

this action with the approbation of the Master of this Court at Ottawa.”

An appointment was taken out in pursuance of said order to settle an advertisement and the Master was proceeding to do so when on the 4th June, 1912, this motion was launched.

An application was first made to the Master himself who considering that he was *functus officio* declined to entertain it.

Under the facts hereinbefore set out I do not think a case has been made out to open up the report.

In the affidavit of the manager of the plaintiff company filed on obtaining the final order for sale he states that no part of the money found due by the report has been paid and that the plaintiff association has not been in possession of the lands or any part thereof.

In a further affidavit filed in answer to the plaintiff's material herein he cleared up in the main the material allegations contained therein. I think the case of *Rutherford v. Rutherford*, et al., referred to in the Master's reasons has application to this motion. The applicants were assignees of the original mortgagor of the lands in which they are interested and have had ample opportunity during the progress of the reference to look after their interests.

The solicitor for the applicants, in one of his affidavits filed on the application, states that in the presence of the Master he asked the solicitor for the plaintiffs if he would, upon being given the amount found due by the report with subsequent costs to date, assign to the applicants the mortgage including the properties which his clients had sold as set out in his (the applicants' solicitor's first affidavit) to which he replied that he would not do so and would only be willing to assign the mortgage as to the properties which were undischarged at the time. No doubt this latter offer is still open to the applicants.

I think the motion must be dismissed with costs.