

sale or foreclosure instituted by a mortgagee, and substitutes for him a "beneficiary"—but what kind of a beneficiary does the Act contemplate? In the case, for instance, of an insolvent mortgagor, who is the beneficiary the Act contemplates, the devisee who has a nominal beneficial interest, but actually none, or the creditors who have the actual beneficial interest in the equity of redemption; or does it mean all persons entitled to participate in the deceased's estate?

The Act seems to afford no clue to the proper answer. It provides, moreover, a delightful pitfall for the unwary, for if pending the mortgagee's action, a personal representative should be appointed to the estate of the mortgagor, in whom the equity of redemption becomes vested, even though unknown to the plaintiff, then all his subsequent proceedings would be invalidated unless such personal representative were made a party, and the plaintiff might find, after completing his proceedings, that he had obtained a merely abortive judgment, as he may learn years after when deducing title under such proceedings.

While we cannot, therefore, think the first section an amendment in the right direction, we think the amendment of section 16 is to be approved as a return to the first principles of the Act. It restores the ample power of the personal representative to sell the land of the deceased, but with reasonable checks on his action.

Had the principle on which the original Act was based been carried out in the first section, it would, we think, have provided that in all cases of intestacy, until some other representative is appointed, some public officer should be ex officio the personal representative of the deceased, and that proceedings instituted against him should bind the estate. This official representative might well be the Official Guardian ad litem, who is already charged with certain duties under the Act, and we trust that some amendment in this line may yet be adopted, and that the first section of the late Act may be repealed, as also the provisions relating to cautions, for which we would substitute some short and easy method of transfer from the personal representative in every case.