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District Court Summons.

(In former Case.)

CITY OF PASSAIC, }
COUNTY OF PASSAIC, } ss.:

To Wit: *The State of New Jersey*, To Sergeant-at-Arms of the District Court of any Constable of said County:

(L. S.)

10

Summon Frank M. Griswold, Ira Mastenbrook and Karl Knapp,

to appear before the District Court of the City of Passaic, to be held at the District Court Room, in the O'Leary Building, 125 Prospect St., in the said City, on the 30th day of October A. D. 1929, at ten o'clock in the forenoon, to answer unto

Passaic National Bank and Trust Company
in an action on Contract.

20

Demand \$300.00 Dollars. Hereof fail not.

Witness: Thomas E. Duffy, Esquire, Judge of said Court at Passaic aforesaid, the 21 day of October in the year of our Lord, One Thousand Nine Hundred and Twenty-nine.

D. DEMURO,
Clerk.

30

40

State of Demand.*(In Former Case.)*

Filed Oct. 21, 1929.

PASSAIC DISTRICT COURT.

10

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff,

vs.

20

FRANK M. GRISWOLD, IRA MAS-
TENBROOK, 437 Highland Ave.,
Passaic, and KARL KNAPP, 970
Main Ave., Passaic, N. J.,
Defendants.

On Con-
tract.State of
Demand.

Plaintiff, a banking institution of the State of New Jersey, having its principal office in the City of Passaic, in the County of Passaic and State of New Jersey, says that:

30 1. On May 13th, 1929, the defendant, Frank M. Griswold, made and executed a certain promissory note in the sum of Three Hundred (\$300.00) Dollars, a true copy of which note is hereto annex, marked Schedule "A" and made a part hereof.

2. Said note was subsequently endorsed to the present plaintiff who is the bona fide holder of said note in due course for value and before maturity.

40

State of Demand.

3. Said note, when the same became due, was duly presented to the bank at which it was made payable for payment, but payment thereof was refused; said note was duly protested; and a true copy of the notice of dishonor and protest was mailed to the said defendants, Ira Mastenbrook and Karl Knapp, the endorsers on said note. 10

4. Although due demand has been made for the payment of said sum, said defendants have failed and refused and still fail and refuse to pay the whole, or any part thereof.

Wherefore, plaintiff demands judgment in the sum of Three Hundered (\$300.00) Dollars, together with lawful interest from May 13th, 1929, protest fees and costs of suit. 20

FEDER & RINZLER,
Attorneys of Plaintiff.

To the Defendants:

Take Notice, that the plaintiff demands that the defendants shall file written specifications of defenses intended to be made in said action on or before the time specified for appearance in the process issued in said cause. 30

FEDER & RINZLER,
Plaintiff's Attorneys.

Schedule "A."

\$300.00 Passaic, N. J., May 13, 1929
 Three Months after date I promise to pay to the
 order of Myself
 Three Hundred.....Dollars
 at Passaic National Bank and Trust Company

10 Value received.
 No. 9872. Due Aug. 13

FRANK M. GRISWOLD

On the Reverse side:

Frank M. Griswold
 2131 Boulevard,
 Jersey City, N. J.
 Ira Mastenbrook
 Karl Knapp

20

30

40

Transcript of Docket.

PASSAIC DISTRICT COURT.

PASSAIC NATIONAL BANK AND TRUST COMPANY,	}	On Con- tract.	10
Plaintiff,			
vs.			
FRANK M. GRISWOLD, IRA MASTEN- BROOK and KARL KNAPP,	}	Demanded \$300.00.	
Defendants.			

FEDER & RINZLER, Attorneys for Plaintiff.

SPINDEL & BERR, Attorneys for Defendant, Karl Knapp. 20

October 21, 1929:

State of Demand filed and summons issued in the above stated cause and returnable October 30th, 1929, at 9:30 o'clock in the forenoon and was returned as follows:

"Served this summons October 22nd, 1929, by reading the same to Ira Mastenbrook, one of the defendants, and delivering to him a copy thereof." Frank M. Griswold not found in County. 30

"Served this summons, October 22, 1929, by leaving a copy thereof at the defendant's place of abode in presence of son of Karl Knapp, a person of the family, of the age of 14 years, who was informed of the contents thereof the said defendant not being found.

Thomas A. Hopkins, Sergeant at Arms. 40

Transcript of Docket.

October 30, 1929:

Listed: Adjourned to November 6, 1929.

November 6, 1929:

Specification of Defenses filed by the defendants Ira Mastenbrook and Karl Knapp.

10

November 6, 1929:

Hearing by Court.

Margaret Glass, Stenographer, sworn.

William F. Gaston, sworn.

Joseph Rean, sworn.

Karl Knapp, sworn.

Ira Mastenbrook, sworn.

Mrs. Helen Finn, sworn.

20

Judgment for the plaintiff and against the defendants Ira Mastenbrook and Karl Knapp, in the sum of \$308.36.

November 25, 1929:

Defendants filed Notice of Appeal.

November 25, 1929:

30

Defendant Karl Knapp filed bond, duly approved, in the sum of \$756.36.

January 4, 1930:

Defendant filed stipulation of discontinuance as to the defendant Ira Mastenbrook.

May 5th, 1930:

Filed Supreme Court rule reversing judgment entered against Karl Knapp.

40

Transcript of Docket.

May 12th, 1930:

Filed Notice to Move case on May 14th, 1930.

May 14th, 1930:

Case not moved.

10

July 16th, 1930:

Special appearance entered by Karl Knapp's attorneys.

The Court ordered case on list of July 30th, 1930, for new trial.

July 30th, 1930:

Adjourned to August 13th, 1930.

20

August 13th, 1930:

Adjourned to September 10th, 1930.

September 10th, 1930:

Adjourned to September 12th, 1930.

September 12th, 1930:

Hearing by Court.

30

Margaret Glass, Stenographer, sworn.

Joseph Rean, Witness, sworn.

Perne Pitman, Witness, sworn.

Helen Tinn, Witness, sworn.

Luella Griswold, Witness, sworn.

Karl Knapp, Witness, sworn.

Ira Mastenbrook, Witness, sworn.

The Court reserved decision.

40

Transcript of Docket.

December 17th, 1930:

Court rendered decision as follows:

Judgment for the plaintiff and against the defendant Karl Knapp, in the sum of \$326.56.

10

December 24th, 1930.

Karl Knapp filed Notice of Appeal.

December 27, 1930:

Appeal Bond filed by Karl Knapp.

20

I, Dominick DeMuro, Clerk of the District Court of the City of Passaic, County of Passaic and the State of New Jersey, certify that said Court is a Court of Record with a seal; that the foregoing is a transcript and true copy of the records of such case as appears in Docket 87, page 654.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the said District Court of the City of Passaic and affixed the seal of said Court this 27th day of December, 1930.

30

DOMINICK DEMURO,
Clerk of the District Court of
the City of Passaic.

40

Notice of Appeal.

PASSAIC DISTRICT COURT.

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff,

vs.

KARL KNAPP,
Defendant.

On Con-
tract.

10

Notice
of Appeal.

To:—FEDER & RINZLER, Esqs., Attorneys for
Plaintiff, or PASSAIC NATIONAL BANK AND
TRUST COMPANY, Plaintiff.

20

SIRS:

TAKE NOTICE that the defendant in the above
entitled cause, Karl Knapp, hereby appeals to
the New Jersey Supreme Court from the judg-
ment of the Passaic District Court entered in
the above entitled cause on December 17th, 1930.

SPINDEL & BERR,

Attorneys for Defendant, Karl Knapp.

Dated, December 24th, 1930.

30

40

Specifications of Determinations.

NEW JERSEY SUPREME COURT.

10	PASSAIC NATIONAL BANK AND TRUST COMPANY, Plaintiff-Appellee, vs. KARL KNAPP, Defendant-Appellant.	} On Appeal from Passaic District Court. } Specifica- tions of Determina- tions.
----	--	--

20 Following is a specification of the determination of the District Court with which the defendant, Karl Knapp is dissatisfied in point of law.

30 1. The Court took unto itself jurisdiction to retry this case, notwithstanding a prior adjudication of the same case between the same parties by the New Jersey Supreme Court, when the same case came up before it for consideration on a prior appeal, and the Court denied defendants-appellants' motion, that said cause not be retried. Said motion being made in connection with a special appearance. The Court erred in denying defendant-appellants' motion as aforementioned, and in entertaining jurisdiction, and retrying this case, and appellant is dissatisfied with same in point of law.

40 2. The court rendered a verdict in favor of the plaintiff and against the defendant, Karl Knapp. The Court erred in this determination and the appellant is dissatisfied with same in point of law.

Specifications of Determinations.

3. The said Court directed the entry of a judgment in favor of the plaintiff and against the defendant, Karl Knapp, in the sum of \$326.56, from the facts. Defendant-appellant contends that there were no facts to warrant such findings. The Court erred in this decision and appellant is dissatisfied with the same in point of law. 10

4. The Court found that as a fact, by reason of its findings in favor of the plaintiff and against the defendant, that the notice of dishonor was mailed to the endorser, this defendant, in accordance with the statute in such case made and provided. The Court erred in this determination and appellant is dissatisfied with same in point of law. 20

5. The Court ruled that the remittitur filed in the New Jersey Supreme Court in the former case, said case having been appealed from the Passaic District Court, which was a case between the same parties based upon the same promissory note, operated to reconstitute the District Court with jurisdiction so that there should be a retrial on the merits of the case, notwithstanding the fact that the remittitur did not contain any provision for the remanding of the case for retrial, but merely directed a reversal of the judgment. The Court erred in this determination and appellant is dissatisfied with same in point of law. 30

6. The Court denied defendant-appellant's motion for a dismissal of the case against this defendant. The Court erred in this determination. 40

Specifications of Determinations.

tion and appellant is dissatisfied with same in point of law.

7. The Court ruled that the sole question was whether or not a certain telegram was received by this defendant-appellant, and found as a fact by reason of the said ruling, that a telegram testified to by plaintiff's witnesses in the proof of plaintiff's case, would if received be sufficient form of notice. The Court erred in this determination and the appellant is dissatisfied with the same in point of law.

8. The Court found upon its entering a judgment in favor of plaintiff and against this defendant; that the liability of this defendant-appellant was not determined by the disposition of the former case by the New Jersey Supreme Court, wherein the Supreme Court found that there was no proper compliance with negotiable instrument act pertaining to notice to this defendant; and found further that the theory—stare decisis did not apply. The Court erred in this determination and the appellant is dissatisfied with same in point of law.

9. The Court found by reason of its entering of judgment in favor of the plaintiff and against this defendant, that notice of dishonor or non-payment had been given to this defendant-appellant in conformity with the statute in such case made and provided. The Court erred in this determination and the appellant is dissatisfied with the same in point of law.

10. The Court allowed over objection of defense counsel, the following question to be asked

Specifications of Determinations.

of Perne Pitman, one of the witnesses for the plaintiff: Q. "Had you or the bank had any knowledge of any change of the location of that business address?" The Court erred in this determination and appellant is dissatisfied with same in point of law.

10

11. The Court allowed over objection of defense counsel the following question to be asked of Joseph Rean, one of the plaintiff's witnesses: Q. "And upon what did you base that belief?" The Court erred in this determination and appellant is dissatisfied with same in point of law.

12. The Court refused to strike out the answer to the following question propounded by defense counsel to Joseph Rean, one of plaintiff's witnesses: Q. "What did you say?" A. "If she thought it was Clifton, or Garfield, or Paterson, it would have been marked on the back of the note." The Court allowed the said answer to stand over defense counsel's objection and notwithstanding defense counsel's request that the said answer be stricken out. The Court erred in this determination and appellant is dissatisfied with the same in point of law.

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13. The Court allowed over objections of defense counsel, the following question to be asked of plaintiff's witness, Mrs. Finn: Q. "Have you received mail mailed in Passaic in the morning, the same day?" The Court erred in this determination, and the appellant is dissatisfied with the same in point of law.

14. The Court ruled that the question as to post office deliveries are matters of general

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Specifications of Determinations.

knowledge, over defense counsel's objection. The Court erred in this determination and appellant is dissatisfied with the same in point of law.

10 15. The Court allowed over objection of defense counsel the following question to be asked of one of plaintiff's witnesses Mrs. Finn: Q. "and when he furnished you with Passaic, New Jersey, as the place where Mr. Karl Knapp customarily, or was accustomed to receive his mail, that being his place of business, did you rely on it?" The Court erred in this determination and appellant is dissatisfied with the same in point of law.

20 16. The Court allowed over objection of defense counsel the following question to be asked of one of plaintiff's witnesses Luella Griswold: Q. "Do you know whether he ever received that letter with the note which you sent him to sign, and which you intended to give in renewal of P-1?" The Court erred in this determination and appellant is dissatisfied with the same in point of law.

30 SPINDEL & BERR,
Attorneys for Defendant-Appellant.

Testimony.

PASSAIC DISTRICT COURT.

PASSAIC NATIONAL BANK AND
TRUST COMPANY,

Plaintiff,

vs.

KARL KNAPP,

Defendant.

Retrial
from
Supreme
Court.

10

Passaic, New Jersey, September 12th, 1930.

Hearing before:—Hon. THOMAS E. DUFFY,

Judge.

20

APPEARANCES:

JACK RINZLER, Esq., of the firm of Feder &
Rinzler, Esqs., for the Plaintiff.

BARNETT BERR, Esq., of the firm of Spindel &
Berr, Esqs., for the Defendant.

(MARGARET GLASS, sworn as the stenographer.)

MOTION MADE BY MR. BERR AT THE OPENING OF
THE CASE.

30

Mr. Berr: Now then, if Your Honor, please,
originally when the office of Spindel & Berr re-
ceived notification from the Clerk of this Court
that Your Honor had set this case for a specific
day for retrial, or for a trial as the post card
indicates, we appeared and objected to the ac-
tion of the Clerk and the jurisdiction of this
Court, and I entered a special appearance for

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Motion by Mr. Berr at the Opening of Case.

that purpose. In presenting the argument, if Your Honor recalls, there was no stenographer present, and I have continually requested Your Honor for permission for continuing my objections to this Court's jurisdiction to the retrial
10 of this case, in view of the remittitur and the opinion on file with the Supreme Court in the same case which was determined by the Supreme Court, on an appeal issuing out of a case tried before Your Honor on the same state of demand that Your Honor now asks we re-defend. I desire to reiterate my motion, so the record may be clear, and if Your Honor will permit me to enter my special appearance for that purpose, I shall now make my motion. I contend, Your
20 Honor has no jurisdiction for the following reasons: First, because the original cause of action was heard, based upon a state of demand served upon this defendant, Karl Knapp, and after a trial, Your Honor determined the merits of the controversy, that a properly effected appeal was taken to the New Jersey Supreme Court, and that after hearing the arguments of counsel, the Supreme Court filed an opinion, and I desire to read into the record a certain por-
30 tion of the opinion.

Mr. Rinzler: Counsel says he made the motion. I don't think a matter adjudicated on a motion made, should be re-adjudicated.

The Court: Why not place the whole opinion in the record?

Mr. Berr: That is part of my motion.

Mr. Rinzler: It is not evidential in this case.

Mr. Berr: That is one of my reasons for ob-
40 jecting to Your Honor's jurisdiction, and I ask

Motion by Mr. Berr at the Opening of Case.

Your Honor to permit me to have this opinion, which is the copy sent me by the Supreme Court, made part of my motion.

The Court: All right.

Mr. Berr: Now then, in accordance and in conformity with the opinion just referred to, a remittitur was filed with the Clerk of the Supreme Court, and entered in the records of the Supreme Court, which remittitur I ask Your Honor be made part of my motion, a copy of which I now hold in my hand. I call Your Honor's attention specifically to the last paragraph of the remittitur which reads: "It is thereupon ORDERED that the judgment of the said Passaic District Court be in all things reversed insofar as the same pertains to the defendant appellant, Karl Knapp, set aside and for nothing holden, with costs of appeal to this Court to be taxed, and that the record and proceedings be remitted to the said Passaic District Court, to be proceeded with in accordance with this judgment and the practice of said Court." The Supreme Court did file such a remittitur, stating to the Clerk of this Court, and to Your Honor that it sends back its papers and entire proceeding back to you, for you to proceed with the same in accordance with the judgment of the Supreme Court, determining that there is no liability, and that is one of the numerous reasons why this case is practically stares decises, already determined, the liability of this defendant, Karl Knapp, already disposed of, and I say by making this man come back to re-defend, you are taking unto yourself, jurisdiction in a case already decided. Another rea-

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Motion by Mr. Berr at the Opening of Case.

son why I say Your Honor has no jurisdiction to dispose or hear this case, is this: If, as a matter of fact, the Supreme Court had decided that it was not the merits that caused the reversal, but purely error of the Court below, it would have said so, and last but not least, if the Supreme Court felt a new trial should be had, it would have so directed both in the remittitur and opinion, which is the practice of the Court. The present plaintiff's counsel's duty, if it felt dissatisfied with the remittitur or the effect of the opinion, was to address a motion to the Supreme Court and have an order obtained directing that the case be replaced on the District Court calendar for trial, and in the absence of such an order, or any other direction from the Supreme Court, Your Honor has taken jurisdiction of a matter, which in fact, and law, you have not. I respectfully urge that Your Honor grant this motion, and my motion is to vacate the present attempt to retry this case, and I ask Your Honor, in the event Your Honor has decided not to do so, to please continue my objections to Your Honor's jurisdiction, throughout the course of the trial, so that my rights may not be prejudiced, in the event I am forced to take an appeal.

Mr. Rinzler: I don't assume, Your Honor please, in view of the prior argument of a similar motion, and Your Honor's decision, contrary to the argument of my adversary on that motion, that it is necessary for me to further re-argue, in response to the motion, unless Your Honor say that should be done.

Motion by Mr. Berr at the Opening of Case.

The Court: I don't think it is necessary, Mr. Rinzler. We have been over this matter, and the Court has considered the opinion and remittitur, and as previously stated on the argument of the motion, the Court has this interpretation, which the Court places on the opinion of the Supreme Court and the remittitur—it is sent back here as though nothing were holden, which the Court would construe to mean that there should be a retrial on the merits of the case, and if the facts are the same in this trial as in the other case, then the Court is bound by the opinion of the Supreme Court, but if the facts are different, a new state of the case arises entirely. I will dismiss the motion and allow you a continuation.

Mr. Berr: You deny the motion?

The Court: Deny the motion, and allow you an exception and allow you to continue your special appearance throughout the trial, so your rights will not be prejudiced.

30

40

Rule of Reversal.

NEW JERSEY SUPREME COURT,

REMITTITUR.

Part of Motion Heretofore Set Forth.

10

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff-Appellee,

vs.

FRANK M. GRISWOLD, IRA MASTEN-
BROOK AND KARL KNAPP,
Defendants-Appellants.

20

ON APPEAL
TO SUPREME
COURT.

30

This cause having been submitted upon brief at the January Term of this Court by Spindel & Berr, Attorneys for Defendant-Appellant, and Messrs. Feder & Rinzler, Attorneys for Plaintiff-Appellee; and the Court having inspected the Transcript of the records of the District Court and having considered the argument of counsel as submitted in said briefs and having considered the cause assigned for error; and application having been made upon notice by Spindel & Berr, Attorneys for Defendant-Appellant Karl Knapp to counsel for Plaintiff-Appellee for the awarding of costs of this appeal;

40

It is thereupon ORDERED, that the judgment of the said Passaic District Court be, in all things

Rule of Reversal.

reversed insofar as the same pertains to Defendant-Appellant Karl Knapp, set aside and for nothing holden, with costs of appeal to this Court to be taxed; and that the record and proceedings be remitted to the said Passaic District Court to be proceeded with in accordance with this judgment and the practice of said Court. 10

FERD L. BLOODGOOD,
Clerk.

On motion of
SPINDEL & BERR.

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Joseph Rean—Direct.

JOSEPH REAN, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Rinzler:

10 Q. Mr. Rean, are you affiliated with the Passaic National Bank and Trust Company? A. Yes.

Q. And have been for how many years past? A. Oh, sixteen years now.

Q. And what is your present official position in the Passaic National Bank and Trust Company? A. Credit Manager.

Q. And it has been such for the past how many years? A. Past six years.

20 Q. You were affiliated with the same bank in the same position as testified on August 13th, 1929? A. Yes.

Q. And in fact throughout the whole of that year? A. Yes.

Q. Was there a note in that bank, discounted by your bank, to which Frank M. Griswold signed—of which he was maker and also endorser, he being made “myself,” the word myself being payee, meaning himself, and Ira Mastenbrook and Karl Knapp, being endorsers? A. That is correct.

30 Q. Is this the note (handing paper to witness)? A. That is the note.

Q. Was the note paid? A. It was not paid.

Q. What occurred on the due date of the note? A. The note was not good; Mr. Griswold’s account was not good, and the note was turned over to our notary for protest.

Q. Was that done? A. That was done.

40 Q. And the note has not ever been paid, or any part of it, since the protest? A. No.

Joseph Rean—Direct.

Q. Is the full amount due? A. The full amount is due.

Q. Besides interest from August 13th, 1929, the due date? A. Yes, sir.

Mr. Rinzler: I offer the note in evidence.

10

Mr. Berr: No objection.

(Note is received in evidence and marked Exhibit P-1.)

Q. In addition to the face amount of the note, and the interest upon that amount, at the legal rate of six per cent. from the due date, is there also due the Passaic National Bank, fees of \$2.30, and postage of six cents, in connection with the protest? A. Yes, sir.

20

Mr. Berr: That is conceded.

Q. Well now, on August 13th, 1929, what knowledge had you had with regard to the place where the defendant, Karl Knapp ordinarily and usually received his mail, and was accustomed to receiving his letters, and where his business was located, and what it was?

Mr. Berr: One minute. I think I can practically anticipate the line of examination by this question, and I ask Your Honor to rule as to whether or not it is equivalent to the testimony along the same lines as the prior case, because if it is, I say it certainly is immaterial in this cause of action. You can't retry the case on the old testimony.

30

Mr. Rinzler: It is distinctly new.

40

Joseph Rean—Direct.

10 Mr. Berr: That was the very issue and cause for the reversal in the former case, and if Your Honor finds that is so, Your Honor has the right to strike out any testimony being offered now, which is analogous to the testimony offered at the prior trial, and already disposed of.

The Court: I can't assume whether the testimony at the last trial is going to be supplemented or not, but surely, the questions asked in the last trial, would necessarily have to be part of the record in the new trial.

