

credit of John McKay cotton account, or any other moneys, were appropriated to this \$1,000 transaction, either by authority of defendant or her husband, or by act of plaintiff John Harvey. The account is a running one, and was continued as such after the transaction of 2nd February, 1881, at which date, as stated before, a large debit was standing against John McKay, and while there are numerous credit items, there is no evidence whatever to take away the application of the rule that the earlier debit items in the account, in the absence of express appropriation, must be first paid by subsequent credits; and, in my opinion, neither by express act of either of the parties, nor by application of any of the rules regarding the appropriation of payments, could it be said that the \$1,000 which plaintiff John Harvey paid to take up his accommodation note to John McKay was ever repaid either by defendant or John McKay.

Besides the entire absence of any payment or appropriation of any of the moneys placed to the credit of the said account, I think the way in which John McKay and John Harvey dealt with this \$1,000 item, until long after the last credit of cash appears in the account, shews conclusively that none of the moneys credited to the account were ever considered to be appropriated towards satisfaction of the accommodation note, for, as pointed out before, this note was renewed in full down to 24th August, 1883, and subsequent to that date it does not appear that any cash whatever was placed to the credit of the John McKay cotton account, while the last cash credited in the cotton account is on 8th December, 1881.

The security given by defendant, that is, her promissory note for \$1,000, and the policy in question, were for the repayment to Harvey of any moneys he might have to pay in consequence of his giving the \$1,000 accommodation note to John McKay.

The dealings between John McKay and John Harvey in reference to this note, and generally in regard to the appropriation of moneys received by Harvey, would be binding upon defendant as a surety for John McKay, in the absence of fraud. See Munger on Application of Payments, pp. 76-77; also Rowlett on Principal and Surety, pp. 120-1, where it is stated that the question whether the payments made by the principal debtor are to be appropriated to a discharge or reduction of the guaranteed or some other indebtedness is one which, in the absence of special agreement between