

Armour, C.J., Street, J.]

[Sept. 19.

CANADIAN BANK OF COMMERCE v. PERRAM.

*Bills and notes—Indorser before payee—Liability—Bills of Exchange Act, s. 56.*

*Held*, that when one put his name on the back of a promissory note, before the payees, who now sued him as endorser, had themselves endorsed it, he was not liable under it either as endorser or as surety.

*Jenkins v. Coomber*, (1898) 2 Q.B. 168, followed.

*A. W. Anglin*, for plaintiff. *J. Kyles*, for defendant.

Ferguson, J.]

YOUNG v. RAFFERTY.

[Sept. 22.

*Mortgage—Several parcels—Rights of owners of equity of redemption—Enumeration of one parcel—Purchaser—Volunteer.*

An appeal by the defendants John Connolly and Catherine Anastasia Hanley from the report of the Master at Berlin in a mortgage action.

The mortgage was made by Cornelius Connolly, since deceased, upon a farm comprising nearly one hundred acres. After the mortgage the defendant John Connolly purchased forty acres of the farm from the deceased, who conveyed to him by a deed containing the usual covenants. The defendant, Catherine A. Hanley, acquired six acres by devise from the deceased, and defendant, Francis Connolly, fifty-three acres by a similar devise. The deceased was the father of John and Francis, and the grandfather of Catherine.

The Master found that the forty acres of the mortgaged lands belonging to the defendant John Connolly and the properties devised to the other two respectively were alike liable for the payment of the mortgage money due to the plaintiff upon his mortgage.

The appeal of the defendant, John Connolly was upon the ground that he, being a purchaser for value, and the others volunteers, their lands were primarily liable for satisfaction of the mortgage debt.

The appeal of the defendant, Catherine Anastasia Hanley was upon the ground that the portion devised to the defendant, Francis Connolly, was liable before hers, but this appeal was not pressed at the hearing.

*Held*, That the Master should have found that the lands devised to Francis and Catherine Anastasia, were in the first place liable for the payment of the mortgage money, and that the forty acres belonging to John were, as amongst these three owners, liable only for the payment of such money in the event of the other two parcels proving insufficient to satisfy the mortgage money, and then only for the deficiency. The lands devised to Francis and those devised to Catherine Anastasia were in the same position as to liability to satisfy the mortgage, and in the event of a sale these two parcels or a competent part thereof, should be first offered for sale, and