

No. 14628

Supreme Court of Illinois

Milliken

vs.

Blatchford

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Batchelor & Miller

No. 66
1864

J. W. Middleton & Co., Stationers, 196 Lake St.

Apr. 11. 1864

Reported

Mulliken

W.

Batchelor & Miller

1864

14.628

IN THE
Supreme Court of the State of Illinois,

THIRD GRAND DIVISION,

April Term, A. D. 1863.

ELIPHALET W. BLATCHFORD, Plaintiff in Error,

vs.

ISAAC L. MILLIKEN, Defendant in Error.

ARGUMENT FOR PLAINTIFF,

BY H. T. STEELE.

CHICAGO:

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1863.

STATEMENT OF CASE.

This is an action, brought by Blatchford against Milliken, in the court below, upon an alleged guaranty of a note, made by one Crocker. The *date* of the note is somewhat blotted; but it appears to be of the 26th day of November, 1859, and was so declared on; the copy of the note being as follows, with the endorsements:

"\$200.

Chicago, Nov. 26, 1859.

"Sixty days after date, for value received, I promise to pay to myself, or order, the sum of two hundred dollars, with interest after due at 10 per cent.

GEORGE F. CROCKER."

(Endorsed) "GEORGE F. CROCKER."

"November 26, 1859.

"For value received, I guarantee the payment of the within note, at maturity.

CALVIN D'WOLF."

"For value received, I guarantee the payment of the within note, at maturity.

I. L. MILLIKEN.

"Nov. 26, 1859."

The note is in the usual form of a judgment note: a printed blank, filled up; including the power of attorney, which is filled up and executed, of date the 26th November, 1859. The original note is made a part of the record, in this case.

The testimony shows that the maker of the note applied to Blatchford to transfer to him certain chattel mortgage securities which Blatchford held against one Mr. Towle, whom Crocker was owing. And it was agreed that Crocker should have the securities, upon his giving to the plaintiff a note, due in sixty days,

guaranteed by Calvin D'Wolf and I. L. Milliken. In pursuance of this agreement, this note was delivered to the plaintiff by Crocker, precisely in the form in which it now appears, with the guaranties filled up; and the securities were thereupon given up by Blatchford. It had been expressly stated to Crocker, by the plaintiff, that his own note could not be taken; and that it was upon the guaranties that the plaintiff relied; and that the credit was given upon the guaranties.

It seems that, in the making of the note—which Crocker drew payable to his own order—before the endorsement by Crocker, or the delivery of the note, he solicited and procured, first, the signature of D'Wolf, and afterwards, the signature of Milliken, upon the back of the note; then filled up separate contracts of guaranty over each signature; after this, he placed his own name upon the back of the note, in blank, and thus delivered it to the plaintiff.

ARGUMENT.

This case presents two distinct points for the consideration of the court, both of which were submitted to the jury, in the instructions given, and one in the instruction refused :

1. That of the alleged *alteration* in the date of the note.
2. That of the liability of the defendant as a *guarantor*.

No exceptions were taken to the instructions of the court, relative to the rule of law in the case of alterations of instruments ; but, as the verdict of the jury may have been based upon either of these grounds, and it is impossible to determine upon which of them their decision rested, it becomes necessary to consider both.

If the jury found an alteration in the date, then they had no occasion to inquire after the guaranty. If they found no alteration, then they found for the defendant, under the instruction of the court, on the ground that there was no contract of guaranty. And if they found against the *fact* in one case, or against the *law* in the other, the plaintiff is alike entitled to a new trial.

I.

The alleged alteration.

It is believed that an examination of the instrument, by careful inspection, must determine the fact that there is no alteration in the date of the note ; and that the only indistinctness in it, is caused by the writing of the date *twice* in the same place. The double writing of the same date, "Nov. 26," is clearly and dis-

tinctly traced by every letter and figure; and no other letter or figure is discernible, than those which compose this same mode of expressing this same date.

It is of little consequence to inquire in what manner the partial obscuring of this date occurred; whether it was by accident, or from a sudden thought of the writer, after it was written, that it ought to have been some different date, accompanied by a passing of the finger across it, and then immediately re-writing the same. If there is, in fact, no alteration; then no wrong has been done.

However it may have originated, it is plain that *both* the writings of the date were done at or about the *same time*; that the second writing was done whilst the surface of the paper was yet damp enough from the ink of the first writing to absorb an excess of ink at the second writing of the date; after which, a blotter was placed upon it.

The testimony of either of the witnesses, on this point, that they saw no blot appearance, fails to show that it may not have been there, when the paper was before them; for, in whatever manner it occurred, it must have been there then, if there was any date at all, whether the witnesses saw it or not; and, when it was fresh, it may have been very indistinct. Witnesses *D'Wolf* and *Fieldcamp* simply say (pp. 25, 26, 28) that "they do not recollect the "blot appearance"; and *D'Wolf*, who has examined it with a glass, says (p. 26) that he cannot swear that the date has been altered.

In a similar case, in *McCully vs. Silverburgh*, 18 Ills. 306, 308, the court say, after an inspection of the note:

"Had the marks alleged to have been made on the paper been "such as to have made it liable to be read differently than as originally written, the court would have been justified in finding "that the note had been altered."

But the court found no alteration; and, judged by this test, there is none in the present case. Therefore, if the jury found an alteration, they found against the fact.

II.

The contract of guaranty.

On this point, the following instruction was submitted by the plaintiff, and *refused* by the court :

“ If the jury believe, from the evidence, that the defendant put
“ his name on the note in question, before the delivery of the note
“ by the maker to any person as evidence of a subsisting debt,
“ then the defendant became liable as a guarantor, and the plain-
“ tiff is entitled to recover.”

The following instruction was given for the defendant, and ex-

ing his signature as maker, further order the money to be paid to some other person, before delivery. The ordinary mode of doing this is by repeating the signature on the back of the note; or, in the usual mode of stating it, by *endorsing* the note—although he does not thereby become an *endorser*, as we shall see presently, in the legal acceptance of that term.

Such being the form of the note before the maker's endorsement, and while it remains in his hands, he applies to the witness, D'Wolf, for his name, and obtains it; then solicits the name of Milliken, and obtains that also; after which, he endorses it in blank and delivers it to Blatchford.

“note in the hands of the payee, and for his benefit and security,
 “only designed to assume the responsibility of second endorser,
 “that his liability was not designed to be *to*, but *after*, the party
 “who was induced to part with his money or property, and to ac-
 “cept the note, by reason of that very name, I cannot understand.”

Again, the court say :

“If, in truth, the name of the third party is put on the back of
 “the note, not with the intention of affording additional security
 “to the payee, but to give it currency for his benefit, to enable him
 “to negotiate it, then, indeed, he assumes but the liability of se-
 “cond endorser; but such is very rarely, if ever, the case (espe-
 “cially in this country), when the note is given to the payee for a
 “debt actually due him, and *when the name of the third party is*
 “*put on the note at the time of its execution.* * * * In the ab-

“wanting. Upon the
 “bility became fixed, and the plaintiff had a right to sue him at
 “once upon the guaranty, and recover the amount due upon the
 “note.”

In the case of *Webster vs. Cobb*, 17 Ills., 459, the court say, in
 answer to the inquiry whether the plaintiff had the right to fill up
 the blank over the signature of the defendant with a *guaranty* :
 “The proof shows that the signature of defendant was on the
 “back of the note, *while in the hands of the payee*”; and that, in
Camden vs. McCoy, “this court held the law to be, that the holder
 “of a negotiable note, endorsed in blank, may fill up the blanks
 “with such undertaking as is consistent with the nature of the in-
 “strument and the intention of the parties; and that the signature
 “of a third person, in blank, on the back of such note, while in
 “the hands of the payee, is presumptive evidence that it was
 “placed there at the time of the execution of the note as a *guar-*

"*anty.*" The court in this case also cite all the above mentioned cases, previously before this court, recognizing the same doctrine. But they further add, inasmuch as this was an *assigned* note, that "when the note has been in *circulation*, and the name of "a third person appears upon it in blank, it *cannot be determined* "whether the name was placed there for the purposes of transfer "and creating the liability of simple *endorser*, or for the purpose of "absolute *guaranty*. The note, in the course of negotiation, may "have passed from holder to holder, by blank endorsement; and "therefore no *presumption* from the face of the instrument can be "raised, that the blank signature was placed thus at the *inception* "of the note, as a *guaranty*. Here, the note was so endorsed at "the time of its delivery to the payee; and passed, by assignment, "directly from him to the plaintiff. *The defendant could not, therefore, have been an intervening endorser.*"

The *first* holder, or bearer, or endorsee of the maker of a note drawn payable to the order of the maker, and by him delivered to such holder or bearer, is, in legal effect, the "*payee*" of such note; and, while he holds such note, he occupies the position and stands in the character of the *payee* of a note made in the regular form, and is entitled to the benefits arising from that relation. This is the relation indicated by the form of the contract. According to the reasoning of the Court of Exchequer, in *Hooper vs. Williams*, 2 Exch. 13, already quoted, such is the legal principle involved. "The effect of the "endorsement by the maker is to perfect the incomplete instrument, so that the original writing and endorsement taken together, become a binding contract *between the maker and the endorsee.*" The contract is not between the maker and himself, but "between the maker and the endorsee." The maker has not made the note until he has completed it by his endorsement. Until he has endorsed it, there is no payee; no one to whom the ma-

Yet, if this was not a contract of guaranty, we are led to inquire further, what was the liability which the defendant *intended* to assume; for this is the main question in the case, and the court will not imply any different contract from that which the defendant *intended*, provided that can be ascertained.

