

HON. MR. JUSTICE SUTHERLAND.

JULY 11TH, 1912.

HOME BUILDING & SAVINGS ASSOCIATION v.  
PRINGLE.

3 O. W. N. 1595.

*Mortgage—Subsequent Incumbrances—Judgment for Redemption or Sale—Final Order of Sale—Motion to Open up Master's Report—Assignees of Equity of Redemption—Parties.*

Application by two defendants in a mortgage action to open up a report on the grounds that (1) the mortgagee did not file a complete abstract of the lands shewing all subsequent incumbrances, and (2) that the said mortgagee had sold and released certain of the mortgaged lands from the mortgage sued on.

SUTHERLAND, J., *held*, that a plaintiff in a mortgage action need not make all subsequent incumbrancers parties, his failure so to do being at his own risk.

That a mortgagee cannot be forced to marshal his securities but can take his debt out of that portion of his security which first becomes available.

Application refused with costs.

An application at the instance of two defendants in a mortgage action to open up a report dated 6th November, 1911, on the following grounds:—

1. That the mortgagee failed to file a complete abstract of all lands covered by the mortgage;

2. That in consequence thereof the applicants were not informed as to all the subsequent incumbrancers and other parties interested in the properties subsequent to the mortgages in question.

3. That the solicitor for the plaintiffs at the time of making the Master's report concealed the fact that the plaintiffs had sold some of the properties and received a large amount of money therefor, and had been in possession of certain portions of the lands and that no credits were given for the moneys so received or anything allowed for use and occupation of said lands.

On this motion counsel for the applicants conceded that no doubt the solicitors for the plaintiffs thought the abstract was an abstract of all the properties in the mortgage, but that the plaintiff company knew better; and

4. That since the date of the judgment and the making of the report, the plaintiffs have sold without the consent of the Court certain lands and premises and discharged the same from the mortgage in question, which properties so sold are of greater value than the remaining properties.