

COST OF MORTGAGE SALES.

In a recent issue of the Grain Growers Guide Mr. A. L. Crossin contributes a most valuable article bearing on the expensive proceedings in Western Canada in connection with mortgage sale action, attributed to unwise legislation.

Mr. Crossin says in part:—

Amongst the unnecessarily expensive legal proceedings must be placed the mortgage sale action. As no borrower when taking out his loan anticipates failure to meet his engagements there is little general interest in this subject. It is submitted that no one should be indifferent to any condition involving the misapplication of effort or waste of wealth.

An Important Distinction.

In a consideration of this subject the distinction between power of sale and foreclosure action must be preserved. Under power of sale, and provided always the mortgage is in proper form, the lender, on continued default, can without taking court proceedings serve the borrower and all others whose interests are shown on the registered title with a notice of intention to sell. After a proper lapse of time and adequate advertising the property is offered for sale by public auction and knocked down to the highest bidder. If the sale produces more than the total mortgage claim (including costs) the lender is bound to account for the surplus to the parties entitled thereto, he cannot retain to his own use any portion of such surplus. If a dispute arises amongst the claimants to this surplus the lender is permitted upon application to the court to pay the same into court and rid himself of liability therefor. Should the price bid for the property at the auction be less than the mortgage claim the property is usually withdrawn from sale and thereafter sold by private treaty at the best price obtainable.

This process is simple, inexpensive and just. In passing it may be noted that in the older lands sale by auction is the preferred means of selling all real property. Recently the entire holdings of the late Russell Sage in the City of New York, including his half-million dollar residence, were sold by the executors in this manner.

Foreclosure Proceedings.

Foreclosure is an action taken through the courts by which in time, usually about 12 months, the lender becomes the sole owner of the mortgage security. He can sell the property at any price he chooses and retain any profit made on the transaction. This process is tedious and costly.

For many years the lending companies in Canada used only the remedy provided by power of sale, to the advantage, it is believed, of all interested. That they are now more generally resorting to

foreclosure is due to two causes: firstly, the simplicity of the power of sale action is being destroyed by alleged safeguards imposed by legislative enactment, and secondly, lenders have found that a final order of foreclosure affords them the best means of securing a marketable title, having regard to the disabilities imposed by the laws of the past few years.

It is a pity that we are getting away from the simple inexpensive sale action. Under the well settled law governing such proceedings a mortgagee was bound to take all the steps necessary to secure the highest possible price at the auction sale, failure to do so opened him to attack from the borrower or his creditors and to responsibility for prospective loss. He was bound to prove at his peril adequate default, due notice, proper advertising and a fair auction; he was in the eyes of the law a trustee for the owner of the property.

Cost in East and West.

A few figures will illustrate the contrast between the different methods of accomplishing the same end. One of the large lending companies doing business in Ontario reports that during a period of three-and-one-half years the company brought to sale seventeen properties in that province at an average expense of \$114. These mortgages averaged \$2,000 each. It cannot be alleged that any injustice was done any person by the method employed to bring these properties to the market.

The writer ascertained the cost of bringing to sale several farms in Manitoba, Saskatchewan and Alberta during the past few months under securities held in his own office. These were merely uncomplicated titles and the figures are taken just as they come, as follows:—

	Loan	Cost
Saskatchewan $\frac{1}{4}$ -section... ..	\$1,000	\$218.66
Manitoba $\frac{1}{4}$ -section... ..	1,500	174.75
Saskatchewan $\frac{1}{4}$ -section... ..	1,500	217.70
Manitoba $\frac{1}{4}$ -section... ..	800	150.91
Manitoba 400 acres... ..	4,400	306.16
Saskatchewan $\frac{1}{4}$ -section... ..	900	249.65
Saskatchewan $\frac{1}{2}$ -section... ..	3,500	232.73
Saskatchewan $\frac{1}{2}$ -section... ..	4,000	330.00
Alberta $\frac{1}{2}$ -section... ..	1,400	252.82
Alberta $\frac{1}{2}$ -section... ..	4,280	278.27

More striking figures may easily be found. One company which was compelled to bring to sale a section of land in Alberta was required by the courts to expose the land for sale by auction on three different occasions, the court fixing the reserve bid in each case. The costs were one thousand dollars. Many similar instances might be given. These involved processes have been imposed in part with the well meant intention of restricting the alleged rapacity of lending companies.