

HOME BUILDING AND SAVINGS ASSOCIATION v. PRINGLE—SUTHERLAND, J.—JULY 11.

Mortgage—Judgment for Redemption or Sale—Final Order of Sale—Motion to Open up Master's Report—Assignees of Equity of Redemption—Parties.]—Application by the defendants Victoria McKillican and David A. Smith to open up a report of the Local Master at Cornwall in a mortgage action, upon the grounds that, by reason of the failure of the plaintiffs, the mortgagees, to file a complete abstract of all lands covered by the mortgage, the applicants were not informed as to all the subsequent incumbrancers and other parties interested in the properties subsequent to the plaintiffs' mortgages; that the plaintiffs, at the time of the making of the report, concealed the fact that they 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, nor anything allowed for use and occupation; and that, since the date of the judgment and the making of the report, the plaintiffs had sold, without the consent of the Court, certain lands and premises and discharged the same from their mortgages, which properties were of greater value than the remaining mortgages. SUTHERLAND, J., after setting out the proceedings, said that, in his opinion, a case for opening up the report had not been made out. In the affidavit of the plaintiffs' manager filed on obtaining the final order for sale, he stated that no part of the money found due by the report had been paid, and that the plaintiffs had not been in possession of the lands or any part thereof. In a further affidavit, filed in answer to this motion, he cleared up in the main the material allegations contained therein. *Rutherford v. Rutherford*, 17 P.R. 228, applied to this motion. The applicants were assignees of the original mortgagor of the lands, and had ample opportunity during the progress of the reference to look after their interests. The solicitor for the applicants, in one of his affidavits filed on the application, stated that, in the presence of the Master, he asked the solicitor for the plaintiffs if he would, upon being given the amount found due by the report with subsequent costs to date, assign to the applicants the mortgages, including the properties which his clients had sold as set out in his (the applicants' solicitor's first affidavit), to which he replied that he would not do so, and would be willing to assign the mortgage only as to the properties which were undischarged at the time. No doubt, this