

W. M. Reade, K.C., for the defendants.

M. A. Secord, for the plaintiffs.

Boyd, C. (after setting out the facts and the correspondence between the plaintiffs and the defendant company):—The acts and correspondence of the creditors and the assignees of the original debtors shew, so to speak, an attornment as between them by which the plaintiffs were treated as the direct creditors of the new concern, and the new concern negotiated with the plaintiffs for extension of time, and undertook absolutely to make payment. The giving of the promissory notes is sufficient evidence of the direct relationship of debtor and creditor to give a direct right of action. Even if it be treated as a dealing by one to answer for the debt of another, there is plenty of evidence in writing of such a promise as would satisfy the Statute of Frauds, which, however, is not pleaded. The merits are entirely with the plaintiffs—the line of defence is a technical one and manifestly only to gain time. And though after judgment in the plaintiffs' favour they may be well advised in giving further time to the new and developing company, that is not a legal reason why the intervention of the Court may not be properly claimed. The facts of the case and the direct dealings between the plaintiffs and the defendant company remove this litigation from the authority of *Osborne v. Henderson*, 18 S. C. R. 698. There is here in the correspondence a direct promise of the new company to pay the old debt which they had assumed.

The judgment may also be supported as against the company on the ground that notice was given of the incorporation of the company and the taking over of the old assets and the assumption of the old liabilities, and in effect the assent of these creditors asked to the change. The plaintiffs do in effect accede to that change, and by their conduct shew that the new liability is accepted, and both parties proceed with the correspondence, and the debtors in effect get some extension of time—from April till October, when the action is brought. The plaintiffs' letter of the 30th August indicates that . . . they could look to both; but the previous dealings afford sufficient evidence to justify a conclusion that they had already elected to look to and exclusively deal with the new concern. See *Scarf v. Jardine*, 7 App. Cas. 345, at p. 251, and *Rolfe v. Flower*, L. R. 1 P. C. 27, in which Lord Eldon is quoted as saying that a very little will do to make out an assent by the creditors to the agreement. See also *Clark v. Howard*, 150 N. Y. 232.