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Notice of Appeal.

New Jersey Supreme Court

MIDDLESEX COUNTY.

MORRIS DEUTSCH, Plaintiff,	}	Action at Law. Notice of Appeal.	10
vs.			
JOSEPH POCOROBA, JR., AMALIA POCOROBA, HUMBERTO CON- STRANTINO, JOSEPH POCOROBA, trading as POCOROBA & Co., and JOSEPH POCOROBA and THEODORE HAWRYCZ, Defendants.	}		20

To DAVID T. WILENTZ, ESQUIRE,
Attorney of Plaintiff.

Sir:

Take Notice, that the defendants appeal to the
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. 30

Dated: April 8th, 1930.

R. M. GLASSNER,
Attorney of Defendants-Appellants.

Service of the within Notice of Appeal is hereby
acknowledged this 9th day of April, 1930.

DAVID T. WILENTZ,
Attorney for Plaintiff. 40

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	<p style="text-align: center;">MORRIS DEUTSCH, Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOSEPH POCOROBA, JR., AMALIA POCOROBA, and JOSEPH POCOR- OBA, SR., Defendants-Appellants.</p>	<p>Action at Law.</p> <p>On Appeal from New Jersey Su- preme Court.</p> <p>Grounds of Appeal.</p>
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20 The defendants-appellants state the following grounds of appeal.

1. The trial court refused to grant a motion to strike out the complaint on the ground that same set forth no cause of action when thereunto moved by the attorney for the defendants.
2. The trial court refused to direct a judgment of non-suit against the plaintiff and in favor of the defendants when thereunto moved by the attorney for the defendants.
- 30 3. The trial court refused to direct the jury to return a verdict in favor of the defendants and against the plaintiff when thereunto moved by the attorney for the defendants.
4. The proof introduced at the trial of the issue joined did not conform to the pleading filed by the plaintiff and did not conform to the allegations contained in the complaint.
- 40 5. The complaint set forth an action for the principal sum due upon the note, and recovery had

Grounds of Appeal.

in the lower court for the full sum of said note was erroneous, for that the complaint discloses that plaintiff was a prior endorser on the instrument responsible to all subsequent endorsers and could not recover against any of such subsequent endorsers.

6. There was no allegation contained in the complaint setting forth an order of liability among the endorsers on the said note other than the liability imposed by law, to wit, that the endorsers inter sese are liable in the order in which their endorsements appear. 10

7. No allegation appeared in the complaint tending to show any agreement by or between the parties hereto whereunder the order of liability among the endorsers on the note which is the subject of this suit was to be changed. 20

8. The trial court refused to strike out the complaint on the ground that it set forth no cause of action in that the instrument sued upon by the plaintiff had been negotiated back to said plaintiff who was a party prior to the defendants and who was not entitled to enforce payment thereof against any intervening party to whom he was personally liable. 30

RICHARD M. GLASSNER,
Attorney for Defendants-Appellants.

Service of the within Grounds of Appeal is hereby acknowledged the 9th day of May, 1930.

DAVID T. WILENTZ,
Atty. of Pltf.

Summons.

State of New Jersey: To Joseph Pocoroba, Jr.,
Amalia Pocoroba, Humberto Cos-
entino, Joseph Pocoroba, trading
as Pocoroba & Co. and Joseph Po-
(L.S.) coroba, and Theodore Hawrycz.

10 You are Summoned to answer
the annexed complaint of Morris
Deutsch, in an action at law in the
New Jersey Supreme Court. And Take Notice
that unless you file your answer to said complaint
with the Clerk of the said New Jersey Supreme
Court at Trenton, within twenty days after service
upon you of this Writ and the annexed complaint,
the plaintiff may proceed in the suit and judgment
may be entered against you.

20 Witness WILLIAM S. GUMMERE, Chief Justice of
the New Jersey Supreme Court at Trenton this 9th
day of January, 1929.

FRED L. BLOODGOOD,
Clerk.

DAVID T. WILENTZ,
Attorney.

To the Defendants:

30 In case the within summons and complaint are
served upon you personally, then Take Notice that
if you intend to make a defense to this action you
must file an affidavit of merits within ten days
from the date of the service hereof upon you and
that unless you file such affidavits, judgment by
default will be entered against you at the end of
said ten days; and that in case you file said affi-
davit, unless you file an answer or motion or no-
40 tice of motion to strike out within twenty days
from the date of service hereof upon you, judg-

Summons.

ment by default will in such case be entered against you at the end of said twenty days.

DAVID T. WILENTZ,
Attorney for Plaintiff.

Complaint.

10

Filed Feb. 13, 1929.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MORRIS DEUTSCH, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOSEPH POCOROBA, JR., AMALIA POCOROBA, and JOSEPH POCOR- OBA, SR., Defendants.</p>	}	<p style="text-align: center;">Action at Law.</p> <p style="text-align: center;">Complaint.</p>	20
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Plaintiff, residing in the City of Perth Amboy, County of Middlesex and State of New Jersey, complaining of the defendants says that: 30

(1) On October 8, 1927, Theodore Hawrycz made a note payable to Amalia Pocoroba, a copy of which is hereto annexed and made a part hereof.

(2) On the day the note fell due it was presented for payment at the place where it was payable but it was not paid and notice was duly given to all the endorsers.

40

Complaint.

(3) On or about the 27th day of January, 1928, the North Ward National Bank of Newark, New Jersey, recovered a judgment against Theodore Hawrycz and Morris Deutsch, the maker and last endorser in point of time respectively, in the New Jersey Supreme Court for the sum of \$3042.58 damages and \$59.77 costs of suit.

(4) On or about the 18th day of June, 1928, the said Theodore Hawrycz, being financially irresponsible, the said Morris Deutsch paid the amount of the judgment together with costs and received an assignment from the North Ward National Bank.

(5) Said note is now the property of the plaintiff who has demanded payment from the defendants who are prior endorsers to the plaintiff, but the whole of said note is still due and owing.

Wherefore judgment will be demanded in the sum of \$3102.35 damages together with lawful interest and costs of suit.

DAVID T. WILENTZ,
Attorney for Plaintiff.

30

40

Complaint.

COPY OF NOTE.

\$3000.00 Perth Amboy, N. J. Aug. 8, 1927.
 Three months after date I promise to pay to the
 order of Amalia Pocoroba,
 Three Thousand Dollars
 at Raritan National Bank of Perth Amboy, N. J.
 Due Nov. 8, 1927 THEODORE HAWRYCZ 10

Indorsement.

Theo. Hawrycz
 Morris Deutsch
 Joseph Pocoroba, Jr.
 Amalia Pocoroba
 Humberto Cosentino
 Pocoroba & Co.
 J. Pocoroba. 20

Answer of Defendant Joseph Pocoroba.

Filed March 22, 1929.

Joseph Pocoroba, residing in the City of New-
 ark, County of Essex and State of New Jersey, in
 answer to the complaint filed in this court, says
 that: 30

1. He has not sufficient knowledge or informa-
 tion to form a belief as to paragraph one of the
 complaint.

2. He denies the allegations contained in para-
 graph two of the complaint.

3. He has not sufficient knowledge or informa-
 tion to form a belief as to the allegations contain- 40

Answer of Defendant Joseph Pocoroba.

ed in paragraph three of the complaint and puts plaintiff to his proof.

4. He has not sufficient knowledge or information to form a belief as to the allegations of paragraph four of the complaint and puts plaintiff to his proof.

10

5. He has not sufficient knowledge or information to form a belief as to the allegations contained in paragraph five wherein plaintiff alleges the said note is his property, and puts plaintiff to his proof.

He denies that plaintiff demanded payment from him; he denies that defendant is a prior endorser to that of plaintiff's endorsement; and denies that there is any sum due or owing to the plaintiff on said note.

20

FIRST SEPARATE DEFENSE.

Plaintiff is not entitled to enforce payment of this note as against this defendant.

SECOND SEPARATE DEFENSE.

This defendant endorsed this note at the request of the plaintiff, Morris Deutsch, and received no consideration therefor; said endorsement being made for the accommodation of said plaintiff.

30

SECOND SEPARATE DEFENSE.

There is no money due or owing to plaintiff in this cause, Morris Deutsch.

OBJECTION IN POINT OF LAW.

Defendant reserves a right to move at or before

40

Answer of Defendant Amalia Pocoroba.

the trial of the above cause to strike out the complaint filed by the plaintiff herein, for that it states no cause of action against this defendant.

RICHARD M. GLASSNER,
Attorney of Defendant.

10

Answer of Defendant Amalia Pocoroba.

Filed March 22, 1929.

Amalia Pocoroba, residing in the City of Newark, County of Essex and State of New Jersey, in answer to the complaint filed in this court, says that:

20

1. She has not sufficient knowledge or information to form a belief as to paragraph one of the complaint.

2. She denies the allegations contained in paragraph two of the complaint.

3. She has not sufficient knowledge or information to form a belief as to the allegations contained in paragraph three of the complaint and puts plaintiff to his proof.

30

4. She has not sufficient knowledge or information to form a belief as to the allegations of paragraph four of the complaint and puts plaintiff to his proof.

5. She has not sufficient knowledge or information to form a belief as to the allegations contained in paragraph five wherein plaintiff alleges the said note is his property, and puts plaintiff to his proof.

40

Answer of Defendant Amalia Pocoroba.

She denies that plaintiff demanded payment from her; she denies that defendant is a prior endorser to that of plaintiff's endorsement; and denies that there is any sum due or owing to the plaintiff on said note.

10

FIRST SEPARATE DEFENSE.

Plaintiff is not entitled to enforce payment of this note as against this defendant.

SECOND SEPARATE DEFENSE.

This defendant endorsed this note at the request of the plaintiff, Morris Deutsch, and received no consideration therefor; said endorsement being made for the accommodation of said plaintiff.

20

THIRD SEPARATE DEFENSE.

There is no money due or owing to plaintiff in this cause, Morris Deutsch.

OBJECTION IN POINT OF LAW.

Defendant reserves a right to move at or before the trial of the above cause to strike out the complaint filed by the plaintiff herein, for that it states no cause of action against this defendant.

30

RICHARD M. GLASSNER,
Attorney of Defendant.

Answer of Defendant Joseph Poceroba, Jr.

Filed March 22, 1929.

Joseph Poceroba, Jr., residing in the City of Newark, County of Essex and State of New Jersey, in answer to the complaint filed in this court, says that:

1. He has not sufficient knowledge or information to form a belief as to paragraph one of the complaint. 10

2. He denies the allegations contained in paragraph two of the complaint.

3. He has not sufficient knowledge or information to form a belief as to the allegations contained in paragraph three of the complaint and puts plaintiff to his proof. 20

4. He has not sufficient knowledge or information to form a belief as to the allegations of paragraph four of the complaint and puts plaintiff to his proof.

5. He has not sufficient knowledge or information to form a belief as to the allegations contained in paragraph five wherein plaintiff alleges the said note is his property, and puts plaintiff to his proof. 30

He denies that plaintiff demanded payment from him; he denies that defendant is a prior endorser to that of plaintiff's endorsement; and denies that there is any sum due or owing to the plaintiff on said note.

FIRST SEPARATE DEFENSE.

Plaintiff is not entitled to enforce payment of this note as against this defendant. 40

Answer of Defendant Joseph Pocoroba, Jr.

THIRD SEPARATE DEFENSE.

This defendant endorsed this note at the request of the plaintiff, Morris Deutsch, and received no consideration therefor; said endorsement being made for the accommodation of said plaintiff.

10

THIRD SEPARATE DEFENSE.

There is no money due or owing to plaintiff in this cause, Morris Deutsch.

OBJECTION IN POINT OF LAW.

Defendant reserves a right to move at or before the trial of the above cause to strike out the complaint filed by the plaintiff herein, for that it states no cause of action against this defendant.

20

RICHARD M. GLASSNER,
Attorney of Defendant.

30

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Reply.

Filed March 19, 1929.

Plaintiff, replying to the answers of Joseph Pocoroba, Jr., Amalia Pocoroba, Humberto Constantino and Joseph Pocoroba says:

He denies each and every allegation contained in the separate defenses in said answers. 10

OBJECTION IN POINT OF LAW.

Plaintiff reserves the right to move at or before the trial of the above cause to strike out the second and third defenses contained in the answers of the said defendants Joseph Pocoroba, Jr., Amalia Pocoroba, Humberto Constantino and Joseph Pocoroba in that they do not state a valid legal defense.

DAVID T. WILENTZ, 20
Attorney for Plaintiff.

30

40

Postea.

This case was tried before the Honorable Peter F. Daly, Circuit Court Judge, and a jury in the Middlesex County Court House in the City of New Brunswick on the second day of April, 1930.

10 The jury rendered a general verdict against the defendants Joseph Pocoroba, Jr., Joseph Pocoroba, Sr., and Amalia Pocoroba, and in favor of the plaintiff, Morris Deutsch, in the sum of Thirty five hundred and four dollars and sixty-three cents (\$3504.63) and a verdict of no cause for action against the remaining defendants.

20 Whereupon it is adjudged that the plaintiff Morris Deutsch do recover of the said defendants Joseph Pocoroba, Jr., Joseph Pocoroba, Sr., and Amalia Pocoroba, the sum of Thirty five hundred and four dollars and sixty-three cents

\$3504.63	which have been taxed at the sum
82.09	of eighty-two dollars and nine
<hr/>	cents making in the whole the sum
\$3586.72	of Thirty five hundred eighty-six
	dollars and seventy-two cents.

Judgment signed and entered April 10, 1930.

WM. S. GUMMERE,

Ch. J.

30

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Testimony.

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY CIRCUIT.

April Term, 1930.

MORRIS DEUTSCH,
Plaintiff,

10

vs.

JOSEPH POCOROBA, JR., AMALIA
POCOROBA, HUMBERTO CON-
SENTINO, JOSEPH POCOROBA,
trading as POCOROBA & Co.,
and JOSEPH POCOROBA and
THEODORE HAWRYCZ,
Defendants.

20

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House, in the city of New Brunswick, New Jersey, on the second day of April, A. D. 1930, at 10:40 A. M.

APPEARANCES:

30

DAVID T. WILENTZ, ESQ.,
HENRY MORRIS SPITZER, ESQ., (Present)
Attorneys for the Plaintiff.
RICHARD M. GLASSNER, ESQ., Attorney for
the Defendants.

Mr. Glassner: I appear for the defendants in the 40

Argument.

case, and I wish to make a motion addressed to the complaint.

The Court: Why wasn't this made before?

Mr. Glassner: I suppose I could have made the motion before your Honor. However, lawyers very often resort to a practice of reserving the right in
10 their answer to move to strike out the complaint.

The Court: Of course, you have that right. The point is that I have sixty jurors here, and during this argument their time is not being occupied. I will not listen to motions this way. You have the right, it is true, but then you have to wait to be heard until such time as I will be free from jury work. That is the practice here and in the rest of my circuit.

Mr. Glassner: I respectfully submit to your Hon-
20 or that if my contention is correct and the complaint does not set forth a cause of action, the jury would be saved a good deal more time.

The Court: I am listening to motions every Saturday and the motion could have been made then to strike out the complaint, and I am ready to listen to it at one o'clock this afternoon.

Mr. Spitzer: This is a motion to move to strike
30 out on the ground;—he does not state why he moves to strike out the complaint, and so, I think, on that ground he has no right to come in this court and state that he is going to move to strike out the complaint. He does not state it in the answer as specifically anyway. He just makes the general allegation that he reserves the right, and nothing further, and I think under those circumstances he has no right, at any time, because he has not specifically stated his cause.

Mr. Glassner: That can be raised at the argu-
40 ment of the motion.

Argument.

The Court: He is saying now that you have no right because you did not give the reasons.

Mr. Glassner: That was the reason, that the complaint does not set forth a cause of action. If your Honor will examine it, I think your Honor will agree with me. The complaint does not set forth a cause of action.

10

The Court: I will listen to you now, but I do not want this to happen again.

Mr. Glassner: This is a suit brought upon a promissory note, by the plaintiff Morris Deutsch, who is the second endorser thereon, against several defendants, all of whom are subsequent endorsers to this plaintiff. The action is simply brought to recover upon a promissory note which the plaintiff claims to hold.

20

Under the law, to wit, section fifty of the Negotiable Instrument Law, the endorsers are liable in the order of their endorsement, and a prior endorser cannot bring suit upon the note against a subsequent endorser. The plaintiff, in his complaint, at paragraph five says:

"The said note is now the property of the plaintiff, who has demanded payment from the defendants, who are prior endorsers to the plaintiff," and so forth. But the copy of the note, which is, of course a correct copy of the note, shows that the first endorser is Theodore Hawrycz, the second endorser is Morris Deutsch, and the third, fourth, fifth, and sixth endorsers are the defendants in this suit.

30

Now, I respectfully submit that an action brought upon that note, a prior endorser cannot maintain a suit upon the note against a subsequent endorser.

40

Mr. Spitzer: Paragraph three of the complaint

Argument.

alleges that the plaintiff recovered a judgment against Theodore Hawrycz the maker and last endorser in point of time respectively. Now, I think, I feel sure that it is fundamental law that regardless of how the names appear on the back of the note, evidence can be adduced and can be presented before this court to show actually the order in
10 which the endorsers signed, and if we can prove that Deutsch signed last in point of time, we have recovered against the prior endorsers, and I refer your Honor to section sixty-eight of Negotiable Instruments Law:

“All endorsers are liable prima facie in the order in which they endorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise.”

20 Mr. Glassner: And as to that, there is no allegation in the complaint that there was any agreement outside of the writing contained upon the negotiable instrument, in which view of it certainly no evidence could be introduced to show that the agreement of the parties is anything other than what is in this agreement. If there was an action for contribution, if there was an action on the part of an accommodating endorser, the complaint
30 should allege who was the accommodating party and who was the accommodated party, and should base the action upon that theory. If the plaintiff conceives that he is entitled to recover by reason of the fact that he either endorsed last or endorsed for the accommodation of one or more of these parties, the complaint should specifically allege it, so that the defendants would be in a position to meet that contention. This is a simple suit brought upon a promissory note, which the plaintiff claims he
40 holds against these defendants, whom he claims, in his complaint, are prior endorsers, but who, in fact,

Argument.

according to the copy of the note, are subsequent endorsers, and the plaintiff cannot prove that which he does not plead.

May I say further in the case of Johnson against Tennessee Oil, Gas & Mineral Development Company, 73 Atlantic, page 60, it is there held that if an action is brought for contribution, which would be the case if the plaintiff was on a note with certain others, accommodating parties, the action must be brought only for a pro rata amount, which is a very different thing altogether from what we have here. The action we have here is a simple action upon a promissory note, copy of which is hereunto annexed. Nothing further. Of course, the complaint says the defendants are prior endorsers, but the copy of the note, which is a true copy, plainly shows they are subsequent endorsers, and in that form of action no recovery can be had.