20 Mr. Rinzler: I think I should call Your Honor's attention to this paragraph in the opinion: "It appears that the notice was not sent to the post office nearest to the endorser's residence or post office where he was accustomed to receive his letters, or where he conducted his business, nor the place where he was sojourning, as required by section 108 of the Negotiable Instruments Law," and that is exactly what that question is.

30 Mr. Berr: I object to the question on the ground it involves an answer to about six interrogations.

The Court: If the witness understands, it I will allow it. If he doesn't understand it, divide it up.

The Witness: I think I can answer the question.

The Court: Then I will allow it.

40 A. We had very little, if any correspondence, or at least, I did, with Mr. Knapp heretofore. He

Joseph Rean—Direct.

is not a customer of our bank, but we had had talks with Mr. Mastenbrook, or not him—Griswold—, concerning the note, and it was my understanding from conversations with Mr. Griswold—

Mr. Berr: I ask Your Honor to instruct the witness not to recite it. 10

Mr. Rinzler: It is material, I think, because we want to show where he was accustomed to receive his mail, and then I am going to show by another witness that it was where Griswold told him the business was, that it was, and what it was, and that it was there he was accustomed to receive his mail, and by another witness that saw his business there— 20

Mr. Berr: It would not be binding on Karl Knapp. It is immaterial and not binding. What Griswold told the bank is in no way binding.

The Court: He is also a defendant in this case.

Mr. Berr: In this retrial, he is not a defendant; he is a judgment debtor on a judgment rendered against him. 30

Mr. Rinzler: I will temporarily withdraw the question.

Q. Do you know where his business was—Mr. Karl Knapp's business was, at that time? A. Did I know—?

Q. Yes. A. No, I did not.

Q. Did you know the business he was in? A. Yes.

Joseph Rean—Direct.

Q What business was he in? A. He was in the cut stone business.

Q. Under what name? A. Passaic Cut Stone.

Q. Do you know what city? A. Did I know?

Q. Yes. A. I didn't positively know. I
10 thought I knew, but I didn't.

Q. Is Mr. Pitman here? A. Yes.

Q. Had you had knowledge prior to August 13th, 1929, as to where Mr. Karl Knapp's business was? A. Did I have knowledge?

Q. Yes; prior to August 13th, 1929? A. Only as I just stated, I had spoken as to where his business was. He was in business on Main Avenue.

Q. In Passaic? A. We assumed it was in Pas-
20 saic.

Q. Under the name of the Passaic Cut Stone Company? A. Under the name of the Passaic Cut Stone Company.

Q. And in the cut stone business? A. And in the cut stone business.

Q. Have you personal knowledge of whether mail was received there by him?

Mr. Berr: Objected to, unless he can
30 testify Knapp told him.

Mr. Rinzler: I asked him if he had personal knowledge.

The Court: The answer to the question is yes or no.

Mr. Berr: All right

A. No.

Mr. Rinzler: That is all.

Joseph Rean—Cross.
Perne Pitman—Direct.

Cross-Examination by Mr. Berr:

Q. Mr. Rean, you say you assumed Mr. Knapp's business was in Passaic? A. Yes.

Q. Did you make any attempt to ascertain whether it was in Clifton or Passaic at that time? A. Did I look in the directory or telephone book? 10

Q. Yes. A. I did not.

Mr. Berr: That is all.

PERNE PITMAN, a witness produced in behalf of the plaintiff, having first been duly sworn, according to law, testified as follows: 20

Direct Examination by Mr. Rinzler:

Q. Are you an employee of the Passaic National Bank and Trust Company? A. Yes.

Q. Were you, throughout the year 1929? A. Yes, sir.

Q. In what capacity? A. Note teller.

Q. Do you know of the note account relating to the note, Exhibit P-1? A. Yes, sir. 30

Q. The note is not paid? A. No, sir.

Q. Has it ever been paid, even since it was protested? A. No, sir.

Q. Do you know what occurred with regard to the note on its due date? A. The note was presented for payment, and Mr. Griswold's account was insufficient to take care of it, so it was handed over to the notary.

Q. Ad then protested? A. Protested, yes. 40

Perne Pitman—Direct.

Mr. Berr: "And then protested." That calls for a conclusion, and is not proper evidence of the protest.

The Court: The note is in evidence.

10 Mr. Berr: It may not conform with the statute, and I don't want any testimony that pre-supposes that it was properly protested.

Mr. Rinzler: I didn't say properly.

Mr. Berr: I say it is immaterial testimony, and improper. He is not in a position to answer that question. Even his answer wouldn't be evidential.

20 Mr. Rinzler: The answer is given, and then counsel awakens that maybe he ought to object, and I submit for our proper guidance, he cannot object.

Mr. Berr: Then I ask that the answer be stricken out.

The Court: I see no harm in the answer or the question. I will allow it to stand.

Mr. Berr: Exception.

30 Q. What was Karl Knapp's business at the time? A. Cut stone.

Q. Under what name was he trading? A. I think Passaic Cut Stone Company.

Q. Where was his business located? A. I was of the opinion that it was on Main Avenue; in fact, I knew it was at one time, and I presumed it was at that time.

Q. In Passaic? A. Yes.

40 Q. And you had personal knowledge that the business was located on Main Avenue, Passaic?

Perne Pitman—Direct.

Mr. Berr: I object. That is leading.

The Court: The question calls for an answer of yes or no. I will allow the question.

Q. Did you or not have personal knowledge 10
that Mr. Knapp's business was located on Main Avenue, Passaic? A. No.

Q. Well, you say, "In fact, I had knowledge";
how did you know? A. I presumed it was be-
cause I had knowledge that it was at one time,
and I had no notice of a change of address.

Q. At one time you had personal knowledge
that Mr. Karl Knapp's business was located on
Main Avenue, Passaic, and it was the cut stone
business, conducted under the trade name of 20
Passaic Cut Stone Company? A. Yes, sir.

Q. Of that you say that you had personal
knowledge? A. Yes, sir.

Q. And when was that, approximately? A.
Well, I would say I believe the first time I knew
it was about ten or twelve years ago.

Q. Had you seen his place of business after
you had first acquired such personal knowledge
at various intervals? A. Yes, sir.

Q. Had you or the bank had any knowledge 30
of any change of the location of that business
address?

Mr. Berr: One minute. I object to the
question on the ground that that is imma-
terial whether the bank had knowledge of
a change of address.

The Court: I will allow the question and
allow an exception.

Perne Pitman—Cross.

Q. Do you know where Mr. Karl Knapp was accustomed to receive his mail? A. I presumed it was Passaic, New Jersey.

Mr. Rinzler: That is all.

10 *Cross-Examination by Mr. Berr:*

Q. Mr. Pitman, you say it was about ten or twelve years ago, when you first noticed Mr. Knapp's business at that time was located on Main Avenue, Passaic? A. Yes, sir.

Q. And I think that was on your way downtown from your home that you noticed that? A. Yes, sir.

Q. Yuo live in that part of Passaic? A. No, sir.

20 Q. You did at that time? A. Yes, sir.

Q. How long after you first noticed the Passaic Cut Stone Company's location on Main Avenue, Passaic, did you continue to notice the place of business there; over a period of how long? A. Well, I can't say.

Q. Well, was it a month, was it a year, was it two years, that you had been passing this place of business and noticing its location? A. Well, 30 it may have been a couple of years.

Q. A couple of years. Now then, how long after you first noticed Mr. Knapp's location, that is, on Main Avenue, Passaic, did you move from that part of Passaic? A. I believe about ten years. I am not sure.

Q. In other words, you lived in that part of Passaic for ten consecutive years, passing that particular part of town, after you first noticed Mr. Knapp's business was there? A. I passed 40 that particular place for ten years?

Perne Pitman—Cross.

Q. Yes. A. No, sir.

Q. Well then, how long did you live there? You say ten or twelve years ago, you first noticed Mr. Knapp's place of business on Main Avenue, Passaic, and you say you noticed that for a period of two years? A. It may have been. 10

Q. How many years ago did you move from that part of town? A. Well, maybe eight or ten years ago. I am not sure.

Q. You moved from that part of Passaic eight or ten years ago? A. Yes, sir.

Q. Are you positive that at the time you had not yet moved from that part of Passaic, while passing the place which was formerly Knapp's place of business on Main Avenue, that you didn't notice he was no longer there? A. No, sir. 20

Q. What makes you think he was there for a period of time; you say he was there for a couple of years; what particular significance did his place of business have for you at that time? A. None whatsoever.

Q. And you might not have noticed the fact that he might have moved, notwithstanding the fact you passed the place for a considerable time? 30

Mr. Rinzler: I object. He might not notice lots of things, but it doesn't prove the fact or non-existence of the fact.

The Court: I will allow the question and an exception.

Q. You might have passed the place and not noticed whether Mr. Knapp was or was not there? A. Yes, sir. 40

Perne Pitman—Cross.

Q. And that might have continued for quite some time? A. Yes, sir.

Q. And on the strength of what did you tell us that you know you saw the place of business for two years in that location? A. I say approximately two years.

Q. Well, it might have been two or three months? A. I know there was a cut stone place there at one time.

Q. And the thing that attracted you to the location was a sign outside? A. There might have been a small sign. I know there was a cut stone place, and I understood it was the Passaic Cut Stone Company.

Q. Twelve years ago or today? A. I understood it twelve years ago.

Q. And at that time, you didn't know whether or not Mr. Knapp or somebody else was conducting that business? A. I did not.

Q. You are not in a position to tell us whether Mr. Knapp was trading as Passaic Cut Stone Company on Main Avenue, Passaic, ten or twelve years ago? A. No, sir.

Q. You don't know who ran the business? A. No, sir.

Q. Can you tell us about the location on Main Avenue, where this business was supposed to be? A. I believe it was opposite Oak Street, on the right hand side.

Q. What attempt did you make to ascertain the post office address or whereabouts of Mr. Knapp at the time the note was presented to you for payment? A. I made no attempt.

Q. You presumed he was in Passaic? A. Absolutely.

Perne Pitman—Re-direct.

Perne Pitman—Re-cross.

Q. And without using any means of advising yourself to the contrary? A. Yes, sir, because we had no——

Q. Yes. Now,——

10

Mr. Rinzler: Let him answer the question.

Mr. Berr: It is yes or no. I don't feel we are entitled to an explanation.

The Court: You can bring it out at the proper time.

Mr. Berr: That is all.

Re-direct Examination by Mr. Rinzler:

Q. Upon what did you base the presumption? 20

A. Because we had no notice of a change of address.

Q. That was a renewal note? A. Yes, sir.

Q. Of a series of notes? A. Yes, sir.

Q. With renewals from time to time, which lead up to the note Exhibit P-1 in question?

A. Yes, sir.

Mr. Rinzler: That is all.

The Court: Had this note run over a period of ten or twelve years? 30

The Witness: No, sir. Possibly,——

Re-cross Examination by Mr. Berr:

Q. How long are you connected with the bank?

A. Eleven years, I guess.

Q. Had Mr. Knapp ever done any business with your bank in the eleven years you were there? A. Not as far as I know.

40

Perne Pitman—Re-Re-direct.

Joseph Rean—Direct.

Q. Had you ever had occasion to ascertain or look up his address in connection with any other note in the eleven years you had been there?

A. No, sir.

10 Q. These renewal notes brought in, did Mr. Griswold mail them or bring them in himself?

A. Sometimes mailed, and other times Mr. Griswold brought them in.

Q. You never saw Mr. Knapp put his name on the back of the note himself? A. No, sir.

Q. You never asked Mr. Knapp to furnish you with an address? A. I don't believe I ever saw Mr. Knapp before.

Q. Before today? A. Before today.

20

Mr. Berr: That is all.

Re-Re-direct Examination by Mr. Rinzler:

Q. Was the bank furnished with the address of Mr. Knapp when the Exhibit P-1 was left with the bank?

Mr. Berr: I object.

The Court: The answer is yes or no.

30

Mr. Berr: Exception.

A. This particular note here?

Q. Yes. A. No, sir.

Mr. Rinzler: That is all.

JOSEPH REAN, recalled.

40 Q. When the note, Exhibit P-1, was discounted and acquired by the Passaic National Bank, you had charge of the matter, did you?

A. I am not positive. I think I probably had.

Joseph Rean—Direct.

Q. You were credit manager at the time? A. He may have gone to one of the other officers, but I remember a long time back,——

Q. There was no other residence address or other address affixed to the note?

Mr. Berr: The note speaks for itself.

10

Q. Is the note P-1 in the same form as it was when it was acquired and discounted by the bank? A. As far as I know, yes.

Q. Did you or the bank ever acquire knowledge that Mr. Karl Knapp had changed his business address or his location? A. No. We had no knowledge that he changed it.

Q. Had you any knowledge on the due date of the note where Mr. Knapp lived? A. No.

20

Q. Had you ever had knowledge of it, prior to the due date? A. I had a recollection that he had a business in Passaic, on Main Avenue, Passaic. When this note was presented, what shall we do? Here is Karl Knapp. He is in the cut stone business. If we thought he was out of town, we would have marked it so.

Q. What practice and custom did the Passaic National Bank have in existence on August 13th, 1929, with respect to sending a notice of dishonor in a case where a man, to the knowledge of the bank, lived in Passaic, as distinguished from when he lived beyond the Passaic limits.

30

Mr. Berr: I object. The only thing evidential is what was done in this case.

The Court: Objection sustained.

Mr. Rinzler: Our point is, by intended evidence, to show that in cases where the

40

Joseph Rean—Direct.

10 bank acquired a note where a party's address of business or residence was outside of Passaic, it was the practice to put the address on the note. In this case, it was in Passaic, and therefore not put on the note, and therefore, we want to show this in addition to other evidence shown in the case why the notice of dishonor and protest was sent to Passaic, and that is very vital.

The Court: You will have to limit your question to what happened in this particular case in question.

20 Q. Why, on this particular note, did you have the notice of dishonor sent to Passaic? A. Because we believed Karl Knapp lived in Passaic.

Q. And upon what did you base that belief? A. As I said before, it was an understanding. We knew he was in business on Main Avenue, Passaic, at one time.

30 Mr. Berr: I don't think that is a proper question. That is not binding on this defendant, and we are not interested, and it is immaterial why he based the fact that he believed it on. The only evidence material to the cause is that it was done. I don't think a personal belief as to why a certain thing is done is evidential. An apology for a fact isn't evidence. That is my point, the fact that Mr. Rean or any other officer had a certain belief or understanding, is not binding on the defendant, and it is improper testimony.

40

Joseph Rean—Direct.

The Court: The same question has been answered several times without an objection.

Mr. Berr: Possibly an oversight on my part.

The Court: I will allow it and allow an exception. 10

Q. What did you say the belief was based upon, Mr. Rean? A. Based upon a recollection, I might say, that Mr. Knapp was in business on Main Avenue, Passaic.

Q. And had you such a recollection at that time? A. I recalled there was a cut stone business up on Main Avenue at one time, and of course, I didn't connect it. 20

Q. Well, now, this note P-1 was a renewal of other notes? A. It was a renewal of other notes.

Q. And how long did this series of renewals cover? A. That is an old note.

Q. About how long? A. I looked back in the records, and I find we had a renewal note in 1924. It was originally \$1,000.00. At that time, it was \$800.00. We can't find the original entry.

Q. Had you seen the Passaic Cut Stone Company listed in the City directory? A. What do you mean? 30

Q. As to its location? A. At the time the note came due?

Q. Previous. At that time, or prior thereto? A. I can't say I did.

Q. Or at any time prior to the due date of the note? A. I knew there was a Passaic Cut Stone Company up there on Main Avenue.

Q. You did know that? A. I did know that. 40

Joseph Rean—Cross.

Q. Was Mr. Karl Knapp endorser on all these series of notes? A. He was, yes.

Q. And the notes bore the signatures of the same parties in each instance? A. Exactly the same parties.

10 Q. You say you did not know, nor did the bank have any notice, of a change of address of Karl Knapp? A. No, sir.

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

Q. When did you first know of the cut stone company on Main Avenue Passaic? A. I don't recall, exactly.

20 Q. About how many years? A. Well, I can't say exactly, Mr. Berr. I remember seeing a cut-stone company there.

Q. There is a cut stone company on Main Avenue now, isn't there? A. I don't know.

Q. You don't know? A. I know there is one in this particular location.

Q. Where you had formerly seen it? A. Yes.

30 Q. But you don't know whether the Passaic Cut Stone Company is still located on Main Avenue, do you? A. Yes, I know the Passaic Cut Stone Company is located on Main Avenue now.

Q. Do you know whether it is located in Passaic or Clifton now? A. I understand it is in Clifton.

Q. What understanding did you have at the time this note became due? A. In Passaic.

40 Q. Did the notary public in this case make any inquiry from you or to your knowledge from Mr. Pitman, as to the whereabouts of Mr.

Joseph Rean—Cross.

Knapp? A. Mrs. Finn may have come down and seen me on this note. I know what the testimony was the last time. She may have. I am inclined to think she did.

Q. But you can't swear to us now you are positive? A. I believe this; if Mrs. Finn came to me, I would have put Passaic, New Jersey, on the note,— 10

Q. And the fact that Passaic, New Jersey, isn't on the note now—

Mr. Rinzler: Let him finish, please.

The Witness: I want to tell you exactly what the circumstances are.

Mr. Rinzler: I think the witness should be allowed to finish and should not be required to stop at a certain point. 20

Mr. Berr: He has answered my question.

The Court: He may finish his answer, and counsel can decide whether it is responsive.

A. (Continuing) We put on the back, I believe, or told Miss Smith, or Mrs. Finn, rather, the notary, of the address, and I believe the correct street address was not put on that note. I don't know whether she got it on the record properly or not, and if she asked, the answer made was Passaic, New Jersey. 30

Q. Is that your answer or do you want to continue?

Mr. Rinzler: Let him continue, please.

The Witness: That is the answer.

Q. And if, as a matter of fact, no such thing appears on the back of this note, then evidently 40

Joseph Rean—Cross.

inquiry was not made from you by the notary, either Mrs. Finn or Mr. Gaston? A. What is your question?

10 Q. If there is no such notation on the back, underneath Karl Knapp's signature, then evidently Mrs. Finn did not make inquiry from you? A. I won't say Mrs. Finn did not make inquiry, but I will say if she did, I told her it was Passaic, New Jersey. I think she probably did. If there was anything different, outside of Passaic, New Jersey, I would have had a record of it.

Q. What did you say? A. If we thought it was Clifton or Garfield or Paterson, it would have been marked on the back of the note.

20

Mr. Berr: I ask that that be stricken out.

The Court: I will allow it to stand, and allow an exception.

Q. Do you tell us—yes or no I want the answer—are you positive that Mrs. Finn did or did not make inquiry from you as to the post office address or whereabouts of this defendant?

30

Mr. Rinzler: He testified to his best recollection.

Mr. Berr: We are not interested in probabilities.

Mr. Rinzler: He testified to his best recollection, which is all a man can ever testify to.

Mr. Berr: I think I am entitled to an answer, Your Honor, please.

40

The Court: He may answer the question.

Joseph Rean—Cross.

A. Well, considering all circumstances in connection with that note, I will say that she did speak to me.

Mr. Berr: I ask that Your Honor strike the answer out on the ground that I asked for a yes or no answer. 10

The Court: The answer is yes.

Mr. Berr: He answered the question, "considering all the circumstances, I believe it is yes".

The Witness: That is the way I can.

Mr. Berr: I want to have an answer yes or no.

Mr. Rinzler: We will let it stand until the Court decides otherwise. 20

The Court: That is to all intents and purposes a yes answer.

The Witness: That is the best I can answer it.

The Court: I will allow you an exception.

Q. Did Mr. Gaston, the Notary Public, ever make any inquiry from you as to the post office address or whereabouts of this man, Mr. Knapp? 30

Mr. Rinzler: I object to that as not being proper cross-examination. It doesn't relate to the matter which is the subject of the direct examination, sir.

Mr. Berr: I think it does. I think all these questions are on the same line.

The Court: It relates to the protest. I will allow the question.

Joseph Rean—Re-direct.

A. I will answer it no.

Q. Mr. Gaston took care of some protests himself, did he not? A. Yes.

Q. Do you know whether Mr. Gaston took care of this one himself or not? A. I am certain he didn't, because Mrs. Finn's writing is on the note.

Q. Now then, did you make an attempt, in order to be able to answer Mrs. Finn's query as to the whereabouts of this defendant, Mr. Knapp to look it up in a city directory, or did you make inquiry from the maker or did you make inquiry at that time from anyone else other than your own recollection of a place in Passaic, when you gave her the information that you did? A. No.

Q. In other words, you relied solely upon what you remembered to be a cut stone company in Passaic, quite some time before the due date of this note? A. Yes, and conversations with the maker of the note.

Q. And did the maker of the note tell you that this man's business was on Main Avenue? A. Yes, sir.

30 Mr. Berr: That is all.

Re-direct Examination by Mr. Rinzler:

Q. And that it was the Passaic Cut Stone Company. A. Yes. He was talking——

Mr. Rinzler: That is all.

Mr. Berr: That is all.

Mr. Rinzler: Just one more question.

40 Q. When a man brings a note to your bank, if the location of his business or residence is in

Joseph Rean—Re-cross.

Mrs. Finn—Direct.

Passaic, or outside of Passaic, then there is no indication of the business or residence on the note, unless the party gives it? A. We have changed our system since then.

Q. I mean at that time? A. At this particular time, if the endorser lived in Passaic, nothing would be noted on the back of the note. That was the general rule. 10

Q. Nothing would be noted upon the back? A. Nothing would be noted upon the back, that is correct.

Q. In this case, nothing was noted upon the back? A. Yes, and we believed it was in Passaic?

Q. And Mr. Karl Knapp didn't furnish any address at that time, or anyone else? A. No. 20

Mr. Rinzler: That is all.

Re-cross Examination by Mr. Berr:

Q. Did you ever ask Mr. Knapp to furnish you with an address? A. No, sir.

Mr. Berr: That is all.

30

Mrs. FINN, a witness produced in behalf of the plaintiff, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Rinzler:

Q. Mrs. Finn, on August 13th, 1924, were you secretary to Mr. William F. Gaston, a Notary Public of New Jersey, and protest officer for the Passaic National Bank? A. I was. 40

Mrs. Finn—Direct.

Q. On August 13th, 1924, did you have charge of the making and of the mailing of notices of dishonor on dishonored notes, and the sending of protest notices? A. Did you say 1924?

Q. August 13th, 1929, pardon me. A. I did.

10 Q. On August 13th, 1929, Exhibit P-1, this note, came to your attention, did it not, the note in suit here? A. It did.

