

The short copy of the Watkins judgment offered in evidence does not show on its face that the defendant was summoned, but there is no exception to this evidence; it does not appear that the validity of the judgment was ever questioned by Mr. Middleton, who admits in his testimony that Mr. Watkins held a judgment against him, and Mr. Urie, counsel for the appellant, who examined the proceedings in the case, states in his testimony that the defect he found in the judgment was that it had been rendered 16 days after the return day of the writ. *Insolvent Estate of Leiman*, 32 Md. 244, 3 Am. Rep. 132. No question as to the validity of the judgment had been suggested either in the oral argument of the learned counsel for the appellant or in his brief, and there can be no doubt that where the defendant has been summoned and the justice thereby acquires jurisdiction in the case, if he subsequently proceeds erroneously or irregularly, his jurisdiction is not thereby affected, and the only remedy is by appeal. *Mottu v. Fahey*, 78 Md. 389, 28 Atl. 387; *Weed v. Lewis*, 80 Md. 128, 30 Atl. 610. While counsel for the company, who examined the title and the proceedings under the execution, may have been justified in declining to recommend the loan until the deed from the sheriff to Mr. Watkins had been recorded, we think the deed, the execution and delivery of which has been proved is evidence of the sale of the property to Mr. Watkins and of his right to redeem the mortgage. *Estep v. Weems et al.*, 6 Gill & J. 303; *Dorsey v. Dorsey*, 28 Md. 388.

In 2 Story's Equity, § 1023 (5th Ed.), the learned author says: "It is clear that the equity of redemption is not only a subsisting estate and interest in the land in the hands of the heirs, devisees, assignees, and representatives (strictly so called) of the mortgagor; but it is also in the hands of any other persons, who have acquired any interest in the lands mortgaged by operation of law, or otherwise, in privity of title. Such persons have a clear right to disengage the property from all incumbrances, in order to make their own claims beneficial or available. Hence a tenant for life, a tenant by the curtesy, a jointress, a tenant in dower in some cases, a reversioner, a remainderman, a judgment creditor, a tenant by elegit, the lord of a manor holding by escheat, and, indeed, every other person, being an incumbrancer, or having legal or equitable title, or lien therein, may insist upon a redemption of the mortgage, in order to the due enforcement of their claims and interests respectively in the land." And in 3 Equity Juris. § 1220 (3d Ed.), Mr. Pomeroy states that "any person who holds a legal estate in the mortgaged premises, or in any part thereof, derived through, under, or in privity with the mortgagor, and any person holding either a legal or equitable lien on the premises, or any part thereof, under or in privity with the mort-

gagor's estate, may also in like manner redeem from the prior mortgage." The same rule is recognized in 2 Jones on Mortgages, §§ 1055-1069 (5th Ed.); *McNiece v. Ellason*, 78 Md. 168, 27 Atl. 940; *Parsons v. Urie*, 104 Md. 238, 64 Atl. 927, 8 L. R. A. (N. S.) 559. There can be no doubt on the authorities cited of Mr. Watkins' right to redeem the mortgage.

2. The tender made by Mr. Barroll was not made upon the condition that the company assign the mortgage to him. In his letter asking for a statement of the amount due he stated that he intended to pay it, and he accordingly sent his check for that purpose. The statement in his letter inclosing the check that Mr. Durdin did not want the mortgage released, and the request that the mortgage be assigned to him, do not show a conditional tender, but an absolute tender accompanied by a request to assign the mortgage and not to release it. Nor was the tender refused because it was in the form of Mr. Barroll's check, but it was declined, as stated by the secretary and treasurer of the company, because Mr. Middleton would not consent to an assignment of the mortgage. Under such circumstances the appellant must be regarded as having waived all objection to the form of the tender. In the case of *McGrath v. Gegner*, 77 Md. 331, 26 Atl. 502, 39 Am. St. Rep. 415, Judge Robinson says: "We take it to be well settled that, where a tender is made, whether it be by ordinary bank notes, or by a check on a bank, and the tender is refused, not because of the character or quality of the tender itself, but on other grounds, the tender thus made and refused will be considered in law a lawful tender. And for the reason, that all objection to the character of the tender will be considered as having been waived; and for the further reason, that, if objection had been made on the ground that the tender was not made in lawful money, the party would have had the opportunity of getting the money and of making a good and valid tender." See, also, *Hartsock v. Mort*, 76 Md. 292, 25 Atl. 303, and *Bonaparte v. Thayer*, 95 Md. 548, 52 Atl. 496. Where a person who has an interest in the equity of redemption, or a lien creditor of the mortgagor makes an unconditional tender to the mortgagee of the amount then due on the mortgage, and of the amount of any costs that have been properly incurred, with a request for an assignment of the mortgage, if there is any reason why the mortgage cannot be assigned, it is the duty of the mortgagee to accept the money without insisting upon a release of the mortgage. *Parsons v. Urie*, supra.

3. Section 9 of article 66 of the Code provides that all sales under a mortgage shall be reported to the court, and that "the court shall have full power to hear and determine any objections which may be filed against such sale by any person interested in the property and may confirm or set aside said