

to be administered under a creditor's suit, they would clearly suggest the propriety of allowing each creditor to come in at once, according to the terms of his contract, for the whole amount of his claim then due; and of calling on him when so satisfied, to assign his securities to the suing creditors, to the heir, or devisee, or to the executor or administrator, or to suffer them to take his place for so much as he had been satisfied for their own benefit or for that of the legatees or next of kin of the deceased.

But the principles of this court are essentially different. In bankruptcy, the creditor himself makes choice of the security, from which he will obtain satisfaction, and the court, so far from lessening the obligation of any of his securities, or driving him from any one of them, will assist him in enforcing his contract to the extent of its jurisdiction, so as to insure to him one complete satisfaction; but here, the court officiously interferes, and throws upon the creditor the burthen of shewing whether the deceased was principal or surety, or co-surety; and then, unless he also proves, that the co-surety or principal debtor, is insolvent, directly contrary to the principles which prevail in bankruptcy, pushes the creditor partially or entirely away from that portion of his security by which the deceased's estate might have been made liable. (a)

The doctrines of bankruptcy sustains the obligations of the creditor's contract in all its bearings; the principles of this court strike off a large proportion of its force on the very eve of fruition, and at the moment when the means of a full or partial satisfaction are shown to be immediately at hand. It is evident, therefore, that nothing can be found to sustain these principles of this court in any of the rules applicable to cases of bankruptcy.

It might perhaps, have been urged, that the peculiar circumstances under which the rights of a creditor, and the liabilities of his debtor are presented in a creditor's suit, calling for the administration of the real assets of such deceased debtor, render it necessary to depart from those rules so clearly applicable in a different state of things, and require the adoption of these principles of this court, in order to do equal justice to all whose interests have been brought into conflict by the death of the debtor.

It is certain, however, that the mere act of God, as the death of the debtor, does not change the rights of the creditor; nor can they be affected by any change, from that cause, in the mental

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(a) *Ex parte Kendall*, 17 Ves. 519.