$174, whereby, and by reason of the terms of the order, they were entitled to resume possession.

Before taking possession, the defendants recovered judgment against Bird, and on the appeal before us counsel made the following admissions: (1) that the judgment recovered by Petrie against Bird was for the amount due by Bird under the contract; and (2) that, at the time of the seizure of the machine, money was due to the vendor under the contract, and was still due.

Plaintiffs' counsel attacked the judgment in this action on the following grounds: (1) that the action of the defendants in recovering judgment before seizure worked a merger whereby the original indebtedness of Bird ceased to exist, and, consequently, the defendants lost their right to resume possession of the machine, and the property in it thus passed to the plaintiffs; (2) that in suing for and obtaining judgment for the purchase money the defendants had elected to treat the transaction as an absolute sale; and (3) that the defendants had been guilty of such laches in resuming possession as to disentitle them as against the plaintiffs to seize the machine.

As to the question of merger, the transaction was one creating an indebtedness by Bird to Petrie, for collaterally securing which the latter retained the property in certain goods, to which he was, in certain contingencies, entitled to resort. Recovery of judgment is not payment of the indebtedness. Its simple contract character has disappeared, and it has become a debt of record. To that extent only has there been a merger, but the original indebtedness still exists, and until payment the defendant is entitled to retain his collateral security: Houlditch v. Desonges, 2 Stark. 339; Scrivener v. Great Northern R. W. Co., 19 W. R. 388. I therefore am unable to give effect to Mr. Raney's first objection.

As to the second, that the defendants in recovering judgment for the whole unpaid purchase money had elected to treat the case as one of actual sale, thus waiving his collateral security, McIntyre v. Crossley, [1895] A. C. 457, is relied upon, particularly the observations of Lord Herschell, L.C., at p. 464: "If the instalments are not paid as provided for, or if the hirer or intended purchaser, or whatever he may be called, becomes bankrupt, then there is a provision in the agreement as to what shall happen. Messrs. Crossley may in that case elect to sue for the remainder of