New Jersey Court of Errors and Appeals.

WILLIAM H. CHADDOCK
vs.
JACOB S. VAN NESS.
} *In Error.*

POINTS FOR PLAINTIFF IN ERROR.

1. The first count of the declaration charged Chaddock, the defendant below, as joint maker with Woodward of a promissory note to Van Ness, the plaintiff below.

The second count charged said defendant as sole maker of a promissory note to said plaintiff.

The third count (added after the trial) charged defendant on the ground that Woodward having made a promissory note to plaintiff and plaintiff having endorsed it, "without recourse" to defendant, the defendant had endorsed it to plaintiff, and had had notice of its dishonor.

The fourth count charged that the defendant, in consideration of forbearance by plaintiff to Woodward, of a pre-existing debt from Woodward to plaintiff, became surety for Woodward, on Woodward's promissory note to plaintiff for such debt.

The note produced to support this declaration was a note made by Woodward, to the order of plaintiff, and endorsed absolutely by plaintiff and defendant, as shown on page 13 of the case.

This note sustains none of these counts, but negatives any right of plaintiff who is first endorser to recover thereon from defendant who is second endorser.

2. The note with its endorsement showed a valid contract by plaintiff as absolute first endorser, and by defendant as second endorser, and these contracts being in writing, no oral testimony should have been received to show that they were intended to be different from what they appeared in writing to be.

3. The testimony offered by plaintiff and objected to by defendant, as shown on page 14, ought not to have been received, because it was to vary a written instrument and to show a contract as surety by oral testimony.

4. The oral testimony having been held to show that, before the giving of the note, there was a debt, due from Woodward to plaintiff, that, at the time of the giving of the note, plaintiff agreed to give Woodward an extension of the three months mentioned in the note, and that, in consideration of such extenson, the defendant endorsed the note as surety for Woodward ; this arrangement should not have been held to give the plaintiff an action against the defendant, because, the defendant's promise being to answer for the debt of another, the agreement or some memorandum or note thereof was not in writing signed by the defendant.

5. The Justice having found that defendant was entitled to notice of dishonor as an endorser, it does not appear that he received notice sufficient in point of time and substance.

J. DIXON, JR.

of Counsel with Plaintiff in error.

Nicholson, printer, Trenton, N. J.

COURT OF ERRORS & APPEALS.

NEW JERSEY SUPREME COURT.

JACOB S. VANNESS } *In Case.*
vs. } *On Postea, &c.*
WILLIAM H. CHADDOCK. } T. W. JAMES, *Att'y.*

[Filed March 8, 1870.]

As yet of the fourth day of August, A. D. eighteen hundred and sixty-nine.

Witness MERCER BEASLEY, ESQ., *C. J.*
CHAS. P. SMITH, *C'lk.*

Hudson county, *ss.*—William H. Chaddock, the defendant in this suit, was summoned to answer unto Jacob S. Vanness, the plaintiff herein, of a plea of trespass on the case upon promises. And thereupon the said plaintiff, by Thomas W. James, his attorney, complains—For that, whereas the said defendant and one Appleton A. Woodward, on the sixteenth day of April, in the year one thousand eight hundred and sixty-nine, at Jersey City, to wit, at the city of Hudson, in the county aforesaid, made their certain note in writing, bearing date the day and year last aforesaid, and delivered the same to the plaintiff, and thereby jointly and severally promised to pay to the order of the plaintiff, by the name of Jacob S. Vanness, three months after the date thereof, (which period has now elapsed) at The Hudson County National Bank, two thousand and ninety-one dollars and ninety-eight cents, without defalcation or discount, for value received; and the said plaintiff in fact saith, that afterwards, and when the said note became due and payable,