It is true there is no *direct* evidence that the agreement between Crocker and Blatchford, as stated by the witness *Gates*, that Crocker should procure the guaranties of D'Wolf and Milliken, was communicated to the defendant. But it is distinctly stated by witness *Fieldcamp*, who was present when the defendant put his name on the note, that Crocker had been in once before to get Milliken to sign with him, as *maker* of the note, which he refused; but, at this time, signed his name on the back without objection, and without asking for, or giving, any explanation. The least that can be gathered from this is, that the request of Crocker was not new nor unexpected by the defendant; that the matter had been settled and determined in the mind of the defendant, so that nothing further was to be said or done, except to put his name on the note. These circumstances establish a strong presumption that Crocker had, in fact, acquainted the defendant with the agreement made between him and Blatchford; and that the name was procured to be signed in pursuance of such agreement; for this court will not presume that Crocker acted in bad faith in the matter. The same objection to being *joint maker* of a *judgment note* could not arise against being a *guarantor*. In *Cushman vs. Dement*, 3 Scam. 497, where the court held that "a blank endorsement of a promissory note, at the time of its execution, is *prima facie* evidence of a liability in the capacity of guarantor, and operates as authority to a *bona fide* holder to fill up the endorsement by writing a guaranty over the signature"; the court likewise say that this legal presumption is not rebutted by proof that such party had refused to sign as *maker*.

It is evident that the defendant did not intend to sign the note in manner as he did. The witness, Fieldcamp, decidedly says that "Crocker wanted Milliken to put his name on the back of 'the note *for him*.'" The meaning of this is, not that Milliken should himself acknowledge an indebtedness in favor of Crocker; for there was no foundation for it; but that he should, by his signature, add to the security of a debt which Crocker owed, and unite his responsibility with that of Crocker to ensure the payment of the money, when it should become due; that it was for the purpose of "affording additional security to the payee."

But there is another view to be taken of this case, for the purpose of showing the manifest intention of the defendant in furnishing his name. He knew the form of the note, and that it required the endorsement of Crocker to perfect the note; and that such endorsement was not then made. He put his name on the note in contemplation of such endorsement by Crocker. He also knew that Crocker might make a special instead of a blank endorsement, which would bind the defendant; so that there is little ground for the pretence that he intended to incur any liability different from that which the facts rendered probable. Had he thought proper to restrict his liability to that of an *endorser*—the method was easy—to make the endorsement of Crocker run to D'Wolf or to Milliken himself.

This view, which under other circumstances might have little significance, when taken in connection with the express agreement between Crocker and the plaintiff, that he would procure the guaranties of D'Wolf and Milliken, is entitled to great weight. The note is delivered to the plaintiff in conformity with such agreement, with the full contracts of guaranty written out. With the plaintiff there was no room for presumption in the case. It was a fact; and such a fact as he could not get rid of. By thus signing his name in blank, the defendant put it in the power of Crocker, or of the per-

son to whom, after his endorsement, he should deliver it, to fill up the blank with any contract consistent with the terms of the instrument on which it appeared. And the testimony shows no other contract than that which the declaration alleges, and which the law, as determined by this court, implies in such cases.

The language of the court in the case of *Klein vs. Currier*, 14 Ills. 240, is singularly appropriate in this connection :

“ After Currier had insisted that the name of Klein should be upon the note before he would accept it as a security for his debt, and had accepted it, relying upon that name; had he been told that Klein could never be liable to him on the paper, in case the makers did not pay it; but that, on the contrary, he might be liable to the party who had put his name to the note to add to the security of his debt, he would have had great difficulty in comprehending the wisdom or justice of the law by which the rights and liabilities of the parties had become thus transposed. If such is to be the law in this State, it must be made so by the legislature. We have neither the authority nor the inclination so to alter the law.”

And again, on p. 241 :

“ Should we yield to the argument urged, and hold him to have been but a second endorser, we should, no doubt, do violence not only to the expectations of the payee, but also of Klein himself.”

Another circumstance strongly tending to show the design of Milliken in placing his name upon this note is found in the manner in which it is done. The broad space left between the names (see original note on file) indicates some other intention than that of becoming a mere indorser. Both of these men, Milliken and De Wolf, were at that time acting Justices of the Peace, and had been so for years. They had seen and handled scores of notes every day, and had observed the slight space commonly devoted to succeeding indorsements. Yet in this instance, the departure from the ordinary practice in

this particular is so marked, that it is clear that some special reason must have prevailed with the defendant in placing his signature so remote from De Wolf's. Is it not plain that it was for the purpose of allowing the intervening blank to be filled in some other manner than with the form of a simple indorsement? and does not this circumstance afford strong grounds for the presumption that the defendant had, in fact, been made acquainted by Crocker with the terms of the agreement entered into between him and the plaintiff, relative to the guaranties, and had signed his name in pursuance of such agreement? Completed in this manner by the addition of the maker's signature, *after the defendant had affixed his*, the note is delivered to the plaintiff by Crocker, *with the guaranties filled up as they now are.* (Gates' testimony, p. 24.)

We may therefore conclude, both from the *presumption of law* in the case, and from *circumstances* as they appear, as well as from the *evidence* of the witnesses, that the defendant did in fact intend to assume the liability of a guarantor.

In striking contrast with these several and independent evidences of the nature of the contract, stands the *first instruction* given by the court in behalf of the defendant, as an exposition of the law applicable to the case : that,

" If the jury believes the signature of the defendant was in blank
 " on the back of the note, and that he thereby intended only
 " to be liable in case the same could not be collected of Crocker,
 " *and he (Crocker) well knew that fact at the time*, then the law is
 " for the defendant," &c.

The objection to this instruction is three-fold.

First. There is no evidence whatever in the case, tending to show that the defendant entertained any such intention as is attributed to him in the instruction. On the contrary, the entire evidence stands opposed to any such conclusion; so that this instruction was improper, and should have been excluded, by reason of the lack of evidence to support it.

Coughlin v. The People, 18 Ills., 266 ;
Ewing v. Runkle, 20 Ills., 448 ;
Galena & Chicago U. R. R. v. Jacobs, 20
 Ills., 485, 488.

Second. The legal proposition laid down in this instruction is destructive of the principle which imparts the chief value to all commercial paper, namely : that it bears upon its face that which, without inquiry, shall enable the holder to determine readily the liability of any party thereto.

Third. The principle involved in this instruction encourages and protects fraud.

If the evidence had established or indicated the fact, falsely assumed in the instruction, that the defendant did intend to bind himself to some other contract than that of guaranty, and that Crocker knew it to be so ; in case such intention was not expressly or impliedly communicated to the *other party with whom he was contracting*, such intention would avail the defendant nothing. The defendant, by affixing his signature to this note, was entering into a contract, not with Crocker, but with him to whom Crocker should deliver the note, after he should indorse it.

Hooper v. Williams, 2 Exchequer R., 13.

But if the instruction be correct, the principle admitted would enable Crocker, by the connivance of the defendant, to perpetrate a fraud upon the plaintiff. So that, while the defendant, thus, by his signature, *seemed* to assent to the precise terms of the agreement made between Crocker and the plaintiff—that the *guaranty* of Milliken should be procured ; he nevertheless conspires with Crocker to tender him another and a different contract, such as he had been already told could not be accepted (p. 22).

And while the *guaranty* is fair upon its face, being written out in full, it is in truth a different contract in disguise, and one not at all suspected by the plaintiff ; a contract, too, which the law will

compel the plaintiff to discover and enforce, or else go without remedy! Against this, the plaintiff had no means of protecting himself, there being nothing whatever to put him upon his guard.

These contracts of guaranty were written out in full when the note came into the hands of the plaintiff. It was delivered to the plaintiff by the maker himself, and no other persons had handled the note, besides Crocker, De Wolf and Milliken. The defendant had constituted the maker his agent to complete his contract by delivering the note. And will the court presume that, after Crocker had *agreed* to procure the *guaranties* of these very parties, he nevertheless acted in bad faith in the matter? And in view of this special agreement beforehand, and its *apparent* compliance in full, will the court presume that the intention of the defendant in such compliance was to make a different contract from that stipulated for, when such a pretence is unsupported by any evidence? Shall fraud be presumed to exist, without any proof to sustain such a presumption?

It would be a strange doctrine to proclaim, as applicable to such instruments, that the holder, before he accepts them, must first seek out those who have become in any manner parties thereto, and inquire and learn what particular liability each had intended to assume; whether it was not some other and different liability than that which the face of the paper indicated. This would be subversive of all confidence in commercial paper, and directly at variance with the whole policy of the law governing such instruments.

In *Gibson v. Minet*, 1 H. Bl., 606, EYRE, C. B., while commenting upon this subject, says:

“The value of the writing, the assignable quality of it, and the particular mode of assigning it, are created and determined in the original frame and constitution of the instrument itself; and the party to whom such a bill is tendered has only to read it, need look no further, and has *nothing to do with any private history that may belong to it.*”

It is believed that only a single case determined by this court,

seems to stand opposed to the doctrine contended for in the case at bar.

In *Bogue v. Melick*, 25 Ills., 91, the court suffers a departure from the doctrine laid down in *Klein v. Currier*, 14 Ills., 237, and *Webster v. Cobb*, 17 Ills., 459, so far as to hold that there are *exceptions* to the general rule of implied guaranty; that not in every instance, where the signature of a party defendant is proven to have been affixed to a note in blank, while the note was still in the hands of the payee, shall the party *on that account* be deemed a *guarantor*, especially when the *evidence* is against such a presumption. And the case of *Bogue v. Melick* furnishes one such exception, and that, too, as it is conceived, on good and substantial grounds.

In that case, the evidence showed that the note was made by the co-partnership firm of Dorsett, Bro. & Co., in form payable to one Folsom Dorsett, who was proven to be one of its own members, and who was in fact the debtor whose indebtedness was to be settled by the delivery of the note in question. The debtor, as the proof shows, agreed to procure "*another name*," mentioning the name of Melick; but whether as *guarantor* or *indorser* *nothing was said or agreed upon*. Accordingly the note is returned and delivered by the debtor, who is the payee, with the names of the payee and Melick indorsed in blank.

