

RECENT ENGLISH DECISIONS.

he is allowed to come in after default made, and even sometimes in those peculiar cases where, after order absolute, he is allowed to come in, as in *Campbell v. Holyland*, 7 Ch. D. 166; but the established rule is that a mortgagor has six months, and six months only, to redeem, and undoubtedly, to my mind, it is an anomaly to say that a mortgagor by any dealings with the equity of redemption subsequent to the first mortgage should be able to gain for himself a right to a further time to redeem.

If, however, the defendants in a foreclosure action have put in a defence or appeared at the bar, and have proved their incumbrances, and there is no question of priority between them, it does appear that the course of the Court has been to make a judgment allowing successive periods for redemption, which, when examined in principle, will be found to be a judgment, not only in favour of the plaintiff, but a judgment as between the co-defendants. In order, to my mind, for the Court properly to make such a judgment as that, the defendants must appear, and either prove or have sufficient admission of their incumbrances in order to entitle the defendants asking for it to such a judgment as between the co-defendants. In my opinion, the mortgagor is not entitled to ask at all for such a judgment. It is the right of the *puisne* mortgagees.

HAMPDEN V. WALLIS.

Order for payment into Court—Admission—Evidence.

Trust funds may be ordered to be brought into Court by the trustee, an accounting party, upon admissions contained in letters written before action brought that he has received the money, and a recital to that effect contained in the settlement, his execution of which as trustee has been proved, although there is no formal admission in his pleadings or affidavits that he has received and holds the money.

[27 Ch. Div. 251.]

CHITTY, J.—The late Master of the Rolls, in *London Syndicate v. Lord*, 8 Ch. D. 84, held that one mode of admission was as good as another. The old practice was not to order money into Court unless an admission was to be found in the answer. That practice was modified, and admissions in the proceedings were held to be sufficient.

LUMB V. BEAUMONT.

Imp. O. 50, r. 3—O. J. A. r. 398.

Inspection of property—Interlocutory order.

Under the above rules the Court has power to make an interlocutory order before trial, giving liberty to a plaintiff to enter upon land belonging to the defendant, and to excavate the soil thereof for the purposes of inspection.

[27 Ch. Div. 356.]

FUSSELL V. DOWLING.

Imp. O. 17, r. 4 (1883)—O. J. A. r. 385.

Revivor—Discretion of Court—Expiration of time limited for appealing—Special circumstances.

By a marriage settlement the property of the wife was vested in trustees upon trust for the wife, for her separate use, and in case there should be no issue (which event happened) for the wife, her executors, administrators, and assigns, if she survived her husband, but if she died in his lifetime, then for the husband for his life, and subject thereto for the wife's next of kin. The marriage was dissolved in 1871, and in 1872 the wife, in a suit instituted by her against her late husband and the trustees of the settlement, obtained a decree that she was absolutely entitled to the property comprised in the settlement. By her will, dated in 1877, the wife disposed of the property as if it was her own absolutely, and died in 1881, in the lifetime of her late husband.

Held, in the absence of special circumstances, that the next of kin of the wife were not now entitled to an order to revive the suit or to carry on proceedings thereon for the mere purpose of appealing against the decree of 1872.

[27 Ch. Div. 237.]

CHITTY, J.—(After reading the terms of the above rule) it seems to me that the Court has a discretion in making the order, and the applicant is bound to show that it is either necessary or deniable for the purpose of working out the decree. In this case the decree admittedly has been worked out, and a transfer of the fund has been made years ago. The only object, therefore, is that there may be an appeal from the decree. It appears to me, having regard to the observations which fell from the late Master of the Rolls in *Curtis v. Sheffield*, 21 Ch. D. 1, that in cases of this kind, where the only object of a party asking for an order is to appeal, and where there are no special circumstances in the case, where, for instance, there is no suggestion of collusion, or fraud, or the like, and where there is no irregularity, as there was in the case of *Walmsley v. Foxhall*, 1 DeG., J. & S. 451, where the decree had erroneously dealt with future rights, the right rule to be observed is this, that such an order should not be made after the expiration of the time which is limited now for an appeal, namely, one year. It is not necessary to go so far as that in the case which I am dealing with, because a period of something like twelve years has elapsed since that decree was made.

I think that the application ought not to succeed; that it certainly is not "necessary" nor, in my opinion, "desirable" that such an order should be made.