the argument supposes, that he had, or might have, a survey or grant to offer, in addition to the warrant of survey. The words refer to the statement, that the plaintiff claimed as devisee of Mr. Collell, and mean, that after offering Collell's title, or the warrant of survey granted to Collell, as the first link in the chain of his the (plaintiff's) title, he intended to go on and complete the chain from that first link, by proof to establish the second link, namely his title as devisee. This is evident, *from what is afterwards stated, that he offered "no other title than the order of survey." Again, [*603 the court does not reject the order of survey, and exclude it altogether as evidence; but assuming that the paper offered is evidence of the party being proprietor of the order of survey, the court decided, that such order of survey was not title to recover on, in the action of ejectment. It was a decision, not upon the admissibility of the order of survey as evidence, but upon its legal effect, when admitted.

It is not easy to comprehend the object of the latter statement in the bill of exceptions, "that the court decided the signatures, &c., ought to be proved." It does not say, they were not proved. It does not state that the paper was rejected, because the signatures were not proved. But if the bill of exceptions had so stated, we think, the exception, on that ground, could not be maintained. The warrant of survey does not appear to have been recorded; it purported to be the act of foreign officers, and was not verified by the great seal of the nation to which they belonged, or any other authoritative official seal, which was either known, or could be proved. The court and jury could not be presumed cognisant of their signatures. How, then, could the genuineness and authenticity of the document be proved, otherwise than by proof of the signatures of the officers by whom it purported to be made? It was not of that class of public instruments which prove themselves, and, consequently, it ought to be proved in the mode ordinary instruments are required to be verified by the rules of evidence.

Judgment affirmed, with costs.

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*Davidson and another, Plaintiffs in error, *v.* Taylor, Defendant in error. [*604

Bail.

The bail is fixed by the death of the principal, after the return of the *ca. sa.* and before the return of the *scire facias*, and the bail is not entitled to an *exoneretur* in such a case.

January 31st, 1827. This case was argued by *Jones*, for the plaintiffs in error; and by *Coxe*, for the defendant in error.

Marshall, Ch. J., delivered the opinion of the court.—This is a case of bail, and is to be decided by the principles of English law, which the case finds constitute also the law and practice of Maryland on the subject. According to these principles, the allowance of the bail to surrender the principal, after the return of a *ca. sa.* is considered as a matter of favor and indulgence, and not of right, and is regulated by the acknowledged practice of the court. To many purposes, the bail is considered as fixed, by the return of the *ca. sa.* But the courts allowed the bail to surrender the principal, within a limited period after the return of the *scire facias* against them, as matter

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of favor, and not as matter pleadable in bar. In certain cases, even a formal surrender has not been required, where the principal was still living, and capable of being surrendered, and an *exoneretur* would be entered, and the principal discharged, immediately upon the surrender. But the rule has never been applied to cases where the principal dies before the return of the *scire facias*. In such a case, the bail is considered as fixed by the return of the *ca. sa.*, and his death afterwards, and before the return of the *scire facias*, does not entitle the bail to an *exoneretur*. The plea is, therefore, bad ; and the judgment is affirmed, and six per centum damages and costs.

Judgment affirmed.

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*605] *Scott and others, Appellants, *v.* Shreeve and others, Respondents.

Relief against judgment at law.

Relief in equity against a judgment at law, upon certain bonds given for the indemnity of the obligee, as indorsee of notes drawn by the obligor, the consideration having failed.

The assignee of such bonds takes them subject to all equities existing between the original parties.

Appeal from the Circuit Court for the District of Columbia.

January 13th, 1827. This cause was argued by *Swann*, for the appellants ; and by *Taylor*, for the respondents.

January 20th. Thompson, Justice, delivered the opinion of the court.—This case comes up by appeal from the circuit court of the district of Columbia, for the county of Alexandria. The object of the bill filed in the court below, was to obtain relief against a judgment at law, recovered against Shreeve, the appellee, upon certain bonds given by him to Elisha Janney, and which bonds had been assigned to the appellant, Scott, as his trustee, for the benefit of his creditors. In the progress of the cause, it was deemed necessary by the court, that the Bank of Potomac should be made a party defendant. A supplemental bill for that purpose was accordingly filed, and the bank made a party.

The first inquiry that seems naturally to arise is, how the case stood as between Shreeve and Janney, the orginal parties to the bonds. The material facts upon which the complainant in the court below relied for relief, are not denied by the answer of Scott. From the bill and answer, and exhibits in the cause, accompanied by a written agreement between the solicitors of the parties, before the cause was set down for argument, the leading facts in the case appear to be—that some time in the year 1808, Shreeve failed in business, being indebted to the Bank of Potomac in the sum of $6300, upon
*606] a note discounted at the bank, *and upon which Janney was the indorser ; for whose security Shreeve transferred to him and John Roberts, who was also his indorser upon other notes, certain property, at a valuation, but which, upon settlement of accounts between them, fell short of Janney's responsibility to the bank upon his indorsement, $1980.88 ; for which, by agreement between the parties, Shreeve gave to Janney five bonds, payable in five annual instalments, and Janney was to pay the note to the bank, upon which he was the indorser. The note, however, was con-