

2-1929

Mortgage Foreclosure, by Charles Hastings Wiltsie

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Recommended Citation

Brown, Robert C. (1929) "Mortgage Foreclosure, by Charles Hastings Wiltsie," *Indiana Law Journal*: Vol. 4 : Iss. 5 , Article 5.

Available at: <https://www.repository.law.indiana.edu/ilj/vol4/iss5/5>

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REVIEWS

MORTGAGE FORECLOSURE.*

This work is primarily a treatise upon the procedure in suits for the foreclosure of mortgages. It is, therefore, to be classed as a book on practice, and such substantive law as is contained is purely incidental. For example, the discussion of priorities is prefaced with the frank statement that such a discussion is necessarily somewhat inadequate, in that the book "is intended to deal principally with the foreclosure of mortgages, rather than with the substantive law of mortgages."

However, a rather complete discussion of the law of mortgages from its substantive aspect is, in fact, included. Since this is subordinate to the adjective aspect of the subject, it is presented in a manner differing considerably from what would naturally be expected in a treatise upon the substantive law of mortgages. A person interested in the substantive law would probably feel that the subject is not presented in a logical manner or in a form which makes it easy to follow, but the answer is that the book is dealing primarily with the procedure in foreclosing mortgages and from this aspect is arranged in a manner which is entirely logical, and satisfactory.

The discussion of the substantive law of mortgages seems on the whole satisfactory, although the reviewer is inclined to disagree with what is said with respect to mortgages for future advances (p. 378). The author takes the position that such mortgages are not good where the future advances are optional, providing the mortgagee has notice "actual or constructive," of the existence of a subsequent encumbrance at the time he makes the advance. This would seem to imply that the recording of such an instrument would give constructive notice. The weight of authority and the better view is contrary to this; that is, it is generally held that the recording of any instrument is constructive notice only to subsequent encumbrancers and that the mortgage for future advances is a prior encumbrance.

This book is, therefore, in form and largely in substance a complete and exhaustive discussion of all problems relating to the foreclosure of mortgages and to redemption. One of the most satisfactory things in the book is the somewhat revolutionary method of handling the subject of parties. The author has put entirely aside the complicated distinctions, with which the books are too full, as to the necessary and proper parties. He has pointed out that unless all subordinate encumbrancers are made parties, the title which will pass by the foreclosure sale

* *Mortgage Foreclosure*, by Charles Hastings Wiltsie. Fourth Edition, revised by Samuel W. Eager. Albany, New York; Matthew Bender and Company, 1927. 2 vols., Pages xxxviii, 1916. Price, \$20.00.

will not be such that the purchaser will be compelled to accept it. He, therefore, treats all such parties, and all other persons who must be made parties if a marketable title is to pass, as necessary parties. It is submitted that this is good sense, and that it follows the actual decisions of the courts though not what they have been accustomed to say.

In addition, the book contains very full discussions of defenses in foreclosure suits, of the effect upon such suits of assignments, and also such subjects as *lis pendens*, pleadings, rights to appointment of receiver in pending suits, judgment and sale, strict foreclosures, and the proceedings with respect to surplus moneys. There is also a full discussion of redemption from mortgages and foreclosure sales, and the proceedings which are incidental thereto.

As this is a book on practice it is primarily for reference work. Its usefulness for this purpose is insured by a full table of contents, a table of cases and a rather exceptionally detailed index. The usefulness as a practice work is also greatly increased by a complete collection of forms for use in foreclosure proceedings. The forms are avowedly such as are suitable for use in New York state, although it is suggested, and probably correctly, that they may be adapted for use in other states. It might be thought that the text also gives undue prominence to New York statutes and decisions, but there are actually complete references to the law of other states.

From the mechanical standpoint the book is quite satisfactory. The proof reading and printing have been done with as much care as could be expected in a work of this size and while some errors are apparent they are usually of no consequence. One of the most serious errors—and this is more serious in appearance than in substance—is on page 445, where reference is made to what the "Supreme court of Louisiana" says, but the citation given is to the Federal Reporter. Examination of the citation developed that the court was in fact the United States Circuit Court for the Eastern District of Louisiana! It may be added that since this is a new revision it would seem well to strike out references in the previous editions which have by this time become obsolete. For example, the reviewer noted a so-called "recent" case actually decided in 1877 and it may be that there are others which are even older. But this, again, is not a matter of consequence.

It must be explained again that this is not a book of theory but one of practice, and is to be tested as such. From this standpoint it seems a very excellent work. Its obvious value to the New York lawyer should not be allowed to obscure the fact that it is valuable to a lawyer in any jurisdiction. It is confidently and very highly recommended to the profession, especially those dealing in real estate matters.

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