

W. M. Douglas, K.C., for the appellant.

J. G. Farmer, for the plaintiffs.

The judgment of the Court was delivered by MIDDLETON, J.:— This appeal raises several questions of some difficulty. The mortgagees having brought an action for foreclosure, after judgment and before the time for redemption had expired, fearing a loss, and realising that, in the event of the mortgagor failing to redeem on the 27th May, the loss would be augmented by reason of the farm remaining unworked for the year, entered into an agreement with one John W. Siddall by which they undertook to sell him the land in case the mortgagor failed to redeem. Under the terms of this agreement the purchaser was allowed to take possession in the meantime, and farm the property in question. The purchaser so in possession could have no greater rights than the mortgagees, and no reason can be suggested why he should have any less. As the mortgagees and purchaser are acting in harmony, there is no reason why, for the purpose of this appeal, the right of the mortgagor should not be determined as against the mortgagees, regarding the purchaser as acting under and for them.

There is not on the material any ground for suggesting that the plaintiffs were not throughout acting in entire good faith. True, the mortgagor was always asserting his intention to redeem, but a mortgagee, particularly when, as here, the security is scant, is not bound to rely upon the assurance of an apparently impecunious although sanguine mortgagor. Here the mortgagor admits that he had sold all his own chattel property, and sets up title in his relations as to the remaining horses, etc., with which he contemplated operating the farm, and there was much in his conduct to cause the mortgagees to doubt, as they apparently did, his ability ultimately to perform his promises.

The mortgagor complains that the Master has allowed the mortgagees \$325 as compensation for crops put in in the spring of 1908, prior to redemption. These crops have been reaped by the mortgagor since redemption.

The Master has charged the mortgagees with the proportionate part of the rental value for the entire year for the time it was in possession, but no appeal is had from this finding. The mortgagor contends that, as the mortgagees knew that there might be redemption at the day fixed, the crops were put in at the risk of the mortgagees, who knew that upon redemption he was bound to reconvey the land, and so might lose all title to the crops.

This argument is based upon a misconception of the position. A mortgagee in possession is bound to act towards the mortgaged