

ness carried on contrary to the provisions of said section 7." Sub-section 2 of sec. 16 provides: "Upon the granting or restoration of the license or the removal of any suspension thereof such action or other proceeding may be prosecuted as if such license had been granted or restored or such suspension had been removed before the institution thereof."

The learned Judge was of opinion that sub-sec. 2 enables the plaintiff company to prosecute the present action "as if such license had been granted before the institution thereof." The prohibition was for the purpose of preventing default in obtaining a license—to compel compliance with the Act. The Legislature had thought proper to treat the granting of a license after action brought as equally efficacious with one granted before action brought.

There should be judgment for the plaintiffs for \$6,650, less the sum paid to the defendants by the express company, to be settled by the Master at St. Thomas if the parties should disagree. There should be no order as to costs.

---

MIDDLETON, J., IN CHAMBERS.

FEBRUARY 7TH, 1920.

\*MORROW v. MORGAN.

*Practice—Action by Mortgagee for Possession of Mortgaged Lands—Judgment Signed for Default of Appearance—Irregularity—Rule 43—Absence of Affidavit Required by—Motion to Set aside Judgment—Leave to File Affidavit nunc pro tunc—Jurisdiction of Master in Chambers—Failure to Prove Service of Amended Writ of Summons—Allowance of Costs—Ex Parte Taxation—Excessive Costs.*

Appeal by the defendants from an order of the Master in Chambers dismissing their application to set aside a judgment signed for default of appearance in an action to recover possession of certain lands situate in the city of Toronto.

A. C. Heighington, for the defendants.

T. R. Ferguson, for the plaintiff.

MIDDLETON, J., in a written judgment, said that the plaintiff was mortgagee of the lands, and there was no doubt that the mortgagee was in default. The defendants were endeavouring to arrange for a new loan for an amount sufficient to meet the plaintiff's claim, and said that they were now in a position to pay the plaintiff off.