

fits which came to his hands, he alone is responsible. If this court were to make good to *Catharine's* representatives any amount of the rents and profits which had been misapplied by *Vincent* to their prejudice, out of the proportion of the funds now about to be distributed, to which the plaintiff *Araminta* is entitled, it would be, in effect, to treat her as the principal debtor, for whose benefit, among others, *Vincent* was not merely a trustee, subject only to the order of this court; but, who was, in fact, her own proper agent; or it would be to consider *Araminta* as the surety of the trustee *Vincent*. But there is nothing in the case to warrant the placing of *Araminta* in any such condition of responsibility; and therefore the representatives of the late *Catharine* cannot sustain themselves on the stand they have taken by any principles derivable from the case of a principal debtor and surety.

But the representatives of the late *Catherine*, insist on having the securities, or these assets, now about to be distributed, so marshalled as to reimburse them to the amount of their share of the rents and profits which had been misapplied by the former trustee, *Vincent*.

The marshalling of securities is only made where the debt is so secured as to give to the creditor the means of obtaining payment out of two funds, and others can reach only one of them. In such case the court will compel the creditor who holds the more comprehensive security to obtain payment, as far as practicable, out of the fund which the other creditors cannot reach; so as to leave the other fund to be distributed among the creditors holding more limited securities. (*f*) But there is no sort of analogy between the case of creditors, whose securities may be thus marshalled, for the benefit of all, and without injury to any, and the case now under consideration. The plaintiff *Araminta*, and the representatives of the late *Catherine*, stand precisely in the same situation; not as creditors seeking payment, by way of preference, or otherwise, from the assets of a debtor; but claiming the distribution of a fund to which they are alike entitled.

Marshalling of assets respects two different funds, and two different sets of parties, where one set can resort to either fund, and the other only to one. As where there are real and personal assets, and judgment and simple contract creditors; the real assets will be applied to the satisfaction of the judgment creditors; so as to leave