

of payment; and it is thought to be quite clear, that when the circumstances are such, as would induce the court to presume the payment of a mortgage, the same presumption would be made with reference to these bonds. "It is," says Chancellor Kent, "a well settled rule, both at law and in equity, that a mortgage is not evidence of a subsisting debt, if the mortgagee never entered, and there has been no interest paid or demanded for twenty years." 5 *Johns. Ch. Rep.*, 552. These facts, alone, authorize and require the presumption of payment.

In this case, upwards of twenty years have elapsed from the date and forfeiture of the bond, by the non-payment of the first installment, which became due in October, 1827. It is true, Mackall Harris was then a minor; but, he attained his full age in 1832, and did not make demand of the bond until September, 1848, sixteen years subsequently. And if, therefore, by analogy, he would be entitled to the benefit of the proviso in the statute of 21st James, which courts of equity have adopted, as applicable to the right of the mortgagor to redeem, he comes too late; as the proviso only saves the right of infants, &c., if they bring their action within ten years after the disability removed. 3 *Johns. Ch. Rep.*, 135; 1 *Powell on Mortgages*, 360. This question was considered and decided by this court, in the case of *Hertle and Wife vs. Schwartze and McDonald*—[ante, page 128]—in May last.

If Mackall Harris had been of age when the bond was given, or when it became forfeit, by the non-payment of the installment, in 1827, as more than twenty years intervened between that time, and the filing his bill in September, 1848, the presumption of payment would have defeated his recovery; and, even if he be entitled to the benefit of the proviso in the statute, inasmuch as he did not make his claim within the period limited by the proviso, he could not escape the force of the presumption.

There are, moreover, in this case, other circumstances entitled to much weight, in considering the question of the continued existence of the lien claimed for Mackall Harris. Looking at all the facts contained in the statement, I should be