législatures provinciales du Canada seront et sont déclarées valides et effectives à toutes fins que de droit, tout comme si elles eussent été décrétées par le parlement du Canada.

Sur le tout, je suis d'opinion qu'il n'y a pas erreur dans la conviction dont est appel, et je déboute le certiorari avec dépens.

Augé & Cie. pour le requérant.

N. H. Bourgoin pour le poursuivant.

SUPERIOR COURT.

MONTREAL, November 30, 1883.

Before JOHNSON, J.

SCOTT v. TURNBULL.

Promissory Note—Evidence.

Parol evidence is admissible to establish the actual order of endorsements of a note or bill, the instrument being only prima facie evidence.

JOHNSON, J. This is an action by the indorsee and holder of a promissory note against the defendant as having endorsed it as a guarantor (*pour aval*), and the facts alleged in the declaration are, that the Standard Drain Pipe Company being indebted to one Mitchell, promised to settle with him by giving an approved endorsed note, and gave him their note in consequence, (the one now sued upon) payable to his order, and further procured the name of the defendant to be put upon it as guarantor; that the note so endorsed by Turnbull was delivered by the Company to Mitchell who endorsed it for value to the plaintiff. The defendant met the action by two pleas: 1st, alleging that the plaintiff had merely lent his name to Mitchell the true holder, and had no right of action; 2nd, that the plaintiff got the note after maturity: that the defendant knows nothing of any agreement between Mitchell and the Company, and that he endorsed the note for Mitchell's accommodation, and never signed as guarantor. That Mitchell is a prior endorser to the defendant, and is therefore liable to him, and the note is subject to all the equities between Mitchell and him. The answers are general. When the case came on for trial, Mitchell was called by the plaintiff, and proved every word of the declaration,—and also that the note had been endorsed by him before maturity; but delivered to Scott in payment of an old debt after maturity. Mitchell's evidence was objected to on the ground that it was parole evidence to vary the contents of a written instrument; and I might have had difficulty in saying that the plaintiff ought to get judgment on Mitchell's evidence alone; but it is sworn by another witness (Mr. McCall) that the note was brought to him on the day of its maturity, *or the day before;* and that the only name on the back of it at that time was Turnbull's, and that the only reason Mitchell wrote his name on it even then, was because the witness asked him to do so, as it was payable to his (Mitchell's) order. So that it is quite clear Mitchell is not a prior endorser to Turnbull; but the latter must have signed as security. Therefore there are no equities as between Mitchell and Turnbull which Turnbull can oppose to Scott. If Mitchell had brought suit in his own name both against the makers and Turnbull, what could Turnbull have had to say to him? Evidently nothing; and he can't have anything more now to say to Scott who got the note subject to the defences existing against it. As to the objection to parole evidence to vary the *apparent* contents of the note, I would refer the parties to 1st Daniel on negotiable instruments, p. 520–21, No. 704: "Where a note is endorsed by the "payee and by a third party, the legal inference "is that the payee is prior indorser; *but it may "be proved otherwise by parole evidence."* That was the opinion I expressed at the hearing, and nothing has been said or cited to alter it since. I have not, of course, had time to examine the question very attentively; but I see in Bigelow's law of bills and notes, 2nd Ed., p. 174, a number of cases cited in support of this view, and the commentator uses almost the same words that I did. He says: "The actual order of indorsement, where there are several indorsements, is open to parol proof; the note or bill being but *prima facie* evidence; and he cites *Coolidge* v. *Wiggin*, 62 Maine, 568; *Sturtevant* v. *Randall*, 53 Maine, 149; *Smith* v. *Morrill*, 54 Maine, 48; *Clapp* v. *Rice*, 13 Gray, 403; and goes on to say, in this manner, one who appears to be an indorser, and in law is such *prima facie*, may be shown to be a joint promisor or guarantor, and in support of that he cites *Browning* v. *Merritt*, 61 Indiana, 425; and *Way* v. *Butterworth*, 108 Mass. 509.

The judgment therefore is for the plaintiff.

Robertson, Ritchie & Fleet for the plaintiff.

Kerr & Carter for the defendant.