tiffs of a part of the indebtedness of the Specialty Manufacturing Company. In addition to the defendant's guaranty, the plaintiffs held as collateral security for the indebtedness of the Specialty company: (1) a mortgage on the company's land; (2) a mortgage on the plant, machinery, etc., of the company; (3) an assignment of book-debts. The company, on the 9th April, 1915, assigned to one Thompson for the benefit of creditors; whereupon the plaintiffs proved their claim and valued their securities at the amount of the claim as filed. Subsequently, the assignee conveyed all his right, title, and interest in the mortgaged property to the plaintiffs, and received from the plaintiffs therefor $300 and a release of the book-debts.

The defendant contended that the plaintiffs must be taken to have accepted the conveyances in satisfaction of their claim against the company, and to have thus determined her liability.

In the opinion of the learned Justice of Appeal, the rights of the parties must be ascertained on the basis that, at the time the conveyances were made and accepted, there had been no election under the Assignments and Preferences Act, and that the conveyances were executed and delivered to complete an actual sale of the equity of redemption. And, upon the evidence as to the terms of sale and the intentions of the parties, the conveyances were given and accepted in satisfaction of the plaintiffs' claim against the company, and the defendant was thereby freed from liability.

In view of the conclusion reached upon the appeal from the judgment of Middleton, J., it was not necessary to consider the accounts or to deal with the questions raised on the reference or in the appeal from the order of Sutherland, J.

Both appeals should be allowed, and judgment on further directions should be entered declaring that the defendant is not indebted. The defendant should have the costs of both appeals and of the proceedings subsequent to the judgment of a Divisional Court directing the reference to take accounts.

MACLAREN, J. A., agreed with FERGUSON, J. A.

MAGEE, J. A., agreed that the appeals should be allowed. He said that there was not, on the agreement for the release of the equity of redemption, any reservation of the plaintiffs' rights against the surety; and, in giving up their claim, the plaintiffs released any claim the surety might have, and so interfered with the surety's rights.

HODGINS, J. A., read a dissenting judgment. He was of opinion that both appeals should be dismissed.

Appeals allowed (HODGINS, J. A., *dissenting*.)