

and the note of the defendant for \$1,000 as collateral, there were two contracts—one, with which the defendant had nothing to do, for Richard to pay \$400, and the other for the defendant or Richard to pay \$1,000. If the extension of time on the former contract had the effect of suspending the remedy beyond its due date (assuming that the relation of principal and surety existed, to the knowledge of the bank), the defendant would be discharged.

But that was not the effect of the extension of time: the defendant could, if he wished, have come in and paid the bank, and then compelled the bank to realise the amount of the note for him.

There was never any extension of time for the payment of the \$1,000 note; and, consequently, the principle of *Frazer v. Jordan* (1857), 8 E. & B. 303, did not apply.

Devanney v. Brownlee (1883), 8 A.R. 355, distinguished.

Another ground was equally available to the plaintiffs. Admittedly the plaintiffs had no notice or knowledge that the defendant's note was not a debt from the defendant to Richard or anything else than a promise to pay without condition. No notice was given by the defendant or any other person of anything concerning the note until March, 1918, and then the only notice was an order by the defendant not to pay it. The next notice was by the solicitor for the defendant on the 11th February, 1919, asserting that the note had been left with the bank for safekeeping; and no other notice was given until after the commencement of this action. There was nothing to affect the plaintiffs with notice that the defendant was merely a surety for Richard.

The appeal should be dismissed with costs.

MIDDLETON, J., in a written judgment, said that the law applicable to this case was well stated in *Bailey v. Griffith* (1877), 40 U.C.R. 418. Nothing was done by the plaintiffs to the prejudice of the defendant after they learned that he was in the position of a surety only.

The appeal should be dismissed.

FERGUSON, J A., agreed with MIDDLETON, J.

LATCHFORD, J., agreed in the result.

Appeal dismissed with costs.