

as of the 6th of July, 1850, instead of calculating the interest to the 8th of May, 1848, and then compounding on that sum up to the 27th of June, 1850.

To the allowance of the item of \$1,207 45, the defendants object.

First, Because there is no case before the Chancellor in which the respective claims of the purchaser and the defendants as against each other can be adjusted, or an account between them stated. Zenos Barnum was but the purchaser of the estate, the defendants the debtors upon the claim under which the property was sold, the controversy between them in the Court of Chancery affected only the validity of the sale reported by the trustee, and the damage resulting from the delay consequent upon the appeal from the order of ratification is covered by the appeal bond, to which the purchaser may resort for indemnity. But the defendants respectfully insist that it is not competent for the Chancellor in any condition of this case, to determine how far the purchaser has been damaged by the course of the defendants, and to assess and liquidate his damages. That can only be done by a resort to the bond of the defendants, and in a different form.

Second. There is no evidence from which the Chancellor can determine the amount of damage the purchaser has sustained, if it be conceded that it is competent for this court to assess it, and enforce its payment in this suit. The assumption that the possession of the property was equivalent in value to the interest of the purchase money, is altogether arbitrary. It may have been worth more, or much less, and it is impossible, therefore, to say, that the measure of damages in this case is the precise interest. It cannot escape the observation of the Chancellor, that if this audit be confirmed, the defendants are made to pay not only the interest due by them up to the day of the final settlement of this controversy, but interest for a large portion of the same period upon the whole purchase money of which that debt is a part.

The defendants, therefore, maintain that these items are not allowable, and that the same, or a portion of them are not even cognizable in this court.