

that mortgage as paid off, and charge the mortgagor with interest at the increased rate on the amount thereof, but must, until the prior mortgage is paid, charge as against the mortgagor only the interest actually paid to the prior mortgagee.

An assignee of a mortgage takes it subject to the actual state of the accounts between the mortgagor and mortgagee, and cannot, even where it contains a formal receipt for the whole mortgage money, claim more in respect of it than has been advanced, and cannot therefor in such a case as this, charge the mortgagor with the increased rate.

The fact that the purchaser of the equity of redemption has been allowed the full amount of the mortgage as between the mortgagor and himself, does not make him liable to pay that sum to the mortgagees.

Judgment of the Chancery Division affirmed.

*Gibbons, Q.C.*, for the appellants.

*W. H. Blake*, for the respondent.

From Chan. Div.]

[Jan. 14.

THE BRIDGEWATER CHEESE FACTORY COMPANY *v.* MURPHY.

*Company—Bills of exchange and promissory notes—Discount by president.*

Where the president of an incorporated company made a promissory note in the company name without authority, and discounted it with the company's bankers, paying the proceeds by cheques in the company name to creditors of the company whose claims should have been paid by him out of moneys which he had previously misappropriated, the bankers, who took in good faith, were held entitled to charge the amount of the note, when it fell due, against the company's account.

Judgment of the Chancery Division, 26 O.R. 327, affirmed, BURTON, J.A., dissenting:

*McCarthy, Q.C.*, *E. Guss Porter*, and *W. Cross*, for the appellants.

*Moss, Q.C.*, *S. Masson*, and *D. E. K. Stewart*, for the respondents.

From C.C. Middlesex.]

[Jan. 14.

CONNOLLY *v.* COON.

*Landlord and tenant—Lease—Breach by tenant—Damages.*

When a tenant leaves the demised premises before the expiration of the term, paying rent up to the time of leaving and notifying the landlord that he does not intend to keep the premises any longer or pay any more rent, the landlord cannot at once recover the whole rent for the unexpired portion of the term. He must either consent to the tenant's departure and treat the term as surrendered, or must treat the term as subsisting and sue for future gales of rent as they fall due.

Judgment of the County Court of Middlesex reversed.

*Magee, Q.C.*, for the appellant.

*Rowell*, for the respondent.