No. 13514

Supreme Court of Illinois

Ward.

VS.

Williams.

71641

STATE OF LINOIS

SUPREM

TRT

Third Grand

sion

No. 235.



Hen f. Deaton, 6,9. May 13, 1861, Ottawa Ill Men Sir In the case of Wais v William no, 235, we have not been purnished with the appellants brug of points until this P.M. He will prepare ours in reply as soon a possible and formaco their, which we hope may be in time to have the case disposed of auring the present term, yours truly Govering Thomas VItabets ally in appellee

United States of America & State of Illinois. book bounty & &s

fac y

Shear before the Storarable the Sudges of the Superior bount of blue ago within and low the bounty of book and State of Illusois (1) a regular term of the said Superior bours of bhicago begun and held at the bount stonce in the bity of bhicago in said bounts and State on the first Monday being the thora day of December in the year of our Lord me of the thousand light hundred and sixty and of the chadand light hundred and sixty and of the chadapendance of the United States of America the Eighty fifth.

Present Hu Honorable Dohn M. Wilson, Chief Instice
of the Superior Court of Chieago
Naw It, Higgins and Grant Goodrich Inages
Carlos Haven, . Prosecuting Cettoney
Chithory b. Hessing Theriff of Cook County

Draller Chimball . . Clarks.

Ist it remembered that heretofore to wis on the twenty third day of Veloucary a.D. Cighteen Sundred and fifty nine carro Joseph St. Williams Freeident for the use of the Southern Bank of Indiana by Gookins Florias & Roberto his afforments and felow in Ho Office of the Clerk of the Superior Court of Chicago, Precise & Officiavit for Ostachment: Which said Precipe & Officaunt is in His words and figures as follows to with

"State of Ollivis

book bounts bowet of Common Heas. Joseph Ot Philliams, President for the use of the Southern Bank Vresposs on the case

Eler B. Ward.

Hw blerts of Hw book

Country Court of Common Reas will please ifour a writ of altachment against the protecty of the above named Observant un Min abour butilled cause. Fiel 2/3, 1854 Peges Ourys,

Vigo County. . & So.

Coeple of Williams being duly Oworn pays he is President of the Southern Bank of chidiais

d. A. Williams "

Notary Public Chily Commissioned & qualified in and for The Country of Nigo and State of Indiana this 19th day of Tebruary 1859

Seale Miners my hand and Molarial Deal His day beach his day lev; le, Day Dop; Pub;

And Hurafter also on the paid twenty there day of: February a. D. lighten hundred and fift, sind there accordingly issued out of and under the Deal of Daid Court Deoples Writ of Cutachurent against the Daid Harov; Which Writ with the Gloriffo peture Hures, enderse co isi Me words and figures as follows to with

"State of Minois } &

of the Slaw of elliws to the Heriff of Daid County Greeting.

Hereas doeple of Philliains hath complained on oath 10 Walter Chimbalo Clock of the Cook County Count of Common Deras of book bounty that beher B. Franco is jully inachted to the said Joseph Apriliains president for the use of the Southern Bouls of Chidiaia to the amount of Quenty how hundred fluenty two dollars and fifteen cents, and Oash having here also made that the paid Ever. B. Ward is hid a resident of the State of Allinois so that ordinary process of low count be Derneso upor him

Christ the soid Grephe Ab. Williams having given bond Crua Decurity a cerding to the divelions of the act in such

of February 1859

Mitness my hand and Motarial Deals His day beach of and year afores aid les; le, Day Dub;

And Hurafter also on the paid twenty there day of February a. D. lighten hundred and fifty sind there accordingly issued out of and under the Deal of Daid Court Peoples Writ of Custachurent against the Daid Harov; Which Wris wish the Heriffo peture thereon endersed is is the words and figures as follows to with

"State of Ollinois & &

Two Proples of the State of Alliero to the Heriff of Daid Country Greeting.

Thereas doeple of Philliains hath confilained on oath 10 Walter Chimbalo Clock of the Cook County Court of Common Deras of book bounty that believ. B. Haras is jully marked to the said Joseph St, Williams president for the use of the Southern Bouls of Chidiana to the amount of Twenty how hundred Humily two dollars and fifteen cents, and Oath having here also made that the paid Eben B. Ward is not a perident of the State of Allinois so that ordinary process of low count be Derneso upor him

Christ the soid boreps Ab. Williams having given bond Crew Decurity a coording to the divetions of the act in such

3- Caso mado and provideou:
3- Mw Herefore Commana you that you attach Do much of the Estate read or personal of the Daico Elun . 13. France to be found in your County as shall be of value sufferentlo Datisfy Daia debt ana costo according lo lhe Daia Complaint and puch solate do astaches in your hands to seeme or Do la primice that the pame may be liable to purcher procuaigs thereufin a certainy to law at a terms of Daion Cook County Count of Common Fleas to be holden at Chicago wishing for the Country of Cook on the first morday of africance Do as lo Compub Hu Daia Cler. B. Ward to appear and to andwer the complaint of the Daio Grefile Ofp, Williams so precident for the use of the Southern Bank of chadianavii a felia of trespass on the case on permises to the damaged-Daia plaintiff as he pays in the Dum of Dew thousand dollar as garrished to be once appear at this saw bours on the paid ford Monday of Great them and there to arours lo what may be objected regardswhen and where you shall make Brown to the saw Court

how you have loce enter His Wirt? Oluon house you then and there this Wist Witness Walter Okinbalo Clerks of our Dava Court and the Deal thereof at Chicago in Dova County Soals.) this twenty third day of February in the year of own Sond one thousand eight hundred and

fifty Druces.

Maller Chine ale Colerto" "By wirtur of His Wis I die on His 1st march 1859 lay

Upon the witerest of Cher. B. Ward in and to the Real Estate Investigation and Investo Universal and Investigate and Investigate and Investigate and Investigate and Investigate and Investigate and Steriff.

B. F. M. Bradley Defenty,"

Schedulo "Ch"

in First Dearlieres addition to Chirago - also.

Subles 39. 93. 24. 25 4 26 in Sot One (1) in Block, 18 in Stoffictes and and 300 feet deep more or less of Cles, Subloto Lund, Hour, Lour and five in Daici lot and in Block Eighteen (18) in Stoffelas andision, also The Duest half of the Dorth Duest quarter of Section of Suction and Just half of the Dorth of range Twelves Cast half of the Dorth of range Twelves Cast half of the Dorth Duest quarter poeting Ches the Spection Also the Spection also the Spection also the Spection of the Droth Duest quarter poeting also the Spection and the Spection of Section also the Spection of the Droth Duest quarter of Section of Sinty five (35) in Sourchip Firity fever Droth of range, 13 bast all in Sourchip Firity fever Droth of range,

And thereafter to wit on the Lenth day of
Dravel, a. D Lighteen hunared and fifty mine came bara

Planitiff by his paid alterning and filed in the Office

of the Clerks of vaid Court, his Delaration in vaid view

Which paid Declaration with the Bile of Everhange and

account, theresigns pred and annexaces thereto is in words

and figures as follows to with

" States of Allinois \ Cook County, , & So

book bounty bourt of Common Pleas.

Chris Jour 1859.

Chreph of Philliams President of the Southern Back of Indiana, who sues for Mis use of paia Bank complains of Elev. 18. Ward defendant, of a lilea of Trespais on llo case upon promises.

Trow West whereas by aw Oct of the General Describly of the Glato of new York possess on the 14th day of agrice 1857 and duly approved by the executive authority of oxid State it was enacted that all charles bills of Escalange or drafts apparing upor Hoir lass to have been drawn your any Bank or upon any Banking association or wich indual Bouker carrying on Banking business under the act to authorize the business of Banking which are on their face prayable on any ofireified day, or in my sumber of days after the date or fight-thereof shall be deemed due and payable on the day mentioned for the payment of the Dance without any days of grace being allowed, and it-Health not be recessary to profest the saire for simpourned acceptance, and the vaid act being in five force and unt refueded and being the law of the said State of New York afterwards to wit in the 28th day of January 1858 at Force Startes in the State of Judiana to wit, at the Country of Cook aforcesaid no gleason . F. Versio by Hor mario and in trals of 4. J. Venis unade his certain Bill of Exchange according to the usago and auston of Merchanto bearing date the day Ouch year oforesaid and then and there directed the someto

the metropolitan Bank of New York at and in the City of new York in the Daid Blate of New York and thereby then and there pequested the Cashier of the Daio Bank Hered Inontho after the date thereof to lay to the Order of the Daid defendant by the Trame auro initials of E. B. Ward Eg, the own of Here thousand dolears (acceptance wanted for value to received and the Daid defendant afterwards and before perpung of the said dum of money in said Bile of receliange specific, or any part thereof, lo witon the day and year aforesaid at Verre Hauto in the State of Ordeana aforesaio (10 unit, at the County afresoid by his endorseement made under his hand an writing on saice Bile of rocalianger by the name and intrails of E. B. Warm endrow Ho Daid Bile of Earhange auro then and there delivered the Dance to the Daiso plearing for the uses of the paice Southern Bouts of cludiana auro afterwards to unit on the 28 the day of april in the year a foresand at the said City of New York, the said Bile of Exchange to Encloração as afresaios was any presentes to and as the Bank Dais Metropolisan Bank for payment and payment thereof was Here and there demanded of and from the sand Bouts and of and from the proper Officer of said Banks to pay the same, buy The said Metropolitan dia not nor would, nor ched nor would any Officer of said Bank when the said Bile of was hange was so presented as afresaid him at any other him hory the said our of money in the vain Bile of lackange Abeliece, nor any part Mured, whereufun the Daiso Bile of eachange was then and there according to the usage and custom of merchants duly protected for Inonfragment Horsel, wher of the Daid a ferciant How and there

here below hable to pay to paice Plaintiff the said sum of movey in said bile of Eachange Specified and also a large sum to wit, the sum of and huran declars as and for damages which there and there became the and owning from the said defendant to the said Plaintiff by reason of said fristest once hung to hable he the said defendant those and there is contideration there of undertook and provided, to wit, at the Country afores and to pay the said plaintiff the said leneral show of morey, whom he the said plaintiff the said leneral should be so there and defendant should be so there and defendant should be so there and defendant should be so there and afterwards furthered.

