or *chose in action*, as a conditional payment, where, by the terms of the contract, the creditor is bound to use due diligence, in order to make the means of satisfaction, so placed in his hands, available; or excuse himself by shewing, that the pawn has been found insufficient, or that the debtors bound by such assigned *chose in action*, are insolvent, and that he has actually returned, or is, and has always been able and ready to return the *chose in action* so assigned. It cannot be denied, that the principles of the Court so far as they have a direct bearing upon such cases as these, are sustainable by the clearest reason and equity; and indeed, have been enforced in Courts of common law as well as in this Court. *Kearslake* v. *Morgan*, 5 *T. R.* 513; *Clark* v. *Young*, 1 *Cran.* 181; *Harris* v. *Johnston*, 3 *Cran.* 311; *Powel Mort.* 1083; *Hoffman* v. *Johnston*, 1 *Bland*, 103; *Dorsey* v. *Campbell*, 1 *Bland*, 356.

528 *This third position, taken in support of the principles of this Court, rests upon the general doctrine in relation to principal debtor and surety. It is alleged, that the creditor must be excluded from any participation in the deceased's estate; because he had it in his power to recover his whole claim, or a due proportion of it, from the principal debtor, or the other sureties; or because he is chargeable with some injurious negligence as regards the deceased debtor, whose estate the Court is then about to distribute. And assuming these allegations to be true, until the contrary is shewn, the Court calls upon the creditor to explain the transaction, and to shew which of the obligors is the principal, and which the surety.

In the common case of a money bond, there is no distinction upon the face of it, between the principal and surety; nor is it necessary to be shewn in any suit upon such a bond, who is principal and who is surety; except for the purpose of administering the equities that arise between the principal and sureties. Such an instrument shews only, that the creditor has parted with his property, or lent his money on a security, by which two persons are jointly and severally bound to him. The contract is legal and fair; and therefore, as to him, they are both principal debtors; though with respect to each other, they may stand in the relation of principal and surety. Of the interests or motives between them, the creditor has, or need have no knowledge. All he looked to was a security, by which two persons were equally and jointly bound to him; and that his security had an admitted legal obligatory force fully to that extent. And if the bond were joint only, still as against other creditors even, and in the administration of assets, it would be allowed to have the effect of a several bond. *Burn* v. *Burn*, 3 *Ves.* 574; *Just. Inst. by Coop.* 613. Yet, according to these principles of this Court, the creditor must not only know which of the obligors is the principal debtor, and which the surety, but may have the burthen cast upon him of developing by proof, the latent