New Jersey Court of Errors and Appeals.

STEPHEN F. PAULIN,
vs.
CHARLES KAIGHN.
} *In Error.*

PLEADINGS.

Camden County Circuit Court, of the term of January, in the year of our Lord, one thousand eight hundred and fifty-seven.

Camden County, ss. Stephen F. Paulin was attached to answer Charles Kaighn of a plea of trespass on the case upon promises, and, thereupon, the said Charles Kaighn, by Abraham Browning, his attorney, complains. For that, whereas, the said defendant heretofore, to wit, on the first day of November, in the year of our Lord, one thousand eight hundred and fifty-six, at Camden, in the county of Camden, and within the jurisdiction of this court, was indebted to the said plaintiff in the sum of two thousand dollars, for so much money by the said plaintiff, before that time, paid, laid out and expended, to and for the use of the said defendant, at his special instance and request; and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last, aforesaid, at Camden, in the county and within the jurisdiction aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay to him the said sum of money, when he, the said defendant, should be thereunto afterwards requested.

And, whereas, the said defendant afterwards, to wit, on the day and year aforesaid, at the county and within the jurisdiction aforesaid, was indebted to the plaintiff in the further sum of two thousand dollars for money lent by the plaintiff to the defendant, at his request; and in two thousand dollars for money had and received by the defendant for the use of the plaintiff; and in two thousand dollars for interest for the forbearance by the plaintiff, at the defendant's request, of money due and owing from the defendant to the plaintiff; and in two thousand dollars for money found to be due from the defendant to the plaintiff, on an account stated between them. And the defendant afterwards, on the day and year last aforesaid, in the county and within the jurisdiction aforesaid, in consideration of the premises respectively, then and there promised to pay the said moneys respectively to the plaintiff on request. Nevertheless the said defendant not regarding his said several promises and undertakings, but contriving and fraudulently intending, craftily and subtly, to deceive and defraud the said plaintiff in this behalf, hath not, as yet, paid the said several sums of money or any or either of them or any part thereof to the said plaintiff, although often requested so to do, but the said defendant to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff two thousand dollars, and therefore he brings his suit, &c.

A. Browning,
Attorney for Plaintiff.

And the said Stephen F. Paulin, the defendant in this suit, by Thomas H. Dudley, his attorney, comes and defends the wrong and injury, when, &c. And says, that he did not undertake and promise in the manner and form, as the said plaintiff in this suit hath above thereof complained against him; and of this he puts himself upon the country, &c.

And the plaintiff doth the like.

Thomas H. Dudley,
Attorney for Defendant.

BILL OF EXCEPTIONS.

Camden Circuit Court.

CHALES KAIGHN *vs.* STEPHEN F. PAULIN. } *In case upon Promises and Issue joined.*

Be it remembered, that on the sixth day of May, in the year of our Lord one thousand eight hundred and fifty-eight, before the Honorable Stacy G. Potts, Judge of said Court, at the May term of said Court, the issue came on to be tried before a jury of county, regularly empannelled and sworn to try said issue, between the said Charles Kaighn, plaintiff, and the said Stephen F. Paulin, defendant, parties therein, as prout the declaration, plea and issue: And the plaintiff, to maintain and prove the issue joined on his part on the said trial, gave in evidence as follows, viz.:

Bond with warrant of attorney to confess judgment, (the signatures of the obligors being admitted by the counsel of the defendant,) dated December ninth, eighteen hundred and fifty-two, by Charles Kaighn, Joseph M. Cooper and Stephen F. Paulin, to William Champion, conditioned to pay four thousand, five hundred and fifty-five dollars, &c., (prout said bond and warrant of attorney.)

Record of Judgment, William Champion, against said Charles, Joseph and Stephen, in Camden Circuit Court, and the entry of satisfaction thereof, (prout said record of said judgment and entry, or a copy thereof, Book B. of Judgments, p. 72.)

Richard W. Howell, a witness, called on the part of the plaintiffs, and being duly sworn, saith:—

I knew William Champion; he is dead; I know his handwriting, (receipts on bond of Sept. 9, 1852, being shown witness,) the signatures to these receipts are in his handwriting. As the attorney of Mr. Champion, I caused a judgment to be entered on this bond on 19th of May, 1855, in the Circuit Court of this county. I think I did not issue an execution, but was about to do so when some settlement took place. The judgment was settled by Mr. Kaighn and Mr. Cooper with me, as the attorney, about 22d of August, 1855; the amount due on the bond was $4,818.34. I am under the impression that Mr. Kaighn about 10th July paid in cash on account $151.05, (receipt dated July 10, 1855, shown.) This is the receipt to Charles Kaighn for $150, and is in my handwriting, but signed by William Champion. $1.05 allowed; interest being added, makes the $151.05.

