FORECLOSURE DECREES AND PERSONAL ORDERS.

Some doubt exists in the minds of the profession at present as to the rights of mortgagees to the double remedy in the Court of Chancery which the Administration of Justice Act of 1873, sec. 32, was designed to afford. When a decree for sale is prayed no difficulty is felt, we believe; but when a foreclosure is prayed, it is said the mortgagee's rights are more restricted.

The point came up recently before Vice-Chancellor Blake in a case of *Armour* v. *Usborne*. In that case the bill prayed for a personal order for payment against the defendant, and also a decree for foreclosure. It, however, appeared by the statement of counsel that the office copy of the bill served on the defendant had been endorsed with an endorsement, notifying the defendant that, in default of answer or note disputing claim, &c., a decree for foreclosure might be drawn up; this endorsement made no reference to the application intended to be made for the personal order, so that the defendant, looking at the bill, saw that a personal order and foreclosure was asked; but looking at a notice which the practice of the Court did not render necessary, but which the plaintiff served on the defendant, he perceived that the plaintiff only demanded foreclosure. The defendant allowed the bill to go *pro con.* The Vice-Chancellor considered that as the special endorsement had been unnecessarily made, it would have the effect of misleading the defendant, and therefore refused to grant the plaintiff any other relief than the simple decree for foreclosure.

In a previous case of *Crickmore* v. *Dow* the question of special endorsement did not arise, and in that case an order for payment was made, together with a decree for foreclosure, but the decree was so worded that the remedy on the personal order was to be first exhausted or abandoned before recourse could be had to the foreclosure proceedings.

In this case the Court gave the plaintiff the remedy by action, and also a decree for foreclosure, but at the same time virtually stayed the proceedings for foreclosure until after the plaintiff should have proceeded, as far as he wished, to enforce the personal remedy on the covenant.

We are not aware what special circumstances there were in this case which called for this mode of framing the decree, though doubtless there were such. But to prevent any misconception it would be well to consider the subject in the abstract. We do not think it could have been intended by this decision to specify a form of decree of general application, one which would not, as it seems to us, give the two remedies in the one suit which the Administration of Justice Act intended. And it may be argued in this way:—The nature of the relief which a plaintiff is now entitled to claim in a mortgage suit must obviously be governed by the relief which he could have got by his action or actions at law and suit in equity before the Administration of Justice Act; and no principle, we think, was more clearly established than this, viz., that a mortgagee at any time before, and up to obtaining the final order of foreclosure, and even after final order, as long as he retained the mortgaged estate, was at liberty to enforce all the remedies he might be entitled to at law and in equity concurrently. The Court of Chancery over and over again has refused to stay an action at law on the covenant or in ejectment because a suit in equity had been brought for foreclosure. As early as 1780, Lord Mansfield held that a mortgagee having a bond securing the mortgage debt, might bring an action on the bond and arrest the debtor pending a suit in equity for foreclo-