[HIGH COURT OF AUSTRALIA.]

WALKER . . . . . APPELLANT;
PLAINTIFF,

AND

BOWRY AND ANOTHER . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1924.

BRISBANE, *June* 19, 20, 27.

ISAACS A.C.J., RICH AND STARKE JJ.

Principal and Surety—Guarantee—Contribution between co-sureties—Joint and several liability—Judgment on guarantee against one of the sureties—Insolvency of judgment debtor — Acceptance by judgment creditor of smaller sum in satisfaction and discharge — Limitation of action — Time when right of action arose—Statute of Frauds and Limitations 1867 (*Q.*) (31 *Vict. No.* 22), *sec.* 16—*Insolvency Act* 1874 (*Q.*) (38 *Vict. No.* 5), *secs.* 163, 178.

A creditor obtained judgment against the appellant, one of several sureties who under a deed of guarantee had contracted jointly and severally. The appellant, being adjudicated insolvent on the creditor's petition, paid the sum of £800 to the creditor in satisfaction of the judgment debt and the creditor released him from the judgment debt and all claims in respect of it; and the adjudication of insolvency was thereupon annulled. In an action by the appellant against one of his co-sureties for contribution in respect of the sum paid to the creditor,

Held, that the release of the appellant from the judgment debt as effectively discharged the other sureties as if the creditor had released him from his obligation under the guarantee; that the liability of the sureties under the guarantee was fixed by the release at £800, and that the appellant, who had paid the whole of that debt, was entitled to contribution.

Held, also, that the appellant's right of action for contribution did not arise until he had paid the debt, and, therefore, that his claim was not barred by the *Statute of Frauds and Limitations of* 1867 (Q.).

Decision of the Supreme Court of Queensland (Full Court): *Walker* v. *Bowry and Willey*, (1924) S.R. (Q.) 142, reversed.

APPEAL from the Supreme Court of Queensland.

James Walker brought an action in the Supreme Court against Alfred Bowry and another, claiming, in substance, contribution of £400 from Bowry in respect of £800 which had been paid by Walker to the Bank of Australasia Ltd. Walker, Bowry and two others were jointly and severally liable to the Bank on an instrument of guarantee for the debt of a mining company. The company went into liquidation. The Bank recovered judgment on the guarantee against Walker alone. Walker was adjudicated insolvent. The Bank proved its debt; and subsequently accepted £800 from Walker in full satisfaction, and released and discharged him from the debt and all claims in respect thereof. The adjudication was annulled. After payment of the sum of £800 Walker brought this action against Bowry and another co-surety.

The action was tried before *Blair* J., who directed certain accounts and inquiries and ordered judgment to be entered for the plaintiff against both defendants for the amounts found to be due. The inquiries established that the defendant Bowry alone was in a position to make any contribution, and *Douglas* J. gave judgment for the plaintiff against Bowry for £400 and interest thereon at the rate of 5 per cent per annum.

On appeal to the Full Court that judgment was reversed by a majority (*Shand* and *Lukin* JJ., *McCawley* C.J. dissenting): *Walker* v. *Bowry and Willey* (1).

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

Neal Macrossan, for the appellant. The joint liability of all the co-sureties under the guarantee merged in the judgment against Walker, although they still remained liable on their several liability (*Sessions* v. *Johnson* (2); *Lechmere* v. *Fletcher* (3); *King* v. *Hoare* (4)), for, if the joint liability was not merged, Walker also could again be sued. The adjudication of insolvency did not extinguish the judgment debt, but merely modified or suspended the creditor's rights of enforcement during the continuance of the insolvency: nothing but a payment or a release or a certificate of discharge

(1) (1924) S.R. (Q.) 142.
(2) (1877) 95 U.S. 347, at p. 348.
(3) (1833) 1 Cr. & M. 623, at p. 635.
(4) (1844) 13 M. & W. 494, at pp. 503-506.

