Statement of the case.

it formed the rule to determine the sum to be recovered in this suit. The verdict and judgment were competent evidence on behalf of the surety for this purpose; indeed, the highest evidence of the fact. Other questions would have arisen if this judgment had been offered against the surety. The counsel for the government, if desirous of recovering a greater amount, should have postponed the trial of this case till the error had been corrected which was committed in the case against the principal. Then he would have been in a situation to avoid the effect of the erroneous judgment. This is the only question presented on the record.

JUDGMENT AFFIRMED.

---

## LEFTWITCH v. LECANU.

1. When a paper which is to constitute a part of a bill of exceptions is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions, otherwise it will be disregarded.
2. That a copy of a paper is attached to a pleading in the case, which purports to be the same as the paper mentioned in the bill of exceptions, does not make it a part of that bill, nor can this court presume that it is the same paper read in evidence and excepted to.

A STATUTE of Louisiana* enacts "that notaries shall keep a book, in which they shall transcribe all the protests by them made, with mention made of the notices which they shall have given to drawers and indorsers, &c.; which declaration, duly recorded *under the signature* of the notary public *and two witnesses*, shall be received as a legal proof of the notices."

With this statute in force, Lecanu sued Leftwitch and others in the Circuit Court of the United States for the Eastern District of Louisiana, as indorsers of a promissory note. The suit was in the form usual in Louisiana, that is to say, by petition, and the plea was a general denial.

* Stat. of 1855, p. 48, § 7.

On the trial before a jury, the counsel for the plaintiff below offered in evidence an instrument in writing on the back of the protest, and purporting to be a certificate of the notary, that he had notified the indorsers of the note, which is contained in the record.

The certificate, although it stated in the body of it that it was signed by two persons, Janin and Lenes, the "two witnesses," *had not their signatures to it.*

The counsel for the defendants objected to reading the instrument, on the ground that the certificate was not in conformity with the laws of Louisiana, and, consequently, that it did not prove the notice. The court overruled the objection, and the plaintiff excepted.

The bill of exceptions stated that "plaintiff offered in evidence an instrument in writing on the back of the protest, purporting to be a certificate of the notary, that he had notified the indorsee to this note, *which is hereunto annexed for reference as a part of this bill*, to which certificate counsel for defendant objected," &c. No such paper was, however, found attached to the bill of exceptions, nor in any manner referred to, or marked, or identified as being a part of it, or as the paper which was offered in evidence.

*Mr. Gillet, for the plaintiff in error. Mr. Carlisle, contra.*

Mr. Justice MILLER delivered the opinion of the court.

The only allegation of error in this record relates to a certificate of a notary public, that he had notified the indorsers of a promissory note of the dishonor of said note.

The bill of exceptions states that "plaintiff offered in evidence an instrument in writing on the back of the protest, purporting to be a certificate of the notary, that he had notified the indorser of the note, *which is hereunto annexed for reference as a part of this bill*, to which certificate counsel for defendant objected," &c. No such paper is found annexed to the bill of exceptions, nor in any manner referred to, or marked, or identified as being a part of the bill of exceptions, or as the paper which was offered in evidence.

Statement of the case.

The suit being in the Circuit Court for the District of Louisiana was commenced by petition, and according to the practice in such cases, there is annexed to the petition a copy of the note sued on, and of the protest and certificate of notice to the indorsers. But this is merely a copy attached to, and a part of the pleading, and is certainly not the *paper* which was offered in evidence. It may or may not be a perfect copy of that paper; but whether it is so or not, it is certain that it does not become a part of the bill of exceptions by being attached to the pleading.

If a paper which is to constitute a part of a bill of exceptions, is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions.

There is nothing of the kind here; and as we must presume the ruling of the court to be right, in the absence of anything showing it to be wrong, the judgment must be

AFFIRMED.

---

## MAYOR *v.* SHEFFIELD.

1. Where a corporation is sued for an injury growing out of negligence of the corporate authorities, in their care of the streets of the corporation, they cannot defend themselves on the ground that the formalities of the statute were not pursued in establishing the street originally.
2. If the authorities of a city or town have treated a place as a public street, taking charge of it, and regulating it as they do other streets, they cannot, when sued for such injury, defend themselves by alleging want of authority in establishing the street.

ERROR to the Circuit Court for the Southern District of New York.

The action below was brought by W. P. Sheffield, against the Mayor, &c., of New York, to recover damages for injuries received by him from stumbling over a stump at the