Mitchell
vs
Mitchell } Ordered upon motion of the Solicitor that the above cause be set down for hearing on Saturday the 16 day of February 1863 provided a copy of this order be served on the opposite party or his Solicitor on or before 11 day of February inst.

W. Ro. Webb.

Whereupon further the Court here is not advised to give its Judgment of and upon the premises aforesaid day therefore is given to the said parties to hear their respective judgment next the second Monday in March thereafter

At which said second Monday of March to wit in the year last aforesaid and at such succeeding term, came again into Court the parties aforesaid by their Solicitors aforesaid. And the said cause was further continued under advisement by regular continuances from term to term of the said Court from the said 2d Monday in March in the year last aforesaid to the second Monday in September of the same year.

At which said second Monday of September to wit in the year aforesaid came again into Court the parties aforesaid by their Solicitors aforesaid. And thereupon to wit the 11 day of October in the year last aforesaid the Court here passed and published an Order in said cause the following Opinion in writing to wit

Henry Mitchell
vs
Sarah Mitchell } The Bill in this cause is filed for discovery and relief. The relief prayed is that it may be declared that the Legal Estate in the premises referred to in the Bill hath become vested in the Complainant, and that the Defendants may be compelled to surrender possession thereof to him, and to pay over to him certain rents that have come into her hands from the property or that she justly chargeable with by reason of her having had the possession thereof which he alleges belongs to him. The discovery sought is in reference to the amount of those rents as well as another matter of enquiry set forth in the said Bill.

The ground upon which the claim to relief and discovery is rested is that the said premises and the right to said rents had descended upon the Complainant, that the Legal Estate in the premises aforesaid hath become vested in him and that because of the said Sarah having been found guilty of a felonious assault for the space of more than ten years in succession

Jonathan in his attempt to bar this property vested in him the Complainant alleges that it belongs to his father that he devised it in trust for the said defendant his daughter "to be at my honor in the world that in case she should be guilty of any felonious assault for 10 years in succession that the said property is devised and bequeathed in trust for her should belong to and devolve upon his sons Thomas Jonathan and Henry Mitchell the said Complainant is the survivor of them. He further alleges that the said Defendant had been at the time when his Will was filed for more than 10 years

in immediate succession guilty of a felonious assault insomuch that the brother Francis Mitchell aforesaid had died leaving his father at Law and that consequently the trusts of the aforesaid devise have ceased and determined and the legal Estate in the premises aforesaid hath become vested in him as the survivor of his sons Brother. The defendant having demurred to the Bill the facts alleged as above are admitted.

The objection raised by the Defendants demurrer to this Bill may be rested upon the familiar position that a Complainant who had no interest in the subject matter is not entitled to institute a suit concerning it, neither entitled to relief nor discovery in regard to it. Story's Eq Plea § 503 & 504, 519.

The Defendant insists that the Complainant has no such title in the premises as a Court of Equity can recognize that the title he sets up is that which has descended upon him by reason of the breach of the condition annexed to the devise in her favor which she has forfeited her interest in the property. This objection of want of title in the Complainant seems to result necessarily from the universal rule in Equity never to enforce either a penalty or forfeiture, or any thing in the nature of a forfeiture never to aid in the divesting of an Estate for a breach of a condition subsequent. 2 Story Eq Jr 1319. Story Eq Plead 321 Brewster and Thompson. 4 Yates Rep 451. 2 Ph Ch 576. Hartung vs Baker 1 Yates Rep 232, 236. The courts upon this ground express in the very strongest language the aversion of Courts of Equity to grant any kind of relief in cases of penalty and forfeiture, and their unwillingness to declare an Estate forfeited by reason of the non performance of a condition subsequent. And I am of opinion that the well established principle is an insuperable bar to the Complainant's claim to the discovery and relief that he prays. The property became vested in the trustee named in the testator's Will in trust for the defendant

The prayer of the Bill in regard to the relief that it asks is that it may be declared that the Legal Estate in the premises hath become vested in the Complainant, and that the said Sarah may be compelled to surrender possession thereof to him. The Court cannot grant the prayer. It has manifestly nothing to do with establishing title in Equity, it does not undertake to enforce a forfeiture, and will not divesting an Estate for the breach of a condition subsequent. Nor can it grant the discovery asked without assuming that the Complainant has such an Estate or interest in the premises as gives him a title to it, and the Court cannot assume or find that to be the case unless it declares the Estate forfeited and thus vested in the Complainant, because the interest which he asserts in this Estate as a reason why the Court should interfere in regard to it in this behalf is simply that which he insists has accrued to him in consequence of the forfeiture.

It has been urged in argument of the Complainant that this case is excepted from the operation of this rule, that the time within which it should be discovered. That the Estates have title