

bill does not contain any offer to redeem. Had the bill been filed by the original mortgagee simply to redeem *Boulton*, and to release his security out of the property, the court would have had to consider the two defences which *Boulton* makes now to redemption, viz., the Statute of Limitations, or the lapse of twenty years since he had possession of the property under his mortgage; and the appeal to the discretion to refuse redemption given to the court by the Chancery Act of 1837; the mortgage to *Boulton* having become absolute at law for non-payment of interest prior to the passing of that act. In the view I take of this case it is necessary to refer to these grounds of defences only to show how the mortgagor and mortgagee stood to one another, putting the assignment to the plaintiff out of sight, or treating it as void for the moment, at the time of bill filed; and again how they stood towards one another at the time of the assignment. It is clear that both at one period and at the other they were in an antagonistic position, and we are now to enquire how and under what circumstances the plaintiff intervened and has become the actor in this suit. So far back as the 7th of March, 1838, the mortgagor, *William Banks*, who had not up to that time paid any thing on the mortgage to *Boulton*, then overdue, writes to the latter that "the mill dam broke again and damaged the mill, so that it will take a deal of labour and expense to put into working trim. The uncertain kind of tenure by which I have for some time held the mill, has in a great measure cramped exertions in making it beneficial to me, but I find it is my best if not my only resource; therefore, if you would guarantee my quiet possession of it for three years upon my punctually paying you in shape of rent the interest on the balance I owe you, I would immediately take steps to repair the mill and dam, and I trust would liquidate a portion of the obligation I am under to you. The present state of the country forbids my recommending my brothers to invest more property in it. They had better lose all I owe them. If you agree to this propo-