

MACMAHON, J.

JANUARY 28TH, 1905.

CHAMBERS.

NISBET v. HILL.

Summary Judgment—Promissory Note—Defence—Collateral Security—Sureties—Extent of Liability.

Appeal by plaintiff from order of Master in Chambers dismissing plaintiff's application for summary judgment under Rule 603.

F. Arnoldi, K.C., for plaintiff.

W. J. Tremear, for defendants.

MACMAHON, J.—The action is on a promissory note for \$10,000, dated 23rd June, 1904, made by defendants jointly and severally, payable 6 months after date to the order of J. B. Hill & Co., and by them indorsed to plaintiff.

The firm of J. B. Hill & Co. was indebted in sums aggregating \$18,190.35 to several persons and firms in Toronto, who were pressing for security, and J. B. Hill & Co., on 23rd June, 1904, wrote to plaintiff as follows: "I beg to submit the following offer or proposition in consideration of my present indebtedness to (four firms or companies), viz., I agree to remit you weekly, commencing on Monday 27th June, 1904, the sum of \$350, and a like sum or thereabouts on the Monday of each and every week thereafter, so that you will have on hand the sum of \$1,500 for distribution during the following months, July and August, and will so increase my weekly remittances on the Monday of each week during the months of September, October, November, and December, 1904, that you will have on hand the sum of \$2,000; the said moneys to be held by you in trust for pro rata distribution among the above named creditors, and I will give you a promissory note made jointly and severally, Geo. Hill and W. G. Hill, indorsed by ourselves, for the sum of \$10,000, dated 23rd June, 1904, at 6 months after date, to be held by you in trust to collaterally secure the payment of our indebtedness to the above named creditors. If they accept this proposition, we will give them any agreement they may deem necessary."

This offer was accepted by the creditors named, and the note now sued upon was forwarded to plaintiff.

According to a statement prepared by plaintiff and embodied in his affidavit, the firm of J. B. Hill & Co. had between the date of the note and December, 1904, paid \$7,300.

Defendants' contention is, that, although the note was given as collateral security for the payment of the whole