H. C. OF A. 1924.

WALKER v. BOWRY.

would extinguish it. The indenture of release is unambiguous; it was a release of the judgment debt to Walker, not to his estate, and the release of Walker operated *ipso facto* as a release of his sureties (*Nicholson* v. *Revill* (1); *Re E. W. A.* (2); *North* v. *Wakefield* (3); *Ward* v. *National Bank of New Zealand* (4)). A release of one of two or more sureties who have contracted jointly and severally discharges the others. The effect of the annulment put Walker in the same position as if he had never been insolvent, subject to whatever had been done by the trustee during the insolvency (*Insolvency Act of* 1874 (Q.), sec. 178; *Bailey* v. *Johnson* (5)). The majority judgment of the Court ignores the fact that the release was given to enable the insolvency to be annulled and that in fact it was annulled. *Re Wolmershausen* (6) is clearly distinguishable, for in that case the release was not under seal, was made with the trustee and not the insolvent, and the insolvent's liability has terminated by his discharge; and these were the grounds of the decision of *Stirling* J. As the appellant has paid all the money that can ever be payable on the guarantee and the liability thereunder is at an end, he is entitled to compel his co-sureties to contribute. The respondent Bowry is the only co-surety who is now able to contribute, and he is liable to pay one-half of the money paid by the appellant (*Ex parte Snowdon* (7); *Halsbury's Laws of England*, vol. xv., p. 530). The claim is not barred; no right of action for contribution arose until payment was made (*Gardner* v. *Brooke* (8)). [He was stopped on this point.]

Stumm K.C. and *Fahey*, for the respondent Bowry. When the appellant became insolvent the liability of the other sureties became a several liability only and their joint liability was severed (*Ex parte Good*; *In re Armitage* (9)), and, until the appellant has paid more than his proportion of the original debt, no right of contribution arises.

(1) (1836) 4 A. & E. 675, at pp. 682-683.
(2) (1901) 2 K.B. 642.
(3) (1849) 13 Q.B. 536, at p. 541.
(4) (1883) 8 App. Cas. 755, at p. 764.
(5) (1872) L.R. 7 Ex. 263, at p. 265.
(6) (1890) 62 L.T. 541.
(7) (1881) 17 Ch. D. 44.
(8) (1897) 2 I.R. 6.
(9) (1877) 5 Ch. D. 46, at p. 58.

[ISAACS J. In that case the Court was dealing with the construction of a resolution passed by creditors (1).]

The release by the Bank was a release, not only of appellant's liability, but of that of his estate; it was a release of the whole debt proved in insolvency. The appellant must go to the extent that no release, however comprehensive, could operate to release co-sureties; and that proposition is not tenable (*Ex parte Good*; *In re Armitage* (2); *Re Wolmershausen* (3)). Part of the consideration for the release was the consent to the annulment of insolvency, and the Court cannot calculate or measure how much should be apportioned to that consideration or to the part payment of the total debt. On the effect of the annulment of insolvency, see *Robson on Bankruptcy*, 4th ed., pp. 671-673; *Markwick* v. *Hardingham* (4); *In re Parnham's Trusts* (5); *In re Paine*; *Ex parte Read* (6); *Wolmershausen* v. *Gullick* (7).

[ISAACS J. referred to *Tailby* v. *Official Receiver* (8).]

Further, the claim is barred by the *Statute of Frauds and Limitations of* 1867 (Q.) (31 Vict. No. 22), sec. 16 (*Wolmershausen* v. *Gullick* (7); *Robinson* v. *Harkin* (9); *Encyclopædia of Laws of England*, 2nd ed., vol. v., p. 315; *Seton on Judgments and Orders*, 7th ed., pp. 2078-2081).

[ISAACS J. referred to *The Crown* v. *McNeil* (10) and *Bulli Coal Mining Co.* v. *Osborne* (11).]

Neal Macrossan, in reply.

Cur. adv. vult.

June 27.

The following written judgments were delivered :—

ISAACS A.C.J. Two questions arise: (1) Has the appellant, apart from the Statute of Limitations, any cause of action against the respondent; and (2), if he has, is it barred by the statute?

The facts are agreed to. The writ was issued on 26th September 1922. On 10th January 1910 the appellant and the respondent Bowry

(1) (1877) 5 Ch. D., at pp. 48, 55.
(2) (1877) 5 Ch. D. 46.
(3) (1890) 62 L.T. 541.
(4) (1880) 15 Ch. D. 339.
(5) (1872) L.R. 13 Eq. 413.
(6) (1897) 1 Q.B. 122.
(7) (1893) 2 Ch. 514.
(8) (1888) 13 App. Cas. 523.
(9) (1896) 2 Ch. 415.
(10) (1922) 31 C.L.R. 76, at pp. 96, 97, 100.
(11) (1899) A.C. 351.

