

HIGH COURT DIVISION.

FALCONBRIDGE, C.J.K.B.

JULY 8TH, 1918.

TOWN OF WIARTON v. CANADA CASKET CO. LIMITED.

Mortgage—Action for Foreclosure—Form of Judgment—Foreclosure with Six Months for Redemption, or Sale after Three Months—Costs.

Action upon a mortgage; the plaintiffs claimed foreclosure, immediate possession, and payment of \$21,802.07.

The action was tried without a jury at Owen Sound.

J. C. Moore, for the plaintiffs.

D. Robertson, K.C., for the defendants.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that the plaintiffs at the trial insisted on a decree for *immediate* foreclosure. This, the learned Chief Justice thought, he could not grant, but gave their counsel time to submit authorities. By a memorandum since sent in by counsel for the plaintiffs, he apparently abandoned his former position and asked for immediate sale.

The action was begun on the 27th September, 1917; an appearance was entered on the 9th October; and the plaintiffs took no further proceedings until June of this year, when they gave notice of motion for immediate foreclosure, which motion was dismissed with costs to be paid by the plaintiffs to the defendants in any event of the action.

The plaintiffs would have been much further ahead if they had adopted the suggestions contained in the defendants' solicitors' letters of the 1st February and the 14th June, 1918.

The plaintiffs must take the usual decree for foreclosure (6 months to redeem), or, if they prefer, a decree for sale in 3 months.

As they may elect, the Master at Walkerton will take the account and tax costs and fix a day for redemption.

In view of all the circumstances, the Master will not tax the plaintiffs any costs of the trial.