Mr. Spitzer: I maintain this is a simple action on the note. The only question is whether Deutsch signed last, as we claim he did, or whether or not he signed first as appears on the back of the note, that is, second, or third, whatever the case might be. That becomes a factual question, because we allege in our complaint that he was the last endorser in point of time, respectively. So it becomes a factual question whether or not he did.

Mr. Glassner: Paragraph three alleges that the North Ward National Bank of Newark, New Jersey recovered a judgment against Theodore Hawrycz and Deutsch, the maker and last endorser in point of time respectively.

In paragraph five it expressly makes an allegation in fact, not words of description, that the said note is now the property of the plaintiff, who has demanded payment from the defendant, who are prior endorsers to the plaintiff, but the whole of

Argument.

10 said note is still due and owing. A copy of the note which is annexed to the complaint shows the order of endorsement, and the fact is that the plaintiff is not the last endorser, nor are the defendants prior endorsers. The fact shows that the plaintiff is a prior endorser to these four defendants, and that these four defendants are subsequent endorsers. If, as a matter of fact, the situation with respect to the respective liability of the endorsers, interse, is different than what is implied by the document itself, there should have been a specific allegation of fact either that the plaintiff was an accommodated endorser, or that he really endorsed last, for some specific reason, or under some arrangement, or that the matter or form of the note itself does not truly convey the status of the parties, and a specific allegation of what is the status, and how it came about.

20 Under this complaint, it is true that there is a conflict between paragraph five and a copy of the note. Paragraph five says that the defendants are prior endorsers. The note shows that they are not, that they are subsequent endorsers, and the words of description used in paragraph three, describing Theodore Hawrycz and Morris Deutsch, being respectively the maker and the last endorser, are
30 purely words of description, and not an allegation of fact at all. Certainly it does not help out paragraph five, which specifically alleges the fact, which, according to the copy of the note, is plainly untrue.

The Court: Well, you know now that they claim that, as a matter of time, that Deutsch is the last endorser.

40 Mr. Glassner: This is the first intimation that I have had of it. As a matter of fact, as an officer

Argument.

of this court, I want to state to the court that I brought that fact to the attention of the attorney for the plaintiff, Mr. Wilentz; I am not quibbling, I came here to defend this particular suit, and I asked Mr. Wilentz how it was that he hoped to succeed in an action by a prior endorser against a subsequent endorser, and his answer was, "Well, you don't think I am going to walk into that, do you?" 10

That is all the facts I could get out of him. Under those circumstances I am prepared to go to trial on this particular note, and I cannot be held to defend an issue of fact which intends to show that Morris Deutsch, the plaintiff, who is the second endorser, and who is suing subsequent endorse- 20
 rs, is really in truth and in fact a subsequent endorser.

The Court: You get sufficient notice in the complaint in paragraph three that that is the position they take, that Deutsch is the last endorser in point of time. You may call that matter of mere description, but so far as giving you information as to the kind of defense that is necessary to put up, you have full information there. Your motion is denied. You may have an exception.

Mr. Glassner: Very well, sir. 30

(A jury being impaneled and found satisfactory, they were sworn.)

Mr. Spitzer opens the case for the plaintiff.)

(Mr. Glassner opens the case for the defendant).

Morris Deutsch—Direct.

MORRIS DEUTSCH, the plaintiff, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Spitzer:

Q. Mr. Deutsch, you are the plaintiff in this action? A. Yes, sir.

10 Q. I show you a note dated August 8, 1927, payable to the order of Amalia Pocoroba, in the sum of \$3,000, payable at the Raritan National Bank of Perth Amboy, New Jersey, and ask you if that is your signature on the note? A. Yes, sir.

Q. At the time you signed this note, Mr. Deutsch, how many other signatures were on this note? A. There was four others.

20 Q. Well, I show you this note and ask you if, when you signed this note, were all the other names on that note? A. Yes, sir.

Mr. Glassner: I object to that.

The Court: Objection sustained. That is leading and suggestive. He ought to be able to answer without seeing the note.

Q. At the time you signed this note what other names were on this note, this \$3,000 note?

30 Mr. Glassner: I object to that on the ground that this note is a renewal note of the other and the rights of the parties are fixed by the position on the original note, and not by the position on the renewal note, irrespective of the fact that there may have been a change in position.

Mr. Spitzer: Every note constitutes a separate cause of action.

40 The Court: I overrule the objection. It

Morris Deutsch—Direct.

may be insignificant, but for the present I will allow it. You may have an exception.

Q. Do you recollect the question, Mr. Deutsch?

A. Yes, sir. There was J. Pocoroba.

The Court: Give them in the order they were. 10

A. Amalia Pocoroba, Theodore Hawrycz, Consentino, G. Pocoroba, Pocoroba and Company.

By the Court:

Q. There are two Joseph Pocorobas. Which one do you mean? A. Junior was the first one.

Q. The next was whom? A. Amalia Pocoroba, Theodore Hawrycz, Consentino, G. Pocoroba and Company. 20

The Court: Go on.

By Mr. Spitzer:

Q. Where was this note signed, at what place, Mr. Deutsch? Where did you sign this note? A. Right up at my place of business in Fords.

Q. How did you happen to get this note? A. Mr. Major and Mr. Hawrycz and J. Pocoroba came up to my place. Mr. Major asked me to do him a personal favor to sign the note. I said, "All right, sir," being that he has been a friend of mine for many years, and I never asked no questions or what, I said, "All right, I will sign it," and I went to work and I signed the note. 30

Q. What note is that that you have reference to, the \$4,000 note? A. \$4,000; yes, sir.

Q. Where was your signature on that \$4,000 note? A. Well, that I couldn't tell you, sir. 40

Morris Deutsch—Direct.

Q. How many other endorsers were on that note at the time you signed that \$4,000 note?

Mr. Glassner: Objected to. He said he didn't know.

The Court: He did not say that at all. He said he did not know which position his name was.

10

A. Yes, sir. There were four other signatures on there.

Q. Four other signatures at the time you signed it. Do you recollect their names? A. There was Hawrycz, J. Pocoroba, Amalia Pocoroba, Consentino.

By the Court:

20 Q. When you say Pocoroba, who do you mean? There are two Pocorobas.

Mr. Spitzer: He said J. Pocoroba.

The Court: Yes, but there are two.

Mr. Spitzer: This last one seems to be G.

The Court: Your transcript says J. Is that a mistake?

Mr. Glassner: That is correct, your Honor. It is J.

30

By Mr. Spitzer:

Q. When you refer to J, which J do you mean, senior or junior? A. Junior.

Q. Those four gentlemen you named were on the note at the time you endorsed? A. Their names were on the note; yes, sir.

Q. Any other names on the notes? A. No. Afterwards I signed it and my name was on there.

40 Q. Was there any other names on the note? A. G. Pocoroba and Company.

Morris Deutsch—Direct.

Q. I am speaking now of the \$4,000 note. A. Yes, sir.

Q. Now, I refer you again to the \$3,000 note, this note upon which you are suing. I ask you where you signed your name, at what place, what city, what borough, or wherever you signed it? A. At Fords. 10

Q. How do you come into possession of this \$3,000 note? A. Mr. Major came up that day and that note was a protested note.

Q. Just tell what happened, Mr. Deutsch. A. Well, from the first, from the \$4,000 note down?

Q. No. Start with the \$3,000 note. A. They came up and asked me to sign the note. I signed the \$3,000 note. They came in with Mr. J. Pocoroba, Jr., and Mr. Johnson, and Mr. Hawrycz. 20

Q. Anybody else present? A. That is all. Mr. Major, Mr. J. Pocoroba, and Mr. Hawrycz.

Q. When you signed that note you testified prior that those other signatures that you mentioned were on that note? A. Yes, sir.

Q. Did you ever receive any consideration for your signature on this note? A. No, sir.

Q. Were you partners or had anything to do with any trucking business, or any sort of business that these gentlemen were going in? 30

Mr. Glassner: Objected to, that is immaterial.

A. Nothing at all, sir.

Mr. Glassner: Objected to.

The Court: Why is it immaterial?

Mr. Glassner: The action is brought up on a consideration, a note, and it is not necessary to go into the fact— 40

Morris Deutsch—Cross.

The Court: They opened about accommodation endorser, and I thought it might be pertinent. He said no anyhow. It does not make much difference, unless the question of accommodation endorser comes up.

10 Q. Did you ever have any dealings or any conversations with any of the Pocarobas? A. No, sir. That is the first time I met Mr. J. Pocaroba, when they came up with this \$3,000 note to be signed. Mr. Major introduced me to Mr. Pocaroba, and Mr. Johnson.

By the Court:

Q. \$3,000 or \$4,000? A. The last note is \$3,000, your Honor.

20 Mr. Spitzer: That is all, Mr. Deutsch.

Cross-examination by Mr. Glassner:

Q. Mr. Deutsch, do you know the defendant J. Pocaroba, senior? A. No, sir.

Q. You never met him? A. No, siree.

Q. Never had any business dealings with him? A. No, sir.

30 Q. His name was not on the \$4,000 note when you signed it, was it? A. Yes, it was.

Q. You testified on direct-examination that the only four signatures on that note at the time you signed it were that of Theodore Hawrycz, J. Pocaroba, junior, and Amalia Pocaroba, and Consentino, isn't that what you said? A. Well, I stated the names who was on there.

40 Q. Yes. Well, if those were all the names that were on there, then, surely J. Pocaroba, senior's

Morris Deutsch—Cross.

name was not on there? A. G. Pocoroba and Company was on there.

Q. How many endorsements were on this \$4,000 note at the time you signed it? A. I gave you their names.

Q. Yes, you gave me the names. The names you gave were Theodore Hawrycz, J. Pocoroba, junior, and Amalia Pocoroba, Umberto Consentino. Wasn't that all? A. And G. Pocoroba and Company. 10

Q. You insist now that G. Pocoroba and Company was on that original \$4,000 note when you endorsed it? A. Yes, sir.

Q. What did you see? A. Yes, sir.

Q. You could not be mistaken about that, could you? A. No, sir.

Q. What? A. No, sir. 20

Q. Who else was on that note besides G. Pocoroba when you endorsed it? A. When I endorsed it there was the names that I have told you, they were all on there, I was the last one endorsed on that note.

Q. You were the last one endorsed on that note? A. Yes, sir.

Q. You claim now that there was Theodore Hawrycz, J. Pocoroba, junior, Amalia Pocoroba, Consentino, and also G. Pocoroba and Company. Now, who else was on that note when you endorsed it? A. That is all there was on there. 30

Q. That is all? A. Yes.

Q. You are quite sure now? Do you remember seeing the endorsement of Guisepe Petrucci on that note? A. No, sir, I do not.

Q. But you do remember seeing G. Pocoroba and Company on the original \$4,000 note? A. Yes, sir. 40

Morris Deutsch—Cross.

Q. You have never met Amalia Pocoroba, have you? A. No, sir.

Q. You do not know under what circumstances she signed that note, do you? A. No, sir.

Q. Do you remember how the name of G. Pocoroba was signed on that \$4,000 note? A. No, sir.

10 Q. Was it signed just G. Pocoroba, or was there some firm name, by G. Pocoroba? A. And Company.

Q. Well, how was it signed, please? A. G. Pocoroba and Company.

Q. Is that all that was on there? A. That is all.

Q. Just G. Pocoroba and Company? A. That is all that I can remember; yes, sir.

20 Q. You don't remember anybody signing it for the company either as officer or as a member of the firm? A. No, sir; I do not.

Q. Just G. Pocoroba and Company? A. That is all.

Q. When the \$4,000 note became due your endorsement was on that note, wasn't it? A. Yes, sir.

30 Q. And you received the notice of protest, did you not? A. Yes, sir.

Q. You didn't pay that note, did you? A. No, I did not.

Q. Did you pay any money towards renewing that note? A. No, I did not.

Redirect-examination by Mr. Spitzer:

40 Q. Mr. Deutsch, at the time this note was brought down to you for your signature, was there any discussion about your signature at that time?

Morris Deutsch—Redirect.

A. Why, the discussion was, I have heard that my signature wasn't no good, after the second—that is the time when the first note was protested, and I asked, "Well, what is the idea then, youse, coming up here and asking me to sign it again?" The answer I got, "Well, never mind, you just sign it, you signed the first one, sign the second one too, the notes will be taken care of." 10

Q. And that is the only conversation? A. And that is the only conversation.

Mr. Spitzer: I offer that note in evidence.

Mr. Glassner: No objection.

By the Court:

Q. How is it you are so sure that you were the last signature on this \$3,000 note? A. Why, Judge, your Honor, I never would sign the note except I had the same signatures that was on there that was on the note previous to that. Mr. Major, Mr. Hawrycz, and Mr. Pocaroba came up to me. And I made sure that the note was endorsed by the rest of the endorsers before I would endorse it myself. 20

Q. Well, were you the last signature on the \$4,000 note? A. All the other signers were endorsed before I endorsed it; yes, sir.

Q. Was yours the bottom name on the back of the note, the \$4,000 note? A. That I don't remember, your Honor. 30

Q. Oh, well, now, you know the signature of—the physical location of your signature as endorsement on the back of a note, don't you? A. No. I didn't think or mention anywhere I had my signature on it. If there was an open space, I signed it.

Q. You knew the significance of being last endorser as compared with being first or second or 40

Morris Deutsch—Redirect.

third, didn't you? A. No, siree, I did not. I don't know today.

Q. You didn't? A. No, sir.

Q. Well, you are suing now because you are last endorser. If you didn't know the significance of the rights of a last endorser against the other endorsers, why are you suing? A. Why, your Honor, what I knew being the last endorser, I must figure
10 three other endorsers, the other signatures was on there, the previous endorsers.

Q. Why wouldn't you endorse until all the other signatures were on? A. Well, I figured when it comes, if they don't take care of it, I figured they have to take their share the same as I do.

Q. You also figured, did you, that if you were the last endorser, and you have to pay the bank, for example, but then you can sue all the endorsers whose names appear on the back of the note before yours appears there, don't you? Is not that the reason why you say it is significant to be the last endorser? A. Yes, sir.
20

Q. Well, then, the reason why you saw to it that all the other endorsers were on the back of this \$4,000 note, and again on the back of the renewal note of \$3,000 was because if you were on last, the other endorsers were liable ahead of you, is that right? A. Yes, sir.
30

Q. Well, that being so, and you having the knowledge that that was so legally, why didn't you think it was important to see that your signature was the bottom one on the back of the note? A. Well, that I didn't, your Honor. I really never figured it at all.

Q. Well, now, if there is a paper presented to anyone, and there are four, five, or six signatures on the paper, the first impression, naturally, to you
40

Morris Deutsch—Redirect.

or anyone else that you know of would be that whoever was on the bottom was the one who wrote last, wouldn't it be? A. Well, not always, your Honor; no, sir.

Q. Well, on this \$3,000 note, which is the only one we have yet to look at, there was plenty of room under the name of G. Pocaroba for you to put your name, wasn't there? A. Yes, sir; your Honor, there was, but there was an open space there between the second and third and fourth endorsers, whatever it was— 10

Q. Well, now, you say whatever it was. Be definite about it. A. Well, Judge, your Honor, second or third endorser there, there was an open space between those endorsements, and I thought it will be all right to put my signature under there. 20

Q. How many endorsements were there on there that were ahead of you in point of physical location? You say second or third. You say there was a space there after the second or third endorsement? A. Yes, sir. 20

Q. Well, were there two or three that were ahead before there was a space? A. That I don't remember, your Honor.

Q. Well, you said two or three— A. Well, that is what I stated, I didn't really state how many was there ahead of me. 30

Q. Well, you said second or third. Were there two or were there three or were there more or were there less than three? A. There was no more than three and there was nothing less than two. I don't remember that at all.

Q. Don't say it if you don't remember. A. I do not.

Q. You say there was no more than three and 40

Morris Deutsch—Redirect.

no less than two, is that right? A. I don't remember, your Honor.

Q. Why did you say then that there was no more than three nor less than two?

10 Mr. Glassner: It has been lost by the bank and I have a copy of the protest notice. I have the original \$3500 note, which was endorsed exactly the same as the \$3,000 note and exactly—

The Court: I thought the original was \$4,000.

Mr. Glassner: It was. This is the first renewal and the endorsements are exactly in the same order.

20 (\$3,000 note entered in evidence and marked "Exhibit P-1.")

By the Court:

Q. How many renewals were there, Mr. Deutsch?

A. First one was \$4,000, and then the second one was \$3500, and the third one was \$3,000.

The Court: You say the \$4,000 note is lost?

30 Mr. Glassner: Yes, sir. There are the order of endorsements on it, according to the certificate of protest.

By the Court:

Q. How are the endorsements on the first renewal of \$3500, the same as they were on the \$3,000?

A. That I don't know, your Honor.

40 Q. Were you the last one on that? A. I was the last one—that is, the last one to sign on that note; yes, sir; your Honor, but I don't know if my name was the last one or not.

Morris Deutsch—Redirect.

Q. They were all on there before your name went on? A. Yes, sir.

Q. Was that the same with the \$4,000 note? A. The same with the \$4,000, your Honor.

The Court: That is all.

By Mr. Glassner:

10

Q. Do you remember where you signed the \$3500 note, Mr. Deutsch? A. No, sir, I do not.

Q. Do you remember exactly when you signed it? A. No, I don't remember the date.

Q. I beg your pardon? A. No, sir.

Q. Do you remember the date of the note? A. No, I don't.

Q. \$3500 note was a renewal note, wasn't it, of the original \$4,000 note? A. Yes, sir.

20

Q. You don't remember just what signatures were on there when you put yours on, do you? A. I do remember. All the other signatures was on except mine.

Q. Well, what other signatures were on except yours? A. J. Pocoroba, Amalia Pocoroba, Hawrycz, Consentino, and G. Pocoroba and Company.

Q. Was Petrucci's endorsement on there? A. I don't know.

Q. Was Consentino's endorsement on there? A. Yes, sir. 30

Q. Do you remember that? A. I surely do.

Q. When you put your name on the \$3500 note, did you put it underneath the other endorsements?

A. That I couldn't say. I don't know.

Q. Well, that is what you would have, wouldn't you, if all the other signatures were on there? A. I don't know.

Q. I say, if the other signatures were on it when 40

Morris Deutsch—Redirect.

it came to you for endorsement, you would have put your name on the bottom, wouldn't you?

