

continuance of this security upon the said 11 shares under any of the by-laws of the association”

As the interest was always to be calculated on the full \$2,200, although the latter was to be reduced each month by \$11, it follows that the rate of interest charged was actually much greater than 7 1-5 per cent. In view of this, it is contended on behalf of defendant that under the provisions of R. S. C. ch. 127, secs. 3 and 4, embodied in R. S. O. 1897 ch. 205, secs. 21 and 22, the interest should be calculated at only 7 1-5 per cent. on the unpaid principal, and that payments already made should be appropriated on that basis; also that certain amounts charged from time to time by way of “fines” on payments not made at the appointed times, should be disallowed.

In *Lee v. Canadian Mutual Loan Co.*, 3 O. L. R. 191, defendants were, as were the plaintiffs in the present case, incorporated under R. S. O. 1887 ch. 169, and Mr. Justice MacMahon held that sec. 57 of that Act took the mortgage there in question out of the provisions of the Usury Act. The judgment was reversed by the Court of Appeal (5 O. L. R. 471, 2 O. W. R. 370), but on grounds which do not affect the present case. The circumstances were, it is true, in some respects different. The mortgagor gave promissory notes for a loan on his stock, and the mortgage was expressed to be given as collateral security only. The present mortgage is nowhere said to be collateral. I am nevertheless of opinion that it is so in fact, in the same sense and to the same extent as the one there in question. The recital, to which I have already referred, indicates the basis of the whole transaction. The mortgagor has subscribed for stock in the company and has asked the mortgagees to advance to him the par value of his shares, “which the mortgagees have agreed to do upon the terms hereinafter contained.” The loan is primarily an advance by the company to one of its shareholders of the par value of his stock, and the mortgage, though nowhere expressed so to be, is evidently intended to be merely collateral. This disposes of the objection as regards both the rate of interest and the fines. The latter are imposed under by-law No. 6 of the company’s by-laws, which conforms in all respects to sec. 6 of schedule A. to R. S. O. 1897 ch. 205. The mortgagor covenants in the mortgage “to observe and keep the rules and by-laws of the said association which are now and from time to time shall be in force in the said association.” They are moreover, apart even from that, clearly binding on him: