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*June 2.
*Dec. 11.

THE PEOPLES LOAN AND DEPOSIT COMPANY (DEFENDANTS)..... APPELLANTS;

AND

ALEXANDER GRANT AND OTHERS (PLAINTIFFS)..... RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Mortgage—Rate of interest—Fixed time for payment of the principal—"Until principal and interest shall be fully paid and satisfied."

A mortgage of real estate provided for payment of the principal money secured on or before a fixed date "with interest thereon at the rate of ten per centum per annum until such principal money and interest shall be fully paid and satisfied."

Held, affirming the judgment of the Court of Appeal for Ontario, that the mortgage carried interest at the rate of ten per cent. to the time fixed for payment of the principal only, and after that date the mortgagees could recover no more than the statutory rate of six per cent. on the unpaid principal. *St. John* v. *Rykert* (10 Can. S. C. R. 278) followed.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment of the Chief Justice of the Common Pleas Division and the ruling of a referee appointed to take an account of the amount due on defendants' mortgage.

The single question raised on this appeal was as to the construction of a covenant in a mortgage for payment of interest. Such covenant provided that the mortgage would be void on payment of the principal sum "on or before the first day of June, 1884, with interest thereon at the rate of ten per cent. per annum until such principal money and interest shall be fully

*PRESENT: Sir W. J. Ritchie C.J., and Strong, Fournier, Gwynne and Patterson J.J.

(1) 17 Ont. App. R. 85.

paid and satisfied, such interest being payable and to be paid quarterly." There was also a provision that interest at the same rate should be paid on any instalment of interest in default, the same to be compounded and added to the principal half yearly.

The plaintiffs in this action were the mortgagor and the beneficiaries under certain insurance policies given as collateral security to the mortgagee, and the action was brought to redeem the said policies. A reference having been ordered to take an account of the amount due on the mortgage the referee, in taking such account calculated the interest at ten per cent. up to the first of June, 1884, and from that time he only allowed interest at six per cent., and did not compound the interest after that date. The defendants appealed to the Chief Justice of the Common Pleas Division, claiming the interest as provided in the mortgage up to the time of taking the account. The ruling of the referee was affirmed by the Chief Justice, and on further appeal to the Court of Appeal his judgment was also confirmed. The defendants then appealed to the Supreme Court of Canada.

Delamere Q.C. for the appellants. The courts below decided against us on the authority of *St. John* v. *Rykert* (1), but this case may be distinguished. *St. John* v. *Rykert* (1), was a case of a promissory note on which judgment had been recovered. The peculiarly strong words of our covenant distinguish it from that case and from *Peck* v. *Powell* (2).

The following cases were cited as instances of similar covenants: *King* v. *Greenhill* (3); *Popple* v. *Sylvester* (4); *Ex parte Fewings* (5); *Ex parte Furher. In re King* (6).

(1) 10 Can. S. C. R. 278.
(2) 15 Ont. App. R. 138.
(3) 6 M. & G. 59.
(4) 22 Ch. D. 98.
(5) 25 Ch. D. 338.
(6) 17 Ch. D. 191.

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Beck for the respondents. In *St. John* v. *Rykert* (1), the words were "until paid," which cannot be construed differently from those in this case, "until fully paid and satisfied." In *Archbold* v. *Building and Loan Association* (2), Mr. Justice Street similarly construes the words "until fully paid off and satisfied." And see *Re European Central Railway Co.* (3); *Powell* v. *Peck* (4); *Wilson* v. *Campbell* (5).

It was urged that the mortgage should be construed most strongly against us in accordance with the rule *fortius contra proferentem* but that rule has no force at the present time. Elplinstone on deeds (6); *Taylor* v. *Corporation of St. Helens* (7).

