

LATCHFORD, J.

JANUARY 21ST, 1919.

MATHER v. BANK OF OTTAWA.

*Guaranty—Directors of Company Guaranteeing Account with Bank—
Alleged Extinction of Guaranty by Payment—Finding of Fact—
Counterclaim—Judgment against Executors of Deceased Direc-
tors—Limitation to Estates in Hand for Administration.*

In consideration of advances made or to be made by the defendants to the Ontario and Manitoba Flour Mills Limited, an incorporated company, the plaintiff and 4 other men, directors of the company, on the 15th November, 1911, executed and delivered to the defendants an instrument guaranteeing the account of the milling company to the amount of \$150,000. The defendants made advances amounting to more than that sum; but the plaintiff asserted that he and his co-directors had paid in full; and brought this action for an account, a declaration that the defendants had been paid in full, and for delivery up of the instrument.

The defendants alleged that a large amount was still due by the guarantors, and counterclaimed against those who were living and the estates of Fraser and Orme, who were dead, for the sum of \$98,631.10, with interest from the 31st May, 1918.

The action and counterclaim were tried without a jury at an Ottawa sittings.

G. F. Henderson, K.C., for the plaintiff and for George S. May, one of the defendants to the counterclaim.

I. F. Hellmuth, K.C., for the defendants.

G. D. Kelley, for the other defendants to the counterclaim.

LATCHFORD, J., in a written judgment, said that the only fact in issue was, whether or not the direct indebtedness of the company to the defendants had been paid. Upon the statements and admissions of counsel, supported by the documents filed as exhibits, the learned Judge found as a fact that, while \$90,000 and other large sums paid by the plaintiff and his fellow-directors were applied upon the direct indebtedness of the company to the defendants, yet, owing to additional advances made from time to time by the defendants, the amount of the company's direct liabilities to the defendants, secured by the guaranty, amounted on the 31st May, 1918, to \$98,631.10. Of this but \$61,672.95 was for principal. Neither the plaintiff nor the other defendants by counterclaim had established any defence to the counterclaim.

The plaintiffs' claim should be dismissed with costs, and there should be judgment for the defendants upon the counterclaim for