

## MORTGAGE AS SECURITY FOR DEBT

## Position of Parties When Mortgagee Becomes Absolute Owner—British Columbia Court of Appeal Divided

A RECENT case before the British Columbia Court of Appeal was that of Royal Bank vs. McLeod, in which the rights of parties to a mortgage, where the mortgagee subsequently became the owner of the lands in question, were settled.

The facts of the case, which, as regards the appeal, were not in dispute, are as follows: McLeod had become indebted to the Quebec Bank in the sum of \$95,000, and was sued for the balance which remained after crediting on the debt \$9,000 realized from the sale of certain land held on mortgage by the Quebec Bank as security. In 1912, in addition to promissory notes, McLeod assigned to the Quebec Bank certain land which had been agreed to be sold to him as further security for his indebtedness, and another loan of \$21,000 was made to him. On June 25th, 1914, demand was made for payment, but by an agreement between the bank and McLeod three months' further time for payment was granted, and, in case of final default, McLeod executed a quit claim deed and release of his equity of redemption in the land which he held by agreement of sale. The payments were defaulted, and by a special provision in the quit claim deed the bank became owner of the land. The assets, etc., of the Quebec Bank being later sold to the appellant, the Royal Bank became entitled to the indebtedness of McLeod to the Quebec Bank, and on default sold the land and credited the money received on McLeod's debt.

## Was Effect Like Foreclosure?

The point in dispute was whether all that had occurred would bring into effect the same results as if a decree of foreclosure had been obtained in respect of a single security for the whole debt and the land sold, thus placing it out of the bank's power to revest the title to the land in McLeod if he later made payment of the total indebtedness.

The reasons for the decision of the trial judge are in the following terms:—

"It seems to me settled law that a person, who was once a mortgagee, but who, by foreclosure decree or otherwise, has become the absolute owner of the mortgaged property, cannot sue for the debt or any part of the debt secured by the mortgage without reopening the foreclosure; and if, by a sale of the mortgaged property to a third party, he has put it out of his power to reconvey that property to the mortgagor upon redemption, he should, in the language of Idington, J., in *Mutual Life Assurance Co. v. Douglas* (1918), 44 D.L.R. 115 at 122, 57 Can. S.C.R. 243 at 253, 'be restrained from proceeding to enforce that common law right, whether by suing upon the covenant—or other promise to pay—or in way of asserting a proprietary right over any property he had held by way of collateral security to his mortgage.'

## Bank's Title to Property

"The general release clause in the instrument of transfer of the equity of redemption (ex. 6, June 25th, 1914), has, in my opinion, no relation to the circumstances here. It was simply intended to make the bank's title to the mortgaged property more absolute, if that were possible. But the absolute character of the title acquired by a (former) mortgagee does not affect or prevent the reopening of the foreclosure in case the (former) mortgagee afterwards sues for any part of the debt. And, as I have already intimated, where the foreclosure cannot be reopened by reason of the mortgaged property having passed into the hands of the *bona fide* purchaser for value the right to sue is forever gone.

"The action must be dismissed with costs, and the defendant is entitled to the declaration and injunction asked for in his counterclaim, with costs."

On appeal, Macdonald, C.J.A., and Eberts, J., held to dismiss and McPhillips and Martin, J.J.A., held to allow the appeal. The reasons given by Macdonald, C.J.A., for dismissing the appeal are that the mortgagees (the Quebec

Bank) obtained absolute title to the land by the release of the equity of redemption to them, and that, therefore, the relation of mortgagor and mortgagee ended unless foreclosure proceedings on the mortgage were reopened, but that this latter plan was impossible because the land had passed into the hands of a purchaser for value (the Royal Bank); that the quit claim deed releasing the equity of redemption must be taken to have been a settlement of the indebtedness, for if the right to redeem has been lost by reason of the release of the equity of redemption, the land takes the place of the debt and is held free from any right of redemption; that, therefore, the debt was extinguished and the appeal should be dismissed (Eberts, J., assenting).

## Dissenting Judgment

McPhillips, J.A., in his judgment, said that the land was one only of several securities held by the Quebec Bank, and at most could only be security for the debt, which was past due when the assignment of the agreement for sale was taken; that this security did not fully cover the debt, and that, therefore, it could not be considered as a full settlement of the indebtedness and a release of the other securities. The sale by McLeod to the bank was absolute, and, therefore, the amount realized was to be considered as a *pro tanto* reduction of the whole indebtedness (Martin, J.A., assenting).

The two decisions are thus directly opposed to one another, Macdonald, C.J.A., deciding that the whole indebtedness was cancelled, and McPhillips, J.A., deciding that the indebtedness was lessened only by the amount derived from the sale of the land.

The appeal was dismissed.

## QUEBEC AND ST. THOMAS GET NEW INDUSTRIES

## Very Few New Developments—Large Properties Transferred in Hamilton

THIS being the holiday season, very few announcements of new plants, extensions, etc., are being made by manufacturing concerns. Those in the United States, which have been contemplating branches in Canada, are watching the strengthening farmers' movement, and it is fairly certain that some downward revision in the tariff will be made, not at the coming session of parliament, but possibly at the next.

A large Detroit automobile concern is to build a plant at St. Thomas, Ont., which, it is announced, will take care of the entire Canadian trade. Options have been taken on a site, and work on the factory will commence in the spring. Arrangements are being made for railway spurs into the plant.

The National Steel Car Corporation, Ltd., recently organized under Dominion charter, has taken over the plant, business equipment, assets and liabilities of the National Steel Car Co., Hamilton. The new company is purely Canadian, having as president, R. J. Magor, second vice-president of the National Steel Car Co. The National Steel Car Corporation, Ltd., will continue to manufacture railway cars, having on hand two large orders and others about closed, and the motor truck department will have a greatly increased capacity. The minimum production for the coming year is placed at 1,500 motor trucks.

The Pion property on Prince Edward St., Quebec, Que., has been sold to the Colonial Hide Co., of Boston, one of the largest American hide corporations, with branches in all parts of the United States and Canada. Heretofore, this company has had a branch in Quebec, in conjunction with other branches in Halifax, St. John, Ottawa, etc., but lately they decided to go into the manufacturing business in the city, on a very much larger scale, and for this reason secured the above-mentioned property for the purpose. It is estimated that over two hundred hands will be employed as soon as the new machinery can be installed. The company will manufacture the products of hides, which includes oil, greases, glue, etc.