

It is very clear, that the right of substitution claimed for Mr. Swann can receive no aid from the Act of 1763, ch. 23; that Act, as was observed by the Court of Appeals, in the case of *Creager vs. Brengle*, 5 H. & J., 234, only conferring the right to make the assignment authorized by it upon the original creditor, and not upon the assignee of such creditor, and therefore, if the right claimed in this case can be admitted, it must rest upon the principle of equity, that a surety on paying the debt of the principal debtor, has a right in a Court of Chancery to call on the creditor for an assignment of the claim against the principal, and all liens which he has given the creditor, a principle too firmly established in this State to be for a moment called in question.

The payment by Mr. Swann in this case was not to the original creditor, the Neptune Insurance Company, but to the Baltimore Life Insurance Company, the assignee of the first-named Company, and the Life Insurance Company could not, if disposed to do so, have made an assignment under the Act of 1763, ch. 23, as was expressly adjudged by the Court of Appeals in the case referred to.

And it appears to me to be equally well settled in this State, that even when the payment is made by the surety to the original creditor, an assignment under the Act of the Legislature cannot be demanded, unless the payment be *in full*. This was decided by the Court of Appeals, in the case of *Hollingsworth vs. Floyd*, 2 H. & G., 87; and it was in the same case also declared to be the settled doctrine in equity, that a surety paying the *entire debt* had a right in Chancery to an assignment of the judgment against the principal debtor, and of all liens which the principal had given the creditor. And it was further said by the Court in this last case, that "it would not subserve the ends of justice to consider the assignment of an entire debt to a surety, as effected by operation of law, where he had paid but a part of it, and still owed a balance to the creditor, and this Court would not countenance such an anomaly as a *pro tanto* assignment, the effect of which could