and whereas also after the parage and approvat of the said Get of the General arsembly of the State of the York, and Ho saus being the law of said state, in manner aforesaid, and after the harsage of a certain act by the General assembly of the State of Cudiana, 11/1/100000 by the Executive authority of Daia Blate on the 31th day of Meny 1852 in and by which it was among other Hungs machon Hat-Ho Common Law of Junglance and Statutes of Ho to British Carliame I made in aice thereof prior to the fourth year of the reign of James Hw first (except the Presidelien of the Dwell Chapter of the forty Hira Elizabeth and thwaight Chapter of the thirtieth Elizabeth and the Durith chapter of thirty persenthe Therey the eighth) and which are of a general Diature not lecal to that Kingdow, should be the law to governing the said Blake of Pudiana, and after the hospiassay and approval of a Certain other out of the said general assent, approved May 12 1859 wand by which it was among

other thungs mocked that damages payable on protest for montanment of a Bile of localianger chairen or Diegoliated in Daia Blate, if drown when any herson, at any place out of that Gate, but within the Vinted States phould be fine how cent on the principals of each bull, and that I've damages beyona the Ost of protest phoula be chargeable agains drawer or wisorer of white of protest and demand of the principal pund the Danno was poin, and the Daia Deverals forus hering unrefuciled and in full force to vin ow the D8th day of January 1868 at Jerro Haute in the State of Quediance to wit at the Country of book aforesaid ono Gleason J. Venis by Ho Brano and initials of ly it, Lewis made his certain other Bile of hachango in writing areviouing to the usage and out on of merchanto, bearing date the day and year afresaid and thew and there develow the Dame to the metropolisaw board of Dew Work at the City of Drew York in the State of Drew York and Herely thew there requestion the Cashier of the said Bank, House mosths after the date thereof losicy to the Order of the Daice defendant by the Dicure & initials of E. B. Tranoo Esq. the Duns of Fire to Housand dollars (acceptance wained) for value premier and the paid defendant afterwards and before payment of Me Daice Dune of money in Daice Sile of Eorch angrippina free or any part thereof, to unit on the day and upon aforesaid, at verio Houte is the Galo of chickound (10 wit, at the Country aforesain) by his budinaement made under his hand in writing or paid Bile of reschange by the name ance withall of to. 18. Wand encorsed the Daid Bile of Exchange.

and then and there delivered the Daine to the Daiso plainty for the use of the Daia Southerer Bank of Indiana and afterwards to with the 28th day of afine is the year afreesaid at the Paia aig of Dew York the Daid Bile of Roseliango la endorsea as aforesaix was chily presented to and as the paid metropolitan Boul for payment and fragment Hureof was How and there dunances of and from the odis Bouls and of and from the troper officer of Daid Bank To Jiay Ho pauxo; but the paid metropolitais Bank dico Brot nor would, now did nor would any Officer of oaid Bank when the paid Bile of rocchange was to presented as aforescion, nor at any other line pay the said our of In may in the Paid Bile of Exchange Machine, har any 1011- Horsof, Where your Ho Daid Bile of Eschange was then and there are ording to the usage and Custom of morehants duly profession for nonliapnoul thereof, when of the said defendant thew and there has motion. And afterwards to wit on the 14th day of May 1858 to wit, at the bownly aforesaice the said Claiming your the said defendant notice of the paid present, and demanded of the Daid defendant houpment of the pain principal puno in sonce Voile of Rocchango mulinew pools the Dun of and thousand dollars eredited thereon at the date thereof, by means wherey Mu Daios defendant Mun onas there became liable to pay to the pain Claiming the said own of money in said Bis of hocehange spreifico and also a largo pum lo mis Hw Duns of Ono hundred dollars as and for the damages which thow and there became due and owing from the

parci defendant lo Hu Daia planitiff by reason of the Daia forwards funders - and bearing to hiable he the Baia defendant afterwards to unit on the country of ormain in Consideration thereof undertook and promise at the Daia planitiff to fray him the Daia leveral owns of money when he Daia defendant of the Daia bearab owns of money when he has Daia defendant of the Heraulo afterwards.

Und whereas also the Daia defendant heretofne lo wit on the 28 th day of april 1858 at the Country afresona was widebied to the Daia Illaintiff in the Dune of Twenty fine hundred dollars for so much morey by the Daid defendant before there at his request had and pereived In and for the use of the oned Planitiff, and also in the further Dund of Vinesty five hundred dollars for do much morey by the paice plainty of the Apreial vistance once request of the ocias defendant paid laid out and expended to auco for the use of the Daie defendant also in the further Duno of Junity live humanco dollars for so much money before auro How due from the said defencement to the Daia / Maintif upon an account there and there state by and befures the said defendant and the said Planitif, and also in this further ours of and thousand dollars of interest ufini divers largo Duns of morry before there due and ourning from Hos soice defendant to this soice plaintiff and by the Daire Mountiff fortrorno lo the Daire defendant for devis long sposes of liver before their eleptico auro experso, and also hi a further and like Dun of morry for damages upon dwino liles of local wigo endorses by the daid as

defendant to the said Plantiff and protested at materity thereof for nonfrequent and being so undertook by the said defendant then and there in Consideration thereof undertook and firmined the said Plantiff to pay him the said several sums of money when he the said defendant should be thereunto afterwards they reserved.

Met the paid defendant although often thereunto requested hathe not paid the said beverat Duns of Dunning nor any part thereof but to pay the same has historic while Duglished and refused to the damage of the said Wholey Herefore he paid the our of Fire Thousand dollars and therefore he pues.

Gookins Finias & Roberts Deffo Chays."

(bolig of Bilo of Escahauge set forth in 1st 122 Cours)

"\$ 3000 Serve Hauso, Ind, Long 28 46 1858

Here months after date floy to the Order of E13, Drand Esq. Hires thousand dollars acceptance wained Walno received.

G. F. Sewis"

Or Cash; Metrofinlisour Bank, Mus Yorko City, (Indorsed) & B. Hard."

dollars \$1000.

Southern Bank of Indiana for the use of Said Bank

Sept 5,1854 O'N runny advanteres / orgon of date hayable at 90 days , , , , , & 3000 Jany 28, 1858 I'm money advanced to you on ly. F. Sewish Bill at 90 days which is wy & 3000 " " O'n money had proceed to my use reliminable at 90 days ... 3000 11 " For interest on famel For Danages on protest of Pile endorsedly your 100 april 28.1858. Owount and on delflewent on account of fremous accorded..... 3000 Gookins Fromas Moleers Refo artys." . And thereafter to wit on the downth day of June Defendant by his afformeys and filed in the Office of the Clerko of Daid Court his pleas to pouce Declaration; Ithich Dana Clear with Officianit of Merits thereto attached is in the words and figures following to wike State of Ollivois & In this Superior Court of Chicago Country of book & & af the June View a 21859. Cher, B. Ward chaeple A. Philliams Preof for the use of Southern Banks of Indiana, , , , , , S And the vain Defendant by

14

Deales, mo allerster & cleweth his altorneys Cornes & defends Ho wrong and viging when \$18 and Days that he did Drot undertake a promise us manner and form as the said Planishy hath above thereof declared against him and of This the Doid Defendant puts hunself upon the Country & Scales, Dro aluster of clewetts actys for Defs." " Que the Plantiff doth the like Gookins, Promas Holords "Stato of Oblivios & In the Superior Court of-Chicago, Of the June lervo Con 1859, Assept A Philaains President To the use of the Southern Banks of Elen B. Warow. , S Country of Wayne St Cher. B. Warow being duly Duron deposes and Days that he is the Defendant in the about Entitled Carse, and that his has a good defence to Daia cretion upon the merits as he werely believes.