Mr. Spitzer: I object as a conclusion.

Mr. Glassner: It is cross-examination.

The Court: No, it is not what he would have or not.

10

Q. Did you put your name at the bottom, Mr. Deutsch? A. I don't know.

Q. I call your attention to the fact that on this \$3,000 note your signature is the very second one. Will you tell me why it was that you put your signature here instead of at the very bottom when the other signatures were already on there? A. Yes, sir. Because there was an open space there and I didn't think that matter where I am put my name, whether the note will be filled up entirely, but put it right in there where the open space was.

20

Q. What about the \$3500 note? A. I don't know how that was signed.

Q. Would you be surprised to find it was signed exactly the same way this was, exactly the second signature, the same as it is here? A. No, I wouldn't be a bit surprised; no, sir.

Q. You explain that in the same way? A. The same way; yes, sir.

30

Q. Is this the \$3500 note which you signed? A. That is my signature right on there; yes, sir.

Mr. Glassner: I offer that in evidence.

Mr. Spitzer: I object to this note on the ground that the note sued on is \$3,000, and this is a \$3500 note. As I said before, each note stands by itself, regardless of whether it is a renewal note, or what it is. It is a separate transaction, apart and distinct from

40

Samuel Manger—Direct.

other transactions. The suit in this case is on the \$3,000 note.

The Court: You are entirely right about that, but still this is evidential, isn't it, to go before the jury for them to determine the probability or improbability of the reason given by him why his signature appears in the physical location it does. I will allow it as a matter of cross-examination. 10

Mr. Glassner: I ask that be marked for identification.

(\$3500 note marked "D-1 for identification.")

SAMUEL MANGER, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith: 20

Direct-examination by Mr. Spitzer:

Q. Mr. Manger, do you know Joseph Pocoroba, junior? A. Yes, sir.

Q. Do you know Amalia Pocoroba? A. Yes, sir.

Q. Is she the wife of Joseph Pocoroba, junior?
A. She is the wife of Joseph Pocoroba, junior.

Q. Do you know Umberto Consentino? A. No, I do not. 30

Q. Do you know Joseph Pocoroba, senior? A. Yes, sir, I do.

Q. And Theodore Hawrycz? A. Yes, sir, I do.

Q. I direct your attention to the time when you gentlemen were to enter into some agreement for business. Who were to enter business and how much was each to put up, if anything? A. We were six of us supposed to go in partnership.

Mr. Glassner: I object. The question is: 40

Samuel Manger—Direct.

Who was he in business with, and how much did he put up. I have no objection to asking who was in the venture with him. I do not think the question of contribution is material.

10 Mr. Spitzer: It is only material insofar as just to prove the original transaction and just to show the facts leading up to this note, that is all, and prove who was in this transaction, and how much each put up, to show that they were all liable and what their interest was.

20 The Court: There is only one question of fact in this case, whether this man was the last endorser in point of time or not. It is contended that the physical location of the signatures on the back of the note contradict his statement.

Mr. Spitzer: I want to show that the other Pocorobas, Mr. Glassner claims were accommodated parties, were actually in the transaction.

Q. Mr. Manger, will you explain just your connection with this case?

30 Mr. Glassner: I object to the question on the ground your Honor has stated the only issue in this case is whether the note is what it purports to be, or whether he put his signature on there last.

40 The Court: That is all I did state, but I was not allowed to finish my statement. That being true, what I have stated, that that is the only issue, as to whether or not Deutsch was the last endorser; if he was not, he has

Samuel Manger—Direct.

no cause under this complaint. To assist the jury in determining whether or not he is telling the truth when he says that all the other signatures were on there when he signed, the relationship of all the parties is necessary, and only from that standpoint alone, to determine whether or not his story is a probable story. I will allow it. You may have an exception. 10

Q. Mr. Manger, what was your relationship with these gentlemen? A. We was supposed to go in the trucking business partners.

Q. Who were the five? A. Mr. Pocoroba, junior, G. Pocoroba, Mr. Charles S. Rossner, Samuel Manger, Arthur Johnson; so we had a meeting together— 20

The Court: Why go into all these details? The only question is where was Deutsch's interest in this.

Q. I direct your attention to this note of \$3,000 payable to Amalia Pocoroba, signed by Theodore Hawrycz. A. Yes.

Q. Were you present in Fords when the note was signed by Mr. Deutsch? A. I came down with Mr. Pocoroba, junior, and Johnson to Mr. Deutsch to have that note signed, and renew it, and Mr. Deutsch told me, he said, "Listen, I don't care to sign that note any more for two reasons, I have been having too much trouble with that note going protested, and another thing, you haven't got all the signatures on that note, and I don't think I will sign it." 30

Finally we started to plead with Mr. Deutsch, I spoke to him, and I begged him, "Please do that, 40

Samuel Manger—Direct.

sign that note, and it wouldn't go wrong any more."

He said, "Well," he said, "the only way I will sign this note if you will give me the rest of the signatures the way I did before."

10 And we went back to Newark and Mr. Pocoroba got the rest of the signatures on, and the following day we came down to Mr. Deutsch, and Mr. Deutsch signed the note.

Q. Where was this note signed? A. In Mr. Deutsch's place of business.

Q. Do you know whereabouts on that note he signed it? A. Mr. Deutsch seen an open space, and I don't know much about notes, but he didn't think it would make any difference where he signed—
20

The Court: You have no right to say what he thought.

A. All right, your Honor.

The Court: That is in his mind, not yours.

By Mr. Spitzer:

Q. Not what he thought. Just what you actually saw. A. I seen him signing the note.

30 Q. Do you recollect where he signed that note, what space, or what place? A. No, I do not. The only thing I know he signed the note.

Q. How do you know what other names there were on this note at the time he signed? A. I have seen the names right on the note.

Q. What were the names? A. The first name was Theodore Hawrycz; the second was Joseph Pocoroba, junior; and the third one was Amalia Pocoroba; the fourth one was H. Consentino; and
40

Samuel Manger—Direct.

the fifth one was G. Pocoroba, senior, and Pocoroba and Company.

Q. Who else was present at that time? A. Mr. Hawrycz was present at that time, and Mr. Johnson was present at that time, and Pocoroba, senior,—that is junior, rather.

Q. Did you ever have any transactions with Joseph Pocoroba, senior? A. The only transactions I have with him is this partnership transaction. 10

Q. What partnership was that? A. The trucking business.

Q. Is that what this note was given for? A. That is what the note was given for, to help the trucking business out, to have money to go along with the business.

Q. Who else was in that trucking business to go in with it? A. Why, I have just mentioned the names. 20

Q. Will you please mention them again? A. Samuel Manger, Pocoroba, junior, Pocoroba, senior, Amalia Pocoroba, Johnson, and Charles S. Rossner.

Q. At whose request did Deutsch sign this note? How did it happen that he signed this note? A. Mr. Pocoroba, junior, told me, he said, "Why should we be all on this note, and you haven't got anything, in case anything does go wrong with the note," he said, "Why, we may have to pay it, you ain't got nothing we can take off you." He said, "You had better go out and get yourself a signer, and he must be a property owner." 30

I said, "If you will give me a day's time, I will go out and see if I can get a signer." So all right, we went down to Perth Amboy, and I went down to Fords Corner, and I went over to Morris 40

Samuel Manger—Direct.

Deutsch. I said, "Morris, will you please sign me the note? I have explained the whole situation, and what we are going to do with this money, and we are going to go in business." And I told him, "You need not be afraid, you are not the only sign-
 10 er on the back of the note, there is three or four signers, you will see them when I bring you the note down, and then if you think you can sign it, you will sign it," and I told him I will appreciate it very much.

So he said, "All right, bring the note down and I will see what I can do."

So I went up to Pocoroba's and I told him I have got a property owner to sign the note, and I mentioned the name. He said, "I don't know the gentleman."
 20

Q. Which Pocoroba do you have reference to? A. All the Pocorobas happened to be in the house then because they live together.

Q. Do you mean Joseph Pocoroba, senior? A. I mean Pocoroba, junior, and Pocoroba, senior.

Q. What was their interest in this transaction? A. The same as mine.

Q. Well, just explain what was their interest. A. We was supposed to go in the trucking business, Mr. Pocoroba, junior, is supposed to go out and get the business of the factories for the trucking, and we was supposed to be the drivers, me and Charles Rossner.
 30

Q. How much did Amalia Pocoroba put into this? A. Amalia Pocoroba was supposed to take care of the books, and she was supposed to get a certain share of it, a certain per cent. out of it.

Q. How about Joseph Pocoroba, senior? A. The same thing as me. We were equal partners.
 40

Mr. Spitzer: That is all.

*Samuel Manger—Cross.**Cross-examination by Mr. Glassner:*

Q. If that is so, Mr. Manger, how do you explain the fact that Mr. Pocoroba, senior, that his endorsement was not on the original note? A. It was on the original note because Mr. Pocoroba—

Q. Never mind why. A. I will explain you why. 10

Q. How do you know that it was? A. I have seen it.

Q. You actually saw it? A. Yes, sir.

Q. You say that you were going into the trucking business? A. Yes, sir.

Q. You are quite sure it was the trucking business? A. Absolutely.

Q. Or was it some other kind of business? A. In my heart it was trucking business.

Mr. Spitzer: I object to any cross-examination along this line. 20

The Court: Well, you went into detail pretty well. We will have to get it all.

Q. What do you mean? A. In business here, the proposition was before me to go in the trucking business.

Q. What business was it in your mind? A. The trucking business. 30

Q. What do you mean by it was the trucking business in your heart? A. Because Mr. Pocoroba came over—

Q. What business was yours? A. A trucking business, carting freight and long distance trucking.

Q. How many trucks did you have? A. We didn't have any trucks.

Q. And you had no licenses for any trucks? A. What do you mean licenses? 40

Samuel Manger—Cross.

Q. You had no licenses? You understand my question, sir. A. I think not.

Q. You had no licenses issued to you to run any trucks? A. There were no licenses because Mr. Pocoroba—

10 Q. Never mind why. You didn't get any licenses? A. Mr. Pocoroba was supposed to get the licenses.

Q. Won't you tell me whether you had any licenses to operate trucks? A. Absolutely, I didn't have no licenses, but I have driver's license, yes. I have a license right with me now.

Mr. Spitzer: The testimony is that they did not have any trucks.

20 A. We didn't have the trucks yet. Mr. Pocoroba was supposed to get the trucks.

Q. Did you take any of the money that was invested and pay on account of the purchase of any trucks? A. Mr. Pocoroba was supposed to be the secretary and treasurer.

Q. Will you tell me, please, for yourself? A. Yes.

30 Q. Whether within your knowledge any of the money that was put in was used to buy any trucks with? A. Yes. Mr. Pocoroba told me that he was putting in money, he was buying trucks.

Q. Was any money put in the trucks? A. I don't know. That is up to Mr. Pocoroba.

Q. You never saw any trucks that were bought, did you? A. Mr. Pocoroba told me that he did—

Q. Please tell me whether you saw any trucks that were bought. A. No.

40 Q. As a matter of fact, it wasn't the trucking business at all? A. It was the trucking business.

Samuel Manger—Cross.

Q. You insist that it was the trucking business?
A. Absolutely.

Q. You also insist that you actually saw Mr. Pocoroba, seniors' endorsement on the original note for \$4,000? A. Absolutely.

Q. Isn't it a fact that the first note for \$4,000 was offered to the bank for discount without Mr. Deutsch's signature? A. I didn't get you. 10

Q. Isn't it a fact that the first note for \$4,000 was offered to the North Ward National Bank for discount without Mr. Deutsch's signature? A. No.

Q. Never offered at all? A. Not that I know of.

Q. Well, do you know in what condition the note was when it was first presented to the North Ward National Bank for discount? A. The only condition I seen— 20

Q. Do you know it? A. Yes, the same as I have said before, with all signatures on it.

Q. All signatures on it when it was offered for the first time? A. First time.

Q. You are quite sure about that? A. Positive.

Q. Weren't you told, as a matter of fact, that the bank refused to discount the note, and that you had to get an endorsement in addition to Mr. Hawrycz? 30

Mr. Spitzer: I object whether he was told or not. By whom?

A. I wasn't told by anybody. The only thing I was told that Mr. Pocoroba called me up that he has got the money and it is in his father's hands, and they are going to take care of the trucks, to get the trucks themselves.

Q. You were not told that the bank would not discount the note of Hawrycz, and that you had to 40

Samuel Manger—Cross.

get an additional endorsement? A. I wasn't told that, no. The only thing I was told to get a signer.

Q. Mr. Morris Deutsch, was he interested in this firm or not? A. Not in any way.

Q. He wasn't your silent partner? A. No, sir.

10 Q. Why was it you asked for his endorsement?
A. Because they insist upon me to get an endorser.

Q. Oh, they did insist upon getting an endorser?
A. Yes.

Q. Then you were mistaken about saying that you offered his signature first right away? A. I didn't offer. That was proposition to me to get an endorser the same as the rest of them was endorsed.

Q. Who told you you had to get a property owner endorser? A. Mr. Pocoroba, junior.

20 Q. Why did he tell you you had to get a property owner endorser? A. That is the only endorser the banks will take.

Q. He did tell you then, didn't he, that the bank would not discount the note without a property owner? A. He told me to make the note stronger it will have to be a property owner.

30 Q. Didn't he tell you the bank would not discount the note without a property owner endorsement? Did he or did he not tell you that? A. He didn't tell me that.

Q. Did Mr. Pocoroba know Morris Deutsch at that time? A. He don't.

Q. He had never met him, had he? A. Never met him before.

Q. Wasn't it you who suggested that you take the note and get it endorsed by a property owner? A. No, I didn't.

40 Q. Didn't you, in fact, take that note to Morris

Samuel Manger—Cross.

Deutsch and ask him to endorse it? A. No, I did not.

Q. You were not on this note, were you? A. No, I wasn't.

Q. Well, why weren't you on this note when you admit you were a member of this firm? A. Because Mr. Pocoroba told me that my signature is not reliable, I have no property. 10

Q. Isn't it a fact you didn't want your name upon the note for other reasons? A. No, not that. Mr. Pocoroba didn't want my name.

Q. Isn't it a fact— A. It isn't a fact, Mr. Pocoroba didn't want my name on the note because I didn't own any property.

Q. They felt your name on the note would harm the note? A. I don't know how I felt. It is only what Mr. Pocoroba insisted. 20

Q. Were you present when the 3500 note, the first renewal note was endorsed? A. Second note, not the first one. The first one was \$4,000.

Q. \$3500 note, the first renewal note? A. The first renewal note?

Q. Yes. A. I was.

Q. Were you present when that was signed? A. It was down there at Mr. Deutsch's place of business. 30

Q. Were you present when that note was signed? A. Absolutely I was.

Q. Who else was present? A. Mr. Johnson, Mr. Pocoroba, senior—I mean, junior, and Mr. Charles S. Rossner, and Mr. Hawrycz.

Q. Mr. Johnson's name does not appear upon this note? A. No.

Q. Was he too a partner? A. He was a partner.

Q. What is the other man's name, Mr. Rossner, was he a partner too? A. Yes. 40

Samuel Manger—Cross.

Q. His name does not appear on this note at all?

A. No.

Q. They were all present? A. Yes.

Q. Where was the note signed? A. In Mr. Deutsch's place of business in Fords.

10 Q. When the first note for \$4,000 was due it was not paid, was it? A. No, it wasn't paid.

Q. Were you asked for money to take up this note with? A. Yes, I was.

Q. Did you pay any money? A. Yes, I did.

Q. How much money did you pay when the \$4,000 note became due? A. A little over \$71 on my share, including the protest fees.

Q. Who else contributed money? A. The rest of them, all of them. They all got together, and we put the money in to pay the \$500.

20 Q. Who got this money? A. Mr. Pocoroba, junior, got the money.

Q. How many of you were there altogether? A. Seven.

Q. Seven of you put in \$71? A. A little over \$71. I can't recall how much. It was a little over \$71.

Q. Did you pay your contribution by check or cash? A. Cash.

30 Q. And the others did likewise? A. Also by cash.

Mr. Glassner: That is all.

Mr. Spitzer: That is all.

By the Court:

Q. What was this \$4,000 note given for in the first place? A. Why, your Honor please, I have got to explain the thing so you will know what it was given for.

40 We were supposed to go in the trucking busi-

Samuel Manger—Cross.

ness, and Mr. Pocoroba said \$300 would be enough and we each give the \$300 to Mr. Pocoroba, and Mr. Pocoroba was treasurer and he was supposed to do all managing, him and his father, and his wife, and he was supposed to get the truck off of the trucking agency. One day we come up there, he said, "Well, we will get this kind of make truck, and the other kind of make truck." 10

Finally he figured out that the money that he had in wasn't enough, he would have to have more money for insurance, and for what they call rent for the trucks, and then we go in business, so expenses to run the trucks, or to keep the trucks. we have got to raise more money to continue the business, being we are in it, we had money already, we have got to raise more money to continue the business. Mr. Pocoroba, junior and senior, was up, and Mrs. Pocoroba, we were all sitting together in the dining room, and he told us we have got to raise more money. I told him I didn't have any more money, and the rest of them told them the same thing. So he made a proposition to Mr. Hawrycz, being that he is a property owner, he should be the maker of the note, he should sign his name, and we each one should get a signature, or we should try to get a signature, and Mr. Pocoroba, senior, is going to discount that note. I told him I haven't any signers at the present time, but I am going to try to get a property owner. And I went home, and finally the following day I told Mr. Pocoroba, junior, that I have got a property owner which I think he will sign me the note, and I went down—they all had the signatures on them, Mr. Pocoroba was telling me what kind of good signatures he has got on the note, and he showed me them, Mr. Consentino, his father, and his wife, 20
30
40

Samuel Manger—Cross.

they were all very reliable, he said, why couldn't I get a signer. So we went down to Mr. Deutsch and I explained Mr. Deutsch the whole matter, just the same way I am explain it here, I said, "Morris," I said, "it wouldn't be no harm to you," I said, "nor you can't go wrong, not any such last
 10 thing in the world, there is five or six signers on the note, and it wouldn't be any harm done if it does go wrong," and I wish to try to pay my share, but the way it looked to me, your Honor, Mr. Ponoroba never did give us—

Q. Nobody is asking you for your argument. You are asked to give some facts. A. I am giving you facts.

Q. Why was this note given? A. It was given to go ahead further with the business, so we don't
 20 lose the rest more money, the first money we put in.

