ties." He then observed that it did not appear that there was any case reported in which any Court ever did entertain an appeal from a judge's order as to the costs of interpleader proceedings as between the parties, while *Teggin* v. *Langford*, 10 M. & W. 556, does not bear out the argument put forward in support of the appeal in the present case, and if it had done so would be open to review, and moreover, "when a question of this kind is raised, one case does not make a practice." He concluded thus:—

O. 1., r. 2. does not give any power to entertain appeals, but even if it did I should try to construe it so as not to contradict the express provisions of the Imp. Jud. Act, 1873, s. 49 (Ont. Jud. Act, s. 32.) I think the rule is not inconsistent with this section; and the section contains an express enactment that appeals shall not lie as to costs, and this applies to interpleader as well as to other proceedings. It would be strange if this were otherwise, it would be an anomaly that there should be no appeal as to the costs of an action, which often comes to a very large amount, and there should be an appeal only where the costs are of minor consideration, as is the case in interpleader. I do not think the case of *Hamlyn* v. *Batteley*, L. R. 6 Q. B. D. 63, interferes with this decision. That case was as to the carrying out of an interpleader order, and there was not an express enactment relating to the question as there is here.

COTTON, L. J., concurred, and added that *Dodds* v. *Shepherd*, L. R. 1 Ex. D. 75, does not decide the point.

LINDLEY, L.J., also concurred, and added that if the section of the Act and the order were inconsistent he should say the rule must give way to the statute.

[NOTE.—*Imp. Jud. Act, 1873, s. 49, and Ont. Jud. Act, s. 32, are identical: as also (mut. mut.) are the Imp. and Ont. orders.*]

ONTARIO.

CHANCERY DIVISION.

(Reported for the LAW JOURNAL.)

REGISTRAR'S OFFICE.

REID v. WILSON.

Mortgage—Interest.

Where no interest is reserved by a mortgage, none is recoverable until after day appointed for payment

Effect of proviso in mortgage for payment of amount secured "without interest if paid when due."

[Nov. 15, 1882.—Mr. Holmested.

The plaintiff had issued a writ on a mortgage, and had endorsed the writ for $400, and interest from 16th Sept., 1871.

The defendant paid into Court $400 and interest from 16th Sept., 1881, to the date of payment, and had filed a note disputing that any more was due.

Notice of taking the account before the Registrar of the Chancery Division having been served,

T. Langton appeared for the plaintiff.

G. M. Rae, for the defendant.

Coote on Mortgages, 4th ed., p. 867; *Farquhar* v. *Morris*, 7 T. R. 144; *Carey* v. *Doyne*, 5 Ir. Chy. R. 104, were referred to.

The facts are sufficiently stated in the judgment of

The REGISTRAR:—This action is on a mortgage. The proviso is for payment of several instalments to different parties, one of which is in default, and for non-payment whereof the action is brought. The defendant has paid into Court the amount of this instalment and the interest which has accrued thereon since it fell due, and disputes the right of the plaintiff to interest prior to the instalment falling due. The mortgage is dated 16th September, 1871. The proviso is as follows: "Provided this mortgage to be void on payment of $2,400 of lawful money of Canada, as follows, that is to say; 1st, to pay unto the said Ellen Gilmor $400 in ten years after the date hereof." It then enumerates five other payments, and winds up: "all without interest, if paid when due to the above parties." There is the usual covenant to pay "the mortgage money and interest and observe the above proviso."