The result is that the appeal will be dismissed with costs; but a provision may be inserted in the judgment that it is to be without prejudice to any action which the appellant may be advised to bring to set aside the conveyance by the grantor to the plaintiff.

NOVEMBER 11TH, 1907.

DIVISIONAL COURT.

QUACKENBUSH v. BROWN.

Mortgage—Discharge—Intention to Take Assignment—Mistake—Subrogation—Chargee of Land Joining in Mortgage as Surety for Owner—Extension of Time to Owner—Release of Surety—Declaration of Priority—Redemption—Costs.

Appeal by the adult defendant, Amanda Brown, from judgment of MAGEE, J. (7 O. W. R. 284), and from his subsequent judgment in June, 1907, after the addition of parties and hearing further evidence, finding that plaintiff is entitled to have his rights under his father's will in priority to defendant's title, and that plaintiff as a surety had been discharged by giving time to William Allen Quackenbush.

C. J. Holman, K.C., for the appellant, contended that there was mere passive inactivity and no binding bargain to extend time.

J. H. Spence, for plaintiff, contra.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., ANGLIN, J.), was delivered by

MEREDITH, C.J.:—The law is simple enough, and the question in issue is one of fact only.

We are not embarrassed by any finding of fact of the learned Judge, in the sense of his pointing to any specific