

KELLY, J., IN CHAMBERS.

DECEMBER 14TH, 1917.

MASON v. FLORENCE.

Mortgage—Action for Foreclosure—Motion for Summary Judgment—Defence—Interest, whether Payable from Date of Mortgage or Dates when Moneys actually Advanced—Arrangement between Mor gator and Mortgagee—Form of Covenant for Payment of Interest.

Appeal by the plaintiff from an order of the Master in Chambers dismissing a motion by the plaintiff for judgment for foreclosure.

A. C. Heighington, for the plaintiff.

J. S. Lundy, for the defendants.

KELLY, J., in a written judgment, said that the plaintiff relied upon the form of that part of the covenant for payment, in the indenture of mortgage, which applied to interest for the first 6 months of the term of the mortgage, his position being that he was entitled to interest from the date of the mortgage upon the whole amount of principal, notwithstanding that the principal was advanced from time to time during that 6 months.

The defendants claimed to be entitled to have the interest charged on the sums so advanced from the respective dates of the advances—not from the date of the mortgage—and in his affidavit the defendant Joseph L. Florence referred to an arrangement which, he alleged, he had made with the plaintiff, that interest was to be charged only from the dates on which the moneys were advanced. The defendants paid into Court the amount with which, on that mode of calculation, they were chargeable.

It was nowhere stated whether this arrangement was before or after the making of the mortgage. The plaintiff had proceeded upon the assumption that, if any arrangement was made, it was prior to the making of the mortgage, and that, consequently, the defendants were precluded from now setting it up. But that was by no means clear. There was quite sufficient in the affidavit to establish the defendants' right to put forward their defence; and the motion for judgment was rightly refused.

Appeal dismissed with costs.