

proceedings, where the motion is made promptly, and this although the mortgagee had purported to make an agreement for sale of the lands after the final order to a person having notice of the foreclosure proceedings, where there is evidence of collusion between the mortgagee and the purchaser.

2. *Mortgage—Opening foreclosure—Serious error in plaintiff's accounts.*

A final order of foreclosure may be vacated and the mortgage account re-opened where there had been concealment from the court on the plaintiff's part of material circumstances on the application for the order nisi and serious error to the prejudice of the mortgagor is shewn in the plaintiff's account upon which the foreclosure is based, if there has been no laches on plaintiff's part in moving and he did not obtain information until after the making of the final order of the time fixed for redemption.

*C. M. Woodworth*, for defendant. *W. B. A. Ritchie*, K.C., for plaintiff.

ANNOTATION ON THE ABOVE CASE FROM DOMINION LAW REPORTS.

Where third parties have not acquired rights to the property, and the mortgagee can be recompensed in money, the foreclosure may be opened and the time for redemption extended. But some reasonable excuse must be shewn for not having redeemed by the time fixed: *Bell and Dunn on Mortgages*, 267.

Where it was shewn that the money was ready, but owing to illness and accident could not be paid at the exact time, this was held to be a sufficient ground: *Jones v. Creswicke* (1839), 9 Sim. 304. And the relief was given in a case in which it was shewn that the mortgagee had repeatedly stated, before and after the decree absolute, that he wanted the money, not the property, and the mortgagor was under a reasonable belief that the mortgagee would extend the time for payment and the value of the property considerably exceeded the mortgage debt: *Thornhill v. Manning* (1851), 1 Sim. N.S. 451.

A foreclosure was opened eighteen months after the final order, where the mortgagor was illiterate, and had no solicitor in the cause, and misunderstood the object of the bill, which was the only paper served on him, the value of the property appearing to be three times the amount of the mortgage debt: *Platt v. Ashbridge* (1865), 12 Gr. 105; see *Ford v. Wastell* (1847), 6 Ha. 229.

Where there has been actual, positive fraud, and not mere constructive fraud, on the part of the mortgagee, or where he has insisted on rights which upon due investigation are found to have been overstated, this relief may be afforded to the mortgagor: *Patch v. Ward* (1867), L.R. 3 Ch. 203.