

The Legal News.

VOL. III. JANUARY 24, 1880. No. 4.

TRANSFER OF INSURANCE POLICIES.

The decision of the Queen's Bench in appeal, in the case of *Black & The National Insurance Co.*, noted in the present issue, as the learned Chief Justice remarked, determines one of the most important questions that can come before a Court. Unfortunately, the judgment is rendered by the narrow majority of one, a Judge *ad hoc*, and as it is a reversal, the Judges stand three to three, there being two Appeal Court Judges and one Superior Court Judge on each side. It happens that the French speaking Judges have gone one way and the English speaking the other.

The principal point in the case is very clear. There was an insurance effected under the usual condition that "if the assured shall have, or shall hereafter make any other insurances on the property hereby insured, or any part thereof, without the consent of this Company, written hereon, then, and in every such case, this policy shall be void."

The insurance was made payable to mortgagees, and subsequently the assured, or another mortgagee, did effect an insurance with another company, without notice to the first company. If the loss had been payable to the insured, the breach of the condition would have prevented him from recovering. Did it affect the claim of the mortgagees in the same way? That was the great question in the case, and the majority of the Court of Appeal have answered it in the negative.

The Court holds that "the said George W. Farrar, (the insured) could neither by a release of the said insurance, nor indirectly by any act of his, destroy or impair the rights and interests of the said John and Henderson Black (the mortgagees) in the said policy." The decision has taken by surprise many lawyers who have had to do with the investment of moneys, and whose practice has long been guided by a different impression of the position of mortgagees under the circumstances. However, the decision seems to favor investors. If it be settled law that their claims cannot be prejudiced by any omission or neglect of the insured, (so long, of course, as the premium is

paid), they will be the more ready to advance on the collateral security of insurance policies. It is somewhat singular that the question has not been clearly presented in any previous case in our Courts, and that very little light is thrown upon it by the jurisprudence of England or Ontario.

"LAWYER'S LETTERS."

A question of considerable interest to the profession has been decided in the Circuit Court. Mr. Justice Rainville held last month that where a demand has been made upon a debtor for payment, and he neglects to pay, and then the case is intrusted to a lawyer, the latter is entitled to a fee of \$1.35 for writing a letter demanding payment, and if the debtor refuses to pay this fee, the lawyer may take out a writ in the case, and enforce payment. It is understood that the learned Judge consulted his colleagues in reference to the point, and that they concur in this ruling.

It is obviously in the interest of debtors, that some fee should be exigible for a letter, otherwise, as has been the practice with some members of the profession, there is an inducement to issue a writ without previously sending a letter. The writing of a letter is merely an act of courtesy which the debtor often requires by refusing to pay more than the debt. It is right that a fee should be exigible. The only question which may arise in some cases is whether the lawyer should issue a writ in the name of his client for the original debt, or in his own name merely for the amount of the fee for the letter. In the Circuit Court case the tender of the debt alone was refused, and the writ then issued for the amount of the debt in the client's name. But if the client had accepted the debt without prejudice to the lawyer's rights, it would seem more correct that the latter should sue in his own name for the amount of the fee.

THE CRIMINAL LAW MAGAZINE.—The first number of this new magazine has been issued at Jersey City, N.J. It is edited by Mr. Stewart Rapalje, of the New York bar, and Mr. Robt. L. Lawrence, of the Jersey City bar. It is to appear bi-monthly, and to furnish digests of all current criminal cases, besides leading articles and reports in full. The first number is carefully edited, and augurs well. We trust it will meet with success,