

DIVISIONAL COURT.

OCTOBER 18TH, 1912.

HOME BUILDING AND SAVINGS ASSOCIATION v.
PRINGLE.

Mortgage—Judgment for Redemption or Sale—Final Order of Sale—Motion to Reopen Master's Report—Assignees of Equity of Redemption—Parties—Mistake—Sale of Part of Incumbered Estate—Position of Several Purchasers.

Appeal by the defendants Victoria McKillican and David A. Smith from the order of SUTHERLAND, J., 3 O.W.N. 1595.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

C. H. Cline, for the appellants.

F. A. Magee, for the plaintiffs.

The judgment of the Court was delivered by RIDDELL, J.:—
The facts are not fully disclosed, but, so far as they appear and are material, they are as follows.

One Peter Valley, on and prior to the 1st March, 1885, owned a considerable portion of land in the county of Stormont, and he upon that day mortgaged it to the Hamilton Provident and Loan Society for \$1,900 and interest. He also on the 1st February, 1886, mortgaged the land to the same company for \$150 and interest. Making certain payments, certain portions of the land were released from the mortgage at his request.

On the 26th March, 1887, he made conveyance of a certain lot, part of the said land, to one J.T., by a deed which contained covenants for quiet possession, further assurance, and "that he has done no act to incumber the said lands." The defendant McKillican claims under J.T. On the 24th May, 1887, Valley sold another lot to M.M., giving a similar deed. The defendant Smith claims under M.M.

On the 16th December, 1887, the defendant Pringle bought the equity of redemption under Sheriff's sale, and took a quit claim deed from Valley.

Thereafter, Pringle made deeds in like form of certain lots to individual purchasers. Some of these mortgaged to the plaintiffs, who acquired the position of the Hamilton Provident and Loan Society, the original mortgagees. The plaintiffs sold some of these lots so mortgaged to them, purporting to act under the power of sale in the mortgages made to them by the several