

CHANCERY.

Proudfoot, V. C.]

[January 6.

SANDS v. THE STANDARD INSURANCE CO'Y.

*Fire insurance—Alienation—Mortgage—
Additional condition.*

By an additional condition endorsed on a policy of insurance against fire, covering chattels, it was declared that "when property (insured by this policy) or any part thereof shall be alienated, or in case of any transfer or change of title to the property insured, or any part thereof, or any interest therein without the consent of the company, first endorsed hereon, or if the property hereby insured shall be levied upon or taken into possession or custody under any legal process, or the title be disputed in any proceeding at law or in equity, this policy shall cease to be binding on this Company."

Held, that this did not prevent the owner from creating a mortgage on the property covered by the policy, without notice to or assent of the Company.

MOSS, C. J. A.]

[January 7.

PRESSY v. TROTTER.

Mortgagor and mortgagee—Assignee of mortgage—State of accounts—Existing equities.

The rule that an assignee of a mortgage takes, subject to all the existing equities and the state of accounts between the mortgagor and mortgagee was acted upon and applied in a case where, in 1875 a married woman created a mortgage, in which her husband joined, and it was agreed that any balance then due by the mortgagee to the husband as soon as ascertained should be applied on the mortgage, and that any future accounts that might become due to the husband for lumber and work supplied to or done for the mortgagee should also be so applied; which mortgage was about fifteen months afterwards sold and assigned by the mortgagee to a purchaser without notice of such understanding or agreement, he having obtained such assignment as security for any deficiency that might be found to exist upon the realization of a mortgage then held by the purchaser against the mortga-

gee; and having taken the assignment without inquiring as to the state of accounts, or the title to the lands.

CANADA REPORTS.

ONTARIO.

CHANCERY CHAMBERS.

(Reported for the LAW JOURNAL by F. LEFROY, Barrister-at-Law.)

BICKFORD v. PARDEE.

Execution—Setting aside—R. S. O. c. 66, sec. 72.

Where a decree ordered B to give A a note as the price of certain railroad iron to be forthwith delivered to B by A, the quantity and weight thereof to be ascertained by the Master, and the price adjusted accordingly; and also, in another clause, ordered A to deliver to B selected rails up to a certain value, and B forthwith to give A a note for the value thereof, and that A should thereupon enter into a certain covenant in regard to them; and that in default of delivery of the said notes the amounts should become immediately due from B: *Held*, such a decree is not a "judgment" within R. S. O. cap. 66, sec. 72, on which a *fi. fa.* could, on such default, be issued *ex parte* on mere filing of affidavit with C. of R. and W., but that a reference was necessary.

[Mr. Stephens, Referee.

In this suit a decree had been obtained, by which it was decreed (1) that a certain agreement, as subsequently modified, should be carried into execution; (2) that the defendants, L. and P., should forthwith deliver to the plaintiffs the promissory note of the defendant P. for \$17,000 as the price of the railroad iron on the wharf at Belleville, and that the plaintiffs thereupon should deliver to the defendants the said railroad iron, and on this delivery the quantity and weight should be ascertained, and, in case of disagreement, the Master should determine it, and if the value at the prices in the said agreement fixed fell short of the said sum of \$17,000, the deficiency should be credited by endorsement on the said note, and if in excess, the defendants should deliver a similar promissory note of the said defendant P. for the excess; (3) that on the plaintiffs delivering to the defendants selected rails not exceeding a certain value then lying at Port Stanley, the said defendants should deliver to the plaintiffs the promis-