

was subsequently assigned in part to John Glenn ; and the claims of Mr. Glenn and Mr. Patterson, formed therein, are designated in the report of the Auditor as claims Nos. 4 and 5.

It also appears that on the 9th of May, 1844, Edward H. Dorsey, the assignee of the equity of redemption of Rebecca Dorsey, and the mortgagor in the mortgage to Patterson, passed to the Baltimore Life Insurance Company, the assignee of the Neptune Insurance Company, his three promissory notes endorsed by James Swann, for \$443 55, payable respectively at ninety days, six months, and one year, and being for the amount of interest due on the mortgage, to the 9th of May, 1845. That these notes were, at maturity, paid to the Life Insurance Company by said Swann, and the amount thereof, with interest, having been repaid to Mr. Swann by David Stewart, Esq., one of the trustees for the sale of the property under the decree of this Court, the claim in question, designated as No. 12, has been stated by the Auditor as due him.

The fact that these notes were given to the Baltimore Life Insurance Company, on account of interest due on the mortgage of Rebecca Dorsey to the Neptune Insurance Company, and that they were at their maturity paid by Mr. Swann to the Baltimore Life Insurance Company, the assignee of the said mortgage, and that the money has since been repaid to Mr. Swann by Mr. Stewart, appears by the depositions of Mr. Swann, and Mr. Donaldson, the President of the Insurance Company, and I state these as facts in the cause, upon the assumption that the depositions are admissible in evidence, though the competency of Mr. Swann as a witness is excepted to.

But assuming the facts to be established by competent testimony, the question arises whether Mr. Swann or Mr. Stewart, who has paid him the claim, can, to the extent of the sum so paid, be permitted to stand in the place of the prior mortgagee, and be subrogated to his rights ?

No assignment, in fact, was made by the Baltimore Life Insurance Company to Mr. Swann, upon the payment of the money by him or since, and if he is entitled to occupy the