

tion was made by the plaintiff or any of the other parties. Besides voluntarily filing a statement of defence against Rogers' claim, specially so designated, Milburn appears to have acquiesced in the order of the Queen's Bench Division, and to have made no further opposition to the mode of trial which was thus forced upon him. But for this acquiescence, and what may be called consent on his part, I should have thought it clear that the trial of the question of indemnity in this action was irregular and unauthorized."

His Lordship fortifies this view of the matter by a reference to the opinion of the late Master of the Rolls in *Marner v. Bright*, and the court evidently adopted the same view, as they abstained from interfering with the judgment, except as respected Milburn.

So far, then, as this case was concerned, the rule of Practice laid down in the headnote was robbed of its sting.

But were their Lordships right in denouncing as "improper and unauthorized" the course which the plaintiff took in making Rogers, the intermediate owner of the equity of redemption, an original defendant?

The answer to this question depends chiefly, if not entirely, upon the law of principal and surety.

It is now settled law that creditors are bound to recognize, and give effect to, the rights of persons who have become sureties to the principal debtor, when and so often as notice of the relationship is received by such creditors; and this duty devolves upon creditors whether they are parties to the creation of the relationship or not.

In *Duncan v. N. & S. Wales Bank*, L.R. 6 App. Cas. 1, the point is stated in the headnote as follows:

"The acceptor of a bill of exchange knows that by his acceptance he does an act which will make him liable to indemnify any endorser of it who may afterwards pay it. The endorser is a surety for the payment to the holder, and, having paid it, is entitled to the benefit of any securities to cover it deposited with the holder by the acceptor."

The same relationship, with its corresponding rights and liabilities, arises when a mortgagor sells the lands subject to the mortgage, and the mortgagee receives notice of the transaction—the purchaser becomes the principal debtor (in respect of the lands), and the mortgagor becomes surety for payment of the