

WILLIAM McKIM
 AND
 HASLETT McKIM
 VS.
 WILLIAM MASON
 AND
 THE WHITE HALL CO.

DECEMBER TERM, 1849.

[PRACTICE—PLEADINGS—USURY—MORTGAGE TO SECURE A FORFEIT.]

Joining issue upon an answer, must be regarded as a waiver of any mere technical objection to the form in which the defences in such answer are presented.

Pleadings in Chancery should consist of averments or allegations of fact, and not of inference and argument.

The defence of usury may either be set up by plea, or relied upon in the answer.

The *statute* against usury must be pleaded, or relied upon in the answer, and it will not do to state circumstances which may lead the opposite party to infer that he is to meet that defence—this view is supported by the 1st section of the act of 1845, ch. 352.

The consideration of the mortgage which the complainants sought to enforce, was a forfeit, which the mortgagor agreed to pay them in the event of his failing, or neglecting to appoint the complainants his agents, as provided in a certain agreement. **HELD—**

That this mortgage could not be enforced by this court—the rule being a universal one, that courts of equity will not lend their aid to enforce a penalty, or forfeiture, but will leave the parties to their remedy at law.

It may be laid down as a fundamental doctrine, that equity does not assist the recovery of a penalty, or forfeiture, or anything in the nature of a forfeiture.

[The bill in this case was filed on the equity side of Baltimore County Court, on the 5th of September, 1849, by the complainants, for the sale of a certain cotton factory, and other real estate, mortgaged by the defendant, Mason, to the complainants, by two deeds of mortgage: the first dated the 29th of September, 1848, professes to secure the sum of \$22,499 33, which the mortgagor owed the complainants, and for which, with the interest thereon, he passed the several promissory notes recited in said mortgage. The second, dated the 9th of October, 1848, professes to secure the sum of \$6,000, also owing by the mortgagor to the complainants, and for which he