Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Macdonald v. Whitfield from the Court of Queen's Bench for Lower Canada, delivered 11th July 1883.

Present:

LORD WATSON.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR ARTHUR HOBHOUSE.

Edward Macdonald and George Whitfield, who are respectively Appellant and Respondent in this appeal, were, in the year 1875, directors of a trading corporation known as the St. John's Stone China Ware Company, which carried on business at St. John's, in the district of Iberville and province of Quebec. At that time the concern was not in a very prosperous condition, and in the month of July 1875, the balance due by the Company in its account current with the Merchants' Bank of Canada was upwards of $17,000. The Appellant was President and Chairman of the Board of Directors; and he had endorsed the Company's promissory notes, for its accommodation, to the Merchants' Bank, to the amount of $65,000. It appears that he had also given his personal guarantee to the Bank, for the overdrafts of the Company upon its account current, to the extent of $10,000.

In July 1875, the Company, being in want of funds, applied to the Bank, through the Appelland, for further credit; and, on the 24th of that month, the agent of the Bank at St. John's sent a written answer to the application, addressed to

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the late Mr. Lavicount, the Secretary of the Company, in these terms :—

" Dear Sir.—Respecting your President's application to the bank for further extension of your credit, I have the pleasure to inform you that you have been allowed an extension of four or five thousand dollars in case of need. The Bank, however, requires that the present advances, as they mature, be secured by the personal guarantee of your Directors, should renewals be required, which could be done by their endorsation of the notes. Your account current is now overdrawn seventeen thousand six hundred and fourteen dollars and fifty-four cents; and by giving me the Company's note, endorsed as required, for 8,500 dollars, you will reduce your overdrawn account, leaving a balance of 700 dollars of above loan.

" I enclose a letter of guarantee along with a note, for signature by your Directors, as required by the Bank, to take the place of Mr. Edward Macdonald's personal security for the like amount."

Along with this communication there were sent to the Secretary of the Company the letter of guarantee, and also the note therein mentioned.

The letter in question, which was dated the 24th July 1875, and addressed to the agent of the Bank, was expressed as follows :—

" Dear Sir,—In consideration of the Merchants' Bank of Canada allowing the St. John's Stone China Ware Company to overdraw their account to the extent of ten thousand dollars, we herewith depesit with you, as collateral security for the due payment of such overdraft, the demand note of the Company, endorsed by the following Directors individually. . . . . And we hold ourselves liable without prejudice to the ordinary legal remedies.—Subscribe ourselves, your obedient servants."

The note which accompanied the foregoing form of letter for signature by the Directors was a promissory note by the Company for $10,000, payable on demand to the order of the Appellant, at the office of the Merchants' Bank of Canada, in St. John's.

Having regard to the pecuniary relations then subsisting between the Company and the Bank, the arrangements thus proposed by the latter are sufficiently intelligible. The Bank had made large advances by discounting, or in other words purchasing, the paper of the Company endorsed

for its accommodation by the Appellant, and had also advanced upwards of $17,000 on current account, which was only secured, to the extent of $10,000, by the personal guarantee of the Appellant. In these circumstances the Bank was willing to make a further advance of from $4,000 to $5,000, provided the Company complied with these three conditions:—In the first place, advances upon current notes which had been discounted by the Bank were, in the event of renewals being required at maturity, to be secured by the personal guarantee of the Directors of the Company, such guarantee to be given by their endorsation of the renewal notes. In the second place, the note of the Company for $8,500 duly endorsed by the Directors as aforesaid, was to be delivered to the Bank in payment and extinction *pro tanto* of the advances on current account, so as to reduce the debit balance of the Company to nine thousand odd dollars. And, in the third place, the demand note for $10,000, when duly signed and endorsed by the Directors, was to be deposited with the Bank as a collateral security for overdrafts on account current, and was to be substituted for the Appellant's personal security for the like amount.

No mention is made, in the Bank's letter, of the manner in which the additional advance, or extended credit, of four to five thousand dollars was to be allowed to the Company. It is obvious, however, that the Bank was not prepared and did not agree to give the extended credit without security; and also that the result of carrying out the conditions upon which it was to be given would be to reduce the balance due on current account about $700 only below the amount of the demand note covering that account. It, therefore, seems matter of reasonable inference that the additional advance was to be made by the Bank discounting the promissory note or

notes of the Company, duly endorsed by its Directors.

