

C. of A.]

NOTES OF CASES.

[C. of A.]

The *Attorney-General* (*O'Donohue* with him), for the respondent.

Appeal dismissed.

From Chy.]

[March 4.

THE CANADA FIRE INSURANCE CO. v. THE
NORTHERN INSURANCE CO.

Reinsurance—Misrepresentation.

The plaintiffs, by their bill, sought to have one of their policies by which they reinsured the defendants for the amount of a policy of \$2,800, declared null and void on the ground that they had been induced to accept the risk at seven per cent by a fraudulent representation by the defendants' agent that the rate at which the defendants had insured the property was seven per cent; whereas, in fact, it was eight, and that the other insurance companies, holding risks on the same property, had reduced their rates from eight to seven per cent.

It appeared that when the plaintiffs' agent accepted the risk in November, 1875, he was well acquainted with the property and every circumstance which it would be necessary to consider in determining whether to accept the risk. He renewed the risk on the 10th March, 1876, at 8 per cent, but on the 25th April he alleged that he was induced to accept 7 per cent, owing the above misrepresentations.

Held, that even if these representations were made, they would, under the circumstances, afford no ground for avoiding the policy, inasmuch as the defendants had already accepted the policy, and the alleged misrepresentation only had the effect of inducing them to take a lower premium.

One of the conditions of the policy was: "This reinsurance is subject to the same specifications, terms and conditions as policy No. of the Northern Assurance Company which it reinsures, it being well understood that the Northern Assurance Company do not retain any sum or risk on the property covered by this policy, but retain an amount equal at least thereto, on other parts" of the property.

It happened that before the fire occurred, a policy of the defendants expired and was not renewed, so that at the time of the fire they had only risks over and above their reinsurance to the amount of \$2,500.

Held, that the defendants had not violated the condition, as the effect of it merely was

that defendants were to retain, or, in other words, to forbear to reinsure the stipulated proportion.

Held, also, that the difference of the rate of premium was not such a departure from the "specifications, terms and conditions" as to violate the policy.

Boyd, Q. C., (with him *C. Moss*), for the appellants.

Ferguson, Q. C., (with him *G. Patterson* for the respondents.

Appeal allowed.

From C. P.]

[March 4.

O'CONNOR v. BEATTY.

Deed—Investigation of title—Dower.

On a sale of land, the deed and mortgage back were executed by the vendor and purchaser, and left with one K until their respective wives should come in and bar their dower: nothing, however, was said as to title. The defendant went into possession of the land, made a payment on the mortgage, and endeavoured to raise money on the land, when he discovered (after he had been in possession four years) that there was a defect in the title.

Held, that he was entitled to have a release of dower; but that he had waived his right to demand an unlimited inquiry as to title.

McCarthy, Q. C. (*Pepler* with him), for the appellant.

Lount, Q. C., for the respondent.

Appeal dismissed.

From C. C., York.]

[March 4.

SMITH v. HUTCHISON.

Insolvent Act 1875, secs. 133 and 134.

A payment by an insolvent in the ordinary course of business, within thirty days before an assignment or the issue of a writ of attachment is not void under section 134 of the Insolvent Act of 1875, unless the payee has actual or constructive knowledge of the insolvent's inability to meet his engagements in full; nor can such a payment be avoided under section 133, by shewing that it was made in contemplation of insolvency, and that it gave the debtor an unjust preference, as a payment in money does not come within that section.

W. A. Foster, for the appellant.

Rose, for the defendant.

Appeal dismissed.