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Anomalous Indorser

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Introduction

A Knowledge of the first principles of the law of negotiable instruments, such as the ordinary relations and rights of maker, payee or indorser, has been presumed to exist in the mind of the reader, and without any preliminary definitions, the subject in hand, that of the "Anomalous Indorser," has been plunged into. Beside the English doctrine, the three great doctrines of the United States are taken up and examined at some length; especial attention being given to the doctrines of Massachusets and New York. However this is not to the neglect of the other jurisdictions, as every state or Territority has been classified under some doctrine or head according to the writer's best judgment of the cases he cites.

E.M.M.

The Anomalous Indorser

As to who or what an anomalous indorser is, there seems to be in the authorities a wide diversity of opinion; or, at any rate, if we assume that the authorities are striving each to describe an indorser laboring under exactly the same conditions, there is certainly great laxity of language.

The anomalous indorser has been variously termed an irregular indorser; an indorser who is not a payee; a stranger to the note indorsing the same before delivery by writing his name on the back of the instrument with the intention of giving the maker credit with the payee; a third person indorsing, who may or may not be a stranger to the consideration between the maker and payee, as a further assurance in favor of the payee[1]

It would seem that looking strictly to the meaning of the word "anomalous" a clearer definition than any of those mentioned above might be made. The term anomalous necessarily refers to something startling or out of the ordinary, and here is used with regard to the indorser. This novel relation of the in-

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[1] Bigelow on Bills and Notes pg. 33

dorser to others, may be one as per secret understanding between himself and the primary parties to the note, as the maker or payee; but this would be so narrow an anomaly as to be beyond the knowledge of third parties without notice. To fit a general definition the anomaly must be so patent, that even the casual observer would notice it. This kind of an anomaly can only exist on the face of the paper, conveying information by its very appearance, and in the case of an indorser in blank, must be with regard to the position of his name on the paper.

An indorser who signs before the payee, or who places his name over that of the payee, with the consequent presumption that he signed before the payee, is instantly recognizable as an anomaly, and is the anomalous indorser.

The rights and liabilities of the anomalous indorser depend upon the view taken of him by the court. The terms rights and responsibilities are concurrent and complementary, each depending on the other. As the rights vary so do the responsibilities. In various jurisdictions, the anomalous indorser has been held as either:—

1. Having no liability whatsoever.

2. Having a liability as joint maker or surety
3. Having a liability as both 1st and 2nd indorser
4. Having a liability as guarantor
5. Having any liability, the payee may elect.

The need then to a lawer or business man to know exactly the light in which an anomalous indorser stands, is evident, when is considered the wide divergences of rights and responsibilities these various views entail for:

1. As joint maker he assumes an absolute undertaking to pay
2. As first indorser he assumes an undertaking to pay conditioned: that the note be presented to the maker on maturity, demand of payment made dishonor of instrument by principal and notice of dishonor to indorser; while the undertaking as second indorser is similar with the qualification that the right of the payee to recover against him is barred
3. As guarantor he assumes an undertaking to pay if by due diligence the debt cannot be collected out of the original debtor — This is a secondary contract, one in which the principal does not join and is usually discharged by the indulgence of the creditor to the principal, requiring notice of the default of the principal to bind the guarantor.

4. As surety he assumes an undertaking to answer for the debt of another, by which the surety is bound as the principal or original debtor is bound — this is a primary obligation and the creditor is not bound to proceed first against the principal, before he can recover from the surety, nor need the surety be notified of the default of the principal, as he is an original debtor and ordinarily is held to know every default of his principal.

With all these various holdings as to the liability of an anomalous indorser, we find the courts grouped according to certain lines, the new jurisdictions following in the main the lead of the older ones, tho' occasionally branching out so markedly as to form a nucleus for a new grouping. The leading doctrines are called by the names of the respective jurisdictions that gave them birth and are the English, across the Atlantic, followed blindly at first and later with indications of refinement, in the Canadas; the Massachusetts; the New York and the Illinois.

The English Doctrine

It seems rather strange that a diligent search thro' the English reports for a case of an anomalous indorser does not reveal one in the home of our law merchant, till that of Gwinnell vs Herbert[1] in the year 1836, after Two of the leading doctrines of the United States had been established, and each had gathered a respectable following; the case of Sumner vs Parsons[2] having been adjudicated in Massachusetts in 1801 thirty five years prior; and the case of Herrick vs Carmen[3] having pronounced the Newyork doctrine in 1813.

The facts in Gwinnell vs Herbert (ante) were substantially as follows:— A note payable to William Gwinnell or order was signed Herbert Herbert. It was indorsed in blank by Edward Herbert, who was sued as a maker. The court while not settling the anomalous indorser's liability, clearly disavows for him any responsibility as maker using

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1. Gwinnell vs. Herbert, 5 Adolphus and Ellis 436
2. Sumner vs. Parsons, Notes in American Pre Declarations 113
3. Herrick vs Carmen, 10 Johnson 224.

this language:- "So here the defendant was not a maker but should have been declared against on his collateral undertaking."

There is one other case in the English reports, Lecaan vs Kirkman[1]. Here one C.F. Kirkman made a note payable to the order of the plaintiff Lecaan, which note was indorsed by the defendant Kirkman. In a suit against the anomalous indorser, as an indirser the court held that he was not liable as a surety, because he had not satisfied the Statute of frauds, nor as an indorser because he had not satisfied the law merchant.

In Canada there have been a number of cases in point, the courts in their adjudication all looking to the leading case of Gwinnell vs Herbert (ante) and their findings, if not in the lineal line of descent from the original doctrine yet cousins-german to it, may be looked to as indicating the trend of the English courts.

The first case of Steer vs Adams[2] follows so squarely upon the precedent that no light is shed as to the meaning of the phrase "Collateral undertaking"; using the same language and leaving

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1. Lecaan vs Kirkman, 6 Jurist N.S. 17

2. Steer vs Adams. 6 Up. Can Q.S. 60

the matter in just the same condition. Jones vs. Ashcroft[1] is a similar case.

In West vs Brown[2], where it was sought to hold the anomalous indorser as an indorser, the court decided that he could not be so held. Reffering to previous adjudication in Canada the court says:- " I could not find in Shaw (Steer) vs. Adams (ante) that a party indorsing his name on the back of a promissory note not negotiable or if so, not indorsed by the payee, could be made responsible to the payee as a maker, or indorser or guarantor "

The case of Swift vs Hill[3] in which it was sought to hold the anomalous indorser as joint maker follows squarely on Gunnell vs Herbert.

From these cases the English doctrine would appear to be that an anomalous indorser incurs no liability whatsoever. The reasoning of the court is that the name so appearing on a negotiable instrument has no right to be there, and consequently say the courts, is not there. If a person wished to contract some special liability with regard to the

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1. Jones vs. Ashcroft, 6 Up. Can. Q.S. 154
2. West vs. Brown, 3 Up. Can., Queens Bench 290
3. Swift vs Hill, 1 All. (N.B.) 213

instrument he would sign on the face, if joint maker; or under a worded contract if signing as surety or guarantor. A name signed in blank before negotiable raises no presumption and consequently no more affects the instrument than would a blot of ink or a erease in the paper.

