Supreme Court of Canada
North Western National Bank of Portland v. Ferguson, (1918) 57 S.C.R. 420

Date: 1918-12-09

The North Western National Bank of Portland *(Plaintiffs) Appellants*;

and

John Ferguson and W.W. Ferguson *(Defendants) Respondents.*

1918: October 29; 1918: December 9.

Present: Davies, Idington, Anglin and Brodeur JJ. and Falconbridge C.J. *ad hoc*.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Principal and surety—Guarantee of debt—Advances by Bank—Giving time to debtor.

F. guaranteed payment of all advances made by a bank to his son up to $10,000, no time being fixed for such payment. The bank advanced $3,000, taking a note at thirty days for the amount.

Held, Idington J. and Falconbridge C.J. dissenting, that the consent of the bank to renew the note at the end of the thirty days without the knowledge of F. did not relieve him from liability on his guarantee.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario affirming the judgment at the trial in favour of the respondents.

The material facts are stated in the above head-note.

Tilley K.C. and A.R. Clute for the appellants.

McKay K.C. for the respondents.

DAVIES J.—I think we are all agreed that the defence set up by the primary debtor, W.W. Ferguson, in this case of misrepresentation on the part of the bank which discharged him from payment of the debt was properly held invalid by the trial judge and the Appellate Division.

The only ground, therefore, upon which the judg-

ment below affirming the dismissal of the action as against the defendant guarantor, John Ferguson, can be upheld is that he was a guarantor of a debt due and payable at a fixed time and was discharged from his liability by an extension of that time to the primary debtor without his knowledge or consent.

The guarantee is evidenced by a telegram from John Ferguson, the guarantor, to the bank and a letter confirming the telegram.

The former reads:—

> I hereby guarantee advances to my son up to $10,000
>
> JOHN FERGUSON.

And the letter reads:—

> I beg to confirm my guarantee to you to the extent of $10,000 if necessary as per your wire to me.
>
> JOHN FERGUSON.

In order to fully understand and construe this guarantee it is necessary to know the chief facts and circumstances under which it was given.

Olmstead, the vice-president of the bank, states in his evidence that W.W. Ferguson, the son and primary debtor, had told him that his father, the defendant John Ferguson, had a contract to buy horses and would be willing to guarantee such sums as the bank would advance to him, W.W. Ferguson, and that he, Olmstead, told him in reply he had looked up his father's financial ability

and found it good and that he would submit the matter of an advance to the bank committee and that he did so and the advance was agreed to be made. This was some time in October, 1914.

On the 21st November following, the defendant, John Ferguson, telegraphed the bank as follows:—

> All acceptable stock purchased by my son and Robert Smith will be paid for immediately on inspection. I will personally stand behind them in transaction.

To which the bank wired him a reply as follows:

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> Referring your telegram Saturday must have guarantee from you for any sum advanced your son up to $10,000 regardless of stock being acceptable.

Whereupon John Ferguson sent the telegram in reply:—

> I hereby guarantee advances to my son up to $10,000.

An advance of $3,000 was accordingly made on the 24th December and a short term note of 30 days, with interest at 7 per cent., taken for it by the bank.

Olmstead further states that on the day they made the advance the plaintiff bank telegraphed the defendant, John Ferguson, as follows:—

> We loaned your son $3,000 to-day. Wish you would send us a letter confirming your telegram wherein you agreed to pay the advances paid to your son. Do you want Smith's name on the notes?

On the next day, he sent the plaintiff bank the following telegram:—

> I appreciate your telegram. Wrote you as requested. I expect my son's associates to join in liability to the proportionate extent of their interest in transaction with him. You may be wired regarding their ability to fill contract which I am negotiating on 25 per cent. profit.

The contract John Ferguson here refers to and for the carrying out of which the advances were being made related to the purchase of horses for the French Government. The exact relations between the son, W.W. Ferguson, and his associate, Smith, in the purchase of these horses does not appear. Whether they were simply agents of John Ferguson receiving a commission or other remuneration, or partners with him is not disclosed.

