

There is an imposing aspect of equity in this position; and, if the court felt itself at liberty to make free with the positive covenants of the parties, there might be no difficulty in applying its equalizing principles to this case; but the court is not at liberty to reject or impair the covenant of indemnity in this deed of the 8th of January. By that covenant, *Thompson* is bound to save *Heyland* harmless, not merely against the *Bells*, but against all the holders of the acceptances, whoever they may be, to the amount of the funds in his hands. In other words, he is thus constituted a trustee for the bill holders of the funds in his hands, to the amount of the balance remaining due and unpaid on those acceptances: otherwise *Heyland* would not be indemnified against all demands by the bill holders, according to the express terms of this contract. The expressions in this deed, "on account of the transactions before alluded to, or otherwise, to the time of executing these presents," were intended merely to refer to the means of ascertaining the extent of *Heyland's* liability to the bill holders, and the amount of the funds which it was necessary should be placed in *Thompson's* hands, to meet that liability. The great leading object of *Heyland* was to provide for the payment of his *own* debts due to those bill holders. He had nothing to do with the transactions between *Thompson* and the *Bells*, or with the debts due from the one to the other of *them*. The obvious inducement of *Heyland* in making this provision in favour of his bill holders was, some apprehended inability of those who had thus become his sureties to them. Hence, whatever might have been the nature or design of the assignment of the claim on *Heyland* from the *Bells* to *Thompson*, or of any contract between *those* parties, that transfer, or contract, cannot be permitted to control or contradict the positive and clear stipulations contained in this deed of the 8th of January, between *Heyland* and *Thompson*.

In short, the clear and unequivocal objects of this deed, were to place funds in *Thompson's* hands to meet the claims of those of *Heyland's* creditors who should present themselves as the holders of his bills, as therein described; and to obtain an indemnity and discharge for *Heyland* from every part of those claims, so far as those funds would go. But *Thompson* does not pretend that he stands here as a creditor of *Heyland*, in the special character of a holder of all, or any one of the specified acceptances; he is not, by any thing that is alleged or appears, a holder of any one of the designated bills drawn by *Heyland*. It might be, that *Heyland*