

*A Treatise on Power of Sale Under Mortgages of Realty, with Appendix of Statutes and Forms.* By Alfred Taylour Hunter, LL.B., Barrister-at-Law. The Carswell Co. (Ltd.), Toronto, 1892.

In the land to the south of us law books have been written on almost every conceivable subdivision of the various branches of the law, but no really good work has yet been written upon the important subject treated of by the author of this work. We feel certain, therefore, that the profession will, and must, give a hearty welcome to this volume, treating, as it does, of the law and practice in connection with one of the most frequently recurring incidents in a solicitor's office. In such everyday matters as proceedings under power of sale are, it is surprising to find how much ignorance prevails even with regard to the elementary legal principles involved, and in what a reckless and perfunctory way these proceedings are often conducted. It seems strange that when such is the case we should have had, up to the present time, no text-book in what the author justly calls this "difficult and most important branch of real property law."

In discussing the question as to who are "assigns" of the mortgagor, and therefore entitled to notice of sale, the author comes to the conclusion that execution creditors of subsequent purchasers and mortgagees are not entitled to notice, although he admits that an argument might be built up against the position he takes from the judgment of Spragge, V.C., in *Larling v. Wilson*, 16 Gr., at p. 256. Mr. Leith, in his work, takes a similar position; but it has nevertheless been the practice among conveyancers to serve execution creditors of a purchaser from the mortgagor, and we think that this is a reasonable view of the case, and would be upheld should occasion arise; for we do not see why, when execution creditors of a mortgagor are entitled to notice as "assigns," that execution creditors of a purchaser from a mortgagor should not be entitled when the purchaser himself is.

The author seems to have overlooked R.S.O., c. 115, ss. 1-3, in that he does not mention that sale papers may be deposited in the proper registry office. This is a provision of which comparatively little use is made, and it seems all the more surprising that it should be so, seeing that sale papers become very valuable documents in a chain of title, and are often of the greatest importance to the owner of the land. Since the cost of deposit is so very small, it is worth considering whether it would not be advisable to compel this course to be taken, which is now but seldom resorted to except when there are conflicting demands for the custody of the sale papers. Referring to the cases of *Clark v. Harvey* 16 O.R. 159, and *Re Gilchrist and Island*, 11 O.R. 537, in which latter case the Chancellor, in an important judgment, discusses the question of how far an alteration in the wording of the Short Forms Act varies the construction of the long form, the author says, "It seems, on the whole, to be very unsafe to make any change in the interior of the clause—further than to make substitutions for the word 'mortgagee'; and if we are to abide by the view of Mr. Justice Street (*Clark v. Harvey*), who instances a few alterations that might be made in some of the Short Form terms, only very insignificant internal qualifications are admissible by the statutory power."