

12636

No. _____

Supreme Court of Illinois

Porter, et al.

vs.

Cushman.

71641  7

191 = 81

Porter & Stair

vs

Cushman

Apportion

191

12636

1858

X

Prepared

1
Lafayette County Court March Term 1858

State of Illinois
Lafayette County

Whereas proceedings and judgement
have and taken in and before the Lafayette County Court
in the State of Illinois at the Court House in Ottumwa
in said County of Lafayette of March Term thereof
to wit on the first day of March A. D. 1858 and
of the Independence of the United States of
America, the Eighty Second

It is remembered that heretofore to wit on the
16 day of February 1858 a summons was
issued out of the Clerk's Office of the said
Court in the words and figures following Viz

The People of the State of Illinois

To our Sheriff of our County of Lafayette Greeting
We Command You that You Summon

Walter G. Foster & Franklin T. Barry
if they shall be found in our County personally
to be and appear in our Lafayette County Court before
our Judge thereof on the first day of the next Term
of said Court to be held at the Court House in Ottumwa
on the first Monday in March next at Ten o'clock
in the forenoon then and there to answer unto
Maria Cushman in a plea of Assumpsit to her
damages Five Hundred Dollars — And have
you then then this writ and the manner in which
you shall have executed the same

In Witness Whereof We have cause the
Seal of our said Court to be hereunto affixed
and attested by John Smalley our Clerk
Thurs at Ottumwa 16 day of February
1858
John Smalley Clerk
C. H. Smith Dep.

22

Which Summons was returned with the following
 endorsement thereon Viz "Served by reading to the
 parties named - Walter G. Porter and Franklin
 J. Barry - July 17th 1858. - Dr & Mt. - 60
 15 Miles 15

Filed July 26th 1858
 W. G. Porter & Franklin J. Barry
 C. S. Waterman Shyff
 C. S. Hinch (Dep.)

And on the said 16th day of July, 1858 a declaration
 was filed with the Clerk of said Court which
 was in the words and figures following to wit:

State of Illinois³ County Court for said County
 LaSalle County³ Id. March Term Thurf. A.D. 1858

Maria Cushman the plaintiff in this action by
 James H. Deane her Attorney
 Complain of Walter G. Porter & Franklin J. Barry
 the defendants in this action. Of a plea of
 Trespass on the Case upon promises for that whereas the
 said defendants by the names of W. G. Porter and
 F. J. Barry sent for to wit on the twenty third
 day of July in the Year of our Lord one thousand
 Eight hundred and fifty seven, at LaSalle
 to wit at the County of LaSalle and State of
 Illinois made their certain note in writing
 commonly called a promissory note bearing date
 a certain day and year therein mentioned to
 wit. The day and Year last aforesaid and
 then and there delivered the said note to
 One S. DeRuy. By which said note the said
 defendants then and there promised to pay
 to the said, S. D. Ruy or orator (under the
 name and style of S. DeRuy) the sum of two
 hundred and forty five dollars in four
 months after the date thereof which period

has now elapsed and the said P. do Pay there
and then encrossed the said note to the plaintiff
of which the said Defendants then and there
had notice

By Reason whereof and by force
of the Statute in such case made and provided
the said Defendants became liable to pay to
the said plaintiff the said Sum of Money
in the said note specified according to the
Tenor and effect of the said note and being
so liable the said Defendants in consideration
thereof afterwards to wit on the same day
and Year and at the place aforesaid under-
took and then and there faithfully promised
the said Plaintiff and truly to pay unto
the said Plaintiff the said Sum of Money
in the said note specified according to the
Tenor and effect of said note and whereas also
the said Defendants afterwards to wit on the
first day of February in the Year of our Lord
One thousand Eight hundred and forty Eight
at the place aforesaid were indebted to the
said Plaintiff in the Sum of Five hundred
(500) Dollars Lawful Money of the United States
of America for Money before that time lent and
advanced by the said Plaintiff to the said
Defendants and at the special instance and
request of the said Defendants and for other
Money by the said Plaintiff before that time
paid, Laid out and expended for the said
Defendants and at the like request of the said
Defendants and for other money by the said
Defendants before that time paid and received to
and for the use of the said Plaintiff and
being so indebted the said Defendants in
consideration thereof afterwards to wit on
the same day and Year last aforesaid

has now elapsed and the said P. do Pay there
and then encashed the said note to the plaintiff
of which the said Defendants then and there
had notice

