

either establish the fiduciary relationship he has set up or shew that through fraud or misrepresentation he was induced to sign. In this he fails. The most that can be said is that these two men were on terms of business and social friendship; that their business dealings were conducted in an agreeable way, the manager doing defendant the favour at times of helping him in the preparation of his securities, and seeing to it that when demands upon him reached the bank they were protected without further troubling or calling upon him. This was a convenience and a protection to defendant. The evidence does not reveal that there was anything in this mode of procedure, or, in fact, in any other part of their business transactions, establishing the confidential relationship set up by defendant, or from which it can be implied. It is true their evidence does not agree on what took place at the time the guarantee was given. Armstrong's story is that, defendant being in the bank on other business, he explained to him that the head office insisted on security being given for the Galt and Mackey account or otherwise that it would be closed out, and that he asked defendant to guarantee this liability, explaining its nature, the security which the bank already held, and what business Galt and Mackey were doing and their statements; he says that he did not advise defendant to sign, but simply asked him to do so; that defendant asked no questions about the guarantee but signed willingly and without protest or objection. Defendant, on the other hand, says that when Armstrong called him into his office he put the paper before him and asked him to sign, and he did sign; and that he did so because he trusted Armstrong; but he adds that he glanced through the document to see what it was before he signed it, and that he did not ask what it was nor read it; though there was nothing to prevent his doing so.

Armstrong's whole evidence, given with straightforwardness and directness impressed me more favourably than that of the defendant especially in the light of the evidence of other circumstances which happened later on.

Mackey, who was called as a witness for the defence, says that he first learned of the giving of the guarantee in July or August of 1912 from defendant, who said that he was on the guarantee or that he was in some way 'mixed up' with the bank, and that they were holding him.

Galt says that the first he heard of the guarantee was in the fall of 1912.