[HIGH COURT OF AUSTRALIA.]

DEANE . . . . . APPELLANT;
DEFENDANT,

AND

THE CITY BANK OF SYDNEY . . . RESPONDENTS.
PLAINTIFFS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1918.

SYDNEY, *Aug.* 7, 19.

Barton, Isaacs, and Rich JJ.

*Principal and Surety—Action on bond—Limitation of action—Acknowledgment of indebtedness—Joint and several bond to secure joint debt—Payments appropriated to debt—Merger—Advancement of Justice Act* 1841 (*N.S.W.*) (5 *Vict. No.* 9), *secs.* 39, 41.

Two persons already indebted to a bank on their joint current account gave the bank a joint and several bond to secure advances already made and which might thereafter be made to them on their joint account by the bank.

*Held*, that the debt in respect of the advances and that in respect of the bond were distinct debts, and that payments made to the bank by the debtors and appropriated to repayment of the advances were not acknowledgments by part payment of their indebtedness on the bond within the meaning of sec. 41 of the *Advancement of Justice Act* 1841 (N.S.W.) so as to authorize the bringing of an action on the bond after the lapse of twenty years from the giving of the bond.

Decision of the Supreme Court of New South Wales: *City Bank of Sydney* v. *Deane*, 17 S.R. (N.S.W.), 562, reversed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court by the City Bank of Sydney against Henry Deane, the plaintiffs alleging, by their declaration, that the defendant by his bond dated 11th October

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1894 became bound to the plaintiffs in the sum of £9,858 to be paid by him to the plaintiffs. The writ in the action, which was set out in the declaration, was issued on 2nd June 1917, and had been specially indorsed with a claim for £5,964 2s. 11d. due on 31st December 1902 under a joint and several bond dated 11th October 1894, made between William Deane and the defendant in favour of the plaintiffs. The writ then contained an account running on from 31st December 1902 until 15th May 1905, when the balance due to the plaintiffs was stated to be £6,941 12s. 4d. From that amount deductions were made of £822 14s. as the amount of securities realized, and £20 as the amount of securities unrealized. There was then added £1 11s. 1d., and a balance was shown of £6,100 9s. 5d., which sum the plaintiffs claimed. By his plea the defendant pleaded that the alleged cause of action did not accrue within twenty years before the suit. By their replication the plaintiffs said that the defendant within such twenty years had made an acknowledgment in writing signed by him that the debt mentioned in the declaration remained unpaid and due to the plaintiffs, and also that the defendant within such twenty years made an acknowledgment to the plaintiffs, by part payment on account of the principal money and interest then due on the bond, that the debt mentioned in the declaration remained unpaid and due to the plaintiffs. The defendant joined issue on the replications respectively.

By the bond in question William Deane and Henry Deane acknowledged themselves to be bound to the plaintiff Bank (called in the bond "the said corporation") in the sum of £9,858 to be paid to the plaintiff Bank their successors or assigns or their certain attorney or attorneys, for which payment to be well and truly made the obligors bound themselves and each of them, their and each of their heirs, executors and administrators. The bond then continued:— "The condition of the above-written bond or obligation is such that if the obligors or any of them their heirs executors or administrators do and shall from time to time and at all times hereafter reimburse and fully pay and satisfy to the said corporation their successors and assigns all and every sum and sums of money whatsoever which the said corporation shall or may from time to time

or at any time lend advance or pay to for or on account of the obligors or any of them their executors or administrators for or by reason of accepting or paying any drafts cheques promissory notes bills of exchange or other orders loans securities or engagements whatsoever which the obligors or any of them their executors or administrators shall from time to time or at any time draw upon or desire or request or appoint to be paid discounted or negotiated by the said corporation or shall make payable at any banking house of the said corporation or which shall be lent or advanced discounted or paid accepted or credited in advance by for or on account of the said corporation on behalf of or for the credit or accommodation of the obligors or any of them their executors or administrators either alone or jointly with any other person or persons body or bodies corporate or otherwise And also all and every other sum or sums of money which the said corporation shall have laid out paid or advanced or become in any way liable to pay or advance or which the said corporation shall lay out pay or advance or become in anywise liable to pay or advance to for or on the credit or for the accommodation of the obligors or any of them their executors or administrators or otherwise on his or their or any of their account or in which he or they or any of them shall become in any manner indebted to the said corporation together with all discounts postages commissions charges exchanges re-exchanges and expenses according to the usage and course of business of the said corporation and together with interest upon and for all such sum and sums of money as aforesaid at the rate agreed upon (if any) and if not then at and after the usual and prevalent rate charged or chargeable by the said corporation for the time being or from time to time to their other customers in similar transactions to be computed from the time or respective times of advancing paying or disbursing the same moneys respectively or of the same respectively becoming due such discounts postages commissions charges exchanges re-exchanges expenses and interest to be added to the principal at every half-yearly rest on balancing the books of the said corporation and to become thenceforth part thereof and bear interest accordingly And also do and shall from time to time and at all times hereafter well and sufficiently indemnify and save harmless the said corporation and

