Stone China Ware Company, as co-sureties for the said company to the Merchants Bank, by which the notes were discounted for the Company.

The question in the present case was as to the rights and liabilities of the parties *inter se*. The respondent's pretension was that in determining the rights and liabilities of the endorsers, *inter se*, regard should be had, not to the contract in pursuance of which they became endorsers, but to the order of their endorsements, as evidencing the terms of the contract.

The Judicial Committee held that this doctrine was at variance with the principles of English law (the case being governed by the law of England in force on the 30th May, 1849: C. C. 2340 and 2346). The following portion of their lordships' observations explains the question decided:—"In the present case the appellant, although his endorsement was first written, was a stranger to the notes in the same sense as the respondent, and it is not matter of dispute that the endorsements of both were given for one and the same purpose, viz., in order to induce the Bank to discount two of the notes, and pay the proceeds to the promissor, the St. John's Stone China Ware Company, and also to give the company credit in account current to the amount of the third note. It was argued, however, for the respondent that in the absence of some special contract or agreement between them, *dehors* the notes themselves, strangers giving their endorsements successively must be held to have undertaken the same liabilities *inter se* which are incumbent on successive holders and endorsers of a note for value. The appellant and respondent must, therefore, it was said, be assumed to stand towards each other in the relation of prior and subsequent endorsers for value, inasmuch as it had not been proved, *habili modo*, that they had specially agreed that their endorsements were to have the effect of making them co-sureties for the promissor. On the other hand, it was contended for the appellant that all the Directors who endorsed the notes in question must now be treated as co-sureties, seeing that their endorsements were made, without reference to the order of their signatures, in pursuance of a mutual agreement to give their joint guarantee to the Bank that the notes would be duly retired by the Company.

"Their Lordships see no reason to doubt that the liabilities, *inter se*, of the successive endorsers of a bill or promissory note must, in the absence of all evidence to the contrary, be determined according to the ordinary principles of the law merchant. He who is proved or admitted to have made a prior endorsement, must, according to these principles, indemnify subsequent endorsers. But it is a well-established rule of law that the whole facts and circumstances attendant upon the making, issue, and transference of a bill or note, may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, either as makers or as endorsers; and that reasonable inferences, derived from these facts and circumstances, are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law-merchant would otherwise assign to them. It is in accordance with that rule that the drawer of a bill is made liable in relief to the acceptor, when the facts and circumstances connected with the making and issue of the bill sustain the inference that it was accepted solely for the accommodation of the drawer. Even where the liability of the party, according to the law-merchant, is not altered or affected by reference to such facts and circumstances, he may still obtain relief by showing that the party from whom he claims indemnity agreed to give it him; but, in that case, he sets up an independent and collateral guarantee, which he can only prove by means of a writing which will satisfy the Statute of Frauds.

"The appellant has not attempted to establish an independent collateral agrement by the respondent, to contribute equally with him and the other endorsers, in the event of the Company's failure to make payment of the notes in question to the Bank. He relies upon the facts proved with respect to the making and issue of these three promissory notes as sufficient in themselves to create the legal inference that all the directors of the company, including the respondent, put their signatures upon the notes, in August, 1875, in pursuance of a mutual agreement to be co-sureties for the company. And, in the opinion of their Lordships, that is the proper legal inference to be derived from the circumstances of the present case." The case of *Reynolds* v. *Wheeler*, 10 C. B. (N.) 561, was referred to as being in point.

Judgment of Queen's Bench, Montreal (26 L. C. J. 69) reversed.