Q. Just a minute. You say not to lose the rest of your money. There were seven of you, weren't there? A. Yes.

Q. You were to go into this trucking business originally, were you? A. Yes, sir.

Q. And each was to put in a like amount, is that right? A. Yes, sir.

30 Q. That would have been \$2100, is that right? A. Yes, sir.

Q. And you each did put in \$300? A. Yes, sir.

Q. Making \$2100, and you were all seven to be engaged in the trucking business, is that right? A. Yes, sir.

Q. How many trucks were you supposed to have? A. Four trucks.

40 Q. On \$2100? A. Just to pay a deposit on them, and pay out so much every month. Buy them on instalment.

Samuel Manger—Cross.

Q. With \$2100 you expected to get— A. That is what Mr. Pocoroba told me would be sufficient, \$300 apiece.

Q. For four trucks? A. Four trucks.

Q. Each one of you were to go in the trucking business, were you? A. Yes, four of us were supposed to be on the trucks working as drivers, and three was supposed to take care of the outside, to get business for us to do the trucking. 10

Q. What kind of business? A. Factory, freight, long distance trucking, and all of that.

Q. You were supposed to get four trucks for \$2100 deposit, is that right? A. That is what Mr. Pocoroba put the proposition for us.

Q. And then you were to go on with the business with \$2100? A. Yes.

Q. Then you found the \$2100 wasn't enough? A. 20
Mr. Pocoroba found that it wasn't enough.

Q. Well, you found it too, didn't you? A. Well, he called me up and told me that we were going to call a meeting in his house—

Q. You found it too, didn't you? A. The way he explained it to me.

Q. Where did you ever get the idea that you could buy four trucks for \$2100 and conduct a trucking business? A. Your Honor, I didn't have much experience in that. 30

Q. Well, what business were you in before? A. In the soda water business.

Q. In what way in the soda water business? A. Bottling, manufacturing soda water.

Q. You didn't have enough business experience to know that \$2100 would not buy four trucks? A. Your Honor, I wasn't on a big merchant to know big business transactions.

Q. You told the jury you didn't know that \$2100 40

Samuel Manger—Cross.

— A. I did know on a certain extent four trucks, yes, four trucks on \$2100 deposit would be sufficient providing we would get the business right away, it would be sufficient.

10 Q. You were not to have any cash capital at all to do this trucking business? A. Mr. Pocaroba said he didn't need it because he had plenty of business on hand at the present time.

Q. I ask you this: You were to put \$2100 into the trucks, deposit on four trucks, isn't that right?

A. No, not all the money. Was supposed to be from three to four hundred dollars on every truck.

Q. There were seven of you putting in three hundred dollars? A. Not all the money. To keep part of the money reserved for the expense.

20 Q. What expense? A. For running the trucks, gasoline, rent, insurance.

Q. How much of this \$2100 was to go as a deposit on the purchase of four trucks? A. Part of the \$2100.

Q. How much? A. Oh, between two and three hundred dollars apiece on each truck.

Q. That would be \$1200? A. \$1200.

Q. That would leave \$900? A. \$900 to carry on the rest of the business.

30 Q. As your cash working capital? A. Yes, sir.

Q. How long were you before you found out that you could not buy the trucks? A. Mr. Pocaroba was supposed to go out and buy the trucks.

Q. How long were you before you found out that you could not buy trucks? A. Yes.

Q. How long was it? A. Oh, about from two to four days.

Q. Two to four days? A. Yes, sir.

40 Q. Who held this \$2100 for that two to four days? A. Mr. Pocaroba held it.

Samuel Manger—Cross.

Q. Where did he have it, do you know? A. He had it with him.

Q. Then each one of you put in \$300 cash? A. Cash.

Q. That included Amalia Pocoroba, also, did it? A. Amalia Pocoroba was supposed to be with Mr. Joseph Pocoroba, senior, being she is his wife. 10

Q. Won't you get down to facts, please, and keep to them? I want to know where the money came from. A. The money came from each individual, we were seven of us.

Q. Well, there was a woman among the seven, wasn't there? A. There was, and the woman was supposed to just get a certain interest out of it, a certain percentage out of it to take care of our books.

Q. Were there seven besides Mrs. Pocoroba? A. 20
Yes, there was.

Q. Each one of those seven was to put up \$300? A. \$300.

Q. And you did put up \$300 apiece? A. And we did put up \$300 apiece.

Q. And you put it up in cash and you handed it to Pocoroba, junior, is that right? A. Yes, sir.

Q. And he held it for two to four days? A. Yes, sir. 30

Q. Then he found that he couldn't buy four trucks with as little money as that, is that right? A. Yes.

Q. Then he proposed that a note be given? A. He proposed we have to have more money.

Q. And he proposed the way, didn't he? A. He asked us have we got cash money and we told him we have got no more cash money. So he made a proposition on a note, to raise money on the note.

Q. And Hawrycz was to sign the note? A. And 40

Samuel Manger—Cross.

anybody should sign the note. He didn't mention Hawrycz immediately.

Q. How did Hawrycz come to sign it? A. They asked us—Mr. Pocoroba asked every one of us if we are property owners, and I said no, and the rest of them said no, and Mr. Hawrycz said he is
10 a property owner.

Q. That is why he was picked out to make the note? A. He asked him to make it. He didn't want to do it.

Q. That is why he was picked out to sign the note was because he was a property owner? A. Yes.

Q. Why did he make out the note to Amalia Pocoroba? A. Mr. Pocoroba asked him up with me especially to get some money in the bank.

20 Q. She wasn't one of the seven, was she? A. No, she wasn't.

Q. She was Joseph Pocoroba's, Junior's wife, wasn't she? A. Yes, sir.

Q. She was picked out to be the payee of that note? A. She was picked out to get the money on that note.

Q. That is payee. A. I don't know that.

30 Q. She was to get the money on the note? A. Yes.

Q. Did she get it? A. She didn't get it.

Q. Who got it? A. Mr. Pocoroba, senior, got it.

Q. Then they had \$4,000, less the discount, plus the \$2100 in cash that the seven of you put up?
A. Yes.

Q. Then he had \$6100 about? A. \$6100.

Q. How long did he keep that? A. He didn't keep it very long. He put it in the bank in his name and in his wife's name.

40 Q. Why didn't he buy the trucks? A. Why, he

Samuel Manger—Cross.

said that he is bargaining, he wants to get better buys on the trucks, and he is bargaining with different companies and different agencies.

Q. How long was it— A. Then the bills, they been going on right along.

Q. I understand. He had \$6100 of the money?
A. Yes, sir.

Q. That belonged to the seven of you, of which he was one of the seven, is that right? A. Yes, sir. 10

Q. That first note for \$4,000 was given for three months, was it? A. Yes, sir.

Q. So, therefore, you didn't buy trucks for all that first three months, did you? A. No.

Q. And he held that \$6100 all the time? A. Yes, sir.

Q. Then, at the end of three months you paid \$500 off on that \$4,000 note? A. Yes. 20

Q. And he didn't use any of that \$6100 to pay that note? A. No, he didn't.

Q. Just follow me. But he made the seven of you put up about \$71 and some odd cents apiece in order to make \$500 reduction, is that right? A. Yes, sir.

Q. Where was this \$6100 all that time? A. He had it still in the bank between him and his wife.

Q. What were all you seven men that were to engage in this trucking business, what were you doing in the meantime, what were you working at? 30

A. I was still working in the soda water business.

Q. What were the rest of them doing? A. All working.

Q. All working? A. I suppose so. Mr. Rossner keeps a candy store and confectionery.

Q. Now, then, you went on and you let three more months go, didn't you? A. Yes.

Q. And he still had the \$6100. Why didn't you 40

Samuel Manger—Cross.

make him buy the trucks during that six months?

A. Why, your Honor please, we couldn't talk to him. Every time we speak to him he had different excuse and different reasons, and after that, you see, we always asked for Mr. Pocoroba, senior, and we could never find him.

10 Q. This \$6100 that Pocoroba, junior, had belonged to all of you? A. All of us.

Q. He was holding it for the benefit of all of you? A. Yes.

Q. Where is the \$6100? A. Mr. Pocoroba, junior, and senior have still got it.

Q. Why didn't you have them arrested for embezzling it? A. I couldn't have them arrested.

Q. Why not? A. I don't know why I didn't have them arrested.

20 Q. You say under oath that this \$6100 was given to him as the result of the seven of you putting it up? A. Yes, sir.

Q. \$300 in cash apiece in the first place, and then by going on this note in the second place, and that he has had that \$6100 all that time from about June, 1927, and you have let him have that \$6100, you claim he has gotten away with that \$6100? A. Yes, sir.

30 Q. And you are out your original \$300 and the \$71 that you paid? A. Yes, I have paid it.

Q. Have you asked him for the money back? A. Your Honor please—

Q. Have you asked him for the money back? A. I did.

Q. What did he say? A. If I will ask again I will get a punch in the nose.

Q. Why didn't you have him arrested? A. I couldn't have him arrested.

40 Q. Why not? A. Well, your Honor please, I was

Samuel Manger—Cross.

really afraid of him, to tell you the truth, and I am not afraid to say it in court.

The Court: That is all I have.

By Mr. Glassner:

Q. You are quite sure that is the reason, because you are afraid of him? A. Yes. 10

Q. And is that the reason why— A. One of the partners.

Q. Is that the reason why you gave this note for \$30 on October 10, 1927, to the order of Hector R. Pocaroba? Is that your note, sir? A. This was a different transaction.

Q. I ask you if that is the reason why you gave that note, because you were afraid of him? A. Yes. 20

Q. Is that the reason? A. Yes. What, this note here?

Q. This note here, yes, that is your note, isn't it? A. Yes, that is my note.

Q. Is that the reason why you gave that note? A. No, not for that reason, because this note was given to him because I had to give it to him.

Q. You didn't give it to him because you were afraid of him?

Mr. Spitzer: I object to this. 30

A. That has nothing to do with the other note. It is a different proposition.

Mr. Glassner: May I offer for identification this note?

(Note marked "D-2 for identification.")

Q. I show you one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve thirteen notes 40

Samuel Manger—Cross.

of \$30 each to the order of Hector R. Pocaroba, bearing the same dates, and ask you if you signed those note? Did you sign those notes? A. I was supposed to get those notes, please.

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

Q. You gave these notes to Mr. Joseph Pocaroba, junior? A. Yes, sir.

Q. Did you give him these notes too because you were afraid of him? A. No. I gave him these notes to protect him until I get a signer.

Q. Did you give him these notes because you were afraid of him? A. No, I didn't.

Mr. Spitzer: I object to the form of the question.

Q. Isn't it a fact that you gave these notes to Hector Pocaroba because he gave out of his pocket \$1,000—to reimburse him for your share of the \$1,000 which he paid off on the \$4,000 note? A. No, sir.

Q. That is not the fact? A. No, sir.

Q. Didn't you tell Mr. Pocaroba, after a judgment was recovered against Deutsch and Hawrycz, not to worry about it, that you would reimburse Deutsch? A. No, sir.

Q. Isn't it a fact that you told him you had reimbursed Deutsch? A. No, sir. I couldn't because I didn't have the money.

Q. H. Consentino was not one of the company, was he? A. No, sir.

Q. Yet, you testified that his signature was on the first note of \$4,000? A. Yes, sir.

Q. You are quite sure of that? A. Yes, sir.

Q. How did that signature get on, do you know? A. I don't know.

Q. You don't know him personally, do you? A.

Theodore Hawrycz—Direct.

I don't know Mr. Consentino personally, no, I do not.

Q. You are quite sure Consentino is not one of the seven? A. I don't know Mr. Consentino; no, sir; upon any—

Q. Won't you answer the question? A. No, he wasn't a partner. 10

Mr. Glassner: That is all.

Mr. Spitzer: That is all.

THEODORE HAWRYCZ, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Spitzer: 20

Q. Mr. Hawrysz, you signed that note as maker, did you not, the note in question? A. Yes.

Q. You are one of the defendants in this action? A. Yes, sir.

Q. How did you happen to sign that note, Mr. Hawrysz, that \$3,000 note? A. The \$3,000 note?

Q. Yes, sir. A. Well, they come down, they wanted to renew the note and they come down to me, note been protested first, I had a notice from the bank note been protested. Note was making payable to my bank, Raritan Trust Company, I used to do business there, and every time note was due they always—North Ward National Bank was send it to my bank, see, I didn't have enough money down there, they didn't take it up, note was protested, I always had a notice from the bank my note protested. So when the note go protest—so when I had the notice from the bank note go protest— 30 40

Theodore Hawrycz—Direct.

Q. What notes? A. The \$3,000—\$4,000 note went protest, and three and a half, and three thousand. So when the note went protest, I got in touch with Pocoroba and asked why—

Q. Which Pocoroba? A. Bob, Joe, they call him.

10 Q. Junior, is that? A. Junior, and I say, they send that note to my bank for collection; I am not responsible for all myself.

He said, "Don't worry about it," he said, we are going to take care of it." So every time it wants to be renewed, and there was about three or four days, maybe a week, the bank had to wait before they got signatures again, and collected more money from each one to renew the note. So every time they come in for renew the note, a note
20 was make the same way as the first \$4,000 note was made, paying to Amalia Pocoroba, and I was the maker and also endorsed on the back, they make me, so make the note stronger, see. So I done the same thing every time they wants to have the notes renewed because they asked me to do them a favor.

Q. This \$4,000 note, what was that drawn for?
A. That for the business.

Q. For the business? A. Yes.

30 Q. Was Mr. Deutsch at any of your meetings?
A. Never.

Q. Was he in the business? A. No.

Q. Who constituted this business? A. Why, I have my own place of business in Perth Amboy, State Street.

Q. Who was to be in this business, what sort of business was it? A. How I got to be partner in that business?

40 Q. No. Who was to be in the business? A. Pocorobas, Manger, Rossner, Johnson, I don't re-

Theodore Hawrycz—Direct.

member, two brothers of Rossner, I believe, Phil.

Q. Anybody else? A. And Pocerobas.

Q. Which Pocerobas do you mean? A. I was only those meetings twice, I only see them twice. There was Bob, they call him, but his name Joe, but they call him Bob, and his father, senior.

Q. Was Amalia Poceroba at any of those meetings? A. She was always present. That was in their house. 10

Q. Did you see the back of that \$4,000 note? A. Did I see back of it?

Q. Did you ever look at the back of it? A. I did.

Q. Did you endorse your name on the back of it? A. I did.

Q. When did you endorse, first, last, or second, or third? A. Well, I was the maker. 20

Q. And you endorsed where? A. On the top.

Q. Do you know where Deutsch's signature was on that \$4,000 note? A. I do.

Q. Where was his signature? A. Well, he signed the last, but his signature was the second to me, to mine.

Q. How do you know he was last there, Mr. Hawrysz? A. Of course, they come down with the note to my place, and they want to send Manger, somebody to go his share and get some reliable, responsible more for that note. Signature all was there besides Morris Deutsch. 30

Q. On the \$3,000 note do you know where Deutsch signed on that? A. At the same place.

Q. How do you know that? A. Because I had the note in my hand every time it was for renewal.

Q. Did you have that note in your hand before 40

Theodore Hawrycz—Direct.

Mr. Deutsch signed it? A. Before he signed it, yes.

Q. Were all the signatures there before he signed it? A. Yes, sir.

Q. When the note was protested, the \$4,000 note, did you have any share of that in order to renew it? A. Yes, sir.

10 Q. How much did you pay? A. Same equal amount everybody.

Q. Do you remember how much it was? A. More over seventy-one odd some dollars.

Q. When the note went protested you received notice of it? A. Every time.

Q. When the \$3,000 note went protested did you have notice of that? A. Yes, sir.

20 Q. And did the others? A. I don't know if they did or not.

Q. Did any of the Pocorobas call you up and speak to you? A. Yes, the note been protested. That was Bob.

Q. He told you about it? A. Yes.

Cross-examination by Mr. Glassner:

30 Q. Mr. Hawrysz, were you ever at the North Ward National Bank in February of 1927, at Newark? A. Yes, sir.

Q. Were you there on February 7? A. I don't know what day.

Q. You don't know what day? A. No.

Q. But you remember being there? A. Yes, sir.

Q. And who was all with you on your first visit? A. Nobody.

Q. You were there alone? A. All alone.

40 Q. What did you do there alone? A. That time when they had a proceeding against me, a judg-

Theodore Hawrycz—Cross.

ment of \$3,000 for not paying that note, and I went to bank and find out.

Q. Do you mean on this very note which is being sued on? A. \$3,000.

Q. Was that the first time you were in the North Ward Bank? A. Yes, sir; never been before.

Q. Was that in February, 1927? A. That was 1927, but not in February. That was in the Fall. 10

Q. Was that in 1927 that the bank recovered a judgment against you? A. Yes.

Q. You are sure now? A. 1928, I don't remember.

Q. Why don't you think what you say? I asked you about February, 1927. A. No, I wasn't at the bank that time.

Q. You were not in the bank that time at all? A. No. 20

Q. That time you were at the bank with Mrs. Amalia Pocoroba and Joseph Pocoroba, junior, you three, when was it that you three were at the North Ward National Bank? A. I never been there.

Q. Never been there? A. Not with Pocorobas.

Q. Weren't you ever there before the time judgment was recovered against you and Mr. Deutsch? A. Never.

Q. Do you remember where you first signed the \$4,000 note? A. There was to the meeting, they called the meeting. 30

Q. At the meeting? A. At the meeting.

Q. What time of day was the meeting held? A. I don't remember what time.

Q. What time of day, morning, noon, or night? A. Evening.

Q. How late? A. About ten o'clock.

Q. Wasn't it at that time that you signed your 40

Theodore Hawrycz—Cross.

name to the \$4,000 note, ten o'clock at night? A. Was I there?

Q. Wasn't that the time? A. Yes.

Q. When you signed a note for \$4,000 payable to Amalia Pocoroba? A. Yes.

Q. That is right? A. Yes.

10 Q. Mr. Morris Deutsch was not at that meeting, was he? A. No.

Q. Isn't it a fact the next morning at ten o'clock you and Mrs. Pocoroba and Joseph Pocoroba, junior, went to the North Ward National Bank and spoke to Mr. Leshear, the president of that bank? A. No, sir.

Q. That is not the fact? A. No, sir.

20 Q. When did you go there? A. I went around first time to bank when they had a judgment against me.

Q. Never before? A. Never before.

Q. That wasn't until a year and a half afterwards, was it? A. About that, yes.

Q. When you signed the note for \$4,000 you left the note with Joseph Pocoroba, junior, didn't you? A. Yes.

Q. And Mr. Morris Deutsch wasn't there? A. No.

30 Q. And he hadn't endorsed the note? A. No.

Q. You say you too paid a contribution when the note was renewed? A. Yes.

Q. How much did you pay? A. The same equal amount with everybody.

Charles Rossner—Direct.