Now the only circumstance from which the liability of Melick as a *guarantor* can be implied, is that his name was placed upon the note in its inception, while it was "in the hands of the payee;" and if this was all that the testimony in the case disclosed, it would undoubtedly have fixed the defendant as a *guarantor*, under the rule laid down in *Webster v. Cobb*, 17 Ills., 459; but the evidence furnished two important facts, from which the court inferred a different contract from that of guaranty.

First. That the circumstances under which the defendant put his name on the note were such as to render it *equally as probable*

that he intended to assume the liability of second indorser, as that of guarantor—the question of *intent* being the chief object of inquiry. Dorsett agreed only to “*get another name*,” not necessarily did he, by this, agree to procure a *guarantor*. And the case is utterly silent as to the capacity in which Melick did in fact *intend* to become liable. All is left to conjecture, except in so far as the law would imply a guaranty. But the law *implies* nothing as against an *express contract*.

Second. The other fact shown was that the payee was one of the makers.

Now, since the *object of a guaranty* is the furnishing of *additional security to the payee*, inasmuch as there was, in this case, no indebtedness whatever shown from the makers to the payee; there was no obligation or liability to the payee, on the part of the makers, to which the guaranty could attach itself. Hence there was no *foundation* for a guaranty. And in the light of these facts, no guaranty should have been presumed to have been intended, when it was equally probable that a different liability was intended—that of second indorser. There is nothing in that case to show that the plaintiff knew of any fact which gave him the right to hold Melick to a contract of *guaranty*.

We do not understand this case to hold that a promissory note in *form* made payable by a firm to one of its own members, is not susceptible of guaranty by a third party. But the court find in this circumstance a fact which, in the absence of other proof to fix the guaranty, may lead to the conclusion that the party may have intended to assume some other liability.

Besides, the evidence failed to show that Folsom Dorsett did not in fact indorse the note before Melick did. The probability is that he did so; and in that case, unless it could be affirmatively shown that Melick *intended* to become a guarantor, he must be held a second indorser.

Again, the note so indorsed by Melick was a *perfect and complete note*, and he knew it to be so, when he indorsed it. There is, therefore, no foundation in the case for the presumption that he intended to *guaranty* the note.

But in the case before the court, the note of Crocker was yet *incomplete* when the defendant put his name upon it, and he knew it to be so. It was impossible then, in the nature of things, for him to be a second indorser. Crocker had not yet completed the note, by making his own indorsement, and the party to whom he (Crocker) should first deliver it after such indorsement, as evidence of an existing debt, would be the first indorsee or payee of the note; and when so delivered it would first become a binding contract between Crocker and such indorsee. These things the defendant knew, and took notice of.

In *Bogue v. Melick* every circumstance shown, apart from the fact that the signature of a third party was on the note while it was in the hands of the payee, conspired to prove that the plaintiff had no right to hold defendant as a *guarantor*; and that one fact from which, if unexplained, a contract of *guaranty* might properly have been implied, was overborne by other testimony, which destroyed any such presumption.

But in the case now before the court, all the facts and circumstances shown, except one, concur in supporting the presumption of a *guaranty*, while the only circumstance which stands opposed to it, is that which is supposed to be comprehended in the statement by the court in *Bogue v. Melick*, that the "payee is one of the makers of the note." Such a reason is not applicable to this case. Indeed, there is no such fact or circumstance in this case. In the present case, it is true that the party to whose order the note *in form* is made payable, is the *same with the maker*—not "one of the makers of the note." Yet it is only in form; and the maker of an instrument made payable to the maker's own order, is not, in the legal acceptation of that term, as we have shown, the "payee" of such note. That character is found in the party to whom the

maker, after his own indorsement, shall first deliver it as an evidence of a subsisting debt. Such party indorsee is the "payee" of the note; and such party is not in this instance the maker nor "one of the makers of the note."

It will not be pretended that the third instruction asked by the plaintiff, and refused by the court, was obnoxious to the charge; that it confined the jury to the single question of *guaranty*, and took from them the consideration of the question of fact of the alleged alteration of the note. (1) This question of alteration had been already submitted in the 1st and 2d instructions of the plaintiff; so that the jury could not be misled in this particular by the 3d instruction so submitted. (2) If the court regarded the 3d instruction objectionable on the ground above stated, it should either have been modified by the court to correspond with the facts in this respect, or else an opportunity have been given to counsel so to modify it, at the suggestion of the court.

"It is the province of the court, their undisputed realm, in which
 "to exert to the fullest extent, this power to impart instructions
 "as to the law of the case on the facts, as the jury may find them
 "to exist; and for that purpose supply, by its own suggestion, any
 "omission or want of observation of counsel."

Galena & Chicago Union R. R. Co. v. Jacobs,
 18 Ill., 478, 487.

The case shows that the plaintiff was induced to surrender to Crocker certain securities held against Mr. Towle (*not against Crocker*), in consideration of the delivery to him of this note with the guaranties of De Wolf and Milliken. The note was brought to him by Crocker, in pursuance of that arrangement, with the guaranties in due form, to all appearance precisely as agreed upon. A debt well secured was thus relinquished by the plaintiff, and this guarantied note accepted in its stead. The plaintiff parted with those securities upon the faith of receiving this note so guarantied. And although no direct evidence is furnished to show an

agreement on the part of defendant to guaranty the note, before the agreement between the plaintiff and Crocker; yet the plaintiff had a right to presume, when the names of the proposed guarantors were offered to him at the outset, and a day or two after were brought to him upon the note, that there had been a previous agreement on the part of defendant with Crocker, to furnish on his part such guaranty.

It being in evidence that the defendant's contract was not written out upon the note at the time of signing, the contract is to be supplied and expressed according to the law in the case. A contract of *indorsement* would neither be consistent with the terms agreed upon between the parties, nor with the law as held by this court.

The defendant did not limit his liability, nor define the terms of his contract at the time, as he ought, if he intended to make a different contract; nor has he shown that he intended to make another contract than that of guaranty.

A contract of guaranty can not be converted into a contract of indorsement; and under the evidence now before the court, no action against the defendant as *indorser*, could be maintained.

H. T. STEELE,

Plaintiff's Counsel.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1863. }

Eliphalet W. Blatchford,
 Plaintiff in Error,
 vs.
Isaac L. Milliken,
 Defendant in Error.

ERROR TO SUPERIOR COURT OF CHICAGO.

ABSTRACT OF RECORD.

The first count in the declaration is upon an alleged guarantee of a promissory note, by the defendant, and reads as follows:

- /s. 2. For that whereas, heretofore, to wit: on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-nine, at the city of Chicago, to wit: at the county of Cook and State of Illinois, one George F. Crocker made his ~~his~~ certain promissory note, in writing, bearing date a certain day and year therein mentioned, to wit: the day and year last aforesaid; and thereby, then and there, for value received, promised to pay, sixty days after date, (sixty days after the date of the said promissory note, thereby meaning) to myself (to the said George F. Crocker, thereby meaning) or order (the order of the said George F. Crocker, thereby meaning), the sum of two hundred dollars,

with interest after due at ten per cent. (with interest on the said sum of two hundred dollars after the maturity of the said note, at the rate of ten per centum per annum, thereby meaning); and the said defendant then and there, and before the delivery of the said promissory note to the said plaintiff, as hereinafter mentioned, for a good and valuable consideration, for the purpose of securing the payment of the said promissory note to the legal holder and owner thereof, at the maturity thereof, by his usual signature of I. L. Milliken, by him thereon inscribed, made his certain guarantee in writing, on the said note, in manner and form, and in the words and figures following, to wit:

“For value received, I guarantee the payment of the within note at maturity.

Signed,

Nov. 26, 1859.

I. L. MILLIKEN.”

4- and then and there delivered the said note, with the said guarantee thereon endorsed, as aforesaid, to the said George F. Crocker, by means whereof the said defendant then and there, for a valuable consideration, guaranteed the payment of the said note at the maturity thereof, meaning thereby the payment of the said sum of money in the said note specified, to the legal holder and owner of the said note, according to the tenor and effect of the said note, in case the said George F. Crocker should make default in the payment of the same; and the said George F. Crocker afterwards, to wit: on the day and year last aforesaid, and at the place aforesaid, under his hand endorsed the said promissory note, and by that endorsement ordered and appointed the said sum of money, in the said note specified, to be paid to the said plaintiff or order, and then and there delivered the said note so guaranteed and so endorsed, as aforesaid, to the said plaintiff; and thereby then and there the said plaintiff became and was the legal holder and owner of the said note, and entitled to receive payment of the said sum of money, in the said note specified, according to the tenor and effect thereof, and of the said endorsement and the said guarantee thereof, as aforesaid; whereby and by means whereof the said George F. Crocker, the maker of the said note, became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect thereof; and in case default should be made by the said George F. Crocker in the payment of the said note at the maturity thereof, the said defendant became liable to

pay the said sum of money in the said note specified, to the said plaintiff. And the said plaintiff says that the said George F. Crocker hath not paid the said promissory note at the maturity thereof, which has long since passed, nor any part or portion of the said note, to the said plaintiff, neither have any other person or persons paid the same on his behalf, and that the said note remains wholly due and unpaid, to the said plaintiff; by means whereof the said defendant became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect thereof; and being so liable, in consideration thereof, afterwards, to wit: on the twenty-fifth day of January, A. D. 1860, undertook and faithfully promised the said plaintiff to pay him the said sum of money in said promissory note specified, according to the tenor and effect thereof, and of the guarantee so endorsed thereon, as aforesaid, to wit: at Cook county, aforesaid. Nevertheless—

3. 6. The declaration also contains the *indebitatus* count for money had and received.

