

and might still be prosecuted without the assistance of this Court. Rule refused.

*Bartram*, for the motion.

Boyd, C., Robertson, J.] McCOLLUM v. CASTON.

[April 2.

*Action—Mortgage—Judgment—Subsequent settlement—Failure to carry out—Account—New day—Reference.*

An appeal by the plaintiff from an order of LOUNT, J., affirming an order of the Master in Chambers dismissing an application by the plaintiff for an order for a new day and new account in a mortgage action, upon the ground that there was a settlement or compromise between the plaintiff and defendants which the plaintiff could not ignore, and which must be enforced or set aside in a new action. The plaintiff contended that there was no compromise, but merely an agreement made, which was not carried out.

*Held*, that the defendant mortgagor having made default in payments according to the agreement, the unmodified burden of the mortgage existed and was enforceable. Such an arrangement should be investigated in the Master's office, and not by independent litigation. In mortgage cases the Court has a general jurisdiction to deal with the accounts in such a manner as shall seem equitable. This is not a case of ordinary litigation; here the matter has passed into judgment, and the only matter between the contestants is one of account—how much is due and payable in respect of the mortgage, having regard to the arrangement manifested in the correspondence and dealings subsequent to the Master's report. It is foreign to the policy of the Judicature Act to contemplate new litigation in such a case as this: s. 57, sub-s. 12.

*Keene v. Biscoe*, 26 W.R. 552; 8 Ch. D. 201, *Brown v. Deacon*, 12 Gr. 198, and *Geldard v. Hornby*, 1 Ha. 251, referred to.

Appeal allowed, and order made directing a reference to take the subsequent account of what (if anything) is due upon the mortgage, having regard to the arrangement for reducing the interest and extending the time, and to dispose of the costs of the application. Costs of the appeal to the plaintiff in any event. If either party choose, further directions and costs (except costs of appeal) may be reserved.

*W. E. Middleton*, for plaintiff. *H. E. Caston*, for defendants.

Meredith, C.J.]

IN RE GARNER.

[April 2.

*Lunatic—Death of—Confirmation of report—Discharge of committee.*

Before the confirmation of the Master's report appointing a committee of the person and estate of a lunatic and propounding a scheme for her maintenance, the lunatic died.