


No. 13514

Supreme Court of Illinois

Ward.

vs.

Williams.

71641  7

STATE OF ILLINOIS,

SUPREME COURT

Third Grand Division

No. 235.

Ward

23

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86

1351

Chicago, May 13. 1861.
Hon. J. Deaton, C. J.
Ottawa Ill

Dear Sir - In the case of
Ward v Williams No. 235, we have not
been furnished with the appellants brief
of points until this P.M. We will
prepare ours in reply as soon as pos-
sible and forward them, which we
hope may be in time to have the
case disposed of during the present
term.

Yours truly
Joshua Thomas & Roberts
attys for appellee

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United States of America }
State of Illinois Cook County } ss

Pleas before the Honorable the Judges of the
Superior Court of Chicago within and for the
County of Cook and State of Illinois at a
regular term of the said Superior Court of
Chicago begun and held at the Court House
in the City of Chicago in said County and
State on the first Monday being the third day
of December in the year of our Lord one
thousand eight hundred and sixty and of the
Independence of the United States of America
the Eighty fifth.

Present The Honorable John M. Wilson, Chief Justice
of the Superior Court of Chicago
Wm H. Higgins and Grant Goodrich, Judges
Carlos Stawen, . . . Prosecuting Attorney
Anthony C. Hessing Sheriff of Cook County

Attest

Walter Kimball . . Clerk.

Be it remembered that heretofore to wit on the twenty
third day of February A.D. Eighteen hundred and fifty
nine came Joseph M. Williams President for the use of
the Southern Bank of Indiana by Gookins Thomas &
Roberts his attorneys and filed in the Office of the Clerk
of the Superior Court of Chicago, Precept & Affidavit
for Attachment; Which said Precept & Affidavit is in
the words and figures as follows to wit:

"State of Illinois

Cook County Court of Common Pleas.

Joseph M. Williams, President

for the use of the Southern Bank

of Indiana

vs

Clerk B. Ward

Respond on the case

upon promised

Damages of \$3000

The Clerk of the Cook

County Court of Common Pleas will please issue a writ
of attachment against the property of the above named
defendant in the above entitled cause. Feb 23, 1859

Gookins, Thomas & Roberts

Plffs Atty's."

"State of Indiana

Vigo County ss.

Joseph M. Williams being duly
sworn says he is President of the Southern Bank of Indiana

and as such President is the holder of a Bill of Exchange drawn by one L. C. Lewis dated Terre Haute, Ind., January 28, 1858 upon the Cashier of the Metropolitan Bank New York City, payable to the order of Elmer B. Waro by the name of E. B. Waro for the sum of Five thousand dollars payable three months after date and endorsed by the said Elmer B. Waro to the said Southern Bank, credited at the date thereof the sum of One thousand dollars, which Bill was protested at maturity for nonpayment, and the said Elmer B. Waro duly notified thereof And this Deponent states that as the holder of the said Bill of Exchange for said Bank he is about to sue out from the Cook County Court of Common Pleas in and for the County of Cook in the State of Illinois, a Writ of attachment against the property of the said Elmer B. Waro And this deponent states that the said Elmer B. Waro is justly indebted to this deponent as the President of the said Bank and holder of the said Bill of Exchange in the sum of Two thousand two hundred and twenty two dollars and fifteen cents being the amount of principal and interest due at the date hereof and unpaid upon the said Bill of Exchange, and that the said Elmer B. Waro is not a resident of the State of Illinois.

J. H. Williams

"Subscribed and sworn to before me George C. Day a Notary Public duly commissioned & qualified in and for the County of Vigo and State of Indiana this 19th day

of February 1859

Witness my hand and Notarial Seal this day
 and year aforesaid

Geo: B. Day

Not: Pub: "

And hereafter also on the said twenty third day of February A. D. eighteen hundred and fifty nine there accordingly issued out of and under the Seal of said Court Peoples Writ of Attachment against the said Harow; Which Writ with the Sheriffs return thereon endorsed is in the words and figures as follows to wit:

" State of Illinois }
 Cook County .. } S

The People of the State of Illinois to the
 Sheriff of said County, Greeting,

Whereas Joseph H. Williams hath complained on oath to Walter Kimball Clerk of the Cook County Court of Common Pleas of Cook County that Eben B. Harow is falsely indebted to the said Joseph H. Williams president for the use of the Southern Bank of Indiana to the amount of Twenty two hundred twenty two dollars and fifteen cents, and oath having been also made that the said Eben B. Harow is not a resident of the State of Illinois so that ordinary process of law cannot be served upon him

And the said Joseph H. Williams having given bond and security according to the directions of the act in such

of February 1859

Seal

Witness my hand and Notarial Seal this day
and year aforesaid

Geo: L. Day

Not. Pub: "

And Hereafter also on the said twenty third day of
February A. D. eighteen hundred and fifty nine there
accordingly issued out of and under the Seal of said
Court Peoples Writ of Attachment against the said
Harow; Which Writ with the Sheriffs return thereon entered
is in the words and figures as follows to wit.

" State of Illinois }
Cook County .. } §

The People of the State of Illinois to the
Sheriff of said County Greeting.

Whereas Joseph H. Williams hath complained on oath
to Walter Kimball Clerk of the Cook County Court of Common
Pleas of Cook County that Eben B. Harow is justly indebted
to the said Joseph H. Williams president for the use of
the Southern Bank of Indiana to the amount of Twenty
two hundred Twenty two dollars and fifteen cents, and
oath having been also made that the said Eben B. Harow
is not a resident of the State of Illinois so that ordinary
process of law cannot be served upon him

And the said Joseph H. Williams having given bond
and security according to the directions of the act in such

also made and provided:

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We therefore Command you that you attach so much of the Estate real or personal of the said Elmer B. Ward to be found in your County, as shall be of value sufficient to satisfy said debt and costs according to the said Complaint and such estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to law at a term of said Cook County Court of Common Pleas to be holden at Chicago within and for the County of Cook on the first Monday of April next so as to compel the said Elmer B. Ward to appear and answer the Complaint of the said Joseph H. Williams as president for the use of the Southern Bank of Indiana in a plea of trespass on the case or damages to the damage of said plaintiff as he pays in the sum of Two thousand dollars,

as garnished to be and appear at the said Court on the said first Monday of next then and there to answer to what may be objected against when and where you shall make known to the said Court how you have executed this Writ. And have you then and there this Writ.

Witness Walter Kimball Clerk of our said Court and the Seal thereof at Chicago in said County this twenty third day of February in the year of our Lord one thousand eight hundred and fifty nine.

Seal.

Walter Kimball, Clerk "

"By virtue of this Writ I did on this 1st March 1859 levy

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upon the interest of Chas. B. Ward in and to the Real Estate
mentioned and described in the Schedule hereto annexed
and marked "C". Defendant not found in my County

John Gray. Sheriff.

B. J. M. Bradley Deputy.

Schedule "C"

"Lot five and West half of lot Six in Block No 2
in Fort Dearborn Addition to Chicago - also.

Sublots 22, 23, 24, 25 & 26 in Lot One (1) in Block
18 in Sheffield's Addition to the City of Chicago, being
300 feet front and rear and 300 feet deep more or less

Also, Sublots two, three, four and five in said lot
One in Block eighteen (18) in Sheffield's Addition, also

The West half of the North West quarter of Section
Twenty two in Township 36 North of range Twelve
East. Also the East half of the same quarter section
Also the West half of the North West quarter of Section
Thirty five (35) in Township Thirty seven North of range
13 East - all in Cook County, Ills."

And thereafter to wit on the tenth day of -
March A. D. eighteen hundred and fifty nine came said
Plaintiff by his said attorneys and filed in the Office
of the Clerk of said Court, his Declaration in said suit
Which said Declaration with the Bill of Exchange and
account, hereupon sued and annexed thereto is in words
and figures as follows to wit -

" State of Illinois }
Cook County , } \$

Cook County Court of
Common Pleas.

April Term 1859.

Joseph H. Williams President of the Southern Bank of Indiana, who sues for the use of said Bank complaining of Chas. B. Thara defendant, of a plea of Trespas on the case upon promises.

To wit that whereas by an Act of the General Assembly of the State of New York passed on the 14th day of April 1857 and duly approved by the executive authority of said State it was enacted that all checks bills of exchange or drafts appearing upon their face to have been drawn upon any Bank or upon any Banking Association or individual Bankers carrying on Banking business under the act to authorize the business of Banking which are on their face payable on any specified day, or in any number of days after the date or sight thereof shall be deemed due and payable on the day mentioned for the payment of the same without any days of grace being allowed, and it shall not be necessary to protest the same for nonpayment accepted, and the said act being in full force and unrevoked and being the law of the said State of New York afterwards to wit on the 28th day of January 1858 at Term started in the State of Indiana to wit, at the County of Cook aforesaid one Gleason, F. Lewis by his name and initials of G. F. Lewis made his certain Bill of Exchange according to the usage and custom of Merchants bearing date the day and year aforesaid and then and there directed the same to

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The Metropolitan Bank of New York at and in the City of New York in the said State of New York and thereby then and there requested the Cashier of the said Bank three months after the date thereof to pay to the Order of the said defendant by the name and initials of E. B. Ward Esq, the sum of Three thousand dollars (accepted waived) for value received and the said defendant afterwards and before payment of the said sum of money in said Bill of Exchange specified, or any part thereof, to wit on the day and year aforesaid at Terre Haute in the State of Indiana aforesaid (to wit, at the County aforesaid) by his endorsement made under his hand in writing on said Bill of Exchange by the name and initials of E. B. Ward endorsed the said Bill of Exchange and then and there delivered the same to the said Plaintiff for the use of the said Southern Bank of Indiana and afterwards to wit on the 28th day of April in the year aforesaid at the said City of New York, the said Bill of Exchange so endorsed as aforesaid was duly presented to and as the Bank said Metropolitan Bank for payment and payment thereof was then and there demanded of and from the said Bank and of and from the proper Officer of said Bank to pay the same, but the said Metropolitan did not nor would, nor did nor would any Officer of said Bank when the said Bill of Exchange was so presented as aforesaid nor at any other time pay the said sum of money in the said Bill of Exchange specified, nor any part thereof, whereupon the said Bill of Exchange was then and there according to the usage and custom of Merchants duly protested for nonpayment thereof, whereof the said defendant then and there

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had inter, by means whereof the said defendant then and there became liable to pay to said Plaintiff the said sum of money in said Bill of Exchange specified and also a large sum to wit, the sum of one hundred dollars or more for damages which then and there became due and owing from the said defendant to the said Plaintiff by reason of said protest and being so liable to the said defendant then and there in consideration thereof undertook and provided, to wit, at the County aforesaid to pay the said Plaintiff the said several sums of money, when to the said defendant should be so hereunto afterwards requested.

And whereas also after the passage and approval of the said Act of the General Assembly of the State of New York, and the same being the law of said State, in manner aforesaid, and after the passage of a certain Act by the General Assembly of the State of Indiana, approved by the executive authority of said State on the 31st day of May 1852 in and by which it was among other things enacted that the Common Law of England and Statutes of the British Parliament made in and thereof prior to the fourth year of the reign of James the first (except the second Section of the sixth Chapter of the forty third Elizabeth and the eighth Chapter of the thirtieth Elizabeth and the ninth Chapter of thirty seventh Henry the eighth) and which are of a general nature not local to that Kingdom, should be the law governing the said State of Indiana, and after the passage and approval of a certain other act of the said General Assembly, approved May 12th 1852 in and by which it was among

other things enacted that damages payable on protest for
dishonourment of a Bill of Exchange drawn or negotiated in
paid State, if drawn upon any person, at any place out of
that State, but within the United States should be five
hundred cent on the principal of such bill, and that no damages
beyond the Cost of Protest should be chargeable against
drawer or indorser if upon notice of protest and demand
of the principal sum the same was paid, and the said
several laws being unrevoked and in full force to wit
on the 28th day of January 1858 at Terre Haute in the
State of Indiana to wit at the County of Cook aforesaid
one Gleason F. Lewis by the name and initials of G. F.
Lewis made his certain other Bill of Exchange in writing
according to the usage and custom of Merchants, bearing date
the day and year aforesaid and then and there directed the
same to the Metropolitan Bank of New York at the City of
New York in the State of New York and thereby then & there
requested the Cashier of the said Bank, three months after the
date thereof to pay to the Order of the said defendant by the
name & initials of E. B. Ward Esq. the sum of Three
Thousand dollars (acceptance waived) for value received
and the said defendant afterwards and before payment of
the said sum of money in said Bill of Exchange specified
or any part thereof, to wit on the day and year aforesaid,
at Terre Haute in the State of Indiana (to wit, at the
County aforesaid) by his endorsement made under his hand
in writing on said Bill of Exchange by the name and
initials of E. B. Ward endorsed the said Bill of Exchange.

and then and there delivered the same to the said Plaintiff
for the use of the said Southern Bank of Indiana and
afterwards to wit on the 28th day of April in the year
aforesaid at the said City of New York the said Bill of
Exchange so endorsed as aforesaid was duly presented to and
at the said Metropolitan Bank for payment and payment
thereof was then and there demanded of and from the said
Bank and of and from the proper officer of said Bank
to pay the same; but the said Metropolitan Bank did
not nor would, nor did nor would any Officer of said
Bank when the said Bill of Exchange was so presented
as aforesaid, nor at any other time pay the said sum of
Money in the said Bill of Exchange specified, nor any
part thereof, whereupon the said Bill of Exchange was then
and there according to the usage and custom of Merchants
duly protested for nonpayment thereof, whereof the said
defendant then and there had notice. And afterwards to
wit on the 17th day of May 1858 to wit, at the County
aforesaid the said Plaintiff gave the said defendant notice
of the said protest, and demanded of the said defendant
payment of the said principal sum in said Bill of
Exchange mentioned except the sum of One thousand
dollars credited thereon at the date thereof, by means whereof
the said defendant then and there became liable to pay
to the said Plaintiff the said sum of Money in said
Bill of Exchange specified and also a large sum to wit
the sum of One hundred dollars as and for the damages
which then and there became due and owing from the

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said defendant to the said plaintiff by reason of the said
forest- and being so liable to the said defendant afterwards
to wit on the day and year aforesaid at the County aforesaid
in consideration thereof undertook and promised the said
plaintiff to pay him the said several sums of money
when to the said defendant should be hereunto afterwards
requested.

And whereas also the said defendant heretofore
to wit on the 28th day of April 1858 at the County
aforesaid was indebted to the said plaintiff in the sum of
Twenty five hundred dollars for so much money by the
said defendant before then at his request had and received
to and for the use of the said Plaintiff, and also in the
further sum of Twenty five hundred dollars for so much
money by the said plaintiff at the special instance and
request of the said defendant paid laid out and expended
to and for the use of the said defendant And also in the
further sum of Twenty five hundred dollars for so much
money before and then due from the said defendant to the
said plaintiff upon an account there and there established by
and between the said defendant and the said Plaintiff, and
also in the further sum of One thousand dollars of interest
upon divers large sums of money before then due and
owing from the said defendant to the said plaintiff and by
the said plaintiff foreborne to the said defendant for divers
long spaces of time before then elapsed and expired, and
also in a further and like sum of money for damages
upon divers bills of exchange endorsed by the said

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defendant to the said Plaintiff and protested at maturity thereof
for nonpayment and being so indebted to the said defendant
then and there in consideration thereof undertook and promised
the said Plaintiff to pay him the said several sums of money
when to the said defendant should be hereunto afterwards
requested.

