

risk by indorsing it himself, and that he then did so. It clearly appeared that the plaintiff, when he indorsed the first note, did not expect that there would be any other indorser.

In *Fisken v. Mechan*, (1876) 40 U.C.R. 146, defendant made a note payable to the order of and for the accommodation of James Sorley, and Fisken indorsed it also for his, Sorley's, accommodation, to one Metcalfe, who was a holder for value. Fisken was compelled to pay it, and he and his partner then sued defendant upon it. It was held, following *Ianson v. Paxton*, that the relation of co-sureties between Fisken and defendant was not established so as to prevent the plaintiff from recovering the whole instead of the half. It seems, however, to have been conceded that the position of defendant and Fisken on the note, one as maker and the other as indorser, would not prevent the application of the rule, if they were really co-sureties, but it was found as a fact, that Fisken knew nothing of the mode in which defendant became a party, but indorsed in the ordinary way, assuming that the maker would be liable to him.

In *Macdonald v. Whitfield*, (1883) 8 App. Cas. 733, the facts so far as material to this question were as follows:

Whitfield and Macdonald were directors of a joint stock company carrying on business at St. Johns, Quebec. In July, 1875, the company being in want of funds, the Merchants Bank offered to advance the sum of \$10,000, by an overdraft, which was to be collaterally secured by a demand note of the company indorsed by the directors individually. This proposal was accepted by the company, and its acceptance communicated to the bank in a letter signed by the directors individually, except Whitfield. A note for \$10,000 was drawn up and indorsed in the following order: (1) Macdonald; (2) Whitfield, and next, two other directors; the fifth director did not indorse it, as he happened to be the manager of the bank in St. Johns. An action having been brought by the bank upon the note against Macdonald, Whitfield and one of the others, Whitfield instituted an action for a declaration that Macdonald as a prior indorser was bound to relieve him of any sum which the bank might recover judgment for. It