

and authority to defend any suit at law or in equity, which may be instituted against the heirs or representatives of Odel Wheeler on account of said single bill, but this stipulation is not inconsistent with, but is entirely compatible with the complete substitution of himself as the party liable, in the place of his obligor, Odel.

As I understand this agreement, Thomas T. Wheeler by it assumed upon himself, for a valuable consideration, moving from the representatives of Odel to him, the payment of Odel's one-third of the single bill in question, which made him responsible for two-thirds. The stipulation, that he shall have power to defend the proceedings at law or in equity which may be instituted against the representatives of Odel Wheeler, does not appear to me to militate against this view of the obligation imposed upon him by contract. Having by his agreement with the representatives of Odel, undertaken to pay his, Odel's, part of the single bill, nothing was more natural or proper than that he should be authorized to defend any action which might be brought against those representatives on account thereof; and being so authorized, it is quite likely a failure on their part to give him notice of such action, might be fatal to their right to recover from him upon the contract, in the event of their being compelled to pay any thing on the single bill.

But as the case presents itself to my mind, the question here is not, whether the representatives of Odel Wheeler could recover from Thomas T. Wheeler, if they were made to pay any part of the joint debt, without having given him an opportunity to defend the action; but whether as between Thomas T. Wheeler and Thomas Hilleary, the former by receiving from Odel Wheeler a full and valuable consideration for that portion of the debt, which he, Odel, was bound to pay, Thomas T. Wheeler is not, with respect to Hilleary, substituted for Odel, and responsible for his one-third of the joint debt due upon the single bill. There can be no doubt, that originally each of these three joint obligors, though jointly and severally liable to Wilson, the creditor, for the whole debt, were, as among themselves, each bound to contribute one-third, because each must