The case however of Falmstock vs Palmer,[1] more recent than any of the others and arising just across the Newyork state line, shows strongly the impress of a doctrine foreign to the precedents and in unmistakable dicta would give an indorser's liability to the party. The facts are these:- One E. W. Palmer gave notes to Falmstock, which were indorsed in blank by Noble Palmer. In a suit against Noble Palmer as guarantor the court held:- "As to whether the defendant could be held liable as upon a written guaranty to pay the plaintiff for goods furnished the maker, E. W. Palmer, I have no doubt that he could not be held so liable x x x x It is admitted that he merely gave his name as indorser of what no doubt he supposed to be promissory notes"

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1. Falmstock vs. Palmer 20 Up. Can. Q.B. 307

From the decisions previous to this case, the anomalous indorser had been freed from all responsibility either as joint maker, guarantor, surety or indorser, and his signature was a nullity. For the court to say in this case, that the indorser signed as indorser is admitting on the part of that individual Court a recognition of some responsibility. The dicta however is not so strong nor the court so controlling as to be liable at all, to shake the accepted English doctrine, which probably is to day as has been stated; that the anomalous indorser incurs no responsibility whatsoever.

The Massachusetts Doctrine

The first case that arose in Massachusetts or for that matter any where, in any Anglo-Saxon jurisdiction was that of Sumner vs Parsons! The facts were these:- Parsons wrote his name on a paper and gave it to one John Brown. Brown made a note on the other side payable to Jesse Sumner or order. Sumner then got a writing in these words over the name of Parsons: "In consideration of the subsisting connection between me and my son-in-law, John Brown, I promise to engage to guarantee the payment of the contents of the within note on demand." Sumner sued Parsons declaring on the promise, especially stating it, and the note, but did not aver any demand on John Brown or notice to Parsons. It was held in the Supreme Judicial Court that Parsons was liable, and that Sumner had a right to fill the indorsement so as to make Parsons a common indorser (2nd indorser) of the note with the rights

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1. Sumner vs Parsons, Notes in Amer. Prec. Declarations 113

and obligations of such, or a guarantor, warrantor or surety liable in the first instance and in all events as a joint an several promissor would be.

The next case reported was that of Josselyn vs Ames where the defendant indorsing as guarantor was not held so liable, but the court held that the plaintiff could write over the endorsement an absolute undertaking to pay for value received, and intimated that on such an indorsement recovery would be allowed. In just what light the indorser was held is not clear but it is evident that the decision of Sumner vs Parsons (ante) controlled.

Hunt vs Adams[2] following squarely laid down the accepted Massachersel's doctrine. On a note given by one Chaplin to one Burnett the defendant wrote "I acknowledge myself holden as surety for the payment of the demand of the above note. Barnabas Adams" The court held that Adams was to be charged as a promissor and that his signing as surety did not change his liability nor the plaintiff's rights

In Carver vs. Warren[3], one Cobb made a

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1. Josselyn vs. Ames 3 Mass 274
2. Hunt vs Adams 5 Mass. 358
3. Carver vs Warren 5 Mass 546

note and on the back of it. Warren wrote his name In a suit against him for the value of the note, the defendant Warren demurred on the ground that this was a promise to pay the debt of another, and was void for the lack of consideration. But the court held that he was a joint promisor and that his promise did not import any guaranty or collateral stipulation.

Moies vs Bird[1] was on a note made to the plaintiff and signed Benjamin Bird. It was indorsed in blank by the defendant Abraham Bird. The court said:- "The defendant leaves it to the holder to write anything over his name not inconsistant with the transaction. The holder chooses to hold him as a surety, binding himself originally with the principal, and we think he has a right to do so. If he was a surety then he may be sued as an original promissor."

The cases of Baker vs Briggs[2] and Chaffee vs Jones[3] where the defendants, not payees or

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1. Moies vs Bird 11 Mass 436
2. Baker vs Briggs 8 Pick 130
3. Chaffee vs Jones 19 Pick 260

holders signed on the back of notes as sureties followed squarely on Moies vs Bird (ante)

