

## THE CHANCELLOR :

Waiving the objection to the answer taken by the complainant, and conceding for the purpose of this motion that it is entitled to be treated as if sworn to by the defendant, I am of opinion that it has not removed the equity of the bill, and consequently that the injunction must be continued.

It cannot be necessary to say that this court disclaims in the most explicit manner any power to review, in the proper sense of that term, the decrees of the Court of Appeals, either upon the state of facts upon which that tribunal acted, or any others. What is resolved by it in view of those facts, or others, is conclusive, and the duty of this court, when required to carry its mandates into effect, is unqualified obedience.

But it is not, in my opinion, at variance with this principle, to say, that upon circumstances which were not, and could not, from the nature of things, have been before the Court of Appeals at the time it passed its decree, it may become the duty of this court to stay its hand, especially when it is manifest that, according to the principles settled by the Superior Court, these circumstances give rise to an equity in direct opposition to the rigorous execution of its decree.

When the decree in this case was passed by the Court of Appeals in June, 1846, there was nothing in the record to show that the possession by Crook of the mortgaged premises continued subsequently to the period stated in the report of the Auditor, to wit, November, 1844, and, therefore, he could not be charged with the rent later than that period, but it is now charged in this bill, and confessed by the answer, that he did so continue in possession to a later period, the bill alleging that this possession continued so long as to extinguish the debt, and the answer, though it does not admit, certainly does not deny, this assertion. It is also charged and not denied that Crook, the assignee of the mortgage, is insolvent, and that if the mortgagor is now compelled to pay, he will be wholly without remedy.

Now, this certainly presents a case in which all must regret the inefficiency of the court, if it be incapable to relieve the complainant. There would, in that event, be a striking defect