

F. Arnoldi, K.C., for the appellant.

A. J. Reid, K.C., for the defendant the Glenlaven Land Company.

W. N. Tilley, K.C., for the other defendants.

MEREDITH, C.J.C.P., said that the action was brought in the teeth of the Mortgagors and Purchasers Relief Act, 1915, which prevents the enforcement of payment of the principal money due upon the mortgage during the war. The Act leaves it open to a mortgagee to insist upon being paid the incidentals of his mortgage—the interest, taxes, and so forth. The interest is the interest which the mortgagor has covenanted to pay. If he pay that regularly, he is not to be prosecuted in any action upon the mortgage for mortgage-moneys without the leave provided for in the Act. The Act makes an exception of the interest; the onus is upon the mortgagee to shew that his claim comes within the exception. The exception applies only to interest contracted, in the ordinary manner, to be paid. It does not apply to interest payable *de die in diem*, if it is so payable, under a special clause in the mortgage.

The learned Chief Justice added that, in his opinion, the clause* had not the effect contended for by the plaintiff, the mortgagee. The mortgage-deed contained the usual and special clauses dealing with the payment of principal and interest, one clause providing that, in default of the payment of interest, the principal secured should become payable. The obscure words of the clause relied on should not be given an effect different from the plain words of the mortgage dealing with such payments. Those words might very well be applicable only to the default dealt with in the clause.

MASTEN, J., was of the same opinion. The statute, he said, was to be construed as relating only to the regular gales of interest falling due at the periods mentioned in the mortgage.

RIDDELL and LENNOX, JJ., concurred.

Appeal dismissed with costs.

*The clause was a covenant by the mortgagors to the effect that if they made default as to any of the covenants or provisoes contained in the mortgage-deed the principal should, at the option of the mortgagee, "forthwith become due and payable and in default of payment of same with interest as in the case of payment before maturity the powers of entering upon and leasing or selling hereby given may be exercised forthwith." There was a proviso "that the mortgagee may distrain for arrears of interest" and "that in default of the payment of the interest hereby secured the principal hereby secured shall become payable."