6 18. Ward Subscribed and severe lo before mo a Notary pueso within and for the Country of Drayno & State of Michigan this 18th day of Dray a D1859 as withing my hand and Protorial Beat the day tyear afordand (Desaine) Governo Fluescle"

CANOO thereafter to wit on the Eighteenth day of april a. D. Eighteen hundred and Diochy there was filed withe Office of the Clerk of Daia Court Un'Dava Cause a Certoin Dipulation in words and figures as follows, to with

"Doreple A. Milliams Superior bours of Chiengo Tur Qpril Perus 1860

It is stipulated and agreed by and between the parties that the Damo Evidence shale he admitted on behalf of the defendant under the Wea of the General usur not werified by the Pash of the defending as if the proper plea decying the Execution of the uistrument quea on as it verifica by the Dath of the Daia Defendant-densing the exacution of the endorscure. 1on the bull declared on, had been filed

Gookino, Franco & Roberts Reflo Oltys Scales, mo allister & claueth Defis altys."

And afterwards to wit in the eighteenth day of april Chering one of the days of the april June of sana Court) Q. D. righteen hundred and Reacted the Pollswing proceedings were had in Dond cause and entered of record mi paia bourt, la mit,

I Arreplo H Williams President

for use of the Southurn Banto of Indiana

(1)

To Surface of March of President

Sher B. Ward of Miss any comes said Plaintiff by Gorkines, Humas & Roberts his attorneys and paia Defendant by Scato, mo allesser & chemeth his aftorways also comes ance on motion it is arderes that defendant have leave lo amendo his pleas lure is pleaded on payment by him of all cisto, and there for isource being joined herein it is Ordered that a Jury como Whereufun comes the Jury of good and lawful men lo wit Samuel Everden Gorn Gibbs Constructorarie Chambes Coney Peter Downie P. d. Basin S. It Story DV. J. Merrilo J. J. Dum Y O. P. Brewster Harman Clockson Homas barr who being duly elected trico and sworm to try the issued formed aforesaid after hearing hart of the hectionery addicad IN His cause and lurin of adjournment having Brow arrived up or agreement of the provises it is Ordered that the dury Defearate and meet to Court tomorrow morning,

And afterwards to witten the Nineteenth day of april (being yet of the poid april Term of Daid Court)

Ob. D. Cighteen humaned and Diochy the following promany
were had in poid cause and entered of record in Das
bourt, to wit

for uses of the Southern Pank of Indiana (

The Sher B Dhard., ,) And how again come the

parties to this cause and the chury emparmelles herein on yesherday for the hiab of this cause also come and after becoming balance of the lectioning and the hour of odlowrument howing arriand it is ordered upon the agreement of the parties Heat the Jury peparato with formerrow morning.

And afterwards to wit on the Iwenteeth day of april Chung the one of the days of the said april term of said bourt) a, D. highleen hundred and dixly the so following further proceedings were had it vais come and lutered of person in para lound, lo with

the parties to this cause as on yesterday and the Vary to Impanuelles herein for the hiab of this cause also come and having heard all the between y address, argumento of Coursel and waterestions of the bourt, the cause to submitted and the Cary petire to anxider of their Verdiet and the home

of adjournment having arrived who i agreement of the harries it is Ordered Heat when the dury shall have agreed upon a Verdiet Hey stall reduce the Dome to writing fign treat the power and afterwards Deparate and Invest the Court at the coning in there of to norrow morning.

And afterwards to with the twenty first-day of april (being still of the Daix april Loren of Daid bourt) Co. D. Dighteen hundred and Dischy, the following further proceedings were had in Daid Cause and entered of record m' paid bours lo wit

Anco now again Coms the parties to this cause and the dury empaniello herin for the hiab of this cause ces on yesterday and pubmit their Vordies and pay "The the dury find issues for Dace plaintiff and assess his damages herin to the pun of Owo thorward two hundred and thinky Deven dollars and lixty Deven Cents.

Chuck thereupon paice defendant pulmeto his motion herein for a Dun trial no His cause.

And afterwards to wit on the twenty poesed day of December (being one of the days of the December tour of Paid bours) W. D highteen hundred and Dialy the following

Lurstur / uro recolungs were how in Daix Cando and entered of

Uso of The Southern Back of Indiana Epecianis Epechania.

Lotor B. Dhara, ... Show again corner

Her Daid Planitiff Greeph It Thillians President who has for the use of the Southern Bank of Andraia by Goodina Thomas thought his afformers and the Paria defendant by Seales Ino alleisor & Vaneth his afformers also comes and the Court whom hearing Coursel on the Winters Published herein at the April bound for a very brial we paid came and being fully advised to the firemess ourrules and describ said defendant lakes exception to the pulsing of the bours in our defendant lakes exception to the pulsing of the bours in our orderating his paid Instins and enteres his exceptions of the refer to the paid planitiff for the use aforeacied oright now to have a fudgment enteres herein againg the paid defendant on the Verdict of the dury pendered at the afore turns turns for the law dury pendered at the afore turns turns for the law dury pendered at the

Hundre it is considered that the Paid plaintiff do have and here it of the Bouthern Bouts of Indiana tuo damys of Two thousand hus hundred and thinks ferren dollars and in peners cents in form shows and hundred and thinks ferren dollars and in peners cents in form shows and by the church here at the Ceprie here of this bount bot past forma and acco assersed and also

Succeptions herein proup an appear herein to the Supremo los bourt of this State which is allowed to hum on filing his affects thousand dolears with Deswrity to be approved by a drage of this bourt and to be fitted with his being his file with his being his fixed the bount and to be fitted with his being from the first his being from the state.

And Hurenfine accordingly on Ho I werty first day of claims ry Co. D. highteen hundred and prochy on Camo the pairi defendants by his astorneys aforesaid and files in the Office of the Cerk of said bourt, his affreat Bonco wis aid Duit; Dhich Bonco in aid with the with

Know all Mero by these Presents that we Eler B Hard of Detroit Michigan and Stephen Clement of the Country of Cook and State of Elievis are held and formly bound unto Arrefile It Philiams President of the Southern Bouts of Judicial for the asso of said Bonk in the fund sum of From there are deleard lawful Drossey of the Unit to States for the progress our fusion well and brush well and brush of the fund ourselves our lairs expenters of accuming trators family deverally and furnity by the Unit of Seals and dated this the

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23

" desepte It. Philiains, President
of the Southern Back of Indianal
for the wo of said Back

Seo 9. Oll obreks; biles of Exchange or Dealls to appearing on their face to have been drown whos any Banks or whos any Bourking alsociation are viderialist of banker Banker on Banking business under the arthograph the business of Banking, which are or their face payable on any specifical day, or in any Dumber of date after the date or hight thereof shall be dumed due and payable on the day Dumber the Dame without any days of grave being allowed, and it shall not be veresory to protest the Dame without any

The Planitiff react offered as Swidered and peace to the dury dection Four (4) on page 350 of Nob 1 of Ha Revision Fairs of Luciana as Jolenno

Sio 4. The Common Law of England aux Statutes of the British Parhavent made in aid thereof first to the fourth year of the peign of James the first, (except the December of the peight Chapter of First, (except the December of the Siath Chapter of First, hind Elizabeth the eighth Chapter of thirteenth Elizabeth, and the Minister Chapter of Flinty Dewenth Houry the Eighth) and which are of a general nature not freak to that Chingdon and not income lend with the Constitution of the Minister States and the State or the Statutes of the General Generally of the State in force & not income is but with Paid Constitution to the Statutes of the States and pelating to Subjects over which benegies has forced to legislate for the States over which benegies has forced to legislate for the States on and declared to be the Saw governing this States,

Plaintiff thew offered and read in Suidence Dellisio 7 10 or page 379 of Nob 1. of the Revised Lame of Cudana as follows.

See 7. Danages payable on protest for horpayment or Dron-a explaner of a Bile of Exchange drawer or Degeticated within this State black to, if drawer upon any person of any place within the Venited States, but within the Venited States, five few Cent, but if upon any person at any place without the Devited States, the Devited States of known

The Maintiff for the purpose of further ouslaining the asur on his part buset produced and offered to read to the Cary as Encience a paper purporting to be a Bile of Eachange drawn by G. J: Lewis to 110 arder of the Defendant Lucidised by the defendant (the Dignature of Daid defendant on the back of saice paper being admitted to be genuise) for \$3000 to derieta To Cashier of Metropolisan Bank New York City and daken Torre Saule January 28, 1858 - and a frague attached to the same purpurling to lo aw Official Certificate of a Motory public of the Protest of Daia Draft for Monfragment-

To the witroduction of which as andown the defending There and there objected on the ground 1sto of alforations apparent on the face of the Instrument. I'm Mat no durand, probet on notice of nonpayment to Ho defendant had been proud,

Ho objections of the defendant were overruled by The Court aux to the decision of the Court in over-Juluig said objection the defendant by his Course Hum and there escepted.

Qua said papers were thereupon reax to the Jury as follows:

How morths ofter date framise to pay to the order of E. B Ward Esq. Here Hursand dollars at asseptance warmed value procinco. G. J. Lewis.

Foloaoli: Metropolitano Barek }
New Yorko City &"
(Encursea as Joleono)

dollars \$100000"

also endosed " to B. Hard

To which are attached the following.

" United States of Churica

State of Drew York &

of april in the year of our Sora one theresand high Sunais and fifty eight at the request of the Park Bank the below, ch. Eift of Health Warry Public and admitted and swom accelering in the City of Dew York, die present the original Bile of Excelonage (horeunto amesced) at the Metropolisan Bank to a believe thereof and demanded progressed vais Bile which was refused.

