MECHANICS' BUILDING AND SAVINGS SOCIETY v. GORE DISTRICT MUTUAL FIRE INSURANCE CO.

Mutual insurance policy—Assignment to mortgagee—Subsequent insurance by mortgagor—Effects of on rights of mortgagee—Pleading.

A mortgagee, becoming assignee of a policy under the Mutual Insurance Act 36 Vict. cap. 44, O., by an assignment duly ratified by the company, becomes—whether he has given his own note, or the directors had assented to retain the premium note of the mortgagor—a person insured to the extent of his own interest, and is, in the event of loss, entitled to recover in his own name to the extent of his claim. By such assignment he acquires a separate independent interest under the policy, and he is not bound by a contract for further insurance made by the mortgagor without his knowledge, and which he could not prevent, nor by any acts of a similar kind beyond his control.

Held, that although the assignment might by agreement so bind him, the terms of the assignment here were not sufficiently clear to have that effect.

The declaration alleged that defendants by their policy insured one B. for $3,000 on a manufactory and stock: that afterwards with defendants' knowledge and consent, he assigned all his interest in the policy to the plaintiffs, as collateral security for a mortgage by B. to them for $3000, or the property insured: that defendants ratified and confirmed said policy to and in favor of the plaintiffs: that the premises were burned: and that by force of the statute the plaintiffs became under the said assignment interested in the said policy as the insured, and entitled to all rights as if they had been the original parties insured.

Defendants pleaded that the assignment was accepted by plaintiffs, and the consent given by defendants, subject to the condition that the plaintiffs should be bound by all the terms and conditions of the policy, as B. was bound by the same, and that the policy should continue voidable as though such assignment had not been executed, and that said policy was not otherwise ratified or confirmed to the plaintiff: that it was a condition of the policy that any insurance on the premises by the act or with the knowledge of the insured in any other company, without the consent of defendants, should avoid the policy; and though B. effected other insurances specified with defendants' consent.

The plaintiffs replied, that the said assignment was not accepted by the plaintiff, nor was defendants' consent thereto and the ratification by them to the plaintiffs, as in the declaration and plea mentioned, on the terms or subject to the condition that the plaintiffs should be bound by any terms which would render the policy voidable by any act or omission of B.; but by virtue of said assignment, consent and ratification, the plaintiffs became entitled to all the rights and subject to all the conditions to which B. had been subject, before the assignment, &c., but not otherwise; and that the said insurances effected by B. were without the plaintiffs' consent or knowledge; 3. that the alleged insurances effected by B. were not of the same interest as that insured by the plaintiffs under said policy in the declaration mentioned, and said insurances were not effected by plaintiffs or with their knowledge or consent.

Held, that the second replication was bad, as being in effect a demurrer to the plea, and neither traversing nor confessing and avoiding it; and that the plea was bad and the third replication good.

D. McCarthy, Q.C., and *B. B. Osler*, Q.C., for plaintiffs.

F. Osler and *Durand* for defendants.

[Feb. 6.

JOHNSTONE v. WHITE.

Husband and wife—Separate estate—C. S. U. C. cap. 73, 35 Vict. cap. 16—Ejectment—Outstanding term.

The plaintiff was married to her present husband in 1859, without any marriage settlement, and he before that year had reduced into possession the land in question.

Held, that she was not entitled to sue for it without joining her husband in ejectment. Either under C. S. U. C. cap. 73, or 35 Vict. cap. 16, O., such land not being her separate property, and the husband's interest not being divested by the last mentioned Act, and that she would not have been entitled even if her husband had not reduced it into possession.

The patent issued in 1836 to C., who apparently had made some agreement for sale to D.; who transferred it to the plaintiff. The plaintiff in 1846 conveyed the land to her sons, and in 1862 a deed for a nominal condition, was executed by C. to the plaintiff. The learned Judge, who tried the case without a jury, having found that this last deed was made to the plaintiff as a trustee to enable the title of her sons to be perfected: *Held*, that on this ground also the land could not be her separate estate.

The evidence shews that the plaintiff's son had for some time been in possession as a tenant under lease, at a year's rent. *Semble*, per HAR-