

name on the back of a note or bill becomes liable to the payee, but he arrives at this conclusion by a route which it is difficult to follow. He considers that the section was not intended to enact new law but merely to declare and codify the law as it stood when the Act was passed: *Ayr American Plough Co. v. Wallace*, 21 S.C.C. 260. If this were the object of the section the consequence would be that the anomalous indorser, the defendant in the case then before the court, could not have been held liable to the plaintiff as he was not a subsequent party to the bill any more than McKinley, the defendant in the case of *Steele v. McKinley*, could be held liable to the drawer or payee in that case. If we accept the chief justice's conclusion as sound it will only be because we cannot agree with his reasons. The Act does not merely codify the law. There is no presumption that it does: per Lord Herschell in *Vagliano's Case*. It must be supposed to mean exactly what it says. It enacts that the person who signs otherwise than as a drawer or an acceptor incurs the liabilities of an indorser to a holder in due course, that is to any holder in due course. There is no reason for excluding from the benefit of this section the payee of the note simply because he is not a subsequent party to the bill or note. On the other hand, there are the best of reasons for reading the Act in such a manner as to correct the injustice that must have been occasioned in following the decision in *Steele v. McKinley*, and which must, under that case, be done in every instance where the facts are such as occurred in *Mathews v. Bloxome*, the "just and sensible" decision in which case, to use the words of Lord Cockburn, the House of Lords overruled. There can be no more reason for adding to this section the words "providing such holder is a subsequent party to the bill," than there was in *Vagliano's Case* for adding to the section, the words, "to the knowledge of the acceptor." In *Vagliano's Case* these words would have had to be added to the clause to reproduce the law as it stood before the Act. The House of Lords declined to add them. The words just suggested would have to be added to the clause