

bert, 5 Ad. & Ec. 436, where the note was made by Herbert Herbert, to William Gwinnell, the plaintiff and indorsed by Edward Herbert, the defendant. He received no notice of dishonour and it was contended that none was requisite, as he was himself a maker, according to the doctrine of *Penny v. Innis* that every indorser is a new drawer. The under sheriff directed the jury to this effect, but Lord Denman said this was all wrong. "The under sheriff had acted upon a misapplication of *Penny v. Innis*. The law there laid down as to the effect of an indorsement might be correct as to a bill of exchange, but does not apply to a promissory note." Patteson, J.: "There is no conflict between the cases on this subject. The whole question turns on the distinction between a bill and a note. On a bill each indorser is a new drawer as was stated in *Penny v. Innis*, but the drawer of a bill is liable only on default made by the acceptor. The maker of a note is liable in the first instance and if each indorser became a maker he would be also liable in the first instance. There is a difficulty, therefore, in the case of a note which does not exist in the case of a bill. Some confusion has arisen in many of the cases from not attending to the distinction between a bill and a note."

The Bills of Exchange Act in s. 56 (now 131) said that: "Where a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an indorser to a holder in due course, and is subject to all the provisions of this Act respecting indorsers." The question that presents itself is whether this section is intended to codify or amend the law, McLaren, J., takes it for granted that the corresponding section of the Imperial Act was framed in accordance with the doctrine laid down in *Steels v. McKinley*, McLaren on Bills (2 ed.) 319, where it was held that a person who put his name on the back of the bill was not liable on the bill to the drawer." Both Lord Blackburn and Lord Watson lay it down in that case that the anomalous indorser is not liable to any but subsequent parties. Chief Justice Strong evidently differs from McLaren, J., holding that since the passing of the Act the person who puts his