contradicting a written document applies only to an agreement which has actual vitality, and not to one which is in a state of suspended animation, ineffective and undelivered.

The evidence supported the position that the delivery was a conditional one.

Reference to Johnson v. Baker (1821), 4 B. & Ald. 440; Bowker v. Burdekin (1843), 11 M. & W. 128, 147; Corporation of Huron v. Armstrong (1868), 27 U.C.R. 533; Trust and Loan Co. v. Ruttan (1877), 1 S.C.R. 564, 583.

The guaranty sued on provided for the exact situation which had arisen; and, if it were operative, would control it, as it made each individual liable, even though others failed to do what was expected of them. Something more, then, was necessary, if the desired inference was to be drawn, than the fact that the circumstances pointed to a conditional delivery. Express and clear notice should be required to prevent the delivery of such a document from taking immediate effect, because its terms shewed that it was intended to come into effect as to each party as soon as he put his hand to it.

Such a notice had been established here; and the conclusion followed that the delivery was conditional only, and that the guaranty never became effective as against any one of the parties.

Carter v. Canadian Northern R.W. Co. (1911), 23 O.L.R. 140, 24 O.L.R. 370, Anning v. Anning (1916), 38 O.L.R. 277, and Great Western Railway and Midland Railway v. Bristol Corporation (1918), 87 L.J. Ch. 414, distinguished.

It was argued that delivery to Webb (the bank-manager) was delivery to the bank, the plaintiffs, who were to take the benefit under the contract, and that no escrow could be established in those circumstances. But the ancient rule on the subject has not survived: Millership v. Brookes (1860), 5 H. & N. 797; Watkins v. Nash (1875), L.R. 20 Eq. 262; London Freehold and Leasehold Property Co. v. Baron Suffield, [1897] 2 Ch. 608, 621, 622; Scandinavian American National Bank v. Kneeland (1914), 8 W.W.R. 61, 73, 77

The evidence established that, when the bond was finally handed to Webb, he undertook to get Farley's signature, and so held it as the agent of all parties until the time when, if he got that signature, he could properly retain the instrument for the plaintiffs.

The defendant Brownridge was in no different position from that of his co-defendants; he did not make himself personally liable to the plaintiffs for the amount advanced.

There was no ground for applying the doctrine of Ewing v.