

in other States creditors of only a particular description are allowed to resort to them. In this case the plaintiffs themselves say, by their exceptions, that the land in the District of Columbia, which has been conveyed as an additional security for this claim, No. 4, "is not liable for their claims and other general creditors." Why it is not so liable, according to the law of the District of Columbia, it is unnecessary to enquire; it is enough for this Court to know, that the other fund is a portion of territory, or immovable property, subject to another government; and is governed by law which may fairly be presumed to be, in many respects, substantially different from that of this State, to demonstrate, that no such arrangement can be made which may not materially impair the obligation of the contract of that creditor against whom the funds of the debtor are directed to be marshalled; and which may not prejudice his interests, or greatly delay the satisfaction of his claim.

In the case of principal and surety there can be no doubt, that, on a bill filed by the surety, he will be allowed the benefit of all the securities of the principal, wherever they may be located, or by whatever law they may be governed; so far as this Court has the power and the jurisdiction to assure to him the benefit of them. Thus, if the creditor has obtained a security, by mortgage of land in another State, or in a foreign country, the validity of which had been impaired or made questionable by the creditor himself; the surety may here have the creditor ordered to sue upon such foreign security for the purpose of testing its validity, and endeavoring to obtain satisfaction; because if the security has, in fact, by his own conduct been rendered so unavailable that he cannot recover, the surety will be discharged. And this arises as an equitable consequence of the nature of the contract by which the principal and surety are bound. *Theobald Prin. & Sur.* 256; *Hayes v. Ward*, 4 *John. C. C.* 123.

The marshalling of different funds among creditors, is not, however, founded on any such equity or implied contract between debtors; but rests upon a natural and moral equity; that no one ought to be permitted, at his mere will, to derive a benefit from * that which must injure another; and that equality is **517** equity, provided the Court has any foundation for enforcing such equity without depriving a party of his clear legal rights, or impairing the obligation of his contract. 2 *Fonb. Eq.* 298.

I am therefore of opinion, that the claimant No. 4, cannot, for the benefit of the other creditors of the deceased, be required to proceed against and exhaust the fund, or land in the District of Columbia, which had been mortgaged to them as a security for their debt, before they are allowed to come here for satisfaction out of the proceeds of that fund lying within this State which had also been mortgaged to them as a security for the same debt.