The purchasers transferred their interest under the agreement to the defendant, and the defendant, in pursuance of the agreement, insured the building in various companies.

The building was damaged by fire. The loss was apportioned among 9 insurance companies, who issued cheques to the aggregate amount of $15,000, payable to the order of the defendant and the plaintiffs.

This action was brought to compel the defendant to execute such a release as might be necessary to secure the delivery of the cheques or to endorse the cheques so that the plaintiffs might obtain the proceeds.

The defendant, alleging that all past-due instalments of the purchase-price had been paid, but that the portion of the purchase-money not yet due was greater than the total amount of the insurance moneys, contended that the insurance moneys were the property of the defendants, subject only to a lien in favour of the plaintiffs, and to the right of the plaintiffs, so often as there should be arrears of principal or interest payable to the plaintiffs by virtue of the agreement, to apply so much of the insurance moneys as might be necessary in payment of the arrears, and claimed a declaration accordingly.

The action was tried without a jury at London.

Sir George Gibbons, K.C., for the plaintiffs.

T. G. Meredith, K.C., for the defendant.

FALCONBRIDGE, C.J.K.B., in a written judgment, said, after setting out the facts, and referring to sec. 6 of the Mortgages Act, R.S.O. 1914 ch. 112, and the meaning given to "mortgage," "mortgage money," "mortgagor," and "mortgagee" by sec. 2 (*d*), said that the definition of "mortgage" was wide enough to cover the charge commonly known as "a vendor's lien," and he was inclined to think that the plaintiffs were mortgagees within the meaning of sec. 2, and therefore of sec. 6, though he doubted whether the Legislature ever considered very seriously the effect of applying this wide definition to every individual provision of the Mortgages Act.

Reference to Edmonds v. Hamilton Provident and Loan Society (1891), 18 A.R. 347; Corham v. Kingston (1889), 17 O.R. 432.

There was nothing in the judgments in those cases to justify the plaintiffs' contention that they were entitled to apply the insurance moneys in payment of instalments not yet due; but it appeared from those cases that, if the plaintiffs were mortgagees,