THE CANADIAN MORTGAGE INVESTMENT COMPANY (PLAINTIFFS) ..... APPELLANTS;

AND

W. F. CAMERON (DEFENDANT) ..... RESPONDENT.

1917

*May 8.
*June 22.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA.

Statute — Application — "Interest Act" — Mortgage — Blended payments—Statement—Rate of interest—R.S.C. [1906] c. 120, s. 6.

Section 6 of the the "Interest Act" (R.S.C. [1906] ch. 120) provides that "whenever any principal money or interest secured by mortgage on real estate is, by the same made on the sinking fund plan, or any plan under which the payments of principal money and interest are blended * * * no interest whatever shall be * * * recoverable * * * unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon calculated yearly or half-yearly not in advance."

Held, Davies and Idington JJ. dissenting, that the provisions of this section are complied with if the facts stated in the mortgage shew the amount of the principal and the rate of interest calculated as required; a special statement, complete in itself, of such amount and rate is not essential.

Therefore, where the mortgagor covenants to pay the principal and interest in ten half-yearly payments, and to pay interest on the principal, or so much thereof as remains due, at the rate of ten per cent. per annum and the same rate on any sum in arrear, the mortgagee is entitled to the interest.

Judgment of the Appellate Division, 33 D.L.R. 792, ([1917] 2 W.W.R. 18), affirming that at the trial (32 D.L.R. 54, 10 West. W.R. 959), reversed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Alberta (1), affirming by an equal division of opinion, the judgment at the trial (2), in favor of the defendant.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 33 D.L.R. 792; [1917] 2 W.W.R. 18.

(2) 32 D.L.R. 54; 10 West. W.R. 959.

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Sections 6 and 7 of the "Interest Act" (R.S.C. [1906] ch. 120) provide that:—

6. Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement shewing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance. R.S., ch. 127, sec. 3.

7. Whenever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shewn in such statement. R.S., ch. 127, sec. 4.

The mortgage in question in this case contains the following covenant by the mortgagor.

"First: That he will pay to them, the said mortgagees, the above sum of one thousand four hundred dollars and interest thereon at the rate hereinafter specified in gold or its equivalent at the office of the said mortgagees at the City of Toronto, in the Province of Ontario, as follows: That is to say, in instalments of one hundred and seventy-nine 90/100 dollars half-yearly on the 24th days of June and December in each year until the whole of said principal sum and the interest thereon is fully paid and satisfied, making in all ten half-yearly instalments. The first of said instalments to become due and be payable on the 24th

of December, 1907. All arrears of both principal and interest to bear interest at ten per centum per annum as hereinafter provided.

"Secondly: That he will pay interest on the said sum or so much thereof as remains unpaid at the rate of ten per centum per annum by half-yearly payments on the twenty-fourth days of December and June in each and every year until the whole of the principal money and interest is paid and satisfied, and that after maturity interest shall accrue due at the rate aforesaid from day to day, and that interest in arrear, whether on principal or interest, and all sums of money paid by the mortgagees under any provision herein contained or implied or otherwise, shall be added to the principal money and shall bear interest at the rate aforesaid, and shall be compounded half-yearly, a rest being made on the twenty-fourth days of the months of December and June in each year until all such arrears of principal and interest are paid; and that he will pay the same and every part thereof on demand."

The only question for decision was whether or not this covenant contained the statement required by section 6. The trial judge held not and there being an equal division of opinion in the Appellate Division his judgment stood affirmed.

Nesbitt K.C. and *Ford K.C.* for the appellants, referred to *Credit Co.* v. *Pott* (1), at page 299; *Canadian Mortgage Investment Co.* v. *Baird* (2); *Colonial Investment Co.* v. *Borland* (3), at pages 97-8; *Biggs* v. *Freehold Loan Co.* (4).

G. F. Henderson K.C. for the respondent.

(1) 6 Q.B.D. 295.
(2) 30 D.L.R. 275; 10 West. W.R. 1195.
(3) 5 Alta. L.R. 71.
(4) 31 Can. S.C.R. 136.

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THE CHIEF JUSTICE.—This appeal was argued at the same time as the appeal from the Appeal Court of the Province of Manitoba of *Standard Reliance Mortgage Corporation* v. *Stubbs*. The question for determination in each case turns upon the construction to be put upon the "Interest Act" (R.S.C. 1906, ch. 120). Some minor objections to the judgment under appeal were taken by the appellant in its factum, but not pressed at the argument.

