

£1,500. By deed of 21 April, 1842, George Ridley, a subsequent owner of the same estate, mortgaged the equity of redemption and certain additional land to one William Nicholas to secure £2,500. Nicholas paid off the first mortgage and took an assignment to himself in 1874, and by the same deed Samuel Ridley, who was tenant for life of all the mortgaged property, covenanted with Nicholas to pay the principal and interest of the first mortgage, but reserving his rights as surety against the owners of the mortgaged estates, and stipulating that as between him and them the lands should be deemed the primary security and his covenant only a collateral security. The representatives of Nicholas brought the present action against the representative of Samuel Ridley on his covenant, and against the owners of the equity of redemption for foreclosure. The representative of the covenantor Samuel Ridley claimed that on payment of the first mortgage he was entitled to an assignment thereof, claiming as between himself and the plaintiffs to stand in the position of a surety. The plaintiffs, on the other hand, contended that they were not bound to assign one mortgage without being also paid the amount due on the other. Byrne, J., who tried the action, considered that it was governed by *Farebrother v. Wodehouse* 23 Beav. 18, and that the plaintiff's contention must prevail, and that, although Samuel Ridley's representatives stood in the position of sureties, their rights as sureties could not interfere with the plaintiff's right to tack or consolidate their securities. On appeal Williams, L.J., agreed that they were sureties, and considered that the only way their rights could be carried out in accordance with the covenant given by Samuel Ridley was by an assignment to them of the first mortgage on payment thereof: Stirling and Romer, L.JJ., however, affirmed the judgment of Byrne, J., but on the ground that Samuel Ridley was not a surety as between himself and Nicholas, but a principal debtor. The case, therefore, presents quite a conflict of judicial opinion. Per Byrne, J., Samuel Ridley was a surety, but his rights as surety could not interfere with the plaintiff's right to consolidation. Per Williams, L.J., Samuel Ridley was a surety, and the plaintiffs were not, owing to the terms of his covenant, entitled to consolidate their securities as against him. Per Stirling and Romer, L.JJ., Samuel Ridley was not a surety as regards the plaintiffs, but a principal debtor, ergo plaintiffs had a right to consolidate their securities as against him.