

well the mortgagor, as him who 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 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; (g) 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 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; (h) and for aught that appears, there may be abundance

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(g) *Andrews v. Scotton*, ante 668.—(h) *Brocklehurst v. Jessop*, 10 Cond. Cha. Rep. 136.