By Reason whereof and by force
of the Statute in such case made and provided
the said Defendants became liable to pay to
the said plaintiff the said Sum of Money
in the said note specified according to the
Tenor and Effect of the said note and being
so liable the said Defendants in Consideration
thereof afterwards to wit on the same day
and Year and at the place aforesaid acknow-
ledged and then and there faithfully promised
the said Plaintiff and truly to pay unto
the said Plaintiff the said Sum of Money
in the said note specified according to the
Tenor and Effect of said note and moreover also
the said Defendants afterwards to wit on the
first day of February in the Year of our Lord
One thousand Eight hundred and fifty Eight
at the place aforesaid were indebted to the
said Plaintiff in the Sum of Five Hundred
(500) Dollars Lawful Money of the United States
of America for Money before that time lent and
advanced by the said Plaintiff to the said
Defendants and at the special instance and
request of the said Defendants and for other
Money by the said Plaintiff before that time
paid said out and expended for the said
Defendants and at the like request of the said
Defendants and for other Money by the said
Defendants before that time paid and received to
and for the use of the said Plaintiff and
being so indebted the said Defendants in
Consideration thereof afterwards to wit on
the same day and Year last aforesaid

And at the place aforesaid undertook and then and then faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said Sum of Money in this Count mentioned when the said Defendants should be therunto afterwards requested And whereas also the said defendant afterwards to wit on the same day and last aforesaid and at the place aforesaid accounted together with the said Plaintiff of and concerning divers other sums of money before that time due and owing from the said Defendants to the said Plaintiff and then and then bring in an ear and receipt And upon such accounting the said defendant to them and then were found to be in arrears and indebted to the said Plaintiff in the further Sum of Three Hundred \$500., dollars of like lawful money as aforesaid And being so found in arrears and indebted to the said Plaintiff the said Defendants in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid undertook and then and then faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said Sum of money last mentioned and when the said defendant should be therunto afterwards requested.

Nevertheless the said Defendants although often requested &c. to wit on the day when the said Note became due and payable according to the Tenor and effect thereof and oftentimes since to wit at the place aforesaid have not yet paid the several Sums of Money aforesaid above mentioned or any or either of them or any part thereof to the said Plaintiff but to pay the same or any part thereof to the said Plaintiff the said Defendants have ^{well} alleged ^{to} refused and still do refuse to the damage of the said

Plaintiff of Robt Henderson Dollars (\$50) and
 therefore the said plaintiff brings suit &c.
 By Motion & Rule
 His Attorney

Copy of Note Sued on to wit
 " 245th Four months from date (or jointly and severally
 " promise to pay to J. DeBarry or Order Two Hundred
 " and forty five Dollars at the Banking House of
 " St. Palamie in La Salle for Value recd."
 " La Salle July 25th 1857 signed (M. G. Porter "
 " Do } W. J. Barry "

Endorsed as follows to wit
 " Pay James Strain Maria Cushman or Order "
 " J. DeBarry "

Afterwards to wit on the 2nd day of March 1858
 the same being one of the days of the March Term
 of said Court for the Year 1858 - the following
 proceedings were had and entered of Record

vs Maria Cushman

vs Wm G. Porter

vs Wm J. Barry

Assumpsit

This day came the
 Defendants by David S. ~~Hay~~
 through their Attorney and
 on his motion and affidavit it is ordered that
 Plaintiff produce the note declared on.

