

Insurance (Fire)—Transfer of amount of insurance to mortgagee—A subsequent insurance effected by the mortgagor without notice to company does not affect the rights of the mortgagee.

The action was brought by John Black, Henderson Black and G. W. Farrar, setting up that respondents insured Farrar against loss by fire for \$1800, the loss, if any, payable to J. & H. Black (the other two plaintiffs) as mortgagees; that a fire occurred, and the conclusions were that the respondents be condemned to pay J. & H. Black, to the acquittal of Farrar, the sum of \$1800.

The principal plea was that Farrar, with the consent of the company, effected several insurances in other companies, in each of which, the loss, if any, was stipulated to be paid to the Blacks. But that on the 12th July, 1876, Farrar effected still another insurance in the Royal Canadian, loss if any, payable to E. & D. McDonald, and that this was in force up to the time of the fire, but was never made known to respondents, or consented to by them in the form required by the policy.

The answer of the plaintiffs was that the insurance had been effected by E. & D. McDonald without Farrar's interference.

The judgment appealed from (Mackay, J.) maintained the pretention of the respondents on this point, and the action was dismissed, the *considerants* being as follows:—

"Considering that plaintiffs have not proved their allegation to the effect that plaintiff Farrar *en tems utile*, to wit, in October, 1876, furnished to the defendants a claim regular and attested in respect of losses suffered by him by the fire of the 10th of September before; that on the contrary it appears that no regular claim signed and legally attested as required by the terms of Farrar's policy, was in October, after the fire, rendered by him to defendants, and that he and Farrar did not *en tems utile* produce such a claim, or any certificate under hand and seal of a magistrate, or notary public as required by the terms of his (Farrar's) policy, basis of the present action, but that he (Farrar), up to the 13th November, was refusing to sign any claim papers;

"Considering that at the time of plaintiff (Farrar) obtaining the policy sued upon, he was the owner of the property, or subjects

insured, and George Henry Farrar and Lucius Edwin Farrar were not, and that the plaintiff George Whitfield Farrar continued afterwards and up to the time of the fire of September, 1876, to be the owner of the said property, subjects insured, and that after obtaining from the defendants the insurance policy, base of this action, he procured by the name George Henry Farrar and Lucius Edwin Farrar other insurance, to wit, in the Royal Canadian Insurance Company, on the principal of the same subjects as covered by defendants' policy, loss, if any, payable to E. & D. McDonald, and the said Farrar, plaintiff, made such last insurance without the consent of the defendants written upon the policy sued upon, and so he violated the terms of his contract and the said policy; that in fact the other or subsequent insurance was made by and for plaintiff Farrar at his expense and by his authority and was not an insurance by E. & D. McDonald at their own expense; that the defendants did not, till long after the fire, know of the said other and subsequent insurance, which has in fact inured to plaintiff's (Farrar's) benefit, after proofs made by him of his ownership of the subjects insured, to the satisfaction of the Royal Canadian Insurance Company;

"Considering that defendants have not waived the objections set forth in their pleas, to wit, the objection founded upon the other or subsequent insurance, and the one founded upon the want of notice and particulars of loss hereinbefore referred to;

"Considering under all these circumstances and these findings that this suit or action cannot be maintained, and that the policy sued upon had no force, but was void at the time of the institution of the present action, and is void, doth dismiss the said action with costs, *distrains*."

RAMSAY, J. (*diss.*) This case has given rise to a good deal of discussion and difficulty, on several questions. With all but one of these questions, I agree with the conclusion arrived at by the majority of the court, and I shall, therefore, refrain from entering at length into any of the questions. It will be sufficient for me to say that I think the plea by which it is attempted to insinuate, without saying it in so many words, that the Blacks set fire to the building, is wholly unjustifiable. If it is intended to make a defence on the ground of the