

Province of Nova Scotia.

SUPREME COURT.

Full Court.]

RYAN v. CALDWELL.

[Feb. 7.

*Mortgage—Action on covenant to recover difference between amount due and proceeds of sheriff's sale—Property in hands of third party and plaintiff not in position to give defendant further right to redeem.*

Defendant mortgaged certain real estate to A. and afterwards conveyed the equity of redemption to E. P. A. who conveyed it to L. A. assigned the mortgage to the plaintiff, who foreclosed without making defendant a party to the proceedings. At the sheriff's sale plaintiff purchased the property for an amount less than the amount due for principal and interest on the mortgage, and afterwards conveyed to F.

Plaintiff having sued on the covenant contained in the mortgage to recover from defendant the full amount due, deducting the proceeds of the sheriff's sale.

*Held*, following *Kinnaird v. Trollope*, 39 Ch. D. 636; *Almon et al. v. Busch Ritchie's Equity Decisions* 362; and *Miller et al. v. Thompson*, (unreported) that plaintiff could only sue for the amount by which the proceeds of the sheriff's sale fell short of the amount due on the mortgage on giving defendant a further opportunity of redeeming, and that as this could not be done, the property having been disposed of to a stranger, there should be judgment for defendant. *Kenny v. Chisholm*, 19 N.S.R. 497 (affirmed on appeal to the Supreme Court of Canada), distinguished.

MEAGHER J. dissented.

A. Drysdale, Q.C., for appellant. W. A. Henry, for respondent.

Province of New Brunswick.

SUPREME COURT.

En Banc.]

EX PARTE VANBUSKICK.

[April 20.

*Canada Temperance Act—Election—Irregularities—Scrutiny—Certiorari.*

The holding of a polling station in an election under the first part of the Canada Temperance Act outside the territorial limits of the district for which such poll is held is not such an irregularity as will vitiate the election so long as the persons entitled to vote have had a fair opportunity of exercising their franchise and the election has been held in substantial accordance with the provisions of the Act.