Afterwards to wit on the 3rd day of March 1858
 the same being one of the days of the March
 Term of said Court for 1858 - the following Pleas
 were filed with the Clerk to wit

Maria Cushman
vs
Walter G. Pott &
Franklin S. Barry

Sassau County Court
March Term A.D. 1858

And the said Defendants by Hough and Bascom
their Attorneys come and defend the wrong and injury
when &c. and say that did not undertake and promise
in manner & form as the said Plaintiff has above
thereof declared against them and of this they
put themselves upon the Country &c.

And for a further
plea in this behalf Defendants say action non.
because they say that it is not true that said note
in said Declaration mentioned and described
was endorsed to said Plaintiff by the Payee
thereof as the said Plaintiff in his said Declaration
has averred & of this they put themselves upon the
Country &c.

Hough & Bascom
Deft. Attorneys

State of Illinois
Sassau County
David B. Hough being
first duly sworn in Court declares
and says that he is Attorney for Defendants
in the above suit and verily believes that the facts
stated in the plea ^{in answer} are true

Subscribed and sworn to before me this 3 day
of March A.D. 1858
David B. Hough
C. Stedrick Deft.

Whereas to wit on the 4th day of March 1858
the same being one of the days of the March Term
of said Court for 1858 a demurrer was filed

in the words and figures following to wit:

State of Illinois *St.*
 La Salle County *County Court March Term*
Thurs. A.D. 1858

Maria Cushman

vs

Walter G. Porter & *Assumpsit*

Franklin D. Barry

And now comes the said
 Plaintiff by Straun & Paul her Attorney and
 says that the ^{Special} plea of said Defendants secondly
~~pleaded~~ ^{after pleaded} is not sufficient in Law wherefore
 she prays Judgment &c

And for Special Cause
 of demand the plaintiff shows to the Court
 here the following to wit: That said Plea amounts
 only to the general issue

Straun & Paul

Plaintiffs Atty

And said Plaintiff as to the plea firstly above
 pleaded by said Defendants and of which
 they have put themselves upon the Country
 do the like

By Straun & Paul
her Attorneys

Obtained to wit on the 5th day of March 1858 being
 one of the days of the March Term of said Court 1858
 the following proceedings were had and entered of
 Record &c

Maria Cushman

vs

Walter G. Porter &

Franklin D. Barry

Assumpsit

This day comes the Plaintiff by Brown
 & Pass her Attorneys and files a demurrer to the
 second plea of Defendants filed herein, whereupon
 comes the defendants by D. L. Hough their Attorney
 and after hearing the arguments of Counsel said
 demurrer is sustained whereupon the Defendants
 withdraw said second plea with leave to verify
 their plea of ~~to~~ General issue by affidavit.

Cyrtomands to wit on the said 5th day of March 1858
 the defendants by leave of Court amended their plea
 filed herein which amended plea is in the words
 and figures following viz

Maria Cushman

vs

Walter G. Porter &

Franklin D. Barry

LaSalle County Court

March Term A.D. 1858

And the said Defendants by
 Hough & Pascoe their Attorneys come and defend
 the wrong and injury where to and say that did
 not undertake and promise in manner and form
 as the said Plaintiff has above through declared
 against them and of this they put themselves upon
 the Country &c.

State of Illinois

LaSalle County

David S. Hough being first
 duly sworn on oath depone and says that he is
 Attorney for defendants in the above suit and truly
 believes that the facts stated in the plea above
 pleaded are true

Subscribed and sworn to

before me this 5th day of March A.D. 1858

J. S. Smalley, Clerk - Hough dep.

David S. Hough

Afterwards to wit on the 6th day of March 1858
the same being one of the days of the March Term
of said Court for 1858 the following proceedings
were had and ^{entered} ~~put~~ of Record to wit

