

GIVING NOTICE OF LOSS.

When a fire occurs and the assured fails to notify the Company as required by the policy, and the Company resists payment on that ground, some important legal questions arise, and, in this connection the case of *Prairie City Oil Company vs. Standard Mutual Fire Company*, decided by the Supreme Court of Canada in 1910, is worthy of serious consideration.

This case was decided under the Manitoba "Fire Insurance Policy Act," which provides that "where by reason of necessity, accident or mistake, the conditions of any contract of fire insurance on property in this province as to the proof to be given to the insurance company after the occurrence of a fire have not been strictly complied with or where from any other reason the court or judge before whom a question relating to such insurance is tried or inquired into considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions," the informality may be dispensed with.

By the same act the assured is "forthwith after loss to give notice in writing to the Company."

It appeared from the evidence that while the insured himself did not give notice of the loss in writing, the general agents notified the Company by telegram, and the Court held that, under the circumstances, a written notice from the assured was not necessary in view of the Manitoba law quoted above.

"The Company's officers had," said Judge Anglin, "through the telegram from its own agents, all the benefit which they could derive from a notice in writing given personally by the insured. They so conducted themselves that the insured may well have been lulled into the belief that the company would accept its agent's notification as a compliance with clause (a) of the 13th condition. The omission of the insured to give the notice in writing was obviously due to accident or mistake. This is, therefore, in my opinion, eminently a case in which it would be inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with the condition as to immediate notice in writing."

The *Prairie City Oil Company* case was followed by the Supreme Court of Canada in the case of *Bell Bros. vs. Hudson Bay Insurance Company*, decided a few months later, and both cases were followed by the Supreme Court of New Brunswick in a case recently decided,—*Wetmore vs. British & Canadian Underwriters*.

In New Brunswick the Insurance Act under which the *Wetmore* case was decided provides that the assured "is forthwith, after loss, to give notice in writing to the insurer," with a further proviso in the following words :

"7 In any of the following cases:—

(a) Where, by reason of necessity, accident or mistake, the conditions of any contract of fire

insurance on property in this province as to the proof to be given to the insurer after the occurrences of a fire, have not been strictly complied with; or,

(b) Where, after a statement or proof of loss has been given in good faith by or on behalf of the assured in pursuance of any proviso or condition of such contract, the insurer, through its agent or otherwise, objects to the loss upon other grounds than for imperfect compliance with such conditions or does not, within a reasonable time after receiving such statement or proof, notify the assured in writing that such statement or proof is objected to, and what are the particulars in which the same is alleged to be defective, and so from time to time; or,

(c) Where, for any other reason, the court or judge before whom a question relating to such insurance is tried or inquired into, considers it inequitable that the insurance should be deemed void or forfeited by reason of imperfect compliance with such conditions, no objection to the sufficiency of such statement or proof or amended or supplemental statements or proof (as the case may be) shall, in any such cases, be allowed as a discharge of the liability of the company on such contract of insurance wherever entered into."

In the *Wetmore* case the insured verbally notified the agent, the latter notifying the company in writing, and the Court held that the insured could recover, on the ground that there had been a substantial compliance with the requirement of notice in writing.

"From all this," said Judge Grimer, "I think the proper inference is that *Wetmore* assumed what he had done and what the agent stated he would do to be a sufficient compliance with the conditions of the policy, either as having been done on his behalf by the agent or as being within the terms of the conditions themselves. *Wetmore* allowed his interests to become the particular case of the Company, and left the same entirely in its hands, and it will be encroaching closely upon the domain of fraud to permit the acts of the agent or Company to deprive *Wetmore* of the benefits of the policy and the objects for which the insurance was placed. It seems almost certain the Company, probably acting upon some information from their adjuster, made objection to the payment of the loss on other grounds than for improper compliance with the statutory conditions as to notice and proofs, and the fact that they had prompt notice from their own agent of the loss and could have suffered no prejudice from the omission of the assured also to give them notice, and the further fact that the agent who placed the insurance told *Wetmore* he had so notified the company (from which the inference is patent that *Wetmore* concluded personal notice from himself was not required necessary) that he would attend to the papers and forms, etc., and would fix the loss up, brings the case, in my opin-

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