are also inconsistent with the other defenses. If the matters were included in the settlement, they cannot be set up against it, except for fraud, etc. If these were errors merely, they should be specifically stated. If other matters were not included, the answer should also state and set out specifically said matters, in order that definite issues may be tried. It is impossible, from the reading of the answer, to understand whether the alleged counter-claims, Nos. 7 and 8, were matters that entered into the settlement or not. If they did, then the settlement must be assailed, as in No. 6; and assailed specifically, which is not done in No. 6.

The demurrer to parts of the answer is sustained.

WAKEMAN, Jr., v. HUNGERFORD and others.

(Circuit Court, S. D. New York. 1883.)

VERDICT CONCLUSIVE—SUBMISSION OF QUESTION OF FACT.

Where a clear question of fact is submitted to a jury by the court their finding ought not to be disturbed.

This is a motion for a new trial. The action was brought to recover damages for the infringement of a patent for coffee-scouring machines. It was tried at the April circuit, in New York, and the plaintiff had a verdict. The defendants contended that they did not infringe, because one of the elements of plaintiff's combination—the ribs—was omitted in their machine. The plaintiff's experts testified that the machines operated precisely alike, and that the coffee and other substances accumulating in the space left by the defendants between the spikes in the outer cylinder operated to form a rib, which was a mechanical equivalent for the plaintiff's device. The defendants' experts denied this. The question was left to the jury.

Francis Forbes, for the motion.

Abram Wakeman, opposed.

COXE, J. I have examined with care the questions presented by this motion, and I am convinced that no error was committed on the trial of sufficient gravity to justify the court in setting aside the verdict. The propositions advanced by the plaintiff on the trial were sustained by testimony; so were the propositions of the defendants. There was, then, a clear question of fact, which it was the duty of the court to submit to the jury, and their finding, in such circumstances, ought not to be disturbed. The motion is denied.

PALMER *v.* WARDENS AND VESTRYMEN OF ST. STEPHEN'S CHURCH.

(*Circuit Court, N. D. Illinois.* 1883.)

PROMISSORY NOTE — EXECUTION BY VESTRYMEN OF CHURCH — RELIGIOUS CORPORATION — LIABILITY.

Where a negotiable promissory note upon its face does not purport that the parties who signed the note as wardens and vestrymen of a church were directed to execute such note by any vote or order or direction of the church or congregation, as required by section 43 of chapter 32 of the Revised Statutes of Illinois, and the evidence fails to establish any such direction or order, or any ratification by the church or congregation, a *bona fide* holder thereof cannot recover in an action on the note against the corporation.

At Law.

C. L. Easton, for plaintiff.

S. Corning Judd, for defendant.

BLODGETT, J. This is a suit on a note, dated June 14 1870, for $1,600 and interest, payable in three years from date to Chauncy T. Bowen, and duly indorsed to the plaintiff. The declaration charges that the defendant, a corporation organized and existing under the laws of the state of Illinois, made and delivered the note in question to Bowen, and the same was indorsed to plaintiff. The defendant pleads the general issue, and a plea denying the execution of the note, verified by affidavit. The only proof on the part of the plaintiff is by the production of the note, and the testimony of a witness that the persons whose names are signed to the note admitted to him that they had signed the note in question as wardens and vestrymen of St. Stephen's church, and the further testimony of the plaintiff that she is the holder of this note, for value, by purchase from Bowen.

Sections 35 to 49 of chapter 32 of the Revised Statutes of Illinois provide the mode of organizing, and the powers and duties, of religious corporations in this state. Section 35 provides—

"That any church, congregation, or society formed for the purpose of religious worship may become incorporated in the manner following, to-wit: By electing or appointing according to its usages or customs, at any meeting held for that purpose, two or more of its members as trustees, wardens, and vestrymen, or such other officers whose powers and duties are similar to those of trustees, as shall be agreeable to the usages and customs, rules or regulations, of such congregation, church, or society, and may adopt a corporate name; and upon the filing of the affidavit, as hereinafter provided, it shall be and remain a body politic and corporate by the name so adopted."