according to the tenor and effect thereof, to wit, on the nineteenth day of July, in the year aforesaid, at the said The Hudson County National Bank, to wit, in the county aforesaid, the said note was duly presented and shown for payment thereof, and payment of the said sum of money therein specified was then and there duly required, according to the tenor and effect of the said note; but that neither the said The Hudson County National Bank nor the said Appleton A. Woodward, nor the said defendant, nor any other person or persons, on behalf of the said Appleton A. Woodward, and of the said defendant, or either of them, did or would, at the said time when the said note was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but wholly neglected and refused so to do; of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, had notice. And whereas, also, the said defendant afterwards, to wit, on the said sixteenth day of April, in the year one thousand eight hundred and sixty-nine, at Jersey City, to wit, at the city of Hudson, in the said county of Hudson, made his certain other note in writing, bearing date the day and year last aforesaid, and then and there delivered the same to the plaintiff, and thereby promised to pay, three months after the date thereof, (which period has now elapsed) to the order of the plaintiff, by the name of Jacob S. Vanness, at the said The Hudson County National Bank, two thousand and ninety-one dollars and ninety-eight cents, without defalcation or discount, for value received; and the said plaintiff in fact saith, that afterwards, and when the said last mentioned note became due and payable, according to the tenor and effect thereof, to wit, on the nineteenth day of July, in the year one thousand eight hundred and sixty-nine, at the said The Hudson County National Bank, to wit, in the county aforesaid, the said last mentioned promissory note was duly presented and shown for payment thereof, and payment of the said sum of money therein specified was then and there duly required, according to tenor and effect of the said last mentioned promissory note; but that neither the said The Hudson

County National Bank nor the said defendant, nor any other person or persons on behalf of the said defendant, did or would, at the said time when the said last mentioned promissory note was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but to pay the same, the said The Hudson County National Bank and the said defendant wholly neglected and refused to do—of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, had notice.

And whereas, also, one Appleton A. Woodward, before and at the time of the making of the promise and undertaking of the defendant, herein after next mentioned, to wit, on the sixteenth day of April, in the year one thousand eight hundred and sixty-nine, in the county aforesaid, was justly and truly indebted to the plaintiff in the sum of two thousand and ninety-one dollars and ninety-eight cents, of lawful money of the United States of America, for so much money found to be due from the said Appleton A. Woodward to the said plaintiff, on an account then and there stated between them, the said plaintiff and the said Appleton A. Woodward, and thereupon heretofore, to wit, on the said sixteenth day of April, in the year one thousand eight hundred and sixty-nine, in the county aforesaid, in consideration of the premises, and that the plaintiff, at the special instance and request of the defendant, would forbear and give time to the said Appleton A. Woodward for the payment of the said debt, until the maturity of the promissory note herein after mentioned, he, the said defendant, undertook and then and there faithfully promised the plaintiff that he, the said defendant, would endorse the said promissory note herein after mentioned, as a surety for the faithful payment thereof on the part and behalf of the said Appleton A. Woodward, according to the tenor and effect of the said promissory note herein after mentioned.

And the said plaintiff avers that he, confiding in the said last mentioned promise and undertaking of the said defendant, afterwards, to wit, on the said sixteenth day of April, in the year one thousand eight hundred and sixty-nine, in

the county aforesaid, did forbear and give time to the said Appleton A. Woodward for the payment of the said debt in this count above mentioned, until the maturity of the promissory note herein after mentioned, to wit, until the nineteenth day of July, in the year one thousand eight hundred and sixty-nine; and thereupon afterwards, to wit, on the said sixteenth day of April, in the year one thousand eight hundred and sixty-nine, at Jersey City, to wit, at the city of Hudson, in the said county of Hudson, the said Appleton A. Woodward made his promissory note in writing, bearing date the day and year last aforesaid, and thereby promised, three months after the date thereof, (which period has now elapsed) to pay to the order of the plaintiff, by the name of Jacob S. Vanness, two thousand and ninety-one dollars and ninety-eight cents, without defalcation or discount, for value received, payable at The Hudson County National Bank, and then and there delivered the said last mentioned promissory note to the defendant, to be by him endorsed as such surety as aforesaid, and delivered to the plaintiff; and the said defendant then and there endorsed the said last mentioned promissory note, in writing, as a surety for the faithful payment thereof, on the part and behalf of the said Appleton A. Woodward, according to the tenor and effect of the said last mentioned promissory note, and according to the said last mentioned promise and undertaking of the said defendant, and then and there delivered the said last mentioned promissory note so endorsed by him, the said defendant, to the plaintiff, in fact saith that afterwards, when the said last mentioned promissory note became due and payable, according to the tenor and effect thereof, to wit, on the nineteenth day of July, in the year one thousand eight hundred and sixty-nine, at the said The Hudson County National Bank, to wit, in the county aforesaid, the said last mentioned promissory note was duly presented and shown for payment thereof, and payment of the said sum of money therein specified was then and there duly required, according to the tenor and effect of the said last mentioned promissory note, but that neither the said The Hudson County National Bank nor the said Appleton A. Woodward, nor the said defendant, nor any other person or persons, did or

