he does not owe any debt to the judgment debtor, and on his refusal to do so an order absolute may rightly be made. The order of the Divisional Court (Day and Lawrence, JJ.), setting aside the attaching order made by a Master, was therefore reversed.

PRACTICE—COUNTER-CLAIM—JUDGMENT ON COUNTER-CLAIM, MOTION FOR—ORD XXVII., R. 11 (ONT. RULE 727).

Jones v. *Macaulay* (1891), 1 Q.B. 221, settles a point of practice which is not very clear upon the Rules. The question being, where to a counter-claim for a debt, no defence is pleaded by the plaintiff, how is the defendant to obtain judgment on the counter-claim? The defendant claimed the right to sign judgment as of course for the amount claimed, but the Court of Appeal (Lord Esher, M.R., Lopes and Kay, L.JJ.), adopting the practice followed in *Higgins* v. *Scott*, 21 Q.B.D. 10, held that the only way a judgment can be obtained by a defendant on a counter-claim, or default of defence, is by motion for a judgment. Lopes, L.J., comments on the inconvenience and injustice which might result if a defendant could sign judgment as of course and issue execution against the plaintiff before the latter's claim against him had been disposed of.

PRINCIPAL AND SURETY—DISCHARGE OF SURETY BY GIVING TIME TO PRINCIPAL—SUBSEQUENT COVENANT BY PRINCIPAL TO PAY DEBT AT A LATER TIME.

In *Bolton* v. *Buckenham* (1891), 1 Q.B. 278, the defendant, who was a surety, claimed to have been discharged from liability by reason of time having been given to his principal by a subsequent agreement, to which he was no party. The circumstances of the case were as follows: The defendant was surety for the payment by a mortgagor of a mortgage debt of £450 on 4th March, 1858, under a covenant made September 4th, 1857. By a deed made December 15th, 1884, this mortgage, which was made to one Cooper, was assigned to the plaintiff, together with various other mortgages on other properties, and together with the benefit of all covenants therein contained, he advancing £3,200 to take them up; and the mortgagor executed a new mortgage to him, subject to a proviso for redemption on repayment of (the amount advanced) £3,200 and interest thereon, on January 19th, 1885, and which sum the mortgagor covenanted to pay. Day, J., who tried the action, held that the effect of the transaction was to give time to the mortgagor, and therefore the surety was discharged; and he doubted whether the assignment of the benefit of all covenants applied to the surety's covenant for payment, and thought it was confined to "collateral covenants," *e.g.*, for further assurance, etc. The Court of Appeal (Lord Esher, M.R., and Lopes and Kay, L.JJ.), without discussing the latter question, affirmed the decision of Day, J., on the ground that the taking of the mortgagor's covenant in December, 1884, necessarily involved by implication that the lender of the money was not to sue for it before the day named in the covenant for payment; and it made no difference that the benefit of the first mortgage was expressly reserved by the second, because the right to sue under the first mortgage was inconsistent with the implied undertaking not to sue contained in the second.