Yet the said defendant although often hereunto requested
has not paid the said Plaintiff the said several sums of
money nor any part thereof but to pay the same has hitherto
wholly neglected and refused to the damage of the said
Plaintiff the sum of Five thousand dollars and therefore he
sues.

Hookins Thomas V Roberts
Defts Atty's."

(Copy of Bill of Exchange set forth in 1st & 2^d Counts)
"\$3000 Terre Haute, Ind, Jan'y 28th 1868

Three months after date pay to the Order of E. B.
Ward Esq. Five thousand dollars accepted waived
Value received.

G. F. Lewis "

To Cash; Metropolitan Bank, New York City

(Indorsed) E. B. Ward."

Paied on date on the within Bill One thousand
dollars \$1000.

"Chas. B. Ward

To Joseph W. Williams, President of the
Southern Bank of Indiana for the use of
said Bank Dr.

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Sept 5, 1857 For money advanced to you at date
 payable at 90 days \$ 3000

Aug 28, 1858 For money advanced to you on L.F.
 Swiss Bill at 90 days which is up'd 3000

" " " For money had received to my use
 payable at 90 days 3000

" " " For interest on same 500

" " " Damages on protest of Bill endorsed by you 100

April 28, 1858. Amount due on Settlement on account
 of previous advances 3000

Lookins Thomas Roberts
 City City."

. And thereafter to wit on the twentieth day of June
 A.D. eighteen hundred and fifty nine came the said
 Defendant by his attorneys and filed in the Office of the
 Clerk of said Court his plea to said Declaration; which
 said Plea with Affidavit of Merits thereto attached is in
 the words and figures following to wit

"State of Illinois } In the Superior Court of Chicago
 County of Cook } & At the June Term A.D. 1859.
 Elmer B. Ward
 vs
 Joseph H. Williams Pro^{se}
 for the use of Southern Bank
 of Indiana }

And the said Defendant by

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Seated, Mr. Alexander & Jewett his attorneys comes & defends
the wrong and injury when &c and says that he did
not undertake or promise in manner and form as the said
Plaintiff hath above thereof declared against him And of
this the said Defendant puts himself upon the Country &c

Seated, Mr. Alexander & Jewett
Attys for Deft."

"And the Plaintiff doth the like
Hookins, Thomas & Roberts
Plffs Attys."

"State of Illinois
County of Cook }

ss.

In the Superior Court of
Chicago, At the June term A.D. 1859.

Joseph H. Williams President
For the use of the Southern Bank of
Indiana

vs

Edw. B. Ward

State of Michigan
County of Wayne ss.

Edw. B. Ward being duly
sworn deposes and says that he is the Defendant in the
above Entitled Cause, and that he has a good defense to
said action upon the merits as he verily believes.

E. B. Ward

Subscribed and sworn to before me a Notary Public
within and for the County of Wayne & State of Michigan
this 18th day of May A. D. 1859 as witness my hand and
Notarial Seal the day & year aforesaid

(Notarial
Seal)

George P. Russell "

And thereafter to wit on the Eighteenth day of April A. D. Eighteen hundred and sixty there was filed in the Office of the Clerk of said Court in said Cause a certain Stipulation in words and figures as follows, to wit,

" Joseph H. Williams
vs
Elihu B. Thayer . . . }

Superior Court of Chicago
April Term 1860.

It is stipulated and agreed by and between the parties that the same evidence shall be admitted on behalf of the defendant under the plea of the General issue not verified by the Oath of the defendant as if the proper plea denying the execution of the instrument sued on ~~is~~ verified by the Oath of the said Defendant denying the execution of the instrument on the bill declared on, had been filed

Gookins, Thomas & Roberts

Plffs Attys

Scates, M^o Alesser & Jewett

Defts attys."

And afterwards to wit on the eighteenth day of April (being one of the days of the April Term of said Court) A. D. Eighteen hundred and sixty the following proceedings were had in said cause and entered of record in said Court, to wit,

17 Joseph H Williams President
for use of the Southern Bank of Louisiana

vs
Eber B. Ward

Attachment

This day comes said Plaintiff by Hookins, Thomas & Roberts his attorneys and said Defendant by Seale, McAllister & Bennett his attorneys also comes and on Motion it is Ordered that defendant have leave to amend his plea herein pleaded on payment by him of all costs, and thereupon issued being joined herein it is Ordered that a Jury come Whereupon comes the Jury of good and lawful men to wit

Garson Gibbs	Erastus Prairie	Samuel Lardner
Charles Corey	Peter Downie	P. A. Bacon
S. W. Starns	W. F. Merrill	J. J. Dunn &
Harmon Jackson	Thomas Carr	A. P. Brewster

who being duly elected here and sworn to by the clerk joined aforesaid after hearing part of the testimony adduced in the cause and hour of adjournment having now arrived upon agreement of the parties it is Ordered that the Jury separate and meet the Court tomorrow morning.

And afterwards to wit on the Nineteenth day of April (being yet of the said April Term of said Court) A. D. Eighteen hundred and Sixty the following proceedings were had in said cause and entered of record in said Court, to wit.

" Joseph H. Williams, President
for use of The Southern Bank of Indiana
we

Chas B Ward

Attachment

And now again come the parties to this cause and the Jury empanelled herein on yesterday for the trial of this cause also come and after hearing balance of the testimony and the hour of adjournment having arrived it is ordered upon the agreement of the parties that the Jury separate until tomorrow morning.

And afterwards to wit on the twentieth day of April (being the one of the days of the said April term of said Court) A. D. eighteen hundred and sixty the following further proceedings were had in said cause and entered of record in said Court, to wit,

" Joseph H. Williams President
for use of the Southern Bank of Indiana
we

Chas B. Ward

Attachment

And now again come the parties to this cause as on yesterday and the Jury empanelled herein for the trial of this cause also come and having heard all the testimony adduced, arguments of Counsel and instructions of the Court, the cause is submitted and the Jury retire to consider of their Verdict and the hour

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19 of adjournment having arrived upon agreement of the parties it is ordered that when the Jury shall have agreed upon a Verdict they shall reduce the same to writing sign the same and afterwards separate and meet the Court at the coming in here of tomorrow morning.

And afterwards to wit on the twenty first day of April (being the day of the said April term of said Court) A.D. Eighteen hundred and sixty, the following further proceedings were had in said cause and entered of record in said Court to wit

" Joseph H. Williams President
of the Southern Bank of Indiana

vs

Chas. B. Starns

} Attachment.

And now again comes the parties to this cause and the Jury empanelled herein for the trial of this cause as on yesterday and submit their Verdict and say "That the Jury find issues for said plaintiff and assess his damages herein to the sum of Two thousand two hundred and thirty seven dollars and sixty seven cents.

And thereupon said defendant submits his Motion herein for a New trial in this cause.

And afterwards to wit on the twenty second day of December (being one of the days of the December term of said Court) A.D. Eighteen hundred and sixty, the following

Further proceedings were had in said cause and entered of record in said Court, to wit:

" Joseph H Williams President
 Pres of The Southern Bank of Indiana }
 vs }
 The } Exemption.
Edw B. Ward }

And now again comes the said Plaintiff Joseph H Williams President who sues for the use of the Southern Bank of Indiana by looking to Thomas V Roberts his attorneys and the said defendant by Seabrook Mc Aleister & Lammie his attorneys also comes and the Court upon hearing Counsel on the Motion submitted herein at the April term last past by the said defendant for a new trial in said cause and being fully advised in the premises overrules and denies said defendants said Motion herein for a new trial whereupon the said defendant takes exception to the ruling of the Court in overruling his said Motion and enters his exceptions Therefore the said Plaintiff for the use aforesaid ought now to have a judgment entered herein against the said defendant on the Verdict of the Jury rendered at the April term last of this Court

Therefore it is considered that the said Plaintiff do have and recover of and from the said defendant for the use and benefit of the Southern Bank of Indiana his damages of Two thousand two hundred and thirty seven dollars and six pence cents in full aforesaid by the Jury here at the April term of this Court last past found and assessed and also

his costs and charges in this behalf expended and have execution therefor and that an Order issue for sale of the property attached by virtue of the Writ of Attachment issued in this cause.

And therefore the said Defendant having entered his exceptions herein prays an Appeal herein to the Supreme Court of this State which is allowed to him on filing his Appeal Bond in the penalty of Three thousand dollars with Security to be approved by a Judge of this Court and to be filed with his bill of exceptions within thirty days from this date.

And therefore accordingly on the twenty first day of January A.D. eighteen hundred and sixty one came the said defendant by his Attorneys aforesaid and filed in the Office of the Clerk of said Court, his Appeal Bond in said Suit; Which Bond is in words and figures as follows to wit.

"Know all Men by these Presents that we Elmer B Ware of Detroit Michigan and Stephen Clement of the County of Cook and State of Illinois are held and firmly bound unto Joseph H Williams President of the Southern Bank of Indiana for the use of said Bank in the penal sum of Three thousand dollars lawful Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors & administrators jointly severally and jointly by these Presents Sealed with our Seals and dated this the

as follows to wit,

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" In the Superior Court of Chicago.
" Joseph H. Williams, President
of the Southern Bank of Indiana
for the use of said Bank }

vs
Edw. B. Ward }

Be it remembered that on the
Eighteenth day of April A.D. 1860 that being one of the
days of the April Term A.D. 1860 of said Court, this cause
having come on to be heard in said Court before the
Honorable Nathl. Higgins one of the Judges thereof and
a Jury, the Plaintiff for the purpose of sustaining the
issues on his part offered in evidence and read to the
Jury Section 2 in pages 838 & 839 of Vol 1 of the Laws
of New York passed in the year 1857 as follows

Sec 2. All checks, bills of Exchange or Drafts
appearing on their face to have been drawn upon any Bank
or upon any Banking Association or individual Banker
carrying on Banking business under the Act to authorize
the business of Banking, which are on their face payable
✓ on any specified day, or in any number of days after the
date or sight thereof shall be deemed due and payable on
the day mentioned for the payment of the same without any
days of grace being allowed, and it shall not be necessary
to protest the same for nonacceptance

The Plaintiff next offered as evidence and read to the Jury Section Four (4) on page 362 of Vol 1 of the Revised Laws of Indiana as follows

Sec 4. The Common Law of England and Statutes of the British Parliament made in aid thereof from the fourth year of the reign of James the first, (except the second Section of the sixth Chapter of Forty third Elizabeth, the eighth Chapter of Thirteenth Elizabeth, and the ninth Chapter of Thirty seventh Henry the Eighth) and which are of a general nature not local to that Kingdom and not inconsistent with the Constitution of the United States and this State or the Statutes of the General Assembly of the State in force & not inconsistent with said Constitution or the Statutes of the United States in force and relating to subjects over which Congress has power to legislate for the States - are declared to be the Law governing this State.

Plaintiff then offered and read in evidence Section 7 & 10 on page 379 of Vol 1. of the Revised Laws of Indiana as follows.

Sec 7. Damages payable on protest for nonpayment or non-acceptance of a Bill of Exchange drawn or negotiated within this State shall be, if drawn upon any person at any place out of this State, but within the United States, five per cent, but if upon any person at any place without the United States - ten per cent on the principal of such Bill

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Sec 10. No damages beyond cost of protest shall be chargeable against Drawer or Indorser if upon Notice of protest, and demand of the principal sum, the same is paid.

The Plaintiff for the purpose of further sustaining the issue on his part first produced and offered to read to the Jury as evidence a paper purporting to be a Bill of exchange drawn by G. F. Lewis to the order of the Defendant endorsed by the defendant (the signature of said defendant on the back of said paper being admitted to be genuine) for \$3000⁰⁰ directed to Cashier of Metropolitan Bank New York City and dated Three Months January 28, 1858 - and a paper attached to the same purporting to be an Official Certificate of a Notary public of the Protest of said Draft for Nonpayment -

To the introduction of which as evidence the defendant then and there objected on the ground 1st of alterations apparent on the face of the Instrument 2nd that no demand, protest or Notice of non-payment to the defendant had been proved.

The objections of the defendant were overruled by the Court and to the decision of the Court in overruling said objection the defendant by his Counsel then and there excepted.

And said papers were thereupon read to the Jury as follows
\$3000⁰⁰ Three Months, Jan. 28th 1858

Three Months after date ~~promise to~~ pay to the order of E. B. Ward Esq. Three thousand dollars at acceptance
inclosed value received.

G. F. Lewis.

To Cash: Metropolitan Bank }
 New York City }"
 (Endorsed as follows)

"Paid at date on the within Bill One thousand dollars \$1000⁰⁰"

Also endorsed "E. B. Ward

To which are attached the following.

"United States of America

State of New York &

On the Twenty eighth day of April in the year of our Lord one thousand eight hundred and fifty eight at the request of the Park Bank the holder, A. Eff. J. Hyatt Notary Public duly admitted and sworn dwelling in the City of New York, did present the original Bill of Exchange (hereto annexed) at the Metropolitan Bank to a teller thereof and demanded payment of said Bill which was refused.

Whereupon I the said Notary at the request aforesaid did protest and by these presents do publicly and solemnly protest as well against the Maker, Drawer & Acceptor and Endorser of the said Bill as against all others whom it doth or may concern for exchange - re-exchange and all costs damages and interest already incurred and to be there after incurred for want of payment of said Bill.

Thus done and protested in the City of New York the testimony whereof I have hereto subscribed my name and affixed my Official Seal on this twenty eighth day of

April 1858.

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S. S.

Eff. J. Hyatt.

Notary Public

The Plaintiff then introduced as a witness on his part one.

Francis S. Williams who being first duly sworn deposed as follows.

"I reside at Terre Haute Indiana - am Son of the Plaintiff and Cashier of the Southern Bank of Indiana and was Cashier on January 28th 1858 - and have been ever since - George L. Day was Cashier prior to that time -

The instrument above set-out being shown to and examined by the Witness - he said "Notices of the Protest of this Bill were received by the Southern Bank of Indiana - The regular Mail time between New York and Terre Haute was 4 or 5 days - at that time the Mail was carried from Indianapolis to Terre Haute by Wagon, because of the difficulty between the Railroad Co. and the Government - The Notices of Protest were received by the Bank May 3rd 1858. I enclosed one of them to G. J. Lewis and one to the Dept - directed the one sent to Dept to Detroit, Michigan, and the one sent to Lewis to Cleveland. The Notice shown me dated April 28th 1858 signed John Townsend Jr. is the one received by the Bank - I know the handwriting of Mr Ward - It is endorsed "Rec^d May 1st 1858 in his handwriting. I should think I did not send any letter with the Notice - I merely enclosed the Notice in

an Envelope and addressed it as above and forwarded it by Mail.

I had a conversation with the defendant August 16th 1868. I presented the Bill to him and he told me he had Securities of Mr Lewis in his hands. I asked him if he would arrange it and he answered that Mr Lewis had given Notice on him not to arrange it. I presented to him the Bill offered in evidence. He said he did not know what Mr Lewis intended to do, but he had notified him not to pay it. He made no objection that it was in the form of a Bill, said he would arrange or pay it then, if Lewis had not told him not to do so - he said he wanted it brought to trial and if Judgment went against him he should realize on the Securities he had and pay it up. He said he would give us no trouble whatever, accept service and would make no defence.

