chattel mortgage was filed towards the end of the first year, but none was filed thereafter. The defendant Tibbetts had suffered judgment by default.

The learned Judge said that the chattel mortgage was still good as between the plaintiff and Tibbetts, and that it was not shewn in evidence that, if the defendant McKenzie should now pay the amount demanded and receive from the plaintiff an assignment of the chattel mortgage, he would be in any worse position from the fact that the renewal statements had not been filed in the meantime.

The defendant McKenzie must have been aware all along that the notes had not been paid. He said that he had had opportunities in the meantime, if he had been called upon to pay the notes, to recover the moneys from Tibbetts. He did not give any particulars. A surety cannot remain passive and then seek to escape liability: Wright v. Simpson (1802), 6 Ves. 714, 733; Eyre v. Everett (1826), 2 Russ. 381. The defendant had not sustained any loss on this score through the alleged dilatoriness and negligence of the plaintiff.

It was said that the plaintiff accepted from Tibbetts a promissory note of a stranger on account of this debt; but that was not the fact.

The main contention was, that McKenzie, the surety, was discharged by reason of the plaintiff giving time to Tibbetts, the principal debtor; but the learned Judge was unable to find that any agreement of a character binding on the plaintiff was made with Tibbetts, or that there was anything more than delay and indulgence.

Reference to De Colyar's Law of Guaranties, 3rd ed. (1897), pp. 423, 426; Chalmers on Bills of Exchange, 7th ed. (1909), p. 244; Maclaren on Bills Notes and Cheques, 5th ed. (1916), p. 81; Thompson v. McDonald (1858), 17 C.R. 304; Wilson v. Brown (1881), 6 A.R. 87.

Judgment for the plaintiff against the defendant McKenzie for the sum of $836.16 and interest from the 20th October, 1915, with costs.