INDEX

New Jersey Court of Errors and Appeals

Notice and Grounds of Appeal

(Filed 191)

NEW JERSEY SUPREME COURT

CAMDEN COUNTY

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA. Plaintiff, vs. WILLIAM E. CRAMER, Defendant.	Action at Law.

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To Grey & Archer, Esqs., Attorneys for The People's National Bank of Tarentum, Pa.:

TAKE NOTICE, that the defendant, William E. Cramer, appeals to the Court of Errors and Appeals fom the whole of the judgment entered in this cause on the following grounds:

30

1. For the reason that a verdict was directed by the Court in favor of the plaintiff.

2. For the reason that the case should have been submitted to the jury.

3. For the reason that the findings of the Court are contrary to law.

JOSEPH BECK TYLER,
Attorney for Appellant.

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Summons

The State of New Jersey to
Wm. E. Cramer.

You are summoned to answer the annexed complaint of The People's National Bank of Tarentum, Pa., in an action at law in the Supreme Court

10 (Seal)

And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court at Trenton, within twenty days after the service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness: William S. Gummere, Chief Justice of the Supreme Court, at Trenton, this 6th day of July, 1916.

20

WM. C. GEBHARDT,
Clerk.

Complaint

(Filed July 1916)

SUPREME COURT OF NEW JERSEY

CAMDEN COUNTY

10

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA.
Plaintiff,
vs.
WILLIAM E. CRAMER,
Defendant.

Plaintiff, The People's National Bank of Tarentum, Pa., a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and having its principal office at Tarentum, Pa., says that; 20

1. On November 26th, 1915, the defendant, Wm. E. Cramer, made and delivered his note of that date for $696.98 payable to Fidelity Glass Company or order, sixty days from date at the People's National Bank of Tarentum, Pa., a copy of which is hereto annexed. 30

2. The payee afterward endorsed said note to the plaintiff.

3. On the day the same fell due, it was presented for payment at the place where it was payable, but it was not paid and was duly protested.

4. Notice thereof was duly given to Wm. E. Cramer.

5. On February 14th, 1916, plaintiff received the sum of $199.85 on account of said note, leav- 40

ing a balance due on said note of $497.13.

6. Protest fees on the protest of said note amount to $1.75.

7. Said note is now the property of plaintiff and the balance due on same is still unpaid.

10 Plaintiff demands as damages the sum of $497.-13 together with interest on $696.98 from January 25th, 1916 to February 14th, 1916, and interest on $497.13 from February 14th, 1916 to date and also protest fees of $1.75 together with interest thereon from January 25th, 1916.

GREY & ARCHER,
Attorneys for plaintiff.

20

Copy of Note

Annexed to Complaint

$696.98 Tarentum, Pa., November 26, 1915.
Sixty days after date I promise to pay
To The Order of Fidelity Glass Co. at
The Peoples National Bank
of Tarentum
30 Six hundred ninety-six and 98/Dollars
Without Defalcation for Value Received.
WM. E. CRAMER.

No. 22270 Due Jan, 25.
(Endorsed,)
Fidelity Glass Company,
(Signed) John P. Crawford, Treas.
(14c in revenue stamps)
2/14/16 Paid on account $199.85.

40

Answer

(Filed July 19, 1916)

SUPREME COURT OF NEW JERSEY

CAMDEN COUNTY 10

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA. Plaintiff, vs. WILLIAM E. CRAMER, Defendant.	Action at Law.

Defendant, WILLIAM E. CRAMER, of the City and 20 County of Camden and State of New Jersey, says that:

1. He admits the first paragraph of the complaint.

2. He denies the second paragraph.

3. He has no knowledge of the facts alleged in the third paragraph.

4. He denies the fourth paragraph.

5. He states that he paid $200.00 on account of said note when it became due, but he denies 30 that there is any balance due for reasons hereinafter stated.

6. He has no knowledge of the facts alleged in the sixth paragraph.

7. He has no knowledge of the transfer of said note to the plaintiff and denies that there is any balance due thereon to the plaintiff.

FIRST DEFENSE

1. The Fidelity Glass Company, on September 40

27th, 1915, made a contract in writing with him as follows:

FIDELITY GLASS COMPANY

Order No. 17 September 27, 1915.
10 Sold to WILLIAM E. CRAMER,
Town and State Haddon Ave. & Line St.,
Camden, N. J.

Terms: 1/2 in 30 days, Balance in 60 days.

QUANTITY	ARTICLES	PRICE
	Ship to Eorer St. Siding,	
	Cooper's Point, Penna. R. R.	
5	Carloads Private Mould # 2	
20	Tall S Style, Milks, Packed	
	in Bulk	
	1/4 Pint Stock Mould	2.45
	1/2 " " "	2.50
	Pint Private "	2.60
	Quart " "	4.10

F. O. B. Camden, N. J.

FIDELITY GLASS Co., agrees to meet any lower prices quoted W. E. Cramer or cancel any balance on this agreement.

30 FIDELITY GLASS Co., guarantees their bottles to be of highest quality and satisfactory to W. E. Cramer. In the event of defective bottles shipped to W. E. Cramer he can cancel this agreement.

All conditions must be expressed in writing.

No verbal agreements will be recognized.

All orders subject to acceptance by Fidelity Glass Co., at its Tarentum office.

40 Signature of Buyer WM. E. CRAMER.

2. That thereafter the Fidelity Glass Company shipped to the defendant a car-load of bottles in pursuance of such contract and billed same as follows:

FIDELITY GLASS COMPANY

Sold to Wm. E. Cramer,
Haddon Ave. & Line St.,
Salesman—Dennis. Camden, N. J.

Order	Package	Gross	Description	Price	Extension	Total
205	9	9	1/4 Pint Milk Stock Mould Crated	2.45	22.05	
			1/2 " Milk Stock Mould Crated	2.50	23.75	
			Pint Milks P/M "S" Mould Bulk	2.60	256.53	
			Quart Milks P/M "S" MouldBulk	4.10	318.60	
			Car P. L. # 562180.			
			Prepaid.		620.93	620.93

That in settlement of said bill the defendant executed the note set forth in the bill of complaint and paid $200.00 on account thereof, leaving amount unpaid for the said carload of bottles of $420.93 and no more.

3. That prior to or at the time the note set forth in the complaint was transferred to the plaintiff the Fidelity Glass Company became insolvent and discontinued its business, of which facts the plaintiff had notice and full knowledge

and also prior to and at the time the note set forth in the complaint was transferred to the plaintiff, the said Fidelity Glass Company was indebted to the defendant in the sum of six hundred and forty dollars ($640.00) for breach of contract set forth in first paragraph of this defense, of which facts the plaintiff had notice and full knowledge at the time it is alleged to have purchased said note.

4. That James P. Crawford was the cashier of the plaintiff and also the treasurer of the Fidelity Glass Company at the time said note was transferred to the plaintiff and the Fidelity Glass Company made a voluntary application for the appointment of a receiver on December 3d, 1915, and the papers for said application were prepared several days prior to that time and the affidavit thereto made on December 2nd, 1915. The plaintiff had notice and full knowledge of the then financial condition of the Fidelity Glass Company and that voluntary application was being made for the appointment of a receiver at the time it is alleged to have purchased the aforesaid note.

5. That the defendant had an offset to said note in the hands of the Fidelity Glass Company amounting to six hundred and forty dollars ($640.00) at the time it was purchased by the plaintiff, of which fact the said plaintiff had full knowledge and notice when it is alleged to have purchased said note. Arising out of the same cause of action for which the note was given, said

plaintiff knew that the defendant claimed that there was nothing due or to become due on said note to the Fidelity Glass Company.

6. That by reason of the breach of contract set forth in paragraph one (1) by the Fidelity Glass Company and its failure to complete the same and deliver the goods therein purchased, the defendant has been obliged to go into the market and buy other bottles to take the place thereof, at a much higher price, equal, at least, to the amount of plaintiff's claim.

7. That note set forth in complaint is endorsed by Fidelity Glass Company and plaintiff has filed a claim thereon with R. O. Stillwell, Receiver for said Company, which claim has been allowed and will be paid in full.

8. That on appointment of receiver for Fidelity Glass Company, the plaintiff seized the bank balance of Fidelity Glass Company in amount sufficient to pay balance due on said note. Said bank balance to credit of Fidelity Glass Company was in part the proceeds of discount of said note and the note has thereby been paid in full. The alleged transfer to the bank being a scheme to defeat the right of the defendant to a counter-claim against the Fidelity Glass Company.

JOSEPH BECK TYLER,
Attorney for Defendant.

Reply

(Filed July , 1916)

SUPREME COURT OF NEW JERSEY

CAMDEN COUNTY

10

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA. Plaintiff, vs. WILLIAM E. CRAMER, Defendant.	Action at Law.

20 The plaintiff, The People's National Bank of Tarentum, Pa., replying to defendant's answer, says:

1. It has been informed since the discounting of the note on which suit is brought, that the allegations contained in Paragraph 1 of the defense are true, and plaintiff believes them to be true.