Cross Examination.

The conversation took place at Mr Ward's Office at Detroit. We were in the front Office. No one but Mr Ward and myself were in the Room. I do not know that Mr Ward read the Bill. He took it in his hands looked at it and appeared to read it. I do not know that I called his attention to the fact that it was a Draft. He said he did not know what Lewis's defence was - only that he had given Notice not to pay it. He told me distinctly that he should not pay it then. He did not tell me what Securities he had or where he received them, but simply that he had

Some Securities and should give us no trouble.

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I was sworn in a Suit on this Bill in the United States Court for the District of Michigan. The signature to the Deposition now shown me is mine. I think I swore the same thing then. The statement I then made was in relation to this same bill of Exchange and this same conversation.

I think I stated the same thing then, but do not recollect what I then stated. I think I said then, that he said he would make no defense. I remember the occasion on which the statement now shown me was reduced to writing, it was at Detroit, Michigan. The deposition was taken before a man acting as United States Commissioner. I suppose I do understand it. Do not recollect his name. I was sworn by him before I gave the statement. The statement was read over to me as it was written down, but not read again before I signed it. Mr. Poole (referring to one of the Defts Attys then in Court) was present. The deposition was taken to be used in a Suit in the United States Court by the Southern Bank of Indiana against Eben B. Ward on the same Bill on which this Suit is brought. The conversation with Ward was at his Office in Detroit August 16th 1868. No one was present but Mr Ward and myself. I was in the room reading a Newspaper when Mr Ward came in. When he came in I stated my business to him and asked him if he would make any Settlement. He then went on and stated how he gave the paper. I asked him to give a Note payable at a future time if he could not pay it then. He said he could not do that for Lewis had

gives him notice not to arrange the matter. Do not recollect what was said next. He talked about various matters. He said he was sorry he had got mixed up with Lewis's affairs. He said he would accept service and make no defence. That was my understanding of it. Do not remember that he said anything about any other person making a defence. He said he did not know what defence Lewis had. A few days after I sent the Bill to an attorney at Detroit to be sued. The deposition I took was taken in the latter part of October. I intended in that examination to give the conversation between me and Mr. Ward which I have testified to. I cannot say whether in that examination I stated Mr. Ward said that he would make no defence. I know Mr. Ward said he would accept service.

I was examined respecting this matter at Terre Haute before Judge Huntington. I related or intended to the conversation with Mr. Ward before Judge Huntington. There were Counsel there to examine me on both sides. I intended then to give the conversation of August 16th 1858 between me & Mr. Ward. The witness being then shown the signature to a paper purporting to be a deposition taken October 11th 1858 before E. M. Huntington U. S. District Judge for the District of Indiana, said - "The signature is mine - the deposition was written down and read over to me, and I then subscribed my name to it." The Bill sued on in this case is the same one about which I was testifying in both depositions.

Direct Examination resumed.

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I transmitted the Bill to C. A. Macey Cashier of Park Bank New York. I sent it as Cashier of Southern Bank of Indiana. It was sent for collection in the regular course of business. Macey is Cashier of the Park Bank. Mr. Macey on the 16th August 1858 told me that he endorsed the paper and gave it to Mr. Lewis to raise money for him, and that the first notice he received of the use of the paper was from the Southern Bank of Indiana - that the Bank had discounted it. He said that out of the note or Bill, which the Bank had before of Mr. Lewis, endorsed by him, he had \$2000. which he had paid. and that he had given Mr. Lewis his endorsement on this paper to raise money for himself."

A letter here shown to the witness is identified as a letter written by himself as Cashier of the Southern Bank of Indiana. and is thereupon offered in evidence by the Plaintiff and read to the Jury as follows.

" E. H. Williams Pres^t

Southern Bank of Indiana

Terre Haute - Aug 28th 1858.

" E. B. Macey Esq^r

Detroit, Mich.

Dr Sir, We received your favor Aug 25th this morning with check for \$2000, which amount we have endorsed on G. F. Lewis Bill for \$3000 due Dec. 8. 1857. Mr. Lewis was here to day and took up the bill and we

cancelled it & gave it up to him. It was in our Bill and not in \$ as you mentioned. The then discounted for Mr Lewis his Bill endorsed by you for \$3000. at 3 Months from this date with \$1000 endorsed since upon the back, which leaves balance due \$2000.

Yours very Resp^y

J. S. Williams - Cashr."

Cross Examination resumed.

At the date of my letter to Mr Ward of the 28th Aug 1858 there was a paper in the Bank to which Lewis and Ward were parties. The paper referred to in that letter as a Bill may have been a Note or a Bill. The paper shown me dated Sept 5th 1851 signed by J. Lewis is the same one.

At the conversation of August 16th 1858 Mr Ward did not tell me at the time he endorsed the paper in controversy he intended \$2000 of it to be applied on the Note in the Bank. He did not say he intended it to be so applied; but that he had since paid the money - He said he had since paid the money the \$2000. but did not feel bound to pay this paper on that account. I think he said that if the \$3000. Note had not been arranged he should have felt bound to take it up. The Note was taken up by Ward paying \$2000 of it and when Lewis discounted the paper in controversy \$1000 and upwards of it were applied in payment of balance of that Note. I think it likely that costs Protest &c were taken out of the bill. The Southern Bank

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of Indiana was the owner of the paper in controversy - The Bank discounted it for Lewis - The paper was not in its present form when it was presented to the Bank. Mr Ward was not here at the time. Mr Lewis myself and the Plaintiff in this suit, the President of the Bank and perhaps a clerk were present. When the paper was presented it was blank, except the check mark "\$3000" on the upper left hand corner and had Mr Ward's name on the back. The words "promise to", now erased were there in it - Mr Lewis brought it to the Bank - I and the President saw it in its then condition - Lewis and the President had some conversation about it, which I did not hear - After they had made their arrangements, they called me back where they were and Mr Lewis handed me the paper and directed me to fill it up to suit the form used by the Bank or words to that effect - I took it away to my desk and filled it up in the form it now is and took it back and Lewis signed it. Lewis told me to direct it to the Cashier of the Metropolitan Bank New York - I erased the words "promise to" and "at"

Mr Ward was not there and was never at the Bank to my knowledge - I do not know what was paid to Lewis at that time - I think money was paid at that time - That was settled between him and the President - The letter shown me dated Sept 5, 1854 to Mr Lewis and the other dated Oct 3, 1854 to E. B. Ward are in the handwriting of Mr Day Cashier of the Southern Bank of Indiana at these dates - The Note for \$3000 dated Sept 5, 1854 signed by Lewis and endorsed by Ward is the only one of that amount

and date the Bank held at that time - I think the Bank had had other paper of the same parties - The Southern Bank of Indiana has been in operation since January 1853 and has been issuing Bills since that time.

(The plaintiff here admitted that the Southern Bank of Indiana was organized and doing business under the general free Banking law of the State of Indiana)

The Bank owns the Bill in controversy now - The usual rate of interest at that time was six per cent on Bills - I do not know what rate of interest was taken on this Bill - The object of getting the Bill payable in New York was to get Exchange - at the date of the Bill exchange was 5 or 6 per cent, at the time the Bill matured it was 3 per cent at least - The Bill payable in New York was preferred because of the Exchange - That was why the Bill was so drawn - so as to get the exchange.

Re Examination by Plaintiff

"The letter shown me dated Jan'y 25th 1858 is the one enclosing the \$2000 paid by Mr Ward on the \$3000 Note and is the one to which I replied on the 28th of the same Month - Said letter was then offered in evidence and read to the Jury as follows,

"Detroit Jan'y 28th 1858.

"Geo. W. Day Cash

Terre Haute,

Dr Sir - I believe your Bank holds

35- G. D. Lewis Notes, my encloremment amounting to \$3100⁰⁰ I now
enclose you herewith my draft No 4 on J. M. Forbes Esq.
Boston payable to your order for \$2000 - the proceeds of which
you will please apply in payment of the two Notes for \$1000
Each, and return the same to me cancelled, Should there be
any interest due on these Notes you will please send me a
statement of the same & I will remit you the amount.

Yours respectfully,

E. B. Ward

for H. H. Benson Carter,

The witness then continued as follows.

There were no \$1000 Notes to which Ward was a party
then in the Bank. At the conversation with Mr Ward in
August 1858 he said he had securities, and if a Chancery
went against them he should realize on them and arrange it,
but he did not say how or for what purpose he held the
securities

Gross Examination resumed

At the date of the letter of Mr Ward the only Note
held by the Bank, to which he was a party, was the Note
for \$3000 above referred to.

The Plaintiff then offered in evidence the Notice
of Nonpayment and protest referred to by the witness Williams
as having been sent by him to the Defendant.

To the introduction of which in evidence the
Defendant by his Counsel objected on the grounds

- 1st That it has not been shown that there is any person by the name of John Townsend Jr which is printed at the bottom of said pretended Notice.
- 2nd That it has not been shown that any person by the name of John Townsend Jr ever at any time or in any manner had the possession of, or any control over said Bill or any authority to demand payment of the same.
- 3rd That the name and description of the person by whom said notice purports to have been given, being printed and not written it cannot be presumed from the Notice itself that there was any such person, or that any person by that name, or any other name had any authority to give said Notice, and in the absence of proof of such facts, the Notice should be excluded.
- 4th That the name printed at the bottom of said pretended Notice being different entirely from that of the Notary by whom the Certificate of Protest is attached to the Note is signed, and no proof having been introduced tending to show that there was any such person, said pretended Notice is of no effect, and is the same as though not signed at all.
- 5th That the defendant under the circumstances was not bound to regard such a Notice when received by him - "

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Which objections of the Defendant were overruled by the Court. (Then to the decision of the Court in overruling said objections the defendant by his Counsel then and there Excepted.

Then the said Notice was thereupon read to the Jury as follows (the name and description of the person purporting to give the same as well as the formal parts thereof being printed)

"New York Apr 28. 1858.

"Please to take Notice that a Bill of Exchange drawn by H. V. Lewis on Cash. Metropolitan BR as drawn for \$3000 dated Jan'y 28. 1858 endorsed by you is protested for nonpayment, and that the holders thereof look to you for the payment thereof.

Yours &c,

E. B. Ward

John Townsend Esq."

Attorney at law and Notary Public for the Park Bank. 5 Beekman Street."

(Endorsed) "Recd May 6th 1858" Also addressed on the back "E. B. Ward."

The Plaintiff next offered in evidence a letter of the Defendant to the Plaintiff dated May 11th 1858 & read the same to the Jury as follows.

"Detroit

"J. H. Williams

May 11th 1858.

Dear Sir - Yours of the 12th is at hand Mr Lewis

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Continue for annum - but the same may according to Bank rules, be discounted and taken in advance out of the sum loaned."

Also Section 6 on page 378 of the 1st Volume of Laws of Indiana as follows.

"Notes payable to Order or Bearer in a Bank in this State, shall be negotiable as inland Bills of Exchange and the payees and Endorsees may recover as in case of such Bills."

Also Sections 1, 3 & 4 on pages 171 & 178 of 3^d Vol of Revised Statutes of New York as follows.

"Sec 1. All Notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his Order, or to the Order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed and shall have the same effect and be negotiable in like manner as inland Bills of Exchange according to the custom of Merchants."

Sec 3. "The word "Person" in the two last preceding Sections shall be construed to extend to every Corporation capable by law of making contracts."

Sec 4. "The payees and Endorsees of every such Note payable to them or their order, and the holders of every such Note payable to bearer, may maintain actions for the sum of money therein mentioned against the Makers and Endorsers of the same respectively ~~in~~ ⁱⁿ like manner as in case

of Indiana Bills of Exchange and not otherwise."

The Plaintiff here rested:-

The defendant for the purpose of sustaining the issue on his part, then read from the Deposition of Francis S. Williams about identified by him taken before a United States Commissioner at Detroit on the 29th day of October 1858 as follows.

"I reside at Terre Haute in the State of Indiana One Cashier of the Southern Bank of Indiana, the Plaintiff in this suit, - The Plaintiff is a Corporation incorporated under the general Banking Laws of the State of Indiana and are doing business in that State at Terre Haute aforesaid - The witness being shown the Bill of Exchange on which this action is brought attached to the Deposition of Effingham J. Hyatt now on file in this cause says, Mr H. J. Lewis the maker of said Bill brought it to our Bank in blank, the only exception being the \$3000 & the signature of the defendant on the back, being the only writing on the paper - I filed it up at Mr Lewis' request - The writing in the body of the draft except the signature to the same is in my handwriting - After the draft was filed up, I made an endorsement upon the back of it of One thousand dollars in order to reduce it to Two thousand dollars - After it was filed up Mr Lewis signed it - The Bank then discounted it for Two thousand dollars - I

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advised Mr Waro the same day or the day after the date of the Bill, that we had discounted his Note for Two thousand dollars. This Notice was given by letter -

The Plaintiff then offered to produce in evidence a Copy of that letter which is marked Exhibit "A" & the witness says

that the letter now produced and shown is a Copy of the letter written by myself to the defendant on the twenty eighth or twenty ninth day of January, 1858. I put the same in an envelope and left it on my table as is my custom to be put in the Post Office by the Clerk.

The Plaintiff received a Notice of the protest of said Bill of Exchange by Mail on the third day of May, 1858. The letter was addressed to me as Cashier. In the same envelope was contained Notice of protest to the defendant, and also to L. V. Lewis. I sent the Notice of protest to the Defendant by Mail the same day that I received it, directed to him at Detroit, Michigan. I had a conversation about this matter at Detroit on the 16th of August 1858 had the draft with me at the time. I showed the draft to Mr Waro and tried to get him to make some settlement of the matter. He said that as far as he was concerned he was willing to settle it but Mr Lewis had given him legal notice not to do so. He said he gave Mr Lewis this draft to raise some money upon for him defendant. By this draft I mean the paper that I showed him which is the draft in evidence. He said the first he knew that the paper had been used was the reception of the Notice that he got from

no, that the draft had been discounted for Two thousand dollars - The defendant took the paper in his hand and opened it - I supposed he read it for he looked at it, and held it for some five or ten minutes - I asked the defendant what ground Mr Lewis took for not paying the draft and he replied that he did not know. Mr Ward made no other objection to the payment of the paper than what has been mentioned."

Gross Examination.

Witness on being shown the Bill of Exchange on which this suit is brought says I erased the printed words "promised to" and also the word "at" on the face of that Bill - This paper when brought to the Bank was in the form of a blank note filled only as to the amount in figures - Mr Lewis had some conversation with the President of the Bank before he handed me the paper which I did not have. At this time the Bank held a note or Bill of Exchange made by Lewis and endorsed by Mr Ward, the Defendant, which note was for ~~Three~~ ^{two} thousand dollars, and upon which a payment had been made that morning with money received from Mr Ward of Two thousand dollars - The thousand dollars due on that piece of paper, the interest and costs of protest formed a part of the consideration of the Bill in suit, and the balance of the Two thousand dollars, for which the Bill was discounted - was paid or sent to Mr Lewis in money. I think a portion of it was paid to him at that time and a

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part sent to him by express. I became Cashier of the Bank the first of January 1858 George, C. Day was Cashier of that Bank prior to my coming there. The three thousand dollar note or bill so taken up by Lewis at this time, was made and had matured before I became Cashier. I don't know its date, nor the time when it matured. I only know it was for three thousand dollars.