Thereusen of the Daid Notary at the request a foresain clini protest and by there protected do publicly and beloming protest as well against the Molen, Drawer of acceptor and hudorles of the Daid Bill as against all others who, it with a may assert for exchange heachings and all others and only and all others and lost there after winders and to be there after wienered for want of paid Bill.

Hues dow and protested in the City of New York In letteriory whereof I have hereto dubscribed my name and afficed my Official Soal on this truenty eighth day of

.

april 1858,

Eff O. Hyalb."

27 S.S.) Eff O. Hyalb."

He Plaintiff then withousered as a writness on his

Francis S. Williams who being first duly sworn defused

us folious.

" I reside at Force Hauto Judiaina. an Dorof.

R. W. of Chidiaina The Reacistiff and Carlier of the Southern Bank of Undiana and was Castier in damary 28 1/ 1868. and have been ever Durie - Gurgo, le, Day was loashier prior lothat him -

The instrument alrowe set out being shown to and a escauring by the Midness - he Daiso " notices of the Grobel of His Bill were recewice by the Southern Bank of Judiana - The regular mail him between new York and Perro Marke was 4 or 5 days - at that him the Mail was Carried from Vudanaforlis lo verro Hanto ley Dragor, because of the difficulty between the Rochood bo, and the Government. The notices of protest were received by the Bank May 3 res 1858. I malored on of How to G. F. Lewis and one to the Deft directed the one furt to Deft lo Dehvit, Mueshigan, and the one Dont lo Lewis to Claritain. He notice shown me datea april 28 16 1858 signa John Townsena Chr is the one province by the Bank - How He handwriting of "m Ward - It is endorsed " Rie ? May 1,14 1858 in his handwaterig. I should think I did not Rend any letter with the notice. I merely aclosed the nitievin

un brustofie and addressed it as above and forwarded it

Heave a conversation with the defendant Chiquest 16 4/2 1868. I presented the Bile to him and to toler we he had becarded if Dor Sain's in his hands. I asked him if has would arrange it and to anowned that my Sewis had perma notice on him not to arrange it. I presente a lotting the Bile offered in Evidence. He said he did not know what my Sewis willended to do, but he had notified him not to hay it. He was in the forw of a Bile, said he would arrange or pay it there, if Lewis had not love him not to do so he said he wanted it was in the forw of wonght to trial and if Inagment went against him he should have the said he wanted it was in he wanted it was in the said he wanted it was in the said he wanted it was in the forw of a Rought to trials and if Inagment went against him he should healing on the desirities he had and pay it up. The said he would give us no hould whatever, accept service and would not would give us no hould whatever, accept service

Cross Examination.

The conversation took place at mr Wards Office at Detroit. The were in the port Office. No one but mr Ward and wyself were in the Porint. I do not know that mr Ward beaco the Bilo. The look it in his hands looked at it and appeared to reach it. I do not know that I called his altertion to the fact that it was a Draft. He said he did not know what Sevinds defence was only that he had presented motion not to pay it. I to large we distinctly that he should not pray it there was a chip had be should not presented by hear it there. The did not we distinctly that he should not presented by the first he should not presented by the first he should be and the or when the presented here had not presented by the first here had

dono decurities ana shoula give us notrouble.

I was purre in a duit or this Bilo in the United States: Court for the District of Michagaw - The lighter to the Deportion row shows me is mine. I think I ever the Daws Hung Hun. Hw Malenard there was willation to this daw wie of Excelange and this pause conversation. I thunk I stated the Dano Bung thew, but do not treadbet what I thun Makes. I think I said thew, that he saidle uvula make no defence. I remember the occasion on which. the platement now phown uno was reduced to writing, it was at Detroit, Michigan - The defurition was taken before a mon acting as United States Commissions. I Duppore. I de understood it Do not recolver his name I was proored by him before I gard the statement. The to plalement was peare occers le me as it was written down, but not read again before d'eigned it; no Pordo (referring 10 one of the Defes attys thew in bourt) was present. The defunction was taken to be used in a Duit in the United flates bourt by the Southern Baulo of Oudraine against Eler 13. Harce on the same Bile on which this suit is brought. The conversation with Ward was at his Office in Detroit august 16 190 1868. No no was present but mr Thand and myself-I was in the room reading a Turepoper when I'm War Caus is when he cause in I stated my busmiss to him and arthro him if to would unall any Dettlement - the then went on and stated how he gave the paper I asked him to que a noto payable at a futuro timo if he could not pay it theo. Ho Daid he could not do that for Veinis had

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ques hun notice not le arrange the matter- De not reedes what was said reset . The falker about various matters. The Davie hu word dorry her haa got movere up with Lewis affairs. He said he would accept dervice and wake un defence. Heat was my understanding of it. Do not me remember that he said anything about any other person making a defener. The orinice he dia not bluves what defence Le wis haco - a hew days after I sent the Bile to an atterway at Detroit to be pued - Hie definition Ithink was taken in the latter part of Cetatur - Cuiteraco in that excouniation lo quie les Conversation between un and mo Ward which Phono hestifica to ~ I cannot day whether in that Escammation of otated mr Ward Daid that he would make no defencer. I luve mo Marco Daia ho uvula accept Dervice. I was examined respecting this wolfer at Terro Haute before Audge Huntington & related or intendere to The conversation with morana before anago Huntington. Here were Coursel Mure 10 escausie nu on both Dides. I whender How to give the corners also if august 16 181838 between 5100 1 m Waroo - The winds being how shown the Rightalure lo a frague presporting to be a deposition Taken Gelober 114 1858 before 6. M. Atunhuigton W. S. Dutriet ducine for the District of Judiana, paid - The dignaluro io mino - Ileo deposition was written aound and plead over to me, and of the subscribed my name to it Ho Bile dued one in Huis cale is the same one about which I was bestifying in both depositions.

3/ Direct Examination Resumea.

I transmitte a les Bile 10 la a nacey Cashier of Park Bank Dew York. I feet it as l'asluer of Soutarn Baulo of cludiana. It was lest for colection in the regular course of business. Turey is Cashino of the Park Bank - Mr War o on the 16th august 1858 told we that he hudersed the paper and gave it to Mr. Servis to haise money for luni, and that the first notice to receive a of the use of The paper was from the Southern Bank of Quonaira-that Ho Bank had discounted it. The said that out of the not so Bile, which the Bank has before of mr Sewis, endorsealy him, he had \$2000, which he had paids. and that he had quie mr Sewis his judorement on this paper to paise morey for Suiself"

@ fether here shown to the withvers is identified as a letter writden by hunself as lashier of the Southern Bank of Andiana. and is there you offered in widered by the to Reanisiff and read to Hw Chury as follows.

" It. Williams Prest Southern Bank of Quediana

d'erre Haul Lany 28 th, 1858.

" To. B. Wara Ego

Detroit, mich.

DrSir, We received your favor day 25th this morning with Cheek for \$2000, which amount we have Judorsea on J. J. Levis Bill for \$3000 due Dec. 8.1854 The Sewis was here to day and look up the bele and we

Cavelled it of gave it up to huis. It was in ow Bile and not wind as you have his law cho countred for mr Servishing Bill endersed by you for \$3000. at 3 Months from this date with \$1000 endersed paid upon the back, which haves balance du \$2000.

Yours very Respy Fr. S. Phillianie Leash "

bross Examination resumed.

at the date of my letter to my hard of the 28th damy 1858 there was a paper in the Bank to which Sewis and I know were parties. The paper referred to in that letter as a Bile way have been a note or a Bile. The paper How win me dated Sept 5-14, 185-1 Right of Sewis is the same one.

not lille use at the fine he endorsed the paper in Controversy ho wilender of 2000 of it to be applicate on the Italian he had recently on the Italian for the surface of the I had been applied; but that he had duice paid the money - the last he had duice paid the money - the last he had duice paid the money the follow that he baid that if the follow. Into had not feel bound to had been that for the follow of the money the follow up he had that if the follow it up - the most latter the bound to lake it up - the most latter up they that the paid that if he was latter up they that the paid the paid had not feel the most to lake it up - the most latter up they that the first wind the paper un controversy \$1000 and upwards of it were applied in hay much of balance of that note the think it fitting that cots they want of balance of that note the bill. The Southern Bank

3 3

of chidiana was the owner of the paper in continuersy. The Bank dis counted it for Sewis - The paper was not in it present form when it was presented to the Bank. In Ward was not Here at the hime. Mr Senis myself and Ho Plantiff in this Suit, the President of the Boule and perhaps a black were Inesurt. Mu the paper was presurted it was black, except the Check mark "\$3000" no the repen left hours comer and has now Wards name on the back The unras " promise lo", now erased were Hore in it - Im Seins brough it- to the Back - I and the President Daw it- in its thus Condition Lewis and the President had low Conversation alwest it, which I did not hear - after they had made their arrangemento, Huy called un back where they were and no Veris handed un the paper and directed un lo file it up to suit the forw used by the Bank or words to that Effect. I took it ceway to my desk and filea it up in the form it sow is and look it back and Sewis light it. Lewis lold we to deriet it to the Cashier of the Metropolitans Bank The York of erassa the words "promise to" and "as" The Wares was not Huro and was never at the Bank long Knowledge. I do not know what was paice to Lewis at Mattime - Ithink morey was paid at that hime - That was feltha between him and Ho President - The lether Shown we dated Seft 5. 1861 to Dur Semis and the other dated Get 3.1854 to ElB. Ward are in the handwriting of In Day Cashier of the Southern Bault of Quediana at these dates - the Mode: for \$ 3000 dates Soft 5. 1851 pieper by Lewis and endersed by Ward is the only one of that amount

and date the Bank hela at that him. I think the Bowle had had other paper of the Dame hartus. The Bouchern Bank of Audiana has been in operation pines damary 1853 and has been issuing Biles Dines that hims.