Reading the guarantee in question in the light of the disclosed facts, I have no hesitation in reaching the conclusion that it was an absolute and a continuing one and covered any advances which might be made from time to time by the bank to Ferguson and Smith up to $10,000.

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No reference was made to the time at which the advances were to be repaid. That was a matter with other details left by John Ferguson to the bank and primary debtors.

It was arranged by the bank and primary debtors in accordance with bank usage and custom that a thirty-day note should be given which afterwards was renewed for another thirty days.

Now it does appear to me clear that if the defendant's contention is right, the taking of the thirty-day note in the first instance operated as a discharge of the surety equally with its subsequent extension. The advance in the absence of any time for its repayment being agreed to would become payable at once. Surely no one looking to the facts of the case could put a construction upon the transaction determining that the advance became payable next day after it was made and if extended a day beyond that without guarantor's knowledge and consent would discharge him. The renewing of the thirty-day note had no greater legal effect on the guarantor's liability than the taking of the thirty-day note by the bank in the first instance. In my judgment, the guarantee being an absolute and continuing one guaranteeing whatever advances might be

made from time to time under it up to $10,000, and leaving all details with respect to the taking and renewing of notes in accordance with bank custom and usage to the parties giving and taking the advances, was binding on the guarantor notwithstanding the taking of the thirty-day note or its extension.

There was nothing in the guarantee or the evidence anywhere shewing that any definite time for repayment of the advances was contemplated, and in my judgment the extension of the thirty-day note and taking of a new one had no greater or other effect upon the guaran-

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tor's liability under the continuing guarantee than the taking up of the thirty-day note in the first instance. Both were matters of detail which John Ferguson left to be settled between the bank and his son. The defendants knew from the telegram sent to him by the bank at the time the advances were being made that notes were to be taken for them, and he was asked whether he wanted Smith's name also on the notes, to which he replied that he expected his

> son's associates to join in liability to the proportionate extent of their interest.

He said nothing about the time the notes were to be taken for, evidently leaving that detail for the decision of the bank and his son and the latter's associate. They settled upon a thirty-day note, and subsequently agreed that it should be renewed for another thirty days.

It may fairly be argued that this renewal should be treated as a fresh advance by the bank within the guarantee. I prefer, however, to rest my judgment upon the facts as I have stated them and my construction of the guarantee as a continuing one, and the fact that the guarantor left all questions of detail as to the time when the advances should be repaid to the bank and his son.

Under these circumstances and for these reasons I would allow the appeal and enter judgment against the defendant, respondent, for the amount claimed with costs in all the courts.

IDINGTON J.—The appellant advanced to W.W. Ferguson, son of respondent John Ferguson, and one Robert Smith, three thousand dollars and got their promissory note for that amount with interest at seven

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per cent. per annum dated 24th November, 1914, payable thirty days after date.

The money was intended to have been used in buying horses which they expected to dispose of in filling orders got for the French army through respondent, John Ferguson.

He, in anticipation of such purchases by his son, had wired from New York to appellant, carrying on business in Portland, Oregon, on 28th October, 1914, as follows:—

> Will accept and pay all my son's drafts on me.

On the 21st November, 1914, he again wired the appellant to same address as follows:—

> All acceptable stock purchased by my son and Robert Smith will be paid for immediately on inspection. I will personally stand behind them in transaction.

The following reply thereto was sent by the appellant to respondent:—

> Referring your telegram Saturday must have guarantee from you for any sum advanced your son up to ten thousand dollars regardless of stock being acceptable.

To this he responded as follows:—

> Northwestern National Bank.
>
> Portland, Ore.,

I hereby guarantee advances to my son up to ten thousand dollars.

JOHN FERGUSON.

