

fact, as if it had never been given, or as if it had been originally a mere nullity; and therefore, in all such cases sureties should be given who are not only then sufficient; but who are likely to be so when the contemplated event shall happen. Where money is * to be paid, or some duty is to be performed, within some short space of time, a continuance of the solvency of a surety may be much more confidently relied on than where the debt is to be paid, or the duty to be performed at some distant day. But in reckoning upon the probability of a surety's continuing to be solvent, during any given period, various other circumstances must be taken into consideration as well as the lapse of time; his continuing solvency may depend, in a great degree, upon the regular or irregular, certain or hazardous business in which he may be engaged; thus, an agriculturist, of the same extent of sufficiency, is more likely to continue solvent for the same space of time than a merchant. 1 *Er. Poth. Obl.* 390. The continuing solvency of a surety may also, in some measure, depend upon the kind of property held by him, as being such as is ordinarily acquired with a view to a permanent holding; such as land for cultivation; or such as personal property procured for consumption, or for the purpose of barter or traffic, which is easily alienated. 1 *Er. Poth. Obl.* 390. Hence it is, that many of our legislative enactments have required freeholders, or "persons of visible and landed estates," to be given as sureties, where their solvency was required to endure for any length of time. 1715, ch. 46, s. 9; 1742, ch. 10; 1789, ch. 26, s. 15. The continuing solvency of a surety may, likewise, in some degree, depend upon the state of society in the country. In England, and in most other countries of Europe, property is either not so free, or it does not, or cannot be made to change hands so easily and so frequently as in ours. That very bold spirit of active enterprise of our citizens which is, in a great degree, the result of our free institutions; and the unfettered rights of all property, render the continuance of the solvency of all persons, for any length of time, less certain here than elsewhere.

In Maryland, however, a practice has long prevailed, as to the mode of showing the sufficiency of appeal bonds, and other such securities, which the Chancellor has been in various ways authorized or called upon to demand and approve, by which all these considerations seem to have been disregarded or totally put aside. For although it was, on the 7th of March, 1793, laid down as a standing rule, that no officer of this Court or his deputy should be admitted as a surety in any such bond; and also, by the rule of the 14th of November, 1801, that the sureties in such bonds should reside within the jurisdiction of the Court; yet, in all other respects, * it has been deemed enough to lay before the Chancellor a bond regularly drawn, and which purports to be the

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