

Strictly speaking, the plaintiff was entitled to recover only \$1,100 and interest upon his mortgage; but as an indulgence he should have judgment for \$2,000 and interest, without costs. If the plaintiff desired to amend, he was at liberty to apply before the entry of judgment. J. S. Beatty, for the plaintiff. A. C. Kingstone, for the defendant.

SCOTT V. GARDINER—KELLY, J.—OCT. 17.

Report of Master—Motion to Open up—Defendants not Appearing on Reference—Denial of Indulgence—Notice of Settling Report not Given to Defendants—Rule 424—Report Set aside for Purpose of Notice of Settling only—Costs.—An appeal by the defendants from the report of the Master at Windsor. The appeal was heard in the Weekly Court, Toronto. KELLY, J., in a written judgment, said that the defendants were given ample opportunity to present before the Master any evidence they might have chosen to submit; but, after repeated enlargements at their request, and though due notice was given them of a peremptory appointment for the day on which the Master did proceed, and notwithstanding that on that day and shortly before the proceedings commenced they were personally informed that the matter would be then proceeded with, neither they, nor any one representing them, appeared. They now set up that the Master should have allowed them to give evidence and that they had material evidence to submit. In the circumstances, they were not entitled to further indulgence on that ground. They also complained that notice of settling the minutes of the report was not served upon them, as required by Rule 424. It is not disputed that this notice was not given to them, and no special reason has been assigned for dispensing with notice. On this latter ground the report should be set aside to permit of notice of settling being given and thus affording them an opportunity of appearing or being represented on the settling. For this purpose and to this extent the report is set aside and the matter referred back. Costs of the appeal to be paid by the plaintiff to the defendants. B. H. Symmes, for the defendants. W. J. Beattie, for the plaintiff.