

raised and decided by the Chancellor in the opinions reported below, the first of which was delivered on the 10th of January, 1850, upon exceptions to the report of the Auditor.]

THE CHANCELLOR :

This case now comes before the court upon exceptions to the report of the Auditor, and has been fully argued by the counsel of the parties.

Some of the questions discussed at the bar, will, I apprehend, be found to be covered by the opinion and order of this court of the 5th of December, 1848. In that opinion it was said, "that the notes of Hancock & Mann held by Winn & Ross, trustees of Samuel Jones, Jr., which bear date prior to the mortgage of the 11th of April, 1846, are not entitled to the benefit of that security and must be excluded from participating in the fund raised, or to be raised, by a sale of the property embraced in it." 2 *Md. Ch. Decisions*, 37.

The order of the court changes the phraseology a little, and declares that such notes *made* prior to that date are to be excluded. But this order is to be construed with reference to the language used in the opinion, and must be understood to exclude notes which bear date prior to the date of the mortgage.

I am not prepared to say that there is no proof of the identity of the notes alleged to have been *antedated*, but if parties with a security before them applicable to a particular description of responsibilities, choose, of their own accord, to create written obligations which, upon their face, are not within the security, I think it would be a bad precedent to permit them by parol to bring them within it. I am, therefore, of opinion, that the notes in question, alleged to be *antedated*, are not entitled to a dividend of the fund to be distributed.

This opinion is not founded upon the idea that antedating notes is, *per se*, fraudulent, or evidence of a dishonest intent. The cases referred to by the counsel for Winn & Ross establish the contrary; but without looking to or criticising the intent, I think the parties have given the paper a character which excludes it from the security. The notes of Jones, given in ex-