

first, the claims and pretensions of the representatives of the late Catherine; and second, the liabilities of and allowances to this defendant, John Diffenderffer.

It has been urged, that the debts of the late Charles Rogers were paid, contrary to the directions of his will, by the trustee, Vincent, out of rents and profits which ought to have gone to the late Catherine; and, consequently, that she or her representatives, to the extent of the rents and profits to which she was entitled, and which had been so misapplied, ought now to be allowed to take the place of those creditors as against these funds in the hands of this trustee, and which are now about to be distributed.

This stand is taken upon the ground of substitution; and it can only be maintained by means of those principles by which a surety, or one who has been placed in the condition of a surety is allowed to take the place of the creditor against the principal debtor; or **199** by the help of those principles by which securities or assets are * marshalled so as to satisfy all, or to leave the loss to fall where it must rest according to the positive rules of law; or by the aid of the general principles of equity arising out of some fraud or injustice practised, or participated in by the plaintiffs, or those under whom they claim.

It is a well settled general rule, that no one can be allowed to intrude himself upon another as his surety; and therefore if a man voluntarily pays the debt of another, without any agreement to that effect with the debtor, he cannot take the place of the creditor, or in any way recover the money so paid of the debtor; because the law does not permit one man thus, officiously, and without solicitation, to intermeddle with the affairs of another. *Stokes v. Lewis*, 1 T. R. 20. The only exception to this general rule is, where, on a bill of exchange being dishonored, a third person, not a party to it, may pay it for the honor of the drawer, or any of the endorsers. The reason of allowing this exception is, that it induces the friends of the drawer or endorsers to render them this service; and by that means preserves the honor of commerce, and the credit of the trader. *Chitty on Bills*, 164. But where one, by express contract, becomes bound as a surety for the payment of the debt of another, or as an insurer against loss, then if the surety or insurer pays the whole debt, or reimburses the loser, he thereby intitles himself to demand a full assignment or subrogation of all the securities of the creditor or insured, and has a right, in all respects, to be substituted for the creditor or insured, so as to enable him to obtain re-imbursement from his principal. *Randal v. Cockran*, 1 Ves. 98; *Ex parte Rushforth*, 10 Ves. 414; *Pothier Obli.* p. 2, c. 6, art. 4; *Just. Inst. by Cooper*, 612.

This general right of a surety has, to a certain extent, been affirmed by an Act of Assembly, 1763, *ch.* 23, *s.* 8, and this Court has so entirely approved of the doctrine as to allow a surety, who