

J. H. Rodd, for the appellant.

W. E. Raney, K.C., for the defendants, respondents.

MEREDITH, C.J.C.P., read a judgment in which he said that the only question upon the appeal was, whether the prosecution, without the leave of a Judge, of such an action as this, was prohibited by the Mortgages and Purchasers Relief Act, 1915, 5 Geo. V. ch. 22, as amended by (1916) 6 Geo. V. ch. 27 and (1917) 7 Geo. V. ch. 27, sec. 59.

As to mortgages, the prohibition against proceedings for the recovery of the principal moneys secured by them is expressly confined to mortgages made or executed prior to the 4th August, 1914; and, even in regard to them, the prohibition is, by sec. 4 of the original Act, further curtailed so as to exclude mortgages made before that day which have been extended or renewed after it. But, by the amending Act of 1916, this further curtailment was reduced so that it now covered such mortgages only when "the extension or renewal is for less than three years, and the rate of interest provided for in the original mortgage is not increased by such extension or renewal."

The mortgage upon which the plaintiff was proceeding having been made after the 4th August, 1914, how was it possible to bring this case within the prohibitory words of the enactments? To say that it is in substance only a renewal of a mortgage made before that day could not help the defendants—it was none the less a mortgage made after that day, and so expressly without the enactments. To the words "made or executed prior to the 4th day of August, 1914," the Court could not add such words as "or remade or re-executed after that day."

This case could be brought within the provisions of the enactments only (1) by ignoring the fact that they affect only mortgages made or executed after the 4th August, 1914, or (2) by turning the curtailing section, 4, into an enlarging provision, and then holding that by implication a mortgage made after the 4th August, 1914, is brought within the enactments if it can be called an extension or renewal of one made before that day.

But, if that were not so, how could it be found that the mortgage was only an extension or renewal of another mortgage? Another mortgage which had long since ceased to exist and had long since been formally discharged, and a mortgage made by a different mortgagor—a different mortgage in all respects save that the lands were the same in both and that both were made by purchasers to secure payment of parts of their purchase-moneys.

There may be an extension or renewal of a mortgage without