1948 *Present :* **Nagalingam J. and Basnayake J.**

AHAMADO MUHEYADIN, Appellant, *and* THAMBIAPPAH, Respondent

S. C. 177—D. C. Batticaloa, 629

Mortgage Ordinance (Cap. 74)—Sections 11 and 16 (1)—Right of mortgagee to bring two separate actions in respect of same remedy—Joint and several mortgagors—Extent of liability of each.

Under section 16 (1) of the Mortgage Ordinance (Cap. 74) several actions in respect of the same remedy are made available to a mortgagee, the only limitation on that right being what can be gathered inferentially from the terms of section 11. Where, therefore, a mortgagee obtains a hypothecary decree in respect of two properties and has one of the properties sold but, before proceeding to sell the other, discovers that that other property has passed into the hands of a third party who has not been made a party to the action, there is nothing in the Ordinance which bars the right of such a mortgagee from bringing a second hypothecary action against the mortgagor and the third party to obtain an effectual hypothecary decree binding that other property.

Where two or more mortgagors have bound themselves jointly and severally and the mortgagee obtains judgment against one of them, he is not precluded from suing the other or others until he gets satisfaction. Even execution against one is no bar against suing the others ; for execution without satisfaction is not any bar.

APPEAL from a judgment of the District Court, Batticaloa.

H. V. Perera, *K.C.*, with him *E. B. Wikramanayake*, *K.C.*, and *G. Thomas*, for defendant appellant.

F. A. Hayley, *K.C.*, with *C. Renganathan*, for plaintiff respondent.

Cur. adv. vult.

October 1, 1948. NAGALINGAM J.—

This appeal involves the determination of the scope and extent of the powers conferred on a mortgagee under the Mortgage Ordinance, Cap. 74.

By bond P 1 of 1930, one Ismail Lebbe Marikkar and his wife, Asiathummah, mortgaged and hypothecated with the plaintiff two allotments of land to secure repayment of a sum of Rs. 3,000 and interest thereon. Ismail Lebbe Marikkar died in 1938. The plaintiff instituted action No. 224-M of the District Court of Batticaloa against the widow and the children for the recovery of the amount due under the bond and for a hypothecary decree in respect of the properties mortgaged. In this action the first defendant is described as "Asiathumma, widow of S. M. Ismail Lebbe Marikkar for herself and as guardian-ad-litem over the minor the 7th defendant", and the names of five other children are thereafter entered in the caption and they are all described as "representatives to represent the estate of the deceased S. M. Ismail Lebbe Marikkar". It will be noticed that Asiathumma, the widow, is not specifically sued in her personal capacity, but it is contended that the description "for herself and as guardian-ad-litem over the minor the 7th defendant" was intended to make her personally liable. Mr. Hayley appearing for the defendant contended that the words "for herself"

mean nothing more than that she was being sued as a representative of the deceased. If there was nothing more in the plaint, I think this contention would be entitled to succeed. But the plaint sets out the fact that the 1st defendant herself executed the mortgage and that she herself borrowed and received the money, and the property against which hypothecary decree was to be entered was not merely the property of Ismail Lebbe Marikkar but also of the 1st defendant herself. In view of these additional facts disclosed in the plaint, Mr. Perera's contention is entitled to succeed, and I would hold that the action was against both the widow in her personal capacity and against her and her children as representing the estate of the deceased, Ismail Lebbe Marikkar.

