

## FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

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## CHAPTER III.

OF INSURABLE INTEREST, THE SUBJECT INSURED,  
AND WHO MAY BECOME INSURED.

[Continued from p. 208.]

A French clause is to this effect: This insurance is meant to guarantee the insured his mortgage claim in the case of a fire damaging the said house, and of the property mortgaged not offering longer a sufficient guaranty.

The money received is the mortgagor's money; the mortgagor pays the premium. If the debt has been paid before the loss, or there is overplus, the mortgagee is trustee for the mortgagor; but the insurer cannot go free. As to the relations between the mortgagee and the mortgagor, the insurer has no concern.

## § 78. Insurance, loss payable to mortgagee.

Where the mortgagor insures a house, loss if any payable to mortgagee, the mortgagor's interest is insured with power of attorney irrevocable to mortgagee to receive the avails of the policy, if fire happen. In such case, if fire happen the insurers must pay, whether the mortgagor have previously paid the mortgagee or not. If the debt have been paid, then the amount of loss received by the mortgagee is received from a fund placed in his hand for a special purpose now accomplished. The mortgagee receives it to the use of the mortgagor and must account for it.<sup>1</sup>

Where the mortgagee insures solely on his own account, it is but an insurance of his debt.<sup>2</sup> If his debt be paid the policy can have no operation;<sup>3</sup> nor can the mortgagor in such case claim, for he has no interest in the policy.<sup>4</sup> How can any Court hold that

a policy taken by A in his sole name shall avail to B, a stranger to the policy? observes Story, J., in the case of *Carpenter v. Prov. W. Ins. Co.*<sup>1</sup>

## § 79. Value of land mortgaged must be equal to claim insured.

The mortgaged land (claim against or upon which is insured) must offer at the time of the insurance a value equal to the claim insured and all other, earlier, claims against it. Otherwise the insurance is improper, the creditor not having any real valuable *gage*.<sup>2</sup>

The contract with the insurance company is a contract of indemnity, legal only as an indemnity commensurate with the interest of the insured.<sup>3</sup>

## § 80. Sale under execution.

In the United States a sale, by a Master in Chancery, of the property mortgaged, under a decree of foreclosure will terminate the interest of the mortgagor, although the decree may not have been enrolled, and no deed executed by the Master.<sup>4</sup>

## § 81. Liability of carrier until delivery of goods to consignee.

A carrier is liable for loss by fire, though the carriage be ended; if the goods have not been delivered to the consignee, and he has

<sup>1</sup> 16 Peters.<sup>2</sup> Boudousquie.

The Code of Holland prohibits insurance of a hypothecary claim, unless the creditor could be usefully collocated if there had been no loss by fire.

<sup>3</sup> Per Vice. Chan. in *Ex parte Andrews, in re Emmett*, 2 Rose R.

A creditor insured his debtor's house for the full value of it. It was burnt. The insurance more than sufficed to pay the creditor. The debtor, a stranger to the contract, asked for the difference, and he got it, the insured hypothecary creditor being held *negotiorum gestor* of the debtor for the excess. There was no mention in the policy of the amount of the mortgage debt, and the insured was held to have acted in his own interest and the debtor's. Boudousquie, No. 97.

<sup>4</sup> *McLaren v. Hartford Ins. Co.*, 1 Selden, 151.

Query, as to sheriff's sale alone in Lower Canada. Suppose the purchaser not to pay, may not the mortgagor, after that, have an insurable interest, or is his property defeated? Where the tenant has promised to insure, can the landlord do it at once and charge the tenant, or must his recourse be in damages? *Dufresne v. Lamontagne*, Superior Court, Montreal, June, 1874.

<sup>1</sup> See observations of Shaw, C.J., in *Kinn v. The State M. F. Ins. Co.*, 7 Cush.

<sup>2</sup> *Carpenter v. The Prov. W. Ins. Co.*, Supreme Court, United States, Story, J. 16 Peters.

<sup>3</sup> This is conceded by Shaw, C. J.

<sup>4</sup> Boudousquie *contra*.