Q. What did you do? A. Presented the note to the Bookkeeping Department of the Passaic National.

Q. Was it honored or dishonored? A. Dishonored.

Q. No account there? A. No account there.

Q. What did you do? A. Protested it.

20 Q. What did you do; to whom did you send notices? A. Frank M. Griswold, 2131 Boulevard, Jersey City; Ira Mastenbrook, Passaic, New Jersey, and Karl Knapp, Passaic, New Jersey.

Q. Those notices were sent by mail? A. Those notices were sent by mail.

Q. Enclosed in envelopes containing proper postage, prepaid?

30 Mr. Berr: Of course, those aren't leading.

Mr. Rinzler: They are preliminary questions. Why waste time?

A. Yes.

Q. Was the envelope endorsed, or did it contain the return address of the sender? A. It had the return address of the sender.

Q. Was it ever returned? A. It was not.

Mrs. Finn—Direct.

Q. And where was it mailed? A. Where was what mailed?

Q. The notice of protest and dishonor, identifying the note and the fact of dishonor, contained in the envelope you testified to? A. There were three mailed.

10

Q. All of them; excuse me. A. One mailed to Frank Griswold,——

Q. I mean from where did you mail them? A. I beg your pardon. In the post office.

Q. United States Post Office, Passaic? A. Yes.

Q. What day, Mrs. Finn, from your own knowledge, does mail reach Passaic, from the day it is mailed, if it is mailed in Passaic, in the morning?

20

Mr. Berr: She is not qualified.

Mr. Rinzler: I will withdraw it.

Q. You live in Passaic for how long? A. About twenty-six years.

Q. Have you received mail mailed in Passaic, in the morning, the same day?

Mr. Berr: Objected to, on the ground that is no evidence. I think a Post Office authority is the only one qualified.

30

The Court: I think any matter of general knowledge can be testified to.

Mr. Berr: Post office deliveries are not matters of general knowledge.

The Court: Oh, yes, they are.

Mr. Berr: I will ask for an exception to Your Honor's ruling.

The Court: I think it is something the Court could almost take judicial notice of,

40

Mrs. Finn—Direct.

that a letter dropped in the Passaic Post Office in the morning, would be delivered in Passaic that same day.

10 Mr. Berr: When addressed, but not as this one was dropped in. We are dealing with the circumstances in this case. No Street, no number. Is it possible that such an envelope would ever reach any destination?

Mr. Rinzler: We know that a letter addressed Jack Rinzler, Passaic, New Jersey, Bernard Saltzman, Passaic, New Jersey, Mr. Andrew Foulds, Passaic, New Jersey, Honorable Thomas E. Duffy, Passaic, New Jersey, would be received; Barney Berr, too.

20 The Court: It is a general question; not Karl Knapp, but a letter. That is the question as I understand it.

Mr. Berr: It is an improper question, because the only type question that is proper is one that conforms with the circumstances in this case.

The Court: I will allow the question.

30 Q. Mrs. Finn, from your own personal knowledge and experience, when a letter is mailed at the United States Post Office at Passaic, in the morning, does it ordinarily reach the address on the same day? A. It does.

Q. That has been your experience for the past— A. Mailed as late as twelve o'clock.

Q. For the past ten years, that has been your experience? A. Last fifteen.

40 Q. When were these notices of dishonor, notifying the parties of the dishonor of the note on its

Mrs. Finn—Cross.

due date when presented, referring to note Exhibit P-1, dropped in the United States mail box in the Passaic branch? A. At eleven o'clock on August 14th.

Q. 1929? A. Yes; that is eleven in the morning. 10

Q. Eleven o'clock in the morning of August 14th, 1929? A. That is right.

Q. Which would be the morning following the maturity of the note? A. Right.

Q. Were any of the notices returned? A. No.

Q. Were they all enclosed in envelopes addressed as you have testified, and the envelopes bearing the return address of the sender, with United States postage, prepaid? A. Yes, they were. 20

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

Q. Mrs. Finn, where were these notices mailed; in the mail chute of the National Bank, or the Post Office? A. There is no mail chute in the National Bank; they were mailed in the Post Office.

Q. There is no mail chute in the National Bank? A. No; that is one of the sad features of the National Bank. 30

Q. Your testimony pertaining to the protest of the note in question results from the reading of a certain book that I notice in front of you, is that right? A. That is right.

Q. And that book, I believe, has a record of the different addresses of the endorsers and the maker, and as to what happened to the note, and the manner of protest? A. That is correct. 40

Mrs. Finn—Cross.

Q. What entry is there in that book in regard to the payment of postage; how much money?

A. No entry regarding payment of postage; it shows how much postage should be charged.

10 Q. How much does it show? A. It shows three notices; each one requires a two cent stamp.

Mr. Berr: May I see the note?

Mr. Rinzler: Surely.

Q. Now, Mrs. Finn, the address you mailed it to, the notice you say was mailed by you, was Karl Knapp, Passaic New Jersey? A. That is right.

20 Q. Did you make an attempt to find out if he lived in Jersey City or Hoboken or Clifton? A. I inquired of Mr. Pitman as to his address.

Q. And did you inquire of any one else? A. I don't recall, but I probably inquired of Mr. Rean.

Mr. Berr: I ask that that be stricken out, on the ground that probabilities are not the concern of this Court. I want an answer of did she, or did she not.

30 Mr. Rinzler: I think she should be asked her best recollection.

Mr. Berr: Probabilities are not evidence, and I should not be forced to accept those answers.

The Court: Strike it out as to the probability.

Q. Would you say that you did or didn't, or don't you recall? A. I don't recall?

40 Q. Now then, what did Mr. Pitman say to you concerning the address? A. That it was Passaic, New Jersey.

Mrs. Finn—Cross.

Q. Mr. Pitman said it was Passaic, New Jersey? A. Yes.

Q. And what did Mr. Rean say to you? A. I don't recall if I asked Mr. Rean. If I asked him—

Q. You said you didn't recall? A. Yes. 10

Q. In conformity with the information given by Mr. Pitman, you forwarded the notice to Passaic, New Jersey? A. That is right.

Q. You didn't ask the street? A. He didn't know, or he would have given it to me.

Q. Did you make any attempt to find it? A. Not other than inquiring from Mr. Pitman.

Q. How many notes do you protest a day; hundreds? A. No.

Q. A considerable amount? A. Yes. 20

Q. Do you ask Mr. Pitman or an officer of the bank in each instance where you have no address?

Mr. Rinzler: My adversary before refused to entertain a question on what is usually done. Now he asks a similar question, and his objection should now be sustained, for the same reason Your Honor overruled my question.

30

The Court: I will allow the question, and allow you an exception.

Mr. Berr: This is cross-examination.

A. In each instance where there is no address, noted on the note, inquiry is made.

Q. And the limit of your inquiry in this case was to ask Mr. Pitman? A. That is right.

Q. And his answer was Passaic, New Jersey? A. That is right. 40

Mrs. Finn—Re-direct.

Q. And you did nothing further? A. Nothing.

Q. And you made no additional attempt to ascertain the post office address of this man?

A. No.

Q. You know now that this man lived at the
10 time these notices were mailed in Clifton?

Mr. Rinzler: I object to her present knowledge.

The Court: Objection sustained. Not material.

Mr. Berr: That is all.

Re-direct Examination by Mr. Rinzler:

Q. Mrs. Finn, is Mr. Pitman from whom you
20 say you made inquiry on the due date of the note, when you undertook to protest P-1, is he the Mr. Pitman who testified here today, and the note teller of the Passaic National Bank? A. Yes.

Q. And when he furnished you with Passaic, New Jersey, as the place where Mr. Karl Knapp customarily or was accustomed to receive his mail, that being the place of his business, did you rely on it?

30 Mr. Berr: One minute. That certainly puts an answer into the witness' mouth, and directs what the course of the witness should be. "Where he is accustomed to receive his mail." It is lucky there is a Supreme Court opinion.

The Court: The question is "Did you rely on it?"

Mr. Berr: He suggests what she hasn't testified to. If she is in a position to tell
40 where he is accustomed to receive his mail, that is one thing, and—

Mrs. Finn—Re-direct.

The Court: The question is something that would be in the knowledge of——

Mr. Berr: I didn't mis-state the question. She hasn't testified Mr. Pitman said anything but Passaic, New Jersey.

The Court: I don't think the question 10
assumes she did testify to anything other than that.

Mr. Berr: If she says yes——

The Court: She may say no. I don't know.

Mr. Berr: I have a right to anticipate that when a question is drafted in such fashion as to practically draft the answer, the affirmative will be the response.

The Court: I will allow the question and 20
allow you an exception.

Mr. Berr: All right, sir.

A. I did rely on the information from Mr. Pitman.

Q. And outside of the knowledge and information that Mr. Pitman gave you in that regard, had you any other knowledge or source of knowledge with regard to the residence, business or other address or whereabouts of Mr. Karl Knapp, or with regard to how or where he received his letters? A. No; no other. 30

Mr. Rinzler: I offer the protest book in evidence.

Mr. Berr: Objected to on the ground the notary public is still alive. It is improper.

The Court: Objection sustained.

Mr. Rinzler: That is all. 40

Frank M. Griswold—Direct.

FRANK M. GRISWOLD, a witness produced in behalf of the plaintiff, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Rinzler:

- Q. Mr. Griswold, do you live in Jersey City?
 10 A. Right.
 Q. At what address? A. 2164 Boulevard.
 Q. And did you live there on August 13th, 1929? A. Yes.
 Q. Are you the Frank M. Griswold who is the maker and endorser of the note, Exhibit P-1?
 A. Yes.
 Q. Is it correct that this note, P-1, was a renewal of a series of notes that had been renewed from time to time on their respective due dates?
 20 A. Right.
 Q. And on that whole series of renewals, were the same parties to those named as are parties to P-1, namely you being the maker and payee, and Ira Mastenbrook—no, you being maker and endorser, yourself being payee, and Ira Mastenbrook and Karl Knapp being endorsers? A. Yes.
 Q. Now, each time a note became due, a renewal note was made by you and signed by the same endorsers, including Karl Knapp? A. Yes.
 30 Q. When this note, Exhibit P-1, became due, or before it became due, did you communicate with Mr. Knapp? A. No, sir.
 Q. Was the note paid? A. No.
 Q. You had no account in the Passaic National Bank, on the due date of the note? A. Very small, if any.
 Q. So the note was dishonored? A. Right.
 Q. And the next day, did you receive anything?
 40 A. The day after the note was due, I received a protest notice.

Frank M. Griswold—Direct.

Q. With regard to P-1? A. With regard to P-1.

Q. And on the same day, what, if anything did you do, having received a protest notice of the note, P-1? A. That evening when I received the notice, I sent a telegram to Mr. Knapp.

Q. Mr. Karl Knapp? A. Mr. Karl Knapp. 10

Q. Where? A. At Donald Street, Clifton.

Q. And what did you advise him in that telegram? A. I don't remember the nature of the whole telegram, but it was pertaining to the note.

Q. This particular note? A. This particular note, asking why it was not taken care of, because it was important.

Q. Referring to the fact, in that telegram, that the note was dishonored when it was due? 20

A. I don't think I mentioned it was gone protest.

Q. What did you say with regard to it? A. I don't remember the nature of the telegram, or the exact words, but it was pertaining to the note due August 13th, which had not been taken care of. Prior I had mailed him the note.

Q. You did say it had not been taken care of? A. Words to that effect.

Q. You sent him the note prior? A. The day the note was due, my wife mailed a special delivery letter with the note enclosed. 30

Q. What; you sent a note? A. With the note I had received back from Mr. Mastenbrook. I didn't receive the note until late from Mastenbrook, due to the fact he was out of town.

Q. You say on the day P-1 was due, you sent a letter and the note to Mr. Knapp for his signature? A. Yes.

Q. You mean a renewal note? A. I mean a renewal note. 40

Frank M. Griswold—Direct.

Q. On the due date of P-1, you sent a letter to Mr. Karl, and a new note to be signed by him, in renewal of this note P-1, is that correct? A. That is correct.

10 Q. Did he respond to that letter? A. Not to me.

Q. Did he return the note signed or otherwise? A. No.

Q. Did he get in touch with you? A. No.

Q. Then you sent him a telegram the following day, asking why the note wasn't taken care of? A. Right.

Q. Did you receive a response to that telegram? A. No.

Q. Did it come back? A. No.

20 Q. Did you afterwards speak to Mr. Knapp with regard to the telegram?

Mr. Berr: That is leading.

The Court: The answer is yes or no. I will allow the question.

A. I did not.

Q. Do you know whether your wife did? A. My wife did.

30 Q. But you did not? A. I did not.

Q. Do you know what business Mr. Karl Knapp was in? A. Cut stone business.

Q. Passaic Cut Stone Company? A. I believe he went under that name, although his business was in Clifton at that particular time.

Q. But it had been on Main Avenue, Passaic? A. Passaic, near Oak Street.

Q. And the note didn't contain any address of Mr. Knapp, P-1, did it?

40

Frank M. Griswold—Cross.

Mr. Berr: It speaks for itself.

A. I don't think it did.

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

10

Q. You were a defendant in the prior suit? A. Right.

Q. And there is a judgment on record against you in connection with the execution of this note?

A. I didn't know that.

Q. Whom did you talk to about this case before you came here Wednesday? A. Wednesday?

Q. Yes. A. I didn't talk to anybody about the case, unless you mean I got a subpoena to come out here. I started my vacation this week. I called Mr. Rean up. I didn't know Mr. Feder. The idea was if I could go on vacation and not come out, and if I understood it was important, I would come out. I was here Wednesday and a week today.

20

Q. Did you speak to Mr. Feder about this case? A. Mr. Feder?

Q. Yes. A. No.

Q. Mr. Rean? A. No.

30

Q. Didn't you speak to either one of them about it at all? A. I haven't. I did speak as we come into the court room.

Q. Did you tell him what the actual facts in the case are? A. I told Mr. Feder Wednesday about the telegram and the note.

Q. You told him Wednesday about the telegram and the note? A. I did, yes.

Q. Where was the telegram sent from? A. Jersey City.

40

Frank M. Griswold—Cross.

Q. What particular station? A. It is Claremont Avenue, near Jackson.

Q. What time of day did you send the telegram? A. It was at night; about seven thirty.

10 Q. What day was it? A. It was the day I received the notice, and I think it was the 14th.

Q. The day you received the notice; you think it was the 14th. Where is the notice? A. The protest notice I received.

Q. Where is it? A. I haven't got it here.

Q. Did you throw it away? A. I don't know.

Q. How do you know it was the 14th? A. I had one before.

20 Q. Don't you know it fell due on the day before because there were only thirty days in that month? A. The note was dated the 13th.

Q. There were only thirty days in that month?

Mr. Rinzler: That question on cross-examination is improper, because the note is not payable a specified number of days after its dating, but it is payable three months after, and three months from a given date is three months, that particular day of the third month.

30 Mr. Berr: It is cross-examination.

The Court: I will allow the question.

Q. Don't you know it fell due on the date prior? A. My understanding is it fell due the 13th.

Q. What do you mean by your understanding; is that your best memory, or don't you remember? A. Best memory.

40 Q. When you got the protest notice, how was it addressed? A. My name on it.

Frank M. Griswold—Cross.

Q. Your address on it. A. I think the address was 2131, where I had lived just two or three weeks prior, but mail was delivered at the new address.

Mr. Rinzler: That corresponds with the address on the note. 10

Q. Where did you move to? A. 2164 Boulevard, about two blocks away.

Q. About two blocks away? A. About that.

Q. And you are positive you got it on the 14th? A. My recollection is I got in the 14th or 15th. I don't know when the bank mailed it to me.

Q. Notwithstanding the fact it was mailed in Passaic at eleven o'clock on the 14th, you insist you got it in Jersey City on the 14th? A. I have got it in the evening. I would say the 14th. 20

Q. Is it the 14th or not? A. It's over a year.

Q. Do you know when it was delivered? A. No.

Q. Do you know whether or not it was delivered? A. It was, because I got it.

Q. Did you read the notice? A. Yes.

Q. You say you got the notice of protest in the late evening. What time did you get home? A. Six-thirty. I didn't say late evening, I said evening. 30

Q. Was that immediately after you got home from work? A. Yes.

Q. Then you sat down and had dinner? A. Yes, sure.

Q. About how long did you take? A. About an hour.

Q. Then you looked over your mail? A. I looked over the mail I think before. I don't remember that. 40

Frank M. Griswold—Cross.

Q. You knew before? A. It is possible.

Q. I don't understand you. A. It is possible I opened that before.

Q. Before you started to eat? A. It is possible.

10 Q. How far is Carlton Avenue and Jackson Street from 2164 Boulevard? A. About two blocks.

Q. About two blocks; it wouldn't take you about more than two or three minutes to get there? A. About five; one is a long block.

Q. You felt it was very important that you had gotten this notice of protest, and you were a little surprised the note wasn't taken care of? A. Yes, I was.

20 Q. Who did you expect to take care of that note? A. I thought Mr. Karl. I think the letter asked him if he would take care of it for me.

Q. Did you send him any money? A. I didn't send him any money.

Q. How did you expect him to take care of this note? A. Mr. Mastenbrook and Mr. Karl were taking care of some of my notes before.

Q. Had they paid after protest or before? A. Before.

30 Q. Are you sure they paid notes before they matured? A. Before.

Q. Before the notes matured, they paid them? A. On the due date, they would walk in and pay something.

Q. So you sent Mr. Karl a renewal note; what time on the 14th, did you mail that to Mr. Karl?

A. That was mailed on the 13th.

Q. What was mailed on the 13th? A. The renewal note.

Frank M. Griswold—Cross.

Q. Didn't you know it was already due? A. Because I didn't get the note back from Mr. Mastenbrook until, as I recall it, the day before in the evening.

Q. Why didn't you go to Passaic or Clifton, and make arrangements to see that Mr. Karl endorsed the new note, just when you received the new one from Mr. Mastenbrook, the day before the old one was due; why didn't you go to Passaic, and have him endorse it? A. I had to do something else, and I didn't get it till evening, the night before. 10

Q. So you say you didn't get the note from Mr. Mastenbrook until the night before the 13th? A. The evening before. 20

Q. The evening before the 13th? A. Yes. 20

Q. Well, did you mail it out that very same evening that you got the note from Mr. Mastenbrook; did you mail out the note to Mr. Knapp that evening, or wait until the next day? A. Well, I sent it special delivery. My idea was a special delivery stamp would have to be procured in the morning, and it would go just as quick.

Q. This was before eight o'clock that your attention was called to the fact that the note had come in from Mr. Mastenbrook? A. Yes. 30

Q. The post office was open? A. I don't believe it was.

Q. Don't you know the post office is open until eight P. M.? A. Some close in Jersey City at seven.

Q. You got home at six? A. Yes.

Q. You passed the post office on your way down? A. Yes.

Q. And the post office isn't very far from your home? A. There's one about half a mile. 40

Frank M. Griswold—Cross.

Q. And have you a machine? A. Yes.

Q. And in your machine, about how long would it take you to get there? A. I suppose ten or fifteen minutes.

Q. Ten or fifteen minutes to travel half a mile?
10 A. Yes.

Q. And just tell us the reason why you didn't take this note that had come so late with Mr. Masterbrook's endorsement on it, and drive over to the post office, with a special delivery letter, and send it immediately to Mr. Knapp, so he might get it before the due date? A. I thought the morning would go just as quick.

Q. You thought the morning would go just as quick. Is it your understanding that if you mail
20 a letter from Jersey City in the morning, special delivery, that in the afternoon, Mr. Knapp would receive it in Clifton? A. Yes.

Q. And relying on that understanding, that is why you did it? A. Yes.

Q. If that is a fact, why did you use the telegraph office to let Mr. Knapp know the note was protested? A. I sent the telegram after I had received the protest notice.

Q. Why? A. To ask him why.
30

Q. He couldn't do anything seven thirty in the evening? A. But I figured he could do something the next day.

Q. Why didn't you send a special delivery again; your understanding of the carriage of mail is if you send a letter special delivery, he will get it the same day; you had never used the telegraph office before. A. I thought a telegram would reach him sooner.

Frank M. Griswold—Re-direct.

Q. Why did you use a telegram in this case, when to get the note itself, you used the mail?

A. With a special delivery stamp.

Q. Why didn't you use the mail this time? A. I thought a telegram would go quicker.

Q. What time did you get to the telegraph office? A. I think in the neighborhood of seven or seven thirty in the evening. 10

Q. Do you know what time it was? A. No.

Q. You are not sure? A. No.

Q. It might have been later? A. Yes; might be earlier.

Q. It couldn't have been much earlier, because you had to eat? A. Yes.

Q. You didn't send it before? A. No.

Q. It might have been later, but it couldn't have been much earlier than seven thirty? A. I don't believe so. 20

Q. What did you say in the telegram? A. I don't know just the matter.

Q. Do you know anything at all about the words in the telegram? A. Only that it pertained to the note.

Q. Do you know if you asked him why he didn't present the renewal and take care of it, or whether or not you told him the note was protested? A. I didn't tell him the note was protested. 30

Q. You didn't tell him the note was protested? A. No.

Mr. Berr: That is all.

Re-direct Examination by Mr. Rinzler:

Q. You sent a telegram asking why he didn't take care of this particular note? A. That was the nature of the telegram, because in the mean- 40

Frank M. Griswold—Re-cross.

time, I had sent the note and a letter special delivery.

Q. You also say that Karl Knapp had at one time prior to the due date of this note, had his business on Main Avenue, Passaic? A. Yes, a
10 number of years.

Mr. Rinzler: That is all.

Re-cross Examination by Mr. Berr:

Q. How long ago? A. About ten years.

Q. You had a place of business next to Mr. Karl in 1924? A. Yes.

Q. Where was that, Clifton? A. Passaic.

Q. At the time you had your place of business
20 there, the Passaic Cut Stone Company was in Passaic? A. In the beginning; in the very beginning.

Q. And then later, Mr. Karl moved to Clifton? A. Yes.

Q. And you knew he moved to Clifton? A. Yes.

Q. And you knew where he lived? A. His home address.

Q. Where was it? A. 32 Donald Street.

30 Q. Did you ever speak to a bank officer about the address of Mr. Knapp? A. I don't remember.

Q. Try to remember; did you ever tell Mr. Rean? A. I don't know.

Q. It is a long time since this telegram was sent? A. Quite a while.

Q. You remember, however, it told Mr. Knapp you wanted to know why the note wasn't taken care of? A. I know it pertained to the note.

