

The remedy of surety under this section, pointed out. *Martindale v. Brock*, 41 Md. 580.

This section has no application to a bond conditioned upon the faithful discharge of the duties of an office. *Crisfield v. State*, 55 Md. 197.

This section does not apply where a surety seeks contribution from his co-surety. *Carroll v. Bowie*, 7 Gill, 41.

This section is declaratory of the common law. *Watkins v. Worthington*, 2 Bl. 529. Cited but not construed in *Dixon v. Dixon*, 1 Md. Ch. 222.

See notes to sec. 6. As to sureties, see art. 90.

An. Code, sec. 6. 1904, sec. 6. 1888, sec. 6. 1763, ch. 23, sec. 8. 1880, ch. 161, sec. 6.

6. When any person shall recover a judgment against the principal debtor and surety, and the amount due on the judgment shall be satisfied by the surety, the creditor or his attorney of record shall assign the same to the surety, and such assignment being filed in the court where the judgment was rendered, the assignee shall be entitled to execution in his own name against the principal for the amount so paid by the surety.

Where the holder of a promissory note gets judgment against an indorser who pays the same, the latter is entitled to the benefit of this section. The judgment creditor cannot refuse to make an assignment, because the maker of the note has a defense as against the payee. *Wallace v. Jones*, 110 Md. 147.

Equity will compel the assignment under this section, and a full payment by a surety has been held to operate of itself as an assignment. *Hollingsworth v. Floyd*, 2 H. & G. 90; *Creager v. Brengle*, 5 H. & J. 234; *Wallace v. Jones*, 110 Md. 147.

The entire judgment must be satisfied, as there can be no *pro tanto* assignment. *Hollingsworth v. Floyd*, 2 H. & G. 91.

This section is to be construed in connection with secs. 7 and 8. It applies if the surety pays the judgment or any balance due thereon. *McKnew v. Duvall*, 45 Md. 507.

This section applies only when a judgment has been rendered against the surety, hence where the surety dies before judgment, his administrators are not entitled to an assignment of the judgment recovered against a principal. *Wilson v. Ridgely*, 46 Md. 246.

Where a judgment in favor of the state is paid by a surety, the attorney for the state has no authority under this section to assign the judgment. But see sec. 8. *Peacock v. Pembroke*, 8 Md. 348; *McKnew v. Duvall*, 45 Md. 508; *Wilson v. Ridgely*, 46 Md. 245.

This section is declaratory of the common law. *Watkins v. Worthington*, 2 Bl. 529.

This section referred to in construing sec. 5—see notes thereto. *Fuhrman v. Fuhrman*, 115 Md. 442.

Cited but not construed in *Martindale v. Brock*, 41 Md. 581; *Winder v. Diffeffer*, 2 Bl. 199.

An. Code, sec. 7. 1904, sec. 7. 1888, sec. 7. 1763, ch. 23, sec. 8. 1864, ch. 243. 1880, ch. 161, sec. 7.

7. When any judgment shall be rendered against several sureties and the amount unpaid on said judgment shall be satisfied by said sureties or by any one of them, the plaintiff shall be obliged to assign such judgment to the surety or sureties satisfying the same, who shall be entitled to execution in his or their names against the other sureties in the judgment, for a proportionable part of the said judgment so paid by the said assignee; provided, that no defendant shall be precluded or debarred of his remedy against the plaintiff, or his co-sureties by *audita querela*, or other equitable course of proceedings.

The design of this section was to place a surety in the same position as the creditor, and to clothe him with the latter's rights. *Colegate v. Frederick Savings Inst.*, 11 G. & J. 122; *Wallace v. Jones*, 110 Md. 147.