

that no creditor shall be admitted to come in under the commission, so as to obtain more than a ratable dividend, without regard to his security. Hence, when a creditor applies to prove his claim under the commission, he may be called on, in most cases, to deliver up his security, so that the other creditors may have the benefit of the means of satisfaction he has chosen to abandon. If there be a mortgage of the bankrupt's estate, the mortgagee may have the mortgaged property sold, and the proceeds, after deducting all costs and expenses of sale, applied in satisfaction of his claim as far as it will go, and then come in under the commission for the balance. In short, wherever the creditor holds a double security, he may make choice of either, or pursue both, so he does not obtain a double satisfaction. If he obtains a partial satisfaction by one security, he is allowed to prove against the estate of the bankrupt only, for the balance; and if he comes against the bankrupt for the whole, his claim upon the other security is satisfied, or diminished by so much as he receives from the bankrupt's estate. If the bankrupt be the principal debtor, his surety from whom the creditor may have obtained a partial or a full satisfaction, takes the place of the creditor to that amount. And if the bankrupt be only a surety, then his assignees have a right to be subrogated to the creditor's place, in so far as satisfaction may have been made from the bankrupt's estate for the benefit of his other creditors. *Ex parte Ryswicke*, 2 P. Will. 89; *Ex parte Lefebvre*, 2 P. Will. 407; *Ex parte Rowlandson*, 3 P. Will. 405; *Ex parte Groce*, 1 Atk. 104; *Ex parte Marshal*, 1 Atk. 130; *Ex parte Bennet*, 2 Atk. 528; *Order of Court*, 4 Bro. C. C. 550; *Ex parte Goodman*, 3 Mad. 373.

If these regulations on the subject of bankruptcy, should be deemed applicable to the case of a deceased debtor's estate, about * to be administered under a creditor's suit, they would clearly suggest the propriety of allowing each creditor to **534** come in at once, according to the terms of his contract, for the whole amount of his claim then due; and of calling on him when so satisfied, to assign his securities to the suing creditors, to the heir, or devisee, or to the executor or administrator, or to suffer them to take his place for so much as he had been satisfied for their own benefit or for that of the legatees or next of kin of the deceased.

But the principles of this Court are essentially different. In bankruptcy, the creditor himself makes choice of the security, from which he will obtain satisfaction, and the Court, so far from lessening the obligation of any of his securities, or driving him from any one of them, will assist him in enforcing his contract to the extent of its jurisdiction, so as to insure to him one complete satisfaction; but here, the Court officiously interferes, and throws upon the creditor the burthen of showing whether the deceased was principal