on Mortgages, 801; *De Colyar on Guarantees*, 445; *Woodruff* v. *Mills*, 20 U. C. Q. B. 51; *Burnham* v. *Galt*, 16 Gr. 417; *Mathers* v. *Helliwell*, 10 Gr. 172; *Titus* v. *Durkee*, 12 U.C.C. P. 367; *Stewart* v. *Clark*, 13 U. C. C. P. 203.

George Patterson, in reply. What is alleged does not set up that defendant became surety and Bailey principal debtor. *Real Estate* v. *Molesworth*, 3 Man. R. 116.

(24th June, 1880.)

KILLAM, J.—The plea would not be a sufficient answer at law, for it is pleaded to counts in covenant for payment of definite sums of money, and simple accord and satisfaction is in such case no defence at law, *Massey* v. *Johnson*, 1 Ex. 241; *Webb* v. *Hewitt*, 3 K. & J. 438.

In the latter case, however, where there had been accord and satisfaction in fact by the principal debtor, though with an attempt to reserve rights as against the surety, the latter was granted an injunction to stay proceedings against him at law, on the ground that in equity the cause of action was extinguished.

The plea asserts that the lands covered by the mortgage were conveyed to Bailey subject to the mortgage. The authorities show, that in such case a court of equity implies an obligation on the part of the grantee to indemnify the mortgagor against the mortgage debt. *Barry* v. *Harding*, 1 J. & Lat. 485; *Waring* v. *Ward*, 7 Ves. 338; *Jones* v. *Kearney*, 1 Dr. & War. 155; *Campbell* v. *Robinson*, 27 Gr. 634; *Real Estate Loan Co.* v. *Molesworth*, 3 Man. L. R. 116.

The plea also alleges that the plaintiff took the conveyance of the equity of redemption in discharge of the mortgage. Although there may be some doubt whether the mortgagor is rightly termed in such case a surety for the grantee of the equity of redemption when the latter has never become debtor directly to the mortgagee, the principle of the decision in *Webb* v. *Hewitt*, appears equally applicable, and the defendant to be entitled in a court of equity to claim that the debt has been wholly discharged.

I prefer to treat the matter as one of equitable accord and satisfaction rather than of merger, though the latter principle was [illegible] in *North of Scotland Mortgage Co.* v. *German*, 31 U.C. C. P. 349, and *Id.* v. *Udell*, 46 U. C. Q. B. 514. I would suggest that the doctrine of merger is applicable rather to the charge