

which such a creditor is entitled. (d) These principles, in regard to those who stand properly in the relation to each other of principal debtor and surety, have been extended, for the benefit of an executor or administrator, who may have been induced through mistake, to pay debts of the deceased beyond the amount of the assets which came to his hands; in which case he has always been allowed, in this court, as in England, to take the place of the creditors, and obtain reimbursement out of the real assets of the deceased, so far as they were liable; or if the debt so overpaid was on a judgment against the deceased, operating as a subsisting lien upon his realty, the executor or administrator is permitted to take the place of such judgment creditor, and to have a preference in the distribution of the real assets over creditors of an inferior grade. (e)

The doctrine of substitution embraces only those cases where there is a principal debtor and a surety by express or implied contract; or where, for the benefit of commerce, a man is allowed officiously to place himself in the condition of a surety; or where he has by mistake, as in the case of an executor, made payment as if he had stood in that situation. Now before any of the principles, upon this subject, can be brought to bear upon the case under consideration, it must appear, that the plaintiff *Araminta*, or those under whom she claims were the principal debtors; or that the trustee *Vincent* was the principal; and that *Catharine*, or those claiming under her, were their sureties; and that those claiming under *Catharine* are now here asking to be reimbursed, as such, out of the funds of their principal now in the hands of the court.

But the assumption of any such statement would be in direct opposition to all the proofs in the case. *Vincent* was a trustee appointed by this court for the benefit of all concerned in the estate of the late *Charles Rogers*; and if he misapplied the rents and pro-

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account stated. If the parties shall choose to come before the auditor, before the said day, to have the said account stated, the auditor may proceed accordingly; or if the said parties, by writing to be here filed, shall agree to the appointment of any person or persons more convenient to them than the auditor, an account by the said person or persons stated, will be received by the Chancellor as an account stated by the auditor; provided the said person or persons proceed on or before the 15th of June next.

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On the 16th of June, 1804, the parties not having appeared before the auditor, the foregoing order was annulled, and the trustee ordered to sell, &c.

(d.) *Mickle v. Taylor*, 1806, per KILTY, Chancellor, M. S. Theob. Prin. and Sur. 259.—(e.) *Robinson v. Tonge*, 3 P. Will. 400. Theob. Prin. and Sur. 233. *Ex parte*, Street, 1 Bland, 532, note.