Decree was duly entered in the action and the properties hypothecated were sold and purchased by the plaintiff himself; the full amount of the debt was not realised by the sale of the mortgaged properties, and the plaintiff issued writ and had certain other properties sold, which were purchased by one Ahamadu Cassim Kariapper. While these proceedings were afoot, administration proceedings in respect of the estate of Ismail Lebbe Marikkar were commenced and letters of administration with the will annexed were issued to one Ahamado Muheyadin. The administrator thereafter instituted action No. 153–L of D. C., Batticaloa, against the plaintiff claiming a declaration that the properties sold under the mortgage decree save as to a one-fourth share of the first of the two allotments of land hypothecated that belonged to the widow formed part of the estate of the deceased notwithstanding the sale, that the plaintiff be ejected from the properties and he be placed in possession thereof. This Court, by its judgment (See *Ahamado Muheyadin v. Thambiappah* [1]) held that inasmuch as the estate of the deceased was more than Rs. 2,500 in value, the District Court had no jurisdiction to appoint legal representatives to represent the estate of the deceased mortgagor and that all the proceedings had in the mortgage action No. 224–M of D. C., Batticaloa, were bad, and declared the administrator entitled to the properties as claimed by him. In view of this judgment, the sale at which Ahamedu Cassim Kariapper became purchaser of unhypothecated properties was also set aside by the District Court. The plaintiff thereupon instituted the present action, making only the administrator of the estate defendant. Asiathumma, the co-mortgagor, was not made a party. The action, however, is for the recovery of the full principal sum of Rs. 3,000 and the recoverable interest thereon amounting to another Rs. 3,000 aggregating to Rs. 6,000 and the properties over which hypothecary decree was claimed were the entirety of the land hypothecated, no exclusion being made in respect of any share of the co-mortgagor, Asiathumma. The defendant did not contend that any part of the sum of Rs. 6,000 claimed by the plaintiff had been paid off, but took two pleas by way of defence. One was the question of prescription and the other was that "the plaintiff having instituted action No. 224 and obtained a decree therein is debarred from maintaining this action". The learned District Judge held against the defendant on both these points.

On appeal, the plea of prescription was not pressed. It was, however, contended that the present action was not available to the plaintiff in view

[1] *(1945) 46 N. L. R. 370.*

of the proceedings had in the earlier mortgage action No. 224-M. It has been argued that had the plaintiff not proceeded to sale of the hypothecated properties but stopped short at obtaining the decree in the previous mortgage action, in view of the decision of this Court in *Kadappa Chettiar v. Ramanayake et al.* [1], the plaintiff would be entitled to maintain this second action on the mortgage bond and claim a hypothecary decree against the administrator as the proper party to be sued, inasmuch as there had been no adequate representation to bind the estate of the deceased mortgagor in an earlier action. But it has been urged that the sale held of the mortgaged properties in the previous mortgage action alters the legal position. It is said that by the sale of the hypothecated property in the earlier action the right of the plaintiff to obtain a hypothecary decree has been exhausted, as by the judicial sale under the earlier mortgage decree, all real rights which the plaintiff may have had against the property have been put an end to.

At this point it may be useful to ascertain the facts before proceeding to a consideration of the question of law. In regard to the earlier mortgage action, where the heirs of the deceased mortgagor were sued as legal representatives, Cannon J. expressed himself thus in the case instituted by the administrator against the plaintiff (*Ahamado Muheyadin v. Thambiappah (supra)*) :

> " The point of jurisdiction " (the plea taken, it will be remembered, was that the Court had no jurisdiction to appoint legal representatives without proof being adduced before it that the estate of the deceased did not exceed in value a sum of Rs. 2,500) " is important because if the Court had no jurisdiction its order was void *ab initio* and the consequent sale and other proceedings a nullity as against the deceased's estate. "

The Court held that the sale was void and did not divest the administrator of his title. The resultant effect, therefore, is that it cannot be said that in the earlier mortgage action the rights of the plaintiff as against the deceased mortgagor's properties at least are concerned have been carried beyond the stage of obtaining a decree, and there is no room for argument that a sale of the mortgaged properties has taken place. The case, therefore, comes within the principle laid down in the case of *Kadappa Chettiar v. Ramanayake et al. (supra)*.