I don't know what kind of money was paid to Mr Lewis upon the discount of the Bill in suit nor what rate of discount was received. We were discounting at that time at the rate of Six per Cent, the legal rate of interest in Indiana. We uniformly charged or discounted at that rate. Exchange on New York at Terre Haute was at that time from five to eight per Cent premium. In April 1858 exchange had declined from one and a half to two per Cent. The object of the Plaintiff in taking bills on New York was to provide themselves with exchange. A Note or Bill payable in New York at that time was more valuable than one payable at our Bank by the amount of the premium.

The letter now produced and marked "Exhibit B" is in the handwriting of George C. Day who at the time the same bears date was the Cashier of the Southern Bank of Indiana.

I never saw the Bank have any paper made by Lewis, that was not endorsed by Mr Ward the Defendant.

The letter produced and marked "Exhibit C" is also in the handwriting of said George C. Day. At the time this letter bears date Mr Day was Cashier of said

Bank. I know the letter Exhibit "C" was written by the place it occupies in the letter Book. The original was dated but when written the margin was so turned that the date did not copy. I placed the pencil mark January 28, 1868 upon that letter when I cut it out. I never saw the paper spoken of in Exhibit "C" as "H. T. Lewis's Bill for \$3000 due Dec 8, 1857" and don't know whether the paper there alluded to was a Bill or not. I wrote that letter by the dictation of the President of the Bank and directed the envelope in which the same was enclosed. I might or might not have put that letter into the post office.

I very seldom mailed any letters written for the Bank, but left it for the Clerk to mail them as before spoken of.

The paper marked Exhibit D is the Notice of Protest received from New York and mailed by me to Mr. Thaw as spoken of in my direct examination.

The conversation with Mr. Thaw as referred to in my direct examination on the 16th of August 1868 was at Defendants Office in Detroit. No one was present but Mr. Thaw and myself. I introduced myself to Mr. Thaw told him what I had come to see him about and showed him the Bill or Draft in controversy - I don't know that I used the words "Bill" or "Draft" when I presented it to him. I suppose Mr. Thaw read it, but don't know. He opened it and looked at it. He was talking with me at the time he held it in his hand. I do not know that the word "Bill" or "Draft" was mentioned in that conversation.

by either of us. Mr. Harco said he would like to see the
/ 5- matter settled. He spoke of the Note or draft in controversy,
and also of a Note to another Bank, said he would be
willing to settle them, but Mr. Lewis had given him a
legal Notice not to do so. In a further conversation he
said he did not want to see the Bank lose the money
nor did not want to lose it himself. But if he settled
it he should have to lose it and he had no doubt
but that Mr. Lewis justly owed the Bank the money.
Mr. Harco said further that he had given the Two a
thousand dollars which he had out of the proceeds of
the prior Note, and should have felt bound to pay the
balance if Lewis had not arranged it.

Direct Examination resumed

Mr. Harco said in that conversation that he had
promises from Lewis, and if the Bank got judgment
against him he would turn out those promises and pay
it off. Terre Haute is four hundred miles from Detroit
or thereabouts.

Re Cross Examination.

Mr. Harco said he had promises of Lewis in his
hands and in case the Bank got judgment against him
he should turn them out and settle it up. He did not
say at what time nor for what purpose Lewis had given
him those promises. Mr. Harco was not present at the
time I filed up the Bill of Exchange sued upon.

Exhibit "A" attached to the foregoing Deposition was a copy of the letter of the 28th January 1858 before offered and read in evidence by the Plaintiff

Exhibit "B" attached to said deposition and read in evidence by the Defendant was as follows

" A. H. Williams, Presr. L. B. Day Cashier
Southern Bank of Indiana

Terre Haute Sept 5th 1854.

G. F. Lewis Esq. }
Cleveland, O. }

Dr Sir, We this day discount your	
Bill 3 m/s	\$ 3000 " 00
& deducting discount	70 " 50
leaves to your Credit	\$ 2929 " 50
I have you with this against above	
Land Warrants and as per agreement	600 " 00
and our currency	329 " 50
Day	\$ 929 " 50

For the balance \$2000, we will forward you in our Notes for good circulation.

On the 15 th inst;	\$1000.	
" " 25 th "	1000.	\$2000 " 00

Respy

L. B. Day - Cashr."

Exhibit "C" was not offered & read in evidence on this trial.

47, Exhibit "D" attached to the foregoing deposition was the same Notice of Protest above offered in evidence by the Plaintiff.

The defendant next offered and read in evidence from the deposition of the witness Francis S. Williams taken before Judge E. M. Huntington at Terre Haute on the 11th day of October 1858 to be used in a suit in the United States District Court for the District of Michigan, wherein the Southern Bank of Indiana was plaintiff and Elbert Ward was defendant as follows.

"I reside at Terre Haute Indiana - more than 100 miles from Detroit - am Twenty two years of age and am Cashier of the Southern Bank of Indiana."

"The blank note number A is substantially a copy of the paper sued on - as originally presented to said Bank for discount - Lewis handed it to him, witness, and requested him to make it into the form of a Bill fill up and address it to the Cashier of the Metropolitan Bank New York - I therefore erased the words "promised to" filled it up for the true amount and addressed it as he requested. My impression is that Lewis signed it after I had so filled it up."

Cross Examined by Jeffs Counsel.

On the 16th of August last I showed Mr Ward the Bill now sued on. It was then due. He then told me that \$2000 of the first note was discounted for his benefit - that he received that amount and had paid it, leaving Lewis to pay the balance, if Lewis had not arranged it. He further

stated that we had informed him, that we had discounted \$2000 of the Bill upon which was the first knowledge he had that Lewis had used the paper. That when he endorsed the paper upon, it was with the understanding that Lewis was to have some money on it for him.

ReExamined by Deft Counsel.

The conversation was in Mr Ward's front Office and as I believe not in the presence or hearing of any other person.

The defendant then offered and read in evidence the Note of G. F. Lewis referred to and identified by the witness Williams as follows.

"\$3000⁰⁰ Cleveland O September 5, 1857.

Two Months after date I promise to pay to the Order of E. B. Ward Esq. Three thousand dollars at the Office of Winslow, Limer & Co 52 Wall Street New York cashed by
G. F. Lewis"

(Endorsed) "E. B. Ward" also as follows.

"Paid on within by E. B. Ward Two thousand dollars \$2000 and by G. F. Lewis And thousand dollars \$1000⁰⁰ - Jan'y 28. 1858.

The defendant then offered in evidence and read to the Jury Decisions 1 and 5 on pages 418 and 43 of the 3^d Vol of the Revised Laws of New York as follows

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Sec 1. "The rate of interest upon the ^{loan} ~~grace~~ or forbearance of any money goods or things in action shall continue to be Seven dollars upon One hundred dollars for one year, and after that rate for a greater or less sum or for a longer or shorter time."

Sec 5. "All Bonds, Bills, Notes, Certificates, Conveyances, all other Contracts or Securities whatsoever (except ~~a~~ bottomry and respondentia bonds and contracts) and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken or secured, or agreed to be reserved or taken any greater sum or greater value for the loan or forbearance of any money goods or other things in action, than is above prescribed, shall be void - But this act shall not affect such paper as has been made and transferred previous to the time it shall take effect."

The defendant next introduced in evidence the Free Banking Laws of Indiana for the purpose merely of showing the date of the passage of said Laws. The date of the same was thereby shown to have been the 28th day of May 1852 - and here

The defendant rested

The foregoing contains all the evidence offered by either party on the trial of said cause, and thereupon the Court at the request of the plaintiffs counsel instructed the Jury as follows.

1. "The Notice which has been given in evidence is sufficient in form and substance and if transmitted to the defendant in due time it was sufficient to fix the defendant's liability as endorser."

"This is so unless the defendant was discharged by the alteration of the Note without authority by Lewis."

2. "If that the maturity of the Bill the defendant was fully indemnified by Lewis the drawer, against his indorsement, he was not entitled to any notice of its dishonor, as the indorser of the paper."

3. "If the Bill was drawn and discounted for the use of the defendant, he was not entitled to notice of its dishonor."

5. "If in making the Note and bill which have been given in evidence they were made payable in New York, for the purpose of allowing a rate of interest exceeding what was legal in Indiana, the parties understood that the money was not to be paid in New York, but in Indiana, the usury law of New York which has been given in evidence has no application to the case, and will be disregarded by the Jury."

"But if the Bank in violation of a provision of its charter reserved or took more than the legal rate of interest then the Bill of Exchange would be void."

6. "The defendant having filed no Plea of usury, cannot insist upon that defense under the laws of Indiana. But he may insist that the Bank violated the law in reserving interest in violation of a provision of its charter."

5-1

Given

Given

Given

Given

7. "The endorsement of blank paper and delivery of it to another for the purpose of enabling him to raise money on it is a letter of credit of the most ample nature, and the persons to whom it is delivered will be unrestricted in filling it up, as to amount time and place of payment so far as such matters are left blank in the Note."

8. "The Check-mark in the Margin of a Bill or Note endorsed in blank is no part of the Instrument but it imposes a limitation upon the holder as to the amount for which it shall be filled up."

9. "The holder of the paper which has been given in Evidence, if it was endorsed in blank by the defendant had no right to put it in the form of a bill of Exchange if it was originally in the form of a promissory Note without authority from Itasca to do so."

11. "The ratification of an unauthorized act with a knowledge of all the facts, will bind the party in the same manner as if he had previously authorized it."

12. "If the defendant delivered the paper in question to Lewis, the drawer, blank, with his endorsement upon it, for the purpose of enabling him to raise money upon the paper, and if the words "promise to" were erased, and the paper discounted in the form of a bill of exchange, and if the defendant was immediately notified thereof, it was his duty if he intended to disavow the transaction and deny his liability, to give notice to the holder, of such disavowance, and if he failed to do so, the Jury

Wells

X

may infer therefrom his acquiescence in and ratification of the act."

Given

"This is the law if his attention was particularly called to the alteration in such a way that the Jury are satisfied from the evidence that he must have known of the alteration at the time."

To the giving of which said instructions and each of them the defendant by his Counsel then and there objected.

The defendant by his Counsel then asked the Court to instruct the Jury as follows.

1st "That the endorsement and delivery by defendant Ward to Lewis the drawer of the draft upon which a recovery is sought in this suit, of a printed blank of a promissory Note, authorized Lewis to fill up the blanks only so as to perfect it as a promissory Note, and did not authorize him to change it into the form of a bill of Exchange, and if he did so change it at the request or with the knowledge of the Southern Bank of Indiana, the party in interest in this suit, and without the knowledge or assent of Ward, the Bill would be void as to Ward unless he afterwards assented to or ratified the change."

Given

2. "That evidence that the bill after its maturity was presented to Defendant and that he made no objection to its form is not sufficient to establish his assent to or

Given

ratification of the change."

3. "That any express promise by Ward to pay the Bill would not amount to ratification unless made after a full knowledge of the change."

4. "That any express promise by Ward to pay the bill would not amount to a ratification unless made under such circumstances, that the Jury can find that it was made with the intention to ratify the change."

5. "That if the paper endorsed by debt Ward had been filed up as a promissory Note there would have been three days of grace upon it, although payable in New York. But if the same was filed up as a Bill of Exchange drawn upon a Bank in New York, then there is no grace upon it and the two contracts are in this respect materially different."

6. "That the making the Note of the 5th Sept 1857 payable in the State of New York is presumptive evidence that the parties to it had reference to the laws of New York in making and endorsing and receiving the same."

7. "If the Jury believe from the evidence that the Bill of Exchange upon which a recovery is sought in this action, was discounted for the drawer thereof, by the Southern Bank of Indiana and that said Bank in making paid ^{discount} contracted for or knowingly & intentionally received, at a rate of interest higher than 6 per cent per annum in advance then said Bill is void."

8. "That if the Jury believe from the evidence that the

Gwen

Deft Ware endorsed his name to a blank promissory note and so delivered the same to G. F. Lewis to be filled up and discounted, and the same was by said Lewis and the President or Cashier of the Southern Bank of Indiana altered into a Bill of Exchange upon a Bank in the City of New York without the authority or consent of said Ware, he cannot be liable thereon unless, with full knowledge of what had been done in relation to said alteration, he voluntarily promised to pay the same."

9. "If the Jury believe from the evidence, that the Defendant Ware signed his name upon the back of a paper which at the time purported to be a printed blank for a promissory Note and delivered the same with his name so endorsed, to G. F. Lewis without the blanks being filled, and said Lewis took the said paper to the Southern Bank of Indiana and the same was, there, without the knowledge or assent of the Defendant, but with the knowledge of the President and Cashier of said Bank, changed into a bill as it now appears, by erasing words which were in the same, when said Deft so endorsed his name on the paper as aforesaid & given to Lewis and by filling up the said blanks, converting said Note into a Bill of Exchange then, the said alterations are material and render the paper passed on, in this case, void as to the Deft Ware."

Gwen

10. "If the Jury believe from the evidence that the Bill of Exchange passed on in this case was made for the purpose of being discounted in the State of Indiana at a rate of interest exceeding Six per Centum per annum and the

5- Southern Bank of Indiana corruptly and knowingly and contrary to the laws of the State of Indiana under which the said Bank is organized and with intent to evade the law of their organization, discounted the said Bill at a rate of interest exceeding six per centum per annum; and the Jury further believe from the evidence that the same was made payable in the State of New York at the instance of the President of said Bank and a part of the said discount was paid in Land Warrants as a sham and device to convert money and evade the law under which said Bank was organized, then the transaction is prohibited by the law of the organization of said Bank and the said Bill of Exchange is void."

Quint

And the Instructions so asked for by the said Defendant were given by the Court. And the Defendant by his Counsel further asked the Court to instruct the Jury as follows.

1st That if the Jury believe from the evidence that the Bill of Exchange upon which a recovery is sought in this action was made to be discounted by the Southern Bank of Indiana, and that in making such discount said Bank contracted for, or knowingly and intentionally reserved or received to itself directly or indirectly a greater rate of interest than 7 per cent per annum in advance (being the rate of interest authorized by the laws of the State of New York where such Bill was made payable) said Bill is void and their Verdict must be for defendant

+ Request.

2 " If the Jury believe from the evidence that the Note of Sept. 5, 1857 given in evidence by defendant was discounted for the maker by the Southern Bank of Indiana and that said Bank in making such discount contracted for and knowingly & intentionally received or reserved to itself directly or indirectly a greater rate of interest than 7 per cent per annum, taken in advance, (being the rate of interest authorized by the laws of the State of New York, where said Note was made payable) said Note was void; and if the Jury believe from the evidence that the Bill of Exchange upon which a recovery is sought in this action, was given in whole or in part in consideration of said Note or in renewal or extension thereof in whole or in part, then said Bill is void and they must find their Verdict for defendant."

3 " That by the laws of Indiana the legal rate of interest for the loan of money is Six per cent per annum, and by the laws of New York the legal rate of interest is Seven per cent per annum. If the Jury believe from the evidence that the Note given in evidence bearing date the 5th day of September A. D. 1857 was made and indorsed for the purpose of having the same discounted at a rate of interest exceeding Seven per cent (the legal rate in New York) and the same was made payable in the State of New York and with reference to the laws of New York and that the Southern Bank of Indiana by its officers and agents corruptly

Refused

Refused

57

Refused.

and notoriously discounted the said Note at a rate of interest exceeding seven per cent; then the said Note was governed by the laws of New York and by the Statute of that State given in evidence, was void from the time it was so discounted; and if the Jury further believe from the evidence that the said Note so discounted was the consideration in whole or in part of the bill sued on in this case, then such consideration is illegal and said bill sued upon in this case, is for that reason wholly void and the Jury will find for the debt."

