

A mortgage provided for payment of the principal money in two years from the date of the mortgage, with interest in the meantime half-yearly at the rate of nine per cent. per annum; that on default of payment for two months of any portion of the money secured, the whole of the instalments secured should become payable; and that, on default of payment of any of the instalments secured at the times provided, interest at the said rate should be paid on all sums so in arrear.

Held, that the principal money was an instalment within the meaning of the proviso, and that interest at the rate of nine per cent. per annum was chargeable upon it after the expiration of the two years.

J. Bicknell, for appellants. *Armour*, Q.C., for respondents.

From Drainage Ref] MCKENZIE v. WEST FLAMBOROUGH. [May 5.

Drainage—Want of repair—Act of God.

Where a drain is out of repair and lands are injured by water overflowing from it, the municipality bound to keep it in repair cannot escape liability on the ground that the injury was caused by an extraordinary rainfall, unless it is shown that, even if the drain had been in repair, the same injury would have resulted. Judgment of Drainage Referee reversed.

G. L. Staunton and *W. A. Logie*, for appellants. *Watson*, Q.C., and *A. R. Wardell*, for respondents.

From Street, J.] FAWCETT v. FAWCETT. [May 5.

Benevolent society—Insurance—Change in rules—Creditors

In his application for membership in a benevolent society, the applicant directed that the amount to which he should be entitled should be paid, "subject to my will," and the certificate, issued in 1889, provided that at the death of beneficiary, if then in good standing, "his heirs and legal representatives shall be entitled to receive the amount collected upon an assessment not exceeding \$3,000, and he now directs that in case of his death the said sum be paid, subject to his will." The insured died on the 5th of January, 1897, having on the 12th of September, 1896, made his will, by which he directed his debts to be paid, and gave "all the rest and residue" of his estate to his wife, who survived him. At the time of the issue of the certificate, there was no restriction in the rules of the society as to the person to whom payment could be made, and no provision as to payment in the event of an invalid appointment; but in July, 1896, new rules were passed limiting the persons who could take as beneficiaries, and excluding expressly creditors and persons designated only by will.

Held, that the new rules did not affect certificates then existing, and that the insured's executors were entitled to the amount (fixed at \$1,500)