40 Q. But you don't know what it said? A. I don't know the exact wording.

Frank M. Griswold—Re-cross.

Q. You don't know the effect of it either, do you? A. No.

Q. About four or five years ago, did you ever come to Mr. Knapp's place of business in Clifton? A. I think about that time.

Q. And you knew as far back from the very day Mr. Knapp moved to Clifton, that Mr. Knapp's place of business was in Clifton? A. Yes. 10

Q. And Mr. Knapp's home address has been in Clifton for how long? A. I don't know how long.

Q. Well, ten years? A. I don't know whether Mr. Knapp lived in Clifton when his business was in Passaic; that is something I don't know about.

Q. Well, how long has he lived in Clifton, to your knowledge? A. I would say four or five years. 20

Q. You have known about that? A. I have known about that.

Q. And how many renewals have there been of this note in the last four or five years; four a year? A. Yes.

Q. Sixteen or seventeen renewals? A. Yes.

Q. And on each of these renewals, Karl Knapp's name appeared on the back of the note with no address? A. I would say yes. 30

Q. And during the sixteen or seventeen renewals, did, at any time, any officer of the Passaic National Bank, require you or ask you to furnish the home address or place of business of Karl Knapp? A. I would say no.

Q. Are you sure that they did or didn't? A. No. 40

Frank M. Griswold—Re-cross.

Q. You say no. Did you tell any bank officer at any time that Mr. Knapp lived or had his place of business in Passaic?

Mr. Rinzler: He answered that question several times.

10

Mr. Beer: I am examining the witness.

Mr. Rinzler: There is a limit to examination. Asking questions three times doesn't make it more helpful than getting an answer before the Court once.

The Court: There is nothing before the Court. A statement is never an objection. You may answer the question.

A. No.

20

Q. How many days before the due date, did you mail the renewal note to Mastenbrook? A. About a week.

Q. About a week? A. About a week.

Q. Mastenbrook and Mr. Knapp, do you know or don't you know whether or not they are very friendly? A. I don't know how friendly they are, today. They were friendly.

Q. They were friendly at that time? A. Oh, yes.

30

Q. And Mr. Mastenbrook and Mr. Knapp, they don't live very far apart; by that I mean they are in constant touch and communication with one another, in connection with your notes? A. I would say yes.

Q. Why didn't you ask Mastenbrook to take the note over to Knapp and have him endorse it?

40

Mr. Rinzler: That is not a proper question on cross-examination, and I object to it.

Frank M. Griswold—Re-Re-direct.

Frank M. Griswold—Re-Re-cross.

The Court: It is too far fetched. There is no denial of the endorsement. Let's not waste time. I would like to finish up some time.

Mr. Berr: That is all.

10

Re-Re-direct Examination by Mr. Rinzler:

Q. You say you never conveyed any information to the bank or its representatives of the change of business address of Mr. Knapp? A. I would say no.

Q. And you say that your place of business was located on Main Avenue, right next to Mr. Knapp's place of business, where he had his cut stone business? A. Originally, when Mr. Knapp was in Passaic, yes.

20

Q. That is right. And you say the telegram was sent the day after the due date of Exhibit P-1? A. Yes.

Mr. Rinzler: That is all.

Re-Re-cross Examination by Mr. Berr:

Q. How was the telegram addressed? A. To Karl Knapp, 32 Donald Street, Clifton.

30

Q. 32 Donald Street, Clifton? A. Yes.

Q. And you didn't address it to his place of business at all, did you? A. Positively no.

Q. You don't know whether the telegram ever was delivered to him? A. I never received it back. I assumed it was.

Q. Don't you know you never receive them back? A. I was told yesterday by the Western Union they send them back.

40

Frank M. Griswold—Re-Re-direct.

Q. You were told yesterday by the Western Union that they send them back? A. Anybody's.

Q. Did they also tell you they keep a copy of every telegram sent? A. Yes, for a certain length of time.

10 Q. Have they got a copy of this telegram? A. Yes, they have it somewhere there, but they can't find it.

Q. They can't find it? A. Not in a hurry.

Mr. Berr: I would like to ask Your Honor, before the disposition of the case, to give us an opportunity to subpoena the Western Union. I think that is the meat of this case.

20 The Court: This is not the proper time for motions.

Mr. Berr: That is all.

Re-Re-direct Examination by Mr. Rinzler:

Q. As a matter of fact, you went to the telegraph office in Jersey City, and tried to get them to locate it? A. Correct.

30 Q. This was yesterday? A. I have been there twice. It seems sometimes they keep them. In fact, now they think they keep them for about a year or a little over, and they are filed according to dates and put in storage in bundles, and it would take quite a time to find it.

Q. And you went twice and inquired and met with no success? A. Called up again this morning.

Q. You were not successful? A. No.

40 Q. Your last communication was this morning? A. Yes.

Mr. Rinzler: That is all.

Frank M. Griswold—Re-Re-cross.

Luella Griswold—Direct.

Re-Re-cross Examination by Mr. Berr:

Q. You knew Mr. Knapp had a telephone at his home?

Mr. Rinzler: I object. That is not material. 10

Mr. Berr: It is cross-examination, and a question of veracity. A man has a telephone and yet sent a telegram.

The Court: I will allow the question, but it is pretty far from the issue.

Mr. Berr: It is a question of veracity.

The Court: Only as to whether it would clear up why he sent it.

Q. Did you have a telephone home at that time? A. No. 20

Q. Do you live in an apartment house? A. Two family.

Q. Do the other people have a telephone? A. Yes.

Q. You could easily have gotten access to that one? A. I didn't know he had a telephone. I never spoke on the phone to him. I didn't look to find out, that is true. 30

Mr. Berr: That is all.

LUELLA GRISWOLD, a witness produced in behalf of the plaintiff, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Rinzler:

Q. Madam, you are the wife of the last witness? A. Yes.

Q. And you and he live in Jersey City? A. Yes. 40

A. No, sir.

Luella Griswold—Direct.

Q. Did you live at No. 2131 Boulevard, Jersey City, New Jersey, when this note, Exhibit P-1 was signed? When your husband signed this note, was 2131 Boulevard, Jersey City, your correct address? A. I couldn't say.

10 Q. Did you ever live there? A. Yes. We moved about the 1st of August, 1929, to 2164.

Q. This was a note—Exhibit P-1—which was a renewal of a series of notes? A. Yes, sir.

Q. And your husband was maker and endorser and Mr. Karl Knapp and Ira Mastenbrook were endorsers?

Mr. Berr: The note speaks for itself.

20 Q. (Continuing)—of the series I am speaking about? A. Yes.

Q. When this note became due, do you remember the occasion about which your husband testified, namely, the sending of a renewal note to Mr. Karl Knapp, for the renewal of P-1?

Mr. Berr: I object on the ground it is leading.

The Court: Yes, it is very leading.

30 Q. What do you know with regard to the mailing of that renewal note? A. I remember the night of the 12th, Mr. Griswold received the note from Mastenbrook or his daughter by mail.

Q. Was that a note to be given in renewal of P-1? A. Yes. It was in the evening, late. Mr. Griswold got home quite late. I don't know whether I told him it was too late to go by mail that night, and I told him first thing in the morning, eight o'clock, I would go.

40

Luella Griswold—Direct.

Q. Do you mean first thing in the morning of August 13th, 1929, the day the note was due?

A. Yes, sir.

Q. And you took the letter to the post office?

A. I took the letter with the note enclosed.

Q. In an envelope? A. Yes. 10

Q. Containing the renewal note? A. Yes.

Q. And Mastenbrook had already signed it?

A. Yes.

Q. And you mailed it where? A. Five corner branch.

Q. To whom addressed? A. Karl Knapp, 32 Donald Street, Clifton.

Q. Do you know whether he ever received that letter with the note which you sent him to sign, and which you intended to give in renewal of P-1? 20

Mr. Berr: I object to that.

The Court: The answer would be yes or no.

A. Yes.

Q. You say you do know? A. Yes.

Q. Now, tell the Court how. A. The next day, Mr. Griswold received a protest notice, and immediately after supper, he went up and sent a telegram. 30

Q. Telling about it to Mr. Knapp? A. Then a short time after it, a day or two, we had friends come in from out of town, and they were going out that way—

Q. What way? A. Clifton way, and they took me along with them.

Q. Do you remember who they were? A. A young couple, and they took me to 32 Donald 40

Luella Griswold—Cross.

Street, and I saw Mr. Knapp, and he showed me the note with the letter and telegram, and he said he got it too late, after three o'clock, to put it in the bank.

10 Q. He told you that he got the intended renewal note with the letter you had sent him too late, is that correct? A. —and he consulted his lawyer—

Q. Too late on the due date of the note? A. Too late on the due date of the note, and he said the lawyer said it was too late to put it in the bank, and he wouldn't have anything more to do with it.

20 Q. He also told you he had received a telegram and he showed it to you? A. Yes, he showed the telegram with the note.

Q. The note has never been paid? A. No.

Q. Did you write the letter or your husband? A. Mr. Griswold.

Q. But you mailed it? A. Yes

Q The note has never been paid? A. No.

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

30 Q. What time did your husband get home August 12th? A. Somewhere around—in the evening, around supper time.

Q. Approximately, the time? A. Around six o'clock, six-thirty.

Q. Is that his usual hour of getting home? A. Yes.

Q. When you say he came in unusually late, what hour do you intend or think that was? A. Sometimes he came in half past five.

Luella Griswold—Cross.

Q. His usual time to come home was what time? A. Between half past five and six.

Q. When he came home seven thirty, was that unusually late? A. Yes.

Q. He came home unusually late August 12th? A. No.

10

Q. What time did he come home August 12th? A. About six.

Q. How far are you from the post office? A. A half mile, one mile.

Q. Your husband had an automobile. What caused you to say to wait until morning? A. I thought it would go just as quick by special.

Q. Did you discuss the matter with your husband at all? A. Just telling him that I would mail it first thing in the morning. I thought you could only get a special in the main office.

20

Q. You told him you would mail it first thing in the morning? A. Yes.

Q. Other than that, you said nothing to him? A. No.

Q. When did he write that letter? A. That night the night of the 12th, when he received it from Mr. Mastenbrook.

Q. The night of the 12th, when he received it from Mr. Mastenbrook; and what did he say in the letter? A. I don't know.

30

Q. You were there when it was written? A. Yes.

Q. Why don't you know; because it is too long ago? A. I didn't pay attention to it.

Q. You weren't interested, were you; particularly, I mean? A. Well, no. I thought he took care of it.

40

Luella Griswold—Cross.

Q. What time does your husband go to work in the morning? A. Eight o'clock.

Q. Do you drive the machine? A. No.

Q. Your husband drives the machine? A. Yes.

Q. How far is the main post office from your house? A. About a mile.

Q. Did you walk? A. No. I go to business, and I mailed it on my way to business.

Q. How do you go to business? A. By bus.

Q. Does the bus pass the station? A. No. It is the corner where I work.

Q. The corner where you work; and you took a bus. What time did you start for work? A. I don't start till about a quarter after eight. I left unusually early that morning, so it would be there about eight.

Q. Why were you anxious to get it off? A. So it would get there the same day.

Q. Don't you know mail can't be delivered to Passaic or Clifton the same day; have you ever tried it before? A. Yes. It has reached there.

Q. It has reached there the same day? A. Yes.

Q. You sent it registered? A. No, special.

Q. And if it was mislaid or lost, this note would have been protested? A. Our address was on the envelope.

Q. And that is why you didn't register it? A. Yes.

Q. Now, on the 13th of August, what did your husband do pertaining to this note? A. He gave it to me, and I put a special delivery stamp on it, and mailed it in the post office that morning.

Q. Where did you get the special delivery stamp? A. At the post office.

Q. When you got there? A. Yes.

Luella Griswold—Cross.

Q. That night, the night of August, what happened? A. Nothing happened. He just asked me if I had mailed it. I hadn't seen him all day till he came home.

Q. He asked you if you had mailed it, and you told him you had? A. Yes. 10

Q. What happened the next day? A. I believe he got a protest notice.

Q. Don't you know whether he did or not? A. Yes.

Q. What time do you get home from work? A. About half past five.

Q. Did you see the protest notice he got? A. No.

Q. You didn't see the protest notice he got? A. No, I don't recall seeing it. 20

Q. You don't remember seeing it? A. No.

Q. But you know he got it? A. Yes.

Q. And you are positive it was the 14th of August? A. Almost sure.

Q. Almost sure of that. The notice was addressed to 2131 Boulevard? A. Yes.

Q. And you had no longer been living there at that time? A. Yes.

Q. And you say you got it the same day it was mailed. You don't know what time you got home that night, the night of the 15th? A. I imagine the usual time. 30

Q. By the way, what did you do on the 15th; what did you do; what happened on the 15th, pertaining to the note? A. It was the same night. He went out and sent a telegram.

Q. He went out and sent a telegram; did he send the telegram before or after dinner? A. After. 40

Luella Griswold—Cross.

Q. Quite a lot after dinner, as far as time is concerned? A. In the evening.

Q. I mean eleven o'clock, twelve o'clock is evening, too. A. About half past seven, eight o'clock.

10 Q. You got home five thirty? A. Yes.

Q. How long did you sit at the table? A. I don't know.

Q. What time did your husband get home? A. I don't know; about half past six, maybe.

Q. That night, what time did he get home? A. I couldn't say. It might have been quarter to six—after.

Q. Was it eight, seven thirty? A. No, before that; half past six.

20 Q. Now then, Mrs. Griswold, did you call at the house of Mr. Knapp? A. Well, I don't know whether it was the next day or the next day after that, but shortly after that.

Q. Some days thereafter, isn't it? A. I couldn't say.

Q. Four days, to be exact? A. I couldn't say.

Q. Weren't you at Mr. Knapp's home four days after? A. I don't know how many days.

30 Q. It might have been four? A. It might have been one, two, three; I don't know.

Q. It might have been four? A. Yes.

40 Q. What did you say to him? A. I said, "Mr. Griswold sent me out here, asking if you didn't receive the telegram and note and letter" and he said "Yes" and he said, "There is the telegram" and I saw the note and letter attached to it. He said he got it after three o'clock, too late, and he said, "I saw my lawyer, and my lawyer said not to bother with it."

Luella Griswold—Cross.

Q. Did he tell you what lawyer he saw? A. No.

Q. What the lawyer said? A. No, just not to bother.

Q. Why didn't you write another letter, instead of the telegram? A. Mr. Griswold was anxious, because he sent the telegram. 10

Q. You work; go to business? A. Yes; this was in the evening.

Q. Oh, you went in the evening? A. Yes.

Q. And you went to his home in Clifton? A. Yes; these friends took me there.

Q. Who? A. These friends.

Q. Whose friends? A. Some friends of mine.

Q. Mr. Griswold, what was he doing? A. He had an engagement and couldn't go, and he said, "You go as long as they are going that way." 20

Q. Did your husband ever send telegrams before in connection with these notes? A. I don't think so.

Q. Don't you know whether he did or not? A. I don't think so; no.

Q. Your neighbor downstairs or upstairs, whichever the case may be, has a telephone in the house? A. Yes. 30

Q. And by the way, you made the suggestion to your husband about the telegram, didn't you? A. I don't think so.

Q. Did he suggest it himself? A. I think so.

Q. Didn't you say something about a letter? A. I thought he had gotten the other.

Q. Why did he send a telegram? A. Because when he got the protest notice, he sent a telegram. 40

Luella Griswold—Cross.

Q. So what did you say in the telegram? A. I don't know just what.

Q. Did your husband say anything to you about it? A. Not, not the exact wording, but I know it was in reference to the note.

10 Q. Because of what your husband told you? A. I saw it in Mr. Knapp's house.

Q. Who was there? A. Mr. Knapp.

Q. Who else? A. Somebody in the back room.

Q. Wasn't his wife there? A. No.

Q. Is it no? A. No. A woman left me in, and I came in the sun porch.

Q. Did you ask him for it? A. He seemed to have it all there together.

Q. And he pulled it out and showed it to you?

20 A. Yes.

Q. Did you look it over carefully? A. I don't know as——

Q. You read what was there? A. I read the note and letter. I didn't read the telegram.

Q. You didn't read the telegram? A. I didn't read the telegram.

Q. He showed it to you? A. Yes.

Q. You were looking at it? A. Yes.

Q. You knew your husband had sent one? 30 A. Yes.

Q. And yet you did not look at it to see what it had on it? A. I saw that is the telegram, and he says, "That is the telegram I got from Mr. Griswold."

Q. Was there a lady on the front porch while you were talking to Mr. Knapp? A. No, Mr. Knapp and myself.

Q. Was it dark or light on the front porch?

40 A. Lighted.

Luella Griswold—Re-direct.

Q. Sure about that? A. Yes, sir.

Q. What makes you so sure it was lighted, last year, August 14th, I mean the day you were there, during the month of August? A. It might have been in the front room.

Q. Don't you know you spoke to him on the front porch, that wasn't lighted? A. I don't know what room it was, whether the front porch or the front room. 10

Q. The reason you don't know is because it is so long ago, you can't remember?

Mr. Rinzler: It is because she doesn't recall.

Mr. Berr: It is cross-examination.

The Court: There is nothing before the Court. Answer the question. 20

A. The room I was in was lighted.

- Q. And there was nothing to prevent you from seeing the telegram? A. Yes.

Q. And you saw the telegram? A. Yes, the yellow copy.

Q. And the note? A. Yes.

Q. Your husband's name was on that note; did you take it back with you? A. No, sir.

Q. Why not? A. I don't know why I didn't take it back. I didn't go to take it back, I went to see why he didn't answer the telegram. 30

Q. Four days after the protest? A. I don't recall how many days.

Mr. Berr: That is all.

Re-direct Examination by Mr. Rinzler:

Q. You saw the letter there, and called his attention to the fact that this note P-1 hadn't been taken care of? A. Yes, and he said he 40

Luella Griswold—Re-cross.

consulted his lawyer in the meantime, and the lawyer told him not to bother.

Mr. Rinzler: That is all.

Re-cross Examination by Mr. Berr:

10

Q. Did you speak to him the day after the protest notice?

Mr. Rinzler: I object to that. It is not proper re-cross examination. It is merely re-questioning the witness upon the same matter he already examined on before.

20

Mr. Berr: I am questioning what he got an answer on. He inquired of her, did she hear something that he learned from the letter he had shown her, which she testified to before.

The Court: She can answer the question, I suppose for quick time, but it seems to me we have been over the ground before.

Mr. Berr: I will withdraw it.

Q. Did you read the letter when Mr. Knapp showed it to you? A. No.

30

Q. Do you know what was in it? A. Yes.

Q. How? A. Because he told me.

Q. Who? A. Mr. Griswold. I recognized his handwriting.

Q. But you don't know what it said? A. No.

Mr. Berr: That is all.

Mr. Rinzler: That is all. Plaintiff rests.

40

MOTION MADE BY MR. BERR AT THE CLOSE OF
PLAINTIFF'S CASE.

Mr. Berr: I, of course, reiterate, in order that there may be no misunderstanding, my former grounds for the vacating of this suit, and these proceedings, just as if I had repeated them, and further, than that, I say that the testimony in the case is an attempt to cure a defective mailing, and concedingly so. Now then, the statute outlines the manner in which an endorser shall be given notice of protest, and in order for an endorser to be held, he must be given notice of the protest of this note, in the manner prescribed by the statute. Your Honor said earlier in the case, that a matter of general knowledge was something that you could have a right to use, and anybody would be qualified to talk about such a subject as post office delivery. What happened in this case? There is only one part of the testimony, as far as the motion now is concerned, I am regarding. Let's forget Mr. Rean and Mr. Pitman and Mrs. Finn said anything at all. Let's just consider the testimony of Mr. and Mrs. Griswold, which is really the testimony whereby the plaintiff hopes to cure the defective mailing. What did they do? If their testimony is to be believed, and I admit to your Honor, that I am put upon my defense—

Mr. Berr: He can't argue the credibility of the witnesses, Your Honor.

The Court: For purposes of this motion, he assume everything to be true that has been testified to.

Mr. Berr: Not if the man himself testifies to something that Your Honor knows is untrue, and a man can't get up and say he arrived from

*Motion by Mr. Berr at the Close of
Plaintiff's Case.*

Boston yesterday in two hours, when common knowledge is you can't get here, and because I make a motion, Your Honor certainly isn't bound to accept that as true.

10 The Court: I am going to suppose you are going to argue the impossibility of a special delivery letter——

Mr. Berr: No, the notice of protest was mailed in Passaic, on the 14th of August, at eleven o'clock, and he says he got it that evening. At six o'clock, he had his notice of protest. That is the meat of the case, and that is a physical impossibility, which can't be done. Mrs. Finn doesn't testify she sent it special delivery. Can
20 it get to Jersey City that evening, and if it can't, is there anything else for Your Honor, but to determine that Griswold and his wife have concocted a certain story to assist the bank in collecting a note which they can't pay.

The Court: I didn't say whether it is general knowledge whether a letter can go from Passaic to Jersey City in one day, but I said it is general knowledge whether in Passaic, it would be delivered the same day, but I didn't go so far
30 as to say that one could assume whether a letter could or could not go from Passaic between certain hours, if deposited in Passaic at eleven o'clock and delivered in Jersey City at six o'clock in the evening. Both Mr. and Mrs. Griswold said it did, and it isn't such a matter that I can say it is impossible. It might be probable, I don't know, and we must take all their testimony to be true. I agree with you there isn't much testi-
40 mony, or difference in testimony of the other

*Motion by Mr. Berr at the Close of
Plaintiff's Case.*

witnesses, as what happened before, except with the possible exception of the establishing of Mr. Knapp's being in Passaic some ten or twelve years ago.

Mr. Berr: That doesn't cure it.

10

The Court: I don't think it would. I think it is the testimony of the Griswolds that is of prime importance, and I think they have established a *prima facie* case. Under the act, there is absolutely no necessity for protest. All the endorser has to have is notice that it is dishonored, and he must receive it not later than the next day. I would say now the question is whether he got this telegram.

Mr. Berr: And when.

20

The Court: The next night, according to the testimony.

Mr. Berr: She doesn't say she was there the next night. She said it might have been four days after.

The Court: The sending of the telegram was within time.

Mr. Berr: The statute doesn't recognize sending telegrams like it does mailing letters, and in the absence of the statutory protest, Your Honor can draw no conclusion. The statute has the specific reference to mailing, and we know that the assumption is that a letter is delivered, but there is no such assumption to be taken as to a telegram. Telegrams have been known to have been sent and not delivered.

