

principle stated to have held that he could be. Then the suggestion is made that Hayward put his name on the bill and delivered it to the payee, Bishop, who had written his name upon it by way of form. Lord Kenyon, in giving judgment in the case puts it that Bishop, the first indorser, is suing Hayward, a subsequent indorser. "Nothing can be clearer in law than that an indorsee can resort to either of the preceding indorsers for payment, whereas the present action is an attempt to reverse this." He admits, however, "a case might happen in which the plaintiff might have stated that he was substantially entitled to recover on the note, e.g., that his own name was used originally for form only, and that it was understood by all the parties to the instrument, that the note, though nominally made payable to the plaintiff was substantially to be paid to the defendant."

In a later case the very state of facts was proved by evidence that had been suggested by counsel in the case of *Bishop v. Hayward*, and stated by him to have been the facts of the case, although not presented in such form that the court could take notice of them. In *Morris v. Walker*, 15 Q.B. 588, Ballam had made a note to Morris for £23, which was declared on as indorsed by Morris to defendant Walker and re-indorsed by Walker to the plaintiff. The defendant pleaded that the plaintiff Morris and the Morris alleged to be the payee were one and the same person, from which it appeared that the plaintiff could not be permitted to recover against Walker as an indorser, seeing that Walker would, in the event of his paying, be entitled to recover against the plaintiff as a prior indorser, the consequence of which would be that the court would have tried and determined two actions between the same parties on the same instrument with the result of leaving them both in exactly the same position as when they began their litigation. Had the pleadings ended here the case would have been concluded for the defendant, but the plaintiff put an entirely new face on the matter by replying that Ballam was indebted to the plaintiff and had agreed to give him his note therefor, which the plaintiff had agreed to accept provided the defendant would indorse it to secure the payment, and that it