

piration of a policy of insurance in the Canadian Fire Insurance Co. for \$1,400 on the building, held by the company as collateral to the loan, notified the plaintiff by letter that they intended to transfer the insurance at its expiration to another company, as they had power to do under the terms of the mortgage. The plaintiff then had a conversation by telephone with the secretary-treasurer of the company respecting the transfer of the insurance and received from him the assurance that the matter would be attended to. The company about the same time notified the Canadian Fire Insurance Co. not to renew its policy and wrote to the Occidental Fire Insurance Co. of Wawanesa, asking them to insure the property for the same amount from the date of the expiration of the Canadian fire policy. The investment company took no further steps to replace the insurance, and, after it had expired, the property was destroyed by fire.

Held, 1. The investment company was guilty of gross neglect in not carrying out its undertaking to keep the building insured and was liable to the plaintiff for the loss sustained by reason of such neglect.

The law on this point is as laid down by WILLES, J., in *Skelton v. L. & N. W. Ry. Co.*, L.R. 2 C.P. at p. 636, as follows:

"If a person undertakes to perform a voluntary act he is liable if he performs it improperly, but not if he neglects to perform it," and, as the company had taken steps towards carrying out its undertaking, they had brought themselves within that principle.

Although the company's undertaking was not under seal yet it was in respect of a matter in the usual course of its business and of a kind in which it becomes practically necessary to dispense with the seal by reason of the frequency of its occurrence and the company should be held liable.

After the expiration of the insurance and before the fire the investment company assigned the plaintiff's mortgage to its co-defendant the Northern Trust Co., but, as found by the trial judge, no notice of that assignment was given to the plaintiff before the loss.

Held, that, under s. 39 of the King's Bench Act, the plaintiff had the same right of setting off his claim for damages against the mortgage debt in the hands of the trust company as he would have had, if there had been no assignment. *Newfoundland v. Newfoundland*, 13 A.C. 213, followed.

Hull, for plaintiff. *Aikens*, K.C., and *Hugg*, for defendants.