

HIGH COURT OF JUSTICE.

Teetzel, J.] HASLEM v. EQUITY FIRE INS. CO. [May 5.

Insurance—Loss if any payable to mortgagees—Ascertainment of lesser amount by mortgagor and company—Mortgagees refusal to accept—Action by mortgagees for amount of policy—Interest limited to the amount ascertained—Absence of fraud or collusion—Statutory conditions.

Plaintiffs were mortgagees of a certain property with a covenant in the mortgage from the mortgagor to insure for \$2,000 pursuant to which a policy was issued by the defendants to the mortgagor, the loss being made payable to the plaintiffs, mortgagees, as their interest may appear. A loss having occurred, the mortgagor and the company not being able to agree upon the amount of the loss, appraisers were appointed under statutory condition 16 (R.S.O. 1897, c. 207 s. 168) and an award made fixing the amount at \$1,012, about which the plaintiffs were not consulted. Plaintiffs refused to accept that amount and brought action to recover the \$2,000.

Held, that the effect of the covenant to insure, the application referring to the mortgage and the issue of the policy with the loss made payable to the plaintiff as their interest may appear, was to give the plaintiffs an equitable lien on the money secured by the policy to the extent of their interest, that as soon as all things had been done by the assured to make the defendants liable to pay, the money was stamped with a trust in favour of the mortgagees and they had a direct beneficial interest in and a lien upon it in the defendant's hands as soon as it became applicable to the payment of the loss, and were entitled to bring an action against the company for it. But

Held, also, that in view of the terms of statutory conditions 12 & 16, and as no fraud or collusion between the mortgagor and the company was alleged, the amount of the award as ascertained between them was "the loss, if any," to which the plaintiffs were entitled, and their rights were limited to the recovery of that amount.

O'Connell, for plaintiff. B. Morton Jones, for defendants.

Meredith J.] MACDONALD v. GRUNDY. [June 2.

Chattel mortgage—Mortgage on lands as additional security—Appropriation of goods by mortgagee—Statute of limitations

Where a mortgage on lands was given merely as additional security for the amount secured by a chattel mortgage, and on default in payment a warrant was issued under the chattel mortgage, and the goods seized and taken out of the mortgagor's possession, and, though a form of sale was gone through with, no sale actually took place; but the goods were taken possession of by the mortgagee and appropriated to his own use, and where