

treal, for whom the plaintiff was western agent. G. and Co. at first refused to fill the order unless the plaintiff would guarantee the account for his ordinary commission. After considerable delay and correspondence G. and Co. wrote plaintiff that they would allow 2½% extra commission for his guarantee, to which plaintiff replied that he would guarantee the account for that season only. G. and Co. then shipped the goods to defendant, but did not notify plaintiff that they had done so until about four months afterwards.

The main defence was that plaintiff was not bound by his guaranty, as he had not received notice of acceptance of it until after the defendant got into financial difficulties, and that, therefore, his payment of the amount was merely voluntary and he could not recover from defendant: *Sleigh v. Sleigh*, 5 Ex. 574.

*Held*, that this case was different from those in which the offer of a guaranty emanated from the guarantor, and the person to whom it was made acted upon it without notifying the guarantor that he was doing so, for here there was an offer by G. and Co. to fill the order if the plaintiff would guarantee payment and an acceptance of that offer by the plaintiff; that such offer and acceptance constituted a binding contract between G. and Co. and the plaintiff, and no further notice to the plaintiff was necessary, and that plaintiff did not pay as a volunteer, but was legally bound to do so, and was therefore entitled to recover from defendant.

Brandt on Suretyship, para. 213, and *Nelson v. Shrene*, 68 S.W.R. 376, followed.

Another objection was that plaintiff was not bound by his guaranty because it was limited to "this season only," whereas a note for the amount was taken from defendant at four months, which would carry the time beyond that season; but this objection was overruled because the evidence shewed that the plaintiff had himself agreed to the terms of the sale which were "four months or 5% off 30 days."

*Daly*, K.C., and *Crickton*, for plaintiff. *Pitblado*, K.C., and *McKerchar*. for defendant.

Mathers, J.]

[Jan. 15.

Griffiths v. WINNIPEG ELECTRIC RY. CO.

*Jury trial—Action for damages for consequences of negligence—*

*Loss of limb—King's Bench Act, R.S.M. 1902, c. 40, s. 59.*

Application under sec. 59 of the King's Bench Act to have