

The important point decided in this case, was whether a person insured on what was called the cash or stock plan under Sec. 35 of 40 Vict. chap. 72, was liable for extra assessments under Sec. 24 of C. S. L. C. c. 68.

The appellant in his factum urged that his cash premium was final. That the power to take cash premiums was inconsistent with the mutual principle and characteristic of the stock plan. He cited in support, Flanders on Insurance, p. 17, and judgments of Hon. Justices Gill and Loranger. He also cited the evidence of Mr. Grant, the Manager, and of Fitzgerald, the Secretary of the Company, to show that by general understanding no such extra liability existed. "Personne," said appellant, "ne songeait, disent MM. Grant et Fitzgerald, à cette répartition extraordinaire de \$2 par \$400 assurés, dont il n'a été question pour la première fois qu'après la mise de la compagnie en liquidation. Personne ne songeait même qu'il y eût une telle disposition dans la loi."

The appellant also invoked the fact that a special form of policy was printed for these cash cases, and also a By-law of the company declaring that the liability of persons insured was limited to the amount of their deposit notes. Also, that in no case could more than one extra assessment of \$2 on every \$400 insured be made under Sec. 24 of chap. 68 C. S. L. C., and that the circumstances did not even justify this one.

The respondent replied, that appellant was a member of a mutual company and as such liable as other members for the extra assessments; that the By-law invoked was contrary to the Statute and void; that members could not avoid their liability by showing that they or those connected with the company considered it different from what the law imposed. That unless an extra assessment for each fire was intended by Sec. 24 of chap. 68 C. S. L. C., there would be no one insured and no company after the first extra assessment had been made. That the six fires on each of which an extra assessment was demanded from appellant, could not be paid otherwise than by extra assessments. The appellant cited 40 Vict., chap. 72, Sec. 1, 3, 6, 7, 8, 38; May on Insurance, Sec. 146 and 548; Brice, *Ultra Vires* pp. 7, 38, 598, 745, 746;

1 L. N. 450; Thompson, Liability of Shareholders, p. 170 and par. 386.

The judgment of the Court of Appeal maintained respondent's claim for extra assessments and is as follows:—

"The Court, etc.

"Considering that under section 24 of chap. 68 of the Consolidated Statutes of Lower Canada, each member of a mutual insurance company incorporated under the provisions of the said Act is liable, in addition to the amount of the deposit note made by him, to pay a sum not exceeding \$2 on every \$400 for which he is insured, to meet the loss occasioned by fire at the same time, if the amount of the deposit notes be insufficient to pay such loss; and also a sum not exceeding \$2 on every \$400 for which he is insured for any loss occasioned by any one fire occurring after the amount of the deposit notes has been exhausted;

"And considering that by the Act 40 Victoria, chap. 72, sect. 35 (Quebec), the company respondent was authorized to collect from its members premiums in cash for insurances for terms not exceeding one year in lieu of deposit notes, the rights and liabilities of such members remaining in other respects the same as those of other members of the company;

"And considering that it appears by the evidence in this cause, that the appellant was insured in the said company under policy No. 386 for \$1,100, under policy No. 504 for \$4,000, and under policy 918 for \$1,500, periods not exceeding one year;

"And considering that the cash premiums by him paid on the said policy, and the deposit notes of the other members of the company have been exhausted by previous losses, and that the appellant has become liable to an assessment not exceeding \$2 on every \$400 of the amount of his said policies, for the losses which have occurred by each fire pending the said policies, and that the sums for which the appellant should have been so assessed amount to \$125.18;

"And considering that the appellant is entitled to a sum of \$31.25 for services as a director of the company, which sum the directors and the liquidators of the company have agreed to deduct from the amount due by the said appellant;