

the assessments was given to him in accordance with the provisions of the 36th Victoria, chapter 44 of Ontario, and then follow allegations as to the insolvency of the Company and the appointment by the Court of Chancery of the plaintiff as such Receiver.

After a plea by the defendant putting in issue the averments of the declaration, is another to the effect that the note in question was obtained from the defendant by the fraudulent artifices of the officers and agents of the Company, who represented that it was a solvent Company, whereas at the time it was insolvent and worthless, and that it furnished no security for any loss insured against, and that defendant received no value or consideration for the note, and that (which was specially put in issue) the company suffered no *bona fide* losses for which the defendant could be made liable.

Upon these issues the parties proceeded to proof, the evidence on the part of the plaintiff being documentary, and proof of the authenticity of the documents filed being supplied by the testimony of the plaintiff. On the part of the defendant, the only witness examined was the plaintiff, no kind of written evidence being adduced by him. The evidence of plaintiff was to the effect, that the assets of the Company were equal to its liabilities, and that it was from non payment by its debtors that the Company was forced into liquidation, and that the Company was not insolvent when the premium note sued on was given, and that defendant was not assessed for any loss previous thereto; but the losses on which he was assessed were subsequent to the time his insurance was effected. The counsel for the defendant endeavoured to obtain from the witness a statement of what losses and in what manner the assessments were made on defendant's note, but the court maintained the objection of plaintiff to allowing the witness to enter into any details in regard thereto, the more particularly as the Court held he had no records or books from which to speak.

The Court, in giving judgment for the plaintiff under the proof, held that although it might be open to a party insured to show that a company was a swindling or bogus company, and that the security sought to be enforced had been obtained by false pretences, which had not been done in the present case, yet that it

was not competent to the assured in a mutual company, when called upon to pay assessments on his premium note, to compel the Company to enter into a detailed statement of the losses, to establish the correctness of the assessments made by the Directors. That the power to and that the Directors in so acting were the agents of the insured who also was a member of the Company, and that he was, *quoad* these assessments, in a suit brought to enforce payment of them, bound by their acts and by the terms of his premium note, which are here of a most specific nature, and by which he agreed to pay on demand for value received, any sum of money which the Company might from time to time *require* of him, provided that such sums should not in the aggregate exceed the sum of \$96 (the amount of the premium). That, apart from the contract itself which must govern this case, to hold otherwise would appear to defeat the object of the law establishing these Mutual Companies, wherein, as in ordinary incorporated Companies, the conduct and details of the business are left to the action of Directors, who would be responsible directly for malfeasance of duty, but whose acts within their scope are binding on shareholders or members of the Company, and one of whose main duties it was, in these Mutual Companies, to make assessments for losses and other expenses of the Company.

Here, the defendant having failed to prove the fraudulent character of the Company, or the false representations upon which, it was alleged, the note in question was obtained, and a Receiver having, under the 75th section of the above-cited Act, the like rights and remedies upon the non-payment of assessments as are given to the Company itself, the right of the plaintiff to recover the amount sued for from the defendant was indubitable, and judgment accordingly went in his favour.

Judgment for plaintiff.*

E. Racicot for plaintiff.

E. Carter, Q. C., Counsel.

O'Halloran & Duffy for defendant.

* As the observations of the Court are manifestly condensed, it may be well to state that the report has the approval of the learned Judge who pronounced the judgment.—Ed.