

Another ground was that the property was mortgaged and that the plaintiff denied this in his application. In the application the question was left unanswered. There was no evidence that the plaintiff knew of any mortgage upon the property. There was a mortgage, but not made by him, covering a large tract of land in which this small piece was included. The defendants were not prejudiced by the non-disclosure: *Patterson v. Oxford Farmers Mutual Fire Insurance Co.* (1912), 4 O.W.N. 140, 7 D.L.R. 369.

Therefore, the plaintiff was not debarred from recovery by reason of his answers in his application to the questions as to ownership and incumbrances.

A more serious objection was that no notice was given to the defendants of the insurance in the Northern Assurance Company, and that there was no assent by the defendants, or even knowledge on their part, of the insurance subsequently effected. There was such an insurance as required notice to the defendants.

Reference to *Gauthier v. Waterloo Mutual Fire Insurance Co.* (1881), 6 A.R. 231, at p. 236; *Manitoba Assurance Co. v. Whitla* (1903), 34 Can. S.C.R. 191, at p. 206; *Bruce v. Gore District Mutual Assurance Co.* (1869), 20 U.C.C.P. 207, at p. 210.

The plaintiff effected other insurance without the written assent of the defendants, and so at the best the plaintiff would not be entitled to recover in excess of 60 per cent. of the loss, under statutory condition 5, which was endorsed on the defendants' policy.

The last clause of statutory condition 5 reads: "But if for any fraudulent purpose the assured does not disclose such other insurance to the company this policy shall be void."

The learned Judge said that he had in December, 1917, tried the plaintiff for fraud and perjury in connection with this same transaction, and found him "not guilty."

There is a distinction between the evidence of fraud necessary to convict in a criminal prosecution and that necessary to avoid a policy of insurance: *Adams v. Glen Falls Insurance Co.* (1916), 37 O.L.R. 1, at p. 16.

The learned Judge found that the non-disclosure by the plaintiff to the defendants of the insurance in the Northern was for a fraudulent purpose—that the plaintiff had it in his mind to obtain the amounts of the two insurances on a building worth about \$800.

The policy was, therefore, void under statutory condition 5.

Action dismissed with costs.