SIR W. J. RITCHIE C.J.—The defendants admit the allegations in the first paragraph of the statement of claim contained, and say that the said mortgage is in the words and figures following, that is to say :—

This indenture made in duplicate the 31st day of May, 1881, in pursuance of the act respecting short forms of mortgages, between Alexander Grant of the city of Toronto, in the county of York and Province of Ontario, barrister-at-law, and Annie Grant of the same place, wife of the said Alexander Grant, hereinafter called the mortgagors of the first part, and the People's Loan and Deposit Company, hereinafter called the company of the second part.

Witnesseth, that in consideration of seven thousand five hundred dollars, now paid by the company to the mortgagors, (the receipt whereof is hereby acknowledged), the mortgagors do grant and mortgage unto the company (their successors and assigns) forever, all and singular that certain parcel or tract of land and premises situate, lying and being in the city of Toronto aforesaid, on the north west corner of Duke and Parliament streets, in the said city, being composed of part of lot fifteen, the whole of lot sixteen and part of lot seventeen, according to plan 7 A, and being ninety-four feet on Duke street, and extending along the westerly limit of Parliament street two hund-

(1) 10 Can. S. C. R. 278.
(2) 15 O. R. 237.
(3) 4 Ch. D. 33.
(4) 15 Ont. App. R. 138.
(5) 8 Ont. P. R. 154.
(6) Bl. Ed. p. 93-4.
(7) 6 Ch. D. 270.

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red and four feet : Provided this mortgage to be void on payment at the office of the company in the city of Toronto of $7,500 in gold coin if so demanded, on or before the 1st day of June, 1884, with interest thereon at the rate of ten per cent per annum until such principal money and interest shall be fully paid and satisfied, such interest to be paid quarterly, on the 1st day of June, September, December, and March, the 1st payment thereof to be made on the 1st day of September next, together with all fines imposed by the company on the mortgagors on account of default in payment according to the company's rules, and taxes and performance of statute labor : Provided that on default of payment for two months of any portion of the interest hereby secured the whole of the principal hereby secured shall become payable at the option of the company.

" Shall be fully paid and satisfied " necessarily refers to the time fixed for payment, viz.: " On or before the 1st of June, 1884, and the interest to be paid quarterly on the 1st of June, September, December and March, the first payment thereof to be made on the 1st day of September next;" in other words, until fully paid and satisfied according to the times fixed in the deed. I can see nothing in these words to show any intention to extend the time of payment of principal or interest beyond the respective times named in the mortgage. The last gale day would be the 1st June, 1884. It is quite an error to say there is any provision in this mortgage for *post diem* payments. There is no payment provided for after the 1st June, 1884, on which day, if not paid before, the principal and interest then due is made payable. There was no contract to pay beyond the period for which the money was borrowed.

I think the rate of interest allowed by the referee as damages was, under the evidence before him, most reasonable. Independent of the fact that as a general rule interest by way of damages should be the statutory rate of interest it is quite impossible to distinguish this case from *St. John* v. *Rykert* (1). There the words

(1) 10 Can. S. C. R. 278.

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were "with interest at the rate of two per cent. per month until paid." What possible difference is there between "until paid" and "until fully paid and satisfied?" If the money secured is "paid" is it not "fully paid?" And if the debt is "paid" is it not "satisfied?" The debt cannot be "paid" without being "fully paid and satisfied"; the terms "paid" and "fully paid and satisfied" are equivalent terms, the meaning being precisely the same, the only difference being that in the one case one word, and in the other four are used to express the same idea.

STRONG J.—On the 31st of May, 1881, Alexander Grant (one of the present respondents) and Annie Grant his wife, since deceased, by indenture of that date, mortgaged certain land and hereditaments to the appellants to secure the repayment of $7,500 lent and advanced by the appellants to the mortgagors and interest thereon; and by an indenture of the same date the respondent, Alexander Grant, assigned to the appellants three policies of assurance on his own life, viz.: a policy for $4,000 in the Canada Life Assurance Company and two policies, each for £499 19s. sterling, in the Eagle Insurance Company, as further and collateral security for the same loan. These several securities were subject to the following proviso for redemption:

> Provided this mortgage to be void on payment at the office of the company, in the city of Toronto, of $7,500 in gold coin if so demanded, on or before the 1st day of June, 1884, with interest thereon at the rate of ten per cent. per annum until such principal money and interest shall be fully paid and satisfied, such interest being payable and to be paid quarterly, on the 1st day of June, September, December and March, the first payment thereof to be made on the 1st day of September next, together with all fines imposed by the company on the mortgagors on account of default in payment according to the company's rules, and taxes and performance of statute labor; Provided that on default of payment for two months of any portion of the

interest hereby secured the whole of the principal hereby secured shall become payable at the option of the company.

