

Ontario.]

HOLLIDAY v. HOGAN.

[Feb. 20.

Surety—Discharge of—Endorser of note—Release of maker—Reservation of rights.

The plaintiff H., and the defendants J. and H., were both creditors of the other defendant, a hotel keeper. The debtor borrowed \$600 from H., giving a note endorsed by J. and H., who also assigned to H. to the extent of \$600 a chattel mortgage on the debtor's property. The debtor, not being able to pay the claim against him, sold out his business to a third party, who was accepted by both creditors as their debtor, and an agreement was entered into between the plaintiff and the new debtor by which time was given to the latter to pay his debt, but in all the negotiations that took place no mention was made of the \$600 note. An action was brought against both maker and indorser of said note, which, on the trial, was dismissed as against the indorser, the trial judge holding that plaintiff had reserved his rights as against the indorser. This decision against the indorser was affirmed by a Divisional Court (22 O.R. 235), but reversed by the Court of Appeal (20 O.R. 298).

Held, affirming the judgment of the Court of Appeal, that the indorser was relieved from liability by the release of the maker.

Appeal dismissed with costs.

Johnston, Q.C., for the appellant.

Moss, Q.C., for the respondent.

Ontario.]

[Feb. 20.

NORTHCOTE v VIGEON.

Specific performance—Agreement to convey land—Defect of title—Will—Devise of fee with restriction against selling—Special legislation—Compliance with provisions of.

Land was devised to N., with a provision in the will that he should not sell or mortgage it during his life, but might devise it to his children. N. agreed, in writing, to sell the land to V., who, not being satisfied of N.'s power to give a good title, petitioned, under the Vendors and Purchasers Act, for a declaration of the court thereon. The court held that the will gave N. the land in fee with a valid restriction against selling. N. then asked V. to wait until he could apply for special legislation to enable him to sell, to which V. agreed, and thenceforth paid to N. interest on the proposed purchase money. N. applied for a special Act, which was passed, giving him power, notwithstanding the restriction in the will, to sell the land, and directing that the purchase money should be paid to a trust company. Prior to the passing of this Act, N., in order to obtain a loan on the land, had leased it to a third party, and the lease was mortgaged, and N. afterwards assigned his reversion in the land.

In an action by V. for specific performance of the contract to sell the land, defendant claimed that the contract was at an end when the judgment on the petition was given; that he could give no title under the will; and that if performance were decreed the amount received on the sale of the land should be paid to him, and only the balance to the trust company.

Held, affirming the decision of the Court of Appeal, that the contract was