that the supposed instrument is negotiable in form; or that it may have passed to the hands of a bona fide holder for value. Negotiability in such cases pre-supposes the existence of the instrument as having been made by the party whose name is subscribed, for until it has been so made and has such actual legal existence, it is absurd to talk about a negotiation or transfer or bona fide holder of it. That which in contemplation of law never existed as a negotiable instru-

ment cannot be held to be such; and to say that it is and has the qualities of negotiability because it assumes that form and thus to shut out all inquiry as to its existence or whether it is really and truly what it purports to be, is begging the question. It matters not that the paper, when received by the holder, is in the form of a negotiable instrument. It must always be competent for the alleged maker to show that it is not his instrument or obligation.

II. Nor does the uniform Negotiable Instruments Act impose any liability upon the defendants-appellants under the circumstances in this case.

1. Section 14 provides as follows:

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

it had been filled up strictly in accordance with the authority given and within a reasonable time."

(1) It will readily be seen that this Section only imposes liability where the signature is made in order that the paper may be converted into a negotiable instrument and of course does not apply where, as here, the paper was intended as a receipt.

(a) In the case of Ribner vs. Kleinberg, 122 N. Y. Supplement, page 229, Justice Seabury, speaking for the Appellate term of the Supreme Court of New York, says:

"Action upon a demand note against the maker. The defendant proved that he was induced to sign the note because it was represented to him that it was a receipt. This evidence was not denied. The defendant also proved that the note was without consideration. It follows that the verdict of the jury in favor of the plaintiff cannot be sustained."

(2) Further, there was no proof that the plaintiff became a party to the instrument either prior or subsequent to its completion or that it was completed within a reasonable time. This knowledge would lie peculiarly with the plaintiff and it is significant that it did not see fit to produce testimony as to when the instrument was completed or whether it was or was not completed when it came into the plaintiff's possesion. Of course, there is no presumption as to the time when the instrument was filled. Madden vs. Gaston, 121

N. Y. Supplement, page 951. That it was not filled out strictly in accordance with the authority given is shown by the uncontradicted testimony of the appellants.

(3) But even if we were to assume that the plaintiff acquired the instrument after its completion, and if we were to assume that the plaintiff is a holder in due course, Section 14 would still deny the plaintiff a recovery. The last clause of this section, by using the words "such instrument" of course refers to an instrument which is intended to be converted into a negotiable instrument and not to a paper intended for any other purpose. But in any event the plaintiff would only be entitled, in the language of the statute, "to enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time." It is to be noted that the statute does not say that said holder "can enforce it as if the authority given was to fill it up as it was filled up." Accordingly, in any event, the plaintiff could only enforce the instrument as if it had been filled up strictly in accordance with the authority given or, in other words, he could only enforce it as a receipt for $200.00 and inasmuch as the defendants had paid the $200.00 it would be entirely unenforceable.

(4) Of course the authority implied to fill in blanks in an instrument is only prima facie. In the case at bar, this authority was expressly denied by the uncontradicted testimony of the defendants-appellants, and the legal effect of this testimony was to destroy whatever prima facie authority existed.

(5) The uniform Negotiable Instruments Act adopted in this State is substantially the same as the Canadian Act and the English Bills of Exchange Act. According to the construction placed upon the Act in England and Canada, as well as in New York, the appellants are not liable.

(a) In the case of Smith vs. Prosser, 1907, 2 K. B. 735 (Court of Appeal), the defendant, in anticipation of the possibility of funds being required during his absence, signed his name on two printed forms of promissory notes and handed them to one of two agents with instructions that they should be retained in the custody of his agent until the defendant should give instructions for their issue as promissory notes and as to the amounts for which they should be filled. After the defendant had left South Africa, his agent, without waiting for instructions from him, filled the blanks in the documents so as to make them appear to be promissory notes payable to the plaintiff for considerable sums and sold them to the plaintiff who took them honestly and in good faith and without notice of the fraud and gave full value for them. On appeal from judgment for the defendant, the court held that if the defendant handed the notes to his agent as custodian only, and not with the intention that they should be issued as negotiable instruments, he was not estopped from denying the validity of the notes as between himself and the plaintiff and that the action was not maintainable. The court, speaking through Vaughan Williams, Lord Justice, says, page 744 (Italics are mine):

> "* * * I do not say that a point might not be made as to the notice which the plaintiff had

when he advanced money against the sale of these notes. A point was in fact made that he had notice that Telfer was acting under a power of attorney and that the plaintiff ought to have made inquiries; but I do not desire to rest my judgment on that ground * * *

I propose to deal with the case in this way. Here is a document which was in an incomplete state at the moment of its negotiation. If that note, being in that condition, had been handed to Telfer (and I leave out of consideration for this purpose the fact that Telfer and Wilson were joint attorneys) for the purpose of his making use of it, *and for the purpose of its being issued as a negotiable instrument,* I am of opinion that prima facie the defendant would have been responsible to a bona fide holder for value who had purchased the note from Telfer as the plaintiff did. *In my judgment it is of the very essence of the liability of a person signing a blank instrument that the instrument should have been handed to the person to whom it was in fact handed as an agent for the purpose of being used as a negotiable instrument and with the intention that it should be issued as such.*"

On page 745 he continues:

"*Under these circumstances the authorities seem to shew that, in the absence of a delivery of notes to an agent with the intention that they shall be negotiated, or at any rate that the agent shall have power to negotiate them, the signer is not responsible even*

to a bona fide holder for value. I may say at once that the majority of the cases cited to us are not applicable at all because most of the cases in which the person who signed the instrument was held responsible, although the instruments were negotiated in fraud of him, were cases in which either the instrument was itself complete or else there was a parting with the instrument either with authority or instructions to the agent to fill it up, or with the more general intention that he should use it for the purpose of raising money by its negotiation.