A further point was taken that inasmuch as part of the hypothecated property, namely, the one-fourth share belonging to the surviving mortgagor was sold in the earlier mortgage action, and as no judicial pronouncement was made in regard to that sale in the judgment of this Court in action No. 153-L, the sale was good, and that the hypothecary decree entered in the case had been carried to a stage beyond the decree. In the first place, I do not think that this Court treated the sale of the one-fourth share belonging to the surviving mortgagor as continuing to subsist, for Cannon J. who delivered the judgment of the Court makes it clear in the final paragraph of his judgment, when he says :

> " The judgment in the action and the subsequent order for sale remains binding on A. M. Asiathumma who was herself a mortgagor since she was made party to the proceedings. "

[1] *(1936) 38 N. L. R. 33.*

It will be noticed that the learned Judge studiedly refrains from making any reference to the sale itself as distinct from the order for sale, for it is obvious that when the sale against the estate of the deceased mortgagor was declared a nullity, the sale of the surviving mortgagor's interests cannot be said to remain unaffected thereby. The sale was not of the interest of the deceased mortgagor and of the surviving mortgagor as two separate entities, but it was a sale of the entire land in respect of the joint interests of the deceased and surviving mortgagors. When the sale of the deceased mortgagor's interests was held to be a nullity, that pronouncement inevitably resulted in rendering void the sale of the surviving mortgagor's interests as well, so that, in truth it cannot be said that even in regard to the surviving mortgagor's interests there has been a sale. Though what view the defendant took is immaterial, it is a point worthy of note that the defendant himself did not assert that any part of the debt had been liquidated by the plaintiff purchasing the interests of the surviving mortgagor. Mr. Hayley referred to a journal entry under date March 5, 1946, in the proceedings of case No. 224-M, which records the setting aside of a sale by consent of parties, but that has reference to the purchase made by Ahamadu Cassim Marikkar and does not affect this question. The position, therefore, is that the sale of the one-fourth share was void by reason of the judgment of this Court in action No. 1,153-L.

But even assuming the contrary, namely, that the sale in respect of the surviving mortgagor's interests was valid and that the conveyance in favour of the plaintiff was good to that extent, I do not think that the position in law is different. Section 16 of the Mortgage Ordinance, if read strictly and literally, would lead to a conclusion which I do not think was anticipated by the framers of the Ordinance. Sub-section 1 of the section is in two parts. Firstly it says that a claim to all or any of the remedies of a mortgagee to enforce payment of the mortgage money may be joined to a claim in a hypothecary action. This merely gives recognition and legal sanction to the practice in existence even then of a mortgagee joining all his remedies in one action. The second part of the sub-section is what creates or was intended to create a change in the law. It permits the institution of a separate action in respect of each remedy.

To appreciate the precise effect of this enactment, it will be necessary first to ascertain what are the remedies to which a mortgagee is entitled. Taking the simplest form of a mortgage action, where a single mortgagee sues a single mortgagor to recover the debt and obtain an order for the sale of the hypothecated property consisting of a single property mortgaged, the mortgagee would be entitled to two remedies, (1) a money remedy, and (2) a hypothecary remedy. This part of the section, therefore, merely enacts that an action may be instituted claiming only a money remedy or claiming only a hypothecary remedy, or two actions may be instituted, one in respect of each remedy. But the language does not specifically enact that more than one action may be brought in respect of *the same remedy*, in other words, that two separate actions can be instituted in respect of either the hypothecary remedy or the money remedy. A literal interpretation, therefore, cannot be supported. For, if that is all that the Legislature intended to enact, the very objective the Legislature had in mind in repealing the provisions of the Civil Procedure Code and

enacting the Ordinance would have been futile, for it is well known that the Legislature intended to give relief to a mortgagee who had obtained an ineffectual mortgage decree by reason, to use the words of the Ordinance, of necessary parties not having been made parties defendant to the mortgage action.

