

A. E. H. Creswicke, K.C., and W. A. J. Bell, K.C., for the plaintiff.

B. H. Ardagh, for the defendant John Gibbs.

MIDDLETON, J.:—Cassidy, the owner of the land in question, mortgaged the same to the defendant John Gibbs to secure an advance of \$1,500; the principal falling due on the 21st December, 1911. The mortgage contained a proviso for the acceleration of the payment of the principal upon default of payment of interest, also a proviso enabling the mortgagor to pay off the whole or any part of the principal sum on any interest day without notice or bonus.

Cassidy conveyed this property to the defendant Conway, but on the 22nd June, 1910, executed a mortgage in favour of the plaintiff to secure the sum of \$500 in ten equal monthly instalments of \$50, the first instalment to become due on the 22nd September, 1910; so that the last instalment payable under this mortgage would mature before the principal would fall due under the earlier mortgage, by effluxion of time.

The occasion of making the second advance was the partial destruction of the building on the property by fire. The building had been used as an hotel, and the License Commissioners required its restoration and improvement before the license would be renewed. The money advanced was spent towards this restoration, but the building never was completed, and the license never was renewed. Conway has made default in payment of the mortgage, and it may be taken that both he and Cassidy are financially worthless.

At the time of the making of McKey's advance, some arrangement was made between him and Gibbs looking to the protection of McKey with respect to the loan to be made. This arrangement was embodied in a covenant found in McKey's mortgage; and I find nothing upon the evidence which would justify the reformation of that covenant. I think it must be taken to express the real bargain between the parties, and their rights must be worked out upon the documents as they stand.

This covenant, omitting immaterial words, is a covenant on the part of Gibbs that he "will not collect or receive payment of or seek to collect any of the principal money secured by" his mortgage, "but will allow said principal to remain unpaid and will collect the interest thereon only until and while and so long as the moneys hereby secured shall remain unpaid."

So far as the mortgagor and his assignee are concerned, it