

On the other hand, if payment of the overdue instalment be not made, and foreclosure or sale take place, the mortgagor will be foreclosed or sold out of all the interest he has in the land. He could not enforce the bond; nor could he be compelled to pay the \$1,000; that was all part of the one transaction which his default has brought to an end.

There does not seem to me to be any kind of difficulty in applying foreclosure or sale proceedings to the case; nor any reason of any kind why they should not be applied to it.

But it was contended that the cases are against that view: *Cameron v. McRae*, 3 Gr. 311, and *Parker v. Vinegrowers Association*, 23 Gr. 179, being the cases relied upon.

As to each of these Ontario cases, it is enough to say that they were decided on the authority of the case *Burrowes v. Molloy*, 2 Jo. & Lat. 521, and were, to say the most of them, not intended to go beyond what was the opinion of Sugden, L.C., expressed in that case.

That which was decided in *Burrowes v. Molloy* was . . . that one who had expressly and plainly covenanted that the mortgage-moneys should not be called in before a certain time, could not call it in before that time: see *Williams v. Morgan*, [1906] 1 Ch. 804.

How then does that apply to this case? Merely to this extent, that the plaintiff cannot call in the \$1,000 until the time fixed for payment of it, namely, on delivery of the deed of the infant's interest, if any, in the land; but, if foreclosure be had, this is never to happen; and so payment of that sum is not sought or demanded. If foreclosure take place, that executory contract will come to an end, as will all consequences that would have flowed from it. . . .

The agreement is for the reduction of the last payment by \$1,000 if the deed be not delivered. Foreclosure, without having delivered the deed, has the effect of reducing the amount of the mortgage only.

Nor does foreclosure create any difficulty or work unjustly against any one. If foreclosure takes place, the mortgagee merely gets back that which she conveyed, and the mortgagor loses only that which he has paid—the usual case.

If the mortgagor desire a sale, the land can be sold, with his right to the deed before-mentioned, by assignment of the contract and bond, and the mortgagor will get the surplus purchase-money.

If the mortgagor pay up the arrears, the contract will go on as if nothing had happened: *Con. Rule 485*. . . .