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the present and any future individual members or proprietors thereof their heirs executors administrators and assigns and all and every the officers of the said corporation and each and every of their heirs executors and administrators from and against all and all manner of actions suits losses costs charges damages expenses and demands whatsoever which shall or may happen or be occasioned by or by reason or on account of the said corporation discounting accepting paying or satisfying all or any bill or bills of exchange drafts notes cheques orders securities or engagements or lending paying or advancing or becoming in any manner liable to lend pay or advance any sum or sums of money to for or on the credit or for the accommodation of the obligors or any of them their executors or administrators or any other person or persons by their or his order desire or authority or otherwise on their account or for their use or benefit And further do and shall from time to time and at all times hereafter upon demand to be made by the said corporation their successors or assigns or by the manager for the time being of the said corporation or by the accountant or other officer of the said corporation and either delivered to the obligors or one of them their heirs executors or administrators or left at his or their or any of their usual place of abode or business in the said Colony or that which was last known as such to the said corporation their successors or assigns or sent through the medium of any post office addressed to him or them or any of them or by notice in that behalf published in the New South Wales *Government Gazette* well and truly pay or cause to be paid to the said corporation their successors or assigns all and every sum and sums of money whatsoever which shall be due and owing by the obligors or any of them their heirs executors or administrators to the said corporation their successors or assigns by reason or in respect of any such loans advances and transactions as aforesaid or otherwise according to an account current to be made up from the books of the said corporation which account current when signed by for or on behalf of any manager or accountant for the time being of the said corporation without its being necessary to produce any books or vouchers to verify the same and without retrospection beyond the immediately preceding half-yearly balance of account in the books of the said corporation shall be conclusive

evidence of the matters therein set forth : Then the above-written bond or obligation shall be void and of no effect but otherwise the same shall be and remain in full force and virtue."

The action was tried before *Pring* J. and a jury, and at the close of the defendant's case a verdict was formally entered for the plaintiffs for £6,100 9s. 5d., and leave was reserved to the defendant to move to enter a nonsuit or verdict for him, the Court being at liberty to draw inferences of fact. The defendant accordingly moved before the Full Court to set aside the verdict and enter a verdict for the defendant or a nonsuit, or to grant a *venire de novo* or a new trial. That motion was dismissed with costs : *City Bank of Sydney* v. *Deane* (1).

The other material facts are stated in the judgments hereunder.

From that decision the defendant now appealed to the High Court.

*Flannery* (*Armstrong* with him), for the appellant. The bond is not a single bond, but is a double bond. It is a bond not for the payment of the amount of the bond, but it is a bond conditioned on repayment of the advances, and is within 8 & 9 Will. III. c. 11. See *Halsbury's Laws of England*, vol. III., p. 89 ; *Bullen & Leake's Precedents of Pleadings*, 3rd ed., p. 115 ; *Smith* v. *Bond* (2).

[ISAACS J. referred to *Preston* v. *Dania* (3).]

The bond not being single, the cause of action has not been pursued in a proper manner. The writ should not have been specially indorsed, and breaches of the bond should have been assigned. The issue would then be, what damage had the plaintiffs sustained ? The plaintiffs were not entitled to a verdict in the action without assigning breaches. On the pleadings it is admitted that but for acknowledgment the remedy on the bond would have been barred by the Act 5 Vict. No. 9, secs. 39, 41. There was no evidence of an acknowledgment or of part payment of the indebtedness on the bond. The advances being a joint debt and the bond being joint and several, there was no merger (*Halsbury's Laws of England*, vol. III., p. 90), and although there was an acknowledgment and part payment of the joint indebtedness they cannot be taken to be an

(1) 17 S.R. (N.S.W.), 562. (2) 10 Bing., 125.
(3) L.R. 8 Ex., 19.

