v. ———, 2 *Freem.* 97; *Fleewood* v. *Charnock, Nelson*, 10; *Parsons* v. *Braddock*, 2 *Vern.* 608; *O'Carroll's Case*, *Amb.* 61; *Peter* v. *Rich*, 1 *Rep. Cha.* 34; *Collins* v. *Griffith*, 2 *P. Will.* 313; *Tynt* v. *Tynt*, 2 *P. Will.* 542; *Dering* v. *Winchelsea*, 1 *Cox*, 318; *S. C.* 2 *Bos. & Pul.* 270; *Wright* v. *Morley*, 11 *Ves.* 22; *Craythorne* v. *Swinburne*, 14 *Ves.* 160; *Mayhew* v. *Crickett*, 2 *Swan*, 186; *Smith* v. *Tunno*, 1 *McCord*, 443; *Lowndes* v. *Chisolm*, 2 *McCord*, 455. **530** *The insolvency of the principal is, in no instance, necessary to be shewn; except where a surety alone claims contribution from his co-surety, and the principal is not a party to the case. *Lawson* v. *Wright*, 1 *Cox*, 276.

But if the creditor has done any act injurious to the security, or has omitted to do that which, by the nature of his contract, he was bound to do, such acts or omissions give to the surety a clear release from his obligation. It must, however, appear to have been the act of the creditor himself, and that his conduct had been directed by his own will, with a knowledge of his rights, and not that it was the result of mere accident or mistake. For there are many cases where equity will set up debts extinguished at law against a surety, as well as against a principal, as where a bond has been destroyed or cancelled by accident or mistake, or caused to be delivered up by fraud; because a surety cannot be allowed to benefit by mere accident or mistake, or to avail himself of the fraud of any one. *Skip* v. *Huey*, 3 *Atk.* 93. But where any act has been done by the creditor that may injure the surety, or that alters his situation, it may be turned to his advantage; *Eyre* v. *Bartrop*, 3 *Mad.* 221; *Rathbone* v. *Warren*, 10 *John.* 587; as where the principal had left a sufficient fund in the hands of the creditor, and he thought fit, instead of retaining it, to pay it back to the principal; *Law* v. *The East India Company*, 4 *Ves.* 824; or where the creditor made a compromise with the principal debtor, and accepted a part of the debt in satisfaction of the whole from him without a clear or express reservation of the creditor's remedies against the surety, and of the surety's right to take the place of the creditor, *Ex parte Gifford*, 6 *Ves.* 805; *Boultbee* v. *Stubbs*, 18 *Ves.* 20, or where the creditor, by positive contract, enlarged the time of payment, even because of the principal debtor's being then unable to pay; or where the creditor expressly stipulated, that he would not sue the principal within a certain time after the debt had become due, so that the surety could not come into equity by a bill *quia timet*, and have the bond put in suit; *Baker* v. *Shelbury*, 1 *Cha. Ca.* 70; *Renelaugh* v. *Hayes*, 1 *Vern.* 190; or, by paying the debt, have an assignment of the security, so as to enable him immediately to proceed against the principal, or have the same remedy against the principal as the **531** *creditor could have had on the original contract, the surety will be totally discharged; upon the ground that all such acts are against the faith of the contract, by virtue of which the