

Divisional Court.]

GOLDIE v. BANK OF HAMILTON.

[July 14.

Mortgage—Reconstruction of machinery in mill—Rights of first and second mortgagees and of person furnishing new machinery—Fixtures.

The owner of mill property mortgaged it to another with the machinery, which was declared to be fixtures, etc., deemed to be of substantial value, to W. Afterwards a second mortgage was made to a bank. Both mortgages were made under the short form Act, and contained covenants to insure, but the insurance moneys, under the policies effected on the property and machinery, were made payable to the first mortgagee. Subsequently the mortgagor with the consent of the second mortgagee, but not of the first one, at all events not so as to prejudice his security, made a contract with the plaintiff under which the plaintiff placed new machinery in the mill, using, as the contract provided, such of the old machinery as was necessary to complete the equipment, and taking and removing such of the old as was not so required. On the mill and machinery being destroyed by fire and the insurance adjusted, the second mortgagee paid off the first mortgagee's claim, and procured from him an assignment of his mortgage as well as of his interest in the policies.

Held, that the plaintiff could not claim that by reason of his betterment of the machinery, prior to the reconstruction thereof was deemed of substantial value, he was entitled to the insurance moneys thereon to the detriment of the first mortgagee's claim; but that he was so entitled as against the second mortgagee; and therefore after the claim of the first mortgagee so acquired by the second mortgagee was satisfied, the plaintiff was entitled to such insurance moneys to the extent of his claim. Remarks on *Hobson v. Gorringe* (1897) 1 Ch. 192 as to its effects on the decisions in this province as to fixtures.

W. R. Riddell and *Hugh Rose* for the plaintiff. *E. D. Armour, Q.C.*, and *Lees* for the defendants.

Rose, J.]

RE SHUNK.

[Sept. 14.

Will—Widow—Specific bequest—Dower—Election.

An estate amounting to over \$10,000 was, after the direction to pay the debts, funeral and testamentary expenses and after a specific devise of certain land, devised by the testator to his executors in trust to sell and convert into money, and out of the proceeds to pay to his widow \$3,000 for her own use absolutely, and to divide the remainder among certain nephews and nieces.

Held, that the widow was not put to her election, but was entitled to her dower in addition to the bequest.

Marsh, Q.C., for the widow. *W. R. Cavell*, for the executors. *W. R. Riddell*, for the adult beneficiaries. *F. W. Hurcourt*, for the infant beneficiaries.