

the creditor and the surety, must be determined as if it arose merely between the creditor and the principal debtor, the surety having no right of his own to dictate either to the creditor or the debtor how payments made by the latter are to be appropriated. See also *Wright v. Hickling*, L. R. 2 C. P. 199; *City Discount Co. v. McLean*, L. R. 9 C. P. 692.

Paragraph 3 of the report finds that "John Harvey released John McKay from payment of the said \$1,000, by transferring it from his account and charging defendant with it, and also by releasing John McKay from balance of the cotton account, of which it formed a part, and wiping it off his books."

It would appear that during the year 1881 John McKay failed, and plaintiff John Harvey, who was the owner of the mill premises occupied by McKay, conveyed the same to defendant for \$12,000, and took her mortgage back for the full amount to secure the purchase money; and in August, 1881, an account is opened in the name of Mrs. Elizabeth McKay.

On 23rd January of that year Harvey's bookkeeper, as I find, without any authority from Harvey, but of his own motion, debited Mrs. Elizabeth McKay with two items of \$677.92 and \$1,308.19, described as "J. McKay cotton account," and at the same time credited the said two amounts to "John McKay cotton account." And afterwards, also, as I find, without any authority of his employer, said bookkeeper of his own motion on 31st December, 1885, balanced off the John McKay cotton account by transferring the debit balance of \$609.06 to profit and loss, and placing that amount to the credit of the cotton account, so that, so far as the bookkeeping shews, John McKay would not be indebted to John Harvey in respect of said cotton account.

In my opinion, the evidence conclusively shews that on 19th October, 1885 (the date when the last renewal of accommodation note was taken up), John McKay was actually indebted to plaintiff John Harvey in respect of the cotton account, including the \$1,000 note and interest, in the sum of \$2,406.02, as per exhibit 10, which, in my opinion, was fully verified by the evidence. And I am of the opinion that the transfer entries made by the bookkeeper are in no way conclusive, nor can they operate as a release of the liability of John McKay to John Harvey.