

and B. & Co. discounted with defendants. The draft, not being paid at maturity, was protested by the bank. On 7th January, 1884, B. & Co. made an assignment for the benefit of their creditors; and, on 25th January, plaintiff, also becoming embarrassed, procured his creditors, including B. & Co.'s estate, to execute a deed of composition and discharge, whereby the creditors agreed to accept 50 cents on the dollar on their respective debts, payable 30 days from the date of the deed, one D. being surety for the said payment within the time limited.

There was a covenant by plaintiff and his surety to pay the several creditors, on or before the 25th February, the said 50 cents; and by the creditors with plaintiff not to sue for their several debts; that if plaintiff and his surety should observe and perform the covenants and agreements on their part, the creditors would release and deliver up the bills, notes, etc., held by them; and that if any of the creditors should sue for their debts, the deed might be pleaded in bar. The bank refused to execute the deed of composition. They proved against B. & Co.'s estate, and received a dividend of 40 cents, which they applied on the paper discounted by B. & Co., and upon which a customer was accommodation guarantor. The bank afterwards sued or threatened to sue plaintiff for the amount of the draft, and, not knowing that the bank had received the dividend, paid them in full; but, on discovering the fact, brought this action to recover the amount received by them. The plaintiff had not paid B. & Co. the 50 cents, or any part thereof.

Held, that the covenant not to sue on the deed of composition and discharge was not absolute, but merely conditional on payment being made within thirty days; and as plaintiff had not paid B. & Co. within the thirty days, he could not have claimed a release and set up the covenant as a bar to the action; that the bank were trustees for B. & Co. to the extent of 40 cents on the dollar of the amount received from the plaintiff; and B. & Co. could compel the bank to refund such amount to them; and therefore plaintiff had no right of action against the bank.

Lash, Q.C., for plaintiff.

Robinson, Q.C., and *T. P. Gall*, for defendants.

Chancery Division.

Boyd, C.]

[April 9.

THE CORPORATION OF THE VILLAGE OF
WESTON *v.* CONRON *et al.*

Principal and surety—Surety for treasurer—Treasurer being allowed to receive taxes instead of a collector being appointed—Liability of.

The defendant, C., was appointed treasurer of the plaintiffs in 1882, and continued in office until 1887.

He was also the clerk of municipality, and as such, in 1885, received certain taxes from the ratepayers for two months of that year. In an action against C. and N., who were sureties for C., in which year it was sought to charge both defendants with all moneys come to C.'s hands, and not accounted for, it was

Held, on appeal from a referee's report, that that temporary function was not of such a nature as to terminate C.'s duties as treasurer by implication, and that when the money came to his hands with which he charged himself, as treasurer, the responsibility of the surety began, and that he should not be charged with any sums which did not appear in his books, as treasurer, and which were referable to taxes otherwise received by him.

Foy, Q.C., and *J. Nason*, for the appeal.

J. K. Kerr, Q.C., contra.

Boyd, C.]

[April 26.

BANKS *et al.* *v.* ROBINSON *et al.*

Agreement to sell—Property not to pass—Stipulation for taking possession—After acquired property—Registration—R. S. O. c. 125.

J. R., by an instrument in writing, agreed in 1880 to sell his business and stock-in-trade to his sons, and provided that all the existing stock was to remain his property until it was paid for, and all after-acquired property brought in by way of substitution for existing stock was to become his property for the purposes of the security for the purchase money, and that on default he should have the right to re-enter and take possession. Default having been made, he took possession in January, 1888, and began selling off by auction. The