

#### 44 ASSIGNMENT OF CHOSSES IN ACTION. [ART. 9.

tested bill of exchange, who shall pay or tender the money due thereon, whether the whole be due or part has been previously paid, shall be entitled to an assignment thereof; and may, by virtue of such assignment, maintain an action in his own name against the principal debtor.

6. Where any person shall recover a judgment against the principal debtor and surety, and the judgment shall be satisfied by the surety, the creditor shall assign the same to the surety; and such assignment being recorded in the court where the judgment was rendered, the assignee shall be entitled to execution in his own name against the principal.

7. Where any judgment shall be rendered against several securities, and one of them shall satisfy the whole, the plaintiff shall be obliged to assign such judgment to the surety satisfying the same, who shall be entitled to execution against the other sureties in the judgment for a proportionable part of the debt or damage paid by such assignee; *Provided*, that no defendant shall be precluded or debarred of his remedy against the plaintiff by *audita querela*, or other equitable course or proceeding.

8. The assignee of any bond or other obligation under seal that has been assigned under hand and seal, may maintain an action in his own name against the obligor therein named—and if such obligor shall be unable to pay the debt mentioned in the obligation, or cannot be found in the place or county of his usual abode, or any other thing or casualty should happen whereby the assignee should not be able to recover his debt from the obligor, an action may be maintained by the assignee against the obligee in such obligation, unless the assignee be a surety therein; *Provided*, that where any debt shall be lost by the negligence or default of the assignee, the assignor shall not be liable.

9. No action shall be maintained in the name of any assignee upon any assignment mentioned in the last preceding section, upon the default of the obligor, unless the obligee shall have made or shall make oath, to be endorsed on such bond or obligation, before some justice of the peace, that he hath received no part of the sum mentioned in such obligation, or but such part thereof as shall be mentioned in such oath, at the time of making such assignment.