

In cases of this sort, the exertion of every reasonable and proper degree of diligence is within the express terms and meaning of the contract. And, after all such proper efforts have been made, before payment can be enforced from the surety, equity and justice require, that the bonds, notes, or judgments, or all the securities he had placed in the hands of his creditor, or enabled him to procure, should be returned, or reassigned, so as to put it in the power of the debtor or surety to obtain reimbursement from the funds which he had represented as sufficient, and which his creditor had shewn that he was unable to render available.(f) Such are the principles of equity applicable to this case: let us now review the facts.

It appears that *Hole's* bond was payable on the 23d September, 1786; that it was given to secure the payment of the purchase money of a certain lot of land, which was held bound for the payment of this debt, by an equitable lien; and, which lien there is strong reason to believe, continued unimpaired down to the year 1807. At May term, 1793, of the General Court, the assignee obtained judgment against *Hole* on this bond; on which judgment a *ca. sa.* was issued, returnable to May term, 1794, and there the judicial proceedings appear to have ended. *Hole* petitioned for the benefit of the insolvent law, in April, 1794; yet, it does not appear that he obtained a complete discharge under any insolvent law until 1802. Not even an offer has been made by the holder of this bond, given by *Hole*, at any time, to return it, or to transfer the judgment obtained on it to the vendee. From all these circumstances it is considered, that the vendee is entirely discharged from all responsibility for this debt of *Hole's*. If it has been lost, it has been owing to the laches of the vendor; and, therefore, the vendee ought not any longer to be held answerable.

The bond of *William Benner*, it appears, became due on the 1st of January, 1786; and he died on the 10th August, 1793. It was generally reported, that he was, shortly before his death, entirely insolvent; but that he left some personal estate, is certain. The vendor or assignee, brought suit on his bond, and obtained judgment against him, in the General Court, in May, 1793, on which a *ca. sa.* was issued, returnable to October, 1793. From

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(f) *Kearslake v. Morgan*, 5 T. R. 513; *King v. Baldwin*, 17 John. Rep. 334; *Hayes v. Ward*, 4 John. C. C. 123; *Eddowes v. Niell*, 4 Dall. 133; *Clark v. Young*, 1 Cran. 192; *Harris v. Johnston*, 3 Cran. 311; *Ex parte Mure*, 2 Cox. 63; *Williams v. Price*, 1 Sim. & Stu. 551.