The mortgage deed also contained the following clause:

And it his hereby declared that in case the company satisfies any charge on the lands, other than a certain mortgage at present held by the Canada Life Assurance Company, the amount paid shall be payable forthwith with interest at ten per cent. per annum, and in default the power of sale hereby given shall be exercisable, and in the event of the moneys hereby advanced or any part thereof being applied to the payment of any charge or incumbrance, including the said mortgage of the Canada Life Assurance Company, the company shall stand in the position of, and be entitled to all the equities of, the person or persons so paid off.

There was also inserted in the mortgage a power of sale as follows:

Provided that the company, in default of payment for two months, may without any notice enter upon and lease or sell the said lands for cash or credit.

Prior to the execution of the before mentioned mortgage, and on the 13th of June, 1877, the respondent, Alexander Grant, and his wife had mortgaged the same lands and premises to the Canada Life Assurance Company to secure the sum of $6,000 and interest at eight per cent., and had assigned to and deposited with the last mentioned company the same policies of assurance as collateral security for that amount, and such mortgage and deposit and assignment of policies were subsisting securities at the date of the execution of the mortgage and assignment of policies to redeem which the present action was instituted and were, in fact, paid off out of the loan advanced by the appellants. The mortgage to the Canada Life Assurance Co. was subject to the following proviso:

Provided this mortgage to be void on payment of six thousand dollars in gold, with interest at eight per cent. as follows:—The said principal sum of six thousand dollars at the expiration of one year from the date hereof, with interest in the meantime, payable half-

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yearly on the thirteenth day of December and the thirteenth day of June, at the rate of eight per cent. per annum, and on payment of all sums of money which may be requisite, or which the said mortgagees, their successors or assigns, may pay or expend for premiums of insurance against loss by fire in terms of the covenant hereinafter contained, or for premiums upon the several policies of insurance upon the life of the said Alexander Grant hereinafter mentioned, with interest at the rate aforesaid upon such premiums and taxes and performance of statute labor.

Subsequently to the mortgage to the Canada Life Assurance Company, and on the 28th February, 1879, an indenture was executed to which Alexander Grant and his wife and the Canada Life Assurance Company were the only parties, whereby the time for payment of the money thereby secured was extended until the 13th of December, 1881.

The appellants were, by the express terms of the mortgage of the 31st of May, 1881, subrogated to all the rights of the Canada Life Assurance Company in respect of their securities paid off as before mentioned. By the deed of assignment by the Canada Life Assurance Company to the appellants, which was dated the 2nd day of June, 1881, and to which Alexander Grant and his wife were parties, it was admitted that the amount then due to the Canada Life Assurance Company and assigned to the appellants was the sum of $7,025 for principal and interest, and $400 for expenses.

On the 24th of August, 1877, prior to the date of the appellant's mortgage but subsequent to the mortgage to the Canada Life Assurance Company, Alexander Grant by endorsement upon the policies under his hand declared, pursuant to the statute in that behalf, that the said policies, and the sums payable thereunder, should be for the benefit of his wife for her natural life, and on her decease to such of his children as should be living at the time of the death of his said wife in proportions more fully set out in the endorsement.

Mrs. Grant having died, the respondents other than Alexander Grant are, as the children of Alexander Grant, who survived his wife, absolutely entitled to the policies and the monies payable thereunder at the death of Alexander Grant, subject only to such charge thereon as the appellants may be held to be entitled to.

