

11 Jur. 761; *Kershaw v. Kalow*, 1 Jur. N.S. 974; see also *Falkner v. Equitable Society*, 4 Drew. 352. It is more advisable, of course, in order to avoid any ground of complaint of insufficiency of price or of unfair sale, that the property should be sold at public auction, instead of by private contract, even though the power authorize the latter. In one case where the mortgagee expressed a desire to get his debt only, and made no effort to sell, and never having advertised, sold at private sale at a great undervalue, the sale was set aside, though it did not appear that the purchaser was aware of the negligence of the mortgagee, *Latch v. Furlong*, 12 Gr. 303. Due notice by advertisement of the intended sale should be given, and perhaps as to this the practice which governs on sales by the direction of the Court would be the safest guide. Unnecessary and too stringent conditions of sale as to title and production of title deeds or otherwise should be avoided as likely to prejudice the sale; and if in this or other respects the conduct of the mortgagee be improper, not only will he be held responsible, but under circumstances the sale may be set aside, *Richmond v. Evans*, 8 Gr. 508; *Jenkins v. Jones*, 2 L.T.N.S. 128; *Latch v. Furlong*, 12 Gr. 303; *McAlpine v. Young*, 2 Ch. Ch. 171. As to depreciatory conditions, see *Falkner v. Equitable Rev. Society*, 4 Drew. at p. 355; but the circumstances must be very strong to induce the Court to set aside a sale as against a purchaser acting bona fide, and if the sale were set aside as against such purchaser, he might be allowed for his improvements, *Carroll v. Robertson*, 15 Gr. 173.

A mortgagee cannot purchase at a sale under his power, and, notwithstanding any such purchase, he will still continue mortgagee, and liable to redemption. His duty as vendor is to obtain as much as possible for the property, his interest as purchaser is the reverse of this, viz., that the property shall sell for as low a price as possible. Courts of equity forbid a man placing himself in this position, wherein his interest may conflict with his duty. Neither can an agent of the mortgagee buy for him, nor his solicitor's clerk, *Ellis v. Dellabough*, 15 Gr. 583; *Nelthorpe v. Pennycuik*, 14 Ves. 517; *Howard v. Harding*, 18 Gr. 181, nor his solicitor, either for himself or the mortgagee, *Downs v. Grazierbrook*, 3 Mer. 200; *Whitcomb v. Minchin*, 5 Madd. 91. Nor can the secretary or manager of a company (mortgagee) buy at a sale by the company *Martinson v. Cloves*, 21 Ch.D. 857. But a second mortgagee buying on a sale by the first mortgagee, under a power of sale in his mortgage, takes the estate as any stranger, free from the equity of redemption, *Shaw v. Bury*, 2 D.J. & S. 468; *Parkinson v. Hanbury*, 2 D.J. & S. 450; *Watkins v. McKellar*, 7 Gr. 584; *Brown v. Woodhouse*, 14 Gr. 684. And if the mortgage of the second mortgagee be in trust for sale on default, instead of with the usual power of sale, so that the mortgagee stands more in the position of a trustee, it is said, *Kirkwood v. Thompson*, 2 D.J. & S. 613; but see *Parkinson v. Hanbury*, 2 D.J. & S. 450, even then he can purchase from a prior mortgagee.

Whoever is entitled to the right to redeem is the person who is entitled to the residue of the property left unsold after satisfaction of the mortgage debt, and the surplus proceeds if all be sold. Before the Devolution of Estates Act, if the mortgagor of a freehold did not intend this, but intended a conversion in the event of a sale, and that the proceeds shall go as personal estate, then that should have been clearly expressed; for when there was a