The final settlement took place in August following. When Charles Kaighn gave his own bond for a part and assigned two bonds and mortgages he held for balance, in all $2,409.17, which he so settled with $151.05 in cash, in all made his half of the judgment. I think Cooper's mortgage was given 22d August. That was the date to which I calculated interest. Mr. Cooper gave his own bond and mortgage for the other half of the judgment, (receipt for costs shown.) In addition I received $14.75 for costs of suit and my expenses. This included my fees, as well as the taxed costs, which was $4.

(Papers authorizing entry of satisfaction shown.) On the 29th August, 1855, I handed over the securities to Wm. Champion, and he gave me a written authority, (which is this,) to enter satisfaction of the judgment. In pursuance of this authority I entered satisfaction on the judgment in my own hand about 29th or 30th of August, 1855.

I received these securities; they were received by me as the attorney of William Champion, in full satisfaction and discharge of the judgment.

(Receipt of William Champion to Kaighn shown.) This is Mr. Champion's signature and receipt for the securities received to Kaighn. I think Mr. Cooper's bond and mortgage remained with me as attorney of Mr. Champion, and Mr. Cooper afterwards on June 10, 1856, paid me $1200 on account. I don't remember about the balance or of having received it.

I do not know as to Mr. Cooper's paying the whole of his bond and mortgage, or any thing over the $1200. Charles Kaighn gave his bond for the whole amount, and assigned the bonds and the mortgages I referred to as collateral. The bond of Charles Kaighn was for his half; for the whole amount to be paid by him, and the two bonds and mortgages were assigned as collateral. I was led into error on my first statement on this point.

I am not able to speak definitely as to the consideration of the original bond to William Champion. I was not present when it was given.

Mr. Browning read the several papers in evidence, (prout the same,) viz.;

1. Receipt of Wm. Champion, dated July 10, 1855, for $150.
2. Receipt of R. W. Howell, Aug. 28, 1855, for costs, $14.75.
3. Authority to enter satisfaction of judgment.
4. Receipt of W. Champion to C. Kaighn, Aug. 23, 1855.
5. Entry of satisfaction in Book of Judgments.
6. Receipt of W. Champion, June 10, 1856, $1200.

Joseph M. Cooper affirmed for plaintiff. (Bond of Sept. 9, 1852, being shown witness, says) we gave this bond to satisfy a debt due from the heirs of Ebenezer Toole to William Champion, assumed by the Ferry Company.

The heirs had purchased William Champion's interest in the Ferry, and when the Ferry Company was organized they (the Company) agreed to pay that indebtedness. Champion refused to take the Ferry Company. In consequence of that, this bond was given by us. The heirs of Ebenezer Toole was Mrs. Paulin, (wife of Stephen F. Paulin,) Mrs. Cozens and Emila Toole. After the judgment had been entered, Charles Kaighn and myself paid this to Mr. Howell. Mr. Kaighn made a bargain with Mr. Champion and gave his bond, with collaterals. I think for one-half. I gave my bond and mortgage for my half—my own bond and mortgage. Charles Kaighn gave his bond for the other half, less the cash paid. We gave these securities as cash in satisfaction of the judgment, and they were received in full satisfaction.

Judgment was taken out, payment insisted upon, and there was no other remedy. Paulin never satisfied his part of this judgment. I have not entirely paid off my bond. I paid $1200, and my brother, John Cooper, bought the balance. Champion has been paid the whole through him. John Cooper holds my bond and mortgage for the balance against me, (receipt for $14.75 shown.) This was paid by Charles Kaighn and myself jointly, (receipts on bond shown for interest.) The second received for interest endorsed was paid by me; I can't say as to the others.

The boats were purchased of Champion for the express purpose of being sold to the Ferry Company. I can't say if any bills of sale were made to the heirs of Toole; it was my impression; I can't say whether it was so or no. The heirs undertook that Champion should sell to the Company for a given price. I never asked Mr. Paulin to pay this judgment before I paid it. I have asked him since; I think before this suit was commenced, on deck of Company's boat, within the last year, in May or fore part of summer; I am not certain as to the time; I am not certain it was before suit was commenced. When the purchase took place I think I was a Director; I continued a Director from the organization of the Company till the election in April last. First Monday in April last.

