

it. Sec. 56 therefore does not apply. This was not on the face of it a regular and complete bill of exchange, since when the defendant indorsed it the bill had not been indorsed by the plaintiffs, to whose order it was payable. But then it is said that the defendant is liable under s. 55, sub-s. 2, as an indorser because his name was on the back of the bill. The Bills of Exchange Act certainly does not give much assistance as to the meaning to be attached to the word 'indorsement.' It says (s. 2): 'indorsement means an indorsement completed by delivery;' but it nowhere says what constitutes an indorsement. . . . The cases which have been cited by Mr. Attenborough to establish the liability of the defendant as indorser are all cases where the bill was a complete and perfect instrument. Here, as I have already said, the bill was not a complete and negotiable instrument until it had received the indorsement of the drawers. . . . The general principle since the Act of 1882 seems to me to be exactly as it was laid down in *Steele v. McKinlay*, and the contract of indemnity on which the plaintiff relies is one which is not recognized by the law merchant, but which arises solely from an agreement between the parties. It is, however, here relied upon as giving a primary liability against the defendant upon this bill of exchange. That, as Lord Watson points out in *Steele v. McKinlay*, will not do. If the agreement exists at all, it must exist as a contract of suretyship, and for that purpose it must satisfy the requirements of the Statute of Frauds."

The judgment of Kennedy, J., is no less explicit: "I am of the same opinion, and for the same reasons. I do not think that the doctrines laid down in *Steele v. McKinlay*, 5 App. Cas. 754, have been varied by the Bills of Exchange Act, 1882. In the edition of that Act by Mr. Chalmers, he expressly gives *Steele v. McKinlay* as an illustration to s. 56, without a suggestion that the law laid down in that case has in any way been altered. This document was, according to the law merchant, irregular, and therefore the defendant is not liable upon it to the plaintiffs. If it is sought to use it as an agreement of suretyship, it is insufficient to satisfy the provisions of the Statute of Frauds."

Sec. 56 of the Canadian Code is an exact transcript of s. 56 of the English Code, save and except the Canadian Code has the following additional words: "and is subject to all the provisions of this Act respecting indorsers." These words were added in