2. It has been informed, since the discounting of the note on which suit is brought, that the allegations contained in Paragraph 2 30 of the defense are true, and plaintiff believes them to be true. But plaintiff denies that the note set forth in the complaint was given in payment of said bill alone, and denies that the amount left unpaid was $420.93, and no more.

3. It denies the allegations contained in Paragraph 3 of the defense, except the fact that said Fidelity Glass Company became insolvent and 40 discontinued its business, which event took place

subsequent to the discounting of said note by plaintiff.

4. It admits, as alleged in Paragraph 4 of said defense, that James P. Crawford was Cashier of the Plaintiff and Treasurer of the Fidelity Glass Company at the time plaintiff purchased said note, and that the Fidelity Glass Company made a voluntary application for the appointment of a receiver on December 3, 1915, but it denies that said papers were prepared several days prior to that time, and that plaintiff had notice and full knowledge of the financial condition of the Fidelity Glass Company and that application was being made for the appointment of a Receiver at the time when plaintiff discounted said note.

5. It denies the allegations contained in Paragraph 5 of the defense.

6. It denies the allegations contained in Paragraph 6 of the defense.

7. It denies the allegations contained in Paragraph 7 of the defense.

8. It denies the allegations contained in Paragraph 8 of the defense.

GREY & ARCHER,
Attorneys for Plaintiff.

Testimony

NEW JERSEY SUPREME COURT

CAMDEN COUNTY

10 THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA.
Plaintiff,
vs.
WILLIAM E. CRAMER,
Defendant.

December Term, 1916.
No. 42.

Camden, N. J., December 20, 1916.

20

Met on the above date in the Circuit Court Room, County Court House, before LLOYD, J., and a jury.

Counsel appeared as follows:
F. Morse Archer, Esq., and
Edward T. Currey, Esq., for Gray & Archer, for the plaintiff.
J. B. Tyler, Esq., for the defendant.

30 Mr. Archer opens for the plaintiff:

Gentlemen of the Jury: This suit is on a note, a promissory note, dated the 26th day of November, 1915, for $696.98, made by the defendant, Mr. Cramer, to the order of the Fidelity Glass Company, endorsed by the Fidelity Glass Company, and discounted by the People's National Bank of Tarentum, which is the plaintiff in this

suit. The amount of the plaintiff's claim, based on the note, is the face of the note, $696.98, less a payment of $199.85 which was paid on account on the 14th of February, 1916. The balance due on that note, $497.13, is the principal sum due, with interest on the larger amount for a few days, from January the 26th to February the 14th of this year, and interest on the balance, $487.13, from the 14th day of February to today, or the 20th day of December, 1916. I figure the total amount of this interest due is $29.27, which would be added to the principal of $497.13. This suit is to recover the balance due on that note, now held by the plaintiff bank and unpaid by the defendant.

Mr. Tyler opens for the defendant:

Gentlemen of the Jury: This note was given by Mr. Cramer, a milk dealer in the City of Camden, in part payment on a contract for five carloads of milk bottles which he purchased, or agreed to purchase, from the Fidelity Glass Company of Tarentum, Pa. Tarentum is a few miles outside of Pittsburgh. He had contracted in September of 1915 for five carloads of bottles at a price named in the contract. There was some delay in getting the shipments on this contract, but a small shipment was made amounting to $72. Then a carload of bottles was shipped, I think, in October, on the contract made in September, amounting to six hundred and some dollars, the two together making the amount of this note. That was all one transaction. The Fidelity Glass Company is in Tarentum, Pa., and the bank is in Tarentum, Pa. John P. Crawford is

treasurer of the Fidelity Glass Company and John P. Crawford is also cashier of the Tarentum National Bank. The bank claims to have discounted the note on November the 30th, 1915. The Fidelity Glass Company went into the hands of a receiver within two or three days after that date. It was on December the 2nd, two days later, and the receiver was appointed on December the 3d. Under our contract with the Fidelity Glass Company we were to receive five carloads of bottles. Bottles, like anything else, have gone up in price. It has been impossible to get bottles at the price we contracted with the plaintiff. Mr. Cramer has expended some seven or eight hundred dollars more. The plaintiff is not a bona fide holder of that note in good faith. The plaintiff, of which the said John Crawford is cashier, took this note with full knowledge of this transaction, knowing that the company was insolvent. It was really a scheme or effort to get this note out of the Fidelity Glass Company a day or two before insolvency and to claim to be a bona fide holder of the note. We claim that the bank, when they took this note, knew that the Fidelity Glass Company was insolvent, that the insolvency grew out of this transaction and that the company had defaulted, and that we had a defense to note in the hands of the company.

Mr. Archer: Our reply to that is that the bank took this note, but I want to make a statement as follows: It is a fact that Mr. Crawford, who is this gentleman here, is the cashier of the bank, and it is also a fact that he was serving as treasurer of this Fidelity Glass Company. The Fidelity Glass Company, as we will show you, if we

have to, I mean by that, if we are called upon to make that proof, and I doubt if we will be called upon for that, but if we are, we can very clearly show you that while Mr. Crawford is the cashier of this bank, he was not physicially an agent for the corporation, the Fidelity Glass Company. He had nothing to do with the routine business. They had their own manager who came almost daily to the bank and discounted the notes given to the corporation. In this particular instance the note was not discounted by Mr. Crawford acting as cashier, but by a teller. This particular transaction came along in the regular course of business. Mr. Crawford had had other dealings with the Fidelity Glass Company, and he had given them notes which had been discounted. This note came along in the regular course of business and the proceeds went to the credit of the Fidelity Glass Company, so that the bank was in every sense of the word a bona fide holder in good faith for value. The note, you will shortly observe, was dated the 26th day of November, 1915; it was discounted by the bank for the Fidelity Glass Company as soon as it was received and sent to the Fidelity Glass Company in the regular course of business and not afterward. Subsequent to this time, due to conditions unknown to Mr. Crawford, a meeting of the Board of Directors of the Fidelity Glass Company was held within a few days afterward, and owing to the higher cost of materials used in the manufacture of glass it became almost prohibitive of manufacture, and the Board of Directors decided to wind up the company and to go voluntarily into the hands of a receiver. There was no knowledge on the part

of the bank or Mr. Crawford, that there was a contract. There was no knowledge that the corporation was insolvent, and in fact we can show you that it was not insolvent. It has paid or is payng 92% to its creditors. Its transaction was a business transaction that was carried out in good faith. The bank was a bona fide holder. There is no excuse for such a defense.

The Court: Mr Tyler is that the only evidence you have, that the treasurer of the company was the cashier of the bank? I understand you to say that the cashier of the bank was an officer of the corporation. As such, you claim, he acquired information and had knowledge of this transaction.

Mr. Tyler: That is correct.

The Court: Is that the only evidence you have to charge the bank?

Mr. Tyler: No, sir.

The Court: Evidence of knowledge of the treasurer can not be imputed to the bank. Is that all you have to prove the bank is chargeable?

Mr. Tyler: May it please the Court, I don't want to go into these details in advance of the witnesses being examined. I would ask to go into that at side Bar. The witness comes from Pittsburgh and I would like to have him examined. There is a defense against the Fidelity Glass Company arising out of this particular transaction; that the bank took the note with the knowledge of the defense. After they took it in this way, instead of being a bona fide holder, the bank is what we call a mala fide holder after that. They took it for the purpose of doing just what they are doing.

Mr. Archer: I offer the note in evidence and rest.

A copy of the note is attached hereto, marked Exhibit A.

Mr. Tyler: I think the plaintiff should show that they are bona fide holders for value. 10

The Court: The note implies obligation to pay.

Mr. Archer: I have always assumed that with the note.

The Court: As things now stand it shows that you have the note and nothing more. There is nothing to show that the bank took the note before maturity.

Mr. Archer: The note is drawn to the Fidelity Glass Company and endorsed by the Fidelity Glass Company. 20

JOHN P. CRAWFORD, sworn:

By Mr. Archer: Q. Mr. Crawford, you live in Tarentum, Pennsylvania? A. Yes, sir.

Q. What is your business? A. Banker.

Q. What bank are you connected with? A. The People's National Bank of Tarentum.

Q. Are you also the treasurer of the Fidelity Glass Company of Tarentum? A. I was, yes, sir. 30

Q. You were in December of 1915, November and December? A. I was.

Q. I show you a note, the note on which suit in this case was brought, signed by the defendant, W. E. Cramer, to the order of the Fidelity Glass Company, dated November 26, 1915, with the endorsement of the Fidelity Glass Company over your name as treasurer of that company, and ask 40

you whether or not this is the endorsement of the Fidelity Glass Company? A. It is.

Q. Was that note discounted by the People's National Bank of Tarentum? A. It was.

Q. On what date? A. The 30th of November.

10 Q. 1915? A. 1915.

Q. The proceeeds of the note on discount went to the credit of whom? A. The Fidelity Glass Company.

Q. The People's National Bank of Tarentum is at the present time the owner of the note? A. Yes, sir.

Q. The balance due on the note is the face of the note less $195.85? A. Yes, sir.

Q. Leaving a balance of $497.13 and interest?

20 A. Yes, sir.

Q. Four hundred and ninety-seven dollars and thirteen cents plus the interest? A. Yes, sir.

CROSS-EXAMINATION by Mr. Tyler:

Q. Mr. Crawford, you are the cashier of the Tarentum National Bank, aren't you? A. Yes, sir.

Q. A member of the Board of Directors? A. Yes, sir. You mean the Board of Directors of the People's National Bank?

30 Q. Yes. A. Yes, sir.

Q. Are you a member of the Board of Directors of the Fidelity Glass Company? A. Yes, sir.

Q. Did the Board of Directors of the People's National Bank pass a minute in regard to the discounting of this note? A. No, sir.

