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FIRE INSURANCE — LOSS, IF ANY, PAYABLE TO THIRD PARTY.

In vol. 3, p. 25, of this work, reference was made to the decision of the Court of Appeal in *Black & National Insurance Co.*, 3 Leg. News, 29; 24 L. C. J. 65. In that case it was held, by a majority of the Court, that where a policy, taken out by the owner of real property, declares that the loss, if any, is payable to certain persons named as mortgagees to the extent of their claim, such persons become thereby the parties assured to the extent of their interest as mortgagees, and their rights and interests cannot be destroyed or impaired by any act of the owner of the property. Mr. Justice Ramsay, who was one of the dissentient judges, described this decision as not compatible with any sound principle. "It alters the obligation of the insurer, and exposes him to perils which the contract he has entered into, on its face, does not contemplate."

As the decision above referred to was a reversal, and there were two dissentients, authority on the point was pretty evenly divided, Justices Mackay, Monk and Ramsay being in favor of the insurer, and Chief Justice Dorion and Justices Tessier and Sicotte being in favor of the mortgagee.

Nearly ten years later the question has again presented itself in *National Assurance Co. of Ireland & Harris*, M. L. R., 5 Q. B. 345. Here the loss, if any, was made payable to a person named in the policy, and it was held that the rights of this person were not affected by acts of the insured which would have the effect of voiding the contract as regards the insured, such as an assignment of the property without the permission of the insurer. It was also held that the creditor to whom the loss was payable might make the preliminary proof of loss in his own behalf, notwithstanding a stipulation in the contract that the proof of loss should be made by the insured although the loss should be made payable to a third party.

This judgment, which was made to rest upon *Black & National Ins. Co.*, extends and broadens the scope of the earlier decision. It would appear that the fact of a company consenting to an assignment of the loss, is equivalent to a renunciation on its part of all the conditions of the policy. For example, the property insured may be assigned to some one whom the company would have utterly refused to insure, but the company has no redress during the remainder of the period for which the premium has been received. The property may be converted from a dwelling into a saloon, but the contract holds good. To use Mr. Justice Ramsay's words, the obligation of the insurer is altered, and he is exposed to perils which the contract he has entered into, on its face, does not contemplate.

The equal division of opinion on the former case was pointed out. This equality is still more marked when the two cases are taken together. The vote stands thus: For the insurer:—Justices Mackay, Monk, Ramsay, Cross, Doherty, 5. Against the insurer:—Chief Justice Dorion, and Justices Tessier, Bossé, Papineau and Sicotte, 5. It happens that the French-speaking judges have all gone the one way and the English-speaking the other. The amount involved in *National Assurance Co. & Harris* was too small to give a right of appeal either to the Supreme Court or to the Judicial Committee of the Privy Council. It seems very strange, however, seeing the importance of the question, and the remarkable division of opinion above noted, that an effort has not been made to bring the case before the Judicial Committee of the Privy Council. There is every reason to suppose that on a presentation of the facts here stated, special leave to appeal would readily have been granted by the Judicial Committee. As the matter now rests, a very important question is governed only by the accidental decision of an intermediate tribunal, the ten judges who have pronounced upon it standing precisely five to five.