

1810.

Maryland Insurance Company.
vs.
Graham.

that each of the defendants in that suit was bound for the whole of the costs adjudged to the plaintiff, which the appellant might have avoided by severing in his defence. But I cannot perceive how his not having severed, in any manner affects the case; for defendants may sever in their defence in other actions of tort, and yet if a joint judgment for damages is rendered against two in an action of trespass or trover, &c. and one pays the whole, he cannot recover against the other a moiety of the moiety so paid. Nor can one security, who is compelled to pay the whole of the money, in all cases resort to his co-security for a contribution; as if one becomes a joint security at the instance of another, though he is thereby made liable to the person to whom the security is given, yet he cannot be called upon by the other, because it was at his instance that he became a security. And this is a stronger case, with more equity on the side of the appellant; for the costs, which are the subject of controversy, were not only incurred at the instance of the appellee, but against the consent of the appellant; and the law therefore will not raise against him an implied undertaking to pay, and the judgment being joint makes no difference, and cannot shut out any equitable defence which the party might otherwise have had.

JUDGMENT AFFIRMED.

JUNE.

MARYLAND INSURANCE COMPANY VS. GRAHAM.

In an action of covenant on a policy of insurance, stating that H and W Y for account of T G (the plaintiff) did make insurance, and cause themselves, and their and every of them, to be insured, &c. and the assurers, (being a corporate body) executed the Policy under their common seal. The declaration stated that the plaintiff, according to the usage & custom of merchants, (through and by H & W Y his attorneys and agents,) in his own name, did

APPEAL from Baltimore County Court. Covenant by the appellee against the appellants. The declaration stated, "That whereas by a certain deed made between *Thomas Graham* of the one part, and *The Maryland Insurance Company* of the other part, at Baltimore county, on the twenty-fourth day of September, in the year one thousand eight hundred and two, which deed, sealed with the seal of *The Maryland Insurance Company* aforesaid, the said *Graham* here into court brings, the date whereof is on the day and year aforesaid, the said *Graham*, according to the usage and custom of merchants, (through and by *Hugh Young* and *William Young*, merchants, trading in partnership under the name and firm of *Hugh and William Young*, his attorneys and

held that the action, was well brought.