

**MORTGAGE, MORTGAGOR AND MORTGAGEE—Continued.**

- recorded conveyance shall be available only in cases, where the notice is so clearly proved as to make it fraudulent in a subsequent purchaser to take and record conveyance in prejudice to the known title of the other. *Ib.*
5. In case of a mortgage payable by instalments, a sale will be decreed of so much of the property as will pay the amount due, and the decree will stand as a security for the other instalments as they become due; and if the property cannot be sold in parcels, it may be sold entire, and the whole debt paid with rebate of interest for sums not due. *Peyton vs. Ayres, 64.*
  6. Whenever the relation of mortgagor and mortgagee is once shown to exist, the court views with distrust and disfavor, any arrangement between them, by which it is proposed to transfer the equity of redemption to the mortgagee. *Sheckell vs. Hopkins, 89.*
  7. The parties will be held to their original relation, unless the transaction shall appear to be perfectly fair, and no advantage taken by the mortgagee of the mortgagor, by reason of his incumbrance. *Ib.*
  8. But there may be a sale of the equity of redemption to a mortgagee, where the transaction is fair, untainted by any advantage taken by the mortgagee of the necessities of the mortgagor to influence him to part with his estate for less than its real value. *Ib.*
  9. It being proved that a fair purchase at a fair price of the mortgaged property was made by the mortgagee, the court refused to grant relief to the mortgagor on a bill to redeem, and ordered the bill to be dismissed. *Ib.*
  10. It is a well settled rule, both at law and in equity, that a mortgage is not evidence of a subsisting debt, if the mortgagee never entered into possession, and there has been no interest paid or demanded for twenty years: these facts alone authorize the presumption of payment. *Boyd & Hance vs. Harris, 210.*
  11. It is a well settled rule, that a mortgagee may sue, at the same time, at law, upon his bond or covenant, and in equity upon his mortgage; the case of a mortgagee forming an exception to the general rule that a party shall not be permitted to sue at law and in equity at the same time, for the same debt. *Wilhelm vs. Lee, 322.*
  12. In this case one mortgagee had recovered judgments at law for his debt, upon one of which judgments an appeal had been taken, and was still pending in the Court of Appeals, the other remained unsatisfied in the County Court, the other mortgagee had simply instituted a suit at law, but had recovered no judgment. **HELD—**  
That each of these cases come within the rule which permits a mortgagee to sue at law upon the bond or covenant, and in equity upon his mortgage. *Ib.*
  13. There can be no doubt that upon proper averments, and upon sufficient evidence, this court may treat an absolute deed as a mortgage, and decree a redemption of the property by the mortgagor, or sale, for the purpose of paying the sum due. *Thompson vs. Banks, 430.*