

**The**  
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COURT OF APPEAL.

NOVEMBER 15TH, 1909.

PRINGLE v. HUTSON.

*Mortgage—Assignment—Re-assignment—Covenant for Payment  
—Right of Action of Assignee—Mortgagee Joined as Co-plaintiff—Trustee and Cestuis que Trust—Proviso for Re-payment  
—Rate of Interest post Diem—Credits—Costs.*

Appeal by the defendant from the judgment of MEREDITH, C.J.C.P., in favour of the plaintiff in an action upon the covenant for payment contained in a mortgage made by the defendant to the plaintiff Smith.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, MACLAREN, and MEREDITH, JJ.A.

A. J. Russell Snow, K.C., for the defendant.

F. Arnoldi, K.C., for the plaintiffs.

OSLER, J.A.:—As the action was originally brought, the plaintiff Pringle was sole plaintiff, claiming as assignee of Smith, the mortgagee, but, notice of the assignment being denied by the defence, an order was made in Chambers allowing the mortgagee to be added as a co-plaintiff, and as thus constituted the action went to trial. There it appeared that the mortgage money had been advanced by two separate lenders for whom the mortgagee was trustee, and that, by an earlier assignment than that under which the plaintiff Pringle at first claimed, the mortgage, the covenants therein, and the mortgage money, had been assigned to the cestuis que trust or their representatives to hold in proportion to their