qualities and incidents with legal Estates, and may be subject to similar conditions and limitations; and that the party entitled to a trust Estate may have in Equity a remedy equivalent to that which the holder of the legal title of a like nature and duration might have at Law and of course of the trust be subjected to the party having the present enjoyment of it in Equity will enforce the forfeiture, and give the enjoyment of it to the party entitled upon the forfeiture. Without discussing the correctness of these positions it is sufficient to say that they can only apply to continuing trust Estates, that is to say to cases in which the trust Estate continues after the forfeiture. It may be that when an Estate is vested in trust for the use and enjoyment of a party with a condition annexed that if he does or neglects to do certain acts he shall forfeit the enjoyment of it, and the trustee the title for the use and benefit of another that a Court of Equity upon due proof of the fact and declaring the forfeiture and decree the trustee to hold the Estate for the benefit and enjoyment of the person who was to become entitled to it after the forfeiture. And that for the reason that Courts of Law could afford no remedy in such cases. But the case under discussion is not that of a trust Estate continuing after the forfeiture for the benefit of a party who is to succeed to the enjoyment of it thereafter nor is the case of a trust Estate thrown upon the forfeiture as the Bill insists, but that the legal Estate devolves upon and becomes vested in the Complainant, which legal Estate the Court is asked to compel the defendant to surrender. The language of the testator taken as well as the statements of the Bill show that this is the true character of the devise. The Will provides that in case the daughter should be entitled to a sale hereafter for her use "then that the said property devised in trust for her shall belong to and devolve upon her the said [illegible]" If the legal title has vested in the Complainant as he alleges it has he will find and ample remedy in a Court of Law for the recovery of it. Notwithstanding he may rely upon a title acquired by forfeiture. After he has established his title at Law where only the forfeiture can be enforced he may perhaps be entitled in this Court to some part of the discovery and relief he asks in this proceeding. These carefully examined the cases cited by the Solicitor of the Complainant to show that though a defendant may instead himself by plea or demurrer from answering allegations in a Bill for discovery and relief that might expose him to penalties or forfeitures yet he will be required to answer as to such matters alleged in the Bill as would not have that effect. And to show also that when a Complainant filed his Bill for discovery and relief though he cannot assist himself in obtaining relief by the answer of the Defendant if it would expose him to penalty or forfeiture, yet he may have relief if he can prove his case. Yet it does not find authority for the Defendants Solicitor that because in these cases the Defendant is required to answer in regard to matters which do not criminate him. And it seems in the other case filed without any answer from him in regard to such matters or to other facts charged in the Bill the Complainant may go on with his proceedings and obtain relief by proving his case by other means that

therefore the Court will affirm relief as cases of forfeiture because in none of these cases did it ask the relief asked upon the ground of forfeiture or was the Court required to enforce a forfeiture. The defendants by objecting to answer in these cases because their answer to the Interrogatories propounded might have subjected them to some penalty or forfeiture but not to a penalty or forfeiture simply to be enforced in the case in which their answers were required the Complainants in these cases are asking the aid of the Court in enforcing either, and though they were required to answer orally and to other matters and the Court may have said that the Complainants uncontrolled be relieved by proving their cases by other testimony yet the fact nothing in favor of the Defendants proves that a Court of Equity will enforce a forfeiture because the Court has not asked for such relief.

The position taken in behalf of the Complainant that this Bill is confined to forfeitures growing out of contracts that when a party has stipulated for a forfeiture on the part of another upon his doing a certain act that he must look to the remedy at Law under the contract and cannot be aided in Equity. We do not find sustained by authorities. They draw no distinction between such forfeitures for conditions broken as are created in contracts or dissolutions are created in deeds leases or other voluntary instruments so far from the Chancellor's decree in the case above in 4 John Ch. Rep. 632 says that the rule in the most general terms referring to Sacred Scriptures authorities for the language which he expresses is. He says "The rule has been again and again repeated and as the common language of the Books, that in no case (unless under extraordinary circumstances) will a forfeiture or the discharge of an Estate be assisted in a Court of Equity."

Wm. G. Fitch.

And the said cause is standing as further continued until the second Monday in November last.

At which said second Monday in November to wit in the year last aforesaid came again into Court the parties aforesaid by their solicitors aforesaid and afterwards to wit on the 21st day of November in the year last aforesaid the Court passed the following order to wit.

Henry S. Mitchell
v.
Sarah E. Mitchell

This cause standing ready for hearing on the demurrer filed by the defendant to the Bill of Complaint of the Complainant and being argued by Counsel and pleadings and proceedings considered. And it appearing to the Court in the showing of the Complainant that his title if any he hath is a legal title and ought to be established at Law before Equity can relieve him in respect of such title.

It is therefore the 21st day of November in the year 1856 adjudged and ordered that the Complainant's Bill of Complaint be dismissed without prejudice to the plaintiff in the near time to proceed at Law trying the matter in