

Divisional Court.]

SCOTT AND MIDDLETON.

[July 31.

Mortgage—Amount due—Waiver or dispensation with tender of rate of interest after maturity of mortgage—Costs.

Prior to the maturity of a mortgage, the mortgagor's solicitor wrote to the mortgagee's solicitor, that if he would call at the former's office he could have the principal and interest due amounting to \$396.48, and on the mortgagee's solicitor failing to call, he wrote to the mortgagee, that he was prepared to pay the said sum; this was answered by the mortgagee's solicitor sending a statement claiming in addition certain disputed costs.

Held, that what took place did not amount to a waiver or dispensation of a tender of the amount due under the mortgage.

The payment of the principal money was to be made at the expiration of a named period, with interest at a specified rate, as well before as after maturity until the said principal was fully paid and satisfied.

Held, that the interest at the rate specified was payable after as well as before the expiration of such period.

Peoples' Loan and Deposit Co. v. Grant (1890) 8 S.C.R. 262, distinguished.

In an action for redemption brought by the mortgagor, in which the said tender was set up, the judgment was for a reference before the master to ascertain the amount due, to make all necessary enquiries for redemption or foreclosure and to report. The provisions for costs being that if the mortgagor had made default in payment of the amount if any found to be due, he should pay the costs; and, if no greater sum than \$396.48 were found to be due, the defendant should pay the costs. Further directions were not reserved; nor were there any further directions as to costs.

Held, that the defendant was entitled to the costs of the action.

M. Wilson, K.C., and J. B. O'Flynn, for appellants. *Middleton*, for defendants.

Divisional Court.]

RE BRAMPTON GAS COMPANY.

[Aug. 13.

Winding-up Act—Claims provable thereunder—Secured creditors.

Creditors holding fully secured claims and content to rely thereon, without seeking to share in the distribution of the other assets, cannot be compelled to file their claims in the winding-up proceedings under the Dominion Winding-Up Act, R.S.O. ch. 129, and have them adjudicated upon therein, and where such creditors without any intention to submit to such adjudication had filed with the liquidator affidavits proving their claims, leave was given them to withdraw same, leave also being given to one of such creditors, who had an unsecured debt, to file a claim limited thereto.

Shepley, K.C., and Skeans, for creditors. *Cassels*, for liquidator.