

MIDDLETON, J.

JANUARY 12TH, 1920.

BANK OF MONTREAL v. TURNER.

Banks and Banking—Hypothecation Agreement with Customer—Pledge of Promissory Notes Made for Accommodation of Company to Knowledge of Bank—Creditor and Surety—Judgment against Surety—Credit of Amount of Collateral Securities Realised—Mortgage Given to Secure Amount Remaining Due on Judgment—Merger—Change in Relation between Creditor and Surety—Right of Surety to Credit for Collateral Securities Realised—Action upon Mortgage—Costs.

Action upon a mortgage, tried without a jury at a Toronto sittings.

Wallace Nesbitt, K.C., and G. L. Smith, for the plaintiffs.

R. McKay, K.C., and G. S. Hodgson, for the defendant

D. J. Turner.

A. R. Thomson, for the defendant Florence Turner.

MIDDLETON, J., in a written judgment, said that the defendant D. J. Turner became liable to the bank as surety for Benson & Bray Limited, an incorporated company. The transaction took the form of a promissory note for \$32,000, made by Messrs. Benson, Bray, and Turner in favour of the company, dated the 21st November, 1913, payable upon demand; and a second note, in similar form, for \$3,000, bearing date the 15th December, 1915.

These notes were pledged to the bank by the company, by an hypothecation agreement of the 15th December, 1913, signed not only by the company but by the three makers of the notes. Under this agreement, the notes stood as "a general and continuing collateral security for payment of the present or any future liability" to the bank "and for any ultimate balance of indebtedness" by the company to the bank.

Benson, Bray, and Turner were, to the knowledge of the bank, accommodation makers of these notes.

Early in 1916 the bank sued Turner on the notes for the amount then due by the company. Turner contended that the bank were bound to realise on collateral securities before resorting to his liability upon the note; but, this being decided against him, judgment was pronounced on the 25th April, 1916, for \$43,482.62, the amount then due.