

in favour of the creditors and signed by the debtor, and the court held that there was no evidence to go to the jury that the defendant intended to be liable as a maker. Patterson, J., however, states the effect of the cases on the subject to be that it is a question of fact whether the anomalous indorser of a note is a maker or not. "The report of *Bell v. Moffat* and the case of *Piers v. Hall* bear on the present discussion as shewing that a man may write his name on the back of a note and yet be liable as the maker of a note. That is a question of fact more than of law. The evidence in those cases proved the intention to be maker, while here the whole evidence is that he was to be indorser."

It is much to be regretted that countenance is here given to the view that one who signs in this way may be held to be a maker of a note. The question should be considered as having been set at rest by the decision in *Gwinnell v. Herbert*, 5 A. & E. 436, as it is in the very convincing judgment of Bliss, J., in *Morton v. Campbell*, Coch. N.S. 5, in Nova Scotia, where the note was made by Archibald Campbell in favour of the directors of the Liverpool Insurance Association for goods sold to the maker of the note. The document bore the indorsement of the three other defendants who were sued jointly with Campbell as maker. After comparing the case before the court with *Gwinnell v. Herbert* and shewing that the question was concluded by the authority of that case, Bliss, J., proceeded to say: "Independently, however, of this authority, so binding upon us, I should never have had, I confess, great doubts how far these indorsers could be considered as makers. It is said they ought to be so held, inasmuch as they cannot be liable as indorsers, for want of the previous indorsement of the payee and that as they obviously intended to make themselves liable in some way this is the only one by which that can be effected. Whether they can or cannot be held liable as indorsers, or would be estopped from contesting this I do not think it is necessary to inquire—for, admitting that they could not be sued as indorsers, I cannot think that a sufficient reason for treating