

Held, that the mortgagees were not responsible to a subsequent incumbrancer for the \$2,000, or chargeable with more money than they had actually received.

The Bank of Upper Canada v.
Wallace [In Appeal], 280.

5. Where a mortgage provided that in case of sales by the mortgagor of portions of the mortgaged property, the mortgagee, on receipt or tender of a certain proportion of the purchase money, should release the part sold from the mortgage it was *held*, that the first person who thereafter purchased and paid to the mortgagor his purchase money, but obtained no release from the mortgagee, was not entitled, as he would have been in the absence of this provision, to pay off the whole mortgage, and to demand payment of the whole from a subsequent purchaser redeeming him; but that each purchaser (including the first) was entitled to redeem his own part on payment of the stipulated proportion of money.

Davis v. White, 312.

6. Wherever, from the necessities of his position, it is necessary that a mortgagee should, for his own protection, take possession, he is not chargeable with rests, and this even though the mortgage was not in arrear.

Gordon v Eakins, 363.

7. A tenant of a mortgagor paid the mortgage after the mortgagor's death, and the representatives of the mortgagor having no means of paying the debt, he entered into an agreement with the widow that she and her children should occupy the dwelling house and four acres of the mortgaged property, that he himself should occupy the residue at a rental of \$170, should pay \$40 a year to the widow, and apply the residue of the rent on the mortgage:

Held, in a suit afterwards brought by a purchaser of the equity of redemption to redeem, that the defendant was not chargeable with the \$40 a year he had paid to the widow, nor with rests, though the rent for which he was accountable exceeded the interest.—*Id.*

8. Where, after the mortgagor had assigned his equity of redemption, the mortgagee, with the concurrence of the assignee, by sale and transfer of the mortgaged premises, put it out of his power to reconvey on redemption by the mortgagor, it was *held* that he could not call upon the mortgagor for payment of any deficiency resulting upon such sale of the estate.

Burnham v. Galt, 417.