

MERGER.—*Continued.*

4. Where banks take their own stock in payment of, or in pledge to secure debts due them, it has always been the understanding and practice, that they were authorized to re-issue the stock whenever they thought fit to do so. *Ib.*
  5. This Court has the power to order a re-transfer of stock, or the issuing of new shares, where justice between the parties require it, the amount of capital authorized by the charter not being exceeded by such issue. *Ib.*
- See CHARGES UPON LANDS DEVISED, 1.

## MORE OR LESS.

See CONTRACTS, CONSTRUCTION OF, &c., 1, 2, 3.

## MORTGAGE, MORTGAGOR, MORTGAGEE.

1. Upon proper averments and sufficient evidence, a Court of Equity will treat an absolute deed as a mortgage, and decree a redemption by the mortgagor, or a sale for the purpose of paying the sum due. *Davis vs. Banks*, 138.
2. Where a bill alleges, that a deed, absolute on its face, was intended to be a mortgage, and was procured with the fraudulent design of setting it up as an absolute deed, contrary to the express agreement and understanding of the parties at the time of its execution, and the answer denies the fraud, the complainant must prove it by evidence, direct or circumstantial. *Ib.*
3. A mortgage was executed to a manufacturing company, and the affidavit required by the 1st section of the Act of 1847, ch. 271, was made by the agent and treasurer of the Company. HELD—  
That this was a sufficient compliance with the provisions of that Act. *McKim & Kennedy vs. Mason*, 186.
4. Where a mortgage contains no covenant that the mortgagor shall continue possessed of the land, with power to take the rents, profits, and issues, until default made, he cannot be regarded as the tenant of the mortgagee. *Ib.*
5. A husband executed a mortgage to secure a debt, and after payment thereof the mortgagees were to hold the property, or convey it to the appointee of the grantor's wife, for her separate use; and on the same day, the husband and wife assigned to the same mortgagees the wife's interest in the real estate of her father. HELD—  
That the mortgagees had a perfect right to resort to either, or both of these securities, for the payment of their debt; and all that the wife can demand is, that after payment of their claim, they shall convey to her appointee the property mentioned in the mortgage of the husband. *Notley Young's Estate*, 461.
6. A stipulation in a mortgage to secure a specific sum, that it should cover such further sum as might become due the mortgagees for costs, charges, and commissions, is not effectual since the Act of 1825, ch. 50. *Ib.*
7. The policy of that Act is, that the utmost extent to which the mortgaged premises can be made liable, must appear upon the face of the instrument; and provisions that the mortgage shall be a security for future liabilities, or advances, are forbidden by it. *Ib.*
8. No matter how absolute a conveyance may be on its face, if the intention is to take a security for a subsisting debt, or for money lent, the transac-