

this can affect the right of the complainants; unless some fraudulent delay or collusion was proved to the injury of *Penn*.

The bond to *Edward Gwinn* was dated the 21st of September 1788, but was not payable until the 21st of September 1792. And although it seems to be admitted, that *Pigman* was the principal, and the other obligors the sureties; yet they all appear as principals in the condition of the bond.

Suits were not brought on the bond until April 1795; but such forbearance is not unusual, and does not affect the right of the obligee. And the sureties, if they thought proper to pay off the bond, might have had it assigned to them, and have brought suit against the principal. The judgments, against *Pigman* and against *Charles Penn*, were obtained at October term, 1796, with a stay of execution till the 1st of January 1797. The judgment against *Pigman* was removed in February 1797, as appears by the record, although the writ of error bond is left blank as to the dates; and admitting, that this bond was executed by *Deakins* and *Stoddart* to oblige *Pigman*, there is nothing suspicious in the transaction; and it appears also, that a similar bond was executed, about the same time, by *Charles Penn*, with the same sureties. *Edward Gwinn* died before November 1798, at which time his administratrix had appeared, and the judgment was affirmed. There is nothing to shew, that she was disposed to favour *Pigman*; and it is presumed, that she would have recovered the money from him or *Charles Penn*, by execution, if in her power. But suits were brought against the executor of *Deakins* and against *Stoddart* on the appeal bonds, and judgments obtained thereon at May and October term 1801, against them as sureties for *Penn*, as well as for *Pigman*. The money was paid by them on the 1st of May 1802, and the judgment against *Pigman* only was assigned to them. This was the commencement of their claim against *Charles Penn* or his heir or representatives, and they filed the present bill in July 1802. It appears by the testimony of *Benjamin Ray*, that executions were issued against *Pigman*, and *Penn*, which were both served, so that there was no neglect on the part of *Gwinn* to pursue his legal remedy, supposing, that he was obliged so to do, which was not the case. If *Pigman* had been possessed of visible property, a resort to it would have been preferable to a suit on the writ of error bond. And as to *Penn* it is to be observed, that the conveyance of his lands in 1792, prevented their being taken on the judgment, and affirmance in 1796 and 1798, by which