(Ho planisiff here admitted that the Southern Banks of Andraina was organized and during bus uses under the general free Banking low of the State of Judiana)

The Bank owns the Bill wirentrowers your - The usual rate of witerest at that him was Siso for cent on Bills. I do not know what rate of witerest was taken on this Bill - The object of gething the Bile payable in New York was to get backanger - at the dates of the Bile escalency was 5 or 1 for Cent, at the time the Bile watered it was I for Cent at least. The Bile payable in New York was preferred because of the Exchange - That was why the Bile was why the

Re Escamination by Mountiff

"The selection the street of the Street of Juny 25-16 18 58 is
the one successing the \$2000 paid by Mr Hara on the
\$3000 Drote and is the one to which I reperied in the
D8 15 of the same Month." - Daid letter was there offers
in suidence and reach to the Jury as follows,
"Detroit Jany 28 18 58.

'Ger Cay bash Verre Haute.

Disir. I believe your Bank holas

I, V. Sewis Notes, my enversement amounting to \$3100 00 of now 5 Evelose you herewish my draft I to H on In. Forles Eag.

Boston payable to your Graer for \$2000 - the proceeds of which you will please apply in payment of the five Mates for \$1000 - Each, and return the same to me cancelled, Should there to any interest due on these notes you will please few me to statement of the same of I will present you the amount.

E. B. Ward

In H. St. Busson Carlor, "

The witness thew continued as follows.

Here were no \$1000 hopes to which Ward was a party
Here in the Bonk - at the conversation with Dm Dhard in
August 1858 he said he had previous, and if a Chiagment
went against those he should realize on them and arrange it,
but he did not pay how or for what furtose he held the
Desurities

Cross Examination resumed

at the date of the letter of Mr Hara the only note held by the Bank, to which his was a party was the note for \$3000 about perferred to?

The plaintiff them offered in widered the notice of mortiogness and product reformed to by the unimet releases as having been peut by him to the Defendant To the vitreduction of which we huidered the

Defendant by his Coursel objected on the grounds

1sh Heat it has not been shown that Here is any love of the Solum Solumound I which is firmfea at the bottom of Daia fretended the of the Solum shown that any fusson by the name of Lolun Solum that any fusson by the name of Lolun Solum dian the liver at any luice or in any manner had the prosession of, a any control over paia toile or any authority to domand layrent of the pane.

3rd Heat Ho name and description of the person by whom said notice profests to have been given, being printed and notice profess to have the given, being printed and notice itself that there was any such person, or that any probin by that it is any profess, or what any probinty to guie said broties, and is the absence of proof of such focts, the interest of hours le profess, and is the absence of proof of such focts, the interest of hours le explicited.

Justinas of Draws finished as the bottom of said foretunded Drothers brung different entirely from that of the Drothers by whom the Ortificate of Trothers - as alfaction to the notes is digned, and no proof having, been introduced lending to phono that there was any puch forom, Jaia pretended brice is of no Effect, and is the Dame as though not Lighted at all. It is that the defendant under the circumstances was not from the digned to required by him.

Hue's objections of the Defendant were overruled by the Charlo Hos decision of the Cours in overluling paid objections the defendant by his Coursel Huw and How Excepted.

Cluso the said notice was thereston treas to the Jany as follows (The name and description of the larson furtiring to give the pause as well as the formal traits thereof build funited)

" new York aps 28, 1858.

"Please to take notices that as Bile of Excelioneye drava by G. V. Venis on Cash. Metrofindisaw BK as drauce for \$3000 dated Cary 28. 1858 knamed by you is prototed for Dronflaymous, and that the holders thereof looks to you for the layment thereof.

E. B. Thand & John Joursena Dr"

astorney as low auro notary Justio for the Park Caulo . & Breekingw Street ."

(Endorsed) "Rest may 6th 1868" also adaressed in Un back " E. B. Ward!"

The Ramitiff west-offered in Eurosence a letter of the Defendant to the Claintiff dated may 114 1868 tread The Dawe to this dwy as follows:
"Detroit"
"It Whileans May 14 4 1868.

Do Sir . Mours of the 12th is of band Dir Suis

latin for annum- but the Dame may according to Bark pules, he discounted and taken in advance out of the so

Cles Deepins bou page 378 of the 1th Nobune of Laws of Indiana as follows.

"Motes payable to ardon or Bearer in a Bauts in this State, shall be negotiable as Juland Biles of Escalange and the Mayees and Endersees may received as in Calo of ouch Biles."

Pariero Statutes of new York as Polence.

"Soo 1. All notes in writing made and lighted by any lorson, while he shall promise to fray to any other person or his Order, ar to the Order of any other prom, or with the heart, any one of morey therein, new world have the same and frayable as therein estimate and that he have the same Effect and be pregotiable in little mainer as Culo. & Bills of Earthaugh as conduing to the custom of new herein."

Desturio shall be construeco lo extent lo cenery Confination capable by law of Smalling contracto."

See II. " Hw payers and Endorses of every such noto hayable to Hour or Hicir arder, and the Rolders of every out Droto propale to bearer, way manitain actions for the such Droto from the such Droto from the pure of Droney therine mulioned against the makers and lucions of the same perfectively as the manner in cases

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The Plaintiff here rested-

The defendant for the purpose of sustaining the cosine on his hant, Hun head from the Deferition of Trancis. S. Philliains about identified by luin takenbefore a Numino States Commiss when at Depost on the 29th day of Getober 1858 as follows.

" I reside as Perro Hauto in the State of Indiaisa Chw bashin of Hw Southern Bouls of Indain, the Maintiff in this purt, The Plansiff is a Confunction inconfinated or under Ho general Banking Laws of the State of Pudiana and am doing business in that State at Jerro Nanto aforesaico - The witness being shown Hw Bilo of Rocahonger on which this action is brought of to she to the Defico dies of Effuighaw. J. Hyalt now on file in His Cause Days, In G. J. Lewis Un waker of Dava Biles brought it to over Banks in black, the only exception being the \$ 3000 How Dignature of the defendant on the back, being the only widing ow the hafur - I blied it up at Mr Live's request - Tho writing in the body of the draft- concept the signature to His Down is w'un honduriting. after the draft was filled 14, I wade an encepteement when the back of it of One Hursand dollars in order to reduce it to Owo Him wand dolears. Ofter it was filled up mr Sewis Ligoros it The Banks How discounters it for Two Munisand dollars -

a aucha Mr Hara Ho same day or He day often the Date of Hw 18 ilo, Mat we had discourted his motor for Two Housand dolone This motive was given by letter.

The plantiff thew Offerior to produces in luidence!

a Copy of that letter which is 3 marked Exchelit
"Or" tiles unines pays

Ihat the Setter wow Woodness and showed to a Copy of the Setter written by myself to the defendant on the twenty eighth or twenty mith day of clamary 1858. I furt the came in an tweetofic and left it on my table as is my custom to be fruit in the Troot Office by the Clerk.

Hw plaintiff received a notice of the protect of Doio Bile of hocahougo by mail ow the third day of Bray 1858. The better was addressed to me as Cashier In the Dame Suveleties was contained notice of protect to the action, and also to by. V. Vivis . I lent the motice of thosest to the Defendant by mail the David day that I received it duriels de him at Dehoit, Michigan. I had a conversation about this smaller at Detroit on the 16th of august 1858 had the dualt with me at the him. I showed the arafe lo ma Warro and linea lo get him lo make Domo Det Hunent of the minter. The Dain Heat as far as he was concerned he was unleving to pettle it but mr Levis how given him legal Brotice not lo do po. He said ho gand mr Senis Huis draft to naide pono coney after for him defendant by this do af Imean the paper that I shouse him who is to the craft hi luidres - the vaice the first he Knew that the fraper has been used was the peception of the notice that he got from

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Ino, that the draft has been discounted for Two thousand delears. The after some trade the proper in his house and operation it - et suppresse her pread it for he proper at it, and held it for he proper the defendant what ground I'm Lewis look for ment haying the draft and he peptied that he did not her proper to the proper than what has been Insulined."

bross Escaminea.

