

MIDDLETON, J., said that the mortgage contained a clause providing that, in the event of non-payment of the principal moneys at the time stipulated, the mortgagor should not require the mortgagee to accept payment without paying a bonus equal to three months' interest in advance. Default was made, and the mortgagee required the mortgagor to pay, by suing him for the principal and interest. The mortgagor had paid the principal, interest, and costs. The mortgagee, not satisfied, sought the aid of the Court to enable him to exact this bonus, by allowing him to amend the writ, after all he originally sought had been given him; so that, unless the mortgagor yielded to the demand, an action in the Supreme Court of Ontario must be prosecuted to determine the right to this bonus. This amendment the Master had permitted, but the learned Judge was unable to agree with him.

In the first place, it was clear that the mortgagee is entitled to the bonus only when the mortgagor "requires the mortgagee to accept payment" after default. The clause has no application where, as here, the mortgagee himself demands payment, and sues upon the covenant. Secondly, in the exercise of a sound discretion, and even though an amendment is generally granted, as a matter of course, no amendment should be granted which would re-open the whole litigation where the plaintiff's original demand has been acceded to and where the amount in dispute is so small as to make it a monstrous thing that a Supreme Court suit, with all its incidental expense, should be the means of determining liability for what is, after all, a trifling amount, and an amount which is rendered still more trifling by the fact that the Master provided that the costs of the motion should be set off against it.

The appeal should be allowed, with costs to be paid by the plaintiff to the defendant, both here and below.

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MIDDLETON, J., IN CHAMBERS.

NOVEMBER 29TH, 1915.

REX v. COLTON.

*Liquor License Act — Magistrates' Conviction for Keeping Intoxicating Liquor for Sale without License—Evidence — Search-warrant—Prior Conviction—Identity of Accused.*

Motion to quash the conviction of the defendant by magis-