In answer to that appellant sent night message as follows:—

John Ferguson,

c-o Imperial Hotel, New York, N.Y.

We loaned your son three thousand dollars to-day. Wish you would send us a letter confirming your telegram wherein you guarantee to pay the advances made to your son. Do you want Smith's name on the notes?

NORTHWESTERN NATIONAL BANK.

The respondent sent also the following letter and lettergram:—

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Hotel Imperial,

New York, Nov. 25th, 1914.

The Northwestern National Bank,

Gentlemen—Re W.W. Ferguson Loan.

I beg to confirm my guarantee to you to the extent of ten thousand dollars (if necessary) as per your wire to me.

Yours truly,

JOHN FERGUSON.

Northwestern National Bank,

Portland, Ore.

> I appreciate your telegram. Wrote as you requested. I expect my son's associates to join in liability to the proportionate extent of their interest in transaction with him. You may be wired regarding their ability to fill contract which I am negotiating on basis of twenty-five per cent. profit.
>
> JOHN FERGUSON.

There seems to have been no further business of buying horses carried on by Ferguson and Smith, and no further application to the appellant for advances falling within the meaning of the said guarantee than covered by the note mentioned above (if even that), yet on the 24th of December, 1914, the appellant accepted in renewal of the said promissory note, without the consent of respondent, or indeed any reference to him as to his wishes, the promissory note of W.W. Ferguson and Robert Smith for $3,000 at thirty days with interest at seven per cent. per annum.

There was no reservation of any recourse against the surety or anything else done to preserve such rights as may have existed up to that date against respondent.

The appellant sued upon the last-mentioned promissory note W.W. Ferguson as the maker thereof and the respondent as guarantor, claiming he was such by virtue of the foregoing telegrams and letters.

The learned trial judge directed judgment against W.W. Ferguson as maker, but dismissed the action as against respondent on the ground that he had been

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discharged by the giving of time to the makers without his consent.

The Court of Appeal for Ontario has maintained such dismissal.

I should have supposed, but for the contrary demonstrated before us by ingenious suggestions of able counsel, that an appeal therefrom was hardly arguable.

It was suggested, notwithstanding the fact that this transaction stood and stands quite isolated, that the guarantee must be considered as a continuing one because a ten thousand dollar limit happened to be named.

If there had been further advances and the business carried on, it is conceivable that the conduct of the parties and such complications as might have ensued might have given rise to some such aspect and room for such an argument.

But at the very outset it is evident that the parties all anticipated that the rapid turnover of horses bought and sold could avert any such like condition.

And again it was suggested that the appellant might have made a fresh advance of an equal amount and used the money to take up the first note.

That certainly was not made apparent as within the terms stated in the correspondence I have quoted which is all that passed between appellant and respondent, and would have been a breach of that good faith a surety is entitled to claim.

In short there is nothing in that correspondence to authorise such a mode of treatment of the guarantee.

And all the ingenious suggestions of what might have happened if the parties concerned had done something else than they did, must, in my opinion, go for nothing.

The case submitted must be decided by the actual

facts and the relevant law governing the rights and liabilities of surety in such circumstances.

The following submission, which I quote from appellant's factum, represents fairly well the nature of the appellant's contention:—

> The note of November 24th, 1914, was payable at the expiration of 30 days after its date and at maturity was renewed for a further period of 30 days. This renewal may be regarded as a fresh advance by the bank which it was then entitled to make. It was within the limit as to amount fixed by the father and the latter's liability was in no way increased beyond the terms of the guarantee given by him. It is submitted that under the circumstances above mentioned John Ferguson's liability on the guarantee is not affected by the time or times when said advances were made or were to be repaid or by the manner in which said advances were evidenced or secured; and is a continuing guarantee effective and binding until all advances up to $10,000 were actually repaid.

Hence unless and until the appellant chose to make advances up to $10,000 it could do as it pleased and call on respondent to implement his guarantee when it pleased.

