Held, also that the mode of acquiring them, viz., by delivering up the maturing notes with receipts was unobjectionable, the transaction being in fact a negotiation of the notes; or at any rate there was a mere substitution or continuation of securities.

T. did not keep the wheat covered by the receipts distinct, but ground some of it and allowed the remainder to be mixed with wheat subsequently brought in. Before assigning in trust for creditors he pointed out one carload of flour made from the wheat covered by the receipts, and pointed out wheat in his mill which he admitted was covered by the receipts, and the next day the bank took possession. He subsequently assigned and the defendants afterwards recovered a judgment against him on an interpleader issue.

Held, that the plaintiffs were entitled to the wheat taken possession of by them.

Leave given to supplement the evidence given on the trial by affidavit evidence of documents under Rules 271 and 182.

Guthrie, Q.C., for the plaintiffs.

Moss, Q.C., and *Cutten*, for the defendants.

ADJALA V. MCELROY.

Principal and surety—Municipal Treasurer—Annual re-appointment—Misconduct—Condoning misconduct—Release of sureties.

A treasurer was appointed by the plaintiffs under R. S. O. cap. 174, by sec. 274 of which all officers appointed by a council shall hold office until removed by the council. He furnished a bond dated 1st November, 1880. He was re-appointed annually for several years.

Held, the re-appointments were not equivalent to removals and re-appointments, but were rather a retention in office of the same treasurer, and that the sureties were not in consequence thereof discharged.

The treasurer having failed to account for large sums, the council of the plaintiffs caused a letter to be written to him on 27th February, 1882, requiring him to settle all claims by a certain day, otherwise a special meeting would be called to consider his case. He failed to settle and the council did not carry out their threat. In 1883 the council, again becoming dissatisfied with the treasurer, passed a resolution that no further payment should be made to him, but that all moneys should be paid into a certain bank. In 1884 the council for that year rescinded this resolution and permitted the treasurer to receive the accumulated funds. No notice was given to the sureties.

Held, that the plaintiffs had failed to perform their duties by retaining the treasurer in office after they became aware of his defalcations, and that the sureties were released from all liability after 27th February, 1882. A reference was granted at the plaintiff's election to take an account of the amount due under the bond to that date.

Lount, Q.C., and *Strathy*, for the plaintiffs.

Lennox and *Hearn*, for Patrick McElroy.

J. A. McCarthy, for the Can. P. L. & S. Co.

Pepler, for the other defendants.

CORE V. ONTARIO LOAN CO.

Registered title—Equitable charge—Priority.

W. and his son, W. W., in consideration of $4,000, made a mortgage of separate parcels of land owned in severalty to the defendant company, containing a proviso for releasing W. W.'s land on payment of $500. The covenant for payment was joint. W. W. sold his land to J. W. W. then mortgaged his land to the plaintiff by an instrument which declared it subject to the company's mortgage. The various conveyances were registered. It was proved that W. W. was merely a surety for his father in the mortgage transaction with the company, but there was no notice of this to the plaintiff by registration or otherwise.

Held (reversing the judgment of PROUDFOOT, J.), that the plaintiff's registered title prevailed over the equity of W. W. to charge his father's lands with the $500 for which he had made his land liable; and that the plaintiff was therefore entitled to recover his mortgage out of the father's land before W. W. could charge it with the $500.

Gray v. *Ball*, 23 Gr. 390, approved and followed.

Maclennan, Q.C., for the plaintiff.

Moss, Q.C., for the defendants, the Wilsons.

Hoyles, for the company.
