

the Bank and him, his stock thus credited to him should not be allowed by way of deduction or set off, and the balance be considered the true debt due from him to the Bank.

"On that point the three arbitrators were unanimous of opinion, that the defendant's stock actually paid in, and not reimbursed, should be allowed to him by way of set off.

"In the present act, stock creditors are not distinguished from other bank creditors, but placed on the same footing. They are entitled equally with bill holders and certificate holders, to exhibit their claims and share in the dividends. The Commissioners cannot legally exclude or postpone them.

It results as a necessary consequence that a stock creditor is entitled to the same means of obtaining payment. He may therefore, as one of the means, set off his stock credit in part satisfaction of any debt due from him to the Bank, precisely as he might set off a note or bill, or any other evidence of a bank debt due to him, bank credits all are, or as the Commissioners have expressly declared, should be placed on precisely the same footing. On that fair and recognised principle the award was founded.

Another objection which you make to the award is, that it allows the defendant to pay by instalments. On this point I beg leave to state, that as the defendant offered to pay in the manner and at the times specified in his contract, but was prevented by the refusal of the Commissioners then representing and managing the Bank, so that there was no breach of contract on his part, all three of the arbitrators agreed that he ought now to be allowed a reasonable length of time for paying the balance that might be found due, and a majority of the arbitrators, as you see by the award, thought he was entitled to the same proportionable instalments as was stipulated in his original contract.

"It is a settled principle of law that if any party, to or for whom a specific contract is to be performed, by the delivery of specific articles, or the doing of any specified services, prevents the performance by declaring that he will not accept it, or by any other words or acts such refusal or prevention, discharges the party thus prevented, from any further performance, and is a legal bar to the preventing party against any action for the non performance.

The Defendant's case comes directly within that well known rule of law. This offered performance of his contract having been refused by the Commissioners, their successors, the Plaintiffs, had at law no right of action against him, and could now only come in equity to claim any performance whatever of the contract, and that which is awarded, appeared to be equitable, being in respect both to the time and amount of the instalments, conformable to the terms of the original contract.

[REMARK—On reading the above, it is almost impossible to believe