In the account marked A, stated by the auditor, these sums thus unappropriated by either the debtor or the creditor, are applied to the satisfaction in part of the mortgage debt, which the Auditor supposes, for the reason given by him, to be the proper application. By this account, there remains an unappropraited balance of $2480 56, after paying the complainant's claim ; one moiety of which is assigned to Jacob Snively, and the other to the defendant.

In account B, stated according to the views of the complainants, the residue is reduced to $1489 93, which is assigned to the same parties in like proportions.

Exceptions have been filed to these accounts by the parties interested ; the one side, insisting upon the propriety of the application of the payments in the one account, and others in the other.

The Chancellor thinks, that the appropriation of the payments made by the Auditor in the account A, is the proper one, that is, to the payment of the mortgage debt, as being most beneficial to the debtor.

The general rule upon the subject of the appropriation of payments, is laid down by the Court of Appeals, in the case of *Mitchell* vs. *Hall*, 4 *Gill & Johns.*, 301, giving the right to the debtor, in the first place to make the application, and then upon his omitting so to do, to the creditor.

In this case, however, there was no appropriation of these payments made by either party, and the question is, how, in the absence of such appropriation, will the law apply them?

It was said by the general court, in the case of *Gwinn* vs. *Whittaker*, 1 *Harr. & Johns.*, 754, that if a party is indebted on mortgage and simple contract, and making a payment, neglect to apply it, the law will apply it to the mortgage or bond, as most beneficial to the debtor. And in the case of *Dorsey* vs. *Gassaway*, 2 *H. & J.*, 402, 412, the same court said, that such was the undoubted rule, where no particular application, by either party was made. There was an appeal in this last case, and the judgment of the general court was affirmed by the appellate court.