

ANGLIN, J.:—On the short ground that the appended words do not qualify the obligation created by the unconditional promise to pay which precedes the maker's signature, I would hold the document before us to be a promissory note within s. 176 (1) of the Bills of Exchange Act (R.S.C. 1906, c. 119). Any rights which the maker of the note may have under the appended memorandum will not arise until payment of the note has been made. It is, therefore, not necessary for the holder to aver or to prove readiness and willingness at the date of maturity of the note to deliver to the maker the stock certificate mentioned in the memorandum as a condition of his right to recover on the note. Still less can he be required to aver or to shew tender of the certificate either then or before action.

As Hawkins, J., said, with the concurrence of Wills, J., in *Yates v. Evans* (1892), 61 L.J.Q.B. 446, at p. 448:—

The early part of the document is a complete note in itself—there is nothing in the memorandum to qualify the terms of the note and there is no ambiguity in the note—all that is necessary for the purpose of suing is that the amount claimed is due.

The decision of the English Court of Appeal in *Kirkwood v. Carroll*, [1903] 1 K.B. 531, overruling *Kirkwood v. Smith*, [1896] 1 Q.B. 582, and holding that s. 83 (3) of the Imperial statute (our sub-s. 3 of s. 176) does not import, as Lord Russell, C.J., had held in the earlier case, that "if the document contains anything more than is there referred to it would not be a valid promissory note," very materially weakens, if it does not wholly destroy, the value of a number of Canadian cases relied on by the appellant.

I would dismiss the appeal.

BRODEUR, J. (dissenting):—The question we are called upon to decide is whether the written document on which the action is based is a promissory note.

It reads as follows:—(See judgment of Davies, C.J.)

The part in italics was written on the document before it was signed. The other part was on the ordinary printed form of a promissory note.

It must be disputed that these written words, providing that the stock certificate for 50 shares should be surrendered on payment of the \$3,000 agreed upon, form part of the document. The signature is inserted in such a manner as to have the effect of authenticating them. Halsbury, vbo. Contract, No. 775.

CAN.

S. C.

LECOMTE

v.

O'GRADY.

Anglin, J.

Brodeur, J.