would, at the said time when the said last mentioned promissory note was so presented and shown for payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but to pay the same, the said The Hudson County National Bank, and the said Appleton A. Woodward, and the said defendant, wholly neglected and refused to do; of all which said several premises the said defendant afterward, to wit, on the day and year last aforesaid, in the county aforesaid, had due notice; by means whereof the said defendant then and there became liable to pay unto the said plaintiff the said sum of money in the said last mentioned promissory note specified, when he, the said defendant, should be thereunto afterwards requested, and being so liable, he, the said defendant, in consideration thereof afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, undertook and faithfully promised the plaintiff to pay him the said sum of money in the said last mentioned promissory note mentioned, when he, the said defendant, should be thereunto afterwards requested; yet the said defendant has disregarded his said several promises and undertakings, and has not paid any or either of the said several sums of money, or any part thereof, to the plaintiff, although often requested so to do, to the damage of the said plaintiff of three thousand dollars, and thereupon he brings his suit, &c.

And the said defendant, by J. Dixon, jun., his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form, as the said plaintiff has above thereof complained against him, and of this he puts himself upon the country, &c.

And the said plaintiff, as to the plea of the said defendant by him above pleaded, and wherof he hath put himself upon the country, doth the like.

Therefore let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the state of New Jersey, at a Circuit Court to be held at Hudson City, in and for the county of Hudson, on the third Tuesday of January, A. D. eighteen hundred and seventy, by whom, &c., and the same day is given to the parties aforesaid, there, &c.

And now, to wit, the twenty-second day of February, in the year last aforesaid, come the parties aforesaid, by their attorneys aforesaid, and the Justice before whom, &c., sends here his record had before him, in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at the city of Hudson, in and for the county of Hudson, before Joseph D. Bedle, esquire, one of the Justices of the Supreme Court, on the third Tuesday of January, in the year of our Lord one thousand eight hundred and seventy, according to the form of the statute in such case made and provided, come as well the said Jacob S. Vanness, the plaintiff, as the said William H. Chaddock, the defendant, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being summoned, also come; and the parties aforesaid, by their attorneys aforesaid, thereupon consent and agree that the trial of the issue aforesaid before the jurors aforesaid, be waived, and that the issue aforesaid be tried by the said Joseph D. Bedle, esquire, Justice as aforesaid. And thereupon the said Justice having heard the evidence of the parties respectively, and of their witnesses, and the argumenis of the respective counsel thereon, on the issue aforesaid, did, on motion of the plaintiff, by his counsel aforesaid, at the trial of the issue aforesaid, and upon hearing counsel thereon, give leave to the plaintiff to amend his said declaration, by adding a new count thereto, immediately after the second, and before the third count therein contained, charging the said defendant as endorser of the promissory note therein mentioned; and thereupon the said new count is added, in the words following, to wit, "and whereas, also, one Appleton A. Woodward, by the name of A. A. Woodward, afterwards, on the sixteenth day of April, in the year eighteen hundred and sixty-nine, at Jersey City, to wit, in the county of Hudson aforesaid, made his promissory note in writing, bearing date the day and year last aforesaid, and thereby promised to pay to the order of the plaintiff, by the name of Jacob S. Vanness, three months after the date thereof, which period has now elapsed, two thousand and ninety-one dollars and ninety-eight cents, without defalcation or discount, for value received, payable at The Hudson County National Bank, to wit,

in the county of Hudson aforesaid, and then and there delivered the said note to the plaintiff; and the plaintiff then and there endorsed the said note without recourse to him (the (plaintiff) and delivered the same so endorsed to the defendant; and the defendant then and there endorsed and delivered the said note to the plaintiff; and the plaintiff avers that neither the said The Hudson County National Bank nor the said Appleton A. Woodward, nor any other person or persons, on behalf of the said Appleton A. Woodward, did or would pay the amount thereof, although the said last mentioned note was presented and shown for payment, and payment thereof demanded at the said The Hudson County National Bank, to wit, in the county aforesaid, on the day when the said last mentioned note became due; of all which the said defendant then and there had due notice." And the said Justice, upon the said trial of the issue so joined between the parties aforesaid, doth find and determine that the said William H. Chaddock, the defendant, did undertake and promise, as the said Jacob S. Vanness, the plaintiff, hath in his said declaration, so amended, alleged; and the said Justice doth assess the damages of the said plaintiff, by reason of the premises, over and above the costs and charges of him about his suit in this behalf expended, at the sum of two thousand one hundred and seventy-nine dollars and eighteen cents, and for those costs and charges, six cents.

