

CAN.
S. C.
LECOMTE
v. O'GRADY.
Brodeur, J.

In a case of *Campbell v. McKinnon*, 18 U.C.Q.B. 612, decided in 1859, some words had been written on the back of an ordinary form of promissory note, and Robinson, C.J., said, at p. 614, that "the agreement written on the back must be looked upon as part of the instrument, being upon it before and at the time it was signed."

The respondent is, then, under obligation to pay to O'Grady, Anderson & Co., or to their order, at such a date, a certain sum of money provided that a certain stock certificate should be at the time of payment surrendered to him. And O'Grady, Anderson & Co., in accepting that document, become entitled to claim under it on the condition that they surrender that stock certificate. And any subsequent assignee who becomes the holder of that promise to pay cannot claim payment without tendering that stock certificate.

But is that document an unconditional promise to pay?

It was decided in England, in a case of *Bavins v. London & South Western Bank*, [1900] 1 Q.B. 270, that a document in the form of an ordinary cheque ordering a banker to pay a sum of money "provided the receipt form at the foot hereof is duly signed, stamped and dated" was not unconditional and, therefore, was not a cheque within the meaning of the Act.

In the case of *Bavins*, as in the present case, the document provided payment to order and was in that respect apparently negotiable; but the obligation for the payee or the bearer to sign a certain receipt in that case, and the obligation for the bearer or the payee in this case to deliver a certain stock certificate, rendered the document a conditional one. As a result, the document we have to construe is not a negotiable instrument the property in which is acquired by any one who takes it *bonâ fide* and for value notwithstanding any defect of title in the person from whom he took it. The engagement contained therein could not be transferred by simple delivery of it (*Stevens, Mercantile Law*, 5th ed., p. 286).

Several decisions have been brought to our attention in connection with this question of unconditional promise to pay.

I may divide them into two groups:—One has reference to those promissory notes called lien notes because in the body of the notes it is stipulated that the money which is to be paid is the