30

The Court: The delivery of this is testified to four days later.

40

*Motion by Mr. Berr at the Close of
Plaintiff's Case.*

Mr. Rinzler: The admission was made four days later.

10 Mr. Berr: If the testimony in the case as it is now, in the record, were that Mr. Knapp received it the day after, but the fact is there is no such testimony.

The Court: I don't think there is.

Mr. Berr: And unless they have proved that is a fact I don't have to defend.

The Court: I believe a *prima facie* case has been made out. I will deny the motion and allow an exception.

20 Mr. Berr: I ask Your Honor to continue my reservation so I am not waiving my rights, or submitting to jurisdiction.

The Court: I think we have already taken care of that at the beginning of the case.

Mr. Rinzler: That doesn't bind my client.

Mr. Berr: I am doing it with the permission of the Court, and the Court extends me that reservation. I am willing to take my chances.

Karl Knapp—Direct.

Defendant's Case.

KARL KNAPP, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Berr:

10

Q. Mr. Knapp, did you ever receive a telegram from Mr. Griswold, at any time since May 13th, 1929, the date when this old note was made out?

A. I did not.

Q. How many days after August 13th, did Mrs. Griswold call at your house? A. About five days after.

Q. Who was there at the time? A. My wife, my daughter and my son-in-law was there.

Q. Where were you talking to Mrs. Griswold? A. I was talking to Mrs. Griswold in the front parlor right at the front door. 20

Q. Who was there, in that part of the house? A. Nobody there but me.

Q. You and Mrs. Griswold? A. Yes.

Q. Was it dark or light? A. Dark.

Q. Did you have anything there; the note and a letter? A. Nothing.

Q. What did she ask you? A. She asked me to go down in the bank, that Mr. Rean was holding the note back, to go down and make arrangements with him. I told Mrs. Griswold it is too late. That is the first thing I knew about the note. 30

Q. That is the first time, when Mrs. Griswold came to you, that is the first time that you knew the note had been protested or dishonored? A. She told me Mr. Rean held the note back, because I told her that note must have been protested. 40

Karl Knapp—Direct.

Q. You told her the note must be protested by now? A. And she said, "No", Mr. Rean promised her husband to hold it back, and get me down, and he holds that note back.

Q. Did you say anything else about it? A.
10 Nothing at all.

Q. Did you ever receive any notice of protest or dishonor, or non-payment of P-1? A. No.

Q. Where did you live August 13th, 1929? A. I lived in Clifton.

Q. What street address? A. 32 Donald Street, Clifton.

Q. How long have you lived there? A. Seven years.

Q. Where is your place of business? A. Corner Main and Milton Street, Clifton.
20

Q. How long have you been there? A. About ten years.

Q. What post office, as a matter of custom, delivers your mail? A. Clifton post office.

Q. Where is your mail as a matter of custom addressed to? A. Most addressed to my business place.

Q. Is it addressed Passaic or Clifton? A. Says Clifton; always addressed Clifton, New Jersey.
30

Q. Now then, did the bank or any officer of the bank ever send for you in connection with this note? A. Never did.

Q. Did they ever ask you for your home address or place of business at any time? A. Never did.

Q. This is an old note? A. Must be about six or seven years old.

Karl Knapp—Direct.

Q. And none of the bank officers ever asked or made inquiry from you where you lived or your business was? A. No.

Q. And all that time you have been living and your place of business was in Clifton? A. Always was.

10

Q. And your place of business at the time you endorsed the original note was in Clifton? A. Yes.

Q. And it has been ever since? A. Yes.

Q. And your residence when you first endorsed the original note was where? A. In Clifton.

Q. Have you ever lived in Passaic since the execution of this note, or any of its prior notes? A. Not at that time.

20

Q. Now, did Mr. Griswold ever call you up on the telephone? A. Never did.

Q. Did he write you a letter enclosing a note? A. Never did.

Q. With a renewal? A. Never received one.

Q. Did you receive any notice from either a bank officer, by way of the mail, by word of mouth, or from Mr. Griswold, or by telegram, or any other means? A. I did not.

30

Q. Concerning the notice of protest or dishonor or non-payment of the note in question? A. No.

Q. No? A. No.

The Court: Mr. Knapp, if a telegram were delivered to your home, addressed to you, no one else would open it, would they?

The Witness: I don't think so.

40

Karl Knapp—Direct.

The Court: It would be turned over to you, if it were delivered?

The Witness: Yes.

Q. And by the way, do you recall what day it
10 was that Mrs. Griswold was down at your home?
A. It was five days after.

Q. Do you remember whether it was Saturday or a week day? A. I couldn't say exactly, but if I am not mistaken, I think it was on a Monday. I ain't sure of that, but I know it was sure five days after. If I ain't mistaken, I got it on a piece of paper home, the date when she was there.

Q. By the way, are you listed in the New Jersey Bell Telephone directory? A. I am.
20

Q. You are? A. Yes.

Q. Both your business and your home? A. Yes, sir.

Q. Under what designation? A. Charles Knapp.

Q. Charles Knapp? A. Yes.

Q. Is Passaic Cut Stone listed there? A. No, only an advertisement Passaic Cut Stone Company.

Q. You have got an advertisement there, the
30 Passaic Cut Stone Company? A. Yes.

Q. And you are listed under Clifton or Passaic? A. Clifton.

Q. And you have been listed for how long that way? A. The last three or four years. It was before Passaic. They only changed it a few years ago, changed it to Clifton.

Q. You mean the telephone company designation has only been changed to Clifton from Passaic, the last few years, the central? A. Yes.
40

Karl Knapp—Direct.

Q. Are you listed in the City directory? A. Yes.

Q. Is your company, the Passaic Cut Stone Company, in the City directory? A. Yes. Karl Knapp is in dark print, I think, but I am not sure.

10

Q. Do you know whether it is there or not? A. It is there.

Q. Under what designation? A. Karl Knapp, Clifton.

Q. Karl Knapp, Clifton. How long have you been in the directory, in the ordinary directory? A. Ever since I am around here.

Q. And lived in Clifton, as many years as you have been in Clifton? A. As I have been in Clifton.

20

Q. You heard what Mrs. Griswold said concerning the fact you were holding a telegram in your hand? A. I did.

Q. Were you holding a telegram in your hand? A. I don't hold no such thing. I know I don't have one.

Q. Have you forwarded letters ordinary mail to Mr. Griswold? A. What is that?

Q. Have you ever forwarded ordinary mail from Clifton to Jersey City? A. I never did.

30

Q. Was a demand ever made upon you by the Passaic National Bank, or— A. (interrupting) Was not.

Q. (Continuing) One minute before you speak, please,— Mrs. Griswold, five days after the due date of the note for payment of this note or any part of it? A. Was not.

Mr. Berr: That is all.

40

*Karl Knapp—Cross.**Cross-Examination by Mr. Rinzler:*

Q. You say you are listed in the telephone directory under the name of Charles Knapp? A. Yes, sir.

10 Q. Who signed the note P-1? A. Karl Knapp; that is my right name.

Q. And you had at one time, and until you changed the location of your business to Clifton, or not, your business under the name of the Passaic Cut Stone Company on Main Avenue, Passaic? A. I still do it today.

Q. On Main Avenue, Passaic? A. Clifton.

Q. I mean you did one time have that business at Main Avenue, Passaic? A. I have.

20 Q. Located on Main Avenue, Passaic, next to Mr. Griswold's place of business, until you moved your business to Clifton? A. I did.

Q. And your trade name was the Passaic Cut Stone Company? A. Still is today.

Q. You never notified the bank your business moved to Clifton? A. Never did.

Q. Never furnished them with your address? A. Never did.

30 Q. You didn't receive a telegram, did you? A. No.

Q. You received no letter or no renewal note? A. No.

Q. For several years, however, there had been a series of notes, and when the note became due, of which Mr. Griswold was the maker, then Mr. Mastenbrook and you would endorse the note on the due date, from time to time, is that correct? A. Yes.

40 Q. And continued to do that for a few years? A. I did.

Karl Knapp—Cross.

Q. And then this note became due of \$300.00, P-1? A. Yes.

Q. You didn't hear from anybody about it? A. Not a thing.

Q. What did you do about it? A. Nothing.

Q. You knew you had endorsed the note? A. 10
That year I did.

Mr. Berr: I object to that, if Your Honor, please. It is improper cross-examination. The only question involved here is whether he got the telegram or any other form of notice.

Mr. Rinzler: It is cross-examination.

The Court: You should be limited to the scope of the direct examination. That question was answered before the objection, so it will stand. 20

Q. You never got a protest notice? A. No.

Q. Never got a notice of dishonor? A. No.

Q. Aas a matter of fact, Mrs. Griswold did speak to you four or five days after the due date of the note? A. Yes.

Q. And what did she tell you. A. That I talk to the National Bank. I says, "It is no use to go down, that note must be protested." She says no, that he holds that note back, to go down and make a settlement. Mr. Rean holds it back. 30

Q. So you say in that conversation Mrs. Griswold told you that Mr. Rean informed her that the note was not yet protested? A. Yes, sir.

Mr. Rinzler: That is all.

Karl Knapp—Re-direct.
Ira Mastenbrook—Direct.

Re-direct Examination by Mr. Berr:

10 Q. In connection with your conversation with Mrs. Griswold, when she told you that you should go to see Mr. Rean, that he was holding the note back, you said to her, "it is too late?" A. That is what I did, yes.

Q. "It must be protested by now?" A. Yes.

Q. And the reason for that was that her presence in your house asking you to take care of it, indicated he hadn't paid it? A. Yes.

Mr. Rinzler: I object to this, because I merely cross-examined on the subject of the direct, and this is improper redirect.

20

The Court: It is already answered.

Mr. Berr: That is all.

IRA MASTENBROOK, a witness produced in behalf of the defendant, having first been duly sworn, according to law, testified as follows:

Direct Examination by Mr. Berr:

30 Q. What state were you in at the time this note in question became due? A. Connecticut.

Q. You were in Connecticut? A. Yes, sir.

Q. And how many days before August 13th, did you receive a communication from your daughter at home here? A. Oh, I guess about three or four days.

Q. Three or four days? A. Yes.

Q. And your daughter sent in that communication— A. (Interrupting) Yes.

40

Ira Mastenbrook—Cross.

Q. To you in Connecticut— A. Yes.

Q. What? A. A note.

Q. And you did what with that note? A. I endorsed it.

Q. And what did you do? A. Returned it to my daughter. 10

Q. Did you return it the same day you got it? A. Yes.

Q. Do you know what day your daughter got it? A. No, I couldn't say.

Q. Did Mrs. Griswold call to see you at your home? A. No, sir.

Q. Did she ever send you a telegram?

Mr. Rinzler: I object to that. It is not part of the issue. 20

The Court: There is no testimony she did.

Mr. Berr: That is all.

Cross-Examination by Mr. Rinzler:

Q. Concerning the note of \$300.00, before this note became due, you received a new note, a renewal note, to renew this note, and it was made by Mr. Griswold to his own order, and he endorsed it, and you did? A. Yes, sir. 30

Q. And that was the practice that had been followed in the renewal of the preceding notes, preceding this one? A. Yes, sir.

Q. And that was before the due date of this particular note that you endorsed it? A. Yes, sir.

Q. And then you sent it back to your daughter? A. I sent it back to my daughter, and she returned it to Mr. Griswold. 40

Mr. Rinzler: That is all.

Ira Mastenbrook—Re-direct.

Joseph Rean—Direct.

Re-direct Examination by Mr. Berr:

10 Q. I think there is a misunderstanding. Mr. Mastenbrook, did you mean that this note was signed by you in Connecticut, or the renewal?
A. The renewal.

Mr. Rinzler: That is what he said.

Mr. Berr: With the exception of subpoenaing the Post Office and Western Union, it is our case.

The Court: I will give you an opportunity to subpoena them. We will continue next Friday.

20

Rebuttal.

JOSEPH REAN, recalled.

Direct Examination by Mr. Rinzler:

30 Q. Mr. Rean, did you tell Mrs. Griswold that you were holding back the note, P-1, and that it had not been protested, and that you were waiting for Mr. Knapp to take care of the renewal?

Mr. Berr: One minute. I object to it. It is improper rebuttal. He says Mrs. Griswold told him that, not Mr. Rean.

Mr. Rinzler: Then I will put Mrs. Griswold on.

Mr. Berr: That isn't the question involved.

The Court: This isn't exactly proper at this time. I suppose you can call Mrs.

40

Luella Griswold—Direct.

Luella Griswold—Cross.

Griswold in rebuttal, but I will allow it now it.

A. No.

Q. As a matter of fact, the note was not held back, but was protested? A. Yes. 10

Mr. Rinzler: That is all.

Mr. Berr: No cross-examination.

LUELLA GRISWOLD, recalled.

Direct Examination by Mr. Rinzler:

Q. Mrs. Griswold, did you, in the conversation which you testified you held with Mr. Knapp a few days after the note P-1 was due, did you say to him that Mr. Rean had told you that he had held back the note P-1, and that it had not been protested, but that it was held back by him or the bank, so Mr. Knapp could renew it or take care of it in some way? A. No, sir. 20

Q. Did Mr. Rean ever say such a thing to you? A. I never saw Mr. Rean until Wednesday.

Q. And he never made such a statement? A. No. 30

Q. And you never said anything like that to Mr. Knapp? A. No.

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

Q. Mrs. Griswold, didn't you tell Mr. Knapp that your husband had said Mr. Rean had promised to withhold the note and keep it back? A. Mr. Rean's name was not mentioned. 40

Frank M. Griswold—Direct.

Q. Mr. Rean's name was not mentioned at all?

A. No, sir.

Q. What message did Mr. Griswold give you to deliver to Mr. Knapp? A. Why he didn't put the note in.

10 Q. Oh, you didn't go to Passaic to arrange to have it taken care of with Mr. Rean, you went to Passaic specifically to find out why it wasn't taken care of; not to have it taken care of? A. No.

Mr. Berr: That is all.

FRANK M. GRISWOLD, recalled.

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Direct Examination by Mr. Rinzler:

Q. Did you say to your wife that she should tell Mr. Knapp that Mr. Rean had informed you that the note P-1 would be held back and would not be and was not protested, so the note could be taken care of? A. No.

Q. Did Mr. Rean say anything like that to you? A. No.

30 Q. Did you say anything like that to your wife? A. No.

Q. As a matter of fact, the note had been protested? A. I had received notice.

Mr. Rinzler: That is all.

Cross-Examination by Mr. Berr:

Q. But you don't know what your wife said to Mr. Knapp? A. I wasn't there.

40

Mr. Berr: That is all.

Stenographer's Certificate.

I, MARGARET GLASS, of Passaic, N. J., a stenographer duly appointed to report stenographically the evidence given before the Passaic District Court in the case of Passaic National Bank and Trust Company, Plaintiff, *v.* Karl Knapp, defendant, do hereby certify that the foregoing is a true and accurate transcript of the proceedings and the evidence given on the 12th day of September, 1903, before the Hon. Thomas E. Duffy, Judge of the Passaic District Court, in said matter. 10

MARGARET GLASS.

Sworn to and subscribed before me }
this 24th day of December, 1930. }

JACOB A. REISS,

A Notary Public of N. J. 20

Certificate of Judge.

I, THOMAS E. DUFFY, Judge of the Passaic District Court, do hereby certify that the foregoing is a true and correct transcript of the evidence given upon the trial of the case of Passaic National Bank and Trust Company, plaintiff, *vs.* Karl Knapp, on the 12th day of September, 1930, as certified to by Margaret Glass, the stenographer appointed to report such evidence stenographically. 30

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 24th day of December, 1930.

THOMAS E. DUFFY,

Judge of the Passaic District Court. 40

Exhibit P-1.

\$300.00 Passaic, N. J., May 13, 1929
 Three Months after date I promise to pay to the
 order of Myself
 Three Hundred Dollars
 at Passaic National Bank and Trust Company

10 Value received.

FRANK M. GRISWOLD

No. 9872. Due Aug. 13

On the Reverse Side:

Endorsers:

Frank M. Griswold
 2131 Boulevard,
 Jersey City, N. J.
 20 Ira Mastenbrook
 Karl Knapp

United States of America, }
 State of New Jersey. } ss.:

30 On the 13th day of August, in the year of our
 Lord, one thousand nine hundred and twenty-
 nine, at the request of The Passaic National
 Bank and Trust Company, of Passaic, New Jer-
 sey, I, William F. Gaston, a Notary Public of
 the State of New Jersey, duly commissioned and
 sworn, and residing at Passaic, in said State did
 present the original note hereunto annexed, at
 the said bank at Passaic, aforesaid where payable
 to the teller and demanded payment thereof of
 him who refused to pay the same saying not good.

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Exhibit P-1.

Whereupon, I, the said Notary, at the request
aforesaid, did Protest and by these presents do
publicly and solemnly Protest as well against the
makers and endorser of said note as against all
others whom it doth or may concern, for ex-
change, re-exchange and all costs damages and 10
interest incurred or to be hereafter incurred, for
want of payment of said note.

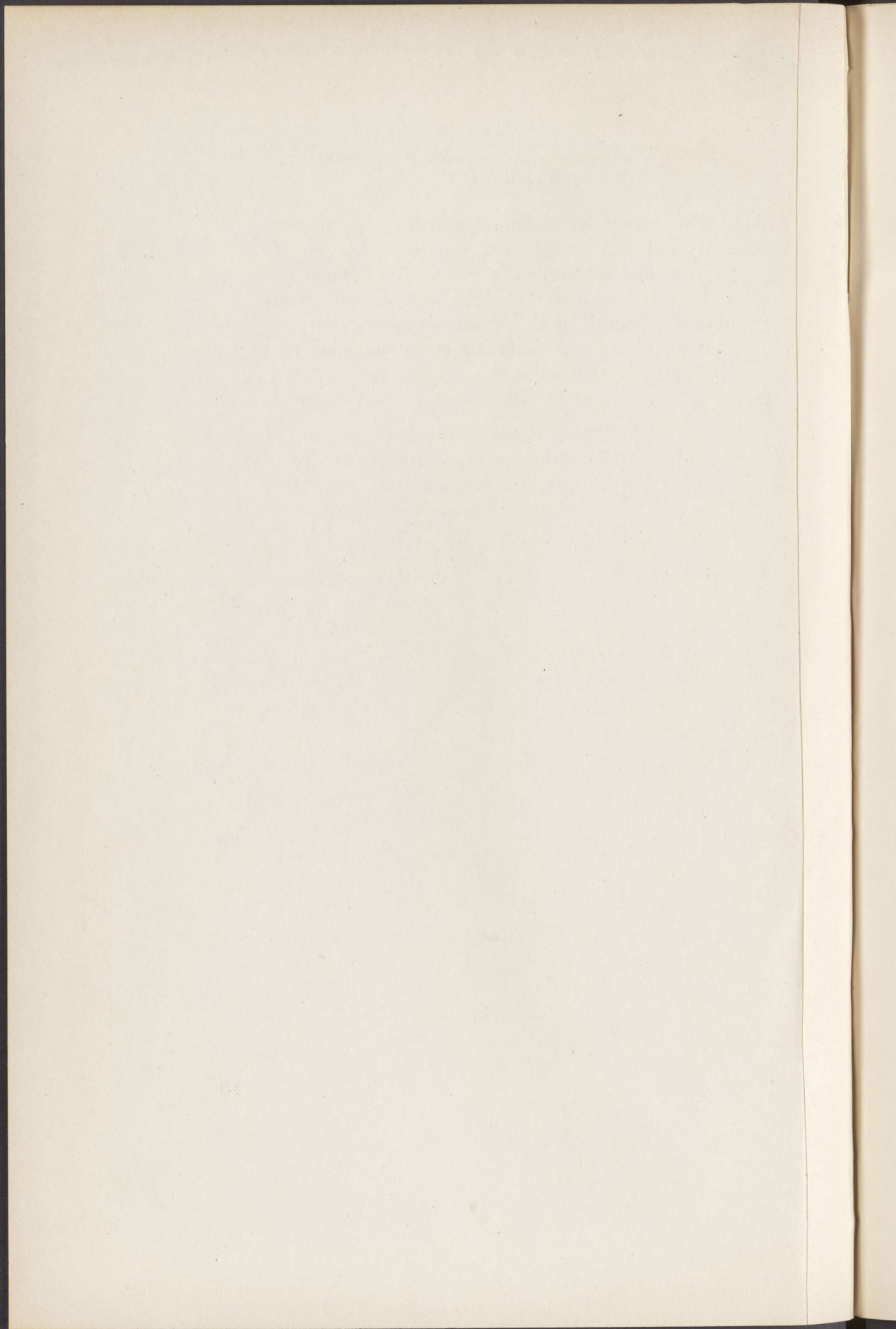
Thus Done and Protested at Passaic, in
the State of New Jersey as afore-
said, in the presence of John Doe
and Richard Roe, Witnesses.

In Testimonium Veritatis,

W. F. GASTON,
Notary Public. 20

30

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Notice and Grounds of Appeal.

Filed February 16, 1932.

NEW JERSEY SUPREME COURT.

PASSAIC NATIONAL BANK AND
TRUST COMPANY,

Plaintiff-Appellant,

vs.

KARL KNAPP,

Defendant-Respondent.

Notice and
Grounds
of Appeal.

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To: SPINDEL & BERR, ESQS.,

Attorneys of Defendant-Respondent:

Sir:

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PLEASE TAKE NOTICE that the plaintiff appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause in the Supreme Court, on the following grounds:

1. The New Jersey Supreme Court erred in reversing the judgment of the Passaic District Court.

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2. The New Jersey Supreme Court erred in refusing to affirm the judgment of the Passaic District Court.

3. The New Jersey Supreme Court erred in reversing the judgment of the Passaic District Court upon the ground that "there is no proof in the case that notice of dishonor was sent either (1) to the post office nearest Knapp's place of residence or the post office where he was accustomed to receive

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Notice and Grounds of Appeal.

his letters, or (2) to his place of business, or (3) to a place where he was sojourning."

4. The New Jersey Supreme Court erred in holding that nothing appears in the case to show notice of dishonor was dispensed with by reason of the provisions of Paragraph 112 of the Negotiable Instruments' Act of New Jersey.

5. There was evidence before the trial judge sitting without a jury, sustaining and supporting his findings of facts and the judgment entered in the trial court, and the Supreme Court, consequently, erred in reversing that judgment.

6. In considering and deciding the appeal from the judgment of the Passaic District Court, the Supreme Court dealt with the case as if it came before that court on a rule to show cause, and in reversing the judgment considered the weight of the evidence, and not whether there was any evidence to support the judgment, and in this, the Supreme Court erred.

