

It was contended that the parties who paid should be relieved from this and that the amounts paid should be credited on the debt.

Sums promised but not paid do not form part of the mortgage-debt, and cannot be charged against the lands, at any rate as against third parties; and it was admitted that the whole equity of redemption has been sold or agreed to be sold under a scheme of subdivision. The only sum not paid seemed to be \$60.

Sections 4 and 5 of the Money-Lenders Act, passed in 1912, now R.S.O. 1914 ch. 175, were relied on. But these sections, which refer to "money lent," do not apply when the mortgage is for the balance of purchase-money. The "cost of the loan" (having regard to the interpretation of that expression) cannot be found excessive or the transaction harsh and unconscionable.

The mortgage bore 6 per cent. interest, and since the war this was below the market rate. The security was vacant land purchased in boom days for subdivision purposes, and now inadequate security. The "bonus" was agreed to by a barrister of experience, and in fact was in one instance suggested by him.

(2) The second contention was, that there was no interest in arrear when the action was begun, in February, 1917, and so the action could not be brought without leave under the Mortgagees and Purchasers Relief Act. Nothing had been paid since the 27th November, 1915, when \$50 was paid, and interest fell due on the 27th December, 1915, and each 6 months thereafter.

All payments made must, in the absence of some appropriation to the contrary, be applied first to discharge arrears of interest and next in discharge of arrears of principal. The creditor by his statement so applied them. What was now contended was, that the creditor must hold money paid in excess of arrears of interest in suspense, and that the debtor could prevent this sum so held being applied on principal in arrear and apply it to meet accruing instalments of interest. There was no such law.

There should be judgment for the plaintiff, with a declaration, if so desired, that credit need not be given for the two sums paid by way of bonus. The account might be as in exhibit 15—eliminating the \$60 item and correcting the computation of interest if any error can be pointed out.

The costs of the action on the notes could not be added as against any third person, and ought not to be included in any personal judgment.

The persons having agreements for purchase should be added, under Rule 490 (2), in the Master's office.

The plaintiff should have the costs of the action.