

heard any agreement or conversation between Plaintiff and Defendant with regard to the note, the Appellant placed of record a formal objection to the adduction of parol evidence to contradict the terms of the written contract declared upon. This objection was reserved by the Judge at Enquete, and the evidence ordered to be taken *de bene esse*. All other evidence of a similar nature was taken under reserve of objections. The Respondent adduced evidence, also under reserve of Appellant's objections, to show that the consideration given to the Appellant for the note was a horse of the value of about one hundred dollars, and sixty dollars in money. This evidence as to the value of the horse is rebutted by the testimony of several witnesses for the Appellant, who proved the horse to be worth one hundred ^{and fifty} dollars. In support of his first peremptory exception, the Respondent adduced no evidence, nor did he file any affidavit with his pleas.

The cause was heard on the 14th day of June last, when the Appellant moved to reject the evidence to which he had filed objections.

On the 18th day of the same month, the following judgment was rendered, viz :—

“ The Court having heard the parties by their respective Counsel, as well “ on the Plaintiff's motion to reject the Defendant's evidence as upon the “ merits, and examined the pleadings and proceedings of record, and upon the “ whole deliberated, considering the evidence adduced herein by the Defendant “ is legal, and he hath maintained the allegations of the exceptions by him “ pleaded, that the Promissory Note sued upon was transferred by the Defen- “ dant to the Plaintiff on the expressed agreement of the Plaintiff's looking for “ payment solely to John Turner, the maker, and no legal presentment for “ payment of said note was made at the maturity thereof, and no notice of “ non-payment was given to the Defendant, and the endorser thereon is fully “ discharged from all liability therein, doth overrule the Plaintiff's motion to “ reject the evidence adduced by the Defendant, and doth dismiss the action of “ the Plaintiff, and doth condemn him to pay the Defendant the costs of this “ suit, distraction of which is awarded to Messrs. Sanborn & Brooks, the De- “ fendant's Attorneys.”

The legal pretensions of the Appellant, and upon which he relies for a reversal of the judgment appealed from, may be briefly stated in the following propositions :—

1. The Promissory Note sued upon was duly presented for payment, and the protest and notice are regular and sufficient.
2. That even if there be any irregularity in such presentment, protest and notice, it was waived by the Respondent, who neglected to avail himself of the only legal method of objecting to the sufficiency of such protest and notice.
3. That in the absence of an allegation of fraud, parol evidence is inadmissible in support of a contemporaneous verbal agreement to contradict a valid written instrument ; and, consequently,
4. That the evidence adduced by the Respondent in support of his plea was illegal, and ought to have been rejected.

These propositions the Appellant will, he apprehends, be able to support by numerous and undoubted authorities.

But the allegations of the Respondent's pleas are not, as Appellant humbly maintains, established by the evidence, (illegal though it be) which he has placed of record in the cause. The Respondent pleads *that at the time when the note was transferred* the Appellant agreed to release him and look to the maker only, *in consideration of Appellant's not giving the full value of the note.* Lougee, the Respondent's principal witness, and the only one who professes to have any personal knowledge of the transaction, admits that he never saw the note in question, and “ *was not present when the bargain was made* between “ the Plaintiff and Defendant in this cause. The conversation which I have