McGugan v. Manufacturers', &c. Mutual Ins. Co.

Insurance—Incumbrances—Assessment—Acceptance of note in payment of.

In an application for insurance on a saw mill, in answer to the question as the incumbrances, the applicant answered that the property was mortgaged to $500. It appeared that there was an additional mortgage thereon of $1,000, and that this application was one of three applications for insurance in the defendant's company, made at the same time and constituting one transaction, from which other applications the company were expressly informed of the existence of the mortgage in question.

Held, that under these circumstances the applicant could not be said to have omitted to have made known the existence of the mortgage in question.

For an assessment made on the insured's premium note, he gave defendants a note of himself and another person, which, it was contended, was accepted by the company in payment of such assessment, but held that the evidence shewed that the note was so received, but merely as a suspension of the debt during its currency.

Coyne (St. Thomas), for the plaintiff.

Ferguson, Q.C., for the defendants.

Miller v. Reid.

Insolvency—Action to recover money paid within thirty days of insolvency.

This was an action by plaintiff as assignee in insolvency of one A. to recover the amount of two promissory notes made by A., and paid by R. out of, as was alleged, money belonging to the insolvent, within thirty days before the insolvency, the defendant then being a creditor of A. and knowing his inability to pay his liabilities in full. At the trial the learned Judge found that the money was money belonging to R., &c., and he entered a verdict for the plaintiff. On motion in term to enter the verdict for the defendant, Wilson, C. J., was of opinion that on the evidence the verdict was right, and should not be disturbed, while Galt, J., was of opinion that the evidence shewed that the money was paid by R. under his personal undertaking to that effect, and that the verdict, therefore, should be entered for the defendant. The Court being equally divided, the verdict stood.

Walker (of Hamilton), for the plaintiff.

Mackelcan, Q.C., for the defendant.

Gauthier v. Canadian Mutual Ins. Co.

Insurance — Description — Warranty — Liquor sold on insured premises.

In a policy of insurance, certain premises were described as a two-story brick building, &c., occupied as a tenement dwelling. By a memorandum afterwards endorsed on the policy, the building was allowed to be "occupied as a refreshment room. No liquor sold." The policy was for a year, but was renewed by a renewal recept issued under sec. 32 of the Mutual Insurance Act. The building was occupied by a tenant of the plaintiff, and it was proved that liquor was sold in the building by the occupant, but without the plaintiff's knowledge or consent.

Held, that on renewal the memorandum became part of the description and binding as insured as a warranty that no liquor should be sold, and as liquor was sold the policy was avoided.

Robinson, Q.C., for the plaintiff.

Mackelcan, Q.C., and *Duff*, for the defendants.

Sly v. Ottawa Agricultural Ins. Co.

Insurance—Value of building—Misrepresentation of material fact—Avoidance of policy.

One of the statutory conditions endorsed on a policy of insurance provided that, "If the person insuring his buildings shall cause the same to be described otherwise than as they really are, to the prejudice of the company, or shall misrepresent any circumstance which is material to be made known to the company in order to enable them to judge of the risk they undertake, such insurance shall be of no force in respect of the property in regard to which the misrepresentation is made."

In the application for insurance in this case, the plaintiff stated that the estimated cash value of the building offered for insurance was $900, and obtained an insurance