

SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

NOVEMBER 5TH, 1913.

HOME BUILDING & SAVINGS ASSOCIATION v.
PRINGLE.

5 O. W. N. 226.

Mortgage—Judgment for Redemption or Sale—Appeal from Master's Report — Subsequent Encumbrancers — Who are—Necessity of Adding—Mode of Adding—Neglect to Add Fatal—Equity of Redemption an Entire whole—Con. Rules 16, 404, 433, 468, 469, 490 —Report Remitted to Master—Costs.

BRITTON, J., 24 O. W. R. 889, dismissed an appeal by certain defendants from the report of the Local Master at Ottawa in a mortgage action, holding that subsequent purchasers of portions of the mortgaged property who had given mortgages were not necessarily subsequent incumbrancers within the meaning of the Rules and need not be made parties to the action.

SUP CT. ONT. (1st App. Div.) *held*, that where the equity of redemption is severed, so that different persons are entitled to redeem in respect of different parcels these different persons must be made parties, either by writ or in the Master's office, for the equity of redemption is an entire whole and so long as the right of redemption exists in any portion of the estate or in any of the persons entitled to it, it enures for the benefit of all.

Jones v. Bank of U. C., 12 Gr. 429; *Faulds v. Harper*, 2 O. R. 405, referred to.

Appeal allowed without costs and report set aside and reference remitted to the Local Master at Ottawa.

Appeal by the defendants McKillican and Smith from the order of BRITTON, J., 24 O. W. R. 889, dismissing without costs an appeal from the report of the Local Master at Ottawa in a mortgage action. For prior reports of this action see 122 O. W. R. 791; 23 O. W. R. 137.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by HON. SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS.

C. H. Cline, for defendants, McKillican and Smith, appellants.

F. A. Magee, for plaintiffs, respondents.

HON. MR. JUSTICE HODGINS:—In this case the mortgagees began their action for sale as to the whole of the lands comprised in the mortgage, except three parcels re-