The defendants thereupon appealed to the Court of Appeal who reversed this decision, and granted the indulgence prayed for, making an order to open the foreclosure on the usual terms of paying principal, interest and costs of the plaintiffs (including the plaintiffs' taxed costs of opposing the petition before BOYD, C,), and of the purchaser, Grattan (not including any costs of the appeal), together with any costs incurred by the purchaser in connection with his purchase of the property: 20 C.L.J. 262.

In taking the accounts the Master allowed to the plaintiffs interest on the whole amount of principal, interest and costs as found by the original decree of November 14th, 1877 (*supra* p. 359).

Held, that the Master was right in so doing.

The Master also allowed to the plaintiffs interest on the taxed costs of opposing the petition to open the foreclosure before BOYD, C.

Held, as to this, the Master was wrong. The costs payable under the order of BOYD, C., on that petition were not recoverable by force of that order, which was reversed, otherwise interest might properly have been recovered under Rule 351; but they were payable simply owing to the direction given by the Court of Appeal, that the plaintiffs' taxed costs of opposing that petition were to be paid by the defendants as a term of getting the indulgence craved by them.

The Master also allowed to the plaintiffs the costs of a writ of execution issued by them upon the order of BOYD, C., to recover their costs taxed thereunder.

Held, that the Master was wrong. The vacating of that order had the effect also of levelling the writ of execution, and there was no provision for the payment of the costs of that writ in the direction for payment of costs given by the Court of Appeal, for such costs are not part of the taxed costs of the petition, but incurred subsequently.

Bain, Q.C., for the appeal.

S. Vankoughnet, Q.C., contra.

O'Brien, for the purchaser.

Boyd, C.] [November 5.

KAISER V. HAIGHT.

Legacy—Receipt—Legatee not bound to execute release—Costs.

J. B., being the owner of certain lands, by his will gave his son M. B. a legacy of $150, and charged it on the land which he devised to his son W. B., an infant, with a provision that his son J. B. should occupy it during the minority of W. B., and pay the legacy. The land was so occupied and the legacy paid, and a receipt for its payment taken. W. B. subsequently sold the land to T. B., and T. B. sold it to J. C., who retained $150 of the purchase money because the legacy was not released, but by an agreement agreed to pay T. B. the $150 as soon as he should furnish release, duly executed by M. B. The right to receive the $150 under this agreement, and any right that he had to get this release was assigned by T. B. to M. B., M. B. then tendered a release for execution to T. B., who declined to execute it, and upon a suit being brought to compel him so to do, it was

Held, that although the plaintiff was entitled to a judgment declaring that the legacy was paid, which might be registered; still, as the defendant had done no wrong, and had given a receipt for the legacy when it was paid, he was not compelled to sign anything else, and should not be punished by being ordered to pay the costs for not doing that which he was not bound in law to do.

The purchaser should not have objected to the title on account of the legacy, if there was proof of its being paid.

T. H. Bull, for the plaintiff.

No one appeared for the defendant.

Proudfoot, J.] [Nov. 8.

CORE V. THE ONTARIO LOAN AND DEBENTURE CO.

Mortgage—Marshalling securities—Registry Act—Prior equity.

W. W., sen., owned north half Lot 14. and two lots in Village of Blyth, and applied for a loan to the above Loan Company, who required additional security. Accordingly, by mortgage of August 16th, 1880, W. W., sen., and W. W., jun., joined in a mortgage to the company, the