

---

WRIGHT CHAMBERLIN,

(Plaintiff in the Court Below.)

Appellant,

— AND —

ORVIS BALL,

(Defendant in the Court Below.)

Respondent.

---

APPELLANT'S CASE.

---

This appeal is from a judgment of the Superior Court at Sherbrooke, rendered on the 18th day of June last, dismissing the action of the Appellant.

The action was brought against the Respondent, Ball, as endorser of a Promissory Note, dated Sherbrooke, May 17th, 1858, made by one John Turner, and payable ten days after date to the order of the Respondent. The note was endorsed by the Respondent, by endorsement in blank, and delivered to the Appellant upon the day it bears date, and was duly protested for non-payment on the 31st day of May, 1858, (the 30th being Sunday) and the Respondent duly notified of such protest.

Besides a *défense en droit* (which was dismissed) and a *défense en fait*, the Respondent pleaded two peremptory exceptions, which are in substance as follows, to wit:—

1. That the Promissory Note was not presented to the maker, and no demand of payment made of him when it became due, and was not legally protested for non-payment. That the protest is irregular and insufficient in several particulars, and that the defendant had no legal notice of protest, the notice not having been sent to the post office nearest to his residence.

2. "That when the Promissory Note sued upon in this cause was made over to the Plaintiff by Defendant, it was sold to said Plaintiff at a large discount, and Plaintiff purchased it upon the sole credit and responsibility of the maker thereof, John Turner, and that the Plaintiff accepted the same as such, and agreed to release the Defendant from all liability thereof as endorser; and the Defendant simply put his name upon said note to convey the same to him, and order the said John Turner to pay the same to Plaintiff; and it was distinctly agreed by and between the Plaintiff and Defendant that Defendant should incur no liability upon said note to Plaintiff by reason of his endorsing his name upon the same, and the Plaintiff accepted the same and gave as consideration therefor only the value of one hundred and sixty dollars in consideration of taking the sole risk of the collection thereof of John Turner, the maker thereof."

Issue having been joined, and the *défense en droit* disposed of, the Respondent proceeded to evidence in support of his second plea. Upon his attempting to adduce parol evidence, by proposing a question to the witness Seth Lougee (paper 21 of record) whether at the time of the transfer of the note he