the clerk of this court do notify the clerk of the municipality of St Thomas of this my decision, and that the roll be amended according to the same.

And as to the costs of this proceeding, I do order that the same be borne and paid by the respondent.

UNITED STATES LAW REPORTS.

SUPREME COURT OF PENNSYLVANIA.

KRAMER AND RHAM'S APPEAL.

When the surety for the payment of a debt, or one standing in the relation of a surety, receives a security for indemnity, the principal creditor is in equity entitled to its full benefit. The principle applies to acceptors and endorsers, in favor of creditors, as well as to cases of surety in form

Where a judgment note is given by the principal debtor to an accommodation acceptor for his security, a trust is created which attaches to the debt, and should go in satisfaction of it in default of payment otherwise, unless divested by a *bona fide* assignment for value, and without notice of its character

Appeal from the Common Pleas of Blair Co (LOWRIE, C J, and WOODWARD, J, dissent) Opinion by

THOMPSON, J —In *Curtis* v. *Taylor and Allen*, 9 Paige, 422, the Chancellor of Walworth asserted, and sustained by many authorities, the equitable principle "that where a surety, or a person standing in the situation of a surety, for the payment of a debt, receives a security for his indemnity, and to discharge such indebtedness, the principal creditor is in equity entitled to the full benefit of that security And it makes no difference that such principal creditor did not act upon the credit of such security in the first instance, or even know of its existence." *Maure* v *Harrison*, 1 Eq Cases Abridg 1092, is to the same effect So also is *Heath* v. *Hand*, 1 Paige, 329, *Paris* v. *Hulett*, 26 Verm Rep 308; *Ohio Life Insurance Company* v. *Ledyard*, Mat Rep. 866; *Branch Bank of Mobile* v. *Robertson*, 19 Ala 798, *Clarke* v *Ely*, 2 Scandf Rep 166; *Ten Eyck* v *Holmes*, 3 Scandt C R 128 So in Cornwell's Appeal, 7 W. & S 305. Justice Kennedy announced the same rule saying, "it is a well established principle in equity that a creditor is entitled to all the securities taken by the surety of his debtor, either for the purpose of securing the payment of the debt to the creditor, or for the purpose of indemnifying himself" To the same purpose are Erb's Appeal, 2 Penna. Rep 296; *Hines* v *Barnitz*, 8 W. 39, *Carman* v. *Noble*, 9 Barr, 366; Hancock's Appeal, 10 Cassey, 155. The authorities place the principle upon the ground that, as the security is a trust created for the better securing of the debt, it also attaches to it, and hence it is, that it may be made available by the creditor, although unknown to him at the time of the purchase of the security for which it may have been given as an indemnity The effect of such a transaction, is the placing of means in the hands of the surety by the principal debtor to meet liability on account of his contract for suretyship It is consequently a trust for that specific purpose, and equity will control the legal title to it in the hands of the surety so that it may be applied to the object intended, viz, the payment of the debt to the holder