2 "That if the Jury believe from the evidence that the paper endorsed by the debt Maker was a blank promissory Note and the same so endorsed was given to G. F. Lewis and the same was filled up as a bill and discounted in the State of Indiana, the liability of the debt as endorser, would be governed by the laws of that State; and by the laws of that State, if said paper had been filled up as a promissory Note, Maker could be made liable as an endorser of the same as a promissory Note only by the holder using diligence to collect of the maker or by showing the maker notoriously insolvent; but the liability of the endorser of a Bill of exchange drawn by a party in one State upon a drawee in another State, is other and different; depending upon due presentment, demand, protest and notice, and in this respect there is a material difference between the liability of the endorser, as the paper sued on now is and what it would have been if filled up as a promissory Note."

Refused.

5th "That although the Jury may believe from the evidence that after the time for the maturity of the Bill passed on, the said Jeff Thaw had a conversation with the Cashier of the said Southern Bank of Indiana, and in that conversation the said Thaw told the said Cashier that he would admit service of process to commence a suit against him on said Bill and that he would not make any defense to such suit except what he made through Lewis, but at the same time stated to said Cashier that he had been notified by Lewis not to settle it and that Lewis was going to defend the action on the bill, such statements should be considered together by the Jury, and are not sufficient in law to amount to a ratification of the alteration of said paper into a bill of Exchange."

6th "That the taking of security by Thaw from Lewis to indemnify him against liability upon the Bill of Exchange upon which a recovery is sought in this action would not render him liable upon the same or authorize a recovery against him upon it, if he were not liable thereon before taking such security."

7th "That the taking of security by Thaw to indemnify him against liability upon the bill upon which a recovery is sought in this action, would not amount to as he is evidence of a ratification of the making of said Bill, under the circumstances detailed in the evidence of the witness, Francis S. Williams"

Of the Jury believe from the evidence that the Note of Sept 5, 1857 read in evidence by defendant

used

Refused

Refused

59

Refused

was discounted for the maker thereof by the Southern Bank of Indiana, and that said Bank in making said discount contracted for, or knowingly & intentionally received or reserved to itself directly or indirectly a greater rate of interest than 6 per cent per annum in advance, said Note was illegal and void; and if the Jury believe from the evidence that the Bill of Exchange upon which recovery is sought in this action was given in whole or in part in consideration of said Note or in renewal or extension thereof in whole or in part, then said bill is void and they must find the Verdict for defendant.

8 " That if the Jury believe from the evidence that the Bill of Exchange upon which recovery is sought in this action was discounted by the Southern Bank of Indiana and was made payable in the City of New York at the instance of said Bank for the purpose and with the intention of enabling it to receive the difference in Exchange between Terre Haute and New York by way of payment for the loan or use of the money so loaned upon said Bill over and above the rate of interest which it was authorized to receive by the laws of Indiana, under which it existed, then said bill is void and their Verdict must be for defendant."

Refused
to be
substantially
given
refused.

All of which instructions last named so asked by the said defendant as aforesaid were refused by the Court, and to the refusal of the Court to give the said last named Instructions and each of them

Separately the Defendant by his Counsel Here and there excepted.

The Court of its own Motion gave the following Instructions to the Jury.

1. "When an endorser of a Note commits it to the Maker with blanks to be filled; as, of date, sum of money, time, or place of payment; there is an implied authority given to the maker to fill any and all blanks so left in such Note - But the maker would not be authorized to erase or strike out anything written or printed in the instrument so delivered to him unless an express authority is given to him to do it.

And if, in this case, the Maker erased any material part and altered the Note without authority from the Endorser in a material manner at the request of the Southern Bank of Indiana such alteration would discharge the Endorser, unless he afterwards assented to such an alteration, or knowing of such alteration, expressly, or recognized his liability or agreed to pay such bill or note."

Q.^c "Altering a blank Promissory Note payable generally, so as to convert it into a bill of exchange payable in New York would be a material alteration within the meaning of the rule "that a material alteration destroys the validity of the Note."

The Jury thereupon retired to consider of their Verdict, and afterwards returned into Court with the following Verdict, to wit:

"We the Jury find for the Plaintiff and his
the damage at \$2237.67.

"A. Gibbs - foreman."

Which being announced the Defendant by his Counsel moved the Court to set aside said Verdict and to grant a new trial in said cause - And afterwards filed in said cause his Motion in writing as follows.

"Joseph M. Williams, Pres' of
two use of Southern Bank of Ohio. } Superior Court of Chicago
in } April Term A. D. 1860
Chas. B. Ward . . . }

And now comes the said defendant by Seabro, McCreister & Levest his attorneys and moves the Court to set aside the Verdict of the Jury in this cause and to grant a new trial therein, and for cause shows
1st That said Verdict is against the evidence in the cause.

2nd Said Verdict is contrary to the Instructions of the Court.

3rd Said Verdict is contrary to the Law and the evidence in the case.

4th The Court refused proper Instructions asked for by the Defendant.

5th The Court gave improper Instructions on behalf

of the Plaintiff.

6th The Court admitted improper Evidence on the trial.

7th And for other good and sufficient reasons.

Seated, The Attorney & Clerk

Atty for Deft."


Which Motion after argument by Counsel was overruled by the Court - and to the decision of the Court in overruling said Motion the Defendant by his Counsel then and there excepted. And thereupon a Judgment was rendered by the Court upon the Verdict of the Jury aforesaid - and the Defendant then prayed an appeal to the Supreme Court, which was allowed.

And inasmuch as the said several rulings and decisions of the Court and the exceptions of the said Defendant thereto, do not appear of record in said cause the said Defendant prepares and submits to the Court this his Bill of Exceptions in said cause and prays that the same may be signed and sealed by the Court and made a part of said Record, which is accordingly done this 21st day of January A.D. 1861.

New. H. Higgins (Seal) "

63
State of Illinois }
Cook County . . . } *W. H. Kimball*

I Walter Kimball Clerk of the Superior Court of Chicago (formerly the Cook County Court of Common Pleas) within and for the County of Cook in the State of Illinois Do hereby certify the above and foregoing to be a true and correct Transcript of the Precept, Affidavit and Writ of attachment Declaration Plea and affidavit of Merits and ^{and Answer Brought & Bill of Exceptions} ~~objections~~ now on file in my Office together with all orders and judgments entered of record in said Court in a certain suit therein wherein Joseph H. Williams for the use of the Southern Bank of Indiana was plaintiff and Eben B. Ward was Defendant.



In testimony whereof I have hereunto set my hand and affixed the Seal of said Superior Court at Chicago in said County the twenty third day of March A.D. 1861.

65-
Supreme Court { April Term 1868
Eben B. Ware {
 vs. Appellant {
Joseph H. Williams { Assignment of
 President &c Appellee { Error

And the said Appellant by Scates McAllister & Jewett
 his attorney, before the Justices of the Supreme Court
 at Ottawa comes and says that in the record and
 proceedings aforesaid and in giving the judgment
 aforesaid there is manifest error in this to-wit:
 1st The Court erred in admitting improper evidence
 and excluding proper evidence,

2^d The Court erred in giving the instructions
 aforesaid on behalf of the plaintiff in said
 Superior Court.

3^d The Court erred in refusing the instructions
 aforesaid asked on behalf of Appellant

4th The Court erred in overruling the motion
 made by Appellant to set aside the verdict
 and to grant a new trial,

5th The Court erred in giving judgment for the
 plaintiff and against the defendant
 Wherefore for the errors aforesaid and other
 errors in the said record and proceedings
 Appellant prays that said judgment may
 be reversed &c

Scates McAllister & Jewett
 Attys for Appellant

(over)

And the said appellee, by Gookin's
Thomas & Robert, his attorneys, comes
and says there is no error in the said
verdict and proceeding, as the said
appellant hath alleged

Gookin, Thomas & Robert
Attorneys for appellee

Supreme Court
Eber B Ward
235 on
73

Joseph H Williams
Pres vs Appeller

Record

Filed April 17. 1861
L. Leland
Clerk

\$20.00

SUPREME COURT,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

Eber B. Ward,

Appellant,

vs.

Joseph H. Williams, Pres.,

*for the use of the Southern Bank of
Indiana,*

Appellee.

APPEAL FROM THE SUPERIOR
COURT OF CHICAGO.

ABSTRACT OF RECORD.

Rec. 5 This suit was ASSUMPSIT, commenced by ATTACHMENT, to the April Term A. D. 1859 of the Cook County Court of Common Pleas, by Joseph H. Williams, President and who sued for the use of the Southern Bank of Indiana, against Eber B. Ward.

7 to 12 The DECLARATION contains two special counts and the common money counts.

7 The SPECIAL COUNTS aver the passage of an act of the General Assembly of the State of New York, April 14th, 1857, whereby it is provided, among other things, that all bills of exchange or drafts appearing upon

their face to have been drawn on any bank or banking association, &c., which are on their face payable on any specified day or in any number of days after date or sight, shall be deemed due and payable on the day mentioned for payment, without grace, and it shall not be necessary to protest the same for non-acceptance.

8 And it is further in substance averred, that — said act being in force in the State of New York on the 28th day of January, 1858 — at Terre Haute, in the State of Indiana, one Gleason F. Lewis made his certain bill of exchange, bearing that date, and directed the same to the Metro-
9 politan Bank of New York, at and in the City of New York in the State of New York, and thereby requested the Cashier of said Bank three months after date to pay to the order of the defendant the sum of three thousand dollars (acceptance waived) for value received; that the defend-
9 ant endorsed the same at Terre Haute, Indiana, and delivered it to plain- tiff for the use of the Southern Bank of Indiana; that the same was not paid by the Metropolitan Bank — protest and notice.

9 The SECOND COUNT is upon the same bill of exchange, and sets forth
19 the laws of Indiana, and provisions as to damages upon dishonor of bills drawn in said State upon persons out of that State but within the United States.

14 The defendant plead the general issue, with stipulation that it should
16 give the defendant the same right as if verified.

17 On the 18th day of April, A. D. 1860, the case was tried before the Court and a jury.

23 The BILL OF EXCEPTIONS shows, that, upon the trial, the plaintiff read in evidence the statute of New York set out in the first special count of his declaration as aforesaid.

24 The plaintiff then read in evidence the statute of the State of Indiana set out in the second special count of said declaration, which provides for damages on the dishonor of bills of exchange in certain cases.

25 The plaintiff, further to maintain the issue on his part, offered in evidence a paper with certain erasures, as follows :

"\$3000.00. TERRE HAUTE, IND., JAN'y 28th, 1858.
"Three months after date (promise to) pay to the order of E. B.
"Ward, Esq., three thousand dollars, (at) acceptance waived, value
"received. G. F. LEWIS.
"To Cash. Metropolitan Bank, New York City."

[The words enclosed in parentheses were erased by pen-strokes.]

25 Endorsed as follows : "Paid at date, on the within bill, one thousand dollars. \$1000." Also endorsed : "E. B. WARD."

25 To the introduction of said bill the defendant objected that alterations appeared on the face of the instrument. The Court overruled the objection, and the defendant excepted.

27 FRANCIS S. WILLIAMS was introduced as a witness for plaintiff, and, being sworn, testified as follows :

"I reside at Terre Haute, Indiana ; am son of plaintiff, and Cashier of Southern Bank of Indiana ; was Cashier January 28th, 1858, and have been ever since ; George C. Day was Cashier prior to that time."

The instrument above mentioned being shown to witness, who, after stating about the notices of protest, &c., proceeded :

28 "I had a conversation with defendant August 16th, 1858 ; presented the bill to him, and he told me he had securities in his hands of Mr. Lewis ; I asked him if he would arrange it, and he answered that *Mr. Lewis had served notice on him not to arrange it*. I presented to him the bill offered in evidence. He said he did not know what Mr. Lewis intended to do, *but he had notified him not to pay it*. He made no objection that it was in the form of a bill ; said he would arrange to pay it then, *if Lewis had not told him not to do so*. He said he wanted it brought to trial, and if judgment went against him, he should realize on the securities he had, and pay it up. He said he should give no trouble whatever, accept service, and make no defence."

Cross-Examination. — "I do not know that Mr. Ward read the bill ; he looked at it, and appeared to read it ; I do not know that I called his

29 attention to the fact that it was a draft. He said he did not know what Lewis' defence was — only that he had received notice not to pay it. *He told me distinctly that he should not pay it then.* He did not tell me *what securities* he had, or *when* he received them, but *simply that he had some securities*, and should give us no trouble."

31 *Direct Examination resumed by plaintiff.*—"I transmitted the bill to C. A. Macy, Cashier of the Park Bank, New York; sent it as Cashier of the Southern Bank of Indiana; it was sent for collection in the regular course of business; Macy is Cashier of the Park Bank.

"Mr. Ward, on the 16th August, 1858, told me *that he endorsed the paper and gave it to Mr. Lewis to raise money for him*; and that the first notice he had of the use of the paper, was from the Southern Bank of Indiana that the Bank had discounted it. He said that out of the note or bill which the Bank had before of Mr. Lewis, endorsed by him, he had \$2,000, *which he had paid, and that he had given Mr. Lewis his endorsement on this paper to raise money for himself.*"

31 A letter shown to the witness was identified as a letter written by himself, as Cashier of the Southern Bank of Indiana, and given in evidence by plaintiff, as follows:

"J. H. WILLIAMS, Pres't.

"SOUTHERN BANK OF INDIANA,
"TERRE HAUTE, Jan'y 28th, 1858. }

"E. B. WARD, Esq., Detroit, Mich. :

"*Dear Sir*—We received your favor Jan'y 25th this morning, "with check for \$2000, which amount we have endorsed on G. F. "Lewis' bill for \$3000 due Dec. 8, 1857. Mr. Lewis was here to- "day, and took up the bill, and we cancelled it and gave it up to "him. It was in one bill, and not in three as you mentioned. We "then discounted for Mr. Lewis his bill endorsed by you for \$3,000, "at three months from this date, with one thousand endorsed paid
32 "on the back, which leaves balance due \$2000.

"Yours respectfully,

"F. S. WILLIAMS, Cash."

