that too, according to our law, whether it be considered as a simple contract or specialty debt, so that if the mortgaged fund should turn out to be insufficient, the plaintiff may apply to amend the bill by making it a bill in behalf of herself and the other creditors of the intestate Robert Lee, and thereby come at the assets so descended; *Brocklehurst* v. *Jessop*, 10 *Cond. Cha. Rep.* 136; and for aught that appears, there may be abundance * in their hands to satisfy the whole of this claim should the mortgaged property be found deficient. 684

These heirs then, are properly here in respect to an interest which enures to them by reason of the application of the proceeds of the sale of the equity of redemption to the extinguishment of the incumbrance; and also in regard to the title to the equity of redemption itself which may here, or otherwise be drawn in question by them; and moreover for the purpose of having an account taken of the mortgaged debt; and of making discoveries in relation to it; and therefore I shall over-rule their demurrers.

It is not necessary to make the personal representative of the mortgagor a party to a bill to foreclose, or to sell; because the plaintiff need only make him a party who holds the equity; and the mortgagee is not bound to intermeddle with the personal estate, or to run into an account of it; and if the heir would have the benefit of any payment made by the mortgagor or his executor or administrator, he must prove it. *Powell Mort.* 968. This plaintiff could not, therefore have been required to state, as she has done in her bill, or to prove, that no letters testamentary or of administration had been granted of the personal estate of Robert Lee, deceased, the mortgagor; and consequently, that allegation of the bill may be passed over as mere surplusage.

But this is a bill by the administratrix of the mortgagee to obtain payment of the debt, as she specially prays, by a sale of the mortgaged estate; and the suit may terminate in a redemption; in a mere foreclosure; or in a sale of the mortgaged property. From the nature of the case therefore it is indispensably necessary, that all persons should be made parties to it whose rights may be involved by either of those alternatives; or who may be called on to execute a conveyance, or who should be bound by a decree terminating in either of those modes, in favor of a purchaser under a decree for a sale, or in any other way.

It has always been held, that upon the death of the mortgagee, his heir cannot be allowed to exhibit a bill to foreclose without making his executor or administrator also a party, who may have a right to the mortgage money; *Freak* v. *Hearsey*, 1 *Cha. Ca.* 51; *S. C.* 2 *Freem.* 180; *S. C. Nelson*, 93; and it is now settled, on the other hand, that, in such case, the executor or administrator of the mortgagee cannot alone bring a bill to foreclose without making