Therefore it is considered that the said Jacob S. Vanness do recover against the said William H. Chaddock as well the said sum of two thousand one hundred and seventy-nine dollars and eighteen cents, in form aforesaid assessed, as also the sum of forty-eight dollars and seventeen cents, for his costs and charges aforesaid by the court now here adjudged to the said plaintiff and with his assent. Which said damages, costs, and charges in the whole amount to two thousand two hundred and twenty-seven dollars and thirty-five cents.

Judgment signed this twenty-second day of February, A. D. eighteen hundred and seventy.

M. BEASLEY, *C. J.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true transcript from the record of judgment in the above stated cause, as the same remains in my office.

In testimony whereof, I hereto set my hand [L. S.] and the seal of said court, at Trenton, this seventh day of March, A. D. eighteen hundred and seventy.

CHARLES P. SMITH, *Clk.*

[L. S.] New Jersey, *ss.*—The state of New Jersey to the Justices of the Supreme Court—Greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our Supreme Court before you, between Jacob S. Vanness, as plaintiff, and William H. Chaddock, as defendant, in a plea of trespass upon promises, manifest error hath intervened to the great damage of the said defendant, as by his complaint we are informed.

We being willing that the error, if any there shall be found, shall in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, before the Judges thereof, on the second Tuesday in March next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, Abraham O. Zabriskie, esquire, our chancellor and presiding judge of said Court of Errors and Appeals in the last resort in all causes, this twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy.

H. N. CONGAR.

DIXON & COLLINS, *Att'ys.*

The answer of the Justices of the Supreme Court of New Jersey within named.

The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within commanded.

M. BEASLEY, *C. J.*

Assignment of Errors.

Afterwards, to wit, on the second Tuesday in March, in the year of our Lord eighteen hundred and seventy, before the Court of Errors and Appeals in the last resort in all causes in New Jersey, comes the said William H. Chaddock, by Dixon & Collins, his attorneys, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid and the matters therein contained, are not sufficient in law for the said Jacob S. Vanness to have or maintain his aforesaid action thereof against him, the said William H. Chaddock. And also, there is error in this, to wit, that on the trial of said cause in the Supreme Court Circuit, held in and for the county of Hudson, the Justice before whom said cause was tried, admitted incompetent and illegal evidence, produced by the said Jacob S. Vanness, which was objected to by the said William H. Chaddock, whereas by the law of the land said evidence ought not to have been admitted; therefore in that there is manifest error. And also there is error in this, to wit, that on said trial the said Justice held that the evidence produced by the said Jacob S. Vanness, in support of the issues on his part, was sufficient in law to entitle the said Jacob S. Vanness to a finding by the said Justice for the amount of the note in the said declaration referred to, with costs of protest and interest, whereas by the law of the land the said evidence was not sufficient to entitle said Vanness to such

finding in said action, and the said Justice ought to have found for the said Chaddock therein; therefore, in that there is manifest error. And also there is error in this, that on the said trial the said Justice held the law to be as follows, and based his finding for said Vanness upon such holding of the law, *viz.*

"It is the law in this state that parol testimony may be received to show the character of the contract under which a party puts his name on the back of a note as this, and that he may so put his name either as joint maker, as guarantor of the note or as surety, with the liability of an endorser; and I think it is well settled in this state that the nature of the contract may be shown."

Whereas, by the law of the land, the said Justice ought not to have so held; therefore, in that there is manifest error. And also there is error in this, that on said trial the said Justice held the law to be as follows, and based his finding for said Vanness upon such holding of the law, *viz.*

"To carry out the idea of this contract, the plaintiff may write upon this note, over his name, 'pay to the order of William H. Chaddock,' with the words 'without recourse,' leaving Chaddock in the position of first endorser."

Whereas, by the law of the land, the said Justice ought not to have so held, therefore in that there is manifest error.

And also there is error in this, that on said trial the said Justice held the law to be as follows, and based his finding for said Vanness upon such holding of the law, *viz.*

"Then as to the question of protests, I find no difficulty in that at all. The notice to Chaddock was, I think, sufficient."

Whereas, by the law of the land, the said Justice ought not to have so held; therefore in that there is manifest error.

And also there is error in this, to wit, that the judgment aforesaid by the record aforesaid, appears to have been given for the said Jacob S. Vanness and against the said William H. Chaddock; whereas, by the law of the land, the said judgment ought to have been given for the said William H. Chaddock against the said Jacob S. Vanness.

