

but in his day, in the early part of the seventeenth century, it had become the practice in Chancery to allow a mortgagor to redeem after default in special circumstances, for instance, if the period of default was short and the default was occasioned by accident or fraud (j). So at a comparatively early date Chancery allowed redemption after default in the case of a person who had made a mortgage as surety merely, because in that case, until after the principal debtor had made default, the mortgagor would not know whether he would be called upon to pay at all (k).

In the reign of Charles I. the right to redeem in equity was fully recognized even in the absence of special circumstances (l).

Conversely, Chancery admitted the right of a mortgagee, after the mortgagor had made default at law, to come into a court of equity and insist that the mortgagor should either exercise his equitable right to redeem within a reasonable time or be forever precluded from exercising it (m).

"A bill of foreclosure (it is an action now) never gave and never was intended to give the mortgagee any active remedy. A bill of foreclosure in substance was this: 'You have a right to redeem and you may exercise that right at any time within twenty years (n) according to the usual practice of the court, but I do not want to be kept in a state of uncertainty as to whether I am or am not to be redeemed, and therefore if you want to redeem me, redeem me now;' and the mortgagee has a right to say: 'Redeem me upon those terms upon which you would be entitled to redeem if you filed your redemption suit.' That is all. If you do not redeem your equity of redemption is gone; the only result, therefore, of a bill for foreclosure is to deprive a man of his opportunity of filing a bill of redemption at some future time." (o).

3. A mortgage cannot be made irredeemable.—When the right of redemption after default became established, the Court of Chancery, in order to prevent its evasion, was obliged to hold that a

(j) In *Courtman v. Conyers* (1550), *Acta Cancellariae*, 764, the mortgagee was alleged to have purposely absented himself on the day fixed for redemption in order to avoid receiving payment. In other words, it was a case of fraud. Jenks, *Short History of English Law*, 219.

(k) Hazekine, *op. cit.*, 252, 253; Spence, *Equitable Jurisdiction*, vol. 1, 602, 603; Williams, *Real Property*, 21st ed., 546, 547.

(l) *Emmanuel College v. Evans*, 1625-6, 1 Rep. in Ch. 18; *Wellden v. Rallison*, 1656, 1 Rep. in Ch. 171.

(m) *How v. Vignes*, 1628-9, 1 Rep. in Ch. 32.

(n) The period is now ten years in Ontario, twelve years in England.

(o) *Cummins v. Fletcher*, 1880, 14 Ch.D. 699, at p. 708. The passage quoted occurs in a judgment relating to the mortgagee's right of consolidation.