A more liberal interpretation has been placed on this section and it has been held that a second action would be available to a mortgagee in respect of the same remedy. In the case *Savarimuttu v. Annammah* [1] Soertsz J. in reference to section 16 (1) observed :

> " That section " (section 16 (1) of the Mortgage Ordinance, although the reported judgment erroneously describes it as section 16 (1) of the Registration Ordinance) " makes it possible for more than one action to be brought in respect of the same remedy notwithstanding section 34 of the Civil Procedure Code . . . . "

see also *Kadappa Chettiar v. Ramanayake* (*supra*). This construction may be justified by reference to the Interpretation Ordinance, which enables the singular in an enactment to be construed as including the plural.

If therefore, several actions in respect of the same are made available to a mortgagee by the Ordinance, the only limitation on that right that may be said to be imposed is what can be gathered inferentially from the terms of section 11 of the Ordinance. This section provides that where under an ineffectual mortgage decree the hypothecated property is sold and purchased the purchaser would be entitled to what the section declares a hypothecary charge on the purchased land. Therefore, it will be correct to say that, so long as a sale of the mortgaged property, though ineffective to convey title but completed by a conveyance, stands, the mortgagee would have no right to bring a separate hypothecary action claiming a second judicial sale of the land, for the property has by then ceased to exist as mortgaged property and has passed into property that becomes subject to a hypothecary charge in favour of the purchaser and free of the rights of the mortgagee thereon. In no other case does this limitation operate ; so that, for instance, in a case where the mortgagee obtains a hypothecary decree in respect of two properties and has one of the properties sold but before proceeding to sell the other discovers that that other property has passed into the hands of a third party who has not been made a party to the action, there is nothing in the Ordinance which bars the right of such a mortgagee from bringing a second hypothecary action against the mortgagor and the third party to obtain an effectual hypothecary decree binding that other property. Therefore, even if the sale of Asiathumma's interests is deemed to be good, a second action such as the present one is not barred thereby.

For these reasons, I hold that the decree entered by the learned District Judge should be affirmed. The appeal is therefore dismissed with costs.

BASNAYAKE J.—

I have had the advantage of perusing the judgment of my brother Nagalingam and I agree to the order proposed by him. But as my approach to the question is slightly different I wish to record my reasons. Before I do so it will be helpful if I state the facts.

[1] *(1937) 39 N. L. R. 80.*

By a Bond dated August 29, 1930 (hereinafter referred to as P1), two persons by name Sinnalevve Maracair Muhamadu Ismailevve Maracair (hereinafter referred to as the deceased) and his wife Assanarlevve Maracair Asiathummah (hereinafter referred to as the widow) mortgaged the two lands described therein to secure a loan of Rs. 3,000 given to them by Vyramuttu Thambiappah (hereinafter referred to as the mortgagee). The Bond is in the following terms :

"Know all men by these presents that we Sinnalevve Maracair Muhamadu Ismailevve Maracair and wife Assanarlevve Maracair Asiathummah of Div. No. 4, Kattancudy in Manmunai-Pattu, Batticaloa, do hereby give mortgage bond to Vyramuttu Thambiappah of Arupattai in the manner, to wit :—

"This day we have borrowed and received from him a sum of Rs. 3,000 and we bind ourselves our heirs executors and administrators and assigns to repay the said sum of Rs. 3,000 together with interest thereon at the rate of 12½ per cent. per annum in a term of one year from the date of these presents to the said V. Thambiappah or to his heirs executors and administrators and assigns. In default of payment of the said principal and interest as aforesaid he and his aforewritten will have every right to sue at any time after the said term and recover the said principal and interest at the rate aforesaid from the properties described below or from any other property belonging to us jointly and severally and for securing unto the said debt we do hereby specially mortgage and hypothecate the properties described in the schedule below."

