

R. G. Code, Ottawa, and E. F. Burritt, Ottawa, for plaintiffs.

Travers Lewis, Ottawa, and J. F. Smellie, Ottawa, for defendants.

MEREDITH, C.J. (after stating the facts and referring to the evidence) :—It was contended that the effect of the proof of the claim against McRae's estate was to preclude plaintiffs from making any claim against defendants. Had plaintiffs sought to make the estate of McRae liable on the footing that McRae was the principal debtor, it is probable that the effect of the order for administration, coupled with the proof by the plaintiffs, would have precluded them from suing the real principal debtor, the defendant company: *Morel v. Westmoreland*, 19 Times L. R. 42: but, McRae being only a surety for defendants, at all events in respect of the promissory notes, the proof of the claim has not, in my opinion, as to the notes, any such effect. Assuming that defendants were liable to plaintiffs, they, and not McRae, were the principal debtors, and McRae was a surety only, and proof against the surety's estate is of course no bar to an action against the principal debtor.

Nor did the taking by plaintiffs of the notes of McRae in renewal of the notes of defendants . . . affect the liability of defendants on the promissory note for \$863.28, or so much of it as remains unpaid. The note of McRae were not taken . . . in satisfaction of the promissory note of defendants, and they operated only to suspend the right of action on it during the currency of the renewals made by McRae, though, of course, to the extent of the actual payments made by McRae on his notes, the payments must go in reduction of the claim against defendants.

There remains, however, the question whether the defendants are liable on the promissory note for \$863.28.

McRae, as president, and Williams, as secretary-treasurer, were authorized by the by-laws of the company to sign promissory notes on behalf of the company; and by sec. 76 of the Companies Act it is provided that promissory notes made on behalf of the company by any agent, officer, or servant of the company in general accordance with his powers as such under the by-laws of the company, shall be binding on the company. The promissory note for \$863.28 being signed in the way prescribed by their by-laws, the company are bound by it, unless McRae and Williams had no authority to make the note in the name and on behalf of the company, and unless also plaintiffs are affected with notice of that want of authority. . . . On the facts of this case, it cannot be said, I think, that the proper finding of fact is either the absence of authority to make the note or knowledge of the