7. The Supreme Court erred in reversing the judgment of the trial court on the alleged ground that it does not "appear that the notary exercised any diligence whatever in attempting to learn the endorser's address".

Dated: February 10th, 1932.

FEDER & RINZLER,
Attorneys of Plaintiff-Appellant.

A copy of the within Notice and Grounds of Appeal received this 13th day of Feb. 1932.

SPINDELL & BERR,
Attys. for Deft. Resp.

Order of Reversal and Remittitur.

Entered February 4, 1932.

NEW JERSEY SUPREME COURT.

No. 409. JANUARY TERM, 1931.

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff-Appellee,

vs.

KARL KNAPP,
Defendant-Appellant,
and

FRANK M. GRISWOLD and IRA
MASTENBROOK,
Defendants.

On Appeal
from Passaic
District Court.

Order of
Reversal and
Remittitur.

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Judgment having been entered in this cause in favor of the plaintiff-appellee and against the defendant-appellant, Karl Knapp, in the Passaic District Court, and the said appellant having appealed from said judgment to this court, and the arguments of counsel for the plaintiff-appellee and defendant-appellant having been heard, and the questions brought up by said appeal having been duly considered at the January Term, 1931, of this Court: 30

It is, ORDERED, that the aforesaid judgment be and the same is hereby reversed and a venire de novo awarded, and the record and proceedings in this matter is ORDERED remitted to the court below to be proceeded with according to law and the practice of said court.

Entered February 4, 1932.

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Opinion of Supreme Court.

Filed January 30, 1932.

NEW JERSEY SUPREME COURT.

No. 409. JANUARY TERM, 1931.

10	PASSAIC NATIONAL BANK AND TRUST COMPANY, Plaintiff-Appellee, vs. KARL KNAPP, Defendant-Appellant, and FRANK M. GRISWOLD and IRA MASTENBROOK, Defendants.
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Argued Jan. 21, 1931. Decided January 28,
1932.

On Appeal from the Passaic District Court.

Before Justices CASE, DALY and DONGES.

30	For the defendant-appellant, Karl Knapp, SPINDEL & BERR. For the plaintiff-appellee, FEDER & RINZ- LER.
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Per Curiam:

40	Action was brought in the Passaic District Court to recover upon a promissory note, of which the defendant Griswold was maker, payee and en- dorser, and defendants Mastenbrook and Knapp were endorsers. Defendant Griswold was not served with summons and judgment was entered
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Opinion of Supreme Court.

against defendants Knapp and Mastenbrook. An appeal was taken by the defendant Knapp and the judgment was reversed as to Knapp—Passaic Nat. Bank &c. vs. Griswold, 8 N. J. Misc. R. 262; 149 Atl. 629, wherein the court said: "It appears that the notice was not sent to the post office nearest to the endorser's residence or to the post office wherein he was accustomed to receive his letters, or where he conducted his business, nor to the place where he was sojourning, as required under Section 108 of the Negotiable Instruments Law. Nor does it appear that the notary exercised any diligence whatever in attempting to learn the endorser's address. He made no inquiry of the maker, the officials of the bank, or any one else whether connected with the transaction or not, so that notice of dishonor could not be dispensed with under Section 112 of the Negotiable Instruments Act." The case was thereupon remitted to the Passaic District Court. The remittitur, in part, reads as follows: "It is thereupon ordered that the judgment of the said District Court be in all things reversed insofar as the same pertains to defendant-appellant, Karl Knapp, set aside and for nothing holden, costs of appeal to this court to be taxed, and the records and proceedings be remitted to the said Passaic District Court to be proceeded with in accordance with this judgment, and the practice of said court."

The plaintiff then moved the case for trial against defendant Knapp in the Passaic District Court without issuing a new summons. The defendant entered a special appearance, and argued that the court was without jurisdiction again to try the case because of the opinion in this court, and the remittitur. The court denied the motion

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Opinion of Supreme Court.

to dismiss and again proceeded to trial, resulting again in a judgment against the defendant Knapp.

10 The plaintiff proved the note, also that it was due and unpaid, had been presented for payment and protested for non-payment; that notice of dishonor had been mailed to defendant Knapp at Passaic, N. J., in an envelope with proper postage thereon, and with the return address of the plaintiff, which letter had never been returned to the sender. The note was due August 13, 1929, and notice of dishonor was mailed about 11 A. M. on August 14, 1929. The plaintiff's credit manager, note teller and the secretary of the notary public, who protested the note, testified, but none of these had any knowledge of defendant Knapp's residence, place of business, the post office where he
 20 received his mail or where he was sojourning. No inquiry of any kind was shown to have been made to discover where notice of protest could reach Knapp, outside of an inquiry made by the secretary to Perne Pitman, the note teller, and his response was to mail the notice to Knapp in Passaic. Pitman had no knowledge of the residence or place of business of Knapp. While he testified that he knew that Knapp had been in business in Passaic,
 30 under the trade name of Passaic Cut Stone Company, ten or twelve years previous, he knew nothing about Knapp's personal or business address since that time; and he admitted that, as far as he knew, Knapp had done no business with the bank during his, Pitman's connection with the bank—eleven years. "Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged." Paragraph
 40

Opinion of Supreme Court.

112, Negotiable Instruments Act. But, as said in the previous opinion in this court, and as it must be said upon the basis of the evidence presented at the second trial, it does not "appear that the notary exercised any diligence whatever in attempting to learn the endorser's address."

The maker Griswold testified for the plaintiff 10 and it appeared from his testimony that he knew Knapp's address, which was Clifton, N. J. No inquiry was made of him by the notary. No city directory or telephone directory was inspected which would have disclosed the address. Griswold testified Knapp had a telephone. Griswold and his wife testified for the plaintiff, and they said Griswold sent a telegram to Knapp the same day he received the notice of dishonor from the plaintiff 20 which they testified was the day after the note was due. Griswold could not tell what was stated in the telegram. Mrs. Griswold also said that she visited Knapp one to four days after the telegram was sent and Knapp showed her the telegram. Of what avail this to the plaintiff? Paragraph 90 of the Negotiable Instruments Act provides, with respect to notice of dishonor: "The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might 30 be compelled to pay it to the holder, and who, upon taking it up would have a right to reimbursement from the party to whom the notice is given." Griswold was not the holder. He had no authority to give notice on behalf of the plaintiff holder. He was the maker of the note and the person primarily obligated to pay the note. Knapp was an endorser. Griswold, the maker, upon taking the note up would have no right of reimbursement 40

Opinion of Supreme Court.

from Knapp, the endorser to whom the notice was alleged to have been given by the telegram.

10 The defendant denied receiving the telegram. He also denied receiving notice of protest. He further testified he had lived in Clifton for seven years, that his place of business was in Clifton and had been for ten years, and that he received his mail through the Clifton post office. The address of Knapp did not appear on the note although the address of Griswold did appear.

No error is found in the Court below having retained jurisdiction of the case, after the previous opinion herein and remittitur, without new process. While the Supreme Court reversed the judgment in favor of the plaintiff, there was no direction of a verdict in favor of the defendant.

20 There must, be a reversal of the judgment against the defendant Knapp because there is no proof in the case that notice of dishonor was sent either (1) to the post office nearest Knapp's place of residence or the post office where he was accustomed to receive his letters, or (2) to his place of business, or (3) to a place where he was sojourning. Nothing appears in the case to show notice of dishonor was dispensed with by reason of the provisions of Paragraph 112 of the statute previously quoted.

30 The judgment will be reversed.

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New Jersey Court of Errors and Appeals

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff-Appellant,
vs.

KARL KNAPP,
Defendant-Respondent.

On Plain-
tiff's Appeal
from
Supreme
Court.

Sat Below:
Case, Daly
and Donges,
JJ.

BRIEF FOR APPELLANT.

Statement of Facts.

Plaintiff instituted this action against the defendant-appellant and Frank M. Griswold and Ira Mastenbrook to recover the amount due upon a note (Ex. P-1, Case, p. 96). The note was made by Griswold and was payable to the order of himself, and was endorsed by him and Mastenbrook and Knapp. Griswold and Mastenbrook are not involved in this appeal. The note was dated and made at Passaic, N. J., May 13, 1929, and made payable at the Passaic National Bank and Trust Company, which is a banking institution located at Passaic, N. J. On the back of the note, below the endorsement of Frank M. Griswold, *his* address was designated at 2131 Boulevard, Jersey City, N. J. The address of Mastenbrook and of Knapp, the appellant, was *not* added to the signature of these parties, and was not indicated. When the note was presented for payment on the due date at the bank where it was made payable, ~~it was protested, be~~

~~cause~~ there were no funds there and it was there-upon duly protested by a notary public.

The case was tried in the Passaic District Court, without a jury, and resulted in a judgment for the plaintiff against the defendant-appellant. This is the second trial of the case. The plaintiff recovered a judgment at the first trial, but the judgment was reversed by this court on appeal. *Passaic National Bank and Trust Company vs. Griswold, et als.*, 8 N. J. Misc. 262; 149 Atl. 629 (not officially reported).

The first reversal was due to the fact that *there was no evidence produced in that case showing that the notary exercised any diligence in attempting to learn the address of the endorser.*

Defendant took an appeal from the judgment which the plaintiff recovered at the second trial, and the Supreme Court reversed that judgment.

There is evidence in this case (second trial) showing that the notary exercised diligence in attempting to learn the endorser's address by making inquiry of two of the bank officials in charge of this transaction, and upon the information that he received, the notary relied and acted.

Yet, in reversing this judgment, the Supreme Court said:

"He (the notary) made no inquiry of the maker, the officials of the bank, or anyone else whether connected with the transaction or not, so that notice of dishonor could not be dispensed with under Section 112 of the Negotiable Instrument Act.

No inquiry of any kind was shown to have been made to discover where notice of protest could reach Knapp, outside of an inquiry made by the secretary to Perne Pitman, the note teller, and his response was to mail the notice to Knapp in Passaic. Pitman had no knowledge of the residence or place of business of Knapp."

The Supreme Court erred in this conclusion because there is uncontradicted evidence in the record showing that Mrs. Finn, the notary's assistant, who had charge of the protest of this note, made inquiry of Mr. Pitman, the note teller, and also of Mr. Rean, the credit manager of the bank, regarding Knapp's place of business, and that these officials had knowledge of the place where Knapp used to conduct his business, and never received notice of any change.

There is also evidence in this case that the appellant knew before the due date of the note that it would not be honored, and that after the note was dishonored, he received due notice of the fact within the time regulated by law.

The appellant filed seven grounds of appeal (case, pp. 99 and 100) alleging amongst other things that the Supreme Court erred in reversing the judgment of the Passaic District Court. All of the grounds of appeal will be argued under Point I of our brief.

ARGUMENT.

POINT I.

The notary exercised reasonable diligence in attempting to learn the endorser's address and sent notice of dishonor to his last known address according to information obtained.

The evidence establishes these facts: On the due date of the note, there being no funds in the bank, the note was dishonored, and a notary public protested the note and sent notices to all of the parties by mail. The note was due on August 13th,

1929 (Case, pp. 22, ll. 30-40; 23, ll. 1-10). The notary's assistant deposited the notices, in envelopes properly addressed, bearing the notary's return address, in the United States mail box, at the Passaic Post Office branch at eleven o'clock in the morning on August 14th, 1929. These notices were *not returned to the sender* (Case, pp. 46, bottom; 47 top).

It is undisputed that the defendant's address was *not* added to his signature on the note, and was nowhere indicated thereon, and defendant admits that he never furnished the bank with his address (Case, p. 88, ll. 25-30).

This is significant owing to the fact that the testimony of the representatives of the bank was that they knew that at one time the defendant was engaged in business on Main Avenue, Passaic, under the name "Passaic Cut Stone Company." The defendant himself admitted that he was engaged in the cut stone business under that name on Main Avenue, Passaic for some years, but, he says, he later moved to Main Avenue, Clifton (Main Avenue runs through Passaic and Clifton) (Case, p. 88, ll. 10-20). Defendant admits that he never notified the bank of this change of address, or of any address.

We shall now demonstrate that the evidence shows that the notary public, through his assistant, Mrs. Finn, who had charge of the protest of this particular note, exercised reasonable diligence in attempting to learn the endorser's address by making inquiry of Mr. Rean and Mr. Pitman, two officers of the bank, and received from them information that they personally knew that at one time the endorser maintained a place of business on Main Avenue in the City of Passaic, under the name "Passaic Cut Stone Company" and that they had never received notice or known of any change of address,

and that Mrs. Finn, relying on this information, acted thereon and mailed a notice to the endorser at that address.

After first stating that she was secretary to Mr. William F. Gaston, a notary public of New Jersey and protest officer for the Passaic National Bank, Mrs. Finn testified that on August 13th, 1929, she had charge of the making out and the mailing of the notices of dishonor, and that she presented the note for payment to the bookkeeping department of the bank on the due date, but there being no account in the bank, the note was protested (Case, p. 43 bottom, p. 44, ll. 1-20). She sent a notice of protest to Mr. Griswold, the maker, to 2131 Boulevard, Jersey City, New Jersey, his address appearing on the note. The notice of protest was sent to the defendant, Karl Knapp and the other co-endorser Mastenbrook, to Passaic, New Jersey. These endorsers did not append or add to the note, their residence, place of business or other address, and the note contained no indication of what the address was. The notices were enclosed in envelopes, with postage prepaid, bearing the notary public's return address, and were deposited in the regular mail box in the Passaic branch of the United States Post Office. *None of these notices were returned* (Case, p. 44, ll. 20-40; p. 45, ll. 1-15). She says that she knows personally, from her own experience, that mail sent from Passaic at about eleven o'clock in the morning will be delivered at Passaic the same day (Case, p. 45, ll. 20-40; p. 46, ll. 1-40; p. 47, ll. 1-20).

Turning to her attempt, in the exercise of reasonable diligence, to learn the defendant's address, Mrs. Finn testifies:

"Q. Did you make an attempt to find out if he (Knapp) lived in Jersey City or Hoboken

or Clifton? A. I inquired of Mr. Pitman as to his address.

Q. And did you inquire of anyone else? A. I don't recall, but I probably inquired of Mr. Rean.

Q. Would you say that you did or didn't, or don't you recall? A. I don't recall?

Q. Now then, what did Mr. Pitman say to you concerning the address? A. That it was Passaic, New Jersey" (Case, p. 48, ll. 15-40).

"Q. In conformity with the information given by Mr. Pitman, you forwarded the notice to Passaic, New Jersey? A. That is right.

Q. You didn't ask the street? A. He didn't know, or he would have given it to me" (Case, p. 49, ll. 10-18).

"Q. Did you ask Mr. Pitman or an officer of the bank in each instance where you have no address? A. In each instance where there is no address, noted on the note, inquiry is made.

Q. And the limit of your inquiry in this case was to ask Mr. Pitman? A. That is right.

Q. And his answer was Passaic, New Jersey? A. That is right" (Case, p. 49, ll. 20-40).

"Q. Mrs. Finn, is Mr. Pitman from whom you say you made inquiry on the due date of the note, when you undertook to protest P-1, is he the Mr. Pitman who testified here today, and the note teller of the Passaic National Bank? A. Yes.

Q. And when he furnished you with Passaic, New Jersey, as the place where Mr. Karl Knapp customarily or was accustomed to receive his mail, that being the place of his business, did you rely on it? A. I did rely on the information from Mr. Pitman.

Q. And outside of the knowledge and information that Mr. Pitman gave you in that regard, had you any other knowledge or source of knowledge with regard to the residence, business or other address or whereabouts of Mr. Karl Knapp, or with regard to how or where he received his letters? A. No; no other" (Case, p. 50, ll. 19-40; p. 51, ll. 1-35).

It is clear, therefore, that she has a positive recollection that she inquired of Mr. Pitman, the note teller of the bank, for the defendant's address, and that he told her that his address was Passaic, New Jersey, and that relying upon that information, she sent the notice of protest to the endorser to his address. She also says that she does not recall whether or not she also made a similar inquiry of Mr. Rean, the credit manager of the bank, but she "probably inquired of Mr. Rean".

Turning to the testimony of Mr. Pitman, it shows that he had personal knowledge that at one time the defendant was engaged in business on Main Avenue, Passaic, New Jersey, under the name "Passaic Cut Stone Company" and that he had never received notice or known of any change of address:

"Q. What was Karl Knapp's business at the time (the due date of the note)? A. Cut stone.

Q. Under what name was he trading? A. I think Passaic Cut Stone Company.

Q. Where was his business located? A. I was of the opinion that it was on Main Avenue; *in fact, I knew it was at one time*, and I presumed it was at that time.

Q. In Passaic? A. Yes" (case, p. 28, ll. 29-40).

"Q. Well, you say, 'In fact, I had no knowledge'; how did you know? A. I presumed it was because I had knowledge that it was at one time, and I had no notice of a change of address.

Q. At one time you had personal knowledge that Mr. Karl Knapp's business was located on Main Avenue, Passaic, and it was the cut stone business, conducted under the trade name of Passaic Cut Stone Company? A. Yes, sir.

Q. Of that you say that you had personal knowledge? A. Yes, sir.

Q. And when was that, approximately? A. Well, I would say I believe the first time I knew it was about ten or twelve years ago.

Q. Had you seen his place of business after you had first acquired such personal knowledge at various intervals? A. Yes, sir" (case, p. 29, ll. 10-30).

"Q. Do you know where Mr. Karl Knapp was accustomed to receive his mail? A. I presume it was Passaic, New Jersey" (case, p. 31, ll. 1-5).

On cross examination, he testified:

"Q. Mr. Pitman, you say it was about ten or twelve years ago, when you first noticed Mr. Knapp's business at that time was located on Main Avenue, Passaic? A. Yes, sir.

Q. And I think that was on your way downtown from your home that you noticed that? A. Yes, sir" (case, p. 30, ll. 10-18).

"Q. How long after you first noticed the Passaic Cut Stone Company's location on Main Avenue, Passaic, did you continue to notice the place of business there; over a period of how long? A. Well, I can't say.

Q. Well, was it a month, was it a year, was it two years, that you had been passing this place of business and noticing its location? A. Well, it may have been a couple of years" (case, p. 30, ll. 22-30).

"Q. Upon what did you base the presumption? A. Because we had no notice of a change of address" (case, p. 33, ll. 20-23).

It is clear from Mr. Pitman's testimony that about ten or twelve years ago, he personally observed that Mr. Knapp was engaged in business on Main Avenue, Passaic, under the name Passaic Cut Stone Company, and that in passing through that neighborhood for a period of two years, he from time to time observed the continuance of that business at that address; that he had never had notice or known of any change of the defendant's address,

and that when Mrs. Finn, the notary's secretary, inquired of him for information about the defendant's address, he remembered that the defendant had at one time been engaged in business on Main Avenue, Passaic, New Jersey, and not having received notice or known of any change of address, he presumed that the address was the same and gave that as the defendant's address to Mrs. Finn.

Mr. Rean, the credit manager of the bank, testified that the defendant's address was not stated or indicated anywhere on the note. He too, had a recollection that the defendant had at one time been engaged in the cut stone business on Main Avenue, Passaic, New Jersey:

"Q. Had you ever had knowledge of it (the defendant's address) prior to the due date?
A. I had a recollection that he had a business in Passaic, on Main Avenue, Passaic. When this note was presented, what shall we do? Here is Karl Knapp. He is in the cut stone business. If we thought he was out of town, we would have marked it so" (case, p. 35, ll. 29-35).

"Q. Why, on this particular note, did you have the notice of dishonor sent to Passaic?
A. Because we believed Karl Knapp lived in Passaic.

Q. And upon what did you base that belief?
A. As I said before, it was an understanding. We knew he was in business on Main Avenue, Passaic, at one time" (case, p. 36, ll. 18-25).

"Q. What did you say the belief was based upon, Mr. Rean? A. Based upon a recollection, I might say, that Mr. Knapp was in business on Main Avenue, Passaic" (case, p. 37, ll. 10-14).

"Q. Or at any time prior to the due date of the note? A. I knew there was a Passaic Cut Stone Company up there on Main Avenue.

Q. You did know that? A. I did know that" (case, p. 37, ll. 35-40).

"Q. What understanding did you have at the time this note became due? A. In Passaic" (case, p. 38, ll. 36-38).

"Q. Did the notary public in this case make any inquiry from you or to your knowledge from Mr. Pitman, as to the whereabouts of Mr. Knapp? A. Mrs. Finn may have come down and seen me on this note. I know what the testimony was the last time. She may have. I am inclined to think she did" (case, p. 38 bot., 39 top).

"Q. If there is no such notation on the back, underneath Karl Knapp's signature, then evidently Mrs. Finn did not make inquiry from you? A. I won't say Mrs. Finn did not make inquiry, but I will say if she did, I told her it was Passaic, New Jersey. I think she probably did. If there was anything different, outside of Passaic, New Jersey, I would have had a record of it.

Q. What did you say? A. If we thought it was Clifton or Garfield or Paterson, it would have been marked on the back of the note" (case, p. 40, ll. 8-20).

"Q. Do you tell us—yes or no, I want the answer—are you positive that Mrs. Finn did or did not make inquiry from you as to the post office address or whereabouts of this defendant? A. Well, considering all circumstances in connection with that note, I will say that she did speak to me" (case, p. 40, ll. 25-30; 41, ll. 1-5).

"Q. In other words, you relied solely upon what you remembered to be a cut stone company in Passaic, quite some time before the due date of this note? A. Yes, and conversations with the maker of the note.

Q. And did the maker of the note tell you that this man's business was on Main Avenue? A. Yes, sir" (case, p. 42, ll. 20-30).

Mr. Rean also explained that at the time of this transaction if a party's residence or business was

located in Passaic, the bank did not itself write his address upon the note, but if his business or residence was located outside of Passaic, such fact—his address—would be noted on the back of the note; in this instance, there was no such notation on the note and consequently the bank, pursuant to its custom, also assumed that the endorser's address was in Passaic (Case, p. 42, bottom; 43, ll. 1-20), so that Mr. Rean remembers distinctly that at one time the defendant was engaged in business under the name Passaic Cut Stone Company on Main Avenue, Passaic; that the maker of the note also once told him that that was the defendant's place of business; that he had never received notice or known of any change of such address, and that therefore, he presumed that there was no change of address; and in addition, since according to the custom of the bank, if the endorser's address was located outside of Passaic, the bank would note such fact—his address—on the back of the note—and that in this instance such fact was not noted on the note, and therefore he also was led to the belief that the address was Passaic. He has no personal recollection whether Mrs. Finn made inquiry of him regarding the defendant's address, but he is inclined to think that she did, he believes that she probably did. He also says if the bank had known that the defendant's address was outside of Passaic, New Jersey, that "we would have made a note of it" and "if we thought it was Clifton, or Garfield, or Paterson, it would have been marked on the back of the note."