Maria Cushman

vs

Walter A. Porter &

Assumpsit

Franklin J. Bury

This day comes the plaintiff
by Train & Bury her Attorneys, and the defendants
by Vane & Bacon their Attorneys. Whereupon
I came the following jurors of a jury to wit, J. S. Russell
Nightingale, Elisha Carr, Austin Smith, L. J. Gann
William C. Bux, George Teal, C. W. Baworth
O. Dravens, Sylvester Brown, John Stevens and
William M. Gregor. who were duly elected tried
and sworn to wit and truly try the issue herein
according to the evidence and after hearing
the evidence and argument of Counsel the jury
retire to consider of their verdict and after due
deliberation wherein had return into Court the
following Verdict to wit, "We the jury find the
issue herein for the Plaintiff and assess her damages
at Ten Hundred and Forty Nine Dollars and Twelve
Cents"

Whereupon the Defendants by their Attorneys
enter ^{their} Motion for a new Trial herein

Afterwards to wit on the 10th day of March 1858
The following proceedings appear of Record

Maria Cushman

vs

Walter A. Porter &

Assumpsit

Franklin J. Bury

This day again came the parties herein by their said Attorneys and after hearing the arguments of Counsel upon the motion for a new trial herein said motion is ^{overruled} ~~dismissed~~ by the Court to which ruling of the Court the defendants then and there excepted. Whereupon the defendants enter their motion in arrest of Judgment herein which motion is ^{overruled} ~~dismissed~~ by the Court to which ruling of the Court the defendants then and there excepted. It is therefore considered by the Court that said Plaintiff have and received of said Defendants said sum of Two Hundred and forty nine dollars and twelve Cents for her damages and also her Costs and Charges by her herein expended, and that she have execution therefor.

Whereupon the Defendants pray an Apprais to the Supreme Court which is allowed on their entering into a Bond in the sum of Three hundred and fifty Dollars with Henry Porter as security - said Bond to be filed within ten days from the last day of this term of the Court.

And afterwards to wit on the 10th day of March 1858 a Bill of Exceptions was filed in the records and figures following viz

Maria Cushman

Wm. C. Porter &

Franklin J. Perry

San Jose County Court
March Term A.D. 1858

It is remembered that on this 10th day of March A.D. 1858 the same being one of the days of the March Term A.D. 1858 of said Court this Cause came on to be heard by the Court and a jury - Whereupon the Counsel for the Plaintiff

offered in evidence a promissory Note in the words
and figures following to wit:

\$245⁰⁰.
 Four Months from date we jointly and severally
 promise to pay to J. DePue or order Two Hundred
 and forty five Dollars at the Banking House of
 H. Wadsworth in LaSalle for value received
 LaSalle July 23^d 1857
 W. G. Potter
 A. T. Berry

On said Note had been written the following full
 endorsement "Pay James Strain
 or Order"
 L. DePue

at the trial the name of James Strain was erased by
 Plaintiff's Counsel & Plaintiff's name substituted
 therefor making said endorsement read as
 follows Pay ~~James Strain~~ Maria Cushman
 or Order
 L. DePue

The signatures of the defendants to said Note
 and of L. DePue to the endorsement were admitted
 to be genuine

The Counsel for the defendants claimed
 the right of Plaintiff's Counsel to erase the name of
 James Strain in said endorsement and set there
 therefor the name of Plaintiff and objected to the
 introduction of said note and the endorsement
 thereon so altered in evidence. But said objection
 was overruled by the Court and the said Note &
 the endorsement thereon so altered was by leave
 of the Court offered in evidence to the jury by
 the Counsel for the Plaintiff - to which decision of

the Court in overruling said objections and allowing said Note with the endorsement thereon to attach to be offered in evidence to the Jury, the Counsel for the Defendants then and then excepted No other evidence was given or offered in the case.

Whereupon the Jury found a Verdict for the Plaintiff in the sum of Two Hundred and forty nine Dollars and Twelve Cents.

Whereupon the Counsel for the Defendants moved for a new Trial and in arrest of Judgment which motions were overruled by the Court & Judgment was rendered against said ~~Said~~ Defendants & in favor of said Plaintiff for said sum of Two Hundred and forty nine Dollars and Twelve Cents.

