

them as makers of the note. The maker of a note is one who signs it—that is who signs on the face of it. An indorser, as the word denotes, is one who puts his name on the back of the note. The signature in the two situations is obviously for different purposes, and the indorsement has thus acquired a well-known legal meaning and effect altogether different from signing. To transfer, then, the language of promise from the body of the note, where it is applicable to the signer of it, to the indorser, would be a confusion of terms, and, what is of still greater consequence, it would impose on the indorser a contract of a very different character—one of a more extensive obligation than that which the law affixes to his indorsement, and which he must be supposed to have intended by it."

Seeing the difficulty of holding an anomalous indorser liable as a maker and probably because the effect of so ruling is in nearly every one of the cases to frustrate the real intention of the parties, it has sometimes been decided that his position is that of a guarantor. The objections to this course are, in view of the Statute of Frauds, insuperable. There is no memorandum in writing of any agreement. The terms of the agreement are established by inferences supplied by the principles of the law merchant founded on mercantile usage. Moreover, in some jurisdictions, as Mr. Ames points out, where the Mercantile Law Amendment Act is not in force, the specific objection arises that no consideration is mentioned for the guarantee. None of these difficulties prevented MacMahon, J., in *McPhee v. McPhee*, 19 O.R. 603, from holding the indorser of a non-negotiable promissory note liable as a guarantor for the maker, the circumstances shewing that this was the nature of the obligation he intended to assume. Seeing, however, that the decision to this effect was recanted by the same judge in a later case we need not expend much energy upon it. "The case of *McPhee v. McPhee*, 19 O.R., was cited by Mr. Middleton. But that was a case where a partnership having borrowed money from the plaintiff for partnership purposes, one member of the firm gave to the plaintiff a non-negotiable promissory note upon