The deceased died on June 30, 1938, leaving a joint will dated September 22, 1922. Under that will the widow was the sole legatee and executrix. In October, 1938, shortly after the death of the deceased, the mortgagee, who was evidently unaware that the deceased had left a will or of its term, with a view to putting his bond in suit moved that the widow and all the children of the deceased be appointed legal representatives to represent the estate of the deceased. After notice to all the parties, they were so appointed by the District Court and the widow was, in addition, appointed as guardian *ad litem* of the minor child.

On May 8, 1939, action No. 224 M/D. C. Batticaloa (hereinafter referred to as the first mortgage action) was filed by the mortgagee against the widow in her personal capacity as debtor and against the widow and children of the deceased as his legal representatives. The mortgagee asked for judgment in a sum of Rs. 5,559·37 and in default of payment that the lands mortgaged be sold and the proceeds applied in reduction of the sum due to him. The action was undefended although all the parties were noticed. On May 4, 1940, decree was entered in the following terms :

"It is ordered and decreed that the defendants and substituted defendants jointly and severally do pay to the plaintiff within one month from the date of this decree, the sum of rupees five thousand five hundred and fifty-nine and cents thirty-seven (Rs. 5,559·37) being the aggregate amount of the principal and interest due in respect of Mortgage Bond No. 17,005 dated the 29th day of August, 1930, and

attested by S. Vythilingam, Notary Public, with interest thereon at the rate of nine per cent. per annum from 8.5.1939 till payment in full and the costs of this action as taxed by the officer of court. And it is further ordered that in default of payment of the said amount, interest and costs within such time, the premises mortgaged by the said bond, to wit: (Here follows a description of the mortgaged property.) and all the right, title, and interest and claim whatsoever of the defendants into upon or out of the said several premises mortgaged by the defendants be sold by Mr. S. A. Selvanayagam, Commissioner, and the proceeds applied for and towards the payment of the said amount, interest and costs and if such proceeds shall not be sufficient for the payment in full of such amount, that the defendants do pay to the plaintiff the amount of the deficiency and that the said Commissioner shall follow the directions as contained in the conditions of sale annexed hereto marked Lr. 'Y' as to the conduct and conditions of the said sale."

Thereafter the mortgaged lands were sold for Rs. 3,045 in execution of the decree. Satisfaction of the judgment to that extent was entered. The mortgagee himself was the purchaser of the lands and he was given possession thereof by the Fiscal in September, 1941.

While these proceedings were in progress the eldest son of the deceased, Ismalevve Marikar Ahamadu Muhaideen (hereinafter referred to as the administrator), produced the joint will and asked for probate on April 28, 1939. He stated that his mother who was the sole legatee and executrix under the will, being a Muslim woman, was unable to undertake the duties of the office of executrix. Probate appears to have been granted to the administrator with the will annexed on May 7, 1942.

On May 10, 1943, the administrator who was the second defendant in the first mortgage action instituted action No. 153 L in the District Court of Batticaloa where he sought to have the sale of the mortgaged lands set aside. The prayer in the plaint which was amended more than once in its final form as amended on February 2, 1944, reads:

"Wherefore the plaintiff prays—

(1) that he be declared entitled to the property described in the schedule to the plaint filed of record excluding a ¼th share of the property described under item (*a*).

(2) that the defendant be ejected therefrom and the plaintiff be put, placed and quieted in possession thereof.

(3) for damages Rs. 500 per annum.

(4) for costs and for such other and further relief as to this court shall seem meet."

The administrator's action was dismissed by the District Judge but in appeal[1] his order was set aside and the District Judge was directed to enter judgment for the plaintiff as prayed for; but with the following reservation: "The judgment in the action and the subsequent order for

[1] *Ahamado Muheyadin v. Thambiappah* (1945) 46 N. L. R. 370.

sale remains binding on A. M. Asiathummah". The result of that decision is that except for one-fourth share of the first land mortgaged the remainder re-vests in the widow, the sole legatee of the deceased, subject to administration but not free of the mortgage.

