

the authorities are express, that they have no claim to the aid of the 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. *Story's Equity Pl.*, section 521; 2 *Story's Com. on Eq.*, section 1319; *Livingston vs. Tompkins*, 4 *Johns. Ch. Rep.*, 415. In this case, Mr. Chancellor Kent said, "It may be laid down as a fundamental doctrine of this court, that equity does not assist the recovery of a penalty or forfeiture, or any thing in the nature of a forfeiture."

I cannot bring myself to think, that the power of this court can be successfully invoked in this case, because of the execution of the mortgage. That circumstance does not take from the claim the character of a forfeiture, against the enforcement of which, the court always turns its face.

I will, therefore, sign a decree, in the usual form, for a sale of the mortgaged premises, to pay the claims founded upon the first mortgage, but in my opinion, the residue of the proceeds of sale, will not be applicable to the payment of the second.

J. MASON CAMPBELL for Complainants.
ST. G. W. TEACKLE for Defendants.

EPHRAIM K. BARNUM,
AND
ZENOS BARNUM,
EXECUTORS OF
DAVID BARNUM,
VS.
CATHERINE M. RABORG
AND
CATHERINE M. McCLELLAN.

DECEMBER TERM, 1850.

[OBJECTIONS TO APPEAL BOND—CHANCERY PRACTICE—INDEMNITY FOR DETENTION OF POSSESSION OF LAND.]

It has never been the practice of this court to require the sureties in an appeal bond, when excepted to, to justify, in order to ascertain their sufficiency, in analogy to the practice at law in the case of bail.

The only question, in cases where an appeal bond is objected to, is, to ascertain