

In December, 1909, the defendant endorsed plaintiff's note for \$1,000. This was paid by the plaintiff, and a couple of weeks thereafter the defendant again endorsed the plaintiff's note for \$2,500. This was also paid by the plaintiff.

There was much evidence pro. and con. as to what took place when the last note was discounted on the 16th April, 1910, and whether or not the defendant was present. Further evidence was admitted before this Court, by consent of both parties, which clearly shewed that the defendant was in New York at the time the note was discounted.

It was quite clear that the defendant had sent a telegram from New York becoming responsible for the note, which evidently he afterwards endorsed, probably having agreed to do so before he went to New York.

In the view I take of the evidence, I do not think it very material, nor do I think it surprising, that there should be discrepancies in the evidence, of both parties, as to what took place at that time. I have mentioned it as it seems to have been regarded as very important by both parties; on the part of the defendant as tending to shew that the plaintiff had sworn falsely in stating that he was present at the bank when the note was discounted, and on the part of the plaintiff, urging that it was improbable that the defendant would have sent the telegram agreeing to endorse for Scully a note for \$2,500, unless he was personally interested.

There is not sufficient weight, in either of these views, in my opinion, to decide the question of credibility.

The defendant swears that on the 30th May, 1912, the plaintiff asked him to loan him some money or to endorse for him and that defendant had told plaintiff that as he was through with the race-tracks since 1909, it was not fair to ask him; that then the plaintiff said: "Why you owe me a thousand dollars." "I said: 'Owe you a thousand dollars?'" He said 'yes.' I said, 'You get right out of this office.' He said, 'I have your promissory note.' I says, 'You have not got my promissory note and no other man has got my promissory note.' He says, 'I have got it over at the hotel; I will go and get it.' I says, 'All right, if you have my promissory note, it will be paid,' knowing well he had not; and he left my office and telephoned me later on the same day, the 30th May, and said, 'Look here, I am going to shew you up; I don't think I will take these papers over to your office. I will take them to my solicitor.' I said, 'All right, take them to your solicitor.'"