

*all the rules of the society in force at the time of their becoming borrowers."*

Now the rules relating to the claim for discount on further payments are the same in the Hamilton case as in this, and in the Hamilton case it was held that the rules must govern and give the right of their claim for discount, although in the absence of rules there would be no claim whatever to it; unless there is something else to distinguish the Hamilton case from this, I must disallow the plaintiff's claim. The only difference between the two cases I can see is, that in the Hamilton case it is recited in the mortgage that the mortgagor was a member of the society and applied for a loan, while in the mortgage in this case there is nothing of that kind. The mortgage in the Hamilton case was made in 1874, when borrowers were required to be members of the society, or at least, it was usual to make them such. But in 1876, by 39 Vict., above referred to, it became no longer requisite that borrowers should be members; so in the case of the mortgage in question, the mortgagor was simply a borrower, and that is not mentioned in the mortgage. But his written application to borrow from the defendant's society is admitted. By that S. undertook to be subject to the rules of the society, so that the only difference in the Hamilton case and this appears to be, that in the former the mortgagor was mentioned as being a borrower from the society, whereas there is no mention of that circumstance in the mortgage of S. It appears to me that the difference is unsubstantive; that S. as a borrower was made plain by the fact of the mortgage.

I must say that, were it not for the case of the Hamilton company, I should have found it difficult to get over the fact that in the mortgage there is no reference whatever to any rules, nothing to show that they are obligatory, and nothing appears to show that they were brought to the knowledge of the mortgagor further than in the application to borrow he acknowledged his submission to them. To supersede the subject of the statutory power of sale which, in drawing the mortgage, was invoked, and which disallows any claim to discount, and to make the rules paramount, and to ignore the effect of the Registry Laws, would have caused me some perplexity, were it not for the authority of this Hamilton case.

The plaintiff's counsel also refers to c. 127 Rev. Stat. of Canada, prohibiting any fine or penalty which increases the rate of interest payable, but does not prohibit a contract for the payment of interest on arrears of interest on principal, at any rate not greater than the rate payable on principal not in arrears. In this case it is not shown that there has been any contravention of this Act. On the contrary, the discretion of the directors under the company's rules has been, I understand, exercised by imposing the difference between the rate of interest in the mortgage, which is  $7\frac{1}{2}$  per cent., and the current rate of 6 per cent., and thus constituting the so-called discount on the future payments. It was further objected on behalf of the plaintiff that the rate of interest upon which the discount was to be calculated, should have been shown in the mortgage by virtue of the last mentioned statute, but the provision does not apparently apply to this question of discounting further payments. I arrive at the conclusion that, following the law of *Green v. Hamilton Loan Society*, my judgment must be for the defendant's company, but without costs.

### Early Notes of Canadian Cases.

#### SUPREME COURT OF JUDICATURE FOR ONTARIO.

#### COURT OF APPEAL.

COATTS v. KELLY.

*Fraudulent preference—Assignment for benefit of creditors—48 Vict. c. 26 (O.).*

One Chamberlain, who was in insolvent circumstances, and indebted to K. in \$120, was pressed by him for payment, when he agreed to sell K. a horse for \$110 in part payment, and about the 15th August, 1885, delivered the horse in pursuance of such agreement. K. kept possession of and worked the horse for one day, when he lent him to Chamberlain, who continued to use him in his business until the early part of October following, when he returned the horse to K., who thenceforward retained possession of him. On the 31st October Chamberlain executed an assignment to