

available in or near the surface of the vein, or was to go down deeper, or operate more largely, with the view of mining the property as if it was owned by his principals and himself.

The learned Judge said that the cases were not uniform, and that principals had been held liable where the agency was a general one.

After a review of the English and Ontario cases, he said that he thought it was open to this Court to follow *Miles v. McIlwraith*, *supra*, untrammelled by other decisions.

The appellants never heard of the plaintiff nor did he make any claim on them. The fund provided for expenses had all been paid out and appropriated to accounts earlier in date than that of the plaintiff, and properly so. No right against the appellants existed unless it could be based upon the fact of agency irrespective of limitation of authority or the course of dealing. To allow the plaintiff to recover against the appellants would be to ignore the limitations of his agency, the exhaustion of the fund provided, and the revocation of his authority, all of which happened in fact before the plaintiff supplied any of his goods.

That part of the plaintiff's claim which consisted of an assigned account presented no different features.

The appeal should be allowed, the judgment for the plaintiff set aside as against the appellants, and the actions dismissed with costs to the appellants.

The plaintiff should have judgment against Chisholm for the amount of his (the plaintiff's) claim and costs.

*Appeal allowed.*

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FIRST DIVISIONAL COURT.

DECEMBER 19TH, 1919.

**\*DIME SAVINGS BANK v. MILLS.**

*Guaranty—Indebtedness of Company as Customer of Bank—Construction of Instrument—Limitation of Amount of Liability—Bank Allowing Increased Indebtedness or Liability—Agreement for "Addition thereto"—Interest—Liability of Guarantors.*

Appeals by the defendants Mills and Howell respectively from the judgment of FALCONBRIDGE, C.J.K.B., at the trial, of the 23rd April, 1919, in favour of the plaintiffs for the recovery of \$3,520.25 and costs, and dismissing the defendants' counterclaims. The action was upon a guaranty.