

LENNOX, J.

OCTOBER 7TH, 1914.

EASTERN TRUST CO. v. BERUBE.

Mortgage — Action for Mortgage-money by Executors of Deceased Mortgagee — Services Rendered by Mortgagor to Mortgagee—Promise to Pay for by Legacy—Specific Performance—Interest — Compound Interest — Ademption or Satisfaction—Evidence—Corroboration.

Action by the executors of The Honourable William Miller, deceased, to recover the amount alleged to be due upon a mortgage made by the defendant Ernest Edmund Berube, in which his wife, the other defendant, joined for the purpose of barring her dower.

John T. C. Thompson, K.C., for the plaintiffs.

M. J. Gorman, K.C., for the defendants.

LENNOX, J.:—It will be convenient to refer to Ernest Edmund Berube as "the defendant." The plaintiffs are suing for the recovery of \$1,663.93 alleged to be owing upon a mortgage made by the defendant, in which Angelina Berube joined for the purpose of barring her dower; and, there being no remedy asked against the mortgaged land, I see no reason why the defendant's wife should be a party to the action. It is not denied that interest for two years was duly paid in money. The mortgage was made on the 9th January, 1900, and the whole of the principal money—\$1,000—and the interest became due on the 9th January, 1901. Interest is reserved at the rate of 6 per centum per annum. There is a proviso that the mortgage is to be void only upon payment of interest at the mortgage rate upon principal and interest in arrear, but, notwithstanding this, and that the mortgage was current when 63 & 64 Viet. ch. 29 (D.) was assented to, I do not think that the plaintiffs, in the absence of evidence of the value of money, or a distinct contract subsequent to default, are entitled to recover interest upon interest accruing due after the maturity of the mortgage or to a higher rate than 5 per cent.

The interest then from January, 1902, to January, 1905, to which the mortgagee was legally entitled, was \$150, not \$180, and this was more than met by admitted disbursements made by the defendant on account of the mortgagee, amounting to \$159.-