

of the fray you can see everywhere "wigs on the green."

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Insurance managers who combine business with amusement are returning home from the Paris Exhibition with arms full of diplomas, grands prix, etc. We have certainly come off very well at this tourney of the world's industries.

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Something will certainly be wanted to gild the pill of the losses in connection with the African war. What with the heavy death rate and the damage to insured property, the offices can see heavy sums going out in return for little ones which come in. The commandeered gold losses alone are a heavy drain.

RECENT LEGAL DECISIONS.

FIRE INSURANCE—CONDITION AGAINST ALIENATION.—The Supreme Judicial Court of Massachusetts deals with this subject as follows:—A sale of all an insured's interest in a house and barn, except an estate for life in the house, does not avoid a policy under a clause, which provides that the policy shall be void, if the insured shall sell the property without the company's consent; such a clause must be construed to refer only to an absolute transfer of the insured's entire interest.

Where there is an express provision in a policy of fire insurance, that the policy shall be void, if without the company's consent "the situation or circumstances affecting the risk shall by or with the knowledge, advice, agency or consent of the insured be so altered as to cause an increase of such risk," it will not be construed to embrace changes of situation or circumstances made by a sale.

In giving judgment, Mr. Justice Hammond said: The burden of proof to show a breach of condition of a policy is on the Company; and even if the clause has reference to what are sometimes called the moral elements of the risk, we cannot say upon the facts appearing before us that the risk was increased by the sale, or that the clause was intended to embrace the changes made by a sale, especially when there is an express provision in the policy relating to that subject. The company must rely upon the clause as to alienation. Many of the earlier policies of fire insurance contained no condition against alienation. Inasmuch, however, as the contract of insurance is one of indemnity, and not a wager, it is manifest, that where, before a fire, the insured had parted with his entire interest in the property insured, he suffered no loss by its destruction, and needed no indemnity. A total transfer of his interest therefore defeated the policy. But, any change short of a complete transfer of his entire interest did not have that effect. The general rule was, and is, that, in the absence of any provision to the contrary in the policy, any change in the insurable interest of the insured, whether by the complete sale of only a part of the property or a change in the title to a part, or the whole of the property, does not avoid the policy which has once attached, provided that at the time of the loss the insured has an insurable interest. It is necessary that there should be an insurable interest at the time of the contract, and

at the time of the loss; or, if at the time of the loss the insured has parted with only a part of his interest, the policy is valid as to the part retained. And even a total alienation does not avoid, but only suspends, the policy, so that if the insured regains his interest on any part of it, and holds it at the time of the loss, he may recover. In this state of the law companies began to insert in their policies clauses relating to alienation. These clauses vary in language, and in the examination of the cases on this subject considerable care must be exercised in order to discriminate properly between those cases applicable and those not applicable to the clause which may be under consideration. The clause in this policy is "if the said property be sold." Conditions of this sort are strictly construed against the insured, and the general rule is that such a condition refers only to an absolute transfer of the entire interest of the insured, completely divesting him of his entire insurable interest. Any sale on transfer short of this is not within the scope of the condition. If it be the intention of the company that the contract should be avoided by any partial sale, or by any change short of an absolute sale of the entire interest, there is no difficulty in expressing that interest in plain and explicit language; and in many policies such an intention is thus expressed. Where a condition was that the policy should be void, if any change should take place in the title or possession of the property insured, whether by sale, transfer or conveyance, legal process or judicial decree, it was held that a mortgage by way of an absolute deed, and an unrecorded instrument of defeasance back, was a violation of the condition; while in another case it was held that such a mortgage did not avoid a policy, where the condition was that the policy should be avoided "if the property should be sold." If, therefore, the house had been the only building named in the policy, or if the policy can be regarded as containing two separate and independent contracts, one applicable to the house alone, and one applicable to the barn alone, there was no breach of the condition against alienation so far as respects the house, and so the policy was valid as to the life estate of the plaintiff at the time of the loss. *Clinton v. Norfolk Mutual Fire Insurance Co'y.*, 57 N. E. Reporter 958.

BANKER AND INSOLVENT CUSTOMER.—A customer who had a deposit to his credit in the Ontario Bank at the time of his death was also a debtor to the bank on a note under discount, which had not then matured. After the maturity of the note, the bank brought an action upon it against his executors, in which it was contended by the executors that, as the assets of the deceased customer were not sufficient to pay his debts in full, the bank should only be allowed to rank on his estate for the amount of the note, giving credit on the dividend for the amount of the deposit. It was held, however, in favor of the bank, by Chief Justice Meredith, that the deposit having been withdrawn or demanded, before the maturity of the note, the bank was entitled to set off the debt on the note against the deposit, and to rank on the estate of the insolvent customer for the balance. *Ontario Bank v. Routhier*, 36 Canada Law Journal 504.