This is on being Horizon the Bile of Exchange ow wholi this suit is brought Days I crased the priviled words " promised to " and also the word "at" on the face of that Bilo - This paper when brought lotter Backs was in the form of a blank note filled only as lother amount in figures - nr Vewis haw down Corners alou with the President of the Bank before he hourdes we the paper which of dia not have. At this line the Bank held a note or Bile of Escahanger waces by Lewis and encurred by mr. Ward, the Defendant, which mits was for Hores to Minisauco dollars, and upon which a fidepreus has been mado that morning with morey weened from mr share of Two Humes and dolears - The Hums and dolears due in that pieces of hapir, this vilerest and costs of protect formed a frant of the consideration of the Bill in ouit. and the between of the Owo thousand dollars, for which the Bile was a Vis es untero - was paia or tent lo mor Levis in morey. Thunk a frostin of it was paice to him at that him and a

hart Dent-to-luin by cocpress. I became Carlier of the Bark the first of Carnory 1868 George, be, Day was Carhier ofthat Bank prior to my corning there, His three thousand dollar motor or hill be faken up by Sewis at this Line was made and had matured before I became Carlair, I don't know its date, nor the line when it matured. I only knew it was for Fire thousand dollars.

Don't Know what kind of money was fraid to Don't Lewis upon the discount of the Bile in suit nor what had of chis count was perenwoo. We were discounting at that lune at the parts of Sico fire Cent, the legal rate of interest in Judiana. We uniformly charged on discounters at that rate borshange on New Hork at Jerro Hante was at that line from fine to eight few Cent premium, In april 1868 exolicing has declined from one and a half to two free Cent. The object of this planitiff in taking belies on New York was to fine vices themselves with possioned. Or note on Bile fragalie in New York at that line was word valuable than one payable in New York at that line was word valuable than one payable atour North at that line was word valuable than one payable in

The fether now produced ance marketo "reclubit 13" is in the handwirtning of George to. Day who at the line the Done be are date was the Carlier of the Southern Bonk of Judiana.

Sunis, that was not endursed by "Mr Wharoo the Defendant The letter produced and warked "hochelit lo" is also in the handwriting of said George. C. Day at the live this better hears date mr Day was bookier of said

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Banks. I kana ko letter Eschibit "a" was written by 1800 / 1600 it o ecupies in the letter Books. Ho original was dated hut when Copies the morgin was so turned that the date did not copy. I looked the housel mark claimary 28.1868 upon that fuller when I aid it out I were allo at the field of as "J. J. Lewis Bilo for \$3000 due Dea 8. 185"/" and don't know white allo father there alended to was a Bilo we not. I wrote that fether by the dicitation of the Praident of the Bank and duries a the his huvelofe in which the same was enclosed. I wing feld on maight not have for the fether with the part of the Proposition of way feld on mailed any fethers written for the Proposition of his proposition of the proposition of the proposition of the his sound. I way feld on mailed any fethers written for the Proposition of the his part, but left it for the Clerk to mail them as before approached that I feld it for the Clerk to mail them as before approached the front of the proposition of the proposit

The haper marked rachilis & is the notice of Protest received from Down York and marked by und to mr

Ward as spoken of wing direct locaumation.

The conversation with Im Hand as peterreco to in my direct herauniation on the 16th of angust-1868 was at Defendents Office in Detroit. In one was present but Im Thank and ungrelf. I willounded ungrelp to my Thank low him what I have come to per him about and of women fried this wo Draft in Controversey - I don't know that I whom I bresented it to him. I entrove my Draft "whom I presented it to him. I entrove Im Thank of the was lattering with me at the line he held it in his hours. I see not know that the word he held it in his hours. I see that know that the word "Bile" or "Draft" was wentioned in that conversation

In where of us. Mr Thoros poid he would like to be the mother feltless. He spoke of the nots or draft in controvery and also of a not to another Bank, fair to would be willing to letter thour, but mr Servis heave given him so legal notice not to do so. In a first we conversation he send he did not want to see the Banks boso the money nor chain not want to boso it hunself. But if he settled if he plurites have to hose it and he had not the money but that no Servis fusily owned the Banks the money. In Ward said firster that he had from the Two a thousand delease which he had from the fire croas of the lower note, and should have fell becomes to fine the balance if Vivis had water fell becomes to fine the balance if Vivis had water arranged it.

Direct Cocamuiation resumed

Describio from Sewis, and if the Banks got Quagment against him ho would lurw out those feenities and fray it off Jerre Ofanto is four humaned miles from Detroit or thores bours.

Re bross Caramination.

Mr Ware Dain he bod Drewither of Sewis in his howers and in case the Banks got fragment against hum his should turn them out and lettle it up. No der not pay at what him how for what furfice Sewis had given him those Sewis had given him those Sewistis - Mr Wareve was not bresent at the line of like of Exchange succe upont.

Cochibit "a" attached to the foregoing Deposition was a Copy of the letter of the 28 th Jamary 1868 before Offerero auco reaso in evidou so by the Manitiff

Exchibit "88" alto aher lo paid defusition and reaco ni enidence by the Defendant was as follows " A. M. Williams. Prest y. lo Day Cashier Southern Bank of Judiana Terro Hanto Sept 5th 1854.

G. V. Venis Esq. J Clevelanco, Co. 5

Dr Sir, No His day discount your

Leave to your Oredit \$ 2929, 50 18 ile 3 m/s

I hand you with this against about Land Warrando and g as /100 agreement

600 "00

and our burrency

329 ,, 50

Boy \$ 929 " 50 choo the balance & 2000, we will forward you in our rules for good circulation. Ow Ho 15° H insD; \$1000.

Yes. lo. Day - bashr."

Posehier "le" was not offeres & reaco in evidence or this brial.

Exchilet "D" aldoches to the frequency deposition was the sauce 47, notice of Protest about offered in Ruidence by the Flaintiff.

The defendant react offered and read in evidence from the depression of the witness Francis S. Williams taken before cludy to M. Hustington at Jure Hank on the 11th day of actober 1858 to be used in a Duit in the Number States States being lours for the District of Michigan, wherein the Southern Bank of Indeana was planish and clear Ward was defendant as follows.

follows.

"I reside at Sirro Stanto Indiana more than 400

niles from Detroit. And Twenty Iwo years of ago and and

Cashier of the Southern Bank of Indiana".

bross Escamineco by heffs boursel.

Ow Hw 16th, of august last of olivered Mr Hard Hw Bill row owed or. It was then due. Ito Hew told we that \$ 2000 of the first note was discounted for his benefit-that to precise that amount and have paid it, leaving Venis to pay the balance, if Venis had not arranged it. Ito further

Blateou that we had informed him, that we had discounted of 20000 of the Bile suco on which was the first knowledge too had that when he was the first when he was the hat when he was the had with the understanding that Vewis was to have pome movey on it for him.

ReExamireos by Defts Countel.

The corners also was in mr Hards front Officer and as I believe not in the presence or hearing of any other forson,

The defendant their offers and read in Evidence the Moto of G, J; Sewis referred to and idulifica by the witness Theleains as follows.

"\$300000 Clevelanoo & Sephender 5.1857.

Thro months after date I promise to pay to the affect of Truislaw, Lainer & Co 59, Whater Street Brow York value tecimo by If I, J., Venis"

(Eudorsed) " E. B. Hard" also as follows.

* plance on within by E.B. Ward Two Housand dollars of 2000 and by y. J. Lewis and Housand dollars \$ 1000 - Jany 28.1858.

The defendant thew offered in widered and read to the dury Doctions I and 5 ow page "12 and 43 of the 38 Not of the Revised Laws of Dun Unk as follows

See 1. The rate of interest upon the grace or forbearance of any money goods or things in a dim whall continue to be Seven dollars upon One humaned dollars for one years, and after that rate for a greater or less pun or for a longer or shouler time.

Ded 5. "All Bonds, Bills, notes, Clasurances, conveyances all others Contracts on Securities whatsoever (except to buttomy and respondentia lunds and contracts) and all defusits of goods or other things whatsoever, whereuten or whomely there shall be reserved on taken or Decured, or agreed to be reserved or taken any greater pum or greater value for the loan or torbecor and of any money greater value for the loan or torbecor and of any money shall be void - But this act that not affect ouch paper as had been made and transferred previous to the time it shall take Effect."

His O'pee Banking Laws of Indicular for the purpose muly of showing the date of the passage of said Laws. The date of the propose of the date of the propose of the date of the Down to have been the 28th day of May 1859 - and here

Me deferrant prested

He foregoing contains all the Evidence offered by either party on the trial of David Course, and thereupon the Court at the request of the Illaintiffs Coursel we unstructed the Juny as follows.

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1. "The notice which has been given in Evidence to puffacing in form and substance and if transmitted to the defending ni and time it was sufficient to live the defendants linking as endorser."

"This is Do nuless the diferedant was discharged by Hw alteration of the note without authority by Sewis. 2. "Athat the maturity of the Bill the defendant was fully indemnified by Lewis the drower, against his widoreement, he was not sutifled to any notices of its dishonor, as the viderser of the paper."

