

MORTGAGE.

1. *Rate of interest after maturity of mortgage—Contract or damages, "Until the whole is fully paid and satisfied."*—A mortgage of real estate provided for the payment of the principal money at the expiration of five years from the date thereof, together with interest thereon at the rate of nine per cent. per annum, "until the whole is fully paid and satisfied."

Held, that after the time fixed for payment of the principal money, the mortgagees were entitled to no more than the statutory rate of six per cent. per annum on the unpaid principal.

The Peoples' Loan & Deposit Co. v. Grant, 18 S. C. R. 262, followed.

Powell v. Peck, 15 A. R. 138, discussed. *Freehold Loan Co. v. McLean* 116

2. *Mortgage suit—Decree for sale—Execution issued for balance due—Petition to set aside proceedings.*—A decree was made in a mortgage suit, for sale of the mortgaged premises and payment of any deficiency after sale. The lands were knocked down to P. The Master made a report confirming the sale and found a large balance due plaintiff by C. and G., for which executions were issued; and the lands were vested in P. Subsequently, it was alleged on petition that plaintiff really held the mortgage as nominee and trustee of a certain Company; that there was no real sale to P., to whom the land was knocked down for the benefit of the Company; that P. transferred the land to an officer of the Company without consideration; that this officer trans-

ferred it to another who subsequently died, having devised the land to his executors in trust for the Company; that these officers always admitted themselves to be trustees of the lands for the Company; and that all the proceedings in the suit were conducted for and on behalf of the Company, and at its expense.

Held, that the report confirming the sale and the vesting order were obtained by a fraud upon the Court and the defendants. In the absence of some of the parties interested the sale could not be formally set aside; but it, and all the subsequent proceedings, could be treated by the Court as nullities; and, as all the parties concerned in the subsequent report and the *fi. fa.'s* issued thereon were before the Court, those proceedings should be set aside. *Taylor v. Sharp*. . 163

3. *Sale by mortgagees under power of sale—Bill to restrain proceedings under covenant—Demurrer—Inability of mortgagees to re-convey.*—A mortgagee who has *bona fide* exercised a power of sale contained in his mortgage deed, and who has thereby realized only part of the amount due, can proceed to enforce payment of any deficiency. He can so proceed against a surety as well as the original debtor; but where the power of sale has not been exercised *bona fide*, and has been used for an improper purpose, that is a defence to an action upon the covenant brought after such improper exercise of the power.

The defendants having put it out of their power to re-convey to the plaintiffs, upon payment of the mortgage money, and having done this by an exercise of a power of