

No. 7215, Equity.

to the Union National Bank on August 2, 1900, a balance of \$2,975.67 on a judgment with interest from that date to August 30th, of this year, \$715.64. Principal and interest \$3,691.31. (Testimony of Mr. Hering, Exhibit, J. No. No. 1, Sheet 1.). These two claims, due to the Bank with interest up to the date of this judgment, aggregate \$4,406.95. The indebtedness to Mrs. Roberts, as executrix, arose in the following way: Edward A. Lynch, Josiah Leland, Charles B. Roberts, Francis H. Roberts and one other were indebted upon the Lynch for \$1,675.11. Each of these four last named was responsible for one fourth of the whole sum, namely, \$418.78, but the whole amount was paid by three of them not including Francis H. Orendoff. The interest on the \$418.78, which should have been paid by Francis H. Orendoff, up to this date is \$100.98. Adding that to the \$418.78 makes \$519.76, and of this sum Mrs. Roberts, as executrix of her husband, is entitled to recover from Francis H. Orendoff one third, or \$173.25. (See testimony of John Roberts.) The total sum due to the two plaintiffs exclusive of the costs, which are not brought into the above calculation is \$4,537.19, with interest from this 30th, day of August 1904.

It has been objected that inasmuch as the estate of Judge Roberts is equally bound with Francis H. Orendoff to the Bank for the payment of the balance due on the judgment for \$2,975.67, above alluded to, the Bank should be required to pursue its remedy against that estate, which is solvent, rather than against the defendants in this case who claim under the assignment and the release of the \$5,6000 Mortgage. But there is no substance in this objection, because the Creditor has a perfect right to pursue any one of the joint and several makers of the note upon which the judgment was founded, and upon securing satisfaction from one of them cannot so paying well have a cause of action over against the other, for Contribution.

The position taken in the answer that the remedy of the plaintiffs is at law and not in equity cannot be sustained. Whilst at law an assignment or release may be availed upon the ground of fraud and may be set aside in that forum, yet the fact that a Court of law has concurrent jurisdiction with a Court of Equity will not deprive the latter tribunal of its undoubted jurisdiction to grant