only two-thirds of the annual premium, but the one-third remaining unpaid was to be deducted from the sum assured at death, if not previously paid, with interest at 6 per cent. per annum. This clause was taken advantage of by the assured, and the sum due at death was greatly reduced in consequence.

The action was tried without a jury.

W. H. Hunter, for the plaintiff.

Leighton McCarthy, K.C., for the defendants.

SUTHERLAND, J., after setting out the facts and correspondence, said that he was not at all sure that the contract could properly be called a usurious one, or that it was made illegal and void by the terms of the statute invoked for that purpose. The defendants contended that the effect of the statute (1890) 53 Vict. ch. 34, repealing secs. 10 and 11 of R.S.C. 1886 ch. 127, which two sections in the consolidation took the place of the sections in the Acts of 1858 and 1860, was to remove the contract from any disability such as was contended for by the plaintiff. But, whether the statute of 1890 had the effect contended for by the defendants or not, the plaintiff admitted that he could not successfully claim the balance alleged to be due, except by an appeal to the principle that a borrower who seeks equitable relief against a security which is voidable in equity, or which is void by statute, can obtain it only on terms of paying the money which is properly due, that is to say, as the plaintiff admits in this case, the amounts of the unpaid portions of the premiums for the first ten years of the life of the policy, with interest at 6 per cent. from their respective dates.

Reference to Halsbury's Laws of England, vol. 13, p. 71; Neesom v. Clarkson (1845), 4 Hare 97, 101; Davey v. Durrant (1857), 1 DeG. & J. 535; Plimmer v. Wellington Corporation (1884), 9 App. Cas. 699 (P.C.); Ramsden v. Dyson (1866), L.R. 1 H.L. 129, 141; Jackson v. Cator (1800), 5 Ves. 687, 690; Waller v. Dalt (1676), 1 Ca. Ch. 276; Bill v. Price (1687), 1 Vern. 467; Mason v. Gardiner (1793), 4 Bro. C.C. 436; 63 & 64 Vict. ch. 51; Chapman v. Michælson, [1909] 1 Ch. 238 (C.A.); Lodge v. National Union Investment Co. Limited, [1907] 1 Ch. 300; Hanson v. Keating (1844), 4 Hare 1, 5; Drake v. Bank of Toronto (1862), 9 Gr. 116.

But could it be said, in the face of the facts in this case, that it would be fair and reasonable to grant such relief? The evidence of the defendants went to shew that this policy was not