In Union Bank vs Willis[1], which is considered a leading case in the development of the Massachusets doctrine, this was the state of facts:- J.W. Thompson made a note payable to Tilley Willis or order. This note was indorsed on the back by B. F. Merrick & Co., and underneath was the name of Willis, the payee. It was clearly an accomodation note being discounted by Thompson, the maker. The plaintiff sued Willis as an indorser and the defense raised the question, that the note not having been presented to Merrick & Co., for payment, whether or no the omission discharges the indorser, Willis? The plaintiff claimed that Merrick & Co. were mere sureties and not entitled to presentment and demand, but the court held that as between the creditor and surety, the surety was in the light of a joint maker and that the contract of suretyship only applied as between the surety and principal. A distinction was drawn between the one placing his name on the note at its inception, he then being

1. Union Bank vs Willis 8 Metcalf 504

a joint maker; and one placing his name on it subsequently, when he is a guarantor or surety according to the agreement upon which he gives his signature. This case is followed by a long line[1] reiterating this doctrine known as the Massachusets doctrine, and extensively followed, to wit:

> In the absence of proof to the contrary the liability assumed by the anomalous indorser is that of a joint maker with the original promissor.

It is almost unfortunate that the commonwealth which gave the name to this doctrine has been obliged per force of statute to abandon it. The statute[2] passed in 1874 states "all persons becoming parties to a promissory note payable on time by a signature in blank shall be entitled to notice of non-payment thereof the same as indorsers."

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1. Bryant vs Eastman 7 Cush. 113
   Brown vs. Butler 99 Mass 179
   Way vs Butterworth 108 Mass 509
   Woods vs Woods 127 Mass 141

2. Public Statutes of Mass 1874 ch. 404

The arguments advanced to support the Mass achusets doctrine are:—

1. The anomalous indorser cannot be held as first indorser because he is not the payee and only the payee can be first indorser, and put the note into circulation:

2. He cannot be held as second indorser as only one to whom the paper has actually passed by transfer can be held as an indorser.

3. He cannot be held as guarantor, as the contract of guaranty is a collateral one to answer for the debt or default of another, and it must be in writing and signed by the party to be charged. In this case the signature is present but the collateral agreement is not:

4. The contract is ambiguous because the party signing has failed to express himself clearly and it should be enforced more strongly against him, and in favor of the payee:

5. As he can't be held as an indorser or guarantor, but evidently intended to assume some liability he should be held as a promissor.

The following states and jurisdictions hold according to the Massachusetts doctrine:—

Arkansas	Killian vs Ashley	24 Ark 511
Colorado	Bert vs Hoppie	3 Col. 137
Delaware	Gilpin vs. Marley	4 Houst 284
Florida	Melton vs Brown	6 So Rep 211
Georgia	Quinn vs Sterne	26 Ga. 224
Louisianna	Collins vs Irist	20 La Ann. 350
Maine	Woodman vs Boothby Rice vs Cook	66 Me 391 71 Me. 559
Maryland	Third Nat Bk. vs Lange	51 Md. 138
Mass	Up till 1874	Ante
Michigan	Roschill vs Grix	31 Mich 156
Minnesota	Stevi vs Passmore	25 Minn 256
Missouri	Mammon vs Hartman	51 Mo. 168
Mississippi	Pollinghorne vs. Hendricks	61 Miss 366
New Hampshire	Currier vs Fellows	27 N.H. 366
North Carolina	Hoffman vs Moore	82 N.C. 313
Nebraska	Salisbury vs First Nat. Bk.	37 Neb. 872

Rhode Island	Carpenter vs Mc.- - Laughlin	12 R. I. 270
South Carolina	Carpenter vs Oakes	10 Rich 17
~~Utah~~	McGee vs Conor	1 Utah 92
U. S. Cts.	Rey vs Simpson	22 How. 341
	Good vs Martin	95 U. S. 95
	First Nat. Bank vs Lockstitch Fence Co.	24 Fed Rep. 224
Vermont	Sylvester vs Donovan	20 Vt. 355
	~~Nat Bk.~~ vs Morsell Marble Co.,	61 Vt. 106
Washington	Wilkie vs Chandon	1 Wash 355
Wisconsin	Houghton vs Elly	26 Wise 181.

