

thing that was agreed upon as amounting to a bargain to extend the time upon the acquisition of the mortgage by the appellant.

The part of the case that is in question is dealt with in a very few words, at p. 290 of 7 O. W. R. After referring to the fact that the respondent had notice that William was the principal debtor and the respondent a surety, the learned Judge says: "Having this knowledge imputed to her, she entered into an agreement, oral but binding upon her in equity, from the execution of the deed, to give a substantial extension of time to William. That agreement, so binding, would ordinarily relieve the surety from liability and entitle him to have his property released from the mortgage, unless in as far as she reserved her remedies against him or it."

Apparently the learned Judge's view was that, inasmuch as the purpose of the whole transaction was that more time should be given to the mortgagor, and a deed had been executed on the faith of that, a contract must be inferred to extend the time for payment of the mortgage debt. At first sight it struck me that the reasoning was well founded, but, on further consideration, I find considerable difficulty in following the reasoning.

All that the evidence shews, at most, is that the respondent expressed her willingness or her intention to be lenient to the mortgagor in respect of the mortgage indebtedness. There was nothing, it seems to me, in the shape of an agreement binding her to extend the time for payment, and, while it might have been an unexpected thing if she had, immediately after having acquired the mortgage, proceeded to foreclose it, I do not see what answer the mortgagors would have had to an action for that purpose. If she had brought an action the next day after the assignment, it would have been necessary for the mortgagors to have proved an agreement which tied the hands of the mortgagee from suing. I can see no evidence of an agreement which would do that. I can see nothing more than the extension of generosity and kindness from the one to the other in relieving them from one that was pressing, or who it was feared might press, for the debt.

With great respect for the view of my brother Magee, I think his judgment must be reversed, and that so much