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KAISERHOF HOTEL CO. v. ZUBER.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

Mortgage—Sale under Power—False Bidding—Withdrawal of Bid.

Appeal from a decision of the Court of Appeal for Ontario, 25 O. L. R. 194, affirming the judgment of a Divisional Court, 23 O. L. R. 481, by which the judgment at the trial in favour of the plaintiffs was reversed and the action dismissed.

The defendant Zuber was holder of a second and a third mortgage on hotel property, and the plaintiffs owned the equity of redemption. Under powers of sale contained in his mortgages Zuber took proceedings to sell the property, and the plaintiffs brought action to restrain the sale, and obtained an interim injunction which was afterwards discharged. The property was then put up for sale at auction. One Boehmer, acting for the appellants, instructed a man named Fish to bid, and he ran the price up to \$43,500, the respondent Roos having bid \$43,000. At request of Zuber's solicitor the auctioneer inquired of Fish if he was prepared to pay the money if the property was knocked down to him, and he requested and was given half an hour to satisfy the mortgagee of his ability to do so. He did not return at the expiration of that time and Roos withdrew his last bid. The property was offered for sale again and knocked down to Roos at \$39,500, and was conveyed to him a few days later by Zuber.

The appellants then proceeded with their action to restrain the sale, adding Roos as a party, and alleged that it