jurisdiction of the Court cannot, I think, be sustained, and the bill must be dismissed and the injunction dissolved. But I shall dismiss it without costs, because there are circumstances proved in the cause showing, I think, very clearly that there has been a want of that spirit of accommodation, and disposition to adjust this small matter amicably, which would have prevented all controversy, and because the complainants, in regard to the amount of the taxes, have been misled by the error or carelessness of the collector.

GEORGE H. WILLIAMS, for Complainants.
LEVIN GALE, for Defendant.

THE NEPTUNE INSURANCE COMPANY, ⎫
           vs.   ⎬   DECEMBER TERM, 1850.
        REBECCA DORSEY.   ⎭

[RIGHT OF SURETY TO SUBSTITUTION—TRUSTEES' COMMISSION.]

A MORTGAGE was assigned, and the equity of redemption conveyed by the mortgagor to D., who created liens upon the property by way of mortgage, and then executed and passed his promissory notes for the interest due on the original mortgage to the assignee thereof, with S. as endorser. These notes were paid at maturity by S., but no assignment of the mortgage was ever made to him, and the property was afterwards sold. HELD, that S. could not be subrogated to the rights of the original mortgagee as to the amount so paid by him.

If by the payment of the money by S. an assignment *pro tanto* was effected by operation of law, he would, to all purposes and every effect, have been placed upon a footing of equality with the original mortgagee, and equally entitled with him to participate in the common security.

The Act of 1763, ch. 23, only confers the right to make the assignment authorized by it, upon the original creditor, and not upon the assignee' of such creditor.

It is a clearly established principle in this State, that a surety, on paying the debt of the principal, has a right in a Court of Equity, to call upon the creditor for an assignment of the claim against the principal, and all liens which he has given the creditor.

But a surety can neither at law nor in equity call for such assignment, or