

The plaintiffs, then, instead of applying for a final order of foreclosure, petitioned the court to make an order for the sale of the mortgaged premises, and for payment by the mortgagor of the balance which should remain due after deducting the amount realized by the sale.

This application was based on the ground that the mortgaged premises are not now worth the amount due under the mortgage.

Held, that Order No. 419 of the Rules and Orders in Equity, which provides that "the court may direct a sale of the property instead of a foreclosure of the equity of redemption on such terms as the court thinks fit," does not authorize the court to make a decree for sale after foreclosure has been ordered without the consent of the parties.

Order No. 419 is substantially a repetition of the first part of the 48th section of the Imperial statute, 15 & 16 Vict., c. 86, and, under that section, according to the English authorities, no sale could be ordered after foreclosure decree except upon consent: *Daniel's Chancery Practice*, p. 1151; *Coote on Mortgages*, p. 1000; *Girdlestone v. Lavender*, 9 H.A. 53. The English practice was changed in this respect by section 25 of the Conveyancing and Law of Property Act, 1881: *Union Bank v. Ingram*, 20 Ch.D. ; *Wooley v. Colman*, 21 Ch.D. 169.

The practice under the Ontario Chancery Order 428, which is the same as the Manitoba Order No. 419, appears to have been different, but this court is bound by the English authorities where they conflict with those of Ontario. Petition dismissed with costs.

Huggard for the plaintiffs.

Phippen for the defendants.

Law Students' Department.

LAW SCHOOL EXAMINATIONS.

[N.B.—Students will have observed that the examination papers which appeared *ante* p. 368 do not always comprise the entire number of questions on each paper as set by the examiner, but are extracts only therefrom of some of the more unusual or important questions. The papers following are given in full.—ED.]

EQUITY.

Examiner: J. H. Moss.

1. To what extent may the executor maintain an action for a tort to the person of his testator? Within what time after the death must the action be brought, and how are the damages estimated?

2. What method of ascertaining the value of real estate upon the security of which he proposes to lend trust money must a trustee adopt in order that all question as to the propriety of the investment may be avoided in the event of the security proving insufficient?

3. A. agrees in writing with B. that he will be answerable for any loss that B. may sustain by reason of C.'s misconduct in B.'s employ. B. having suffered loss through C.'s negligence brings an action and obtains judgment against C., but not being able to realize upon this judgment he brings an action against