

the latter should convert it into a note, but that he should hold it until the defendant, in case he had not money to pay the bills for repairs in his houses in Port Arthur, should instruct Thompson to fill it up for the amount of the repairs and discount it, but that Thompson had, without such instructions, fraudulently filled it up for \$1,000 payable on demand, and had delivered it to the Union Bank as collateral security for his own debt. He further found upon the evidence that the plaintiffs were not holders in due course, and that when they took the note they had reason to suspect, and did gravely suspect, the bona fides of Thompson, and he consequently dismissed the action.

The first question to be considered is whether this case falls within section 31 of the Bills of Exchange Act which provides that "where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount," etc.

The only evidence on this point is the testimony of the defendant who being in his seventy-sixth year, and having been ill for a couple of years, was said by his physician to be unable to go to the trial at Port Arthur. He had been formerly a bailiff for some twelve years; some of his answers are bright and intelligent; others have no connection with the particular question, and his memory appears to have been particularly defective as to the order of events in point of time.

His testimony, so far as material, is to the following effect:— Some two or three or four years before his examination (June 10th, 1910), he went to Port Arthur and through his friend Thompson bought some lots, on one of which were two buildings. Thompson was to get needful repairs done, and send the bills to him. If he had the money he was to send it; in case he should not have the money he left with Thompson some blank printed forms of notes signed, but with nothing more. The bills for repairs were sent to him and he says he sent the money by return mail. About the 6th November, 1909, he received a letter from the plaintiffs dated the 3rd November, 1909, stating that they held a demand note of his in favour of John Thompson for \$1,000, of which they demanded payment. A few days later he received a notarial notice of protest of the note, dated the 11th November, 1909, and shortly after another letter from the plaintiffs dated the 16th November, 1909, threatening suit if the note was not paid. He did not answer or pay attention to any of these.