jurisdiction assumed by Equity to relieve against penalties and forfeitures. If good intentions are the only test of desert, the heroic expedients resorted to by Equity in its endeavours to enforce fair dealing between man and man cannot be too highly praised. These expedients have, however, been attended with untoward results, and we hope to show that the Legislature would act wisely in abrogating the rule of Law, which (among other evils) in many cases hinders a person from enforcing a penalty he has bargained for on the breach of a contract. It is well known that contracts are often enforced by the sanction of a penalty disguised under the name of "liquidated damages," but (as will be shown) it is only a certain class of contracts which is in practice capable of being so enforced, and the Courts might well be constrained to forego the perplexing distinction which at present obtains between penalties and liquidated damages, and to admit the broad principle that contracts may be legally enforced by the sanction of a penalty on non-performance. It may be observed that the Legislature is in the habit of enforcing obedience to Acts of Parliament through the medium of penalties, and if a person may be called upon to pay a penalty for the commission of an act of the illegality of which he may be ignorant, it is surely no greater hardship, at all events in the absence of special circumstances, that he should be called upon to pay a penalty to which he has purported to subject himself by express contract. The decisions by which the law has been settled, when taken separately, are, it is true, sufficiently plausible, but they are not easily reconcilable. The judicial instinct has contrived, under great difficulties, to preserve a certain semblance of justice, a semblance owing its existence not to steady adherence to the dictates of an inexorable logic, but on the contrary, to the bold disregard of logic which has enabled the Judges to stop short in the middle of any syllogism threatening to lead to an inconvenient conclusion.

There is one familiar and very instructive instance of a decision that would otherwise have worked great injustice, having been rendered innocuous by means of a purely imaginary distinction, namely, the provision for enforcing punctual payment of interest on mortgages. The law on this subject is stated for the edification of Law Students by Mr. Joshua Williams, in his text-book on "Real Property," as follows:—"A curious illustration of the anxiety of the Court of Chancery to prevent any imposition being practiced by the mortgagee upon the mortgagor occurs in the following doctrine: that, if money be lent at a given rate of interest, with a stipulation that, on failure of punctual payment, such rate shall be increased, this stipulation is held to be void as too great a hardship on the mortgagor, whereas the very same effect may be effectually accomplished by other words. If the stipulation be that the higher rate shall be paid, but on punctual payment a lower rate of interest shall be accepted, such a stipulation being for the benefit of the mortgagor is valid, and will be allowed to be enforced."*

It may we think, be gathered from the above quotation that Mr. Joshua Williams does not regard this distinction with any favour, and probably respect for the Bench would not have deterred him from expressing a decided opinion on the matter had he not felt convinced that any comment would be superfluous.

We now propose to take a comprehensive view of the equitable doctrines of Relief against Penalties and Forfeitures, and in the course of the survey we shall point out some other legal "curiosities" not unworthy of comment.

Perhaps the most astonishing "curiosity" connected with this doctrine is the circumstance that first led to the interference of Equity.

One of the grounds on which Equity professes to exercise its jurisdiction (notably in the case of bonds and mortgages) rests on the assumption, which, if it were not true, would be utterly incredible, that persons are in the habit of putting their hands to documents which do not express their real intention. Equity claims to construe written agreements not according to the plain meaning of the words, but according to what it conceives ought to have been the intention of the parties. The respective parties may have declared their meaning in writing as distinctly as possible, but nevertheless Equity, in the

* Lord Northington, in *Stanhope* v. *Manners*, 2 Eden, 199, says: "I never heard or could myself discover the sense of this distinction."