There is certainly no guaranty contained in either of the letters, and the plaintiff is in error in supposing that there existed any other letter from the defendant guaranteeing the loan. Even assuming that these letters afforded evidence of a verbal guaranty, that is not of any avail to the plaintiff, as, by no possible stretch of the imagination, could the defendant be said to come within the case of Sutton v. Grey, [1893] 1 Q.B. 285. In that case it was held that, although the contract was not in writing, the action was maintainable, because the defendant had an interest in the transactions equally with the plaintiffs, and therefore the contract was not within s. 4 of the Statute of Frauds. In the present case the defendant had no interest whatever in the lending of the money, except the solicitor's fee and any fee charged for valuation, both of which were paid by the borrower. There was no neglect of duty by the defendant, but every care was exercised by him in making the valuations, and the then marketable value of each of the properties, as stated by him, was amply sufficient to justify the advance made on the mortgage in each case. Action dismissed with costs.

Clarke, Cowan, Bartlet, & Bartlet, Windsor, solicitors for plaintiff.

Ellis & Ellis, Windsor, solicitors for defendant.

MAY 13TH, 1902.

DIVISIONAL COURT.

GODBOLD v. GODBOLD.

Executor—Insolvency—Administration of Estate by Court—Motion for—Undertaking to Pay into Court—Costs.

Appeal from order of MEREDITH, J., ante p. 233. The same counsel appeared.

THE COURT (BOYD, C., MEREDITH, C.J.) held that no reason had been shewn for ordering administration by the Court or for the appointment of a receiver. The order below went further even than was necessary in the plaintiffs' favour. There is now a discretion in the Court to grant or refuse administration, and the Court should not interfere where the administration is in competent hands. Nothing to the executor's discredit is now shewn which was not known to the testator when he appointed him executor. The executor has no property, but has paid his debts, and cannot be considered insolvent; he is apparently an honest man. His refusal to allow the plaintiffs to see the will before it was proved, is not material, and is not evidence of any want of good faith. There is nothing to shew that he