

following *Re Thuresson*, 3 O. L. R. 271, 1 O. W. R. 4, he made the following direction for the entry of judgment: . . .

[The action was to be dismissed unless plaintiff satisfied the Master, upon a reference, that he was in a position to reconvey the mortgaged property substantially as it was when he took possession.]

I am unable to agree with the conclusion of the trial Judge.

The principle upon which *Re Thuresson* was decided is not, in my opinion, applicable to such a case as this. . . .

[Reference to *Walker v. Jones*, L. R. 1 P. C. 50; *Lockhart v. Hardy*, 9 Beav. 349, 357; *Perry v. Barker*, 8 Ves. 527, 13 Ves. 799; *Gowland v. Garbutt*, 13 Gr. 578; *Schoole v. Sall*, 1 Sch. & Lef. 176; *Stokoe v. Robson*, 3 V. & B. 51, 19 Ves. 385; *Shelmardine v. Harrol*, 6 Madd. 39; *Kinnaird v. Trollope*, 39 Ch. D. 636; *Dyson v. Morris*, 1 Hare 427; *Palmer v. Hendrie*, 27 Beav. 349, 28 Beav. 341.]

I have found no case in which the principle has been applied where the mortgagee is in a position to restore the whole of the mortgaged estate, but not in the condition in which it was when he took possession, even although the altered condition is due to his own act or the acts of those for whose dealings with the estate he is answerable to the mortgagor.

To give such a wide application to the principle would make it impossible for a mortgagee who had entered into possession of mortgaged property worth not more, it might be, than one-tenth of his debt, to sue upon the covenant, if he had either by acts or omissions caused or suffered the condition of the property to be altered, be it by pulling down a building or the improper cutting down of a tree, or the like, though the result had been to depreciate the value of the property but to a trifling extent.

In my opinion the principle does not extend to a mere alteration of the character or condition of the mortgaged estate, where the mortgagee is in a position to reconvey the whole of the land itself. I use this expression as meaning the land apart from that which is affixed to it, either by the operation of nature or the hand of man, such as a tree or a building; there is, as I view it, no good reason why he should not be entitled to recover the mortgage money after deducting from it what may be sufficient to compensate the mortgagor for the injury done to the mortgaged property by the wrongful act or default. . . .

[Reference to *Munsen v. Hauss*, 22 Gr. 279.]