Robert Y. Bonnin affirmed for plaintiffs, (receipts on bond shown.) The first receipt for interest on the bond is in my handwriting; I can't say whether I received that money of Mr. Kaighn or Mr. Cooper; I received it of either one or the other.

Mr. Dudley of counsel with the defendant opened the defence and offered to prove, on the part of the defendant, as follows:

1. It appears by the evidence of the plaintiff, and we further offer to prove the same, that this is an action for contribution by one of three co-sureties; that the debt alleged to have been paid was a debt of the South Camden Ferry Company, for which these sureties were jointly bound to William Champion.

2. We shall show in defence that Charles Kaighn, the plaintiff, was President and a Director of the Company, from its organization until a late election in April of this present year, and also during a considerable part of that time one of the Executive Committee of the Board of Directors, taking an active part in its business, and particularly of its financial affairs, and therefor well informed of its affairs.

That Joseph M. Cooper, the other co-surety, referred to in the evidence of the plaintiff, was, during the same period, a Director, and during a considerable part of the time Treasurer of the Company.

3. That the Ferry Company being the principal debtor, from time to time placed in the hands of these two co-sureties, Charles Kaighn and Joseph M. Cooper, securities to indemnify them against this liability, as well as other liabilities incurred, and to be incurred by

them, in behalf of the Company; and for these advances, as also for other advances made to, for, and on behalf of, the said Ferry Company; and that these securities were surrendered and given up by the said Charles Kaighn and Joseph M. Cooper, without the consent of this defendant.

1. The South Camden Ferry Company, on or about the 15th Dec., 1854, in pursuance of a resolution of the Company previously made, duly executed a mortgage to Charles Kaighn, Joseph M. Cooper, Stephen F. Paulin and others on all or most of the property of the Company in the sum of $30,000, to secure the persons named as mortgagees therein for all sums of money advanced or to be advanced to or for the Company, and from all loss from responsibilities by them or any of them incurred for or in behalf of the Company pro-rata to the extent of the said $30,000. That the said mortgage though in part made for the benefit of the defendant was never in his possession or control, but was held by the said Charles Kaighn and Joseph M. Cooper, or one of them, and was by them cancelled and discharged without the consent of the defendant after the alleged payment to Wm. Champion.

2. That the said Company on or about the 31st day of March, 1855, pursuant to a previous resolution of the Company, duly executed a mortgage on all or most of the property of the said Company to Stephen Coulter to secure coupon bonds of the Company to the Company to the amount of $55,000, and which bonds the said President was authorized to negotiate and to deliver in payment of any debts of the Company, and further in substance and effect with the said bonds to secure the officers and members of the Company who had or might afterwards pay off and discharge any debts of the said Company or advance any monies for its benefit. That under the said resolution of the said Company, and the

terms of the said mortgage, and in pursuance thereof the said Charles Kaighn received and appropriated 20 bonds duly issued under said mortgage of $500 each, in all to the amount of $10,000, as security for his advances made and to be made for the Company, and which bonds were in the hands of the said Charles Kaighn at the time of the alleged payment to William Champion, and which he then held as security for said alleged advance and payment by him made for the benefit of said Company. That the said bonds were surrendered up and the said last mentioned mortgage cancelled by the said Charles Kaighn and Joseph M. Cooper without the consent of the defendant.

3. That about December, 1855, or early in 1856, the said Charles Kaighn and Joseph M. Cooper, the said Company being then indebted to them as alleged for the payment of the said monies to the said William Champion, with other creditors, signed a written agreement intended for the benefit of the said Company and its creditors, by which they respectively agreed to accept from said Company, in lieu of and in payment of the indebtedness of the Company to them respectively, bonds of the Company payable in five years, to be secured by a mortgage of the said Company specified in said agreement for $75,000, as by the said written agreement will more fully appear. That in pursuance of said agreement the said Company did make such mortgage and issue said bonds; that other creditors received said bonds in discharge of the said Company in pursuance of said agreement; that it was part of the said agreement that all the indebtedness of the said Company to the said Charles Kaighn and Joseph M. Cooper and other creditors who signed said agreement, that time should be given upon said indebtedness funded as aforesaid. That the said Charles Kaighn and Joseph M. Cooper were bound by their said agreement to fund the indebtedness of the

said Company for the said payment to the said William Champion, as well as other indebtedness of the said Company to them; and that to neglect or refuse so to do would be in fraud of said agreement.

