

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario]

[Feb. 18.

AGRICULTURAL INS. CO. *v.* SARGENT.

Suretyship—Principal and surety—Continuing security—Appropriation of payments—Imputation of payment—Reference to take accounts.

J. H. S. was a local agent for an insurance company, and collected premiums on policies secured through his agency, remitting moneys thus received to the branch office at Toronto from time to time. On 1st January, 1890, he was behind in his remittances to the amount of \$1,250, and afterwards became further in arrears, until on the 15th October, 1890, one W. S. joined him in a note for the \$1,250 for immediate discount by the company, and executed a mortgage on his lands as collateral to the note and renewals that might be given, in which it was declared that payment of the note or renewals, or any part thereof, was to be considered as a payment upon the mortgage. The company charged J. H. S. with the balance then in arrears, which included the sum secured by the note and mortgage, and continued the account as before in their ledger, charging J. H. S. with premiums, etc., and the notes which they retired from time to time as they became due, and crediting moneys received from J. H. S. in the ordinary course of their business, the note and its various renewals being also credited in this general account as cash. W. S. died on 5th December, 1891, and afterwards the company accepted notes signed by J. H. S. alone for the full amount of his indebtedness, which had increased in the meantime, making debit and credit entries as previously in the same account. On 31st July, 1893, J. H. S. owed on this account a balance of \$1,926, which included \$1,098 accrued since 1st January, 1890, and after he had been credited with general payments there remained due at the time of trial \$1,009. The note W. S. signed on 15th October, 1890, was payable four months after date with interest at 7 per cent., and the mortgage was expressed to be payable in four equal annual instalments, of \$312.50 each, with interest at 6 per cent. on unpaid principal.

Held, that the giving of the accommodation notes without reference to the amount secured had not the effect of releasing the surety as being an extension of time granted without his consent and to his prejudice; that the renewal of notes secured by the collateral mortgage was *prima facie* an admission that at the respective dates of renewal at least the amounts mentioned therein were still due upon the security of the mortgage; that in the absence of evidence of such intention it could not be assumed that the deferred payments in the mortgage were to be expedited so as to be *eo instanti* extinguished by entries of credit in the general account, which included the debt secured by the mortgage; and that there being some evidence that the moneys credited in the