

QUACKENBUSH v. LANE.

[2 Mich. Lawy. 27.]

District Court, N. D. Michigan.

1877.

MORTGAGES—MATURITY ON DEFAULT OF INTEREST—OPTION—COMMENCEMENT OF SUIT.

1. In a foreclosure cause, where the mortgage contains the usual interest clause giving the mortgagee the option to consider the whole amount due after default for thirty days in the payment of interest when due, decree is granted for the full sum, though the bill does not allege option by the mortgagee and notice.
2. The mortgagee exercises his right and signifies his choice by bringing suit for the full amount, and the suit is sufficient notice.

Suit to foreclose a mortgage containing the usual interest clause, that, if any installment of interest or principal shall come due and remain unpaid for thirty days, the whole sum secured shall be due and payable at the expiration of said thirty days, at the option of the mortgagee.

WITHEY, District Judge, held that it is no objection to granting a decree for the full amount secured that the bill does not allege option by the mortgagee and notice. It is sufficient that default for more than thirty days in the payment of an installment is alleged, that the default continues, and that the bill claims a decree for the whole sum secured.

“Option,” in the instrument, imports a right to choose and an exercise of that right. The mortgagee exercises his right and signifies his choice by suing for the whole amount, and suit is sufficient notice of his choice, upon like principle that suit upon a note payable on demand is a sufficient demand of payment.

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