According to the Roman law, a surety was allowed three advantages: 1st, he might compel the creditor to sue the principal debtor first; 2nd, the creditor might be driven to resort to each surety for his proportional share only; and 3d, a surety, sued for the whole debt, might demand of the creditor to transfer ever his actions against the other sureties, before he was allowed to recover the *whole from the one sued; that is, to have it placed in his power, as far as practicable, to obtain reimbursement, by being clothed with all the powers of the creditor and substituted in his place. *Coop. Just. Inst.* 612. These principles and privileges, it is said, have been substantially adopted by all nations of Europe, of whose code the Roman law forms the basis; which shows that they accord very much with natural equity and the common sense of mankind. *Hayes* v. *Ward*, 4 *John. C. C.* 133. The principles of equity, of England and of Maryland, although in most respects substantially the same, are apparently not so broad and indiscriminate in their application. **105**

In the ordinary case of a money bond, there is no distinction, upon the face of it, between the principal and the surety, who being both debtors to the same creditor, a Court of equity will rarely, if in any case, be induced to make any distinction between them, as regards their creditor. Being alike his debtors, and equally bound to him; and the credit having been given to them all together; equity never interferes with such a contract, so as to loosen any of its ligatures, unless upon peculiar and strong ground, Yet, as between themselves, such obligors, without prejudice to their creditor, may be treated, according to the fact, as principal and surety, and relieved accordingly. The surety may come into equity to compel his principal to relieve him of his liability by paying off the debt; but it is otherwise in the case of a bond of indemnity, the legal effect of which is to protect against the consequences of future deficiencies, but not entitle the party to call for anticipated and precautionary payment, by way of preventing the risk of his being thereafter damnified. *Antrobus* v. *Davidson*, 3 *Meriv.* 578. Hence it evident, that a case can rarely occur, under a contract in the form of a mere money bond, where one of the obligors, who may be, in fact, no more than a surety, can be considered as discharged by reason of the obligee's not proceeding against his co-obligor; or, merely because of the laches of the creditor. *Ex parte Rushforth*, 10 *Ves.* 411; *Coop. Just. Inst.* 462, 612.

The principles of law in relation to negotiable and commercial paper, have arisen out of the peculiar nature and uses of such instruments. It has been found, from experience, every where, that it is of the utmost importance, in commercial affairs, that the holder of such paper should, without delay, give every one who has become a surety or endorser, notice of its fate. Hence the