

(Metropolis) Act, 1774 (*t*), s. 83, formerly in force in Ontario (*u*). It gives the mortgagee the right, where insurance is effected by the mortgagor, even where there is no covenant on the part of the mortgagor to insure, or a covenant to insure merely but not to assign the policy, to require the money to be applied in making good the loss or damage (*uu*).

Sub-s. 2 confers on the mortgagee a new right, namely, the right to "require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage." The words "without prejudice to any obligation to the contrary imposed by law" have probably lost their significance since the statute 14 Geo. III. c. 78, s. 83, ceased to be in force. The words "special contract" mean a special contract relating to the insurance (*v*). The sub-section presumably refers to insurance money received by the mortgagor, for no statutory provision was needed as to money received by the mortgagee (*w*).

The mortgagee is not at liberty without the consent of the mortgagor to accelerate the times of payment under the mortgage by applying the insurance money in payment of instalments of principal or interest not yet due, but he may apply it in payment of overdue instalments (*x*). On the other hand, subject to a provision in the mortgage to the contrary, he still has the right, which he had before the passing of the statute, to hold the money as he held the policy, as collateral or additional security for the mortgage debt, and he is not bound to apply it towards payment of either principal or interest overdue (*y*).

"Now the Act does not profess to interfere with any right the mortgagee had theretofore possessed to deal with the proceeds of the policy when the mortgage money was overdue. He was not compelled to apply it at all, or if he did apply it he might apply it in such a way as to preserve the full benefit of his contract. The new right or option which is given to him must, I think, be considered as one controlling any right which the mortgagor might otherwise have had to direct the disposition of the insurance received by or paid into the hands of the mortgagee before the mortgage debt becomes due. In effect the option given by the section is either to have the money applied in rebuilding or to have it at once applied in reducing the debt secured by the mortgage. If the latter option is not exercised the money remains in the mortgagee's hands (in those cases in which he has had, apart from the statute, the right to receive it) as it would have done before the Act, and subject to whatever rights or interests the parties by law respectively had therein, and *inter alia* to the right of the mortgagee to make such application of it as he might deem proper to the payment either of principal or of interest, or of both, overdue, or to make no application of it if he should deem it more advisable

(*t*) See *In re Quicke's Trusts, Poltimore v. Quicke*, [1908] 1 Ch. 887; *Sinnott v. Bowden*, [1912] 2 Ch. 414.

(*u*) This statute, commonly referred to as the Metropolitan Building Act, was held to be in force in Ontario. *Stinson v. Pennock*, 1868, 14 Gr. 604; *Carr v. Fire Assurance Association*, 1887, 14 O.R. 487. By the Ontario Insurance Act, 1887, 50 V., c. 26, s. 154, it was provided that the statute should not "be deemed to be in force with regard to property in this Province."

(*uu*) *Edmonds v. Hamilton Provident and Loan Society*, 1891, 18 A.R. (Ont.) 347, at pp. 354-355.

(*v*) 18 A.R. (Ont.) at p. 355.

(*w*) 18 A.R. (Ont.) at p. 368.

(*x*) *Corham v. Kingston*, 1889, 17 O.R. 432.

(*y*) *Edmonds v. Hamilton Provident and Loan Society*, 1891, 18 A.R. (Ont.) 347, reversing judgment of the Queen's Bench Division on this point, 19 O.R. 677, and disapproving of *Corham v. Kingston*, 1889, 17 O.R. 432, in so far as it may be supposed to have decided that the mortgagee was bound to apply the insurance money on principal and interest as they matured.