Now, since Mr. Rean and Mr. Pitman, the officials of the bank who had charge of this transaction, had personal knowledge of the fact that the defendant's business address was at one time located on Main Avenue, Passaic, and that they had

never received notice or known of any change of address, they had the right to presume, as they say they did presume, that his address remained the same—that there was no change of address, especially in view of the fact that the defendant's address was not indicated or noted on the note.

Before turning to the law dealing with this subject, we call the court's attention to the fact that the defendant in his own testimony admitted that he was at one time engaged in business on Main Avenue, Passaic, under the name Passaic Cut Stone Company, but he says that he later moved his place of business to Main Avenue, Clifton, New Jersey, but he admits, however, that he never notified the bank of such fact—his change of address. Main Avenue is a through street running through both cities—Passaic and Clifton:

“Q. And you had at one time, and until you changed the location of your business to Clifton, or not, your business under the name of the Passaic Cut Stone Company on Main Avenue, Passaic? A. I still do it today.

Q. On Main Avenue, Passaic? A. Clifton.

Q. I mean you did one time have that business at Main Avenue, Passaic? A. I have.

Q. Located on Main Avenue, Passaic, next to Mr. Griswold's place of business, until you moved your business to Clifton? A. I did.

Q. And your trade name was the Passaic Cut Stone Company? A. Still is today.

Q. You never notified the bank your business moved to Clifton? A. Never did.

Q. Never furnished them with your address? A. Never did” (Case, p. 88, ll. 1-28).

In 5 Uniform Laws, Ann. at page 551, it is said:

“It has been held that where no address was added to the indorser's signature but she resided at the place where the note was dated,

and it did not appear that he residence was changed previously to the time of sending the notice, it would be assumed that there has been no change of residence up to that time, and consequently the mailing of notice to that place was sufficient as matter of law. *J. H. Mohlman Co. v. McKane*, (1901), 60 App. Div. 546, 69 N. Y. S. 1046."

In 10 R. C. L. Sec. 15, page 872, it is said:

"When the existence of a person, a personal relation, or state of things is once established by the proof the law presumes that the person, personal relation, or state of things continues to exist as before, until the contrary is shown, or until a different presumption is raised from the nature of the subject in question. (Citing many cases.' * * * Similarly when the existence of a residence at a certain place at a certain time has been established, it will be presumed to have continued, until the contrary is shown or until a different presumption is raised from the nature of the subject in question." *State v. Jackson*, 79 Vt. 504, 65 Atl. 657, 8 L. R. A. (N. S.) 1245" (and cases cited).

To the same effect is *Rixford vs. Miller*, 49 Vt., 319, where it was held that:

"when the residence of the defendants in that case was once established in the State of New York, it was presumed to continue there until the contrary was shown."

These cases were approved and the principle recognized and applied in *Sowles vs. Carr*, 69 Vt. 414, 38 Atl. 77.

In *Keith vs. Stetter*, 25 Kan. 100, it was held:

"It is a familiar rule that residence, once established, is presumed to continue there until it is shown to have been changed."

In 3 R. C. L., Sec. 482, page 1256, under the head, "Change of Place of Business or Residence", it is said:

"An indorser who changes his place of business or residence without the knowledge of the holder of the protested paper is bound by notice sent to his former place of business or residence, if the holder is not guilty of negligence in his failure to have knowledge of the change. (Citing cases). In such a case the holder, in the absence of any fact to put him on inquiry, can well assume that the indorser's residence continues where it formerly was. (Citing cases). He is not bound to go upon the street to ascertain a fact which he has the right to assume he already knows. (Citing cases). And it has often been held that an abandoned residence may be considered as still subsisting, if no new residence has been established, and if the holder of the note does not know of the change. (Citing cases). Indeed, if it is known that an indorser has abandoned his residence, and if upon reasonable inquiry the place of present residence cannot be ascertained, no notice at all need be given. (Citing authorities)."

Wigmore on Evidence, Vol. 1, section 437, page 772, says:

"When the existence of an object, condition, quality, or tendency at a given time is in issue, the *prior existence* of it is in human experience some indication of its probable persistence or continuance at a later period" * * *

And in the foot notes at page 706, cases are cited in which an inference is permitted to be drawn of the continued residence or non residence of a person in a particular place based upon his former residence or non-residence at such place.

At page 705, Professor Wigmore says:

"The prior or the subsequent existence of such a fact is always evidential to show its existence at a time in issue, upon the general experience that such facts involve a human attitude more or less continuous and permanent. The probability of continuance depends much, of course, on the nature of the specific fact and the circumstances of each case; and therefore, in setting a limit of time for the range of the evidence, the discretion of the trial Court should control. The principle is illustrated by many sorts of facts. Such evidence is receivable to show the *mode of conducting a business, the keeping of liquors illegally, the possession of goods, land, or money, the ownership of property, the existence of a debt, the condition of solvency, the condition of coverture, the condition of residence, the incumbency of office, and so on.*"

The Supreme Court of the United States has also decided that residence or domicile once acquired is presumed to continue until it is shown to have been changed.

Anderson v. Watt, 138 U. S. 694; 34 L. ed. 1078;
Mitchell v. United States, 21 Wall. 350;
 22 L. ed. 584.

According to these authorities, the defendant, who admits he changed his place of business without the knowledge of the bank—the holder of the protested note—is bound by the notice of dishonor sent to his former place of business, and in the absence of any fact to put the bank on inquiry it had the right to assume that the endorser's place of business continued where it formerly was. The various officials of the bank were not bound to

go upon the street to ascertain a fact which they had the right to assume they already know.

The Supreme Court, in its opinion, made no reference whatever to the fact that the evidence shows that Mr. Pitman and Mr. Rean knew that at one time the defendant was engaged in business on Main Avenue, Passaic, and that they had never received notice or known of any change of address, owing to the fact that the defendant, as he admits, never notified the plaintiff of his change of business address.

Moreover, this case was tried before the trial judge, without a jury, and his decision upon the facts is, of course, the same as the decision of a jury. There was competent legal evidence that the notary public, through his secretary, Mrs. Finn, who had charge of the protest of this note, exercised reasonable diligence to learn the defendant's residence or place of business, in the manner already stated. The trial judge's decision based on the evidence with regard to that question, being supported by competent legal evidence, cannot legally be reversed by the appellate court. The trial judge's decision upon the facts, supported by the evidence, may not legally be disturbed by an appellate tribunal.

In *Second Nat. Bank of Hoboken vs. Smith*, 91 N. J. Law, 531 (Court of Errors and Appeals), it was held:

"Where a notary makes inquiry at the bank where paper is payable, and receives information from the cashier as to the residence of the indorser, upon faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligent."
(Our italics.)

So in the case at bar, the notary public, through its secretary, made inquiry at the bank where the paper was payable, and received information from the note teller and from the credit manager as to the place of business of the endorser, upon faith of which the notary's secretary addressed the notice of protest, and the trial judge, sitting as a jury, is consequently justified in finding that the notary used due diligence.

In *Hazelton Coal v. Ryerson*, 20 N. J. Law 129, at page 132, this court held:

"Upon this principle, it has been the course of the court to submit the question of due diligence and reasonable notice, as a matter of fact, to the consideration of the jury, and not as a matter of law, to the opinion of the judges."
(Our italics.)

Now, guided by that decision of this court, the question of due diligence and reasonable notice was properly before the trial judge for consideration as a matter of fact, and cannot properly be reviewed by the Supreme Court as a matter of law, nor is it proper in view of that decision for the Supreme Court to disturb the trial judge's finding upon that question of fact.

In addition, the law is settled, that the holder of a promissory note is entitled to rely upon the diligence of the notary in inquiring for the address of a party obligated upon the instrument, and is not affected by want of diligence in the officers of the bank where the note was payable, and of whom inquiry was made.

The syllabus by the Court of Errors and Appeals in *Second Nat. Bank of Hoboken v. Smith*, *supra*, reads:

"A holder of a promissory note presented for payment and dishonored is entitled to rely

upon the diligence of the notary in inquiring for the address of a party obligated upon the instrument, and is not affected by want of diligence in the officers of the bank where the note was payable, and of whom inquiry was made." (Our italics.)

In *Herbert v. Servin*, 41 N. J. Law 225, it was held:

"Where a notary makes inquiry at the bank where paper is payable, and receives information from the cashier as to the residence of the indorser, upon faith of which the notary addresses the notice of protest, the jury are justified in finding that he has used due diligence." (Our italics.)

In *Herbert v. Servin*, *supra*, the facts were similar to the facts in the case at bar. In that case, a notary testified that his custom, whenever the residence of a party is not known to him personally, was to apply to the president or cashier of the bank where the paper is payable; he testified that he is quite sure he applied to Mr. Johnson, the cashier of the bank, for information concerning the residence of Mr. Servin, the endorser, and received the information which led him to direct the notice of protest to New York City. The court held:

"This was certainly a proper source of information concerning the place of business or domicil of parties doing business through the bank."

The court also observed in the same opinion as follows:

"In Barr v. Marsh, 9 Yerg. 255, and Harris v. Robinson, 4 How. 336, the fact that inquiries had been made at the bank was stated to be evidence of diligence in making inquiry."

In *Radin v. Creran*, 106 N. J. Law 460, the Court of Errors and Appeals held:

"In the case of the First Nat. Bank of Belmar v. Gray, 101 N. J. Law 179, 127 Atl. 201, it was held whether due diligence in ascertaining the address of an indorser and giving notice of dishonor as required by the statute were jury questions."

Controlled by that decision, since the question whether due diligence in ascertaining the address of the endorser and giving notice of dishonor as required by the statute were jury questions, how could the Supreme Court, an appellate tribunal, legally review the trial judge's decision on those jury questions, the trial judge sitting as a jury?

Another case in point is *Liberty Title & Trust Co. v. Sweeten*, 106 N. J. Law 313, where the syllabus by the Court of Errors and Appeals reads:

"S. A. Co. made its promissory note payable to its own order at bank of L. T. & T. Co., signed S. A. Co., J. S. Jr., Pres.; and same was endorsed, S. A. Co., J. S. Jr., Pres., J. S. Jr., P. P. S.; J. S. Jr., the president, then delivered the note to L. T. & T. Co. for discount, which was done, and informed the assistant officer in charge of the note department of L. T. & T. Co. of an address of the endorser, P. P. S., who was his brother; the notary on the due day, at the request of L. T. & T. Co., presented the note at, and demanded payment of, the L. T. & T. Co., which was refused as 'No provision (was) made for payment'; he then protested the same, and duly mailed a notice of protest the same day to P. P. S. endorser, at the address given. *Held*, the protest was good, and the mailing was good, and that the endorser, whether or not he received the notice, is liable."

The following excerpts from *Liberty Title & Trust Co. v. Sweeten*, *supra*, is also applicable to the case at bar:

"Due diligence was shown to the notary public in ascertaining the address of the endorser. See *Second National Bank of Hoboken v. Smith*, 91 N. J. Law 532, 103 A. 862, 1 A. L. R. 470, which seems to entirely control the instant case on this head. * * *"

So in the case at bar. Mr. Rean says that the maker of the note had informed him that the endorser's place of business was located on Main Avenue, Passaic. The notary protested the note and duly mailed the notice of protest to the endorser at the address given. Controlled by the case just cited, due diligence was shown on the part of the notary public in ascertaining the address of the endorser, he having inquired of two officials of the bank for information regarding the endorser's address, and having sent the notice to the address given by these officials, one of whom obtained such address from the maker of the note, especially in view of the fact that the endorser's address did not appear upon the note, as was the fact in the cited case.

In *Liberty Title & Trust Co. v. Sweeten*, *supra*, the court also held:

"The Negotiable Instruments Act (3 Comp. St. 1910, p. 3747), Sec. 108, provides:

"Where either party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

"I. Either * * * to the post-office where he is accustomed to receive his letters; or

"II. If he lives in one place, and have his place of business in another, notice may be sent to either place; or

"III. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

'But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.'

In this case the place given by the endorsers' brother as his address could properly be inferred to be any one of the places mentioned in subdivisions 1, 2 or 3 of the section of the act quoted.

There was no address of the endorser placed on the note. And as the brother who dealt with the bank and discounted it gave the endorser's address, and as the notice of protest was sent to that address and was never returned undelivered, the jury were entitled to infer that it was mailed and received. That it was received would alone satisfy the statute; but it did not have to be received, for if it were put en train for delivery by mail and miscarried, that also would nevertheless be good. The jury, however, had a right to believe that it was received."

Since the question of due diligence of the notary and of the mailing of the notices were questions of fact for the trial judge sitting as a jury and not questions of law, his decision on those questions of fact are not legally reviewable on appeal. *Marten vs. Brown*, 80 N. J. Law, 143, affirmed by this court in 88 N. J. Law, 599.

Section 112 of the Negotiable Instruments Act reads:

"Notice of Dishonor is dispensed with when after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged."

"Reasonable diligence is all that the law requires, and what is reasonable diligence depends on the circumstance of each case."

Brewster vs. Schraeder, 26 Misc. 480, 57 N. Y. S. 606.

In considering and deciding the appeal from the trial court, the Supreme Court dealt with the case as if it was brought up on a rule to show cause, and in reviewing the judgment, considered the weight of evidence and not whether there was any evidence to support the judgment. In this, the Supreme Court erred.

CONCLUSION.

For the foregoing reasons, we respectfully submit that the judgment of the trial court is legally correct, and that the trial judge's decision upon the questions of fact should be sustained, and that the Supreme Court erred in reversing the judgment of the trial court. We respectfully urge this court to reverse the judgment of the Supreme Court and affirm the judgment of the trial court, with costs.

FEDER & RINZLER,
Attorneys of Plaintiff-Appellant.

FEDER & RINZLER,
Of Counsel.

28 OCT. 1. 1932

*Filed after the Oral Argument
by leave of Court*

New Jersey Court of Errors and Appeals

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff-Appellant,

vs.

KARL KNAPP,
Defendant-Respondent.

On Plaintiff's
Appeal from
Supreme
Court.

BRIEF OF DEFENDANT-RESPONDENT.

Statement of Facts.

On October 21st, 1929, the plaintiff here instituted an action in the Passaic District Court against Frank M. Griswold, Ira M. Mastenbrook and Karl Knapp, this defendant, which said action was based on a promissory note executed by Frank M. Griswold to the order of himself and endorsed by him, together with Ira M. Mastenbrook and Karl Knapp, the defendant-respondent herein, and which said note was discounted with the plaintiff corporation. Said note was not paid at maturity. On November 6th, 1929, said case was brought on for trial at the Passaic District Court, and the summons and state of demand filed therein is exhibited on pages 1, 2, 3 and 4 of the State of Case. The Judge of the Passaic District Court, after hearing all the evidence adduced in the case on the part of the plaintiff and the defendant, rendered judgment in favor of the plaintiff and against the defend-

ants Ira M. Mastenbrook and Karl Knapp in the sum of \$308.36. From said judgment an appeal was taken to the Supreme Court of New Jersey and said appeal resulted in a reversal of the judgment of the Passaic District Court insofar as the same pertained to the defendant Karl Knapp. A rule of reversal entered in the Supreme Court was filed on May 5th, 1930, with the Clerk of the Passaic District Court. (See Case, p. 6, ll. 37-40; Case, p. 20, ll. 10-40; Case, p. 21, ll. 1-15). On July 16th, 1930, the District Court ordered said cause to be placed on the calendar for trial on July 30th, 1930, over the objection of the defendant's counsel, notwithstanding the fact that a special appearance had been entered by him contesting the Court's jurisdiction over him, in view of the aforementioned reversal by the New Jersey Supreme Court. On September 12th, 1930, the plaintiff herein proceeded with a retrial of this cause, over the objection by the defendant-respondent who questioned its right so to do, inasmuch as his liability thereon was already adjudicated by the Supreme Court. This contention was overruled by the trial Judge and the Court proceeded to retry this case on the original suit papers, (See Case, pp. 1-2-3 and 4) no new process having been re-issued. This the defendant contended did not give the Court jurisdiction to hear said cause. Notwithstanding such objection, the Court proceeded with the trial of said cause and entered judgment in favor of the plaintiff and against the defendant Karl Knapp.

The evidence disclosed that on the due date of the note in question, to wit, August 13th, 1929, the said promissory note was protested by one, William F. Gaston as is shown by Exhibit P-1 (Case, pp. 96 and 97). The defendant-respond-

ent contended and testified that no notice of dishonor or non-payment of the said note was given to him in any form or manner. (Case, p. 84, ll. 11-12; case, p. 85, ll. 26-35). On behalf of the plaintiff it was adduced that the notice was given by mail. Said notice, through the Notary Public was addressed to the defendant-respondent, Karl Knapp, Passaic, New Jersey, and mailed in the United States mail (see Case, p. 48, ll. 13-18; Case, p. 44, ll. 20-29; Case, p. 45, ll. 1-16). Karl Knapp's testimony further disclosed that he resided and still resides at #32 Donald Street, Clifton, New Jersey, at said time; said defendant had resided there approximately seven years and that he had maintained a place of business at the corner of Main and Milton Streets, Clifton, New Jersey, for a period of ten years; defendant further testified that he customarily received his mail through the Clifton Post Office and no other post office. (Case, p. 84, ll. 14-30). One Mrs. Finn, the secretary of the Notary Public whose name was signed to the certificate of protest (see Exhibit P-1) said that the notice was mailed to Karl Knapp in the Post Office in Passaic at eleven o'clock in the morning of the 14th day of August, 1929, (See Case, p. 47, ll. 38-40 and Case, p. 47, ll. 1-12), that neither the Notary Public William F. Gaston, who protested the note in question or his secretary made any inquiry of any kind or character to ascertain the Post Office Address, place of residence, or business address of the defendant-appellant, with the exception of an inquiry by Mrs. Finn, the Notary Public's secretary of one Mr. Pitman, a note teller in plaintiff's banking institution (See Case, p. 48, ll. 18-23, Case, p. 49, ll. 15-17). A further undisputed fact appears, and that is, upon the reverse side

of the promissory note in question (Exhibit P-1, Case, pp. 96-97) underneath the endorsement of Frank M. Griswold, one of the defendants, appears the address of Frank M. Griswold, he being the maker of the note in question, said address being No. 2131 Boulevard, Jersey City, New Jersey, and no address appearing upon the note in question, insofar as the defendant-appellant is concerned. It further appeared by the testimony adduced by plaintiff's witness, Frank M. Griswold, that he, Griswold, dispatched a telegram to Karl Knapp at No. 32 Donald Street, Clifton, New Jersey, (Case, p. 53, ll. 1-13), and it was further testified by Mr. Griswold that he did not remember the nature of the contents of the telegram, excepting that it pertained to the note, and also testified, that he, Griswold, did not mention in said telegram the fact that the said note was protested (Case, p. 53, ll. 12-26).

It was further testified by the wife of Frank Griswold, Luella Griswold, that a few days after the note in question became due and protest notice was received by her husband, she called to see Mr. Knapp at his home in Clifton, New Jersey; Mrs. Griswold said on cross-examination that this might have been three or four days after the note was due. This fact is contradicted by Mr. Knapp. Mr. Knapp testified that no telegram was ever received by him at all (Case, p. 87, ll. 10-15). It being further testified by Mr. Knapp that Mrs. Griswold called at his home five days after the 13th day of August, 1929, (Case, p. 83, ll. 18-19).

The defendant took an appeal from the judgment which the plaintiff recovered at the second trial and the Supreme Court reversed that judgment on the ground that there was no evidence

produced in the case showing that the Notary exercised any diligence in attempting to learn the address of the endorser. This was the second reversal rendered by our Supreme Court, the first being entitled and known as *Passaic National Bank vs. Griswold, et als.*, 8 N. J. Misc. 262, 149 Atlantic 629. In again reversing this judgment in favor of the defendant, Karl Knapp, the Supreme Court said "he, (notary) made no inquiry of the maker, the officers of the bank, or anyone else, whether connected with the transaction or not, so that notice of dishonor could not be dispensed with under section 112 of the negotiable instrument act."

No inquiry of any kind was shown to have been made to discover whether notice of protest could reach Knapp, outside of an inquiry made by the secretary to Perne Pitman, the note teller, and his response was to mail the notice to Knapp in Passaic. Pitman had no knowledge of the residence or place of business of Knapp.

POINT I.

There is no proof of the giving of notice of non-payment or dishonor of the note to this defendant in accordance with the statute in such case made and provided.

The evidence in this case is practically undisputed as offered by both plaintiff and defendant; and the plaintiff under our statute must before it can recover against an endorser on a promissory note, prove certain essential facts as required by our negotiable instrument act, to wit: that notice of non-payment and dishonor of the

note in question be given to the endorser sought to be charged with the liability; and that such notice must be given as soon as the instrument is dishonored (3 C. S. page 3747, par. 102), and our statute provides among other things in paragraph 103, C. S., page 3747, as follows:

“Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours, on the day following;

2. If given at his residence, it must be given before the usual hours of rest on the day following;

3. If sent by mail, it must be deposited in the post-office in time to reach him in the usual course on the day following” (P. L. 1902, p. 600).

