

liable to be sued as an indorser of the note on the custom of merchants because the payees had never indorsed it and without their indorsement the indorsement of any third party would be merely nugatory." It is not surprising to find that when so much importance is attached to the formality of an indorsement by the payee, the anomalous indorser of a note which is not negotiable and therefore cannot be indorsed by the payee, cannot be held liable on his indorsement. This has been several times decided by the Ontario courts, notably in the case of *West v. Brown*, 3 3 U.C.Q.B. 290, in which Robinson, C.J., says: "It is impossible to hold that any right of action is stated in this declaration, unless one can hold that any one by indorsing a note not negotiable, made payable to another, makes himself liable to that other and may be sued as an indorser."

We may conclude that apart from the Bills of Exchange Act the person, stranger to the note, who puts his name on it, cannot, in the absence of a prior indorsement by the payee, be held liable to the payee as an indorser. Can he be considered as a maker? Where a note that is not negotiable is indorsed by a stranger there is good reason for holding the so-called indorser liable as a maker which does not exist in the case of a negotiable note. If his signature is to operate in any way at all it cannot operate in any other way. He cannot be an indorser for want of the previous indorsement of the payee, which there cannot be in the case of a non-negotiable note. In *McMurray v. Talbot*, 5 U.C.C.P. 157, Macaulay, C.J., shewed a strong disposition to hold the defendant so liable. "If the note had been made payable to order the late cases shew that the defendant might have been made liable to the plaintiff as an indorser to him for value after the plaintiff had indorsed to the defendant without value. But the note is not negotiable on the face of it. The predominant intention, however, was that the defendant should become surety to the plaintiffs for the due payment of the note as indorser if by law he might; but at all events, as a party to the instrument if by law he could. . . . Treated as a joint and several maker he might become such