

pay to *Thompson*, the amount of the aforesaid acceptances in the same manner as if it had been ascertained they had been duly paid by the *Bells*; that on all those payments, *Heyland* was to be allowed the current exchange; and, further, that *Thompson* should indemnify *Heyland*, to the amount paid into *Thompson's* hands by *Heyland*, against all demands that might be rightfully made against him on account of those acceptances, either by the *Bells*, or by the holders of them.

By this deed *Heyland* does, most clearly and distinctly, give us to understand, that it was his intention to pay all those of his creditors in whose favour he had drawn bills on the *Bells*. For, with what other possible view could he have stipulated to account with *Thompson* for the whole amount of the bills, as if they had been actually paid by the *Bells*? And with what other understanding was the covenant entered into for an indemnity against all those creditors? It is most manifest, therefore, that *Heyland* placed this fund in the hands of *Thompson* for the use of that class of his, *Heyland's* creditors, the bill holders, whoever they might be.

But, it is alleged that *Thompson* has a title to at least a share of this fund as the assignee of the *Bells*; and this, it is said, is proved by the recital in this deed, in which it is acknowledged, that the *Bells* "had transferred and made over all the amount due by the said *Heyland* for goods which the said house of *William & John Bell & Co.* accepted to pay on his account to *Hugh Thompson*;" and also by the express stipulation, by which *Heyland* bound himself to *Thompson* for such balance as might be found due from him, *Heyland*, to the *Bells*, on account of those transactions, or otherwise, to the time of executing that deed.

This position may, perhaps, be more clearly and strongly presented in another form, thus: *Heyland* stands indebted to sundry persons in the sum, suppose for example, of \$16,000, for the payment of which the *Bells* are his sureties; and, as such, they have paid for him \$4,000, and consequently stand in the place of his creditors to that amount. But this claim of the *Bells*, having been assigned by them to *Thompson*, he has, thus circuitously, become a creditor of *Heyland* to the amount of that \$4,000, part of the original debt of \$16,000. Now, says the defendant's counsel, *Thompson* must be allowed to retain at least one-fourth of the fund which has been placed in his hands for the payment of the whole \$16,000, since he, in fact, stands in the place of the original creditors to one-fourth of that whole amount.