

the advance or for the payment by the mortgagor of a bonus or commission in addition to the interest payable under the mortgage (b).

6. *Clogging the equity of redemption.*—There remains the third rule, that any stipulation which restricts or clogs the equity of redemption is void, or, as stated more broadly, that any provision which is repugnant either to the contractual or to the equitable right to redeem is void. A condition that if the contractual right is not exercised by the time specified the mortgagee shall have an option of purchasing the mortgaged property may properly be regarded as a penal clause and may be relieved against (c). It is repugnant only to the equitable and not to the contractual right. But a condition that the mortgagee is to have such an option for a period which begins before the time for the exercise of the equitable right has arrived, or which reserves to the mortgagee any interest in the property after the exercise of the contractual right, is inconsistent not only with the equitable but with the contractual right itself, and might perhaps be held invalid for repugnancy even in a court of law (d). "It is the right of a mortgagor on redemption, by reason of the very nature of a mortgage, to get back the subject of the mortgage, to hold and enjoy as he was entitled to hold and enjoy it before the mortgage. If he is prevented from doing so, that which he is entitled to on redemption is prevented, and to constitute such prevention it is not necessary that the subject of the mortgage should be directly charged with whatever causes the prevention. If he be so prevented in fact,

(b) *Potter v. Edwards*, 1857, 26 L.J. Ch. 468; *Marquess of Northampton v. Pollock*, 1890, 45 Ch.D. 190, at p. 212 (S.C. sub nom. *Salt v. Marquess of Northampton*, [1892] A.C. 1); *Lyne v. Wynn-Mackenzie*, [1894] 1 Ch. 218, at p. 227; *Gardiner v. Munro*, 1896, 28 O.R. 375; *Farrell v. Caribou Gold Mining Co.*, 1897, 30 N.S.R. 199; *Buchanan v. Harvie* (No. 2), 3 N.B. Eq. 61. The distinction drawn in *Phillips v. Proul*, 1898, 12 M.R. 143, between a bonus or commission agreed to be paid and one which is deducted at the time of the advance or afterwards paid by the mortgagor does not seem to be well-founded.

(c) *Vernon v. Bethell*, 1762, 2 Eden 110, at p. 113; *Fallon v. Keeman*, 1866, 12 Gr. 388; *Arnold v. National Trust Co.*, 1912, 5 A.L.R. 214, 7 D.L.R. 754.

(d) *Kreglinger v. New Patagonia, etc., Co.*, [1914] A.C. 25, at p. 50.