

shall be in any way impaired, not by his own omission or negligence, but by the act of his debtor, over which, he, the creditor, could exercise no control.

The objection that the claim of the creditor for this additional interest, is personal against the debtor, and cannot be enforced against the proceeds of sale, cannot, I think, be supported. The appeal bond might no doubt be resorted to, for any injury or loss, occasioned by the appeal; but there can be as little doubt, I presume, that if a recovery was had upon the bond, and the sureties were made to pay the money, they would be entitled to come here, and ask for indemnity out of this fund; and if this be so, I cannot perceive the propriety of turning the creditor over to the sureties in the first instance, creating unnecessary circuitry certainly, and perhaps, exposing them to loss. Upon the same principle, that the costs of the appeal are allowed out of the fund, (and this allowance is not objected to,) the additional interest should be allowed, these costs are equally a personal claim as the interest, and equally covered by the appeal bond.

The remaining exceptions relate to the allowance to the purchaser, if the sum of \$1,207 45 for loss sustained by him, in consequence of not obtaining possession of the property, the sale having been made for cash, and the terms having been complied with. That the purchaser is entitled to indemnity for this loss, is not, I presume, denied; but for this also, it is said, the remedy is upon the appeal bond, and not upon the proceeds of sale. The purchaser bought subject to an incumbrance of \$8,000, and the amount of the sale being \$6,600, the property cost him \$14,600, the interest on this sum, from the day of sale, until the order of ratification was affirmed by the Court of Appeals, amounts to \$1,871 28; but the residue of the proceeds of sale, only amounting to \$1,207 45, that sum only was assigned to the purchaser, by the Auditor, being but little more than interest at the rate of four per cent. per annum, on the purchase money. That the loss occasioned by the acts of the defendants in withholding the possession of the property from the purchaser, entitled him to have recourse to the appeal bond, is