

[The facts in this case are stated in the Chancellor's opinion.]

THE CHANCELLOR:

The question now to be decided, upon the petitions of the Farmers' Bank of Maryland, and the answers thereto, relates to the disposition of the sum of \$1,538 13, paid into court under the order of the 25th of June last.

It appears, that on the 11th of September, 1848, the bank recovered judgments against Stewart, upon his acceptances, which it had discounted. The judgments were recovered in Baltimore, the place of Stewart's residence, and executions issued upon them to May term, 1849, of the County Court, were returned *nulla bona*, by the sheriff.

Prior to this, to wit, on the 18th of March, 1848, the decree in this case passed for the sale of certain real estate, situate in Anne Arundel county, which had been mortgaged by the defendant, Stewart, to the complainant, to secure the payment of a debt due him. A sale under this decree was made on the 22d of June following, which, by consent of parties, was ratified on the 2d of the then ensuing month of October. After satisfying the claim of the mortgagee, and the expenses of the suit, there remained a surplus of \$2,521 73, which was, by the report of the Auditor, assigned to the mortgagor, and this report was on the 11th of the same month and year ratified, and the proceeds, in the usual form, directed to be applied by the trustee accordingly.

On the 16th of March, 1849, the bank filed a petition in the cause, in which, exhibiting its judgments and the proceedings upon them, and alleging that Stewart had no other property in the county of Baltimore or elsewhere, and insisting that their judgments were to be regarded as liens upon the surplus proceeds of sale assigned to Stewart, which was to be treated as real estate, they pray that the said surplus may be so applied, and in the meantime, and until the matter can be heard and decided, that Stewart may, by injunction, be restrained from transferring or assigning the same, and that the trustee may be required to pay the money into court.