

appellants required to file a new bond, or, in default thereof, that they be required to surrender possession of the premises. On this petition, an order was passed the same day, setting it down for hearing on the 14th of October then next, with leave to take depositions in relation to the matter therein contained, upon the usual notice, &c.

By depositions of various witnesses, taken under this order, it was proved that Eliza A. McClellan, one of the sureties, owns unincumbered real estate worth \$7,000, besides other property; that she owes nothing, and has never entered into any other bond. That the other surety, William M. McClellan, had been protested at various times for notes of small amount; that he has no commercial credit, no credit at bank, and was not punctual in payment of his debts; but, it was also shown, that he owns a very large real estate; that the aggregate of his property is about \$100,000. His indebtedness, or the liens upon his estate, were not shown.

The matter of this petition was argued upon notes by the respective counsel, and on the 16th of October, 1848, the following opinion was delivered, and order passed.]

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THE CHANCELLOR :

I have read carefully the evidence taken by the parties under the order of the 18th of September last, passed upon the petition of Zenos Barnum, objecting to the sureties in the appeal bond filed by the defendants in this case, and am of opinion, that the objections are not sustained.

The solicitor for the complainants and purchaser, suggests, that the sureties in an appeal bond, if excepted to, should justify, in analogy to the practice at law in the case of bail.

But the late Chancellor in *Ringgold's Case*, 1 *Bland*, 27, says, "there does not appear to be any settled mode of proceeding, by which to cause the sureties to justify to ascertain their sufficiency, and I am persuaded such has never been the practice of this court in cases similar to the present."

The proof shows very clearly in this case, that one of the sureties is worth more than the penalty of the bond, and though