

## ANTHONY vs. PERCIFULL.

The Bank of the State recovered judgment on a note in which R. was principal, and A. and P. securities. P. paid part of the judgment to the Bank, and gave his note for the balance—HELD that he thereby extinguished the judgment, and might sue his co-security for contribution.

HELD further, that R., having given an indemnity to his securities, did not deprive P. of the right to sue A. for contribution.

*Writ of error to Pulaski Circuit Court.*

Assumpsit by Percifull against Anthony, for contribution as co-security of Royster, determined in the Pulaski Circuit Court in November, 1847.

Tried on the general issue, and verdict and judgment for plaintiff, for \$153.66 damages. Motion for a new trial overruled, and defendant<sup>t</sup> excepted and set out the evidence.

Plaintiff proved, that, on the 30th April, 1845, the Bank of the State recovered judgment against Royster, defendant, and himself, for \$1182.14, including debt, damages and costs, on a note in which Royster was principal, and plaintiff and defendant securities. That, on the 1st March, 1847, plaintiff settled the judgment with the Bank, by paying part of the amount in the bills of the Bank, and giving his note, with approved security, for the balance. That at the time he so paid the judgment, the bills of the Bank were worth twenty-five cents to the dollar.

Defendant proved, that, in February, 1841, Royster executed to

him and plaintiff a deed of trust upon slaves and other property, to secure them against loss, as his securities upon the note, on which the bank had afterwards obtained the said judgment. That, on the 14th January, 1845, plaintiff and defendant filed a bill in chancery against Royster, to subject the property mentioned in the deed to the payment of said debt. That the chancellor ordered the property to be placed in the hands of a receiver, and held, hired out, &c., subject to the determination of the suit, and that the case was still pending. That, on the 19th March, 1847, plaintiff brought suit against Royster for the whole amount of said judgment so settled by him to the bank, as security as aforesaid, which suit was still pending in the Pulaski Circuit Court. Defendant also proved, that no entry of satisfaction had been made upon the record of said judgment, so settled with the bank by plaintiff. This is the substance of all the evidence given on the trial.

Defendant brought error.

HEMPSTEAD, for plaintiff.

WATKINS & CURRAN, contra.

OLDHAM, J. The new note given by Percifull as principal, and others as securities, and the payment of the balance due and costs of suit in cash, operated as an extinguishment of the judgment obtained by the bank against him and Anthony as the securities of Royster. *Witherly v. Mann*, 11 *J. R.* 513. After the judgment was discharged by Percifull, Anthony became liable as co-security, to contribute his proportion of the debt. Royster having given an indemnity to his securities, did not change the liability. *Rochester v. Fish*, 17 *Mass.* 464. Judgment affirmed.