

through the Hudson's Bay Company carried with it all the rights of a riparian owner so that the plaintiffs owned the bed of the river as claimed.

*Bickett v. Morris*, L.R. 1 H.L. 47; *Keewatin Power Co. v. Town of Kenora*, 11 O.W.R. 266, and *Servos v. Stewart*, 15 O.L.R. 216, followed.

*Aikins*, K.C., *Robson* and *Coyne*, for plaintiffs. *J. Hillyard*, *Leech* and *Sutton*, for defendants. *Hudson* and *Howell*, for Dominion Government.

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Mathers, J.] NATIONAL TRUST CO. v. CAMPBELL. [March 17.

*Mortgage—Foreclosure—King's Bench Act, R.S.M. 1902, c. 40, Rules 277, 178—Real Property Act, R.S.M. 1902, c. 148, s. 117—Relief on payment of overdue part of mortgage debt, although whole amount payable under acceleration clause in mortgage.*

Appeal from the order of the referee, in an action for foreclosure and a personal order for payment, staying proceedings after judgment under Rule 278 of the King's Bench Act, R.S.M. 1902, c. 40, upon payment of the overdue instalment of principal, interest and costs.

*Held*, 1. The action was one for foreclosure within the meaning of Rules 277 and 278 of the King's Bench Act, although judgment for the amount of the debt was also asked for.

2. A provision in a mortgage that, upon default in payment of an instalment of principal or interest, the whole should become due is not one against which equity will relieve as being in the nature of a penalty. *Sterne v. Beck*, 1 De G. & S. 595; *Bell & Dunn*, p. 80.

3. Although Rule 278 says that proceedings may be stayed in the action after judgment "upon paying into court the amount then due for principal, interest and costs," the relief ordered could not be granted to the defendant under that Rule, because, by virtue of the acceleration clause in the mortgage, the amount then due was the full amount of the principal debt and equity will not relieve against such a provision.

4. The defendant was entitled to the relief ordered by virtue of s. 117 of the Real Property Act which provides that a mortgagor, under the circumstances appearing in this case, may "pay such arrears as may be in default under the mortgage, together with costs to be taxed by the district registrar, and he