

The learned Judge has no sympathy with the view that there is no such thing as judicial knowledge. The true principle is indicated by Eyre, C.B., in *Attorney-General v. Cast-Plate Glass Co.* (1792), 1 Anst. 39, 44.

Application dismissed without costs.

MIDDLETON, J.

SEPTEMBER 11TH, 1915.

LEVINSON v. GAULT AND MACKEY (No. 1).

Payment—Voluntary Payment of Debt of Another—Absence of Request—Right to Recover from Debtor—Judgment—Admissions on Examination for Discovery—Rule 222—Costs.

Appeal by the defendants from an order of the Local Judge at Kenora allowing the plaintiff to enter judgment against the defendants for \$1,990.63, upon admissions made by the defendant Mackey in his examination for discovery in the action.

A. McLean Macdonell, K.C., for the defendants.
Harcourt Ferguson, for the plaintiff.

MIDDLETON, J., said that the plaintiff introduced the defendants to a bank as would-be customers, and the bank accepted them. Later, the defendants appearing to be in an unsatisfactory financial condition, the manager of the bank reproached the plaintiff, and the plaintiff in consequence made himself liable to the bank for the defendants' account, and the bank sued him upon the document signed. In that action, he denied liability, but the finding was against him; and he secured the bank not merely for the indebtedness of the defendants, but for the bank's costs of that action. In this action he sued the defendants for the sums so secured. The plaintiff, when he first made himself liable to the bank, did so without any request on the part of the defendants, and contrary to their wishes; there was no assignment to the plaintiff of the bank's claim; and it was contended that there was no true contract of suretyship, and that the plaintiff's voluntary assumption and payment—if the security was equivalent to payment—of the indebtedness of the defendants to the bank did not confer upon him any right of action against them.

Upon the defendant Mackey's examination for discovery, he said that he considered himself morally liable to the plaintiff for the debt paid, but not for the costs.