

the Short Forms of Mortgages Act. This provision is to be treated as the contract of the parties, and the party taking advantage of it is not to be treated as claiming a penalty or forfeiture: *Wallingford v. Mutual Society*, 5 App. Cas. 685; *Wilson v. Campbell*, 15 P. R. 254; *Graham v. Ross*, 6 O. R. 384. Plaintiff was entitled to have brought his action to recover both principal and interest on 16th March, 1880, and his cause of action having then arisen, he is barred by sec. 1 of R. S. O. ch. 72. *Kemp v. Garland*, 4 Q. B. 519, and *Reeves v. Butcher*, [1891] 2 Q. B. 509, followed. This covenant differs from the contracts in these two cases in this, that it contains a term not found in them, that upon payment before judgment of the arrears of interest and costs, the mortgagor shall be relieved from the effect of his default; but the cause of action for recovery of principal and interest arose upon the default, although the contract permitted defendant to do away with the stipulated consequences of the default, and to restore the original terms of payment, by doing something which has not been done in this case.

Action dismissed with costs.

STREET, J.

JULY 4TH, 1903.

TRIAL.

ST. LAWRENCE STEEL AND WIRE CO. v. LEYS.

*Guaranty—Construction—Future Liability.*

Action upon a guaranty. The Wray Corset Co., a partnership, ordered goods from plaintiff and had been irregular in paying the drafts upon them. They were indebted to plaintiffs for the amount of certain goods which they had received, and had ordered other goods, which plaintiffs objected to sending. On 10th May, 1901, plaintiffs telegraphed to the Wray Corset Co., "Let Mr. Leys wire guaranty for payment of all accounts to us, and everything will be satisfactory." Defendant authorized a telegram to be sent to plaintiffs in the following words: "Will guarantee payment of all accounts for Wray Corset Co. F. B. Leys." Defendant was told that certain goods ordered from plaintiffs were detained until payment should be guaranteed by him. The goods then under order were sent on by plaintiffs on receipt of this telegram, and were afterwards paid for by the Wray Corset Co., who also paid for all the goods for which they owed plaintiffs at the time the guaranty was given; but the Wray Corset Co. continued to deal with plaintiffs until the former stopped payment some months afterwards, when they were indebted to plaintiffs for goods purchased since