

Province of Manitoba.

KING'S BENCH.

Full Court.]

[32 D.L.R. 57.]

STUBBS v. STANDARD RELIANCE MORTGAGE CO.

Interest—Mortgage—Statement of rate.

The provisions of s. 6 of the Interest Act, R.S.C. 1906, c. 120, are not sufficiently complied with, if a mortgage, under which payments of principal and interest are blended, states the amount of principal and the rate of interest, but does not state whether the interest is calculated yearly or half-yearly. The intention of the Act is that the rate of the interest and how it is computed shall be stated plainly on the face of the mortgage.

Wilson, K.C., McAlister and Garland, for appellants.

Bergman, for respondent.

ANNOTATION ON THE ABOVE CASE FROM D.L.R.

Three decisions involving an interpretation of the Interest Act (R.S.C. 1906, ch. 120), have been given in Alberta, and one in Manitoba. The decision of Beck, J. (Alberta), in *Canadian Mortgage Investment Co. v. Baird*, 30 D.L.R. 275, was in opposition to the opinion expressed in the other three decisions.

The section to be construed reads as follows:

6. Whenever any principal money or interest secured by mortgage of real estate is, by the same, made payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated payments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement shewing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance.

In the *Colonial Investment Co. v. Borland*, 6 D.L.R. 211 (1912), the mortgage contained a covenant to pay \$600 and interest at 12 per cent. per annum by equal monthly instalments. C. Harvey, J. (delivering the judgment of the Court), said: "There is nothing in the covenant to pay the principal and interest at 12 per cent. to suggest that it is in the result the same so far as amount is concerned as the payments under the proviso, and slight computation shews that it is not." It will be noted, therefore, that though the mortgage stated the amount of principal and the rate of interest per annum, the Court held that this was not the "statement" required by sec. 6 of the Interest Act. "Moreover," said the Court, "it is not a compliance with the statute, since it provides for interest monthly, and not yearly or half-yearly in ad-