Q. Wasn't it taken up at all by the Board of Directors? A. Not until afterward.

40 Q. After it was discounted? A. The regular dis-

count day was the following Thursday.

Q. By the following Thursday the plan had been made for the appointment of a receiver for the Fidelity Glass Company? A. I don't know. The receivership was made on the 2d or 3d of the month.

By the Court: Q. What month, November or December? A. December.

By Mr. Tyler: Q. The note came in the window with the other deposits? A. Yes, sir.

Q. Have you the deposit slip here? A. Yes, sir.

Q. Will you let me see it please? A. Yes. (Witness hands counsel a paper.)

Q. This note is the second item referred to on the slip, is it not? A. Yes, sir.

Q. Who made out that slip? A. The teller.

Q. Do you mean the slip was not made out in advance of the note being brought to the bank? A. Yes, sir.

Q. They simply brought it there to the teller and the teller made it out? A. Yes, sir.

Q. Who brought it there? A. I don't know who brought it there.

Q. As the treasurer of the Fidelity Glass Company didn't you receive payments or remittances to the Company? A. No, sir.

Q. Weren't they turned over to you? A. No, sir. Each day they came down themselves.

Q. Then, weren't they sent to you from the plant, to the bank? A. Yes, only the totals of the day's business.

Q. Did not you sign this note before it was discounted? A. No, sir.

Q. Did you sign the endorsement before or af-

ter it was discounted? A. Generally after the day's business was over. That was done after the day's business was over.

Q. This particular note; was it discounted by the bank before or after you endorsed it? A. Before.

10

Q. When did you endorse it? A. The same day. The credit slip was there and two notes besides that one.

Q. You had an understanding with the bank whereby you could endorse it at a later time? A. To answer that I must explain why I was doing it. I was treasurer of the company and also cashier of the bank. The reason for this arrangement was that I took lunch at one o'clock and they came down between one and two o'clock with the deposits. I was never there when they came in.

20

Q. You knew the note had to be endorsed by you before the bank received it? A. Yes.

Q. Do you claim that you acted entirely for the bank and only incidentally for the Glass Company in receiving and discounting this note?

Mr. Archer: I object to that. His actions must tell for themselves.

Objection sustained.

Exception noted for defendant.

30

Q. What were your duties with the Fidelity Glass Company? A. Treasurer.

Q. That involved the knowledge of the financial affairs, didn't it? A. Yes, I kept records of it. I had made out two deposit slips, one for the desk and one for the files.

Q. Did you have an office and spend your time at the Fidelity Company? A. No, sir.

40

Q. You stayed at the bank? A. Yes, sir.

Q. And what little business you did for the company you did at the bank? A. Yes, sir.

Q. Did you receive a salary from the Fidelity Glass Company? A. Yes, sir.

Q. How much? A. Twenty-five dollars a month. 10

Q. Your principal salary was paid by the bank? A. Yes, sir.

Q. And your principal work was done there? A. Yes, sir.

Q. Is that the truth? A. Yes, sir.

Q. Why did the company go into the hands of a receiver on December the 2d? A. To protect their creditors.

Q. In what way? A. We thought we could pay them out in full. It would protect them from losing anything. 20

Q. Can you pay them in full as you intended, in advance? A. No.

Q. Why not? A. Materials are going up, and contracts expire on the first of January.

Q. Isn't it true that you would have made them at a loss if you had continued to make bottles? A. I don't know that absolutely. We lost money the month before.

Q. You just said you went in the hands of a receiver because contracts expired on the first of the year? A. Yes, sir. 30

Q. Did you have contracts and orders not filled? A. I suppose so.

Q. As a matter of fact, you did? A. Yes, I guess so.

By the Court: Q. Have you any? Tell us if you know, and if you don't know, say so. A. Yes, 40

we had orders, but I don't know about contracts.

By Mr. Tyler: Q. If you had continued to do business you would have done it at a loss? A. Yes, we were losing at that time.

Q. How do you know you were losing? A. By
10 the monthly reports.

Q. How were these arranged, month by month? A. Yes, sir.

Q. Did you get a report of the company every month? A. Yes, sir.

Q. And had been for many months prior to the shutting down of the business? A. Several years, about five years.

Q. They showed that you were losing money? A. Yes, sir.

20 Q. Were you present at the Board of Directors' meeting when they arranged to enter the receivership? A. I was.

Q. When was that meeting held? A. I think it was on the 2d day of the month.

Q. On the Thursday you speak of? A. I don't know, it was the first or second of the month, I don't remember exactly. It was in the evening.

Q. Where? A. In Tarentum, in Mr. Marvin's office.

30 Q. Who is he? A. He is one of the members.

Q. You kept minutes of this meeting? A. Yes, sir, certainly.

Q. Have you the minutes here? A. No, sir.

Q. Were you present at the Board of Directors' meeting of the bank on December the 2d, when they discounted this note? A. Yes, sir.

Q. You acted on it? A. Yes, sir.

40 Q. The only action prior to that time was when

the note had been handed in at the window and placed to the credit of the Company on the books? A. Yes, sir.

Q. It was officially taken up and discounted on December the 2d? A. The first Thursday of the month, whatever day that was.

Q. At that meeting you were present? A. Yes, sir.

Q. And the day before you had attended a like meeting of the Fidelity Glass Company in which they decided to go into the hands of a receiver? A meeting of the Board of Directors of the Fidelity Glass Company on the previous day when they decided to go into the hands of a receiver? A. No, sir.

Q. Didn't you say you had on the 1st or 2d of the month? A. I was down at the Fidelity Glass Company on Thursday, the same day as the other.

Q. The same day you attended the meeting of the bank, the Board of Directors of the Bank, you attended a meeting of the Board of Directors of the Fidelity Glass Company, and they decided to go into the hands of a receiver? A. Yes, sir.

Q. That was because the reports showed that the company was going backward, the reports you had been getting in each month? A. No, sir.

Q. Didn't you just say so; that you got reports every month, and that they showed that the business was being operated at a loss? A. Yes, sir.

Q. At the time you attended this meeting of the Board of Directors of the bank, you knew that the company had been manufacturing bottles at a loss, didn't you? A. Yes, sir.

Q. Now, have you the minute book of the bank

here, showing the action on this note? A. I have the discount ledger; not the minutes.

Q. Have you the Board of Directors' minutes showing the action taken on this note? A. No. They do not keep individual notes. They pass upon a week's notes.

10

Q. You never notified Mr. Cramer, either as treasurer of the Glass Company or cashier of the bank, that it had been transferred to you, did you? A. No, not until it became due.

Q. That was in the latter part of January? A. I think it was, yes.

Q. That was about two months after the company had gone into the hands of a receiver? A. I judge about that time.

20

Q. As far as you knew you never notified Mr. Cramer that the company was in the hands of a receiver? A. I did not.

Q. Either as treasurer of the company or an officer of the bank? A. No, sir I had no business to as treasurer of the bank.

Q. This $200 paid on the note was in the form of a check to the Fidelity Glass Company, wasn't it? A. Yes.

Q. That check was endorsed to you in the bank?

30

A. Yes, sir.

Q. Before the receivership? A. I don't know about that; I cannot tell you.

Q. This same note you are bringing suit on appears to carry the endorsement of the Fidelity Glass Company; did you say that they paid 92 per cent to their creditors? A. They are going to; I was not notified that they had.

Q. Has the bank filed its claim with the receiver on this note? A. No, sir.

40

Q. They hold this note against the company and pay 92 per cent to their creditors and have made no claim against the company? A. No, sir.

Q. Is that true? A. No, sir, we have not.

Q. Was the bank a creditor of the Fidelity Trust Company, aside from this particular note, this particular endorsement? A. They had a loan there, yes. 10

Q. They carried an individual loan at the bank? A. Yes.

Q. Did the bank require the Fidelity Glass Company to make a statement? A. No, sir.

Q. Never required a statement? A. No, sir, never asked them for one.

Q. Notwithstanding the fact that it was making loans from time to time, it continued to ask for no financial statement? A. No, sir. 20

Q. As a matter of fact you as an officer of the bank did not require that? You knew the condition of the Fidelity Glass Company? A. I think I did, yes.

Q. By reason of the fact that you as cashier or treasurer of the company and an officer in the bank, you thought you did not have to require a statement, as you did, from other people, didn't you? A. That was not the reason. 30

Q. You required a financial statement from other people, didn't you? A. Not always; we didn't always.

Q. Will you let me see a copy of the account of the Fidelity Glass Company, showing when the proceeds of this note were paid out?

(Witness hands Mr. Tyler a piece of paper.) 40

A. This is the ledger page out of the bank.

Q. My question is, when they were checked out of the bank. There appears to be two columns on this page; one marked deposits and one marked checks. The one marked deposits shows the money received into the bank, doesn't it? A. Yes.

