

the mortgagee, must bear the loss arising from the solicitor's misappropriation of the funds.

Judgment of ROBERTSON, J., reversed.

*Watson, Q.C.*, for the appellants.

*W. H. Blake* for the respondents.

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From FALCONBRIDGE, J.]

[June 30.

WATEROUS ENGINE WORKS CO. *v* McCANN.

*Mortgage—Fixtures—Machinery—Lien agreement—Fire insurance.*

The plaintiffs sold certain mill machinery under an agreement which provided that a mortgage of the mill property was to be given to them by the purchasers to secure the price; that the machinery was not to form part of the real estate, but was to remain personal property; that the title was not to pass till payment of the price; and that the plaintiffs might insure the machinery.

After the machinery was placed in the mill the purchasers gave to the plaintiffs a mortgage on the mill property and all machinery therein, and this mortgage contained a covenant to insure.

After this the plaintiffs insured the mill and machinery, and the purchasers, without their knowledge, also placed insurance thereon.

The mill and machinery were destroyed by fire, and the plaintiffs were unable to recover owing to the breach of condition, and claimed the benefit of the purchasers' insurance of the machinery.

*Held, per* HAGARTY, C.J.O., and MACLENNAN, J.A., affirming the judgment of FALCONBRIDGE, J., that the plaintiffs were entitled to the money payable to the purchasers under their policy, the mortgage being the governing instrument.

*Per* BURTON and OSLER, J.J.A.: That they were not so entitled, the machinery being, by the agreement, personal property, and not included in the mortgage or protected by the covenant to insure.

*F. A. Anglin* for the appellants.

*W. H. Blake* for the respondents.

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From Q.B. Div.]

[June 30.

GIBSON *v.* TOWNSHIP OF NORTH EASTHOPE.

*Drainage—Petition—Withdrawal.*

The plaintiff, in 1884, after signing a petition for the construction of a drain wrote to the council objecting to the work for reasons set out, but in 1885 the council passed the necessary by-law, and issued debentures. Subsequently, the plaintiff gave notice of his intention to move to quash the by-law, but afterwards he withdrew this notice and tendered for the work. In 1889 he attacked the by-law, alleging, among other grounds, that it was void by reason of his withdrawal.

*Held, per* HAGARTY, C.J.O., that before 53 Vict., c. 50, s. 35 (O.), a petitioner could not withdraw.