On the 5th August 1875, the Directors of the St. John's Store China Ware Company met for the purpose of considering the answer returned by the Bank to the application, made through the Appellant, for an extension of the Company's credit. At that meeting all the Directors of the Company, five in number, were present, viz., the Appellant, the Respondent, and Messrs. Marler, Coote, and Macpherson. The minute of the meeting of the 5th August 1875, as entered in the minute book of the Company, bears that "the letter of the agent of the Merchants' Bank "of the 24th ultimo was submitted, and the "Directors agreed to give the personal endorsation "asked for by the Bank, and the Secretary was "instructed to have the said notes drawn out, "signed as required, and handed over to the "Merchants' Bank."

In pursuance of that resolution the Secretary of the Company drew out two notes, for $8,500 and $4,500 respectively, which he signed as promissor on behalf of the Company, the name of the Appellant being inserted as payee, just as it had been in the demand note for $10,000 sent by the Bank for signature and endorsation. Mr. Marler, one of the five Directors of the Company, was also the manager of the Merchant's Bank of Canada, in St. John's, and was precluded from signing any of these promissory notes by the regulations of the Bank. All the other Directors endorsed the demand note for $10,000 (after it had been signed by the Secretary for the Company) in the following order, (1) the Appellant, (2) the Respondent, (3) Mr. Coote, (4) Mr. Macpherson. It does not clearly appear whether Mr. Macpherson did or did not become a party to the two notes for $8,500 and $4,500; but these were certainly endorsed by the other three

Directors, in the same order in which their signatures were put on the $10,000 note. Neither does it appear at what dates these two bills for $8,500 and $4,500 were made payable; but it appears to their Lordships to be established that they were new discount bills, and that they were renewed on more than one subsequent occasion, the last renewal of the first of these notes having been made on the 21st March, and the last renewal of the second upon the 26th March, in the year 1877. These renewal bills were not signed by Macpherson, but they were endorsed by the Appellant, by Mrs. Whitfield, per procuration of her husband the Respondent, and by Mr. Coote, in the same order as before.

The letter of guarantee sent by the Bank was subscribed by the Appellant as well as by Messrs. Coote and Macpherson, and their names were inserted in the blank left for that purpose; but it was not signed by the Respondent, nor was his name entered therein. When thus completed, the letter was handed to the Bank along with the $10,000 demand note.

On the 27th December 1877, the Merchants' Bank of Canada instituted a suit against the Appellant, the Respondent, and Mr. Coote, in the Court of Queen's Bench for Lower Canada, for recovery of the sums then due to the Bank as holder for value of the said demand note for $10,000, dated the 24th July 1875, and of the two renewal notes for $8,500 and $4,500, dated the 21st and 26th March 1877. The demand of the Bank was not resisted either by the Appellant or by Mr. Coote, but the Respondent appeared and defended the action. After a variety of proceedings, which it is unnecessary for the purposes of this case to notice in detail, Mr. Justice Chagnon, on the 1st September 1879, ordained the three Defendants, jointly and severally, to pay to the Bank the contents of the

two notes of the 21st and 26th March 1877; and also ordained the Appellant and Mr. Coote, jointly and severally, to make payment to the Bank of the contents of the demand note for $10,000.

On the 7th January 1878, the Respondent, availing himself of the provision of Article 1953 of the Civil Code, brought an action *en garantie*, before the same Court, against the Appellant, concluding to have the Appellant condemned, to acquit and relieve him of any sum of principal and interest, for which decree might be given against him in the suit at the instance of the Bank. In the declaration filed by him in that action, the Respondent treated the three promissory notes in question as if they had been ordinary commercial paper. His allegations, in regard to each of these notes, were in substantially the same terms, and after reciting the making of the note by the Company, payable to the Appellant, thus proceed:—

"Lequel billet la dite St. John's Stone China Ware Company remit au dit Défendeur Edward Macdonald, qui là et alors signa et endossa le dit billet et le remit au dit Demandeur en garantie George Whitfield qui là et alors signa et endossa le dit billet et le remit au dit Isaac Coote, qui là et alors signa et endossa le dit billet et le remit à la dite Merchants' Bank of Canada qui en est encore porteur et propriétaire."

The plea founded by the Respondent on that allegation was to the effect that the Defendant,

"Étant, ainsi qu'il appert par les allégués ci-dessus, endosseur précédent et antérieur au dit Demandeur en garantie, sur tous et chacun des trois billets plus haut mentionés, est obligé et tenu en loi de rembourser, garantir et indemniser le dit Demandeur en garantie de tous troubles et de toute condamnation qui pourrait intervenir contre lui, sur et à raison des dit billets, et dans et à raison de la dite action instituée par la dite Merchants' Bank of Canada."