I need not try to deal with such contentions. I merely submit the contract.

The appeal should be dismissed with costs.

ANGLIN J.—Consideration of the evidence has satisfied me that the conclusions of the learned trial judge, that

> the defendants have (not) made out any case of misrepresentation or concealment which would constitute a defence to the note in question,

and that it was contemplated that the advances to be guaranteed by the defendant, John Ferguson, should be made precisely as they were on the joint liability of Smith and W.W. Ferguson, are so well supported that they cannot be disturbed. There is really no evidence

of misrepresentation. I fully concur in the learned judge's appreciation of the testimony of W.W. Ferguson. Nor was there any concealment such as

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would afford a defence. *Hamilton v. Watson*[1]; *London General Omnibus Co. v. Holloway*[2]; *Royal Bank of Scotland v. Greenshields*[3]. John Ferguson's letter puts it beyond doubt that he was apprised of Smith's interest with his son and that the joint liability of both for the advances to be made by the bank was what he desired.

The only question at all arguable, in my opinion, is whether the plaintiff bank, by taking a renewal of the Smith-Ferguson note of $3,000 for 30 days, discharged John Ferguson as a guarantor. I think, with respect, that it did not. The question resolves itself into an inquiry whether the terms of the guarantee and the circumstances under which it was made warrant the inference that the parties to it contemplated that any short date note taken to evidence the advance of a part of the $10,000 should be renewable at all events until the whole $10,000 had been advanced (if not afterwards, *Merle v. Wells*[4]), or until what would be a reasonable period of credit, having regard to the nature of the transactions which it was proposed to finance, should expire. I think they do.

I fully appreciate the inflexibility of the rule that any material alteration in the terms of a guaranteed. contract made by the principals without the guarantor's assent will discharge him and that a binding agreement for extension of time without reservation of rights will always be deemed such a variation because it disables the guarantor, should he be minded to discharge the principal debtor's obligation and seek recoupment from him or to compel him to do so himself, from immediately proceeding against him.

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[1] 12 Cl. & F. 109, 119.
[2] [1912] 2 K.B. 72, 83.
[3] [1913-14] Sess. Cas. 259.
[4] 2 Camp. 413.

> The right of the surety to be subrogated to all the means of the creditor is, as it has been said, one of the highest equity, and any act by which it is curtailed will to the extent of the injury inflicted be a defence. *Wilson v. Brown*[5].
>
> It has been the law of the court for many years that a surety is entitled to come into equity to compel the principal debtor to pay what is due from him, to the intent that the surety may be relieved. *Ascherson v. Tredegar Dry Dock and Wharf Co*.[6]

But that right accrues only upon the maturity of the debt.

The guarantor's assent to an extension need be neither contemporaneous with it nor explicit. It may be implied in his own original contract assuming the liability. It may be involved in the arrangement or understanding between the principals which he has undertaken to guarantee—perhaps without sufficient inquiry. It must always be a question of the intention of the parties either expressed or, if not, to be inferred from the terms in which they have couched their agreement, construed, if they be "at all ambiguous," in the light of their relative positions and of the surrounding circumstances; *Coles v. Pack*[7]; *Wood v. Priestner*[8]; whether an extension without reservation of rights, relied upon as having worked the discharge of the guarantor, was or was not within the purview of the guarantee. To assume that it was not, if the terms are susceptible of the contrary construction, merely because it is not expressly provided for, however strong the grounds of inference that it must have been understood, is certainly unwarranted.

