

was to give a deed of the land to defendant or to any other person named by him on receipt of the purchase price, and to accept a mortgage of the property for the sum of \$1,000 part of the purchase price, on receiving from defendant all moneys due over and above that amount. After the making of the agreement defendant paid A. the sum of \$140 and entered into possession of the premises, and for a period of two years paid A. interest on the sum of \$1,000 as if the deed and mortgage had been executed, although as a matter of fact he had not received the deed or given the mortgage as agreed. No further interest was paid on the ground that A. and plaintiffs claiming under him after his death wrongfully and in breach of the agreement refused and neglected to convey the land to plaintiff and that the agreement itself contained no provision calling for the payment of interest.

Held, reversing the judgment of the trial judge, that defendant being in possession of the property and enjoying the fruits of it was bound to pay interest pending the carrying out of the terms of the agreement and that the question whether the delay was due to the action of the deceased or not was immaterial.

Per RUSSELL, J.—The position of the parties in equity was that of mortgagor and mortgagee and interest was due by the defendant on that footing notwithstanding the absence of any stipulation in the agreement, defendant having gone into possession and enjoyed the fruits.

Roscoe, K.C., for appellant. J. J. Ritchie, K.C., for respondent.

Province of New Brunswick.

VICE-ADMIRALTY COURT.

McLeod, J.] POULIOT v. LADY EILEEN. [Dec. 14, 1905.
Security for costs—Admiralty Court Rule No. 134—Plaintiff intending to remain in jurisdiction.

The plaintiff, former master of the defendant's ship running between ports in New Brunswick, was staying at Dalhousie, New Brunswick, at the time the libel was issued. The plaintiff had described himself as of Quebec, but it appeared by affidavit that he had no fixed residence and intended to remain in New Brunswick until after the trial of the action. On application made for security for costs, the same was refused, with costs.

Hazen, K.C., for plaintiff. Mott, for defendant.