

was with this intent and purpose that the plaintiff had indorsed the note to the defendant without any consideration and the defendant had indorsed to the plaintiff. The objection of circuitry of action was thus removed. Plaintiff could recover against defendant as indorser. The defendant could not, under these facts, recover against the plaintiff as a prior indorser, because the indorsement was not made for the purpose of transferring title, but as a matter of form merely and without any consideration. Lord Campbell therefore says, that "the action is by the holder against the second indorser. The plea shews that the plaintiff, the holder, was the first indorser, which was left uncertain on the declaration, and the plea assumes that the second indorser could recover against the first indorser. The replication confesses that the plaintiff was the first indorser and avoids by adding that such indorsement by him to the defendant was without consideration and gave no remedy against the first indorser."

The same point substantially had occurred a few years before on a bill of exchange and had been decided in the same way. In *Wilders v. Stevens*, 15 M. & W. 208, Wilders drew a bill on Heigham to their own order which they indorsed to Stevens, who indorsed back to Wilders, the intention being, as in the case last mentioned, that Stevens should be security to Wilders for Heigham. Stevens was sued on this indorsement and pleaded, as in the other case, the prior indorsement to himself by Wilders, raising the question of circuitry of action. Parke, B., said: "The declaration shews a title to sue the defendant upon his indorsement, and the replication states circumstances sufficient to negative any right in him to sue defendant upon their indorsement to him. The objection, therefore, of circuitry of action being removed, inasmuch as the defendants could not sue plaintiffs, the case is brought within those special circumstances which it was stated by the court in *Bishop v. Hayward* may exist and which entitle the plaintiff to recover against the defendant. Upon this state of the pleadings, therefore, it appears to me that the plaintiffs are entitled to our judgment."

It is in view of cases like this that Mr. Ames says "no one but a payee or subsequent holder can be an indorser. There is,