

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 could be made. (k) 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. (l) 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 favour 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 over-ruled ; 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 over-ruled, 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. (m)

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(k) *Powel Mortg.* 970 ; *Wood v. Williams*, 4 *Mad.* 185 ; *Morgan v. Davis*, 2 *H. & McH.* 16.—(l) *Hunter v. Guant*, ante 667.

(m) 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 execu-