

also sustains the doctrine contended for by the defendant Lacourse.

After going over the affidavits and the examination of Platt, the assignee of the plaintiff's claim, I am of opinion that there has been no valid assignment of this claim to deprive the defendant of his right to set off this judgment,

The order will go to set off so much of the judgment of plaintiff as may exceed the costs of the plaintiff's attorney, to be taxed as between attorney and client on the judgment in the suit *Bank of U. C. v. Chichester et al.*

Order accordingly.

ENGLISH REPORTS.

ALLAWAY V. DUNCAN.

Principal and Surety—Guarantee.

The plaintiff, who held an overdue bill accepted by one W. received a letter from the defendant containing the following passage:—"I am now making arrangements for an advance to W. to enable him to pay this and other claims upon him, and if you will have the goodness to hold the bill for a few days I shall be prepared on his behalf to take it up."

Held, that this letter did not amount to an undertaking on the part of the defendant to be personally liable for the debt due from W. to the plaintiff.

[C. P., April 16. W. R. XV. 711.]

The declaration stated that the plaintiff was the holder of a certain overdue bill of exchange, drawn by the plaintiff upon, and accepted by John Wright, which had not been paid; and thereupon, in consideration that the plaintiff would give time to Wright for the payment of the same for a few days, the defendant guaranteed that he would, at the expiration of such time, be prepared to take up the said bill on behalf of Wright. Averment, that the plaintiff gave time to Wright—breach, that neither Wright nor the defendant had paid to the plaintiff the amount of the said bill.

Plea (the first), a denial of the guarantee.

The cause was tried before Smith, J., at the sittings after last Hilary term, at Guildhall, when it appeared that the plaintiff carried on business as a brick merchant and agent in the city of London, and that the defendant was a solicitor in the city of London. In the years 1865 and 1866 the plaintiff sold certain bricks to Mr. John Wright, a builder at Erith, which were paid for by Wright's acceptances at three months. One of these acceptances, for £91 11s., became due on the 4th December, 1865; it was made payable at the London and County Bank, Woolwich, where it was presented and dishonoured. It was afterwards paid; but Wright subsequently requested the plaintiff not to present at the bank his next acceptance for £91, which was to fall due on the 4th February, 1866, but promised to call upon him and take it up when it became due. Wright failed to do this, whereupon the plaintiff wrote to Wright requesting him to fulfil his promise, and on the 5th February he received the following letter from the defendant:—

"Sir,—Mr. Wright has handed me your letter of the 3rd respecting the non-payment of a bill for £91, due on Saturday. I am now making arrangements for an advance to Mr. Wright to enable him to pay this and other claims upon him, and if you will have the goodness to hold

the bill for a few days, I shall be prepared on his behalf to take it up."

This action was brought upon the guarantee which the plaintiff contended was contained in this letter.

A verdict was found for the defendant, with leave to the plaintiff to move.

Keane, Q. C., now moved for a rule nisi to set aside the verdict, and to enter a verdict for the plaintiff. He contended the letter of the 5th February contained a personal undertaking to be answerable for the debt due from Wright to the plaintiff, if Wright failed to pay it. He cited *Downman v. Williams*, 7 Q. B. 103; *Lewis v. Nicholson*, 18 Q. B. 503; *Norton v. Herron*, R. & M. 229.

BOVILL, C. J.—The important document in this case is very ambiguous, and is one on which it is difficult to place a construction; it is the duty of the court to arrive at a conclusion from the general nature of the document. The letter which was written by the defendant to the plaintiff refers to Wright in such terms as a solicitor would use in speaking of his client. The defendant speaks of Wright as of a person for whom he was acting; he then says—"I am now making arrangements for an advance to Mr. Wright, to enable him to pay this and other claims upon him." To whom was this advance to be made? undoubtedly to Wright; and for what purpose? No doubt it was to enable Wright to pay off a sum due from him. The letter proceeds to say—"If you will have the goodness to hold the bill for a few days, I shall be prepared on his behalf to take it up." The letter is almost similar to the second part of the letter in *Downman v. Williams*; the distinction is a very fine one. I base my judgment on the whole transaction, as disclosed by the letter, and I think it is evident that defendant was acting for Wright.

BYLES, J.—I am of the same opinion. I think that a contract by which an attorney is to become a surety for his client can only be created by express terms. The defendant here says in effect, I shall be in funds on Wright's behalf, and shall then be prepared to take up the bill. The Lord Chief Justice has referred to the case of *Downman v. Williams*, and that case is a very strong one against Mr. Keane.

KEATING, J.—In order to decide this case it is necessary to look at the whole of the document: it appears clear from it that the defendant was only acting for Wright. The letter says nothing more than that, if the plaintiff would hold over for a few days, the defendant would raise money to satisfy the bill on behalf of Wright.

SMITH, J.—I am of the same opinion. My impression at first was that the letter did not contain any personal undertaking to pay, and I have since been confirmed in that view.

Rule refused.

STUBBS V. THE HOLYWELL RAILWAY COMPANY.

Contract—Personal services—Death—Right of action vested—Rescission.

Where a contract is for personal services, the death of the person who is to render those services determines the contract for the future, but it does not rescind it *ab initio*, or take away any right of action already vested. Where a person employed to do a job, to be finished in a certain time, at a quarterly salary, and after several quarterly payments had accrued due, but before the work was finished he died,