H. C. OF A. 1924.

WALKER v. BOWRY.

Isaacs A.C.J.

(with another who has since died and whose estate is wound up) by deed of guarantee " jointly and severally " agreed to become sureties to the Bank of Australasia for a certain company, their liability not to exceed £3,850 and interest. In 1915 the Bank made demand on the appellant and the respondent. It sued the appellant alone, and in May 1915 recovered judgment against him for £2,865 19s. 1d. In October 1915 the appellant was adjudicated insolvent on the Bank's petition. In June 1919 the Bank, the only creditor who had proved in the insolvency, executed the following document:— " This indenture made this twelfth day of June one thousand nine hundred and nineteen between the Bank of Australasia (hereinafter called ' the Bank ') of the one part and James Walker of Rose Bay Sydney in the State of New South Wales formerly of Charters Towers in the State of Queensland contractor of the other part Whereas the said James Walker was adjudicated insolvent by the Supreme Court of Queensland on the twenty-fifth day of October one thousand nine hundred and fifteen on the petition of the Bank and whereas James Martin Hopkins of Townsville in the said State of Queensland accountant was duly appointed trustee in the said insolvent estate and whereas the only creditor who proved in the said insolvent estate was the Bank for a debt of two thousand eight hundred and eighty-five pounds three shillings and ninepence and whereas with a view to obtaining the annulment of the said insolvency the said James Walker has offered to the Bank and the Bank has agreed to accept the sum of eight hundred pounds in full satisfaction and discharge of its said debt and to execute the release hereinafter contained Now this indenture witnesseth that in pursuance of the said agreement and in consideration *inter alia* of the sum of five hundred pounds (on account of the said sum of eight hundred pounds) now paid by the said James Walker to the Bank the receipt whereof the Bank hereby acknowledges the Bank doth hereby for its successors and assigns release and for ever discharge the said James Walker his heirs executors and administrators from the said sum of two thousand eight hundred and eighty-five pounds three shillings and ninepence and every part thereof and all claims and demands in respect thereof." The appellant paid the eight hundred pounds by instalments between August 1919 and June 1922. On 14th July

1919 the adjudication of insolvency was annulled. The respondent has paid nothing of the secured debt.

The first ground relied on by the respondent for disputing the existence of the liability is the fact of the appellant's insolvency. That event, it is said, converted the respondent's liability into a several liability only. For this, the observation of *Jessel* M.R. in *Good's Case* (1) is relied on. Hence, it is argued, the release of Walker did not affect Bowry's liability to the Bank, and did not release Bowry. As, therefore, Walker has not paid more than his share of the principal debt, he cannot recover contribution from his co-surety. *Good's Case* is no authority for that position. Reference to the facts of that case (2) and to the judgment of *Bacon* C.J. in Bkcy. (3) will show that it was the act of the creditors—namely, their resolution of release—that relieved Armitage from his debt. The judgment of the Court of Appeal turned on the meaning of that resolution, and not on the legal effect of the insolvency. The observation of the Master of the Rolls must be understood in connection with the facts. The adjudication in this case was annulled. The relevant sections of the *Insolvency Act* 1874 are secs. 163 and 178. The effect of the annulment was to restore the appellant to his former status as to all his "property," subject, of course, to such effectual dispositions as had been meanwhile made under the authority of the insolvency law. "Property," as defined by the Act, includes a claim such as the present. The release in this case was unquestionably an act of the party—the Bank—and not the act of the law; and its effect has to be considered.

The second ground raised by the respondent for disputing liability was that the release was a release of the whole judgment and the sum of £800 could not be considered as a *pro tanto* payment of the debt. It was argued that the consent to the annulment was at least part of the consideration and, as the value of that could not be measured, no one could say whether any or how much of the £800 was part payment of the debt. The answer to that is that, on the construction both of the release and sec. 163, no part of the £800 can be taken to be the price of any consent to annulment. That

(1) (1877) 5 Ch. D., at p. 58. (2) (1877) 5 Ch. D., at p. 48.
(3) (1877) 5 Ch. D., at p. 55.

