

one-third of the amount of the note, but this was not known to the plaintiff until about the time the note fell due. At that time, Nov., 1897, the defendant paid one-third of the amount due on the note and the plaintiffs took a note for \$2,000 from B. who also paid in cash the difference between that sum and the remaining two-thirds of the original note which the plaintiff then took up and held. B. did not pay the note for \$2,000 when due and the plaintiff accepted from him several successive renewal notes for the same amount extending over a period of nearly twelve months, but none of these were paid. This action was commenced in Feb., 1900, to recover from defendant the balance due on the original note. The plaintiff had received the note for \$2,000 from B. so that they might discount it at a bank for the purpose of providing funds to take up the original note and there was no agreement that B.'s note for \$2,000 was to be taken in discharge of the other note; and, if the liability of the defendant upon it was the ordinary liability of the maker of a promissory note to the holder of it, nothing that the plaintiff had done had extinguished that liability. The defendant, however, contended that under the circumstances his liability to the plaintiffs for the \$2,000 was only that of a surety for B. and C. as to the balance of their shares of the unpaid amount, and that the plaintiffs, by giving time to B. and C., had discharged him from that liability.

Sub-s. 14 of s. 39 of "The King's Bench Act," 58 & 59 Vict., c. 60, provides that in such a case such defence "shall be allowed in so far only as it shall be shewn that the surety has thereby been prejudiced," and the defendant claimed that by the giving of such time he had been prejudiced to an amount exceeding the plaintiffs' claim by being thereby induced to alter his position with relation to B. and C. in that he had paid to each of them a large sum of money on the settlement of the affairs of a partnership that to the knowledge of the plaintiffs had existed between the defendant and B. and C., and had handed over and released to B. a large quantity of goods.

The only evidence in support of this defence was that of the defendant himself who said that, when he and B. and C. met in Nov., 1897, B. and C. represented to him that the note in question and all other liabilities in connection with the partnership business had been paid and that he, the defendant, owed them \$1,630 on the settlement of the accounts; and that, having absolute confidence in them, he accepted their word and paid them that amount; also that at the same time he and B. agreed to release C. from "all obligations which may have been incurred and exist" in respect of their partnership agreement. Defendant did not explain why, if all these obligations had been settled, a release was considered necessary.

Held, without deciding whether the knowledge of the true relation between the defendant and B. and C., acquired by the plaintiff about the time the note sued on fell due, had the effect of changing the apparent liability of the defendant on the note to that of a surety only for the pay-