

SUBSTITUTION OF MORTGAGES—BAGGS V. CITY OF TORONTO.

not extinguish the lien of the first mortgage, so that he (the plaintiff) could not use it as a protection to his right against the subsequent mortgage. "In other words, a court of equity will regard it as still existing as a lien and not having merged, so as to protect him against the subsequent mortgage, . . . In law a merger always takes place when a greater estate and a less coincide and meet in the same person, in one and in the same right, without any intermediate estate. The lesser estate is said to be annihilated or merged in the greater; but a court of equity is not guided in this matter by the rules of law. It will sometimes hold a charge extinguished where it would exist at law, and sometimes preserve it where at law it would be merged. The question is one of intention, actual or presumed, of the person in whom the interests are united."

A mortgagor, for his own advantage, yet in good faith, procures satisfaction pieces from his mortgagee, and cancels the mortgages without paying the mortgage money, and does so upon an understanding to give new mortgage, but dies without accomplishing it, and his heirs after him give such new mortgage; *held*, that the new mortgage executed by the heirs should have the same effect as the old securities.

Contrary Doctrine.—A rule contrary to the one above maintained is steadily followed by the courts of Maryland, and, as far as we are able to discover, that State is alone in its position. It is there said that the release of one mortgage and the giving of another on the same property, for the same debt to the same mortgage, does not avoid the loss of the first mortgage lien by the release, and although the only consideration for the release is the simultaneous execution of another mortgage to the same tenor and effect as the released mortgage.—*Central Law Journal*.

[The authorities will be found on reference to the above publication, vol. 23, p. 579.]

REPORTS.

MUNICIPAL CASE.

BAGGS V. CITY OF TORONTO.

Surface water—Raising grade of street—Flooding of adjacent land—Note—Liability of corporation.

B., residing on Lippincott Street, Toronto, had his premises flooded by surface water flowing into his cellar after a storm. The flooding was greater owing to the raising of the grade of Lippincott Street by the defendants block-paving same.

Held, That right of drainage does not exist *jure nature*. That the defendants were not liable for the damage claimed, as they had only exercised a legal power vested in them by statute to raise the grade of the street, and block-pave same; they had been guilty of no negligence, and were not bound to provide drainage for surface water.

[County Court, Co. of York—Toronto, 1886.]

The plaintiff claimed damages from the defendants in this proceeding for the flooding of his cellar and premises on Lippincott Street, in the City of Toronto.

Heighington, for plaintiff.

McWilliams, for defendants.

The facts, as disclosed in evidence, are set out in the judgment of

McDUGALL, Co. J.—Lippincott St. runs north and south. The natural fall of the land from Bloor St. is from the north to the south-west; and it appears that, prior to the doing by the defendants of any of the acts complained of, the surface water collected on the lands to the north and north-east of the plaintiff's property, flowed in times of heavy rains or freshets in a southerly and westerly direction partly across the line of Lippincott Street and partly across the plaintiff's land, then south-westerly till they found their way into certain natural watercourses west on Bathurst Street.

The plaintiff admits that on former occasions in times of heavy freshets he had been flooded by surface water, but said that by reason of the side ditches on Lennox Street, a street running east and west, and north of his premises, (which ditches were cut through and across the line of Lippincott Street) a good deal of the surface water was intercepted before reaching him, and transferred and discharged upon the lands lying west of Lippincott Street, though in times of heavy freshets even this diversion did not protect him, and his premises suffered more or less. In May, 1885, the defendants block-paved Lippincott Street. In doing so the grade of the street was necessarily raised. Prior to block-paving, some years, a sewer had been put down on the street, and,