H. C. OF A. 1924

WALKER v. BOWRY.

Isaacs A.C.J.

sum was certainly the portion of the debt insisted on before the Bank would release the liability on the judgment. In effect the release was only for the balance—the £800 being a part payment. What, then, is the legal position apart from limitations? The Supreme Court differed, and, taking into account the learned primary Judge, was really equally divided. The matter is, therefore, by no means easy. The instrument of guarantee being "joint and several" contained in effect (leaving aside the third obligor) three possible obligations, namely, two several promises and one joint promise. The Bank chose to sue and get judgment against the appellant in respect of his several promise. The first problem is, what effect had that on the joint liability of both the appellant and the respondent? Certainly the Bank could never sue in respect of that joint liability. The principle can, I think, be traced through the cases, though it is not, so far as I can find, distinctly stated. Where the obligation is joint, there can be no doubt that judgment against one obligor puts an end to the original contractual liability of both—as against the judgment debtor, because that liability *transivit in rem judicatam*, so that he can never be sued again; as against the other obligor, because his right, if sued, to be sued in company with his co-contractor cannot be satisfied (*King* v. *Hoare* (1) and *Kendall* v. *Hamilton* (2)). But what is meant by *transivit in rem judicatam*? This is explained by *Parke* B. in *King* v. *Hoare* (3). He says—referring to the maxim *Transit in rem judicatam*—"the cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher. This appears to be equally true where there is but one cause of action, whether it be against a single person or many." What is meant by "one cause of action"? This, to my mind, is the crux of the position. The "cause of action" is not, in my opinion, the liability to pay "jointly" or "jointly and severally" or "severally." Those terms signify merely certain conditions attached to the promise to pay. I freely confess that one may find observations difficult to square with this; but, on the other hand, when the leading case of *Kendall* v. *Hamilton* is carefully examined, what I have said will, I think, be found to be

(1) (1844) 13 M. & W., at p. 506. (2) (1879) 4 App. Cas. 504.
(3) (1844) 13 M. & W., at p. 504.

the underlying principle on which the decision is rested. I refer to the judgment of Lord *Cairns* L.C. He says (1):—"I must say that the case of *King* v. *Hoare* (2) appears to me to have been decided on satisfactory grounds. It is the right of persons jointly liable to pay a debt to insist on being sued together. If then there are three persons so liable, and the creditor sues two of them, and those two make no objection, the creditor may recover judgment against those two. But should he afterwards bring a farther action against the third, that third may justly contend that the three should be sued together. It is no answer to him to say that the other two were first sued and made no objection, for the objection is the objection of the third, and not of the other two. Nor is it any answer to him to say that whatever he pays on the judgment against himself he may have allowed in account with the others, because he may fairly require, with a view to his right of account or contribution, to have the identity and the amount of the debt constituted and declared in one and the same judgment with his co-contractors. If, therefore, when the third is sued, and required that the other two be joined as parties, the creditor has to admit that he cannot join the other two because he has already recovered a judgment against them in the same cause of action, this is equivalent to saying that he has disabled himself from suing the third in the way in which the third has a right to be sued." Lord *Hatherley* says (3): "Each of the co-contractors has a right to be sued and to have the matter settled at once, instead of its being settled piecemeal." Lord *Blackburn*, in a most illuminating passages points out (4) that the defendant's objection, if his co-contractor is not sued, is not that there is a variance between the contract alleged and the proof. The objection was by plea in abatement. That view does, in my opinion, harmonize the cases, at all events the principal cases, including *Isaacs & Sons* v. *Salbstein* (5), *Parr* v. *Snell* (6) and *Clarkson* v. *Davies* (7). If that be so, the judgment against Walker was one in which his obligation to pay £2,865 19s. 1d. (either jointly or severally) at the election of the

(1) (1879) 4 App. Cas., at pp. 515, 516.
(2) (1844) 13 M. & W. 494.
(3) (1879) 4 App. Cas., at p. 522.
(4) (1879) 4 App. Cas., at p. 543.
(5) (1916) 2 K.B. 139.
(6) (1923) 1 K.B. 1.
(7) (1923) A.C. 100, at p. 112.

H. C. OF A. 1924.

WALKER v. BOWRY.

Isaacs A.C.J.

