

MORTGAGE—FORECLOSURE—PROVISO FOR REDEMPTION—PRINCIPAL NOT DUE—NON-PERFORMANCE OF COVENANT TO PAY INTEREST.

*Williams v. Morgan* (1906) 1 Ch. 804 was an action for foreclosure brought by a mortgagee for non-payment of an instalment of interest pursuant to a covenant. The mortgagor contended that the default did not authorize the plaintiff to foreclose. The mortgage contained, (1) a covenant to pay the principal on January 1, 1914, and the "interest which may be then due"; (2) a covenant to pay interim interest half-yearly on a specified date;; (3) a conveyance of the property "subject to the proviso for redemption hereinafter contained"; (4) a proviso that the mortgagee would not call in the principal before 1 Jan, 1914, if half-yearly interest were paid on the specified days or within twenty-one days thereafter; (5) a proviso that the mortgagor would not pay off the principal before 1 Jan., 1914; (6) a proviso that if the mortgagor should on 1 Jan., 1914, pay the principal "with interest for the same in the meantime at the rate aforesaid that may be due and unpaid" the mortgagee would reconvey. The mortgagor having paid an instalment of interest twenty-seven days after the specified date, the plaintiff claimed that this breach of the covenant had given him the right to sue for foreclosure. Eady, J., however, held that the proviso for redemption did not import a condition that the mortgagee's estate should become absolute for default in payment of the half-yearly interest on the specified days or within twenty-one days thereafter, and consequently that the right to foreclose had not arisen. He says, "The plaintiff asks me to import the covenant to pay the interest half-yearly into the proviso for redemption, so that on breach of that covenant, the condition of the proviso is broken, and the estate is absolute at law. I see no ground for doing this."

RAILWAY COMPANY — OMNIBUS BUSINESS — PASSENGERS — INCIDENTAL POWERS—ULTRA VIRES.

In *Attorney-General v. Mersey Railway Co.* (1906) 1 Ch. 811 Warrington, J., decides that a railway company incorporated to carry on the business of a railway, has not (unless specially authorized so to do) any power to carry on business as omnibus proprietors for the purpose of collecting and distributing their passengers, and that such a business cannot be considered as incidental to their undertaking.

COMPANY—RECONSTRUCTION—SALE OF ASSETS FOR SHARES IN NEW COMPANY—PARTLY PAID SHARES—DISTRIBUTION OF CONSIDERATION.

*Fuller v. White* (1906) 1 Ch. 823 is a somewhat similar case