The ~~strength of the~~ presumption ~~that~~ the anamalous indorser is joint maker varies widely in different jurisdictions.

1. In Massachusets and Minnesota and perhaps in Delaware and Rhode Island the presumption is a conclusive presumption of law and not rebuttable by evidence of contrary intent on the part of the party signing.

However if the indorsement is made after the delivery of the note to the payee, the presumption that the anomalous indorser is a joint maker is displaced, and he is presumed liable as a guarantor. This applies to all the jurisdictions following the Massachusets doctrine

2. In Maryland, Missouri, Maine, United States courts and Utah and possibly in Georgia, New Hampshire and North Carolina the presumption is one of fact and rebuttable by evidence showing that the anomalous indorser signed with the intent of charging himself as indorser or guarantor.

3. In Vermont the presumption is only prima facie and evidence may be admitted to show any situation of the parties.

4. In Arkansas, Colorado, Louisianna, Michigan, Florida, Mississippi, South Carolina,

Wisconsin, Washington and Nebraska, it does not seem to have been decided as to the degree the presumption shall control.

Such is the Massachusets doctrine with its following in twenty two jurisdictions, and consequent refinements. Notwithstanding its popularity it seems unreasonable and illogical. Why the anomalous indorser, signing on the back of an instrument should be conclusively presumed to be a joint maker, when had such been his intent he could equally well have signed on the face of the instrument, is not clear. The very fact that the anomalous indorser signs on the back of the instrument would appear to show his intent to assume some other liability than that of a maker. The basis for the doctrine is that a maker can sign on any portion of an instrument, on the back as well as the face. The anomalous indorser signs before there

is possibility of indorsement in the regular order of business, he cannot be an indorser, he may and must be a maker.

The New York Doctrine

Shortly after the original adjudication by the court of Massachusetts, the matter of the responsibility of the anomalous indorser came up in New York in the case of Herrick vs Carmen[1]. This was in 1813. The facts were:— One Ryan applied to Laurence Carmen & Co. for the sale of goods, which they refused without security for payment. Ryan then gave his note indorsed in blank by Herrick, Ryan became bankrupt, and Laurence Carmen & Co., being informed that to hold Herrick liable as indorser, they must first indorse the note, sold it at a reduced value to J.V. Carmen who sued on it. Proper demand of payment from Ryan by Carmen & Co., and refusal and notice to Herrick was proved. The court held that in the absence of proof to the contrary, Herrick indorsed as a second indorser with the intent that all rights attending should attach. Also that Carmen & Co., could not recover against Herrick, it being impossible for a prior indorser to recover against a subsequent

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1. Herrick vs Carmen { 10 Johnson 224 / 12 Johnson 159 }

indorsee, nor could J.V. Carmen, the indorsee with knowledge of the facts and at a speculative value; altho' (dicta) if Herrick indorsed the note to give Ryan credit with Carmen & Co., then he would have been liable to them or any subsequent indorser, as one guarantying to pay the note if Ryan did not. The value of this decision is the advancement (presumptively) of the theory of the anomalous indorser being the second indorser, a theory that has obtained in New York from that day to the present time.

The facts of the next case, Nelson vs Dubroise[1] were:— One Brundige wishing to purchase a horse from Nelson offered his note for payment. The note was refused unless defendant Dubroise guaranteed Brundige's payment of it. Dubroise indorsed in blank on the back of the note. It was held that in the absence of proof to the contrary Dubroise would only be a second indorser but that proof was admissible to show that Dubroise signed as surety and inasmuch as he indorsed the note to give Brundige credit with Nelson, he was a surety.

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1. Nelson vs Dubroise, 13 Johnson 175

In Campbell vs Butler[1] on a similar statement of facts the court followed Nelson vs Dubois (ante) squarely.

