as security for the loan of his own paper, given in exchange for it. The case is not within the principle of the cases referred to, which prove that the holder of cross paper may prove under a commission, by taking up his own note, or exonerating the estate of the bankrupt. 3 *Denio*, 187; 1 *Eden on Bankrupts*, 150, 160, 163; *Byles on Bills*, 343, 344; 4 *Taunt*, 200; 7 *Term Rep.*, 565; 2 *Term Rep.*, 100. It is not enough to entitle Winn & Ross to a dividend that they show the estate of Hancock & Mann will not be exposed to a double charge. They must show that the estate of Jones has been damnified by his paying his own notes issued for the paper of Hancock & Mann. If none of these notes have been paid by Jones, as stated by the Auditor, then they must be outstanding, and the holders of them, and not Jones or his trustees, are the parties who, by substitution, are entitled to participate in the fund.

My opinion, therefore, is, that the trustees of Jones are not entitled to dividends, simply because they hold the paper of Hancock & Mann, and that unless they can show that the paper of Jones, exchanged for it, has been paid, they must be excluded.

I am of opinion that the exception taken by the complainants to the account stated by the Auditor between the mortgaged estate and Clark & Kellogg, cannot be supported, and the exception will be overruled.

The petition of Clark & Kellogg, for the advance to them of a fee to counsel, to be paid out of the money in their hands, cannot be allowed except upon the ground of consent. No precedent for such an allowance can be found, and it is readily perceived that the principle upon which it is claimed would make this court, in a great number of cases, the medium by which the fees of counsel would be adjusted. Allowances of counsel fees are made under the head of just allowances to trustees, but it is believed that neither in this country nor in England was a stakeholder, even viewing Clark & Kellogg as occupying simply that character, ever allowed counsel fees out of funds in his hands.