Q. And the one marked checks shows when the money was paid out? A. Yes, sir.

Q. This page of the ledger which I hand you is filled up to the last line on the page? (Hands witness page of ledger.) A. Yes, sir.

Q. Where was that account continued, on the other page? A. Yes.

Q. This application for the receiver was made on December the 2d and the receiver was appointed on December 3d? A. Yes, I think those are the two dates.

Q. On December the 3d it shows items checked out $276.66, $77.59, $150.00, $10.68. That is the last item checked out on the 4th. On December 10th a balnce of $1203 was checked out? A. No, sir.

Q. Is that not true? A. That was checked out to the receiver.

Q. The items of December 3d and 4th were paid out on checks of the company, weren't they? A. Yes.

Q. The receiver was applied for on December the 2d and appointed on December 3d? A. Yes.

Q. The Board of Directors met then, didn't they, and held their meeting on December the 2d, isn't that true? A. Yes, if that falls on Thursday.

Q. Mr. Crawford, the affidavit made to the peti-

tion for a receiver filed in the Court of Allegheny County, shows it was made on December the 2d. You say the Board of Directors meeting was held on the evening of December the 2d, is that true? A. I think it is, but I am not positive.

Q. It might have been December the 1st, mightn't it? A. It was on Thursday night, I think that was the 2d. 10

Q. If this affidavit was made on December the 2d, then the petition was prepared in the nighttime after you had the Directors' meeting to consider the appointment of a receiver, isn't that true? A. Yes, sir.

Q. Do you know that in the evening, after you had held this meeting, on the night of the 2d of December, you prepared this petition and had it sworn to on that day, isn't that true? A. I don't know about it being sworn to. We had the terms there and made the application the next day. 20

Q. You answered interrogatories in this case under oath, didn't you, Mr. Crawford? A. Yes, sir.

Q. The fourth interrogatory was: "On what date was the affidavit to the petition or application for receiver made?" Your answer to that was: "December 2 or 3, 1915, as plaintiff is informed and believes." The third interrogatory was: "On what date was the matter placed in the hands of counsel by the said Fidelity Glass Company to make application for receiver?" Your answer to that was: "December 2, 1915, as plaintiff is informed and believes." The second interrogatory was: "On what date was the petition or application for appointment of receiver 30

"December 3, 1915, as plaintiff is informed and believes." Is that correct? A. Yes, sir.

Q. Was your counsel present at the meeting held in the evening? A. At the Fidelity Glass Company meeting?

10 Q. Yes, sir. A. No, sir.

Q. How did you get hold of him in the evening after you had this thing prepared? A. Went to his house.

Q. After holding this meeting in the evening for the purpose of discussing the financial affairs? A. Yes, sir.

Q. Were the Board of Directors there, including yourself? A. Yes, sir.

Q. How long did the meeting take? A. Couple

20 of hours.

Q. What time did you assemble and what time did you get through? A. We assembled shortly after the seven o'clock train came in, and Mr. Lindsey, who was there, went down on the nine o'clock train.

Q. Mr. Lindsey went right from the meeting to the train? A. Yes, sir.

Q. Don't you know that Mr. Lindsey is the man who made the application? A. Yes, sir.

30 Q. Then you couldn't have had the meeting on the 2d if he went straight to the train, he making the application on the same day. That is impossible, isn't it? A. I don't know how that part of it was.

Q. Isn't that impossible? He is the man who made the application? A. Yes, sir.

Q. If you held the meeting on the 2d and he got the nine o'clock train to Pittsburg, when did he

40 sign that application? As a matter of fact, didn't

you have the meeting the day before? A. I don't know, but I don't think it was.

Q. Is it possible for you to have held the meeting on the 2d and still have him make the nine o'clock train?

The Court: What day was it?

Mr. Tyler: It was on Thursday, in 1915. 10

Q. Mr. Crawford, do you still say that your meeting was held on the second in view of the fact that Mr. Lindsey signed the affidavit and left the meeting in time to get the nine o'clock train to Pittsburg? A. I don't know.

Q. Didn't the directors live in Tarentum? A. The directors lived in Tarentum, yes.

Q. This was prepared in Tarentum? A. I don't know about that, but the directors have their offices in Pittsburg. 20

Q. Where was it prepared? A. I don't know whether it was prepared in Pittsbung or Tarentum.

Q. You have no knowledge that it was prepared after the meeting that night? A. No, sir.

By the Court: Q. Do you know if it was prepared before or after the meeting was held? A. I don't know, but I don't think it was before; I think it was afterward. 30

Q. Was there any minute or vote concerning the receivership before that meeting? A. No, sir.

Q. You say you discounted this paper when it first came in on the 30th. Was that a part of your duties as cashier? A. Yes, sir.

Q. Did you pass upon the propriety of discounting? A. Yes, unless it is not to be discounted, and then it is given to the finance committee. 40

The third Thursday those are acted upon.

Q. What do you mean? A. My action is confirmed.

Q. Did the money actually get into the Glass Company on the 30th? A. Yes, sir.

10 By Mr. Tyler: Q. As a matter of fact, this money was paid out prior to the 2d and the proceeds were paid out prior to December the 2d? A. The slip shows there. Checks may take a day or two to get around.

Q. On the 2d the major part of the proceeds of this note had been paid out by the bank? A. We discounted the note on the 30th and by the 2d it was overdrawn.

Q. Then, if the Board of Directors do not ratify
20 your decision, what? A. There were other deposits made on that day.

By the Court: Q. Did it require the recommendation of the board, your action? A. No, sir.

Q. Have you any knowledge at the time this note was taken by the bank that there was any difficulty with the note, or any infirmity in the note? A. No, sir. It came in the regular business transaction.

By Mr. Tyler: Q. Mr. Crawford, you knew as
30 a matter of fact, that this note had come in from one of the parties with whom the Fidelity Glass Company had been doing business and selling bottles to? A. Yes.

Q. You knew the Fidelity Glass Company had received an order for bottles? A. Yes.

Q. Then you knew, as treasurer of the company and cashier of the bank, that the company was doing business with William E. Cramer and that he had an order or contract of some kind with
40 them? A. No, sir.

Q. You knew you got an order and a bill for bottles? A. Yes, sir.

Q. Didn't that indicate to you that the Fidelity Glass Company was doing business with Cramer? A. Yes, but it came in with the order. It came in payment for bottles. 10

Q. You knew that? A. I took it as a supposition that it was.

By Mr. Archer: Q. You had discounted other notes in the same way for the company made by Mr. Cramer? A. Yes, sir.

Q. Had you, at the time you discounted this note on the 30th of November, any knowledge that any application was to be made for a receiver for the Fidelity Glass Company? A. No, sir.

Q. How did it come about that the Board of Directors were called together on the 2d of December, or whenever it was, for the purpose of considering that question? A. The manager came down to the bank and told me that he had just got word that sodas had raised form 52 cents to one dollar. The contracts ran out the first of January. 20

Q. Did he say anything more? A. Yes, he said he did not think he would be able to make anything, but that he would lose money if he ran with the new contracts. 30

Q. This was the occasion for calling the directors together? A. I told him that if the company was losing more money he had better call the directors.

Q. That was done? A. Yes, sir.

Q. Why was the meeting held in the evening? A. He had to get word to the men. He called Mr. Lindsey on the 'phone. 40

Q. Where does he reside? A. Pittsburg.

Q. Did he come up that evening? A. Yes, sir.

Q. And went back that evening? A. Yes, sir.

Q. Was there any reason for holding the meeting in the evening, except for the accommodation? A. No, sir.

Q. At the time you discounted this note for the Glass Company what did you know of the endorser of the note, in regard to his financial responsibility and to his ability to pay up his debts? A. Mr. Cramer was considered good.

Q. Aside from Mr. Cramer what was the financial condition of the Fidelity Glass Company on the 30th of November as to its ability to pay its debts? A. We considered them all right.

Q. You considered it a solvent concern? A. Yes, sir.

Q. And that was the occasion for winding up the business, while you still considered it solvent? A. Yes.

By Mr. Tyler: Q. Mr. Crawford, do you remember talking to me personally about this affair in the Tarentum Bank last June? A. Yes, I think you are the man. Some man came from Camden up to the bank.

Q. Do you remember saying to me at that time that the company had been going from bad to worse and that you thought you had better make an application for a receiver before things got in too bad shape for the sake of the creditors? A. I presume I did—

Q. At the time the application was made? A. Yes, I think so.

Q. You told me then, didn't you, that the com-

pany was going from bad to worse? A. I don't know if that is what I said, that it was going worse. I probably told you that it was going back.

Q. You say now that you considered the company solvent on the 30th of November? A. Yes.

Q. While you considered the company absolutely solvent you got word from the manager on the 2d day of December? A. Yes. 10

Q. You are sure it was the 2d? A. Yes.

The Court: He has said that it was on that night that they held the meeting of the bank directors.

