

The agents also filled up an application form, and signed it in the name of the plaintiffs, but this was done without the knowledge, consent or authority of the plaintiffs. A policy was issued and sent to the plaintiffs, which contained the statement that "the property is being held by the assured as owners." Statutory condition 10 provides that the company is not liable for loss of property owned by any other party than the assured, unless the interest of the assured is stated in or upon the policy.

*Held*, that the plaintiffs were not precluded by this condition from recovery under the policy. The defendants had notice through their agents of the real interest of the plaintiffs in the property insured, and it was their duty to have endorsed on the policy the necessary statement as to it, or at all events they were estopped from setting up the above condition to defeat the plaintiffs' claim.

*Semble*, also, that the plaintiffs might invoke the second statutory condition, under which, after application for insurance, it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the company points out in writing the particulars wherein the policy differs from the application. There is no reason for confining the operation of this condition to a written application, and its effect is to secure to the applicant for insurance the very contract for which he has applied, though the policy sent to him is a different one, unless the notice for which it provides is given by the insured.

*R. McKay*, for defendants (appellants). *J. L. McDougall*, for plaintiffs (respondents).

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Street, J.]

AMES v. SUTHERLAND.

[Feb. 20.]

*Stock brokers—Carrying stocks on margin—Pledges of stock—Sale without notice—Damages.*

Action by stock brokers to recover from defendant balance alleged to be due to them upon an account of dealings between them and the defendant in respect to certain shares of the Dominion Coal Co., which defendant had bought and had been carrying on margin. The defendant set up that the plaintiffs bought the stock as his brokers, and held the same as a pledge or security for certain monies which they had during the course of the dealing advanced to him, and that they had nevertheless sold the stock without notice to him, and were liable in damages. It appeared that the sales were notified to the defendant by the plaintiffs in or about June 19, 1903, the sales having