to the effect that it was the duty of the defendant to give the deceased adequate warning of the approach of the train, if, under the circumstances of the case, there was risk of injury to him in discharging the duties to which he had been assigned; that it was the duty of the deceased not to abandon his post, but to remain there for a reasonable time, until he could complain of its dangers to his employer, and require them to be obviated; and that it was a question for the jury whether, by reason of his remaining, he assumed the risks of the situation.

We think the instructions given were exceedingly favorable to the plaintiff, and that those refused were quite unnecessary, and their refusal was not prejudicial to the plaintiff. Upon the evidence there was no dispute that the defendant had given the deceased adequate warning of the approach of the train, the train having approached in the customary manner, and with the usual signals, with all of which the deceased was familiar. The trial judge might properly have instructed the jury that it was a question for them to determine whether the deceased, by remaining in the employment of the defendant with knowledge of the situation and the risks, had not consented to assume the hazards; but he did not give them that instruction, and eliminated any such issue from the case. The plaintiff therefore had no reason to complain that he refused to charge the propositions of law specifically requested bearing upon that issue. His instructions in regard to the negligence of the defendant presented the real issue as to that branch of the case. Those in respect to the negligence of the deceased narrowed the issue to the single question whether the deceased failed to exercise the care of a prudent man in attempting to do his work as he did, when, by reason of the approach of the train, and the facilities of the platform, the place selected was unsafe.

We have not attempted to discuss in detail all the questions presented by the assignments of error. We have considered those which have any color of merit, and are satisfied that none of the exceptions by the plaintiff were well taken.

The judgment is affirmed.

CAREY v. WILLIAMS.

(Circuit Court of Appeals, Second Circuit. April 8, 1897.)

1. EVIDENCE—WRITTEN ADMISSIONS—AFFIDAVIT—PROOF BY COPY.
   Pursuant to a stipulation that either party might read in evidence any document "proved or admitted" in a prior action, plaintiff, to prove an alleged admission contained in an affidavit by defendant, read a copy of the affidavit, taken from the exemplified copy printed in the record of the case. Nothing was read from such record to show that defendant executed the affidavit, or that it had been proved or admitted in the case. *Held* no evidence of the alleged admission to go to the jury.

2. CORPORATIONS—PROOF OF MEMBERSHIP—ENTRIES IN CORPORATE BOOKS.
   Entries in the books of a corporation showing the transfer of stock to a certain person, and payments by him thereon, are not prima facie evidence that he is a stockholder, in a suit to charge him as a stockholder of the corporation.

3. SAME—BOOKS AS EVIDENCE—STATUTE.
A statute providing that one "in whose name shares of stock stand on the books of the company shall be deemed the owner thereof, as regards the company," only estops the company from disputing that such person is a stockholder, and does not render the books admissible against him to prove that he is one.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Burton N. Harrison and Arthur H. Masten, for plaintiff in error.
George Zabriskie, for defendant in error.

Before PECKHAM, Circuit Justice, and WALLACE and SHIPMAN, Circuit Judges.

WALLACE, Circuit Judge. This is a writ of error by the plaintiff in the court below to review a judgment in favor of the defendant entered on the verdict of a jury rendered by the direction of the court.

The action was brought to recover from the defendant, as the alleged holder of 250 shares of the capital stock of the National Express & Transportation Company, a corporation of the state of Virginia, two assessments made upon stockholders,—the first by the chancery court of the city of Richmond, December 14, 1880, for 30 per cent. of the par value of the shares, and the second by the circuit court of Henrico county, Va., March 26, 1886, for 50 per cent.; being in all the full amount alleged to remain unpaid of the original subscription price.

The trial judge ruled that the evidence upon the issue whether the defendant had ever become a stockholder of the company was insufficient to authorize the submission of that issue to the jury, and the only assignments of error which have been argued are those which challenge the correctness of this ruling.

The plaintiff sought to prove that the defendant was a stockholder—First, by an admission alleged to have been made by the defendant in an affidavit in a suit brought by Alexander J. Mayer against the National Express & Transportation Company in the supreme court of the state of New York; and, secondly, by entries in the books of the National Express & Transportation Company showing the transfer of 250 shares of stock from the company to the defendant November 1, 1865, and his payment of two calls thereon for $1,250 each,—the first, November 1, 1865, and the second March 9, 1866.

To prove the admission by the defendant, the plaintiff read, pursuant to a stipulation between the parties, a copy of an affidavit purporting to have been subscribed and sworn to by the defendant October 1, 1866. The stipulation provided that either party might read in evidence from the printed record in a certain equity cause, subject to any legal objection except as to the form of a question, any deposition, record, book, document, or extract therefrom, "proved or admitted" in such cause. The plaintiff also produced and read a copy of the same affidavit from an exemplified copy of a record in the suit of Mayer v. National Express &

Transportation Company. Thereafter he called upon the defendant to produce the original affidavit, and gave evidence sufficient to excuse its nonproduction by himself. He offered no other evidence tending to show that the defendant had ever subscribed or verified an affidavit in substance similar to the copy, or any affidavit whatever. At the close of the evidence the plaintiff moved for leave to withdraw a juror, on the ground of surprise "in not being able to find the original of the defendant's affidavit." The court denied this motion, and, upon the defendant's motion to direct a verdict in his favor, ruled, among other things, that there was no evidence sufficient to go to the jury that the defendant had ever made the affidavit. We think this ruling was correct.

Obviously, all the evidence which was thus offered by the plaintiff was introduced for the purpose of making secondary proof of the contents of the original affidavit. It was incumbent upon him, before he could complete his secondary evidence and avail himself of the copy of the affidavit as proof of the contents of the original, to show that the original had been made by the defendant. If he had produced the original affidavit itself, instead of a copy from the exemplification, and from the printed record in the equity cause, the document would not have proved itself; and it would still have devolved upon him, in order to establish an admission in writing by the defendant, to prove the defendant's signature, or to prove in some other way that the defendant had made the affidavit. The copy read from the exemplification, and from the printed record in the equity cause, could have no greater force as evidence than the original affidavit would have had. The plaintiff apparently was under no misapprehension at the trial that he had failed to prove the alleged admission of the defendant, and that there was no evidence tending to show the genuineness of the original affidavit. We are at a loss to understand upon what theory it can be plausibly insisted in his behalf now that there was any. The circumstance that the copies were read in evidence is of no importance. It was a matter going merely to the order of proof whether they were read first, and the execution of the original proved subsequently, or vice versa. By consenting to the order of proof adopted, the defendant did not waive any right to object in due season to the insufficiency of the proof. The purpose of the stipulation pursuant to which the copy was read from the printed record in the equity cause was to enable the parties to dispense with the production of the depositions, documents, etc., which had been proved in the cause, and to read from the printed record in lieu of reading from the originals, but it was not intended to enable them to avail themselves of incompetent or inadequate evidence as sufficient proof of any fact in dispute. If anything had been read from the printed record tending to show that the defendant was the author of the affidavit, a different question would arise, but nothing of that sort was read. It did not appear that the affidavit had been "proved or admitted" in the equity cause, and, so far as appears, it may have been used merely for the purpose of some interlocutory proceeding in the cause.