

PACIFIC STATES REPORTS VOLUME 20

EXTRA ANNOTATED ... [1850-1883]
CALIFORNIA. SUPREME COURT AND COLORADO (TER.).
SUPREME COURT AND IDAHO (TER.). SUPREME COURT AND
KANSAS. SUPREME COURT AND MONTANA (TER.). SUPREME
COURT AND NEVADA. SUPREME COURT AND NEW MEXICO
(TER.). SUPREME COURT AND OREGON. SUPREME COURT
AND OREGON. CIRCUIT COURTS AND UTAH (TER.). SUPREME
COURT AND WASHINGTON (TER.). SUPREME COURT AND
WYOMING (TER.). SUPREME COURT



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California Supreme Court



This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1906 Excerpt: ...of San Francisco shall pay all damages, and is in effect but a conditional contract to pay if the city does not As the able counsel for respondent said, upon the argument, they agreed to pay if the city didnt It therefore imposes necessary precedent obligations upon the plaintiff--1. That the city shall be placed in such a condition that it can lawfully pay. 2. That such obligation being fulfilled, it be requested to pay or its refusal alleged. 3. That it shall appear by the complaint that it has not been paid. By the Statutes of 1863-64, pages 152, 153, all Imrn against the city and county must be presented to the Board of Supervisors within one year, and until such presentatiou is made the city can not pay. Such claim could only be presented by Newton Morgan, the plaintiff. His neglect to do so is a neglect to put either principal or surety in default. The principal, because it prevented him from paying, and the surety because he was only obligated in default of the principal. His failure to do so for one year operated as a bar in favor of the city and put it out of its power to make default, and as a logical consequence operated as a bar in favor of the sureties. The principal not having been in default, the guaranty was not broken, and an action could not be maintained against the sureties. (De Colyer on Guaranties and Principal and S. 215, 216 Brandt on Sureties and Guaranties, Sees. 1, 82 and 83.) The principal was never put in default. The time had expired before the commencement of the action in which the principal could have been put in default or proceedings taken against it, and the claim was barred against the principal. (Parnell v. Hancock, 48 Cal. 452 Finney v. Hershfield, 1 Montana, 367 Holcomb v. Foxworth, 34 Miss. 266...

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