

mortgagee was in fault, in permitting the mortgagor to continue in possession. *Eden on Injunctions*, 166 ; *Robinson vs. Litton*, 38 *Atk.* 210 ; *Fanant vs. Lovel*, *ib.*, 723.

It is true, that it is established in Maryland, that unless there is some agreement between the parties to the contrary, the mortgagee is entitled to the possession of the property, immediately upon the execution of the mortgage, and this without regard to whether there is a forfeiture or not. *Jamison vs. Bruce*, 6 *G. & J.*, 72. And hence it follows, that though either before or after forfeiture at law, 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 this court, until it can be made available by a decree for the payment of the debt charged upon it.

If it be urged, that there is no necessity for the interposition of the court in this case by injunction, because the debt being due, the mortgagor may possess himself of the property by replevin, the answer is, that the same right would exist, though the debt was not due, and in the latter case the Court of Appeals have expressly affirmed the power of this court to preserve the property by injunction.

Though the case of a mortgage forms an exception to the general rule, that a party shall not be allowed to sue in law and in equity for the same debt, and a mortgagee may, without restraint, sue upon all his remedies at once, (having nevertheless but one satisfaction,) yet he is under no obligation to do so, and it would certainly be falling short of the demands of justice, and the exigency of the case, if this court, when the remedy is sought exclusively here, has not the power in a proper case, to protect the subject of the controversy from destruction, while the suit is depending. 3 *Powel on Mortgages*, 966 and note 1 ; *Jones vs. Conde*, 6 *Johns. Ch. Rep.*, 77.

I am, therefore, of opinion, that when a mortgagee files a bill in equity for a sale of the mortgaged property, for the satisfaction of his debt, being then due, and alleges, that it being in possession of the mortgagor, has been, or is about to be wasted : or where it consists of personalty, is about to be removed be-