Q. Mr. Crawford, notwithstanding the fact that this company was perfectly solvent on the 30th, you got word from the manager that you should not continue doing business on what day? What day did you get word from the manager? A. The day of the meeting. 20

Q. When was that? A. On Thursday.

Q. You went to the telephone? A. No, sir.

Q. Who did? A. The manager.

Q. Who suggested that he do it? A. I don't know.

Q. Didn't you say to him that he had better get in touch with Mr. Lindsey? A. I presume so.

Q. Was that about noon? A. I don't recall the exact time of day. It was sometime during banking hours, and it may have been in the afternoon. 30

Q. When did you hold the Board of Directors' meeting that day? A. Always at three o'clock.

Q. He came to you prior to when you held the Board of Directors' meeting, prior to three o'clock? A. Yes, sir.

Q. You knew the Board of Directors' meeting would be called to consider insolvency proceedings? A. Yes, sir.

Plaintiff rests. 40

Defendant's Evidence

WILLIAM E. CRAMER, sworn:

By Mr. Tyler: Q. What is your name? A. William E. Cramer.

10 Q. Mr. Cramer, you are the defendant in this suit? A. Yes, sir.

Q. What is your business? A. The milk business.

Q. Where, at what place? A. Haddon Avenue and the line.

Q. How long have you been there? A. Fourteen years.

Q. You are still in business there? A. Yes, sir.

Q. I show you what purports to be a contract 20 made with the Fidelity Glass Company in September.

The Court: Mr. Tyler, are you going to try to show breach of contract? What effect would that have?

Mr. Tyler: I want to show that this company discounted the note with full knowledge of the insolvency.

The Court: I will hold this case in abeyance until morning.

30

Adjourned to December 21st, 1916, at 10 o'clock a. m.

SECOND DAY

December 21, 1916.

The Court: As far as I have been able to view the case it presents this situation: You are now prepared to show that there was a defence which would be valuable against the Bottle Company, but it would have no object against an innocent holder. 10

Mr. Tyler: We propose to show in this case that the Bank is not an innocent holder. I am going to offer to show that the cashier knew absolutely the finanacial condition of the Fidelity Glass Company.

The Court: Call your witnesses, then, and show that. 20

Contract offered in evidence and marked Exhibit D-1.

JOSEPH B. TYLER, affirmed:

The Witness: (J. B. Tyler, Esq.) I went to Tarentum last June to see Mr. Crawford, the cashier of the plaintiff bank. In the course of the conversation at that time he told me that the Fidelity Glass Company was, referring to the time it discounted this note, in bad financial condition, that the Company had gone from bad to worse, and that it was impossible to carry on the business profitably, and for that reason they decided to go voluntarily into insolvency proceedings, for the purpose of protecting their assets for all of their creditors. That was the reason, because of 30

the financial condition of the company, that they decided to take insolvency proceedings.

The Court: The other witness, Mr. Crawford, said practically the same thing.

Mr. Archer: This statement does not relate to any particular time. He makes statements in a vague way.

10

The Witness: The time referred to extends over a considerable period. He said that the company had been going from bad to worse for some time prior to when they went into the insolvency proceedings.

By Mr. Archer: Q. Didn't he tell you at that time that the insolvency proceedings were declared? A. I don't think so.

20

Q. He did not? A. He didn't say so in those exact words.

Q. What did he say in exact words? A. He said the company was in bad financial condition, and that it was going from bad to worse.

Q. When was that? A. Preceding the time of the proceedings.

Q. Did he tell you that the company was going to do this for the sake of its creditors? A. Yes.

Q. Did he tell you that the company was able to pay 92% of its claims? A. No, he said that the materials had raised more than they had expected. He said the company was going into the hands of a receiver, but that they would pay 92% to the creditors and not stockholders.

30

Q. He didn't say at that time that it was claimed that the insolvency proceedings were to be proceeded with? A. No, he said the company was going from bad to worse, be meant prior to the time of the conversation.

40

Q. What did he say? A. He said the company

was in bad condition and was going from bad to worse.

Q. What was the date of your interview? A. It was in June, the 19th or 20th.
present year.

By the Court: Q. In what year? A. This present year. 10

By Mr. Archer: Q. You went to Tarentum and had an interview with our clients after you had correspondence with us? A. Yes.

Q. You went in April of this year, didn't you? A. I don't recall the date, but if you will let me look at a reference I might be able to.

Q. Don't you know as a fact that it was after we had taken this matter up with you that you went to Tarentum to interview Mr. Crawford? A. Very likely, but I knew that the note had come here for collection and that Mr. Crawford knew the condition and probable insolvency of this company. 20

Q. You interviewed our client in regards to these circumstances? A. I did.

Q. That is when you had the conversation with this man? A. That is it.

Q. Did you say anything to us about your going to Tarentum and interviewing our clients? A. I don't see why I should. 30

Q. Is that your regular custom in your practice of the law? A. (No answer.)

Q. He told you this company was going from bad to worse and that they had decided to wind up the company for the protection of the creditors? A. Yes.

Q. He didn't tell you at the time the note was discounted that the insolvency proceedings were 40

the subject of discussion by the Board of Directors? A. No, not in those exact words. He inferred that.

By the Court: Q. Mr. Tyler, is that the sum of your evidence relating to the knowledge of the bank? A. The only other evidence I have to offer is to show our damages, the amount of the damages.

The Court: I will direct the jury to render a verdict for the plaintiff. My reasons are these: That the evidence discloses that the bank acted without the knowledge of the cashier and further, the laws of this State says that an institution of this kind cannot be held responsible for knowledge held by one of its officers, acquired by him in a private capacity. The only way to bind the bank would be to show that Mr. Crawford turned over the information to the bank in some way. In the absence of that the evidence discloses that the bank was an innocent holder. When he did not turn the knowledge over to the bank the bank is not to be charged with using that knowledge. You will render a verdict, gentlemen, for the plaintiff, for $526.30.

Exception noted for defendant.

Verdict for plaintiff, $526.30.

Exhibit A

$696.98. Tartentum, Pa., November 26, 1915.

Sixty Days after date I promise to pay to the order of Fidelity Glass Co. at

Exhibit D-1

THE PEOPLES NATIONAL BANK
of Tartentum

Six hundred ninety-six.....98 Dollars
Without defalcation for value received.

WM. E. CRAMER.

No. 22270 Due January 25. 10

(*Endorsed*)
Fidelity Glass Company,
John P. Crawford, Treas.
2/14/16 Paid on account $199.85

(*Rubber Stamp Endorsements* of the Union National Bank of Pittsburg, Pa., The Peoples National Bank of Tarentum, Pa., by John P. Crawford, Cashier; Philadelphia National Bank, by H. Fortescue, Cashier, March 11, 1916; Union National Bank of Pittsburgh, Pa., and the Philadelphia National Bank, by H. Fortescue, Cashier, February 2, 1916, appear on the back of the note, together with two revenue stamps.) 20

Exhibit D-1

Contract printed in Defendant's Answer. 30

Postea

(Filed December 29, 1916)

SUPREME COURT OF NEW JERSEY

CAMDEN COUNTY

10 THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA., Plaintiff, vs. WM. E. CRAMER, Defendant. — Action at Law.

This case was tried before Judge Frank T. Lloyd, with a jury, at the Camden Circuit, on December 13th and 14th, 1916.

20 Upon motion of the plaintiff, the Court, directed and the jury rendered a general verdict against the defendant and in favor of the plaintiff for Five Hundred and Twenty-six dollars and forty cents ($526.40).

FRANK T. LLOYD, J.

NEW JERSEY SUPREME COURT

30 PEOPLE'S NATIONAL BANK OF TARENTUM, PA., vs. WM. E. CRAMER, — Action at Law. On Postea.

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of five hundred and twenty-

six dollars and forty cents besides costs to be taxed nisi.

Entered December 29, 1916.

On Motion of

GREY & ARCHER,
Attys. 10

A true Copy,
Wm. C. Gebhardt,
Clerk.

Judgment Record

NEW JERSEY SUPREME COURT

20

PEOPLE'S NATIONAL BANK OF TARENTUM, PA., vs. WM. E. CRAMER.	Action at Law. On Postea.

Grey & Archer, Attorneys.

Judgment entered this Twenty-ninth day of December, A. D., nineteen hundred and sixteen for the sum of five hundred and twenty six dollars and forty cents damages and $526.40. 30

WM. S. GUMMERE,
C. J.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that 40

the foregoing is a true copy of the judgment entered in above stated cause which said judgment is recorded in this office in Vol. 9 of judgments, page 550.

In testimony whereof I have hereunto set my
10 hand and the seal of said Court at Trenton, this twenty-sixth day of January, A. D., nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

(Seal)

98

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA., Plaintiff-Respondent, vs. WILLIAM E. CRAMER, Defendant-Appellant.	ACTION AT LAW.

BRIEF FOR PLAINTIFF-RESPONDENT.

FACTS.

The note upon which suit was brought was given by Cramer to the Fidelity Glass Company, and was discounted by The People's National Bank of Tarentum, on November 30th, 1915, four days after its date and prior to maturity, and the proceeds were placed to the credit of the Fidelity Glass Company, the payee. (P. 18, l. 10.)

The Treasurer of the Fidelity Glass Company, John P. Crawford, was Cashier of the Bank. (P. 17, l. 25.)

