On the 1st November, 1916, the mortgage now sued upon was given; it recited that there was due upon the judgment on the 1st September, 1916, the sum of $18,213.37.

This amount was arrived at by giving credit upon the judgment for all sums received from the realisation of securities between the date of the judgment and the 1st September, 1916.

The bank continued to carry the account and made new advances to the company. As security for such advances, new hypothecation agreements were given, each covering all the stock of material and manufactured goods. After the date of the mortgage, the bank changed their method of dealing with the account, and allowed no credit upon the amount of the indebtedness covered by the judgment and mortgage, but credited all money received, no matter from what source, upon the new advances.

Upon the evidence, the amounts realised from securities held at the date of the accounting on the 1st September, 1916, were: (1) proceeds of lumber sold, $12,000; (2) Playfair note, $1,000; (3) bonds, $650—in all $13,650; and the defendants maintained that these sums should be credited upon the judgment and mortgage at the dates when realised.

This was the issue tried.

When judgment was obtained by the bank against Turner, the contract of suretyship came to an end, and he became directly liable to the bank in such a way that the mere giving of time to the company would not operate to discharge him from the judgment: Re A Debtor, [1913] 3 K.B. 11. On the other hand, his contract as surety being merged, the bank could no longer make advances to the company and seek to charge him as surety. The old relation of surety and creditor was gone, and in its place there arose a new relationship based on the judgment.

There was an obligation upon the bank to give credit on the judgment for all sums paid by the company on account of the judgment, and also to credit upon the judgment the proceeds of all securities held by the creditor at the date of the judgment.

There was a crystallisation of the rights of the parties by the judgment: so long as the original contract continued, the bank could make advances and could apply the money received and the proceeds of realisation as it pleased; but the moment the bank ended the original contractual relation, new rights and new obligations arose; and one right that Turner had was that the proceeds of all then existing securities should be applied upon the debt as it then existed.

The sums mentioned were approximate only; if the parties could not agree, they might speak to the learned Judge.