

compound interest largely exceed the principal. It is not to be forgotten that the liquidator of the plaintiffs (whose clerk makes the affidavit) is not in a position to know what may have been said by the officials of plaintiffs in October, 1890. . . . Besides this, the instrument contained a covenant by one Henderson, which, as defendant contends, took the place of the mortgagor's covenant. These two circumstances are very cogent, in my opinion. They are both quite independent of defendant's assertion, and until explained or displaced tend strongly to corroborate defendant's story.

In view of the language of Lord Halsbury, cited by the Chancellor in *Wilkes v. Kennedy*, from *Jones v. Stone*, [1894] A. C. 124, and of the whole current of the later decisions down to *Jacobs v. Booth's Distillery Co.*, 85 L. T. R. 262 (for which I again refer with much pleasure to Mr. A. MacGregor's very useful article in 39 C. L. J. p. 259), there can be no doubt that the motion cannot succeed.

The liquidator was acting reasonably and according to his duty in making the motion, and was very excusably in ignorance of the facts alleged in defendant's affidavit. Under these circumstances, the costs of the motion will be in the cause.

[On appeal from this decision, argued by the same counsel, on the 12th June, 1903, before STREET, J., the Master's order was set aside, but the defendant was given leave, upon payment of costs, to file a further affidavit, and have the motion reheard.]

CARTWRIGHT, MASTER.

JUNE 8TH, 1903.

CHAMBERS.

CAMPBELL v. BAKER.

Staying Proceedings—Former Action Pending—Identity of Matters in Controversy—Consent Judgment.

On the 7th January, 1901, an action was commenced by the present plaintiff against Croil and McCullough to recover an amount alleged to be due by them on certain mortgages. The statement of claim was delivered on 20th February. On the same day an agreement was made by the defendants in that action to sell to the Bakers, who were defendants in the present action, so much of the lands embraced in the first action as were sought to be recovered and otherwise dealt with in the present action. To this agreement the plaintiff assented on certain terms not necessary to set out. This first