" If the Bill was drawn and discounted for the use of the defendant, he was not entitled to notice of its dishoring " If in making the rote and bill which how here given in Evidence they were made frayable to New York, for the purpose of allowing a pasto of interest locaced mig what was legal in Undiana, the parties as understanding that the money was not to be paid in The York, but in Undiand, the usury law of New York which has been quen in Evidence has no application to the care and will be disregarded by the Jury,

But if the Bank in violation of a provision of its charles rescrived on book more than the legal rate of "The defudant having file no Blear of usury, cannot

moist upon that defence under the laws of Ondiana But to may wist that the Bouk wilated the law in reserving interest in violation of a provision of its charter

7. The endersement of blank haper and delivery of it to another for the purpose of Enabling him to paise w money in it is a letter of credit of the most augile materie, and the persons to whom it is delivered well to um colries à in filling it up, as le amount line and place of payment Do law as Queh masters are left blank in Hie Drole!"

"Hw Check-mark in the margin of a Bill or Dide Succorsed to blank is no front of the Pustument but it imposes to firmitation upon the holder as to the answert for which it shall be filled up."

The holder of the paper which has been guen in Evidence, if it was ludorsed in blank by the defeir and how no right to trut it no the form of a full of locationge if it was ariguially in the form of a primisory note. without authority from It ara go to do ."

11. "His ratification of aw unauthorized act with a & Knowledge of all the facts, will bind the party in the 2) parne manner as if he has previously authorized it."

12, " If the defendant delivered the paper in question to

Lewis, the drawn, blank, with his Endorsesnest upon it, for With the purpose of Enabling him to proise money upon the paper, and if the words " promise to " were trassed, and I the paper discounted in the form of a bile of horshough, auco if the defendant was immediately notified thereof, it was his cludy if he witended to disafferent the hous action and day his liability, to gue notice to the holder, of ouch desaffermance, and if he facted to do do, the day

may infer therefront his acquiescence in and patification of the act "

"This is the law if his affection was hartreilarly Called to the alteration in such as way that the dury and palisfiew from the Evidence that he must have Known of the alperation at the hime!"

> I the going of which said instructions and each of them the defendant by his Coursel Hew and Here excepted.

He defendant by his bounced then with the Court to wistrues the Jury as follows.

1st " Frat the Endorsement and delivery by defendant Ward to Servis Hus drawer of the draft upor which a resourcery is pought we this suit, of a prester blank of a primifory Droto, authorized Lewis to file up the blanks only so as to herfall it as a promissory note, and did not authorize him to change it wito the form of a bell of Exchanges, and if he did to change it at Hw request or with the Knowledge of the Southern Bank of Undiana, the party ui vilerest no this Quit, and without the Knowleago or assent of Mara, Hw Bile would be void as to Mara unless he definerando allenter la vo patifica the change.

"That Enidonce that the liel after to maturity was presented to Defendant and that he made no objection to its form is not sufficient to establish his assent to or in

radification of the change." That aw expres promise by Hand to pay the Bill would not amount le patification unless made after a 3 full Knowledge of Hw change. 14. "Heat any express promise by Hard to hay the bill would not arround to a partification unless made under Ouch circumstances, that the Jury can find that it was Inade with the witerline to ratify the change." 5. "Heat if the paper ludorseco by defo Ward haw been filicoo uje as a promissory Mose Hiero would have been Hore days of grace upon it, although payable in New Hork. But if the pamo was filed up as a Bill of Exchange drawn upor a Bark in New York, then Hore is no grace upon it and the two contracts and to thier respect materially different," Heat the making the Drote of the 5th Sept 1857 how orble in the State of New York is prepumption Enidence that the parties to it had reference to the laws of new York in making and endersing and receiving the same " If the clury believe from the luidence that the Bile of Exchange whom which as recovery is dought in this action, was discounted for the arawer thereof, by The Southern Bank of Indiana and that said Bank in making paid, Contracted for or Knowingly & intentionally recevied, no preserved la Memorlus lisher directly or a widwelly a greater rate of witerest thou to per cent her. Consum ui advance there Dana Bill is void!" " That if the Jury believe from the Evidence that the 5-4

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Deft Ward Endorseco his rauce to a blank promissing rote and so delivered the same to by Securis to be files up and the Southern to and Sewis and the President or Carbier of the Southern Bank of Indiana altered wito a Bill of Escahange upon a Bank in the City of rew york without the authority or Corsent of our Wars, I he cannot be liable thereon where, with full throwledge of what him level done in relation to said alteration, but to Notuntarily promised to fray the same."

Defendant Marco signed his reased upon the back of a paper which at the time purported to be a priviled blank for contraining note and delivered the Dame with his rame por endoresco, to by J'; Lewis without the blanks being filled, and paid Vernis troto the Daiso perform to the Southern Bank of Indiana and the pane was, there, without the Kusulage or assent of the Defendant, but with the Rusulage of the Indiana and Cartino of para boards which with a filled the paid of the Indiana which and back of such changes with a blank, which when the para is the free para deft or but or but with the para is the para a aforesaid to give to Sewis and by filling up the paid blanks, connecting paid note with a Bile of Exceptange them, the said alterators are material and pures. He paper pured on, the this case, void as to the deft that.

of Esceliance Dury believe from Hw Evidence Heat the Bile of Esceliance Durch on this case was made for the furgions of being discounted in the Glato of Indiana at a take of wilerest esceleding Sino for Culuw feer armum and the

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Southern Bould of Indiana corruptly and usuriously and Centrary to the lows of the States of Indiana under which the said Bould is organized and with intent to evade the law of their organization, discounted the said Bill at a pate of wierest exceeding sion fun Guturn fur amount; and the Jury further believe from the bridence that the same was made fragable in the State of New York at the instance of the Precident of said Bank and a frart of the said discount was paid in Sand Marranto as a schow and device to comer usury and evade the law more which said Bould was organized, then the transmetion is prohibited the law of the organization of said Bank! and the said the sa

Chron the Instructions so asked for by the said Defendant Defendant his Sound were given by the bount - and the Defendant by his bount to motivet the Jury as follows.

Refussal.

His Bile of Rocaliange upon which a preauty is panght in this cetion was made to be discounted by the Southern Bank of Indeana, and that in making such discount said Bourb contraction for, or throwingly and intentionally reserved or received to iself directly no indirectly a greater rate of where thous I have Cent for assument in advance being the rates of witerest authorized by the laws of the States of New York where such Biles was made payable sound Bill is wont where such Biles was made payable sound Bill is wont where such Biles was made payable

Myresod

2 " If the Jury believe from the widered that the Note of Sept. 5. 1857 given in Enidence by defendant was diseruled for the maker by the Southern Book of Judiana and that paid Bault in making puehl to discount contracted for and Knowingly & witestionally received or peserced to itself-directly or midwelly a greater pate of witeress how I for cent for armen, laker in advance, (being the rate of witerest authorized by the laws of the State of New York, where saw note was made payable) paid note was void; and if the Jury believe from the Evidence that the Bill of Oxehonge whom which a precovery is sought in this action, was quew in whole or in par in consideration of said notes we in pour at we esclusion Hereof us whole or in frant, then said Bill is void and they must find their Verdiet for defendant, 3 Heart by the land of Audiano Hw legas parts of wil crest for the locus of money is sion per cent per assumme, and by the laws of New York the legal rate if underest is perew for cut her commons. If the Mury believe from the Evidence that the note given in Evidence bearing date the 5th day of September Co. D 185 Tway made and Indorsed for the purpose of having the Same descourted at a rate of luterest exercing Deven for Cut (the legal pate in New York) and the Dame was Inado payable in the State of New York and with Reference to the Louis of New York, and Heat the Southern Baulo of Judiana by its Offeirs and agents corruptly

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and usuriously discounted the said Drate at as pade of witerest escending sever two cent; there the said Drate was governed by the laws of Drow York and by the states of that state given in suidence, was void from the line it was so discounted; and the said Drate so discounted was the correideration in whole we in fract of the like suidence that the said Drate so discounted was the correideration in whole we in fract of the like suid on in this case, then such consideration is illegal and said full such the Sury will find for the deft."

24 " That if the Sury will find the Evidence Heat the find suder that the find suder that the line from the Evidence Heat the find suders that the Sury lutine from the Evidence Heat the find suders on beaut?

the trajue Endorsed by the Ouft Than a was a blank promissing hote and the Dame Do endorsed was given to y. J. Seneis auxo No Dans was fileeo up as a bill and discounted in Mu Date of Indiana, the liability of the deft as ludorser, would be governed by the laws of that DIale; and by the laws of that State, if paid frague how been filled up as a promisory mose, Hard could be made liable as an Judorser of the Dame as a promisory harter only by the holder using diligered to collect of the maker or by showing the maker notoriously uisolvent; but the hiability of the indorver of a bile of hocaliange drown by a franty in one State upon a drawed in another State, is Offier and different; defunding upon due presentment deman protest and motice, and in this respect there is a material elifference between the liability of the Sudorow, as the paper Sued on now is and what it would have been if felled up as as promisony hate."

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3" Heat although Hw Jury may believe from the to Evidence that after the time for the maturity of the Bill Qued on, the paid Deft Dravos has a conversation with He Cashen of the said Southern Boult of Quanaio, and in Heat conversation the para Train tolar the para Casheir Mid- la would admit & cruce of process to commune a qui agained him on paid Bilo and that he would not make any defence to ouch suit locals what his made through Lewis, but at the same time stated to said Cashier that he has been brotifica by Lavis not to dettle it and that Sewis was going to defend the action on the bill, such Statements should be considered together by the clary, and are not pufficient in law to arrount to a patification of the alteration of paid paper with a bell of Escalauge!" 6 "Front the lasting of occurring by Ward from Lewis To widensnify how against liability upon the toole of Excelounge upon which a recovery is sought in this action would not render him liable upon the pauce or authorize a recoury against him ifin it, if his were not liable therend before

Tothing pueh Decemity."

