

Although personal service on the mortgagor is requisite, yet, where a notice of sale was served on an agent of the mortgagor who subsequently transmitted it to the mortgagor, who sold it in time, it was held to be sufficient. *Fenwick v. Whitlam*, 1 O.L.R. 24.

It is most inadvisable to omit a private power for sale without notice; because if the mortgagor should die intestate and no letters of administration should be applied for the mortgagee cannot proceed as there is no one upon whom notice could be served.

An execution creditor whose writ is in the sheriff's hands at the time of giving the notice of sale has been said to be an "assign" entitled to notice, *Re Abbott & Metcalfe*, 20 O.R. 299, although the interest of the mortgagor is such that it could not be sold under the writ, *Glover v. Southern Loan Co.*, 1 O.L.R. 590. But see *Ashburton (Lord) v. Norton*, [1914] 2 Ch. 211.

It is important, also, to provide that any sale purporting to be made by the mortgagee shall be valid as regards the purchaser in all events of impropriety in the sale, leaving the former personally liable for improper conduct, if any; and that the purchaser shall not be bound to enquire as to whether notice has been given, or default made, or otherwise as to the validity of the sale. In the absence of such a clause the mortgagee selling may sometimes have difficulty in enforcing the sale against an unwilling purchaser, see *Hobson v. Bell*, 2 Beav. 17; *Ford v. Healy*, 3 Jur. N.S. 1116; *Forster v. Hoggart*, 15 Q.B. 155; *Dieler v. Angerstein*, 5 Ch.D. 600. But such a clause will not protect a purchaser who has express notice that the notice of sale stipulated for has not been given, *F. Vinson v. Hanbury*, 2 D.J. & S. at p. 452; *Selwyn v. Garfit*, 35 Ch.D. 273.

Where the mortgagee proceeds under the statutory power given by the Mortgage Act, R.S.O. ch. 112, sec. 19, and has made a conveyance to the purchaser, the latter's title cannot be impeached on the ground that no case had arisen for exercising the power of sale, or that the power had been improperly or irregularly exercised, or that notice had not been given, but the person damaged is to have his remedy against the person exercising the power, R.S.O. ch. 112, sec. 22.

The power usually authorizes a sale by private contract or at public auction, for cash or on credit, in one parcel or in lots, from time to time, under any special conditions of sale as to title or otherwise, with power at any sale at auction to buy in and re-sell, without being responsible for any loss or diminution of price occasioned thereby, and to rescind or vary any contract of sale that may have been entered into, *Dudley v. Simpson*, 2 Ch. App. 102.

On any sale under the power, the vendor must be careful so to act that the interests of the mortgagor be not prejudiced by any negligence or misconduct. The duty of a mortgagee on a sale by him resembles that of a trustee for sale, *Richmond v. Evans*, 8 Gr. 508; *Latch v. Furlong*, 12 Gr. 306, though he is not a trustee but has a beneficial interest in realizing so as to recover his money, see *Kennedy v. DeTrafford*, [1897] A.C. 180, as to his duties. A greater latitude may be allowed to a mortgagee than to a bare trustee not interested in the proceeds, and the Court might restrain a sale by a trustee under circumstances in which they would not restrain a mortgagee, (as to cases wherein the Court declined to interfere: *Mathie v. Edwards*,