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*May 8, 9.
*June 22.

STANDARD RELIANCE MORTGAGE CORPORATION (DEFENDANTS) ..... APPELLANTS;

AND

LEWIS ST. GEORGE STUBBS (PLAINTIFF) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA.

*Statute—"Interest Act" — Mortgage — Blended payments — Statement— R.S.C. [1906] c. 120, ss. 6 and 7.*

A mortgage on real estate contained a covenant by the mortgagor to pay the combined principal and interest by monthly instalments and also provided that "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."

*Held,* reversing the judgment of the Court of Appeal (27 Man. R. 276), Davies and Idington JJ. dissenting, that these provisions constituted a statement of the amount of the principal and interest sufficient to satisfy the requirements of section six of the "Interest Act."

APPEAL from a decision of the Court of Appeal for Manitoba (1), affirming the judgment at the trial in favour of the plaintiff.

This appeal raises the same question as was raised on the preceding case of *Canadian Mortgage Investment* v. *Cameron*. The mortgagor sued for a declaration that no interest could be recovered on the mortgage debt.

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

(1) 27 Man R. 276.

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*Lafleur K.C.* and *Jones* for the appellants.

*Bergman* for the respondent.

THE CHIEF JUSTICE.—The "Interest Act" (R.S.C. 1906, ch. 120) in part represents the statute 43 Vict. ch. 42. Until the year 1911, no case appears to have come before the courts depending upon this statute. In that year there was one in the court of the Province of Alberta and there were two last year. These three Alberta cases and the one now under appeal are the only cases in which the courts have been called on to construe the Act during the 37 years that have elapsed since it was passed.

In my opinion, the difficulties that have now been suggested regarding the requirements of the Act are largely imaginary and certainly very exaggerated.

Section 6 of the Act is as follows:—

> 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.

The purposes of this section and what it calls for are, I think, very fairly stated by Mr. Justice Walsh in the latest judicial pronouncement on the subject given on the appeal of the case of *Canadian Northern* (reported in error "Mortgage") *Investment Company* v. *Cameron* (1). He says:—

> The evil which the section aims to prevent is the imposition of an extortionate rate of interest through the medium of blended payments of principal and interest. Under this system without the protection which this section affords a highly usurious rate of interest might be

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

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wrapped up in these innocent-appearing blended payments without the slightest suspicion on the part of an ignorant or careless borrower that he was being made the victim of it. And so parliament stepped in and decreed that such a mortgage should itself tell the mortgagor exactly how much of the aggregate of these blended payments represents principal and exactly the rate at which the interest included in them calculated yearly or half-yearly not in advance is charged under penalty of the loss of all interest for breach of this direction. I think that if such a mortgage gives all the information to which the mortgagor is entitled under the statute the exact form of words which it uses to convey it to him is absolutely immaterial. A statement is something which is stated. Surely if there is to be found within and as part of the mortgage something which states the amount of the principal money and the rate of interest chargeable thereon calculated in one of the methods prescribed by the section the mortgage does contain a statement of these things. The main thing, in fact the only thing needed is to give to the mortgagor the information to which the section entitles him and I think he can be given it just as effectually through the medium of his own covenants as he can by tabulating it in a formal statement.

If the blended payments of principal and interest amount to more than the principal and interest at the rate stated, then, by section 7 no greater interest is recoverable than the rate stated.

The meaning of the requirement in section 6 that the mortgage should shew

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

is not perhaps altogether clear.

I have read very carefully all the judgments in the decided cases but I have failed to find in them any satisfactory explanation of the meaning of the provision though there are some conclusions as to what it does not mean. It is pointed out that "calculated" is not the same as "payable" but in the respondent's factum it is said:—

> Appellants' contention is that the interest here is payable monthly. Interest at the rate of 10 per cent. per annum payable monthly is more than 10 per cent. per annum.

Yet the Act cannot have intended to prohibit any such monthly payments of blended principal and interest.

I do not know what interpretation has been generally adopted as shewn by mortgage forms in common use in the country, but in the appeal to this court from the Ontario Appeal Court of the case of *Biggs* v. *The Freehold Loan & Savings Company* (1), the "Interest Act" was incidentally considered through the use that had been made of a printed form adapted to a loan repayable in one sum with interest in the meantime, and we read:—

> Then follows, in the printed form, a clause which is required by the statute to be inserted in every mortgage wherein the principal and the interest secured by the mortgage are blended together and made payable by instalments. It is as follows:—
>
> "The amount of principal money secured by this mortgage is $20,000 and the rate of interest chargeable thereon is 9 per cent. per annum *payable* not in advance."