If the word "advances" used by the guarantor does not imply advances from time to time and an extended period of credit, it is at least susceptible of that construction and therefore open to explanation by proof of surrounding circumstances. However strict and

[5] 6 Ont. App. R. 87, 90.
[6] [1909] 2 Ch. 401, 406.
[7] L.R. 5 C.P. 65, 70.
[8] L.R. 2 Ex. 66, 68, 282.

well defined the rights of a guarantor once the nature and extent of the guaranteed liability are ascertained, the contract of guarantee is not to be construed in his favour but rather in that of the creditor (De Colyar on Guarantees, 3rd ed., 199 *et seq*.). The contract guaranteed in this instance was for "advances" up to the sum of $10,000. It is silent as to the time when such advances should be made and the period or periods of credit, and there is nothing to shew that any definite time for repayment was contemplated. The nature of the customer's business—the purchase of horses suitable for army purposes where and as they could be found—makes it clear that the advances were to be made from time to time, as the guarantor says,

> to the extent of $10,000, if necessary.

There is no room for doubt that the guarantee was "continuing" in the sense that it was intended to cover a series of transactions. 15 Hals. Laws of England 440; *National Bank v. Thomas*[9]; *Newcomb v. Kloeblen*[10]; and cases collected in De Colyar on Guarantees, 3rd ed., pp. 242 *et seq.* The taking of a short date note (30 days) was purely for the bankers' convenience and according to what is well known to be a usual custom, even where a longer period of credit is intended and understood. It was obtained merely to evidence the debt and Smith's joint liability. It was not meant thereby to fix 30 days as the period of credit or to render the money exigible by the bank on their expiry. The obligation of the makers had not then matured either in the sense that the bank would have been justified in taking immediate action to compel repayment, or that the guarantor would have been entitled to force the principal debtor to liquidate the liability or secure his discharge. On the contrary,

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having regard to the nature of the Fergusons' undertaking and all the circumstances, I think the inference is irresistible that the bank intended to give, and the Fergusons well understood when the $3,000 was advanced that they were obtaining, a more prolonged period of credit and that the 30 days' note would merely evidence the advance and might just as well have been drawn

[9] 69 Atl. R. 813.
[10] 74 Atl. R. 511.

payable on demand, or at 60 days or three months. Any other view of what occurred would seem to me—I say it with respect—highly unreasonable. Thirty days after the advance of the $3,000 the purchasing of horses, so far as appears, was still in progress and the banker might within the terms of the guarantee have allowed the note to remain overdue and unpaid. On the other hand, if entitled then to collect it, had he done so he might immediately have made a fresh advance of $3,000 or of a larger sum for one month or for a longer period and it would have been clearly within the terms of the guarantee.

It is such a well-known custom of bankers to keep their paper "current" by taking renewals of short date notes that business men dealing with them may properly be assumed to have contracted with reference to it. The nature of the customer's business and the other circumstances in evidence in the case at bar indicating that the parties contemplated a comparatively long period of credit during which advances should be made from time to time "if necessary," and the custom of bankers to takes notes for advances at short dates, and to keep them "current" making it reasonably clear that the parties must have contemplated renewals at least of any such notes taken to evidence the earlier advances, it is not surprising to find that the renewal in question was given at the bank's instance,

> because it was a time note and the time had elapsed.

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The renewal would seem to have been treated as a matter of course—something which was asked for and given pursuant to the understanding of the parties as to the terms on which the advance had been made. Moreover a renewal is usually dealt with by bankers as a fresh discount, the customer's account being debited with the amount of the old and credited with the proceeds of the discount of the new note—a process slightly more advantageous to the bank than it would be to charge interest on the original obligation, and, in effect, tantamount to a fresh advance which, as already stated, would have been clearly within the terms of the guarantee.

