

Now in the present case the indebtedness in the principal (Adair & Co.) in respect of the pack of 1881, cannot, according to the construction I put upon the deed which binds the surety, be put at more than \$20,000 on the 2nd March, 1882. And it so happens that just one week later, on the 9th March, 1882, the Defendants appear to have received on account of the cargo of the "Buston Vale", part of the pack of 1881, a sum of \$22,000, that amount appearing in the accounts at that date.

That would more than extinguish the principal's alleged debt of \$20,000, which was all that the surety had undertaken to guarantee: and that debt being extinct the surety can be no longer under any liability in respect of it. Then as to the advances of 1882, the surety is distinctly informed that they are not to exceed in the whole the sum of \$25,000. Long before the commencement of this action (Writ dated 30th September, 1884, served 21st November, 1884,) advances to that amount in respect to the pack of 1882, had been repaid to the Defendants out of sales monies the proceeds of that pack. Therefore again as to these advances all that the surety had undertaken to guarantee had been satisfied by the principal, and the liability of the surety was at an end before the commencement of this action; And the Plaintiff has, in my opinion, established the truth of the proposition in the 16th paragraph of his claim. So soon as that was the case the Defendants became bare trustees for the Plaintiff, with no rights to exercise or duties to perform except to reconvey the mortgaged premises to him at his own expense. There will be a declaration to that effect and the further consideration of the case, particularly as regards the position of Mr. Pemberton, the other Defendant, and all questions of costs will be reserved. Liberty to apply. 10