

# HOLME-VS- BRUNSKILL [1877]

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*Court of Appeal*

*1<sup>st</sup> January, 1877*

## **THE FACTS**

Mr Holme had let his farm in Cumberland to a tenant farmer, along with a flock of sheep. When let, the farm extended to 234 acres and there were 700 sheep. The Mr Brunskill guaranteed the tenant's obligation to re-deliver the flock of sheep in good condition at the end of the term of the lease. When the flock was re-delivered, however, the sheep were reduced in number and were not in good condition. Earlier, in the course of the term, the tenant had made an agreement with the plaintiff that he would surrender a field of about 7 acres in exchange for a decrease in his rent of £10 a year.

Brunskill neither consented to, nor knew of, this variation to the original lease.

## **HELD:**

A guarantor is released from liability under a guarantee given to a creditor where that creditor and the principal debtor have entered into an agreement, subsequent to the giving of the guarantee, which has the effect of altering the contractual position between them, to the disadvantage of the guarantor, without his prior consent, and even though a jury had held that the variation had not substantially or materially altered the tenant's obligations under the lease.

Cotton LJ said: 'The true rule in my opinion is, that if there is any agreement between the principals with reference to the contract guaranteed, the surety ought to be consulted, and that if he has not consented to the alteration, although in cases where it is without enquiry evident that the alteration is unsubstantial, or that it cannot be otherwise than beneficial to the surety, the surety may not be discharged; yet, that if it is not self-evident that the alteration is unsubstantial, or one which cannot be prejudicial to the surety, the Court, will not, in an action against the surety, go into an inquiry as to the effect of the alteration, or allow the question, whether the surety is discharged or not, to be determined by the finding of a jury as to the materiality of the alteration or on the question whether it is to the prejudice of the surety, but will hold that in such a case the surety himself must be the sole judge whether or not he will consent to remain liable notwithstanding the alteration, and that if he has not so consented he will be discharged.'

**Judges:** Cotton LJ, Thesiger LJ

**References:** (1877) 3 QBD 495

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