

the property at auction on 21st May, 1900, when the highest bid was \$150, and the property was withdrawn. On 7th August, 1902, plaintiff sold the property by private sale to Mitchell for \$750. On the same day an instrument in writing containing the terms of the agreement for sale was executed by both parties. According to its terms, the purchase money was to be paid as follows: \$100 on 1st May, 1903; \$250 on 1st November, 1903; and the remaining \$400 on 1st November, 1904—all with interest from the date of the agreement. The agreement provides for the conveyance of the property upon payment of the purchase money and interest, and that plaintiff will suffer the purchaser, his heirs and assigns, to occupy and enjoy the property until default.

Plaintiff did not himself occupy or use the property; the key of the factory was, however, under his control, and the purchaser, about 1st March, 1903, obtained it from the custodian of it, by plaintiff's direction. Mitchell never used or occupied the factory, but shortly after his purchase sold the property to Slavin and Magann, who proceeded at once to take the factory down, and removed most of the materials of which it was composed to another site several miles distant, where they remained at the time of the trial. The boiler and engine were not removed, but the other property comprised in the chattel mortgage appears to have been taken away.

Plaintiff was not a party or privy to what was done by Slavin and Magann, and did not become aware of it until after the removal had taken place, and nothing appears in the evidence to warrant the conclusion that he afterwards acquiesced in what had been done. The most that can be said is, that he took no steps to compel the restoration of the property or to require the wrongdoer to answer in damages or otherwise for having removed it.

Mitchell never completed his purchase or paid anything on account of either purchase money or interest, and the factory remained closed and unused until it was taken down.

The trial Judge came to the conclusion that the contract for sale to Mitchell and the giving to him of possession did not amount to an exercise of his power of sale by plaintiff sufficient to extinguish defendant's equity of redemption, and that defendant was not entitled to credit for the purchase money on the footing of a completed sale to Mitchell, and defendant being therefore entitled to redeem, and plaintiff, not being in a position to reconvey the security as it was when he took possession or when he gave possession to Mitchell, was not entitled to enforce the covenant sued on, and,