

7 June, 1897.

ROBERTSON V. DAVIS.

Quebec.]

Action—Suretyship—Promissory note—Qualified indorsement.

D. indorsed two promissory notes, *pour aval*, at the same time marking them with the words "not negotiable and given as security." The notes were intended as security to the firm of A. & R. for advances to a third person on the publication of certain guide books which were to be left in the hands of the firm as further security, the proceeds of sales to be applied towards reimbursement of the advances. It was also agreed that payment of the notes was not to be required while the books remained in the possession of the firm. The notes were protested for non-payment, and A. having died, R., as surviving partner of the firm and vested with all the rights in the notes, sued the maker and indorser jointly and severally for the full amount. At the time of the action, some of the books were still in the possession of R., and it appeared that he had not rendered the indorser any statement of the financial situation between the principal debtor and the firm.

Held, that the action was not based upon the real contract between the parties, and that the plaintiff was not, under the circumstances, entitled to recover in an action upon the notes.

Held, further, *per* Girouard, J., that neither the payee of a promissory note nor the drawer of a bill of exchange can maintain an action against an indorser, where the action is founded upon the instrument itself.

Appeal dismissed with costs.

Greenshields, Q. C., and *Lafleur*, for the appellant.*Macmaster, Q. C.*, for the respondent.

7 June, 1897.

MCGOEY V. LEAMY.

Quebec.]

Agreement respecting lands—Boundaries—Referee's decision—Bornage—Arbitration—Arts. 941-945 and 1341 et seq. C.C.P.

The owners of contiguous farms executed a deed for the purpose of settling a boundary line between their lands, thereby naming a third person to ascertain and fix the true division line