

the machine should be covered "while in any one of the out-buildings insured." Barn No. 2 was insured, though not by the defendant company.

*Held*, that the machine was covered by the policy, and that the plaintiff was entitled to recover in respect of it.

An objection was also made that a reaper destroyed by the fire was not covered by the policy.

*Held*, on the evidence, that the objection was untenable.

*Clute*, for plaintiff.

*Britton*, Q.C., for defendant.

Divisional Court.]

[July 29.

SWEENEY *v.* SWEENEY.

*Maintenance, sum payable in lieu of—Payable at end of year—Consent judgment.*

The plaintiff conveyed his farm to his son, subject to the payment of an annuity of \$60 a year, and the plaintiff's "maintenance in board, washing and keep out of the farm," or to "receive in cash an amount sufficient to pay for the same yearly." There was also a bond of even date whereby the defendant covenanted to furnish such maintenance or pay such sum. The defendant sold the farm, and went to reside on a farm elsewhere. The plaintiff went and lived with him on the new farm for some years, receiving his maintenance, etc., but, becoming dissatisfied, left.

*Held*, that the plaintiff was not bound to reside with the defendant wherever he might choose to go; and under the circumstances was entitled to be paid a reasonable sum for his maintenance, payable at the end of each year.

At the trial the defendant's counsel raised the objection that the amount, if any, was only payable at the end of the year. The learned judge overruled the objection, and decided that the plaintiff was entitled to receive \$2 a week, payable weekly. The defendant's counsel then asked to have the amount payable monthly, to which the learned judge acceded, and gave judgment accordingly.

*Held*, that the judgment could not be deemed to be by consent, so as to preclude the defendant from afterwards moving against it.

*Leonard*, for the plaintiff.

*C. J. Holman*, for defendant.

Chancery Division.

Robertson, J.]

[July 15.

GLASS *v.* GRANT, *et al.*

*Fraudulent mortgage by insolvent—Defence of foreclosure proceedings after assignment by insolvent—Action by assignee to set aside the mortgage—Demurrer—Res judicata—Assignee of insolvent—Trustee for creditors.*

Plaintiff, as assignee for the benefit of creditors of one C., brought an action to set aside a mortgage made by C. to the defendants while insolvent, as fraudulent. The defendants set up *inter alia* as a defence certain foreclosure proceedings which had been taken, to which G. was a party defendant as assignee, and in which a judgment of foreclosure had been obtained on a demurrer to this part of the statement of defence. It was

*Held*, that the plaintiff acted in a dual capacity, and that the foreclosure proceedings were taken against him as assignee of C. and not as trustee for the creditors, and that the plaintiff could not set up the fraud of his assignor, and that he was not bound to set up by way of counter-claim in the foreclosure action his cause of action in this suit, and that the foreclosure judgment was not a bar to this action.

The Duchess of Kingston's case, 2 Sm. L. C. (7 ed.), 792, commented upon.

*Hellmuth*, for the demurrer.

*James MacLennan*, Q.C., *contra*.

Robertson, J.]

[July 24.

HORTON *v.* PROVINCIAL PROVIDENT INS.

*Insurance—Certificate of membership—Default—Forfeiture—Waiver.*

H., the husband of the plaintiff, was, in his life-time, the holder of two certificates in the defendant's company in his wife's favour, the condition of which required that the semi-annual dues should be paid on May 15th and November 15th in each year, and that thirty day's default should suspend membership and void the certificates; and that the suspended member should be reinstated only on furnishing a fresh medical examiner's report to the satisfaction of the defendants within ninety days from the date of suspension, and on paying all arrearages. The deceased died on