8. 9. The defendant pleads the general issue verified by affidavit.

11. The cause came on for trial by a jury, before the Hon. Van H. Higgins, Judge, upon the following evidence:

16. **Uriah R. Hawley** testified in substance as follows:

(Witness is shown a paper, partly in writing and partly in print, purporting to be a promissory note, made by one George F. Crocker, with power of attorney to confess judgment annexed thereto, made and executed by said Crocker, and having indorsed on said note a writing purporting to be a guaranty of said note made by Isaac L. Milliken).

I know George F. Crocker, and the defendant, Isaac L. Milliken. I am acquainted with the signatures of Crocker and Milliken. The signatures to this note and this power of attorney are the signatures of George F. Crocker. The signature I. L. Milliken, on the back of this note, I should say, is in the handwriting of the defendant.

The following note was then introduced and read in evidence, (the

date of said note being somewhat blurred and blotted, but apparently of date the 26th November, 1859 :

19-

20.

21. **Caleb F. Gates**, a witness on the part of the plaintiff, testified in substance as follows :

I am the book-keeper and cashier for the plaintiff, at the Chicago Lead Works, and was so employed in the year 1859. In the month of November, of that year, the plaintiff held certain chattel mortgage securities to secure the payment of a debt due from one Hughes. These securities had nearly matured, and the debt remained unpaid. Some time in the month of November, George F. Crocker came and stated to me that he was owing some one in the city of Chicago whose securities the plaintiff held, as collateral to the debt of Hughes, due to the plaintiff—I think it was Mr. Towle—and that Mr. Towle wanted him, Crocker, to pay the money that was coming due on the chattel mortgage, and take up the securities, and Crocker wished me to hold on and wait a few days, and not make sale of the property until he could get the money, which

23. he expected to have shortly. This I agreed to do, if he would raise the money and pay up the debt at the time when he then fixed. After this I saw Crocker several times on the subject, when he agreed to have the money, but he failed to make any payment. Finally he offered to give a sixty day's note, which should bring the money. I told Mr. Crocker that I could not trust to him in such a matter, and could not take his note. Crocker then said he would give a guarantied note, and said that he would procure the guaranties of Calvin D'Wolf and I. L. Milliken,

the defendant. I knew these men, and agreed to take such a note. After two or three days, Mr. Crocker brought to me a note made by himself, with the guaranties of D'Wolf and Milliken upon it. (Witness is shown the note already introduced). This is the note that Crocker brought me at that time, and placed in my hands. The note is on its face now precisely as it was when Crocker handed it to me; the signatures on the back are also as they were then, and *the guaranties were filled up as they now are*. I cannot swear positively to the date on which this note was
 24. brought to me by Crocker, but it was either on or about the twenty-sixth day of November. I recollect of examining the dates on it, and observing that it corresponded with the time I received it, or about that. I remember that the date over the note was blotted as it now is, and I called Crocker's attention to it at the time, and asked him how it happened. Crocker replied that it was of no consequence, that the other dates were clear, so that there could be no mistakes about the date. The plaintiff accepted the note, and gave up to Crocker the securities before alluded to, which he held.

The plaintiff here rested.

Calvin D'Wolf, a witness on the part of the defendant, testified in substance as follows:

I am acquainted with the defendant, also with George F. Crocker. Some time in the month of November, 1859, Crocker called on me and wanted me to sign a couple of notes with him, which I refused to do. He
 25. afterwards came to me and wanted that I should endorse a couple of his notes, and, after some hesitation, I did so, signing my name on the back in blank; Crocker carried the notes away with him. (Witness is shown the note already introduced). This is one of the notes which I put my name on—that is my signature. There was no other writing on the back of the note when I signed my name; I signed it in blank. Afterwards I saw Crocker at the Metropolitan Hall one evening, and asked him what he had done with those notes. He pulled one of them out of his pocket, and showed it to me, and said that he had not made any use of it. He gave that one up to me, and I destroyed it. I asked him about the other, and my impression is that he said the other was destroyed; at any rate, I understood it was where it would give me no trouble. I

recollect of looking at the notes which I signed, and I did not notice any blot in the date of either of them; I think that I should have noticed it if there had been any. I cannot tell what day of the month it was; I
26. should think it was earlier in the month than the 26th. I cannot tell what the date of this note is or was; I have examined it carefully with a glass, and think that the date has been altered, although I cannot tell in what manner.

On Cross-Examination, witness D'Wolf testified in substance as follows:

I cannot swear that it was not on the 26th day of November, 1859, that I signed my name on this note. I cannot say positively that the date of this note has been altered since I put my name on it; it appears as if it had been. The note may have been made and dated on the 26th day of November. I cannot say whether the power of attorney was filled up when I signed my name or not; but I think it was not.

The testimony of one

27. **Charles Fieldcamp**, a witness for the defendant, was then introduced by the counsel for the defendant, under a stipulation, as follows, viz:

I know the defendant in this suit; do not know the plaintiff; have seen this note before; was present when the defendant wrote his name on the back of the note. It was, I think, in November, 1859. It was presented by George F. Crocker, the maker of the note. Calvin D'Wolf's name was on the back of it then. Nothing was written over his name. I know D'Wolf's signature. Crocker wanted Milliken to put his
28. name on the back of the note for him. He had been in once before, and wanted Milliken to sign with him as maker of the note, and Milliken refused. Defendant, at this second time, wrote his name on the back of the note in blank. Nothing but D'Wolf's name was over it. Defendant received nothing for signing the note, as aforesaid. Crocker carried the note away with him. Blatchford was not present. I did not have the note in my hands. I looked at the note; don't recollect of examining it particularly; can't say what date it was, but think the date did

not then look as it looks now ; don't recollect of a blot appearance that it has now at the place of the date. If it had then, I think I should recollect it.

28. Defendant here rested.

28. The Court then gave to the jury the following instructions on the part of the plaintiff:

29. 1. A material alteration in a written instrument, is such an alteration as changes in some important particulars, the nature or terms of the contract contained in the instrument.

29. 2. Unless the jury shall find that the date of the note has been so altered that the present date differs from the original date, then there is no material alteration of the instrument, by reason of any blotting or blurring of the date.

29. The Court refused to give the following instruction submitted by the counsel for the plaintiff:

3. If the jury believe, from the evidence, that the defendant put his name on the note in question before the delivery of the note by the maker to any person as an evidence of a subsisting debt, then the defendant became liable as a guarantor, and the plaintiff is entitled to recover.

The Court then gave the jury the following instructions on the part of the defendant:

30. 1. If the jury believe the signature of the defendant was in blank on the back of the note, and that he thereby intended only to be liable in case the same could not be collected of Crocker, and he, Crocker, well knew that fact at the time, then the law is for the defendant, and he is entitled to your verdict.

30. 2. If the jury believe, from the evidence, that the note in question has been altered in the date from what it was at the time the defendant wrote his name on the back thereof, without his consent, then such note and obligation, as against defendant, is void, and he is entitled to your verdict. And to determine the question whether the said note has been

altered, the jury can examine and judge from the appearance of the note itself, the law being, "That if, on the production of an instrument in Court, it appears to have been altered, it is incumbent on the party offering it in evidence, to explain this appearance." "Every such alteration detracts from the credit of the instrument, and makes it suspicious; and this suspicion, the party producing it must remove." And in all cases of alterations, "They are supposed, and the presumption of the law is, in the absence of any explanation, that they were made without the consent of the other party."

31. The said judge adding to said last instruction, of his own motion, as follows: "This is the rule, if the jury believe the instrument has been altered."

31. To the refusal to give said *third* instruction requested by plaintiff, and the giving said *first* instruction for defendant, the counsel for the plaintiff excepted.

31. The foregoing was all the evidence offered by the parties, plaintiff or defendant, in the cause, and the jury found a verdict for the defendant.

14, 32. The plaintiff moved for a new trial, which was overruled by the Court, and judgment entered for the defendant.

33. The errors assigned are as follows:

1st. The Court erred in refusing the *third* instruction asked for the plaintiff.

2d. The Court erred in giving the *first* instruction submitted by defendant.

3d. The Court erred in overruling the motion for a new trial.

4th. The Court erred in rendering judgment for the defendant.

(The *original note* upon which this action was brought is by stipulation made an exhibit in the Supreme Court, as evidence in this case.)

H. T. STEELE,

Attorney for Plaintiff in Error.

230 66 60

Blatchford
vs

Milliken

Abstracts

Filed Apr. 23-1863

L. Leland

Clark

Supreme Court of Illinois.
3^d Grand Division. April Term, A.D. 1863.

Elephash N. Blatchford
Plaintiff in Error.

vs.
Isaac L. Milliken.

Defendant in Error.

} Error to Supreme Court of Chicago.

In the above entitled Cause, it is hereby stipulated by and between the said parties thereto, by their counsel respectively, that the original note which formed the ground of action in this case, and which is herewith annexed, be and hereby is made an exhibit as evidence herein, and as part of the case, for the examination of the said Court, to accompany the Record.

N. H. Stubs. for Plff. in Error.
H. Garmon for Def. " "

Jan 28

\$200.00

Chicago, ~~Nov 26~~ 1857

Sixty days

After date,

For Value Received, I

Promise to Pay, to
or order

myself

the sum of Two hundred

DOLLARS, with interest. after due at ten per cent

Due Jan 25/28

George H. Crocker

Printed and sold by Jameson & Morse, 14 La Salle St.

