

TAYLOR, C.J.]

[March 26.

MANITOBA MORTGAGE CO. v. DALY.

*Statute of Limitations—Time when right of action accrued—Onus of proof—Evidence of default in payment—Estoppel.*

This was an action upon a covenant in a mortgage, dated 2nd of January, 1883, for payment of \$2,400 on the 1st of January, 1886, with interest half-yearly. The mortgage contained the usual proviso that on default of payment of interest the principal should become payable.

Defendant pleaded the Statute of Limitations, and plaintiffs joined issue. At the trial plaintiffs put in evidence their mortgage deed.

*Held*, following *Reeves v. Butcher*, (1891) 2 Q.B. 509, and *Kemp v. Garland*, 4 Q.B. 519, that the statute began to run from the time when the first default in payment of interest was made, since the right of action then accrued to the plaintiffs, but that the onus lay upon defendant to prove that default was made earlier than the time fixed for payment of the principal. Plaintiffs were entitled to rely upon the production of the mortgage to prove default at 1st of January, 1886, but it did not follow from that that there had been any earlier default, and as defendant gave no evidence on this point the issue was decided against him.

He also pleaded that plaintiffs were not a body corporate, or entitled to sue in this Province or to take mortgages by the said name and style.

*Held*, that this defence was not open to the defendant, and that a man cannot set up the incapacity of the party with whom he contracted in bar of an action by that party for breach of the contract: *Bigelow on Estoppel*, p. 465, *Cowell v. Colorado Springs Co.*, 100 U.S. 55.

Verdict for the plaintiffs.

*Howell*, Q.C., for the plaintiffs.

*Culver*, Q.C., for the defendant.

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#### ARTICLES OF INTEREST IN CONTEMPORARY JOURNALS.

- Alteration of instruments. 40 *Central Law Journal*, 143.  
 Implied warranty in manufacturer's contract of sale. *Ib.*, 182.  
 Property in growing trees. *Ib.*, 230.  
 Sale of standing trees. 8 *Harvard Law Review*, 367.  
 A general analysis of tort relations. *Ib.*, 377.  
 Liability for the escape of electricity. *New York Law Review*, 57.  
 Common law and statutory revocation of will by marriage, by birth of child, and by both. *Ib.*, 61.  
 Obstructions near harbours. 58 *Justice of the Peace*, 761.  
 Delirium and lunacy. *Ib.*, 783.  
 Invasion of private property—"Trespassers will be prosecuted." *Ib.*, 829.  
 Drain or sewer. 59 *ib.* 82.  
 Evidence of agents. *Ib.*, 145.  
 The law affecting riots. *Ib.*, 161.  
 Compensation for loss of employment through infectious diseases. *Ib.*, 162.