

insurance and taxes, the overseeing of repairs to the buildings on the said premises, and the time and work given to the rebuilding after the fires on the said premises;" reserving further directions and costs. This judgment was affirmed by the Court of Appeal: 11 O.W.R. 241.

The taking of the accounts was proceeded with, and the present appeal concerned the allowance by the Referee of some of the items of the account brought in by the defendant. No question was raised as to the amounts allowed, the contention being confined to the propriety of any allowance in respect of them.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

Shirley Denison, K.C., for the plaintiff.

J. M. Pike, K.C., for the defendant.

MOSS, C.J.O. (after setting out the facts at length):—The first objection is, that the Official Referee should not have allowed interest to the defendant upon the sums of \$1,340.62, the amount of the mortgage-debt, as ascertained or estimated when the agreement of April, 1895, was entered into, and of \$1,857, the amount of the judgment then payable to the defendant.\* The plaintiff's position is, that, under the agreement, the ascertainment of the correct amount due and payable in respect of the mortgage and judgment was never carried out; and, consequently, there was no debt or sum certain payable by virtue of a written instrument so as to bring the case within sec. 114 of the Judicature Act, and that it was not within sec. 113.

These contentions are not applicable under the conditions existing before the Official Referee. By the judgment, the defendant is allowed to redeem upon the special terms expressed therein, and the Official Referee was bound to have regard to them as well as to the provisions of Con. Rules 666, 667, and 756, all of which were applicable to the proceedings before him.

The defendant was being treated as a mortgagee in possession, and as such accountable for the rents and profits. To charge him with rents and profits, and allow him no interest on the mortgage-debt, would be contrary to equity and justice.

\*This refers to a former judgment in an action brought by the Molsons Bank against the present plaintiff and defendant and others, by which the defendant was to recover the sum named from the plaintiff; and to an agreement afterwards made between the plaintiff and defendant, which was not carried out.