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acknowledgment or part payment of the indebtedness on the bond. [Counsel also referred to *Read* v. *Price* (1); *Parr's Banking Co.* v. *Yates* (2).] Even if there was an acknowledgment, the verdict should not stand, but the respondents should assign breaches so that the damages may be assessed. If that were done, the appellant would be entitled to reduce the amount owing on the account by the purchase money realized by the respondents on the sale of the bond.

*Collins*, for the respondents. As the bond was given to secure the account, payments made in reduction of the account are an acknowledgment by part payment of the indebtedness on the bond. The only way in which acknowledgment of the bond could be made was by acknowledgment of the account. The only inference that can be drawn from the payments was a promise to pay that indebtedness. When the bond had been given, there was not an account in respect of the bond as well as an account in respect of the simple contract debt, but there was one account in respect of both the bond and the simple contract debt, and part payment of the account was acknowledgment of the bond. In an action on the simple contract debt, the bond could have been pleaded as an answer. The account was not an ordinary current account, and any payments into it were in liquidation of the amount owing. The bond is not one within 8 & 9 Will. III. c. 11, but is one within 4 & 5 Anne c. 16, and there was no necessity to assign breaches. [He referred to *Halsbury's Laws of England*, vol. III., p. 94.]

[ISAACS J. referred to *Sanders* v. *Cowcrd* (3); *Tippets* v. *Heane* (4).]

*Cur. adv. vult.*

Aug. 19.

The following judgments were read :—

BARTON J. This is an action upon a bond given by the appellant to the respondent Bank. The bond was declared on as if it were single—that is, a simple bond without conditions. The sum

(1) (1909) 1 K.B., 577; (1909) 2 K.B., 724.
(2) (1898) 2 Q.B., 460.
(3) 15 M. & W., 48, at p. 56.
(4) 1 Cr. M. & R., 252, at p. 253.

mentioned in the bond was £9,858, and the sum claimed in the declaration was £6,100 9s. 5d. The only plea set up was the *Statute of Limitations*, and that plea has not been traversed. The replications were (1) acknowledgment in writing and (2) acknowledgment by part payment on account of the principal money and interest then due on the bond.

No attempt is made to support the first replication. Thus it appears that the respondent Bank's case rests on part payment of the specialty debt within twenty years before the suit, and that but for such payment the suit would be barred.

At the trial it appeared that before October 1894 and up till 30th June 1903 the sums shown in the particulars under the second replication were payments made by the appellant in reduction of the overdraft of his firm with the respondent Bank on the dates set out in those particulars.

Up till 30th June 1903 the appellant was in partnership with his brother William Deane. The business was then disposed of. The original debt of the two brothers, that is, the overdraft, was in existence before the execution of the bond, which is dated 11th October 1894. The advance account or overdraft, kept as such before the bond, was continued as such after its execution, and the accounts show that from some time in 1895 until the close of the account the Bank cashed no cheque for the debtors. In other words, the account was kept open purely in liquidation of the amount overdrawn from the first date mentioned in the account in evidence. On the other hand, there were frequent payments from, at any rate, 1897 on account of principal and interest, and in 1903 there were three payments of £25 each, and in 1905 one payment of £665. It was admitted that the payments were made by the appellant "in reduction of the overdraft of the firm." If these 1903 payments or any of them were part payment of the moneys due on the bond, the second replication was proved at the trial. The contention of the appellant has always been that they were appropriated only to the simple contract debt, and not to the specialty debt. It does not appear to be really disputed for the respondent Bank that all the payments in question were so appropriated by the appellant. The correspondence teems with references on both sides to "the

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overdraft" or the "overdrawn account," and to payments in reduction of it, though the payments of 1903 are not stated to have been accompanied by letters. Any letters of earlier date than 1894, if there were any such, are not in evidence. No mention is made of this bond, except in a letter from the Bank of 2nd October 1894, which merely purports to forward that document and others for execution. Nor does either the Bank or the firm make reference to the appropriation of any payment to reduction of the principal and interest on the specialty debt, or otherwise than to reduction of the simple contract debt. A verdict was formally entered for the plaintiffs (respondent Bank) in the amount of £6,100 9s. 5d., leave being reserved to the defendant (appellant) to enter a nonsuit or a verdict for him, the Court to be at liberty to draw inferences of fact. The motion made to the Full Court of New South Wales pursuant to leave reserved was dismissed with costs.

