pay, the obligation undertaken by the defendant was to pay in any event if the pnrchaser failed to do so, irrespective of whether such failure arose from infantile non-responsibility or from financial incapacity. Such a contract differs fundamentally from an ordinary guaranty ensuring payment to the creditor of whatever sum the principal debtor is legally liable to pay, and the rule invoked by the defendant has no application.

(2) In the alternative, if the defendant knew the purchaser's age, and the plaintiff did not, then the situation is, that the defendant, by giving a security now asserted to be valueless in law, induced the plaintiff to abandon the right, which she was bonâ fide asserting, to retake possession. To permit the defendant to do so would be inequitable: Mutual Loan Fund Association v. Sudlow (1858), 5 C.B.N.S. 449; Wauthier v. Wilson, 28 Times L.R. 239.

RIDDELL and LENNOX, JJ., agreed that the appeal should be dismissed.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT. FEBRUARY 4TH, 1916.

*McILWAIN v. McILWAIN.

Husband and Wife — Alimony — Cruelty — Findings of Trial Judge—Absence of Finding of Danger to Life or Health—Evidence—Appeal.

Appeal by the defendant from the judgment of BOYD, C., in an action for alimony, declaring the plaintiff entitled to alimony and directing a reference to fix the amount, with costs to the plaintiff.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

D. L. McCarthy, K.C., for the appellant.

J. C. Elliott, for the plaintiff, respondent.

MEREDITH, C.J.C.P., delivering judgment, said that the findings of the Chancellor were that the husband was guilty of cruelty—assault and battery—on the 24th June, 1914; and that