

debt. (See *Blackley v. Kenney*, No. 2, and authorities collected in it, reported *ante* p. 108.)

Let us now apply these principles, and let us assume that Rogers had conveyed the equity of redemption to the real purchaser, Collins, by deed duly registered.

The plaintiff, by searching the registry office for the owner of the equity of redemption, receives notice of the conveyance (subject to the mortgage) from Dickson, the mortgagor, to Rogers, and therefore of Dickson's position being altered to that of a surety.

The plaintiff makes a similar discovery with regard to Rogers, who, upon execution of the conveyance to Collins, becomes surety, while Collins becomes, in respect of the land, the principal debtor.

De Colyar (Bl. Ser., 218) tells us that "The most important right which a surety possesses before any payment has been demanded of him is that, after the debt has become due, he may compel the debtor to exonerate him from his liability by at once paying the debt. To obtain this relief a surety must formerly have had recourse to a Court of Equity; and he should now resort to the Chancery Division, as being, since the Judicature Acts, the appropriate tribunal in such cases. 'Although,' says Lord Keeper North, 'the surety is not troubled or molested for the debt, yet at any time after the money becomes payable on the original bond this court will decree the *principal* to discharge the debt, it being unreasonable that a man should always have such a cloud hanging over him.'"

Consequently the respective rights of Dickson and Rogers to indemnity arose immediately upon default of payment occurring.

In *McMichael v. Wilkie* (*supra*), Mr. Justice MacLennan pointed out a test for determining who were proper parties to such an action as *Walker v. Dickson*, and the test was, were they or were they not "concerned in the relief sought by the plaintiff"?

According to the view of Mr. Justice Burton (and, we suppose, of the other members of the court also), the only proper defendants were Dickson, the mortgagor, and Collins, the owner of the equity of redemption.

But can it be denied that Rogers was a person "concerned in the relief sought by the plaintiff"?

Here the relief sought by the plaintiff was payment of the