difficulty as it best can: and then if that difficulty cannot be overcome, the fault does not rest with the court. Mar. 25, 1818.

ELECTION.—MISTAKE.—PURCHASER FOR VAL. CON. WITHOUT NOTICE.—LENGTH OF TIME.—ADMISSIONS IN ANSWERS, &c.

Here then I close, and I have only further to say with respect to this case, that I have given it the utmost attention and consideration in my power, and done every thing that depended on me to make sure of my coming to a sound and accurate conclusion.

Decree AFFIRMED.

IRELAND.

APPEAL FROM THE COURT OF EXCHEQUER.

GOVERNOR AND CO. OF THE BANK OF IRELAND, and others } *Appellants.*
BERESFORD, and others—*Respondents.*

COMMISSIONERS under an act of parliament, for giving money by way of loan to merchants, &c. make an advance for A. who, along with B. as his surety, becomes bound to repay within a limited time. A. obtains from the Commissioners several extensions of the time of payment without the privity or knowledge of B. his surety, and at length becomes bankrupt without having paid. Bill to restrain proceedings at law against the surety; the obligation being discharged upon the indulgence granted without his privity or knowledge. Decreed accordingly, and the decree affirmed in *Dom. Proc.* Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

BY an act of the Irish parliament of 33 Geo. 3. commissioners were named, who were empowered to advance certain sums to merchants, traders, and manufacturers, upon securities, the sums to be advanced by the Bank of Ireland, and to be made good by parliament. Thomas Blair, an iron manufacturer in Dublin, applied, about the 30th January, 1800, to the commissioners for a loan, offering John Claudius Beresford, Archibald Redford, and Richard Sayers, all of Dublin, as his co-securities. It was determined to advance to Blair a sum of 10,000*l.*; and a bill of exchange, a security not authorized by the act, dated 7th Feb. 1800, to that amount, was drawn by Blair on Beresford, and accepted by him to the order of Redford, and indorsed by him and Sayers, payable on the 1st of November following. A bond, with warrant of attorney, was also executed by Blair and his sureties.

Blair afterwards obtained several extensions of time, for the payment of the above sum, and at length became bankrupt, without having paid. Judgments had been entered upon the bond and warrant of attorney, and the governor and company of the Bank were about to levy the 10,000*l.* from the sureties, when they filed their bill in the Exchequer Court against the Governor and Co. of the Bank, the secretary to the commissioners (in whose name the commissioners were, under the act, to sue and be sued) and the Attorney General, stating that the extensions of credit were given without their privity and concurrence, and that, they being

merely sureties, were by such indulgence discharged; and praying for a perpetual injunction to restrain proceedings at law against them on the ground of this obligation. The Defendants answered, that the sureties had notice of the indulgence, and that, even if they had not, the extensions were not of a nature to discharge them. An issue was directed to try whether the Plaintiffs had notice, but the Defendants declined the trial, not being able to prove notice.

Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

The Court of Exchequer, in 1814, decreed according to the prayer of the bill. And from this decree the Defendants appealed.

At the hearing in the House of Lords, in March, 1818, the cases of *Walwyn v. St. Quintin*, 1 Bos. Pul. 652.; *Nesbitt v. Smith*, 2 Bro. Ch. Ca. 179.; *Rees v. Berrington*, 2 Ves. 540.; and *Boultbee v. Stubbs*, 18 Ves. 20.; were cited; and the case of *Fentum v. Pocock*, 5 Taunt. 192. decided on the principle that, neither time given by the holder to the drawer to pay, nor knowledge of the holder when he took the bill that the acceptance was merely for the accommodation of the drawer, discharged the acceptor, and that nothing could discharge him but payment or a release, was particularly relied on by the Solicitor General on behalf of the Appellants.

Lord Eldon, (C.) The proceedings in this case are proceedings on a bond and warrant of attorney to confess judgment, executed by Blair and the Respondents, under the circumstances mentioned in the pleadings. But the bond and bill of exchange,

Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

mentioned in the cases, are not produced in this House, nor copies of them; and yet it is absolutely necessary that we should have them or copies of them; 1st, because it is always dangerous to decide without seeing the instruments on which the cases depend; and 2dly, because there is hardly any case from Ireland, in which it not necessary to call for this supplemental information.

