The Legal News.

VOL. XIII. JUNE 28, 1890. No. 26.

The announcement has been made that the person who attempted to murder County Judge Bristowe, at Nottingham station, some time ago, has committed suicide. It is curious that the only successful attempt in England to murder a judicial officer ended in the same way. In *Monro's Acta Cancellariæ* there is to be found (No. clix., p. 236) a certificate, dated Nov. 4, 1616, made in the case of *Bartram* v. *Symeon*, by Sir John Tyndal and Sir John Amye, with an endorsement thereon respecting the murder of Sir John Tyndal, who was a Master in Chancery. The endorsement says: "For making this report Sir John Tyndal was killed by Bartram, the plaintiff, 12th November, 1616." Bartram shot him dead in Lincoln's Inn, and afterwards escaped execution by hanging himself in prison. The assailant of Mr. Justice Field, of the United States Supreme Court, was shot dead in the act of committing the assault. The assailant of Chief Justice Austin, of the Bahamas, received thirty lashes. Examples of attacks on judges are rare, and the assailants seem to fare badly; so it may be hoped that such assaults will wholly cease.

The London *Law Journal* notes the fact that the question of capital punishment has been twice carefully considered in England within the last fifty years; first, by a select committee of the House of Lords in 1847, which reported that "almost all witnesses and all authorities agree in opinion that for offences of the gravest kind the punishment of death ought to be retained;" secondly, in 1865-66, by a royal commission presided over by the Duke of Richmond, which, though "forbearing to enter into the abstract question of the expediency of abolishing or maintaining capital punishment, on which subject differences existed between them," recommended "that the punishment of death be retained for all murders deliberately committed with express malice aforethought, such malice to be found as a fact by the jury," and also for all murders committed in the perpetration of arson, burglary, and other serious felonies. Four out of the twelve commissioners (Dr. Lushington, Mr. Bright, Mr. Neate and Mr. Ewart) signed a declaration to the effect that "capital punishment might safely and with advantage to the community be abolished," while a fifth, Mr. Justice O'Hagan, would have signed it but that he doubted whether public opinion in the country was yet ripe for the acceptance of such a change. Amongst the witnesses examined (who in point of number were evenly balanced), Lord Bramwell, Colonel Henderson, Sir George Grey and Mr. Davis, the ordinary of Newgate, were of opinion that capital punishment has a strongly deterrent effect, while Mr. Justice Denman thought that, on the whole, more was done by capital punishment *as it then existed* (*i.e.*, before the abolition of public executions) to induce murders than to prevent them; the late Chief Baron Kelly thought that the most severe secondary punishment that could be devised would be equally deterrent; and Lord S. G. Osborne believed that where murders proceed from strong provocation, "no fear of death, not even if the rack should precede it, would have power to deter it." Mr. Davis made the important statement that, in his opinion, warders would be in danger, in watching over criminals under penal servitude for life, if capital punishment were abolished.

COUR SUPÉRIEURE.

DIST. DE SAGUENAY, 13 nov. 1889.

Coram ROUTHIER, J.

ROY v. DUBERGER, et FILION, Tiers-opposant.

Séparation de biens — Assignation — Tierce-opposition.

JUGÉ:—1o. *Que le reçu copie donné par le défendeur pour tenir lieu de la signification de l'action, et dispensant la demanderesse des formalités de l'assignation, et le défaut de rapporter l'action au jour fixé pour le rapport, rendent irrégulier et nul, le jugement prononçant la séparation de biens ainsi que toutes les procédures subséquentes s'y rapportant.*

2o. *Que le tiers-opposant, créancier du défendeur, n'ayant pas été partie ni appelé à l'instance, avait le droit de se pourvoir par tierce-opposition.*

JUGEMENT :—"Considérant que le tiers-opposant a prouvé les allégués essentiels de son opposition faite en cette cause;

"Considérant qu'il est un des créanciers de Georges DuBerger, défendeur en cette cause, et que ses intérêts comme tel créancier sont affectés par le jugement en séparation de biens rendu dans la présente cause en faveur de la demanderesse contre le défendeur son mari, dans laquelle instance le dit tiers-opposant n'a été partie ni appelé;

