

MIDDLETON, J.

NOVEMBER 29TH, 1915.

## \*SCHWARTZ v. WILLIAMS.

*Mortgage—Short Forms Act—Additional Covenants—Default in Payment of Interest and Taxes—Acceleration Clause—Relief on Payment of Interest and Taxes—Construction of Mortgage-deed—Powers of Court—Interest-bonus — Penalty—Costs.*

Motion by the defendant, mortgagee, to dissolve an interim injunction obtained by the plaintiffs, mortgagors, whereby the defendant was restrained from taking further proceedings under the power of sale in the mortgage.

The motion came before MIDDLETON, J., in the Weekly Court, and was turned into a motion for judgment.

L. Davis, for the defendant.

W. J. McLarty, for the plaintiffs.

MIDDLETON, J., said that the mortgage was dated the 20th February, 1915, and was made to secure \$4,000 and interest, repayable as to \$300 in six half-yearly instalments on the 20th February and 20th August in each year, with interest, and the balance on the 20th February, 1920. The mortgage was in pursuance of the Short Forms of Mortgages Act, but contained many added covenants and provisions. There was a provision that if the mortgagors made default as to any of the covenants the principal should, at the option of the mortgagee, become payable; a covenant that if the principal was not paid at maturity the mortgagors should not be at liberty to pay it except after three months' notice in writing or upon payment of three months' interest; and a covenant that if an action was brought or the lands were sold the mortgagee should be entitled to three months' interest in advance on the principal so paid or recovered, in addition to interest to the date of payment. There was the ordinary covenant for payment of taxes.

The taxes for 1915 became in default, and the interest was also in default. The mortgagors tendered the amount of the interest, and were ready to pay the taxes and the mortgagee's costs of serving notice of intention to exercise the power of sale; but the mortgagee refused to stay her hand, contending: (1) that, default having been made in payment of taxes, the