

in any other case. But, whether the ruling was based upon a merger of rights under the mortgage in the judgment, or upon an election of one of two inconsistent remedies, or howsoever, it had plainly no effect upon such a case as this. There was no foreclosure judgment or order in this action, nor could there be, as the action was not brought for foreclosure—no such relief was ever sought in it; indeed, no judgment had been pronounced in it; it had been merely referred for trial to a judicial officer of the Court; and, after being in Court for so great a length of time without anything substantial having been accomplished, it was not to be wondered at that the mortgagee should decide to take the matter into his own hands and endeavour to accomplish something in much less time.

It was said for the plaintiffs that the defendant could not sell under the power contained in the mortgage, because it had not yet been decided just by whom and in what shares the lands were owned. But that had nothing to do with the case as a matter of legal right. What the mortgagee desired to sell, and that which alone he could sell, were just such rights and interests in the lands as the mortgage covered.

Application refused with costs.

MEREDITH, C.J.C.P.

MAY 14TH, 1918.

*WARD v. SIEMON.

Fraud and Misrepresentation—Contracts to Purchase Company-shares—Payment of Money for Shares—Obligation upon Company to Resell or Buy back Shares—Action for Deceit—Failure to Prove Actual Fraud or Misrepresentation—Claim to Enforce Contracts against Defendant Company and Individual Defendant—Judgment Recovered against Individual Defendant—Election to Affirm Contracts—Bar to Claim against Company—Claim for Money Paid as Money Lent—Powers of Company Incorporated under Laws of Ontario.

Action for damages for deceit and to enforce other claims.

The action was tried without a jury at Hamilton.

C. W. Bell, for the plaintiffs.

L. A. Landrian, for the defendants.