

hends his assets will be distributed among irresponsible representatives, before those entitled to the proceeds of the property sold by him as trustee, shall claim or sue therefor, and that the complainant as his surety, will thus be exposed to great peril of loss. Upon this statement of facts, the bill prays, that the executors may account, and that they be decreed to pay over to the trustees subsequently appointed, the amount received by their testator, as trustee under the aforesaid decree, and for further relief. That portion of the prayer for relief, which calls upon the defendants to pay the money to the new trustees, is, however, abandoned, in consequence of the admission already adverted to, that they had not given bond or taken upon themselves the execution of the trust. If, therefore, the complainants are entitled to any relief, they must get it under the general prayer.

The answer to this bill, after admitting the proceedings in the former cause, and the receipt of the money by the trustee, Durkee, avers, that he did account for and pay over the same to the parties entitled, and the defendants deny that he did appropriate the proceeds of sale, or any part thereof, except his commissions, to his own use. They aver, that no claim has been presented on account of said trust by any of the parties entitled to the proceeds of the sale made by their testator, and that they have paid all his debts, and are ready to close and settle their trust in the Orphans' Court, as required by their duty as executors.

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, upon the principle established at a very early period "that it is unreasonable that a man should always have such a cloud hanging over him." *Ranelagh vs. Hays*, 1 *Vernon*, 190. And as remarked by Chancellor Kent, in *Hays vs. Ward*, 4 *Johns. Ch. Rep.*, 132, "it is now considered as a settled rule, that a party may resort to chancery if he apprehends danger from the creditor's delay, and compel the creditor to sue the principal debtor, though probably he must indemnify the creditor against the consequences