

house for a year from that date, and to deliver a policy to that effect. The building was destroyed by fire in December, 1877. Defendants alleged that they had been induced to enter into the contract by the misrepresentation of plaintiff that the Building Society were about to advance \$600 on the property, and that they had undertaken to insure it, not for the plaintiff, but for the Society. At the hearing plaintiff's counsel asked for a decree for a policy, and also for the payment of the money.

Held, that, even if such relief could be granted, it could only be upon a bill asking for it, whereas plaintiff had in his writ asked only for a policy; and further, that as the evidence was directly in conflict on the point as to misrepresentation, and as to the terms of the contract, plaintiff should be left to his remedy at law.

Bill dismissed without costs.

Meagher v. The Queen's Insurance Co...... 327

3. B. & E. Colp, being the owners of certain lands, subject to a mortgage of \$2,666, and indebted to other parties in the sum of \$691, entered into an agreement with J. Hubley and C. A. Whitman, whereby, in consideration of the latter agreeing to liquidate the mortgage and the other debts, the parties first mentioned agreed to deed to them the real estate mentioned in the mortgage. It was further agreed that Hubley, Whitman and B. Colp, the defendant, should carry on a lumbering business on the property. The debts were accordingly paid, and the plaintiffs and defendant conducted the business, but defendant refused to sign the deed of the property, denied that a partnership had been entered into as alleged, and claimed that the agreement had been procured by misrepresentation, which he failed to prove.

Held, that the plaintiffs were entitled to specific performance of the agreement.

Whitman et al v. Colp...... 471

STATUTES OF ELIZABETH.

See ELIZABETH, STATUTES OF.

———— OF FRAUDS.

See FRAUDS, STATUTE OF.

———— OF LIMITATIONS.

See LIMITATIONS, STATUTE OF.

SURPLUS PROCEEDS.

R. M. & Co sought to have surplus proceeds arising out of a sale under foreclosure applied to a recorded judgment held by them against the mortgagor. The judgment was recorded in May, 1874. Plaintiff's mortgage had been recorded in 1869, and a prior mortgage of the same property had been recorded in 1855. Defendant having become insolvent, his assignee, in order to prevent the sacrifice of the property, paid off the mortgage last mentioned and the interest on plaintiff's mortgage, receiving from the holders of the mortgage which he paid an instrument in which, after reciting payment of the principal and interest, it expressed that the bond was delivered up to be cancelled, (which, however, was not cancelled, but was produced with the mortgage,) and that they remised, released, and quitted claim to him, as assignee, the land therein mentioned, and all the right which they had as executors, and all sums mentioned therein, to have and to hold to the said K., as assignee as aforesaid, his successors and assigns.