that this was a mistake of law, formidable though it be, might, perhaps, in view of the "unquestionable and flagrant" character of the mistake, be overcome: Snell v. Ins. Co., 98 U. S. R. 85; Story's Eq. Jur., 2nd Eng. ed., pp. 83, 85. But a difficulty, which is, I fear, insurmountable, arises from the fact that a rectification of this note so as to constitute it an obligation of the municipality would in fact make of it a new contract, and that of a body not a party to the instrument being dealt with, and not liable upon it. Nor is any such relief sought.

I am, therefore, constrained to find that defendants are personally liable upon the note.

Notwithstanding the circumstances of this case, in which (In re Central Bank and Yorke, 15 O. R. at p. 630) "there is inherently a persuasive equity to set off one against the other," because the liability on the note and the credit upon the deposit may be regarded as "substantially but the different sides of the same transaction," I agree that the indebtedness of the bank for moneys of the municipality, which it held to the credit of the Munroe account, cannot be set off against the personal liability of these defendants upon the note in suit.

No such difficulty exists, however, in regard to the balance of $548.34 which stood to the credit of defendant McDiarmid. Though no set-off in respect of this deposit is claimed in the statement of defence, in order, if possible, to work out a measure of substantial justice to defendants, I shall, without any hesitation, propria sponte, allow any amendment of pleading proper to raise this defence.

It, therefore, becomes necessary to deal with Mr. Leitch's contention that because the note in suit matured after the bank had gone into liquidation, no set-off can be claimed against it in respect of a balance standing to the credit of the deposit account of a party sued by the liquidators upon such note . . . Vanier v. Kent, Q. R. 11 K. B. 373, in which, under identical circumstances, a Quebec depositor was held to have no right of set-off. I have no doubt that such is not the law in Ontario. . . .

[Reference to Macfarlane v. Norris, 2 B. & S. 783; Mason v. Macdonald, 45 U. C. R. at p. 120; sec. 57 of the Dominion Winding-up Act.]

This promissory note was, at the time of the commencement of the winding-up, a claim accruing due to the bank, debitum in præsenti solvendum in futuro, at all events as to the liability of the maker. In a proceeding upon that claim —if the business of the bank were not being wound up—the