In which decision of the Court in overruling said motion for a new Trial & in arrest of Judgment and rendering Judgment for said sum of Two Hundred and forty nine Dollars and Twelve Cents, Defendants Counsel then and then excepted Excepted and prays that this their bill of Exceptions may be signed ~~and~~ sealed and made a part of the record, which is done.

J. C. Chapman Esq.

And Afterwards to wit on the 20th day of March 1858 the Defendants filed their Apprais Bond, in words & figures following Viz

Know all men by these presents that we Nathl. A. Foster and Franklin A. Bury as principals and Henry Fitch as Security are held and firmly bound unto Maria Cushman in the penal sum of Three Hundred and fifty Dollars good and lawful Money of the United States for the payment

of which may and truly to be made all kind answers
our heirs Executors and Administrators jointly &
severally and firmly by these presents.

In witness
Whereof we have hereunto set our hands and
Seals this Seventeenth day of March A.D. 1858
The Condition of the above obligation is such that
whereas the above named Maria Cushman did
at the March Term of the La Salle County
Court held in and for the County of
La Salle in the State of Illinois A.D. 1858
recover a judgement against the above named
Walter G. Porter and Franklin J. Barry
for the sum of Two Hundred and Forty
nine Dollars and twelve Cents and Costs
of suit, to whose which said judgement
the said Walter G. Porter and Franklin J.
Barry have taken an Appeal to the Supreme
Court of said State of Illinois

Now if the
said Walter G. Porter and Franklin J. Barry
shall duly prosecute said Appeal and pay or
cause to be paid all judgements and
Costs interest and Damages which the said
Supreme Court shall adjudge against said
Walter G. Porter and Franklin J. Barry and
abide the order and judgement of the said
Court on this behalf then this obligation to be
Void, otherwise to remain in full force and
Effect

W. G. Porter Esq.
F. J. Barry Esq.
Harry Porter Esq.

of which will and truly to be made all kind answers
our heirs Executors and Administrators jointly &
severally and firmly by these presents.

And whereas
Whereof we have hereunto set our hands and
Seals this Seventeenth day of March A.D. 1858
The Condition of the above obligation is such that
whereas the above named Maria Cushman did
at the March Term of the La Salle County
Court held in and for the County of
La Salle in the State of Illinois A.D. 1858
obtain a judgement against the above named
Walter G. Porter and Franklin J. Barry
for the sum of Two Hundred and forty
nine Dollars and twelve Cents and Costs
of suit, to whose which said judgement
the said Walter G. Porter and Franklin J.
Barry have taken an Appeal to the Supreme
Court of said State of Illinois

Now if the
said Walter G. Porter and Franklin J. Barry
shall duly prosecute said Appeal and pay or
cause to be paid all judgements and
Costs interest and Damages which the said
Supreme Court shall adjudge against said
Walter G. Porter and Franklin J. Barry and
abide the order and judgement of the said
Court on this behalf then this obligation to be
Void, otherwise to remain in full force and
Effect

W. G. Porter Esq.
F. J. Barry Esq.
Henry Porter Esq.

State of Illinois
Sabell County } p.

I, Philo Lindeley clerk of
the County Court of said County, hereby
certify the foregoing to be a full, true
and complete copy of all the orders of
Court and all the pleadings on file
in case wherein Maria Cushman
was plaintiff and Walter E. Porter
and Franklin S. Berry are defendants
as appears from the records and files
in my office

Witness my hand and the
seal of said Court at Ottawa
this 19 day of April 1858

P. Lindeley cm

Ed. Herrick 24th

Feb. 74. 25-

Walter E. Porter & } State of Illinois
Franklin S. Berry } Supreme Court - 3^d Division
vs } App. Term. AD 1858
Maria Cushman }

And now come the said plaintiff
in error, by D. L. Conybe, their attorney, & say that
in the record of proceedings, & rendering judg-
ment in said cause, there is error in this
to wit -

1st The Court erred in allowing plaintiff
below to alter, at the trial, the indictment
on writ offered in evidence, by erasing the
name of James Shaw, & substituting name of
plaintiff below.