The next case, Tilman vs Wheeler[2] was this:- One Francis Moore and Jeremiah Abbey gave a note to Wheeler, on the back of which was written the name of Tilman. On a suit against Tilman as guarantor by Wheeler, the court followed Herrick vs Carmichael and declared the action would not lie." This case is not distinguishable from Herrick vs Carmichael. They do not vary in principle. The liability is the same. For aught we know, Tilman for the accommodation of drawers and original promissee or indorser, may have put his name on the note as second indorser on the responsibility of the payee. That is the legal presumption from the appearance of the paper.

Mean vs Hall,[3] where the following were the facts followed:- The plaintiff submitted a

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1. Campbell vs Butler, 14 Johnson 349
2. Tilman vs Wheeler, 17 Johnson 325
3. Mean vs Hall, 17 Wendell 214.

note payable to Edward C. Howard, signed by Justice Colman and indorsed in blank by W. L. Hall. The court held on demurrer that a declaration charging W. L. Hall as maker of the note was bad, also (semble) that either the payee or the holder might declare against Hall as indorser but in no other capacity.

The next case was Seabury vs Hungerford[1]. The plaintiff gave in evidence the following note "Six months after date we jointly and severally promise to pay to Daniel Seabury or order the sum of etc" Signed Justice Pickering. Indorsed on back. John L. Hungerford, backer, Schoharie. There was proof to show that Hungerford was privy to the consideration and also that he considered himself liable as joint maker. It was held "that one who has put his name on a negotiable note under circumstances making him chargeable as indorser, cannot be made liable in any other character." This case seriously attack the holdings of the earlier cases, especially Nelson vs Rhoboise (ante) in allowing anomalous indorsers to be held as sureties.

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1. Seabury vs Hungerford, 2 Hill 80.

In Hall vs Newcomb,[1] the next case which the court of Appeals had before them, they boldly over-ruled Nelson vs Dubois (ante) and charged the court with advancing dicta in Herrick vs Carmen (ante) and Tilman vs Wheeler (ante) when it spoke of the right to turn an indorsement into a guaranty under certain circumstances. The facts of the case were:- One Peter Farmer made a promissory note payable to the plaintiff, Hall or order, on the back of which the defendant, Newcomb, indorsed his name in blank. Hall without any demand on the maker or any notice of non-payment to Newcomb, brought an action against Newcomb for the amount of the note. The court considered this question; can Newcomb, who put down his name in blank upon a negotiable instrument, drawn in such form that he may be charged as the indorser in the usual mode, if demand is made and notice of dishonor given, be charged as a general surety without such demand and notice, upon parol evidence merely? The court held that one who indorses

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1. Hall vs Newcomb, 7 Hill 417

a promissory note in blank, prior to the indorsement of the payee, merely engages to pay upon the usual conditions of demand and notice, as a second indorser and parol evidence is not admissible to vary the legal undertaking of his contract.

Spies vs Gilmore[1] immediately following affirms Hall vs Newcomb (ante)

An important case again was that of Moore vs Gross[2], where there was an action on a promissory note made by one Mc Gervey to the order of James Moore and indorsed in blank by John A. Gross. The note was clearly an accomodation one. According to the strict rulings of Seabury vs Hungerford and Hall vs Newcomb (ante) the payee v Moore could not possibly have a right of action against the anomalous indorser. The presumption that an anomalous indorser who indorsed for the purpose of giving the maker credit with the payee was a surety, had been repudiated; and no evidence was admissible to charge the defendant in any other capacity than that of indorser. The court solved

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1. Spies vs Gilmore, 1 N.Y. 321

