

for the security of his contract not to adopt that course, but to require the mortgagor to make his payments in accordance with his covenants" (z).

If the mortgagee receives the insurance money before the time appointed for payment of the money secured by the mortgage he is entitled, nevertheless, to the interest without abatement (a).

"He may keep the insurance money by him and sue for arrears, or distrain for them, if he has that power, or he may at his option apply the whole or part of the insurance money to the arrears. It is part of his security, and whenever there is default he may resort to it, or he may resort to his personal or other remedies. Of course, as soon as the debt is reduced to an equality with the insurance money in his hands he must apply the latter *pro tanto* from time to time to subsequently maturing payments. It hardly needs to be added that a mortgagee retaining insurance money in his hands as security for future payments is accountable for any profit he makes with it, and that he ought not to leave it lying idle, but ought, if possible, to concur with the mortgagor in some profitable way of laying it out." (b)

In view of the definition of "mortgage" in the Mortgages Act as including "any charge on any property for securing money or money's worth" (c), it has been held that s. 6 of the statute is applicable to the case of insurance effected by a purchaser of land with loss, if any, payable to the vendors. Therefore, when the buildings on the land are destroyed by fire, the vendors are entitled to the security of the insurance money, just as before the fire they were entitled to the security of the buildings, but they are not entitled to apply the insurance money in payment of instalments of the purchase money not yet due (d).

Mortgaged property was insured in the name of the mortgagor with loss payable firstly to the first mortgagee and secondly to the second mortgagee as their interests might appear. The first mortgagee having received insurance money applied it on the first mortgage and subsequently sold the property under power of sale. It was held that the insurance money was properly applied, the effect being to reduce the first mortgage for the benefit of execution creditors intermediate between the two mortgagees, and that there was no case for marshalling of two funds as between the two mortgagees (e).

Under a contract with the owner of a mill and machinery which was subject to three mortgages (the second and third in favour of the same mortgagees), each containing a covenant to insure the plaintiffs took out the machinery, replacing it with new machinery, reserving a lien thereon for the balance of the price, the lien agreement providing that the mill-owner should insure the machinery for the plaintiffs' benefit. Before any further insurance was effected the mill and machinery were destroyed by fire. It was held, upon the evidence, that the second mortgagees had consented to the purchase of the new machinery upon the terms specified, and, as a result of that finding, that the plaintiffs were entitled, subject to the first mortgagee's claim, to payment of the insurance money on the machinery and to be subrogated to the first mortgagee's rights against the land to the extent to which that insurance money was exhausted by him (f).

(z) *Edmonds v. Hamilton Provident and Loan Society*, 1891, 18 A.R. (Ont.) 347, at p. 357, Osler, J.A.

(a) 18 A.R. (Ont.) at p. 356; *Austin v. Story*, 1863, 10 Gr. 306.

(b) 18 A.R. (Ont.) at p. 357, Maclellan, J.A.

(c) R.S.O. 1914, c. 112, s. 2.

(d) *Scott v. Crinnian*, *supra*.

(e) *Midland Loan and Savings Co. v. Genitti*, 1910, 35 O.L.R. 163, 30 D.L.R. 52.

(f) *Goldie v. Bank of Hamilton*, 1900, 27 A.R. (Ont.) 619.