

assets, induced the plaintiff to discharge the mortgage, the note being then overdue and unpaid. The plaintiff had no notice or knowledge of an alleged agreement between the partners that the other partner, the defendant, should only be liable as surety for the payment of the money.

Held, that the defendant was liable to the plaintiff. R.S.O., c. 122, ss. 2, 3 & 4, cast no duty on the plaintiff to preserve the collateral security for the benefit of the defendant.

Aylesworth, Q.C., for the plaintiff.

Wallace Nesbitt for the defendant.

Div'l. Court.]

HENDERSON V. BANK OF HAMILTON.

[Feb. 13.]

Jurisdiction—Redemption action—Foreign lands—Locus standi of plaintiff—Application of statute law of foreign country.

The defendants, an incorporated banking company, having their head office in the Province of Ontario, took from a customer a mortgage upon certain lands in the Province of Manitoba as security for an indebtedness which arose in Ontario. The plaintiff, who also resided in Ontario, subsequently recovered a judgment for the payment of money against the mortgagor in a Manitoba court, and registered a certificate of it against the mortgaged lands. By the Con. Stat. Man., 1880, c. 37, s. 83, the effect of the registration was to make the judgment a lien and charge upon the lands. The plaintiff brought this action to redeem the mortgaged lands.

Held, that the court had jurisdiction to entertain the action, and was bound to apply the law of Manitoba to determine whether the plaintiff had the right to redeem; and in determining that the registration of the judgment gave the plaintiff that right under the Manitoba statute was not giving an extra-territorial effect to the judgment.

Mabee for the plaintiff.

J. J. Scott for the defendant.

STREET J.]

SCOTT V. SUPPLE.

[March 4.]

Will—Construction—Specific devise of incumbered land—Exoneration from incumbrance—Devolution of Estates Act—Distribution of estate.

The testatrix, who died in 1891, specifically devised to her grandson a part of her land, which was incumbered. To the plaintiff she gave a legacy of \$5000. The remainder of her estate, consisting of personalty and other lands, she did not dispose of or in any way refer to in her will, except in this clause: "I hereby charge my estate with payment of all incumbrances upon the said lands at the time of my death."

Held, that the residue of the estate was charged with the mortgage debts, to the exclusion of the land specifically devised.

Such residue was to be treated as one fund and as if it were all personalty, under s. 4 of the Devolution of Estates Act, R.S.O., c. 108; and out of it the