I think there is more than room for doubt whether the guarantor would have been entitled under the circumstances of the case at bar, had there been no renewal, either to assert a right to come in at any time after the first thirty days had expired—at all events without some reasonable notice—and pay off the bank and demand subrogation, or to compel the makers of the note to pay it. On the contrary, I rather incline to the view that these rights would accrue only when the bank on the expiry of a reasonable period of credit, having regard to the nature of the Fergusons' undertaking and all the circumstances, would have been entitled to call in the guaranteed loans. In this aspect of the case the renewal of the note did not interfere with or affect any right of the guarantor. But I prefer to rest my judgment upon the view that there was in reality no extension of the guaranteed loan, or that, having regard to the nature of the contract guaranteed, the renewal taken was within its terms in the sense that it was contemplated as one of the things which the creditor might do without affecting his rights against

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the surety. *Grahame v. Grahame*[11]; *First National Bank v. Wunderlich*[12]: *Tyson v. Reinecke*[13]; *National Bank v. Thomas*[14].

I agree with the plaintiff's contention that upon the true interpretation of the guarantee John Ferguson assumed liability to pay any sum or sums advanced by the plaintiff bank to his son within the limit prescribed, should he make default in paying it at such time as the bank should be entitled to and see fit to demand it. It is satisfactory to reach a conclusion which, if it should prevail, will frustrate a plain attempt to evade and defeat what is certainly a moral—I think it is also a legal—obligation.

In the Appellate Division the case was disposed of at the close of the argument, the Chief Justice merely stating that the appellant had failed to shew that the judgment at the trial was erroneous.

[11] L.R. Ir. 19 Eq. 249, 259.
[12] 130 N.W. Rep. 98, 99.
[13] 145 Pac. R. 153.
[14] 69 Atl. R. 813.

With great respect, the four Canadian cases cited by the learned trial judge at the conclusion of his judgment, presumably in support of it, seem scarcely relevant. In *Thompson v. McDonald*[15], it was merely held that the plea was insufficient because it did not allege a binding extension of time. In *Wilson v. Brown*[16], it was not contended, and there was no ground for the contention, that the suretyship was continuing. Moreover, the matter set up as a defence was not a binding extension of time or other alteration of the contract, but a mere forbearance to take steps to recover. *Devanney v. Brownlee*[17], was a case of a single promissory note made by two persons jointly, one of whom, to the knowledge of the holder, was a surety for the other.

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[15] 17 U.C.Q.B. 304.
[16] 6 Ont. App. R. 87.
[17] 8 Ont. App. R. 355.

The note was renewed by such other maker without the knowledge or consent of him held to be a surety. There was no suggestion of a continuing guarantee. *Fleming v. MacLeod*[18], was reversed on appeal to this court[19]. Again there was no question in this case of a continuing guarantee. The agreement relied upon and found to be established in the New Brunswick court—this court held otherwise—was for an extension of the time for payment of a single note (the entire transaction) to a fixed date without the knowledge or consent of an indorser.

I am, for the foregoing reasons, with deference, of the opinion that this appeal should be allowed and that judgment should be entered for the appellants with costs throughout.

BRODEUR J.—I concur with Mr. Justice Davies.

FALCONBRIDGE C.J.—This is an action by a creditor against a primary debtor and a guarantor. Judgment was given against the primary debtor but the action was dismissed as against the guarantor. The plaintiff unsuccessfully appealed to the Appellate Division of the Supreme Court of Ontario, and now appeals to this court.

The defence of misrepresentation was properly held invalid by the trial judge and the Appellate Division, and the only defence requiring serious consideration is that the guarantor was released by the giving of time by the creditor to the primary debtor without the consent of the guarantor.

As appears by the indorsement on the writ of summons, the action was brought upon a promissory note made by the primary debtor in favour of the

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plaintiff dated 24th November, 1914, for $3,000 and interest payable in thirty days. There is no dispute that the advance represented by this note was covered by the guaranty. The note above

[18] 37 N.B. Rep. 630.

mentioned was, however, renewed on the 24th December, 1914, for the same amount. The renewal note was taken without the consent or knowledge of the guarantor. It is, of course, elementary law that a creditor who takes a promissory note or bill from a debtor who is in default impliedly gives him time since he cannot sue the debtor until maturity of the bill or note.