CHARLES ROSSNER, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Spitzer:

Q. Mr. Rossner, you have been mentioned here as one of the partners who contributed \$300 toward this business. A. Yes, sir. 10

Q. Did you ever receive any return for your \$300? A. No, sir.

Q. You were not on this note? A. No.

Q. Do you know where Morris Deutsch signed this note or at what time he signed this \$3,000 note? A. At his place of business in Fords.

Q. What went on at that time? A. Why, first of all they brought the note over to Morris Deutsch, Mr. Pocaroba, junior, brought the note over to Morris Deutsch, and Deutsch refused to sign it because the rest of the signatures were not on there, and Mr. Deutsch said the only way he will sign it by getting the rest of the signatures. So Mr. Manger took the note back, took it to Newark, and brought it back the following day with the rest of the endorsers. 20

Q. Were you there the following day? A. Yes, sir. 30

Q. Do you know where Mr. Deutsch signed the note? A. No, I do not.

Q. You didn't see him sign? A. I saw him sign it, but I didn't take notice of what place he signed.

Q. Did you take notice whether the other signatures were on the note? A. The rest of the signatures were on.

Q. That is all you know about this transaction?

A. That is all. 40

Charles Rossner—Direct.

Q. Did you see the original \$4,000 note? A. Yes, sir.

Q. Do you remember the order of signatures on that note? A. No, I do not.

Q. Did you contribute a part toward the payment of the first note which was protested? A. Yes, sir.

10 Q. What share did you contribute? A. I was notified by Mr. Manger when that note was protested so my share was \$71 and some change.

Q. And you paid that? A. Yes, sir.

Cross-examination by Mr. Glassner:

Q. Was Guiseppe Petrucci, was his endorsement on the first note for \$4,000? A. I do not know.

20 Q. Was G. Pocaroba's endorsement on the first note of \$4,000? A. I haven't noticed all particular names.

Q. Was H. Consentino's endorsement on the first note for \$4,000? A. Well, his was the principal one that I noticed was on there.

Q. You know that Consentino was on there? A. Yes, sir.

Q. You also know that Morris Deutsch was on there? A. Yes.

30 Q. The first note for \$4,000? A. Yes.

Q. You remember that? A. Yes.

Q. Do you remember Theodore Hawrysz's name on there? A. Yes, sir. He was the maker of it.

Q. You remember that? A. Yes, sir.

Q. Do you remember Joseph Pocaroba's signature on there, Joseph Pocaroba, junior? A. That is Joseph Pocaroba and Company.

Q. Do you remember Joseph Pocaroba, junior?
40 A. Senior and junior, both.

Charles Rossner—Cross.

Q. On the first note? A. On the first note, yes, sir.

Q. Do you remember Joseph Poceroba, junior's endorsement on the first note? A. Yes, sir.

Q. You are quite sure about it? A. I am quite sure about it. I don't remember what position they were located.

10

Q. But you remember seeing him there? A. Yes.

Q. But you don't remember seeing Guiseppe Petrucci's signature there? A. No. Amalia Poceroba there.

Q. You do remember Poceroba, senior? A. Yes, sir.

Q. What position was the signature of Morris Deutsch on the third note for \$3,000? A. That is something I don't know. I can't say. I don't know. I didn't take particular notice.

20

Q. Don't know whether it is second, third, or last? A. No, sir.

Q. How about the first renewal note for \$3500, what position was Morris Deutsch's signature on that note? A. I didn't take notice to that.

Q. What about the first note? A. After the note was protested I was notified.

Q. What about the first note for \$4,000? A. I didn't take notice of the position they were laid out.

30

Mr. Glassner: That is all.

Mr. Spitzer: That is all.

Mr. Spitzer: That is our case, your Honor.

MOTION FOR NON-SUIT.

Mr. Glassner: Reserving a right to put in a defense, of course, I respectfully move to dismiss the —for a judgment of non-suit, for the reason that there is no cause of action made out according to the complaint. The action, according to the complaint, is based upon a promissory note on which the signature of Morris Deutsch appears as the second signature and the signatures of the defendants in this suit are all subsequent.

Now, there was testimony of a sort to the effect that although on all three notes, the first for \$4,000, the second for \$3500, and the third for \$3,000, on all these three the signature of Morris Deutsch appeared in exactly the same position, to wit, second, yet he signed the note after the subsequent parties had signed. If your Honor please, I respectfully submit that it does not make any difference at what time the party signed, if in fact he signed at a position preceding the others, the law presumes that the liability of the parties is in the order of their endorsement, in the absence of special agreement, which, of course, is not alleged in the complaint, and is not proven in the evidence.

The Court: Where is your authority for that?

Mr. Glassner: In *Corpus Juris*, volume eight, page 380, section 565, it says that:

“In respect to the liability of endorsers inter se, the rule is that they are prima facie liable to each other in the order in which their endorsements successively appear, each endorser being liable to all succeeding endorsers, but not to preceding ones. Endorsers are liable in successive order, even upon a note taken in renewal of another, on which their names appear in reverse order, and although both of them were accommodation en-

Motion for Non-Suit.

dorsers on the original note as well as on the renewal note.”

Notwithstanding the fact that the liability was different from a previous note, or the order was different on a previous note, and notwithstanding the fact that one of the parties was an accommodating party, yet, the liability is in the order in which their endorsements appear, and not in the order in which they affixed their signatures physically to the document. 10

The Court: That does not say that at all.

Mr. Glassner: May I read the very words of it: “In respect to the liability of endorsers inter se the rule is that they are prima facie liable to each other in the order in which their endorsements successively appear.” 20

The Court: Yes. Prima facie.

Mr. Glassner: That is right.

The Court: Yes.

Mr. Glassner: And if the liability is different from what the purport of the note is, there is no such allegation of a special arrangement pleaded in the complaint.

The Court: That is not the point at all. They claim that although prima facie, so far as the physical location of the signatures are concerned, Deutsch’s name appears second, yet, that, as a matter of time, of the actual signing of the endorsement, he was last, and, under the Negotiable Instrument Act, if he is last as a matter of time, then he can sue all endorsers who signed as a matter of time before he did. 30

Unless there was some special agreement between them.

Motion denied. You may take an exception. 40

Joseph Pocoroba, Jr.—Direct.

DEFENDANT'S CASE.

JOSEPH POCOROBA, JR., one of the defendants, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Glassner:

10 Q. Mr. Pocoroba, did you have occasion to endorse a note for \$4,000 in February of 1927? A. Yes, sir.

Q. Please tell the Court and jury how it was that the note came into existence. A. Why, in the early part of 1927 I went into a business venture with six other gentlemen. We found we needed additional capital, and we decided, at a meeting, that the best way to obtain the capital would be to discount a note at a bank.

20 Q. When was this meeting held? A. At my house.

Q. When? A. In 1927, in February, early part of February.

Q. Go ahead. A. At the time it seemed that all the parties concerned were unable to raise funds, and consequently we decided the best way would be to have Mr. Hawrycz make out a note payable to Mrs. Pocoroba and I would see Mrs. Pocoroba and have her discount it. So, when the meeting was adjourned I spoke to Mrs. Pocoroba, I told her that the man who signed the note was a very good man and I thought very highly of him, would she help us out and discount this note for us. So she said she would.

30 Q. At the time that you showed Mrs. Pocoroba the note, were there any endorsements on that note? A. Only Mr. Hawrycz's signature.

40 Q. Was that the only one? A. That is the only one.

Joseph Pocoroba, Jr.—Direct.

Q. Was Mrs. Pocoroba present at this conference? A. No. Absolutely not.

Q. Go ahead. A. The following morning we went to the bank.

Q. Who all went to the bank? A. I, Mrs. Pocoroba, and Mr. Hawrycz. I made arrangements the night before that Mr. Hawrycz should meet me ten o'clock at the bank. 10

Q. Then Mr. Hawrycz went to the bank? A. Yes, indeed.

Q. Go ahead. A. We went into the North Ward Bank and Mr. Leshear, who is the president of the bank, said that he would let us know the following day. So we left the note with him and the next day we went there.

Q. Did he ask you to endorse the note? A. He asked me right then and there to endorse the note, yes, indeed. 20

Q. And did you? A. He took the note and Mr. Hawrycz signed, and Mrs. Amalia Pocoroba and then I endorsed it.

Q. He asked you to endorse your name? A. Yes, indeed he did.

Q. And did you? A. Yes, indeed.

Q. Underneath Mr. Hawrycz's signature? A. Underneath Mrs. Pocoroba's signature. 30

Q. Hawrycz was first? A. And Mrs. Pocoroba was second, and I endorsed it third.

Q. Your signature was third? A. Yes.

Q. Go ahead. A. The following day I went in to see Mr. Leshear to ask him what he had decided on the note, and he said it would be necessary for Mr. Hawrycz to obtain an additional signature from his locality. Mr. Hawrycz lives in Perth Amboy. I went to see Mr. Hawrycz and we again had another meeting. 40

Joseph Pocoroba, Jr.—Direct.

Q. Where was this other meeting? A. At my house.

Q. Was Mr. Hawrycz present? A. Yes, indeed.

Q. Was Mr. Manger present? A. Yes, indeed.

Q. Go ahead. A. On this meeting we decided

10 Q. Did you tell the people at the meeting what the bank's position was? A. Yes.

Q. Go ahead. A. So Mr. Manger suggested Mr. Deutsch. We went to see Mr. Deutsch.

Q. What do you mean he suggested Mr. Deutsch? A. To endorse the note.

Q. Mr. Manger suggested he would get Mr. Deutsch's endorsement? A. Exactly. We went to see Mr. Deutsch who very nicely endorsed the note for Mr. Manger.

20 Q. Who went to see Mr. Deutsch? A. I and Mr. Manger, and if I am not mistaken there was another party, I don't remember just who it was.

Q. Did Mr. Deutsch endorse the note? A. Yes, indeed.

Q. In your presence? A. Yes, indeed.

30 Q. Was there any other signature on the note outside of Theodore Hawrycz, Amalia Pocoroba, and Joseph Pocoroba, junior, at the time he put his name on the note? A. No.

Q. He was the next signer? A. Yes, indeed.

40 Q. Then what happened? A. Then we brought the note back to the bank again. I took it in to Mr. Manger and he looked at the note, and immediately said, he said, "I am sorry, Mr. Pocoroba," he said, "but you will have to get somebody else in the bank here to endorse this note if you want me to discount it for you." I said, "You have four signatures now, isn't that enough?"

Joseph Pocoroba, Jr.—Direct.

He said, "No, you will have to get somebody in the bank."

I said, "Who am I going to get in the bank?"

He said, "I happen to know that Consentino is a friend of yours." He said, "If he endorsed it I think I can put it through for you." I went to see Mr. Consentino that night, and after certain speech, so and so forth, why, he decided he would endorse the note. Well, the next morning I took the note back to the bank. This was, I think, six or seven days after the note was drawn, because if I remember right, I think it was drawn on the eighth and the note was finally discounted the seventeenth of February. Well, I took the note back again to Mr. Leshear and he looked at the note again, and he said, "I have got to have one more signature, we had a meeting of the board last night." We had another meeting, I mean the people I was with. 10

Q. Was Mr. Manger present at that other meeting? A. Mr. Manger was present at every meeting we had. 20

Q. Was Mr. Hawrycz present at that other meeting? A. Oh, yes.

Q. Go ahead. A. And there was another partner he suggested another name. 30

Q. Who was he? A. His name was Biandi, whom Mr. Manger remembers, I am sure. Mr. Biandi suggested his brother-in-law.

Q. Who was his brother-in-law? A. His brother-in-law was Mr. Petrucci.

Q. Guisepppe Petrucci? A. Petrucci. The next day we went down to Mr. Petrucci and he got his partner to endorse the note. Finally I took it back to the bank and Mr. Leshear accepted the note.

Q. Were the proceeds of the note written up in 40

Joseph Pocoroba, Jr.—Direct.

Mrs. Pocoroba's bank book? A. Yes, indeed.

Q. Did you have that then yourself? A. Yes, indeed.

Q. Was that in accordance with the arrangement made at the various meetings? A. Yes.

10 Q. Was your father's endorsement on that first note? A. No.

Q. Was Amalia Pocoroba in anywise interested in this venture? A. Not at all.

Q. Was Humberto Consentino in anywise interested in this venture? A. No, sir.

Q. What happened to the money? I mean by that the proceeds of the discounting of that note. A. The money was lost.

20 Q. How soon after it was obtained? A. Why, I think three weeks.

Q. Did the other members of the venture know about it? A. Positively.

Q. You were never questioned about that money, were you? A. No.

30 Q. What happened when the first note became due? A. When the first note became due I went chasing all over Perth Amboy for three days trying to get these partners together, because most of them lived in Perth Amboy, and finally after the third day I got pretty near all of them, and we renewed the note for \$500, of which, if I remember right, I paid most of the money.

Q. Who took care of the renewing of the note? A. I did.

40 Q. When you offered to pay \$500 and a renewal note, was that acceptable to Mr. Leshear? A. No. When I finally got the note with Mr. Deutsch and Mr. Hawrycz and Mr. Consentino and Mr. All-of-them I went to the bank with the note.

Joseph Pocoroba, Jr.—Direct.

Q. With what note? A. With the renewal note of \$3500.

Q. Is this the note you went to the bank with?

A. Yes, that is the note.

Mr. Glassner: I offer that in evidence.

(Note entered in evidence and marked "Exhibit D-1.")

10

Q. That is the first renewal note? A. That is the first renewal note.

By the Court:

Q. I did not understand you when you said the money was lost. What did you mean by that? A. Well, we went into a business venture, your Honor, and it was lost.

20

Q. I know you had a business venture before. One of the witnesses went on and positively swore from that witness chair to this jury that the object of getting this money together was to buy trucks. Is that true? A. Why—I refuse to answer that question, your Honor.

Q. Why? A. On the ground that it may degrade me.

Mr. Glassner: I wish to advise my client

30

The Court: You have no right to advise a client.

Mr. Glassner: On the question of, incrimination?

The Court: No, sir. That is something that has to come voluntarily from the client. However, it has come voluntarily from him.

40

Joseph Pocoroba, Jr.—Direct.

By the Court:

Q. What do you mean when you say that the money was lost, lost how? A. We put it into a business deal and it was lost.

By the Court:

10 Q. What kind of a business deal? (No answer.)

Q. What I want to know is whether or not this money was got together for the purpose of buying trucks. A. No, it wasn't.

Mr. Glassner: I offer this note in evidence.
(Note entered in evidence and marked
"Exhibit D-1.")

By Mr. Glassner:

20 Q. When you presented that note for the first time, I mean the renewal note for \$3500, was the endorsement of your father on that note? A. For \$3500?

Q. Yes, for \$3500. A. No. The bank—

Q. Please answer the question. A. No, it wasn't.

Q. Was the bank willing to accept the note? A. No, they were not.

30 Q. What did the bank say to you? A. The bank said unless my father endorsed the note, why, they would have to start suit.

Q. Did you ask for your father's endorsement? A. Why, I went to my father and told him about it.

Q. Did he endorse it? A. Yes, he did.

(Adjourned until 2:00 P. M.)

Joseph Pocoroba, Jr.—Cross.

Afternoon Session, 2:00 P. M.

Mr. Glassner: Cross-examine.

Cross-examination by Mr. Spitzer:

Q. Prior to the first transaction how long did you know Mr. Hawrycz? A. Why, a very short time. 10

Q. Well, how short a time? A. I judge a month.

Q. Did you know anything about him? A. No, I did not.

Q. Didn't you know he was—whether he was rich or poor or humble or what he was? A. No, I didn't.

Q. When is the first time that he became interested in becoming a maker of the note? A. Why, the night we had that meeting. 20

Q. Why did you make him maker? A. Well, we considered among all of us, we thought he had property and he was the most adaptable one.

Q. The bank did not know this, did they? A. No, they did not.

Q. They made no search of it? A. No, they did not.

Q. You went to the bank the first time with whose signatures on the note? A. Just the note and Mrs. Pocoroba. 30

Q. Your wife had no property, did she? A. No.

Q. You went to this bank with only those signatures and you knew that the president or whoever it was you spoke to did not know Mr. Hawrycz? A. No.

Q. Do you remember what day that was? Who did you speak to in the bank? A. Mr. Leshear.

Q. What connection has he with the bank? A. The president of the bank. 40

Joseph Pocoroba, Jr.—Cross.

Q. And he refused to discount your note? A. No. He said he would let us know the next day.

Q. Did you go back the next day? A. Yes, we did.

Q. Mr. Hawrycz with you? A. No.

Q. Was he there the first time? A. Yes.

10 Q. What questions were asked of Mr. Hawrycz?
A. Why, just what his banking connections were.

Q. Anything else? A. And I think he asked him if he had any property.

Q. Did they say "Come back the next day and we will make a search of the property"? A. No. He said, "Come back the next day and we will let you know."

Q. You went back the next day with your wife?
A. No. Alone.

20 Q. What did Mr. Leshear say? A. Mr. Leshear said it would require somebody else, for Mr. Hawrycz to get somebody else to endorse the note from his locality.

Q. What happened then? A. Then we had another meeting and Mr. Manger suggested Mr. Deutsch's name.

Q. Had his name put on the note? A. Yes, had his name put on the note.

30 Q. Who were the prior endorsers on the note at the time Mr. Deutsch put his name on it? A. Mrs. Pocoroba, I, and Mr. Deutsch.

Q. Did you have any property at that time? A. No, I did not.

Q. And what did the bank do when you brought that note back? A. They said that wasn't sufficient. They must have another signature from the man in the bank.

40 Q. But he didn't tell you that at the time you were there prior to that, did he? A. Do you mean

Joseph Pocoroba, Jr.—Cross.

at the time I brought in Deutsch's signature?

Q. The second time the president of the bank told you you would need another signature from Perth Amboy. A. Yes.

Q. At that time he did not tell you that he needed another signature other than that? A. No. That is all.

10

Q. And then the next time you came there the president said he wanted a signature of somebody who had connections with the bank? A. That is right.

Q. Who did you suggest? A. I didn't suggest anybody. I said, "Well, who do you think I should get?"

He said, "I understand Mr. Consentino is a friend of yours." He said, "Why don't you ask Mr. Consentino," and I did.

20

Q. Did Consentino receive any consideration for that? A. No, he did not.

Q. Did you ever tell him you would give him any share of the profits? A. No, I did not.

Q. Did you give him any sum of money for annexing his signature to the note? A. No, sir.

Q. Did the president of the bank ever mention your father, just at those three meetings, confine yourself to them? A. No.