Cross-Examination by Defendant resumed.—"At the date of my letter to Mr. Ward of the 28th Jan'y, 1858, there was a paper in the Bank to which Lewis and Ward were parties. The paper referred to in that let-

33 ter as a *bill* may have been a *note* or a *bill*. The paper shown me, dated Sept. 5th, 1857, signed by G. F. Lewis, is the same one. At the conversation of August 16th, 1858, Mr. Ward did not tell me that at the time he endorsed the paper in controversy he intended \$2000 of it to be applied on the note in the Bank; he did not say he intended it to be so applied; but that he had since paid the money. He said he had since paid the money—the \$2000—and *did not feel bound to pay this paper on that account*. I think he said that if the \$3000 note had not been arranged, he should have felt bound to take it up. The note was taken up by Ward's paying \$2000 of it, *and when Lewis discounted the note in controversy, one thousand and upwards were applied in payment of balance of that note*. I think it likely that costs of protest, &c., were taken out of the bill. The Southern Bank of Indiana was the owner of the paper in controversy; the Bank discounted it for Lewis. The paper was not in its present form when it was presented to the Bank. Mr. Ward was not there at the time. Mr. Lewis, myself, and the plaintiff in this suit (the President of the Bank), and perhaps a clerk, were present. When the paper was presented, it was blank, except the check mark '\$3000' on the upper left hand corner, and had Mr. Ward's name on the back; the words 'promise to,' now erased, were then in it. Mr. Lewis brought it to the Bank. The President and I saw it in its then condition. Lewis and the President had some conversation about it, which I did not hear. After they had made their arrangements, they called me back where they were, and Mr. Lewis handed me the paper and directed me to fill it up to suit the form used by the Bank, or words to that effect. I took it away to my desk and filled it up in the form it now is, and took it back, and Lewis signed it. Lewis told me to direct it to the Cashier of the Metropolitan Bank, New York. I erased the words '*promise to*' and '*at.*' Mr. Ward was not there, and was never at the Bank to my knowledge. I do not know what was paid to Lewis at that time; I think money was paid at that time; that was settled between him and the President. The letter shown me, dated Sept. 5th, 1857, to Mr. Lewis, and the other, dated Oct. 3d, 1857, to E. B. Ward, are in the hand-writing of Mr. Day, Cashier of the Southern Bank of Indiana at those dates. The note for \$3000, dated Sept. 5th, 1857, signed by Lewis and endorsed by Ward, is the only one of that amount and date
34 the Bank held at that time. I think the Bank had had other paper of the same parties.

"The Southern Bank of Indiana has been in operation since January, 1853, and has been issuing bills since that time." (The plaintiff

here admitted that the Southern Bank of Indiana was organized and doing business under the general banking law of the State of Indiana.) "The Bank owns the bill in controversy now. The rate of interest at that time was six per cent. on bills; I don't know what rate of interest was taken on this bill. *The object of getting the bill payable in New York was to get the exchange. At the date of the bill, exchange was five to six per cent.; at the time the bill matured, it was three per cent. at least. The bill payable in New York was preferred because of the exchange. That was why the bill was so drawn — to get the exchange.*"

Re-Examination by plaintiff.—"The letter shown me dated January 25th, 1858, is the one enclosing the \$2000 paid by Mr. Ward on the \$3000 note, and is the one to which I replied on the 28th of the same month."

Said letter was then given in evidence, as follows:

"DETROIT, JAN'Y 25th, 1858.

"GEO. C. DAY, Cash'r, Terre Haute:

35

"*Dr. Sir* — I believe your Bank holds G. F. Lewis' notes, my endorsement, amounting to \$3100. I now enclose you herewith my draft No. 4 on J. M. Forbes, Esq., Boston, payable to your order, for \$3000, the proceeds of which you will please apply in payment of *the two notes for \$1000 each*, and return the same to me cancelled. Should there be any interest on these notes, you will please send me a statement of the same, and I will remit you the amount.

"Yours respectfully,

"E. B. WARD."

The witness continued — "There were no \$1000 notes to which Ward was a party then in the Bank. At the conversation with Mr. Ward in August, 1858, he said he had securities, and if a judgment went against him he should realize on them and arrange it; *but he did not say how or for what purpose he held the securities.*"

Cross-Examination resumed.—"At the date of the letter of Mr. Ward the only note held by the Bank, to which he was a party, was the note for \$3000 above referred to."

36, 37 The plaintiff then gave in evidence the notice of non-payment and protest.

37 The plaintiff gave in evidence to the jury the following letter from the defendant to him :

“DETROIT, MAY 17th, 1858.

“J. H. WILLIAMS :

38 “*Dear Sir*—Yours of the 12th is at hand. Mr. Lewis notifies
“me not to negotiate with the Bank for an adjustment. I am not
“*fully* aware of his position or intentions. I will write to him about
“it. My impression is that you will not be able to close with him
“without a suit ; and I do not desire to delay or interrupt any pro-
“ceedings you may have in contemplation. I regret that I am in
“any way connected with his affairs, but shall feel perfectly satisfied
“with any proceedings you may see fit to take, as I have no doubt
“he justly owes you.

“Reply,

E. B. WARD.”

38 The plaintiff then gave in evidence the 20th section of the general banking law of Indiana, as follows :

“Such associations shall have power to carry on the business of bank-
“ing, by discounting notes, bills and other evidences of debt ; by receiv-
“ing deposits ; by buying and selling gold and silver bullion, foreign
“coins, and bills of exchange, in the manner specified in their articles of
“association for the purposes authorized in the act ; by loaning money
“on personal security, and by exercising such incidental powers as shall
“be necessary to carry on such business ; to choose one of their number
“as President of such association, and to appoint a Cashier and such
“other officers and agents, at pleasure, and appoint others in their places.
“Such association shall be entitled to charge and receive, for moneys
“loaned, *interest* at a rate *not exceeding six per centum per annum*, and
“the same may, according to Bank rules, be discounted and taken
“in advance out of the sum loaned.”

The plaintiff also read in evidence sec. 6, on page 378, of the 1st vol. of the Laws of Indiana, as follows :

39 “Notes payable to order, or bearer, in a Bank in this State, shall be
“negotiable as inland bills of exchange, and the payees and endorsers
“may recover as in case of such bills.”

39 Also sections 1, 3 and 4, on pages 67 and 68 of 3d vol. of Revised
Statutes of New York, as follows :

“SECTION 1. All notes in writing, made and signed by any person,
“whereby he shall promise to pay to any other person or his order,
“or to the order of any other person, or to the bearer, any sum of money
“therein mentioned, shall be due and payable as therein expressed, and
“shall have the same effect and be negotiable in like manner as inland
“bills of exchange, according to the custom of merchants.”

“§ 3. The word ‘person,’ in the two last preceding sections, shall be
“construed to extend to every corporation capable by law of making
“contracts.

“§ 4. The payees and endorsers of every such note payable to them
“or their order, and the holders of every such note payable to bearer,
“may maintain actions for the sums of money therein mentioned against
“the makers and endorsers of the same respectively, in like manner as
“in cases of inland bills of exchange.”

40 The plaintiff here rested his cause.

The defendant then read from the deposition of said witness FRANCIS
S. WILLIAMS, taken before a United States Commissioner at Detroit on
the 29th day of October, 1858, as follows :

“I reside in Terre Haute; am Cashier of the Southern Bank of Indi-
“ana, a corporation under the general banking law of that State.”

(Being shown the bill of exchange in suit, said :) “G. F. Lewis, the
maker of said bill, brought it to our Bank in blank, the only excep-
tion being the ‘\$3000,’ and the signature of the defendant on the back,
being the only writing on the paper. I filled it up at Mr. Lewis’ re-

quest; the writing in the body of the draft, except the signature to the same, is my hand-writing; after it was filled up, I made an endorsement of one thousand dollars in order to reduce it to two thousand dollars, and Lewis signed it; the Bank then discounted it. I advised Mr. Ward, the same day, that we had discounted his *note* for two thousand dollars; notice was given by letter (which is the same above set out). The plaintiff received a notice of protest of said bill by mail on 3d of May, 1858; letter was addressed to Cashier; in same envelope was notice for Lewis; I sent the notice of protest to defendant by mail the same day, directed to Detroit, Michigan; I had a conversation about this matter at Detroit on the 16th August, 1858; had the draft with me; showed it to defendant and tried to get him to make some settlement of the matter. He said *that as far as he was concerned, he was willing to settle it, but Mr. Lewis had given him legal notice not to do so.* He said he gave Mr. Lewis this draft to raise money upon for him. By this draft I mean the paper I showed him, which is the draft in evidence. He said the first he knew the paper had been used, was the receipt of notice that he got from me, that the draft had been discounted. Defendant took the paper and opened it; I supposed he read it; he looked at it. Asked defendant what ground Lewis took for not paying the draft; defendant replied that he did not know. Defendant made no other objection to the payment of the paper."

42

Cross-Examined.—"I erased the printed words 'promise to,' and also the word 'at,' on the face of that bill. This paper, when brought to the Bank, was in the form of a blank note, filled only as to the amount in figures. Lewis had some conversation with the President before he handed the paper to me. At this time the Bank held a note, or bill of exchange, made by Lewis and endorsed by Mr. Ward, defendant, for three thousand dollars, upon which payment had been made that morning with money received from Ward, of two thousand dollars. *The thousand dollars due on that piece of paper, the interest, and costs of protest, formed a part of the consideration of the bill in suit;* and the balance of the two thousand dollars for which the bill was discounted was *paid or sent to Mr. Lewis in money;* I think a portion of it *was paid to him at that time, and a part sent to him by express.*

43

"I became Cashier of the Bank the 1st of January, 1858; George C. Day was Cashier prior to that time. The three thousand dollar note,

so taken up by Lewis at this time, had matured before I became Cashier; I don't know its date—only know it was for three thousand dollars. Don't know what kind of money was paid Lewis upon discounting the bill in suit, nor what rate of discount was reserved. We were discounting at that time at the rate of six per cent., the legal rate of interest in Indiana. *We uniformly charged or discounted at that rate. Exchange on New York, at Terre Haute, was at that time from five to eight per cent. premium.* In April, 1858, exchange had declined from one and a half to two per cent. The object of plaintiff in taking bills on New York was to provide themselves with exchange. A note or bill payable in New York, at that time, was more valuable than one payable at our Bank, by the amount of the premium. The letter now produced, and marked 'Exhibit B,' is in the handwriting of George C. Day, who, at the time of its date was Cashier of the Southern Bank of Indiana.

"Never saw the Bank have any paper made by Lewis that was not endorsed by Mr. Ward.

44

"The conversation with Mr. Ward (as referred to in my direct examination) on 16th August, 1858, was at defendant's office in Detroit; no one was present but Ward and myself; I introduced myself to Mr. Ward, told him what I had come to see him about, and showed him the bill or draft in controversy. Don't know that I used the words 'bill' or 'draft' when I presented it to him. I suppose Mr. Ward read it, but don't know; he opened and looked at it; was talking with me at the time he held it in his hand. Don't know that the word 'bill' or 'draft' was mentioned in that conversation by either of us. Mr. Ward said he would like to see the matter settled. He spoke of the *note* or draft in controversy, and also of a *note* to another Bank; said he would be willing to settle them, but Mr. Lewis had given him legal notice not to do so. In a further conversation he said *he did not want to see the Bank lose the money, nor did he want to lose it himself; but if he settled it, he should have to lose it;* and he had no doubt Lewis justly owed the Bank the money.

45

"Mr. Ward said further that he had paid the two thousand dollars which he had out of the proceeds of the prior note, and should have felt bound to pay the balance if Lewis had not arranged it.

"Mr. Ward said in that conversation, that he had securities from Lewis, and if the Bank got judgment against him he would turn out those securities and pay it off.

"He did not say at what time, nor for what purpose, Lewis had given him these securities. Ward was not present at the time I filled up the bill sued on."

46 The defendant's counsel then read in evidence to the jury the letter of G. C. Day, former Cashier of said Bank, respecting the discount of the prior note referred to, which is as follows :

"J. H. WILLIAMS, *Pres.*

G. C. DAY, *Cashier.*

"SOUTHERN BANK OF INDIANA,
"Terre Haute, September 5, 1857. }

"G. F. LEWIS, Esq., Cleveland, O. :

"Dear Sir : We this day discount your bill, 3 m.....	\$3000.00
"and deducting discount.....	70.50
"leave to your credit	\$2929.50
"I hand you with this, against above, Land Warrants amounting, as per agreement.....	600.00
"and our currency	329.50
"Say	\$929.50
"For the balance, \$2000, we will forward you in our notes for good circulation, on the 15th inst.....	\$1000
" " 25th inst.....	1000—\$2000 00

"Resply, GEO. C. DAY, Cash'r."

47 The defendant then read in evidence another deposition of said FRANCIS S. WILLIAMS, taken on the 11th day of October, 1858, before Judge Huntington, in substance as follows :

"The blank note number A is substantially a copy of the note sued on, as originally presented at the Bank for discount. Lewis handed it to me and requested me to make it into the form of a bill of exchange and address it to the Cashier of the Metropolitan Bank, New York. I therefore erased the words 'promise to,' filled it for the amount, and addressed it as requested. On the 16th of August last, I showed Mr. Ward the bill now sued on ; it was then due. He then told me that

48

\$2000 of the first note was for his benefit ; that he received that amount, and had paid it, leaving Lewis to pay the balance—if Lewis had not arranged it. He further stated that we had informed him that we had discounted \$2000 of the bill sued on, which was the first knowledge he had that Lewis had used the paper ; that *when he endorsed the paper sued on*, it was with the *understanding* that *Lewis was to raise some money on it for him.*”

The defendant then gave in evidence the note of G. F. Lewis referred to and identified by witness Williams, as follows :

“ \$3000.

CLEVELAND, O., September 5th, 1857.

“ Three months after date I promise to pay to the order of E. B. Ward, Esq., three thousand dollars, at the office of Winslow, Lanier & Co., 52 Wall street, New York, value received.

“ G. F. LEWIS.”

Endorsed “ E. B. Ward.” Also as follows: “ Paid on within, by “ E. B. Ward, two thousand dollars, \$2000, and by G. F. Lewis one “ thousand dollars, \$1000, Jan’y 28, 1858.”

The defendant then read to the jury, as evidence, from pages 12 and 13 of the Revised Statutes of the State of New York, the first and fifth sections of the act of May 15th, 1837, entitled “ An act to prevent Usury,” as follows :

49

“ SECTION 1. The rate of interest upon any loan or forbearance of any money, goods, or things in action shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time.”

“ § 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts) and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved, or taken, or secured, or agreed to be reserved or taken, any greater sum or greater value for the loan or forbearance of any money, goods or other things in action than

is above prescribed, shall be void. But this act shall not affect such paper as has been made and transferred previous to the time it shall take effect."

49 The defendant rested his case, and the foregoing is all the evidence given on said trial.

At the request of the plaintiff's counsel, the Court gave to the jury, among others, the following instructions :

50 **5.** If, in making the note and bill which have been given in evidence, they were made payable in New York, for the purpose of allowing a rate of interest exceeding what was legal in Indiana, the parties understanding that the money was not to be paid in New York, but in Indiana, the usury law of New York, which has been given in evidence, has no application to the case, and will be disregarded by the jury.

51 **12.** If the defendant delivered the paper in question to Lewis, the drawer, blank, with his endorsement upon it, for the purpose of enabling him to raise money to pay the paper, and if the words "promise to" were erased and the paper discounted in the form of a bill of exchange, and if the defendant was immediately notified thereof, it was his duty, if he intended to disaffirm the transaction and deny his liability, to give notice to the holder of such disaffirmance, and if he failed to do so, the jury may infer therefrom his acquiescence in and ratification of the act.
52 This is the law, if his attention was particularly called to the alteration in such a way that the jury are satisfied, from the evidence, that he must have known of the alteration at the time.

52 To the giving of which said several instructions, the defendant's counsel then and there excepted.

The defendant's counsel requested the Court to instruct the jury as follows :

55 **1.** That if the jury believe, from the evidence, that the bill of ex-

change, upon which a recovery is sought in this action, was made to be discounted by the Southern Bank of Indiana, and that in making such discount, said Bank contracted for or knowingly and intentionally reserved or received to itself, directly or indirectly, a greater rate of interest than seven per cent. per annum in advance (being the rate of interest authorized by the laws of the State of New York where such bill was made payable) said bill is void, and their verdict must be for defendant.