The plaintiff's counsel were apparently not able to find any case which would make this principle inapplicable to the liability in respect to the original note. It was argued, however, that the guaranty in question was a continuing one, and that it covered the liability upon the renewal note which is to be regarded as representing a second advance within the terms of the guaranty. At least this is the way it seems to me the plaintiff must put its case in its endeavour to avoid the consequences of its having released the guarantor as regards the liability on the original note.

[19] 39 Can. S.C.R. 290.

The plaintiff strongly relied on *Grahame v. Grahame*[20]. The guaranty there was in the following terms:—

7th February, 1879.

> I hereby undertake to guarantee to the National Bank any advances made to my son Charles James Grahame of the London Stock Exchange, to the extent of £1,000

GEORGE GRAHAME.

The promissory note of C.J. Grahame for £450 of the 11th February, 1879, at six months was renewed several successive times for different amounts. The action was on a note for £440, dated 20th August, 1880, payable six months after date. When the last preceding note came due, 20th August, 1880, the

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amount (£375) was debited to his account and the amount of the latest note (£440) credited to his account. The Vice-Chancellor considered that there was a new advance of £440. The guaranty was admitted to be a continuing one and therefore covered the last advance.

The Vice-Chancellor says, at page 259:—

> The promisory note of C.J. Grahame of the 11th February, 1879, was more than once renewed, and if this claim rested on the original note, the bank might have difficulty in meeting this contention (as to giving time).

It is clear that this case does not help the plaintiff as far as the original note in the present case is concerned, and as I have already mentioned, the indorsement on the writ refers only to the original note. The statement of claim, it is true, refers to both notes, and perhaps on that account the present action might be regarded as an action on the second note. In the view which I take of the case, it is unnecessary to decide this because, in order to bring himself within *Grahame v.*

[20] L.R. Ir. 19 Eq. 249.

Grahame[20], the plaintiff must also shew that the second note represented a real advance. In *Grahame v. Grahame*[20], the fact that the amount of the indebtedness fluctuated from time to time and that the amount of the different notes varied, lends some continuance to the view adopted by the learned Vice-Chancellor (I am not saying anything about my opinion as to the correctness of that view), that there was an advance on the occasion of the taking of each note. In the present case, there was simply a renewal and there was no circumstance to support the view that the renewal represented a new advance.

A continuing guaranty ordinarily means one intended to cover successive advances or credits up to a certain amount, and the continuing character may be

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implied from the circumstances. The appellant was, however, driven to argue that the guaranty in the present case was a continuing one in a very special sense, namely, a guaranty intended to cover the various vicissitudes and renewals of one advance so as to make it unnecessary to get the guarantor's consent to such dealings with the debtor, but there is nothing in the terms of this guaranty or in the circumstances to shew that this was the intention.

The guaranty here is as follows:—

> I hereby guarantee advances to my son up to $10,000.
>
> JOHN FERGUSON.

And letter:—

> I beg to confirm my guaranty to you to the extent of $10,000, if necessary, as per your wire to me.
>
> Yours truly,
>
> JOHN FERGUSON.

Another case relied upon by the appellant was the *First National Bank of Antigo v. Wunderlich*[21], a decision of the Supreme Court of Wisconsin. The effective part of the guaranty was as follows:—

> We, the undersigned, hereby guarantee the payment of all future sums of money advanced by you to J.N.S., and guarantee the payment of all notes executed by him to said First National Bank, for loans or sums advanced to him in any amount not to exceed the sum of one thousand dollars ($1,000.00).

This guaranty was clearly continuing and expressly covered successive notes, and it was accordingly held that the guaranty covered the renewal notes which were sued on, independently of any question as to extension of time on the earlier notes.

I am of opinion that the judgment appealed from is right and that the appeal must be dismissed.

Appeal allowed with costs.
Solicitors for the appellants: Gould & McDonald.
Solicitors for the respondents: McGaughey & McGaughey.

[21] 130 N.W. Rep. 98.