The case is the more remarkable here, and it is the more necessary that we should see these instruments, as there appears no authority in the act of parliament for taking a bill of exchange; and when it is made a question, and the subject of argument, whether the bill of exchange was not the principal security, and the bond the collateral security, it becomes still the more reasonable and proper that we should see them; for though the bond is a security of a higher nature, yet if in its recital it refers to the bill of exchange as the principal security, although the one is a specialty, and the other only a simple contract, the specialty may, perhaps, be only the collateral security.

And then you will have to consider the effect of the commissioners taking a bill of exchange as a security when the act says that they shall take only securities under seal; and it cannot without a great deal of reservation be argued with success that they shall have the benefit of such a security under the act, when the act authorizes none such to be taken.

Then in this bill of exchange J. C. Beresford is the acceptor, and if the bond is a collateral security, then you will have to consider what is the effect of the circumstance that, though Beresford is

the acceptor, still the consideration was given to Blair, and that with the knowledge of the commissioners. First, then, it will be to be considered in what situation Blair and Beresford stand with respect to the commissioners, and each other; and secondly, in what situation those who have indorsed this bill stand to justify this decree.

Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

The Solicitor General says, that the Court of Common Pleas have determined that although one receives a bill of exchange with the knowledge that it is an accommodation bill, &c. yet the acceptor is bound to pay, and this decision took place when Sir James Mansfield was Chief Justice, and the present Chief Justice (Sir Vicary Gibbs) was one of the puisne Judges. If that went on this principle, that with a view to the benefit of commercial intercourse you would not inquire into the knowledge of parties; but that all should be taken according to the natural effect of the bill, as appearing on the face of it, I think that a most wholesome principle. And it will not be surprising that I, who have so often contended that you ought always to look only at the natural effect of a bill of exchange, and never to hold that the acceptor was not first liable, should approve of that principle. And yet we have been so often misled in Chancery as to what had been considered as the law on that point by the Court of K. B. as to have held perhaps a dozen times, that the consequence was contrary to what has been determined by the Court of Common Pleas, supposing the principle to be that which I have mentioned.

Fentum v. Pocock, 5 Taunt. 192.

Then it is also necessary that we should see this bond, not only to be certain as to the obligations of

Mar. 13, 1818.

SURETY.—BILL OF EXCHANGE, &c.

the parties with reference to the law, as between principal and surety generally, but as arising out of this Irish act of parliament. In the common case there can be no doubt with respect to a bill of exchange, but that the demand ought first to be made against the acceptor, and he not paying, and notice being given to the drawer, he then became liable. And with respect to principal and surety in a bond where the creditor enters into an agreement or binding contract with the principal debtor, to give him further time without the concurrence of the surety, the surety is discharged; as the creditor by his new contract destroys the benefit which the surety had under the former contract, as he puts it out of his own power to make good his engagement to enforce immediate payment from the principal, when the surety would have a right to require him to do so. But special circumstances may vary even that, as in the case in 18 *Ves.* which I ought not to rely upon as authority, being a decision of my own, but which was sanctioned by a decision of Lord Thurlow. It was said there, that unless the alteration of the time and mode of payment extended to the surety, so as to prevent his enforcing immediate payment, the contract could mean nothing. But the parties must be allowed to judge of that; and there may be many cases in which individuals may think, that having obtained delay as against the creditor, they may leave the matter open as to the surety, trusting to his feelings that he will not distress them.

Boultbee v. Stubbs, 18 Ves. 20.

This case is to be viewed with reference to all these principles. It is also to be considered with

reference to this act of parliament. If the act gives the Crown process to the surety in the event of their being called upon to pay, and if they were not placed in that respect in a worse situation, that is one view of the case: but if there are clauses in the act requiring the commissioners to sue without delay; and the commissioners being so required to sue without delay, have put that out of their own power, then it will be to be considered whether all are to be taken as being parties to this act of parliament; and whether the commissioners, being under an obligation by the act to sue without delay, could take the benefit even of passiveness as against the surety.

Mar. 13, 1818. SURETY.—BILL OF EXCHANGE, &c.

But I give no final opinion upon these points till we have authentic copies of these instruments, that we may take care to be accurately informed of the nature of the instruments to which we are called upon to give legal effect.

Decree afterwards AFFIRMED. Judgment.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

GRANT—*Appellant*.
CAMBPELL and others—*Respondents*.

A. gives a cautionary obligation to B. and engages to transfer and assign to him certain property in security, to en- May 1, 1818.