

ticket, having sore eyes at the time, and the agent did not read or explain the conditions to her further than by mentioning that she alone could use it.

On the trip to W., an accident happened to the road-bed of the defendants' railway by reason of which the train was over-turned, and the plaintiff's baggage, valued at over one thousand dollars, caught fire and was destroyed. The railway had been constructed by the government and transferred to defendants. There were no indications before the accident of any defect in the road-bed.

In an action for damages for such loss the jury found a verdict for the full amount of the alleged value, which on application to the Divisional Court was set aside [Rose, J., dissenting], and the action dismissed with costs. On appeal to this Court it was

*Held*, [by the majority of the Court] affirming the judgment of the Court below, that there was no evidence of any negligence with which the defendants were chargeable.

*Held*, also, [Burton, J. A., dissenting], that, whether or not the plaintiff signed the ticket or informed herself of its contents, it embodied the terms and conditions on which alone the defendants contracted to carry her and her baggage.

*Per* BURTON J. A.—The delivery of the ticket with any condition, by itself amounted only to a proposal to carry on certain terms, and until brought to the notice of the party intended to be bound was not a contract.

BULL V. THE NORTH BRITISH CANADIAN INVESTMENT CO., AND THE IMPERIAL FIRE INSURANCE CO.

*Fire insurance—Mortgagor and mortgagee—Subrogation clause—4th statutory condition—Assignment by way of mortgage—Proofs of loss—Waiver.*

The right of an insurance company to be subrogated to the mortgage rights of the mortgagee in the case of a policy of insurance containing the usual subrogation clause referred to below, depends upon whether they have a good defence against the claim of the mortgagor, who, as between himself and the insurance company, is the party insured.

*Premium Securities Company v. The Canada*

*Fire and Marine Insurance Co.*, 10 R. 494, observed upon.

The fourth statutory condition provides if the property insured is assigned without the written permission of the company, the policy shall be avoided:

*Held*, that the assignment by this condition is one by which the assignor divests himself of all title and interest. The condition is directed against a change of title, not the creation of an incumbrance, and therefore a mortgage by the person named is not a breach of the condition. *Sands v. The Standard Insurance Co.*, 26 Gr. 113, 27 Gr. 167, approved.

*Held*, also, that an agreement for sale by the mortgagees under their power of sale which was never carried out by conveyance was not within the conditions.

After the loss the insurance company received certain proofs of loss from the mortgagees. They made no objections to them for many months after, and gave no notice that any further proofs were required. When making payment of the loss they alleged that they were entitled to be subrogated to the rights of the mortgagees, and that they objected to recognize any claim on the policy by the mortgagor, by reason of non-compliance with the statutory condition as to proof of loss.

*Held*, that they must be taken to have dealt with the mortgagees as agents of the mortgagor, and that they had waived further proofs of loss, and that the payment enured to the benefit of the latter.

Judgment of the Court below affirmed.

HALL V. FARQUHARSON.

*Tax sale—Sale honestly and fairly conducted—Sale for more than was due—R.S.O. ch. 180, sections 137, 155—Double assessment—Identity of parcel sold with that taxed—Payment of taxes—Statute labor.*

Plaintiff was the owner of a group of small islands in Lake Rosseau, in the township of Medora, containing in all less than 50 acres. The island in question was patented to one Pape by the description of Island D. Plaintiff purchased it from Pape, called it by the fancy name of Oak Island, and built a house and made other improvements thereon, and resided there for some months in each year.