LEGAL DECISIONS IN INSURANCE CASES.

COMPILED BY

MESSRS MONK, MONK & RAYNES, ADVOCATES, MONTREAL.

SUPERIOR COURT, MONTREAL.

GENEST

vs.

THE HOCHELAGA MUTUAL FIRE INSURANCE COMPANY.

On the 22nd September, 1877, the Plaintiff, desiring to effect an insurance with the Defendant's Company, made application to the Company's agent at Quebec, who on receiving Plaintiff's deposit note for $245.00, and $36.75 in cash, granted him an interim receipt by which his property was held covered for 30 days.

After the expiration of the 30 days, viz., on the 15th November, 1877, the Company informed him that they refused his application, and that they were ready to give him back his note and deposit money after deducting a proportion of the premium for the time during which the insurance was valid.

In spite of this the Company afterwards refused to give back the note, they pretending that the Plaintiff was a member of the Company from the date of his application up to the 15th November, and as such subject to contribute to the payment of the losses incurred by the Company during that time. And that during that period they had been condemned to pay a loss of $2,000, for which loss his proportion amounted to $96.89, as assessed by the Directors, in addition to the sum already paid by him with his said deposit note, viz., $36.75.

The learned Judge in pronouncing judgment, dismissed Defendant's pleas and gave judgment for Plaintiff, ordering the Company Defendant to return the deposit note, and condemning them to all costs.

He holding that after the expiration of the 30 days mentioned in the interim receipt, the insurance terminated *de plein droit*, according to the express terms of the interim receipt. That the fact of the Plaintiff's not having been informed of the refusal of his application until the 15th November, did not constitute him a member of the Company for the period of time between the lapse of the 30 days and the date of notification.

That the Company having by the notification declared themselves ready to return the deposit note, could not later illegally submit the Plaintiff to a contribution to losses sustained by the Company on account of the said deposit note being still in their hands, owing to the negligence of their employees in not having returned it to the Plaintiff more promptly.

CIRCUIT COURT, SWEETSBURG,

DISTRICT OF BEDFORD.

GILES *es qual. vs.* BROCK.

Mutual Insurance—Assessment for losses—Defence to Action for such Assessments.

The Plaintiff, acting in his capacity of Receiver for the Niagara District Mutual Fire Insurance Company, sued the Defendant for the recovery of the sum of forty-eight dollars currency, being amount assessed on his premium note on the Policy of Insurance against fire effected by him with this Company in August, 1876, notice of which assessment had been given to him in accordance with the provisions of 36 Victoria (Ontario), cap. 44. In his declaration the Plaintiff also alleges his appointment as Receiver by the Court of Chancery, and the Insolvency of the Company.

The Defendant pleaded that the note in question had been obtained by the fraudulent artifices of the officers and agents of the Company, who represented it as solvent, whereas at the time it was insolvent and worthless; and that it furnished no security for any loss insured against, and that Defendant received no value or consideration for the note, and that the Company suffered no *bona fide* losses for which the Defendant could be made liable.

The Plaintiff's evidence was to the effect that the assets of the Company were equal to its liabilities, and that it was from non-payment by its debtors that the Company was forced into Insolvency, and that it was not insolvent when the premium note sued on was given, and that Defendant was not assessed for any loss previous thereto; but the losses on which he was assessed were subsequent to the time his insurance was effected.

The Defendant's Counsel endeavored in his examination of Plaintiff to obtain from the witness a statement of what losses, and in what manner the assessments were made on Defendant's note; but the Court maintained the objection of Plaintiff to allowing the witness to enter into any details in regard thereto, the more particularly as the Court held he had no records or books to speak from.

The Court, in giving judgmentfor the Plaintiff under the proof, held that although it might be open to a party insured to show that a company was a swindling or a bogus company; and that the security sought to be enforced had been obtained by false pretences, which had not been done in the present case; yet that it was not competent to the assured in a mutual company, when called upon to pay assessments on his premium note, to compel the company to enter into a detailed statement of the losses to establish the correctness of the assessments made by the Directors. That the Directors in so acting were the agents of the insured, who also was a member of the Company, and that he was *quoad* these assessments, in a suit brought to enforce payment of them, bound by their acts and by the terms of his premium note, which are here of a most specific nature, and by which he agreed to pay on demand, for value received, any sum of money which the Company might from time to time require of him, provided that such sums should not in the aggregate exceed the sum of $96.00 (the amount of the premium). That apart from the contract itself, which must govern this case, to hold otherwise would appear to defeat the object of the law establishing these Mutual Companies; wherein, as in ordinary incorporated companies, the conduct and details of the business are left to the action of Directors, who would be responsible directly for malfeasance of duty, but whose acts within their scope are binding on shareholders or members of the Company, and one of whose main duties it was in these Mutual Companies to make assessments for losses and other expenses of the Company.

Here, the Defendant having failed to prove the fraudulent character of the Company, or the false representations upon which it was alleged the note in question was obtained, and a Receiver having been appointed under the 75th section of the Statute above referred to, the like rights and remedies upon the non-payment of assessments as are given to the Company itself, the right of the Plaintiff to recover the amount sued for from the Defendant was indubitable, and judgment was accordingly pronounced in his favor.

SUPERIOR COURT, MONTREAL.

GILES *ès-qual. vs.* CHAPLEAU.

Security for Costs—Plaintiff ès-qual.

In this case the Plaintiff brought suit in his capacity of Receiver duly appointed to the Niagara District Mutual Fire Insurance Co., a body politic duly incorporated and formerly carrying on business in the Provinces of Ontario and Quebec.

The Defendant asked for security for costs:

1. Because the Plaintiff sues in his capacity of Receiver to an Ontario Assurance Company.

2. Because said Company has not an office in the Province of Quebec.

3. Because it appears by the declaration that the Company is insolvent, and has ceased carrying on business altogether.

And further, that Plaintiff has always resided in Ontario but has lately come to Montreal for the very purpose of avoiding the furnishing of security in these cases.

The Plaintiff contested the motion strongly, but the Judge decided against him and ordered the security to be given, inasmuch as it appears by the declaration that the Company called there The Niagara District Mutual Fire Insurance Company, for and in whose interest the Plaintiff has instituted the present action, has no place of business (*établissement*) in this Province.