In the Manitoba case the defendant pleaded that under the provisions of section six of the "Interest Act," no interest was recoverable under the mortgage given by him and judgment was given in his favour on this issue. In the present case this defence was not pleaded at all, but at the conclusion of the trial leave was given to amend by pleading the statute. If the statement of defence was ever amended, it does not so appear on the record. I am disposed to think that leave ought not to have been given to make such an amendment, but it is unnecessary to decide this point in view of the conclusion which I have reached that in this as in the Manitoba case the requirements of section six of the statute have been sufficiently complied with.

I have in the Manitoba case sufficiently set forth my views of what, generally speaking, are the requirements of the statute and it is unnecessary to repeat them here. As I pointed out, however, it must depend upon the terms of the mortgage in each case whether or not it fulfils the conditions imposed by the statute.

The mortgage deed to be construed in the Manitoba case contains the provision:—

"It is further agreed between me and the said mortgagees that the principal of $700 and the rate of interest chargeable thereon is 10% per annum."

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In the mortgage given by the respondent to the appellant, the information required to be given has to be sought first in a statement appearing on the face of the deed that the principal sum lent is $1,400, and, secondly, in the covenants of the respondent to pay the said sum of $1,400 and interest thereon at the rate of 10% per annum in half-yearly instalments of $179.90 on the days therein mentioned. This in my opinion sufficiently affords the information called for by section six. In this, as in the Manitoba mortgage, it clearly appears in the deed what is the amount of the principal money advanced and the rate of interest chargeable thereon calculated as provided by section six.

The appeal will be allowed and the judgment varied by allowing the appellant interest upon the mortgage. The appellant having substantially succeeded in its claim is entitled to the costs of the action and the appeal. The respondent will have the costs of the counterclaim.

DAVIES J. (dissenting)—The substantial question arising on this appeal is as to the proper construction of sections 6 and 7 of the "Interest Act," relating to mortgages of real estate in cases where the principal and interest

are made payable on the sinking fund plan or any plan in which the payments of principal money and interest are blended, etc.

These sections read as follows:—

Section 6.—Whenever any principal money or interest secured by mortgage or real estate is, by the same, made on the sinking fund plan, or any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement shewing the amount of such

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principal money and the rate of interest chargeable thereon calculated yearly or half-yearly, not in advance.

Section 7.—Whenever the rate of interest shewn in such statement is less than the rate of interest which whould be chargeable by virtue of any other provision calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shewn in such statement

The sections are carelessly drawn, and the language used somewhat ambiguous. It is not to be wondered at therefore that there has been much difference of judicial opinion as to their meaning.

I frankly confess myself I entertained much doubt as to their meaning alike during the argument and subsequently when discussing the sections with my colleagues.

I have, however, reached the conclusion, after consideration, that the majority judgment of the court of Alberta in this case and the unanimous judgment of the Appeal Court of Manitoba in the appeal case of the Standard Reliance Mortgage Company against Stubbs, the arguments in which appeals were heard by us together, were correct and that both appeals should be dismissed.

In the case of the Canadian Mortgage Investment Company, I concur in the reasoning of Mr. Justice Ives with whom Stuart J. concurred, confirming that of Chief Justice Harvey, the trial judge.

It seems to me that any other conclusion than that reached by them would render the sections valueless as a protection to the borrower, and defeat their clear object, intent and purpose.

I construe the sixth section as requiring in mortgages on any plan under which the payments of principal money and interest are blended that the "statement" called for by the section should shew plainly and separately the amounts of the principal and the interest

respectively contained in each blended stipulated payment with the rate at which the interest has been calculated and, as the section says,

calculated yearly or half-yearly, not in advance.

Now, it is absurd, to my mind, to talk about the *rate of interest* being "calculated yearly or half-yearly." What it must mean is that the statement must shew the interest calculated yearly or half-yearly but "not in advance" in each blended payment, and the rate of interest, so that the mortgagor might test its correctness.

I cannot accept the argument that section six requiring the "statement" referred to is complied with if the facts required to be shewn in it can be gathered from different parts of the mortgage. It must be, in my judgment, complete in itself—and one shewing the essential facts, principal, interest and rate of interest on each blended payment.

Section seven refers specifically to the "statement" required by section six in the absence of which

no interest whatever shall be chargeable.

