

when due," she stood, as regards the land, in the position of surety for him; and as the plaintiff, with notice of the deed, had received the notes current at its date for which alone the mortgage stood as security time had been given to Kenney, the principal debtor, without her consent, and in consequence the land was discharged.

No objection appears to have been made before the referee that this defence was not open on the pleadings. The referee gave no effect to it, and by his second report, upon which this appeal arises, found that for principal and interest there remained due to the plaintiff, in respect of advances up to the 1st September, 1884, the sum of \$2,790.02, instead of \$4,083.52, as stated in the former report. He also reported specially that all the promissory notes held by the plaintiff, which represented defendant Kenney's debt on 1st September, 1884, had been taken from the bank where they had been discounted, and cancelled as they fell due, and returned to Kenney on his paying the notes or renewing them for the amount remaining due on each, and that defendant Mrs. Kenney was no party to renewal, and that the plaintiff did not, when the renewals were taken, reserve any rights against her "other than any rights which he was entitled to under the mortgage security."

On the defendant's appeal from this report, the learned judge held that the identity of the debt secured by the mortgage was not altered by the renewal of the notes; but he also held that Mrs. Kenney had, in respect of the land, become surety for the mortgage debt as represented by the original notes; and that as the effect of renewing these notes was to extend the time for payment of the debt, the land was discharged from the lien of the mortgage. From that judgment the present appeal is brought.

It is well settled that the relation of a mortgagor who has covenanted with the mortgagee for payment of the mortgage debt, and who sells the equity of redemption subject to the mortgage, is that of surety to the purchaser for payment of the debt. He has entered into a personal contract with the mortgagee for payment of the debt, which debt, as between himself and the purchaser, the latter has assumed; and if the mortgagee deals with the purchaser in such a way as to affect the rights of the former to compel payment in the terms of the original contract, he discharges the mortgagee from his liability: *Mathers v. Helliwell*, 10 Gr. 172; *Campbell v. Robinson*, 27 Gr. 634; *Calvo v. Davies*, 8 Hun. (N.Y.) 222; *George v. Andrews*, 60 Md. 26; *Paine v. Jones*, 14 Hun. 577; *Barnes v. Mott*, 64 N.Y. 397; Jones on "Mortgages," ss. 740, 741. And when the land is not sold subject to the mortgage, and the mortgagor covenants with the purchaser to pay off and discharge the mortgage when due, the same principle applies conversely in favour of the latter, so that the mortgagor is to be regarded as the principal debtor, and the purchaser *qua* the land as his surety. The mortgagor is undoubtedly the principal, nay, the only debtor; for whatever may be said in favour of the extremely doubtful proposition that the mortgagee has recourse directly against the purchaser when the latter has expressly assumed the mortgage as part of the purchase money, or covenanted with the mortgagor to pay it as such, he clearly gets no additional right against the mortgagor where the latter undertakes with the purchaser to discharge the mortgage. And as two persons, originally principal debtors, may as the result