any way, to the prejudice of the party whose deed it is (and such *is the case here), should be palmed on him by parol testimony; and so, *vice versâ*, that no alteration which may be, in any way, injurious to the grantee or obligee, should be set up by the other party; but that the terms in which the deed is originally executed should alone be binding, until alterations are introduced into it by the same solemnities which gave existence to the first. Such, in my opinion, is the salutary rule of the common law; and therefore, I think, that the judgment of the circuit court ought to be reversed.

Marshall, Ch. J., was rather inclined to think, that the plea was good, which stated that the bond was given for more than double the value of the vessel and cargo. If the bond was given for more than double that value, he thought it was void in law. He should not, however, have intimated his opinion on this point, if a dissenting opinion had not been given on another point in the cause, and his silence might have been construed into an assent to the entire opinion of the court as it had been delivered.

Judgment affirmed.

Taber *v.* Perrott & Lee. (*a*)

Competency of witness.

A. being sole owner of a bill of exchange, indorsed it in blank, and delivered it to B., to deliver to C. for collection, and when collected, to place the amount to the credit of A. and B., in account; C. collected the amount, but refused to place it to the credit of A. and B., who settled their account with C. and paid him the balance; A. afterwards sued C. for the amount received upon the bills: *held*, that B. was a competent witness for A.

Error to the Circuit Court for the district of Rhode Island, in an action of *assumpsit*, to recover from the defendants, Perrott & Lee, the amount of certain bills of exchange put into their hands to collect, by the plaintiff Taber, and his deceased partner, Gardner. At the trial below, several exceptions were taken, in which the following facts apeared:

The plaintiff produced a witness, John L. Boss, who being duly admitted and sworn, testified, that Messrs. Taber & Gardner, merchants, of Rhode
*40] Island, were *holders and owners of French government bills to a large amount, which were by them indorsed in blank, and given to their agent, the said John L. Boss, to take to France for collection. That he, Boss, had no interest in the bills, and received them as agent for the plaintiffs, and this was known to Perrott & Lee. That he carried them to France, in 1802, in a vessel of the plaintiffs, with a cargo consigned to the defendants, Perrott & Lee, of Bordeaux, in which cargo, Boss had an interest. That he delivered the bills to Perrott & Lee, to negotiate and receive the amount. That Boss went to Paris, in October 1802, and while there, received a letter, on the 26th October, from Perrott & Lee, informing him that Hotel, Thomas & Co., of Paris, were the house to whom the bills were sent, and introducing him to that house, and they wrote a letter to Hotel, Thomas & Co. directing them, when the bills were paid, to place the money to the credit of Perrott & Bineau, a banking-house at Bordeaux, which Per-

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(*a*) February 14th, 1815. Absent, Todd, Justice.

rott is one of the defendants. On the 12th of January 1803, Boss called on Hotel, Thomas & Co., and was informed that the bills had been paid by the French government, on the 7th of January preceding, and Boss saw the proceeds of the bills credited on the books of Hotel, Thomas & Co., to the said Perrott & Bineau, according to the directions of Perrott & Lee. That Boss, on the 14th January, advised the defendants that the bills were paid, and directed the proceeds to be applied to the credit of the account of Taber, Gardner & Boss with them. On the 29th of January, at Paris, Boss saw bills of exchange, drawn by Perrott & Bineau on Hotel, Thomas & Co., and accepted by them, at 30 or 40 days' sight, which were acknowledged by the defendant, Perrott, to have been drawn for the said proceeds. That the said bills so drawn and accepted were in the hands of one Charles Bodin, but whether they had been further negotiated or not, or paid or not, Boss could not tell. That Boss returned to Bordeaux, on the 26th of February, and left Bordeaux, about the 6th of April 1803. That until the day before he left Bordeaux, he had no intimation from the defendants that they would not credit the amount of the said bills to the account of Taber, Gardner & Boss. That the defendants refused to give such credit.

Perrott & Lee, who provided the return-cargo, *brought Taber, Gardner & Boss largely in their debt in account-current; and Boss, [*41 on the 6th of April 1803, signed the account, stating that when the moneys were received on the bills from Hotel, Thomas & Co., the amount should be passed to the credit of Taber, Gardner & Boss. Perrott & Lee afterwards received the whole balance of the said account from Taber, Gardner & Boss, not having credited the proceeds of the said bills; and the present suit was brought by Taber, surviving partner of Taber & Gardner, the original holders of the bills, to recover their amount.

The principal exception was, to the charge of the judge, who directed the jury to find for the defendants, on the ground that the witness, Boss, had not been made a party plaintiff in the suit.

The case was argued by *P. B. Key*, for the plaintiff in error, and by *Hunter*, for the defendants.

February 15th, 1815. (Absent, Todd, J.) Marshall, Ch. J., delivered the opinion of the court as follows:—This suit was brought by the plaintiffs in error, in the circuit court of the United States for the district of Rhode Island, to recover from the defendants the amount of certain bills drawn by General Le Clerc on the government of France. The declaration contains several counts, some special, stating agreements between the parties for the payment of the bills; others general, among which is a count for money had and received by the defendants, to the use of the plaintiffs.

It appeared at the trial, that the plaintiffs and John L. Boss, were concerned in certain commercial speculations, in the prosecution of which John L. Boss sailed, in 1802 and 1803, to Bordeaux, in the Polly, with cargoes in which they were jointly interested. On the first voyage, Boss carried with him the bills of exchange for the amount of which this suit was brought, indorsed in blank by the plaintiff, Gardner, which he delivered to *the [*42 defendants for collection. The amount, when collected, was to be placed to the credit of the return-cargo of the Polly, in which the plaintiffs and John L. Boss were jointly concerned. The account was settled, with-

out giving credit for the amount of these bills; and Taber, Gardner & Boss have been compelled to pay the balance acknowledged to be due. This action was brought to charge the defendants with the bills, alleging that their amount has been received.

At the trial, the plaintiffs offered Boss as a witness, for the purpose of proving the liability of the defendants for the amount of the bills. He swore that he had no interest in the cause nor in the bills; but his testimony was objected to by the defendants, on the ground of his being interested; and the court was moved to instruct the jury, that the action could not be sustained, because Boss was not a party plaintiff in the declaration. This direction was given by the court, and excepted to by the counsel for the plaintiffs. A verdict and judgment were rendered for the defendants, which are brought into this court by writ of error.

The defendants in error contend, that the bills of exchange were part of the cargo of the Polly, and consequently, the joint property of the owners of that cargo. But of this there is no other evidence than that Boss was the bearer of those bills, indorsed in blank, and that their proceeds, if received, were to be placed to the account of the return-cargo. This might very well be, and yet Taber & Gardner remain the sole owners of the bills. Their amount, if received, might be credited to all the partners, in their account with Perrott & Lee, and then be credited to Taber & Gardner in settling the accounts of the partnership. Boss then would have no interest in the bills, unless they should be collected and carried to the credit of the return-cargo. That account having been settled, without including this item, it is not necessarily implied, from the facts in the case, that Boss was interested; and he swears that he was not. This court is of opinion, that the circuit court erred in directing the testimony of Boss to be disregarded; and also in directing the jury to find for the defendants, because he was not made a party plaintiff in the suit.

*43] *Several other opinions were given by the judge, to which exceptions were taken; but it is unnecessary to review them as they depended on the opinion that Boss was interested in the bills for which the action was brought. The judgment is reversed, and the cause sent back for a new trial.

Judgment reversed.