

Motion by the defendants by way of appeal from and to set aside the report of an Official Referee upon a reference in a mortgage action.

The motion was heard in the Weekly Court, Toronto.
H. J. Scott, K.C., for the defendants.
A. C. Heighington, for the plaintiff.

MIDDLETON, J., in a written judgment, said that the report bore an incorrect date. There was evidence upon the face of the report that it was not signed till after the order mentioned in it of the 4th March. Yet the time for redemption mentioned was the 27th August. The effect would be to shorten the time for redemption and the time for appeal. It is imperative that all judicial acts should bear true and not false dates—particularly when the rights of parties depend upon the date.

2. The report was wrong in form. It is not, as was said upon the argument, in accordance with the regular form used in the Master's office, but departed from it in a vital matter. The action originally was for foreclosure, and the judgment directed the ordinary proceedings for foreclosure; but by the order of the 4th March, 1919, the subsequent incumbrancers having paid into Court \$80 to secure a sale of the lands, it was ordered that all due proceedings be had for redemption or sale instead of foreclosure. The practice in Ontario is set out in the very accurate notes by Mr. Hoyles found in Taylor & Ewart's *Judicature Act and Rules*, Appendix, p. [228]: "Under a decree for a sale one day six months off is to be given to the original defendants to redeem the plaintiff and all other incumbrancers who have proved claims." This differs from the practice in foreclosure, where "a day six months from the date of report is to be given to the first incumbrancer to redeem the plaintiff. On default being made and a final order" (as to him) "being obtained, the next incumbrancer is given a day three months" (now one month—see Rule 489) "from date of taking account to redeem plaintiff, and so on until all the incumbrancers entitled to redeem have been foreclosed, when a day should be given the mortgagor to redeem." The reason for this distinction is obvious. When a sale is sought the owner is given his chance to redeem, and, failing this, the sale goes on. The case when foreclosure is sought is quite different. Each incumbrancer, in order, must be given his right to redeem, and the owner can only redeem when those to whom he has given his right to redeem decline to do so. In the case of a sale, an incumbrancer who desires to redeem may always do so, but he is not entitled to have a separate time fixed for him to redeem. The consequence of his failure to redeem the plaintiff is not his foreclosure, but his being compelled to