

PRINCIPAL AND SURETY—RELEASE OF PRINCIPAL—DISCHARGE OF SURETY—AGREEMENT BY SURETY THAT CREDITOR MAY COMPOUND WITH DEBTOR.

*Perry v. National Provincial Bank of England* (1910) 1 Ch. 464 was an action by a surety claiming that he was released by reason of the creditors having discharged the principal debtors. The agreement of suretyship between the plaintiff and defendants expressly provided that the defendants might, without affecting their rights against the plaintiff "exchange or release any other securities held by the bank for or on account of the moneys thereby secured or any part thereof." . . . and "compound with, give time for payment of, and accept compositions from and make any arrangement with, the debtors or any of them." The principal debtors were a firm of Perry Brothers, who, in 1908, being on the verge of insolvency, made an arrangement with their creditors, under which arrangement a company was formed to take over certain properties of the firm, and in consideration thereof they issued debentures to the creditors at the rate of 25 per cent. for each £1 of their debts in full discharge thereof. At this time the total debt due to the bank from Perry Brothers was £3,530, from which was deducted £1,630, the value of certain securities held by the defendants against the property of Perry Brothers, leaving a balance of £1,900 in respect of which the defendants accepted the debentures of the company. In making this arrangement the mortgages made by the plaintiff were not taken into account. It subsequently turned out that the defendants were unable to realize the £1,630 from the securities they held against the property of Perry Brothers, and the defendants then gave notice of sale of the property mortgaged to them by the plaintiff, who, thereupon, brought the present action to restrain the sale and for a declaration that the plaintiff had been released from his suretyship. Neville, J., who tried the action, considered that the principal debtors had been released by the defendants, and that they were not entitled to enforce the mortgages given by the plaintiff as to any part of the claim; but the Court of Appeal (Cozens-Hardy, M.R., and Moulton, and Buckley, L.J.J.) came to a different conclusion, and held that although the acceptance of the debentures for the £1,900 had released the debt as to that amount, yet as to the balance of £1,630 that was still unpaid, and under the agreement the defendants were entitled to recover against the plaintiff that amount.