Default having been made in the payment of the principal money secured by the mortgage of the 31st May, 1881, the appellants, on the 28th of July, 1888, sold the mortgaged lands for the sum of $10,360, and this amount of purchase money was received by them from the purchaser. The respondents other than Alexander Grant thereupon tendered to the appellants the sum of $120, and demanded a re-assignment of the policies. This demand having been refused by the appellants, who claimed a much larger sum to be due than the amount tendered, this action was instituted to compel a re-assignment of the policies. The action having come on to be heard upon a motion for judgment before Mr. Justice Rose on the 28th day of May, 1889, it was ordered and adjudged that it be referred to the registrar of the Queen's Bench Division for inquiry and report, pursuant to R. S. O. cap. 44, sec. 101.

The referee having heard evidence and considered the accounts laid before him subsequently made his report, dated the 27th June, 1889, whereby he found and reported that the mortgage security in the first paragraph of the statement of claim mentioned fell due on 1st June, 1884, and that the defendants were not entitled to any interest after that date under the terms of the contract in the mortgage security contained or under any contract; and the referee assessed the appellant's damages at the rate of six per cent. per annum on the unpaid principal moneys from 1st June, 1884 until

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they received payment. The referee further found that the several insurance policies in the indenture in the second paragraph of the plaintiff's statement of claim mentioned were, on the 24th day of August, 1877, assigned by Alexander Grant to the plaintiffs other than himself, who are now entitled to those policies; and that the plaintiff, Alexander Grant, by the indenture in the second paragraph of the statement of claim mentioned, assigned the policies to the defendants as collateral security for the indebtedness under the mortgage in the first paragraph of the statement of claim mentioned, and to secure the repayment of any premiums the defendants might pay in respect of the policies, but the plaintiffs, other than Alexander Grant, were not parties to such assignment to the defendants and were not bound thereby; and that the defendants had advanced in payment of insurance premiums upon the life insurance policies assigned to them, as in the second paragraph of the statement of claim mentioned, the sum of $253.53, and that they were entitled under the terms of the said assignment to the sum of $24.79 interest thereon, making together the sum of $278.32, from which sum the sum of $181.59, due by the defendants, having been deducted, there was left a balance of $96.73 due to them in respect of life insurance premiums which were a charge on the said life policies; that under and by virtue of a certain indenture of mortgage, dated the 13th day of June, 1877, made by the said Alexander Grant and Annie Grant to the Canada Life Assurance Company, the said Alexander Grant and Annie Grant mortgaged the said lands to the Canada Life Assurance Company to secure $6,000 and interest; that by assignment dated the 13th day of June, 1877, the said Alexander Grant assigned to the Canada Life Assurance Company by

way of collateral security the three several insurances policies hereinbefore referred to; that the said mortgage to the Canada Life Assurance Company was paid off by the defendants out of the moneys advanced upon the security of their said mortgage, and the defendants obtained an assignment thereof, and of their charge on the said life policies, from the Canada Life Assurance Company by way of collateral security for their mortgage hereinbefore mentioned; that the plaintiffs, before the commencement of this action, tendered to the defendants the sum of $120 in payment of the amount due to them under the assignment in the statement of claim mentioned, and also tendered to the defendants a re-assignment of the policies for execution and demanded possession of the policies, but the defendants refused to accept that sum or to give up possession thereof; and that the plaintiffs are entitled to redeem the policies, and to the possession thereof, and to have the same re-assigned to them on payment of the sum of $96.73.

From this report the present appellants appealed, assigning the following grounds of appeal:

1st. That the official referee should have allowed the defendants interest on their mortgage security at the rate mentioned in the mortgage from the date of the mortgage until actual payment, both because such rate is so reserved and made payable by the mortgage and because the evidence shows that, subsequent to the expiration of the term for payment fixed by the mortgage, the plaintiffs agreed to pay such rate if the immediate payment of the mortgage money was not enforced, and because, in any event, the defendants would be entitled to interest at the rate reserved in the mortgage as damages for breach of contract in not paying the same as therein reserved.

