

Full Court.] *MUSGRAVE v. THE MANHEIM INSURANCE CO.* [May 18.
*Marine insurance—Policy on freight—Constructive total loss—Frustration
of object of voyage by peril insured against.*

Plaintiff, steamer, while on a voyage from Halifax to Havana with a cargo of fish and potatoes, was disabled by the breaking of her shaft, and towed into Hamilton, Bermuda. It was found impossible to repair the ship in time to enable her to carry the cargo forward, and at the request of the shippers the cargo was returned to them and brought back to Halifax. The ship was sold and towed to Philadelphia, where she was repaired, and plaintiff brought action against the defendant company to recover the amount insured upon freight to be earned.

The jury found, in answer to questions submitted to them, that the ship could not have been repaired at Bermuda in time to have carried the cargo forward to Havana without material deterioration of the cargo or its becoming worthless, and that the shaft was broken by perils of the sea.

Held, dismissing the appeal, that plaintiff was entitled to recover, the cargo being one that required to be carried forward to its destination without delay, and the object of the voyage having been wholly frustrated by a peril insured against. And that the venture having been made of no effect by a peril insured against, there was a constructive total loss of the freight.

R. C. Weldon, Q.C., and R. E. Harris, Q.C., for appellant.

R. L. Borden, Q.C., and A. Drysdale, Q.C., for respondent.

Graham, E.J.] *RYAN v. CALDWELL.* [June 19.
*Action against mortgagor on covenant for balance due after crediting
amount of sale—Right to redeem.*

Action by mortgagees against mortgagor on the covenant for payment in the mortgage for the balance due after crediting the amount for which the property was sold under foreclosure. The mortgagor had conveyed away his equity of redemption before the foreclosure, and was not made a party to the foreclosure action. The plaintiff bid in the premises at the foreclosure sale for less than was due on the mortgage, and subsequently re-sold them, and the property was now owned by a third party.

Held, 1. The case is distinguishable from *Kenny v. Chisholm*, 7 R. & G. 497, on the ground that the defendant was not a party to the foreclosure proceedings, and that defendant being sued on the covenant had regained the right to redeem. *Kinnard v. Trollop*, 39 Ch.D. 636; *Robbins on Mortgages* 962.

Held, 2. Plaintiff could only recover upon re-conveying the mortgaged property to the defendant, and accounting for the rents and profits since she purchased at the foreclosure sale, and if she failed to re-convey the