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which is nearest to it—if the word "near" can be applied properly to cases so far apart—is *Stevens* v. *Theatres Limited*, [1903] 1 Ch. 857, in which it was held, by Farwell, J., that, after a foreclosure decree *nisi* in an action, the mortgagee could not properly sell the mortgaged property under a power of sale contained in the mortgage; and I have not been able to find that that ruling has been questioned in any case. But, whether the ruling was based upon a merger of rights under the mortgage in the judgment, or upon an election of one of two inconsistent remedies, or howsoever, it has plainly no effect upon such a case as this. There is no foreclosure judgment or order in this action, nor could there be, as the action was not brought for foreclosure—no such relief was ever sought in it: indeed no judgment has been pronounced in it; it has been merely referred for trial to a judicial officer of the Court: and, after being in Court for so great a length of time without anything substantial having been accomplished, it is not much to be wondered at that the mortgagee should decide to take the matter into his own hands and endeavour to accomplish something in much less time.

It is said for the plaintiffs that the defendant cannot sell under the power contained in the mortgage, because it has not yet been decided just by whom and in what shares the lands are owned. But what has that to do with the case as a matter of legal right? What the mortgagee desires to sell, and that which alone he can sell, is just such rights and interests in the lands as the mortgage covers. The application is refused with costs.

J. D. Shaw, for appellants.

W. E. Fitzgerald, for respondent, was not called upon.

THE COURT dismissed the appeal with costs, the Chief Justice saying that there was nothing in the cases cited to warrant the Court in interfering with the decision below, which was clearly right. *Appeal dismissed.*