While the administrator's action was pending in appeal the mortgagee attempted to recover the balance due to him by seizing and selling other lands belonging to the deceased. The decision of this Court referred to above brought those proceedings to a halt, whereupon the mortgagee instituted the present action on April 2, 1946, in which he asks for judgment in a sum of Rs. 6,000 against the administrator together with interest at 5 per cent. till the date of decree and that in default of payment the mortgaged lands be sold and the proceeds applied towards the debt. The District Judge gave judgment for the mortgagee and the present appeal is from that decision.

In the instant case the rights of the respective parties must be determined with reference to the instrument P1. Upon a reading of that document I am of opinion that the mortgagors have bound themselves jointly and severally. The words "recover the said principal and interest at the rate aforesaid from the properties described below or from any other property belonging to us *jointly and severally*" put the matter beyond doubt. The words "jointly and severally" must be regarded as referring to the obligation of the obligors and not to their properties, for property can be owned either jointly or severally but not jointly and severally.

Under the English law, where an obligee has judgment against one of two or more obligors who are jointly and severally bound, he is not precluded from suing the other or others until he gets satisfaction[1]. Even execution against one is no bar against suing the other; for execution without satisfaction is not any bar [2].

The law on this subject is thus stated by Baron Bayley in *Lechmere v. Fletcher* [1]:

> "There are many cases in the books as to joint and several bonds, from which it appears, that though you have entered judgment on a joint and several bond against one obligor, you are still at liberty to sue the other: unless indeed the judgment has been satisfied: but so long as any part of the demand remains due, you are at liberty to sue the other, notwithstanding you have obtained judgment against one. This, I think, establishes the principle, that where there is a joint obligation and a separate one also, you do not, by recovering judgment against one preclude yourself from suing the other."

Our law is not different. In the case of joint and several liability the creditor can at his option sue one or more or all of the debtors in the same action; and a judgment recovered against one of them is no bar to an action against any of the others. The estate of one of the debtors who has died is not thereby freed from liability [3]. An examination of the

[1] *Higgens's Case, 6 Co—Rep. 44b at 46a; 77 E. R. 320 at 323.*
Lechmere v. Fletcher, 1 C and M 624; 149 E. R. 549 at 554.

[2] *Whiteacres v. Hamkinson, Cro. Car. 75; 79 E. R. 666.*

[3] *Huber's Jurisprudence of My Time, Vol. 1, p. 529, Ch. 25.*
Van Leeuwen's Censura Forensis, Bk. IV, Ch. X VII, Secs. 1 & 2, Barber's translation, page 122.
Van der Linden's Institutes 1, 14, Secs. 8 & 9 (Juta's translation 111-117).

precedents of this Court reveals a case[1] which is not widely different from the instant case. In that case the first defendant and his wife had executed a bond wherein they bound themselves jointly and severally to the obligor to repay a sum of £40 they had borrowed from him. For securing the payment of the debt they mortgaged certain lands. The first defendant's wife died before the institution of the action, to which the four children of the deceased were made parties. The plaintiff's prayer was for judgment against the first defendant and the estate of his deceased spouse for the debt, and that the mortgaged premises might be decreed bound and executable for the payment thereof. Judgment was given by the trial judge for the debt as against the first defendant, and against only the interest in the mortgaged property of the second, third, fourth and fifth defendants, the children.

In appeal, as in this case, apart from the question of prescription, it was contended that the action should have been against the personal representatives of the deceased spouse and not against her heirs. In the course of his judgment, Burnside C.J. states :

