A further breach was suggested in that, while the assigned mortgage purported to be a first mortgage, it was in truth a fourth mortgage. It was said "a good and valid security" meant a good and valid first mortgage. This makes it quite plain that the issue there was not, as the Master has thought, similar to the issue here. There there was a breach of the covenant as the security was not "valid," and as it appeared on the evidence a case for reformation had been made out, this relief was granted to the defendant and the action failed.

Then it seems equally clear that the judgment cannot be supported on the alternative finding.

It was the intention of the parties that the whole bargain with reference to this mortgage should be contained in the assignment as executed. The plaintiff's solicitor says that he thought the covenant meant, as his counsel now contends, that the assignor guaranteed the value of the security.

The law is clearly stated in Gordon v. McGregor, 8 C.L.R. 316: "When a contract had been entered into by parol and afterwards reduced into writing, the parties are bound by the writing unless it is shewn by evidence that the written document was not intended to embody the whole of the terms of the contract." Unless the contract is required to be in writing, there is nothing which prevents the parties, if they choose, reducing part of their engagements to writing and allowing the remainder to rest in the oral bargain, but unless this is clearly shewn to have been the intention of both parties, they may expect to hear, as was said by Pollock, C.B., in Knight v. Barber, 16 M. & W. 69, that it is a conclusion of law that when parties are making an agreement by parol and subsequently reduce it to writing, the written document is the contract.

The Supreme Court in Provident Savings Life Assurance Society v. Mowat, 32 S.C.R. 147, at p. 155, refers to "the most salutary rule that parol negotiations leading up to a written contract are merged in the subsequent written instrument, which is conclusively presumed, in the absence of fraud, to contain the entire engagements of the parties, and by which alone their intentions are to be ascertained."

With this in mind the "collateral condition" cases and the "escrow" cases can be applied and reconciled.

See Long v. Smith, 18 O.W.R. 88, for a discussion of some of these.

Apart from this the plaintiff has another difficulty; the assignment contains a covenant which defines the defendant's