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## LEGAL MORTGAGES IN EQUITY.

1. Mortgage regarded as security merely.
2. Equitable right to redeem and the correlative right to foreclose.
3. A mortgage cannot be made irredeemable.
4. Once a mortgage always a mortgage.
5. Stipulation for a collateral advantage.
6. Clogging the equity of redemption.

1. Mortgage regarded as security merely.—Although the courts of law construed a mortgage strictly as conferring upon the mortgagee a conditional estate in the land, they did not entirely lose sight of the fact that the substantial purpose of the transaction was merely to give a security to the mortgagee.

Littleton points out that if the mortgagor dies before the day fixed for payment, the duty to pay the debt may be discharged by his *executors*, and if the mortgagee dies before the day the money should be paid to his *executors*, and not to his heir, unless the heirs are named (a). Till the time fixed for redemption has expired the mortgagee's estate is clearly regarded as simply a security for money lent, which money can be paid by and should be received by the executors and not by the heir. This idea bore much fruit when, after the legal time for redemption had expired, the Court of Chancery recognized an equity of redemption (b).

In *Thornbrough v. Baker* (c), in Chancery, in 1677, it was held that if the mortgagor's estate had been forfeited at law and the

(a) Litt. Ten. ss. 337, 339; Co. Litt. 208a, 209b. If both heirs and executors were named disjunctively and the mortgagor paid the money precisely on the day, he might elect to pay it to the heir or the executor as he pleased. *Thornbrough v. Baker*, 1677, 3 Swanst. 628, at p. 629, 18 R.C. 231, at p. 232.

(b) Holdsworth, History of English Law, vol. 2, p. 491; cf. Strahan, Law of Mortgages, 2nd ed., 19, 20.

(c) 1 Cas. in Ch. 283, 2 W. & T.L.C. Eq. 1; S.C. *sub nom. Thornbrough v. Baker*, 3 Swanst. 628, 18 R.C. 231; 2 Freeman 143. .