In accordance with the usual course of business, as carried on between the Bank and the Fidelity Glass Com-

pany, this note, with others, was left with the Paying Teller of the Bank during the noon hour and in the absence of the Cashier, Mr. Crawford (p. 19). At or before the close of business for the day, Mr. Crawford, acting as Treasurer of the Fidelity Glass Company, endorsed the note, which was then discounted by the Bank. (P. 20.)

The actual management of the business of the Fidelity Glass Company was entrusted to a Manager. (P. 31, l. 25.)

Mr. Crawford assumed that the Cramer note had been given to the Fidelity Glass Company in payment for bottles shipped (p. 31). He knew or believed that Cramer was good for the note, having discounted his note previously for the Fidelity Glass Company (p. 31; p. 32, l. 15). He had no knowledge that the Fidelity Glass Company was under contract to deliver other and additional bottles than those paid for by the note to Cramer (pp. 30-31). He knew, at the time of the discount, that the Fidelity Glass Company had been losing money. He did not know that it was insolvent, if in fact it was at that time (p. 32). On December 2nd a voluntary petition was filed on behalf of the Fidelity Glass Company for the appointment of a Receiver. It now appears that it was at least 92 per cent. solvent on November 30th, 1915. (P. 24, l. 35.)

Under these circumstances, Cramer, as maker of the note, contends that he should be permitted to set off, in a suit brought by the Bank on the note, a claim for damages which he makes against the Fidelity Glass Company for its failure to fill other orders pursuant to contract for bottles.

Argument.

I.

The Trial Judge directed a verdict in favor of the plaintiff and refused to permit proof of the offset as against the Bank, relying principally, we take it, upon the decision of this Court in *Graham vs. Orange County National Bank, 59 N. J. Law, page 225.*

The views of the Trial Judge are very inaccurately set forth in the State of the Case, but his decision was to this effect—that if there were facts known to the Cashier, Mr. Crawford, which, if known to the Bank, would have prevented the Bank from being a *bona fide* holder for value, such knowledge on the part of Mr. Crawford was not to be imputed to the Bank, because he would be regarded as being "actuated wholly by personal reasons," as was Murray was in the case above cited, and subsequently not acting for the Bank, so as to charge it with his knowledge of such facts.

Compare *Willard vs. Denise, 50 N. J. Eq., 482,* and *Vulcan Detinning Co. vs. American Can Co., 72 Eq., 387, 401,* overruling it. In the latter case the rule is stated:

"The knowledge of the agent is chargeable upon his principal whenever the principal, if acting for himself, would have received notice of the matters known to the agent." (Quoted from *State vs. Sooy, 41 L., 394.*) See also *Hanford vs. Duchastel, 93 Atl., 586,* and *Lanning vs. Johnson, 75 L., 259.*

Applying this rule, if the Bank had discounted this note through the agency of its President, it would have in no way known or been put upon notice of any facts affecting its rights as a *bona fide* holder.

II.

But entirely aside from this consideration, there were in reality no facts known to Crawford, imputing all that he knew to the Bank, which would in any way prevent the Bank from enforcing its rights as a *bona fide* holder for value.

Assuming that on November 30th, 1915, the Bank knew, through Crawford, that the Fidelity Glass Company was losing money and was in a precarious financial condition, there was no reason why the Bank should not discount the note on the strength of the maker, Cramer.

There is no proof whatever that Crawford knew either (1) That Cramer had a contract calling for more bottles; or (2) That the Fidelity Glass Company would not be in position to complete such contract if it existed.

Consequently, the Trial Judge was entirely right in overruling the offer of Cramer to prove an offset which might have been good against the payee, and we respectfully submit the appeal should be dismissed.

GREY & ARCHER,
Attorneys for Plaintiff-Respondent.

I. F. Huntzinger Co., Appellate Printers, Camden, N. J.

New Jersey Court of Errors and Appeals

The People's National Bank of Tarentown, Pa., *Plaintiff-Respondent,* **vs. William E. Cramer,** *Defendant-Appellant.*	**Action at Law.**

REPLY BRIEF FOR APPELLANT.

The brief of respondent admits the following facts:

1. That the cashier of the bank was treasurer of the glass company.

2. That the cashier knew that the glass company had sold bottles to appellant before, having discounted his note to the company.

3. That the cashier knew, at the time of the discount, that the glass company had been losing money.

At the trial the cashier testified also that on the date the note was discounted the manager of the glass company "came down *to the bank* and told me (the cashier) that he had just got word that sodas had raised from 52 cents to one dollar. The contracts ran out the first of January;" and that he told the manager that "if the company was losing more money he had better call the directors," (p. 31).

When it is remembered that the cashier had knowledge of the failing circumstances of the glass company, and that such knowledge came to him as cashier of the bank on the date and before the discount, and that the company could not continue its business, or fill the orders already in hand, and that he, as cashier of the bank, notwithstanding such knowledge, discounted the commercial paper of the bank, shutting his eyes against the probability of insolvency before the filling of orders then in hand, then, and in that case, it was bad faith for him not to inquire whether the company could or could not fill the order for which the note was given, and, of course, under the doctrine of imputable knowledge, his knowledge was the bank's knowledge, for he, and no other, was the duly constituted officer of the bank to act for it in such matters.

The case of *Graham vs. Orange County National Bank,* 59 N. J. L. 225; (35 Atl. 1053) cited in respondent's brief is not pertinent to the case at bar, for, in the cited case, the officer of the bank discounting the note was not the cashier of the bank, nor the duly authorized person of the bank for it to act in such matters, and, further in that case it was found as a fact that the officer "was actuated wholly by personal reasons," whereas, in the case at bar there is no suggestion whatever that the cashier received any personal benefit from the discount. Moreover, the case of *Willard vs. Denise,* upon which the Court relied as a precedent in that case has since been repudiated by the Court of Errors and Appeals in *Vulcan Detinning Co. vs. American Can Co.,* 67 Atl. Rep. 339.

In respondent's brief the following statement appears:

> "The views of the trial Judge are very inaccurately set forth in the state of the case * *."

No objection was made by respondent to the state of the case after service of copies upon him, and no mention was made of the alleged inaccuracy until the presentation of respondent's brief. Had respondent known or believed that the Judge's charge was inaccurately set out in the state of the case he should not have reserved that objection for his brief, but should have alleged it sooner. On the other hand, it is insisted by appellant that the charge of the trial Court set out in the state of the case (p. 38) is reproduced correctly from the stenographer's minutes.

Answering respondent's contention on page 4 "that there were in reality *no facts* known to Crawford, imputing all that he knew to the bank, which would in any way prevent the bank from enforcing its rights as a *bona fide* holder for value," it is enough to say that the trial Judge should have left the facts present in this case to the jury, and that if the facts above quoted had been submitted to the jury it might or might not have found that there were "no facts," or otherwise, as they believed the testimony of the witnesses; and, for further answer to respondent's contention on the same page it is insisted that if a corporation or a bank appoints or elects some one to act for it in a particular line of duty, that the officer so chosen stands in the shoes of the corporation, and his acts are the acts of the corporation.

It is respectfully submitted that the verdict should be set aside, and a trial *de novo* ordered.
March Term, 1917.

JOSEPH BECK TYLER,
Counsel for Appellant.

98
B

New Jersey Court of Errors and Appeals

THE PEOPLE'S NATIONAL BANK OF TARENTUM, PA., Plaintiff-Respondent, and WILLIAM E. CRAMER, Defendant-Appellant.	Action at Law. On Appeal From Supreme Court.

BRIEF FOR APPELLANT

The defendant appeals from a judgment of Judge Lloyd, with a jury, in the Supreme Court, entered December 29th, 1916, for $526.40, upon a promissory note which was delivered under the following circumstances:

On September 27th, 1915, defendant entered into a written contract with Fidelity Glass Company, Tarentum, Pa., for the purchase of five carloads of milk bottles at a stipulated price. Of the five carloads, only one carload, and a small fractional part of another carload, were actually shipped to and received by defendant. On November 30th, 1915, a promissory note was discounted by plaintiff-respondent, given by defendant-appellant, as part payment of said bottles. On December 3d, 1915, the Fidelity Glass Company was adjudged insolvent, and a receiver appointed.

The treasurer of the Fidelity Glass Company was the cashier of the plaintiff bank which discounted said note.

Upon the appointment of a receiver of the Fidelity Glass Company there was still due to the defendant from said Fidelity Glass Company, four carloads of milk bottles at the price agreed upon, which have never been delivered to defendant.

At the trial of the case in the Court below defendant urged the following defenses:

1. That the promissory note which was discounted by the plaintiff bank was accepted and discounted by it with the full knowledge of the insolvency of the company requesting such discount and that, in consequence, said bank was not a holder in due course, and that such defenses as were available against the note in the hands of the transferor were also available against the transferee.

2. That the cashier, being the active manager of the bank, had full knowledge of such infirmities and was, therefore, put upon notice of equitable defenses.

3. That defendant was entitled to set off against such transferee such damages as he had sustained by reason of the breach of contract of the transferor.

