

hands by Heyland, against all demands that might be rightfully made against him on account of those acceptances, either by the Bells, or by the holders of them.

By this deed Heyland does, most clearly and distinctly, give us to understand, that it was his intention to pay all those of his creditors in whose favor he had drawn bills on the Bells. For, with what other possible view could he have stipulated to account with Thompson for the whole amount of the bills as if they had been actually paid by the Bells? And with what other understanding was the covenant entered into for an indemnity against all those creditors? It is most manifest, therefore, that Heyland placed this fund in the hands of Thompson for the use of that class of his, Heyland's creditors, the bill holders, whoever they might be.

But, it is alleged that Thompson has a title to at least a share of this fund as the assignee of the Bells; and this, it is said, is proved by the recital in this deed, in which it is acknowledged, that the Bells "had transferred and made over all the amount due by the said Heyland for goods which the said house of William & John Bell & Co. accepted to pay on his account to Hugh Thompson;" and also by the express stipulation, by which Heyland bound himself to Thompson for such balance as might be found due from him, Heyland, to the Bells, on account of those transactions, or otherwise, to the time of executing that deed.

This position may, perhaps, be more clearly and strongly presented in another form, thus: Heyland stands indebted to sundry persons in the sum, suppose for example, of \$16,000, for the payment of which the Bells are his sureties; and, as such, they have paid for him \$4,000, and consequently stand in the place of his creditors to that amount. But this claim of the Bells, having been assigned by them to Thompson, he has, thus circuitously, become a creditor of Heyland to the amount of that \$4,000, part of the original debt of \$16,000. Now, says the defendant's counsel, Thompson must be allowed to retain at least one-fourth of the fund which has been placed in his hands for the payment of the whole \$16,000, since he, in fact, stands in the place of the original creditors to one-fourth of that whole amount.

*There is an imposing aspect of equity in this position; and, if the Court felt itself at liberty to make free with the positive covenants of the parties, there might be no difficulty in applying its equalizing principles to this case; but the Court is not at liberty to reject or impair the covenant of indemnity in this deed of the 8th of January. By that covenant, Thompson is bound to save Heyland harmless, not merely against the Bells, but against all the holders of the acceptances, whoever they may be, to the amount of the funds in his hands. In other words, he is thus constituted a trustee for the bill holders of the funds in his hands, to