

If, therefore, this had been a gift in the ordinary natural form, Mrs. Kenney would not have become, as between herself and her husband, surety for the plaintiff's mortgage debt, and it required the covenant, which was inserted at the last moment at the suggestion of the solicitor, to place her in that position. The husband covenanted to pay the debt, and to relieve the estate, which he had conveyed to her, from the burden. The question now arises, how is the plaintiff affected by the transaction as it was actually carried out?

Originally, and before the conveyance to Mrs. Kenney, the plaintiff was an ordinary mortgagee, Kenney was his debtor, and Kenney's land was his security, and in that state of things he could give whatever time he thought fit to his debtor without losing his security. In my judgment, both principal and authority require that in order that the creditor may be affected by the rules of law relating to suretyship, so as to be bound to treat what was originally a principal security as a surety merely, he should at least have notice that the relation has arisen, that the debtor has so dealt with the land that the creditor's position is altered, and that the new owner of the land is, as between himself and the debtor, a mere surety.

I think that such notice was necessary, and I do not find any evidence that the plaintiff had notice when he renewed the notes which were secured by the mortgage. I have read all the evidence over very carefully, and I do not find that the plaintiffs, or any of them, were ever informed that there was a covenant by the husband to pay the mortgage debt, or that as between him and his wife he was the person bound to pay it. The plaintiff's own evidence is that "his firm was on friendly terms with Kenney and his wife throughout, so much so that he advised Kenney to convey his property to his wife and protect her and his family," and, he adds, "the deed to her was to be subject to my mortgage." Kenney, in his evidence, says: "I executed the deed to my wife; the plaintiff advised me to do this before he was interested in my business." Mr. Bull says: "I had to do with drawing the deed; the plaintiff came over with Kenney at the time." Mr. Duggan says the deed was executed in Kenney's store, that it was drawn by Mr. Bull, and there was something put in by Mr. Kerr after the deed was drawn—it may have been the clause with reference to the mortgage. Mr. Kerr says the clause with reference to the mortgage was put in at his instance; does not recollect the deed being executed without such clause, and that a new deed was necessary. He knew a deed was drawn to Mrs. Kenney, and thinks he put in a clause as to the mortgage. He thinks McCall & Co. knew about the deed being made. Kenney gives the following evidence: "I spoke to the plaintiff and told him I wanted to transfer house to my wife, and he said he was very glad. McCall was spoken to about it, and he said, 'How are we to get paid?' Plaintiff said, 'Mrs. Kenney would have to sign all notes in the future.' Plaintiff then said, 'Come along, Kenney, and we will go over to Kerr & Bull's, and we went over there; the deed was drawn up and I signed it. I think the next day I received a letter from Kerr & Bull's, after I had signed the deed, asking me to come down to their office. When I went there my attention was drawn to an interlining which, I was told, Mr. Kerr thought would make the deed better, and I signed the deed and left it there. The interlineation had reference to mortgage, I think, in left-hand corner of inside of deed." It is ap-