

ANNOTATION TAKEN FROM 44 D.L.R.

INSURANCE ON MORTGAGED PROPERTY.

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1. Insurable interest.
2. Right or obligation to insure.
3. Insurance in the name of the mortgagor.
4. Mortgage clause in insurance policy
5. Insurance in the name of the mortgagee.
6. Application of insurance money.

1. Insurable interest.

The mortgagor has by virtue of his equity of redemption an insurable interest in the mortgaged property, and his right to insure is co-extensive with the value of the property (a), but if he makes an absolute transfer of his equity of redemption he no longer has an insurable interest, and any insurance then existing in his favour ceases to be effectual unless it be assigned with the consent of the insurers to the transferee of the equity of redemption. The mortgagor's insurable interest does not cease until the mortgage debt has been paid, even although the mortgage has been foreclosed, for the mortgagor may nevertheless continue to be liable for the mortgage debt (b).

By a condition in a policy of insurance against fire the policy was to become void "if the assured is not the sole and unconditional owner of the property . . . or if the interest of the assured in the property whether as owner, . . . mortgagee, lessee or otherwise is not truly stated." It was held that a mortgagor was sole and unconditional owner within the terms of said condition. By another condition the policy was to be avoided if the assured should have or obtain other insurance, whether valid or not, on the property. The assured applied for other insurance, but before being notified of the acceptance of his application the premises were destroyed by fire. It was held that there was no breach of said condition (c).

A mortgagor who had made a mortgage, under the Short Forms of Mortgages Act, containing a covenant to insure the mortgaged premises against fire, effected an insurance thereon with the defendant company, the loss, by the policy, being payable to the plaintiff, the mortgagee, as his interest might appear under the mortgage. Subsequently the mortgagor conveyed his equity of redemption to the mortgagee without the consent of the company having been obtained therefor. The premises having been afterwards destroyed by fire, it was held that the plaintiff was not entitled to the insurance moneys, (1) the fact of the conveyance made by the mortgagor to the plaintiff, whereby the former ceased to have any interest at the time of the fire, was a good answer to the claim; and (2) such conveyance constituted a breach of

(a) *Glover v. Black*, 1763, 1 Wm. Bl. 396; 3 Burr. 1304 97 E.R. 891.

(b) *Parsons v. Queen Insurance Co.*, 1878, 29 U.C.C.P. 188, at p. 211; appeal to Privy Council on another point, 7 App. Cas. 96.

(c) *Western Assurance Co. v. Temple*, 1901, 31 Can. S.C.R. 373, following *Commercial Union Assurance Co. v. Temple*, 1898, 29 Can. S.C.R. 206.