In this action of warranty judgment was given by Mr. Justice Chagnon on the 1st September 1879. The learned Judge held that the evidence given by the Respondent himself, with

regard to the circumstances in which these notes were made and endorsed, showed that the property of the notes was not passed by the endorsations, and that there was, in point of fact, no delivery by one endorser to another. And, inasmuch as that testimony, in his opinion, contradicted the allegations upon which the Respondent's claim of indemnity was based, he dismissed the action as laid, reserving to the Respondent any recourse which might be competent to him against the Appellant.

An appeal was taken by the Merchants' Bank of Canada against the judgment of Mr. Justice Chagnon of the 1st September 1879, in so far as it absolved the Respondent from liability to the Bank in respect of the demand note for $10,000. The Respondent also appealed against the judgment of the same date, in his action *en garantie*. On the 18th June 1881 the two actions were consolidated by an order of the Queen's Bench.

Thereafter, on the 23rd September 1881, the Court of Queen's Bench gave judgment in the conjoined causes. The Court, in the suit at the instance of the Bank, reformed the judgment of Mr. Justice Chagnon, and condemned the Respondent in payment to the Bank of the $10,000 demand note, with interest and costs. In the action at the Respondent's instance, the Court reversed the judgment appealed from, and condemned the Appellant to guarantee, acquit, and indemnify the Respondent from all the condemnation in principal, interest, and costs pronounced against him by the judgment in favour of the Bank, and further condemned the Appellant to pay to the Respondent the whole costs incurred by him in the suit at the Bank's instance. The present appeal has been brought against the judgment, in the action *en garantie*,

of the 22nd September 1881, by Edward Macdonald, the Defendant in that action.

The learned Judges of the Court of Queen's Bench were of opinion that the two promissory notes for $8,500 and $4,500, dated the 21st and 26th March 1877, were mere renewals of notes which the Company had, prior to the 24th July 1875, discounted with the Bank, upon the endorsation of the Appellant; and a finding to that effect is set forth as one of the considerations on which the formal judgment of the Court proceeds. Dorion, C. J., who delivered the judgment of the Court, said, "the two notes of "the 21st and 26th of March 1877 are renewals "of other notes which, prior to the 24th July "1875, were endorsed by Macdonald alone."

The learned Judges were also of opinion that the note for $8,500 was the only one which the Bank, by its letter of the 24th July 1875, required from the Company, in order to cover its overdrafts upon current account; and, further, that it was the only note which the Directors of the Company, by their resolution, embodied in the minute of 5th August 1875, agreed to give, endorsed by them, to the Bank. Upon this point Dorion, C. J., said:—"It is also to be "remarked that the Bank merely asked the "endorsement of the Directors on a note for "$8,500, to cover the overdrawn account of the "Company, and that by the resolution it was "only agreed to give the endorsation asked for, "while the note endorsed by the Directors to "cover the overdrawn account is for $10,000; "the resolution, therefore, does not apply to the "note in question, and cannot be invoked as "containing an agreement on the part of "Whitfield (the Respondent) to endorse this "note of $10,000 as surety for the Company."

The views thus expressed by the learned Chief

Justice are, in the opinion of their Lordships, founded on a misconception of the true import of the written communication made by the Bank to the Company on the 24th May, and of the action taken upon that communication by the Directors of the Company on the 5th August 1875. It must be borne in mind that the Company required a further credit, or in other words a further advance from the Bank, and as the Bank had not asked for the endorsements of the Directors, except as a consideration for making the required advance, it is improbable that the Directors agreed to give or gave their endorsations, without making provision for the Company getting, in exchange for these endorsations, the advance of $4,000 to $5,000 which the Bank was willing to allow. If the note for $4,500 which the Directors then endorsed was a new note for discount, then the Company got the advance, in respect of which they were asked, and presumably agreed, to give their endorsations upon the notes required by the Bank. As regards the note for $8,500, the suggestion that the Bank merely required the endorsements of Directors upon it in order "to cover the over-"drawn account of the Company" is inconsistent with the terms of Bank's letter, which states expressly that the $8,500 note was required, not "to cover," but "to reduce," the account. A renewal note could not possibly reduce the overdrafts. The plain import of the letter is that the Bank required not a renewal but a new note for $8,500, which was to be discounted, and the proceeds, instead of being paid to the Company, applied in extinction *pro tanto* of these overdrafts, in order to bring the balance due below $10,000.

