

It may be that the Chief Justice will consider the question of granting a certificate to prevent set-off of costs, if applied to.

TEETZEL, J.

NOVEMBER 9TH, 1903.

WEEKLY COURT.

NELSON v. NELSON.

Costs—Mortgage Action—Redemption—Costs of Appeal in Former Action—Attempt to Add to Claim—Dismissal without Costs—Effect of.

Appeal by defendant Isabella Gibson from a part of the report of the Master at Stratford allowing plaintiff \$464.11, being the costs incurred by him in opposing an appeal to the Supreme Court of Canada. The action was for foreclosure of a mortgage, and defendant was entitled to redeem. The appeal to the Supreme Court was by defendant from judgment of Court of Appeal dismissing action by her against plaintiff to redeem the mortgage in question, and also from the judgment of the Court of Appeal reversing an order of ROSE, J., staying proceedings in this action. The Supreme Court dismissed the appeal without costs.

J. P. Mabey, K.C., for appellant.

J. Idington, K.C., for plaintiff.

TEETZEL, J.— . . . The general rule is, that, besides the costs of the suit in which the mortgagee's rights are immediately adjusted as between himself and the owner of the equity, he has also a right to be allowed out of the mortgaged property all costs and expenses reasonably and properly incurred in ascertaining, asserting, or defending his rights, or in recovering the mortgage debt: Fishers Law of Mortgages, 5th ed., p. 894 et seq.; Seton on Decrees, 6th ed., p. 1953, and cases there cited. . . . In dismissing the appeal to the Supreme Court the Chief Justice said: "Both the appellant and respondent appear to us to have been during the whole course of their dealings in the matter in dispute unreasonably endeavouring to multiply the proceedings and prolong the litigation." . . . In my opinion, the effect of the judgment was not only to deprive plaintiff of the personal remedy for these costs, but of the right to add them to his mortgage debt against defendant.

Appeal allowed with costs and report amended accordingly.