signature of the defendant Nicholaus Dietrich to the note, and was at the close of his case non-suited as to the defendant, Nicholaus Dietrich, and thereupon the defendant Nicholaus Dietrich was called as a witness on behalf of the other defendants and denied that he signed the note and that he ever authorized any one to sign it for him.

There was no evidence that, as alleged, R. J. Dygert forged his name, nor as to how his name came to be signed to the note, nor when, but it clearly appeared that it was signed to the note when the plaintiff became the holder of it.

If the name of the defendant, Nicholaus Dietrich, was signed to the note neither by him nor by his authority, the question arises whether the plaintiff can recover against the other makers of the note, and this was the only question argued before us.

This case differs from the case of *Reid v. Humphrey* (1881), 6 A. R. 403, for there the name of the payee, David Pickle, was added as a maker after the note had been completed and issued, and the inference was, if the evidence of Pickle was believed, that his name was added by the holder, or while in the custody of the holder; while in this case the name of the defendant, Nicholaus Dietrich, was signed to the note during the completion of it, after five of the defendants had signed it and before other two of the defendants had signed and before it was issued, and it is clear that the holder, the plaintiff, did not sign it, and I do not think it fair from the evidence to conclude that either of the payees did it, and the inference I draw from the evidence is that if the defendant, Nicholaus Dietrich, neither signed it nor authorized the signing of it, some person signed it, not with intent to defraud, but believing that he had the authority to sign it for the defendant, Nicholaus Dietrich.

Under these circumstances it may admit of considerable doubt whether this was a material alteration which avoided the note, or whether it was an alteration at all.

But it is unnecessary for us to determine whether this was an alteration of the note sued on or not, or whether or not it was a material alteration of the note, for we are of the opinion that the plaintiff, being the holder of the note in due course and the alteration not being apparent, may avail himself of it as if it had not been altered, under the proviso to sec. 63 of the Bills of Exchange Act, 1890.

It was contended that this proviso did not include an alteration by the addition of a name as maker to a note, but this proviso was passed for the protection of holders in due course, and we cannot so restrict the generality of its terms.

In *Leeds and County Bank v. Walker* (1883), 11 Q.B.D. 84, Denman, J., in commenting on this proviso, at p. 90, said: