

SECOND DIVISIONAL COURT.

NOVEMBER 28TH, 1919.

*ROYAL BANK OF CANADA v. WAGSTAFFE.

Promissory Note—Endorsement to Bank as Collateral Security to Note for Smaller Amount—Position of Maker of Note—Surety—Notice to Bank—Time Given to Principal Debtor for Payment of Smaller Note—Effect of—Prejudice.

An appeal by the defendant from the judgment of the County Court of the County of Halton, in an action upon a promissory note made by the defendant. The County Court Judge gave judgment against the defendant for \$430.22 and costs.

The appeal was heard by RIDDELL, LATCHFORD, and MIDDLETON, JJ., and FERGUSON, J.A.

J. L. Counsell, for the appellant.

E. H. Cleaver, for the plaintiffs, respondents.

RIDDELL, J., in a written judgment, said that the defendant, on the 10th August, 1917, made a promissory note for \$1,000 and interest at 6 per cent., payable 6 months after date, to the order of one Richard, who, desiring to borrow \$400 from the plaintiffs' bank, on the 4th May, 1918, gave the defendant's note to the bank-manager as collateral security for his (Richard's) own note for \$400, payable on the 7th July, 1918, with interest at 7 per cent. Richard endorsed the defendant's note over to the plaintiffs and waived protest and notice of dishonour. Richard received \$400 from the bank, but did not pay his note when due. The plaintiffs had no notice or knowledge of an agreement made between Richard and the defendant that the note was not to be negotiable except on the happening of an event which had not happened— or (if such were the effect of the agreement) that the note was to be void if such event did not happen. Before the defendant's note became due, he notified his bankers not to pay it when due. Richard's note was renewed twice, and was still unpaid when this action was brought to recover \$400 and interest from the defendant.

The defendant based his defence on the extension of time given to Richard to pay the loan of \$400, but that was clearly untenable.

The rule that giving time to a principal releases the surety is based upon the fact that by so doing the creditor ties his hands so that he cannot sue the principal, and consequently the surety is deprived of his right to pay the amount as originally agreed and use the creditor's name to enforce payment from his principal.

In the present case, on Richard giving his own note for \$400