

intended to give the note to the defendant. The intent of a person to do or not to do any given thing can only be shown by his acts, declarations and conduct, and when declarations are introduced in evidence tending to show such intent, other and subsequent declarations tending to show a contrary intent, made prior to the consummation of the act, are admissible for the purpose of enabling the jury to determine what in fact the name of the person was, and thus making it probable or improbable that the act, whatever it may be in controversy, was consummated in accordance with the expressed intent of the party. This class of evidence constitutes an exception to the general rule, and may or may not be admissible, according to the circumstances of each particular case. It is difficult to establish a general rule applicable to all cases. The circumstances under which the declaration is made, its possible object, and whether made with an evident design and purpose, may affect its admissibility, and certainly will have an important bearing on the weight to be attached thereto. In the case at bar we discover no suspicious circumstances indicating an object or purpose on the part of the plaintiff except to express to a relative, with whom he was visiting, his then intention in relation to the note and what he intended to do with it, contradictory of and to any previous intent he may have had to give it to the defendant. Of course, if a controversy had arisen at the time the declaration to Mathews was made between these parties as to the proposed gift or intention to do so—if such intent amounted to a vested right—a different rule might prevail. The foregoing views, to a greater or less extent, are sustained by the following authorities: *Darby v. Rice*, 2 Nott & McC. 596; *Miller v. Eatman*, 11 Ala. 609; *Stone v. Stroud*, 6 Rich. Law, 306; *Whitney v. Wheeler*, 116 Mass. 490; *Whitwell v. Winslow*, 132 id. 307; *Joyce v. Hamilton*, (Ind.) 12 N. E. Rep. 294; *Shailer v. Bumstead*, 99 Mass. 112; *Barthelemy v. People*, 2 Hill. 248, note. Counsel for the defendant have cited many cases in support of this theory, but we think they are all distinguishable. In some the declaration was subsequent to the gift, and in none of them, we think, was the declaration sought to be introduced in evidence because contradictory to or as bearing on the question as to the existence of an unexecuted intent."—*Albany Law Journal*.