(Page 746):

"I take it that the mere fact that the signer of a negotiable instrument has been negligent as regards the care taken by him in regard to a signed paper never renders him liable to be estopped from shewing the conditions under which he parted with its possession, unless he has so dealt with the instrument or given such instructions with regard to it as raised a duty between himself and the commercial public. Mere negotiation by itself, unless it raises such a duty, cannot raise a estoppel; though it may be true to say that where the fraud of a third party has caused injury to one or two innocent parties, that one must be held liable whose negligence rendered the fraud possible. In that sense negligence is not equivalent to mere carelessness which may cause harm, but it is negligence in the performance of a duty to the person who sets up the estoppel."

Lord Justice Fletcher Moulton, on page 752, in a concurring opinion, says:

* * *

"They were handed to him as custodian only, and it is immaterial whether, when they were so handed, the defendant said that the time might come when he might desire to change their character or whether he made no remark on the subject. Both parties knew that they were delivered for safe custody only. *The essential fact which is necessary to enable the plaintiff to establish his case is therefore absent. The defendant never issued the documents with the intention that they should become negotiable instruments.* We were presented with the argument that, as regards third parties the question of the defendant's intention that Telfer should be the mere custodian of the documents or that he should have power to issue them as notes, does not affect his liability because in either view the position of the documents enabled Telfer to put them in circulation as promissory notes. If we are to measure the estoppel by the physical possibility of deception, s. 20 of the Bills of Exchange Act would contain something which would be absolutely irrelevant and which yet is made a condition of the section being applicable. That section commences with the words: 'Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill' *in other words, the intention that it shall be converted into a bill is made a condition of the operation of the section.* In my

opinion s. 20 is based upon the doctrine of common law estoppel as it existed at the date of the act, and therefore the presence of the condition as to its operation shews that this Legislature realized that the intention that the document should be converted into a bill of exchange was essential in order to render the maker liable. In other words, both the common law and the statute realized the possibility of two rival dangers—on the one hand, a person who did nothing more than sign a blank stamped paper might find himself in the position of being the maker of a bill or note; on the other hand, a man might issue an incomplete bill or note and place it in the hands of an agent with a limited authority to fill it up, and the agent might fill it up without due regard to the limitations or his authority and put it in circulation and thereby injure innocent persons. They therefore drew the line as regards, the protection of third parties in the following very reasonable and intelligible way: If the signer intended it to become a bill, it was for him to see that it was issued in accordance with his intentions, and if he did not do this, third parties would not be affected; *on the other hand, if he did not intend it to become a bill, there would be no such duty incumbent upon him,* and he would be in the same position as if he had merely signed it as an autograph. There would in that case be no *animus emittendi* and he would therefore not be liable for the act of a bailee who turned the document into a negotiable instrument.''

(b) The case of Ray vs. Wilson, (1911) 45 Can. S. C. 401, follows the doctrine of Smith vs. Prosser. In that case the owner of houses sent his agent some blank promissory note forms bearing his signature, with instructions to fill up the notes and issue them as completed notes if, when the repairs were made, he should not have money sufficient on hand to pay them. The agent fraudulently filled out the notes and used them for his own purposes. The Supreme Court of Canada held that the defendant was not liable to a holder in due course. *The protection afforded by the Act being limited to cases where the signer intended the instrument signed by him to become a bill or note and authorized its issue for that purpose.*

2. By the provisions of Section 15 of the Act the appellants are not liable. That Section provides as follows:

> Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder as against any person whose signature was placed thereon before delivery.

(1) There can be no doubt, from the uncontradicted testimony of the appellants, that the instrument was not completed when it left their hands. Both of them testified to this fact and their testimony was not denied.

(2) The appellants urge and argue that as a matter of law the instrument was never delivered. In order to create a valid delivery, it is necessary that the maker of the instrument or his duly authorized representative transfer the possession

thereof with the intent of giving effect thereto as a negotiable instrument. The instrument in question was intended to be a receipt, as testified by both appellants (case, page 12, line 21). It was intended to be delivered as a receipt to a Mr. Villicco (case, page 14, line 15). Villicco, however, never became a party to the paper (at least his signature does not appear thereon) so that the defendant Walter, while he may have had custody of the instrument, never had possession thereof and as the instrument was never delivered, this case falls squarely within the provision of Section 15.

3. Section 16 of the Act also precludes any recovery against the appellants. That Section reads as follows:

> Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto; as between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument; but where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed; and where the instrument is no longer in the possession of a party whose sig-

nature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

(1) The first clause of this Section renders the instrument incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. The testimony is clear that the instrument was intended as a receipt and that it was never delivered for the purpose of making it a negotiable instrument.

(2) The clause reading "but where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed;" if standing alone, might be construed as imposing liability upon these appellants; but the courts have repeatedly held that this clause must be construed with Section 15 and that this clause only applies to complete instruments. In the case of Holzman Cohen & Co., Inc. vs. Teague, 158 N. Y. Supplement, 211, the court held that the provision, that a valid delivery by all parties prior to a holder in due course is conclusively presumed, applies only to complete instruments, and must be construed with the section providing that an undelivered incomplete instrument will not be good in the hands of any holder.

