

to him that justice had been done, that the verdict was right, that there had been no resulting injustice, and that the plaintiff had failed to bring his complaints to the attention of the trial Judge. In these circumstances, the appeal ought to be dismissed.

Reference to *Rex v. Banks*, [1916] 2 K.B. 621, at p. 623.

*New trial ordered; MASTEN, J., dissen'ing.*

SECOND DIVISIONAL COURT.

FEBRUARY 1ST, 1917.

ROOS v. SWARTS.

*Evidence—Judgment—Foreclosure—Reference—Costs.*

Appeal by the defendant from the judgment of SUTHERLAND, J., 10 O.W.N. 446, ante 166.

The appeal was heard by RIDDELL and LENNOX, JJ., FERGUSON, J.A., and ROSE, J.

L. E. Dancey, for the appellant.

C. Garrow, for the plaintiff, respondent.

THE COURT made an order opening up the judgment and directing the entry of a judgment for foreclosure in the ordinary form, with a reference to DICKSON, Local Judge at Goderich. The evidence taken before DOYLE, Local Judge, to stand quantum valeat, and all parties to have the right to call the witnesses already examined for examination or cross-examination, and also such other witnesses as they may be advised to call. Costs throughout to be costs in the cause. The costs of the execution creditor to be added to his claim.

HIGH COURT DIVISION.

MASTEN, J., IN CHAMBERS.

FEBRUARY 3RD, 1917.

RE PORTER.

*Executors and Administrators—Application by Executor for Administration Order—Foreign Domicile of Testator—Issue of Letters Probate by Foreign Court—Estate Said to be in Ontario—Attornment to Foreign Jurisdiction—Discretion to Refuse Order.*

Application by the executor of the will of Alexander Porter, deceased, for an order for the administration of his estate. He