

(subject to certain modifications that may arise on the death of one during the life of the survivor, which can now only be conjectural) with remainder in fee to the persons answering the description of the heirs of each son at the death of the longest lived. The ultimate destination of the proceeds of the land is not to those who are the heirs of the first deceased son at the time of his death, but those who are his heirs at the death of the son who dies second.

Judgment accordingly. All costs of plaintiffs to be paid by the defendants the mortgagors up to the hearing, and costs of those who are brought in on account of the question of construction to be borne either by themselves or by the mortgagors, as they covenanted for a title in fee simple. Costs in Master's office reserved to be disposed of by the Master on and after taking the accounts.

FEBRUARY 9TH, 1905.

DIVISIONAL COURT.

PEOPLE'S BUILDING AND LOAN ASSN. v.
STANLEY.

Mortgage—Building Society—Fraudulent Misrepresentations—Rate of Interest—R. S. O. ch. 127, secs. 4, 5, 6—Jury Notice—Power to Deprive Party of Right to Pay—Judicature Act, sec. 110—Intra Vires.

Appeal by defendant from judgment of LOUNT, J., in favour of plaintiffs for \$1,129.66 and interest and costs, in an action to recover payment of the balance due upon two mortgages for \$1,000 each. The defendant pleaded that he had been induced to execute the mortgages by fraudulent misrepresentations on the part of plaintiff's manager as to the rate of interest he was to pay. Under the terms of the mortgages defendant agreed to pay the principal with interest at sixteen per cent. per annum, subject to a provision that upon payment of the monthly subscription upon the shares on which he borrowed, and the monthly premiums which he agreed to pay for his shares, together with interest at six per cent. per annum upon the advance, the payments would be accepted in satisfaction of the advance.

W. H. Bartram, London, for appellant.

I. F. Hellmuth, K.C., for plaintiffs.

The judgment of the Court (STREET, J., BRITTON, J.) was delivered by

STREET, J., holding that the trial Judge properly found upon the evidence that the defence of fraud had not been