

sell on three months' default without notice was not lost by notice being given to some of those entitled to notice under the earlier provision. If notice should be given requiring payment within ten days, even after three months' default, then the mortgagee would be precluded from selling within the time so given, because it would be inconsistent with the notice he had given: *Stevens v. Theatres Limited*, [1903] 1 Ch. 857.

*Second*, complaint was made as to the way in which the auction sale was advertised. Both parcels were put up together—the better way would have been to offer each separately; but the property was not then sold; and the Court must deal with the sale actually made without regarding the abortive auction sale as any real test of the selling value of the property.

*Third*, it was contended that there was not any actual exercise of the power of sale at all. Some things were pointed out by counsel for the plaintiff, in his careful and fair presentation of the case, that might be regarded as suspicious, if suspicion had first been awakened, but which seemed to the learned Judge to be of no moment when, as was the case, he was entirely satisfied of the good faith of all concerned. The property was valued by the mortgagee-defendant's own valuator and by an outside valuator of experience at \$350 per foot, and the sale to the defendant Harris was at a price computed according to that valuation. It was a real sale and free from any taint or suspicion of wrongdoing.

*Fourth*, it was contended that the sale was at an undervalue, and that the mortgagee-defendant should be charged on the basis of a sale at \$400 per foot. Evidence was given by an expert that in his opinion the land was worth that much. [Remarks upon the weight of expert testimony as to the value of land.] There was no foundation for any claim against the mortgagee-defendant upon this head.

*Fifth*, it was contended that there was still a right to redeem outstanding in the plaintiff. It was admitted that, if the sale to the defendant Harris stood, the fact that he was a second mortgagee did not prevent his setting up an absolute title. This ground of action, therefore, also failed, but it was not a matter of practical importance, as the defendant Harris by his counsel offered to sell the land now remaining for a sum that would clear him, and would probably accept considerably less.

In every aspect of the case the action failed.

*Action dismissed with costs.*