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.

Inasmuch as there was no evidence of the alleged admission of the defendant, the only evidence in the case tending to prove that he was a stockholder was that consisting of the entries in the books of the corporation. We are thus brought to the important question in the case, which is whether the entries contained in the corporate books of the company afforded prima facie evidence that the defendant was a stockholder. The relation of corporation and stockholder is a contractual one, and can only be created with the consent, express or implied, of both parties. The assent is evidenced when the name of the stockholder appears as such upon the books of the company; as to the corporation, by its act in placing his name there; and, as to the stockholder, by his knowledge and acquiescence in the act. It is not enough that he appears to be a stockholder upon the books, and when this occurs without his sanction he incurs no liability as such.

It is an elementary rule of the law of evidence that a party cannot make evidence in his own favor, of a contract, by his own statements or declarations of its existence or its terms. They are evidence against him, but not for him. Accordingly it has uniformly been held that entries in the books of a co-partnership, in the nature of declarations showing who are the persons that compose the firm, are not evidence in behalf of the partners, as against a third person, for the purpose of showing that the latter was a member. There is no reason why a different rule should be applied to the entries in the books or records of a corporation which tend to charge a party with the responsibilities of a stockholder. Corporations are not exempt from the ordinary rules of evidence, and there is no stronger presumption of honesty, or regularity or accuracy as to their books or records than there is in the case of natural persons.

Prior to the case of Turnbull v. Payson, 95 U. S. 418, in which Mr. Justice Clifford made an observation to the contrary, there was no respectable authority for the proposition that, without the aid of some statute changing the ordinary rule of evidence, the appearance of the name of a person on the books of a corporation as a stockholder, without other evidence, created a presumption, as against him, of his ownership of the stock. The only reported decision in which it had been so declared was the nisi prius case of Hoagland v. Bell, 36 Barb. 57. The opinion consisted merely of the statement that the appearance of the defendant's name on the stock book as a shareholder was prima facie evidence that he was so, and the burden was then thrown on him to disprove that he was a stockholder. No reasons were assigned, no authority was cited, and there was no discussion of the question upon principle. It may be that the statute under which the corporation was organized dispensed with the ordinary proof by a provision, which has occasionally been adopted, giving to such an entry upon the books of the corporation the force of evidence. No subsequent decisions by the courts of New York have adopted that decision, and, as will be seen, it is irreconcilable with their later decisions.

Turnbull v. Payson was an action to recover an assessment upon a stockholder, and the plaintiff offered to prove that the defendant was