

primarily and plaintiff secondarily liable; in other words, that the relation of principal and surety existed between them, he should not therefore have given time, as he did, to the maker, without the consent of the indorser of the note. He says he thought that time was asked and given on account of both, but if he chose to take the fact for granted without inquiring, he must abide the consequences. It is well settled that time given to the maker of a note discharges the indorser. The learned counsel for the defendant attempted to distinguish this from cases in England, on the ground that one judgment was obtained against both maker and indorser, but we do not think this should vary the principle. The plaintiff had a right at any time to bring the money into court and put the judgment in force against *Jarvis*. This he was prevented from doing by the time given. There should be a decree for plaintiff with costs.

1857.
Vankough't
v.
Mills.

MELLISH V. GREEN.

— v. BROWN.

— v. COSSEY.

Principal and surety.

The holder of a promissory note sued and recovered judgment thereon against the makers and endorsers, which was duly registered so as to create a lien on the real estate of the makers; subsequently the judgment creditor accepted from the makers of the note a composition of fifty per cent, and discharged their lands from further liability, expressly retaining the right to go against their personal assets, and the plaintiff in the action proceeded to execution against the goods of the endorser. *Held*, that what had taken place operated as a discharge of the endorser from further liability; and a perpetual injunction was granted restraining further proceedings in such action against the endorsers.

Decemb'r 22,
1856, and
Jan. 19, 1857.

These were three several suits brought by *William Mellish, Joseph Morrell, John Russell, and Joseph Whitehead*, against *William Green, Major Brown, and William Cossey*; the *Buffalo, Brantford and Goderich Railway Company* being also made defendants in each cause, and the bills stated that the *Railway Company* hav-