

rents received up to that time should be credited on the final adjustment. On the 15th August the defendants applied for a new day, when the plaintiffs stated on affidavit that sums paid by them for taxes and costs more than exhausted the rents received since the date of the report. No other statement was made by the plaintiffs. The application was refused, and on the 17th August a final order of foreclosure was granted.

*Held*, that the statement of the plaintiffs was insufficient; the mortgagor, before a final order of foreclosure is made, is entitled to know how much he must pay in order that he may redeem, and the modes in which that amount may be ascertained, where it has been changed after report, are pointed out in Rule 387.

*Held*, also, that a purchaser who has purchased during the pendency of foreclosure proceedings, and whose rights are expressly subject to the termination of the proceedings by a final order of the Court in favour of the mortgagee, stands in a different position from one who comes in for the first time after a final order has been made, and is much more readily made subject to the discretion of the Court to open the foreclosure. *Campbell v. Holyland*, 7 Ch. D. 166, and *Johnston v. Johnston*, 9 P. R. 259, followed. *Gunn v. Doble*, 15 Gr. 655, distinguished.

In this case the mortgagors were in no default. The slightest examination of the proceedings on the part of the purchaser would have shown him that the mortgagors had never been properly foreclosed, and that no day had ever been fixed for payment of the balance due the mortgagees; but he did not even ask whether a final order had been obtained, which was the condition upon which his sale was to be carried out.

*Held*, therefore, that the mortgagors had a clear right to redeem; and, having come in promptly for relief and taken vigorous steps to assert their rights, they were entitled to have the final order of foreclosure set aside, a new account taken and a new day fixed, and to redeem both as against the plaintiffs and B., for which purpose the latter should be added as a party.

*Held*, lastly, that the sale to B. was not, under the circumstances, sustainable under the power of sale contained in the plaintiff's mortgage. *Kelly v. Imperial Loan Co.*, 11 S.C.R. 516, distinguished.

*J. Bicknell*, for plaintiffs. *W. H. Blake* and *S. B. Woods*, for defendants. *Aylesworth*, Q.C., for purchaser.