POINT II.

Under this point will be considered specification 2, namely "that the District Court erred in ruling that these defendants-appellants are liable to the plaintiff on the instrument sued on."

1. The instrument having been materially altered it was void as to these appellants.

(1) It will be seen from Exhibit P-1, (case, page 17, line 25) that there was no printed provision for interest. The unauthorized addition of a provision for interest was an alteration under Section 125 of the Act and under Section 124 of the Act the effect of the alteration was to avoid the instrument except, however, that a holder in due course might enforce payment according to the original tenor. But the original tenor of the instrument was for a receipt for $200.00, and this sum having been paid, it is unenforceable.

POINT III.

Under this point will be considered specification 3 which reads as follows:

> "The District Court erred in its finding that these defendants-appellants signed the instrument and that these defendants-appellants were careless in signing the same."

The Trial Court, in its memorandum says:

> "In my opinion from all the evidence in the case they knew that they were signing the note and if they were careless enough to sign the note with either the name of the payee or the amount not filled in, they are still liable to the plaintiff who is a holder for value before maturity without notice of any defect in the note."

(1) The testimony in this case was very short, and the appellants respectfully urge, and argue as

a matter of law that there was no testimony or evidence in the case to justify the opinion of the Trial Court that the appellants knew that they were signing a note. Nor was there any evidence of carelessness on the part of the appellants. Mr. Walter, to whom the appellants entrusted the paper, was apparently a good friend of the appellants (case, page 12, line 26). They believed in him (case, page 12, line 27). If we were to hold the appellants negligent in this case it would mean that every time one entrusted a paper to a friend in whom he trusted or believed he would be guilty of negligence.

(2) If the appellants were negligent, so was the plaintiff. The plaintiff knew that Walter was getting the money which it had paid out. It made no investigation as to the validity of the note although it could have ascertained the truth by a telephone call. If it had, it would have discovered the fraud. It depended simply and solely upon the word of the man to whom it was advancing the money; and the plaintiff is hardly in a position to complain of the defendant's negligence in doing only what it itself did so far as trusting the party to whom it advanced the money.

(3) From a reading of the court's memorandum, it would appear that the court ruled that the appellants are estopped by reason of their carelessness. It is undoubtedly the general rule that where one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it. But this rule does not apply in cases like the one at

Bar, where the wrong was accomplished through the instrumentality of a criminal act. The courts generally hold in such cases that the crime, and not the negligent act, is the proximate cause of the injury. In the case at Bar the unauthorized filling in of a promissory note over the appellants' signature constituted a crime, and that crime, and not the signing of the paper, was the proximate cause of the deception of the plaintiff; and even where the wrongful act of one person merely affords an opportunity or occasion for the illegal acts of another, the injury in such cases is too remote.

(4) Nor can the appellants be held responsible for any negligence. They owed no duty to any one; nor, for that matter, was there any negligence, unless they were negligent in failing to suspect and treat as a forger or a criminal a man who came to them apparently as a friend, a man whom they had known for a long time, whom they considered to be a good friend and in whom they trusted, because he afterwards proved himself to be such. In other words, if the appellants were guilty of negligence every person who ever signs a paper not in its entirety, or signs a paper with a blank thereon, is guilty of negligence. The very statement of the proposition proves its absurdity.

The appellants therefore urge that there was no evidence to support this finding of the Trial Court.

POINT IV.

Under this point will be considered specification 4, namely "that the District Court erred in find-

ing that the plaintiff-appellee was the holder of the instrument without any notice of the defect therein."

I. The defendants-appellants having proved that the note was obtained fraudulently, the plaintiff, in order to recover, was required to prove that it took the instrument before maturity for value and without notice of any defects.

(1) This was the rule both at common law and under the statute. According to the uniform line of authorities, when there is shown to have been fraud in the inception of an instrument, the presumption that the plaintiff is a holder in due course is destroyed, and he must then establish his character as a holder in due course by proof.

(2) In the case of Haines vs. Merrill Trust Co., 56 N. J. Law 312, Justice Abbett, speaking for the Court of Errors and Appeals, says: (Italics are mine).

> "It has been held that where a defendant, who is the maker or endorser of negotiable paper, proves that it was obtained from him by fraud, or that it was fraudulently put in circulation, *the plaintiff must prove,* in order to recover, *that he bought it before maturity, bona fide and for value,* Duncan, Sherman & Co. v. Gilbert, 5 Dutcher, 524."

II. Section 55 of the Negotiable Instruments Act, Compiled Statutes, Vol. 3, page 3741, reads as follows:

> "The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or

force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."

1. This case falls squarely within the provision of Section 55 as the defendant Walter negotiated the instrument in breach of faith and therefore his title was defective.

(1) Section 59 of the Act provides as follows:

"Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course; but the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."

(2) This section has been construed in the case of DeJonge vs. Land Co., 77 N. J. Law 233. In that case, Chief Justice Gummere, speaking for the Supreme Court, says: (Italics are mine).

"By force of section 59 of the Negotiable Instruments Act (Pamph. 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 a holder in due course. The effect, therefore, of the rejected proof, would have been to *destroy the then existing presumption* that the plaintiffs were 'holders in due course' *and to throw upon them the burden* either of proving that fact or of overcoming the proof of the defendant that the note was given for Bright's personal debt, and that his act in making it was not authorized or ratified by the company, provided that the making of the note under the conditions recited rendered it invalid in the hands of McLoughlin, the payee. That it did have such effect is beyond dispute."

