

be supposed to have received that portion of the consideration upon which the obligation was given.

But if either one of them receives from the other a consideration equal to the proportion of that other, of the common burden, he must take that proportion upon himself, and in the adjustment of the equities between the remaining party and the obligor, who has enjoyed a consideration equal to two-thirds of the debt, the latter must be charged with that proportion.

That appears to me precisely the relative position of these parties, Thomas T. Wheeler, Odel Wheeler and Thomas Hilleary, each received from Wilson a consideration in money or property, equal to six hundred dollars, and executed to him their joint and several single bill for eighteen hundred dollars.

As between themselves, therefore, each was liable to pay six hundred dollars. But one of them, Thomas T. Wheeler, received from another, Odel Wheeler, in money or property, or in something else of value, a sum equal to the six hundred dollars. Surely, therefore, he, Thomas T., should pay twelve hundred dollars, and Hilleary, the third co-obligor, who has been compelled by the creditor to pay a sum exceeding his one-third of the debt, should be allowed at once in equity, and without circuitry, to go against him, Thomas T., for such excess.

This view of the subject relieves the case, as it seems to me, of the question raised upon the argument, as to the obligation to give Thomas T. Wheeler notice, and an opportunity to defend a suit brought against Odel Wheeler. He has agreed to assume the payment of Odel's part of the debt, and may as well here, as anywhere else, show, if he can, that Odel is liable for less than a third, or not liable for any portion.

No attempt has been made to do this, and upon the face of the instrument and by the terms of the agreement of the parties; the obligors in the single bill were all principals.

I am, therefore, of opinion, that Thomas T. Wheeler is liable to contribute two-thirds; and I am further of opinion, that the statement of the claim by the Auditor is correct.

The creditor unquestionably was entitled to receive the whole amount of his debt, with interest, and the payments made him