the property, etc., make sales subject to approval of mortgagees, and to render them accounts. Pending the foreclosure proceedings the plaintiff joined with the mortgagees in making a lease of a portion of the lot to one Kerr. The plaintiff was not assessed for the property, and the taxes were not charged against him by name in the collector's roll.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

S. B. Woods, for defendant.

J. J. Warren, for plaintiff.

STREET, J.—In my opinion, it is clear from the provisions of this agreement that the plaintiff's rights as purchaser were not to take effect *in praesenti*, nor until the foreclosure should be completed, and were to be dependent upon the happening of that event. Until that time arrived he was to pay no part of the purchase money, and was to manage the property as the mortgagees' servant during his good behaviour only. No other construction can be placed upon the agreement consistently with the obvious intention of the parties that the mortgagees should proceed to foreclose their mortgage, preparatory to carrying their agreement into effect; for, if the agreement had provided for an immediate acquisition by the now plaintiff Lloyd of the mortgagees' rights, they could not have prosecuted the foreclosure proceedings in their own name. It is only upon the construction, which I think is the proper one, upon the terms of the agreement, that the mortgagees were to remain owners of the mortgage until the completion of the foreclosure, and were then to convey to the plaintiff, that the proceedings for foreclosure can be treated as regular: Scott v. Benedict, 9 C. L. T. Occ. N. 181.

As the plaintiff had no estate in the land, and no possession of it save as agent for the mortgagees, and was only to become entitled to an estate in it upon the happening of an uncertain future event, he cannot, in my judgment, be held to be the "owner" of it, upon even the most liberal construction of that word, and the action was, therefore, properly dismissed.

I have not failed to notice that the plaintiff joined with the mortgagees, pending the foreclosure proceedings, in a lease, to one Kerr, of the premises. That circumstance, however, does not seem to affect the question, when the terms of the lease are considered. The lease is expressly made dependent upon the continuance of the rights of the mortgages, and is to terminate if the mortgagor should