That this defendant was no party to said agreement, and that it was made and executed, and all prior securities relinquished, without his consent.

Whereupon, the counsel of the plaintiff interposed and insisted that the said evidence so offered to be given by the said defendant to the jury was not good or admissible in law upon the issue aforesaid; and that the same, if given in evidence, would not be sufficient to maintain the issue on the part of the defendant, and requested the Court to overrule the same as unlawful and insufficient; and the Court delivered an opinion that the said evidence as offered to be proven on the part of the defendant was unlawful and insufficient, and did refuse and did reject the same, and refuse to permit the said evidence so offered to be given to the jury; Whereupon, the counsel of the defendant did propose a bill of exceptions to the said opinion of the Court, and prayed that a bill of exceptions, according to the form of the Statute in such case made and provided, might be sealed, and said bill is hereby sealed by said Judge accordingly.

STACY G. POTTS. [L. S.]

OPINION OF SUPREME COURT.

PAULIN, vs. KAIGHN. } *Error to Camden Circuit.*

Dudley and Carpenter for plaintiffs.

Voorhees and Browning for defendant.

WHELPLEY, J. This was an action for contribution, brought by Kaighn against Paulin. Kaighn, Paulin and one Cooper executed a joint bond on the 9th of September, 1852, to one Champion; judgment was obtained upon it, and Kaighn and Cooper paid it off, each paying one-half. Kaighn brings this action to recover of Paulin the one-third of the one-half paid by him. The case on the part of the plaintiff was made out on the trial. But the defence offered by the defendant was over-ruled, and error is brought on bills of exception for this over-ruling.

The defendants offered to show, by parol evidence, that the bond was executed by the three obligors, as sureties for the South Camden Ferry Company; this was proved by the plaintiff himself, and was clearly admissible evidence. The rule seems well settled, that in an action brought by the surety against the principal for indemnity, or by one surety against another for contribution, the real situation and responsibility of the parties may be shown by parol evidence in an action at law. There is an obvious propriety in excluding the evidence at law in an action upon the contract brought by the creditor. By the form of the instrument they agree to be bound to him as priucipals, the action is to enforce the instrument in the shape the parties put it. But when the action is brought for indemnity or contribution by one of the parties signing it, no such reason exists; the creditor is not interested in that question; it comes up collaterally. The instrument is not the foundation of the recovery, that depends upon whether the relation of principal and surety existed. The fact that they agreed to and did become jointly bound with another to a creditor, is not inconsistent with the fact that they were jointly bound as sureties. *Craythorne vs. Swinburne*, 14 Vesey 160; *Taylor vs. Savage*, 12 *Mass. R.* 102; *Harris vs. Warner*, 13 *Wendell* 400; *Sesson vs. Barres*, 6 *Barb.* 199; S. C. 2 Com. 406; *Pintard vs. Davis*, 1 *Zab.* 634. The defendants offered to show that the Camden Ferry Company put into the hands of Kaighn and Cooper securities to indemnify them against their liability, which they surrendered without the consent of Paulin. They also offered to prove that the Ferry Company executed a mortgage to Kaighn, Cooper, Paulin and others for the sum of $30,000 to secure the persons named as mortgagees therein, for all sums of money advanced or to be advanced, and for all responsibility by them incurred for the Company pro rata, to the extent of thirty thousand dollars; that said mortgage was held by said Kaighn and Cooper, and was by them cancelled and discharged without the consent of Paulin, after the payment to Champion.

Were these offers relevant evidence; did they disclose any legal defence to the action?

It is said that the offer made did not amount to an offer to prove that Kaighn, Cooper and Paulin were sureties for the Ferry Company; that it did not appear that the Company was liable to Champion at all; that the plaintiff, defendant and Cooper absolutely assumed to pay the debt, not as sureties for the Company, but as principal debtors.

I understand the offer to have been to prove that these persons were sureties to Champion for the debt of the Ferry Company; at all events, it was a liability contracted for the Company at its request; the Company as to them was bound to pay the debt in their exoneration. That constituted the relation of sureties inter sese; each had his remedy against the Company for what he might be compelled to pay on the contract; each had his remedy against the other for contribution.