2^d The Court erred in allowing plaintiff
below to introduce in evidence the writ so altered.

3^d The Court erred in overruling motions

of defendants below, for a new trial
4th The Court made in overruling the
motion of defendants below, in and of judgment
5th The Court made in rendering judgment
for plaintiffs below.

For these, & for other reasons apparent
on the face of the record, the said
plaintiffs pray that the judgment of
the Court below herein, may be reversed
annulled, set aside, & wholly for nothing
returned.

D. L. Strong
Attorney for Plaintiffs

191
Porter
or
Bushman^{pt}

Filed April 21, 1898
Leland
C. H.

M. G. Porter +
F. G. Barry
vs
Mariah Cushman } Appeal

And now comes the
said Mariah Cushman by Stein +
Bull her attorneys and says
there is not any such error in
the record of said cause as was
complained of by said Appellees.

Stein + Bull

Attys for Appellees

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Porter & Barry
as
Cushman

Journal in enow.

Filed April 25. 1858

L. Leland
Ct.

STATE OF ILLINOIS, SUPREME COURT,
TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE COUNTY COURT.

WALTER G. PORTER AND FRANKLIN T. BARRY, APPELLANTS, VS.
MARIA CUSHMAN, APPELLEE.

Abstract of Record.

This action was brought in the County Court of La Salle County, by plaintiff below, against defendants below, to recover damages for the non payment of a note executed by defendants in favor of L. De Puy, or order.

Page 1.
Pages 2 and 3.
Pages 3, 4 and 5.
Page 5.
Page 6

1st. Summons issued out of the County Court.

2d. Special count in plaintiff's declaration.

3d. General counts in plaintiff's declaration.

4th. Copy of note sued on.

5th. Defendants plead the general issue, and special plea denying endorsement of note.

Page 7.

6th. Plaintiff's demurrer and replication.

Page 8.

7th. Demurrer of plaintiff sustained by the Court, and defendant withdraws his special plea and amends.

Page 9

8th. Trial by jury and verdict for plaintiff.

Pages 9 and 10.

9th. Motions for new trial, and in arrest of judgment made by defendant and overruled by Court. Judgment rendered for plaintiff.

Page 10.

10th Defendant prays an appeal to Supreme Court, which is allowed.

Pages 10, 11 and 12.

11th. Bill of exceptions as follows:

Maria Cushman,	}	La Salle County Court,
vs.		
Walter G. Porter		
and		
Franklin T. Barry.		March Term, A. D., 1858.

Be it remembered that on this 6th day of March, A. D., 1858, the same being one of the days of the March Term, A. D., 1858, of said Court, this cause came on to be heard by the Court and a jury. Whereupon the counsel for the plaintiff offered in evidence a promisory note in the words and figures following, to wit:

\$245 00.

Four months from date we jointly and severally promise to pay to L. De Puy or order two hundred and forty-five dollars at the banking house of H. Baldwin, in La Salle, for value received.

La Salle, July 23d, 1857.

W. G. PORTER,
F. T. BARRY.

Haugh

3 Wheat 229

16 Ill 454

STATE OF ILLINOIS SUPREME COURT
TO APRIL TERM, A. D. 1858.
APPEAL FROM LA SALLE COUNTY COURT.

WALTER G. PORTER AND FRANKLIN T. BARRY, APPELLANTS, vs.
MARIA CUSHMAN, APPELLEE.

Abstract of Record.

This action was brought in the County Court of La Salle County, by plaintiff below, against defendant below, to recover damages for the non payment of a note executed by defendant in favor of L. De Fay, or order.

1st. Summons issued out of the County Court.

2d. Special count in plaintiff's declaration.

3d. General counts in plaintiff's declaration.

4th. Copy of note read on.

5th. Defendant pleads the general issue, and special plea denying endorsement of note.

