MIDDLETON, J., read a judgment in which he said that a certain incorporated company was a customer of the plaintiff bank, and the defendant was a director of the company. The company owed the bank $31,288, and as security for this debt held: (a) an hypothecation of the manufactured and unmanufactured goods of the company of the nominal value of $26,000; (b) an assignment of book-debts amounting to about $8,000; (c) customers' bills current for $5,500 and past-due $5,200; (d) a note made by one Playfair for $1,500; and (e) the notes upon which the defendant was sued, viz., a note for $32,000, payable one day after demand, dated the 21st November, 1913, made by the defendant and his co-directors in favour of the company, and endorsed by the company to the bank, and a similar note for $3,000, of the 15th December, 1913, also endorsed to the bank. Payment of the notes had been demanded and refused, and the notes had been protested.

At the time the notes were endorsed to the bank in December, 1913, an hypothecation agreement was signed, not only by the company, but also by the makers of the notes, presumably to indicate their assent to the terms upon which the notes were held by the bank. Under the agreement, the notes and the proceeds thereof were to be held as a general and continuing security, collateral to the debt of the company to the bank, and for any ultimate balance of such indebtedness.

The bank now sued Turner as maker of these notes, but limited their claim to the amount due by the company.

The defendant filed an affidavit in which he set up as a defence that the bank could not sue him until it had realised upon all the other security which it held as collateral to the debt, basing this contention upon the reference in the agreement to the ultimate balance of the indebtedness.

This, the learned Judge said, ignored the terms of the agreement—the security was collateral to the whole debt, and not merely for the ultimate balance. The agreement shewed that the bank advanced money to the company on the faith of these demand notes, which gave the bank the right at any time they thought it necessary or advisable in their own interest to call for immediate payment, without waiting till other collateral security should become due or be realised upon.

It was argued that the bank must fail, because the defendant was, to the knowledge of the bank, a surety for the company, and so could not be sued till the debt had matured so far as the company was concerned.