It seems well settled that sureties are not only entitled to contribution from each other, for monies paid in discharge of their joint liabilities for the principal, but they are also entitled to the benefit of all the securities which have been taken by any one of them to indemnify himself against such liabilities. The action for contribution rests not upon contract but upon the broad principle of equity, that in cases where there is an equality in the obligatiom there shall be equality in supporting it. Equality is equity in such cases, being equally bound they shall equally pay. 1 *Story's Equity*, 499; *Theobald on principal and surety*, *Ch.* 11, § 283; *Swain vs. Wall*, 1 *Chan. Rep.* 149. The surety may take collaterals from his principal to indemnify himself against his liability, and if he bring an action against his co-surety for contribution, his holding such collaterals will not bar his recovery. *Donce vs. Walley*, 2 *Well. H. & Gor.* 198; *Bachelder vs. Fiske*, 17 *Mass.* 464. But any collateral he may take will enure to the benefit of all the sureties; as soon as such collateral is taken by one of the sureties all the rest have an equal interest in it with himself. He has no right, without their consent, to deprive them of that which has once enured to their benefit. The proceeds of such collateral must be applied to the satisfaction of the joint debt.

In this case the collaterals were not only in law for the benefit of all the co-sureties, they not only enured for their benefit, but a portion of them were in fact for the benefit of Paulin by their very terms. The security was entrusted to two of the sureties for all; this was given up without the consent of Paulin. He was thus deprived by the act of the plaintiff of the indemnity intended by the principal debtor for his benefit. To give it up was to practice a fraud upon him if done without his consent for that purpose. The opening does not charge fraud in fact upon Kaighn and Cooper, nor does it state that the securities given up would have been sufficient to indemnify. For aught that appears they may have been of small value.

But the main question still remains to be settled, what is the effect of the relinquishment of these collaterals, the joint property of all the sureties, the precise value of which is unknown, without the consent of the joint owners. It did not change the liability of the Ferry Company to Paulin, if he had been compelled to pay the debt, nor did it in any way affect the right of Paulin to his action for contribution against Kaighn and Cooper, the liabilities growing out of the relation of co-sureties still remained the same.

When time is given by a valid, binding contract upon a sufficient consideration by the creditor to the principal debtor, the surety is discharged, because the original contract upon which he was surety is materially modified without his consent; the contract upon which he was surety no longer exists. *Bell adm. Martin*, 3 *Harrison* 171, *and cases there cited.*

In the case now before the court the act of Kaighn in no way affected the original contract of suretyship, as we have already seen. It is alleged that the act of Kaighn absolved Paulin from all liability to contribute to him, because he gave up securities to which Paulin had a right to resort for reimbursement: if the act had been fraudulent in fact there can be no doubt but that it would discharge Paulin from all liability to Kaighn. If Kaighn had received anything as the liquidated price or value of the securities, he would, as we have seen, been obliged to credit it upon the debt paid by him. If he had retained them he would have done so for the benefit of all the sureties.

In the case of *Woodruff vs. The Insurance Co.* 2 *Dutch*, 557, Chancellor Williamson delivering the opinion of the Court of Errors, seems to have held that where an insurer had a right of subrogation to certain collaterals held by the insured, that if the insured relinquished any of them, he must deduct their value from the insurance money. What was said by the learned Chancellor, was said arguendo and was unnecessary for the decision of the case. If he meant to be understood as holding that this deduction could be made in a court of law in an action for the insurance money, either by way of set-off, payment, or forfeiture pro tanto, I cannot yield my assent to the doctrine; it is utterly without support, either upon principle or authority. A court of law cannot thus convert a mere breach of an equitable right without express proof of injury occasioned thereby, and the amount of that injury into a debt to be set off or treat it is as a payment made.

If the securities still remained in the possession of Kaighn, notwithstanding that, he would still be entitled to contribution and to maintain his action for it, and Paulin, upon payment of his contributive share, could then, by bill in equity, enforce his right of subrogation to these securities; or if they had been given up without his consent, and the right of subrogation be a right which can be recognized in a court of law, bring his action on the case for the damages sustained by the violation of that right. These damages are necessarily unliquidated, and as such not the subject matter of a set-off, and *a portion* could not be treated as payment. *Smock vs. Warford*, 1 *Louth.* 306; *Parsons on Contr.* 245.

