

C. P.]

NOTES OF CASES.

[C. P.]

Blake, V.C.]

[April 11.]

SIMONTON V. GRAHAM.

Mortgage—Interest after maturity—Master's Office—Practice.

In a foreclosure suit, the proviso in the mortgage was for payment of the principal "in three years from the date hereof, with interest at ten per cent., payable half-yearly."

On the reference, the Master allowed the plaintiff interest at ten per cent. up to the time the mortgage matured, and six per cent. afterwards.

Held, following *Dalby v. Humphery* and *Cook v. Fowler*, L. R. 7 H. L. 27, that where no rate of interest is fixed by the mortgage for payment after maturity, interest thereafter is awarded as damages for breach of contract; that *prima facie* the rate of interest stipulated for up to the time certain would be taken, but that would not be conclusive; that the onus then lay upon the person seeking to reduce the rate reserved to show that it was more than the ordinary value of money.

The case was referred back to the Master to take evidence as to such value. If the Master alters his former finding, costs to respondent; if he does not, costs to appellant.

Armour for appellant.

Hoyles for respondent.

COMMON PLEAS.

VACATION COURT.

Osler, J.]

[March 11.]

THE MONTREAL CITY AND DISTRICT SAVINGS' BANK V. CORPORATION OF PERTH.

Debenture—Conditions precedent—Presentation and surrender—Damages—Pleading.

In an action on a debenture for £200 sterling, by which defendants agreed to pay bearer at the office of a named bank and on a day named, upon presentation and surrender of the debenture at the said office, alleging that the plaintiffs became the lawful holders and bearers

thereof, before maturity, and that all conditions precedent were performed, &c., and averring as a breach the non-payment of the said principal sum.

Held, by OSLER, J., that the presentation and surrender of the debenture at the said office, on the said date, were conditions precedent to the plaintiff's recovery, but that interest, being merely an accessory to the principal sum, need not be claimed as damages in the declaration, and that therefore it was no departure for a replication herein to show for the first time, that damages or interest was all that was claimed; but that it was a departure for the replication to allege presentation on a day later than that named in the bond, the allegation of performance of conditions precedent in the declaration, including such presentation, &c., on the day named.

A plea after traversing the presentation of the debenture, &c., alleged that it was afterwards paid, and was then duly surrendered and delivered up.

Held, a good plea, because by the exceptions taken to it the payment of principal debt was admitted, and no more than nominal damages, if any, could be recoverable; that payment or satisfaction of the debt would include the nominal damages for its detention, and that the surrender would show that the payment was in satisfaction and discharge of the debt, if not also of the damages, and that it was no answer that the surrender was by inadvertence or oversight when the surrender was intentional, but that it would be a good answer that the delivery up was on the agreement and understanding that the right to claim such damages was reserved, as the surrender would then be not for the purpose of cancellation, and with the intention of not yielding the right, if any, to damages.

S. Richards, Q. C., for the plaintiffs.

R. Smith (of Stratford), for the defendants.