

same would extend, unless some new arrangement had been entered into with respect thereto; of which I quite agree with the Barrister, there is not the slightest evidence. The agreement and the law so appropriated it, therefore on the 28th of April, 1843, when both parties admit the par value of the stock, and £53 8s. of dividends thereon were placed to the credit of J. M. Wilmot, on account. The note for £1,427 5s. 6d., with the interest due on it, was paid, and the balance of £257 8s. 8d., became a payment on account of the note for £610 11s. 3d., being the most favorable appropriation for the Bank. When, therefore, it was made apparent to the Barrister, in taking the account of the amount due on the mortgage C, that a portion of one of the notes secured by it had been discharged by another fund, I think he was acting strictly within the order of reference, and quite right in reducing from the date of such discharge the charge against the mortgaged premises to that amount.

The exception argues that Mr. R. D. Wilmot might be entitled, by a proper suit to be brought for such purpose, to have the Bank stock, or, I presume, the balance, after paying the first note, retransferred to him; but he sets up no such claim, and urges no objection to the view of the Barrister, and he could not, successfully, in my opinion, for the simple reason that it has been appropriated precisely, in accordance with the terms upon which he transferred it.

I therefore am bound to sustain the report on this point also, and overrule the exception. The result of my ruling on the two first exceptions, disposes of the third and fourth exceptions, which must likewise be overruled.

I regret much the delay and expense to which the parties have been put in this tedious and complicated litigation. I cannot but think that much trouble and expense would have been saved to all parties, had the records of the Bank exhibited, in a plain, clear manner, the several agreements entered into with Mr. Wilmot; and had the books of the bank contained accounts, shewing each transaction as it really was: an account of general indebtedness, when there was such, with only credits legitimately entitled to go to reduction of such indebtedness, and a separate account of each special security, with only the credits which belonged to it, and which should go to no other, instead as they appear to have been all carried into one general account, without any reference to their special application.