The bond was subject to several conditions, but, as I have pointed out, was declared on as if single. The proper course would have been to assign breaches, so that damages as to any condition broken might be assessed. That was not done, and it is more than probable that the appellant would be entitled, leaving the judgment to stand, to have the verdict set aside, so that the way might be opened for such assessment. But I think the appellant's rights go much further than that.

The view which commended itself to the Supreme Court was that every payment into the Bank to the credit of the account of the appellant and his partner with the Bank reduced not merely the overdraft but also their liability upon the bond. There is no doubt that when a bond secures a debt previously existing only as a simple contract debt the latter will merge in the specialty, provided that the parties are identical and that the specialty and the simple contract debt and the remedies on both are coextensive, and of course that no contrary intention is expressed. See *Halsbury's Laws of England*, vol. III., art. 183, and cases there cited; also *Ansell* v. *Baker* (1). But I do not think that there is a merger in this case, or that this simple contract debt is capable of merging into this specialty. The two contracts differ distinctly in their terms.

(1) 15 Q.B., 20.

The debt on the overdraft was joint. The debt on the specialty was joint and several. Thus the remedies available differed. For instance, no action could have been taken on the simple contract debt against one only of the debtors, but on the specialty action could have been taken against either or both. Moreover, to illustrate the inapplicability of the doctrine here, suppose that Henry Deane had died after the execution of the bond, say in 1895. The previously joint liability would have passed to William Deane as survivor, but the several liability of Henry Deane would have devolved on his personal representatives. If it were the case that the merely joint simple contract had been merged in the joint and several specialty, then Henry Deane's estate would have been subject to a liability from which the simple contract left it free. Then, if there is no merger, the appellant is perfectly entitled to say that a payment by the partners expressly with relation to the joint debt by simple contract cannot be claimed, at any rate without more shown, as applicable to the specialty debt so as to expose him to an added burden. I think, indeed, there was actual consent to the appropriations to the overdraft. Even if that were not so, surely the maxim applies, *Quicquid solvitur, solvitur secundum modum solventis*, and the debtor who makes the payment is entitled to say that his express appropriation of it to the joint simple contract debt cannot, against his consent, be changed into a payment on account of the joint and several specialty debt. More clearly is this the case, because the debt on the overdraft could become statute-barred at the end of six years, while that on the specialty could run for twenty years from the accrual of the cause of action before encountering any such bar. The money advanced may be the same, but the debtor was and is entitled to say:—"I applied my part payment, as I told you, to debt A, and I adhere to that. You cannot apply it to debt B so as to give yourself an action against me singly, and not only that, to give you fourteen years longer to sleep on your rights."

Holding that view, I do not think that the payments in question are evidence in support of the second replication so as to give a new cause of action on the bond. As that reply fails the respondent Bank, the plea is proved, and the action barred.

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There are other points applicable to the pleadings and, perhaps, the evidence, but I think that to which I have addressed myself is by itself conclusive of the case.

I am of opinion, therefore, that the appellant should have succeeded in his motion before the Supreme Court, that their order should be discharged, and that the judgment at the trial should be set aside and a verdict entered for the appellant.

ISAACS AND RICH JJ. This case is nominally an action by the City Bank of Sydney against Henry Deane to recover £6,100 9s. 5d. on a bond. In reality, however, the Bank has no interest whatever in the action, and would not receive a penny of the verdict now standing for the full amount claimed. The sum referred to is the balance of an account current which was owing to the Bank by Henry Deane and his partner William Deane. William became bankrupt in May 1905, and in January 1914 one Sampson Palmer purchased from the Bank all its interest in the bankrupt estate. His learned counsel informed us at the Bar that the bond now sued on was assigned by the Bank to Sampson Palmer for the sum of £10. Palmer is a clerk in the employ of the solicitor for the official assignee of William Deane. The question really is whether he had made an extremely lucky speculation or has lost £10.

It is manifestly a case where the Court is not called upon to display any indulgence to either party, but to hold both not only to their strict rights as the law requires but also to the precise procedure they have respectively followed in the course of the case. We apply this observation to the appellant with respect to his contention that the procedure of finding a verdict for a definite sum at this stage is wrong. He did not dissent from that course at the trial, and he must abide by his conduct of the case there. We apply it to the respondent by adhering strictly to the pleadings.

