

## SUBSTITUTION, RIGHT OF.

1. A mortgage was assigned, and the equity of redemption conveyed to the mortgagor to B., 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 returned 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. *Napier v. Mackay*, 334.
2. If by the payment of the money by S. an assignment of fact was effected by operation of law, he would, to all purpose 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 sharing. *Id.*
3. The Act of 1783, 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. *Id.*
4. 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. *Id.*
5. But a surety was neither at law nor in equity entitled to such assignment, or to be clothed by mere operation of law, and upon principles of equity with the rights of an assignee, unless he has paid the entire debt of the creditor: a *pro tanto* assignment will not be allowed. *Id.*

## SUBROGATION.

See SUBSTITUTION, RIGHT OF.

## SUPPLEMENTAL BILL.

See PRACTICE IN CHANCERY, 45 to 48.

## SURCHARGE AND FALSIFICATION.

See PRACTICE IN CHANCERY, 56, 63.

PARTNERSHIP, &c., 1.

## SURETY.

See SUBSTITUTION, RIGHT OF, 1 to 5.

## TENANT FOR LIFE.

See IMPROVEMENT, &c., 1.

## TRESPASS.

See INJUNCTION, 2 to 13.

## TROVER.

See JURISDICTION, 3.

## TRUSTEES.

See COMMISSIONS TO SALES BY.

## TRUSTS.

1. If an heir or personal representative or devisee, whose interest would be prejudiced by the insertion of a provision in a will in favor of some third person, induces the testator to omit such provision by assurances, either by words or silent assent, that his wishes shall be executed, although the provision were made, such assurances will raise a trust which will be enforced in equity on the ground of fraud. *Guilford v. Guilford*, 158.
2. If such trust be denied by the heir or devisee, it may be proved by parol, though the statute of frauds be relied upon as a defence. *Id.*