It must be observed that whatever interpretation is put upon the words "calculated yearly or half-yearly not in advance," the difference in the *rate* chargeable would be only fractional, and, I think, it may well be that if all the information required to be given to the mortgagee is, as I think it is, that set forth by Mr. Justice Walsh then the statute is satisfied without absolutely exact figures which the difference in permissible schemes of repayment renders practically impossible to state. The statement of the rate is, I think, only required for the purpose of a standard of comparison.

The effect of judgments like that under appeal leads to extravagant results. These may sufficiently be seen summed up in a note to the report of this case in 32 D.L.R., at p. 60. The learned commentator concludes that,

> in a mortgage providing for periodical payments of blended amounts, there shall be a calculation in figures shewing how each amount is con-

(1) 31 Can. S.C.R. 136.

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stituted by distinguishing principal and interest and stating that the interest is calculated yearly or half-yearly, as the case may be, at a named rate. No other method would enable an illiterate or inexperienced man to do what the mortgagor, it is said, should be enabled to do, that is, amongst other things, be able afterwards to check over the amounts and see how he stands.

Now, in the first place, the Act says nothing about enabling illiterate or inexperienced men to understand a calculation which requires a skilled actuary to understand and is beyond the understanding of the majority of even educated men, and nothing about keeping him afterwards informed as to how he stands. But further, it hardly seems worth while blending the principal and interest if in the same deed they have to be separated and so stated in respect of each payment. Indeed, it would seem doubtful whether they could then be called blended payments at all, and as it is only with such blended payments that the Act is dealing, it might then have no application to the mortgage at all.

I think it is perfectly certain that it was never in contemplation that the Act should impose, in respect of all such mortgages as it provides for, an obligation to set forth all these calculations, and equally certain that it does not do so.

It is not necessary to consider the decided cases in detail because each case must depend to a certain extent on the wording of the mortgage deed therein called in question.

In the present case, I think the requirements of the Act are satisfied by the agreement between the parties expressed in the mortgage, "that the principal is $700 and the rate of interest chargeable thereon is 10% per annum."

The statement of claim asks for declarations that no interest whatever is payable on the mortgage and

that the same has been satisfied. As this claim fails, the action must be simply dismissed.

The appeal will therefore be allowed and the action dismissed, the costs of the appellant both in this court and the courts below to be paid by the respondent.

DAVIES J. (dissenting)—In the case of *Canadian Mortgage Investment Company* v. *Cameron*, which was argued with this appeal, I have filed my reasons for dismissing that appeal and would refer to them as my reasons for dismissing this appeal with costs.

IDINGTON J. (dissenting)—This case was argued together with the case of the *Canadian Mortgage Investment Company* v. *Cameron*, raising the same question as to the requirements of the "Interest Act," for a specific statement in the mortgage, in which payments of principal and interest are blended.

Of the respective mortgages in question that in this case is to my mind far more vicious on its face in disregard of the Act, than those in the other case.

Indeed its provisions bring to mind some of the very abuses which I have no doubt led to the imperative enactments now in question.

The mortgagor in this case covenanted as follows:—

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;

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and then after some pages of other stipulations it contains this:

> 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,

which is followed by a provision for the said payments of one hundred and thirty-five monthly instalments liquidating the debt and otherwise.

And then this curious provision follows, *i.e.*:—

> And for all purposes of this mortgage and for enforcing all rights and remedies of the respective parties thereunder, whenever it shall be necessary to ascertain the amount of principal or interest remaining due or in arrears, the same shall be ascertained by the actuary of the said mortgagees, and his certificate of the fact required shall be final and conclusive between the parties hereto and those claiming through or under them.

As the by-laws of the company to which the mortgage was given and of which appellant is only assignee, are not before us, the penalties and forfeitures covered by the foregoing covenant must be matter of speculation.

Its nature, however, I regret to say, reminds me of the old time abuses to which I have referred.

And the lastly quoted clause is not, I most respectfully submit, as contended by counsel for appellant, merely a collateral matter, but of the very substance of the covenant which is for payment of principal "with interest thereon as hereinafter provided," limited only by the determination of the mortgagee's actuary.

I think that these provisions must be taken as a whole when we are asked to find therein a substitute for the specific requirements of the "Interest Act," demanding that simplicity of statement I have adverted to in my opinion in the other case which I need not repeat here.

They seem like a determination on the part of the draftsman to circumvent the Act rather than an intention to submit to it.

I agree with the reasoning in the courts below and need not repeat what I said in the other case.

