

debt, and that notwithstanding that the mortgagee takes a covenant from the third party to pay it. But in the latter case the mortgagee is unable to enforce against the original mortgagor his covenant unless he is prepared to convey the property to him subject to the right of the third party. See *Kinnaird v. Trollope* (1889), 42 Ch. D. 610; *Stark v. Reid* (1895), 26 O.R. 257.

The sole question here is, does the forfeiture under the agreement of the 10th March, 1905, and the sale pursuant thereto, work such a destruction of the appellants' right against the respondent as disables them from further pursuing him in respect of the debt? The argument is, that the forfeiture and sale were something done under the agreement, and that it was expressly agreed therein, *inter alia*, that "this agreement and anything that may be done hereunder shall not affect or prejudice" the appellants' claim in respect of the \$24,000, and part of the subsequent instalment, *i.e.*, the sum for which judgment was recovered in this action, nor shall it prejudice the rights of the respondent with respect thereto.

But that clause concludes in a way which indicates that it was meant to preserve those rights during a period in which it was open to the purchaser to pay the instalment and for which, if the respondent pays, he obtains a lien. The final words in the clause in question are: "But until the purchaser shall pay the first two instalments of \$24,000 each, with interest as aforesaid, the rights of the vendors and the party of the third party shall remain as they now are in respect of said instalments and interest." This is supported by the provision, found later on, that all moneys paid under the agreement were in the first place to be applied (after paying an earlier judgment) "in and to the discharge of the claims of the vendors against the party . . . of the third part in respect of which their rights have been hereinbefore reserved."

It appears from the notice of forfeiture that, unless within one month the overdue instalments were paid, the appellants intended to forfeit the agreement and any moneys paid thereunder, and that the said agreement was to become null and void. The forfeiture was carried out about July, 1909, owing to default not only on subsequent instalments, but on account of the instalment for which judgment had been recovered in 1907; and the property was sold on the 4th July, 1912.

The forfeiture deprived the purchasers of the right to make payment and demand the property. Treating the liability of the respondent as having continued down to that time, and his right