That the Taking of Decemity by Waroo to indemnify him against his bility upon the bile upon which a recovery is pought in this action, would not amount to no he conducted of or patification of the making of soin Bill, under the Crimistances detailed in the hidence of the witness Francis. S. Williams"

Winefo Francis . S. Williams"

Of the dury believe from the Evidence Heat the

Note of Sefer 5. 1857 read up widence by defendant

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was disevented for the maker thereof by the Douthern Bouls of Oudiana, and that said Bank in making said cliscount contracted for, or Knowingly & wisentionally tereined or reserved to itself directly we inducedly a greater rate of vitered than I have cent for annual in advance, of and note was illegal and void; and if the Jury believes from the Enidener Heat the Bile of Sochongo whom which or perovery is sought in this action was given in whole or in frant in corrideration of said note or in Hermal or escheusion Hereof in whole or in frant, then paid bill is voice and they must fino the Verdies for defenceant. 8 "Heat if the Jury believe from the widerce Heas Hw Bile of Exaliange upon which a precovery is of oright in this action was discounted by the Bouthern Bank of Judicina and was worde payable in the City of New Upork at the instance of paix Bank for the hurhose and. with the witers on of enabling it to receive the difference nio Cocchango between Verro Hanks and New York by way of fragment for the leave or use of the morey to locused your said Bill over and about the parts of interest which it was authorized to receive by the laws of Oudeanos, under which it pociotion, there paid bile is voia and their Verdiet must be for defendant."

All of which histructions last named so asked by the lower the said defendant as aforesaid were refused by the Court and To the prefusat of the bours to give the said last named Instructions and each of them

Selvarabely Hw Defendant by his Coursel Hiero and Huro escepted.

The bount of its own motion gaw the following dustructions to the Juny.

"Three aw hudorser of a note commits it to Has maker with blants to he filew; as, of date, pun of noney, hime, or place of hayment; there is an implied authority given to the maker to file any and all blanks so left in such Drote - But the maker would not he authorized to brase or strike out any thing written or huised in the instrument so delivered to him unlers to esopress authority is given to him to do it.

Oluce if, in His case, Ho maker erased any material from the fourt and altered the Prote without authority from the Endorser in a material manner at the prequest of the Southern Bants of Judiana Such alteration would discharge the Southern Bants of Judiana Such alteration would discharge the Sudoroer, unless to afterwards assented to such an alteration, or knowing of push alteration, esopressly, was recognized his liability or a greeo to pay such little or note.

De alterning a blants promisory note payable generally,

"Altering a blank promisory Note payable generally, Do as to convert it into a bute of exchange payable in new York would be a material afteration unithin the a meaning of the rule " that w material alteration desturys "Hw validity of the Note."

Gwew

The clury there upon retired to coronder of their Verdict, and afterwards returned with bourt with the following Mirdiet, lo wit " Ho He dury find for the Reanity and fine " the damage at \$ 2237. "67. "A. Giblo - foreman" Which being announced the Defendant by his Coursel Arroved Hw bourt lo pet aside paido Nerdies and lo grans a hew tial in said cause - and afternarts filed is Daios couse his motion in writing as follows. In Soseph Ut. Whileans, Fres'- 4 & Superior Court of Chicago for use of Southern Baull of Chicago Capil Verm Q. D 1840 Elwo. B. Harw And now comes the said defendant by Scales, In a aleister & clevet his attorneys and moves the Court to pet acide the Verdiet of the clury in this cause and to grant a New trial Hurin, and for cause shows Cause, David Nordiet is Contrary to the Instructions of Hw lowet. 3 ms. David Wendiet is contrary to the Low and the widence un Hw case. 14th The Court refuer or proper Instructionis asked for

5th The bound your uniproper Instructions on behalf

by the Defendant.

of the Planitiff.

61 Hw bound admitted infrofeer Evidence on the heal.

7th aud for other good and Dufficient reasons.

Scales, Dno allion & cleweth

Overruled by the Court- and to the desision of the Count in overruling paid Trotion the defendant by his Count in overruling paid Trotion the defendant by his Coinsel there and there Excepted. Clud thereupon as Judeprent was rendered by the Court-upon the Verdies of the Sury aforesoid. and the Defendant them prayed an explosed to the Supresse bourt, which was also weak.

And Jordoniuch as the Paia Deverab rulings and Clecisions of the bowd and Medelo, do not appear of precords in Daion Cause Defendant prepares and Dubnits to the Court this his Bile of Exceptions in Daion Cause and prays that the pame may be Digraw and Dealed by the Court bound and made a fray the Dourt and made a fray the Digraw and Previous, which is been duringly done this DIOF day of Causing and 1861.

State of Illinois } &

Downt of Chicago (formerly the Cook Country Court of Common Pleas) within and for the Country of Corto in the State of States of the State of States of the Area of the Precipe, Cafficiant and Writ of astachments. Declaration Pleas and afficient of Man appeal Brown Hack of Breezewins There are afficient of Men to and Stoppelation, now on file in my Office together with all orders and fudgment therein wherein Joseph It Still aims for the word of the Southern Brown of States of Strawn States of States of States of States and States of the Southern Brown of Contains of States of Stat

In lessimony whereof I have hereund set my hand and afficed the Seas of Daid Superior bound at Chicago in said County the twenty there any of March Cot 1861.

Sufrem Court & April Jenn 1868 Eben B Marse appellant Erron, Joseph H Williams President & appeller And the said appellant by Scales hi allestes ofewett his attorney before the Justices of the Supreme Court ah Ottawa Comes and I up that in the learn and proceedings aforesaid and in given the judgments Plue comb Ened in admitten improper Evidence and Excluder proper Evidence, The Court Ened in giving the Instruction afresaid on behalf of the plaintiff in said. 3° Hu Paria Court. The Court Erred in refusing the instructions afresaid as Ked on behalf of appellant 4th The Court Ered in overaling the motion much by appellant for set aside the verdict and to granh a red trul, 5 The couch Ened in giving judgment fulle plaintiff and against the defendant Wherefore for the Euros aforeraid and other Errors in the suid record and proceedings appellant pury that said fadgment may be seversed & & cates he allister & Jeweto ally for appellant (over)

and the said appellee, by Godlins
Thomas & Roberts his allowing comes
and says their is no user in the said
wend and proceeding, as the said
appellant hatte alleged
Goothing Thomas & Robert
alternys for appellee

Ever B Ward 235 on agree forth # Williams fres the appeal Firs April 17, 1881 L. Llaws

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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.

- This suit was Assumpsit, commenced by Attachment, to the April Rec. 5 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.
- 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.

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 Metropolitan 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 defendant endorsed the same at Terre Haute, Indiana, and delivered it to plaintiff for the use of the Southern Bank of Indiana; that the same was not paid by the Metropolitan Bank — protest and notice.

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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 drawn in said State upon persons out of that State but within the United States.

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

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

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.

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.

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."

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

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

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.

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:

"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

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."

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."

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.

"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-

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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

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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:

"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.

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

" DETROIT, MAY 17th, 1858.

"J. H. WILLIAMS:

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"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."

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 banking, by discounting notes, bills and other evidences of debt; by receiving 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:

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"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."

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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 exception 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-w iting; 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.

"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.

"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.

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"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."

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" and deducting discount	
"I hand you with this, against above, Land Warrants amounting, as per agreement	
"and our currency	
" 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."

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

\$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."

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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."

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:

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.

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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.

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 several instructions, the defendant's counsel then and there excepted.

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

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.
- 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.

- 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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S. 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.
- 2. Said verdict is contrary to the law and the evidence in the case.

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

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.

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E. S. Ward vo J. H. Milliams Alstract

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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.

- This suit was Assumpsit, commenced by Attachment, to the April Rec. 5 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.
- 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.

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 Metropolitan 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 defendant endorsed the same at Terre Haute, Indiana, and delivered it to plaintiff for the use of the Southern Bank of Indiana; that the same was not paid by the Metropolitan Bank — protest and notice.

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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 drawn in said State upon persons out of that State but within the United States.

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

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

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.

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.

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.]

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

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.

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:

"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

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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."

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."

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.:

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"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.

"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. 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

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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:

"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.

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

"DETROIT, MAY 17th, 1858.

"J. H. WILLIAMS:

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"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."

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 banking, by discounting notes, bills and other evidences of debt; by receiving 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:

"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."

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.

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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 exception 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-w iting; 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,

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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.

"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.

"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.

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"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."

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.:

"Resply,

GEO. C. DAY, Cash'r."

The defendant then read in evidence another deposition of said Francis 47 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

\$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."

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:

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.

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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.

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 several instructions, the defendant's counsel then and there excepted.

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

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.

- 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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S. 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. But the said Court refused to give any or either of the said instruc-

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

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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.

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