

to come into the litigation, and whose claims are not established before the Master.

W. J. Swanson acquired the claims of the 4 subsequent incumbrancers, and paid the redemption money to the mortgagee plaintiffs within the time limited, and thereupon the Master made his subsequent report of date 12th December, 1905, and took the subsequent account of what was due in respect of the redemption money and the 4 claims proved, and appointed the aggregate sum to be paid by the mortgagors on 12th January, 1906.

This matter was also *res judicata* before the transfer of interest occurred on 2nd January, when the appellant Scott was appointed assignee of Stinson under R. S. O. 1897 ch. 147, sec. 11, as amended by 3 Edw. VII. ch. 7, sec. 29 (O.)

It is now urged that Scott should be entitled to redeem quoad the mortgage money, but that the 4 assignments of the claim of the subsequent incumbrancers should be dealt with under the footing of the Assignments Act, ch. 147, as being claims of judgment or execution creditors whose executions have not been completed by payment.

This position appears to me quite untenable. These claims have passed beyond the judgment and execution stage, and are not within the meaning of the Act. The assignment takes precedence of the various varieties of process mentioned in the new section, including "orders appointing receivers by way of equitable execution;" but it cannot operate as to parties in this mortgage action whose priorities have been determined by the Court to the exclusion of all other creditors, including those represented by the assignee. These claimants have taken advantage of the litigation, and have taken steps in faith thereof, and are entitled to be secured by the Court in any benefit thus obtained. The assignee can get no relief in this action other than that claimable by his assignor—the right to redeem all these securities as consolidated in the report of the Master. The estate came to the hands of the assignee (as to this part of it) burdened by the various incumbrances so declared by the action of the Court, and the transfer of interest in the equity of redemption to the assignee pending litigation, and, at this stage of it, cannot revolutionize what has been done.

If a deposit of \$300 is made, to answer expenses of sale, and the assignee undertakes to pay further expenses of sale, if any, the judgment may go for sale instead of foreclosure