4. The testimony shows that the cashier of the plaintiff bank was also the treasurer of the insolvent glass company at the time of discounting said note; (pp. 17, 18 of State of Case); that he was a member of the board of directors of both companies (p. 18, State of Case); that he endorsed said note as treasurer of the said glass company before it was discounted by the bank (p. 17, State of Case); that he had full knowledge

of the financial affairs of the insolvent glass company (pp. 20, 21, 22, State of Case); that the glass company could not make bottles at the contract price (pp. 23, 31); that the company lost money the month before, (p. 21); that the monthly reports showed that the company was losing money (p. 22); that the company could not fill its orders (p. 21); that he was present at the directors' meeting of the glass company when the receivership was agreed upon (p. 22); that the receivership was agreed upon on December 2d, at a meeting of the board of directors at which he was present, and on the same date he discounted the note as cashier of the plaintiff bank, (p. 22); that he was present at the board of directors' meeting when the note was discounted (p. 22); that he had previously directed a meeting of the board of directors of the glass company to be called to consider receivership (p. 31); that he acted on the note as cashier (p. 29) that he had full authority to discount notes without the previous recommendation of the board of directors (pp. 29, 30); that the cashier stated to other people that he knew at the time he discounted the note that the glass company was going from bad to worse (p. 35).

The learned trial Court directed a verdict for the plaintiff bank for the following reasons:

> "That the evidence discloses that the bank acted *without the knowledge of the cashier,* and further, the law of this state says that an institution of this kind cannot be held responsible for knowledge held by one of its officers, acquired by him in a private capacity" (p. 38).

This, we respectfully submit, was error.

In *Trenton Banking Company vs. Woodruff,* 2 N. J. Eq., 117, it was held:

> "A notice to a cashier is notice to a bank. This must be the rule, otherwise, it will be impossible to get on in the ordinary course of business. There is no officer so directly intrusted with its concerns, especially the details of business, as a cashier. He is the authorized agent of the company for all purposes within the sphere of their business."

Followed and approved by the Court of Errors and Appeals in *Bodine vs. Berg,* 82 Atl. Rep., 901, 904, and by the Supreme Court in *Dock vs. Elizabethtown Steam Mfg. Co.,* 34 N. J. L., 312, 317.

Is the plaintiff bank chargeable with the knowledge of its cashier which he possesses as a director and officer of the payee of the note?

Up to the time of the decision of *Vulcan Detinning Company vs. American Can Company,* 72 N. J. Eq., 387, 400, (Court of Errors and Appeals) the authorities in this state were not in accord upon the question as to whether a corporation was chargeable with the knowledge of one of its directors or officers in matters in which he was interested as a member or officer of another company transacting business with the company sought to be charged with such notice, but, in that case, the Court laid down the following rule:

> "The scope, and to some extent, the theory of the presumption of imputed knowledge has been the subject of two decisions in this Court which are not in accord. I refer to *State vs. Sooy,* 41 N. J. L., 394, and *Willard v. Denise,* 50 N. J. Eq.,

483. The latter of these cases which was also the later in point of time, laid down the rule that—

" 'Where information is casually obtained by an agent of a corporation, the corporation is not charged with notice from the mere fact of its agent's knowledge but if the corporation act through such agent in a matter where the information possessed by him is pertinent the knowledge of the agent will be imputed to the principal.' Under the rule thus stated the defendant corporation is clearly chargeable with notice of all the pertinent information possessed by Assman and used by him in its behalf, we are not, however, willing to rest our decision of this matter upon the case of *Willard vs. Denise.* In the earlier case of *State vs. Sooy,* the rule stated in the syllabus of opinion, delivered by Mr. Justice Dixon is this:

" 'The knowledge of the agent is chargeable upon his principal whenever the principal, if acting for himself, would have received notice of the matter known to the agent. ' "

In the case at bar, the principal was a corporation, so that the qualifying clause "if acting for himself," above quoted, is relative, and applies with equal force to such person, or officer, of a corporation who has authority to receive such information. A cashier of a bank is such person. See *Trenton Banking Co. vs. Woodruff, supra,* and other cases there cited.

In *Lanning, Receiver vs. Johnson,* 75 N. J. L., 259, (Supreme Court), it was held:

> "Knowledge of illegality or want of consideration of a promissory note by the president of a bank, who discounts it without authority to do so having been conferred upon him by his board of directors, is not imputable to the bank when the president's act has not been ratified by or acquiesced in by the board."

But in the case at bar the cashier had authority to discount notes without consulting the Board of Directors (S. of C., p. 30). Gummere, C. J., in last cited case further held:

> "In the late case of *Vulcan Detinning Co. v. American Can Co.,* (N. J. Err. & App.), 67 Atl., 339, the same Court affirmed the rule laid down in *Sooy v. State,* and held that the defendant company was chargeable with knowledge of facts acquired by its president while a director of the complainant company only so far as it would itself have acquired such knowledge by dealing directly, or through another agent, with the complainant company concerning the subject-matter of the controversy. At the same time it expressly repudiated the doctrine laid down by us in the earlier case of *Willard v. Denise,* 50 N. J. Eq., 482, 26 Atl., 29, 35 Am. St. Rep., 788, *viz:* that where information is casually obtained by an agent of a corporation, and the corporation afterward acts through such agent in a matter where the information possessed by him is pertinent, the knowledge of the agent will be imputed to the principal. On the strength of those two cases, therefore, it would seem that, if the note in controversy had been discounted by the board of

directors of the Trust Company while Twining was present as a member thereof, the trust company would not be chargeable with notice of his fraudulent conduct in procuring its discount. But the fact that the note was discounted, not by the board of directors, but by Twining himself, he taking advantage of his position as president to usurp the function of the board without authority from them, makes it unnecessary to determine the question discussed; for it can hardly be held that, where a transaction takes place without either the knowledge or authority of the board, the board is chargeable with notice of facts known to their selfconstituted agent, but not communicated by him to them."

On page 29 (Sate of Case), the cashier testified:

"Q. You say you discounted this paper when it first came in on the 30th? Was that a part of your duty as cashier? A. Yes, sir.

"Q. Did you pass upon the propriety of this discount? A. Yes, unless it is not to be discounted, and then it is given to the finance committee. The third Thursday those are acted upon.

"Q. What do you mean? A. My action is confirmed.

"Q. Did the money actually get into the glass company on the 30th? A. Yes, sir."

In *First National Bank of Hightstown vs. Christopher*, 40 N. J. L., 435, 437, (Supreme Court), Mr. Justice Depue said:

> "The directors of a corporation are not individually its agents for the transaction of its ordinary business, which is usually delegated to its executive officers, *such as the president or cashier.*"

In that case a director of the bank was also a member of a firm which had discounted commercial paper in the director's bank, and the Court found that the director's knowledge was not imputable to the bank, because the director "did not communicate the information to the *president, cashier or any of his associates in the directorship.*"

In 1916, Vice-Chancellor Foster, in the case of *Shaw vs. Standard Piano Co.,* 97 Atl. Rep., 281, in disposing of a case in which an officer of a bank, who was also a director of another company dealing with the bank, said (p. 282):

> "While it does not appear that Mr. Patterson ever had knowledge of any infirmity in complainant's note, if he did, it would not be sufficient to charge the bank, and therefore complainant, who acquires from it some of the notes he now holds, with knowledge of the alleged infirmity unless it further appeared that Mr. Patterson acquired his knowledge while acting as a member of the Board of Directors of the bank convened in its official capacity (*First National Bank v. Christopher,* 40 N. J. L., 435) or that while acting as the agent of the bank *and within the scope of his authority,* he received the information at the time he was actually acting as agent in behalf of his principal (*Harford v. Duchastel,* 87 N. J. L., 205)."

The syllabus of the opinion in the case of *Harford vs. Duchastel,* (Court of Errors and Appeals), 93 Atl. Rep., 587, is:

> "In order that the principal may be affected with a constructive notice of matters known to the agent, the information constituting the notice must be obtained by or imparted to the agent while he was in fact acting as agent, while he is actually engaged in doing his principal's business, in pursuance of his authority, and in his character as agent."

Cases in other States:

In *First National Bank of New Bremen vs. Burns,* (Ohio Supreme Court, 1915) 49 L. R. A., (N. S.) 765; (103 N. E. Rep., 93), Judge Wanamaker, at pages 767, 768, said:

> "It is agreed by the parties that the sole question in this case is: Was the knowledge of Boesel as an individual the knowledge of Boesel as president and manager of the bank?
>
> "In determining the rule of law that shall apply in this case, in the interest of sound morals, the public welfare, and honest business, this Court has a most important duty to perform. Today probably 90% of the country's business is conducted or controlled by corporations. It is not only a business convenience, but a business necessity. Its business cannot be conducted by the invisible, intangible, incorporeal body known in the law, but must be conducted by its officers and agents as known to the public. The agent, when duly au-

thorized to act, stands in the shoes of his principal for the purposes of the corporation, as the principal must be held to stand in the shoes of the agent for the protection of the public. There is a full and complete merger of identity—a oneness in action and knowledge—of principal and agent. If there be that legal identity as to the act of the agent in behalf of his principal, it must follow by a parity of reason and right that there be that same legal identity as to the agent's acquired knowledge in the doing of the principal's act; and, if so, why should there be either occasion or duty on the part of the agent to communicate the knowledge to his principal—which knowledge, by virtue of said identity between the agent and principal, the principal must be conclusively presumed to have, or, as Mechem has said:

" 'Whatever notice or knowledge, then, reaches the agent under these circumstances (Matters within the scope of his authority), in law reaches the principal."