30

Q. Never mentioned your father? A. No.

Q. Father had an account in the bank, did he not? A. Yes, he did have an account.

Q. But in spite of that the president never mentioned your father? A. No, sir.

Q. Did you ever mention your father and ask if his signature would be all right? A. No, sir.

Q. Is Mr. Leshear familiar with your father, was he acquainted with him? A. Yes, indeed.

Q. Had you ever had any banking dealings be-

40

Joseph Pocoroba, Jr.—Cross.

fore, that is, did you ever have any notes discounted prior to the \$4,000 note? A. Yes, indeed.

Q. For any great amount?

Mr. Glassner: Objected to. That is not material.

The Court: I will allow it.

10

Q. For any great amount, Mr. Pocoroba? A. Well, not great amount. \$2,000; \$1500.

Q. \$3,000? A. Yes, \$3,000.

Q. Did you ever have any endorsers on your notes? A. Yes.

Q. Property owners? A. Yes.

Q. Then you knew when you went to this bank you would have to have a property owner, did you not, somebody that the president knew? A. Well, yes.

20

Q. When was the next time you went to the bank? A. Why, when he demanded another signature, and I went to see—we had another meeting and one of the partners suggested his brother-in-law, Mr. Petrucci, we went down and saw Mr. Petrucci, and he put his signature on and I took the note back to the bank and he discounted it.

Q. Mr. Deutsch's name wasn't on the note, was it? A. Yes, indeed it was.

30

Q. When did his name get on the note? A. The second time I went to the bank.

Q. And he signed that note even before your wife did or before Hawrycz did? A. No, not before my wife did. My wife signed it first. She was the payee of the note. When I went there the president requested my signature and I signed it. Then when we brought it back we brought it back with Mr. Deutsch's signature and then he turned it down.

40

Joseph Pocoroba, Jr.—Cross.

Q. When was this board meeting that you spoke of? A. Well, there were several of them. Which one are you talking about?

Q. You spoke of a Board of Directors meeting of this North Ward National Bank? A. Why, at the bank, I suppose.

Q. Well, now, when did that happen? A. Well, it must have happened the night that I was there, the day I brought the note in. 10

Q. Well, how many signatures were on the note at that time? A. I think there was four at that time.

Q. Was your father on it at that time? A. No, sir.

Q. And then it was that the Board had a meeting and they decided that they wanted another signature? A. That is right. 20

Q. Nothing was ever mentioned about a Board of Directors meeting prior to that, was there? A. No, sir.

Q. Mr. Leshear always assumed authority, did he not? A. Well, in most cases, notes under \$3,000.

Q. In the case you are speaking of, in this particular case, Mr. Leshear never mentioned the Board of Directors, did he? A. No, he did not. 30

Q. Mr. Deutsch had nothing to do with these transactions, he was never in this business at all? A. No.

Q. And when you come down to Fords that day to get Mr. Deutsch's signature, how many signatures were on the note, this \$3,000 note, when you came to get his signature for that note? A. The \$3,000 note?

Q. Yes. A. There were Mrs. Pocoroba's signature, Mr. Hawrycz's signature, and my signature. 40

Joseph Pocoroba, Jr.—Cross.

Q. Just those three? A. No. My signature was not on the note. I beg your pardon. At that time it wasn't.

Q. Just Mrs. Pocoroba and Mr. Hawrycz? A. If I am not mistaken, I don't remember, but I think there was just Mr. Hawrycz's signature on the note because the note had not been around at all.

10 Q. Whose signature was on this note? A. I think it was just Mr. Hawrycz's signature.

Q. Are you sure of that? A. Well, as far as I can remember.

Q. Well, now, think of this, whose signature was on that note at the time you came down to Fords to have him sign that \$3,000 note? A. Well, that is three years ago. I can't just think. I know there was one signature. One or two signatures at the utmost, because I hadn't been around to the other people yet, I hadn't seen Consentino and I hadn't seen the other people.

Q. You said that Mrs. Pocoroba, Mr. Hawrycz, and your name was on the note? A. Yes.

Q. Before Deutsch signed, is that the fact? A. Which note are you talking about?

Q. \$3,000 note. A. \$3,000 note, I think Mr. Hawrycz had signed, and then Mr. Deutsch signed.

30 Q. Where was that signed by Mr. Hawrycz? A. I think it was signed at his place of business.

Q. Not in Newark? A. No. In Perth Amboy.

Q. Who brought that note down? A. I did.

Q. When did your wife sign that note? A. Why, when I took it to the bank.

Q. Why didn't you sign your name then? A. I guess I did.

Q. Before you came to Fords? A. I guess I signed it when I went to the bank with it.

40 Q. That was before you came to Fords? A. No,

Joseph Pocoroba, Jr.—Cross.

not before I came to Fords. When I came back with the note.

Q. When did Mr. Hawrycz sign this note? A. Why, he was the first one signed at his place of business.

Q. Then you brought a blank note down to Mr. Hawrycz? A. That is right.

10

Q. Where did you go from there? A. Then from there we went to Mr. Deutsch and he signed it and I took it back to Newark and I had Mr. Consenti-

no—
Q. Was there any conversation prior to his signing? A. Well, I don't remember now. I just don't remember whether there was any conversation or not. I know he signed it.

Q. You don't remember that? A. I think, if I remember, I think he did have an objection to signing the note.

20

Q. You remember how many times you went into the bank and you remember— A. What is that?

Q. You remember the times you went into the bank, do you not? A. Yes.

Q. You know the approximate dates, do you not? A. Yes.

Q. You remember the conversations you had with the president, do you not? A. Yes.

30

Q. You can remember the conversations you had with Manger, can you not? A. Yes.

Q. Do you remember the conversation you had with Mr. Deutsch? A. Yes, I say I do remember I think he had an objection of some kind, he didn't want—he wanted to know why this note wasn't paid, and so on and so forth, and I told him that the note simply had to be signed and had to be renewed and he signed it.

40

Joseph Pocoroba, Jr.—Cross.

Q. Any other reasons did he give for not signing it? A. No, I didn't see any other reasons.

Q. He objected because the other notes were protested? A. That is right.

Q. Didn't want to annex his signature? A. That is right.

10 Q. How did you finally prevail upon him to sign this note? A. I didn't. Mr. Manger did.

Q. How did he prevail upon him? A. I don't know how he did it.

Q. You were present? A. Well, not exactly. They talked it over in the next room between Manger and Mr. Deutsch.

Q. Weren't you present during this entire conversation? A. No, I wasn't.

20 Q. Who asked you to leave, or why did you walk out? A. I didn't walk out. They walked away.

Q. Didn't he come back to you and say, "I don't want to sign this note until the other signatures are on there"? A. I don't remember that. I do remember there was an objection, he didn't want to sign the note, but I don't remember him saying anything about my signatures.

Q. But you would not say that he didn't? A. He hadn't had any objections before.

30 Q. You would not say absolutely that he did not have? A. No, I didn't hear him say.

Q. For the reason that the other signatures were not on the note? A. Well, unless he said it to Mr. Manger.

Q. I am speaking to you. A. No, he didn't say it to me.

Q. Then you definitely state that he did not say that? A. Not to me, he didn't, no.

40 Q. Did you definitely state that the Pocorobas, your signature and your wife's signature was not

Joseph Pocoroba, Jr.—Cross.

on the note prior to his signing? A. Positively.

Q. How many times were you in Fords? A. Twice, I think.

Q. Was that the first time you were there, the time he signed this note, or was that the second time? A. No. That was the second time.

Q. When was the first time? A. On the \$4,000 note. 10

Q. Never was in Fords any other times but those two? A. Not that I can remember.

Q. Weren't you there a few days or a day or so before that \$3,000 note was signed? A. No.

Q. When you were there did you see Mr. Rossner there? A. Mr. Who?

Q. Rossner, the gentleman who was on the stand this morning. A. I saw him in Perth Amboy that night. 20

Q. Did you see him in Fords? A. No, I didn't see him in Fords.

Q. Did you see Mr. Glassner there? A. Never heard of him.

Q. Did you see that gentleman there? A. Never saw the man in my life.

Q. Was Mr. Hawrycz there? A. I don't remember that, whether he was or not.

Q. Didn't you first go to Hawrycz's place to get him? A. Yes, sir. 30

Q. And he accompanied you to Fords? A. Well, I don't remember whether it was on that particular trip or not. I know one trip where I went and got Mr. Hawrycz, I don't remember whether it was on that particular one trip or not.

Q. Where did you pick up Mr. Manger? A. Why, I picked up Mr. Manger at his house that was.

Q. Who showed you where Mr. Manger's house 40

Joseph Pocoroba, Jr.—Cross.

was? A. Well, I knew where Mr. Manger's house was.

Q. Did you know where Mr. Deutsch's place of business was? A. I knew it was in Fords, yes.

Q. And then somebody showed you where it was on that particular occasion? A. I think Mr. Manger came along.

10 Q. Who did you say endorsed the first note? A. The first note?

Q. Yes. A. Mrs. Pocoroba, myself, Mr. Petrucci, Humberto Consentino, and Mr. Deutsch.

Q. That is the first note? A. That is the first note.

Q. Any other signatures on the note besides those? A. No.

20 Q. Your wife had an account in the North Ward National Bank? A. Yes, sir.

Q. I show you an affidavit and ask you if this is your signature? A. It don't look like my signature.

Q. Did you sign any paper at Mr. Glassner's office about the thirteenth day of March, 1929, about a year ago? A. Yes, I did.

30 Q. Did you ever sign such an affidavit as this, Mr. Pocoroba, at Mr. Glassner's office, sometime in March of last year? A. Well, I will be truthful and tell you it doesn't look like my signature. I must have signed it. It is just very poorly written.

Q. Did you sign any paper in Mr. Glassner's office last year?

Mr. Glassner: I object to it on the ground it is immaterial.

40 Q. Did you sign an affidavit before an attorney of New Jersey, or a notary public of New Jersey,

Joseph Pocoroba, Jr.—Cross.

George Schonber? A. I remember signing some papers.

Q. At the time the default judgment was taken in this case and you wanted to have it reopened and you signed an affidavit? A. Yes.

Q. You did? A. Yes.

Q. Then, would you say that this is the affidavit that you signed? A. I don't remember the affidavit. I remember signing some papers. 10

The Court: Let him read it.

Q. Read the affidavit. Is that the affidavit that you signed? A. That is right.

Q. And in that affidavit you swore that the first \$4,000 note was endorsed by Theodore Hawrycz, Morris Deutsch, Amalia Pocoroba and Joseph Pocoroba, junior? A. Yes. And Guiseppe Petrucci. 20

Q. And who else? A. That is all.

Q. Didn't you just say there were two other names outside of yours? A. No.

Q. Now, which is correct, Mr. Pocoroba, the testimony you just gave as to those names, or is this affidavit correct? A. Why, I must have forgotten about Mr. Petrucci's name.

Q. Which is correct? A. Mr. Petrucci, that is correct.

Q. Mr. Petrucci and Consentino? A. Yes. Mr. Petrucci, Consentino, Deutsch, Mrs. Pocoroba, and myself. 30

Q. Is it correct that when you presented this note to the bank they wanted a customer, somebody that Mr. Hawrycz could get who was from Perth Amboy, is that correct? A. That is right.

Q. You say in your affidavit they refused to discount that note unless they had another endorser who was a customer of said bank? A. That is true too. They are both correct. 40

Joseph Pocoroba, Jr.—Cross.

Q. They are both correct? A. Certainly.

Q. You did not say in your affidavit that they wanted a customer from Perth Amboy who is a friend of Mr. Hawrycz? A. Well, I don't know about that. They did ask that.

10 Q. Who were the proceeds of that note turned over to? A. To me.

Q. You received the proceeds of that note? A. Yes, indeed. That is right.

Q. In your affidavit you said the full proceeds of the note were turned over to the plaintiff and his associates. Which is correct? A. What?

Q. The full proceeds of the note was turned over to the plaintiff, that is Mr. Deutsch, and his associates.

20 Mr. Glassner: I object to that question on the ground that the statement in the affidavit is not inconsistent with what the witness said. He said it was turned over to me.

Mr. Spitzer: The affidavit I read is to the plaintiff and his associates.

Q. Which is correct? A. I got it, for the association.

30 Q. When you speak of associates, you meant your father also, did you not? A. No.

Q. Did you mean your wife? A. No.

Q. Just the others? A. That is right.

Q. Did you pay the \$500? A. Did I pay what?

Q. Did you pay him \$500? A. Did I pay what?

Q. \$500 to renew the note? A. Yes, I did.

Q. Whose money did you have? A. Whose money did I have? My own money.

Mr. Glassner: I object to that question.

40 Q. Paid it out of your own money?

Joseph Pocoroba, Jr.—Cross.

Mr. Glassner: I object to the question.

The Court: I will allow the question.

Q. Whose money did you use to pay this? A. My own money.

Q. Did you pay that in cash or by check? A. Why, I think it was taken right out of my wife's account. I think I deposited it in her account and it was taken right out of her account. 10

Q. Whose name is your wife's account in, what is the name? A. Amalia Pocoroba.

Q. Did she go to work with you? A. I don't remember whether she did or not.

Q. Are you in the habit of drawing moneys out of your wife's account? A. If she makes me a check there is no reason I can't draw it out, is there? 20

Q. Then she made you a check? A. I suppose she did.

Q. Who was on that second note? Was it the same as the first note? A. On the second note all the signatures were there excepting Mr. Petrucci's.

Q. Mr. Petrucci's was not there? A. Was not there. Mr. Pocoroba, senior's signature was put on that second note. The first renewal.

Q. On that \$3500 note Pocoroba, senior? A. That is right. 30

Q. In your affidavit you say, "A renewal note in the amount of \$3500 made and endorsed the same as the original \$4,000 note." Which is correct?

A. I don't remember about that affidavit. What I am telling you now is correct.

Q. When you swore to this affidavit you swore this was correct, did you not? A. I don't even remember—I remember talking about it, but I just don't remember what was in it. I don't know. 40

Joseph Pocoroba, Jr.—Cross.

Q. When you signed this affidavit it was in your home or in Mr. Glassner's office? A. Yes.

Q. You swore that was the truth, did you not?

10 Mr. Glassner: I object to the question in that form. The witness testifies that the signatures on this note were exactly the same. There is no question that is what he said in his affidavit. He corrects that and says Petrucci's name was not in the second note, and instead the name of G. Pocoroba was. The answer is responsive and I do not think counsel ought to harrangue the witness.

(Question repeated by stenographic reporter).

20

A. I must have if I put my name to it.

Q. Which is true, that the original note of \$4,000 was the same as the second note, or was there—

A. It was the same outside of Mr. Petrucci's signature. Mr. Petrucci's signature was taken off and my father's signature put on.

Q. When that note became due, that \$3500 note, did you ask your associates for contributions? A. Positively.

30

Q. What happened? A. I received nothing.

Q. Where did you see them that you asked them for contributions? A. I went to Perth Amboy and chased them three days.

Q. Three days? A. Yes.

Q. You paid again out of your own money? A. Yes.

Q. Where did you get that money?

Mr. Glassner: I object to that.

40

The Court: Objection sustained.

Joseph Pocaroba, Jr.—Redirect.

Q. The \$3,000 note, whose were the signatures on the \$3,000 note, the note in question? A. The same as the \$3500.

Q. Petrucci's name on it? A. No.

Q. Was it the same or wasn't it? A. It was the same as the \$3500 note.

Q. Petrucci's name wasn't on the \$3500 note? A. 10
No, it wasn't.

The Court: He has answered that three times.

Q. Your father's name was on the second note and also on the third note? A. That is right.

Q. Did Mr. Deutsch or Mr. Hawrycz ever come to your house and ever speak to you about these notes? A. About which notes, Mr.?

Q. The moneys that were being received and the notes that were being protested. A. Come to my house? 20

Q. Yes. A. I don't remember that.

Q. Did you ever threaten to punish anybody if they bothered you again?

Mr. Glassner: I object to that.

The Court: Objection sustained.

Redirect-examination by Mr. Glassner: 30

Q. This first note for \$4,000 was made payable at the Raritan Trust Company of Perth Amboy, was it not? A. That is right.

Q. Was that the bank of Theodore Hawrycz, the maker? A. Yes.

Mr. Glassner: That is all.

Mr. Spitzer: I would like to offer this affidavit in evidence. 40

Amalia Pocoroba—Direct.

Mr. Glassner: This is a copy. There is no objection.

(Affidavit entered in evidence and marked Exhibit P-2.)

10 AMALIA POCOROBA, one of the defendants, being duly sworn according to law, on her oath, saith:

Direct-examination by Mr. Glassner:

Q. Mrs. Pocoroba, you are one of the defendants in this suit? A. Yes, sir.

Q. And are you the wife of Joseph Pocoroba, junior? A. Yes, sir.

20 Q. In February, about the seventh of February of 1927, did you have occasion to endorse a note in the amount of \$4,000? A. Yes, sir.

Q. Will you please tell the Court and jury under what circumstances you endorsed that note? A. Yes. One evening Mr. Joseph Pocoroba, my husband, came to me and asked me if I wouldn't help him and his associates in a business deal, that they were going into, that they needed more money, and if I wouldn't discount a note for them. I said if it was for him it would be all right. Therefore the next morning I, Mr. Pocoroba, junior, and Mr. Hawrycz, the three of us went to the bank. Presented the note at the bank. And the president received the note and said that he would let us know about discounting that the next day. Now, that is all I know about it.

30 Q. Mr. Hawrycz's signature was on the note, was it not? A. I believe it was.

40 Q. Was your endorsement on the note? A. Yes,

Amalia Pocoroba—Direct.

my endorsement was on the note, and the president—

Q. Was Mr. Joseph Pocoroba, junior's endorsement on that note? A. The president asked him right there to endorse the note, and he did so.

Q. In your presence? A. Yes.

Q. And in the presence of Mr. Hawrycz? A. 10
Yes.

Q. And he did so? A. Yes.

Q. Was there any other endorsement on the note at that time? A. No, not at the time.

Cross-examination by Mr. Spitzer:

Q. Were you present at any of these meetings, Mrs. Pocoroba? A. None at all.

Q. Did you ever see Mr. Manger? A. I have seen 20
him. The meeting was at my house and I must have seen him, but I never attended any of the other meetings, and I don't know anything about it.

Q. Were you supposed to keep the books of this company? A. No.

Q. You have a bank account? A. Yes.

Q. Where your husband and yourself keep the money? 30

Mr. Glassner: Objected to. I will withdraw the objection.

