

my mind that, in the 15 years of continuous service and the four subsequent years, he earned and had reason to rely upon it that he would be paid more—a good deal more—than he will be allowed by the judgment I propose to give him; but, on the other hand, so long as men continue to transact business by unbusiness-like methods, they cannot complain if the Courts, in the absence of any certain measure of value, feel compelled to stay well within the mark.

The Statute of Limitations has not been set up by the plaintiffs, an amendment was not asked, and an amendment would not be in furtherance of justice. . . .

[Reference to *Johnson v. Brown* (1909), 13 O.W.R. 1212; *Cross v. Cleary*, 29 O.R. 542; *Wakeford v. Laird* (1903), 2 O.W.R. 1093; *McGugan v. Smith*, 21 S.C.R. 263.]

No question of time limitation appears to have been raised in either of the two last-named cases, and I am bound by the decisions in the *Johnson* and *Cross* cases, where the point was specifically considered, if the conditions in this case are the same, and if my decision is to rest upon an implied promise arising from service. I do not think these decisions apply. I am of opinion that there is no time limitation where, as here, upon the facts, if I am correct in my conclusions of fact, the defendant was not entitled to payment until the death of the mortgagee, and could not have sued in the meantime; but, as this case may go to a higher Court, it is right that I should declare what sum he actually earned by the services claimed for. I am of opinion that \$150 a year down to 1907, and \$100 a year afterwards, would be a fair and just sum to allow. The amount proper to be allowed on the mortgage account would stand against this *pro tanto*.

But I can, I think, allow the defendant substantial, although not perhaps adequate, compensation, and diminish the chances of further litigation by proceeding along other lines. It is right that the plaintiffs should be called upon to make good the representations of fact made by their testator, so far as this can be done with reasonable convenience and without conflicting with the cases in which the Courts have declared against specific performance. The principal money secured by the mortgage I have already sufficiently dealt with. The furniture probably could not now be delivered in specie, but there is no reason why its value should not go in liquidation of the interest. No question of implied contract, with the incidental implied right to periodi-