

very certain ; but this does not prove, that the proceeds of sale being in court, may not be applied to his indemnity. If the sale, instead of being for cash, had been on credit, and the defendant had refused to give the purchaser possession, until coerced by the authority of the court, it is supposed to be very clear that the purchaser could not be made to pay interest for the time he was deprived of the possession, for the benefit of the defendant.

No opinion is meant to be expressed, with regard to the obligations of the purchaser, under such circumstances, to pay interest, so far as creditors are concerned, but if the principal proceeds of sale should be sufficient for their payment, the defendant refusing to surrender the possession of the property, would never be allowed to claim interest as against the purchaser. But in this case, the sale was for cash, the money was paid, and the possession of the property retained by the defendant. The purchaser, therefore, lost the interest upon the purchase money, and he was also compelled, or will be compelled to pay the principal and interest of the elder incumbrance, and the question is, shall he not be indemnified for this loss out of the residue of proceeds of sale, which would otherwise be paid to the defendants? The justice of making him this indemnity, is too plain to be disputed, and, I think, the technical objection should not be permitted to prevail. According to what is understood to be the received doctrine in this state, *five per cent. per annum*, is considered an equivalent for the use of real estate, that being supposed to be about the average annual value of this description of property. But the allowance here is less than *five per cent.*, and, therefore, it seems to me, I can be doing no injustice to the defendant by confirming this report of the Auditor, and shall pass an order accordingly.

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S. H. TAGART, THOS. S. ALEXANDER for Complainants.  
JOHN NELSON, WM. SCHLEY for Defendants,