

consideration for sale of property and that neither the title nor the right to possession pass until payment. The other group has reference to what I will call suretyship notes. They are notes signed by two persons of whom one is a surety, and stipulation is made in the body of the note that the time given to one of the makers of the note will not prejudice the right of the holder to proceed against the other maker.

With regard to the cases on lien notes the jurisprudence was at first somewhat uncertain. They were generally used in connection with the sale of agricultural implements. By the contract, the vendor would retain the ownership of the machines sold to the farmers, but would put the latter in possession thereof. Then the farmers would give their promissory notes, and it would be stipulated in the body of the notes that the title to the machine for which the note was given should remain in the name of the vendors until the note was paid.

In 1894, in a case of *Merchants Bank v. Dunlop*, decided in Manitoba 9 Man L.R. 623, it was held that the recital in the notes should be construed as simply stating the consideration for which the note was given, viz., the sale of the article and the vendor's promise to complete the sale upon payment. The note was held a valid promissory note.

In the same year (1894) the same question came before MacLennan, J., in Chambers in Ontario, on an appeal from the County Court in a case of *Dominion Bank v. Wiggins* (1894), 21 A.R. (Ont.) 275. In rendering his decision MacLennan, J., said that in view of the general interest and importance of the question he had conferred with the other members of the Court of Appeal, of which he was a member, and that they agreed in his conclusions, viz., that the maker of the note is not compellable to pay when the day of payment arrives, unless at the same time he gets the property with a good title, and the payment to be made is, therefore, not an absolute unconditional payment at all events, such as is required to constitute a good promissory note.

In the following cases, the decision of the Ontario case was followed:—

*Prescott v. Garland* (1897), 34 N.B.R. 291, by the full court of New Brunswick; *Bank of Hamilton v. Gillies* (1899), 12 Man. L.R. 495, by the full court of Manitoba; *Frank v. Gazelle Live Stock Association* (1906), 6 Terr. L.R. 392.

CAN.

S. C.

LECOMTE

v.

O'GRADY.

Brodie, J.