

KELLY and MASTEN, JJ., concurred, each stating reasons in writing.

RIDDELL, J., dissented, for reasons stated in writing.

*Appeal allowed.*

SECOND DIVISIONAL COURT.

JANUARY 4TH, 1917.

\*GIRARDOT v. CURRY.

*Mortgage—Action against Executors of Mortgagee for Redemption—Oral Agreement with Testator—Evidence—Trust—Sale under Power—Notice of Sale—Irregularities—Possession of Land—Limitations Act—Rights of Dowress—Dower Act, sec. 10.*

Appeal by the plaintiffs from the judgment of KELLY, J., 10 O.W.N. 441, dismissing the action.

The appeal was heard by MEREDITH, C.J.C.P., HODGINS, J.A., and LENNOX and MASTEN, JJ.

J. H. Rodd and F. D. Davis, for the plaintiffs.

A. R. Bartlet, for the defendants the executors and the Essex County Golf and Country Club Limited, respondents.

J. H. Coburn, for the defendant Woollatt, respondent.

MEREDITH, C.J.C.P., read a judgment in which he said that the action was brought by a man and his wife against the executors of a mortgagee of the lands of the husband and against purchasers of the lands from the mortgagee, to have the mortgagee dealt with as if a trustee for the husband of the lands, and for redemption, or to recover damages from the estate of the mortgagee for breach of trust or for parting with the land so as to defeat a right to redeem which otherwise would still exist.

The answer to the action was a denial of any such trusteeship, and an assertion that the mortgagee, before action, became entitled to the lands, absolutely, by purchases and conveyances from prior mortgagees under powers of sale contained in their mortgages; and that, in any case, the plaintiffs' claims were barred by the Statute of Limitations.

There was no evidence in writing of the alleged trusteeship; and the learned trial Judge had found against the plaintiffs