

Held, that the estate was entitled to the benefit of whatever advantage the defendants derived from the transaction, and that they should account to the assignee for the difference between the amount of their claims and the amount they would have received by way of dividend from the estate.

Held, also, that the assignee was a necessary party to the action.

James Parkes and W. C. McKay for the plaintiffs.

Aylesworth, Q.C., for the defendants.

Chancery Division.

Div'l Court.]

[May 10.

BROWN v. THE TRUSTEES OF THE TORONTO GENERAL HOSPITAL.

Landlord and tenant—Agreement by landlord to repair—Personal injury from want of repair—Notice—Damage.

The plaintiff, a monthly tenant of a house belonging to the defendants, which they had agreed to repair, finding the steps of the front door out of repair, notified the defendants to repair, which they neglected to do.

He continued to use the steps until he fell through and was injured.

Held, that he could not recover

Herbert M. Mowat and R. Y. Symth for the plaintiff.

Osler, Q.C., and *H. D. Gamble* for the defendants.

Practice.

Chy. Div'l Court.]

[April 23.

RE THE UNION ASSURANCE CO. AND THE LONDON & CANADIAN LOAN & AGENCY CO. AND J. W. LANG.

Insurance—Loss payable to mortgagees—Right to consolidate two mortgages, one of which did not cover the insured property.

G. mortgaged lands A. to a loan company for \$1,000, and afterwards mortgaged lands A. and B. to the same company for \$3,000. S. became the owner of the equity of redemption in both lands, and insured buildings on lands B.; "loss, if any, payable to the company as their interest may appear." The \$3,000 mortgage was paid off, except the last instalment of \$500, the \$1,000 mortgage being overdue, and the \$500 having become due by virtue of the accelerating clause as the last gale of interest had matured, when a fire loss, amounting to \$1,203.30 occurred, and the company claimed the right to consolidate both the mortgages so as to retain the whole amount of insurance money.

Held (reversing the Master in Chambers and *ROBERTSON, J.*), that the insured having a legal right to recover his insurance, and not being driven to a court of equity to enforce his rights, the company could not consolidate the two mortgages.

The trend of modern decisions is against extending the doctrine of consolidation.

Moss, Q.C., and *F. E. Hodgins* for the appeal.

Arnoldi, Q.C., and *Bristol, contra.*