

as one requiring the payments by the purchaser to be applied in discharge of that liability, and it appearing that the rights and liabilities of the parties to this appeal were preserved expressly until payment of the first two instalments, it seems to follow that the forfeiture worked a serious change in the rights of the respondent. The appellants themselves put an end to the situation during which their rights against the respondent were preserved, and, by precluding payment by the person primarily liable, rendered the protection provided by the agreement to the respondent of no value.

Such a radical change as putting an end to the agreement itself, and therefore to all its provisions, does not seem to come within the true meaning of the words "anything that may be done hereunder," notwithstanding that they may seem literally applicable. Retention of the rights now set up ought to be clearly and definitely expressed: *Arnold v. Playter* (1892), 22 O.R. 608.

Upon the best consideration that I can give to the argument of Mr. Lefroy, I think that the true intent and meaning of the agreement was, that the respondent should remain liable, notwithstanding the assignment, for the moneys due by him before, but that otherwise the old agreement was merged in the later one, and that the respondent, when sued upon that old liability, was entitled to rely upon the merger as having changed his position from that of a simple purchaser to that of surety, *quoad* the land, for the purchase-money: *Muttlebury v. Taylor* (1892), 22 O.R. 312.

There is a further ground upon which the judgment in appeal may be supported, namely, that the effect of the agreement between the appellants the Standard Mining Company of Algonie Limited and the respondent was merely to substitute for the respondent that company as the purchaser of the property, and to relieve the respondent from his obligation to purchase, but not from his liability to pay the overdue instalments of the purchase-money, the amount of which paid by the respondent was to be credited upon the purchase-money. In either view, the principle of the cases referred to by my brother Kelly was applicable.

The appeal should be dismissed with costs.