"Considérant que l'action en séparation de biens instituée en cette cause par la demanderesse n'a pas été signifiée légalement sur le défendeur, ni rapportée régulièrement en Cour, au jour fixé pour son rapport, et que le défendeur, par collusion avec la demanderesse, a dispensé cette dernière de toutes les formalités de l'assignation, exigées par les articles 75, 76, 77 et 78 du C. P. C., contrairement aux articles 974 et 976 du même Code;

"Considérant qu'à l'époque de la dite action, le défendeur était notoirement en faillite et avait fait cession de ses biens, et que la séparation de biens obtenue subséquemment par la demanderesse, en vertu des procédures illégales sus-dites, paraît avoir été prononcée pour favoriser la demanderesse, au détriment des créanciers de son mari dont le tiers-opposant est un, et en fraude de leurs droits;

"Considérant que les droits matrimoniaux de la demanderesse n'ont pas été régulièrement établis, et que le jugement de séparation n'a pas été régulièrement exécuté, ce qui n'empêche pas la demanderesse de contester le bilan du failli, et demander à être colloquée par privilège pour quatre mille six cents piastres sur le produit des biens de son mari, maintient la dite opposition du tiers-opposant, déclare nul et de nul effet le jugement de séparation de biens obtenu en cette cause par la demanderesse et les procédures subséquentes auxquelles le dit jugement sert de base—le tout avec dépens."

Confirmé par la Cour de Révision à Québec le 28 février 1890.

Angers & Martin, procureurs du tiers-opposant.

J. S. Perrault, procureur de la demanderesse.

(C. A.)

SUPERIOR COURT.

AYLMER, June 4, 1890.

Coram MALHIOT, J.

Ex parte BANK OF MONTREAL v. O'HAGAN.

Foreign Court—Jurisdiction.

HELD:—*That to give a judgment, rendered by default in the courts of another province, extra territorial effect, it must be shewn, either that the defendant possessed property in such other province at the time that the action was brought, or that he was served personally therein.*

The action was based upon defendant's two promissory notes amounting to the sum of $171, the plaintiff also setting up an exemplification of judgment on the notes obtained by default in the County Court of the County of Carleton, in the Province of Ontario, with costs taxed at the sum of $30.

It was submitted by plaintiff's attorney that the plaintiff could not be refused these costs. The exemplification was in accordance with sub-section 1 of Art. 1220, C. C. It is true that by it, it does not appear that the defendant was served personally within the Province of Ontario, and Art. 42 b., C. C. P., consequently does not apply; but the defendant made and dated the notes, and made them payable in the County of Carleton; and by so doing accepted the jurisdiction of the courts of that place. Our own law would permit of these notes being sued there; and the law of Ontario, in the absence of proof to the contrary, must be presumed to be similar. The R. S. Ont., 1887, Vol. I, ch. 47, Arts. 2, 19 and 55, show the constitution and jurisdiction of the Court and its power to award costs. These costs form part of the present demand, and are not within the discretion of this tribunal.

The Court, after giving judgment for the amount of the notes, rejected the surplus of the demand for the following reasons:

"Et considérant qu'il n'appert pas que lors du jugement rendu contre le dit défendeur en faveur de la demanderesse, dans la Cour du Comté de Carleton dans la Province d'Ontario en date du six de février dernier, que le défendeur résida dans la dite Province d'Ontario, ou que la dite Cour du Comté de Carleton ait eu aucune jurisdiction sur le dit J. C. O'Hagan, qui réside dans la Province de Québec;

"Considérant, en outre, que rien ne fait voir que le dit défendeur eut des biens dans la dite Province d'Ontario lors de l'institution des procédés dans la dite province et la reddition du dit jugement, et que les dits procédés ne paraissent avoir eu d'autre but que celui de multiplier les frais contre le dit défendeur, pratique abusive et qui doit être découragée; la Cour rejette cette partie de la demande qui a trait aux frais de la poursuite faite dans la Province d'Ontario, et condamne le défendeur aux dépens de cette cause comme dans une cause de $181, dont distraction, etc."

Brooke & McConnell for plaintiff.
J. R. Fleming for defendant.
(C. J. B.)

PROBATE, DIVORCE AND ADMIRALTY.

LONDON, June 10, 1890.

IN THE GOODS OF RHODA SLINN, deceased.

Testamentary Paper—Deed of Gift admitted to Probate.