Know all Men by these Presents, That whereas the subscriber is
justly indebted to

upon a certain

Promissory Note, bearing even date herewith, for the sum of Two hundred

Dollars, made payable to the said

or order, and due Sixty days

after date, with interest. after due at ten per cent

Now, THEREFORE, In consideration of the premises, and of the sum of one dollar to me in hand paid
by the said the receipt whereof is hereby acknowledged, I

do hereby make, constitute and appoint Joseph H. Barker or any attorney in any Court
of Record, to be my true and lawful attorney, irrevocably, for me and in my name place and stead,
to appear before any Justice of the Peace, or in any Court of Record, in term time or vacation, in any of the States
or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a
judgment in favor of the said or his or their

assigns or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the
tenor and effect of said note, with interest thereon, together with costs; also, for twenty Dollars
usual attorney's fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount
that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judg-
ment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such
judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution
thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that
my said attorney may do by virtue hereof.

WITNESS my hand and seal this

26th

day of November A. D. 1857

IN PRESENCE OF

George H. Crocker

SEAL

SEAL

State of Illinois, 1st with the hand writing, and with the signature of George H. Crocker.
 Cook County.

and that to my belief that the signatures subscribed to the
 a genuine signatures of said George H. Crocker.
 Subscribed a sworn to before me
 this 4th day of February, A.D. 1859.

John D. Churchman

John D. Churchman

George H. Crocker

1098 1/4 N. W. 1/4 Sec. 36 T. 36 N. R. 10 E. S. 36 E.
 1098 1/4 N. W. 1/4 Sec. 36 T. 36 N. R. 10 E. S. 36 E.
 1098 1/4 N. W. 1/4 Sec. 36 T. 36 N. R. 10 E. S. 36 E.

1098 1/4 N. W. 1/4 Sec. 36 T. 36 N. R. 10 E. S. 36 E.

George H. Crocker

Nov 26 1859

For value received I guarantee
 the payment of the within
 note at maturity

Calvin D. May

For value received I
 guarantee the payment of
 the within note at maturity

Nov 26 1859

J. L. Milliken

Protected for no payment
 January 25 1860

State of Illinois, }
CITY OF CHICAGO, COOK COUNTY, } ss.

Be it Known, That on this Twenty eighth
day of January in the year of our Lord One Thousand Eight Hundred
and Fifty Six, HAMILTON B. DOX, Notary Public, duly commissioned and sworn,
and residing in the City of Chicago, in said County and State, at the request of
H. A. TUCKER & CO., went with the original note, which is above, ~~at~~
~~the office of~~ George B. Baker and demanded payment thereon, which was refused.

Whereupon, I, the said Notary, at the request aforesaid, did PROTEST, and by these
Presents do SOLEMNLY PROTEST, as well against the Makes of said note
the endorsers thereof, as all others whom it doth or may concern, for exchange, re-change,
and all costs, charges, damages and interest, already incurred, by reason of the non-payment
of the said note.

And I, the said Notary, do hereby Certify, that on the same day and year
above written, due notice of the foregoing Protest was put in the Post Office at
Chicago, as follows:

Persons to whom Notice was given on the following named places
" for George B. Baker Chicago
" for Calvin DeLong do
" for Charles DeLong do
" for Ch. Plattford do

Each of the above named places being the reputed place of residence of the persons
to whom this Notice was directed.

In Testimony Whereof, I have hereunto set my hand and affixed my
Official Seal the day and year above written.

HAMILTON B. DOX Notary Public.

ts.; Protest and Record, 50 cts.; ... 4. Notices, ... ; Seal, 25 cts.; Certificate, 25 cts.; & ... 25

George A. Crocker

Filed Feb 4, 1869
Wm Church
clerk

66

107111

Supreme Court of Minn.
Elihu M. Blatchford.

230

vs.
Isaac L. Milliken.

Original Note
with
stipulation.

Filed Apr. 23, 1863
Island
Ct.

Supreme Court

Isaac L. Mickew

vs Appellee

E W Blatchford

Appellant

For the Appellee we wish to make a short statement at the time of printing Appellee's point, we neither had an assumption of Error, nor have we now ~~had or seen~~ seen any of the point or authorities of Appellant - we have given in our printed point, the authorities showing that the instruction to the jury in regard to the alteration in the date of the note was correct - (although there is now ^{not} a prima facie error) - the Appellant therefore admits that the law given to the jury was correct ~~but~~ ^{and} he also admits that the finding of the jury on that point is as correct as if so why should it be sent back for trial - as to the other point the instruction of Appellant No 3 was at all events not correct because it took away from the jury the question of the alteration of the note altogether as to Defendant's 1st Instruction we say that was the Law of the State and we say the case in the 25 Ill 91-93 on which the opinion is written is on all points with this case is good

Law and good Common Sense ought not
to be reversed. And controlling these
cases

And Hildcamp's evidence shows
conclusively that defendant never
intended to incur the liability of payment
of the note at maturity

Attest
City for
appellor

66 60
Supreme Court
Melick
at
Blatchford

Notarially sworn
of appellor

Attest
City

Filed April 25, 1864.
L. Ireland
Clk.

S U P R E M E C O U R T .

ISAAC L. MILLIKEN,

ats.

Def't in Error.

ELIPALET W. BLATCHFORD,

Plff. in Error.

} Error from Cook.

Points &c. of Defendant..

The narr was upon a guarrantee of payment of a note at maturity, made by G. F. Crocker for \$200, payable to his own order—defendant plead the general issue verified—the said note was endorsed by defendant in blank, before Crocker had endorsed the same, and was used by Crocker to pay an old debt, defendant was but an accomodation endorser—and on the trial claimed from the facts proved and the appearance of the note, that the same had been altered since he had endorsed the same, in its date.

1st.

The plaintiff 3d instruction was properly refused, it makes the court take away from the jury, the question of fact whether or not the note had been altered.

And on the question of guarantee it is contrary to law.
25 Ill. 91—93.

2d.

The 1st instruction of defendant was properly given.

The law being, that if a person signs his name in blank on the back of a note, then plaintiff or holder of the note can fill up the endorsement over the signature by a writing, which shall be consistant with the nature of the instrument, and the intention of the parties.

Defendant only intended to become liable as an endorser, see the

evidence—and did not intend to incur the liability of guarantor of payment at maturity.

3 Scam 437, 441, 497, 499.
 21 Ill. 636.
 13 Ill. 682.
 14 Ill. 240.
 17 Ill. 465.
 25 Ill. 91, 93.

This authority is decisive of this cause, and is like this case on note, payable to the order of the maker, and not endorsed by him, until after defendant had endorsed in blank.

3d.

Defendants 2d instruction was properly given.

The alteration of the date of note was a material alteration, and it was proper, to submit the question to the jury.

The law as given in the instruction is correct, see

1 Greenleaf Ev., sec. 564 to 568.
 1 Gil. 475.
 5 Gil. 252.

4th.

This being a note delivered to plaintiff by Crocker, to secure an old debt of Crocker, plaintiff is not a bona fide holder of said note, stands with no greater rights than Crocker as against defendant, and defendant having signed the same in blank without consideration, is not liable.

17 Ill. 505.
 5 Denio 484.
 6 Hill R. 93, 95 & 96.
 4 Scam. 387.

And it was no part of the original transaction or credit to Crocker.

26 Ill. 61.
 20 Ill. 373.

Crocker was never discharged from his debt, see also
 2 Comstock R. 553.

The endorsement at the time of signing, did not express consideration.

A. GARRISON,

Attorney for defendant in Error.

⁶⁶ Supreme Court
⁶⁶ J. S. Milliken

ad
E. W. Blatchford

Point of Dept in Error

A. Garrison
for Duff

Filed April 21, 1864
L. C. C. C. C. C.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the second day of June in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty sixth

Present, The Honorable John Mc Wilson Chief Justice of the }
Superior Court of Chicago. }

Van M Higgins

Grant Goodrich

Judges.

Joseph Knox

Prosecuting Attorney.

Anthony C. Hering

Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit, on the Twenty fifth day of September in the year of our Lord One Thousand Eight Hundred and Sixty one the following Petition by Porter & State Plaintiff Attorney, was filed in the office of the Clerk of Superior Court of Chicago in words and figures following to wit

State of Illinois }
County of Cook } Superior Court of Chicago

Of the October Term A D 1861
Elphail W. Blatchford }

Isaac L. McKim }

Assessment Damages \$400-

The Clerk of said Court will issue a Summons in the above Cause, directed to the Sheriff

2
of Cook County, in a plea of Trespass on the Case where
Promises Returnable at the October Term of Said Court
A D 1861 to the damage of the Plaintiff of Four
Hundred Dollars

Porter & State Plaintiff Attorneys
To Walter Kimball Esq Clerk
Chicago Sept 25th 1861

And afterwards to wit, on the Twenty Seventh
day of September in the Year aforesaid, the Plain-
tiff in this Suit by Porter and State his Attorneys
filed in the office of the Clerk of Said Court his Certain
Declaration in words and figures following to wit,

Superior Court of Chicago
Of the October Term A D 1861

State of Illinois }
Cook County }

Eliphahet W Blatchford.

Plaintiff in this Suit by Porter & State his Attorneys
Complain of Isaac S Milliken Defendant in this
Suit who was summoned &c of a Plea of Trespass on
the Case upon Promises

For that whereas hereafter to
wit, on the Twenty Fifth day of November in the Year of
our Lord One thousand eight hundred and fifty nine
at the City of Chicago to wit: at the County of Cook and
State of Illinois, one George B Crocker made his Certain

promissory note in writing bearing date a certain day and year therein mentioned, to wit: the day & year last aforesaid and thereby then and for value received promised to pay sixty day after date (sixty days after the date of the said promissory note thereby meaning) to myself (to the said George F. Crocker thereby meaning) or order (the order of the said George F. Crocker thereby meaning) the sum of Two Hundred Dollars with interest after ^{at ten per cent.} due (with interest on the said sum of Two Hundred Dollars after the maturity of the said note at the rate of ten per centum per annum thereby meaning) and the said Defendant then & there and before the delivery of the said promissory note to the said Plaintiff as hereinafter mentioned for a good and valuable consideration, for the purpose of securing the payment of the said promissory note to the legal holder & owner thereof at the maturity thereof by his usual signature of J. L. Williken by him therein inscribed, made his certain guaranty in writing on the said note in manner and form and in the words & figures following, to wit: "For value received I guarantee the payment of the within note at maturity."

