

Full Court.]

BLACK v. STEPHEN.

[Feb. 4

*Guarantee—Default of principal—Liability of sureties—Appropriation of payments—Time for making.*

Plaintiffs sold to S. the personal property contained in the building known as the Queen Hotel, of which S. was to become lessee, for the sum of \$11,000, S. undertaking to give to plaintiffs her promissory note for the sum of \$3,000, to be paid in instalments during the first year of the tenancy and to give to plaintiffs a guarantee, signed by defendants, for the payment during the second year of the tenancy of the further sum of \$3,000, payable at the same times and in the same amounts.

In compliance with the terms of this agreement S. gave plaintiffs a written guarantee, signed by defendants, for the payment of said sum of \$3,000, containing a provision that it was to remain in force notwithstanding that S. might have forfeited her right to the said personal property under the conditions of any agreement or mortgage entered into between S. and the plaintiffs.

S. made default after having paid instalments amounting to the sum of \$2,370, and plaintiffs thereupon took possession of the property covered by the agreement of sale, and disposed of the same for the sum of \$6,500.

Plaintiffs deducted from the whole amount due under the agreement the proceeds of the sale of the personal property and charged defendants, under their guarantee, with the balance.

*Held*, affirming the judgment of RITCHIE, J., that the termination of the lease, on default by S., and the taking possession of the personal property by plaintiffs, had not the effect of releasing the sureties.

*Held*, also, that on default of S. to pay, defendants became liable at once, and nothing done afterwards but payment would extinguish the liability.

*Per* RITCHIE, J. (in the judgment appealed from). Plaintiffs had the right to make the appropriation as they did, and that they were not obliged to do so immediately, but could make the appropriation at any time before trial.

R. L. Borden, K.C., and H. Mellish, for appellants. A. Drysdale, K.C., for respondents.

Full Court.]

TRAVIS v. WAY.

[Feb. 4

*Conditional sale—Payment of instalments—Remedy of vendor on vendee failing to pay.*

A written agreement entered into between plaintiff and defendant for the purchase of an organ by defendant from plaintiff provided that the property in the organ should remain in the vendor until payment in full of the price, which was payable in instalments, but that the vendee, making the payments agreed upon when due, etc., should be entitled to the possession