

MASTEN, J.

JULY 9TH, 1919.

*ADAMS v. KEERS.

Mortgage—Foreclosure—Execution Creditor of one of three Owners of Equity of Redemption—Subsequent Incumbrancer—Payment of Mortgagee's Claim and Redemption of Mortgage—Consolidation of Securities—Rights of Owners of Equity—Separate Rights according to Shares or Interests—Marshalling Securities—Appeal from Master's Report.

Appeal by the Toronto Railway Company, made a defendant in the Master's office, from the report of the Master in Ordinary in an action for foreclosure.

The appeal was heard in the Weekly Court, Toronto.

H. A. Harrison, for the appellant company.

J. W. Payne, for the defendants Keers and Ferguson.

J. R. Roaf, for the defendant Gray.

MASTEN, J., in a written judgment, said that the appellant company was an execution creditor of the defendant Keers; its claim had been allowed in the Master's office, and it had, as a subsequent incumbrancer, redeemed by paying what was due upon the plaintiff's mortgage. The defendants Keers, Ferguson, and Gray (the respondents) were owners (presumably as tenants in common, but in what proportions did not adequately appear) of the equity of redemption. The interest of each of the respondents was subject to the plaintiff's mortgage. The interest of Keers was, but the interests of Ferguson and Gray were not, subject to the execution of the appellant company.

The appellant company contended that the Master should have apportioned the amount of the plaintiff's mortgage according to the respective interests of the three respondents, and should have found the amount that each of them should pay to redeem the plaintiff, having regard to their respective interests, and should have fixed a date for payment by each of them. In the alternative, the appellant company claimed the benefit of the doctrine of marshalling securities or of consolidation.

The respondent Ferguson contended that redemption by any one of the owners of the equity put an end to the foreclosure action and forced the appellant company to launch some other proceeding to enforce its rights. The learned Judge did not agree with this. He was of opinion that all remedies possible should be granted in the one action: Judicature Act, sec. 16 (h).

* This case and all others so marked to be reported in the Ontario Law Reports.