

They based this limitation on a term in the application printed on the form signed by the plaintiff on the 10th July, 1916, in the following words: "Not more than two-thirds of the cash value of any building or personal property will be insured by this company in connection with any other company or otherwise."

The policy referred to the application as forming part of the policy.

By sec. 156 (3) of the Insurance Act, R.S.O. 1914 ch. 183, the application shall "not as against him be deemed a part of or to be considered with the contract of insurance except in so far as the Court may determine that it contains a material misrepresentation by which the insured was induced to enter into the contract."

It was not pleaded or proved that the application contained any misrepresentation whatsoever.

The case therefore was to be considered upon the terms of the contract expressed by the policy.

No proof was given that \$1,600 was more than two-thirds of value of the contents of the barn at the time the insurance was effected.

The defendants had the right, under the application, to limit their liability to two-thirds of the amount of the loss.

The insurance was against loss or damage by fire, "such loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen and shall not exceed the said amount insured, nor the value of the interest of the assured in the said property."

The contract, instead of placing a two-thirds limitation on its liability for loss, expressly fixed that liability at the "actual cash value of the property destroyed," and that value, it was conceded, was \$850.

Although not pleaded, it appeared that, by signing a premium note, when applying for the insurance, the plaintiff became, under sec. 123 of the Act, a member of the defendants as a mutual insurance company. No by-law of the company was proved. An extract from a by-law, not verified in any way, and not admitted as authentic by the plaintiff, had recently been sent to the learned Judge. It stated, like the application, that "not more than two-thirds of the value of any building or other property will be insured by the company." There was no evidence that not more than such value was insured. Then again the defendants were confusing the value of the property insured with the loss which they agreed to pay.

The actual cash value of the contents of the barn destroyed by fire being \$850, there should be judgment for the plaintiff for that amount, with costs on the High Court scale, without set-off.