

KELLY, J.

JULY 30TH, 1919.

RE HODGKISS AND MURRAY.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title—Discharge of Mortgage—Effect of—Mistake—Proceedings in Foreclosure Action.

Motion by a vendor of land, under the Vendors and Purchasers Act, for an order declaring invalid an objection made by the purchaser to the title.

The motion was heard in the Weekly Court, Toronto.

H. T. Beck, for the vendor.

H. E. McKittrick, for the purchaser.

KELLY, J., in a written judgment, said that Emma Joselin, holder of a first mortgage on the land now in question (house No. 58 Muriel avenue in Toronto), brought an action for foreclosure, and in the proceedings Robert Hodgkiss and Thomas Hodgkiss, holders of a subsequent mortgage, were made parties and proved their claim. They then redeemed the plaintiff. Thereupon a new account was taken and a new day for redemption—the 17th September, 1917—was given the owner of the equity.

Robert Hodgkiss and Thomas Hodgkiss were also the holders of a second mortgage on the adjoining property (house No. 60 Muriel avenue), made between the same parties and bearing the same date as the mortgage they held on No. 58. On the 29th March, 1917, the amount due on their mortgage on premises No. 60 was paid by the owner of the equity of redemption to the solicitor for Robert Hodgkiss and Thomas Hodgkiss, and the owner became entitled to a discharge. The solicitor for the mortgagees prepared the discharge and had it executed, but inadvertently it was made to discharge the second mortgage held by the same mortgagees on No. 58 Muriel avenue, by virtue of which, as subsequent mortgagees, they had redeemed the mortgage held by the plaintiff (Emma Joselin) on the latter property. The discharge was registered on the 31st May, 1917. The purchaser now objected that a new mortgage-account should then have been taken in the foreclosure proceedings, crediting the owner of the equity of redemption with the amount purporting to have been paid, and a new date given for redemption.

The objection was not well taken. As a matter of fact no payment was made by or on behalf of the owner of the equity of redemption in premises No. 58, upon the second mortgage thereon,