

shall thereupon be relieved from the consequences of non-payment of so much of the mortgage money as may not then have become due and payable by reason of lapse of time."

5. Section 117 of the Real Property Act, notwithstanding it is preceded and followed by sections relating only to mortgages registered under the new system, is not so limited, but expressly applies to all mortgages including those registered under the old system.

Galt, for plaintiff. *J. F. Fisher*, for defendant.

Macdonald, J.]

VOSPER v. AUBERT.

[March 18.

Contract—Redemption—Relief against acceleration clause in agreement of sale of land—Verbal agreement varying with in contract.

By agreement dated June 7, 1906, the plaintiff sold to the defendant 625 acres of land for \$17,500; \$1,000 being payable on the execution of the agreement and the balance in yearly instalments with interest. It was provided that on default in payment of any instalment the whole of the purchase money and interest should at once become due and payable. Owing to some difficulty over the title to the property the agreement was not completed until November 8, 1907, when each party got a duplicate signed by the other and the defendant paid \$957.60 of the \$1,000 payable on the execution of the agreement. On that date there was also past due the second instalment of the purchase money and some taxes which the defendant had covenanted to pay. It was admitted that, prior to the completion of the agreement by delivery, a verbal agreement was arrived at extending the time for payment of the second instalment; but the parties differed as to the terms of this verbal agreement and, as it would contradict the writing, the trial judge held that it should not be given effect to and that the plaintiff was not bound by it. The plaintiff demanded payment of the full amount of the purchase money, claiming that it was due by virtue of the acceleration clause above quoted. The defendant asked, that upon payment of all arrears, he might be relieved from the effect of the acceleration clause.

Held, 1. Such a provision in a contract is not in the nature of a penalty against which equity will relieve. *Wallingford v. Mutual Society*, 5 A.C. 705.