one of such funds, the latter has the right to require the former creditor to exhaust first the fund on which the latter has no claim: Dolphin v. Aylward (1870), L.R. 4 H.L. 486.

Here the defendant corporation had a lien on both lots, and the plaintiff company a lien on lot 14 only. The appellant was the owner of the equity of redemption in both lots, and, as between the common debtor, Frank, and himself, he was bound to pay both claims and thus save Frank harmless.

In these circumstances, the plaintiffs were entitled to have marshalled in their favour the securities of the defendant corporation—and that right could not be defeated by the act of the defendant corporation in having first resorted to lot 13, on which the plaintiffs had no claim.

In view of these facts, the application of the principle of marshalling securities shifted to lot 14 the plaintiffs' right to resort thereto in respect of their claim; and it was rightly declared by the judgment entered that the plaintiffs were entitled to a lien or charge on lot 14. The only amendment to the formal judgment that was necessary was the addition thereto of the usual provisions for redemption and in default for sale.

The appeal should be dismissed with costs.

RIDDELL, J., in a written judgment, agreed, for reasons stated, that the appeal should be dismissed with costs.

SUTHERLAND, J., agreed with MULOCK, C.J.Ex.

MASTEN, J., agreed in the result, for reasons stated in writing.

*Appeal dismissed with costs.*

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SECOND DIVISIONAL COURT. DECEMBER 20TH, 1920.

## *SELICK v. NEW YORK LIFE INSURANCE CO.

*Insurance (Life)—Untrue Answers of Assured upon Application—Materiality of Answers—Fraud—Unsatisfactory Findings of Jury—Judgment of Appellate Court upon the Evidence, Disregarding the Findings—Judicature Act, sec. 27.*

Appeal by the defendants from the judgment of ORDE, J., upon the findings of a jury, in favour of the plaintiff, for the recovery of $3,318.49 and costs, in an action upon a policy of insurance upon the life of the plaintiff's husband, Joseph Selick, who died on the 30th March, 1918.