

PETERKIN, Appellant, and MCFARLANE ET AL., Respondents.

*Discretionary power of Court of Appeal to allow amendments—Supreme Court will not interfere.*

The Court of Appeal for Ontario, on an appeal from a decree of SPRAGGE, C., who had refused a defendant who admitted the plaintiff's right to redeem certain property, but alleged that he was a purchaser for value without notice, leave to amend in order that he might plead the Registry Act, *held*, that the amendment should have been allowed, and that the Court would allow the amendment under the Administration of Justice Act, s. 50.

On appeal, the Supreme Court

*Held*, that the Legislature of Ontario having thought fit to invest all the Courts in the Province with a discretionary power in matters of amendment, this Court will not fetter that power by entertaining an appeal from an order of the Court of Appeal for Ontario, made in the exercise of such discretionary power.

J. A. Boyd, Q.C., and Atkinson, for the appellants.

Bethune, Q.C., and Skead, for respondent.

McQUEEN, Appellant; and THE PHOENIX MUTUAL INS. COMPANY, Respondents.

*Insurance—Notice—Assent—Part of loss payable to creditors—Right of action.*

Appeal from a judgment of the Court of Appeal for Ontario.

On the 19th Nov., 1877, the defendant's agent issued to the plaintiff a thirty days' interim receipt, subjecting the insurance to the conditions of the defendants' printed form of policy then in use, the fourth condition being as follows: "If the property insured is assigned without a written permission endorsed thereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void."

Before the expiration of the thirty days, and before the issue of a policy, plaintiff assigned to one McKenzie and others in trust for his creditors the insured property and notified the company's agent of the assignment, who assented thereto, and stated that no notice to the company was necessary as the policy would be made payable to the assignees. The policy was issued on the 12th Dec., 1877, and the loss, if

any, was made payable to George McKenzie and others, as creditors of the plaintiff, as their interests might appear.

*Held*—On appeal, that the notice of the assignment to the defendants' agent, while the application was still under consideration and before the policy was issued, was sufficient.

2. That the words "loss payable, if any, to George McKenzie," &c., operate to enable the defendant company in fulfilment of that covenant to pay the parties named; but as they had not paid them and the policy expressly stated the appellant to be the person with whom the contract was made, he alone could sue for a breach of that covenant.

Attorney-General Mowat, for appellant.

Bethune, Q.C., & Foster, for respondents.

LANGLOIS V. VALIN.

*Costs—Counsel arguing his own case—No counsel fee.*

Appeal from a ruling of the Registrar of the Supreme Court refusing counsel, who had argued his own case, the fee allowed to counsel by the tariff.

*Held*, that the Registrar's ruling was correct.

THE RIGHT HON. SIR FITZROY KELLY, Chief Baron of the Court of Exchequer, died at his residence in London, Sept. 18th. His death leaves a vacancy on the Bench worth £7,000 a year, which Mr. Gladstone will be called on to fill. Baron Kelly was born in London in 1796. He became king's counsel and was elected a bencher of Lincoln's Inn, in 1835, and a member of Parliament for Ipswich, and occupied that seat until 1841, when he was defeated. He re-entered Parliament in 1843, as member for Cambridge, which he continued to represent until 1847, having in the meantime held the office of Solicitor-General under Sir Robert Peel, and received the honor of knighthood. Baron Kelly again obtained a seat in the House of Commons, in 1852, as one of the members from Harwich. He was Attorney-General in Lord Derby's second administration, in 1858-'59, and was made Lord Chief Baron of the Court of Exchequer on the resignation of Sir Frederick Pollock in 1866. As an energetic member of the society for promoting law reforms, Baron Kelly made his influence felt. The cases by which he is best known as a lawyer are his defence of Frost and the other chartist, in 1840, his defence of the murderer of Farwell, the Quaker, in 1845, and his prosecution of Dr. Bernard, for connection with the Orsini conspiracy, in 1858.