

I am unable to see any sound reason for preventing the mortgagee from suing where the impaired condition of the mortgaged estate is due to his own acts, and allowing him to sue when that condition is due not to his acts but to his neglect to perform the duties which rested upon him as a mortgagee in possession

It is unnecessary to consider whether a case may not arise in which, though the act of the mortgagee has been only the unlawful destruction of a building on the mortgaged land, he may nevertheless be precluded from suing on the covenant. It may be that where the building is of such a character that compensation in money would not be an adequate indemnity to the mortgagor for the injury done by its destruction, the principle of the cases to which I have referred may be applicable. I express no opinion on the point, for it is sufficient to say that, for such an injury as was done to the mortgaged premises in this case, beyond question full compensation may be given by charging the mortgagee with the loss occasioned thereby to the mortgagor.

Nor is it necessary, in the view I take, to consider whether, on the facts of this case, had no sale under the power taken place, plaintiff would have been answerable for the wrongful act of Slavin and Magann in pulling down the factory building and removing from the land the materials of which it was composed, though my present impression is that plaintiff is not answerable for those acts, and is answerable, if at all, for the consequences of them only to the extent of any loss which may have been sustained by the mortgagor owing to plaintiff not having taken steps to recover damages for the wrongful acts of Slavin and Magann, or to compel them to restore the factory to its former condition.

I am of opinion, however, that plaintiff is bound to account for the whole of the purchase price which was to have been paid by Mitchell. Plaintiff was not entitled, according to the terms of the powers, to sell on credit, but a sale made by a mortgagee on credit, if a real sale, is, according to the decided cases, a valid exercise of the power, if the mortgagee stands ready to account to the mortgagor for the price as so much money received by him in cash: *Thurlow v. Mackeson*, L. R. 4 Q. B. 97, and cases there cited; see also *Kennedy v. De Trafford*, [1896] 1 Ch. 262, [1897] A. C. 180; *Beatty v. O'Connor*, 5 O. R. 731.

It is not, I think, open to plaintiff to contend that the sale was an invalid one, and it having been made for a price less in amount than was owing upon his mortgage, he must be taken to have received the whole of the agreed purchase