the principal at once due, so that the cause of action accrued upon such default under sec. 1 of ch. 72, R. S. O. 1897, the Limitations Act.

J. C. Judd, London, for appellant.

T. H. Purdom, K.C., for defendant.

The judgment of the Court (Moss, C.J.O., Osler, Maclennan, Maclaren, JJ.A.), was delivered by

Maclennan, J.A.—. . . It seems too clear for argument that the cause of action arose on 15th March, 1880, and continued unimpaired during all the subsequent years, and there could be no answer to a statement of claim alleging that it arose on that day by virtue of default in paying interest. The contract is clear that on default of payment of interest the principal money and every part thereof should forthwith become due and payable as if the time for payment thereof had fully come and expired. There was default on 15th March, 1880, and then it was that the principal became payable, and it was then the cause of action arose. It is true that, by virtue of the proviso, defendant could, if the action had been brought before the expiration of five years, have had relief against that action on payment of arrears; but, even if he had done that, if could not be said that a cause of action for the principal money had not arisen.

For plaintiff it was suggested that the acceleration clause merely gave him an option to claim payment before the expiration of the five years, which had never been exercised. But that does not remove the difficulty, which is, that a cause of action arose at the end of the first year. It is always optional with a plaintiff to bring any action which may have arisen to him.

It was also said that the acceleration was in the nature of a penalty. But, if it were, I do not see how it would affect the question. But . . Wallingford v. Mutual Society, 5 App. Cas. 685, shews that the proviso cannot be regarded as a penalty.

. . . Hemp v. Garland, 4 Q. B. 519, and Reeves v. Butcher, [1891] 2 Q. B. 509, . . . are distinct authorities in favour of defendant. . . .

Appeal dismissed with costs.