(3) In the case at Bar, the plaintiff did no more than offer the note in evidence and its manager testified that it took the note on the date it was made and that it paid $400.00 for the note. There was not one word of testimony nor a scintilla of evidence that the plaintiff took the note in good faith or without notice of defects or of the fraud by which the paper was procured from the appellants. And if the plaintiff was a holder in good faith and without notice, certainly knowledge of such fact would lie peculiarly with the plaintiff. It would have been a comparatively simple matter for the plaintiff's manager, who was actually in court and took the stand, to testify to the circumstances under which the plaintiff purchased the note. The note was a $500.00 note and the plaintiff purchased it for $400.00. No one but the plaintiff knows under what circumstances the note was bought. Certainly the appellants do

not know what, if any, conversation was had at the time the note was bought or whether the facts connected with it were disclosed. This case bears out and proves the wisdom of the rule of the common law and of the statute in requiring a plaintiff to prove that he is a holder in due course where a prior title was defective.

POINT 5.

The purpose of this point is to supplement Points 1 and 3 and to show wherein it is believed the Supreme Court erred in its opinion.

The Supreme Court says (Case. Page 22, line 30):

> "The claim of the defendants was that they signed a receipt for $200.00. The trial judge found as a fact this was not so. The finding of fact by the Trial Court is supported by reliable evidence. With that conclusion of the Trial Court on the testimony or record we concur. The testimony of the defendants is uncertain and unreliable."

The only theory upon which the Trial Court could have found that the appellants signed the note and knew they were signing it and they did not sign it in order to have it used as a receipt, would be by entirely disregarding the testimony of the appellants. They testified very clearly that the instrument was blank when they signed it and that it was intended as a receipt. (Case. Page 11, lines 20-40. Page 12, lines 17, 30, 40. Page 13, line 13. Page 14, line 12. Page 15, lines 28-33.) This testimony, that the paper was intended to be a receipt, is further corroborated by

the circumstance that the appellants actually paid back the money for which the paper was supposed to be a receipt.

The appellants urge and argue as a matter of law that the Trial Court could not properly reject this uncontradicted testimony of the defendants. Where there is on one side in the court below direct testimony as to the existence of a fact, and there is no counter testimony offered on the other side, and the testimony of the witnesses offered to prove such fact is not impeached by proof of character, or shaken upon cross examination, or rendered suspicious by the inherent improbability of the story, then, upon review, the legal inference will arise that such fact exists and a judgment in opposition thereto will be reversed. Cooley vs. Barcroft, 43 N. J. L. 363; Roeber vs. Society, 47 N. J. L. 237; at page 241; Tracy vs. Tracy, 62 N. J. E. 807.

The cases of Second National Bank vs. Smith, 91 N. J. L. 531; Clark vs. Public Service, 86 N. J. L. 144, and Schmidt vs. Marconi, 86 N. J. L. 183, do not deny this principle of law. In the Second National Bank case the court held that the jury did not have to believe the undenied testimony of the witness. But this holding was based on the fact that the circumstances of the case contradicted the testimony. In the Clark case the maxim of *falsus in uno* was involved. In the Schmidt case, the testimony of the uncontradicted witness, even if true, did not conclusively establish the point attempted to be made.

In the case at Bar the defendants testified very clearly that the paper was blank when they signed it and that it was intended for a receipt. While it is true that the defendants are illiterate and their testimony is not grammatically perfect, nevertheless it was not shaken on cross examination nor is it inherently improbable, so that it is hard to understand just what the Supreme Court found in the testimony (which covers only five pages of the printed record) that led the court to say that it was uncertain and unreliable.

The Supreme Court, near the conclusion of its opinion, mentions three cases and says that they are not in point. The appellants did not claim before the Supreme Court and they do not urge here that any of these cases is in point.

Conclusion.

The appellants respectfully submit that the learned Supreme Court erred in affirming the judgment of the District Court whereas it should have reversed the said judgment. They therefore urge that the judgment of the District Court ought to be reversed as against the appellants and that judgment final in this court be entered in favor of the appellants.

Respectfully submitted,

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JOSEPH ZEMEL,
Of Counsel.

New Jersey Court of Errors & Appeals

UNIVERSAL FINANCE CORPORATION,
Plaintiff-Respondent,
vs.
MICHAEL KUNA, *et al.*,
Defendants-Appellants.

SUPPLEMENTAL MEMORANDUM OF APPELLANTS.

This memorandum is confined to the excerpt from the case of Harris vs. Barrett, 75 N. J. E. 386, quoted by the respondent as follows:

> "Without attempting to formulate a doctrine I find that the trier of facts must be left free to believe or not to believe testimony which is subject to question."

This principle is not applicable to the case at Bar. In the cited case there was a variation between the testimony of two witnesses for the complainant upon one or more matters and the Vice-Chancellor found that the matters were not such that there could be any honest difference of opinion about them. There was further testimony which inferentially, at least, contradicted the testimony of the witness in question and the Vice-Chancellor would have been entitled to discredit the testimony on the theory of *falsus in uno.* Apparently the case of Harris vs. Barrett was not appealed to this court; and so far as counsel for the appellant has been able to learn, has not been cited with approval by this court.

This court has, however, on numerous occasions, had before it a similar question with reference to believing witnesses.

