

by their letter of 28th October, remit the new undertaking and cash premium. By defendants' letter of 7th November they were not leading plaintiffs to think they were insured or that they were giving him time for payment. They simply re-stated their position and adhered to it. . . . The plaintiffs, instead of paying the cash premium and sending the undertaking and thus closing a contract, postponed doing so and waited for a reply which they got on 12th November by defendants' letter of the 11th. The defendants were firm, and, in my opinion, both parties were then in exactly the same position they were in on the 1st November. Defendants had done absolutely nothing to lull plaintiffs into the belief or supposition that they were insured without payment of cash and delivery of undertaking. Plaintiffs remained silent until 18th November, when, without saying a word of the fact that a fire had occurred on the 16th November, they sent forward the undertaking and a marked cheque for the cash premium.

If plaintiffs, not liking the new rates, had, on the 11th November, or at any time after the 31st October, made application to another company for insurance, they could truthfully have said, in answer to the usual question, that they were not insured in any other company, so far as these defendants are concerned.

Joyce v. Swann, 17 C. B. N. S. 84, and *Ridgeway v. Wharton*, 6 H. L. Cas., distinguished.

Appeal dismissed with costs.

STREET, J.

MARCH 6TH, 1903.

CHAMBERS.

RE FOSTER.

Will—Construction—Devises of Land—Charge of Debts—Mortgage Debts—Apportionment—Valuation—Costs.

Motion by George Sparks, executor of will of William Robert Foster, for an order declaring the construction of certain parts of the will. Testator died 25th February, 1899. He was a farmer and left personalty consisting of farm stock and implements, furniture, cash, etc., valued at \$1,295. His real estate consisted of the north half of lot 34 in the 2nd concession of Nepean, 100 acres, and the west quarter of lot 35 in the 3rd concession, 50 acres. The north half of 34 was subject to a mortgage for \$800 dated 17th September, 1888, and that lot, along with the other, was also subject to a further mortgage dated 3rd April, 1897, for about \$2,700. The testator's debts, apart from the mortgage debts, were