

cancelled the risk; and counsel agreed that no insurance can be placed.

Some evidence was given to shew the value of the land, but this seemed to me to be quite beside the real point of the case. The mortgagor has contracted to give the mortgagee not only the land, but insurance on the buildings, as security for the debt; and the rights of the parties must depend upon the agreement. When the aid of the Court is invoked in "scant security" cases, the question of value is of course material; but I know of no power given to the Court to relieve a mortgagor from his contract.

If the property has the value the defendant thinks, there can be no real trouble in finding a new mortgagee, who will lend enough to pay the plaintiff off, and the plaintiff must abide by his readiness (stated in Court) to receive his debt at any time, even if not yet due.

No provision is made in the mortgage expressly dealing with the case of the mortgagor's inability to find a company ready to insure. There is the covenant to insure, and it is broken; and this, I think, gives the mortgagee the right to possession, as the re-demise clause (17) only gives the mortgagor the right to possession so long as there is no breach of any agreement to be found in the mortgage. On the breach of any covenant, the right of the mortgagee, incident to his ownership of the land in law, to possession of the land, revives.

There is no right to foreclosure, but the mortgagee may take possession if he is ready to become a mortgagee in possession and to become liable to account for his use and occupation.

The mortgagee may have his costs. They may be added to his debt or be set off against occupation rent; but I do not make any personal order for payment.

LATCHFORD, J.

MARCH 16TH, 1914.

RUSSELL v. KLOEPFER LIMITED.

Assignments and Preferences—Mortgage Given by Trader for Pre-existing Debt—Agreement for Supply of Goods in Future—Insolvency—Knowledge of Mortgagee—Preference over other Creditors—Assignments and Preferences Act, 10 Edw. VII. ch. 64, sec. 6.

Action to set aside a mortgage made by one Leatherdale to the defendant company, on the ground that it was preferential