

ROSE, J.

JULY 3RD, 1918.

WAY v. SHAW.

Evidence—Mortgage—Reference to Ascertain Amount Advanced and Due—Finding of Master—Credibility of Witnesses—Entries in Book—Suspicious Circumstances—Appeal—Costs of Defending Title to Mortgage Added to Mortgage-debt—Attack Made by Owner of Equity of Redemption.

An appeal by the plaintiff from the report of the Master at Belleville, to whom a reference was directed to ascertain the amount advanced upon and due under the mortgage which the First Divisional Court of the Appellate Division (11 O.W.N. 27), affirming the judgment of BRITTON, J. (10 O.W.N. 124), held to have been duly executed by William George Way, deceased. The plaintiff was the administrator of the estate of the deceased.

The appeal was heard in the Weekly Court, Toronto.

E. G. Porter, K.C., for the plaintiff.

W. C. Mikel, K.C. for the defendants.

ROSE, J., in a written judgment, said that upon the reference the defendant Shaw swore that he had advanced the whole amount purported to be secured by the mortgage, \$620, by the payment in cash of \$216 on the day of the date of the mortgage, and the surrender, at the same time, of 3 promissory notes theretofore made by the deceased Way in the defendant Shaw's favour, for \$100, \$104, and \$200, respectively. Shaw produced a receipt, bearing the same date as the mortgage and purporting to be signed by the deceased, in which the payment of the cash and the surrender of the notes was acknowledged; and Shaw and his son, whose name was on the receipt as a witness, swore that the signature was the deceased's. Shaw also produced a day-book in which there were entries of loans to the deceased of the sums mentioned in the receipt, and of the payment by way of interest on the mortgage on the 21st June, 1913.

The Master had accepted this evidence, and had found that the whole sum was due. There was a great deal in the evidence that might well have led to the opposite conclusion; there were suspicious circumstances, discrepancies in the evidence, and the entries in the book were made in such a way as to arouse grave suspicions; but the real foundation of the Master's finding was the confidence inspired by the witnesses whom he saw, coupled with his disinclination to base a finding of forgery upon anything short of the clearest proof. If the impression which the witnesses created was sufficiently favourable, it might outweigh the sus-