

securities for money," that the residue of either and of both, after paying the small legacies, should pass.

Order declaring that the daughter Stella takes the whole of the residue of the estate after payment of the small legacies. Costs out of the estate.

KELLY, J.

FEBRUARY 7TH, 1918.

DOMINION BANK v. CAMERON.

Guaranty—Liability of Trading Company to Bank—Bond Executed by Certain Shareholders—Action on—Defence that Bond Executed on Condition that all Shareholders should Sign—Absence of Knowledge of Condition by Bank—Admission of Oral Evidence.

Action upon a bond, dated the 21st March, 1914, whereby the defendants guaranteed the payment to the plaintiffs of liabilities, whether incurred before or after the date of the bond, of the Noble Manufacturing Company Limited, to the extent of \$50,000. A specific term in the bond was, that the guaranty should be binding upon every person signing it, notwithstanding the non-execution thereof by any other proposed guarantor.

The defendants were shareholders of the Noble company, and some of them were directors.

The action was tried without a jury at St. Thomas.

W. N. Tilley, K.C., and W. B. Milliken, for the plaintiffs.

C. St. Clair Leitch, for the defendants.

KELLY, J., in a written judgment, after setting out the facts, said that the defendants sought to escape liability on the ground that their execution of the bond was on the understanding that they were not to be bound unless and except on the condition that all the shareholders in the Noble company should execute the bond.

The defendants' right to succeed upon that defence depended upon whether or not there was an understanding to that effect between them and the plaintiffs, or whether the plaintiffs were aware that their execution of the bond was upon that condition.

Upon the whole evidence, there was no bargain by or on behalf of the plaintiffs that all the shareholders should sign or that any