

however, no insuperable difficulty in charging as indorser, one who puts his name on the back of a bill or note to give it credit with the payee. The payee as holder may obviously indorse the instrument to the surety without recourse and may also fill up the blank indorsement of the surety to himself. In this way the parties are placed in the same position as if the maker had in the first instance delivered the note to the payee, the payee had then indorsed it without recourse to the surety, and the surety had then indorsed it to the payee, as in *Wilders v. Stevens*. In both cases the payee, as second indorsee, charges the surety as second indorser." The surety cannot sue the payee as a first indorser because the instrument in the case put by Mr. Ames is without recourse and the same consequence follows if the payee, as in *Wilders v. Stevens* and *Morris v. Walker* is in a position to reply such facts as negative the right of the surety to have recourse to the payee.

In the case of *Peck v. Phippen*, 9 U.C.Q.B. 73, in Upper Canada, the principle of these cases was applied and carried a step further than it was necessary to carry it in those cases. The note was given to plaintiffs by one Kerr for a debt, and defendants wrote their names on the back as sureties. Plaintiffs indorsed it, writing their names under defendants' signature, and procured its discount. They retired it at maturity and then struck out their indorsement and wrote an indorsement above that of the defendant, "Peck B. & R. without recourse." This indorsement is assumed, in the judgment of Robinson, C.J., although not so stated in the case, to have been made after action was brought, and it was objected that the plaintiff had not proved—as in fact he could not prove, seeing it was not the fact—that the plaintiffs had indorsed the note to the defendant, and the defendant contended that when the note fell due he was not liable as indorser for want of a previous indorsement to him. But the Chief Justice took what seems to be a proper view of the matter. "The question is whether as the delivery or transfer of the note for value is the substance and the indorsement only the form, the name may not be written at any time. The de-