The evidence in this case discloses that Notary Public, William F. Gaston, through his secretary, Mrs. Finn, says that there was mailed to the defendant Karl Knapp a notice of dishonor for non-payment of the note in the case at bar, said notice being enclosed in an envelope addressed, Karl Knapp, Passaic, New Jersey, (Case, p. 44, ll. 20-27). The testimony of Mrs. Finn, the Notary Public's secretary, shows that the said mailing, if it took place at all, took place at about eleven o'clock in the morning of August 14th, 1929, a day after the note in question became due, said note being due on the 13th day of August, 1929. Assuming that this defendant-appellant resided in the City of Passaic; in view of the fact

that Section 103 of the negotiable instrument Act requires that the said notice, if sent by mail, must be deposited in the Post Office in time to reach him in the usual course on the day following, even if such were the case, the giving of notice in this case was improper, and absolutely illegal, in that there was no proof adduced by the plaintiff tending to show that the mailing of dishonor at 11 o'clock on August 14th, 1929, would in the regular course of mail be delivered to a person residing in the same city, wherein the plaintiff is situate, on the day following, to wit, on the 14th day of August, 1929. However, in the case at bar, the testimony adduced shows that this defendant, Karl Knapp, resided in Clifton and not in Passaic (Case, p. 84, ll. 13-17); that, as a matter of fact, this defendant had resided in the City of Clifton for seven years and had had his place of business in Clifton, New Jersey, for about ten years (Case, p. 84, ll. 15-23), and in view of the fact, which fact is undisputed, that the said defendant resided and resides in the City of Clifton, and has a place of business in Clifton, and in view of the further fact that if this notice of dishonor or non-payment was mailed at all, it was mailed in an envelope addressed to Karl Knapp, Passaic, New Jersey, the mailing of the said notice was clearly an improper mailing and contrary to the requirements of our Statute. Whilst it is true that a miscarriage in the mailing of the notice if *duly* addressed and deposited in the post office is termed under our statute the giving of due notice (Section 1053, Compiled Statute, p. 3737). Yet, in this case, was the envelope in which this notice of dishonor was contended to be mailed duly addressed? It clearly was not, and could not be said to have been duly addressed,

in that Karl Knapp lived in Clifton, was accustomed to receive his mail in Clifton, through the Clifton Post Office, and in truth and fact, this notice was, if mailed at all, addressed to Karl Knapp, Passaic, New Jersey, and mailed at the Post Office in Passaic, New Jersey. (Case, p. 84, ll. 20-31). In the case of *Peoples Bank vs. Allen*, 94 N. J. L. 355; 110 Atl. Reporter, p. 704, Justice Parker speaking for the Supreme Court held that, addressing a notice to the defendant Louis A. Allen, without an address was an improper mailing and was not the giving of such notice as the negotiable instrument act requires to be given to an endorser before he can be charged with liability on a promissory note. It is well settled that a written notice of dishonor of a note to the party to be charged, *addressed* to him *properly* and put into the post office in *due season* amounts to what is termed due diligence, even if the notice should not have been received by the addressee (*Second National Bank of Hoboken vs. Smith*, 103 Atl. 863; 91 N. J. L. 531.) In the case known as *Marvitz Estate*, 133 Atl., p. 220, a case decided by the Pennsylvania Courts, it was held that the official act of protesting a note is without validity where the wrong address of the endorser is given and he fails to receive notice.

Plaintiff attempted to sidestep the operation of the Statute pertaining to the requirements of mailing, by testimony that a telegram was dispatched by Frank Griswold, the primary debtor, the maker of the note, which is the subject matter of this suit. This telegram, Griswold testified was forwarded by him to Karl Knapp, this defendant-appellant, the present defendant-respondent, to his home in Clifton. Section 90 of

the Negotiable Instrument Act of this State provides as follows:

“This notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up *would have a right to reimbursement* from the party to whom the notice is given.”

This provision in very clear language can mean but one thing, and that is, that the person who gives the notice must be such person who at the time of the giving of the notice must be compelled to pay it to the *holder and* would have a right to reimbursement from the party to whom he sends such notice. Griswold being the maker of the note, and Karl Knapp being the endorser thereon for the accommodation of the said Frank Griswold, certainly cannot be said to be such a person as would be permitted by Section 90 to send notice of non-payment. Griswold was the primary debtor, and being the maker of the note he first of all was inherently liable to pay the same; not by reason of the operation of any portion of the Negotiable Instrument Act, insofar as the fixing of liability, but on the ordinary basis of contract, existing between a lender and a borrower. Then, again, the telegram which was testified to as having been sent by Mr. Griswold to Mr. Knapp was not the giving of such notice as was required by the negotiable instrument act, because there was no proof that the telegram was received within the time required by the Statute for the giving of such notice. The only testimony in the case pertaining to the receiving of the telegram was that by Mrs. Griswold. Mrs. Griswold testified that one, two, three, or four days after

the protest of the note, she called at the home of Mr. Knapp and saw him hold the telegram (Case, p. 74, ll. 20-32). Mr. Knapp, on the other hand, testified that he received no telegram, and that the call made by Mrs. Griswold to him at his home, took place five days after the due date of the notice in question. (Case, p. 83, ll. 10-19).

We contend further that there is no testimony adduced by the plaintiff tending to show that the contents of the telegram contained a notification that the note was protested. On the contrary, Frank Griswold on cross-examination testified that all he could remember about the words in the telegram, was that it pertained to the note and further testified emphatically that he did not tell him (Karl Knapp) that the note was protested. (Case, p. 61, ll. 25-36.)

The Negotiable Instrument Act, Section 96, provides that the notice may be in writing or merely oral and may be given in any terms which sufficiently identifies the instrument and indicates that it has been dishonored by non-acceptance or non-payment; it may in all cases be given by delivering it personally or through the mail. (P. L. 1902, p. 600). There is no testimony offered by the plaintiff showing that the telegram contained an identification of the instrument, nor is there any testimony to show that the contents of the telegram informed the defendant-appellant of the protest or non-payment of the note in the case at bar, on the contrary, Griswold admits that he did not say in the telegram that the note was protested.

It cannot be contended that the giving of notice in this case could be dispensed with, because as was stated by the Supreme Court in its opinion in disposing of the appeal formerly prose-

cuted in this case (149 Atl., p. 629, 8 N. J. Misc. 262):

“By reason of the failure of the Notary Public who might know the post office address or the whereabouts of the defendant-appellant, Section 112 of the Negotiable Instrument Act does not apply in this case.”

The Notary Public's secretary testified that she inquired of the note teller at the bank, one Mr. Pitman. I call this Court's attention to Mr. Pitman's testimony in which, on page 29 of the State of the Case, ll. 10-13, Mr. Pitman testified that he had no personal knowledge of the location of Mr. Knapp's business, and further testified that at one time ten or twelve years ago, and for a while thereafter, he had noticed a business on Main Avenue, Passaic, known as the Passaic Cut Stone Co.; and further, that he presumed that Mr. Knapp's place of business was still in Passaic (Case, p. 29, ll. 16-27). Mr. Pitman further testified that he saw a sign and understood it was the Passaic Cut Stone Co. about twelve years ago (Case, p. 32, ll. 13-40); and further testified that he, the note teller, made no attempt whatever to ascertain the post-office address or whereabouts of Mr. Knapp, at the time the note was presented to him for payment. It appears from Mr. Pitman's testimony that the bank had never had any business before with Mr. Knapp, with the exception of his endorsement upon this note (Case, p. 33, ll. 37-40), and in view of Mr. Pitman's lack of knowledge as to the business or post office address and whereabouts of this defendant-appellant, inquiry of him as to the address of this defendant, is, we contend, analogous to inquiry of an ordinary person on the highway who would have no particular knowledge of the

whereabouts of any person other than with whom he or she might have had business or social relations. Making inquiry of a note teller as to the address of a person with whom the bank had never had any business whatever is equivalent, we contend to making no inquiry at all. It was testified by Mr. Knapp, that the Passaic Cut Stone Co., and Karl Knapp are listed in the New Jersey Bell Telephone Directory and in the City Directory of the City of Clifton, (Case, p. 86, ll. 19-40, p. 87, ll. 1-17). A slight effort on the part of the Notary Public, such as looking in the telephone directory or the City directory or inquiry of the maker, Frank Griswold, the man to whom the bank loaned the money, the man to whom the bank extended the credit, would have supplied the proper post office address or whereabouts of the defendant-appellant. The Notary Public in this case failed to do that, failed to make any inquiry whatever from any one who might or could reasonably be expected to know the whereabouts of the defendant, and in view of this lack of diligence the failure to give notice to this endorser discharges the defendant-appellant and the present defendant-respondent from liability. We urge further that the proof shows the notice if at all was not addressed to the nearest post office station, Clifton, having a post-office and the defendant being a resident of Clifton, and his business being in Clifton.

Further, in connection with the argument, as to whether or not due diligence was exercised in this case, in ascertaining the correct address of this defendant and of the sending of the notice of dishonor, we submit for this Honorable Court's consideration and approval, the following:

3 *Ruling Case Law*, pp. 1254 and 1255, Section
481. *Inquiries respecting address of parties:*

If the holder does not know what is the place of business or residence of the drawer or endorser, he is under obligation to endeavor to inform himself thereof by inquiry, or resort to other source of information, as for example a directory of the place

* * * . And if upon inquiry of a person likely to know, such an answer is received as leaves no reasonable doubt upon the mind of the inquirer that the endorser's residence is ascertained, no further inquiry is necessary. The inquiries should be pursued till all sources of information are exhausted, unless a satisfactory answer is sooner received, but when a satisfactory answer is received, the inquiries may stop * *

The duty to give notice of dishonor of a note, and in pursuance thereof to use due diligence to discover the residence of the endorser, arises subsequently to the dishonor of the note, and, therefore, devolves upon a holder for collection; and such being the case, it is not an element of due diligence that the owner should, previously to the dishonor of the note, have communicated his knowledge of the endorser's residence to the holder for collection. If any precaution against mistake in sending a notice of dishonor to the proper residence of the endorser of a note is to be exercised before dishonor, it should be by the indorser himself, by appending to his endorsement the place of his residence, and if he neglects this *he may rightfully be presumed to be willing to leave the matter of notice to the contingencies of due diligence*. If a holder for collection, or his servant, or a notary, cannot learn the residence of the endorser by due diligence, he can and should send the notice to the owner to be

forwarded. If there is a misdelivery of the notice, through lack of diligence by the holder in ascertaining the proper place of delivery, the endorser is discharged.

In discussing the fact as to whether or not the Supreme Court had the legal right to reverse the judgment by finding as a matter of law, that no due diligence was exercised in this case, we contend that that right existed. The facts in the case as referred to above clearly indicate just what efforts and inquiry were made in determining and learning the address of this defendant. As a matter of fact, these facts were not disputed. Our contention is that the efforts and inquiries made were not sufficient to constitute due diligence in accordance with the Statute in such case made and provided, and where the facts are ascertained it is the duty of the Court as a matter of law, to determine whether reasonable and due diligence has been used, and in support of this contention, we cite for this Honorable Court's consideration and approval, *3 Ruling Case Law*, page 1255, Section 481, to wit:

“When the facts are ascertained, it is the duty of the Court, according to many cases, to determine, as a question of law, whether reasonable diligence has been used; the question, it is held, should not be submitted to the jury as a question of fact.”

In view of the above citation, we again submit that the facts which were brought forth in the trial of this cause and which we contend show a lack of due diligence on the part of the plaintiff, were not disputed by this defendant, and, therefore, being ascertained, it became a question of law as to whether or not the reasonable and due

diligence had been exercised. It, therefore, was within the right and jurisdiction of the Supreme Court to reverse the judgment rendered in the trial Court on the basis of its finding to the effect that no due diligence was used in this instance.

It is urged that Mrs. Finn, the Notary's assistant, who had charge of the protest of this note, made inquiry of Mr. Pitman, the note teller and also of Mr. Rean, the Credit Manager of the Bank. This is not so. Mrs. Finn testified as follows:

"Q. Did you make an attempt to find out if he lived in Jersey City or Hoboken or Clifton? A. I inquired of Mr. Pitman as to his address.

Q. Did you inquire of any one else? A. I don't recall, but I probably inquired of Mr. Rean.

Mr. Berr: I ask that that be stricken out, on the ground that probabilities are not the concern of this Court. I want an answer of did she, or did she not.

Mr. Rinzler: I think she should be asked her best recollection.

Mr. Berr: Probabilities are not evidence, and I should not be forced to accept those answers.

The Court: Strike it out as to the probability.

Q. Would you say that you did or didn't, or don't you recall? A. I don't recall.

Q. Now then, what did Mr. Pitman say to you concerning the address? A. That it was Passaic, N. J. (Case, page 48, ll. 18-40.)

Conclusion.

For the foregoing reasons, we respectfully submit that the judgment of the trial Court is erroneous and that the Supreme Court did not err in reversing the judgment of the trial Court. We, therefore, respectfully urge this Court to affirm the judgment of the Supreme Court, with costs.

Respectfully submitted,

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MORRIS M. SPINDEL,
Of Counsel.

28 OCT. T. 1932

*Filed after the ~~Oral~~ Argument
by leave of Court.*

New Jersey Court of Errors and Appeals

PASSAIC NATIONAL BANK AND
TRUST COMPANY,
Plaintiff-Appellant,

vs.

KARL KNAPP,
Defendant-Respondent.

On Plaintiff's
Appeal from
Supreme
Court.

REPLY BRIEF FOR PLAINTIFF.

POINT I.

The trial judge did not err in allowing the plaintiff to proceed with the trial of this case after the first judgment, which it had recovered against the defendant, was reversed by the Supreme Court.

In dealing with this subject, the Supreme Court in its opinion (at page 106) said:

“No error is found in the Court below having retained jurisdiction of the case, after the previous opinion herein and remittitur, without new process. While the Supreme Court reversed the judgment in favor of the plaintiff, there was no direction of a verdict in favor of the defendant.”

POINT II.

The failure to examine the telephone directory does not as matter of law constitute lack of exercising due diligence to ascertain the endorser's address.

At the oral argument of this case before this court, counsel for the defendant conceded that the defendant's telephone was not listed in the Passaic directory, so that it would have been futile for a representative of the bank, or the Notary, or his assistant to have looked there.

It surely cannot be argued that due diligence, as matter of law, requires a person to look in the directory under every city or every municipality in the state. If a person is obliged, as matter of law, to search a telephone directory for an endorser's address, then he might have to look through the directory of every state and of every municipality therein.

The endorser's address was not added to his signature. In the absence of contrary information, the bank and the Notary had the right to assume that the endorser's address was Passaic, New Jersey, particularly in view of the fact that (1) the note is dated "Passaic, N. J.", and that (2) two representatives of the bank had personal positive knowledge that at one time the endorser had been engaged in business in Passaic, and had had no notice or knowledge of any change of address, as the defendant himself concedes.

The law does not require a person to do any futile act, for example, it does not require a person to look in the telephone directory of the City of Passaic when the conceded fact is that his phone was not listed there.

POINT III.

The notice of dishonor was sent in due time as required by the statute.

As demonstrated on page 5 of the brief for the plaintiff already filed, Mrs. Finn, the notary's assistant, testified that the notices of dishonor were enclosed in envelopes, with postage prepaid, bearing the notary public's return address, and were deposited in the regular mail box in the Passaic branch of the United States Post Office, and *none of them were returned*; and that she personally knows, from her own experience, that mail sent from Passaic at about eleven o'clock in the morning will be delivered at Passaic the same day (Case, p. 45, ll. 20-40; p. 46, ll. 1-40; p. 47, ll. 1-20).

“Q. You live in Passaic for how long?

A. About twenty-six years.

Q. Have you received mail mailed in Passaic, in the morning, the same day?

Objection to the question was overruled.

Q. Mrs. Finn, from your own personal knowledge and experience, when a letter is mailed at the United States Post Office at Passaic, in the morning, does it ordinarily reach the address on the same day? A. It does.

Q. That has been your experience for the past— A. Mailed as late as twelve o'clock.

Q. For the past ten years, that has been your experience? A. Last fifteen.

Q. When were these notices of dishonor, notifying the parties of the dishonor of the note on its due date when presented, referring to note Exhibit P-1, dropped in the United States mail box in the Passaic

branch? A. At eleven o'clock on August 14th.

Q. 1929? A. Yes; that is eleven in the morning.

Q. Eleven o'clock in the morning of August 14th, 1929? A. That is right.

Q. Which would be the morning following the maturity of the note? A. Right.

Q. Were any of the notices returned? A. No.

Q. Were they all enclosed in envelopes addressed as you have testified, and the envelopes bearing the return address of the sender, with United States postage prepaid? A. Yes, they were."

(Case, p. 45, ll. 20-40; p. 46, ll. 1-40; p. 47, ll. 1-20).

POINT IV.

Due diligence was exercised in attempting to ascertain the endorser's address and in the mailing of the notice to the endorser.

Under Point 1 of their brief, counsel for defendant cite *Peoples Bank vs. Allen*, 94 N. J. Law, 355. That case is not applicable to this case. In that case the notice of protest was mailed in an envelope addressed to the endorser as follows: "Lewis A. Allen", but did not specify the municipality or any address. It merely read, "Lewis A. Allen." The Supreme Court said with regard to that:

"But, if accepted, either by itself or in connection with the notarial record, it cannot possibly show more than that a notice was mailed with postage prepaid, addressed to 'Lewis A. Allen'. That is no notice at

all, for the want of some address at which it should be delivered."

In the case at bar the notice was addressed to "Karl Knapp, Passaic, New Jersey". It was addressed exactly to the address furnished by the representatives of the bank to the notary's assistant, Mrs. Finn, when she inquired of them about the endorser's address, both of them (Mr. Rean and Mr. Pitman) having told her that Mr. Karl Knapp's address was Passaic, New Jersey, and acting strictly in accordance with that information, and relying thereon, she addressed a notice of dishonor to Karl Knapp, Passaic, New Jersey. Thus it is clear that *Peoples Bank vs. Allen*, supra, is distinguishable from the case at bar.

At the oral argument, the learned Chief Justice inquired whether if no better or other address were known, it would be proper to send a notice of dishonor to an endorser at New York City, without giving the street number. We have examined the authorities dealing with this subject and find that they hold that the notice may be so addressed if no better address is known.

"Where the indorser resided in the City of New York but did not add his street address to his indorsement a notice to him addressed 'New York City', and properly mailed was held sufficient. *McGrath v. Francolini*, (1915), 156 N. Y. S. 980, *E. I. Dupont de Nemour Powder Co. v. Rooney*, (1909) 63 Misc. 344, 117 N. Y. S. 220.

Cited in 5 Uniform Laws Annotated, (Negotiable Instruments) p. 550.

In *E. I. Dupont De Nemour Powder Co. vs. Rooney*, 63 Misc. Rep. 344, 117 N. Y. S. 220, the court held:

“The defendant did not add his address to his signature upon the note. An agent of the plaintiff testified that he did not know the residence of the defendant, although the evidence shows that the plaintiff did know that the defendant indorsed the note in New York City. The defendant testified that he had been doing business with the plaintiff for 15 years, and that it had frequently corresponded with him at his New York City address. This testimony has not been contradicted.

“There is no evidence to show that the plaintiff made any effort to ascertain the defendant’s address. The only proof presented is that their agent, not knowing the defendant’s address, mailed the notice of protest to the defendant, in the name of the maker of the note, addressed to the residence of the maker. *If the plaintiff, after using due diligence, was unable to ascertain the indorser’s residence, or place of business, I think that, under the circumstances disclosed in this case, the notice would have been sufficient if it had been addressed to the defendant at ‘New York City’. By specifying a particular address, which was not the indorser’s residence or place of business, the plaintiff released the indorser.*” (Citing cases). (Italics ours).

The case of *E. I. Dupont De Nemour Powder Co. vs. Rooney* is cited and followed in *McGrath vs. Francolini, et al.*, 156 N. Y. S. 980; 92 Misc. Rep. 359.

In *Cumming vs. Roderick*, 28 App. Div. 253, 50

N. Y. S. 1053, affirmed in 167 N. Y. 571, 60 N. E. 1109, it was held:

“If the notary had directed the notice to the indorser at the City of Brooklyn, without limiting or specifying any particular place in that city at which the letter was to be delivered, the notice would have been sufficient, within the first of the three authorizations of the third section of the act of 1857.”

In *Mohlman Co. v. McKane*, 69 N. Y. S. 1046, cited in Brannans Negotiable Instrument Law (3rd ed.) p. 300, it was held:

“There was no address added to the defendant’s indorsement. The notary mailed notice of protest to “Fanny, and to John Y. McKane, Atty.” It matured October 6th, 1899. John Y. McKane, the defendant’s husband, died September 5th, 1899, before which date the defendant lived with him at Sheepshead Bay. After his death—but how long after is not stated—she moved from Sheepshead Bay. As it did not appear that the defendant’s residence was changed previously to the time of sending the notice, it was to be assumed that there had been no change of residence up to that time, and consequently the mailing of notice to Sheepshead Bay was sufficient as matter of law.”

It is important to keep in mind in considering these cases, that in the case at bar, the endorser’s address was not added to his signature, and that when the notary’s assistant inquired of the representatives of the bank for the endorser’s address, they informed her that it was Passaic, New Jersey, they relying on the fact that they had personal positive knowledge that at one time the

endorser's place of business was located in Passaic, New Jersey, and they had never had any notice or knowledge of any change of address, and this is conceded to be the fact by the defendant himself.

Of course, if Knapp's place of business or residence had never been in Passaic, the law applicable thereto is otherwise. For example, in *Fonseca vs. Hartman*, 84 N. Y. S. 131, the court said:

"The notary's clerk sent it (notice of protest) as we have seen, simply to 'Clarence Hartman, New York City, New York', without, apparently, having made the least inquiry to ascertain *if defendant lived, or ever had lived, or was sojourning in this city*. The case of *Mohlman Co. v. McKane*, 60 App. Div. 546, 69 N. Y. Supp. 1046, does not apply here. *There it was affirmatively shown that defendant had resided at Sheepshead Bay, and the court held that, in the absence of any proof to the contrary, the presumption was that there had been no change of address up to the time of sending the notice. But in the case at bar there is no evidence as we have already intimated, that defendant lived, or ever had lived, in this city, or was sojourning therein.*" (Italics ours).

In *Re Marwitz's Estate*, (Pa.) 133 Atl. 220, cited by respondent, does not apply to the case at bar. In that case, although the endorser lived on Sixteenth Street at the time the indorsements were executed, yet it was known to the holder that he had died in the meantime. The court held that this was a fact which should have led to inquiry as to the proper address to which notice should be sent.

Counsel for defendant cite 3 Ruling Case Law,

p. 1254 and 1255. That section contains the following statement:

“If any precaution against mistake in sending a notice of dishonor to the proper residence of the endorser of a note is to be exercised before dishonor, it should be by the indorser himself, by appending to his indorsement the place of his residence, and if he neglects this *he may rightfully be presumed to be willing to leave the matter of notice to the contingencies of due diligence.*”

It is immaterial that the endorser claims that he did not receive the notice. The due mailing of the notice raises a presumption of receipt. *Peoples Bank vs. Allen*, supra.

Section 105 of the Negotiable Instruments Act, 3 Comp. St. 3737, reads:

“Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.”

And Section 112 reads:

“Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.”

CONCLUSION.

We respectfully submit that the judgment of the trial court should be affirmed, and that the judgment of the Supreme Court reversing the judgment of the trial court should itself be reversed with costs.

Respectfully submitted,

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Attorneys of Plaintiff-Appellant.

FEDER & RINZLER,
Of Counsel.

