

indulged. To sustain the objections, that have been urged upon the present occasion, would be, in effect, to put aside a practice which seems to have been long settled with the entire understanding and approbation of the whole community.

Whereupon it is ordered, that the said petition be dismissed, with costs, and that the bond be approved.

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HOYE vs. PENN.

RIGHTS OF CREDITOR AGAINST JOINT AND SEVERAL DEBTORS.—VOLUNTARY CONVEYANCE.—EQUITY PRACTICE.

On a bill against A. and B. joint and several obligors, it was *held*, that the trustee, appointed by the decree to make sale of their real estate for the payment of the debt, should be directed to sell so much of the land held by A. in the first instance as would raise one-half of the debt, and to sell so much of the land held by B. in the first instance as would raise the other half of the debt, so far as, in that way, it might be found practicable; but with power to raise the amount by a sale of the whole at a succeeding period, if it can be done; or in the first instance, if it should appear to be absolutely necessary to do so.

And where a sale had been made, as thus directed, of so much of the land of each as not only to pay the half of the debt, due from each; but to leave a surplus of the proceeds of sale to be returned to each; and afterwards the purchaser of the land of A. become wholly insolvent, and the land which had been so taken from A., on a resale, did not produce even a sufficiency to pay the one-half of the debt for the satisfaction of which it had been first sold; it was *held*, that to the amount of the surplus, A. was to be considered as a creditor entitled to come in *pro rata*, with the plaintiff, in the distribution of the proceeds raised by the second sale; but that neither the plaintiff, nor A., could have the deficiency of their respective claims made up to either of them out of the surplus arising from the sale of B's estate: the whole of which should be paid to him. (a)

The mere forbearance to sue, without fraud or collusion, cannot affect the obligee's rights against the obligor or his surety. (b)

A voluntary conveyance to children, the grantor being indebted at the time, is fraudulent against creditors, without any other evidence of a fraudulent intention. (c)

There can be no final decree until all the defendants have answered, or the case is in a situation to have the bill taken *pro confesso*, against those defendants who have not answered.

A party, against whom the bill had been taken *pro confesso*, asked leave to come in, for the purpose of taking an appeal, which was refused; he, nevertheless, appealed, and carried the record up; upon which the Court of Appeals affirmed the decree.

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(a) Reversed on appeal, in *Hoye v. Penn.*, 2 H. & G. 473.

(b) See *Whitridge v. Durkee*, 2 Md. Ch. 442; *Tessier v. Wyse*, 3 Bland, 28.

(c) Approved in *McLaughlin v. Bank*, 7 Howard, 228. See *Worthington v. Shipley*, 5 Gill, 449, note; *Kipp v. Hanna*, 2 Bland, 26.