The learned Chief Justice, after a review and discussion of the evidence, said that his conclusion was, that the guarantors were liable for the whole of the direct indebtedness of the company, but were not to be called on for more than $150,000 in all.

If it were assumed that the guaranty was applicable only to $150,000 of the indebtedness, it by no means followed that the payment of that sum by the company on account of its indebtedness—it still remaining indebted in more than that sum—discharged the guarantors. Ellis v. Emmanuel (1876), 1 Ex. D. 157, does not support the view that, in the case of such a guaranty, where it is a continuing one, the surety's liability is discharged pro tanto by payments made by the principal debtor on account of his indebtedness.

So long as any indebtedness exists, the surety is liable to make good any part of it, not exceeding the amount which he has guaranteed.

The appeal should be dismissed.

MACLAREN and MAGEE, JJ.A., agreed with MEREDITH, C.J.O.

HODGINS and FERGUSON, JJ.A., agreed in the result, for reaons stated by each of them in writing.

Appeals dismissed with costs.

FIRST DIVISIONAL COURT. DECEMBER 19TH, 1919.

FOSTER v. OAKES.

Principal and Agent—Sale by Agent of Syndicate of Block of Shares in Mining Company—Agent himself Becoming Purchaser of Portion of Shares—Knowledge of Members of Syndicate—Ratification—Evidence—Onus—Bona Fides—Disclosure—Deceit—Misrepresentations—Election—Account—Liability for Shares Lost by Agent—Trusts and Trustees—Judgment—Declaration—Costs—Counterclaim—Appeal.

Appeal by the plaintiff from the judgment of KELLY, J., 12 O.W.N. 76, dismissing the action and awarding the defendants the relief asked by their counterclaim.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

I. F. Hellmuth, K.C., and S. J. Birnbaum, for the appellants.

R. McKay, K.C., and J. Y. Murdoch, for the defendants, respondents.