

*Held*, also, that sec. 3 of 54 & 55 Vic., c. 25, providing for an appeal where the amount demanded is \$2,000 or over, has no application to the present case.

Appeal quashed with costs.

*Belcourt*, for appellant.

*G. Stuart, Q.C.*, for respondent.

20 Nov., 1893.

O'GARA v. UNION BANK OF CANADA.

Ontario.]

*Surety—Interference with rights of surety—Discharge.*

The Union Bank agreed to discount the paper of A. S. & Co., railway contractors, endorsed by O'G. as surety, to enable them to carry on a railway contract for the Atlantic & North-West Railway Co. O'G. endorsed the notes on an understanding or agreement with the contractors and the bank that all moneys to be earned under the contract should be paid directly to the bank and not to the contractors, and an irrevocable assignment by the contractors of all monies to the bank, was in consequence executed. After several estimates had been thus paid to the bank, it was found that the work was not progressing favourably and the railway company then, without the assent of O'G., but with the assent of the contractors and the bank, guaranteed certain debts and made large payments directly to the creditors of the contractors other than the bank for monies subsequently earned by the contractors, and in October, 1888, the bank having applied for and got possession of a cheque of \$15,000 accepted by the bank and held by the company as security for the due performance of the contract, signed a release to the railway company "for all payments heretofore made by the company, for labour employed on said contract, and for material and supplies which went into the work." The contract under certain circumstances gave the right to the company to employ men and additional workmen, etc., as they might think proper, but did not give the right to guarantee contractors' debts or pay for provisions and food, etc., due by the contractors.

*Held*, that the payments for supplies and provisions made by the company, for which the bank signed a release without O'G's