

165 relative to Thompson's right and title to the money which he *acknowledges he has received from Heyland, are as fully before the Court now as they can be at any future stage of the case, or at the final hearing. The only opening for any doubt or hesitation is as to the true intent and meaning of those deeds. Let us then consider them carefully.

By that of the 20th of November, 1810, it appears, Heyland had become largely indebted to sundry persons for goods purchased of them; that, to secure the payment of those debts, he had drawn bills on the firm of William & John Bell & Co., which they had accepted: who might, therefore, if they paid those bills, become the creditors of Heyland, in place of those of whom he bought the goods. After which the Bells transferred and made over this eventual and uncertain claim of theirs upon Heyland, to Thompson. In consideration of which, Heyland bound himself, by this contract, to pay to Thompson such balance as might be found to be due from him, Heyland, to the Bells, on account of those transactions, or otherwise, upon the fate of the bills being known, and a fair statement of accounts between Heyland and the Bells.

This seems to be the clear sense and substance of this first agreement. From which it appears, that Thompson was put into the place of the Bells; and, consequently, to the extent of their claim upon Heyland, became his creditor; and, as such, had a right to the funds which were placed in his hands under that agreement. But it is doubtful, from the answer, whether Thompson ever received any thing or not under this first agreement exclusively; and, even supposing he had, the amount not being specified, the Court could make no order on this motion respecting it.

It appears, however, that the sum specified in the Exhibit E, and which is distinctly acknowledged to have been received, came to Thompson's hands after the execution of the deed of the 8th of January; and, consequently, must be controlled and regulated according to that contract, and not the first deed of the 20th of November. Hence it becomes necessary to proceed directly to the consideration of the second agreement, dated on the 8th January, 1811.

This contract, after a recital nearly word for word the same, and in sense entirely the same as the first, proceeds to declare, that, in consideration of the premises, Heyland is held bound to pay to Thompson such balance as might be found due from Heyland to the Bells on account of those transactions, or otherwise, up to that time; that Heyland will immediately proceed to account with and *pay to Thompson, the amount of the aforesaid acceptances
166 in the same manner as if it had been ascertained they had been duly paid by the Bells; that on all those payments, Heyland was to be allowed the current exchange; and, further, that Thompson should indemnify Heyland, to the amount paid into Thompson's