56

2. If the jury believe, from the evidence, that the note of September 5th, 1857, given in evidence by defendant, was discounted for the maker by the Southern Bank of Indiana, and that said Bank, in making such discount, contracted for and knowingly and intentionally received or reserved to itself, directly or indirectly, a greater rate of interest than seven per cent. per annum taken in advance (being the rate of interest authorized by the laws of the State of New York, where said note was made payable), said note was void; and if the jury believe, from the evidence, that the bill of exchange, upon which a recovery is sought in this action, was given in whole or in part consideration of said note, or in renewal or extension thereof in whole or in part, then said bill is void, and they must find their verdict for the defendant.

57

3. That by the laws of Indiana, the legal rate of interest for the loan of money is six per cent. per annum, and by the laws of New York, the legal rate of interest is seven per cent. per annum. If the jury believe, from the evidence, that the note given in evidence, bearing date the 5th day of September, A. D. 1857, was made and endorsed for the purpose of having the same discounted at a rate of interest exceeding seven per cent. (the legal rate in New York) and the same was made payable in the State of New York and with reference to the laws of New York, and that the Southern Bank of Indiana, by its officers and agents, corruptly and usuriously discounted the said note at a rate of interest exceeding seven per cent. per annum, then the said note was governed by the laws of New York, and by the statute of that State given in evidence was void from the time it was so discounted; and if the jury further believe, from the evidence, that the said note so discounted was the consideration in whole or in part of the bill sued on in this cause, then such consideration is illegal, and said bill sued upon in this cause is, for that reason, wholly void, and the jury will find for the defendant.

58 5. That although the jury may believe, from the evidence, that after the time for the maturity of the bill sued on, the said defendant Ward had a conversation with the Cashier of the said Southern Bank of Indiana, and in that conversation, the said Ward told the said Cashier that he would admit service of process to commence a suit against him on said bill, and that he would not make any defence to such suit, except what he made through Lewis; but at the same time stated to said Cashier, that he had been notified by Lewis not to settle it, and that Lewis was going to defend the action on the bill, such statements should be considered together by the jury, and are not sufficient in law to amount to a ratification of the alteration of said paper into a bill of exchange.

6. That the taking of security by Ward from Lewis, to indemnify him against liability upon the bill of exchange, upon which a recovery is sought in this action, would not render him liable upon the same or authorize a recovery against him for it, if he were not liable thereon before taking such security.

59 8. That if the jury believe, from the evidence, that the bill of exchange, upon which a recovery is sought in this action, was discounted by the Southern Bank of Indiana and was made payable in the City of New York at the instance of said Bank for the purpose and with the intention of enabling it to receive the difference in exchange between Terre Haute and New York, by way of payment for the loan or use of the money loaned upon said bill, over and above the legal rate of interest which it was authorized to receive by the laws of Indiana, under which it existed, then said bill is void, and their verdict must be for defendant.

59 But the said Court refused to give any or either of the said instructions so asked on behalf of defendant, and defendant's counsel then and there excepted.

61 The jury found a verdict for the plaintiff, and assessed his damages at \$2237.67.

Whereupon the defendant made a motion to set aside the said verdict and for a new trial, and for cause showed :

1. That said verdict is contrary to the evidence in the case.
2. Said verdict is contrary to the instructions of the Court.
3. Said verdict is contrary to the law and the evidence in the case.

62

Which motion the Court overruled, and the defendant's counsel then and there excepted.

65

Judgment was rendered on the verdict, and the defendant appealed to this Court, and assigns for error the following, viz :

I.

The Court erred in admitting improper evidence and excluding proper evidence.

II.

The Court erred in giving the instructions aforesaid on behalf of the plaintiff.

III.

The Court erred in refusing the instructions aforesaid asked on behalf of appellant.

IV.

The Court erred in overruling the motion made by appellant to set aside the verdict and for a new trial.

SCATES, McALLISTER & JEWETT,

Attorneys for Appellant.

E. B. Ward

vs

J. H. Williams

Abstract

Filed April 17, 1861.

A. J. Daniel

clerk

SUPREME COURT,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

Eber B. Ward,

Appellant,

vs.

Joseph H. Williams, Pres.,

*for the use of the Southern Bank of
Indiana,*

Appellee.

APPEAL FROM THE SUPERIOR
COURT OF CHICAGO.

ABSTRACT OF RECORD.

— ... —

Rec. 5 This suit was Assumpsit, commenced by ATTACHMENT, to the April Term A. D. 1859 of the Cook County Court of Common Pleas, by Joseph H. Williams, President and who sued for the use of the Southern Bank of Indiana, against Eber B. Ward.

7 to 12 The DECLARATION contains two special counts and the common money counts.

7 The SPECIAL COUNTS aver the passage of an act of the General Assembly of the State of New York, April 14th, 1857, whereby it is provided, among other things, that all bills of exchange or drafts appearing upon

their face to have been drawn on any bank or banking association, &c., which are on their face payable on any specified day or in any number of days after date or sight, shall be deemed due and payable on the day mentioned for payment, without grace, and it shall not be necessary to protest the same for non-acceptance.

8 And it is further in substance averred, that — said act being in force
in the State of New York on the 28th day of January, 1858 — at Terre
Haute, in the State of Indiana, one Gleason F. Lewis made his certain
bill of exchange, bearing that date, and directed the same to the Metro-
politan Bank of New York, at and in the City of New York in the State
of New York, and thereby requested the Cashier of said Bank three
months after date to pay to the order of the defendant the sum of three
thousand dollars (acceptance waived) for value received ; that the defend-
ant endorsed the same at Terre Haute, Indiana, and delivered it to plain-
tiff for the use of the Southern Bank of Indiana ; that the same was
9 not paid by the Metropolitan Bank — protest and notice.

9 The SECOND COUNT is upon the same bill of exchange, and sets forth
the laws of Indiana, and provisions as to damages upon dishonor of bills
19 drawn in said State upon persons out of that State but within the United
States.

14 The defendant plead the general issue, with stipulation that it should
16 give the defendant the same right as if verified.

17 On the 18th day of April, A. D. 1860, the case was tried before the
Court and a jury.

23 The BILL OF EXCEPTIONS shows, that, upon the trial, the plaintiff read
in evidence the statute of New York set out in the first special count of
his declaration as aforesaid.

24 The plaintiff then read in evidence the statute of the State of
Indiana set out in the second special count of said declaration, which
provides for damages on the dishonor of bills of exchange in certain
cases.

25 The plaintiff, further to maintain the issue on his part, offered in evidence a paper with certain erasures, as follows :

“\$3000.00. TERRE HAUTE, IND., JAN’y 28th, 1858.
“Three months after date (promise to) pay to the order of E. B.
“Ward, Esq., three thousand dollars, (at) acceptance waived, value
“received. G. F. LEWIS.
“To Cash. Metropolitan Bank, New York City.”

[The words enclosed in parentheses were erased by pen-strokes.]

25 Endorsed as follows : “Paid at date, on the within bill, one thousand dollars. \$1000.” Also endorsed : “E. B. WARD.”

25 To the introduction of said bill the defendant objected that alterations appeared on the face of the instrument. The Court overruled the objection, and the defendant excepted.

27 FRANCIS S. WILLIAMS was introduced as a witness for plaintiff, and, being sworn, testified as follows :

“I reside at Terre Haute, Indiana ; am son of plaintiff, and Cashier of Southern Bank of Indiana ; was Cashier January 28th, 1858, and have been ever since ; George C. Day was Cashier prior to that time.”

The instrument above mentioned being shown to witness, who, after stating about the notices of protest, &c., proceeded :

28 “I had a conversation with defendant August 16th, 1858 ; presented the bill to him, and he told me he had securities in his hands of Mr. Lewis ; I asked him if he would arrange it, and he answered that *Mr. Lewis had served notice on him not to arrange it*. I presented to him the bill offered in evidence. He said he did not know what Mr. Lewis intended to do, *but he had notified him not to pay it*. He made no objection that it was in the form of a bill ; said he would arrange to pay it then, *if Lewis had not told him not to do so*. He said he wanted it brought to trial, and if judgment went against him, he should realize on the securities he had, and pay it up. He said he should give no trouble whatever, accept service, and make no defence.”

Cross-Examination. — “I do not know that Mr. Ward read the bill ; he looked at it, and appeared to read it ; I do not know that I called his

29 attention to the fact that it was a draft. He said he did not know what Lewis' defence was — only that he had received notice not to pay it. *He told me distinctly that he should not pay it then.* He did not tell me *what securities* he had, or *when* he received them, but *simply that he had some securities*, and should give us no trouble."

31 *Direct Examination resumed by plaintiff.*—"I transmitted the bill to C. A. Macy, Cashier of the Park Bank, New York; sent it as Cashier of the Southern Bank of Indiana; it was sent for collection in the regular course of business; Macy is Cashier of the Park Bank.

"Mr. Ward, on the 16th August, 1858, told me *that he endorsed the paper and gave it to Mr. Lewis to raise money for him*; and that the first notice he had of the use of the paper, was from the Southern Bank of Indiana that the Bank had discounted it. He said that out of the note or bill which the Bank had before of Mr. Lewis, endorsed by him, he had \$2,000, *which he had paid, and that he had given Mr. Lewis his endorsement on this paper to raise money for himself.*"

31 A letter shown to the witness was identified as a letter written by himself, as Cashier of the Southern Bank of Indiana, and given in evidence by plaintiff, as follows:

"J. H. WILLIAMS, Pres't.

"SOUTHERN BANK OF INDIANA,
"TERRE HAUTE, Jan'y 28th, 1858. }

"E. B. WARD, Esq., Detroit, Mich. :

"*Dear Sir*— We received your favor Jan'y 25th this morning, "with check for \$2000, which amount we have endorsed on G. F. "Lewis' bill for \$3000 due Dec. 8, 1857. Mr. Lewis was here to-day, and took up the bill, and we cancelled it and gave it up to him. It was in one bill, and not in three as you mentioned. We "then discounted for Mr. Lewis his bill endorsed by you for \$3,000, "at three months from this date, with one thousand endorsed paid "on the back, which leaves balance due \$2000.

32

"Yours respectfully,

"F. S. WILLIAMS, Cash."

Cross-Examination by Defendant resumed.—"At the date of my letter to Mr. Ward of the 28th Jan'y, 1858, there was a paper in the Bank to which Lewis and Ward were parties. The paper referred to in that let-

ter as a *bill* may have been a *note* or a *bill*. The paper shown me, dated Sept. 5th, 1857, signed by G. F. Lewis, is the same one. At the conversation of August 16th, 1858, Mr. Ward did not tell me that at the time he endorsed the paper in controversy he intended \$2000 of it to be applied on the note in the Bank; he did not say he intended it to be so applied; but that he had since paid the money. He said he had since paid the money—the \$2000—and *did not feel bound to pay this paper on that account*. I think he said that if the \$3000 note had not been arranged, he should have felt bound to take it up. The note was taken up by Ward's paying \$2000 of it, *and when Lewis discounted the note in controversy, one thousand and upwards were applied in payment of balance of that note*. I think it likely that costs of protest, &c., were taken out of the bill. The Southern Bank of Indiana was the owner of the paper in controversy; the Bank discounted it for Lewis. The *paper was not in its present form when it was presented to the Bank*. Mr. Ward was not there at the time. Mr. Lewis, myself, and the plaintiff in this suit (the President of the Bank), and perhaps a clerk, were present. When the paper was presented, it was blank, except the check mark '\$3000' on the upper left hand corner, and had Mr. Ward's name on the back; the words 'promise to,' now erased, were then in it. Mr. Lewis brought it to the Bank. The President and I saw it in its *then* condition. Lewis and the President had some conversation about it, which I did not hear. After they had made their arrangements, they called me back where they were, and Mr. Lewis handed me the paper and directed me to fill it up to suit the form used by the Bank, or words to that effect. I took it away to my desk and filled it up in the form it now is, and took it back, and Lewis signed it. Lewis told me to direct it to the Cashier of the Metropolitan Bank, New York. I erased the words '*promise to*' and '*at.*' Mr. Ward was not there, and was never at the Bank to my knowledge. I do not know what was paid to Lewis at that time; I think money was paid at that time; that was settled between him and the President. The letter shown me, dated Sept. 5th, 1857, to Mr. Lewis, and the other, dated Oct. 3d, 1857, to E. B. Ward, are in the hand-writing of Mr. Day, Cashier of the Southern Bank of Indiana at those dates. The note for \$3000, dated Sept. 5th, 1857, signed by Lewis and endorsed by Ward, is the only one of that amount and date the Bank held at that time. I think the Bank had had other paper of the same parties.

"The Southern Bank of Indiana has been in operation since January, 1853, and has been issuing bills since that time." (The plaintiff

here admitted that the Southern Bank of Indiana was organized and doing business under the general banking law of the State of Indiana.)
 "The Bank owns the bill in controversy now. The rate of interest at that time was six per cent. on bills; I don't know what rate of interest was taken on this bill. *The object of getting the bill payable in New York was to get the exchange. At the date of the bill, exchange was five to six per cent.; at the time the bill matured, it was three per cent. at least. The bill payable in New York was preferred because of the exchange. That was why the bill was so drawn — to get the exchange.*"

Re-Examination by plaintiff.—"The letter shown me dated January 25th, 1858, is the one enclosing the \$2000 paid by Mr. Ward on the \$3000 note, and is the one to which I replied on the 28th of the same month."

Said letter was then given in evidence, as follows :

"DETROIT, JAN'y 25th, 1858.

"GEO. C. DAY, Cash'r, Terre Haute :

35

"*Dr. Sir* — I believe your Bank holds G. F. Lewis' notes, my endorsement, amounting to \$3100. I now enclose you herewith my draft No. 4 on J. M. Forbes, Esq., Boston, payable to your order, for \$3000, the proceeds of which you will please apply in payment of *the two notes for \$1000 each*, and return the same to me cancelled. Should there be any interest on these notes, you will please send me a statement of the same, and I will remit you the amount.

"Yours respectfully,

"E. B. WARD."

The witness continued — "There were no \$1000 notes to which Ward was a party then in the Bank. At the conversation with Mr. Ward in August, 1858, he said he had securities, and if a judgment went against him he should realize on them and arrange it; *but he did not say how or for what purpose he held the securities.*"

Cross-Examination resumed.—"At the date of the letter of Mr. Ward the only note held by the Bank, to which he was a party, was the note for \$3000 above referred to."

36, 37 The plaintiff then gave in evidence the notice of non-payment and protest.

37 The plaintiff gave in evidence to the jury the following letter from the defendant to him :

“DETROIT, MAY 17th, 1858.

“ J. H. WILLIAMS :

38 “ *Dear Sir*— Yours of the 12th is at hand. Mr. Lewis notifies
“ me not to negotiate with the Bank for an adjustment. I am not
“ *fully* aware of his position or intentions. I will write to him about
“ it. My impression is that you will not be able to close with him
“ without a suit ; and I do not desire to delay or interrupt any pro-
“ ceedings you may have in contemplation. I regret that I am in
“ any way connected with his affairs, but shall feel perfectly satisfied
“ with any proceedings you may see fit to take, as I have no doubt
“ he justly owes you.

“ Resply, E. B. WARD.”

