

well taken. The second, fifth and sixth relate to acts or intentions imputed to defendant impairing, or showing the inadequacy of the security, and they are not answered explicitly and frankly as they should be.

The allegations in the bill, upon which the third, and fourth exceptions are founded, relate to the application and present position of the money for which the mortgaged slaves were sold. It was certainly material to trace this money, and discover where it is deposited, as otherwise it could not be applied at the proper time, to the payment of the claim of the complainant, should such payment hereafter be decreed. The right of the complainant to have such application made, depends upon whether the money alleged to be in the bank, arose from the sales of the slaves, or other property included in the mortgage. The bill so alleges, but the answer instead of admitting or denying this allegation, by which the money in bank could be identified with that which the defendant received from the sales of the slaves, which he confesses he sold, states that he applied the money to his, the defendant's own use. Now this identity of the money in bank, is an important fact, for upon it depends the right of the complainant, to have it appropriated specifically to the payment of his claim, the principle being, that when mortgaged property is turned into money, the mortgagee, has a right to have it applied to the payment of his claim; his rights remaining unaltered by the conversion of the property into money, *Astor vs. Miller*, 2 *Paige*, 68.

For these reasons, I am of opinion, that the injunction must be continued, and shall so order.

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[No appeal was taken from this order.]