

NORMAN W. OXNER (*Plaintiff*) APPELLANT;

AND

BANK OF MONTREAL (*Defendant*) RESPONDENT.

1968
*Nov. 18, 19
Nov. 19

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA,
APPEAL DIVISION

*Guarantee and suretyship—Guarantee of bank loan—Securities pledged—
Demand notes renewed from time to time at increased rates of interest
—Guarantor not consulted—Steps taken to realize on securities—
Withdrawal of funds from guarantor’s account involved—Action by
guarantor for moneys had and received.*

In 1952 the plaintiff agreed to provide security for the full amount of a loan from the defendant bank to his son-in-law L and in this

*PRESENT: Cartwright C.J. and Martland, Judson, Ritchie and Spence JJ.
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connection signed certain pledge forms. The loan was advanced in two parts and for each advance L signed a demand note in favour of the defendant. The security delivered to the bank consisted of a certified cheque and two government bonds. A change in the form of holding the cash portion of the pledge was made in 1954, and the plaintiff's bonds were converted to a new issue in 1958.

During the period from 1952 to 1962 the defendant dealt actively with the principal debtor without consulting the plaintiff. The notes were renewed from time to time at increased rates of interest, and in 1957 the bank took from L a new note for the amount of principal then owing in substitution for the two original notes.

In 1962 the defendant's manager, after making efforts to get L to pay off the balance of the principal or to reduce that balance, took steps to realize on the pledged securities. A transaction was carried out which involved the withdrawal of funds from the plaintiff's account. An action subsequently brought by the plaintiff for moneys had and received by the defendant in trust for the use of the plaintiff was successful at trial. On appeal, the Court of Appeal reversed the decision of the trial judge and dismissed the action. The plaintiff then appealed to this Court.

Held: The appeal should be dismissed.

APPEAL from a judgment of the Supreme Court of Nova Scotia, Appeal Division¹, allowing an appeal from a judgment of Fielding J. Appeal dismissed.

G. C. Bardon, for the plaintiff, appellant.

W. H. Jost, Q.C., for the defendant, respondent.

At the conclusion of the argument of counsel for the appellant the Court retired and on returning the following judgment was delivered by

THE CHIEF JUSTICE (*orally for the Court*):—Mr. Jost, we do not find it necessary to call upon you. We agree with the conclusions and the reasons of the Appeal Division¹. The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitor for the plaintiff, appellant: G. C. Bardon, Bridgewater.

Solicitor for the defendant, respondent: A. D. MacAdam, Halifax.

¹ (1967), 61 D.L.R. (2d) 599.