The evidence of Mr. Marler and of the Appellant is to the effect that these two documents were new discount notes and not renewals, and

their testimony is corroborated by that of the Respondent himself. He was adduced as a witness for the Appellant, and was examined in regard to the two notes for $8,500 and $4,500. bearing date 21st and 26th March 1877. These were undoubtedly renewals of the two notes of that amount given to the Bank in August 1875, but the Respondent did not assert that they were, as the learned Judges have assumed, "renewals "of other notes which, prior to the 24th of July "1875, were endorsed by Macdonald alone." His statement is :—"The note for eight thousand "five hundred dollars, and the one for four "thousand five hundred, are renewals for "former notes of like amount between the same "parties."

These facts connected with the making and issue of the three promissory notes for $10,000, $8,500, and $4,500 in August 1875, are only of importance in so far as they tend to explain the true legal relation in which the Appellant and the Respondent, as parties to these notes, stand towards each other. The Respondent maintains that, although neither of them gave or received value for the notes, but put their respective endorsations upon them for the accommodation of he St. John's Stone China Ware Company, the Appellant, having first written his name upon the back of the notes, has thereby become liable to him, in the same manner, and to the same effect, as if he had been a prior endorser upon a proper commercial bill.

Had the Appellant been, in point of fact, the holder of the notes, and had the Respondent, in these circumstances, given his endorsements to the Merchants' Bank of Canada, which was about to discount them, the Appellant would have been bound to indemnify the Respondent against any demand made upon him by the Bank, or any subsequent holder, to the same extent as if the

Respondent had been a proper endorser. That was held to be the legal effect of such an endorsement in "Penny *v.* Innes" (I. C. M. and R. 439).

In the present case the Appellant, although his endorsement was first written, was a stranger to the notes in the same sense as the Respondent, and it is not matter of dispute that the endorsements of both were given for one and the same purpose, viz., in order to induce the Bank to discount two of the notes, and pay the proceeds to the promissor, the St. John's Stone China Ware Company, and also to give the Company credit in account current to the amount of the third note. It was argued, however, for the Respondent that, in the absence of some special contract or agreement between them, *dehors* the notes themselves, strangers giving their endorsements successively must be held to have undertaken the same liabilities *inter se* which are incumbent on successive holders and endorsers of a note for value. The Appellant and Respondent must therefore, it was said, be assumed to stand towards each other in the relation of prior and subsequent endorsers for value, inasmuch as it had not been proved, *habili modo*, that they had specially agreed that their endorsements were to have the effect of making them co-sureties for the promissor. On the other hand, it was contended for the Appellant that all the Directors who endorsed the notes in question must now be treated as co-sureties, seeing that their endorsements were made, without reference to the order of their signatures, in pursuance of a mutual agreement to give their joint guarantee to the Bank that the notes would be duly retired by the Company.

Their Lordships see no reason to doubt that the liabilities, *inter se*, of the successive endorsers of

a bill or promissory note must, in the absence of all evidence to the contrary, be determined according to the ordinary principles of the law-merchant. He who is proved or admitted to have made a prior endorsement must, according to these principles, indemnify subsequent endorsers. But it is a well established rule of law that the whole facts and circumstances attendant upon the making, issue, and transference of a bill or note, may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers or as endorsers; and that reasonable inferences, derived from these facts and circumstances, are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law-merchant would otherwise assign to them. It is in accordance with that rule that the drawer of a bill is made liable in relief to the acceptor, when the facts and circumstances connected with the making and issue of the bill sustain the inference that it was accepted solely for the accommodation of the drawer. Even where the liability of the party, according to the law-merchant, is not altered or affected by reference to such facts and circumstances, he may still obtain relief by showing that the party from whom he claims indemnity agreed to give it him; but, in that case, he sets up an independent and collateral guarantee, which he can only prove by means of a writing which will satisfy the Statute of Frauds.

The Appellant has not attempted to establish an independent collateral agreement by the Respondent, to contribute equally with him and the other endorsers, in the event of the Company's failure to make payment of the notes in question to the Bank. He relies upon the facts proved with respect to the making and issue of

these three promissory notes as sufficient in themselves to create the legal inference that all the Directors of the Company, including the Respondent, put their signatures upon the notes, in August 1875, in pursuance of a mutual agreement to be co-sureties for the Company. And, in the opinion of their Lordships, that is the proper legal inference to be derived from the circumstances of the present case.

