1905, and payable three years after date, to the order of the testatrix, one note being for $800, with interest at 5 per cent. per annum, signed by the defendant and his wife, and the other for $140, with interest at the same rate, signed by the defendant alone. The notes were renewals of earlier ones for similar amounts. The defendant duly paid the interest on each of them to the testatrix until her death in 1919; so that there was no suggestion of any defence based upon the Statute of Limitations.

The action was tried without a jury at Hamilton.

H. Carpenter, for the plaintiff.

W. S. MacBrayne, for the defendant.

Rose, J., in a written judgment, said that the defendant in his testimony at the trial swore that his mother gave him the money represented by the notes upon his undertaking that he would pay her interest on it as long as she should live; it was a loan to him for her lifetime; if he outlived his mother he was to get it; if he "dropped off" first his mother could collect it if she needed it.

The defendant's testimony was corroborated, and was believed by the learned Judge; and the question was whether, having been admitted and being believed, it disclosed any answer to the plaintiff's claim.

The learned Judge said that the bargain was, not that the announcement of the obligation represented by the notes should be suspended, but rather that the notes should take some effect, but should be liable to be defeated if the event mentioned in the oral agreement happened: see Wallis v. Littell (1861), 11 C. B. N.S. 369, 374.

They were to take effect, at least so far as was necessary to bind the defendant to pay interest; they were liable to be defeated if the interest was paid and the testatrix predeceased the defendant. The documents were signed and handed over as promissory notes, but there was an oral agreement that at maturity, they should not be paid if the defendant and his mother were both living and the interest had been duly paid: see New London Credit Syndicate v. Neale, [1898] 2 Q. B. 487, 490.

In other words, the agreement relied upon was not an agreement suspending the coming into force of the contract contained in the notes, but an agreement in defeasance of that contract: therefore, the evidence of it was not admissible.

Reference to Hitchings and Coulthurst Co. v. Northern Leather Co. of America and Doushkess, [1914] 3 K.B. 907; Woodbridge v. Spooner (1919), 3 B. & Ald. 233; Porteous v. Muir (1884), 8 O.R. 127; Graves v. Clark (1842), 6 Blackf. (Ind.) 183; Daniel on Negotiable Instruments, 6th ed., pp. 114-120.