

a part payment and a newnote for the balance indorsed by Dixon, and retained the old note. Dixon had to retire the paper he indorsed and brought an action against Gorman on the old note. On the trial the manager of the bank testified that it was arranged when the new security was given that he was to retain the old note until it was paid. A verdict was given in favor of Dixon.

Held, affirming the judgment of the Supreme Court of Prince Edward Island, GWYNNE, J., dissenting, that taking the new note was giving time to the principal by which the surety would have been discharged, but that the evidence of the manager showed that when time was given to the principal debtor to pay the remedy against Gorman as his surety was reserved, and Dixon was entitled to hold his verdict.

An appellate court will not give effect to a mere technical ground of appeal, against the merits, and where there has been no surprise or disadvantage to the appellant.

Appeal dismissed with costs.

Stewart, Q.C., for the appellant.

Peters, Q.C., Attorney-General, P.E.I., for respondent.

Province of Ontario.

COURT OF APPEAL.

From ROSE, J.]

[March 10.

HAMILTON PROVIDENT AND LOAN SOCIETY *v.* STEINHOFF.

Partnership—Covenant in firm name.

Two persons carrying on business in partnership as bankers took from a customer as security for his indebtedness to them a conveyance to them individually of certain land which was subject to mortgages in favor of the plaintiffs. Subsequently, upon proceedings being threatened by the plaintiffs upon their mortgages, one of the partners, without the knowledge or assent of the other, in consideration of a stay of proceedings, signed in the firm name a covenant under seal to pay to the plaintiffs the arrears due on the mortgages.

Held, affirming the judgment of ROSE, J., that this covenant bound only the partner who signed it.

Osler, Q.C., and *Crerar*, Q.C., for the appellants.

Watson, Q.C., for the respondent.

From Q.B.D.]

[March 10.

SCARLETT *v.* NATTRESS.

Chose in action—Covenant—Assignment of covenant by one joint covenantee to his co-covenantees—Mercantile Amendment Act R.S.O. c. 122—Mortgage—Conveyance of equity to one of several trust mortgagees.

One joint covenantee can by virtue of the Mercantile Amendment Act, R.S.O. c. 122, assign to his co-covenantees his interest in the covenant, and they can then sue upon it without joining him as plaintiff; BURTON, J. A., dissenting on this point.