

THEIR LORDSHIPS (v.v.) set aside the above judgment and ordered a new trial; costs of the former trial and of the appeal to be costs in the cause.

HON. MR. JUSTICE KELLY.

JUNE 1ST, 1914.

ROYAL BANK OF CANADA v. LEVINSON.

6 O. W. N. 442.

Principal and Surety—Guarantee — Fiduciary Relationship—Fraud or Misrepresentation.

Where fiduciary relationship, fraud, duress and misrepresentation is pleaded as a defence to liability under a written guarantee. KELLY, J., *held*, that the onus is on the guarantor.

Action brought upon a guarantee executed by defendant on 27th February, 1912, guaranteeing to Traders Bank certain debts and liabilities of John Galt and L. R. Mackey composing the firm of Galt & Mackey. Plaintiffs were the transferees of the guarantee from the Traders Bank.

J. H. B. Coyne and A. McLennan, for plaintiffs.

R. M. Denistoun, K.C., and J. F. MacGillivray, K.C., for defendant.

HON. MR. JUSTICE KELLY:—For several years prior to 1912 defendant carried on a tailoring business in Kenora and did his banking business with the Traders Bank, whose office was close by his store. In the course of his business he had occasion to meet drafts drawn upon him and to give promissory notes. Armstrong, the manager of the bank, was helpful to him in making out these securities, and at times in anticipation of the presentment of drafts or notes, and to meet them promptly, defendant signed in blank and left with Armstrong cheques or notes, the arrangement being that the latter on becoming aware of the amount required should complete the document without reference to defendant. The relationship between them seems to have been of the most friendly kind; defendant daily, or almost so, was in the bank very frequently in the manager's office; they were also members of the same social or benevolent order, and were accustomed to meet outside of business.