

# The Ontario Weekly Notes

VOL. XIII. TORONTO, NOVEMBER 2, 1917. No. 8

## APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

SEPTEMBER 27TH, 1917.

ELLIOTT v. BYERS.

*Mortgage—Foreclosure—Subsequent Incumbrancer Added as Party in Master's Office—Motion to Set aside Præcipe Judgment—Practice—Irregularity in Judgment—Form 101.*

Appeal by the defendant Cleland, added as a party in the Master's office, from the order of FALCONBRIDGE, C.J.K.B., 12 O.W.N. 383, dismissing the appellant's motion to set aside the judgment in the action, entered upon præcipe, and the report of the Master in Ordinary made pursuant to the judgment, and to strike out the name of the appellant as a party.

The judgment was as follows:—

(1) It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure, and that, for these purposes, this cause be referred to the Master in Ordinary at Toronto, *with power to make such special findings as the nature of the case may require.*

(2) And it is further ordered and adjudged that the defendants Jessie I. Byers and William Joseph Martyn do, forthwith after the making of the Master's report, pay to the plaintiff what shall respectively be found due by them for principal money, interest, and costs at the date of the said report, *subject always to the special findings contained therein, and, upon the compliance of them or either of them with the findings and requirements of the said report, the plaintiff shall, subject to the provisions of section 3 of the Mortgages Act, do, perform, and execute all or any acts, matters, or things in conformity with the findings of the said report.*

(3) And it is further ordered and adjudged that the defendants do forthwith deliver to the plaintiff, or to whom he may appoint,