

this discharges the surety although, 19 Ont. Rep. page 169, Blackley vs. Kenney, in that case the same rule as above is followed and Robertson, J., in his Judgment, refers to the case of Davies vs. Stainbank, 6 D. M. and G. (De Gex, MacNaghten and Gordon) page 679, which I think is very much *ad rem* with this case.

There it was held that a creditor who holds a floating guarantee from a surety cannot, without the surety's consent, give time to the principal debtor as to any portion of the debt, without reserving the creditor's right against the surety liable for that portion.

The same principle was upheld in the following cases ; Croydon Commercial Gas Co. vs. Dickinson and others, 2 Comm. Pleas Div. page 46, Holme vs. Burnskill, 3 Q. B. D. page 495 and
 10 several other cases cited.

On the other hand all the authorities cited by the plaintiffs to wit : as to first liability of endorser to innocent holder for value, second accommodation endorser and third as to suretyship are good law as far as they apply ; but the propositions laid down by Daniels on Negotiable Instruments, Vol. 2, pages 341 to 347, particularly 345 and notes, also Vol. 1, pages 771, 774, 775, 777 and notes cannot be applied to this case, for the reason that Daniel speaks always of the principal debtor the maker of the note or the acceptor of the bill of exchange. But here the defendant is merely an endorser on a note given as collateral security, and as proven by one of the plaintiffs, H. A. Sparrow was merely an accommodation endorser. Mr. Christie, one of the plaintiffs says in his evidence "when I asked him (T. B. Lafferty) to get security, I did
 20 not ask him to get Mrs. Sparrow's name (defendant H. A. Sparrow) ; I told him I must have further security and as a result of that he brought me the note." I do not know by what fiction of law the plaintiffs can make the defendant H. A. Sparrow principal debtor in this case. The plaintiff knew she was only a surety, and therefore could not be treated otherwise, and was entitled to all the rights and privileges of a surety.

The case of the Can. Bank of Commerce vs. Woodward and others, 8 Ont. App. Rep. 347 is clearly distinguishable from this case for the reasons already alluded to. The defendant in the case referred to were makers of the note and not endorsers and therefore were principal debtors and interested in retiring McLagan's paper. In the present case H. A. Sparrow as I stated before endorsed the note sued on on behalf of the maker, T. B. Lafferty, who used it as
 30 security only for the notes actually held by the plaintiffs. I think also that the case of Devaney vs. Brownlee and others, 8 Ont. App. Rep. page 355 is a case very much the same as the one under consideration. There is no doubt in my mind that the plaintiffs knew that H. A. Sparrow endorsed the note merely as a surety without consideration and according to the authorities is discharged by the creditors giving an extension of time to the principal debtor.

When the note of \$664.50 exhibit A became due, were the plaintiffs in a position to obtain Judgment against the maker or principal debtor of said note ?

There is no doubt they could not ; the four notes for which exhibit A was given as surety were not due then, because the plaintiffs had renewed them and would have become due long after exhibit A became due.

40 Can the endorser of a note be placed in a more unfavorable position than the maker ; if