dantly clear that the government never would, without some extraordinary reason, have appropriated as a glebe a lot which had been occupied and improved, much less where the patent fee had been paid upon it, and not been returned. If such then be the facts here, a strong presumption of mistake arises on the part of the government in issuing this patent. Some facts are clearly established by the evidence, namely, that one French, in 1829, applied to purchase lots 17, 18 & 19; also, as I think, that he paid the patent fees on them; that the patent fee for lot 19 was never returned to him: that he transferred his interest in this lot to Martin McKinnon for valuable consideration; and that McKinnon in 1835 had built a house, and cleared and brought under cultivation sixteen acres, and was then in occupation of the lot. That the government should have granted a lot, so circumstanced as a glebe, was totally contrary to their ordinary practice, and the question is, whether it was not done in error and mistake. If the books were consulted, they shewed that French in 1829 applied to purchase lots 17, 18 & 19; that upon the entry of this application was endorsed a memorandum in pencil, to the effect that it had been cancelled, as it appeared that French had applied only to obtain money for his interest as first applicant; that opposite lots 17 and 18 was an entry that "the certificates of payment of patent fees had issued;" and opposite lot 19 an entry in these words: "Application made to purchase by John French." In 1835 an inspection and return was made of this lot. The return was dated 9th April, 1835, and was in these words: "Martin McKinnon, 19, 9th concession Vaughan, has been 14 years in the country—owned land in Caledon—is now cutting staves—purchased from John French—returned as a glebe. James McLean states that he and J. French applied together, 16th April, 1835."

This return of course negatives the idea of McKinnon being in occupation of the lot. The officer never would have stated concerning the occupant of the lot, merely that he was cutting staves on it. There was enough, I think, in these entries to invite enquiry. The memorandum of French's application to purchase was left standing against lot 19, and the inspecting officer had thought it right to mention McKinnon in connexion with this lot, as he had purchased it from French, and he so stated.

The government, however, appear to have considered that as French's application to purchase had been, as appeared from the pencil memorandum, cancelled, and attaching no importance, under these circumstances to the memorandum opposite lot 19, or to McKinnon's purchase from French, and supposing from the return of the inspecting officer that McKinnon was not in the occupation of lot 19, but was merely cutting staves on it, and was probably living in Caledon, concluded that the lot was vacant, and under this impression granted it as a glebe.

In short, the government had reason to think that French had applied to purchase, but that his application had been cancelled, although the memorandum of it still stood against the lot that he had sold to McKinnon, and that McKinnon was cutting staves; but they were ignorant of the fact that McKinnon had occupied and improved, and was then living on the lot.

It is to be observed that French states that he was deprived of 17 & 18, but not 19, and the evidence seems to countenance this, with the exception of the memorandum of cancellation, which appears to include the three lots; for the memorandum of the issue of the certificate of payment of patent fees (which means, I think, payment by others than French) is confined to 17 & 18, and the memorandum of application to purchase is confined to lot 19. I am strongly inclined to think that the Government, although considering French a speculator, left him in possession of lot 19; and that the patent fees of 17 & 18 were returned to him, but not of lot 19, at all events I am satisfied that French was persuaded of his title to lot 19, and *bona fide* transferred his interest in it to McKinnon, who occupied it and improved it, and in 1836, when this patent issued, had done a great deal to it, and was living on it, of which the government were ignorant, but if they had known it, would never have appropriated this lot as a glebe.

I think, therefore, that this patent was issued in error and mistake, and must be declared void, but I give no costs.

I may remark that in the case of *Martin* v. *Kennedy*, it was considered that if the patent fee had been paid and the lot occupied and improved, the government would not appropriate it as a glebe. Mr. Baines in his evidence in this case goes further, and says, that although the patent fee had not been paid, and although the lot had been returned as a glebe, yet, when it had been occupied and improved, it was not the practice to appropriate it for a glebe, but to respect the rights of the occupant, and I am satisfied that he is right. No man was more competent to give testimony. I think the lease taken by McKinnon from Mr. Mayerhoffer in 1841 would not have prejudiced his own claim under the circumstances: much less can it operate to the prejudice of the rights of the government.

GOODRICH v. WIDDIFIELD.

Mortgage—Usury

Quære, whether the amount of interest reserved by a mortgage may not be so great as to evidence such a case of oppression as would induce this court to refuse to interfere on behalf of the mortgagee, leaving him to his remedies at law, notwithstanding the repeal of the usury laws.

This was a bill of foreclosure, which had been taken *pro confesso* against the defendant, setting forth the execution of a mortgage by the defendant in favor of the plaintiff, for securing the payment of certain monies, with interest thereon, at the rate of 21 per cent. per annum; and on the cause coming on for hearing.

Mr. Fitzgerald for plaintiff, asked the usual reference to the master at London, to enquire as to incumbrances, and take accounts.

SPRAGGE, V. C.—The question which suggests itself to my mind, has formed the subject of conversation amongst the members of the Court of appeal; the question being, whether a case so gross may not arise as to justify this court in refusing to lend its aid in carrying out the contract between the parties, on the grounds of undue influence and oppression. Before any decree is drawn up, I will take occasion to consult with by brother Esten.

On a subsequent day his honour stated that on consulting with Vice-Chancellor *Esten*, he found that in one case a decree was pronounced in favour of the mortgagee, where the rate of interest reserved was 30 per cent; under these circumstances he made the decree as asked, observing that it may be urged that the legislature intended when they abolished the usury laws, that all the remedies both at law and in equity should be open to the lender.

COUNTY COURT CASES.

In the County Court of the United Counties of Frontenac, Lennox & Addington before his Honour Judge Mackenzie.

McCARTHY v. SHAW.

Collector of Taxes avowing for distress, in levying a municipal rate, must show on his avowry that a By-law was passed authorizing the levying and collecting of such rate, or the avowry will be bad.

(January Term, 1862.)

Replevin—for household furniture.

Avowry—That defendant had been duly appointed by the Council of the Corporation of the City of Kingston, to collect certain unpaid taxes, and that there had been delivered to him, (the defendant) the roll for the purpose of collecting such unpaid taxes, and he at the said time, when, &c, held the Collector's Roll for St. Lawrence Ward, of the said city, for the year of our Lord, 1854, duly made out by the clerk of the municipality of the said city, and containing the names of the parties assessed, and the assessed amount of the ratable, real and personal property of such assessed parties, for which might be assessed in the said municipality, as ascertained after the final reversion of the assessment for the said ward in 1854, containing the amounts for which each respective party is chargeable for the taxes or rates, ordered by the said Council to be levied in the said year, under, and in accordance with, the provisions of the assessment laws in force in Upper Canada in 1854, calculated and set down opposite the lot of land. The defendant averring that it was his duty to collect from the parties, by law liable to pay the same taxes appearing on the the said roll; and that on the said roll a certain lot of land and premises situate in the said ward, and now and at the said time when, &c., in the occupation of the plaintiff, was set down and