Their Lordships construe the Bank letter of the 24th July 1875 as preferring a direct request that the Directors should become bound to the Bank as co-sureties for the Company. The Bank did not require that the Appellant should become surety for the Company, that the Respondent should then become surety for the Appellant, and that Mr. Coote, in his turn, should guarantee the solvency of the Respondent. What the Bank asked was "the personal guarantee of your Directors," and what the Directors agreed to give at their meeting on the 5th August 1875 was "the personal endorsation required by the Bank." Apart from the mere circumstance of the order in which the endorsements were made, the *res gestæ* of the meeting of 5th August, as disclosed in evidence, make it perfectly plain that the Directors were asked and agreed to become co-sureties for the Company, without any stipulation whatever as to their becoming *inter se* sureties for each other, or as to the order of their endorsing. Their Lordships attach no weight to the terms of the so-called letter of guarantee which was returned to the Bank, along with the demand note for $10,000., or to the fact that it was not signed by the Respondent. The letter contains no obligation of guarantee, and simply explains, what would otherwise have sufficiently appeared from the Bank's own letter, that the $10,000 note was not for immediate dis-

count, but was to be held by the Bank as a collateral security for the Company's debit balance in account current.

But the Respondent insists, and the Court below seem to have held, that, in determining the rights and liabilities *inter se* of these endorsers for the accommodation of the Company, regard must be had, not to the contract in pursuance of which they became endorsers, but to the order of their endorsements, as evidencing the terms of their contract. That doctrine appears to their Lordships to be at variance with the principles of the English law. In a case like the present, the signing of their names on the note, by way of endorsement, in order to induce the Bank to discount it to the promissor, is not, as between the endorsers, *pars contractus*, but is merely the performance by them of an antecedent agreement. The terms of that previous contract must settle their liabilities *inter se*, irrespective altogether of the rules of the law-merchant, which will nevertheless be binding upon them in any question with parties to the note who were not likewise parties to the agreement. The law upon this point was correctly laid down by the Court of Common Pleas in Reynolds *v.* Wheeler (10 C. B. (N.), 561. In that case, one Cheeseman drew a bill, and asked Reynolds to accept it for his accommodation, which Reynolds did. The bank refused to discount, whereupon Wheeler, at the request of Cheeseman, endorsed, and the bill was then discounted, Cheeseman receiving the proceeds. The bill was renewed at maturity, Reynolds, on this occasion, being drawer and Cheeseman acceptor, whilst Wheeler endorsed it as he had done before. Reynolds paid the renewal bill, and claimed contribution from Wheeler as a surety with him for the same debt. Wheeler resisted the claim on the same plea which is put forward

by the Respondent in the present case, viz., that, in the circumstances, he had only agreed to undertake the liability evidenced by the endorsement, and consequen
liable in relief or contribution to one who, like Reynolds, had previously become party to the bill as drawer or acceptor. But the Court overruled the plea. Erle, C. J., said, "The substance of "the transaction is this:—Cheeseman was in "want of money, and applied to Reynolds and to "Wheeler to lend him their names in order to "obtain it. If the money had been raised by "the joint and several note or bond of the three, "it could not have for a moment been contended "that Reynolds, paying the whole, would not "have been entitled to contribution. The "machinery adopted here was the drawing of a "note by Cheeseman upon Reynolds and the "endorsement of it by Wheeler." And Williams, J., stating the law to the same effect, said, "If the relation of surety subsists he "(Reynolds) is entitled to contribution, and we "are entitled to disregard the form of the "instrument."

In the present case the Directors of the St. John's Stone China Ware Company one and all agreed with each other to become sureties to the Bank for the same debts of the Company. That was the substance of the agreement to which they came on the 5th August 1875, and the fact that the machinery which they adopted for carrying out their agreement was the making of three promissory notes by the Company, payable to the Appellant, and successively endorsed by him and his co-Directors, cannot have, in law, the effect of altering the mutual relations established by that agreement, and of substituting for these the liabilities of proper endorsers of an ordinary commercial note.