This was a motion for a grant of administration with the will annexed to Elizabeth Walker of the following document:—

"To all people to whom these presents may come, I, Rhoda Slinn, do send greeting. Know ye that the said Rhoda Slinn, of 3 House, 3 Court, West John Street, in the parish of Sheffield, in the West Riding of the county of York, widow, for and in consideration of the love, goodwill, and affection which I have and do bear towards my loving friend, Elizabeth Walker, wife of Joseph Walker, of 5 Garden Street, of the same parish and county, file cutter, have given and granted and by these presents do freely give and grant unto the said Elizabeth Walker, her heirs, executors, or administrators, the moneys invested in my name in the Sheffield Savings Bank, Norfolk Street, in the parish of Sheffield aforesaid, to have and to hold as her or their own without any manner of condition.

"In witness whereof I have hereunto put my hand and seal this 12th day of October 1889.

her
"Rhoda × Slinn.
mark.

"Signed, sealed, and delivered, in the presence of us and in the presence of each other,

"George Stuart.

"George Markley."

Rhoda Slinn died November 3, 1889. There was evidence that she had intended to make a will, but that she had been led to believe that a deed of gift would be cheaper. There was also evidence that at the time the deed of gift above set out was executed she said she wished a certain person in America to have £10.

Middleton, for the applicant, cited *Cock* v. *Cooke*, 1 P. & D. 241; *Robertson* v. *Smith*, 39 Law J. Rep. P. & M. 41; 2 P. & D. 43; *In the Goods of Coles*, 2 P. & D. 362. Apart from other evidence, the expression as to the person in America shows that the deceased did not intend the deed to operate until after her death.

THE PRESIDENT: I am clearly of opinion that this paper ought to be admitted to probate. It is clear that extrinsic evidence may be admitted to explain an ambiguous paper of this kind, as there is always an inherent improbability that the person executing it intended the property to go away from him or her in his or her lifetime. In this case, as in the others that have been cited, the expressions are wholly inconsistent with an out-and-out gift. In *Robertson* v. *Smith* there was an expression of a wish that a certain person should have £50. In this case there is a reference to another person, and an expression of a wish that that person should have £10 if there was enough left. I am of opinion that this paper is testamentary, and I grant probate of it accordingly.

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER III.

OF INSURABLE INTEREST, THE SUBJECT INSURED, AND WHO MAY BECOME INSURED.

[Continued from p. 197.]

§ 68. *Interest of mortgagor and mortgagee.*

In the United States a mortgagor of property retains an insurable interest therein, so long as his right of redemption continues.[1]

In Lower Canada where a mortgagor always retains his property and the fee of it, *à fortiori* may he insure; the mortgagee also may insure, as mortgagee. [2]

But suppose the lender of money to insist on a sale *à faculté de réméré*, can A, seller with *faculté de réméré*, insure? Yes, he can insure his reversionary interest.

In Massachusetts it has been held that the mortgagor's insurable interest will not be affected by the fact that the mortgage equals or exceeds the value of the property. [3]

Certainly it would not be affected in Lower Canada.[4]

A mortgagee can't be referred to the land mortgaged as continuing to offer ample security for the debt. It is in vain to say that the mortgagee has not been damnified. The mortgagee can't, recovering the insurance money, go afterwards and make the mortgagor pay him the debt amount, but the mortgage securities must be transferred to the insurers; and if the mortgagee at the time of the insurance be under incapacity to make such a transfer and subrogation, he ought to disclose that fact, else he is guilty of concealment. [5]

Duer says: There is no case in which after payment to mortgagee by the insurers, the mortgagee will be allowed to enforce for his own benefit payment from the mortgagor of the original debt.

A person may, in the province of Quebec, insure his property however much mortgaged.

A mortgagor insures a house, insurance payable to mortgagee in case of loss. The mortgagor's interest is insured so, with power to mortgagee to get the money. In case of loss the insurers have to pay whether the mortgage debt be paid or not.

If the debt be not paid the insurance money may pay it. If paid, then the mortgagee takes the money as a trustee; it was made over to him for a purpose accomplished, he must account to the mortgagor for it. (So held in King case, 1850. Mass.)

Mortgage creditors in Quebec often insure their debtor's houses mortgaged. The insurer in such case is a kind of surety, though a conditional one, for the debt. If the property be not burned in a given time he is free; again, if the property be burned the insurer may go free if the insured have lost nothing. If he could never have been paid had the fire not happened (owing to

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[1] *Strong* v. *Manufacturers' Ins. Co.*, 10 Pick. 40; *Traders' Ins. Co.* v. *Robert*, 9 *Wend.* 404

[2] A mortgagor may generally insure and recover to the full value of the property. *Gordon* v. *Mass. F. & M. Ins. Co.*, 2 Pick. 249; *Strong* v. *Manufacturers' Ins. Co.*, 10 *Pick.* 40.

