

MEREDITH, C.J.O., reading the judgment of the Court, said that the question raised by the appeal was the same as that which was dealt with by the Second Divisional Court in a former action between the same parties—Gordon v. Gordon (1916), 38 O.L.R. 167—and this Court was bound to follow that decision, which was that the defence set up by the appellant was no answer to the respondent's action.

Appeal dismissed with costs.

HIGH COURT DIVISION.

KELLY, J., IN CHAMBERS.

JULY 15TH, 1918.

MASON v. FLORENCE.

Mortgage—Action for Foreclosure—Motion for Summary Judgment—Defence—Interest—Costs—Stay of Proceedings.

By an order pronounced by KELLY, J., on the 14th December, 1917, 13 O.W.N. 289, the plaintiff's appeal from an order of the Master in Chambers dismissing a motion for judgment for foreclosure, was dismissed.

After the pronouncing of the order, further evidence was brought before the learned Judge, and he reconsidered his decision.

A. C. Heighington, for the plaintiff.

J. S. Lundy, for the defendants.

KELLY, J., in a written memorandum, said that, after he had given his decision, it was brought to his attention that the defendant Joseph L. Florence was, before the motion was argued, cross-examined on his affidavit filed with his appearance. That fact was not mentioned on the argument, nor was the transcript of the evidence on cross-examination made part of the material. After the learned Judge had become aware of the cross-examination, counsel, at his request, again appeared before him, and, so that all the facts of the case should be on record, he allowed the cross-examination to be put in as part of the material. It was now made clear, he said, that whatever took place between the parties about charging interest only from the dates of the respective