It was argued, however, that the Respondent gave his endorsements at the request of the Appellant, and must, therefore, be held to have given them on the faith of his having recourse against the Appellant as a prior endorser. That contention was rested upon certain statements made by the Respondent in his deposition as a witness for the Appellant. He stated, "I was asked to endorse the notes in "question by Edward Macdonald, in fact urged "to do so, to sign them that it was all right, "which I did." Again, in answer to the question by his own Counsel, "At whose instance did you "endorse the notes in question?" he says, "At "the instance of Edward Macdonald." The argument is really without foundation in fact. There is not a word in those statements to suggest that the Appellant, Edward Macdonald, did anything more than urge the Respondent to carry out the argreement which had already been come to by all the Directors present in order to aid the finances of the Company.

The authority of Reynolds *v.* Wheeler, and similar cases, is in no wise affected by the decision of the House of Lords in the Scotch case of Steele *v*, Mackinlay, which is referred to in the judgment of the Court below. In that case A, acting on behalf of his sons B and C, arranged with D that the latter should make an advance to them of 1,000*l.* upon their personal security. D accordingly drew a bill for that amount on B and C, and delivered it to A, in order that he might procure their acceptances. A did obtain their acceptances, and before returning the accepted bill to D, he wrote his own name upon the back of it. The acceptors failed to retire the bill, and D, the drawer, brought an action against the representative of A (who had died in the meantime) for recovery of its contents, upon the

allegation that A had signed as a co-acceptor, or at all events with the intention and effect of becoming a surety to him for the acceptors. Parole evidence was led, not only in regard to the making and issue of the bill, but also in regard to statements made at various times by the deceased, tending to prove a separate and independent engagement by him to guarantee payment of the bill by his sons. The admissibility of the evidence, so far as it bore upon the facts and circumstances connected with the making and endorsement of the bill, was not questioned either at the bar or by the House. On the contrary, the House did take that evidence into account, although it was ultimately held that the claim preferred by D was neither supported by the principles of the law-merchant, nor by any inference derivable from these facts and circumstances. But the House rejected the parole evidence adduced adduced by D in order to establish an independent contract of guarantee, upon the ground that such a contract could only be proved by a writing properly signed under the 6th section of the "Mercantile Law Amendment "(Scotland) Act, 1856," which extends to Scotland the provisions of the English Statute of Frauds with respect to mercantile guarantees.

The Respondent's Counsel, in the course of the argument, referred to the case of "Jansen *v.* Paxton" (28, C.P. W.C., 439), decided by the Court of Error and Appeal in Upper Canada, and to three other decisions of the Canadian Courts. With the same view, they cited the case of "Macdonald *v.* Magruder," decided in 1830 by the Court of New York, United States (3 Peters, 470, and 8 Curtis, 491). These authorities were relied upon as establishing the doctrine that, where several persons mutually agree to give their endorsements on a bill, as securities for the holder who wishes to discount it, they must be held to

have undertaken liability to each other, not as sureties for the same debt, and so jointly liable in contribution, but as proper endorsers, liable to indemnify each other successively, according to the priority of their endorsements, unless it had been specially stipulated that they were to be liable as co-sureties. It is unnecessary to enter into a minute criticism of these cases. Some of them are, in their circumstances, distinguishable from the present case; but there are undoubtedly to be found in the opinions of the learned Judges by whom they were decided *dicta* which seem to recognize the doctrine contended for by the Respondent. If they are to be regarded as authorities to that effect, their Lordships cannot accept these cases as conclusive of the law of England, or as precedents which ought to govern the decision of this appeal. The Civil Code of Lower Canada (Article 2340) enacts that "in "all matters relating to bills of exchange not "provided for in the Code, recourse must be had "to the laws of England in force on the 30th "day of May 1849." By Article 2346 of the Code, the same law is made applicable to promissory notes as to bills of exchange, in so far as regards the liability of the parties; and seeing that the Code makes no provision regarding the question raised between the Appellant and the Respondent, that question must, in the opinion of their Lordships, be decided according to the law of England, as laid down by the Court of Common Pleas in "Reynolds *v.* Wheeler."

Their Lordships will, accordingly, advise Her Majesty that the judgment appealed from ought to be reversed; and that the action *en garantie* at the Respondent's instance ought to be dismissed, with the declaration that the Appellant and the Respondent made their several endorsements upon the promissory notes in question, along with other directors of the St. John's Stone China

Ware Company, as co-sureties for the said Company, and are, in that capacity, entitled and liable to equal contribution *inter se*.

The Respondent must pay to the Appellant the costs of this appeal, and also the costs incurred by him in the Courts below.