

the public records for the purpose of giving a fictitious credit to Hancock and Mann, it would seem impossible to support it as against subsequent creditors, upon any principle recognised in courts of equity, and although Dawson and Norwood, the mortgagees, and the only defendants who could speak with any authority in regard to the motive, deny the motive charged in the bill, they do not deny that it was withheld from the record by design ; and perhaps that design is so much in conflict with the policy of our registration acts, as to subject the instrument to all the objections which would exist against it, if the design charged in the bill had been confessed. It is also worthy of observation, that though the mortgage of the 16th of June, 1846, recites that the preceding one of April, was omitted by accident to be recorded, it is no where pretended that accident prevented the recording of that of the 31st of July, 1845.

The next question to be considered, relates to the dividend which the trustees of Jones are to receive, upon the notes held by them of Hancock and Mann, dated after the mortgage of April, 1846, and which were received in exchange for the notes of Jones, under the arrangement spoken of in the proceedings.

It appears by the answer of Winn and Ross, that Jones suspended payment in or about the month of July, 1846, and about the 26th of October of the same year, assigned to them all his property, in trust, to pay his debts ; and that in the year 1847, he applied for, and obtained the benefit of the insolvent laws ; the defendants Winn and Ross being appointed, and having qualified as his permanent trustees ; and it further appears by the same answer that many of the notes of Jones so given in exchange, are yet outstanding, and unpaid ; and it is yet impossible to determine, as it would seem, what the estate of Jones will divide among his creditors ; though it is understood the deficiency will be large.

Under these circumstances, the question is, shall the trustees of Jones be allowed to receive out of the fund, a dividend upon all the notes of the mortgagors held by them ? or shall they only be entitled to the extent, to which the exchange, or cross paper of Jones has been paid ?