

company under their mortgage, but without actual notice of the plaintiff's mortgage, or of the terms of the agreement for the sale of the land :

*Held*, reversing the decision of FERGUSON, J., reported 24 O.R. 426 (ROBERTSON, J., *dissentiente*), that the plaintiff was not entitled to the priority claimed by her.

*Per* BOYD C. : The further advances were made upon a mortgage providing for such advances, and to secure which the legal estate had been conveyed, and equity as well as law protected the first mortgagee so advantageously placed, as against the subsequent mortgagee, even though registered, where notice has not, as a fact, been communicated to the first mortgagee respecting the subsequent instrument. The Registry Act did not apply because the company claimed interest in the lands under a prior mortgage, carrying the legal estate, and the fact that advances were made on the first mortgage subsequent to the registration of the second mortgage was not contemplated or covered by the statute, R.S.O., cap. 114, section 80.

*Per* MEREDITH, J. : It could not be that in the face of her agreement the plaintiff might at her whim bring the whole building scheme to nought at any stage of the work, causing, perhaps, a total loss of all that might then have been done, even if she had given actual notice of her mortgage to the loan company, and expressly claimed priority over subsequent advances made by them.

*S. H. Blake, Q.C., and Beverley Jones for the Loan Company.*

*G. Bell for the plaintiff.*

STREET, J.]

[Oct. 25.]

HENDERSON v. BANK OF HAMILTON.

*Bank and banking—Special deposit—Wrongful refusal to pay out—Action—Damages—Costs.*

The plaintiff, a clergyman, made a special deposit to the Savings Bank Department, subject to fifteen days' notice of withdrawal if required. He demanded his money ; the defendants, however, refused to give it him, because he had been ordered in certain litigation with them to pay certain costs, which, however, had not been taxed. The plaintiff brought his action, and the defendants paid a certain sum into court which, they contended, represented the amount to the plaintiff's credit with interest.

*Held*, that the plaintiff was entitled to judgment for the whole amount to his credit, as the defendants could not retain the money to cover costs which had not been taxed, but not being a trader the plaintiff could recover no damages beyond interest on his money. However, as the amount paid into court was 20 cents less than the correct amount and the parties were on their strict rights, the plaintiff was entitled to full costs of the suit.

*Held*, also, that as the defendants had not based their refusal to pay the money on the absence of fifteen days' notice, which they had not required, they could not set up such absence of notice as a defence of the action.

*Mabee for the plaintiff.*

*Idington, Q.C., for the defendants.*