

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

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tiff's interest in the said Toronto lots for \$6,000, the defendant to pay interest and taxes to date, but to deduct the same out of the \$6,000. The Toronto property was conveyed to the defendant, who entered into possession and paid off the mortgages on it. The defendant contended that D. had valued the Winnipeg property at \$8,000; but the evidence showed that D. had declined to make any valuation. The defendant refused to convey it except at the price of \$8,000, and also refused to appoint another valuator. In an action to recover from the defendant the sum of \$6,000, the plaintiff intimated that he would accept a conveyance of the Winnipeg property.

Held, that unless defendant accepted offer to make a conveyance, the judgment should be for the \$6,000, less a sum of \$838.28, paid for interest and taxes, leaving a value of \$5,162.72 with interest.

Osler, Q.C., for the plaintiff.

GRAHAM V. ONTARIO MUTUAL INS. CO.

Insurance—Incumbrance—Unreasonable condition.

The application for a policy of insurance against fire stated that there were no incumbrances. The application was filled out by the company's agent. The insured informed him of the existence of a mortgage on the property, when the agent informed plaintiff that if there was nothing overdue thereon it was not an incumbrance; and as there was nothing overdue, and under this belief, the statement was made in the application. A policy was issued shortly afterwards, with conditions endorsed thereon under the heading statutory conditions and variations, No. 13 of which was that any fraudulent misrepresentation contained in its application, or any false statement therein respecting the title or ownership of the property, or the concealment of any incumbrance, or the failure to notify the company of any mortgage or incumbrance upon, or other change in the title or ownership of the insured property, etc., rendered the policy void.

Held (GALT, J., dissenting), that under the circumstances the policy was not avoided.

Chabillon v. Canada Mutual Insurance Co., 27 C. P. 450, followed.

Per GALT, J.—That though before the issue of the policy the insurance was not avoided, yet it would be so thereafter, as under the conditions the plaintiff should have notified defendants of the mortgage.

The fourteenth variation condition was "if any agent or canvasser for this company shall have filled up any part of the application he shall be the insured's agent therefor, and not the company's; and no statement, written or verbal, made to such agent or canvasser as to any matter to which the enquiries in the application extend, shall bind the company or affect the company with notice thereof, unless stated in the application."

Per ARMOUR, J., at the trial, and *per ROSE, J.*, in the Divisional Court, that the condition was unjust and unreasonable.

Mackennan, Q.C., for the plaintiff.

McMullen (of London), for the defendant.

WORDEN V. CANADIAN PACIFIC RY. CO.

Railways—Failure to deliver goods—Damages.

The plaintiff, on 2nd March, 1882, delivered to the G. W. Ry. Co. at Lucknow, Ont., 840 bushels of oats to be carried by said railway and connecting railways to Brandon, Man., and there delivered to the plaintiff. The oats were shipped in car No. 6,253, and while in transit, were transferred to car No. 3,966 of the M. & M. Ry. Co. Before the arrival of the oats the plaintiff arranged with defendants' agent at Winnipeg to have car 6,263 stopped at Winnipeg. The oats were not stopped at Winnipeg but were carried on to Brandon. The plaintiff, before leaving Brandon, and making the Winnipeg arrangement, had instructed an agent at Brandon to receive the oats. The oats arrived at Brandon on 5th May, 1882. The plaintiff's agent at Brandon frequently applied for same, and was always informed that they had not arrived. The defendants alleged that after the arrival at Brandon notice thereof was sent by postal card to the plaintiff's proper address at Brandon, and the goods being of a damageable or perishable nature were, on 22nd July, sold. There was no evidence to show that this notice reached the plaintiff. In an action for damages for non-delivery and for conversion,

Held, that the plaintiff was entitled to re-