

which alone this stock can be transferred, as the bank interprets this clause of its charter, never can be complied with. Or suppose the debtor himself be living, but insolvent and utterly destitute of the means of satisfying the claim, then, according to the position of these defendants, no transfer could be made, and the stock standing in the name of the insolvent, with its accumulating dividends, must be locked up for ever, dead and useless to every one.

Rejecting, therefore, those constructions of this clause which lead inevitably to the grossest injustice, I consider it as intended merely to give to the bank an additional security, to the value of * the stock so held, against its delinquent debtor. The security, which arises by operation of that clause out of such a **397** state of things, must be considered as a lien upon, or pledge of the stock of the debtor to the bank, who must be permitted to stand or proceed as a mortgagee in all respects whatever. *Union Bank v. Laird*, 2 *Wheat.* 390. Considering the bank as a mortgagee of this stock, it might, as in all similar cases, without a bill to foreclose, on giving notice to the debtor, have proceeded to sell at public auction; and have applied the proceeds of sale in satisfaction of its claim, and paid over the surplus, if any. *Powel Mort.* 962. Or if, after the bank had had the full benefit of the security, which had thus accrued to it in virtue of this clause, by a sale of the stock of its delinquent debtor, and it should turn out, that the proceeds of such sale were not sufficient to satisfy its whole claim, principal, interest and costs; then it might have sued for and recovered the balance of the debtor, if living; or, as in this instance have come in, for the amount so left unpaid, with the other creditors for a due proportion of the assets of its deceased debtor. *Powel Mort.* 1001, 1081.

But although the bank might have sold this stock without a bill to foreclose, yet as it has hitherto and still does refuse to do so, I see no just reason why it should not now be ordered to be sold, to enable this plaintiff to settle up the estate of his intestate, and to distribute the assets in due proportion among the general creditors of the deceased; considering the bank as one of them only for so much, if any, as shall remain unpaid after this stock, with the dividends thereon declared and retained by it, have been so applied toward the satisfaction of its claim. I shall, therefore, direct this stock to be sold for this purpose, and transferred to the purchaser accordingly; and also, that the dividends which may have been declared before the day of sale, and which have been retained, shall be, in like manner, applied towards the discharge of this claim of the bank.

The amount of the debt due to the bank from the estate of the intestate is not specified in the bill or in the answer, nor is it stated what dividends have been declared on the stock; these I presume