[3] *Gordon* v. *Mass. F. & M. Ins. Co.*, 2 Pick. 249.

[4] In *O'Neill* v. *Ottawa Agricultural Ins. Co.*, 30 C. P. Rep., Ontario, there was a condition: Interest if "changed in any manner, whether by act of insured or by operation of law, policy to be void." The insured mortgaged the property, whereby his interest became changed. Held, that the policy was avoided. In this case the insured sold and conveyed by way of mortgage. Query, in Lower Canada, would giving a mortgage in Quebec form vacate such policy?

[5] *Kernochan* v. *N. Y. Bowery F. Ins. Co.*, 5 Duer's Rep. (A.D. 1855). *Whyte* (assignee of Miller) v. *The Home Insurance Co.*, March 30, 1871, Court of Review, Montreal. *The Columbian Insurance Co.* v. *Lawrence*, 2 Peters' R., was approved in 10 Peters, and on each occasion verdicts were set aside, for being against it; and if *Tyler* v. *Ætna Ins. Co.*, and some Massachusetts cases be against 2 and 10 Peters, it is because of New York and Massachusetts being against the Supreme Court and the Western States jurisprudence. Held: Miller had an insurable interest from possession and the verbal bargain even as regards land that he had with his co-partner. His co-partner was dead, but letters from him were extant, and his widow, half owner as *commune*, proves verbal sale by her deceased husband. Verbal sale of land is good in Lower Canada; proof is difficult, that's all. Yet the Court of Revision would allow that if a tenant construct a house on the land leased, and it be removeable by him under his lease from the landowner, if he insure that house as *his* (the insured's), the fact of the precarious holding of the insured must be disclosed, on the principle of the Columbian Insurance case, 2 Peters and 10 Peters.

the insufficiency of value of the property), the insured will not get paid. He must show that his *créance* might have been collocated *en ordre utile.*

It is best for the mortgage creditors to insure their mortgage claim.

§ 69. *The hypothecary claim must be secured by the property.*

A mortgage creditor insuring may sometimes not recover the amount insured; because of the existence of mortgages anterior to his, covering more than the value of the land and buildings mortgaged. A hypothecary right is often worth nothing. But insurers, to get free from paying an insured mortgage creditor's loss alleged, must prove clearly the valueless character of the insured's right of *hypothèque*, by proof of the value of the land and buildings mortgaged, and of the quantity of mortgage claims against it, anterior in date to the insured's. In *McGillivray* v. *Montreal Ass. Co.*, one of the judges said that where a mortgagee insures to secure his mortgage claim, it is necessary for him to show that his claim was worth something; for if anterior claims were undoubtedly larger than enough to eat up the whole value of the property insured then he could lose nothing by its destruction, and having lost nothing had no claim for indemnity, and so if, after a fire, enough value remains in the thing insured the mortgage creditor ought not to get the policy amount.

§ 70. *Insurance as security for loan.*

Insurance is often effected by an owner debtor as a security for a loan. The insured would do well to stipulate that the insurance is for the creditor if the debt be subsisting at the time of a fire happening, but for his own after the debt is paid. A borrows £100 from B and promises to insure for B's benefit. The insurers take the premium. The policy reads to secure B. Afterwards B is repaid by A, who, not examining the policy, is tranquil, and even pays a renewal premium. The house insured is afterwards totally destroyed by fire. The insurers lose nothing.[1]

§ 71. *Mortgage creditor insuring debtor's property.*

A mortgage creditor, in France, or in the province of Quebec, insuring his debtor's house, does not get the insurance money for himself, but as *negotiorum gestor* for the debtor's creditors generally. It is otherwise where he insures his mortgage debt claim.[2]

If a mortgage creditor insure his debtor's house, mortgaged, and afterwards the debtor, or representatives, pay part of the debt, the insurers are relieved *pro tanto.*

The mortgagor may insure, says Boudousquie, No. 33, p. 63, and the mortgagee too, the same property. The two contracts can receive execution without the inconveniences that some see; since the insurer who pays the creditor claimant insured is subrogated *de plein droit* into his rights of action against the debtor. If the creditor alone insure, the insurer paying him makes the debtor pay him, the insurer.

