

**MORTGAGE—Continued.**

only created a personal liability, and that the mortgage bore simple interest at six per cent., from December 31st, 1886. *JACKSON v. RICHARDSON*....325

8.—*Power of Sale—Sale by Mortgagee—Invalid Exercise of Power of Sale—Mortgagee in Possession—Redemption Suit Valuation of Vessel—Balance due Mortgagee—Costs.*] The mortgagee of a vessel took possession of her and transferred her to a clerk in his employ, who immediately re-transferred her to the mortgagee. The consideration expressed in both instances was \$2,000. The mortgagee retained the management and possession of the vessel until her loss, without making an effort to sell her, though she was not paying expenses, and was depreciating in value from age, and the market demand for vessels of her class was declining. In a suit to redeem a mortgage on land given as collateral security with the mortgage on the vessel: *Held*, that there had not been a valid exercise of the power of sale vested in the mortgagee, and that he was chargeable with the value of the vessel at the time he took possession. In the above suit a balance was found due the mortgagee by the mortgagee. *Held*, that the mortgagee should pay the costs of the suit. *KENNEDY v. NEALIS* .....455

9.—*Power of Sale—Sale by Mortgagee to Himself—Subsequent Valid Sale Producing Surplus over Mortgage Debt—Mortgagee in Receipt of Rents—Interest—Costs of Special Case.*] A mortgagee, his power of sale on default having arisen, sold the mortgaged premises ostensibly to a third person, in reality to himself. Subsequently he sold a portion of the premises to a third person for an amount in excess of the mortgage debt. He continued in possession of the remaining part, and received rent: *Held*, that the sale by the mortgagee to himself was abortive, and that he was a mortgagee in possession, and should account to the mortgagor for the surplus from the second sale, together with the rent, and interest on both sums and costs. The Court has the same power to deal with the costs of a special case as in the case of a suit instituted by bill, and in awarding them will be governed by the same rules. *MITCHELL et al. v. KINNEAR* .....427

**MORTGAGE—Continued.**

10.—*Rectification—Mistake—Foreclosure Suit—Multifariousness.*] Bill sustained for the rectification of a mortgage, and for the foreclosure and sale of the mortgaged premises. *KING v. KEITH* .....538

11.—*Redemption Suit—Dispute as to Amount Due—Mortgagee's Costs.*] A mortgagee will not be deprived of his costs in a redemption suit made necessary by a dispute as to the rate of interest to which he was entitled. A mortgagor was indebted to the mortgagee in a sum in addition to the mortgage debt. He made several payments in money and goods to the mortgagee. He applied by his solicitor to the mortgagee for a statement of the payments made on the mortgage and of the amount due, as he wished to pay the mortgage off. Before answering, the mortgagee gave notice of sale of the mortgaged property under a power of sale contained in the mortgage. In his answer he stated that the whole of the principal and interest at 12 per cent., or \$311.53, was due, and that no payments had been made on account of the mortgage indebtedness. The mortgagor thereupon filed a bill to restrain the sale and for redemption. A reference having been had to take account, the Referee found that a small payment had been made on the mortgage, and allowed interest on the mortgage from its maturity at six per cent. upon a construction of a covenant in the mortgage to pay interest at twelve per cent., and his report was confirmed by the Court. *Held*, that the mortgagee was entitled to his costs of suit. *THOMAS v. GIRVAN (No. 2)* .....314

12.—*Redemption—Intention of Parties—Absolute Sale—Bank Shares—Admissibility of Evidence to Modify Terms of Transfer.*] Although collateral evidence is admissible to shew that notwithstanding the plain terms of an absolute transfer of property, it was intended that the transferor should have a right of redemption, the evidence must be of the clearest and most conclusive character to overcome the presumption that the deed of transfer truly states the transaction. *MCLEOD v. WELDON* .....181  
—*Assessment of damages—Foreclosure Suit—Practice* .....241  
*See* MORTGAGE, 3.