

CARTWRIGHT, MASTER.

JUNE 24TH, 1907.

CHAMBERS.

ELMSLEY v. DINGMAN.

Mortgage—Action for Foreclosure—Failure to Make Lessees of Owner of Equity with Option of Purchase Parties—Final Order of Foreclosure—Motion by Lessees to set aside after Expiry of Lease—Dismissal without Costs.

Motion by the Toronto Granite Co. to set aside, for irregularity, a final order of foreclosure made in May, 1899.

W. N. Ferguson, for applicants.

J. H. Moss, for plaintiff.

G. H. D. Lee, for the Dominion Bank, subsequent incumbents.

THE MASTER:—The notice of motion was given in October last . . . but was not argued until 14th June. . . . The motion was made on behalf of the Toronto Granite Co., acting through Mr. A. E. Osler as assignee for the benefit of the creditors of that company.

It is clear from *Scottish American Investment Co. v. Brewer*, 2 O. L. R. 369, and cases cited (see especially p. 376), that such motions must be made promptly when relief is asked as an indulgence. If made on that ground, the motion here must fail.

But the substantial question was whether the Toronto Granite Co. should have been made parties, and whether, if that should have been done, the proceedings can now be reopened.

It seems clear from the documentary evidence that the Toronto Granite Co. had a lease from the owner of the equity of redemption for 10 years from 1st October, 1895, with a right of purchase at any time during the term at a fixed price.

Of this lease plaintiff must undoubtedly have had express notice. A memorandum of agreement is produced, signed and sealed by him, which recites that the Toronto Granite Co. "are the owners of the equity of redemption in the said lands and premises," and extends the time for redemption of plaintiff's mortgage on present payment of a