

other material facts of the case, sufficiently appear from the Chancellor's opinion. After several abatements, by the death of parties, the case, having been revived, was at length brought to a final hearing.

18th July, 1826.—BLAND, *Chancellor*.—This case standing ready for hearing, and no counsel appearing for the defendants, the solicitor for the plaintiffs was heard, and the proceedings read and considered.

This case, as it now stands, is much reduced in compass, but is not yet altogether free from difficulties. The first inquiry is, whether, in point of fact, the purchase money has been paid by the plaintiff *Hoffman*, or those under whom he claims; or whether, according to the principles of equity, the vendee has been altogether discharged from his responsibility, even although the purchase money may not have been entirely collected and paid.

According to the contract between the parties, the vendor was to obtain payment, in part, by collecting the amount due on several bonds and notes, assigned to him on the 23d of July, 1791; which, as was declared by the agreement, "when paid are to go in discharge of the amount of such payments." The debt due from *Chapline*, which was one of them, it is admitted, by a solicitor of the defendants, has been lately collected and paid. And it is proved, or conceded, that the whole of the purchase money has been paid, except to the amount of the debts said to be still due from *Hole* and from *Benner*. And whether or not these have been paid, or the vendee discharged from his responsibility for them, is, at present, the whole extent of the controversy as regards the purchase money.

The purchaser, in respect to these assigned debts, was placed in the situation of a surety.<sup>(a)</sup> It will, therefore, be necessary to advert to the general principles of equity, applicable to parties standing in the relation to each other, in which these did, of creditor, principal debtor, and surety.

According to the Roman law, a surety was allowed three advantages: 1st, he might compel the creditor to sue the principal debtor first; 2d, the creditor might be driven to resort to each surety for his proportional share only; and 3d, a surety, sued for the whole debt, might demand of the creditor to transfer over his actions against the other sureties, before he was allowed to recover the

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(a) *Anstey v. Marden*, 1 New Rep. 124.