Bank (see per *Buller* J. in *Streatfield* v. *Halliday* (1)) was entirely merged. That judgment, however, merely replaced by the higher instrument the liability originally existing by the original cause of action (*Drake* v. *Mitchell* (2)). All Walker's liability in respect of the secured debt was included in that judgment. True, Bowry had contracted to pay " jointly and severally " and not " jointly." He had thereby consented to the Bank suing and recovering judgment against Walker severally or jointly, and, even if severally, he undertook to be liable to pay the creditor severally himself. Even if several judgments are obtained, all would be liable. But he did not undertake that Walker should be released and still be liable himself to pay as if he had contracted " severally " only. So far as the Bank released Walker from his liability to pay the secured debt, the condition of " joint and several " liability, on the faith of which Bowry had entered into his obligation, would have been rendered impossible of observance. So far, the principle of *Nicholson* v. *Revill* (3) applies. But it applies only *pro tanto*. There was no release as to £800. The effect of the release was to relieve Bowry from the liability to pay the balance about £2,000. I say this apart from any right Bowry had to set up the Statute of Limitations, had he been sued. Apart from that and from the effect of that statute in this case, Bowry would, on ordinary principles of equitable contribution, be liable to recoup the appellant one-half of what he had paid, namely, a sum of £400. As to the Statute of Limitations I entirely agree with the view of the Supreme Court. No doubt, Walker had an equitable right, even before payment, to protect himself, but he had no right before payment to recover from Bowry what he is now claiming, namely, reimbursement for money actually paid.

The appeal ought, in my opinion, to be allowed, and the judgment of *Douglas* J. restored.

RICH J. I agree with the judgment and the reasons which have been expressed by the Acting Chief Justice.

(1) (1790) 3 T.R. 779, at p. 782.
(2) (1803) 3 East 251.
(3) (1836) 4 A. & E., at p. 683.

STARKE J. By an instrument of guarantee, Walker, Bowry and two other persons jointly and severally agreed to pay the Bank of Australasia all sums of money advanced by the Bank to the Carrington Company, which is now in liquidation. The Bank sued Walker on this guarantee, and recovered judgment for the sum of £2,865 19s. 1d. and costs. Walker was subsequently adjudicated insolvent on the petition of the Bank. But, with a view to obtaining annulment of the adjudication, he agreed to pay, and ultimately paid, to the Bank, £800 in full satisfaction and discharge of its debt, and the Bank released and for ever discharged him from the debt and all claims in respect thereof. The adjudication was annulled (see *Insolvency Act* 1874 (Q.), sec. 163). Walker, in an action against Bowry, claimed, in substance, contribution from Bowry in respect of the sum of £800 paid to the Bank, namely the sum of £400. Judgment was given in his favour, but the decision was, on appeal, reversed by a majority, and an appeal is now brought to this Court.

The amount is not in dispute, if Walker is entitled to contribution, because the other sureties or their representatives are, it is conceded, impecunious, and nothing can be recovered from them. The judgment on appeal proceeded on the view that the release of Walker by the Bank did not affect the several liability of Bowry on the guarantee, and it followed "that as Walker had not paid more than his share of the debt," he could not claim contribution from Bowry. Now, the Judicial Committee have said, in *Ward* v. *National Bank of New Zealand* (1):—"It has been held that when the creditor releases one of two or more sureties who have contracted jointly and severally, the others are discharged, the joint suretyship of the others being part of the consideration of the contract of each. In *Bonser* v. *Cox* (2), where the defendant agreed to become a surety for Richard Cox in a joint and several bond to be executed by Richard Cox and himself, and the execution of the bond by Richard Cox was not obtained, Lord *Langdale* observes, 'The surety has a right to say "The arrangement was, that Richard Cox, as well as myself, should be held bound by bond to the creditor: that arrangement never was carried into effect,"' and the decision

(1) (1883) 8 App. Cas., at p. 764. (2) (1841) 4 Beav. 379, at p. 383.

H. C. OF A. 1924.

WALKER v. BOWRY.