In the case of Day vs. Hopping, 95 N. J. E. 680, this court says, at page 681:

> "In Berckmans v. Berckmans, 16 N. J. Eq. 122, Chancellor Green (at p. 127) states the legal rule thus: 'Express testimony cannot be rejected on the sole ground of its improbability.' This case was affirmed by this court in 17 N. J. Eq. 453.
>
> We said, in Baldauf v. Russell, 88 N. J. Law 303 (at p. 306), the following: 'It is true that the trial judge certifies that, after the cross examination of the witness, he concluded that his testimony was unworthy of belief. But the testimony of a competent witness cannot be capriciously rejected. There must appear some good reason for such action, as, for example, that his story was inherently improbable, or that it was contradicted by some other testimony or by some proven fact or circumstances, or by testimony impeaching his truth and veracity.' "

It is therefore respectfully submitted that the cases cited by the respondent are not controlling and that the judgment of the Supreme Court should therefore be reversed.

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New Jersey Court of Errors and Appeals

UNIVERSAL FINANCE CORPORATION, a corporation of New Jersey, *Plaintiff-Appellee,* *vs.* MICHAEL KUNA, *et al.*, *Defendants-Appellants.*	*Action at Law.* *On Appeal from Supreme Court.*

BRIEF OF PLAINTIFF-APPELLEE.

Facts.

This suit was brought by a holder in due course of a $500 promissory note. Fred Walter, the payee of the note which was signed by the defendants, Michael Kuna and Eva Kuna, sold it to the plaintiff for a valuable consideration before maturity, and endorsed and delivered the note to the plaintiff. The note was not paid at maturity, and when payment was refused, the plaintiff instituted this suit. The defense interposed by the defendants Michael Kuna and Eva Kuna, was that the paper was not intended by these defendants to be a promissory note, that they signed the paper and delivered it to the payee, Fred Walter, believing it to be a receipt, that the plaintiff was not a holder in due course.

The Court rendered a judgment for plaintiff in the sum of $500 plus costs and found as a matter of fact that the defendants knew they were signing a promissory note and that the plaintiff was a holder for value before maturity, without notice of any defect in the note.

POINT ONE.

The District Court did not err in giving judgment in favor of the plaintiff and against these defendants-appellants in the sum of $500 and costs.

1. It is well settled that findings of fact by the trial court will not be disturbed by the Appellate Court where there is any evidence to support them.

A few of the many cases emphasizing this rule are:

Matthew v. *Lewis*, 138 Atl. 511;
Whigham v. *Seacoast Finance Corp.*, 145 Atl. 240;
Aird v. *Hyde*, 142 Atl. 308;
Bell v. *Smith*, 143 Atl. 819;
Miller v. *Grossman*, 140 Atl. 292;
Resky v. *Meyer*, 119 A. 68; 98 L. 168.

In the case at bar the plaintiff was presumed to be a holder in due course and he did not have to offer any testimony to this effect. The defendant offered testimony to show that this was not true, thereby raising a question of fact which the Court determined in favor of the plaintiff. No evidence need be offered by the plaintiff, he may rest on the presumption afforded him by the Negotiable Instruments Act, and if the defendant attempts to rebut that presumption, a question of fact is raised, and when once determined by the trial court it will not be disturbed on appeal.

Therefore the finding by the lower court that the plaintiff is a holder in due course is not reviewable since it is a finding of fact based upon evidence before the Court.

2. The defendants in their brief under Point 1, Section 1, say that both at common law and under the Uniform Negotiable Instruments Act these defendants are not liable.

Section 57 of the Negotiable Instruments Act makes them liable:

> "A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon."

The next point raised by the defendants in their brief (Point # I, Sections 1 and 2) is that there was no delivery of the instrument and the contract is incomplete until delivery.

This objection is set aside by Section 16 of the Negotiable Instruments Act:

> "Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto; as between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument; *but where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed;* and where the instrument is no longer in the possession of a party, whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved" (P. L. 1902, p. 587).

The Court found that the plaintiff was a holder in due course, therefore a valid delivery is conclusively presumed.

This section (No. 16) was considered in the case of *Buzzell* v. *Tobin*, 86 N. E. 923, where it was held that where the plaintiff was an indorsee of a check in due course with all the rights appertaining to such title, it was no defense as against him that the check had been unlawfully put into circulation.

In the case of *Massachusetts National Bank* v. *Snow*, 72 N. E. 959, this section was construed to mean that a negotiable instrument is valid in the hands of a holder in due course, even though taken from a thief.

The case of *Foster* v. *MacKennon*, L. R. 4 C. P. 704, cited by the defendants-appellants in their brief to show the old common law rule (on p. 4 of their brief) does not apply to the case under consideration. In the case cited, the jury found as a matter of fact that the defendants did not intend to endorse a bill of exchange, and on that finding, the Court gave judgment for the defendant. In the case under consideration the Court found that the defendants-appellants knew what they were signing, and that they intended to sign a promissory note.

The next point raised by the defendants-appellants in their brief is that the Uniform Negotiable Instruments Act does not impose any liability upon them, and in support of this contention, they cite Section 14 of the Negotiable Instruments Act, and a number of New York cases.

From a reading of Section 14 of the Negotiable Instruments Act, it will readily be seen that the defendants-appellants are liable to the plaintiffs who are holders in due course.

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

The defendants-appellants cite the case of *Ribner* v. *Kleinberg*, 122 N. Y. Sup. 239, to sustain their contention. In that case the *defendant proved to the satisfaction of the Court* that he was induced to sign the note because it was represented to him that it was a receipt, and because the note was without consideration. The Court found for the defendant. This case differs from the one under consideration in that the Court in the instant case found that the defendant did intend to sign the note. The case of *Ribner* v. *Kleinberg* does not aid the defendants, but rather sustains the contention of the plaintiff-appellee in that it emphasizes the rule that where a maker intended to sign a negotiable instrument, he is liable on it.