2nd. On the ground that the plaintiffs, other than

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Alexander Grant, have no interest in the policies, and that the said Alexander Grant is precluded from redeeming them by his contract.

3rd. Because the evidence shows that, as between the parties to the action, the mortgage to the Canada Life Assurance Company is still unsatisfied, and that the policies in question are held by the defendants as security therefor.

This appeal having come on to be heard before the Chief Justice of the Common Pleas Division that learned judge, on the 27th September, 1889, gave judgment dismissing the appeal with costs. From this order the appellants then appealed to the Court of Appeal, by which latter court the appeal was also dismissed with costs. From this last order the present appeal has been brought.

The declaration of 2nd August, 1877, made by Alexander Grant by endorsement on the policies, clearly had the effect attributed to it by the referee in his report of vesting the policies and the monies thereby assigned absolutely in the respondents other than Alexander Grant in the event, which has occurred, of Mrs. Grant's death. The original enactment which was in force at the date of the endorsed declaration, and of which sec. 5 of ch. 136 of the Revised Statutes of Ontario, 1887, is a reproduction, provides that such a declaration shall be deemed a trust for the children according to the interest expressed or declared, and that so long as any object of the trust remains, the money payable under the policy shall not be subject to the control of the father or his creditors, or form part of his estate when the sum secured by the policy becomes payable. It follows from this that no dealings with the policies by Alexander Grant and his wife subsequent in date to the 2nd of August, 1877, can in any way prejudice or affect the rights of their children,

the other respondents, and that in this respect the finding of the referee is unimpeachable. Therefore, as against the respondents other than Alexander Grant, the appellants are not entitled to a charge upon these policies more extensive than that which was imposed by the mortgage of the 13th of June, 1877, in favor of the Canada Life Assurance Company, and all charges and dispositions of the policies by Alexander Grant subsequently made are inoperative and void as against the respondents other than himself. The last named parties were, therefore, strictly entitled to redeem and have a re-assignment of these policies upon payment to the appellants of the original mortgage debt to the Canada Life Assurance Company of $6,000, together with interest calculated according to the terms of the proviso contained in the mortgage deed, together with any premiums on the policies which may have been paid by the mortgagees, and any proper allowances in respect of costs and expenses—less the amount of payments made by the mortgagors to the original mortgagees, and less a due and ratable proportion of the purchase money received from the sale of the lands and of the payments made by the mortgagors to the appellants. The referee has not, however, taken the account on this principle, but according to the terms of the appellants' mortgage of 1881, which was less favorable to the respondents (other than Alexander Grant) than the principle of accounting to which they were in strictness entitled. They have not, however, appealed from the referee's decision.

The learned Chief Justice of the Common Pleas Division, and the Court of Appeal, rest their respective decisions on the authority of the cases of *Powell* v. *Peck* (1) and *St. John* v. *Rykert* (2), and in the former case of *Powell* v. *Peck* the Court of Appeal followed the deci-

(1) 15 Ont. App. R. 237. (2) 10 Can. S.C.R. 278.

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sion of this court in *St. John* v. *Rykert*. In *St. John* v. *Rykert* it was held that upon a promissory note by which interest was reserved at the rate of 24 per cent. per annum "until paid," interest at the rate so reserved was not recoverable by way of damages after the day of payment, and that from that time interest could only be recovered at the rate of 6 per cent. per annum. This decision was founded on the case of *The European Central Railway Company* (1), and upon the explanation and approval of it by Mr. Justice Fry in the later case of *Popple* v. *Sylvester* (2). See also *re Roberts* (3). Mr. Justice Fry in the last named case distinguished it from that of *The European Central Railway Company* as follows, he says:—

> I ought perhaps to make a remark upon the case of *The European Central Railway Company*. There the covenant being to pay the principal sum with interest until repayment thereof the court held that these words meant until the day fixed for payment, and therefore they held that there was no covenant to pay beyond the day fixed for repayment of the principal. Here I have held that there is an express covenant to continue the payment of interest so long as the security should continue. That case therefore has no application.

