

MORTGAGE—Continued.

redemption in a mortgage on May 31st, 1884, executed his bond to the mortgagee conditioned to pay him \$2,200 (this being the balance due on the mortgage) in one year, and "in the meantime and until the said sum is fully paid and satisfied, pay interest thereon or upon such part thereof as shall remain unpaid, such interest to be calculated from the first day of June, 1884, at the rate of seven per cent. per annum." In a suit for foreclosure of the mortgage: *Held*, that, assuming that as against the assignee the land was chargeable with the debt and interest according to the terms of the bond the mortgagee was only entitled after the 1st of June, 1885, to the statutory rate of interest. Before the above foreclosure suit was brought the mortgagee recovered judgment against the defendant on the bond. *Held*, that the bond being merged in the judgment, the defendant thereafter could only be charged with the statutory rate of interest on judgment debts, and consequently no higher rate from then could be charged against him in the foreclosure suit. Where defendant appears to a foreclosure suit, the plaintiff cannot have the damages assessed on motion to have the bill taken *pro confesso*. The proper practice in such a case is to have the damages assessed upon a subsequent motion with notice. (See now Order of Court, II. T. 1896, ante, p. 244.) *HANFORD v. HOWARD*241

4. — *Interest—Covenant—Construction.* A mortgage provided for payment of the principal on a certain date, with interest thereon at the rate of 9 per cent., payable annually, and that the same rate of interest should be paid from and after the expiration of the date fixed for payment of the principal until the whole sum was paid, and that overdue interest should bear interest at 9 per cent. per annum. *Held*, that the principal bore interest at 9 per cent. both before and after maturity, and that overdue interest bore interest at 9 per cent. whether it accrued due before or after the maturity of the principal. *KING v. KEITH*538

5. — *Interest—Parol Agreement for Increased Rate.* A parol agreement to increase the rate of interest reserved by a mortgage upon land will not be enforced

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as against the land. *MURCHIE v. THERIAULT*588

6. — *Interest—Conversion into Principal—Assignment of Mortgage.* At the request of the mortgagor the defendant took a transfer of a mortgage and paid off the principal and interest. *Held*, that, in the absence of an agreement, interest could not be charged on the sum paid for interest. *THOMAS v. GIRVAN* (No. 1)257

7. — *Interest—Agreement to Pay Compound Interest—Charge upon Land—Intention.* A. and his wife gave a mortgage, bearing date January 25th, 1867, on land belonging to the former to secure the payment of £332 16s., with lawful interest, on June 1st, 1867, accompanied with A.'s bond in the same terms. In 1875 the mortgage and bond became vested in the plaintiff. On June 12th, 1880, A. executed a bond to the plaintiff, reciting that there was due on the original bond on December 31st, 1879, for principal and interest, \$1,971.90, and providing that, in consideration of time for its payment, annual interest thereon should be paid at seven per cent., and that the annual interest as it accrued due, if it were not paid, should become principal and bear interest as such. In 1867 and 1873 A. acknowledged by memoranda indorsed on the mortgage, the amount due thereon, and in both instances the amount was computed by charging compound interest at six per cent., with yearly rests. On August 18th 1887, the balance due December 31st, 1886, was struck by charging compound interest at seven per cent., with yearly rests, from December 31st, 1879, to the time when the balance stated in the second bond was struck, and an acknowledgment stating the amount due on the mortgage was signed by A. upon the mortgage. In a suit for foreclosure, after A.'s death in 1895, against his widow, to whom the equity of redemption had nominally been assigned by A.: *Held*, that there was evidence of an agreement by A., from the acknowledgments indorsed on the mortgage, to charge the land with the payment of compound interest at six per cent., with yearly rests, up to December 31st, 1886, and that the land was so charged; but that the agreement in the second bond