

1920

JUKES *v.* DONALD.

*Oct. 26, 27.

*Nov. 2.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Debtor and creditor—Chose in action—Guarantee—Assignment of debt—Notice to surety, but not to primary debtor—Set-off.

APPEAL from the judgment of the Court of Appeal for British Columbia (1), reversing the judgment of the trial judge, Macdonald J., (2) and maintaining the respondent's, plaintiff's, action.

The action was for recovery of moneys under a covenant of guarantee which had been assigned to the respondent. The appellant guaranteed payment of moneys owing by J. After payment was due, the debt and covenant of guarantee were assigned to the respondent. A notice of the assignment was given to the appellant, the guarantor, but not to J., the primary debtor. The trial court and the Court of Appeal both held that this notice was sufficient to enable recovery against the appellant. But the Court of Appeal reversed the judgment of the trial judge, finding that the moneys advanced to J. by E. (to whom the guarantee was given) were really the moneys of the respondent and not of the estate of which E. was trustee and the respondent administratrix; and hence on the assignment to respondent the debt was hers in her own right; and the respondent was entitled to a judgment on her action.

The Supreme Court of Canada, after hearing counsel and reserving judgment, dismissed the appeal.

Appeal dismissed with costs.

Alfred Bull for the appellant.

F. H. Chrysler K.C. for the respondent.

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

(1) [1920] 2 W.W.R. 209.

(2) [1919] 1 W.W.R. 169.