THOMAS HOLLIDAY (PLAINTIFF).....APPELLANT; 1893

AND *Nov. 3.

JACKSON & HALLETT, AND OTHERS (DEFENDANTS).....RESPONDENTS. 1894 *Feb. 20.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Surety—Discharge of—Reservation of rights against—Promissory note—Discharge of maker.*

Where the holder of a promissory note had agreed to accept a third party as his debtor in lieu of the maker.

*Held*, affirming the judgment of the Court of Appeal, that as according to the evidence there was a complete novation of the maker's debt secured by the note and a release of the maker in respect thereof the indorsers on the note were also released.

APPEAL from a decision of the Court of Appeal for Ontario (1) reversing the judgment of the Chancery Division (2) against the defendants Hallett & Jackson as indorsers of a promissory note.

The facts of the case, which are fully stated in the above-mentioned reports, may be summarized as follows:—

The plaintiff, Holliday, and the defendants, Jackson & Hallett, were respectively creditors of Hogan. The plaintiff held a note made by Hogan which Hallett & Jackson had indorsed as security for payment. Subsequently, Hogan having failed to pay his said creditors as agreed his business was sold to a third party, and both creditors accepted such third party as debtor in place of Hogan, and plaintiff agreed to give him time to pay off Hogan's debt. It was under these circumstances that the action was brought on the note against Hogan as maker, and Jackson & Hallett as indorsers.

*PRESENT:—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

(1) 20 Ont. App. R. 298, sub nom. *Holliday* v. *Hogan*.

(2) 22 O.R. 235.

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HOLLIDAY v. JACKSON & HALLETT.

On the trial the action as against Hogan was dismissed, but judgment was given as against the other defendants. The Chancery Division affirmed the judgment of the trial judge. Jackson & Hallett then appealed to the Court of Appeal where the judgment against them was reversed. Plaintiff then appealed to this court.

*Johnson Q.C.*, for the appellant, referred to *Wyke* v. *Rogers* (1) ; *Ludwig* v. *Iglehart* (2).

*Moss Q.C.* for the respondents.

FOURNIER J.—I am in favour of dismissing the appeal.

TASCHEREAU J.—I am of opinion that the plaintiff's action was rightly dismissed by the Court of Appeal. The reasoning of Mr. Justice Osler and of Mr. Justice Maclennan, shows, in my opinion, that no other conclusion is possible. I would dismiss the appeal.

GWYNNE J.—I entirely concur in the judgment of the learned judges of the Court of Appeal for Ontario. The evidence clearly established and the learned trial judge found that the plaintiff agreed to accept and did accept Singular as his debtor in lieu of Hogan as well in respect of the debt secured by the promissory note upon which Jackson and Hallett were indorsers as of a further sum secured by a chattel mortgage executed by Hogan to the plaintiff upon chattels in the Victoria Hotel which chattels and his interest in the hotel Hogan sold to Singular leaving $1,247 of the purchase money agreed upon on such sale in Singular's hands for the express purpose of his paying the plaintiff the two debts due by Hogan on

(1) 1 DeG. M. & G. 408. (2) 43 Md. 39.

the promissory note and the chattel mortgage. This purchase so made by Singular from Hogan having been communicated to the plaintiff he accepted Singular as his debtor in lieu of Hogan and at Singular's request agreed to give him time for payment of the above sums for one or two years or as long as he, Singular, wished, he paying 5 per cent for such accommodation, to which Singular agreed. In fact the evidence clearly shows that the substitution of Singular in the place of Hogan as the keeper of the hotel, which the plaintiff, he being a brewer, supplied with beer and ale, was a step most acceptable to the plaintiff; accordingly the learned judge held that Hogan was discharged from all liability upon the note, from which judgment there has been no appeal taken; the plaintiff, in fact, admits it to be correct; but Hogan's discharge being due to the fact that the plaintiff had accepted Singular as his debtor in lieu of Hogan in respect of the said sum of $1,247, which included the note sued upon, that transaction constituted a complete novation of Hogan's debt secured by the note and an absolute release of Hogan in respect of that debt; and the sureties, the indorsers also, became discharged, the debt for which they had become sureties by their indorsement of the note being extinguished—*Commercial Bank of Tasmania* v. *Jones* (1). The appeal must therefore be dismissed with costs.

SEDGEWICK and KING JJ. concurred.

*Appeal dismissed with costs.*

Solicitor for appellant: *Kenneth McLean.*

Solicitor for respondents: *T. P. Coffee.*

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(1). [1893] A.C. 313.