

the defendant is doubly vexed. The petition therefore prays for an order to compel the complainant to elect between said appeal and this suit.

Upon the hearing of this petition, the following opinion was delivered and order passed : ]

**THE CHANCELLOR :**

This case is brought before this court, upon the petition of the defendant, Kerr, to compel the plaintiffs to elect between this suit and an appeal prosecuted by them to the Court of Appeals, from a judgment rendered in favor of the petitioner, by Baltimore County Court, in a certain action of assumpsit, instituted by the petitioner, in that court, against the plaintiffs, on the 28th of April, 1847, and in which action, a verdict and judgment had been rendered in favor of the petitioner, before the present bill was filed.

The bill in this case, which was filed on the 4th of August, 1849, prays, that the defendants, Kerr and Glenn, may be required to interplead and settle their respective rights and demands, not only with respect to the sum of money for which Kerr recovered the judgment in the action of assumpsit, but that they shall, in like manner, interplead and settle their respective rights to certain promissory notes, and bills of exchange, held by the complainants, to which the complainants claimed no title, and on account of which, the petitioner, Kerr, had commenced against the complainants, an action of trover and conversion, in Baltimore County Court, and which action is still depending in that court.

With regard to the money for which the petitioner, Kerr, has recovered a verdict and judgment, it is conceded the bill of interpleader comes too late, the rule being, that a bill of this description should not be delayed until after a verdict or judgment, has been obtained. 3 *Daniel's Ch. Pr.*, 1755.

But it does not, in my opinion, follow, that because the complainants in the bill, have comprehended a subject, in respect of which they are not entitled to the aid of the court, that it will not be extended to them with reference to another