Nov. 26, 1859

(signed) J. L. Williken"

and then and there delivered the said note with the said guaranty thereon ^{endorsed} as aforesaid to the said George F. Crocker by means whereof the said Defendant then & there, for a valuable consideration, guaranteed the payment of the said note at the maturity thereof, ^{meaning} thereby the payment of the said sum of money in the said note specified

4
to the legal holder and owner of the said note, according to the tenor and effect of the said note, in case the said George F. Crocker should make default in payment of the same: and the said George F. Crocker afterwards, to wit: on the day & year last aforesaid, and at the place aforesaid under his hand endorsed the said promissory note, and by that endorsement ordered and appointed the said sum of money in the said note specified to be paid to the said Plaintiff or order, then & there delivered the said note so guaranteed and as endorsed as aforesaid to the said Plaintiff and thereby then and there the said Plaintiff became and was the legal holder and owner of the said note, and entitled to receive payment of the said sum of money in the said note specified, according to the tenor and effect thereof, and of the said endorsements and the said guaranty thereof as aforesaid; whereby and by means whereof the said George F. Crocker, the makers of the said note became liable to pay to the said Plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect thereof and in case default should be made by the said George F. Crocker in the payment of the said note at the maturity thereof, the said defendant became liable to pay the said sum of money in the said note specified to the said Plaintiff:

and the said Plaintiff says that the said George F. Crocker hath not paid the said promissory note at the maturity thereof which has long since passed nor any part or portion of the said note, to the said Plaintiff, neither have

5- any other person or persons paid the same on his behalf and that the said note remains wholly due & unpaid to the said Plaintiff by means whereof the said Defendant became liable to pay to the said Plaintiff the said sum of money in the said promissory note specified, according to the tenor & effect thereof and being so liable in consideration thereof, afterwards to wit: on the Twenty fifth day of January A. D. 1860 undertook and faithfully promised the said Plaintiff to pay him the said sum of money in said promissory note specified according to the tenor & effect thereof and of the guaranty so endorsed thereon as aforesaid so wit: at Cook County aforesaid Nevertheless the said defendant although often requested so to do, hath not paid to the said Plaintiff the said sum of money above mentioned, or any part thereof, but so pay the same hath hitherto wholly neglected & refused and still doth neglect & refuse, to the damage of said Plaintiff of Four Hundred Dollars.

And whereas also heretofore so wit: on the twenty fourth day of September, in the year eighteen hundred and sixty one at Cook County in the State of Illinois, the said defendant was indebted to the said Plaintiff in the sum of Four Hundred Dollars for money by the said Defendant before that time had and received to & for the use of the said Plaintiff: and being so indebted, the said Defendant in consideration thereof afterwards, so wit: on the day & year & at the place last aforesaid undertook and promised the said Plaintiff to pay him the said sum of money in

this Court mentioned, when he should be thereunto afterwards requested: Yet the said Defendant although often requested hath not paid to the said Plaintiff the said sum of money nor any part thereof: but to pay the same or any part thereof hath hitherto wholly neglected and refused and still doth neglect and refuse to the damage of said Plaintiff of Four Hundred Dollars, and therefore he brings his suit &c

Porter & Steele, Plffs Attorneys

→

The said Defendant will please to take notice that the following is a copy of the note and guaranty on which this suit is brought & which is above declared on, and that said note & guaranty are the only instruments of evidence relied on in the trial of said Cause. To wit:

\$300.-

Chicago Nov 26, 1859.

Sixty days after date, For value received I promise to pay to myself - or order the sum of Two hundred Dollars, with interest after due at ten per cent.

(sig) George O. Crocker.

(endorsed) "George O. Crocker"

(endorsed) "For Value received I guarantee the payment of the within note at maturity."

Nov. 26, 1859

(sig) J. L. Milliken

And afterwards to wit on the Twenty eighth day of September in the Year aforesaid the defendant in this Suit by A Garrison his attorney entered his Appearance herein in words and figures following to wit

Isaac L. Milliken
 ad
 Elphalet W. Platchford
 Superior Court of Chicago

Can my appearance
 for the defendant in the above Suit
 A Garrison atty for draft.

Sept 28. 1861

And afterwards to wit on the Eighth day of October in the Year last aforesaid Said day being one of the days of the October Term of the Superior Court of Chicago, the following among other proceedings was had in said Court and entered of record to wit

Elphalet W. Platchford
 as
 Isaac L. Milliken
 Assumpit

On Motion of defendant's attor-
 -ney, no objection being made it is ordered that the
 rule to plead herein be and is hereby extended until
 Monday next.

And afterwards, do it on the Tenth day of October in the year aforesaid the defendant herein by A Garrison his Attorney filed in the office of the Clerk aforesaid his Counter Affidant of Minors & Pleas in words and figures following do it

Superior Court of Chicago

Isaac L. Milliken
ad
Eliphaz W. Platchford

State of Illinois }
Cook County } p Isaac L. Milliken being
duly sworn says he is the defendant in this suit
and that he believes he has a defence in this suit
in the Minors
Subscribed & Sworn to before me
Sept 25-1861

C. D. Wofford

Superior Court of Chicago

Isaac L. Milliken
ad
Eliphaz W. Platchford

And the said Isaac L. Milliken defendant in this suit by A Garrison his Attorney comes and defends the wrong and injury whereof And says that he did not undertake and

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promise in manner and form as the said Plaintiff
has above thereof Complained against him. And
if this he puts himself upon the Country &c

State of Illinois

Cook County } Isaac L. Milliken the above
named defendant being duly sworn says the above
plea is true in substance & in matter of fact & he
denies having made & executed any such guaranty
or written instrument as mentioned & set forth
in the first Count of the declaration in this Cause
Subscribed & sworn to } I L Milliken
before me Oct 8th 1861 }
Jas R. C. Herriot
Clerk of the Recorder's Court of the City of Chicago

And afterwards & wit on the Second day of June
in the Year of our Lord One thousand Eight hundred
and Sixty Two. The Parties herein by their Attorneys
pled in the office of the Clerk aforesaid a Certain
Stipulation in words and figures following to wit

Superior Court of Chicago
Isaac L. Milliken }
ads }
Ephraim W. Blatchford }

The Parties hereto to Save
Continuance stipulate that the following be deemed as

evidence in this case, as testified to by Charles Field Camp who was present on a formal trial in regard to the signature of this defendant on the back of the note

Charles Field Camp sworn says I know the defendant in this suit. As not know the plaintiff - have seen this note before - was present when defendant wrote his name on the back of the note. it was I think in November 1839 It was presented by George H Crocker the maker of the note. Calvin D Wolf's name was on the back of it then, nothing was written over his name I know D Wolf signature

Crocker wanted Phillis to put his name on the back of the note for him, he had been in once before & wanted Phillis to sign with him as maker of the note & Phillis refused. Defendant at this time wrote his name on the back of the note in black nothing but D Wolf's name was over it. Defendant received nothing for signing the note as a formal Crocker carried the note away with him Plaintiff not present, I didn't have the note in my hand, I looked at the note don't recollect of examining it particularly, Can't say what its date was, but think the date did not then look as it looks now don't recollect of a blot appearance that it has now at the place of the date - if it had it then I think I should recollect it

Jan 2nd 1862

H. S. Hutto Off. atty
A. Gammon deft atty

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And afterwards went on the third day of June in
the Year last aforesaid, said day being one of the
days of the first Term of the said Superior Court of
Chicago the following Among other Proceedings was
had in said Court and entered of record writ

Elephat W Blatchford

Isaac L Milliken Account

This Cause being this day
Called for trial Comes said Plaintiff by H S State
his Attorney. And said defendant by A Garrison
his Attorney also Comes and ifens being joined herein
it is ordered that a jury Come. Whom upon Comes the
jury of good and lawful men to wit John Whizum
C Peacock M Shinn Ed Langum R S Moore
J B Hill. H Bormader J S Melville John Cilly Samuel
M Cotton John Dorsey and John Morton. who being
duly elected tried and sworn to try the ifens joined
as aforesaid after hearing evidence, Arguments of Counsel
and the instructions of the Court retired to Consider
of their Verdict, And the hour of adjournment having
Arrived it is ordered upon Agreement of the parties
that when the jury shall have agreed upon a Verdict
they shall reduce the same to writing sign and
seal the same and afterwards separate and meet
the Court tomorrow morning

And afterwards to wit on the Fourth day of June
in the Year aforesaid Said day being one of the days
of the June Term of Said Court the following among
other proceedings was had in Said Court and entered
of record to wit.