The defendants-appellants then state that the plaintiff should have proved the time when it became a party to the instrument, whether prior or subsequent to its completion, and they cite the case of *Madden* v. *Gaston*, 121 N. Y. Sup. 951. The facts of that case differed from the instant case in that the plaintiff in the case cited by the defendants-appellants was the person to whom the checks were delivered in blank. In the case at bar the plaintiff is a holder in due course, and when the note was presented to it the note was complete. The plaintiff was not obliged to show when it received the note. An examination of the note itself will disclose an endorsement showing that it bears the bank stamp of the New Jersey National Bank and Trust Company of Newark, New Jersey, March 16, 1929, which was two days before its maturity, and the testimony in the case indicates that it was received by plaintiff shortly after its execution (C. 10, l. 35). The Court found as a matter of fact, that the plaintiff was a holder in due course, and under Section 52 of the Negotiable Instruments Act, a holder in due course is one who has taken the instrument under the condition that it is complete and regular upon its face.

The next point raised by the defendants-appellants in their brief (p. 8, section 3) is that under Section 14 granting that plaintiff was a holder in due course, it could only enforce the instrument for $200, and since that amount was paid by the defendants, they are not liable.

A mere reading of Section 14 will show the untenability of the defendants' contention, for if their contention was sound, the provision in Section 14 in regard to a holder in due course would be a nullity.

The next point raised by the defendants-appellants in their brief (p. 8, section 4) is that the authority implied to fill in blanks is only *prima facie*. This contention is set at rest by Section 14 of the Negotiable Instruments Act (*supra*).

The defendants next cite an English case, *Smith* v. *Prosser*, 1907, 2 K. B. 735, to support their contention that defendants are not liable on the instrument. In that case the Court laid down the test in cases of this kind to be (p. 13, l. 23):

> "If the signer intended it to become a bill, it was for him to see that it was issued in accordance with his intentions, and if he did not do this, third parties would not be affected; on the other hand, if he did not intend it to become a bill, there would be no such duty incumbent upon him, and he would be in the same position as if he had merely signed it as an autograph."

The trial court found that the defendants here intended to sign a note, and that they were negligent, and under the test set forth above the defendants are liable to the plaintiff.

In the case of *Ross* v. *Oland*, 29 Ohio 473, the Court said:

> "If a person negligently signs and delivers to another a printed form of a negotiable promissory note containing blanks, without knowing it to be such, he will be estopped as against a *bona fide* holder from denying his liability."

This is emphasized by the following excerpt:

> "One who signs his name to a blank piece of paper and intrusts this signature to another with authority to fill up the paper, is liable to a *bona fide* holder of a negotiable instrument which has been written on the paper, even though the authority given has

been exceeded as to the amount or conditions of the instrument, *or even as to its character*, or where the authority given was revoked before the note was negotiated." 8 C. J. 733.

The following cases are cited to illustrate the above rule:

(1) Where one intrusted another with his signature in the blank space which was to be written an order for an evaporator, but the space was, in violation of authority, filled up as a promissory note, a *bona fide* holder might recover. *McDonald* v. *Muscatine National Bank*, 27 Iowa 319.

(2) In the case of *Breckenridge* v. *Lewis*, 84 Me. 349; 24 Atl. 864, the following facts appeared: The defendant signed her name on a blank paper to enable Morse to write an order on a savings bank where the defendant had funds, as the necessities of her business intrusted to Morse might require. Morse filled out the blank to be a promissory note and had the plaintiff endorse it for the accommodation of Morse who then negotiated the note. The plaintiff paid the note at maturity and now sues the defendant, the maker. The defense set forth that the note was fraudulently written above the defendant's name, signed on a blank piece of paper and intrusted to Morse. The Court allowed the plaintiff a recovery, saying: "One who intrusts his signature to another for commercial use, that is, to have some business obligation written over it, becomes holden upon a negotiable promissory note fraudulently so written by the person so intrusted with it and negotiated to an innocent holder. * * * An innocent holder, in such a case, is one who has received the note before maturity for value, and without actual knowledge of the fraudulent inception."

The defendants-appellants in their brief (p. 14, section 2) raise the point that under Section 15 of the Negotiable Instruments Act, they are not liable.

This section refers to a case where a person signs his name to an incomplete instrument and the instrument is stolen from him and filled up without authority, as is shown by the case of *Holzman, Cohen & Co., Inc.* v. *Teague*, 158 N. Y. Sup. 211. The note in the case under consideration was not stolen from the defendants. Therefore this section does not apply.

The lower court found that the plaintiff is a holder in due course, therefore, under Section 16 of the Negotiable Instruments Act, a valid delivery will be conclusively presumed and Section 52 of the Negotiable Instruments Law provides that a holder in due course acquired the instrument when it was complete and regular on its face.

The appellants in their brief, have based numerous objections relating to their liability on this note, on the question of an incomplete delivery, or non-delivery of the note in question. This defense was not raised in the court below and therefore cannot be urged on appeal.

> "A question not presented and argued in the court below will be held to be waived and abandoned, and will not be considered in an appellate tribunal, although it is otherwise if the question goes to the jurisdiction, or involves public policy. *State* v. *Snell*, 96 N. J. L. 299, cited in *State* v. *Mohr*, 3 A. R. 340 (E. & A.)."
>
> "An attorney cannot take one position at the trial, of a case, and assume another position in the appeal thereof. *Oxford Foundry Co.* v. *Geo. A. Meyers & Co.*, 3 Misc. R. 1212 (SC)."

