the mortgagee. However, the Act was amended by 5 & 6 Edw. VII. ch. 75, sec. 3, so as to confer jurisdiction over mortgages on any competent Court, notwithstanding anything to the contrary in the Act; but this amendment was repealed by 1 Geo. V. ch. 49, sec. 7; so that at present, as laid down by the Court in *Re Alarie and Frechette* (the case above reported), there is no jurisdiction in any Court to foreclose such a mortgage by means of the ordinary foreclosure decree.

So in Australia, from which country the Torrens system is derived, it has been held that a mortgage made in conformity with the provisions of the Land Titles Act cannot be foreclosed by a Court proceeding, where another method of divesting the mortgagor's title is provided by the Act: see *National Bank of Australia* v. *United Hand-in-Hand, etc., Society*, 4 A.C. 391; *Greig* v. *Watson*, 7 Vict. L.R. 79; *Long* v. *Town*, 10 N.S.W. (Eq. R.) 253. The reason for this doctrine is that a mortgage made under the Land Titles Act differs from a common law mortgage in that no estate in the encumbered land is vested by the instrument in the mortgagee, the mortgage taking effect as a charge or security only with certain statutory methods pointed out for divesting such title; and that consequently the mortgagee's powers are dependent upon such provisions: *Smith* v. *National Trust Co.*, 1 D.L.R. 698, 45 Can. S.C.R. 618, affirming 20 Man. L.R. 522; *Long* v. *Town*, 10 N.S.W. (Eq. R.) 253; *Colonial Investment and Loan Co.* v. *King*, 5 Terr. L.R. 371. In *Greig* v. *Watson*, 7 Vict. L.R. 79, it was said that the legislature by providing for the foreclosure of mortgages made under the Land Titles Act, intended to make such method exclusive. And to the same effect see the remarks of the Court in *Smith* v. *National Trust Co.*, 1 D.L.R. 698, 45 Can. S.C.R. 618, affirming 20 Man. L.R. 522.

But where land is mortgaged under the general law, and subsequently the land is brought under the Land Titles Act, the mortgage may be foreclosed under the old system: *Re Smith*, 15 Australian L.T. 85.

The *Alarie* case, above reported, deals only with the effect of a final order of foreclosure made in the ordinary suit for foreclosure or sale and does not deal with the effect as *res judicata* which the decree might have on an application made in the statutory method before the land titles officer. It merely affirms as a rule of practice that the decree is not an extinguishment of the mortgagor's title where the special statutory system of foreclosure is applicable, and that an application must still be made in the land titles office as might have been done apart from the Court proceedings.

The land titles registrar would then have to consider proofs of default, and on this score the decree may operate so as to conclude the mortgagor from again setting up questions of fact which had been decided against him in the mortgage action: see *Re Woodhouse*, (Ont.) 14 D.L.R. 285.

The Court presumably still retains its powers *in personam*, although the transactions may relate wholly to lands subject to the transfer and registry provisions of the Torrens system. Where the registered owner is within the jurisdiction, it may still be that in an action properly framed the Court may, by its decree against him, direct that he should execute and deliver all necessary transfers in favour of the mortgagee.