Elphatit W Platchford

vs
Isaac L Phillips

Appellant

This day again Comes the
parties to this Cause by their Attorneys and the jury
impanelled herein on yesterday for the trial of Said
Cause also Come and submit their Verdict and say
That the jury find issues for Said Defendant, And
on Motion the jurors of the jury being severally demanded
of and Concerning their Said Verdict just rendered
for Answer say this was and is now their Verdict
And therefore Said Plaintiff submits his Motion
herein for a new trial in Said Cause

And afterwards to wit on the Sixth day of June
in the Year aforesaid - the Plaintiff herein by H. S.
State his attorney filed herein his Motion for a
new trial which is in words and figures following to wit

Superior Court of Chicago
Of the June Term A.D. 1862

Elphatit W Platchford

^{vs}
Isaac L. Miller

And now Comes the Said Plaintiff by H. S. Stute his Attorney and moves the Said Court to set aside the Verdict & grant a new trial in the above entitled Cause on the following grounds to wit

- 1 That the Court refused to give to the jury proper instructions asked by the Plaintiff in the trial of said Cause
 - 2 That the Court gave improper instructions for the defendant in the trial of said Cause
 - 3 That the Verdict ^{rendered} in said Cause is against the law and evidence in said Cause
 - 4 That the jury ought to have rendered a Verdict for the Plaintiff instead of for the defendant in the said Cause
- H. S. Stute Plff Attorney

And afterwards to wit on the Twenty fifth day of November in the Year last aforesaid Said day being one of the days of the November Term of Said Court the following Among other proceedings was had in said Court and entered of record to wit

Cliphart W. Blatchford

^{vs}
Isaac L. Miller

Motion for a new trial in }
Assumpsit }

This day again Comes Said Plaintiff by Porter & Stute his Attorney and Said

Defendant by A. Garrison his Attorney, also Comes
 And the Cause Coming on now to be heard upon
 the Motion of Said Plaintiff heretofore Submitted him
 at the first Term of Said Court A.D. 1862, for a new
 trial in said Cause And Counsel being heard thereon
 And the Court being fully advised in the premises it is
 Conceded by the Court that the Motion of Said Plaintiff
 be and is hereby overruled and that a new trial be refused
 to Said Plaintiff in said Cause & which ruling of the Court
 in overruling his said Motion for a new trial Said Plain-
 tiff then and there accepted, Wherefore it is ordered that
 Said Plaintiff be allowed thirty days from this day,
 in which to file his bill of exceptions, Wherefore Said
 Defendant ought ^{now} to have judgment entered for his
 Costs upon the Verdict of the jury rendered herein as
 aforesaid. Wherefore it is Conceded that Said Defend-
 ant do have and recover of and from Said Plaintiff
 his Costs and Charges in this behalf about his defence
 expended and have execution therefor

And afterwards to wit on the Twenty fourth day of
 December in the Year last aforesaid the Plaintiff in
 the Cause by A. S. Sato his Attorney, filed herein his
 Certain Bill of Exceptions which in words and figures
 following to wit

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B/84
State of Illinois } The Superior Court of Chicago
County of Cook } p.

Eliphalet W. Blatchford }
vs } In Assumpsit
Isaac L. Milliken. }

" Be it remembered
that afterwards to wit: on the third day of
June, A.D. 1862. being at the June Term
of said Court, A.D. 1862. before the Honorable
W. H. Higgins one of the judges of the
said Superior Court of Chicago, according
to the form of the Statute in such case
made and provided, the aforesaid issue
so joined between the said parties as
aforesaid, came on to be tried by a jury
of the County of Cook aforesaid for that
purpose duly empaneled, good and
lawful men of said County; at which
day came there as well the said Plain-
tiff as the said Defendant, by their
respective Attorneys aforesaid; and the
jurors of the jury aforesaid empaneled
to try the said issue being called also
came and were then and there in due
manner chosen and sworn to try said
issue.

And after the trial of said

issue, the Counsel for the said Plaintiff to maintain and prove said issue on his part called

Uriah B. Hawley, who being sworn testified as follows to wit: (witness is shown a paper partly in writing and partly in print & purporting to be a promissory note made by one George F. Crocker, with power of attorney to confess judgment annexed thereto, made and executed by said Crocker, and having endorsed on said note a writing purporting to be a guaranty of said note made by Isaac L. Milliken) I know George F. Crocker and the Defendant Isaac L. Milliken. I am acquainted with the signatures of Crocker and Milliken. The signatures to this note and this power of Attorney are the signatures of George F. Crocker. The signature I. L. Milliken on the back of this note, I should say is in the handwriting of the Defendant,

The counsel for the Plaintiff further to maintain and prove the said issue on his part, introduced an instrument partly in writing and partly in print purporting to be a promissory note with power of Attorney attached thereto

17.

made and executed by one George F. Crocker the date of said note being somewhat blotted, but apparently of date the 26th November A.D. 1859. and the Power of Attorney of the same date, said note having on the back thereof the names in writing of George F. Crocker ~~balwin~~ D Wolf and J. L. Milliken with separate contracts of guaranty in writing over each of the two last mentioned names as follows. viz=

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\$200

Chicago, ~~Nov 26~~ 1859

Sixty days

After date,

For Value Received,

Promise to Pay to

Myself

or order

the sum of *Two hundred*

DOLLARS, with interest ^{after due} at 10 per Cent

George H Crocker

Printed and sold by Jameson & Morse, 14 La Salle St.

Know all Men by these Presents, That whereas the subscriber is
justly indebted to

Promissory Note, bearing even date herewith, for the sum of

Two hundred upon a certain

Dollars, made payable to the said

or order, and due *Sixty days*

after date, with interest. *after due at ten per cent*

Now, THEREFORE, In consideration of the premises, and of the sum of one dollar to *me* in hand paid
by the said the receipt whereof is hereby acknowledged, I

do hereby make, constitute and appoint *Joseph A Barker* or any attorney in any Court

of Record, to be *my* true and lawful attorney, irrevocably, for *me* and in *my* name place and stead,

to appear before any Justice of the Peace, or in any Court of Record, in term time or vacation, in any of the States
or Territories of the United States, at any time after the date hereof, to waive service of process, and confess a
judgment in favor of the said or his or their

assigns or assignees, upon the said note for the above sum, or for as much as appears to be due, according to the

tenor and effect of said note, with interest thereon, together with costs; also, for *twenty dollars*

usual attorney's fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount

that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judg-

ment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such

judgment, and to release all errors that may intervene in the entering up of such judgment, or issuing the execution

thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that

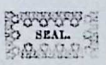
my said attorney may do by virtue hereof.

WITNESS *my* hand and seal this *26th*

day of *November* A. D. 1859

IN PRESENCE OF

George H Crocker



State of Illinois }
Cork County } p Silas W. Holt being duly ^{sworn} says that he is
acquainted with the hand writing and with
the signature of George H. Crocker and that he verily believes
that the signature subscribed to the within warrant of
Attorney and the promissory note thereto attached are the true
& genuine signatures of said George H. Crocker
Subscribed & sworn to before me
this 4th day of February A.D. 1860
Wm. L. Church clu } Silas W. Holt

State of Illinois }
Cork County } Judgment now rendered against
George H. Crocker on the within note for the
sum of twenty & 33/100 dollars (\$20.33)
February 4th 1860. Wm. L. Church, Clerk of
the Circuit Court for said County
Illinois

George H. Crocker
Nov 26 1859
For Value Received I Guar-
antee the payment of the
within note at maturity
Calvin De Wolf
For Value Received I
Guarantee the payment
of the within note at ma-
turity Nov 26 1859
J. L. McKelton
Protested for non payment
January 28th 1860

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The counsel for the plaintiff further to maintain and prove the said issue on his part called

Caleb H. Gates, who being sworn testified as follows to wit: I am the bookkeeper and Cashier for the Plaintiff, at the Chicago Lead Works, and was so employed in the year 1859. In the month of November of that year the Plaintiff held certain — Chattel Mortgage securities to secure the payment of a debt due to the Plaintiff from one Hughes. These securities had nearly matured, and the debt remained unpaid. Some time in the month of November, George H. Crocker came and stated to me that he was owing some one in the city of Chicago whose securities the Plaintiff held as collateral to the debt of Hughes due to the Plaintiff. I think it was Mr. Towle and that Mr. Towle wanted him, Crocker, to pay the money that was coming due on the Chattel Mortgage and take up the securities and Crocker wished me to hold on and wait a few days, and not make sale of the property until he could get the money which he expected to have — shortly. This I agreed to do, if he would

raise the money and pay up the debt, at the time when he then fixed. After this I saw Crocker several times on the subject, when he agreed to have the money: but he failed to make any payment. Finally he offered to give a sixty days note which should bring the money. I told Mr. Crocker that I could not trust to him in such a matter and could not take his note. Crocker then said he would give a guarantied note, and said that he would procure the guaranties of Calvin D. Wolf, and J. L. Milliken, the Defendant. I knew those men, and agreed to take such a note. After two or three days, Mr. Crocker brought to me a note made by himself, with the guaranties of D. Wolf and Milliken upon it. (Witness is here shown the note already introduced.) This is the note that Crocker brought me at that time, and placed in my hands. The note is on its face now precisely as it was when Crocker handed it to me, the signatures on the back are also as they were then, and the guaranties were filled up as they now are. I can not swear positively to the date on which this note was brought to me

by Crocker; but it was either on or about the twenty sixth day of November. I recollect of examining the date on it, and observing that it corresponded with the time I received it, or about that. I remember that the date over the note was blotted as it now is; and I called Crocker's attention to it at the time, and asked him how it happened, Crocker replied that it was of no consequence, that the other dates were clear, so that there could be no mistakes about the date. The Plaintiff accepted the note, and gave up to Crocker the securities before alluded to which he held.

The counsel for the Plaintiff here rested his case.

The counsel for the Defendant to maintain and prove the said issue on his part called

Calvin D Wolf. who being sworn testified as follows to wit. I am acquainted with the Defendant, also with George H. Crocker some time in the month of November A. D. 1859. Crocker called on me and wanted me to sign a couple of notes with him, which I refused to do. He afterwards came to me and wanted that

I should endorse a couple of his notes; and after some hesitation I did so signing my name on the back in blank. Crocker carried the notes away with him (Witness is here shown the note in question, already introduced) This is one of the notes which I put my name on. That is my signature. There was no other writing on the back of the note, when I signed my name. I signed it in blank.

