

upon invoked R. S. C. ch. 127, sec. 7, claiming the right to pay all this mortgage by paying the principal and all interest which had accrued, and three months' added interest. On the 3rd December, 1902, the plaintiffs formally tendered to Kingstone, Symons & Kingstone, as solicitors and agents for the defendants, at their office, Toronto, a bank draft on London, England, for £8,683 5s. 0d., making up the amount as follows:—

For principal.....	£8,441	2	0
For interest to 3rd Dec., 1902.....	146	14	9
For three months' interest by way of bonus.....	94	19	3
For costs of cablegram.....	9	0	
	£8,683	5	0

This was refused.

It was admitted in this case and for the purposes of this action, that the figures were correct in amount on the basis stated in the offer.

The defendants set up the contentions (as stated in the special case):—

1. That sec. 7 of ch. 127, R. S. C., was ultra vires of the Parliament of Canada.

2. That, even if intra vires, it was not intended to apply to such mortgages as those in question in this action.

3. That the parties contracted with a view to the application of the law of England as to payment of the mortgage.

4. That, as defendants were a company authorized by an Imperial Act to lend money in Canada before the passing of the British North America Act, R. S. C. ch. 127, sec. 7, was not intended to and did not abrogate or diminish the powers previously granted to the defendants by their Imperial Act.

5. That the tender was not sufficient.

6. That the whole facts did not disclose any cause of action by the plaintiffs against the defendants.

A. P. Poussette, K.C., for plaintiffs.

F. W. Kingstone and D. T. Symons, for defendants.

J. R. Cartwright, K.C., for the Attorney-General for Ontario.

The Minister of Justice for the Dominion was notified, but was not represented.

BRITTON, J. (after stating the facts).—The right to interest upon a contract for the same made in a Province is certainly a civil right in the Province, but, if the Dominion