If the mortgagor have insured at one office and the mortgagee at another; if there be two different insurers, he who indemnifies the mortgagee creditor goes against the mortgagor debtor, and this debtor calls upon his own proper insurer, and the debtor finds the benefit of his insurance in his liberation; and the two insurances have not given place to double indemnity in respect of, or for, one and same object.

In France (Boudousquie, No. 33), a bad mortgage claim, or one that could never have been turned to account, owing to earlier mortgages, cannot be insured (*ordre utile* is required as a possibility). If the claim of the mortgagee could not be collocated *en*

[1] P. 310, Monthly Law Reporter of 1858, *contra.* Suppose, after a contract and insurance by the debtor in his own name, the policy be transferred to the mortgagee (loss to be paid to mortgagee), the mortgage is afterwards paid, then a fire takes place. There was a contract to insure. The obligations of the insurers (*Ib.* p. 310) have not ceased.

[2] See Angell, § 60. It is said here: "Bot does he receive one and the same satisfaction for one debt." In France it would be said that he does. He would be held to receive his debt to the extent of his interest.

ordre utile according to the value of the thing when burned, the immovable never was a security to the insured nor can he recover. And this is said to be the law of Lower Canada, Aylwin, J., dissenting, in *Mont. Ass. Co.* v. *McGillivray*.[1]

A chirographary creditor need hardly, so, insure his debtor's house; for, says B, he can't insure his debtor's house in his own name, there is not "*matière à assurance*;" but he can insure it in the name of his debtor, and then on loss the indemnity will be distributed *par justice*; the insured is held *negotiorum gestor* of the debtor in making the insurance.

But the premium in such case can't be fastened on the debtor. And whereas the debtor may ratify and make the insurer pay, if loss happen, he may refuse, where all goes well and no fire occur, to ratify the *negotiorum gestor's* doings.

Angell, § 60*a*, says, a mortgagee who, at his own expense, insures his interest in the property mortgaged against loss by fire, *without particularly describing the nature of his interest*, is entitled, after fire and loss before payment of the mortgage debt, to recover the amount of the loss from the insurers to his own use, without assigning any part of his mortgage first to the insurers. He does not so receive two satisfactions, observed Shaw, Ch. J., in *King* v. *The State Mutual F. Ins. Co.*[2] A case of *Dobson* v. *Laud*,[3] is referred to in Angell. It is doubtful whether this would be considered sound law in Quebec.

In the case of *Ex parte Andrews in re Emmett*,[4] a right to £400 contingent on A's wife surviving her mother was assigned by A and wife to two creditors of A, upon trust, after payment of all debt and expenses, to pay the surplus to the transferors. The transferees insured the life of A's wife, without the knowledge of A or his wife. The wife died and A became bankrupt. Each of the transferees got £200 from the insurers; yet the transferees claimed against the bankrupt's estate, without giving credit for anything. But they were ordered to give credit for what they had received. This would be so in Quebec.

In *Dobson* v. *Laud*, the authority of the above case was admitted; but the Vice-Chancellor distinguished that case from the one before him, on the ground that the latter, *Dobson* v. *Laud*, was the case of a common mortgage, while the other was the case of a trust. The mortgagee is not a trustee for the mortgagor to all intents and purposes, said the Vice-Chancellor. In Quebec, *semble*, this would not be held a sound case.

§ 72. *Mortgagee must stipulate to have benefit of insurance.*

A mortgagee stipulating that the mortgagor shall insure the mortgaged property, should stipulate that he is to have the benefit of the insurance; else, after a fire and assignment by the insured, the mortgagee will in vain notify the insurance company of claim by or for him.[1]

§ 73. *Insurance, loss payable to mortgagee.*

Where an insurance is effected by A, "in case of fire the insurance money to be paid to C," a mortgage creditor of A, and A subsequently breaks a condition about other insurance and so avoids the policy, C can get nothing. The full rights in and to the policy were never C's; he was only appointed to have any money claims that A could possibly maintain.

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[1] 8 L. C. R.

[2] 7 Cush.

[3] 8 Hare; also in 7 Cush. It followed after *Ex parte Andrews in re Emmett*, 2 Rose.

[4] 2 Rose.