The material words of the debentures in question in the case of *European Central Railway Company* were "the principal sum to be paid on the 11th day of October, 1865, and the interest to be payable in the meantime half-yearly until the repayment thereof (4)." Following the case of the *European Central Railway Company* and Mr. Justice Fry's comment on it, it was determined in *St. John* v. *Rykert* that the words "until paid" were equivalent to the expression "until repayment" in the case in the English Court of Appeal. In *Powell* v. *Peck* (5) interest was

(1) 4 C.D. 33.
(2) 22 Chy. D. 100.
(3) 14 Ch. D. 49.
(4) See also *Cook* v. *Fowler*, L. R. 7, H.L. 27; *re Roberts*, 14 Ch. D. 49.
(5) 15 Ont. App. R. 237.

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reserved at 8 per cent. per annum "until payment in full." Proudfoot J. allowed interest by way of damages at 6 per cent. only, after the day fixed for payment, and the Court of Appeal unanimously refused to interfere with his decision, holding that interest was only payable under the contract up to the date fixed for payment of principal, and that the rate of subsequent interest allowed by way of damages was discretionary and ought not to be interfered with. This case is valuable for a very able discussion of the principles involved and a full examination of the authorities contained in the judgments of Mr. Justice Burton and Mr. Justice Osler. For myself, I agree with the rule as to interest by way of damages there laid down except in one respect. I cannot assent to the suggestion of Mr. Justice Osler (not, however, acted on in the case under consideration) that in foreclosure and redemption actions more than 6 per cent. might be given by way of damages. Creditors have it in their power to stipulate for liquidated damages in case of default, and in my opinion if they do not do so they must, in the silence of their contract, be content with the statutory rate of 6 per cent which, in the face of the express enactment of the statute, is not to be exceeded unless a larger rate of subsequent interest is actually contracted for. The defeasance clause in the mortgage of 1881 on the footing of which the referee seems to have taken the account, is that the "mortgage should "be void on payment on or before the 1st of June, "1884, with interest thereon at the rate of 10 per cent. "per annum until such principal and interest shall be "fully paid and satisfied." I entirely agree with the Court of Appeal and the Chief Justice of the Common Pleas Division that no sensible distinction can be made between these words and those used in the English case referred to, and in *St. John* v. *Rykert* and

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Powell v. *Peck*; the words in the last case in particular "until payment in full" being the exact equivalent of those used in the present case.

As I have before indicated, however, the mortgage to the Canada Life Assurance Company of the 31st May, 1877, is that which alone can affect the children of Mr. Grant who claim under the statutory declaration endorsed on the policies, and the defeasance clause in that instrument is expressed even more strongly in favor of the respondents than that in the appellants' own mortgage. In this first mortgage the proviso reads: "Provided this mortgage to be void on payment of $6,000 with interest at 8 per cent., as follows: the said principal sum of $6,000 at the expiration of one year from the date hereof, with interest in the meantime payable half-yearly." The words, "in the meantime," here used, bring this case exactly within the terms of the debentures in the case of *The European Central Railway Company*, and are conclusive to show that there was no contract to pay interest ultra the day fixed for payment of the principal.

The case before us is, therefore, a much stronger one for restricting the recovery of interest at the stipulated rate to the day fixed for payment of the principal than any up to this time before the Ontario courts.

Since the foregoing portion of this judgment was written my attention has been called by the appellants' counsel to the case of *Mellersh* v. *Brown* (1). I have read the report of that case, and after the most careful and attentive consideration I have been able to give it it appears to me that so far as it has any bearing at all on the present case it is an authority for the respondents rather than for the appellants. The principal question in *Mellersh* v. *Brown* was whether the mortgagee of a reversionary interest

(1) 45 Ch. D. 225.

