106 *holder of such an instrument in held strictly bound to use due diligence; or, on his default the surety or endorser is discharged. Cases of this kind can have little bearing on that now under consideration.

In the case of a surety for the performance of services; as of a penal bond, the condition of which is, that one of the obligors shall faithfully perform certain work, or discharge the duties of a certain station, as a clerk, or the like; no unreasonable tardiness, on the part of the obligee, will be tolerated. In such cases, one of the obligors only is to perform the service, and if he neglects his duty, the employer alone can know it, and he alone can give notice of the neglect. Hence it is evident, that any unreasonable delay in making a claim, or a long acquiescence in the non-performance of the services, must be considered as a waiver of the right to call for compensation; and as a tacit discharge of the surety, whose principal has been thus unreasonably indulged to his prejudice. Therefore, in this class of cases, the obligee must use due diligence in bringing suit after the cause of action has accrued, or the surety will be discharged. *Coop. Just. Inst.* 613.

But the case now under consideration, belongs to a different class. It is one of those where the debtor places in the hands, and under the control of his creditor, the means of reaching funds, which are represented as available and adequate to the satisfaction of the demand. And the creditor, by accepting those means, tacitly undertakes to use due diligence in endeavoring to make the funds available; or to furnish evidence that they do not exist, by shewing that there was nothing in the hands of the alleged holder of them; or, that he was insolvent; and also, that, after having made every proper effort to come at such funds, he will return or reassign the bond, note, or judgment, which had been placed in his hands for that purpose. An example of this class of cases may be presented in this form: A is indebted to B, and B is indebted to C. And it is agreed, that B shall assign his claim upon A to C, which, when paid, is to go in discharge of the debt due from B to C; consequently, by this agreement, C become the creditor, A the principal debtor, and B stands as the surety of A. But if it should turn out, that there in nothing due from A to B; or that A is insolvent, then the consideration of the agreement fails, and B again becomes a principal debtor to C.

107 *In cases of this sort, the exertion of every reasonable and proper degree of diligence is within the express terms and meaning of the contract. And, after all such proper efforts have been made, before payment can be enforced from the surety, equity and justice require, that the bonds, notes, or judgments, or all the securities he had placed in the hands of his creditor, or enabled him to procure, should be returned, or reassigned, so as to put it in the power of the debtor or surety to obtain reimburse-