

So, in the case of the purchaser, it is only partly true to say that if the mortgagor be still alive he remains liable to the mortgagee, notwithstanding a sale of the lands. The position occupied by a mortgagor after selling his lands subject to the mortgage was defined by our Court of Chancery, as long ago as A.D. 1859, to be that of a surety to the mortgagee: *Joice v. Duffy*, 5 U.C.L.J. 141 (cited by Mr. Justice Osler in *Sutherland v. Webster*, 21 A.R., 21 p. 236).

Esten, V.C., in delivering the judgment of the court, said: "I quite agree with the principles laid down in *Hilliard on Mortgages*, that where a mortgagor sells subject to his mortgage the rule in regard to principal and surety applies, and the mortgagor becomes a surety to the mortgagee for the payment of the mortgage debt." The same doctrine has been recently enunciated and approved in the Court of Appeal and by the Chancellor. (See *Blackley v. Kenney*, 29 C.L.J. 110; *Sutherland v. Webster*, *supra*; *Muttlebury v. Taylor*, 22 O.R. 312.) Accordingly, a failure by the mortgagee to respect the rights arising from the new relationship may discharge the mortgagor.

It has, indeed, been argued by Mr. F. A. Anglin (14 C.L.T., at p. 101) that the suretyship exists only between the mortgagor and the purchaser. But when dealing with a triangular figure one must not forget that it has three sides. If, after determining two of those sides, and the connection between them, he had asked us to find the position of the third side, the problem would have been intelligible—and easy.

This relationship of principal and surety, as we need scarcely point out, gives us another direct route to the purchaser's liability.

The reluctance which both courts and text-writers have shown to recognizing this relationship in mortgage transactions appears to be based upon the supposition that it would enable a debtor (the mortgagor) to vary the rights of his creditor (the mortgagee), *without the latter's consent*. But this is not so. The mortgage contract contemplates and provides as well for an assignment by the mortgagor by deed *inter vivos* as for an assignment in law by his death.

Why any of the parties to this suretyship should object to it is a curious enigma. It imposes no obligation upon the purchaser which he has not already agreed to assume. It imposes