

"11. Persons who have insured property with this company must forthwith give notice of any other insurance already made, or which shall afterwards be made on the same property, and have a memorandum of such other insurance endorsed on the policy or policies effected with this company, otherwise this policy will be void; provided, however, that on such notice being given at any time after the issue of the policy it shall be optional with the company to cancel such policy. In the event of any other insurance on the property herein described having been once declared as aforesaid, then this company shall, if this policy shall remain in force, on the happening of any loss or damage, only be liable for the payment of a ratable proportion of such loss or damage, whether such other insurance be in force or not, unless the discontinuance of such other insurance shall have been previously agreed to by this company by endorsement upon this policy."

On the 10th July, 1895, while the policy was in force, application was made on behalf of insured for additional insurance in another company. On July 17th this application was accepted, but notice of such acceptance did not reach the assured until the 20th. On July 18th the insured property was burnt, and the company refused payment of the insurance on the ground that the policy was void for want of notice of the additional insurance and indorsement thereof, as required by the condition.

*Held*, affirming the judgment of the Supreme Court of New Brunswick, that the policy was not avoided; that the condition did not require the assured to give notice of an insurance of which he had no knowledge, but only covered the case of insurance effected before a loss of which the notice could be given also before the loss.

Appeal dismissed with costs.

*Stockton*, Q.C., and *Dixon*, for appellants. *Pugsley*, Q.C., for respondent.

N.S.]

WALLACE v. HESSLEIN.

[Nov. 21, 1898.]

*Vendor and purchaser—Specific performance—Laches—Waiver.*

The purchaser under a contract for sale of land is not entitled to a decree for specific performance by the vendor unless he has been prompt in the performance of the obligations devolving upon him and always ready to carry out the contract on his part within a reasonable time, even though time was not of its essence, nor when he has declared his inability to perform his share of the contract.

The purchaser waives any objection to the title of the vendor if he takes possession of the property and exercises acts of ownership by making repairs and improvements.

Appeal dismissed with costs.

*Wallace*, in person, and *Sinclair*, for appellants. *Borden*, Q.C., for respondent.