As to the merits, the bond was executed in October 1894 by the appellant and his brother William, who were then in partnership and had a joint account current at the Bank in respect of which they were heavily indebted. The circumstances leading up to the execution of the bond are not before us, nor does the evidence state the amount that was actually owing at the time the bond was given. It was

undoubtedly heavy, nearly £6,000 at least. The earliest date we have in respect of the account current is 30th June 1895, when a balance was owing to the Bank of £5,594 16s. It is not contested that the liability of the two Deanes was primarily a simple contract liability as an ordinary banking account, and that it did not merge in the bond. From June 1895 the account has not been operative in any extensive way. The Bank charged half-yearly interest regularly down to 31st December 1905; it has regularly brought down the accumulated half-yearly balance and charged the banking fee for keeping the account as an ordinary banking account down to the end of 1903. Though a small item, the charge of the fee shows unmistakably that the account was regarded as on the footing of an ordinary simple contract. On the other hand, the fact that the charge stopped at the end of 1903 indicates that the Bank henceforth regarded it as a dead account except for interest and maintenance and realization of securities. Even interest ceased to be charged after 15th May 1905, the date of William Deane's sequestration. Except for possible realization the Bank apparently considered the liability as a bad debt after May 1905. On the other side of the account stand amounts paid in at various times. From 1897 to 1903, inclusive, various sums were paid off, and the pressure upon the firm by the Bank to make these payments can be seen in the correspondence. In November 1905—that is, after the bankruptcy of William—the appellant, Henry Deane, directed £655, the proceeds of some land at Lavender Bay, to be paid in to the credit of the account. The land was then held as security for the joint indebtedness.

Looking at the circumstances as they appear, it is clear that the bond was taken, not as destroying the nature of the banking account, but as security for the existing indebtedness of the firm and for any further advances to and payments for the firm, and as giving, if needed, a more convenient remedy. It was something which the Bank held in reserve. The bond resembled a bond given in a cash credit banking transaction, but the facts do not enable us definitely to say whether any cash credit was actually established. Judging by the appearance of the account, we should think not.

In any event, two distinct obligations existed. One a simple

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contract debt, in respect of which Henry and William were jointly liable, the remedy for which could be barred in six years, and which, if sued upon, must be strictly proved unless admitted; the other a specialty debt, of a joint and several nature, of a nominal amount of £9,858, probably far in excess of the actual indebtedness of the firm, though we are left in doubt how it was arrived at, an obligation requiring twenty years' limitation, and containing a very special provision in its third condition, making, at the option of the Bank, strict proof unnecessary. That the two sets of legal relations were in law distinct is apparent from such cases as *Henniker* v. *Wigg* (1) and *Swan* v. *Blair* (2). It is trite law that originally at common law the full amount of the bond was recoverable on breach of condition and nothing further. Then equity interposed, and on the one hand restrained the obligee from recovering more than the sum intended to be secured, and on the other hand allowed in certain circumstances a sum larger than the amount of the bond to be recovered (*Grant* v. *Grant* (3)). The two obligations are thus entirely distinct in law. Statutes have now rendered equitable interposition unnecessary in the former case. It is also clear that the Bank thought the two obligations distinct, because in February 1914, that is, after the assignment of the bond to Sampson Palmer, the Bank proved in the estate of William Deane for £6,114 2s. 4d., but without reference to the bond. This would probably have been in the interests and under the direction of Sampson Palmer, because he had purchased the Bank's interest in the bankrupt estate in the preceding month. In those proceedings it was stated that the Bank still held security worth £20. Therefore the bond debt sold for £10 could not have included the current account, which was worth admittedly more to keep. The two debts, being in law distinct, were thus apparently kept distinct by the Bank and by Sampson Palmer.

The declaration and issues in this case resulted in a specific claim for £6,100 9s. 5d. The only plea was that the cause of action did not accrue within twenty years before suit. It is a fact, though a singular one, that this plea is not traversed. The fact alleged is

(1) 4 Q.B., 792.

(2) 3 Cl. & Fin., 610, particularly at pp. 635, 636.