The defendants-appellees then raise the objection (page 17, Sec. 1) that the note was materially altered.

Sec. 125, upon which defendants base their objections provides that:

> "Any alteration which changes * * * or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration."

It will readily be seen, granting for the purpose of argument, that there was an addition of the interest provision, that this was not such an addition that would alter the effect of the instrument, as can be ascertained from the note, the interest provision calls for six per cent., the legal rate.

The defendants did not raise the question of alteration of the note in the trial in the lower court, and therefore cannot urge it here.

On page 18 of the defendants-appellants' brief, Sec. 3, they set forth the general rule that when one of two innocent persons must suffer for the acts of a third, he who has enabled such third person to occasion the loss, must sustain it, but say that where a wrong was committed through the instrumentality of a criminal act, this rule does not apply. This exception, however, does not apply where the maker has reposed confidence in the person whose wrongful act occasioned the loss, and where the instrument was incomplete when delivered. 8 *C. J.* 736.

In the instant case the *defendants* admit that they *trusted Walter*, and that they signed the instrument in blank; they are therefore *estopped* by their own acts.

The next point raised by the defendants-appellants (p. 20), is that when there is shown to have been fraud in the inception of an instrument, the

presumption that the plaintiff is a holder in due course is destroyed, and he must then establish his character as a holder in due course by proof.

In the case of *Fifth Ward Savings Bank* v. *First National Bank*, 48 N. J. L. 513, Justice Depue, speaking for the Court of Errors and Appeals, said:

> "It is undoubtedly true that where the maker or indorser of negotiable paper proves that it was obtained from him by fraud, or that it was fraudulently put in circulation, the burden is shifted. The mere possession of negotiable paper obtained or issued under such circumstances is not enough. The plaintiff, in order to recover on such paper, must prove that he took it before maturity, bona fide and for value.
>
> *But when in such a case the plaintiff has shown that he became the holder of the paper, before maturity, and for value, in due course of business, he has established all the facts that are necessary to fulfill the burden of proof laid upon him. From these facts the law will imply that he is a bona fide holder, and unless there can be circumstances disclosed in the case, or produced by the defendant by way of rejoinder, from which bad faith on his part may be inferred, the court should withdraw the case from the jury, and direct a verdict in favor of the holder of the paper.*"

The doctrine laid down in this case has been followed by the Court of Errors and Appeals in the case of *Haines* v. *Merrill*, 56 N. J. L. 312.

That plaintiff showed that it obtained the instrument before maturity, for value and in due course of business, will be readily ascertained from a reading of the testimony (Case, 10, l. 34).

When fraud in the inception of an instrument is proved, that raises a question of fact for the Court or jury to decide, whether the plaintiff be-

came the holder of the note before maturity, bona fide and for value. This principle was laid down in the case of *Haines* v. *Merrill Trust Co., supra.*

In the instant case, plaintiff put the note in evidence, and testified that it paid a valuable consideration therefor, and that it took the note before maturity, and then rested its case, clothed with the presumption afforded it by the Negotiable Instruments Act, namely, that it was a holder in due course. The defendants introduced evidence to show fraud in the inception of the instrument, and rested. This raised two questions of fact, namely, (1) did the defendants sufficiently prove fraud in the inception, so that the burden of proving that it was a holder in due course was shifted to the plaintiff? (2) If defendants did so, did the plaintiff sustain its burden? These were questions of fact which were entirely within the province of the lower court, and it having decided them, its decision is not reviewable since there was conflicting evidence.

POINT TWO.

It is well settled that a note fraudulent at its inception, cannot be invalidated in the hands of a party taking it for value before maturity.

This rule is emphasized by the cases of:

Hamilton v. *Vought*, 34 N. J. L. 187;

Second National Bank of Reading v. *Hewitt*, 59 N. J. L. 57;

Barrington v. *Rice*, 75 N. J. L. 806.

The question raised in the case of *Hamilton* v. *Vought*, *supra*, was whether the title of a holder of a negotiable paper, acquired before it was due, for a valuable consideration, is affected by the fraud of a prior party, without proof of bad faith of such holder. In that case it was held:

"1. A note fraudulent in its inception, cannot be invalidated in the hands of a party taking it for value before maturity, unless actual fraud can be shown in such party taking it.

2. That such note was taken under suspicious circumstances will not avail to defeat it, unless such circumstances are sufficient to prove mala fides in the holder of the paper."

This view was affirmed in the case of *Second National Bank of Reading* v. *Hewitt, supra,* where it was held that: "Negotiable paper fraudulent in its inception, is not invalidated in the hands of one taking it for value, before maturity, unless there be actual fraud."

In the case of *Barrington* v. *Rice, supra,* the Court of Errors and Appeals laid down the following rule:

"Bad faith, not merely notice of suspicious circumstances, must be brought home to the holder for value of a negotiable note whose rights accrued before maturity, in order to defeat his recovery upon the note on the ground of fraud in its inception."

The trial court had the best opportunity to examine the demeanor of the witnesses on the stand, and upon the conclusion of the case summarized the testimony in a manner which plaintiff regards as correct.

Just to quote a short excerpt from the State of the Case will be enlightening:

"Cross examination by Mr. Alenick:

Q Before you signed this paper, Mrs. Kuna, you told Mr. Walter you needed some money, is that right? A Yes, because he asked me—

Q Is that right?

