

variety of questions; but upon the argument the complainant's counsel narrowed the questions down, so as to limit the inquiry to the proper application of the sum of \$1,897 22, received by the defendant, Taylor, from Robert Sinclair, on the 1st of October, 1845, in discharge of the mortgage of the 28th of August, 1843, executed by Sinclair and wife to Taylor, to secure the payment of \$1,607 81, which the mortgage recites was due from the mortgagor to Gustavus R. Barber, and by him assigned and transferred to the defendant, Taylor.

The bill alleges that Taylor, in consideration of this assignment, agreed to assume upon himself the payment of a note discounted and held by the Farmers' Bank of Maryland, the money so assigned being, as is alleged, the proceeds of land pledged and bound for the payment of said note.

This agreement Taylor, in his answer denies, and avers, on the contrary, that he received the money from Sinclair in payment of debts due from Barber to him at the date of the mortgage, amounting to the sum of \$1,550, and that he has long since paid to Barber the difference between the sum paid by Sinclair and the debt of Barber to him.

There is certainly no proof in the case of a positive nature establishing the agreement, as stated in the bill, though there are circumstances from which it is difficult to escape the conclusion that some such understanding did exist. That Welch and Whittington, who were endorsers upon the note held by the Bank, and to whom David Ridgely, the assignee of the mortgage, Ann Ridgely, had assigned the mortgage for their indemnity as such endorsers, should have permitted or consented to any other appropriation of the money, is in the highest degree improbable.

But conceding that the case is destitute of direct evidence of such an agreement, and that the circumstances are not strong enough to establish it in the face of the denial in the answer, still it appears to me to be very clear, upon principle and authority, that the money should be so applied.

The mortgaged premises were unquestionably and confessedly bound for this debt to the Bank, the mortgage having been as-