In an action for redemption brought by a judgment creditor of the mortgagor's executors,

Held, that the same result must follow as if the second action had not been begun until after the foreclosure was complete; the foreclosure was opened *ipsô facto* by the proceedings taken upon the covenant; and any person entitled to redeem had the right to bring this action without first setting aside the final order; the right to redeem under such circumstances not being merely a personal equity in the mortgagor.

The mortgage contained a power of sale without notice on default for one month. After the foreclosure and the issue of execution upon the personal judgment, the mortgagees sold and conveyed the mortgaged premises to a purchaser at a private sale for $9,000. Neither in the contract of sale, nor in the conveyance, was there any recital of the title of the mortgagees.

Held, that the equity of redemption being then at large, the sale and conveyance were to be upheld as an exercise of the power of sale.

Carver v. *Richards*, 27 Beav. 488, and *Kelly* v. *Imperial Loan Co.*, 11 A.R. 526; 11 S.C.R. 516, followed.

The mortagees, prior to accepting the offer of $9,000 for the property, had offered it for sale by auction, after giving wide notice of their intention to do so, and no bidders had appeared; they had since offered it for sale constantly by land agents, and through their own manager, without success. The $9,000 obtained by the mortgagees fell $1,000 short of satisfying their claim, after crediting the proceeds of the sale of the lands bought by them at the sheriff's sale. Within a few months after the $9,000 sale, the purchaser resold portions of the land for $11,000, and retained a portion which he valued at $2,000.

Held, that the mortgagees had not acted negligently or carelessly in the sale they made, and had taken all the reasonable care and exercised all the diligence that a prudent owner would have used; they were not bound to offer the property a second time for sale by auction unless some reasonable prospect of obtaining a purchaser had appeared; but even if the property was sold at an undervalue, there was nothing in the circumstances of the sale which could lead to the conclusion that the inadequacy was so great that fraud should be presumed, and in the absence of such a presumption the sale to the purchaser was binding.

The plaintiff's judgment against the mortgagor's executors was not obtained till a year after the sale of the property for $9,000. Under the plaintiff's execution the sheriff advertised the property in question for sale, and at such sale the plaintiff became the purchaser and received a conveyance from the sheriff.

Held, that under the circumstances, even supposing the sale for $9,000 to have been an undervalue, the plaintiff was not entitled to an account from the mortgagees of the price which they ought to have obtained; for he was not an incumbrancer at the time of the sale, and the title, legal and equitable, had been vested in the purchaser before the sheriff's sale.

Moss, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *H. Cassels*, Q.C., for the defendants.