Starke J.

would obviously have been the same if Richard Cox had executed the bond and had been afterwards released." (See also *Mercantile Bank of Sydney* v. *Taylor* (1); *Kendall* v. *Hamilton* (2).) And at common law the release of one of a number of co-debtors jointly or jointly and severally liable for the same debt released all (*Cheetham* v. *Ward* (3); *Nicholson* v. *Revill* (4); *Re E. W. A.* (5)). It is unnecessary to say whether the common law cases were founded on the same principle—historically, perhaps, they were not—but it is the principle laid down by the Judicial Committee in the case of suretyship, and is in line with the speech of the Lord Chancellor (*Cairns*) to the House of Lords in *Kendall* v. *Hamilton*. In the case of sureties, the principle is that the joint suretyship is the "essential condition of the liability" of each, or, as the Judicial Committee phrase it, "part of the consideration of the contract of each" (see *Rowlatt on Principal and Surety*, p. 272; *Ellesmere Brewery Co.* v. *Cooper* (6); *Barry* v. *Moroney* (7)).

Does it make any difference that the creditor has pursued one surety to judgment on a joint and several guarantee, and then released him from the judgment debt? The judgment itself does not affect his right to indemnity from the principal, or to contribution from his co-sureties. The equities arising from the relationship of principal and surety still subsist. But, in releasing the judgment debt, the creditor just as surely discharges the "joint suretyship" and also the arrangement that both should be bound to the creditor as if he released all claims upon the guarantee itself. The creditor has broken the essential condition of liability of the other sureties, and thereby discharged them. The principle stated in *Ward* v. *National Bank of New Zealand* (8) entirely covers the case, and is quite consistent with, and, indeed, untouched by, the doctrine of *King* v. *Hoare* (9), *Kendall* v. *Hamilton* (10) and other cases based on them.

Consequently, in my opinion, the release of Walker from the judgment debt just as effectively discharged the other sureties as if the Bank had released him from his obligation under the guarantee. And the adjudication in insolvency does not affect this result.

(1) (1891) 12 N.S.W.L.R. (L.) 252; (1893) A.C. 317.
(2) (1879) 4 App. Cas., at pp. 515-516.
(3) (1797) 1 Bos. & P. 630.
(4) (1836) 4 A. & E. 675.
(5) (1901) 2 K.B. 642.
(6) (1896) 1 Q.B. 75, at p. 82.
(7) (1873) 8 Ir. Rep. C.L. 554; (1872) 7 Ir. Rep. C.L. 110.
(8) (1883) 8 App. Cas. 755.
(9) (1844) 13 M. & W. 494.
(10) (1879) 4 App. Cas. 504.

The argument based upon *Good's Case* (1) has been effectively met by my brother *Isaacs*. But in any case it is impossible to hold that an adjudication which is annulled operates to transform the obligations of the sureties under the guarantee into what the learned counsel called "several liabilities only."

We therefore arrive at this result: that the Bank can never recover, against the persons who were sureties under the guarantee, more than the sum of £800 which it received from Walker. The liability of the sureties under the guarantee became fixed, so to speak, by releasing the judgment debt, in this sum of £800. And Walker, one of the sureties, has paid the whole of it. "One of several co-sureties paying the debt, or more than his proportion, is entitled . . . to contribution from the others in respect of the excess . . . the rule does not depend upon contract, but upon an equity arising out of the mere fact that the parties are sureties for the same principal debt, and in the same engagement with the creditor" (*Rowlatt's Principal and Surety*, p. 216).

Lastly, it was suggested that Walker's right to this contribution was barred by the Statute of Limitations. The argument was based upon some observations in *Wolmershausen* v. *Gullick* (2) and *Robinson* v. *Harkin* (3). But *Gardner* v. *Brooke* (4) shows that, in the present case, Walker had no right to sue Bowry for the £400 until he had paid the money. And he paid, in point of fact, between 25th August 1919 and 14th June 1922—less than six years before action brought.

The appeal should be allowed, and the original judgment of the Supreme Court restored.

Appeal allowed. Judgment of Full Court discharged and judgment of Blair J. and of Douglas J. restored. Respondent to pay appellant's costs of this appeal and of appeal to Full Court.

Solicitors for the appellant, *Flower & Hart.*

Solicitors for the respondent, *King & Gill.*

J. L. W.

(1) (1877) 5 Ch. D. 46.
(2) (1893) 2 Ch. 514.
(3) (1896) 2 Ch. 415.
(4) (1897) 2 I.R. 6.