

685 *the heir a party; because, if the mortgagor should redeem, there would be no one before the Court, by whom an effectual conveyance of the legal estate should be made. *Powell Mortg.* 970; *Wood v. Williams*, 4 *Mad.* 185; *Morgan v. Davis*, 2 *H. & McH.* 16. According to the course of the Court, under a bill to foreclose, the mortgagor must, by the decree, be allowed time to come in and redeem; and he can only be foreclosed, or the mortgaged property ordered to be sold, on his failing to do so, within the specified time. If he should pay the whole mortgaged debt with interest and costs as required, then, in all cases now, and according to the express terms of the older decrees, he will be entitled to have the legal estate re-conveyed to him. *Hunter v. Gaunt*, *ante*, 667. But, in this case, those heirs of Thomas Worthington, deceased, who hold that estate, and who alone could make such a re-conveyance; and whose rights, in that respect, ought to be bound by any decree which may be passed for a sale in favor of purchasers and others, have not been made parties to this suit. This case must therefore stand over, with leave so to amend as to have them brought in as parties.

Whereupon it is ordered, that the demurrer of the defendants John Faner and Mary his wife, and Joshua Lee be and the same is hereby overruled; and they are hereby required to make answer to the said bill of complaint; and it is further ordered, that the said defendants pay to the plaintiff the sum of £5 current money and the costs of the demurrer to be taxed by the register; and be in contempt until the said sum of money and costs be fully discharged and paid.

And it is further ordered, that the demurrer of the defendants Independence Houck and Matilda his wife, be, and the same is hereby overruled, and they are hereby required to make answer to the said bill of complaint; and it is further ordered, that the said defendants pay to the plaintiff the sum of £5 current money and the costs of the demurrer to be taxed by the register; and be in contempt until the said sum of money and costs be fully discharged and paid.

And it is further ordered; that this case stand over with leave so to amend as to make the heirs of the mortgagee, Thomas Worthington, plaintiffs or parties to this suit. (c)

(c) Since the passing of this order it has been declared, that where any conveyance of any freehold estate by way of mortgage to secure the payment of any debt has been executed, and the mortgagee shall depart this life, the receipt of his executor or administrator in full acknowledged and recorded in manner and time as prescribed for acknowledging and recording conveyances of lands by way of mortgage, shall have the same effect as a release to the grantor. 1833, ch. 181, s. 1. And moreover, that it shall not be necessary in any cause of foreclosure or sale of mortgaged property, to make the heirs of the mortgagee parties to the same; but that any decree