

troverted or questioned by or between different Defendants in the same Cause or Suit; nor shall be any Prejudice to any subsequent Mortgagee or Mortgagees, or subsequent Incumbrancer; any thing in this Act contained to the contrary thereof in any wise notwithstanding.

I. After the First Day of *Easter Term*, 1734, in Actions concerning Mortgages or Ejectments, no Suit being then depending to foreclose such Mortgage, the Mortgagors tendering the Principal, Interest, and Costs in Court shall be deemed a full satisfaction, and the Court may compel the Mortgagee to surrender the Premises.

II. On Bills filed to compel the Payment of the Mortgage and Specialties, or foreclose the Equity of Redemption, the Court, on Defendant's Request, may proceed to a Decree, before a regular Hearing, and all Parties shall be bound thereby, as if the Cause had been regularly heard.

III. This Act not to extend to Cases where the Right of Redemption is controverted, or the Money due not adjusted, or to prejudice any subsequent Mortgage.

A deed of defendant conveying lands to the plaintiff and the plaintiff's bond for reconveyance on payment of the debt are a mortgage within the Statute, *Moore's lessee v. Pearce*, 2 H. & McH. 236, where this Statute was held to be in force here. And in *Smeeton v. Collier*, 1 Exch. 457, it was **729** held that the Statute applied to an *action of *covenant* on the mortgage deed. It also applies whether there be a power of sale by the mortgagee or not, *per Parke B.* in *Sutton v. Rawlings*, 3 Exch. 407. But it by no means applies to all cases in which proceedings have been taken at law for the recovery of principal and interest due on the mortgage deed. The legislature intended to relieve the mortgagor from the delay and expense of an equity suit to redeem, not to deprive the mortgagee of any equity, and the true limit of the application of the Statute is to cases where it would be equitable to relieve on payment of principal, interest and costs of suit, *i. e.* in cases where the mortgagee is not in possession and in which he has not attempted to exercise a power of sale, *Sutton v. Rawlings*. A mortgagor to entitle himself to the benefit of the Statute in a Court of law *must become defendant in the ejectment*, and, where he is not, the Court will not interfere, either under the Act or in the exercise of its general power, although the action were brought against the tenant of the mortgagor, and the Judge at the trial treated the defendant as such tenant and decided upon the evidence accordingly, *Doe v. Clifton*, 4 A. & E. 814. The Statute does not extend only to cases where the mortgagee recovers adversely against the mortgagor. But until appearance the Court has no jurisdiction in any case. And therefore in *Doe d. Tubb v. Roe*, 4 Taunt. 887, the Court would not, where a mortgagee had recovered the mortgaged premises in an *undefended* ejectment, restore the possession to the mortgagor who had not appeared, upon his payment of principal, interest and costs; but if the recovery be had, as there, against a tenant of the mortgagor, the Court will set aside the judgment, and let the mortgagor in to defend as landlord, in order that he may apply to the Court to stay proceedings on the terms of the Act.