

debt for the payment of which the land was pledged by way of suretyship being satisfied otherwise, by what process of reasoning can it be shewn that the position of the surety is made worse than if he had paid the debt or part of it; or it had been satisfied in whole or in part by a sale of the land. Such a position would be in violation of the rules of equity, which protect and indemnify a surety wherever it would not be inequitable to the creditor to do so; and would postpone him when the debt was paid *aliunde*, when, if paid by himself he would stand prior; and would, moreover, make him liable for debts for which he pledged neither himself nor his property, and would disappoint him of his acknowledged equity to stand in the place of the creditor. A further reason is, that one of the rights of the surety is to put the creditor in motion against the debtor; so *Morgan*, senior, might have compelled *Heaton* to enforce his judgment in order to relieve him the surety; but if the plaintiffs' position upon this point be correct, enforcing Judgment. the judgment would not relieve the surety, but leave him still liable.

If this doctrine were correct, it would follow, that in the case of a prior judgment creditor having a security for his debt, a subsequent judgment creditor would have an equity to compel him to sue the surety, and so leave the debtor to him, and it would involve this absurdity that the surety upon being sued and paying would stand in the creditor's place against the debtor, and so be still prior to the subsequent judgment creditor.

1856.

Joseph
v
Heaton.