Q. The bank account that you have, is that the account where your husband and yourself kept both your moneys? A. Why, it was in my name.

Q. Whose name? A. I believe the money was to be used for both of us.

Q. If your husband made any money he would put it in your account? 40

Amalia Pocoroba—Cross.

Mr. Glassner: I object to that question. It is entirely immaterial what she did with her money.

The Court: She is not being asked what she did with her money. She is simply asked whether her husband gave her money to put it into her account.

10

A. Why, yes.

Q. If there was any property your husband bought it was always in your name, was it not?

A. No.

Mr. Glassner: Objected to as immaterial.

The Court: She said no.

Q. You don't know anything about the other notes? A. Nothing at all.

20

Q. Nothing about any other notes? A. No.

Q. Did you sign any other notes? A. Why, naturally the renewals I had to endorse it being that I was the payee of the note.

Q. The \$3,000 note, did you endorse that? A. Yes.

Q. Where did you endorse that, Mrs. Pocoroba?

A. At home.

Q. Where does your name appear on the note, do you remember, first, second, or last? A. I can't remember. I don't remember.

30

Q. When you endorsed were there any other names on the note? A. I don't remember.

Q. All you do remember is that the three of you went to the bank? A. Yes, sir.

Q. Are you sure that Mr. Hawrycz was there? A. Yes, positive.

Q. Did he go into the president's office? A. Yes.

Q. And what did the president say? He would

40

Amalia Pocoroba—Cross.

not accept those signatures? A. No, he didn't say that he would not accept the signatures, but that he would see—would give us an answer the next day.

Q. Did you go back there the next day? A. No, not I.

Q. These meetings that were held in your house, where were they held, in what part of your home? 10

A. Why, they were in the dining room of my home, but it is a large home, a three-family house.

Q. On the ground floor? A. Second floor.

Q. You just had the second floor? A. No. Just the one room.

Q. Well, I mean, you and your husband lived—
A. We had the entire house.

Q. This entire house? A. Yes.

20

Q. Three floors? A. Yes.

Q. When they came there weren't you ever in the room at all? A. No, not at all.

Q. Did they ever consult you about your money or your name? A. No.

Q. When they decided you should be payee, did they consult you about it? A. They did not. My husband asked me.

Q. When? A. The evening, I believe, after the meeting was over. Just when we were alone at home. 30

Q. You were not at the meeting it was decided to use your name? A. I didn't know anything about it before my husband told me.

Q. Well, your husband told you at the meeting it was decided to use your name as payee? A. Naturally he asked me if I wouldn't discount the note.

Q. Did he tell you at the meeting it was decided to use your name? A. Yes. 40

Joseph Pocoroba, Sr.—Direct.

Q. You just did it to please your husband? A. I did it to accommodate my husband and his associates to help them along in the business.

Q. Why didn't they use somebody else's name as payee?

10 Mr. Glassner: Objected to.
The Court: Objection sustained.
Mr. Spitzer: That is all.
Mr. Glassner: That is all, Mrs. Pocoroba.

JOSEPH POCOROBA, SR., one of the defendants, being duly sworn according to law, on his oath, saith:

20 *Direct-examination by Mr. Glassner:*

Q. Mr. Pocoroba, do you speak English very well? A. No, not English.

Q. What language do you speak? A. Italian.

Q. Mr. Pocoroba, are you one of the defendants in this suit? (No answer.)

The Court: Where is your interpreter?

30 Mr. Glassner: I haven't any, sir, except Mr. Pocoroba, or his wife Amalia Pocoroba.

The Court: They are interested parties. Possibly there may be somebody in the courtroom who can speak the language. It should be prearranged who you are going to have for interpreter.

Mr. Glassner: I didn't know that Mr. Pocoroba didn't speak English well enough to testify. I was under the impression that he did.

40 The Court: It is up to you to have an in-

Max Klein—Direct.

terpreter. There is no official interpreter in the civil courts.

Q. Do you speak English a little bit? A. A little bit.

Q. In 1927, in the month of February did you endorse or sign a note for \$4,000? A. No. 10

Q. You did not? A. No.

Q. About in May did you sign a note or rather, endorse a note for \$3500? A. Yes.

Q. Who asked you to endorse the note? A. My son.

Q. Your son? A. Yes. Brings to the bank and said, "You sign."

Q. Wait a moment. I just want to know that. Your son? A. Yes. 20

Mr. Glassner: Cross-examine.

Mr. Spitzer: No questions.

Mr. Glassner: That is all, Mr. Pocoroba.

MAX KLEIN, a witness produced on behalf of the defendants, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Glassner: 30

Q. Mr. Klein, you are an interpreter, are you not? A. I am.

Q. You are connected with the Raritan Trust Company of Perth Amboy, are you not? A. I am.

Q. And was a note presented for payment in the amount of \$4,000 on May 8, 1929, which note was made by one Theodore Hawrycz? A. Well, I have the record here. 40

Joseph Pocoroba, Jr.—Recalled—Direct.

Q. Can you tell by consulting your record? A. Yes. Well, our records show that on—

Mr. Spitzer: May I ask if he made those records and what the purpose of this examination is?

10 Mr. Glassner: To give the description of that note.

Mr. Spitzer: If the purpose of this examination is to get a description of that note I do not think it is proper evidence. The best evidence is the note itself, and they haven't shown where the note is, and they haven't shown why the note is not here.

Mr. Glassner: Very well. I will withdraw this witness.

20

JOSEPH POCOROBA, JR., recalled.

Direct-examination by Mr. Glassner:

Q. Mr. Pocoroba, did you ever receive back the \$4,000 note after delivering the renewal note to the North Ward National Bank? A. No, sir.

Q. Did you go to the bank and demand that note at any time? A. I went to the bank.

30 Q. Did they look for the note? A. Yes, they did look for the note.

Q. Were they able to find it? A. No, sir.

Cross-examination by Mr. Spitzer:

Q. When did you go there? A. Why, I went there, Mr. Glassner was with me, my attorney was with me.

40 Q. Did you get the other notes? A. Yes, I got the \$3500 note.

Joseph Pocoroba, Jr.—Recalled—Cross.

Q. You paid that renewal note—made the renewal note of \$3500, didn't you get the note back?

A. No.

Q. You knew that note was yours when you made a renewal note? A. Yes, I knew that, but they never sent it back.

Q. When you brought the note there did you ask for it? You brought the renewal note there, did you not? A. At that time I didn't ask for it, no. 10

Q. When was it that you went there to get the \$4,000 note? A. Oh, I guess three months ago, three or four months ago.

Mr. Spitzer: That is all.

MAX KLEIN, recalled. 20

Direct-examination by Mr. Glassner:

Mr. Spitzer: I do not feel that the loss of the note has been satisfactorily explained. Two years or so have elapsed since that original note was brought there and the time they went to ask for it. They do not produce anybody from the bank here to show that note was lost, or what disposition was made of it. Usually when a person signs a renewal note and pays \$500 he gets the note back. He does not leave the note in the bank. 30

By the Court:

Q. Do you know anything about this \$4,000 note, where it is? A. Well, as far as I know about it, the note was presented to the bank for payment 40

Max Klein—Recalled—Direct.

and it was dishonored, payment refused, and it was protested on the ninth of May.

Q. What became of the original note? A. It was returned to our correspondents, which was the Federal Reserve Bank.

By Mr. Glassner:

10 Q. Have you, Mr. Klein, a record of the endorsers who endorsed that note? A. I have.

Q. Will you consult your record and tell me whether the endorsement of Amalia Pocoroba appears on that note? A. It does.

By Mr. Spitzer:

20 Q. Who made those records, Mr. Klein, the records of this specific transaction? A. The record is made by a clerk and I check it up and sign it. That is the customary way.

Q. Is your name signed there? A. It is.

Q. You didn't make it up? A. No. That is detail work.

Q. You just signed your name as a matter of course? A. Well, after I checked it up.

By the Court:

30 Q. Is it done under your direction? A. Yes, sir.

By Mr. Glassner:

Q. Does the endorsement of Amalia Pocoroba appear on that \$4,000 note? A. According to the records it does.

Q. In what position does that endorsement appear? A. Second.

Q. Which is the first endorsement? A. Theo. Hawrycz.

40 Q. Theodore Hawrycz? A. That is right.

Max Klein—Recalled—Direct.

Q. Which is the third endorsement? A. Joseph—it is the same name as the second endorsement.

Q. Is it Joseph Pocoroba, junior? A. Junior.

Q. Is that the third endorsement? A. That is right.

Q. Does the endorsement of M. Deutsch appear there? A. That is fourth. 10

Q. That is the very next one? A. Next one.

Mr. Spitzer: I contend this testimony is very leading. I think Mr. Klein ought to be able to testify just what signatures are there.

By the Court:

Q. How do you know from that what was the actual order of the endorsements on the original? 20

A. They are taken directly from the instrument itself in order.

Q. In every case? A. Absolutely.

Q. That is a rule? A. Yes, sir.

By Mr. Glassner:

Q. Does the endorsement of H. Consentino appear on that? A. No, not H.

Q. Is there a Consentino on there? A. There is. 30

Q. What does the first letter look like? Is it Humberto Consentino? Well, anyway there is a Consentino. Is that the endorsement which appears after M. Deutsch? A. No.

Q. Have you a Guisepe Petrucci endorsement there? A. Yes, we have.

Q. In what position is the endorsement of Guisepe Petrucci? A. It follows the endorsement of Morris Deutsch. 40

Israel Glasser—Rebuttal—Direct.

Q. And what position is the endorsement of H. Consentino? A. Well, Consentino is the last endorser of the individual endorsers.

Q. In other words, you mean the last endorsement was the endorsement of the bank's? A. That is right.

10 Q. Consentino is then the last individual endorser? A. That is right.

Q. And might there have been any other endorsers there on that note that do not appear there? A. No.

Q. You don't recall this particular note, of course? A. No.

Mr. Spitzer: That is all.

20 Mr. Glassner: That is our case, your Honor.

PLAINTIFF'S REBUTTAL TESTIMONY.

ISRAEL GLASSER, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct-examination by Mr. Spitzer:

30 Q. Mr. Glasser, did you ever see Joseph Poceroba, junior? A. Yes, I see him.

Q. How many times have you seen him? A. Well, I see him the first time in Morris Deutsch.

Q. At what city or borough? A. Fords, New Jersey.

Q. Did you hear any conversation there? A. Yes, I heard they came in Mr. Deutsch to sign a note.

40 Q. What did Mr. Deutsch say? A. Mr. Deutsch

Israel Glasser—Rebuttal—Cross.

refused to sign the note until the other signatures will be there. That is all.

Q. Do you know anything else? A. I don't know anything else.

Cross-examination by Mr. Glassner:

Q. Who was present beside you? A. Besides me? They came in about four or five people. 10

Q. About four or five people? A. Yes They came in together.

Q. Was the conversation conducted in the presence of all four or five? A. Well, they had a conversation.

Q. Who are they? A. What is his name, I think Mr. Pocoroba, Mr. Manger, Mr. Hawrycz was there, and if I am not mistaken Mr. Johnson was there too. I don't know sure. I know about four or five people. Mr. Rossner was there. 20

Q. This answer was made in the presence of everybody? A. Yes. Of course, was anybody there, and I was there, that is all.

Q. What sort of a place of business is that that you are in? A. It was a cigar store.

Q. I beg your pardon? A. Cigar store.

Q. Cigar store? A. Yes. 30

Q. Isn't it a fact that Mr. Manger took Mr. Deutsch aside and spoke to him alone? A. Well, I don't know anything about that. The only thing I heard the argument, Mr. Deutsch refused to sign until the other signatures will be there.

Q. Well, isn't it a fact that Mr. Manger— A. I didn't pay no attention to anything because it wasn't my line of business. I didn't care.

Q. Didn't you notice Mr. Manger take Mr. 40

Motion for Direction of Verdict.

Deutsch aside and speak to him alone? A. Well, I don't know anything about it.

Q. You don't know anything about it? A. No.

Mr. Glassner: That is all.

Mr. Spitzer: That is all we have.

10

MOTION FOR DIRECTION OF A VERDICT.

Mr. Glassner: I wish to make a motion for a direction of a verdict in favor of the defendant Joseph Pocoroba, senior. The evidence is uncontradictable of the fact that his endorsement did not appear upon the first note. And that when he endorsed the second note his endorsement was

20 solely for the accommodation of those who were liable upon the first note. That has been the testimony of Mr. Pocoroba, senior, himself, that was the testimony of his son Joseph Pocoroba, junior, and that was admitted by two of the plaintiff's witnesses and denied by two others. Mr. Klein of the Raritan Trust Company comes here with a record of the endorsers on that note and he tells us exactly what endorsements there were there, and the

30 names of Joseph Pocoroba, senior, or Guiseppa Pocoroba is conspicuous by its absence. The testimony amounts to a demonstration of the fact that Mr. Pocoroba was not on the original note and, therefore, when he endorsed the second note, in order to obtain the money, he did so for the accommodation of those who were liable on the first note. Under those circumstances Morris Deutsch, being obligated on the first note, therefore, accommodated by Mr. Pocoroba's endorsement of the second

40 note, and surely an accommodated party cannot

Motion for Direction of Verdict.

sue his accommodating party. I respectfully move for a direction of a verdict in favor of the defendant Joseph Pocaroba, senior.

(Mr. Spitzer replies in opposition to the motion.)

The Court: Is there any evidence that Pocaroba, senior, was on the first note? 10

Mr. Spitzer: Except the evidence we have on that, Mr. Manger, Mr. Hawrycz, Mr. Rossner, I think, testified that Joseph Pocaroba, senior's name was on that first note. Thereby presenting a factual question as to whether or not it was, and it is up to the jury to determine whether or not he was on that first note. My contention is that every note is separate, and every suit can be a separate suit on every note.

The Court: Yes. But at the same time the evidence is uncontraverted that the present note was given as a renewal of a former note. That is not denied. Now, then, it appears that on the original note there were four endorsers, for example, and on the renewal there were five. That is prima facie evidence that the additional endorser is there for the accommodation of those who had already been on the original note, is it not? 20

Mr. Spitzer: It is some evidence. 30

The Court: I will deny your motion. You may have an exception.

(Mr. Glassner sums up the case for the defendants.)

(Mr. Spitzer sums up the case for the plaintiff.)

Charge of the Court.

NEW JERSEY SUPREME COURT.

MIDDLESEX COUNTY CIRCUIT.

April Term, 1930.

10	MORRIS DEUTSCH, Plaintiff,
	vs.
20	JOSEPH POCOROBA, JR., AMALIA POCOROBA, HUMBERTO CON- SENTINO, JOSEPH POCOROBA, trading as POCOROBA & Co., and JOSEPH POCOROBA and THEODORE HAWRYCZ, Defendants.

Court's charge to the jury by HONORABLE PETER F. DALY, Circuit Court Judge, as follows:

Members of the Jury: This is a rather unusual case. There has been to me—I do not know how it impressed you—considerable evasion upon the part of some of the witnesses. I do not yet know whether there has been actual perjury upon the part of some of these witnesses. However, on the face of things, some of the testimony should be investigated by the prosecutor's office.

It seems to me you will have to know the nature of the transactions in which these persons were engaged in order to determine the probability or improbability of the truth of the respective stories told by them. One of the witnesses refused to tell us what kind of a business venture it was, and constrains us to the necessity of inferring

Charge of the Court.

what it was. He says he refused to answer because answering would degrade him. Another witness says that the kind of a business venture they were in was to buy trucks. Do you believe him? I do not know whether you do or not. Pocoroba, Jr., does not say it was to buy trucks, but on the contrary he, on the witness stand, says, in effect, that when Hawrycz, on the witness stand, stated this money they had gotten together, \$2100, besides the proceeds of this note of \$4,000, was to buy trucks, he, Hawrycz, was a perjurer. Therefore, I say it is the kind of a case the prosecutor's office should investigate and find out whether such witnesses can with impunity, come into a Middlesex County Court and from the chair lie to twelve American jurors and to the Court. 10

I am not saying who is lying, or who is telling the truth, but you, in your determination, necessarily must pass upon it in order to intelligently determine the question present in this case. 20

There is a note of \$4,000 and the proceeds of this note were to be used by these individuals for some kind of a business arrangement, the nature of which is in some doubt, and, one of the first questions for you to pass upon is, just who were interested in this note from the standpoint of a possible profit that might arise from the use of the proceeds coming from this note, because you are required to know that in order to determine whether or not all the endorsers on this note were endorsers because they were interested substantially in the proceeds of the note, or whether some of them were endorsers simply as a matter of friendship, as a matter of mere accommodation, because there is a big difference as to their relative rights and obligations, if they were ordinary endorsers 30 40

Charge of the Court.

for value, for substantial interest in the proceeds as compared with being endorsers simply for friendship, for accommodation.

10 There is the first note for \$4,000. Who were on that note? A singular thing about this note is that we have not the original, and Pocoroba says when he tried to get the original from the bank they said they did not have it. The notary public who protested the first note of \$4,000 comes from the Perth Amboy bank, and asserts they did not receive the note directly. They received it from their correspondent, the North Ward Bank of Newark, and naturally when they protested it they sent it back to their correspondent, and so they could not get any information from Mr. Klein, the notary public, as to where that note now is. He says, however, that it is the rule that when they protest they sign their certificate according to the order as the signatures of the endorsers appear, and he has given you what his recorded certificate of protest is along that line, and he further says that the certificate contains the names of all who were endorsers, and that it does not contain the name of Pocoroba, Sr., that is, as to the original note. This note, the \$4,000 note, went to protest.

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30 This gentleman Hawrycz says he put in \$300, that there were seven of them, including himself, who each put in \$300 to buy trucks, and that in addition to this \$2100, they were to get the proceeds of this \$4,000 note, and he does not know where the total of about \$6100 is. He does not tell us where the money went to, but says that Pocoroba held onto the money, or if Pocoroba did not, his wife did. He made no complaint for embezzlement or for misuse of the money. However, 40 there is the original note. This note was renewed,

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\$500 was paid on it, the \$4,000 original note, making the second note \$3500. We have this second note in evidence. This note also went to protest, the renewal for \$3500, and then came along a note for \$3,000. They evidently paid \$500 more on the first renewal of \$3500, making the third note, and the note which is the subject of this suit, for \$3,000. This also went to protest and it was sued upon, and a verdict was obtained against the maker of the note, Hawrycz. Hawrycz made the original note to Mrs. Pocoroba, made the first renewal to Mrs. Pocoroba, and made this \$3,000 renewal to Pocoroba. Judgment was obtained on this \$3,000 note, besides the costs and interest and protest fees, against whom? Against Hawrycz, who was the maker of the note, and against Deutsch, who was an endorser on the note.