2. Moore vs Gross, 19 N.Y. 22

the problem by holding that the defendant could be held by the payee as indorser, thro' the payee going thro' the form of indorsing the note without recourse. "It is quite conceivable that a promissory note may, before it falls due, come to the hands of a person who already appears upon it as payee or indorser. In such a case he cannot maintain an action against any of the parties whose indorsements are subsequent to the first appearance of his name. The legal reason is that each of those persons on paying to him the note would have an immediate right to demand payment from him on his earlier indorsement. The law to avoid this circuity denies an action to a party thus situated. If the note had passed thro' his hands without indorsement, or if it had been indorsed without recourse by him, the reason would not exist, and there would be no objection, founded on his prior holding or indorsement, to the maintainance of an action by him against the parties liable on the note. x x x x Between these parties, I can see no reason why the indorsement might not thus have been made at the Trial; or why it

now, being a mere matter of form and the right to make it having been proved, be treated as made."

The most recent rulings of the Court of Appeals were in Phelps vs Vischer[1], where it was held that an anomalous indorser is as to the payee a second indorser, and not liable on the face of the paper, and can only be made so by proof showing that he indorsed with the intent of becoming so liable; and Coulter vs Richmond[2] which is the last adjudication of the question in the Court of Appeals. The matter has since come up in some of the lower courts[3], but the law as laid down in Coulter vs Richmond has always controlled. In this case the court said:- "In this state it has been repeatedly held, and is too strongly settled by authority to be disturbed, that a person making such an indorsement (anomalous) is presumed to have intended to become liable as second indorser, and that on the face of the paper

1. Phelphs vs Vischer, 50 N.Y. 69

2. Coulter vs Richmond, 59 N.Y. 478

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without explanation, he is to be regarded as second indorser, and of course not liable on the note to the payee, who is the first indorser. As the paper itself furnishes only prima facie evidence of this intention it is competent to rebut this presumption by parol proof that the indorsement was made to give credit to the maker with the payee". (citing Moore vs Cross ante)

A summary of the adjudication in New York shows that Herrick vs Carmen with its following cases laid down the proposition, that the anomalous is a second indorser; that Nelson vs Rubroise laid the erroneous proposition, that the anomalous indorser who signed with the intent to give the maker credit with the payee, was a surety; that this proposition holding the anomalous indorser a surety under certain circumstances, was questioned in Bleam vs Hall, attacked in Seabury vs Hungerford, and overthrown in Hall vs Newcomb; that Moore vs Cross laid down a new proposition, that the anomalous indorser signing to give the

maker credit with the payee might be proved to be a first indorser, against whom the payee could have recourse and that, with the approval of following decisions the law now so stands in New York, to wit that:—

1. The anomalous indorser is presumptively a second indorse
2. Parol evidence may be admitted to show that he signed with the intent of being held as first indorser.

The keynote of the New York holdings has been a fixed adherance to the theory that the one so signing on the back of a promissory note, signed as an indorser. The place of signing is that of an indorser and the presumption is irresistable that the signer intends to have the rights of presentment and demand on the maker with notice of dishonor to him. Thro' the admission of parol evidence to show the indorsement to be a first, instead of a second, under certain circumstances, justice is done to all parties to the instrument. With the payee thus having a right of action against the indorser, every possible contingency is provided for, and no violence is done to the original theory

that the anomalous indorser is an indorser. It is the most logical of all doctrines, and masmuch as it works no injustice, should I think be the preferred doctrine. It is growing in favor, and in addition to having been followed voluntarily by the courts of some jurisdictions, has been adopted in statutory form by the legislatures of California and Massachusets.

The following jurisdictions hold according to the New York doctrine.

California	Civil Code § 3117	Fisk vs Miller 63 Cal 369 Fessenden vs Summers 62 Cal 486
Iowa	Fear vs Hunlop	1 Green 335
Massachusets	By statute	Pub. stat 1874 ch. 404
New York	Ante	———
Oregon	Kamm vs Holland	2 Or. 59
Pennsylvania	Schafer vs. F. & M. Bk.	59 Pa. St. 144
Tennessee	Iser vs Cohen	57 Tenn 421
Texas	Heidenheimer vs Blumenthal	56 Tex 312

and possibly

Mississippi	Fenning vs Thompson	13 Sm. & M. 617

Here again as in the Massachusetts doctrine the secondary presumptions vary.

