

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

B.C.]

[April 6.

MILNE v. YORKSHIRE GUARANTEE AND SECURITIES CORPORATION.

Suretyship—Collateral deposit—Ear marked fund—Appropriation of proceeds—Set-off—Release of principal debtor—Constructive fraud—Discharge of surety—Right of action.

K. owed the corporation \$33,527.94 on two judgments recovered on notes for \$10,000 given by him to R., and a subsequent loan to him and R. for \$20,000. M., at the request of and for the accommodation of, R. had indorsed the notes for \$10,000 and deposited certain shares and debentures as collateral security on his indorsement. K. and R. deposited further collateral security on negotiating the second loan, but K. remained in ignorance of M.'s indorsements and collateral deposit until long after the release hereinafter mentioned. These judgments remained unsatisfied for over six years, but, in the meantime, the corporation had sold all the shares deposited as collateral security, and placed the money received for them to the credit of a suspense account, without making any distinction between funds realized from M.'s shares and the proceeds of the other securities and without making any appropriation of any of the funds towards either of the debts. On 28th February, 1900, after negotiations with K. to compromise the claims against him, the agent of the corporation wrote him a letter offering to compromise the whole indebtedness for \$15,000, provided payment was made some time in March or April following. This offer was not acted upon until November, 1901, when the corporation carried out the offer and received the \$15,000, having a few days previously appropriated the funds in the suspense account, applying the proceeds of M.'s shares to the credit of the notes he had indorsed. These negotiations for compromise and the final settlement with K. took place without the knowledge of M., and