

E. E. A. Du Vernet, K.C., and O'Sullivan, for plaintiffs.

G. T. Blackstock, K.C., and G. H. Sedgewick, for defendants the Traders Fire Insurance Co.

H. D. Gamble, K.C., for defendants the British America Assurance Co.

Judgment was pronounced on 29th December, 1908, but the written opinion of MAGEE, J., was not delivered until 22nd January, 1909.

MAGEE, J.:—These two actions have been tried together by consent. The action against the Traders Fire Insurance Co. is upon a policy insuring \$3,000 on stock in trade and \$1,000 on furniture, fixtures, and fittings, for one year from 15th January, 1908. The action against the British America Assurance Co. is on a policy insuring \$6,000 on stock, etc., for one year from 17th January, 1908. By the policy in the Traders company, loss, if any, is made payable to the Crown Bank of Canada. Since the loss and before action the insurance in the British America Assurance Co. was assigned to the same bank.

Each policy expressly permitted further insurance, and also contained a specially added co-insurance clause requiring the insured to keep up insurance to the amount of 80 per cent. of the value. The policy in the Traders company, though commencing two days earlier, states that there is further insurance in the British America company to the extent of \$6,000.

The plaintiffs by their statements of claim allege that by a fire on 22nd March they sustained loss to the extent of \$9,231.81 on the stock in trade and \$1,082.84 on the furniture, etc., and consequently they claim the full amount of both policies.

The statements of defence, besides other matters which were not referred to at the trial, put in issue the loss, and denied the receipt of proper proofs of claim, as required by the 13th statutory condition of the policies, and asserted that the actions were brought before the lapse of 60 days from the completion of the proofs of loss, and alleged that there was in the statutory declaration furnished by plaintiffs fraud and false statements such as to vitiate the claim under the 15th statutory condition.