

*Held*, also, that the fact of his having pleaded to the counterclaim did not militate against his rights.

*J. E. Day*, for defendant *J. P. Cope*. *W. R. Riddell* and *D. Fashen*, for the defendant *Crichton*.

Boyd, C.]

CLAPPERTON & MUTCHEMOR.

[April 25.

*Bankruptcy and insolvency—Proof of claim—Promissory note—Indorser—Incomplete instrument—Suretyship—Maturity after assignment for creditors—Statute of frauds.*

The plaintiffs, being creditors of an incorporated company, accepted an offer made by the company's president, in a letter addressed to the plaintiffs, to "personally guarantee payment" of the company's debt, upon an extension of time being given, and, in order to carry out the arrangement, promissory notes were made by the company payable to the order of the plaintiffs, and indorsed by the president, who made an assignment for the benefit of his creditors under R.S.O. c. 147 before the maturity of three of the notes, in respect of which the plaintiff's right to rank upon his estate in the hands of the defendant, as assignee.

*Held*, following *Jenkins v. Coomber* (1898) 2 Q.B. 168, that, as against the Statute of frauds, no action could be maintained upon the notes against the president, as to whom the instrument was incomplete.

And, although the correspondence and the notes taken together established an agreement of suretyship, notwithstanding the Statute of frauds, yet proof could not be made upon such a contract when the notes guaranteed had not matured at the date of the assignment.

*Grant v. West*, 23 A.R. 533, and *Purefoy v. Purefoy*, (1) Vern. 28, followed.

*Belcourt* and *R. V. Sinclair*, for plaintiffs. *G. F. Henderson*, for defendant.

Armour, C.J.]

BREWSTER & HENDERSHOTT.

[April 28.

*Church—Change in doctrine—Secession of members—Religious Institutions Act, R.S.O., c. 307.*

In 1865, under the powers conferred by the Religious Institutions Act, R.S.O., c. 138, certain land was acquired in trust for a religious body, called the United Brethren in Christ, whereon a church was erected at the expense of the individual members of the congregation. In 1889 a schism occurred, in consequence of a change of faith, though not a fundamental one, as held by the Court of Appeal in *Itter v. Howell*, 23 A.R. 206, the congregation of this church adhering to the old faith. Subsequently, at the yearly conference of the body, and also at the Quarterly Conference of the circuit in which this church was, resolutions were passed, purporting to appoint, as trustees, the plaintiffs, who were adherents of the new faith,