

MACLENNAN, J.A.

SEPTEMBER 22ND, 1902.

C. A.—CHAMBERS.

McAVITY v. MORRISON.

Appeal—Court of Appeal—Leave—Excision of Pleadings.

Motion by plaintiffs for leave to appeal from the order of a Divisional Court affirming an order of LOUNT, J., in Chambers (ante 552), dismissing plaintiffs' motion to strike out parts of the defence and counterclaim as improper, irrelevant, embarrassing, and tending to prejudice the fair trial of the action, and because the claims by way of counterclaim are not properly so made and are contrary to the rules of practice.

D. L. McCarthy, for plaintiffs.

G. H. Watson, K.C., for defendants.

MACLENNAN, J.A.—It is only in a very plain case of impropriety that the Court ought to order pleadings or paragraphs thereof to be struck out. This is not such a case, and that view having been taken by LOUNT, J., and by a Divisional Court, the discretion conferred by sec. 77 of the Judicature Act ought to be exercised by refusing the leave.

Motion refused with costs.

OSLER, J.A.

SEPTEMBER 23RD, 1902.

C. A.—CHAMBERS.

MIDDLETON v. SCOTT.

Appeal—Court of Appeal—Leave—Mortgage—Redemption—Tender.

Motion by plaintiffs for leave to appeal from an order of a Divisional Court (ante 536) affirming order of STREET, J., on defendant's appeal from the report of a Master. The action was by mortgagors against mortgagee for redemption. One question was whether a valid tender had been made of the amount due before action, or whether a tender had been dispensed with. Another was as to the rate at which interest should be computed after the principal fell due. It was held both by STREET, J., and the Divisional Court, that the tender was not sufficient, and that plaintiffs had not by words or conduct dispensed with the necessity for a legal tender. This only affected the question of the costs of the action.

M. Wilson, K.C., for plaintiffs.

W. E. Middleton, for defendant.