

not satisfied, and, therefore, shall decree an account with liberty to the parties to take proof in reference thereto.

GRAFTON L. DULANEY for Plaintiff.  
EDWARD HINKLEY for Defendants.

[An appeal has been taken in this case which is still depending.]

JOHN WHITRIDGE  
vs.  
ROBERT A. DURKEE'S EX'S. } SEPTEMBER TERM, 1850.

[RIGHTS OF SURETIES—CHANCERY PRACTICE.]

THERE can be no doubt of the right of a surety, after a debt has become due, to file a bill to compel the principal debtor to pay, whether the surety has himself been sued or not.

A surety may resort to chancery, if he apprehends danger from the creditor's delay, and compel the creditor to sue the principal debtor, though he would probably be required to indemnify the creditor against the consequences of risk, delay, and expense.

After a surety becomes chargeable, by a forfeiture of the contract, or its non-performance by the principal, he may ensure a prompt prosecution, either by discharging the obligation, and becoming, by substitution, entitled to all the remedies possessed by the creditor, or he may coerce the creditor to proceed by an application to a court of equity.

A surety in the bond of a trustee, appointed to make sale of certain lands for the purpose of partition, filed a bill *quia timet* in the equity side of Baltimore County Court, against the executors of the trustee, praying for an account and general relief. This bill was removed to this court, but the cause in which the trustee was appointed, was not removed, but still remained, depending in Baltimore County Court. **HELD—**

That though it was very clear that this court may, upon the bill which has been brought here, administer the same relief which could have been administered by Baltimore County Court, yet it is equally clear that the account of the trust must be taken in the cause in which the trustee was appointed.

[The facts of this case are sufficiently stated in the opinion.]