

But the contract informs us, that the payment was to be made, "in bonds, notes, and other claims, indorsed by C. Dorsey, Esq.;" and also that Dorsey expressly says, "I am responsible for their eventual solvency." The fair, clear sense of these expressions removes every difficulty. Dorsey was to have the privilege of

**358** \* paying out of a designated fund, to be placed in the hands, and at the disposal of Campbell & Ritchie; but he was to warrant, that, with due and proper diligence on their part in endeavoring to make it available, it would be ultimately productive to the whole amount of the purchase money. It does not appear, that Campbell & Ritchie are chargeable with any want of diligence in endeavoring to collect the money due on the *choses in action* transferred to them. *Boyer v. Turner*, 3 H. & J. 285.

It would seem, from the expressions of the contract, that Dorsey was to be allowed a reasonable time to assign, and deliver to Campbell & Ritchie, or their agent, *choses in action*, out of which they were to collect the amount stipulated to be paid to them; but that time has elapsed; and indeed, Dorsey, by bringing this suit has virtually waived the privilege of referring the defendants for payment to any *choses in action* in addition to those he had already transferred to them.

This case, then, stands thus:—Dorsey must be charged with the sum of fourteen hundred and sixty-two dollars and fifty cents with interest from the eighth day of June, eighteen hundred and fifteen; first deducting therefrom the amount of the incumbrances on the land; that is, the judgment against Anderson, the former owner, and also the taxes due when Dorsey got possession. Dorsey is then to be credited with the sums actually received by Campbell & Ritchie from the *choses in action* transferred to them. And, since the object of this mode of payment was merely to prevent Dorsey from being called on until Campbell & Ritchie had used every proper exertion to make the specific funds available, Dorsey is only to be accredited with the net proceeds of the *choses in action* received by Campbell & Ritchie, or their attorney, after allowing every legal discount or set-off, and expense of collection on each one. No expense or charge, however, is to be allowed for paying over any money so received, from the attorney of Campbell & Ritchie to them. But the credit is to be given to Dorsey as a payment on the day on which such proceeds were received, either by Campbell & Ritchie, or their attorney. If any of the debtors chargeable by the *choses in action* assigned by Dorsey, have been ascertained to be wholly or partially insolvent, he must be charged to that amount.

With these explanations and determinations as to the principles  
**359** \* of this case, it is hereby referred to the auditor, with directions to state an account accordingly, preparatory to a final decree.