

Full Bench.]

[April 27.

TEMPLE v. COMMERCIAL UNION ASSURANCE CO.

*Additional insurance effected—No notice to company—Non-suit.*

Plaintiff's building was insured in defendant company. On April 10th, 1896, plaintiff himself being ill, his son, without his knowledge, made application to the Quebec Insurance Co. for \$1,000 additional insurance on the building. The letter from the Quebec Co. accepting the risk, was mailed from Quebec on April 17th, and would not reach plaintiff by course of mail until April 19th. Plaintiff did not learn of the additional insurance having been effected until April 21st. In the meantime, on April 18th, the building was burned. Plaintiff adopted the insurance, made up his proofs of loss, and received the \$1,000 in due course. No notice was given to defendant company of the additional insurance having been effected, except by the proofs of loss, which were forwarded to them after the fire, and in which the fact was stated. There was no tender of their policy to the defendant company or their agent for their endorsement of their approval of the additional insurance.

*Held*, that the company was not liable, as the plaintiff had not complied with the conditions of the policy by giving notice of additional insurance, and tendering the policy for the endorsement of their approval thereof, and even if he had, the company still had the option to refuse their assent, and thereby render the policy void. Non-suit ordered.

Pugsley, Q.C., for plaintiff.

Miles B. Dixon, for defendant.

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## Province of Manitoba.

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### SUPREME COURT.

Full Court.]

[May 6.

DOLL v. HOWARD.

*Misrepresentation—Rescission—Waiver—Failure of consideration—Amendment—Parties—Right of action.*

Judgment of TAYLOR, C.J. (noted vol. 32, p. 460), affirmed with costs.

On the argument before the full court defendant's counsel contended that defendant might have relief without rescinding the purchase of shares referred to, as the evidence showed that W. F. Doll had first agreed to sell all of the shares of the stock of the Company to the defendant's co-purchasers at \$15,000, and had carried out the sale at that price, the par value being \$25,000, that they represented to the defendant that the price of the shares was \$25,000, and induced him to join with them in a purchase at that price apparently from Doll, but really from themselves, and that Doll knowingly assisted the co-purchasers in carrying out the fraud, and obtained a benefit from it in the substitution of the notes of a more reliable party for a portion of the purchase money, for which he should have taken the notes of those others; and that in