6th. Plaintiff's demurrer and replication.

7th. Demurrer of plaintiff sustained by the Court, and defendant withdrew his special plea and amended.

8th. Trial by jury and verdict for plaintiff.

9th. Motions for new trial, and in arrest of judgment made by defendant and overruled by Court. Judgment rendered for plaintiff.

10th. Defendant prays an appeal to Supreme Court, which is allowed.

11th. Bill of exceptions as follows:

La Salle County Court.
March Term, A. D. 1858.
Walter G. Porter
and
Franklin T. Barry.

Be it remembered that on this 6th day of March, A. D. 1858, the same being one of the days of the March Term, A. D. 1858, of said Court, this cause came on to be heard by the Court and a jury. Whereupon the counsel for the plaintiff offered in evidence a promissory note in the words and figures following to wit:

\$245 00

Four months from date we jointly and severally promise to pay to L. De Fay or order two hundred and forty-five dollars at the banking house of H. Baldwin, in La Salle, for value received.

La Salle, July 2nd, 1857.

W. G. PORTER
F. T. BARRY.

On said note had been written the following full endorsement:

"Pay James Strain
or order.
L. DE PUY."

At the trial the name of James Strain was erased by plaintiff's counsel, and plaintiff's name substituted, therefor making said endorsement read as follows:

"Pay ~~James Strain~~, Maria Cushman
or order
L. DE PUY."

The signatures of the defendants to said note and of L. De Puy to the endorsement were admitted to be genuine.

The counsel for the defendants denied the right of plaintiff's counsel to erase the name of "James Strain" in said endorsement and substitute therefor the name of plaintiff, and objected to the introduction of said note and the endorsement thereon so altered in evidence. But said objection was overruled by the Court, and the said note and the endorsement thereon so altered was by leave of the Court offered in evidence to the jury by the counsel for the plaintiff, to which decision of the Court in overruling said objections and allowing said note with the endorsement thereon so altered to be offered in evidence to the jury. The counsel for the defendants then and there excepted. No other evidence was given or offered in the case.

Whereupon the jury found a verdict for the plaintiff in the sum of two hundred and forty-five dollars and twelve cents.

Whereupon the counsel for the defendants moved for a new trial and in arrest of judgment which motions were overruled by the Court, and judgment was rendered against said defendants and in favor of said plaintiff, for said sum of two hundred and forty-nine dollars and twelve cents.

To which decision of the Court in overruling said motion for a new trial, and in arrest of judgment and rendering judgment for said sum of two hundred and forty-nine dollars and twelve cents, defendants' counsel then and there excepted, and prays that this their bill of exceptions may be signed, sealed and made a part of the record, which is done.

J. C. CHAMPLIN. { SEAL. }

12th. Defendants' appeal bond.

Pages 12 and 13.

The errors assigned are:

1st. The Court erred in allowing plaintiff below to alter, at the trial, the indorsement on note offered in evidence, by erasing name of James Strain, and substituting name of plaintiff below.

2d. The Court erred in allowing plaintiff below to introduce in evidence the note so altered.

3d. The Court erred in overruling motion of defendants below for a new trial.

4th. The Court erred in overruling motion of defendants below in arrest of judgment.

HOUGH & BASCOM
Attornies for Appellants.

5th The Court erred in rendering judgment for plaintiff below

27th
 HUGH & BARCOM
 Attorneys for Appellants

low in arrest of judgment.

4th. The Court erred in overruling motion of defendants below for a new trial.

5th. The Court erred in overruling motion of defendants below in evidence the note so altered.

6th. The Court erred in allowing plaintiff below to introduce below.

7th. The Court erred in allowing plaintiff below to alter, at the trial, the introduction note offered in evidence, by erasing name of James Gavin, and substituting name of plaintiff.

The errors assigned are:

12th. Defendants, appeal bond.

