

"And considering that the said insurance was so effected by the said George W. Farrar to carry out his undertaking to have the said buildings insured and the insurance policy transferred to the said John & Henderson Black, to secure their interest as mortgagees;

"And considering that the said declaration in the said policy, that the loss, if any, would be paid to the said John & Henderson Black, having been made at the instance and with the consent of the said George W. Farrar, amounted to a delegation of the amount of the said insurance, which delegation, being accepted, had in law the same effect as an accepted transfer of the said policy would have had as to all parties concerned;

"And considering that the contract of insurance is one by which the insurer agrees to indemnify the insured for the loss he may suffer by the risks insured against, and that under articles 2480 and 2482 of the Civil Code of L. C., wager policies are illegal, and a fire insurance policy pending the risk is not transferable except to a person having an insurable interest in the object of the policy;

"And considering that as a consequence of the provisions of said articles, the contingent claim secured by an insurance policy is not transferable, and the only transfer allowed by law is a transfer of the policy itself from one party interested to another party acquiring the same interest, or from the interest of one party in the property insured to that of another party in the same property;

"And considering that in effecting the said insurance with the respondents, the said George W. Farrar was acting both in his own interest, and in the interest of the said J. & H. Black, and as their agent, and that the policy issued by the respondents must be considered and held to be a policy issued in their joint interest, and to cover first the loss of the said J. & H. Black, if any, and secondly, the loss of the said George W. Farrar for any balance of the policy after payment of the loss sustained by the said John & Henderson Black;

"And considering by virtue of the delegation and transfer of the said policy, the said John and Henderson Black became the parties insured to the extent of their interest in the said buildings as mortgagees;

"And considering that the said George W.

Farrar could neither by a release of the said insurance, nor indirectly by any act of his, destroy or impair the rights and interests of the said John and Henderson Black in the said policy;

"And considering that the subsequent insurance on the said buildings was not effected by the said George W. Farrar, but by D. & E. McDonald to secure the payment of their interest in the said buildings as mortgagees and that the same was so effected without the knowledge of the said J. & H. Black, and that such insurance, even if it had been effected by the said George W. Farrar, could not be considered a violation of the condition of the policy as regards subsequent insurances, and could not affect the right of the said J. & H. Black to recover the amount of their loss;

"And considering that it is in evidence that the said buildings were destroyed by fire on the 10th September, 1876, while the said policy was still in force, and that the said J. & H. Black had at the time of the said fire an insurable interest in the same, as mortgagees to an amount exceeding that mentioned in the said policy;

"And considering that the said John Black and H. Black have given due notice of their loss, and have furnished a preliminary proof of the same within a reasonable time, and as requested by the respondents, and that the said respondents have by their agents waived any right to complain of any delay in furnishing such preliminary proof;

"And considering that the said John Black and Henderson Black are entitled to recover the amount of their demand, and that there is error in the judgment rendered by the Superior Court sitting at Montreal on the 31st of January, 1878;

"This Court doth reverse the said judgment of the 31st January, 1878, and proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the said respondents to pay to the said John Black and Henderson Black, to the acquittance of the other plaintiff and appellant George W. Farrar the sum of \$1800, with interest from the day of service, and costs as well those incurred in the Court below as on the present appeal (the hon. Justices Monk and Ramsay dissenting)."

Geoffrion, Rinfret & Archambault for appellants;
E. Carter, Q.C., counsel.

Davidson & Monk for respondents.