Did King, who, it clearly appears was an accommodation acceptor for Baker, stand in the "situation of a surety," as was said by the Chancellor in *Curtis* v *Taylor & Allen*? As between him and Baker he certainly did so As between them he was not the principal debtor, although by the law merchant he would be so to *bona fide* holders of the acceptance But this would not change his relative position to Baker. In his hands, and in the hands of assignees not *bona fide* and for value, the indemnity afforded by the judgment on the 13th Nov, 1857, would be applicable to the payment of the acceptances. This was the trust on which it was given, as King in his receipt for it of the same date says, "to hold as security for the amount of my account against him." There is no dispute but that the acceptances of Kramer & Rham, F Sellers & Co, and Bryan, Gardner & Co, together with other acceptances taken up by Baker, and some items of commissions and expenses constituted King's account, for which the note stood as security. The indemnity was not to apply in any order of priority to parts of the account; it attached to it all and every part of it alike The acceptance went of course, as they were intended to do, into other hands, and the security pledged by the principal debtor for the payment must go to the extinction of the debts created by them so far as they remained unpaid by Baker, on the principles asserted in the outset of this opinion—that when a surety for the payment of a debt receives a security for his indemnity, the principal creditor is in equity entitled to the full benefit of that security, will be subverted, the security still remaining within the reach of equity as will be seen hereafter There are many cases in the books of the application of this doctrine to the cases of surety strictly so But that it cannot be supposed to be limited and controlled by the mere form of the transaction, is apparent from the remarks of the Chancellor in *Curtis* v *Taylor & Allen*, by the qualified expression of "standing in the situation of a surety" The case of *Heath* v *Hand et al.*, 1 Paige, 329, is a case of the direct application of the principle to a transaction like the present. A judgment had been given to secure for advances and acceptances. The holders of the indemnity assigned it to one of their own personal creditors for anterior responsibilities; suppose for them, but on a bill being filed by the defendant in judgment, the party giving it as a security against acceptances made for his benefit,) the collection of the judgment by the Assignee was restrained, and the proceeds directed to be applied to the payment of the bills accepted by the assignees, the Chancellor declaring that, to that extent, the holders of these notes and drafts accepted and endorsed by Hand and Kenyon have an equitable interest in the judgment; *Bank of Auburn* v. *Throp*, 18 Johns. Rep. 405, which being prior to the assignment to Lightbody, must prevail. So also to the same effect in *Eastman* v *Foster*, 8 Metcalf, 19. These authorities, and many others might be added, show clearly the application of the principle to acceptors and endorsers, in favor of creditors, as well in cases of surety in form. The case of *Heath* v *Hand et al*, is also authority for another point in this case, if authority be needed, that the assignment of the judgment for an antecedent debt or liability did not constitute the assignee a purchaser for value. See also *Clark* v. *Ely et al*, 2 Scandf C R 166, and the citation of authorities therein in the affirmation of the principle, by the Assistant Vice-Chancellor of the 1st Circuit of the State of New York.

These principles established, how stands the case in hand? Baker secured King's account to the extent of the judgment note of $10,500, payable four months after date, to be cancelled on the delivery of pig-metal and blooms to the amount of it, within that time, to the latter at Pittsburg. This metal he never did deliver The judgment note therefore remained as security for King's account. On March, 1858, judgment was entered in favor of King on the judgment note. Previously thereto King had accepted all the bills which constituted the claims of Kramer & Rham, F. Sellers & Co., and Bryan, Gardner & Co., together with other notes not necessary to be mentioned These acceptances, with some items of expenses and commissions, constituted King's account, and it cannot be doubted that if he had paid them himself the judgment would have stood good to him as security from which to reimburse himself. He did not pay any of the bills in the hands of the holders named, but on May 4th, 1858, he assigned to Kramer & Rham $7,513 50, as collateral "security" for the payment of their drafts, and to F. Sellers & Co. $2,501 44, also as collateral security for the payment of theirs. These assignments would amount to their respective claims in full, and leave seven or eight hundred dollars, which King says he agreed should go to Bryan, Gardner & Co Kramer & Kham, and F Sellers & Co, have, at considerable expense, enforced the payment of the judgment by Baker, and the claim that by virtue of this and other assignments from King, they are entitled to receive their whole claim out of the indemnity in exclusion of Bryan, Gardner & Co, excepting as to the balance of the judgment after paying them.

The Auditors and the Court below were of a different opinion, and with the exception of certain modifications, hereinafter to be noticed, we think they were right. As already indicated, the judgment note was given by the principal debtor to his accommodation acceptor, a party standing in the situation of a surety for him, and it was for the purpose of saving him harmless; a trust was thereby created in favor of him, and upon the principle already stated, in favor of the holders of the acceptances; 26 Vermont Rep 308; 8 Metcalf, 20 If a trust was thus created, and to secure the debt, it necessarily attached to the debt, and will go in satisfaction of it in default of payment otherwise, unless divested by a *bona fide* assignment for value, and without notice of its character But this element does not exist in this case The assignment