Held, also, that A. A. died intestate and unmarried after January 1st, 1852, the defendants as the children of a deceased brother, took an equal share in the lands as co-tenants in common with the plaintiff, G. A., that they were as much entitled to the possession of the lands as the plaintiff, and that the plaintiff having obtained the legal estate from the trustees, should hold the same as a trustee for all the tenants in common, etc

Held also, that there being no proof or ouster of the plaintiff, he did not recover from the defendants any mesne profits in this action.

James MacLennan, Q.C., and *R. MacLennan*, for plaintiffs.
McCarthy, Q.C., for defendants, Chas. and Wm. Adamson.
Donald, for defendant, Mary Olive Anderson.
} *At the trial.*

and

The *Attorney General* of Ontario, and *T. Langton*, for plaintiffs.
McCarthy, Q.C., and *W. Nesbitt*, for defendants
} *On the argument.*

BOYD, C.] [May 13.

CORHAM *v.* KINGSTON.

Mortgage—Insurance moneys—Application upon mortgage—Appropriation of payments.

Motion for injunction to restrain a mortgagee under a mortgage dated Dec. 16th, 1887, from exercising his power of sale, upon the ground that the mortgage was not in default.

The mortgage was to secure $300 with interest, to be paid yearly, together with an instalment of principal not less than $50, the first instalment of principal and interest to fall due on Dec. 16th, 1888.

On June 29th, 1888, a fire occurred, and the mortgagee received $195 insurance money.

Without communicating with the mortgagor, the mortgagee assumed to apply this in the following way: He reckoned the interest up to the receipt of the money, and deducting that credited the balance on the whole sum advanced; and no payment of the first instalment being made by the mortgagor on Dec. 16th, 1888, he proceeded to exercise his power of sale.

Held, that the rules as to appropriation of payments did not apply, the insurance money not constituting a payment in the ordinary sense of that word, and the mortgagor having had no opportunity of first directing its appropriation.

Held, also, that though the mortgagee had the right to apply the insurance money in satisfaction of the money that ought to be paid under the mortgage, it was not competent to him to accelerate the times of payment, or to alter in any respect the terms of the instrument without the consent of the mortgagor. The insurance money must be applied from time to time as payments fell due under the mortgage, unless otherwise arranged between the parties.

Hoyles, for the plaintiff.
A. H. Marsh, for the defendant.

BOYD, C.] [May 13.

MCGUGAN *v.* SCHOOL BOARD, SOUTHWOLD.

School law—Change of school site—Meeting of ratepayers.

This was an application to have it declared that a certain resolution changing the site of a public school passed at a public meeting of the ratepayers called for the purpose was void, and also that certain conveyances made in pursuance of such resolution were void. It appeared that at the meeting a proposition and also an amendment were submitted, both of which, in addition to the main question as to change of site, embraced matters collateral thereto.

Held, that the main question had not been so presented to the ratepayers as to give them a fair opportunity of voting upon the material point, and that the vote taken could not be considered as unequivocally indicating the mind of the majority on that particular point. Resolution declared invalid and conveyances set aside, but without costs.

Meredith, Q.C., and *Crothers*, for the plaintiff.
Doherty, for the individual defendants.
Glen, for the corporation.

BOYD, C.] [May 13.

Re GRAHAM AND RENFREW.

Trustees—Power to sell—Implied power to take back mortgage.

Petition under Vendor and Purchaser Act.

Under a certain conveyance power was reserved to the trustees named therein to sell