

ENGLISH CASES.

EDITORIAL REVIEW OF CURRENT ENGLISH
DECISIONS.

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**MORTGAGE—COLLATERAL ADVANTAGE—REDEMPTION BEFORE DAY FIXED FOR
PAYMENT.**

In *Biggs v. Hoddinott*, (1898) 2 Ch. 307, the plaintiff was a mortgagee of an hotel and the defendants were the mortgagors. The mortgage contained a covenant by the mortgagors that, during the continuance of the mortgage, they would buy liquor exclusively of the plaintiff for sale on the mortgaged premises. The defendants having ceased to observe this covenant, the action was brought for an injunction to restrain the breach of the covenant. The defendants contended that the covenant could not be enforced as being a stipulation for a collateral advantage beyond the repayment of the mortgage debt and interest, and they also, by cross action, claimed the right to redeem the mortgage, although the day fixed for payment had not arrived. The mortgage contained a proviso that notwithstanding the proviso for redemption, the mortgagors should not be entitled to require or compel the mortgagee to receive his principal until the expiration of five years. Romer, J., held that the plaintiff could not be compelled to accept this mortgage money before the time fixed for payment. In Ontario, of course, the statutory provision (R.S.C. c. 127, s. 7) entitling a mortgagor to redeem after the expiration of five years, would override any such stipulation in the mortgage, for payment at a later period. He was therefore of opinion that the defendants' claim to redeem was premature. He was also of opinion that the covenant to buy liquors from the plaintiff was valid and binding, and should be enforced, and he granted the injunction, and his judgment on both points was sustained by the Court of Appeal, (Smith, Rigby and Williams, L.JJ.). The Court of Appeal points out that the statement of the law in *Jennings v. Ward*, 2 Vern 520, is too broad, and that it is not correct to say that every collateral advantage bargained for by a