the old rule against a mortgagee's stipulating for a collateral advantage should be maintained in any form or with any modification. The right (notwithstanding the stipulation) to redeem on payment merely of principal, interest and costs is a mere corollary of the rule and falls with it (*x*).

In every case in which a stipulation by a mortgagee for a collateral advantage has, since the repeal of the usury laws, been held invalid, the stipulation has been open to objection, either (1) because it was unconscionable, or (2) because it was in the nature of a penal clause clogging the equity arising on failure to exercise a contractual right to redeem, or (3) because it was in the nature of a condition repugnant as well to the contractual as to the equitable right (*y*).

In other words, a provision in favour of a mortgagee is not invalid merely because he thereby stipulates for a collateral advantage. Accordingly, if there is nothing unfair or oppressive in the bargain, in a mortgage of a hotel to a brewer the mortgagee may stipulate that the mortgagor shall during the continuance of the security deal exclusively with the mortgagee for all beer and malt liquors sold on the mortgaged premises (*z*); in a mortgage of the lease of a theatre—a notoriously risky security—the mortgagee may stipulate for a share in the profits of the theatre (*a*); and when money is lent on a security of a speculative or unsatisfactory nature, the mortgagee may, as part of the mortgage transaction, stipulate for the deduction by him from the amount of

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(*x*) Lord Parker of Waddington in *Kreglinger* v. *New Patagonia, etc., Co.*, [1914] A.C. 25, at pp. 54-55.

(*y*) S.C. [1914] A.C. at p. 56. See, *e.g.*, *James* v. *Kerr*, 1888 40 Ch.D. 449 (agreement for bonus voidable as an undue advantage obtained from mortgagor under the pressure of distress and in a position analogous to that of an expectant heir).

(*z*) *Biggs* v. *Hoddinott*, [1898] 2 Ch. 307; *Noakes & Co.* v. *Rice*, [1902] A.C. 24, at p. 33; *Kreglinger* v. *New Patagonia, etc., Co.*, [1914] A.C. 25, at p. 38.

(*a*) *Sandley* v. *Wilds*, [1899] 2 Ch. 474; 16 L.Q.R. 7, 113 (Jan., April, 1900). The correctness of this decision has been called in question because in the mortgage there in question it was provided that the share in the profits of the theatre was to be paid until the end of the leasehold term, and not merely during the existence of the mortgage: *Noakes & Co* v. *Rice*, [1902] A.C. 24, at pp. 31, 34. But see *Kreglinger* v. *New Patagonia, etc., Co.*, [1914] A.C. 25, at p. 56.