

J., in Chambers, on 9th January, 1906, and an order was made adding Scott as a party, and referring the action back to the Master to appoint a new day for redemption, leaving open for decision by the Master the questions as to the receipt of rents and the effect of the assignment for the benefit of creditors. The Master thereupon ruled that Scott was entitled, as against Swanson, to open the mortgage account, and to go into the question of rents, and also to redeem Swanson, on paying only the amount which might be found due under plaintiffs' mortgage, irrespective of the amount due to him as assignee of the execution creditors.

An appeal by defendant Swanson from this ruling was allowed by FALCONBRIDGE, C.J., on 22nd February, 1906; and defendant Scott appealed to a Divisional Court from the order of Falconbridge, C.J.

D. L. McCarthy, for defendant Scott.

H. Cassels, K.C., and R. S. Cassels, for defendant Swanson.

The question as to the right to open the mortgage account in respect of rents alleged to have been received was disposed of on the argument adversely to the appellant. The appellant also asked for a sale in lieu of foreclosure.

The judgment of the Court (BOYD, C., MAGEE, J., MABEE, J.), was delivered by

BOYD, C.:—By report of 29th May, 1905, the Master under the order of reference found what was due to plaintiffs in respect of the mortgages, and also what was due to the 4 execution creditors who came in pursuant to notice (Rule 746, form 7), and proved their claims. He also settled the priorities as between all the parties to the action who had proved claims—these 4 ranking in order after plaintiffs. He certifies that these are the only incumbrances upon the mortgaged property. He also appoints a day for the 4 subsequent incumbrancers to pay off the claim of plaintiffs on the footing of the mortgage. All this matter is *res judicata*, and puts the creditors who have proved in a different position from the status they once occupied as judgment or execution creditors. Their claims now attach upon the property, and they are entitled to redeem and share the benefits of the action, to the exclusion of all other creditors who have failed