

SUPREME COURT OF CANADA.

OTTAWA, 25 January, 1897.

Quebec]

MACDONALD v. WHITFIELD.

WHITFIELD v. THE MERCHANTS BANK.

*Principal and surety—Judgment against sureties—Discharge of one
—Trust funds—Rights of co-sureties—Guarantee.*

A bank holding judgments against several sureties released one, reserving his recourse against the others, with a declaration that the release gave no warranty against claims the other sureties might seek to enforce against the one released by reason of the exercise of the recourse reserved. The surety released had at the time a sum of money in his hands to be applied towards payment of the bank's debt.

Held, that notwithstanding the release said surety could be compelled by his co-sureties to pay such moneys to the bank, or to the co-sureties if the bank had been paid by them.

Held also, that the bank was not liable as a warrantor to the sureties not released, having entered into no agreement creating an obligation in guaranty towards them.

Appeal dismissed with costs.

Geoffrion, Q.C., and *Fleet*, for appellant Macdonald.

Abbott, Q.C., and *Taylor* for Whitfield.

Abbott, Q.C., for Merchants Bank.

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MCGOEY v. LEAMY.

*Appeal—Bornage—Agreement as to—Title to land—Future rights
—R.S.C., c. 135, s. 29—54 & 55 V., c. 25, s. 2.*

The owners of contiguous lands with no established line of division agreed by notarial deed to have such line established by a surveyor, but one owner refused to accept the surveyor's report, and to acquiesce in the boundary thereby fixed. In an action by the other owner to have the same declared the true