

ARCHBOLD v. THE BUILDING AND LOAN ASSOCIATION.

Mortgage—Six months' notice of intention to pay off after default—Contract as to time—Interest after maturity.

T. borrowed money from defendants, and gave a mortgage on certain lands as security, with other securities as collateral, giving a second mortgage on the said lands to plaintiff. Both mortgages being in default, defendants agreed in writing with plaintiff, who began foreclosure proceedings, that if he obtained a final order, subject to their claim, they would accept from him a new mortgage on the same property for \$15,000, payable in five years from date of order, with interest at eight per cent., and that he was "to have the privilege of paying any part of the principal at any time." Upon payment, as aforesaid, defendants were to assign to plaintiff their mortgage from T., and all collaterals. Plaintiff obtained a final order, and gave defendants a mortgage dated 8th January, 1881, for the above amount, payable at the expiration of five years, with interest at eight per cent., half yearly, "until fully paid and satisfied." The mortgage provided, after payment, for the assignment to the plaintiff of the original securities, and had a clause that the mortgagor may at any time pay off the whole or any part of the said \$15,000 before the expiration of the said term of five years, and the said mortgagees shall accept payment of any sum that may be paid to them by said mortgagor on account of the principal, and interest shall thenceforth cease to grow due upon the sum so paid." After the expiration of five years plaintiff paid interest at the said rate on said sum until the 1st of January, 1887, and on the 22nd of March following tendered defendants the principal and interest at the said rate up to that day, and demanded an assignment of the original mortgage and securities. Defendants refused to accept the same, claiming that they were entitled to six months' notice of the mortgagor's intention to pay, or to six months' interest in advance.

Held, ARMOUR, C.J., dissenting,

1. That the rule followed by courts of equity in England that a mortgagor must, after default by him in payment of the money according to the proviso in the mortgage deed, give

the mortgagee six calendar months' notice of his intention to pay off the mortgage, unless the mortgagee has demanded or taken any steps to compel payment, had the force of law in Ontario.

2. That there were no circumstances in the present case to do away with its effect, the provision for payment of the principal being limited to the five years within which plaintiff had covenanted to pay the same.

3. That after the expiration of five years from the date of the mortgage there was no contract in force for the payment of interest, defendants could only claim as damages compensation for non-payment of principal at the time stated, and that the measure of damages should be the ordinary value of money while it was withheld, and during the currency of the six months' notice.

4. That in this case the defendants were entitled to the six months' notice, and the tender on the 22nd of March, 1887, was insufficient, and as no evidence was given by defendants as to the rate of interest after default, and evidence offered by plaintiff on the point was refused at the trial, the legal rate of six per cent. would be taken as the measure of damages.

Practice.

Patterson, J. A.]
Court of Appeal.]

[May 17, 1887.
[Jan. 10, 1888.

PLATT v. GRAND TRUNK RAILWAY CO.

Appeal—Dismissal for delay—Extending time—Special circumstances—Judge in Chambers, powers and discretion of.

Motion to dismiss defendants' appeal to this court for want of prosecution. The judgment appealed from (12 O. R. 119) was pronounced on the 28th of April, 1886, and notice of appeal was given two weeks thereafter. Security was given at the end of June, but the draft appeal case was not sent to the plaintiff's solicitors till the 24th of September following, and did not reach them till the 27th of September. The period from that date till the 1st of March, 1887, was occupied by correspondence between the solicitors for the parties in an attempt to settle the appeal case, and at the end of that period it became apparent that