

barns and other buildings and contents situate upon a farm owned by the plaintiff Gabel subject to a mortgage to the plaintiff Marks, the loss being payable to the latter.

At the time the policy was issued, the plaintiffs held a policy, issued by the defendants, for \$4,000 upon the same property. The policy sued on stated on its face that it cancelled and replaced the former policy.

The amount of the plaintiffs' claim for loss—by a fire which occurred on the 1st December, 1916—was \$3,480.

The defences were: (1) that in applying for the insurance the plaintiff Gabel misrepresented or omitted to communicate to the defendants a circumstance material to be made known in order to enable the defendants to judge of the risk they undertook; (2) that Gabel failed to deliver proofs of loss pursuant to conditions 17 and 18, sec. 194 of the Insurance Act, R.S.O. 1914 ch. 183.

The action was tried without a jury at Guelph.

D. L. McCarthy, K.C., and G. Bray, for the plaintiffs.

H. Guthrie, K.C., and W. M. Sinclair, for the defendants.

MASTEN, J., in a written judgment, after setting out the facts, said that the amount of the loss was not disputed—the contest was as to liability only. The documents constituting the proofs of loss were properly executed except that the statutory declaration, though made out in the name of the plaintiff Gabel, was sworn by two of his representatives on the board of inspection and valuation. The proofs of loss were dated the 9th December, and were sent to the defendants on or about that day. No objection was made to them by the defendants, and no further or other proofs were ever asked for by the defendants.

The learned Judge, acting under sec. 199 of the Insurance Act, finds that the failure to make the statutory declaration arose from mistake; that the plaintiff Gabel did sign the schedules setting forth the amount of the claim, and that, no further or other proofs of loss having been asked for, it would be inequitable that the insurance contract should be deemed void or forfeited for imperfect proofs of loss or from failure to furnish the plaintiffs' declaration as called for by statutory condition 18(c): *Prairie City Oil Co. v. Standard Mutual Fire Insurance Co.* (1910), 44 S.C.R. 40; *Bell Brothers v. Hudson Bay Insurance Co.* (1911), 44 S.C.R. 419. The second defence, therefore, failed.