

BLAKE, V. C.—As between the mortgagor and mortgagee only the principal money and interest for six years can, without special circumstances, be recovered in a mortgage suit. Here, it being an ordinary case, but the six years could be recovered. When the mortgagee assigns the mortgage in trust, there the *cestui que trust* could charge as against the trustee the whole twenty years' arrears of interest, and the trustee, collecting from the mortgagor the principal money and six years' interest, should account to the *cestui que trust* for the principal money and twenty years' interest unless absolved by special circumstances.

1875.

Scatcherd
v.
Kiely.

Here the *cestui que trust* demands that his principal money and interest for the sixteen years it has run should be paid. It matters not whether this be given out of principal money or interest. But these arrears of interest cannot be demanded to the detriment of the mortgagor. The question, therefore, really to be solved is, taking the accounts between mortgagor and mortgagee, and allowing the interest properly payable between them, is there a sufficient amount left to give the claimant here his principal money and sixteen years' arrears of interest? If there is, it is to be allowed; if not, it cannot be recovered against the mortgagor. In other words, the liability incurred by the assignee of the mortgage in trust is not to be enlarged. If the mortgagor can prove that he has paid the whole of the mortgage, and left but the \$194 unpaid then, I think, only \$194 and six years' arrears of interest can be recovered. If, on the other hand, there is yet due from the mortgagor a larger amount than this, the plaintiffs can demand it to the extent sufficient to satisfy the debt, and sixteen years of interest. If the facts necessary to work out the above are not admitted so as to allow the Registrar to act upon them, then there will have to be a reference to the Master at London to take the accounts, and he can ascertain the facts and find the amount in pursuance of the above.

Judgment.