

WORTHINGTON v. LEE.

PARTIES TO FORECLOSURE SUIT.—DISCLAIMER.—PURCHASER OF EQUITY OF REDEMPTION.

A disclaimer should be explicit, and can only be received from a defendant who is subject to no liability.

All persons having an interest in the object of the suit should be made parties.

Under a *feri facias* at law against the mortgagor, the purchaser at the sheriff's sale of the equity of redemption for less than the mortgage debt, takes it as incumbered with the residue thereof.

A mortgagor who has not been legally divested of his whole interest must be made a party. (a)

A mortgagor who has an interest in stating the account, or from whom any discovery may be drawn may be made a party.

Although this Court cannot, in a suit upon the mortgage, after a sale of the mortgaged property, pass a decree for the payment of the balance thus shown; yet, if the mortgagor be dead, the plaintiff may so amend his bill as to have it treated as a creditor's suit. (b)

It is not necessary to make the personal representative of the mortgagor a party to a bill to foreclose or sell; but upon the death of the mortgagee it is necessary to make both his heirs and personal representatives parties.

THIS bill was filed on the 17th of November, 1829, by Marcella Worthington, administratrix of Thomas Worthington, deceased, against Temperance Lee, Thomas Lee, Joshua Lee, John Lee, William Lee, Caleb Lee, Jesse Lee, William Byrum and Clarissa his wife, Independence Houck and Matilda his wife, John Wilson and Penelope his wife, Jacob Faer and Mary his wife, Eleanor Lee, and Ushley Lee. The bill states, that on the 19th of June, 1820, Robert Lee, being indebted unto Thomas Worthington in the sum of £199 2s. 3½d., gave his bill obligatory for the payment thereof in twelve months thereafter with interest; and on the same day as a further security for the payment of the debt, executed a mortgage in fee simple, of a tract of land in Baltimore County, called

679 Upper Marlborough; that shortly after Thomas *Worthington died intestate, upon which administration of his personal estate was granted to the plaintiff, who, when the money became due applied to Robert Lee for payment, who refused to pay. Whereupon she brought suit against him; and at September Term, 1822, of Baltimore County Court, obtained judgment, upon which a *feri facias*, and *venditioni exponas* were issued, under which the

(a) Cited in *Kunkel v. Markel*, 26 Md. 407; *Robertson v. Carson*, 19 Wallace, 106.

(b) See Rev. Code, Art. 66, sec. 65.