applicable, the time prescribed for the filing of a renewal statement not having elapsed.

H. Mellish, for appellant. *C. S. Harrington*, K.C., for respondent.

Full Court.] McLAUGHLIN CARRIAGE CO. *v.* OLAND. [March 5.

Principal and surety—Agreement to sell goods and account—Bond to secure performance of conditions—Default—Notice—Liability of surety.

The plaintiff company entered into an agreement in writing with O. for the sale of carriages manufactured by the plaintiff, by the terms of which O. was required to obtain from the purchaser of each vehicle on delivery his note or cash in settlement, and in all cases where notes were taken to guarantee the payment of and indorse said notes. Defendant became surety on a bond given by O. to the plaintiff that O. would well and truly abide by and perform the conditions of the agreement, and would pay and satisfy all notes and other securities which remained outstanding on termination of said agreement. Some of the notes taken by O. having become overdue during the course of the business, plaintiffs drew drafts on O. for the amounts, which drafts O. accepted but failed to pay. To an action brought by plaintiffs on the bond, after the termination of the agreement, defendant pleaded among other things that plaintiffs were aware of defaults and breaches of agreement by O. and gave time to O. to make payments, and the defendant was thereby released and discharged.

Held,—1. As defendant was not to be liable until after the termination of the agreement, and as the time given had elapsed before the liability of defendant accrued, the giving of the time did not prevent plaintiffs from looking to the surety.

2. If in any case time was given so as clearly to discharge the surety, the amount as to which he was discharged was severable from the rest of the transaction and the discharge would only operate pro tanto.

3. As by the terms of the bond the taking and renewal of notes was contemplated the surety was not prejudiced by the drawing of drafts as a means of collecting the notes.

4. As to the taking by O. of notes in a different form from that stipulated, it must be shewn that plaintiffs by their conduct prevented the thing from being done or connived at their omission, or enabled O. to do what he ought not to do, and but for which conduct on the part of plaintiffs the omission or commission would not have happened, and the mere reception by plaintiffs of notes taken by O. in another form than that required, was not within this principle.

5. A letter from plaintiff's manager to defendant notifying him that notes endorsed by O. were not being paid when due, and that the amount was large and growing, was sufficient to have put defendant upon his guard.

C. S. Harrington, K.C. for appellant. *W. F. O'Connor* for respondent.