

Master's Office.]

TRINITY COLLEGE V. HILL.

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effect: "In the case of a mortgage the ground is plain. The estate belongs to the mortgagee, it is forfeited; the owner comes here to redeem; the Court orders payment on such a day, and that he shall then redeem. He lets that time elapse; of course he shall pay interest."

The House of Lords in *Kelly v. Lord Bellew*, 4 Bro. P.C., 495, varied a decree of the Irish Court of Chancery where there had been delay in carrying it out, by directing a computation of interest in a mortgage case on the whole sum found due by the Master's Report, on which the decree had been made, instead of on the principal money secured by the mortgage. In a note to the case it is stated that, "a stated account ought to carry interest, especially in case of a mortgage, and more strongly when settled by a Master of the Court pursuant to order."

In *Bruere v. Wharton*, 7 Sim., 483, the following note of the practice in Exchequer was cited to Sir L. Shadwell, V.C., who made an order in similar terms: "After the report of principal, interest and costs on mortgage, and time enlarged, with order to compute subsequent interest; this subsequent interest shall be computed on the aggregate reported sum of principal, interest and costs, and not on the principal only; and agreed the practice in Chancery to be the same."

The subsequent cases, up to the late case of *Elton v. Curteis*, 19 Ch. D. 49, show a slight variation in the practice, but not an alteration of the rule. In *Whatton v. Cradock*, 1 Keen, 267, Lord Langdale, M. R., after reviewing some of the cases, states the variation in the practice thus: "The time for paying what is found due on the mortgage is enlarged upon payment of the interest and costs found due; and the subsequent interest on the principal only, and subsequent costs, are directed to be computed and taxed."

The same learned judge is more explanatory in *Brewin v. Austin*, 2 Keen, 212: "The practice formerly was not to order any immediate payment but to order subsequent interest to be computed on principal, interest and costs already ordered. For many years past, however, the practice has been to enlarge the time only on terms of first paying the interest and costs already reported; and these being paid, subsequent interest is to be computed on the principal only—that remaining unpaid. If for any special reason the Court should think fit to enlarge the time without ordering any immediate payment, I conceive it would now be proper to order the subsequent interest to be computed on the aggregate amount of principal, interest and costs before computed."

In *Holford v. Yate*, 1 K. & J. 677, the form of

order in that case shows the terms on which the foreclosure was opened—one of which was that the interest should be calculated on "the aggregate amount found due to the plaintiff."

*Whitfield v. Roberts*, 7 Jur. N. S. 1268, does not seem to be consistent with these decisions, nor with the subsequent case of *Elton v. Curteis*, 19 Ch. D. 49.

In this latter case the reason for the alteration in the practice was referred to during the argument; and in giving judgment Fry, J., quoted the words of Lord Hardwicke, in *Bickham v. Cross*, 2 Ves. Sr. 471, that: "Where a mortgagor came to redeem, and a mortgagee to foreclose, and afterwards there is a report computing what is due for principal, interest and costs, all that is considered as one accumulated sum;" and that as to mortgagees "the compound sum carries interest." And then, after referring to the distinction between the modes of computing subsequent interest in foreclosure and other actions, the learned judge states that subsequent interest in mortgage cases should be computed on the whole amount found due for principal, interest, and costs, and that such was the ordinary practice and was a "well established and old practice of the Court."

These cases show that a Master's Report when confirmed becomes a judgment of the Court. But in this case the amount of principal, interest and costs was ascertained by a decree which is unquestionably a judgment of the Court; and, therefore, in computing the "subsequent interest" allowed to the plaintiffs by the Court of Appeal in this case, I must hold that the direction in *Bruere v. Wharton*, 7 Sim. 483, and similar cases applies: that such subsequent interest is to be computed on the aggregate amount of principal, interest and costs found due by the decree of the 14th of November, 1877, and not on the amount of the principal secured by the mortgage.

As the Court of Appeal has given the plaintiffs their taxed costs of the hearing before the Chancellor, they are entitled to interest on these costs from the date of taxation and also the costs of any *fi-fas*. issued to enforce payment *Schroeder v. Cleugh*, 46 L. J. Q. B. 365.