mortgagor could not by any agreement entered into at the time of the mortgage and as part of the mortgage transaction contract away his right of redemption or fetter it in any way by confining it to a particular time or to a particular class of persons (*p*). The principle upon which the court interfered with the contract of the parties was, however, not a rigid one. The equity judges looked, not at what was technically the form, but at what was really the substance of transactions, and confined the application of their rules to cases in which they thought that in its substance the transaction was oppressive. Thus, in *Howard* v. *Harris* (*q*), Lord Keeper North in 1683 set aside an agreement that a mortgage should be irredeemable after the death of the mortgagor and failure of the heirs of his body, on the ground that such a restriction of the right to redeem was void in equity, but he intimated that if the money had been borrowed by the mortgagor from his brother, and the former had agreed that if he had no issue the land should become irredeemable, equity would not have interfered with what would really have been a family arrangement. The exception thus made to the rule, in cases where the transaction includes a family arrangement as well as a mortgage, has been recognized in later authorities (*r*).

4. Once a mortgage always a mortgage.—The principle that a mortgage could not be made irredeemable was thus limited in early days to the accomplishment of the end which was held to justify interference by equity with freedom of contract. It did not go further (*s*). As established, it was expressed in three ways. The first and most general rule was that if the transaction is one

(*p*) *Mellor* v. *Lees*, 1742, 2 Atk. 494. "It seems that a borrower was such a favourite with courts of equity that they would let him break his contract, and, perhaps, by disabling him from binding himself, disable him from contracting on the most advantageous terms to himself." *Salt* v. *Marquess of Northampton*, [1892] A.C. 1, Lord Bramwell, at p. 19.

(*q*) 1683, 1 Vern. 190, 2 W. & T.L.C. Eq. 11, 18 R.C. 358.

(*r*) *Kreglinger* v. *New Patagonia, etc. Co.*, [1914] A.C. 25, at p. 36; *Stapilton* v. *Stapilton*, 1739, 1 Atk. 2, 1 W. & T.L.C. Eq. 234; *cf.* 2 W. & T. L.C. Eq. 19.

(*s*) The leading case with regard to the principle under discussion is the case of *Kreglinger* v. *New Patagonia, etc. Co.*, [1914] A.C. 25; see, especially, the judgment of Lord Parker of Waddington. See also on the general subject the notes in 2 W. & T.L.C. Eq. 15*ff* to the case of *Howard* v. *Harris*, *supra*.