surety had precisely the same right the creditor had, and must be allowed to take his place in all respects; and also upon the principle that the creditor is a trustee of his security, that is, of the bond, suit, execution, &c. for all parties interested in it, or who may ultimately resort to it for relief. *Parsons* v. *Briddock*, 2 *Vern.* 608; *Nisbet* v. *Smith*, 2 *Bro. C. C.* 579; *Rees* v. *Berrington*, 2 *Ves. Jun.* 540; *Wright* v. *Morley*, 11 *Ves.* 22; *Boultbee* v. *Stubbs*, 18 *Ves.* 20; *Samuell* v. *Howarth*, 3 *Meriv.* 272; *Robinson* v. *Wilson*, 2 *Mad. Rep.* 434; *Mayhew* v. *Crickett*, 2 *Swan.* 190; *Gould* v. *Robson*, 8 *East*, 576; *Clarke* v. *Devlin*, 3 *Bos.* & *Pul.* 363; *Hill* v. *Bull*, *Gilmer*, 149; *Bennett* v. *Maule*, *Gilmer*, 305; *Ward* v. *Johnson*, 6 *Mun.* 6; *Hollingsworth* v. *Floyd*, 2 *H.* & *G.* 90. And so, too, if the creditor omits to do that which the nature of his contract requires him to do, as if, being the holder of a negotiable instrument, he fails to give notice of its non-payment to the drawer and endorsers, they as sureties, will be completely discharged. *Ex parte Smith*, 3 *Bro. C. C.* 1; *Walwyn* v. *St. Quintin*, 1 *Bos.* & *Pul.* 652; *English* v. *Darley*, 2 *Bos.* & *Pul.* 61; *Lennox* v. *Prout*, 3 *Wheat.* 520.

The sole ground of relief to a surety, as exemplified by these various instances at law and in equity, is, that he has, by the act or omission of the creditor, been deprived of a legal or equitable remedy for relieving himself, or that such remedy has been impaired. *Buchanan* v. *Bordley*, 4 *H.* & *McH.* 41; *Norris* v. *Crummey*, 2 *Rand.* 323; *Hampton* v. *Levy*, 1 *McCord*, 107; *Galphin* v. *McKinney*, 1 *McCord*, 280. But it is distinctly avowed, that the principles under consideration, are not founded on any such acts or omissions of the creditor; but simply on a presumption of the truth of certain facts, from which mere passive negligence is inferred, and which may be applied alike, and with equal propriety, to all contracts to which there is, in fact, a principal and surety. And consequently, they can derive no support from anything to be found in this branch of the doctrine upon the subject of principal and surety.

A creditor, however, is not bound to active diligence against the principal debtor; the surety is a guarantee; and it is his business to see that the principal pays, and not the creditor's; and therefore, mere passive delay has never been held to discharge the surety. This principle, in relation to the liability of a surety, seems to have received the unqualified approbation, not only of the Court of Appeals of this State; but of every other enlightened * tribunal by whom the subject has been considered; *Heath* v. *Percival*, 1 *P. Will.* 682; *Wright* v. *Simpson*, 6 *Ves.* 735; **532** *Samuell* v. *Howarth*, 3 *Meriv.* 272; *The Trent Navigation Company* v. *Harley*, 10 *East*, 34; *Deming* v. *Norton*, *Kirby Rep.* 397; *King* v. *Baldwin*, 17 *John.* 384; *The Commonwealth* v. *Wolbert*, 6 *Binn.* 293; *Buchanan* v. *Bordley*, 4 *H.* & *McH.* 41; *Croughton* v. *Duval*, 3 *Call.* 70; *Hampton* v. *Levy*, 1 *McCord*, 107; *Galphin* v. *McKinney*, 1 *Mc-*