I am of opinion that the relinquishment by Kaighn of the securities held by him without fraud, although without the consent of Paulin, did not discharge the liability of Paulin to contribution.

The defendant opened a further defence, in substance, that Kaighn, with others, had signed an agreement, not under seal, dated the 29th of December, 1855, by which the signers agreed to receive in lieu of their respective debts certain bonds to the amount thereof, secured by a mortgage upon the property of the Company upon certain terms therein expressed, and that certain creditors who had signed the agreement did receive the bonds mentioned in it, and that it was part of the agreement that all of the indebtedness of Kaighn, Cooper and the other creditors who signed it, that time should be given upon such indebtedness, funded, as aforesaid, and that Kaighn was bound to fund the indebtedness for which this suit was brought.

One of the terms upon which this agreement was to be binding upon the signers was, that all the other creditors of the Company, except certain second mortgage creditors, would accept these bonds in lieu of their indebtedness, except certain small creditors, who were to be paid after giving a credit of six months.

The defendants did not offer to show that all the creditors signed this agreement, on the contrary, Paulin himself never signed it and was not bound by it.

It was an agreement not amounting to a release. Its terms were never complied with. Kaighn never was bound to fund his indebtedness under its provisions. At the most it was a mere agreement to accept bonds in lieu of his claims upon the Company upon certain conditions. The debt of the Company to Kaighn was never either paid or released by force of that agreement.

There was no valid agreement to give time to the Company; none which the Company were ever in a condition to enforce against Kaighn; his right against them remained unchanged. Paulin's remedy against the Company was in no way changed by the action of Kaighn, the whole arrangement remained incomplete, and became, by non-compliance with its stipulations, a dead letter.

The opening of the defendants, in regard to that agreement and the action of the plaintiff under it, fall far short of showing a legal defence to the action.

There can be no doubt but that if that agreement to fund this debt had been signed by all the necessary parties, and the conditions upon which it was to be binding had been performed, so that it was capable of being enforced by the Company against all who signed it, it would have materially changed the position of Paulin, but these events never happened; the agreement never did become binding upon any of the signers, and nothing done under it by Kaighn ever affected his rights against Paulin.

NEW JERSEY COURT OF ERRORS AND APPEALS.

STEPHEN F. PAULIN,
vs.
CHARLES KAIGHN. } *Assignment of Errors.*

Afterwards, to wit, on the third Tuesday of November, in the year of our Lord, one thousand eight hundred and fifty-nine, before the judges of the Court of Appeals of the last resort in all causes, at Trenton, in the State of New Jersey, comes the said Stephen F. Paulin, by Thomas H. Dudley, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment for the said Charles Kaighn by the Justices of the Supreme Court, before whom the cause was argued, there is manifest error in this, to wit:

1. That the said Stephen F. Paulin offered to prove

upon the trial before the Circuit Court, that the debt alleged to have been paid, to recover which, the action was brought, was a debt of the South Camden Ferry Company, and that his liability and undertaking was that of a surety only, and not as a principal, which offer was refused, and the said Stephen F. Paulin was not allowed to prove the same, and the said Supreme Court have, by their decision, affirmed the ruling of the Circuit Judge.

2. There is error also, in this, that the Circuit Court refused to allow the said Stephen F. Paulin to prove before the Circuit Court and jury, the fact that the South Camden Ferry Company had placed in the hands of said Charles Kaighn sufficient securities—bonds and mortgages—to indemnify him against the very liability upon which this suit was brought, (the said Stephen F. Paulin being only a surety for said Company,) and that said Charles Kaighn gave up and delivered to said Company the said securities without the consent of the said Stephen F. Paulin; and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

3. There is also error in this, that the Circuit Court refused to permit the said Stephen F. Paulin to prove before the court and jury, that the South Camden Ferry Company executed to the said Charles Kaighn and Stephen F. Paulin and others, a mortgage for thirty thousand dollars, to indemnify and secure the said Charles Kaighn and the said Stephen F. Paulin for this very money and debt for which this action is brought, the South Camden Ferry Company being the original debtor, and said Stephen F. Paulin being security. And that said Charles Kaighn held the said mortgage in his hands, and cancelled and discharged the same without the consent of the said Stephen F. Paulin; and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

