

the plaintiff has a right to have it disposed of, the mortgagor could not be called upon to pay the deficiency. *Collet v. Wollaston*, 3 Bro. C. C. 228; 1805, ch. 100; 1808, ch. 71; 1812, ch. 77. On the contrary, instead of the mortgagor's having been divested of his estate by an assignment which he cannot controvert, and so as to leave him in no way liable; his equity of redemption alone, has been taken into execution and sold; the fact and validity of which sale he may deny, and put in issue by an action of ejectment, or by a suit of equity of this kind, involving a decision upon the right. *Morgan v. Davis*, 2 H. & McH. 9; *West v. Hughes*, 1 H. & J. 6; *Purl v. Duwall*, 5 H. & J. 77; *Barney v. Patterson*, 6 H. & J. 204; *Fenwick v. Floyd*, 1 H. & G. 172. Hence, it is essentially necessary, that this questionable title to the equity of redemption, as derived from the judicial sale, should be entirely put to rest by calling before the Court, as well the mortgagor, as him who

683 claims as the purchaser, at that judicial sale.

As to the third ground; an account of the mortgage debt, and the discovery in relation to it, to which the mortgagee may be entitled. It is true, that under a bill to foreclose, the Court cannot, after causing the mortgaged property to be sold, and the proceeds of such a sale to be applied in satisfaction of the debt, go on to decree, that the mortgagor shall pay the balance remaining unsatisfied, by the proceeds of such sale. But although it cannot so decree, and by its own process enforce complete satisfaction by any further proceedings under the same bill, after the mortgaged fund has been exhausted; *Andrews v. Scotton*, ante, 668; yet it can, and must have an account stated, to ascertain the exact amount of the mortgaged debt, before a sale can be ordered, or at least, before it can make any application of the proceeds of the sale of the mortgaged estate. In the stating of such an account, the mortgagor has a direct interest; because it fixes the amount of his indebtedness; and the mortgagee also has an interest in it, and in the discovery in relation to it, which may be drawn from the mortgagor, because, in so far as the mortgaged property fails to produce satisfaction of the amount so shewn, the mortgagee may again have recourse to his judgment at law, or avail himself of any other proceeding, either at common law or in equity to enforce payment of such unsatisfied balance; and therefore, upon this third ground also, it is proper that the mortgagor should be made a party defendant to this suit.

I have spoken of the rights and liabilities of the mortgagor, and of the grounds upon which he should have been made a party to this suit, supposing him to be now alive. He is dead; but the same principles apply with equal force to his heirs; they stand in his place to the extent of his interest in the mortgaged estate, whatever it may be; and they have succeeded to his liability for the debt so far as real assets may have descended to them; and