38 The plaintiff then gave in evidence the 20th section of the general banking law of Indiana, as follows :

“ Such associations shall have power to carry on the business of bank-
“ ing, by discounting notes, bills and other evidences of debt ; by receiv-
“ ing deposits ; by buying and selling gold and silver bullion, foreign
“ coins, and bills of exchange, in the manner specified in their articles of
“ association for the purposes authorized in the act ; by loaning money
“ on personal security, and by exercising such incidental powers as shall
“ be necessary to carry on such business ; to choose one of their number
“ as President of such association, and to appoint a Cashier and such
“ other officers and agents, at pleasure, and appoint others in their places.
“ Such association shall be entitled to charge and receive, for moneys
“ loaned, *interest* at a rate *not exceeding six per centum per annum*, and
“ the same may, according to Bank rules, be discounted and taken
“ in advance out of the sum loaned.”

The plaintiff also read in evidence sec. 6, on page 378, of the 1st vol.
of the Laws of Indiana, as follows :

39 “Notes payable to order, or bearer, in a Bank in this State, shall be
“negotiable as inland bills of exchange, and the payees and endorsers
“may recover as in case of such bills.”

39 Also sections 1, 3 and 4, on pages 67 and 68 of 3d vol. of Revised
Statutes of New York, as follows :

“SECTION 1. All notes in writing, made and signed by any person,
“whereby he shall promise to pay to any other person or his order,
“or to the order of any other person, or to the bearer, any sum of money
“therein mentioned, shall be due and payable as therein expressed, and
“shall have the same effect and be negotiable in like manner as inland
“bills of exchange, according to the custom of merchants.”

“§ 3. The word ‘person,’ in the two last preceding sections, shall be
“construed to extend to every corporation capable by law of making
“contracts.

“§ 4. The payees and endorsers of every such note payable to them
“or their order, and the holders of every such note payable to bearer,
“may maintain actions for the sums of money therein mentioned against
“the makers and endorsers of the same respectively, in like manner as
“in cases of inland bills of exchange.”

40 The plaintiff here rested his cause.

The defendant then read from the deposition of said witness FRANCIS
S. WILLIAMS, taken before a United States Commissioner at Detroit on
the 29th day of October, 1858, as follows :

“I reside in Terre Haute; am Cashier of the Southern Bank of Indi-
“ana, a corporation under the general banking law of that State.”

(Being shown the bill of exchange in suit, said :) “G. F. Lewis, the
maker of said bill, brought it to our Bank in blank, the only excep-
tion being the ‘\$3000,’ and the signature of the defendant on the back,
being the only writing on the paper. I filled it up at Mr. Lewis’ re-

quest; the writing in the body of the draft, except the signature to the same, is my hand-writing; after it was filled up, I made an endorsement of one thousand dollars in order to reduce it to two thousand dollars, and Lewis signed it; the Bank then discounted it. I advised Mr. Ward, the same day, that we had discounted his *note* for two thousand dollars; notice was given by letter (which is the same above set out). The plaintiff received a notice of protest of said bill by mail on 3d of May, 1858; letter was addressed to Cashier; in same envelope was notice for Lewis; I sent the notice of protest to defendant by mail the same day, directed to Detroit, Michigan; I had a conversation about this matter at Detroit on the 16th August, 1858; had the draft with me; showed it to defendant and tried to get him to make some settlement of the matter. He said *that as far as he was concerned, he was willing to settle it, but Mr. Lewis had given him legal notice not to do so.* He said he gave Mr. Lewis this draft to raise money upon for him. By this draft I mean the paper I showed him, which is the draft in evidence. He said the first he knew the paper had been used, was the receipt of notice that he got from me, that the draft had been discounted. Defendant took the paper and opened it; I supposed he read it; he looked at it. Asked defendant what ground Lewis took for not paying the draft; defendant replied that he did not know. Defendant made no other objection to the payment of the paper.”

Cross-Examined.—“I erased the printed words ‘promise to,’ and also the word ‘at,’ on the face of that bill. This paper, when brought to the Bank, was in the form of a blank note, filled only as to the amount in figures. Lewis had some conversation with the President before he handed the paper to me. At this time the Bank held a note, or bill of exchange, made by Lewis and endorsed by Mr. Ward, defendant, for three thousand dollars, upon which payment had been made that morning with money received from Ward, of two thousand dollars. *The thousand dollars due on that piece of paper, the interest, and costs of protest, formed a part of the consideration of the bill in suit;* and the balance of the two thousand dollars for which the bill was discounted was *paid or sent to Mr. Lewis in money;* I think a portion of it *was paid to him at that time,* and a part *sent to him by express.*

“I became Cashier of the Bank the 1st of January, 1858; George C. Day was Cashier prior to that time. The three thousand dollar note,

so taken up by Lewis at this time, had matured before I became Cashier; I don't know its date — only know it was for three thousand dollars. Don't know what kind of money was paid Lewis upon discounting the bill in suit, nor what rate of discount was reserved. We were discounting at that time at the rate of six per cent., the legal rate of interest in Indiana. *We uniformly charged or discounted at that rate. Exchange on New York, at Terre Haute, was at that time from five to eight per cent. premium.* In April, 1858, exchange had declined from one and a half to two per cent. The object of plaintiff in taking bills on New York was to provide themselves with exchange. A note or bill payable in New York, at that time, was more valuable than one payable at our Bank, by the amount of the premium. The letter now produced, and marked 'Exhibit B,' is in the handwriting of George C. Day, who, at the time of its date was Cashier of the Southern Bank of Indiana.

"Never saw the Bank have any paper made by Lewis that was not endorsed by Mr. Ward.

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"The conversation with Mr. Ward (as referred to in my direct examination) on 16th August, 1858, was at defendant's office in Detroit; no one was present but Ward and myself; I introduced myself to Mr. Ward, told him what I had come to see him about, and showed him the bill or draft in controversy. Don't know that I used the words 'bill' or 'draft' when I presented it to him. I suppose Mr. Ward read it, but don't know; he opened and looked at it; was talking with me at the time he held it in his hand. Don't know that the word 'bill' or 'draft' was mentioned in that conversation by either of us. Mr. Ward said he would like to see the matter settled. He spoke of the *note* or draft in controversy, and also of a *note* to another Bank; said he would be willing to settle them, but Mr. Lewis had given him legal notice not to do so. In a further conversation he said *he did not want to see the Bank lose the money, nor did he want to lose it himself; but if he settled it, he should have to lose it;* and he had no doubt Lewis justly owed the Bank the money.

45

"Mr. Ward said further that he had paid the two thousand dollars which he had out of the proceeds of the prior note, and should have felt bound to pay the balance if Lewis had not arranged it.

"Mr. Ward said in that conversation, that he had securities from Lewis, and if the Bank got judgment against him he would turn out those securities and pay it off.

"He did not say at what time, nor for what purpose, Lewis had given him these securities. Ward was not present at the time I filled up the bill sued on."

46 The defendant's counsel then read in evidence to the jury the letter of G. C. Day, former Cashier of said Bank, respecting the discount of the prior note referred to, which is as follows :

" J. H. WILLIAMS, *Pres.*

G. C. DAY, *Cashier.*

" SOUTHERN BANK OF INDIANA, }
 " *Terre Haute, September 5, 1857.* }

" G. F. LEWIS, Esq., Cleveland, O. :

" <i>Dear Sir</i> : We this day discount your bill, 3 m.....	\$3000.00
"and deducting discount.....	70.50
"leave to your credit	\$2929.50
"I hand you with this, against above, Land Warrants amounting, as per agreement.....	600.00
"and our currency	329.50
"Say	\$929.50
"For the balance, \$2000, we will forward you in our notes for good circulation, on the 15th inst.....	\$1000
" " 25th inst.....	1000—\$2000 00
"Resply,	GEO. C. DAY, Cash'r."

47 The defendant then read in evidence another deposition of said FRANCIS S. WILLIAMS, taken on the 11th day of October, 1858, before Judge Huntington, in substance as follows :

"The blank note number A is substantially a copy of the note sued on, as originally presented at the Bank for discount. Lewis handed it to me and requested me to make it into the form of a bill of exchange and address it to the Cashier of the Metropolitan Bank, New York. I therefore erased the words 'promise to,' filled it for the amount, and addressed it as requested. On the 16th of August last, I showed Mr. Ward the bill now sued on ; it was then due. He then told me that

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\$2000 of the first note was for his benefit; that he received that amount, and had paid it, leaving Lewis to pay the balance—if Lewis had not arranged it. He further stated that we had informed him that we had discounted \$2000 of the bill sued on, which was the first knowledge he had that Lewis had used the paper; that *when he endorsed the paper sued on*, it was with the *understanding* that *Lewis was to raise some money on it for him.*"

The defendant then gave in evidence the note of G. F. Lewis referred to and identified by witness Williams, as follows :

"\$3000.

CLEVELAND, O., September 5th, 1857.

"Three months after date I promise to pay to the order of E. B. Ward, Esq., three thousand dollars, at the office of Winslow, Lanier & Co., 52 Wall street, New York, value received.

"G. F. LEWIS."

Endorsed "E. B. Ward." Also as follows: "Paid on within, by "E. B. Ward, two thousand dollars, \$2000, and by G. F. Lewis one "thousand dollars, \$1000, Jan'y 28, 1858."

The defendant then read to the jury, as evidence, from pages 12 and 13 of the Revised Statutes of the State of New York, the first and fifth sections of the act of May 15th, 1837, entitled "An act to prevent Usury," as follows :

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"SECTION 1. The rate of interest upon any loan or forbearance of any money, goods, or things in action shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time."

"§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts) and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved, or taken, or secured, or agreed to be reserved or taken, any greater sum or greater value for the loan or forbearance of any money, goods or other things in action than

is above prescribed, shall be void. But this act shall not affect such paper as has been made and transferred previous to the time it shall take effect."

49 The defendant rested his case, and the foregoing is all the evidence given on said trial.

At the request of the plaintiff's counsel, the Court gave to the jury, among others, the following instructions :

50 **5.** If, in making the note and bill which have been given in evidence, they were made payable in New York, for the purpose of allowing a rate of interest exceeding what was legal in Indiana, the parties understanding that the money was not to be paid in New York, but in Indiana, the usury law of New York, which has been given in evidence, has no application to the case, and will be disregarded by the jury.

51 **12.** If the defendant delivered the paper in question to Lewis, the drawer, blank, with his endorsement upon it, for the purpose of enabling him to raise money to pay the paper, and if the words "promise to" were erased and the paper discounted in the form of a bill of exchange, and if the defendant was immediately notified thereof, it was his duty, if he intended to disaffirm the transaction and deny his liability, to give notice to the holder of such disaffirmance, and if he failed to do so, the jury may infer therefrom his acquiescence in and ratification of the act.

52 This is the law, if his attention was particularly called to the alteration in such a way that the jury are satisfied, from the evidence, that he must have known of the alteration at the time.

52 To the giving of which said several instructions, the defendant's counsel then and there excepted.

The defendant's counsel requested the Court to instruct the jury as follows :

55 **1.** That if the jury believe, from the evidence, that the bill of ex-

change, upon which a recovery is sought in this action, was made to be discounted by the Southern Bank of Indiana, and that in making such discount, said Bank contracted for or knowingly and intentionally reserved or received to itself, directly or indirectly, a greater rate of interest than seven per cent. per annum in advance (being the rate of interest authorized by the laws of the State of New York where such bill was made payable) said bill is void, and their verdict must be for defendant.

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2. If the jury believe, from the evidence, that the note of September 5th, 1857, given in evidence by defendant, was discounted for the maker by the Southern Bank of Indiana, and that said Bank, in making such discount, contracted for and knowingly and intentionally received or reserved to itself, directly or indirectly, a greater rate of interest than seven per cent. per annum taken in advance (being the rate of interest authorized by the laws of the State of New York, where said note was made payable), said note was void; and if the jury believe, from the evidence, that the bill of exchange, upon which a recovery is sought in this action, was given in whole or in part consideration of said note, or in renewal or extension thereof in whole or in part, then said bill is void, and they must find their verdict for the defendant.

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3. That by the laws of Indiana, the legal rate of interest for the loan of money is six per cent. per annum, and by the laws of New York, the legal rate of interest is seven per cent. per annum. If the jury believe, from the evidence, that the note given in evidence, bearing date the 5th day of September, A. D. 1857, was made and endorsed for the purpose of having the same discounted at a rate of interest exceeding seven per cent. (the legal rate in New York) and the same was made payable in the State of New York and with reference to the laws of New York, and that the Southern Bank of Indiana, by its officers and agents, corruptly and usuriously discounted the said note at a rate of interest exceeding seven per cent. per annum, then the said note was governed by the laws of New York, and by the statute of that State given in evidence was void from the time it was so discounted; and if the jury further believe, from the evidence, that the said note so discounted was the consideration in whole or in part of the bill sued on in this cause, then such consideration is illegal, and said bill sued upon in this cause is, for that reason, wholly void, and the jury will find for the defendant.

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5. That although the jury may believe, from the evidence, that after the time for the maturity of the bill sued on, the said defendant Ward had a conversation with the Cashier of the said Southern Bank of Indiana, and in that conversation, the said Ward told the said Cashier that he would admit service of process to commence a suit against him on said bill, and that he would not make any defence to such suit, except what he made through Lewis; but at the same time stated to said Cashier, that he had been notified by Lewis not to settle it, and that Lewis was going to defend the action on the bill, such statements should be considered together by the jury, and are not sufficient in law to amount to a ratification of the alteration of said paper into a bill of exchange.

6. That the taking of security by Ward from Lewis, to indemnify him against liability upon the bill of exchange, upon which a recovery is sought in this action, would not render him liable upon the same or authorize a recovery against him for it, if he were not liable thereon before taking such security.

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8. That if the jury believe, from the evidence, that the bill of exchange, upon which a recovery is sought in this action, was discounted by the Southern Bank of Indiana and was made payable in the City of New York at the instance of said Bank for the purpose and with the intention of enabling it to receive the difference in exchange between Terre Haute and New York, by way of payment for the loan or use of the money loaned upon said bill, over and above the legal rate of interest which it was authorized to receive by the laws of Indiana, under which it existed, then said bill is void, and their verdict must be for defendant.

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But the said Court refused to give any or either of the said instructions so asked on behalf of defendant, and defendant's counsel then and there excepted.

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The jury found a verdict for the plaintiff, and assessed his damages at \$2237.67.

Whereupon the defendant made a motion to set aside the said verdict and for a new trial, and for cause showed :

1. That said verdict is contrary to the evidence in the case.
2. Said verdict is contrary to the instructions of the Court.
3. Said verdict is contrary to the law and the evidence in the case.

62 Which motion the Court overruled, and the defendant's counsel then
and there excepted.

65 Judgment was rendered on the verdict, and the defendant appealed to
this Court, and assigns for error the following, viz :

I.

The Court erred in admitting improper evidence and excluding proper
evidence.

II.

The Court erred in giving the instructions aforesaid on behalf of the
plaintiff.

III.

The Court erred in refusing the instructions aforesaid asked on behalf
of appellant.

IV.

The Court erred in overruling the motion made by appellant to set
aside the verdict and for a new trial.

SCATES, McALLISTER & JEWETT,
Attorneys for Appellant.

E. B. Ward

v

G. H. Williams

Abstract

Filed Apr 17, 1861

A. Selous
Clerk

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