COUNTY COURT OF THE COUNTY OF HASTINGS.

DEROCHE, Co. C.J.   FEBRUARY 17TH, 1919.

DAWSON v. CALEDONIAN INSURANCE CO. OF EDINBURGH.

Insurance (Fire)—Action on Policy—Answers in Application of Assured as to Ownership and Incumbrances—"Owner"—Person having Interest in Property Insured—Mortgage on Property not Known to Assured—Absence of Prejudice from Non-disclosure—Subsequent Insurance not Disclosed—Absence of Assent or Knowledge on Part of Insurers—Necessity for Notice—Statutory Condition 5—Fraudulent Purpose—Finding of Fact of Trial Judge—Previous Acquittal of Assured on Criminal Charge.

Action upon a policy of fire insurance.

The action was tried without a jury at Belleville.
A. A. Abbott, for the plaintiff.
W. N. Ponton, K.C., and R. D. Ponton, for the defendants.

DEROCHE, Co. C.J., in a written judgment, said that the plaintiff insured against fire in the defendant company, the policy bearing date the 30th August, 1917, for $800; and he also insured in the Northern Assurance Company by policy dated the 7th September, 1917, for $800.

The house insured was burned on the night of the 7th September, 1917.

The defendants denied liability on several grounds, one being that in the application for insurance the plaintiff said he was the sole owner of the property to be insured, and that answer was not true.

Reference to Keefer v. Phœnix Insurance Co. (1901), 31 Can. S.C.R. 144, per Sedgewick, J., at p. 147.

Clearly the plaintiff had an interest at the time of the insurance and loss. He had purchased the land on an agreement of sale and purchase, the price being payable by instalments, and had paid several instalments. The building insured he erected entirely with his own money, and the amount of the insurance was fully covered by his cash interest in the building.

Then, too, the word "owner" as used in the statutory conditions is not synonymous with "holder of an exclusive title." See Drombolus v. Home Insurance Co. (1916), 37 O.L.R. 465, at p. 469; Hopkins v. Provincial Insurance Co. (1868), 18 U.C.C.P. 74.

This defence failed.