

other insurance on said property, the policies of which did not prohibit their assignment. The consent of the company to the transfer was not obtained and indorsed on the policy.

*Held*, affirming the decision of the Supreme Court of Nova Scotia, that the mortgage of the policy by S. without such consent made it void and he could not recover the amount insured in case of loss.

Appeal dismissed with costs.

*Harrington, Q.C.*, for the appellant.

*Newcombe, Q.C.*, for the respondents.

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20th Feb., 1894.

FRASER V. FAIRBANKS.

Nova Scotia.]

*Sale of land—Sale subject to mortgage—Indemnity of vendor—  
Special agreement—Purchaser trustee for third party.*

L. F. agreed in writing to sell land to C. F. and others, subject to mortgages thereon, C. F. to hold same in trust to pay half the proceeds to L. F., and the other half to himself and associates. When the agreement was made it was understood that a company was to be formed to take the property, and before the transaction was completed such company was incorporated and L. F. became a member receiving stock as part of the consideration for his transfer. C. F. filed a declaration that he held the property in trust for the company, but gave no formal conveyance. An action having been brought against L. F. to recover interest due on a mortgage against the property, C. F. was brought in as third party to indemnify L. F., his vendor, against a judgment in said action.

*Held*, reversing the decision of the Supreme Court of Nova Scotia, Taschereau and King, JJ., dissenting, that from the evidence it appeared that the original agreement contemplated the sale being to the company and not to C. F., and the latter was not liable to indemnify the vendor.

Appeal allowed with costs.

*Borden, Q.C.*, for the appellant.

*Harris, Q.C.*, for the respondent.

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