And the said William H. Chaddock prays that the judg-

ment aforesaid, for the errors aforesaid, and for the errors in the said record and proceedings being, may be reversed, annulled, and altogether for naught holden, and that he may be restored to all things which he has lost by occasion of said judgment.

DIXON & COLLINS, *Attorneys of, and*
J. DIXON, *of counsel with plaintiff in error.*

Bills of Exceptions.

[Filed May 2, 1870.]

Be it remembered, that at a Circuit Court holden at the city of Hudson, in the county of Hudson, on the twenty-fourth day of January, A. D. 1870, before Joseph D. Bedle, esquire, a Justice of the Supreme Court of New Jersey, the several issues in the above stated cause joined between the said parties, according to the form of the statute in such case made and provided, came on to be tried (*pro ut* the said issues) at which day, before the said Justice, came as well the said William H. Chaddock as the said Jacob S. Vanness, by their respective attorneys aforesaid, whereof mention is within made, and both parties having waived a trial by jury, consented to try the said issues before the said Justice, and thereupon the said Jacob S. Vanness, to maintain the said issues on his part, called as a witness—

Jacob S. Vanness, the plaintiff, who being duly sworn, did depose and say—I live in Newark, and am a dock builder and bridge builder; [and being shown a promissory note, of which a copy is annexed to the declaration, and is as follows, *viz.*

$2091.98. Jersey City, April 16, 1869.

Three months after date I promise to pay to the order of Jacob S. Vanness, two thousand and ninety-one $\frac{86}{100}$ dollars, without defalcation or discount, for value received. Payable at Hudson County National Bank.

A. A. Woodward.

No. ——. Due July 16—19.

[Endorsed] W. H. Chaddock,
Jacob S. Vanness.]

He further says—I own this note—A. A. Woodward signed it; I saw Woodward's signature put there by him at the time the note was given; William H. Chaddock's and Woodward's signatures were both made at the same time; Chaddock wrote the note and put his signature on it in my presence.

The plaintiff thereupon offered the note in evidence, and it was received. And the plaintiff thereupon offered to prove, by oral testimony, that Chaddock wrote his name on the back of the said note, in pursuance of a verbal arrangement that if he would do so Vanness would take the note from Woodward in payment of a debt then due from Woodward to Vanness, and to show what that arrangement was.

The defendant, by his counsel, objected to the admission of this testimony as evidence in the cause, and insisted that the same was not competent or legal evidence in the cause; and the said Justice having given his opinion that the same was competent and legal evidence in the cause, admitted the same. To which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.

J. D. BEDLE,
Justice Supreme Court.

Thereupon the plaintiff further testified as follows: Chaddock, Woodward, and I, met at Culver's office, in Jersey City, and I told Mr. Woodward I would not take his note unless I had security on it; Chaddock consented to be security and endorse the note—then Chaddock sat down and drew the note and Woodward signed it; then Chaddock turned the note over and put his name upon the back of it and handed it to me.

After the note became due it was protested, and I received this notice of protest (notice produced and offered); I received this notice on the twentieth day of July; the next day I went to West Bergen and saw Chaddock, and asked him if he knew that note was protested; he said no, he did not; I told him it was protested; he said he did not know anything about it; I asked him whether he meant to pay it, he said he guessed not; then I went back to Jersey City and got the protest and went down to his house in Lafayette, city of Bergen, in the afternoon, and served it upon his wife at his house—he was not there; he afterwards told me he received it on the twenty-first of July—this was, I think, the twenty-first of July; I received the notice of protest through the Essex County Bank, at Newark, where I had got it dis-

counted; I lived in Newark—Chaddock lived in Lafayette; after the note was protested I took it up; at the time the note was given Woodward owed me the amount of it for building a dock for the use of the West Bergen Association.

And thereupon the plaintiff produced as a witness *Thomas W. James*, who being duly sworn, said—On July 19th last, as Notary Public, I presented this note (the note offered as above) to the note teller at the counter of the Hudson County National Bank, in Jersey City, and demanded payment for it—he refused to pay it; I immediately protested it, and sent notice to W. H. Chaddock, Jacob S. Vanness, and H. S. Graham, cashier of the Essex County National Bank; the notices were deposited in the post-office in Jersey City the same afternoon, at five o'clock, enclosed in an envelope, directed to H. S. Graham, esq., cashier Essex County National Bank, Newark, N. J., and postage prepaid; the notices were in the usual printed form; I don't recollect that I looked in the directory for the name of Chaddock.

The plaintiff thereupon offered the note and protest in evidence, (*pro ut* the same.)

