Court of Queen's Bench, in the case of Wellbridge Holdings Ltd. v. The Metropolitan Corporation of Greater Winnipeg,[42] wherein the plaintiff[43] alleged that the Corporation was negligent in enacting By-law 177 in that it failed to give proper notice. The learned judge held against the plaintiff on the grounds that the action was barred by virtue of s. 21(1) of The Public Officers Act[44] and s. 394 of The Municipal Act.[45]

Secondly, in illustration of the old adage that it is an ill wind that blows no one any good, since the thwarting of the attempts to enable the location of an apartment building on the Ginsburg property, the Maryland Street bridge has been condemned. In order to facilitate the construction of a new bridge, the Ginsburg property is being expropriated.

CAMERON HARVEY*

POTENTIAL UNCONSCIONABILITY AND THE UNCONSCIONABLE TRANSACTIONS RELIEF ACT[1]

Brock Acceptance Company v. Abe Klassen and Henry Klassen[2]

Matas J., of the Manitoba Court of Queen's Bench held in this as yet unreported case that a loan to a businessman to finance the purchase of a gravel truck is unconscionable even where there is no pressure upon the borrower to borrow and where the lender actually tries to dissuade the borrower from proceeding with his enterprise.

The defendant Abe Klassen, intending to enter the gravel hauling business, and requiring a truck, approached the plaintiff for the purpose of financing the purchase of the truck. He was advised by the plaintiff not to proceed but he was determined. The following are the particulars of the loans finally arranged:

42. Which at the time of writing was unreported.
43. The plaintiff, having leased Ginsburg property, inter alia, had obtained a building permit, entered into financial commitments and done some work towards the erection of a high-rise apartment on the property, subsequent to the enactment of the by-law in question.
44. S.M. 1960, c. 30. In interpreting the term "persons" in s. 21(1) Hunt J. referred to The Interpretation Act R.S.M. 1954, c. 128, s. 23(1)(32) (sic—the learned judge ought to have referred to S.M. 1957, c. 33, s. 23(1)(34)) and to Koshurba v. R.M. of North Kildonan and Popiel (1965) 51 W.W.R. 608 (Man.Q.B.).
45. R.S.M. 1954, c. 173 which is made relevant to by-laws of the Corporation by s. 206(4) of The Metropolitan Winnipeg Act; the by-law in question had never been quashed—it simply had been declared invalid!

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1. S.M. 1964 (2nd S.) c. 13, as amended.
2. Decided March 25, 1969.

To balance owing to the plaintiff by the defendant Abe Klassen	$1,479.09
New Loan to Klassen	4,100.00
Finance Charges in respect of the new loan	2,240.00
Insurance Premium	76.72
Total	$7,895.81
Less rebate of finance charges in respect of the earlier loans	155.81
Balance due	$7,740.00

As further security the plaintiff took a chattel mortgage on the truck and obtained the signature of the other defendant, Henry Klassen, to a promissory note.

The note contained the usual provision for acceleration after default. No provision was made for prepayment or for a rebate of unearned interest upon prepayment, but the evidence indicated that it was the policy of the plaintiff to allow rebates "based on the mathematical formula in general use by finance companies".

The interest rate on the loan was stated to be a 13% "flat" rate which, it was pointed out, was roughly equivalent to an effective annual interest rate of 25% if there was a steadily reducing balance.

When the inevitable default occurred, the plaintiff seized and sold the truck, applied the full proceeds against the loan and then demanded payment of the balance. At this time, the effective rate of interest, had full settlement been made, would have been 38.4% per annum. At the opening of the trial a further settlement offer was made which would have had the effect of reducing the interest charged to an effective rate of 26%.

Matas J., did not consider whether the actual rate being charged was harsh or excessive, but held the loan to be unconscionable on the basis that the mere absence of both a provision for repayment and the corresponding contractual right to a rebate of unearned interest upon prepayment created a harsh and unconscionable contract.

The learned judge went on to state that in any event:

> ". . . the exercise by the lender of its right of acceleration where a subsantial amount of the loan is still unpaid could create an obligation on the part of the borrower to pay an exorbitant rate of interest, quite apart from considering whether the actual rate being charged was harsh or excessive."

It would seem, therefore, that although a loan may be fair and reasonable in all other aspects, if there is an acceleration clause and no provision for prepayment plus a right to rebate of unearned finance charges, then, in Manitoba at any rate, a harsh and unconscionable bargain will have been created. It is the fact that the interest rate that *might* be charged is excessive that creates the unconscionability. This

does not mean that relief in the form of a lower interest rate will be given; all it means is that the court may add a term to an otherwise reasonable contract to give the borrower the right to prepay along with a rebate of unearned finance charges. In the *Brock Acceptance* case, Matas J. allowed interest on the amount actually advanced by the lender at the rate of 1% per month to date of payment.

E. A. BRAID*

MISTAKE IN EQUITY: *SOLLE v. BUTCHER* RE-EXAMINED

Twenty years ago, in *Solle v. Butcher,*[1] Denning L.J. (as he then was)propounded his doctrine of equitable mistake.[2] According to this doctrine a contract is voidable in equity if the following conditions are satisfied: 1. The mistake must either be mutual or, if only one party is mistaken, the other party must have induced or at any rate be aware of the existence of the mistake; 2. It must be unjust in all the circumstances for the party seeking to enforce his legal rights to be allowed to do so; 3. The party seeking to have the contract set aside must not have been at fault. This doctrine has been criticized academically,[3] but it has recently been applied on both sides of he Atlantic in *Ivanochko v. Sych*[4] and *Grist v. Bailey.*[5]

In *Ivanochko v. Sych* the appellant agreed to sell a house and chattels to the defendant for $20,000, and some two years later it was discovered that the monthly payments were not sufficient to pay the interest on the outstanding balance of the purchase price and that unless these instalments were increased the agreement would never be paid up. The Saskatchewan Court of Appeal held that, although there was no mistake on the part of either party sufficient to render the contract void at law, the contract was voidable in equity because the parties were under a common misapprehension as to the effect of the monthly payments, each taking it for granted that these payments would in time liquidate the balance of the purchase price, and granted rescission of the contract on terms. In *Grist v. Bailey* the defendant had agreed to sell a house to the plaitniff for £850, "subject to the

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1. [1949] 2 All E.R. 1107, at 1119.
2. For the sake of brevity this doctrine will be referred to in future as "Lord Denning's doctrine."
3. C. J. Slade, The Myth of Mistake in the English Law of Contract (1954) 70 L.Q.R. 385.
4. (1967) 58 W.W.R. 633.
5. [1966] 2 All E.R. 875.