

Mathers, C.J.]

[April 4.]

BANTING v. WESTERN ASSURANCE CO.

Railway Act, R.S.C. 1906, c. 37, as amended by 9 Edw. VII. c. 32, s. 9—Loss by fire caused by sparks from locomotive—Right of company to benefit of insurance against same loss—Action by insured against insurer after recovery of judgment against railway company.

This was an action to recover from an insurance company the amount of a policy against loss by a fire caused by sparks from a railway locomotive. The plaintiff had recovered judgment against the railway company for the amount of his loss under section 298 of the Railway Act, which judgment had been paid less the amount of the policy sued on.

The last paragraph of that section as amended by 9 Edward VII. c. 32, s. 9, is as follows: "Provided further that the company shall, to the extent of the compensation recoverable, be entitled to the benefit of any insurance effected upon the property by the owner thereof. Such insurance shall, if paid before the amount of compensation has been determined, be deducted therefrom; if not so paid, the policy or policies shall be assigned to the company, and the company may maintain an action thereon.

Held, that the statute did not of its own force vest the policy in the railway company, and that, unless it had demanded an assignment, the plaintiff was not bound to give it and might maintain an action against the insurance company upon the policy.

Corporation of Oldham v. Bank of England (1904), 2 Ch. at p. 716, distinguished.

Trucman, for plaintiff. *Laird*, for defendant.

Metcalf, J.]

[April 4.]

HANNESDOTTIR v. RURAL MUNICIPALITY OF BIFROST.

Taxes—Unpatented land—Sale of land after issue of patent for taxes imposed before issue.

Under s. 159 of the Assessment Act, R.S.M. 1902, c. 117, having regard to the special provisions of the Act and more particularly to s. 166, there may be a sale, after the issue of the Crown patent, for arrears of taxes assessed against the interest