in personal property was to be restricted to a recovery of arrears of interest for six years in analogy to that provision of the statute of limitations which prescribes that in the case of money charged on land the mortgagee or chargee shall be limited to six years' arrears. It was held that no such analogy could prevail, a decision which has no application whatever to the question we have to deal with in the present appeal. There is nothing in the judgment in this case of *Mellersh* v. *Brown* touching the question raised in the appeal before us beyond this : The learned judge who decided that case, Mr. Justice Kay, held that interest subsequent to the day fixed for payment, and, therefore, recoverable only by way of damages, was to be at the rate of 5 per cent., not, however, because that was the rate reserved by the mortgage deed, but because it was the usual and current mercantile rate of interest. So far, therefore, the case is a strong authority for the respondents here. In England there is no statutory provision as to the rate of interest, except as to judgment debts which, by statute 1 & 2 Vic., c. 110, sec. 17, are to bear interest at 4 per cent. per annum. Here, however, we have the statute (now R.S.C. c. 127, sec. 2) fixing the rate of interest in all cases where interest is recoverable, and where by the contract a rate is not expressly stipulated for, at 6 per cent. per annum. The words of this enactment are clear :

> Whenever interest is payable by agreement of the parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be six per cent. per annum.

It follows that interest recoverable by way of damages in this country cannot exceed a yearly rate of six per cent.

Further, this case of *Mellersh* v. *Brown* is an authority, if any can be required in addition to the cases before cited, that when by the contract interest is stipulated

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for up to a certain day fixed for payment of the principal the contract is not to be considered as providing by implication for the payment of subsequent interest at the same rate.

It is true that the judgment in the case of *Mellersh* v. *Brown* contains certain dicta from which it might, perhaps be inferred that the rule restricting subsequent interest to the current mercantile rate would not apply to a suit for redemption, and the learned judge certainly does quote the dictum of Lord Justice Cotton in *re Roberts* having reference to the same point. That, however, can have no application in the present case for the reason already mentioned, that we are here bound by a statute which prescribes an absolute rate for such cases which cannot be exceeded. Further, the case of *Cook* v. *Fowler*, the appeal in which embraced two causes one of which was a redemption suit, and the note to *Mounson* v. *Redshaw* (1) seem to have escaped observation. According to the last of these authorities the rule that interest *post diem solutionis* is recoverable only by way of damages is said to apply as well to money secured by a mortgage deed as to other contracts reserving interest payable at a day certain; and it results from *Cook* v. *Fowler* that no distinction is to be made between redemption suits and actions or proceedings instituted by the creditor for the recovery of the debt. And in the face of the well established principle that the price of redemption is to be the same in a redemption as in a foreclosure suit (2), it would be difficult if the case turned on that to maintain that there was any foundation for the distinction suggested.

(1) 1 Wms. notes to Saunders p. 205.

(2) Coote on Mortgages, 5 Ed. 1102; Fisher on Mortgages, 3 Ed. 1037; *DuVigier* v. *Lee*, 2 Hare 326; *Watts* v. *Symes*, 1 DeG. M. & G. 240; *Cook* v. *Fowler*, L.R. 7. H.L. 27; *Walker* v. *Bernard*, 2 Gr. 366; *Hanson* v. *Keating*, 4 Hare 6; *Sober* v. *Kemp*, 6 Hare 160; *Neesom* v. *Clarkson*, 4 Hare 97.

It is sufficient, however, for the present purpose, to say that in the Province of Ontario the rate of subsequent interest recoverable by way of damages is fixed by the statute at six per cent., and that that rate cannot therefore be exceeded.

The appeal must be dismissed with costs.

FOURNIER J.—Concurred.

GWYNNE J.—I only add in concurrence with this judgment of Mr. Justice Strong that it is, in my opinion, too plain to admit of any argument to the contrary that there is no covenant in the mortgage in question for payment of any interest beyond the day named in the proviso for avoiding the mortgage by payment of the principal, and that, therefore, beyond that day interest given as damages must be governed by the statute referred to by my brother Strong.

PATTERSON J. concurred.

Appeal dismissed with costs.

Solicitors for appellants: *Delamere, Reesor, English & Ross.*

Solicitors for respondents: *Beck & Code.*