1. Oregon and Tennessee seem to follow squarely on the holding of New York as laid down (ante), the payee bringing his action not as payee but as second indorser having first indorsed without recourse.

2. Iowa, Mississippi and Pennsylvania admit evidence to charge the indorser as maker or guarantor.

3. In California and Texas it has been held that the anomalous indorser can only be charged as an indorser, being made liable by notice of dishonor, but whether the payee can have a right of action against him as in New York does not appear.

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A kind of offshoot from the New York doctrine holds the anomalous indorser as a first indorser, making him in all cases liable to the payee, but giving him the right to notice of dishonor.

This is followed in:—

Alabama — Mitton vs Mc Yampert — 3 Ala 648

Indiana — Snyder vs Oatman — 16 Ind 265

Houston vs Brunner — 39 Ind 376.

The Illinois Doctrine

The Illinois doctrine which is the third leading doctrine in the United States is that:

> The anomalous indorser is presumptively a guarantor but evidence is admissible to show him a joint maker.

This was first advanced in Camden vs McKoy[1] a case based on the erroneous decision in Nelson vs Mulvihill (ante) which was later over-ruled.

The facts in Camden vs McKoy were as follows:- The plaintiff offered in evidence the following note:" Three months after date I promise to pay J. B. and M. Camden & Co. or order, four hundred & eight dollars value rec'd. without defalcation. Signed John C. Gray. Indorsed in blank by Kenneth McKoy and Jacob Johnson. The plaintiff wrote the following contract over the blank indorsements:- "For value rec'd. we jointly

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1. Camden vs McCoy 3 Scam. 451.

and severally acknowledge ourselves as security of John B. Gray for the payment of the within note at maturity"

The court after a thorough discussion of the authorities said:-" The question is whether the plaintiff below was authorized to write such a contract over the name of the indorsers of the note and can sustain an action upon that contract. We think that the plaintiff had a perfect right to recover as on an original undertaking to pay by each of the indorsers as guarantors of the note."

A long line of cases in Illinois has followed this doctrine notwithstanding the repudiation by the New York courts of Nelson vs Blubvise (ante) upon which it was based. The more recent cases however allow paral evidence to show that the indorser signed as a simple indorser, tho' the original presumption remains the same. Vide Bank vs Nixon!

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1. Bank vs Nixon, 125 Ill 618

Other courts which follow the original Illinois doctrine are: —

Ohio	Robinson vs Abel	17 Ohio Rep 36
Connecticut	Perkins vs Cattin	11 Conn 213
	Gillespie vs Wheeler	46 Conn 410
Kansas	Fuller vs Scott	8 Kas 25
Kentucky	By statute	Arnold vs Bryant 8 Bush 668
Nevada	Vandorem vs Jader	1 Nev 380

Scattering Doctrines

There are a few jurisdictions whose holdings cannot be classified under any of the three great doctrines. These courts set up two theories:—

A. That there is no presumption as to liability on the part of the anomalous inderser, but the payee may elect in what capacity he will hold the inderser.

Virginia — Orrick vs Callston — 7 Gratt 189
West Virginia — Burton vs Hansford — 10 W.Va. 470

B That there is no legal presumption as to the liability arising from the signing by the anomalous inderser, but the liability will be that of second inderser or surety according to the intent of the party signing, and that intent must be shown by parol.

District of Columbia, Boteler vs Dexter 20 D.C. 26
New Jersey, Chadwick vs Vanness, 35 N.J. 516

Unadjudicated Territority

The comparatively few jurisdictions in which the liability of the anomalous indorser has not yet been fixed are:—

Arizona
Idaho
Montana
New Mexico
Nort Dakota
South Dakota
Wyoming.

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