

The appeal was heard by MULOCK, C.J.Ex., CLUTE, SUTHERLAND, and LEITCH, JJ.

S. H. Bradford, K.C., and T. Hislop, for the appellants.

The judgment of the Court was delivered by MULOCK, C.J. Ex. (after setting out the facts, and referring to the Short Forms of Mortgages Act, 10 Edw. VII. ch. 55, sec. 3, proviso as to consequences of default):—Reading together the two provisos, one that the defendant may retain the \$1,000 until a certain time, namely, until after he shall have received a conveyance from U. E. Willson, and the other that, on default of payment of interest, the whole and every part of the principal shall become due, it is clear that the latter proviso qualifies the former, and that the right of retainer of the \$1,000 is not absolute, but conditional on there being no default in payment of interest, and that on that condition being broken the right to retain it ceased. . . .

[Reference to *Burrowes v. Molloy*, 2 Jo. & Lat. 521, distinguishing it.]

Here the agreement not to call in the \$1,000 does not override the terms of the mortgage, but is made subject to the proviso in the mortgage that, if the mortgagor makes default in payment of interest, then the whole principal money and every part thereof shall forthwith be due and payable. Default having been made in payment of interest, the mortgagee is thus, by the express agreement between the parties, entitled to call in the whole principal, which includes the \$1,000 in question.

I, therefore, think that the learned Chief Justice rightly disposed of the case, and that this appeal should be dismissed with costs.

JUNE 15TH, 1914.

\*RE LLOYD.

*Infant—Moneys of, in Hands of Administrator of Estate of Deceased Person—Application by Mother for Payment to her as Guardian Appointed by Foreign Court—Refusal—Past Maintenance of Infants—Future Maintenance.*

Appeal by Hattie E. Lloyd from the decision and order of LATCHFORD, J., 5 O.W.N. 974.

\*To be reported in the Ontario Law Reports.