The Court: That is her testimony. She wanted to borrow money. She spoke to Walter about it. Walter said 'I don't want

to sign for you. I have lost a lot of money doing business that way. I know a man who will lend you the money. You will have to sign a paper for it.' She then signed the note in blank, gave it to Walter, and Villicco sent her two hundred dollars some time after. She said she paid it back. Is that the case?

Mr. Zemel: Yes. Defendant rests.

The Court: Send me your cases, gentlemen, in the form of a letter, and send a copy to the other side."

After considering the case and the memoranda submitted by the attorneys, the Court rendered an opinion in which it stated (C. 18, l. 30):

"In this case, the defendants borrowed money and signed a note. They now claim that the note was blank when they signed it and that they thought they were signing a receipt for the money, which was loaned to them.

In my opinion, from all the evidence in the case, they knew that they were signing the note and if they were careless enough to sign the note with either the name of the payee or the amount not filled in, they are still liable to the plaintiff, who is a holder for value before maturity without notice of any defect in the note. $500.00."

POINT THREE.

The Supreme Court was correct in affirming the decision of the District Court.

In Point 5 of the appellants' brief, counsel for the appellants fails to indicate wherein the Supreme Court erred in affirming the judgment of the District Court. What in effect, this point seeks to do, is to have the Court of Errors and Appeals set aside the verdict of the trial court as being against the weight of the evidence.

It is elementary that the findings of fact by the trial court will not be reviewed by the appellate court where there is any evidence to support them. The Supreme Court, after examining the testimony taken in the District Court found that the verdict of the District Court was supported by evidence and therefore refused to disturb its findings of fact. Now the appellants are asking this Honorable Court to review the judgment of the Supreme Court because that Court found that there was evidence to support the verdict of the District Court; it is in effect, asking this court to say whether there is any evidence to support the verdict of the District Court.

The rule stated by the appellants (Appellants' Brief, p. 24, l. 7) that: "Where there is on one side in the Court below direct testimony as to the existence of a fact, and there is no counter testimony offered on the other side, and the testimony of the witnesses offered to prove such fact is not impeached by proof of character, or shaken upon cross examination, or rendered suspicious by the inherent improbability of the story, then, upon review, the legal inference will arise that such fact exists and a judgment in opposition thereto will be reversed," is true but has no application to the instant case. In the cases cited by the appellants, the testimony in question was absolutely unimpeached, uncontradicted and unshaken upon cross examination and the appellate court in reaching its decision made special mention of the above facts as the reason for arriving at its conclusion.

In the instant case, the testimony of the appellants was impeached and was shaken upon cross examination, the facts testified to by the appellants were improbable when the trial court con-

sidered them with the other facts in the case and therefore raised a doubt in the lower court's mind as to the credibility of the witnesses.

It is well established in this State that the credibility of a witness is for the jury or the court sitting without a jury, and where the issue depends upon the facts, the existence of which is not admitted, even though testified to by a credible witness, who is unchallenged, the question is for the jury. *Clark* v. *Public Service,* 86 N. J. L. 144; *Schmidt* v. *Marconi,* 86 N. J. L. 183; *Second National Bank* v. *Smith,* 91 N. J. L. 531.

In the case of *Harris* v. *Barrett,* 75 N. J. E. 386, the facts were somewhat similar to the instant case in that two witnesses testified as to a material fact, the defendant was unable to contradict said testimony but Vice-Chancellor Garrison refused to believe the uncontradicted testimony of the witnesses and said:

> "Without attempting to formulate a doctrine, I find that the trier of facts must be left free to believe or not to believe testimony which is subject to question."

In the case of *Quock Ting* v. *United States,* 140 U. S. 417, the facts were precisely the same as the instant case. In that case there was uncontradicted testimony as to a material fact by two witnesses and the Court sitting without a jury, refused to believe said witnesses. An appeal was taken from the Court's action to the United States Supreme Court where Mr. Justice Field speaking for that Court said:

> "Undoubtedly as a general rule, positive testimony as to a particular fact, uncontradicted by anyone, should control the decision of the court; but there are many exceptions. There may be such inherent improbability in the statements of a witness as to induce the court or jury to disregard his testi-

> mony even in the absence of direct contradictory conflicting testimony. He may be contradicted by the facts he states as completely as by direct adverse testimony; and there may be so many omissions of his own conduct as to discredit his whole story. His manner, too, of testifying may give rise to doubts of his sincerity and create the impression that he is giving a wrong coloring to material facts. All these things may be considered in determining the weight which should be given to his statements, although there be no adverse verbal testimony adduced. * * * For these reasons that the court below had the witnesses before it and could better judge of the credibility to which they were entitled, we are not prepared to hold that its finding was not justified."

The District Court had the witnesses before it; it could better judge of the credibility to which they were entitled and after hearing the testimony of the appellants upon both direct and cross examination and weighing such testimony with the general demeanor of the appellants on the stand and the improbability of such testimony when considered with the other facts in the case, the trial court had an absolute right to disbelieve the appellants when they testified that they did not intend to sign a note but only intended to sign a receipt.

CONCLUSION.

A cursory glance through the testimony adduced at the trial of the case now before the Court, will lead this Honorable Court to the same conclusion reached by the Supreme Court which decided that the findings of fact made by the District Court were justified and should not be disturbed.

It is, therefore, respectfully submitted that the decision of the Supreme Court be affirmed.

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