

SECOND DIVISIONAL COURT.

DECEMBER 10TH, 1918.

*HOEHN v. MARSHALL.

Mortgage—Sale under Power—Duty of Mortgagee to Mortgagor—Inadequacy of Price not Leading to Presumption of Fraud—Right of Assignee of Mortgage to Exercise Power of Sale—Rights of Mortgagee under Mortgage from Purchaser—Effect of Registration—Bona Fides—Charges of Fraud—Costs.

Appeals by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 14 O.W.N. 316.

The appeals were heard by MULLOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

J. M. McEvoy, for the appellants Rylands, Logie, and Alice Marshall.

The appellant Catharine Marshall was not represented.

P. H. Bartlett, for the plaintiff, respondent.

MULLOCK, C.J. Ex., read a judgment in which he said that the action was brought by Marcel Hoehn, executor of James Marshall, deceased, to set aside as fraudulent and void a conveyance of land to the defendant Rylands, made by Catharine Marshall, in exercise of a power of sale contained in a mortgage made by James to one McMartin, and by McMartin assigned to Catharine, and also to set aside a mortgage made by Rylands to Elizabeth Logie.

The trial Judge declared the plaintiff entitled to redeem on payment of the moneys owing on the mortgage to Elizabeth Logie, and the defendants appealed from that judgment. The trial Judge did not find fraud; but, by decreeing redemption, in effect set aside the deed to Rylands, apparently upon the ground that the sale to him was at an undervalue.

The only possible ground for impeaching the sale is inadequacy of price, but inadequacy is a matter of degree. Mere inadequacy is not sufficient; it must be so gross as to lead to the presumption of fraud—to the conclusion that the mortgagee was negligent or unfaithful in the discharge of his duty, which is to bring the property to the hammer under every possible advantage to his cestui que trust: *Downes v. Grazebrook* (1817), 3 Mer. 200, 205; *Chatfield v. Cunningham* (1892), 23 O.R. 153, 166; *Warner v. Jacobs* (1882), 20 Ch. D. 220.

Latch v. Furlong (1866), 12 Gr. 303, distinguished.

The plaintiff's counsel also contended that the mortgagee only, and not Catharine Marshall, her assignee, was entitled to exercise the power of sale contained in the mortgage. This point