"(Sec. 719).

"Boesel, as manager of the bank, cannot unknow what Boesel, the man, all the while knew."

There is a clear distinction between a mere officer of a bank, such as a director or president, who does not have the active management of the bank, and the managing officer of a bank. The bank is not liable for the fraud of such non-managing officer, on the ground that such officer did not have the active management of the bank.

See cases collated on page 767, case above cited, (Wanamaker, Judge).

Where a director acting for the bank has knowledge of the infirmities in the note, and discounts the same, such knowledge is imputed to the bank. On the same point, see, also:

Leonard v. Latimer, 67 Mo. App., 138.
First National Bank v. Burns, 49 L. R. A., 764, 770; *supra.*
First National Bank v. Blake, 60 Fed. Rep., 78.
Brolston vs. Penniman, 25 S. E. Rep., 350.
Eng.-Am. Loan Co. v. Hiers, 38 S. E. Rep., 103.
Holden v. Bank, 72 N. Y., 286.
Bank v. Cushman, 121 Mass., 490.
Loring v. Brodie, 134 Mass., 453.
Bank v. Irons, 8 Fed. Rep., 1; (*note*).
Bank v. Smith, 22 S. W. Rep., 1056.

A cashier has greater inherent powers than any other officer of a corporation, and is ordinarily the active financial manager and agent of a bank. *7 Corpus Juris,* 549.

Notice received or knowledge acquired by the cashier of a bank while engaged in the transaction of business according to the usage and practice of banking institutions, is notice to and knowledge of the bank.

Birmingham Trust Co. v. Louisiana National Bank, 99 Ala., 379. (13 Southern Rep., 112).
Br. Bank v. Steele, 10 Ala., 915.
Bank v. Penland, 101 Tenn., (47 S. W. Rep., 693).
National Bank v. Steven, 169 Pa. St., 574, (32 Atl. Rep., 603).

Niblack v. Cosler, 74 Fed. Rep., 1000.
Witters vs. Sowles, 32 Fed. Rep., 762.
Stebbins v. Landner, 48 N. W., Rep., 847.

Where a cashier represents in a transaction, not only the bank, but a third party, for whom he is agent, the bank is impressed with all the knowledge of the cashier as to the *mala fides* of the transaction.

Leonard v. Latimer, 67 Mo., App. 138.
First Nat. Bk. v. Burns, (Ohio Twp. Ct.) 49 L. R. A., (N. S.) 764, 770, and cases there cited.

Insolvency of Payee.

Would knowledge of the bank's cashier of the payee's insolvency, or contemplated insolvency, affect the bona fides of the bank?

It was so held in the case of *Holden vs. N. Y. & Erie Bank,* 72 N. Y., 286, 292.

In the case of *Cope vs. C. B. Walton Co.,* 77 N. J. Eq., 512, affirmed, 79 N. J. Eq., 165, Chancellor Walker, dealing with a case in which the subject of insolvency, and notice to an assignee, arose, said:

> "On the subject of insolvency and notice to the assignee *Regina Music Box Co. v. Otto Sons,* 65 N. J. Eq., 582; affirmed 68 N. J. Eq., 801, is an authority. In that case is was held by the Court of Chancery, whose opinion was adopted by the Court of Errors and Appeals, that a security given by a corporation, which is insolvent, or which contemplates insolvency, for a presently moving consideration, is valid, if the person taking the security be without no-

tice of such insolvency, or contemplation of insolvency."

In 8 *Corpus Juris,* 496, 497 the rule is laid down that "Formal notice is not necessary, but *any* knowledge of the holder of defenses is equivalent to notice."

And, whether the holder had or had not such knowledge was not a Court question, but a jury question, as was held in *First National Bank v. Hammond,* 104 App. Mo., 403, 79 S. W. Rep., 493 where the Appellate Court reversed the direction of the Trial Court, saying that the jury might not have believed the cashier, who testified that he did not know the condition of the insolvent payee, which was a company in his town, and had dealings with the bank.

The Courts of this state have adopted a definite rule on the question of knowledge of infirmity in negotiable instruments and have laid down the rule that 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 ground of fraud in its inception. *Rice v. Barrington,* 75 N. J. L., 806, and *Davis v. Clark,* 90 Atl. Rep., 303, so that it becomes important to ascertain what "bad faith" is, and when and what circumstances constitute bad faith.

8 Corpus Juris, 505, says that mere failure to inquire may be bad faith; that one must not wilfully shut his eyes to the means of knowledge which he knows are at hand, and that such conduct might be plenary evidence of bad faith. It had also been stated in 8 *Corpus Juris,* 508, that a purchaser takes with notice only when he has

actual knowledge or knowledge of facts which makes it bad faith not to inquire.

Bad Faith is question for Jury.

> "The question whether plaintiff is a *bona fide* holder is one of fact to be submitted, under proper instructions to the determination of the jury, unless there is an entire absence of testimony tending to show *mala fides.* Where all the facts are admitted or where the question is whether notice is imputable from the face of the instrument itself the question is one of law for the Court."
>
> 8 Cyc. 289.

8 *Corpus Juris,* 508, holds:

> "General Rule— Keeping in mind the general rule that a purchaser takes with notice only where he has actual knowledge or defenses or equities or knowledge of facts which makes it bad faith on his part not to inquire and discover such equities or defenses, it is often decided that certain facts or circumstances do, or do not, constitute notice, actual or imputed, because of failure to inquire, however, it is rarely decided that any one fact is, or is not, conclusive evidence of notice, but the question ordinarily involves several facts and circumstances more or less peculiar to the particular case and generally requiring the question to be submitted *to the jury.*"

Error to Exclude evidence of damage arising from breach of contract.

The learned Trial Court refused to admit any evidence on the part of defendant on his counter-

claim for damages which he had sustained by reason of the insolvency of the transferor, and its subsequent failure to complete its part of the contract for which the note in suit was given in part payment (p. 38, State of Case). This, we submit, was error.

The written contract between the transferor and the defendant provided that the transferor should sell and deliver to the defendant five carloads of milk bottles at a fixed price. Only one, and a fractional part of another carload, were delivered to defendant. The note in suit was given in part payment of the whole contract price.

The contract also provided: (P. 6).

> "Fidelity Glass Company agrees to meet any lower prices quoted W. E. Cramer or cancel *any balance* on this agreement."

The testimony of John P. Crawford, the treasurer of the Fidelity Glass Company, and cashier of the plaintiff-bank, upon the subject of increased price is: (p. 31, State of Case).

> "Q. How did it come about that the Board of Directors were called together on the 2d of December, or whenever it was, for the purpose of considering that question? A. The manager came down to the bank and told me that he had just received word that sodas had raised from 52 cents to one dollar. The contracts ran out the first of January.
>
> "Q. Did he say anything more? A. Yes, he said he did not think he would be able to make anything, but that he would lose money if he ran with the new contracts.
>
> "Q. This was the occasion for calling the

directors together? A. I told him that if the company was losing *more* money, he had better call the directors.

"Q. That was done? A. Yes, sir."

And on p. 22, State of Case, he testified:

"Q. Were you present at the Board of Directors' Meeting of the bank on December 2d, when they discounted this note? A. Yes, sir.

"Q. You acted on it? A. Yes, sir.

"Q. The only action prior to the time was when the note had been handed in at the window and placed to the credit of the company on the books? A. Yes, sir.

"Q. It was officially taken up and discounted on December 2d?

"Q. The same day you attended the meeting of the bank, the Board of Directors of the Bank, you attended a meeting of the Board of Directors of the Fidelity Glass Company, and they decided to go into the hands of a receiver? A. Yes, sir.

"Q. That was because the reports showed that the company was going backward, the reports you had been getting in each month? A. No, sir.

"Q. Didn't you just say so; that you got reports every month, and that they showed the business was being operated at a loss? A. Yes, sir.

"Q. At the time you attended this meeting of the Board of Directors of the Bank, you knew that the company had been manufacturing bottles at a loss, didn't you? A. Yes, sir."

Whether the testimony concerning the meeting of the directors of the glass company on December 2d, looking to a receivership, was before or after the discounting of the note *on the same date* was, it is submitted, a question for the jury. And whether the cashier's testimony that he did not know that the glass company was insolvent on December 2d (pp. 31, 30, 32, 33), coupled with his testimony that the monthly reports of the company had been showing losses (p. 23), and that the company had been going from bad to worse, were also, it is submitted, questions for the jury.

It is contended that the defendant was entitled to offer evidence of the damage which he had sustained by reason of the glass company's failure to fulfill its contract. Defendant offered to adduce evidence at the trial to establish such damages, but the learned trial Court refused to admit it. This, too, was error. If the glass company itself had sought to collect the note, defendant would have been permitted to counterclaim his damages in such suit.

It is respectfully submitted that the learned trial Court erred in directing the jury to find a verdict in favor of plaintiff against defendant.

March Term, 1917.

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