

all those interested in the fund are parties, and the Chancellor acting on that report, confirms it in part, to wit, as to the money received, but further says, "for the reasons stated by the Auditor in his said report, I do not consider it proper, at this time, to pass any order in relation to the stock referred to in the account A. No. 1," and with regard to this stock no further decision has taken place to this day.

It is obvious, that the Chancellor did not consider the order of the 23d of October, 1846, conclusive on him, else why reserve further action upon it? It is not clear, that the Chancellor intended to express the opinion imputed to him. He says, "it being stated in the petition that certain stocks were transferred to the trustees to be held as a means of enabling them to obtain an indemnification from certain losses, arising from the misapplication of the trust estate as therein mentioned, it follows, that they must be allowed to continue to hold the same until the amount of such losses have been ascertained, and further order, and cannot be charged with its depreciation or becoming valueless *during the time of its being so held by them.*" He might have meant during the future holding under his order, but if he meant the whole time, the order does not appear to me to be conclusive upon any right of the parties.

The Chancellor proceeds further to decree an account from the pleadings and proofs in the cause, and from such *other proofs as may be laid before him.* He decides no principle here *without the decision of which* the account could not be stated. It is not like the case of *McDonald vs. Strike*, 2 Har. & Gill, 191, where it was upon an original bill absolutely necessary to establish the fraudulent character of the deeds before any account could be decreed, nor the case of *Thompson vs. McKim*, 6 Har. & Johns., 302, where the Chancellor decided upon the construction of an agreement upon which the whole case depended, and directed money to be brought into court in consequence of his decision; nor like the case of *Williamson vs. Carnan*, 1 Gill & Johns., 184, where the defendant was, by the order of the court, compelled to do an act in derogation of his rights. But this case is very like that of *Hagthorp vs. Neale*, 1 Gill & Johns., 270, where the Chancellor not only directed an account, but