I think the appeal should be dismissed with costs.

DUFF J.—See ante page 418.

ANGLIN J.—The purpose and effect of the concluding clause of section 6 of the "Interest Act" (R.S.C. 1906, ch. 120) are certainly not as clear as could be desired. Consideration of its terms, however, has led me to the conclusion that it does not prescribe that the mortgage shall set forth the calculation by which the several blended payments or instalments of principal and interest are computed, or that it shall be shewn what amount of principal and what of interest is comprised in each such payment or instalment. What the prescribed statement is to shew is (*a*) "the amount of such principal money advanced," *i.e.*, the amount of the principal money secured which has been advanced and is to be repaid in the blended payments; (*b*) "the rate of interest chargeable thereon," *i.e.*, the rate at which the interest to be paid is to be computed. (*c*) The section further prescribes that such interest shall be "calculated yearly or half-yearly not in advance," and that the "statement" shall shew that it is intended to be so computed. The adjective "chargeable" clearly relates to and qualifies the word "rate." The participle "calculated" equally clearly relates to and qualifies the word "interest." It cannot apply to the word "rate"; a "rate of interest" is not "calculated." But the "rate" is distinctly affected by the frequency with which it is calculated or com-

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puted and interest in advance is appreciably more avantageous to the lender than interest not in advance. Ten per cent. per annum computed monthly is a rate materially higher than ten per cent. per annum computed yearly. There is nothing in the statute which precludes requiring payment by quarterly, monthly or even weekly instalments of blended principal and interest. But however frequently the payments are to be made, not only must the rate of interest chargeable be stated, but it must also appear that such interest is to be "calculated" (*i.e.*, computed) "yearly or half-yearly and not in advance." If the rate be stated to be say 10% per annum, although this is not an explicit statement that the interest is to be computed yearly, such a computation is implied, and I should regard it as a sufficient statement to that effect and as precluding the computation of interest on any other than a yearly basis. So too with the provision "not in advance." Unless the contrary is expressly stipulated, I would read a reservation of interest at 10% per annum as precluding computation of interest in advance. That the interest in such a case is to be computed "not in advance" is, I think, the reasonable implication from the stipulation. The statement in the mortgage before us that,

> the rate of interest chargeable thereon (*i.e.*, on the principal of $700) is 10 per cent. per annum as well before as after default

is, in my opinion, a sufficient statement of the rate of interest and that it is to be calculated yearly and not in advance.

Nor do I think it at all necessary that the statement required by section 6 should appear otherwise than in the expression of the consideration, in the proviso for redemption, or in the covenant for payment. Neither

is its form material if the information is given which the statute prescribes.

If the blended payments or the instalments stipulated in fact amount to more than the principal money and interest calculated at the rate and on the basis so stated, section 7 provides the mortgagor's remedy by restricting the mortgagee's right of recovery to the amount secured according to such statement. If the sum of the blended instalments amounts to less than the principal and interest secured by the mortgage according to the statement, and the mortgagee has agreed to be redeemed on payment of the specified instalments, it may be that he would have difficulty in seeking to avail himself of the statement to enforce payment of any larger sum. But any error in the computation of the blended payments or instalments does not affect the sufficiency of the statement to meet the requirements of the statute They are satisfied if the mortgage shews the amount of principal money advanced and to be repaid, the rate of interest per annum which it is to bear and, if it be so intended, that such interest is to be calculated half-yearly. A stipulation for interest to be computed in advance or more frequently than half-yearly is altogether forbidden; a statement shewing that interest is to be computed or is to be calculated in advance would not in either case render such a calculation legal; no interest whatever would be "chargeable, payable or recoverable," on such a mortgage.

One purpose of the statute is to protect the mortgagor against committing himself to an obligation to pay a higher rate of interest than he understood would be charged through the concealment of such higher rate in blended payments. This object is accomplished by requiring the statement shewing the

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amount of principal advanced, and the rate of interest, depriving the mortgagee of any right to recover interest at a rate greater than that so shewn, and if the prescribed statement is lacking taking from him all right to recover any interest.

As I said at the outset, the construction of the statutory clause in question is by no means free from difficulty. I fully recognize that different views may be taken of its purpose and its purport. I have merely endeavoured to state them as they present themselves to me.

It follows that in my opinion the demurrer to the statement of claim must be allowed. The appellant is entitled to its costs in all the courts.

*Appeal allowed with costs.*

Solicitors for the appellants: *McAllister & McCallum.*

Solicitors for the respondent: *Rothwell, Johnston, Bergman & McGhee.*