It contemplates that there may be a difference between the rate of interest shewn in the statement and the rate stipulated for in

any other provision, calculation or stipulation in the mortgage,

and provides that in such case there shall not necessarily be a forfeiture of all interest but that no greater rate than that shewn in the "statement" required by the sixth section shall be recoverable.

The two sections, when read together, confirm me in the opinion that the mortgagor was not to be left to infer or gather from the "other provisions, calculations or stipulations" of the mortgage how the blended payments he was called upon to make were

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made up and how much was principal, how much interest and at what rate the latter was calculated, but, that the statement required by section six should furnish him with all that information, and that in the absence of any such statement no interest could be recovered and that no other provision in the mortgage however express it might be could make him liable for a higher rate of interest than the statement shewed.

Putting the best construction I can upon the admittedly ambiguous language used in the section, I can reach no other conclusion than the one I have attempted to express, that the "statement" required by the sixth section is one shewing separately in each blended stipulated payment how much of principal and how much of interest the blended payment comprised, and the rate of interest at which the calculation was made,

yearly or half-yearly, not in advance.

Otherwise, in my judgment, the whole object, intent and purpose of the sections are defeated.

We are not to speculate, of course, as to what were the objects, intents and purposes of the enactment but to construe its language. When that language is ambiguous and the object, intent and purpose of the enactment are plain, as I think they are in the sections under consideration, we are justified in putting such a construction upon the ambiguous language as will give effect to and not defeat such object and purpose. I have endeavoured to do so in this case without doing violence to the language of the Act.

I would dismiss the appeal with costs.

IDINGTON J. (dissenting) — Contrary to my first impression, I have reached the conclusion that the "Interest Act" required something more than is to

be found in the covenants and other provisions in the mortgage in question, which clearly falls within section 6 of said Act, and in default thereof appellant cannot recover interest.

I suspect there never was a mortgage but contained statements of fact which, when coupled with the other fact, inevitably well known to the mortgagor, of the amount advanced, would enable him by what are called, perhaps ironically, simple questions of computation to ascertain

> the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance.

The legislation in question seems to have been designed for the protection of those who perchance by improvidence or want of knowledge of those simple methods of calculation were incapable of determining offhand the meaning of the facts presented to them in such an instrument as this in the way of covenants or other provisions and thus needed to have resort to a simple statement of fact declaring

> the amount of such principal money and the rate of interest chargeable thereon calculated yearly or half-yearly not in advance.

It was clearly intended that the borrower need not concern himself further with regard to the rate of interest and that if there were no such simple method provided, no interest could be recovered.

And if there were other stipulations in the mortgage in conflict therewith then that no greater rate of interest should be recoverable than shewn in such statement is provided by section 7.

The object of Parliament plainly was to remedy an abuse that had existed and could be successfully continued if resort had to be had to complicated calculations to determine the basic facts of what was

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implied in the blended periodical instalments of principal and interest.

As I agree in the reasoning of the Chief Justice and Mr. Justice Ives in the Court of Appeal, I need not elaborate.

I do not think we should interfere with the questions of costs or damages as disposed of in said court.

I think the appeal should be dismissed with costs.

DUFF J.—This appeal and that of *Standard Reliance Co.* v. *Stubbs* were heard together and the disposition of them must, in the main, be governed by the same considerations. Before proceeding to discuss the statute upon which the respondents rely in both cases I cite some words of Lord Haldane in *Vacher & Sons* v. *London Society of Compositors* (1), at page 113:—

> My Lords, we have heard, in the course of this case, suggestions as to the merits of the conflicting points of view and as to the reasonableness, in interpreting the language of Parliament in the "Trades Disputes Act" of 1906, of presuming that the Legislature was acting with one or other of these points of view in its mind. For my own part, I do not propose to speculate on what the motive of Parliament was. The topic is one on which judges cannot profitably or properly enter. Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who, in making the laws have to endeavour to interpret the desire of the country, they are in danger of going astray in a labyrinth to the character of which they have no sufficient guide. In endeavouring to place the proper interpretation on the sections of the statute before this House sitting in its judicial capacity, I propose, therefore, to exclude consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole, before attempting to construe any particular section. Subject to this consideration, I think that the only safe course is to read the language of the statute in what seems to be its natural sense.

It is in the spirit of these observations that the provisions of the "Interest Act," which have been the

(1) [1913] A.C. 107.

subject of the discussion on the appeals, must be examined.

These provisions are as follows:—

Sec. 6. Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payment of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement shewing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance: R.S., ch., 127, sec. 3.

