

MULOCK, C.J.Ex.

DECEMBER 11TH, 1916.

R. H. THOMPSON CO. v. BROWN.

Promissory Notes—Accommodation Endorser—Surety — Agreement to Release Principal Debtor—Failure to Prove—Dividend on Debt Received by Holder of Notes from Trustee for Creditors of Principal Debtor—Ratable Application on Portion of Claim Secured by Notes and Unsecured Portion.

Appeal by the defendant from the report of the Local Master at Welland, to whom the case was referred for trial.

The action was to recover the amount of certain promissory notes endorsed by Eva F. Brown, the defendant, for the accommodation of the makers, the A. T. Brown Printing Company.

The defence was that the printing company, pursuant to an arrangement with their creditors, transferred their assets to one Palmer in trust to convert into cash and to distribute the moneys realised ratably among the company's creditors, and that it was one of the terms of the arrangement that the creditors were to accept dividends on their claims in full satisfaction of their claims; and that the plaintiff company, one of the creditors, received and accepted a dividend upon their claim, which was therefore fully satisfied, and the defendant was relieved.

The Master decided against this defence, and reported that the plaintiffs should recover from the defendant the full amount of the notes endorsed by her.

The appeal was heard in the Weekly Court at Toronto.

G. Lynch-Staunton, K.C., for the defendant.

L. B. Spencer, for the plaintiffs.

MULOCK, C.J.Ex., in a written judgment, set out the facts and examined the evidence. He said that he agreed with the finding of the Master that the defendant had failed to shew an agreement which released the printing company.

The Master also found that the defendant had no right to have a ratable portion of the dividend received by the plaintiffs applied on the plaintiffs' claim against her. The plaintiffs received from the trustee a dividend of 70 per cent. on their whole claim against the printing company, and assumed to apply it upon their open account. Their whole claim was \$3,511.77, of which \$1,842.92 was upon an open account, and \$1,668.85 upon the notes endorsed by the defendant.