

[IN THE SUPREME COURT OF CANADA.]

BEFORE SIR HENRY STRONG, C. J., AND TASCHEREAU,
GWYNNE, SEDGEWICK AND KING, JJ.

HUGH P. KEEFER and the QUEBEC BANK (Plaintiffs) Appellants

AND

THE PHOENIX INSURANCE COMPANY OF HARTFORD
(Defendant) Respondent.

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.)

Insurance against fire—Insurable interest—Unpaid vendor.

1. An unpaid vendor, who by agreement with his vendee has insured the property sold, may recover its full value in case of loss, though his interest may be limited, if when he effected the insurance he intended to protect the interest of the vendee as well as his own.
2. The fact that the vendor is not the sole owner need not be stated in the policy, nor disclosed to the insurer.
3. Judgment of the Court of Appeal (26 Ont. App. R. 277) reversed, and that of the trial judge (29 O. R. 394) restored.

ARGUMENT : 20th April, 1900.

JUDGMENT : 19th February, 1901.

Appeal from a decision of the Court of Appeal for Ontario (26 Ont. App. R. 277) reversing the judgment at the trial (29 O. R. 394) in favour of the plaintiffs.

The plaintiff Keefer sold a piece of land to one Cloy for \$2,000, payable by instalments, agreeing to keep it insured for the amount of the purchase money, which he did. A fire having occurred causing a loss of \$1,740, when Keefer had been paid \$800 by Cloy, the insurance company refused to pay more than the amount of Keefer's interest, and the latter brought an action to recover the full amount of the loss, the Quebec Bank, as assignee of Cloy's interest in the policy, joining him as plaintiff.

At the trial before Mr. Justice Ferguson, the plaintiff recovered the full sum claimed, but this judgment was reversed by the Court of Appeal. The plaintiffs then appealed to this court.

THE CHIEF JUSTICE.—

I concur in the judgment of Mr. Justice Sedgewick.

TASCHEREAU, J.—

I am of opinion that the appeal should be dismissed.