We have no affirmative evidence that Deutsch was a party to the kind of business venture in which three other persons were engaged, be it the buying of trucks or be it of such nature that the acknowledgment of participation therein would tend to degrade the man. There is no affirmative proof that Deutsch was a participant with the seven who, as testified to, were engaged in this business venture. Was he? Did he sign, as endorser, the original \$4,000 note, the first renewal of \$3500, and the last renewal of \$3,000, simply as a matter of friendship or accommodation? Did he do it because he wanted to help out Hawrycz, who, according to Hawrycz's own testimony, wanted to go in the trucking business? Or, did he do it because the business was such that he was interested in it because it would probably bring gain to himself?

You cannot merely guess at it, and I say there

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is no affirmative evidence that this man Deutsch was a direct party, in the enterprise in which Hawrycz was engaged. But, why did he do it? Was it mere accommodation and friendship, or was he substantially interested in the so-called business venture into which they were putting this money? Deutsch's name appears in the second position on the first renewal for \$3500, and on the second renewal for \$3,000; the first signature on each of these notes is Theodore Hawrycz, signed, "Theo. Hawrycz," the maker of the note, and the second is Morris Deutsch. On the first renewal for \$3500 there is below Deutsch's name Joseph Pocaroba, Jr., Amalia Pocaroba, Umberto Consentino, G. Pocaroba; and on the \$3,000 renewal, the order is: Hawrycz, Deutsch, Pocaroba, Jr., Amalia Pocaroba, Consentino, Pocaroba and Company, and G. Pocaroba.

According to our law the physical order of these names carries with it what we know as prima facie proof that the parties signed as to time according to the location of the names on the back of the note. Prima facie means at first view; the first proof, proof that shows the names were signed in the order as they physically appear upon the back of the paper. But this proof is not conclusive, if disputed. One of the serious questions in the proper determination of this case is when Deutsch signed the endorsement. He claims that he did not sign the endorsement until all the other endorsements had been placed upon the back of the note. Is that true?

Our statute says, "As respects one another, endorsers are liable prima facie in the order in which they endorse." Now, if Deutsch, as a matter of fact, signed last, then as to all the other endors-

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ers preceding him, he could sue and recover from them, because it is undisputed that Deutsch has paid the judgment which was obtained under this note. Now, did he sign last? If he did, then he is entitled to a verdict, and he is entitled to a verdict, if he signed last, as against every other endorser who signed before him.

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If one of you men or women have a note presented to you, to help out someone who is the maker of that note, so it may be discounted in the bank, and one or more others who to help out have placed their signatures as endorsers, and you go down last, all who have signed before you are responsible before you are responsible. Of course, the one to whom the note is due can follow up any of the endorsers, but, if you should be made pay you could look for a judgment against the others who were responsible before you were responsible, because they signed the endorsement before you did. According to the law you are responsible for the endorsement in the order, as to matter of time, in which you signed it, unless there is some special agreement between the endorsers among themselves.

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So you can see how big and important is the question whether or not Deutsch signed last, notwithstanding the fact that his name appears after that of the maker on this note, so far as physical order is concerned.

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If Deutsch did sign last, then he is entitled to a verdict against Joseph Pocaroba, because it is admitted that Joseph Pocaroba was interested in the money which was obtained, and when he was an endorser on this note he was not an accommodation endorser. He would also be entitled, if he signed last, to have a verdict against Amalia Po-

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coroba, if she was interested in that money, substantially interested in that money. She swears she had nothing at all to do with this business, no connection with it; that her husband came to her and asked her whether or not she would loan her name as the payee and as the endorser, and she said yes, she would, but that she individually had no influence, power, control, or interest in this money. That is what she substantially says. Now, even though you find that Deutsch had signed last, yet since he was an accommodation endorser, he could not, under this kind of an action, look for a verdict of contribution as against another accommodation endorser. But, if she was interested, and Deutsch signed last, then he would be entitled to a verdict against Amalia Pocoroba equally with his right against her husband.

Now, then, we come to Pocoroba and Company. When did they sign? And when did Joseph Pocoroba, Sr., as distinguished from Pocoroba, Jr? And were they interested?

The same thing that I have said as to Amalia Pocoroba applies to Joseph Pocoroba, Sr., and Pocoroba and Company. To Theodore Hawrycz the same thing applies. There is no affirmative evidence this man Hawrycz was anything more than an accommodation endorser, and regardless of whether or not this was signed last, I cannot see that Deutsch is entitled, under this statute, to a verdict against Hawrycz, since Hawrycz, according to the evidence in this case, never had any interest, as I understand it.

If you find that a witness or a party deliberately testifies falsely on any substantial matter that is material to a proper determination of the issue, you have a right to consider that, and if, in your

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good judgment, you feel justified, because of such falsification of testimony, you may ignore all his testimony. Or you may use it in your judgment so far as you think it should be used in qualifying the degree of credence that otherwise you would have given to his testimony if there had not been such falsification.

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It resolves itself, I again emphasize, into the main question, was Deutsch the last signer, in point of time, or was he a signer according to the order in which the names physically appear upon the back of the note? If he was a signer according to the order in which the names appear on the back of this note, then he has no claim against any of these people whose name appears subsequent to his, and all the defendants names appear subsequent to his, with the exception of that of Hawrycz. He is entitled to a verdict against Hawrycz in any instance. Hawrycz does not dispute that. But as to the rest of the defendants, if he signed as appears physically, second, next to Hawrycz, then he is not entitled to a verdict against any of them. If he signed last, then he is entitled to verdicts against the parties you may find, according to the explanation that I have given to you. They admit the amount involved is \$3,102.35, besides interest from the twenty-seventh day of January, 1928; you will have to figure the interest on \$3,102.35, at six per cent., from January 27, 1928, and add it to that amount. You have to do that anyhow, because, as I say, Hawrycz makes no defense to this. But, of course, if he is entitled to a verdict against others besides Hawrycz, you do not divide it up among them, but you will include in your verdict all who you find are responsible to Deutsch.

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Exhibit P-1.

\$3000.00 Perth Amboy, N. J. Aug. 8, 1927.

Three months after date I promise to pay to the
order of Amalia Pocoroba,

Three Thousand Dollars
at Raritan National Bank of Perth Amboy, N. J.

Due Nov. 8, 1927 THEODORE HAWRYCZ

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Endorsements:

Theo. Hawrycz
Morris Deutsch
Joseph Pocoroba, Jr.
Amalia Pocoroba
Humberto Cosentino
Pocoroba & Co.
J. Cocoroba.

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Exhibit D-1.

\$3500. May 9, 1927.

Three months after date I promise to pay to the
order of Amalia Pocoroba

Three thousand five hundred 00/100 Dollars
at Raritan Trust Co. of Perth Amboy, N. J.

Value received.

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No. 1 Due . . . THEO. HAWRYCZ.

Endorsements:

Renew only

Theo. Hawrycz
Morris Deutsch
Joseph Pocoroba, Jr.
Amalia Pocoroba
Humberto Cosentino
J. Pocoroba

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New Jersey Court of Errors and Appeals

<p style="text-align: center;">MORRIS DEUTSCH, Plaintiff-Appellee,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">JOSEPH POCOROBA, JR., AMALIA POCOROBA, and JOSEPH POCOR- OBA, SR., Defendants-Appellants.</p>	}	<p>Action at Law.</p> <p>On Appeal from New Jersey Supreme Court.</p>
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BRIEF OF DEFENDANTS-APPELLANTS

This matter is before the Court on appeal from a judgment rendered in the New Jersey Supreme Court, Middlesex County.

Facts.

On August 8th, 1927, Theodore Hawrycz made a note payable to Amalia Pocoroba in the sum of \$3,000.00, which note bore on its reverse side the following endorsements in the following order: Theodore Hawrycz, Morris Deutsch, Joseph Pocoroba, Jr., Amalia Pocoroba, Humberto Cosentino, Pocoroba & Co., J. Pocoroba. The said note was negotiated to the North Ward National Bank of Newark, New Jersey, which protested the said note and recovered a judgment thereon against Theodore Hawrycz and Morris Deutsch, which judgment Deutsch paid and took an assignment

thereof. This suit was then brought by Deutsch, who alleges that the note is his property and that he demanded payment from the defendants who were prior endorsers to him.

A motion was made to strike out the complaint on the ground that it should have alleged an agreement by and between the endorsers as to their order of liability and that in the absence of such agreement the plaintiff could not recover as the note showed him to be a prior endorser seeking to recover against subsequent endorsers. The motion was denied and exception granted.

A motion for a non-suit was made at the close of the plaintiff's case on the same ground. The motion was denied and an exception granted.

A motion was made for a directed verdict in favor of the defendants on the same ground, which motion was denied and an exception granted.

The jury found in favor of the plaintiff and against the defendants, which judgment is the subject of this appeal.

POINT I.

The lower court erred in refusing to grant a motion to strike out the complaint on the ground that same set forth no cause of action when thereunto moved by the attorney for defendants-appellants.

Under Section 68 of the Uniform Negotiable Instruments Act, it is provided that:

“All endorsers are liable prima facie in the order in which they endorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise.”

The Act, therefore, permits introduction of evidence in a suit on a note, of *an agreement* that liability as among endorsers shall be other than it appears on the note itself.

In the complaint in this ^{case} Act, there was not alleged, neither was there set forth, any agreement by or between the endorsers on the note which was the subject of the suit that the order of liability was to be other than it appeared on the note.

The fact that there appears in the complaint the recitation that “said note is now the property of the plaintiff who has demanded payment from the defendants who are prior endorsers,” does not operate to show an agreement changing the liability of the parties thereto. The note attached to the complaint sets forth a different situation—as it appeared on the back of the note that the plaintiff-appellee was, by reason of his position as endorser on the note, a prior endorser to any of the plaintiff-appellants.

The mere recitation that plaintiff-appellee was a prior endorser does not show any agreement between or among the parties that they have agreed to any order of liability, other than that which appears on the reverse side of the note.

There should have been incorporated in the complaint an agreement, by way of a separate count, indicating how the liability of the defendant-appellants arose with respect to the plaintiff-appellee. It is possible that at the trial the only evidence that plaintiff would be able to introduce would be that he acted as accommodation endorser for one or more of the defendants and not for all of them.

Under this type of evidence the plaintiff would only be able to recover for the full amount of the note as against the parties accommodated and as to the others only a contributive share.

In view of the fact, therefore, that the agreement by and between the parties to the suit was not expressly set forth, so as to enable defendants to ascertain whether they were being sued for contribution or otherwise, and to accordingly frame their defense, the complaint was palpably defective and should have been stricken out.

The act expressly refers to evidence of an agreement between the parties, no agreement is set forth in the complaint.

In the absence of an allegation setting forth an agreement as to order of liability, plaintiff was placed in the position of a second endorser seeking to recover from subsequent endorsers.

It is fundamental and needs no argument that subsequent endorsers are not liable in the event of non-payment of a note to a prior endorser or prior endorsers.

It is further well settled that the fact that the plaintiff-appellant paid the judgment and took an assignment of the note places him in no better position than that which he originally occupied, namely, that of a prior endorser.

It may be argued by my opponent that paragraph 3 recites as follows:

“On or about the 27th day of January, 1928, the North Ward National Bank of Newark, New Jersey, recovered a judgment against Theodore Hawrycz and Morris Deutsch, the maker and last endorser in point of time respectively * * * ”

and that sets forth the order of liability among the endorsers.

This refers, however, to an entirely different suit in which defendants were not joined, and accordingly priority of liability was not in issue with respect to them. Further, this allegation still does not set forth an *agreement* whereby the order of liability was to be other than it appeared on the reverse side of the note.

For the foregoing reasons and for the further reason that the allegations of the complaint were so inconsistent with the legal effect of the endorsements on the note which was part of the complaint, it is respectfully contended that the trial court erred in refusing to strike out the complaint on the ground that it set forth no cause of action.

POINT II.

The trial court erred in refusing to direct a judgment of non-suit against the plaintiff and in favor of the defendants.

The plaintiff's case disclosed no agreement by and between plaintiff and defendants changing the prima facie order of liability as it appeared on the note.

For the reasons set forth in the argument under Point I it is respectfully submitted that the court erred in refusing to non-suit the plaintiff, and further erred in refusing to direct a verdict in favor of the defendants.

Respectfully submitted,

RICHARD M. GLASSNER,
Attorney for Defendants-Appellants,

JACOB S. GLICKENHAUS,
Of Counsel.

New Jersey Court of Errors and Appeals

MORRIS DEUTSCH,
Plaintiff-Appellee,

vs.

JOSEPH POCOROBA, JR., AMALIA
POCOROBA and JOSEPH POCO-
ROBA, SR.,
Defendants-Appellants.

Action at Law.
On Appeal from
New Jersey
Supreme Court.

BRIEF FOR PLAINTIFF-APPELLEE.

Facts.

On August 8, 1927, Theodore Hawrycz made a note payable to Amalia Pocoroba in the sum of \$3,000.00 which note bore on its reverse side the following endorsements in the following order: Theodore Hawrycz, Morris Deutsch, Joseph Pocoroba, Jr., Amalia Pocoroba, Humberto Cosentino, Pocoroba & Co., J. Pocoroba. The said note was negotiated to the North Ward National Bank of Newark, New Jersey, which protested the said note and recovered a judgment thereon against Theodore Hawrycz and Morris Deutsch, the maker and last endorser in point of time respectively, which judgment the plaintiff paid and he thereupon took an assignment thereof.

This suit is brought by the plaintiff, Morris Deutsch, the holder of the note, on the theory that in point of time he is the last endorser and sues those endorsers who attached their signatures to the note prior in point of time to the plaintiff's.

POINT ONE.

The lower Court did not err in refusing to grant a motion to strike out the complaint on the ground that same set forth no cause of action.

Assuming, but not admitting, that the complaint did not set forth an agreement as argued by the appellants in their brief, the case of *Schneider vs. Mueller*, 82 N. J. L., page 503 covers this identical situation. In that case the note in question, made by "M" was endorsed by "X & Y" in this order, "X" and "Y". The note was protested and "X" was compelled to pay it. "X" then sued "Y" on the theory that "Y" was in fact a prior endorser. "X" recovered a judgment and "Y" appealed and urged as a ground of reversal that the Court should have ordered a "Non Suit" moved for by defendant "Y" at the close of "X" plaintiff's case, upon the basis that the declaration contained merely the common counts, with a copy of the note annexed thereto; that the note on its face showed that the plaintiff "X", was an endorser and prior to the defendant and that therefore defendant, "Y", was not liable thereon; that in order to show the liability of the defendant to the plaintiff the declaration should have contained a special count, showing how that liability arose. The late Justice Kalisch, in voicing his opinion, said:

"There is no merit in this contention. The plaintiff's declaration is strictly in conformity with the requirements of section 30 of the Practice Act of 1903, page 542, which expressly authorizes a plaintiff in an action on a bill or note to declare on the money counts alone, annexing to his declaration a notice containing a copy of the bill or note with the endorsements, &c."

The above case is dispositive of the defendants-appellants' arguments, but even if it were not, the complaint of the plaintiff in the original action stated that "said note is now the property of the plaintiff who has demanded payment from the defendants who are prior endorsers," and also stated in paragraph three of the plaintiff's complaint that "On or about the 27th day of January, 1928, the North Ward National Bank of Newark, New Jersey, recovered a judgment against Theodore Hawrycz and Morris Deutsch, the maker and last endorser in point of time respectively * * *". And certainly this sets forth the order of liability and the agreement among the endorsers.

It has been uniformly held that once a complaint states a cause of action no matter how inartistically it is drawn, it will be upheld on a motion to strike out the complaint (*Malverti vs. United Electric Co.*, 69 N. J. L. 55). The fact that the cause of action is not described with sufficient particularity will not be considered as a cause for striking out the complaint on this motion (*Savage vs. Public Service Railway Co.*, 95 N. J. L. 432).

For the foregoing reasons, it is respectfully submitted that the Trial Court did not err in refusing to strike out the complaint and it is respectfully urged by the plaintiff-appellee that the appeal be dismissed and that the judgment entered be affirmed.

POINT TWO.

The Trial Court did not err in refusing to direct a judgment of non-suit against the plaintiff and did not err in refusing to direct a verdict in favor of the defendants.

There is abundant and conclusive evidence that the plaintiff, Morris Deutsch, signed last in point of time, after all the other signatures had been affixed to the note.

The plaintiff, Morris Deutsch, testified that all the other names appearing on the note were there before he signed. At page 22, lines 28 to 40, and page 23, lines 1 to 20, in response to a question by the Court, the plaintiff testified he would not endorse the note unless the rest of the endorsers had signed first (p. 29, ll. 18 to 27). At page 30, lines 18 to 32, the plaintiff explains in response to an inquiry by the Court why he signed last.

Samuel Manger, a witness produced on behalf of the plaintiff, testified that Morris Deutsch informed Mr. Pocoroba, Jr., one of the defendants, that he wouldn't sign unless all the others signed ahead of him, whereupon Mr. Pocoroba, Jr., procured the other signatures on the note, and then Mr. Deutsch signed (p. 38, ll. 8 to 13). Mr. Manger, at page 38, line 37 to page 39, line 2, enumerates the names which were on the note before Mr. Deutsch signed.

Mr. Theodore Hawrycz, the maker of the note and one of the defendants, called by the plaintiff as his witness, testified to the same effect, namely, that Mr. Deutsch signed last in point of time (p. 59, l. 22 to p. 60, l. 7).

Charles Rossner, produced as a witness on behalf of plaintiff, also testified to the same effect (p. 63, ll. 18 to 38).

The Trial Judge, in discussing the motion for a non-suit, states the law applicable with clearness and preciseness: "They claim that although *prima facie*, so far as the physical location of the signatures are concerned, Deutsch's name appears second, yet, that, as a matter of time, of the actual signing of the endorsement, he was last and under the Negotiable Instrument Act, if he is the last as a matter of time, then he can sue all endorsers who signed as a matter of time before he did" (by the Court, p. 67, ll. 28 to 38).

The plaintiff-appellee, therefore, contends that conclusive evidence was offered at the original trial; that the plaintiff actually signed last in point of time and the jury believed his story and returned a verdict in favor of the plaintiff and so the plaintiff-appellee respectfully submits that the Trial Court did not err in refusing to "non-suit" the plaintiff and did not err in refusing to direct a verdict in favor of the defendants.

Respectfully submitted,

DAVID T. WILENTZ,
Attorney for and of Counsel with
Plaintiff-Appellee.





