

new transfers of the lands represented by the cancelled transfers to his wife Annie A. Moore.

What defendant sets up is that he (or Mrs. Moore) took those lands instead of the balances due by the allottees to the company, and that he was entitled thereto as having been given to him by the company. Plaintiffs claim the value of these lands.

The form of agreement with and transfer to the allottees is not produced; but the evidence of the defendant is that plaintiffs did not therein reserve any right to cancel the transfers on non-payment of the balances due by the allottees. That being so, the remedy would not have been to retake the lands, but to recover from the allottees the balances so due. It would, therefore, have been wrongful on the part of the plaintiffs to re-possess the land in the summary manner employed by the defendant.

In referring to the transaction, defendant in his evidence says that if anybody other than the allottees had paid the balances due and taken a receipt therefor, he would have accepted the payment and handed over the transfers. To my mind the position of the matter is much as if he himself had paid over the balances and taken the transfers, and that being done he would have received these monies for the plaintiffs. In that view my opinion is that what the plaintiffs are entitled to is not the lands or their value but the balances which were due by the allottees whose transfers defendant assumed to cancel, with interest; and there will be a reference to the Master in Ordinary to ascertain these amounts. I am assuming, in the absence of the documents, that the defendant's statement is correct, that there was no agreement with the allottees entitling plaintiff to cancel the transfers on default in payment. Had there existed such a remedy, my view as to the liability of the defendant to account for the value of the lands instead of for the balances due by the allottees, might be different.

As to the interest chargeable against the defendant, I think it is clear that under the circumstances plaintiffs are entitled to interest on sums payable to them from the time the same, or the benefit thereof were received by the defendant. The rule as to the charging of interest, as laid down in such cases as *Small v. Eccles*, 12 Gr. 37, is, I think, applicable here.