[1] *Lees* v. *Whiteley*, 2 L. R., Eq. 143 (A.D. 1866).

G mortgaged to H, who transferred to appellant Wheeler et al. G had agreed to insure. Afterwards G authorized J & G, to whom also he owed, to insure, and they did by open policy in their names. A fire happened.

Held, that W. et al. had a lien after the claim of J & G against G was satisfied.

Wheeler, appellant, v. *Factors and Traders Ins. Co.*, U. S. Sup. Court, 1879, Alb. L. J., 1880, p. 515.

The general rule is that the mortgagee has no right to the benefit of a policy taken by the mortgagor unless it is assigned to him. Carter v. Rockett, 8 Paige.

But if mortgagor agreed to insure for the mortgagee, the latter has an equitable lien on the money due on a policy taken by mortgagor. Angell, § 62.

Insurance by debtor of house, loss, if any, payable to mortgage creditor of insured. This is no insurance of the mortgage creditor's interest. Flanders, p. 441, approved. *Continental Ins. Co.*, appellant, & *Hulman*, respondent, Illinois, 1879; 34 Am. Rep. And an insured debtor might render unavailable the first policy by acts and deeds of his against its conditions. *Grosvenor* v. *Atl. Ins. Co.*, approved, N. York. New York and Pennsylvania and Maine cases agree. *Black* v. *National*, 24 L. C. Jurist, is bad law.

§ 74. *Case where mortgagee's interest ceases.*

In Quebec, where a mortgage creditor insures the house (mortgaged) of his debtor, this is held not to be insurance of the house *per se*, but of the creditor's security; so that, though the house be burned, if, before the mortgagee sues the insurer, it have been rebuilt by the mortgagor, the mortgagee cannot recover as for loss by the fire. The rebuilding by the debtor is held to free the insurer from obligation to pay.

Mathewson v. *Western Ins. Co.*[1] was an action to recover £400, amount of a policy of fire insurance. In 1844, John Mathewson and wife sold a lot of land to C. P. Ladd, for a price in payment of which Ladd constituted a *rente* in favor of vendors of £60 per annum, for which the land was mortgaged. Ladd further bound himself to erect a house on the lot, of the value of £400, to insure it and to transfer the policy to the vendors as extra security till the *rente* should be redeemed. He did build, but never insured. Mathewson and wife assigned the *rente* to the plaintiff, who, in March, 1853, effected the insurance for £400 on which the action was brought. In June, 1853, the house insured was destroyed by fire. It was rebuilt, by Ladd, immediately, and before plaintiff commenced his suit. The defendants contended that they could not be held liable to pay; that plaintiff had suffered no loss, and that the rebuilding of the house before the institution of the action relieved them from liability. The Court held that an insured must be under loss at the time his action is brought (argument from *Hamilton* v. *Mendes*, 2 Burr.); that in the present case plaintiff's security was as good as it had been before the fire; that he had suffered no loss; and that, under the circumstances, the action was to be dismissed. The Court cited also, in support of its judgment, from Parsons Merc. Law, p. 509: "The mortgagee has an interest only equal to "his debt, and founded upon it; and if the "debt be paid the interest ceases, and the "policy is discharged. And if a house in- "sured by a mortgagee were damaged by fire, "even considerably, or perhaps destroyed, "it might be doubted, on what we should "think good grounds, whether he could re- "cover, if it were proved that the remaining "value of the premises mortgaged was "certainly more than sufficient to secure his "debt and all possible charges."

With respect to this case, it may be remarked that the rebuilding was performed by the debtor; it might have been done, at his request, by third persons, builders, and for credit, these persons observing formalities of the law of Lower Canada, and so securing privilege for their outlay. Had this been the case the insurance company would have been condemned in favor of Mathewson no doubt.

Mathewson, when he insured, had security, by the land and by the building. Had Ladd not rebuilt, it would have been going far to say that the insurer was not liable, on plea that the land was worth the sum insured. It might not continue to be so. It might perish, yet the *rente* continue to be payable, and Ladd might be utterly bankrupt. The intention of both insurer and insured might fairly be supposed to have been that if the house as a security for the debt disappeared the insurer would pay.

A insures to the extent of £400 a house, and transfers the policy to B, who holds a mortgage on it for £400. Fire happens afterwards, and A files all particulars, showing a loss of £500. B afterwards settles with the insurers and discharges them, for £200 paid. A complains, and may, justly; if A and B were creditors of thing *commune*, and B made remission of part, he would be held to indemnify his associate for the hurt caused

[1] 4 L. C. Jurist.

him by the *remise*. Duranton, Tom. xi., p. 190.

