

Held, also, that as the suit was brought on behalf of all the creditors, the proceeds recovered should be distributed pro rata, except that those who had acquired liens must be satisfied to the extent of the liens.

McNeil, Q.C., for plaintiffs.

Borden, Q.C., *Jas. McDonald* and *H. A. Lovett*, for defendants.

Full Court.]

JOHNSON v. FITZGERALD.

[Jan. 12.

Guarantee—Special indorsement in action on—Should set out consideration—Indorsement set aside and action dismissed—Judgment of County Court Judge affirmed—Amendment.

Plaintiff's writ was specially indorsed as follows: "The plaintiff's claim is against the defendant upon a guarantee in writing, of the 6th day of November, 1895, by which defendant agreed to see that plaintiff was paid ten dollars per month on the following note: 'Ten months after date I promise to pay to the order of Walter Johnson, one hundred dollars, payable ten dollars per month, without interest, at Caledonia Corner, for value received.' Particulars,—

To instalments due to July 6th, 1896.....	\$80
By instalments paid to April 6th, 1896	50

Amount due	\$30
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"No instalments have been paid since April 6th, 1896, and defendant refuses to perform his guarantee. The plaintiff claims \$30."

The statement of claim was struck out by the Judge of the County Court, and plaintiff's action was dismissed, on the ground that the action was based upon the guarantee, but no consideration was stated, and it did not appear whether the guarantee was under seal or not.

Held, affirming the judgment of the County Court Judge, that a special indorsement, equally with every other statement of claim, must show a cause of action, and that in order to constitute a good special indorsement in an action upon a guarantee, it was necessary to show the consideration upon which it was alleged to have been made.

Held, also, that there was nothing stated from which consideration might or must be inferred.

Held, also, that the word "guarantee" did not of itself import consideration.

Held, also, that the plaintiff not having asked for leave to amend below, must be deemed to have taken his chances upon the case he made, and that such leave should not be granted now.

Held, also, that the Judge below adopted the correct course, upon the conclusion he reached, in dismissing the action.

Per WEATHERBE, J., dissenting,

Held, that the indorsement was sufficient, but, if not, the defect was a mere slip, as to which the County Court Judge should have suggested an amendment, and that he erred in dismissing the action.

W. B. A. Ritchie, Q.C., for plaintiff.

W. A. Henry, for defendant.