

SEARS v. AGRICULTURAL INS. CO.

Insurance—Nonpayment of premium note—Variation condition therefor—Reformation.

A premium note, dated 24th May, 1880, given on effecting an insurance with the defendants' company, stated that the insured, for value received in policy No. 1305, promised to pay the company \$14.50, on 24th December, 1880, with interest at 7 per cent., and contained an agreement that if the note were not paid at maturity the whole amount of the premium should be considered as earned, and the policy null and void so long as the note remained unpaid. Upon the policy, which was dated 14th May, 1880, and took effect from the 24th May, 1880, was endorsed a variation condition that the policy should not be valid or binding until the premium was actually paid, unless credit was given, for in that case it was a condition of the contract that if the premium were not paid ———, 18——, the whole amount of the premium should be considered as earned, and the policy null and void so long as any part thereof remains unpaid. The application stated that the premium was due the 24th May, 1880.

Held, that the omission to fill in the blank in the condition, which was the same as sec. 48 of R. S. O., c. 161, did not prevent its operating, for the condition would be perfect omitting the figures "18" altogether, but if necessary the condition could be reformed by inserting the words evidently intended, "24th May, 80."

Held, also, that the condition was not unreasonable.

The fire occurred on the 13th September; on the 15th, the plaintiff, through a solicitor, paid the amount of the note to the defendants, who were ignorant of the loss. On the 17th May, notice and proofs of loss were sent to the defendants, when they immediately repaid back the money to the solicitor.

Held, that the payment, being made in fraud of the defendants, could not avail the plaintiff.

Macdonald, (Kingston), for the plaintiff.

Britton, Q.C., for the defendants.

SMITH v. FORBES ET AL.

Broker Discretion—Ratification.

Action against the defendants, stockbrokers, carrying on business at Toronto, for breach of

duty, in not buying for plaintiff certain stock. On Saturday March 25th, plaintiff instructed defendants by telegram to buy certain stock at 114 or less. The telegram was received too late to enable defendants to act that day. On the following Monday, the 27th, they telegraphed plaintiff that they had cancelled his order in the meantime, as there were unfavourable rumours about the stock, and that they would write. The plaintiff received this telegram on the same day about noon, but did not answer it, but waited for the defendants' letter. The letter was received about 5 o'clock on the following day Tuesday the 28th, and was to the same effect as the telegram, and asked plaintiff to repeat order if he wished defendants to act for him. The plaintiff replied by letter, which, after acknowledging receipt of defendants' letter, stated that from defendants' telegram he was prepared for something a good deal more tangible as a reason for not filling his order than the mere general unfavourable impressions described in defendants' letter, and something more definite than suspicion had caused it and therefore waited for the letter; that he thought he was justified in expecting the defendants to make good any decided advance; that he had given defendants a positive order to buy, knowing well that in the important decline which had taken place the air would be full of rumours and uncertainty, but having faith in the ultimate result he was willing to risk his money; that he had just telegraphed them as to how market closed that day. The telegraph stated that letter was received; that he did not think defendants were justified in not buying, and asking, as intimated in his letter, how market closed. The defendant, on 29th, telegraphed in reply that last sale yesterday 120, market very uncertain.

Held, that the above correspondence shewed the plaintiff ratified or assented to the defendants' course of conduct in disobeying his instructions, and exercising their discretion, and that the construction was a matter for the Court, and not for the jury; at all events no damage was proved, as the contract was broken on Monday, when the stock was at 114. The plaintiff therefore was held not to be entitled to recover.

Falconbridge, for the plaintiff.

McMicheal, Q.C., for the defendant.