

Canada Law Journal.

VOL. LVII.

TORONTO, MAY, 1921.

No. 5.

THE EFFECT OF FORECLOSURE AS REGARDS A COLLATERAL SECURITY.

A somewhat interesting question for mortgagees is discussed in the recent decision of the Supreme Court of Canada in *Isman v. Sinnott*, 61 S.C.R. 1.

The facts appear to have been as follows: The plaintiff purchased the Kamsack hotel from the defendant, and transferred to him as security for the balance of the purchase money a first and third mortgage due by one Yandt on another property, being the Redvers hotel; and as "collateral security" he also gave the defendant a mortgage on the Kamsack hotel, payable at dates corresponding with the respective dates of payment of the two Yandt mortgages on the Redvers hotel. The mortgages having become in default the defendant, it is said, foreclosed the first Yandt mortgage on the Redvers hotel, and subsequently sold the property comprised therein. The plaintiff then brought the present action upon the covenant in the "collateral" mortgage and the Judge at the trial gave judgment dismissing the action, which was reversed by the Court of Appeal of Saskatchewan. This latter judgment was reversed by the Supreme Court of Canada but the judgment of the Judge at the trial dismissing the action was not restored but, the judgment was varied by declaring that on payment of the third mortgage by which is meant, we presume, the so-called "collateral" mortgage, the defendant was entitled to a discharge of the mortgage on the Redvers hotel property, being the property included in the first mortgage that was foreclosed.

The true result of what took place was apparently that as to the two Yandt mortgages the plaintiff was a derivative mortgagee, and as to the so-called "collateral" mortgage he was an original mortgagee. The foreclosure of the derivative mortgage seems necessarily to involve the foreclosure of the equity of redemption