

ever paid to the latter Company by the complainant for patent rights, and that in fact the Boston Company had ceased to insist upon their patent rights from about the year 1825, and that they set up no claim whatever against the defendant. It is, therefore, quite clear, that if the complainant is permitted to retain this money, he will retain it without consideration, and without accountability to any one. That it does not *ex æquo et bono* belong to him is too apparent for dispute, and as the defendant has paid Dean Walker his half of the money, as is shown by his receipt of the 13th of March, 1845, the equity of defendant to call back the whole sum from the complainant, cannot, in my judgment, be resisted. This receipt, it is true, was in the record when the order of November, 1848, was passed, but the deposition of Mr. Hobbs was not, and it was thought that the mere act of paying Walker, without the concurrence of the complainant, could not render him liable to refund the money, to which, as agent of Jackson, he was or appeared to be entitled. I do not think that the report made by Mr. George Williams, to the proprietors of the Savage Manufacturing Company, under date the 15th of February, 1836, in which he speaks of this sum of money having been paid over to the agent by C. D. Williams, the stakeholder, in reduction of the liabilities of the Company, sufficient to countervail the positive proof that the party supposed to be entitled has not received and does not claim the money. That report was made only two months after the money was received by the complainant, and when, no doubt, it was supposed his principal was entitled to and claimed it. I do not propose to consider and decide the question of practice raised by the petition filed by the complainant on the 21st instant, and after the argument had commenced, placing my judgment upon the broad, and, as I think, impregnable ground, that upon principles of justice the complainant is bound to refund this money.

The next succeeding ground of complaint against the account specified in the bill is directed against the charge of \$2,353 33, as paid in purchase of land from Herbert and Worthington.