warranty of the existence and capacity of the company, and that the proper measure of damages was the amount of the notes and interest without taking into account any possible liability over of Laplante and Fournier to the plaintiff: *West London Commercial Bank* v. *Kitson*, 13 Q.B.D. 360, and *Simmons* v. *Liberal Opinion*, [1911] 1 K.B. 966, followed.

Semble, the defendants might also be held liable as makers of the notes and that the case was not within that class in which personal liability is excluded by words indicating that the maker is merely signing in a representative capacity or as agent: Story on Agency, par. 280, 281; Bills of Exchange Act, R.S.C. 1906, c. 119, s. 52, and Russell on Bills, p. 176, referred to.

The notes purported to be payable at the Northern Crown Bank, St. Boniface. The defendants respectively pleaded that the notes had not been presented for payment to them.

Held, that they could not succeed on an objection taken at the trial that the notes had not been presented for payment according to their tenor, and that there was no obligation on plaintiffs to present the notes in order to recover against defendants on their breach of warranty of the existence of their pretended principal.

Craig and *Ross*, for plaintiffs. *Dennistoun*, K.C., and *Dubuc*, for defendants.

Province of British Columbia.

SUPREME COURT.

Morrison, J.] [Dec. 15, 1911.

WILLIAMS *v.* SUN LIFE ASSURANCE COMPANY OF CANADA AND DAVID SPENCER, LIMITED.

Mortgage — Foreclosure — Power of sale—Order nisi for foreclosure—Order absolute never taken out—Sale of property —Knowledge of by mortgagor.

A mortgagee having obtained an order nisi for foreclosure never took out the order absolute. Negotiations were entered into and completed for the sale of the property to a third party in 1906. The mortgagor had knowledge of the sale. In 1911 he brought action to redeem the property.