circumstances of the contract itself; and of shewing that the other obligors, who were bound with the deceased, are insolvent. Thus assuming, as established matters of fact, until the contrary is shewn, that the deceased was a surety only; that the principal debtor, and all the other obligors, are well able to pay on demand; and that the creditor, knowing all this, is making an unjust attempt to oppress the representatives of the * deceased; or to obtain satisfaction from his estate, to the prejudice of his other creditors. **529**

The assumption of the truth of these allegations, and throwing the burthen of proving the contrary upon the creditor, is manifestly at variance with that equity by which all other analogous cases between debtor and creditor is grounded. It is laid down, in all such cases, that he, whether he be in realty principal or surety, on whom the creditor calls, must pay; and that the holder of the security may lay hold of the surety even in circumstance under which the surety may not have the same benefit that the creditor had. *Cary's Rep.* 17. With the exception only of those cases where there is no risk, delay, or expense, as where the money is in the next room, or where the surety indemnifies the creditor, or deposits the money, and undertakes, that he shall be at no expense, then the creditor may be compelled to do what he can for the benefit of the surety. *Ex parte Wildman*, 1 *Atk.* 110; *Galton* v. *Hancock*, 2 *Atk.* 435; *Wright* v. *Simpson*, 6 *Ves.* 734; *Ex parte Kendall*, 17 *Ves.* 519; *Union Bank* v. *Laird*, 2 *Wheat.* 390. And this is the rule of the civil law; *Kames' Pri. Eq. b.* 1, *p.* 1, *ch.* 3, *s.* 1; and the same principles have been distinctly recognized by the provisions of our Act of Assembly, which, as declaratory of the common law, give to the surety a right to have the benefit of the security, which he has satisfied, to enable him to take the place of the creditor, and proceed against the principal debtor. 1763, ch. 23, s. 7 and 8; *Lenox* v. *Prout*, 3 *Wheat.* 520.

The claim of the creditor can in no way, be suspended, or put in peril, at the instance of a surety. But if the debt be fully paid by the surety; for the payment of a part will not give him a right to an assignment of the security, *Ex parte Rushforth*, 10 *Ves.* 420; *Hollingsworth* v. *Floyd*, 2 *H. & G.* 91, then those equities arise, which apply as between principal and surety, and between two or more sureties, as regards the contribution they owe to him who has paid the whole; or in relief of each, so that the burthen may be borne equally, or in the proportions warranted by the terms of the contract. And in such cases, where the parties are before the Court, after awarding to the creditor full satisfaction as against all and each of his debtors, it will adjust these equities, without prejudice to him, and, by a decree over, direct that the principal shall be first made to pay, if able, and if not, then that each one of his sureties shall be compelled to contribute his due proportion. *Cooke*