teed by him, have been repaid with interest: either directly or by marshalling the other securities held by the Defendants and of which the Plaintiff claims the benefit. At the first hearing, and as a preliminary to the taking of the accounts, I held that the Plaintiff's guarantee extended at least to two sums of $20,000 and $25,000 respectively, and was not as the Plaintiff then contended limited to $25,000 in all. This decision has been acquiesced in, the time for appealing having long since elapsed. It is now therefore binding probably on all parties. But the taking of the accounts has incidentally disclosed (to me at least for the first time) a circumstance of very great importance not noticed in the pleadings, not alluded to in arguments, and which might materially have influenced my opinion as to the Plaintiff's liability. But as I do not think it necessary for the determination of the question now before me I do not call for any additional argument in respect of it.

I was informed by the Counsel on both sides that the question of Mr. Pemberton's liability was for the present reserved, without prejudice, until the preliminary question now before me was answered. I therefore confine myself to the consideration of the Plaintiff's contention as above set forth.

The Plaintiff's liability arises on a mortgage deed dated the 2nd March, 1882. The recitals state in effect that Adair & Co. (with which firm the Plaintiff is quite unconnected in business) were salmon canners on the lower Fraser, that Adair & Co were already indebted to the Defendants their factors in Victoria in the sum of $20,000 for advances in respect of the pack of 1881, for which they had given some security, and had applied to the Defendants for additional advances, not to exceed $25,000, to enable them to secure the pack of 1882 (then just about to commence); and that the Defendants had agreed to advance the $25,000 to Adair & Co. if the Plaintiff would give them this mortgage security in addition to the securities already held. The Plaintiff thereupon conveys lots 55, 56, 57 and part of 54 in Group II, New Westminster District to the Defendants, with a proviso for reconveyance in case the mortgagor shall on or before the 1st January, 1883 pay to the mortgagees 1st, the sum of $20,000 with interest, and 2nd, "such further and other monies, if any, as shall then be owing to the Defendants by Adair & Co. on the security of these presents." There is also a covenant by the Plaintiff to "repay" to the Defendants on the 1st January, 1883 the said sum of $20,000 with interest; and also "on demand repay to the said mortgagees such sum or sums of money as shall or may hereafter be advanced by them to the said Adair & Co."

There are in these clauses several manifest inaccuracies. The recitals make it quite clear that the deed is intended purely as a guarantee by William Adair, for the liabilities of John Adair & Company, but the latter are not made parties to the deed as they very probably might have been. The surety of course can only be called upon in case the principal debtors make default: but the condition and covenant by the Plaintiff are absolute. This perhaps is not important, both in the condition for reconveyance of the mortgaged premises, and also in the covenant by the mortgagor, the future advances which the surety the mortgagor is to discharge are quite unlimited in amounts, which not only does not carry out the agreement in recital, but quite contradicts the recital. This is I suppose a mere error of the draftsman: not so singular an error perhaps, as that