> " The real question, therefore, is this—even assuming for the sake of argument that the liability of the wife, and her representatives, as a personal debtor was extinguished by prescription, but the liability of the husband for the entire debt remained, he having interrupted prescription—can the mortgagee enforce his claim against the whole of the mortgaged property? The husband and wife by their contract bound themselves jointly and severally to pay the debt, and they pledged the interest of each in the hypothecated property for the payment of the whole debt. It seems to me that it mattered not that the personal liability of either of the co-debtors had been extinguished, whether by prescription or otherwise, the entire property nevertheless, remained pledged for the payment of the debt so long as any debtor remained liable to pay it, and against whom the mortgage was not prescribed. Suppose, for instance, that instead of the second, third, fourth, and fifth defendants having been made co-defendants with the first, the executor of the deceased spouse had been sued ; in such case it might have become material to decide whether the debt as against the deceased existed, or had been barred by prescription, because if the debt still existed her entire estate would be bound for the payment of it ; but it would be immaterial so far as it related to the mortgaged property, because so long as the liability of one of the joint and several debtors remained, and was not prescribed, the whole property which had been pledged to meet the liability of either debtor continued bound for that purpose. This seems to me to be the legal effect of the contract between the parties, and it is uneffected in this action by any question of prescription as between co-contractors. To hold otherwise would be to convert the extended security of the whole hypothecated land s for the entire debt, so long as it existed, into a limited liability of each contractor's share for the debt only so long as he himself continued personally liable for it."

[1] *Ambuldeniyage Don Julis Wijeya Gunawardana v. Don Mathes Wirawikkrama Gunawardana Liyana and others, 7 S. C. C. 183 (Full Bench).*

In the instant case the sale of the hypothecated land has in effect been set aside by the decision of this Court in the action by the administrator against the mortgagee (*supra*). The order made by this Court granting the plaintiff's prayer while at the same time declaring that the judgment in the action and the subsequent order for sale were binding on the widow cannot be reconciled with the facts disclosed in the present proceedings that the widow was the sole legatee and executrix of the deceased. Nor is that judgment consistent with the Full Bench decision I have referred to earlier. The decree in the first mortgage action was that the defendants should jointly and severally pay the amount due. The decree though bad as against the defendants save and except the widow was good as against her as stated by Cannon J. and was, in my view, executable against the mortgaged property even though the estate of the deceased was unrepresented, for immediately on the death of the deceased all his properties, including the mortgaged property vested [1], subject to administration, in the widow the joint testator and sole legatee and executrix, who saw to it that the will was admitted to probate and accepted the inheritance.

The authorities [2] cited by learned counsel for the appellant do not, in my view, govern the instant case. Although the mortgagee cannot be compelled against his will to split up his hypothecary action he is not precluded from instituting such actions as are necessary to enforce his encumbrance. Clarence J. states the position thus in the case of *Ambuldeniyage Don Julis Wijeya Gunawardana* [3] to which I have referred above :

> " A mortgage incumbrance extends over the whole of the hypothecated land, and any subsequent splitting up of the property by conveyance cannot affect the mortgagee's right to enforce his incumbrance, except in so far as it makes a change in the individuals whom he must make defendants to his suit in order to reach the property . . . . And it seems to me that it can make no difference if the subsequent splitting up of the property is affected by a devolution on inheritance as in the present case. "

There is nothing, either in the Mortgage Ordinance or in the authorities cited for the appellant, that excludes the remedy which the mortgagee now seeks. He did not obtain satisfaction in the first mortgage action and is therefore in terms of his bond entitled to proceed against the administrator of the deceased.

Appeal dismissed.

[1] *Cassim v. Marikar and others, 1 S. C. R. 180.*
De Croos v. Don Johannes, (1905) 9 N. L. R. 7.
Silva v. Silva et al., (1907) 10 N. L. R. 234.

[2] *Wille on Mortgage, page 240.*
Nathan, Vol. 2 (1913 Edn.), p. 567, para. 739.
Deonis Appu v. Gunawardena, 16 C. L. W. 29.
Kadappa Chettiar v. Ramanayake et al., (1936) 38 N. L. R. 33.
Voet Bk. XX, Tit. IV, Sec. 3.
Saravanamuttu v. Solamuttu, (1924) 26 N. L. R. 385.

[3] *7 S. C. C. 183 (Full Bench) (supra).*