From the evidence in the cause, the said Justice found the facts stated in the following opinion, which are to be taken as a part of the case, and as facts or findings in the cause—the rest of the evidence on each side is therefore accordingly omitted.

In this case the note was drawn payable to the order of Vanness, the plaintiff, by A. A. Woodward, endorsed by Chaddock at the time of the making of the note. Chaddock drew the note, filled it up, and put his name on the back at the time. Jacob Vanness afterwards endorsed it, got is discounted at a bank in Newark; it was payable at the Hudson County National Bank, and was sent for payment and protested for non-payment. It will be seen that on the note the nominal relation of Chaddock to the note is as second endorser. The action is brought by Vanness, the payee of the note, and he seeks to hold Chaddock liable, either as guarantor of the note, or as joint maker, or as a first endorser of the note. I am satisfied that it is the law in this state that

parol testimony may be received to show the character of the contract, under which a party puts his name on the back of a note as this, and that he may so put his name, either as joint maker, as guarantor of the note, or as surety, with the liability of an endorser. In the absence of parol testimony he would, undoubtedly, be second endorser only, and I think it is well settled in this state that the nature of the contract may be shown. The facts in this case, although I admit they are close, yet it struck me, upon the trial, and that is my opinion now from further examination of the case, show that the name of Chaddock was put upon the note under a contract of a different liability from that of a second endorser. His name was put there as surety of Woodward, and not, as I view the facts, simply as endorser of Vanness, to enable Vanness to get additional credit in the bank. It was put there as surety for Woodward to Vanness as first endorser; as surety with the liability of a first endorser, and I think this is giving the testimony the mildest form for Chaddock. If we made him absolute guarantor of the note, no protest or notice would be necessary to him; but I think the facts show that he intended to be security for Woodward and that the consideration of that was the forbearance of the note.

There was a previous existing debt due to Vanness. There is really some question whether it was due from Chaddock or Woodward. If from Woodward to Vanness, the debt was due and the extension of time was given to Woodward, and that is the consideration for this contract. I think that case in 2 *Dutcher* rules this. And to carry out the idea in this contract, the plaintiff may write upon this note, over his name, "pay to the order of William H. Chaddock," with the words "without recourse." The effect of that would be nominally to pass the note from Chaddock to Woodward, leaving Chaddock in the position of first endorser.

Then as to the question of protest. I find no difficulty upon that at all. The note came due in the bank at Jersey City on the 19th, and on the evening of the 19th, or afternoon, it was protested and notices were mailed to the bank in Newark; late on the 20th, the next day, Vanness received notice from the Essex Bank. The note was payable at the

Hudson County National Bank and was protested there. The notices were sent to the Newark bank, and Vanness received the notice late on the 20th, and he would have had till after the commencement of business hours on the 21st to have mailed notice to Chaddock. Instead of dealing with the mails he went to Chaddock in the morning of the next day and informed him of it. Chaddock would not do anything, and in the afternoon of the same day he got notice, a copy of the one he received, and served it on Mr. Chaddock. That, I think, is sufficient. He (Chaddock) got it in the afternoon of the 21st. I have looked at this declaration, and there is a count here which I am not certain whether it is sufficient or not. I would suggest to counsel that he add another count to the declaration, setting out a note payable to the plaintiff, an endorsement without recourse by plaintiff to defendant, and an endorsement by defendant to plaintiff; also, a demand, protest, and notice.

Plaintiff may have a finding for the amount of the note, cost of protest, and interest.

The defendant, by his counsel, excepted to each of those parts of the said opinion of the said Justice, which held—

1st. It is the law in this state that parol testimony may be received to show the character of the contract under which a party puts his name on the back of a note as this, and that he may so put his name either as joint maker, as guarantor of the note, or as surety, with the liability of an endorser; and I think it is well settled in this state that the nature of the contract may be shown.

2d. To carry out the idea in this contract, the plaintiff may write upon this note, over his name, "pay to the order of William H. Chaddock," with the words "without recourse," leaving Chaddock in the position of first endorser.

3d. Then as to the question of protest, I find no difficulty in that at all. The notice to Chaddock was, I think, sufficient.

4th. Plaintiff may have a finding for the amount of note, cost of protest and interest, and a *postea* accordingly.

And the said defendant, by his counsel, prayed that this, his bill of exceptions, might be sealed, and it is sealed accordingly.

This signing and sealing to relate to each of the above exceptions.

J. D. BEDLE, [L. S.]
Justice Sup. Court.