

He is not to be deemed, as remarked by Chancellor Kent, in *Scribner vs. Hickok*, a purchaser for himself of the judgment, and to use it as if it stood in the character of a stranger to the parties, but having satisfied it, as one of the defendants, he is entitled only to indemnity or contribution as a co-defendant from the other defendants.

My opinion, therefore, is, that if after deducting the sum which was credited upon the judgment, there remains as much due as is equal to the amount which Hilleary has a right, upon the principles which have been stated, to claim as contribution from Thomas T. Wheeler, that in that case Hilleary has a right to the use of the judgment for his indemnity, to the full amount of such claim.

[No appeal wastaken from this decree.]

HENRY H. BROWN  
 vs.  
 ROBERT STEWART ET AL. } SEPTEMBER TERM, 1847.

[INJUNCTION—MORTGAGE.]

If a mortgagor, in possession, is committing waste, equity will restrain him by injunction.

In Maryland, unless there is some agreement of the parties to the contrary, the mortgagee is entitled to the possession of the property immediately upon the execution of the mortgage, without regard to whether there has been a forfeiture or not.

But because the mortgagee may take possession of the property or recover it by an action of replevin, he is not, on this account, precluded from the right of having it protected in a court of equity.

The case of a mortgage forms an exception to the general rule, that a party shall not be allowed to sue at law and in equity, for the same debt, and a mortgagee may pursue all his remedies at once, yet he is under no obligation to do so.

Where a mortgagee files a bill for the sale of the mortgaged property for the satisfaction of his debt then due, and alleges that it being in the possession of the mortgagor, has been, or is about to be, wasted; or, where it consists of personalty, is about to be removed beyond the reach of the creditor, a court of equity has and will exercise the power of preventing the threatened mischief, by injunction.