(3) 3 Russ., 598; 3 Sim., 340.

admitted, because undenied. Whatever may be said of the first two conditions of the bond, the third is a distinct condition, the obligation of which expressly arises on demand. As to the *Statute of Limitations*, the only replication was that the Statute was avoided by acknowledgments in writing and by part payment. By the admission that the Statute, if not so avoided, is an answer, the plaintiff is bound, notwithstanding the incongruity of dates and the effect of the third condition. It remains only to see whether the plaintiff's replications were proved. The Supreme Court thought they were proved, because the simple contract debt and the specialty debt were one. As to acknowledgment in writing, it is clear the correspondence relied on refers only to the account current. As to payment, it is equally clear, and is not really denied, that the payments were made in respect of the account current. On what principle can they be attributed to the bond? We do not lose sight of the observations of *Erle* J. in *Walker* v. *Butler* (1), followed in *Friend* v. *Young* (2) and *In re Boswell*; *Merritt* v. *Boswell* (3). Speaking of the appropriation of a payment where there are two debts, *Erle* J. says:—"It must depend upon the special circumstances of each case. In general, there would be evidence to go to the jury of a payment on account of both debts." We have considered the special circumstances of this case, and having regard to the terms of the communications asking for reduction of the account current, to the method of payment, the way in which the £665 was obtained, and the distinct and relative natures of the two debts (particularly the third condition of the bond), and the documents and accounts in evidence, we are unable to conclude, or to find as a fact, that any of these payments were intended by either of the parties as made under the bond.

It was considered by the Supreme Court that unless the two obligations are regarded as one, and the payments made in direct reference to simple contract debt are considered as also made in relation to the specialty debt, banking operations would be hampered. When the position is examined, that would not appear to follow

(1) 6 El. & Bl., 506, at p. 510. (2) (1897) 2 Ch., 421, at p. 435.
(3) (1906) 2 Ch., 359, at p. 366.

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either under the terms of this particular bond or as a practice. There are three conditions to the bond. The first binds the obligors to pay all future advances and past advances; the second requires the obligors to indemnify the Bank; and the third requires the obligors to pay on delivered demand, not the moneys actually advanced as in the other conditions and as they are advanced, but the balance of the account current as it stands in the Bank's books at the time the demand is made. It is clear that whatever might be said of the first two—and certainly the second is doubtful—the cause of action under the third cannot arise until demand is actually made. (See *Sicklemore* v. *Thistleton* (1); *In re Tidd* (2); and also *In re Brown's Estate*; *Brown* v. *Brown* (3), which was distinguished in *Commercial Bank of Australia* v. *Colonial Finance, Mortgage, Investment and Guarantee Corporation* (4).) Demand here was stipulated for as to the third condition. The prior conditions may possibly have been broken directly the deed was executed as to the amount then owing, and directly any future advance or payment took place as to that advance or payment. But as to the third condition, it could not be broken until demand made and uncomplied with. The Bank was perfectly safe without confusing the two obligations. However, admission of the plea admits all necessary facts to support it. In the result, the plaintiff has failed to prove any acknowledgment of the bond, either in writing or by payment on the footing of the bond, as distinguished from the account current. Sec. 41 of the Act 5 Vict. No. 9 requires, as to a specialty debt, that the acknowledgment by part payment shall be "on account of the principal or interest due thereon," that is, on the bond. The plaintiff has failed to show that this was complied with.

The reservation included liberty to the Court to draw inferences of fact, and the proper inference here, on the meagre evidence adduced, is that the part payments were in respect of the simple contract debt, and were not made in the capacity of obligors of the bond.

(1) 6 M. & S., 9.
(2) (1893) 3 Ch., 154.
(3) (1893) 2 Ch., 300.
(4) 4 C.L.R., 57, at p. 65.

The judgment should therefore be reversed, and a verdict entered for the defendant.

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*Appeal allowed. Order appealed from discharged. Verdict for the plaintiffs set aside and verdict entered for the defendant. Respondents to pay costs throughout.*

Solicitors for the appellant, *Deane & Deane.*
Solicitors for the respondents, *Leibius, Black & Way.*

B. L.

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[HIGH COURT OF AUSTRALIA.]

KEMP . . . . . APPELLANT;
DEFENDANT,

AND

BARBER . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

*Local Government—By-law—Interpretation—Regulation of traffic and processions—"Footway" defined to include "public place"—Ejusdem generis—Local Government Act* 1915 (*Vict.*) (*No.* 2686), *sec.* 197.

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MELBOURNE, *Sept.* 16.

Barton, Gavan Duffy and Rich JJ.

Sec. 197 of the *Local Government Act* 1915 provides that by-laws may be made for any municipality for certain purposes, including "(22) regulating traffic and processions." By a by-law made under that power it was provided that in the by-law, unless the context otherwise required, the word "footway" should include "every footpath, lane, thoroughfare or other public place