J. G. CHAMBERLAIN. { SEAL }

that this their bill of exceptions may be signed, sealed and made return, defendants, counsel then and there excepted, and pray for said sum of two hundred and forty-nine dollars and twelve cents, and in arrest of judgment and rendering judgment to which decision of the Court in overruling said motion for said sum of two hundred and forty-nine dollars and twelve cents and in favor of said plaintiff for said sum of two hundred and forty-nine dollars and twelve cents.

trial and in arrest of judgment, which motions were overruled. Whereupon the counsel for the defendants moved for a new trial and for two hundred and forty-nine dollars and twelve cents.

Whereupon the jury found a verdict for the plaintiff in the sum of two hundred and forty-nine dollars and twelve cents.

to the jury. The counsel for the defendants then and there excepted, and pray for said sum of two hundred and forty-nine dollars and twelve cents, and in arrest of judgment and rendering judgment to which decision of the Court in overruling said motion for said sum of two hundred and forty-nine dollars and twelve cents.

to the introduction of said note and the endorsement thereon in evidence. The counsel for the defendants then and there excepted, and pray for said sum of two hundred and forty-nine dollars and twelve cents, and in arrest of judgment and rendering judgment to which decision of the Court in overruling said motion for said sum of two hundred and forty-nine dollars and twelve cents.

The signatures of the defendants to said note and of J. D. De

or clerk. Martin Chapman

said endorsement read as follows:

At the trial the name of James Gavin was erased by plaintiff, and plaintiff's name substituted, therefore making the endorsement read as follows:

J. D. DE BUI.

mont:

On said note had been written the following full endorsement:

191 = 81
 Porter et al
 vs
 Cushman

Filed Apr. 27, 1888
 R. L. Leland
 Clerk

1st Can an indorsement in full to one person be changed on the face by striking out the name of the assignee and inserting the name of another person?

A plaintiff may strike out a blank endorsement upon a promissory note payable to order, on the trial of a writ on the note.

Parks v Brown 16 Decr 454.

In this last case the Court say "It is not the privilege of the defendant to constitute himself the guardian of the plaintiff's rights, as between the assignor and assignee, or payee and holder. The holder may, so far as the defendant had any right of objection, consult his own interest by instituting suit in the name of the one or the other &c."

"The defendant had a right to require that there shall be such a plaintiff as will make the recovery a bar to any other action by another for the same debt: When this is done he ~~has~~ is protected, and has no cause of complaint or right of objection as to the true or equitable ownership."

of the moneys recovered

On the same case
this Court say " This Court held that
the ~~Special endorsement~~ Special endorse-
ment was in the power of the plaintiff
and he may strike it out or not as
he please. And that possession is prima
facie evidence of title.

It is conceived
by the plaintiff, that a reference to
the authority of the case of Park v Brown
above cited, and cases cited in the
opinion of the Court is all that is
necessary to settle this case in favor
of the appellee. General inclosures
may be stricken out, and blank
inclosures may either fill up
or stricken out, even on the trial
for the purpose of removing all formal
objections. And possession is prima
facie evidence of ownership.

In the case
at bar the plaintiff had possession of
the promissory note in question. Pro-
duced it at the trial. Struck out the
name of one endorsee, and inserted
the name of the plaintiff. all of which
is allowed by the cases cited.

Whatever presumption may arise from the fact that the endorsement was made to James Stain, that the property in the note passed to him by the endorsement, is overcome by the fact that the plaintiff below, by her attorneys Stain & Bull have possession of the note, and ~~exercised~~ exercised acts of ownership and control over it by bringing suit on it, and by striking out the name of one payee & inserting another. Under these circumstances, the Court will presume that the striking out of one name, and the insertion ^{of another} was honestly and properly done, instead of fraudulently.

The judgment is a bar to any other suit on the same note. And there is therefore no error in the record of which the ^{appellant} plaintiff in error has any right to complain.

Stain & Bull
Attys for appellee

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Porter et al
vs
Cushman

Argument on behalf
of Cushman -
Stearns & Bull

Filed April 28, 1888
L. Leland
clerk