

MASTEN, J.

APRIL 10TH, 1916.

FOSTER v. MALLORY.

McLAUGHLIN v. MALLORY.

Mortgage—Foreclosure—Final Order on Consent—Failure to Disclose Interest of Purchaser of Equity of Redemption—Opening Foreclosure—Parties—Costs.

Motion by McLaughlin, the plaintiff in the second action, to open the foreclosure effected by proceedings in the first action, to the extent necessary to allow him to redeem Foster, the plaintiff in the first action; and generally for the disposition of all pending motions in both actions.

See *McLaughlin v. Mallory* (1915-16), 9 O.W.N. 325, ante 47.

The motion was heard in Chambers.

D. L. McCarthy, K.C., for McLaughlin.

R. McKay, K.C., for Mountjoy.

C. J. Holman, K.C., for Foster.

MASTEN, J., disposing of the motion in a short memorandum in writing, said that judgment of foreclosure was pronounced on the 28th February, 1913, and was entered, in the usual form, on the 3rd March, 1913; it gave the usual period for redemption, viz., till September. On the 20th March, a final order of foreclosure was made on consent of all parties then appearing on the record as parties to the action of *Foster v. Mallory*. On the 20th February, 1913, McLaughlin had entered into a binding agreement of purchase of the land in question, and was on 20th March the equitable owner, subject to Foster's mortgage. No consent from McLaughlin to the immediate foreclosure was obtained; and the fact that he was interested was not disclosed to the Judge who granted the final order of foreclosure.

All parties had, either directly or through their common solicitor, knowledge and notice of McLaughlin's interest; and there was good reason to believe that the final order was obtained with the purpose of cutting out his interest. That interest ought to have been disclosed when the application for the final order was made. Such an application is in its nature cognate to an application for an *ex parte* injunction, and the principle requiring full disclosure to the Court applies—differing this case from certain decisions cited in the argument of the motion.

Order made declaring that on and previous to the 3rd March, 1913, McLaughlin had an interest which entitled him to redeem,