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CHAPTER V.

RIGHTS AND DUTIES OF THE TRANSFEREE OF A MORTGAGED PROPERTY.

752. — The transferee of a mortgaged property may remove the mortgage, provided that he be not the principal debtor, a surety or an heir of either of them.

ILLUSTRATION. — I. — A mortgages his land to B as security for the performance of an obligation due by C. Later on C buys A's land (or is given such land by A). C, although the transferee of a mortgaged land, cannot remove the mortgage because he is personally liable for the performance of the obligation secured.

II. — A mortgages his land to B as security for the performance of his obligation. C stands also as security for the performance of A's obligation. A dies and his estate devolves on C. C, although the transferee of a mortgaged land, cannot remove the mortgage because he is personally liable for the performance of the obligation secured.

753. — The transferee may remove the mortgage at any time until, or within one month after he has been

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753.—The transferee may remove the mortgage at any time until, or within one month after he has been

notified by the mortgagee of his intention to enforce the mortgage.

754. — The transferee who wishes to remove the mortgage must offer to all the registered creditors to pay such sum of money as he thinks fit.

755. — The form of the offer may be made to contain the following particulars :

1) the place and description of the mortgaged property,

2) the date of transfer of ownership,

3) the name of the former owner,

4) the name and residence of the transferee,

5) the sum offered,

6) a calculation of the total amount due to each of the creditors including accessories, and of the sums which would be distributed to them according to their respective ranks.

A certified copy of the entries in the official register referring to the property mortgaged will be enclosed.

756. — If all the creditors accept the offer, the mortgages, and preferential rights, i~~s~~[f] any, are removed by the payment of the sum offered.

757. — If a creditor refuses the offer, he is entitled to apply to the Court within one month from the date of

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the offer, for an order to have the mortgaged property sold by public auction, provided that he notifies his refusal to the transferee and to the other registered creditors.

The transferee can bid at the auction.

758. — If the nett proceeds of the auction are not more than the sum offered by the transferee, the creditor demanding sale shall bear the costs of the auction.

759. — If a creditor does not answer the offer of the transferee within one month from the date of the offer, the mortgage or preferential right is removed by the transferee depositing in lieu of performance the sum offered to such creditor.

760. — If the transferee who has been notified by the mortgagee of his intention to enforce the mortgage does not either perform the obligation or remove the mortgage, the mortgage is enforced against him in the same manner as if it were to be enforced against the mortgagor.

761. — Any right over the mortgaged property existing in favour of the transferee before the transfer and extinguished by merger in consequence of the transfer, shall revive in his favour when the enforcement or the removal of the mortgage results in the transfer of the ownership to another person.

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