

suit in equity to foreclose, and he might at the same time bring an action at law on the covenant, if any, for payment of the mortgage money, and another action at law in ejectment to recover possession of the mortgaged lands; and the only penalty for his so doing was that he could not in equity compel the defendant to pay as part of the price of redemption the costs of all three actions, unless it should be made to appear to the court that there was some good and sufficient reason for bringing the action at law. There is equally no doubt whatever that since The Administration of Justice Act mortgagees have been held entitled to include in suits for foreclosure claims on the covenant, and also claims for possession of the land, and this was the necessary consequence of the giving to the Court of Chancery a common law jurisdiction. This common law and equity jurisdiction is perpetuated in the High Court of Justice by The Judicature Act; and as a necessary consequence the court has ample jurisdiction to give to a mortgagee not only any equitable remedy, but also any legal remedies to which he may be entitled, in one and the same action. And though it is true that Rule 341 declares that an action of foreclosure in which a claim for possession is joined "shall not be deemed an action for the recovery of land within the meaning of these Rules," yet the meaning of that must be, that it is not to be so deemed for the purpose of necessitating leave to be obtained before the two causes of action can be joined, as required by the previous part of the Rule in the case of all other claims sought to be joined with a claim for the recovery of land. For all other purposes it is certain that an action for foreclosure in which a claim for possession is joined is an action to recover land; that a judgment for recovery of the land may be awarded therein, and enforced in the same way as any other action for the recovery of land.

But Mr. Justice Gwynne goes on to observe that, "since The Judicature Act, all the courts, no doubt, administer legal and equitable principles in all suits joined for the purpose, but the Act countenances no such confusion of remedies and principles as the form of action in triplicate would seem to suggest." These words, taken by themselves, are calculated to mislead, and suggest to some minds that The Ontario Judicature Act does not authorize the joining in a foreclosure action all the claims spoken of. But, although this interpretation has been put upon