

"I do not think the plaintiff can be forced to do this, especially in view of the fact that the judgment recites the discontinuance. Under the practice, subsequent purchasers should be made parties to the writ, as was done in this case, if the plaintiff desires to enforce his remedies as against them.

"It is his own lookout if he does not choose to proceed against them.

"Any subsequent encumbrancer, however, has the right to redeem the plaintiff, and then to proceed on his own account. *Rutherford v Rutherford*, 17 P. R. 228.

"Second. That by discharging part of the lands covered by the mortgage, makes the mortgagee liable for the value of the lands discharged. That is, that the doctrine of marshalling of securities applies.

"I do not think this doctrine applies to a case like this. By discharging part of the lands, the plaintiff is the one that takes the chances by reducing his security.

"The Court will not interfere with the first mortgagee's right to take his debt out of that part of his security which first comes available (upon the ground that other funds are available) *Coote Can. Ed. 698*. . . .

"Fifth. Mr. Cline contends that I can issue a certificate of my findings from which to take an appeal, if necessary, instead of taking the account and making a report.

"It would appear that this can be done. See *Sieve-wright v. Leys*, 1 Ont. 375 and note p. 873 H. & L.

"I think it would be a convenient way of settling the questions, if it is in order."

The said report was duly filed on the 6th November, 1911.

No appeal was taken therefrom and the redemption period having run, the plaintiff made an application on the 25th May, 1912, supported by an affidavit of its manager in the usual form for a final order of sale. It was granted—I quote from this order as follows:—

"1. Upon the application of the plaintiffs and upon hearing read the affidavit of Clifton Ashton Douglas, the certificate of the bank manager at Ottawa and the affidavit of Frederick Arthur Magee filed herein;

"2. It is ordered that the lands and premises in the pleadings mentioned or a competent part thereof be sold in pursuance of and in the manner directed by the judgment in