but the account is taken for what it professes to be worth upon its face, in connection with another account of the same date, in the same book, which inosculates with it, and in connection with undisputed proof in the case.

The deft's theory is, that $700, borrowed from Albertson by the m't'g of 14 Aug., 1857, must be deducted from the $1,293.75 paid on or before the 29 July, for the three-fourths interest, thus leaving only $593.75, as the actual money of the complt invested, so that if the complt to a resulting trust at all, it can only be, pro tanto, to the extent of the smaller sum thus easily paid out of her money.

But it is quite plain, that in advancing this theory it is the defendants' side which now attacks the correctness of the account referred to, as taken from the books kept by McCullough. That account the one headed "Mrs. Mary Everist" distinctly shows upon its face, that on the 29 July 1857, after the two payments to Martin, amounting together to the consideration paid and expressed in the deed, $1293.75, there still remained to the credit of the complt of the original trust fund, a balance of $578.46, exclusive of the $150 item. "Railroad Co," and exclusive, of course, of the $700 Albertson loan, not credited until the 14 Aug, afterwards.

The defts' theory, therefore, can only be sustained, upon the assumption that that account is incorrect as to both dates and amounts. To make that account square with the defts' theory, it must be so altered to show, instead of a general turning over of a lump balance of $1,406.20 at the end of the year to John M. Everist, separate payments to him of numerous smaller amounts anterior to the 29 July, corresponding with the items charged in his account, which, as already seen, shows a very heavy overdrawing on his part up to that time. Altering the account in that manner, it would then appear

that a very large amount of the trust fund had been in fact taken from it and applied to the use of John M. Everist, prior to the 29 July. Altered thus, the account would show that the Albertson mortgage loan, or a part of it, was needed to replace the money so withdrawn. Taking the account as it stands, the Albertson mortgage was wholly unnecessary and simply gratuitous upon the defts own theory.

That theory must, therefore, be rejected, as directly in conflict with the account in evidence, as well as with the obligations assumed by McCullough, by his acceptance of the 104 U.S., trust. For it is perfectly immaterial whether McCullough permitted Everist to draw upon the trust fund in the first instance, or to overdraw his own account upon the credit of the trust fund as a collateral, to be thereafter covered in to protect the principal account; in either case he became liable to all the consequences which in equity fall as upon a breach of trust.

68.

In order to determine the sort of standing that the Albertson mortgage is entitled in a Court of Equity, under such circumstances as those in evidence, it will be found instructive to go back to the period immediately after it was placed on record, and to inquire whether the complt would then have been entitled to relief, if she had filed her bill, setting forth the facts as they had developed up to that time, and praying, first, that McCullough should be decreed to execute a proper declaration of the trust in her favor, attaching to the property purchased in his own name, with the trust money; and second assuming that Albertson was an innocent purchaser without notice; that McCullough should also be decreed to pay off that incumbrance when due, with the money taken up from Albertson, if he had in hand, and if not, at his own