

fifth day of the next sitting of the Divisional Court, for such amount as should be ascertained by an officer of the court;

Held: (1) That the officer should proceed to ascertain the amount before the time for entering the judgment arrived.

(2) That the officer should proceed upon the direction as indorsed, without any formal order or judgment being drawn up.

And an order setting aside an appointment to so proceed was reversed on appeal.

Marsh, Q.C., for the plaintiffs.

E. T. Malone for the defendant.

MANITOBA.

BAIN, J.]

[Oct. 27.

BOYLE v. WILSON.

Mortgagor and mortgagee—Mortgage to secure performance of agreement—Bill of complaint—Failure to establish allegations in—Amendment.

This was a suit for the foreclosure of a mortgage made by the defendant to the plaintiffs. The bill was in the ordinary form, except that it set out in full the proviso in the mortgage. Under the proviso the mortgage was to be void on payment of the amount secured, with the interest, either to the plaintiffs or to the Canada Northwest Land Co., Ltd., on account of a balance due the company under an agreement of sale of certain lands made between the company and the mortgagor.

In his answer the defendant alleged that he had made an agreement with the plaintiffs to sell them the land mentioned in the proviso for a certain price; that there was due to the land company on the land the sum of \$2,122, payable either in cash or in shares of the company, and that the mortgage was given to indemnify the plaintiffs against any loss they might be at by reason of this claim of the land company.

Aikins, Q.C., objected, before plaintiffs' case was opened, that these allegations were admitted by the plaintiffs in their replication; so it appeared on the face of the pleadings that the plaintiffs were seeking relief on a case or state of facts other than that set forth in their bill.

Monkman did not apply for leave to amend the bill, but proceeded with the hearing.

Held, the plaintiffs are not entitled to any relief. If they wish to amend, they may have leave to do so on payment of costs. If they do not wish to amend, the bill will be dismissed with costs, but without prejudice to their right to file another bill to enforce the mortgage.

BAIN, J.]

[Oct. 28.

CARSCADEN v. ZIMMERMAN.

Examination—Judgment debtor—Scope of examination pending interpleader summons.

In a contest for priority among certain execution creditors of the defendant, Zimmerman, the sheriff obtained an interpleader summons. The plain-