

DIVISIONAL COURT.

MARCH 20TH, 1912.

STONESS v. ANGLO-AMERICAN INSURANCE CO.

Fire Insurance—Interim Receipt—Issue by Agent of Insurance Company—Company not Declining Risk and not Issuing Policy—Insurance in Force until Determination of Hearing Office Notified—Loss Payable to Mortgagee—Assignment of Mortgagee's Claim—Negligence of Agent—Indemnity—Damages—Costs—Power to Make Third Party Pay Costs of Litigation.

Appeal by the defendants from the judgment of RIDDELL, J., in favour of the plaintiff in an action upon a fire insurance policy, and dismissing the claim of the defendants for indemnity against their former agent, made a third party.

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

F. E. Hodgins, K.C., for the defendants.

J. L. Whiting, K.C., for the plaintiff and the third party.

The judgment of the Court was delivered by BOYD, C.:—The learned Judge found that the risk in question was of a hazardous (perhaps extra-hazardous) character, and that a larger premium should have been paid than was collected by the agent—he should have charged double the amount at least, i.e., \$80 instead of \$40. None of this has been paid to the company.

The learned Judge again finds that, if he had power, he would be strongly inclined to allow the agent to pay the costs throughout, as, no doubt, the whole matter had been largely due to his negligence. He thinks the agent's conduct was such as to justify a direction that the costs of the litigation should be paid by that agent; but he apparently doubts the power so to do.

I think that both these items, the extra premium not received by the company and the extra expense incurred by the company in this litigation, may be rightly included as damages payable by the agent on account of the misleading manner in which the situation was placed before the Toronto office, and also by reason of his inaction in not carrying out his undertaking to supply the further information that was needed to enable the head office to appreciate the danger of the risk by being informed of the conditions under which the operations of the insured were being conducted.