

It is universally admitted, wherever the relation of principal debtor and surety subsists, that if the surety pays the whole debt, he has a right to be put into the place of the creditor as to all his remedies for the recovery of the debt. This right of subrogation is recognized in Courts of common law as founded upon an implied contract; and in Chancery as resting upon such a contract; or as an equity properly belonging to the case; or as based upon a principle of natural justice, which springs into existence immediately, that the debt falls due, and the surety becomes liable to be called on for payment. This implied contract binds the creditor, if required, by bill in equity at the instance of the surety, to sue immediately for the recovery of his debt; or, if the debt has been wholly paid by the surety, to transfer to him all his securities; as well those which he held at the time the surety became bound as those which he may have since acquired, even without the privity, or knowledge of the surety; such as a judgment recovered against the principal; or a mortgage by way of collateral security. The surety, in such case, has a right to an assignment of all the creditor's securities, to enable him to proceed immediately, in the same manner, as the creditor might have done to obtain satisfaction or reimbursement. And therefore, if the creditor, being competent to contract, has by express agreement enlarged the day of payment; or has, by his acts, increased the peril of the surety; or has parted with any of his securities; or has, in any other manner, altered or impaired the obligation of the implied contract, which, for the protection of the surety, is always associated with the express contract as its inseparable incident, then the * surety is discharged; upon the ground, that all such acts are against the faith of the implied contract, by virtue of **174** which, the surety had precisely the same right the creditor had; and must be allowed to take his place in all respects; and also upon the ground that the creditor is a trustee of his security; that is, the bond, judgment, execution, or the like, for all parties interested in it; or who may ultimately resort to it for relief. *Baker v. Shelbury*, 1 *Cha. Ca.* 70; *Ranelagh v. Hayes*, 1 *Vern.* 190; *Parsons v. Briddock*, 2 *Vern.* 608; *Nisbet v. Smith*, 2 *Bro. C. C.* 579; *Ex parte Smith*, 3 *Bro. C. C.* 1; *Rees v. Berrington*, 2 *Ves. Jun.*, 540; *Ex parte Rushforth*, 10 *Ves.* 420; *Wright v. Morley*, 11 *Ves.* 22; *Craythorne v. Swinburne*, 14 *Ves.* 164; *Samuell v. Howarth*, 3 *Meriv.* 272; *Antrobus v. Davidson*, 3 *Meriv.* 570; *Mayhew v. Crickett*, 2 *Swan.* 187; *Wallwyn v. St. Quinton*, 1 *Bos. & Pul.* 652; *English v. Darley*, 2 *Bos. & Pul.* 61; *Ward v. Johnson*, 6 *Mun.* 6; *Hill v. Bull*, *Gilm.* 149; *M' Mahon v. Fawcett*, 2 *Rand.* 514; *Creager v. Bringle*, 5 *H. & J.* 234; *Bowers v. The State*, 7 *H. & J.* 32; *Hollingsworth v. Floyd*, 2 *H. & G.* 87; *Lenox v. Prout*, 3 *Wheat.* 520.

It is believed that the obligation of private contracts has been regarded by all civilized people as of the highest and most inviola-