HON. SIR JOHN BOYD, C. NOVEMBER 7TH, 1912.

TRIAL.

WILSON v. TAYLOR.

4 O. W. N. 253.

Mortgage—Sale under Power—Alleged Improvidence—Sale en Bloc Instead of in Parcels—Delegation of Matter to Careful Solicitor by Mortgagee—Local Conditions—Printers' Error in Advertisement—Duties of Mortgagees Discussed—No Evidence of Mala Fides.

Action for damages alleged to have been sustained by a mortgagor by reason of the alleged improvident sale of the mortgaged premises by the mortgagor, under his power of sale. The chief complaint was that the property had been sold *en bloc* instead of in parcels, against the expressed wishes of plaintiff, and the evidence went to shew that in all probability more could have been obtained for a sale in parcels. Defendant had been too old to look after the matter himself, and had put the whole business in the hands of a competent solicitor.

BOYD, C., *held*, that "if a mortgagee exercises his power of sale *bona fide* for that purpose, without corruption or collusion with the purchaser, the Court will not interfere, even though the sale be very disadvantageous unless, indeed, the price is so low as to be in itself evidence of fraud."

Haddington Island Quarry Co. v. *Huson*, [1911] A. C. 729, and other cases as to liabilities of mortgagee selling, reviewed.

Aldrich v. *Can. Perm. Loan Co.*, 24 A. R. 193, distinguished.

Action dismissed without costs.

J. E. Hutcheson, K.C., for the plaintiff.

J. L. Whiting, K.C., for the defendant.

HON. SIR JOHN BOYD, C.:—It has been said that in exercising the power of sale in a mortgage, the mortgagee is acting as a trustee and in explanation of that relation it has been further said that he should act in the same way as a prudent man would act in the disposal of his own land, The highest Courts, however, have held that the mortgagee is not acting as a trustee, but only in pursuance of the powers conferred by the mortgage and that he may first consult his own interest before that of the mortgagor, especially I would think in a case where the security though adequate may be difficult of realization. The effect of this state of the law is to displace the test of the prudent man dealing with his own property in favour of a somewhat lesser degree of responsibility. The point is adverted to by Mr. Justice Duff in *British Columbia Land & Investment Agency* v. *Ishitaka*, 45 S. C. R. at p. 317, and has a bearing on the present case.