

The judgment of the Court (BOYD, C., BRITTON, J., MAGEE, J.), was delivered by

BOYD, C.:—We think this judgment should be affirmed, but without costs, on the ground that the Statute of Limitations shuts out the plaintiff from relief which might have been obtained had earlier action been taken.

JANUARY 22ND, 1909.

DIVISIONAL COURT.

OSTRANDER v. JARVIS.

Contribution—Co-sureties—Equitable Principle—Proportion of Contribution.

Appeal by defendant from judgment of County Court of Prince Edward in favour of plaintiffs, husband and wife, for the recovery of \$384.90 in an action by sureties against a co-surety for contribution.

A. H. F. Lefroy, K.C., for defendant.

W. E. Middleton, K.C., for plaintiffs.

The judgment of the Court (BOYD, C., BRITTON, J., MAGEE, J.), was delivered by

BOYD, C.:—The principle of contribution among co-sureties does not rest on contract, but upon principles of equity which may be modified by the extent to which each has engaged himself. As put by Eyre, L.C.B., in *Dering v. Earl of Winchelsea*, 1 Cox 318, 323: "It is clear that one surety may compel contribution from another towards payment of a debt to which they are jointly bound. On what principle? Can it be necessary to resort to the circumstance of a joint bond? What if they are jointly and severally bound? What difference will it make if they are severally bound and by different instruments, but for the same principal and the same engagement? In all these cases the sureties have a common interest and a common burden: they are joined by the common end and purpose of their several obligations as much as if they were joined in one instrument, with the difference