a bill of foreclosure should be brought against his assignees alone, without making him a party. This exemption of the bankrupt from being called on as a party, is, however, expressly founded upon the fact of his whole estate having been vested in his assignees; and of a bill of foreclosure being limited in its nature to the obtaining of satisfaction from a particular fund, in which he had been deprived of all manner of interest by a legal assignment, which he could in no way invalidate, deny, or question; and also, upon the ground, that in no event, nor by any form of decree, could the proceedings in that suit be applied for the benefit of the bankrupt; or be so used, as to make him liable for any thing, or to any amount. For it is admitted, that if such a bill sets forth any kind of actual interest in the bankrupt, which should be bound by the decree, it will be necessary to make him a party to the suit to foreclose. (*d*)

But here the mortgagor is not a bankrupt, nor in the condition of bankrupt; nor in the similar situation, according to our law, of an insolvent debtor, whose whole estate had been vested in a trustee for the benefit of his creditors. There has been nothing stated, nor as yet shewn, by which it appears, that, as in cases of bankruptcy or insolvency, he has been exonerated and discharged from all liability for this debt; so, that if the mortgaged estate should not, of itself, produce a complete satisfaction in the way in which the plaintiff has a right to have it disposed of, the mortgagor could not be called upon to pay the deficiency. (*e*) 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 in 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 in equity of this kind, involving a decision upon the right. (*f*) 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

(*d*) Griffin *v.* Archer, 2 Anstr. 478; Benfield *v.* Solomons, 9 Ves. 77; Whitworth *v.* Davis, 1 Ves. & Bea. 545; Lloyd *v.* Lander, 5 Mad. 282; Collins *v.* Shirley, 4 Cond. Cha. Rep. 592.—(*e*) Collet *v.* Wollaston, 3 Bro. C. C. 228; 1805, ch. 110; 1808, ch. 71; 1812, ch. 77.—(*f*) Morgan *v.* Davis, 2 H. & McH. 9; West *v.* Hughes, 1 H. & J. 6; Purl *v.* Duvall, 5 H. & J. 77; Barney *v.* Patterson, 6 H. & J. 204; Fenwick *v.* Floyd, 1 H. & G. 172.