

2. The following mortgage clause contained in an insurance policy, to wit:....."cette assurance, en tant "que les intérêts des créanciers hypothécaires seuls sont "concernés, ne sera pas invalidée par le fait de la né- "gligence ou d'un acte quelconque du débiteur hypothé- "caire ou propriétaire de la propriété assurée, ni par "l'occupation des lieux pour des fins plus hasardeuses "que celles permises par la police", cannot avail to dis- pense with the making of proof of loss by the assured, although the loss be payable to the mortgage creditor.

The judgment of the Superior Court, which is reversed, was rendered by Mr. Justice Lafontaine, on June 30, 1916.

The respondent claims \$1500 from the appellant, the amount of a fire insurance policy. He alleges, that one Gendreau, the owner of the property insured, had given him a mortgage on his property, and transferred him the policy to cover his interest, which policy contained the mortgage clause recited in the above summary.

The appellant, in substance, pleads non compliance with the conditions of the policy, and with the statutory provision of the R. S., 1909, art. 7034, as to notice and proof of loss. It says no such notice nor proof having ever been furnished to the company, the respondent's action is premature.

The respondent in his answer relies on his mortgage clause; and says also that he was relieved from compliance with the said formalities by the acts and consent of the appellant.

The Superior Court maintained the action.

In appeal:

*Mr. Justice Cross.* As regards the respondent's repudiation of obligation respecting proofs of loss, it is to be observed that he relies upon a "mortgage clause". In its original form the policy had attached to it a "mortgage