

the defendant Sharkey has forfeited his rights under the plaintiffs' by-law and lease or agreement made pursuant thereto; (3) that the plaintiffs are entitled to judgment for possession of the water power, power plant, premises, etc.; (5) that the plaintiffs should have costs of the action, and there should be no costs of the counterclaim.—It was stated in argument and not denied that on the 22nd October, 1913, the plaintiffs commenced an action against the defendant Sharkey wherein they sought possession of the premises. This, the learned Chief Justice holds, would preclude the plaintiffs from maintaining an action for rent subsequently accruing: *Jones v. Carter* (1846), 15 M. & W. 718; *Woodfall's Landlord and Tenant*, 19th ed., p. 487. The defendants should be allowed to amend by adding paragraph 17a to their statement of defence and counterclaim. Counsel for the defendants admitted that the plaintiffs would, however, be entitled to damages for not obtaining possession of the power plant and premises in the meantime. Reference to the Local Master at Cornwall to take all the accounts between the plaintiffs and defendants for rent or otherwise. The plaintiffs to have leave to amend, if so advised, by claiming alternatively damages instead of rent. Further directions and subsequent costs reserved. W. B. Lawson, K.C., for the plaintiffs. I. Hilliard, K.C., for the defendants.

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HALSTEAD v. SONSHINE—BRITTON, J., IN CHAMBERS—JAN. 29.

*Mortgage—Action for Foreclosure — Motion for Summary Judgment—Account.*—Appeal by the plaintiffs from an order of the Master in Chambers refusing the plaintiffs' motion for summary judgment, in a foreclosure action, against the defendants Shapiro and wife. BRITTON, J., said that, as the plaintiffs held the mortgage sued upon only as security for a loan made to the defendant Sonshine, and as the account between the plaintiffs and Sonshine might require to be investigated, it was not a case for summary judgment against Shapiro and wife, as asked. Appeal dismissed. Costs in the cause. F. J. Hughes, for the plaintiffs. A. Cohen, for the defendants Shapiro and wife.