

the firm, doubt that he did make such representations to them?

The case is, I think, plainly one in which, in order to defeat this action on the ground of mental incapacity of the defendant, he was bound to prove not only such incapacity, but also that the plaintiffs had knowledge of it; and that the trial Judge's holding to the contrary is erroneous. There was no evidence of any such knowledge when the later note was endorsed; and it is not, I find, proved that there was when the earlier one was endorsed.

And I incline to the view that if there was incapacity when the notes in question were endorsed, which incapacity vitiated the endorsements, the plaintiffs might revert to any of the earlier notes for the same indebtedness and recover upon them, on the ground that the renewals were made under a mistake of fact.

The Act respecting the registration of co-partnerships does not in any way relieve the defendant from liability.

I would allow the appeal; and direct that judgment be entered upon the two notes, in the plaintiffs' favour.

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HON. SIR JOHN BOYD, C.

NOVEMBER 28TH, 1912.

CITY OF GUELPH v. JULES MOTOR CO.

4 O. W. N. 401.

*Principal and Surety—Guarantee—Remedies given by Agreement—  
Right of Promisee to Choose Remedy—Alleged Variation of Con-  
tract—Release of Surety—Variation Permitted by Agreement—  
Materiality.*

BOYD, C., *held*, in an action against guarantors that plaintiffs, a municipal corporation, were entitled to damages for breach of an agreement to purchase certain property and for failure to keep up an adequate manufacturing plant as agreed, and to enforce defendants' guarantee of the same, and also, to give notice of complete rescission of the agreement in question.

That the guarantors were not released by a slight deviation from the letter of the agreement as drawn, where such amendment was in contemplation at the time of entering into the agreement, and where the agreement, in express terms, provided for the possibility of the same.

Judgment for plaintiffs against defendant guarantors for \$1,370 and costs.

Action upon a bond of United States Fidelity and Guarantee Co. for \$4,000 for security for the due carrying out of a certain agreement between plaintiff corporation and the defendant, the Jules Motor Co. Ltd.