4. There is error also, in this, that the Circuit Court refused to permit the said Stephen F. Paulin to prove before the court and jury, that the South Camden Ferry Company had made, executed and delivered to the said Charles Kaighn twenty bonds for five hundred dollars each, secured by a mortgage, for and as security and indemnity to said Charles Kaighn for this debt the said Company owed him and Kaighn, and for which said Stephen F. Paulin was and is only a security for said Company, and that said Charles Kaighn had delivered up and cancelled the said bonds secured by said mortgage without the consent of the said Stephen F. Paulin; and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

5. There is also error in this, that the Supreme Court, by their decision and judgment, decided and held that the cancelling and relinquishment of securities held by Kaighn to pay this debt, and to indemnify the parties on account thereof, without the consent of the said Stephen F. Paulin, could not be given in evidence as a matter of defence to this action, and did not discharge the said Paulin from his liability to contribute in this action, either in whole or in part.

6. There is also error in this, that the Circuit Court refused to allow the said Stephen F. Paulin to prove before the court and jury, that said Charles Kaighn had compounded the debt, for which this action is brought, with the South Camden Ferry Company, the original debtor, the said Stephen F. Paulin, being only security for said Company, and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

7. There is also error in this, to wit: that the Circuit Court refused to allow the said Stephen F. Paulin to prove before the court and jury, that the said Charles Kaighn had entered into an agreement with the South Camden Ferry Company, agreeing to give said Company

time to pay the said debt, for which the said action is brought, and for which said Stephen F. Paulin was and is only a surety, without the consent of the said Stephen F. Paulin, and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

8. There is also error in this, to wit: that said Circuit Court refused to allow the said Stephen F. Paulin to prove before the court and jury, that said Charles Kaighn had agreed to take from the South Camden Ferry Company, the principal debtor, (said Stephen F. Paulin being only surety) the bonds of the South Camden Ferry Company payable in five years, secured by a mortgage for the payment of the debt, for which this action is brought; and the said Supreme Court, by their decision, affirmed said ruling of the Circuit Court.

9. There is also error in this, that the said Charles Kaighn did not prove that he had made or demanded of Stephen F. Paulin for payments or contributions before he brought his said action.

And the said Stephen F. Paulin prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

THOMAS H. DUDLEY,

Attorney for Plaintiff in Error.

Whereas, proceedings are now pending in the Court of Chancery of New Jersey, having for their object the appointment of a receiver and sale of all the property of the South Camden Ferry Company, for the benefit of its creditors. And, whereas, said property is encumbered by a first mortgage, all of which has been satisfied but about six thousand dollars, and it is believed that the lots of the Company, not essential to ferrying purposes, are amply sufficient to discharge said mortgage. And, whereas, the property of said Company, besides said lots, is believed to be worth one hundred thousand dollars, and that the whole amount of debts, above said mortgage debts, do not exceed about ninety-five thousand dollars: and whereas, creditors to the amount of about twenty-five thousand dollars now hold subsequent mortgages and encumbrances on the property of the Company, which secures their payment in full, but are willing to accept in lieu of their indebtedness, bonds for the amount thereof, secured by a second mortgage on all the property of the Company, except said lots, provided, that all the other creditors of said Company will accept in lieu of their respective indebtedness, bonds secured by a subsequent or third mortgage on said property; except that where their debts do not amount to one hundred dollars, they will give a credit therefor for six months from the first day of January, A. D., 1856:

Now we, the creditors of said Company, do agree to accept in lieu of our respective debts against said Company, bonds to the amount thereof secured by a mortgage upon the said property of the Company, except said lots, provided, there shall be no prior mortgages or incumbrances, except the residue of the aforesaid first mortgage of twenty-five thousand dollars—said bonds to bear date January 1st, 1856, interest six per cent., payable half-yearly, and principal payable in five years. Except debts less than one hundred dollars, instead of bond to give credit for six months. Upon this arrangement being effected, the proceedings in Chancery to be discontinued. Dated December 29th, 1855.

Richard W. Howell att'y of John C. Clark,
Edward H. Saunders,
R. L. Knight,
T. Birdy,
James Tuttull,
J. M. Cooper,
Charles Kaighn,
Wm. R. Kaighn,
Wm. W. Juvenal,
Isaac K. Wright,
I. P. Morris & Co.,
William Champion,
(Doughten, Wilson & Co. per H. B. Wilson,)
Cooly & Somers,
Samuel A. Reeve.