Afterwards I saw Crocker at the Metropolitan Hall, one evening and asked him what he had done with these notes. He pulled one of them out of his pocket and showed it to me, and said that he had not made any use of it. He gave that one up to me, and I destroyed it. I asked him about the other and my impression is that he said the other was destroyed; at any rate I understood that it was where it would give me no trouble. I recollect of looking at the notes which I signed, and I did not notice any blot in the date of either of them. I think that I should have noticed it, if there had been any. I cannot tell what day of the month it was. I should think that it was earlier in the month than the twenty-sixth.

I can't tell what the date of this note is or was; I have examined it carefully with a glass, and think that the date has been altered, although I can not tell in what manner.

The counsel for the Plaintiff ~ further to maintain and prove said issue on his part, then cross examined the said Calvin D Wolf, and on such cross examination he testified as follows to wit=

I cannot swear that it was not on the twenty sixth day of November 1854 that I signed my name on this note. I can not say positively that the date of the note has been altered since I put my name on it. It appears as if it had been. The note may have ^{been} made and dated on the 26th day of November. I can not say whether the power of Attorney was filled up when I signed my name or not; but I think it was not.

The counsel for the defendant ~ further to maintain and prove said issue on his part, introduced a paper writing purporting to be a stipulation between the parties Plaintiff and Defendant in said cause by their respective counsel and by them signed bearing

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date the second day of June A. D. 1862
for the testimony of one Charles Field-
camp, a witness for the defendant whose
attendance at the trial could not be
procured. as follows. viz.

Superior Court of Chicago
Isaac L. Milliken
ads
Eliphalet W. Blatchford

The parties hereto,
to save continuance, stipulate that the
following be received as evidence in this
cause, as if testified to by Charles Fieldcamp
who was present at former trial, in
regard to the signatures of this Defen-
dant on the back of this note.

Charles Fieldcamp. sworn said, I know the
defendant in this suit; do not know the
Plaintiff: have seen this note before: was
present when the defendant wrote his
name on the back of the note. It was
I think in November 1859. It was presented
by George F. Crocker the maker of the
note. Calvin D'Wolf's name was on the
back of it then. Nothing was written
over his name. I know D'Wolf's signature
Crocker wanted Milliken to put his
name on the back of the note for him

He had been in once before, and wanted Milliken to sign with him as maker of the note, and Milliken refused. Defendant at this second time wrote his name on the back of the note in blank. Nothing but D'Wolf's name was over it. Defendant received nothing for signing the note as aforesaid. Crocker carried the note away with him. Blatchford not present.

I didn't have the note in my hands. I looked at the note, don't recollect of examining it particularly; can't say what its date was; but think the date did not then look as it looks now: don't recollect of a blot appearance that it has now at the place of the date. If it had then I think I should recollect it.

H. P. Steels. Plffs Attorney
June 2nd, 1862. A. Garrison. Defs Atty.

The counsel for the Defendant here rested his case.

And thereupon the said Judge of said Superior Court of Chicago, did then and there at the request of the counsel for the Plaintiff instruct the said Jury as follows to wit:

First A material alteration in a written

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instrument is such an alteration as changes in some important particular the nature or term of the contract contained in the instrument.

Second. Unless the jury shall find that the date of the note has been so altered that the present date differs from the original date, then there is no material alteration of the instrument, by reason of any blotting or blurring of the date.

And thereupon the counsel for the Plaintiff at the same time submitted the following instruction in writing on behalf of the Plaintiff, and requested the said Judge so to instruct the jury to wit:

That: If the jury believe from the evidence that the Defendant put his name on the note in question before the delivery of the note by the maker to any person as an evidence of a subsisting debt, then the Defendant became liable as a guarantor and the Plaintiff is entitled to recover."

Which said instruction the said Judge did then and there refuse to give: to ^{which} refusal said Plaintiff by his counsel did then and there except.

And thereupon the said Judge

did then and there, at the request of the counsel for the Defendant instruct the said jury as follows to wit:

First. If the jury believe the signature of ~~the~~ defendant was in blank on the back of the note, and that he thereby intended only to be liable, in case the same could not be collected of Crocker, and he Crocker well knew that fact at the time, then the law is for the Defendant and he is entitled to your verdict.

Second. If the jury believe from the evidence that the note in question has been altered in its date from what it was at the time the defendant wrote his name on the back thereof, without his consent, then such note and obligation as against defendant is void, and he is entitled to your verdict;

And to determine the question whether the said note has been altered the jury can examine and judge from the appearance of the note itself the law being, "That if on the production of an instrument, in court, it appears it appears to have been altered, it is incumbent in the party offering it in

evidence to explain this appearance."

"Every such alteration detracts from the credit of the instrument, and makes it suspicious, and this suspicion the party producing it must remove."

And in all cases of alterations,

"They are supposed, and the presumption of law is, in the absence of any explanation, that they were made without the consent of the other party."

To which said last instruction, the said judge of his own motion made the following addition to wit:

"This is the rule, if the jury believe the instrument has been altered."

And thereupon the counsel for the Plaintiff did then and there except to the said First instruction — given by the said Judge, at the request of the counsel for the defendant as aforesaid. And thereupon, upon the forgoing evidence and testimony being all the evidence and testimony given and produced by the respective parties Plaintiff and Defendant on the trial of said issue the said issue was submitted to the said jury; and the said jury found a verdict for the defendant.

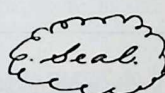
And thereupon the counsel for the Plaintiff then and there entered a motion for a new trial in said cause on the following grounds, to wit:

- 1st That the Court refused to give to the jury proper instructions asked by the Plaintiff on the trial of said cause.
- 2nd That the Court gave improper instructions for the defendant on the trial of said cause.
- 3rd That the verdict rendered in said cause is against the law and evidence in said cause.
- 4th That the jury ought to have rendered a verdict for the Plaintiff instead of for the Defendant in the said cause.

Which said motion for a new trial the Judges of the said Superior Court of Chicago sitting in banc did then and there overrule and refuse to grant to the overruling of which said motion and the decisions of the said Judges thereupon, the counsel for the Plaintiff in behalf of said plaintiff, did then and there except.

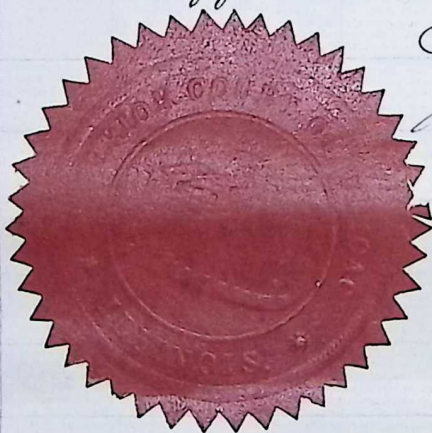
And because none of the said exceptions so offered and made to the opinions and decisions of the said Judges of said Superior Court do appear upon the record of ~~this~~ said trial; therefore, on

The prayer of the said Plaintiff by his counsel, the said V. H. Higgins, Judge of said Superior Court of Chicago - hath, to this bill of exceptions set his hand & seal according to the statute in such case made and provided this twenty fourth day of December in the year of our Lord, one thousand eight hundred and sixty two.

Van. H. Higgins
Judge. 

State of Illinois }
County of Cook }

I Thomas B. Cantor Clerk of
the Superior Court of Chicago within and for the
County and State aforesaid. do hereby Certify that
the foregoing is a full true and complete transcript
of all the pleadings on file in my office; the orders
of Court and judgment, entered of record in said
Cause & the Bill of Exceptions filed in a certain Suit
wherein Eliphalet W. Blatchford was Complainant
or Plaintiff and Isaac L. Milliken was Defendant
In Testimony Whereof I have
hereunto set my hand and the Seal
of said Court, at the City of Chicago
in the County and State aforesaid,
this Twenty Seven the day of March
A D 1863



Thomas B. Cantor
Clerk

Supreme Court of Illinois.

Third Grand Division. Of the April Term, A. D. 1853.
 Eliphabet W. Blatchford.

vs. } Error to the Superior Court of Chicago.
 Isaac L. Milliken }

Afterwards, to wit: on the day of April in this same Term, before the Honorable the Chief Justice and the Judges of the Supreme Court of Illinois, at the City of Ottawa, in the State of Illinois, comes the said Eliphabet W. Blatchford, by Henry J. Steele his Attorney, and says that, in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in them, to wit:

I. That the said Superior Court of Chicago refused to give to the said jury the said third instruction for the said Plaintiff, as requested by said Plaintiff by his counsel, and refused as aforesaid by the said Court.

II. That the said Superior Court of Chicago gave to the said jury the said first instruction for said defendant, as requested by said defendant's counsel.

III. That the said Superior Court overruled the said motion of the Plaintiff, for a new trial in said cause, and refused to grant a new trial of said cause.

IV. That by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Defendant against the said Plaintiff; whereas by the law of the land the said judgment ought to have been given for the said Plaintiff against the said Defendant.

V. That the said judgment is against the evidence in said cause.

And the said Eliphabet W. Blatchford prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record & proceedings aforesaid may be reversed, annulled, and altogether held for nothing, & that he may be restored to all things which he hath lost by occasion of the said judgment aforesaid.

H. J. Steele, Atty. for Plff. in Error.

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Supreme Court

Isaac S Milliken

ado Deft in Error

Elephelt W Blatchford

Peffer Error

April Term 1863

And now comes the said Isaac S Milliken deft in Error
by A Garrison his Atty and defends the wrong injury where
and says that there is not Error in the ^{revelation} of
the judgment & proceedings as the said plaintiff
hath above alleged but that said judgment
ought in all things to be affirmed. & deft demands
hence with his Costs & Expenses in this behalf incurred

A Garrison

Atty for Milliken

~~250~~ 66-60

E. W. Platchford

J. L. Milliken

Feb. 23, 1863
L. Leland
Chk,

Transit \$7.50