

between the name of the said Defendant and that of the said William Smyth & Co., so as that the said Plaintiff should be primarily liable as endorser to the said Defendant should the same not be paid at maturity by the said William Smyth, and the said William Smyth did in fact then make known and declare unto the said Plaintiff, that the said Defendant had endorsed the said note with the understanding and upon the condition aforesaid, and that he the said Plaintiff was to put his name between the name of Wm. Smyth & Co., and that of the said Defendant endorsed on the back of the said note. That the said Plaintiff having received the said note from the said Wm. Smyth, with the understanding and upon the condition aforesaid, no right of action hath accrued or can accrue to the said Plaintiff thereon against him the said Defendant. That moreover the said Plaintiff, when the said William Smyth so delivered the said note to him the said Plaintiff, had notice that the said William Smyth's authority to use the name of the said Defendant as endorser on the said note was restricted to the understanding and condition aforesaid, and that in whatever manner the same might be discounted or the money raised thereon by the said William Smyth through the said Plaintiff, he the said Plaintiff could have no recourse against the said Defendant as endorser to him of the said note.

That although the said Plaintiff had notice of the condition and understanding upon which the said William Smyth obtained the endorsement of the name of the said Defendant, on the said note, and that the authority of the said William Smyth to use the name of the said Defendant thereon endorsed was restricted as aforesaid, yet the said Plaintiff, on the delivery thereof to him by the said William Smyth, got the same discounted at the Molson's Bank, without first so putting his name between that of Wm. Smyth & Co., and the said Defendant. That on or about the fifteenth day of September last the fact that the said Plaintiff had so got the same discounted at the Molson's Bank, without first so putting his name between that of the said Wm. Smyth & Co., and the said Defendant, came to the knowledge of the Defendant, and upon the said Defendant intimating to the Cashier of the said Molson's Bank that he the said Defendant had endorsed the said note with the understanding that the name of the said Plaintiff was to appear between that of the said Wm. Smyth & Co., and the Defendant on the back thereof, the said Cashier made it known to the Plaintiff, who thereupon, long before the said note reached maturity, at once took up and retired the same from the said Bank, and having so retired and paid the same and the said note having been delivered to him by the said Wm. Smyth with notice as aforesaid his only recourse is against the said Wm. Smyth and not against the said Defendant."

The Respondent replied specially as follows:—

"The said Plaintiff, for answer to the Plea filed in this cause by the Defendant, saith, that it is not true that the Promissory Note filed in this cause by the said Plaintiff, and recited in his declaration was received by him on the pretended understanding and conditions, in the said Plea stated, but on the contrary, that the said note was received by him in the usual and ordinary course of business, and without any special understandings and conditions whatever; that moreover the said note was one of a series of note transactions, bearing the endorsement of the said Defendant, in all of which the signature of the said Defendant, as of course, preceded that of the said Plaintiff, and, with respect to all which endorsements, the said Defendant was paid by the makers of said notes a commission of one per cent on the amount of each such note; and that he the said Plaintiff discounted all the said notes including the note presently sued on, on the faith of the security resulting from the endorsement of the said Defendant, without which endorsement the said Plaintiff would never have discounted the said notes, or any of them.

And the said Plaintiff further saith, that true it is, he retired the said note from the Molson's Bank before maturity, in order that he might personally control the said note, but not for any of the pretended reasons assigned in the said Plea.

And the said Plaintiff lastly saith, that all and every the allegations, matters and things in the said Plea set forth and contained, except in so far as the same exactly correspond with the allegations of the Plaintiffs' Declaration, or are hereinbefore expressly admitted to be true are false, untrue and unfounded in fact, and the said Plaintiff hereby expressly denies the same and each and every thereof, and that the same are moreover wholly insufficient in law."