

his lands to be sold by his executors, for the payment of his debts; that his executors had the mortgages foreclosed, and afterwards sold those lands to George Schnertzell, and gave him a bond for a conveyance on the payment of the purchase money; that Schnertzell sold a part to William Hobbs, who sold it to John Hoffman; and the other part Schnertzell sold to John Hoffman, who thus obtained a claim, as assignee of Schnertzell, to the whole; that Schnertzell assigned many notes and bonds, in part payment, for which he was to be answerable; that the executors of Hunter are dead; and administration *de bonis non* had been granted on his estate; and that Baker Johnson had become seized of the legal title to those lands. Upon which, Hoffman, Hobbs, and Schnertzell, on the 23d of July, 1804, filed this bill, to obtain a conveyance of the legal title, alleging, that the whole purchase money had been paid. The *other material facts of the case, sufficiently appear from the Chancellor's opinion. After several abatements, by the death of parties, the case having been revived, was at length brought to a final hearing.

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BLAND, C., 18th July, 1826.—This case standing ready for hearing, and no counsel appearing for the defendants, the solicitor for the plaintiffs was heard, and the proceedings read and considered.

This case, as it now stands, is much reduced in compass, but is not yet altogether free from difficulties. The first inquiry is, whether, in point of fact, the purchase money has been paid by the plaintiff Hoffman, or those under whom he claims; or whether, according to the principles of equity, the vendee has been altogether discharged from his responsibility, even although the purchase money may not have been entirely collected and paid.

According to the contract between the parties, the vendor was to obtain payment, in part, by collecting the amount due on several bonds and notes, assigned to him on the 23d of July, 1791; which, as was declared by the agreement, "when paid are to go in discharge of the amount of such payments." The debt due from Chapline, which was one of them, it is admitted, by a solicitor of the defendants, has been lately collected and paid. And it is proved, or conceded, that the whole of the purchase money has been paid, except to the amount of the debts said to be still due from Hole and from Benner. And whether or not these have been paid, or the vendee discharged from his responsibility for them, is, at present, the whole extent of the controversy as regards the purchase money.

The purchaser, in respect to these assigned debts, was placed in the situation of a surety. *Anstey v. Marden*, 1 *New Rep.* 124. It will, therefore, be necessary to advert to the general principles of equity, applicable to the parties standing in the relation to each other, in which these did, of creditor, principal debtor, and surety.