Sec. 7.—Whenever the rate of interest shewn in such a statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shewn in such statement: R.S., ch., 127, sec. 4.

I can discover no ground for ascribing to the word "statement," in these sections, any unusual meaning. If the facts which the statute requires to be shewn are stated, then I think the requirement of section 6 is complied with.

I find no difficulty in applying the words of section 6 according to their natural meaning, to the mortgages before us.

First, as to the respondent Cameron's mortgage. The two important paragraphs are these:—

First: That he will pay to them, the said mortgagees, the above sum of one thousand four hundred dollars and interest thereon at the rate hereinafter specified in gold or its equivalent at the office of the said mortgagees at the city of Toronto, in the Province of Ontario, as follows: That is to say, in instalments of one hundred and seventy-nine 90-100 dollars half-yearly on the twenty-fourth days of June and December in each year until the whole of the said principal sum and interest thereon is fully paid and satisfied, making in all ten half-yearly instalments. The first of said instalments to become due and be payable on the 24th of December, 1907. All arrears of both principal and interest to bear interest at ten per centum per annum as hereinafter provided.

Secondly: That he will pay interest on the said sum or so much thereof as remains unpaid at the rate of ten per centum per annum

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by half-yearly payments on the twenty-fourth days of December and June in each and every year until the whole of the principal money and interest is paid and satisfied, and that after maturity interest shall accrue due at the rate aforesaid from day to day, and that interest in arrear, whether on principal or interest, and all sums of money paid by the mortgagees under any provision herein contained or implied or otherwise, shall be added to the principal money and shall bear interest at the rate aforesaid, and shall be compounded half-yearly, a rest being made on the twenty-fourth days of the months of December and June in each year until all such arrears of principal and interest are paid; and that he will pay the same and every part thereof on demand.

Now these two paragraphs state with perfect clearness that each of the stipulated half-yearly instalments contains a sum charged for interest at the rate of 10% payable half-yearly and that interest, at this rate, is chargeable under the mortgage and payable at such intervals. That, I think, is a sufficient compliance with the statute.

As to the respondent Stubbs' case, the stipulation to be considered is as follows:—

In consideration of the sum of seven hundred dollars lent to me by The Sun and Hastings Savings and Loan Company of Ontario (who and whose successors and assigns are hereinafter included in the expression mortgagees), the receipt of which I do hereby acknowledge, covenant with the mortgagees that I will pay to the said mortgagees the above sum of seven hundred dollars in gold or its equivalent, together with interest thereon as hereinafter provided, at the offices of the said mortgagees in the city of Winnipeg, in the Province of Manitoba, or in the city of Toronto, in the Province of Ontario, said principal and interest being payable as follows: The sum of eight dollars and seventy-five cents on the first Monday of each month for the period of one hundred and thirty-five months next ensuing, the first of such monthly instalments to become due and payable on the first Monday of January, A.D. 1903, together with all sums, penalties and forfeitures which may become due or payable to the mortgagees by me by virtue of the by-laws of the said mortgagees.

Together with the further covenant in the following words:—

And it is further agreed between me and the said mortgagees that the principal is seven hundred dollars and the rate of interest chargeable thereon is ten per cent. per annum as well after as before default.

These two stipulations contain an explicit statement of the rate of interest chargeable; the rate is declared to be 10% and I think it is stated with sufficient clearness that is it to be payable annually.

ANGLIN J.—What I have stated in *Standard Reliance Mortgage Company* v. *Stubbs* disposes of the main question on this appeal—that as to the mortgagee's right to recover interest. The mortgage states that the sum advanced is $1,400 and by the second covenant the mortgagor agrees to pay thereon or on so much thereof as remains unpaid, interest at the rate of ten per centum per annum by half-yearly payments. This I regard as a statement meeting the requirements of section 6 of the "Interest Act."

Except an item of $200 allowed for damages for refusal to discharge the mortgage, several grounds of appeal taken by the appellant involving comparatively small amounts were not pressed by Mr. Nesbitt. In view of the disposition in its favour of the question as to its right to recover interest the appellant is also obviously entitled to relief as to the $200 item.

The appellant is entitled to recover from the respondent its costs in all the courts.

Judgment should be entered in the usual form for the taking of the mortgage accounts.

Appeal allowed with costs.

Solicitors for the appellants: *Emery, Newell, Ford, Bolton & Mount.*

Solicitor for the respondent: *John R. Lavell.*