

closure against the mortgagor (O'Neill), and Clark as the assignee of the equity of redemption. In addition to foreclosure, the plaintiff also claimed judgment for possession. The defendant Clark set up that the mortgage had been given to secure the purchase money of the mortgaged property, which had been bought by O'Neill from the plaintiff, to be used by the defendant O'Neill for a brothel, to the plaintiff's knowledge, and that the price had been enhanced by reason of the illegal purpose for which the premises were intended to be used; and he contended that the consideration for the purchase was illegal, and the plaintiff's mortgage was therefore void. Judgment having gone against Clark in the courts below he appealed, and in order to shut out the defendant Clark from this defence counsel for the plaintiff appears to have argued that as to him the action might be treated as simply an action of ejectment founded on the legal title to the land, and therefore, as the plaintiff did not claim payment of any mortgage money as against him, the question of consideration did not arise, and it was not open to him to set up the alleged illegality of the consideration as a defence to the plaintiff's right to recover possession, and it was in answer to this line of argument that the observations we refer to were made. At p. 515 Mr. Justice Gwynne says that it was argued that the action was to be regarded as three separate actions, namely, besides being an action for foreclosure of the mortgage, that it was, at the same time, an action against the mortgagor on the covenant, and as against the appellant an action in the nature of an action of ejectment for recovery simply of possession of the land mortgaged, and he goes on to say, "But neither in the Act of 1873 (The Administration of Justice Act) nor in The Ontario Judicature Act, nor in the Rules passed by the judges under the authority of that Act, can I find anything in support of the contention." And referring to Rule 341, which expressly enables a claim for possession to be joined with a claim for foreclosure, he seems to think that it bears out his view, because it winds up with the declaration that "such an action shall not be deemed an action for the recovery of land within the meaning of these Rules."

There can be no doubt that prior to The Administration of Justice Act, 1873, a mortgagee was entitled to pursue all his remedies upon his mortgage at the same time. He might bring a