§ 75. *Limitation of interest.*

The interest of a mortgagee, pledgee, or anyone having a lien upon property, is limited to the amount of his lien.[1]

§ 76. *Insurable interest continuing after mortgagor has sold property.*

In Massachusetts it has been held that a mortgagor of property to secure a debt due from him will continue to have an insurable interest therein, even after he has *sold the property subject to the mortgage*.[2]

It is so in Lower Canada. A mortgagor constantly sells property in Lower Canada charging the purchaser to pay off the mortgage debts, and balance to him. Such seller (mortgagor originally) may insure; he plainly has interest; his vendee may become bankrupt, buildings on the land may be burned.

It has been held in Massachusetts, that where one makes an assignment of his property for the benefit of creditors, he continues to have an insurable interest in the property assigned, unless it is made a condition of the assignment, that all the debts shall be released, and even then, if it can be shown that there is or probably will be a surplus remaining after paying all the debts.[3]

A mortgagee cannot, unless by agreement, charge the mortgagor premiums he pays for insurance.[4]

§ 77. *Insurance by mortgage creditor.*

There is a great advantage in the mortgage creditor taking a policy for himself. Where the assured takes the policy and merely transfers the amount of the loss, the creditor may have many things opposed to him, in case of loss.

At the making of a mortgage, the mortgagor may say that the mortgagee may cause insurance to be effected on the property at the expense of the mortgagor, and that the premiums shall be added to the principal and interest as the debt to be paid on redemption. Then, if loss happen before the debt is paid, the sum payable to the mortgagee is the proceeds of a security furnished by the mortgagor, and it goes towards paying the debt.

[To be continued.]

[1] *Carpenter* v. *Providence Washington Ins. Co.*, 16 Peters, 495; *Park* v. *General Interest Ins. Co.*, 5 Pick. 33.

[2] *Wilson* v. *Hill*, 3 Metcalfe, 66.

[3] *Lazarus* v. *Commonwealth Ins. Co.*, 5 Pick. 76, S.C. 19 *id.* 81.

[4] 9 Allen, 126.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, June 21.

Judicial Abandonments.

Paradis & Co., traders, Roberval.

Percy J. Thompson, doing business under name of Henderson Manufacturing Co., Montreal, June 6.

Curators appointed.

Re Vital Côté, hotel-keeper, Plessisville. — A. Quesnel, Arthabaskaville, curator, June 13.

Re Joseph E. Beauchemin, Nicolet.—C. A. Sylvestre, Nicolet, curator, June 13.

Re Louis Despocas, Valleyfield.—Kent & Turcotte, Montreal, joint curator, June 7.

Julien Hébert *et al.*, Ste. Martine.—Kent & Turcotte, Montreal, joint curator, June 13.

Re Cléophas M. Lavigne.—C. Desmarteau, Montreal, curator, June 10.

Re John C. Lawrence.—John Caldwell, Montreal, curator, June 14.

Re Henderson Manufacturing Co.—A. F. Riddell, Montreal, curator, June 13.

Re Machinery Supply Association, Montreal.—A. W. Stevenson, Montreal, curator, June 19.

Dividends.

Re Elodie Côté.—First and final dividend, payable July 2, Bilodeau & Renaud, Montreal, joint curator.

Re E. & Z. Durocher, Iberville.—First and final dividend, payable July 9, A. F. Gervais, St. John's, curator.

Re G. R. Fabre, Montreal.—First dividend, payable July 17, Kent & Turcotte, Montreal, joint curator.

Re C. N. Falardeau, trader, l'Ancienne Lorette.—First dividend, payable July 7, H. A. Bedard, Quebec, curator.

Re P. Houle, Ste. Perpétue.—First dividend, payable July 17, Kent & Turcotte, Montreal, joint curator.

Re A. Laurent, Sherbrooke.—First dividend, July 17, Kent & Turcotte, Montreal, joint curator.

Re J. H. Rafter, Montreal.—First dividend, payable July 17, Kent & Turcotte, Montreal, joint curator.

Separation as to property.

Léda Létourneau vs. Elzéar Laverdière, farmer and trader, parish of St. Pierre, June 10.