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BOYD, C. NOVEMBER 7TH, 1912.

WILSON v. TAYLOR.

Mortgagor and Mortgagee—Power of Sale—Sale en Bloc where Parcelling Suggested as Better Method—Limits of Mortgagee's Responsibility—Test of "Prudent Man" Selling His Own Property—Omission of Lots from Description—Bona Fides.

Action for damages for sale of the plaintiff's property by the defendant, a mortgagee, under the power of sale in a mortgage.

J. E. Hutcheson, K.C., for the plaintiff.
J. L. Whiting, K.C., for the defendant.

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.

A valuable rule as to the obligations of the mortgagee is to be found in an appeal from Victoria to the Privy Council; viz., that