

The case of two persons effecting, in different insurance companies, insurance of the same property in different rights has been stated thus (g):—

"Where different persons insure the same property in respect of different rights they may be divided into two classes. It may be that the interest of the two between them makes up the whole property, as in the case of a tenant for life and remainderman. Then if each insures, although they may use words apparently insuring the whole property yet they would recover from their respective insurance companies the value of their interests, and of course those values added together would make up the value of the whole property. Therefore it would not be a case either of subrogation or contribution, because the loss would be divided between the two companies in proportion to the interests which the respective persons assured had in the property. But then there may be cases where, although two different persons insured in respect of different rights, each of them can recover the whole, as in the case of a mortgagor and mortgagee. But wherever that is the case it will necessarily follow that one of these two has a remedy over against the other, because the same property cannot in value belong at the same time to two different persons. Each of them may have an interest which entitles him to insure for the full value, because in certain events, for instance, if the other person become insolvent, it may be he would lose the full value of the property, and therefore would have in law an insurable interest; but yet it must be that if each recover the full value of the property from their respective offices with whom they insure, one office must have a remedy against the other. I think wherever that is the case the company which has insured the person who has the remedy over succeeds to his right of remedy over, and then it is a case of subrogation."

6. Application of insurance money.

It is provided by the Mortgages Act, R.S.O. 1914, c. 112, s. 6, as follows:—

6.—(1) All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(2) Without prejudice to any obligation to the contrary imposed by law or by special contract, a mortgagee may 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.

This section was originally passed in 1886 (r), and was based on the English Conveyancing Act, 1881 (s).

Sub-s. 1 is practically declaratory of the mortgagee's right under the English statute, 14 Geo. III., c. 78, now cited as the Fires Prevention

(g) *North British and Mercantile Insurance Co. v. London, Liverpool and Globe Insurance Co.*, 1877, 5 Ch. D. 695 at pp. 683, 684, Mellish, L.J.

(r) 49 Vict., c. 20, s. 9.

(s) 44 & 45 Vict., c. 41. The clause in the English statute is found in connection with various ancillary provisions as to the mortgagee's power to insure, which were substituted for Lord Cranworth's Act (1860), 23 & 24 Vict., c. 145. See § 2, *supra*.