

**THE MORTGAGE CLAUSE.**

We draw the attention of our readers to a recent decision of the United States Circuit Court of Appeals. The case is one bringing up the question of the right of a mortgagee to recover under the Mortgage Clause attached to a fire policy. The case referred to is known as *W. G. & C. Bohn of Omaha, vs. the New Hampshire Fire Insurance Co. et al.* It appears there was misrepresentation established, on the part of the insured, as to ownership, and the Court ruled on this point that the companies were not liable to the mortgagors, the insured. The companies, upon getting this favorable ruling, then contended that if no liability existed as towards the Bohns, in whose name the policy was issued, then no liability existed as towards the mortgagees. To this plea the Court's ruling was adverse. The Judge presiding said: "Pursuant to their mortgage covenant with the mortgagee, the Bohns procured and delivered to the mortgagee policies of insurance, to which were attached the mortgage clause for the benefit of the mortgagee. The mortgage clause was the evidence of a contract between the mortgagee and the insurance company, made for the evident purpose of protecting the indemnity guaranteed to the mortgagee by the company, against destruction by any act or neglect of the mortgagor.

"Does the mortgage clause say that the indemnity of the mortgagee should not be protected against any prior act or negligence of the mortgagor? There is no such restriction in the contract. It provides that the mortgagees' interest shall not be invalidated by any act or neglect of the mortgagors. It provides for subrogation, when the insurance company shall pay to the mortgagee any loss for which it may not be liable to the insured. It provides that its conditions shall be binding on the assigns of the mortgagee without notice to the Company. What after-terms could be chosen to effect a separate insurance on the interest of the mortgagee, uninfluenced by any act or neglect of the mortgagor or assured, and to make it depend solely upon the action of the mortgagee and the insurance company? The inference is that the companies intended to and did agree, that no act or neglect of the mortgagor unknown to the mortgagee, whether prior or subsequent to the date of this contract, should avoid it."

*Opinion.*—"The effect of the Mortgage Clause, when attached to a policy of insurance running to the mortgagor, is to make a new and separate contract, between the mortgagee and the insurance company, and to effect a separate insurance of the interest of the mortgagee, dependent for its very validity solely upon the course of action of the insurance company and the mortgagee, and unaffected by any act or neglect of the mortgagor of which the mortgagee is ignorant, whether such act or neglect was done or permitted prior or subsequent to the issue of the mortgage clause. *Judgement as to the Mortgagees affirmed.*

The simple effect of a "Mortgage Clause," according to this rendering, is that the insurance company must pay to the mortgagee the fire loss to extent of claim,

regardless of any facts which would ordinarily vitiate a policy, such as misrepresentation in relation to ownership as in above case, and any other acts of neglect or misrepresentation, because when the mortgage clause is attached, "a new and separate contract" is created in the interest of mortgagees, a contract, too, all but conditionless. If insurance companies operating in Canada understand and allow that a liability with such scope exists under the mortgage clause in common use, do they consider that the same rate of premiums is sufficient for policies subject to the clause, as for those of the ordinary kind issued under the usual policy conditions? We are of opinion that discrimination in rate should be largely made against the former class.

**THE RUN IN NEWFOUNDLAND.**

On the 7th inst, the Newfoundland branches of the Bank of Montreal, the Bank of Nova Scotia, and the Merchants Bank of Halifax experienced a "run" for deposits and redemption of notes, which was quickly stopped. It is invariably the case that for a length of time after a bank failure in any place, there is a more or less degree of nervous apprehension felt by depositors and note holders generally. After the great panic of 1866, when a number of English banks closed up, there were, for a year afterwards, sporadic manifestations of distrust in banks, which gave many of them serious annoyance, and some few grave anxiety. As these local runs were not in the least degree excited by any general disturbance of credit in country, and were almost wholly confined to small, isolated towns, it was manifest that they arose from the mischievous gossip of some either evil intentioned or very ignorant persons, too ignorant indeed to know themselves to be dangerous. We are not then much surprised at a run having taken place on the Canadian branch banks of Newfoundland. The Islanders are smarting severely from the collapse of the native banks, they have very little knowledge of the institutions they showed distrust of, and it is the policy of a certain party in Newfoundland to stir up a prejudice against Canada, in order to defeat the movement for confederation. It is well to recognize the existence of this anti Canada feeling on the Island, as it is necessary to provide, as far as possible, for removing it by a calm presentation to the people of the advantages they will derive by entering the Dominion. To denounce them at this juncture because of a run on the Canadian banks is most unwise. There are "times of ignorance" which should be "winked at" and quietly endured, until more intelligence develops, and with it, a better, more trustful spirit towards those whom ignorance regards with suspicion. It has to be borne in mind that large vested interests have become established in Newfoundland, which will suffer damage, some indeed will be destroyed by its entering the Dominion. The effect of that change is by no means a simple problem to the Islanders, and no one need wonder at, when confederation is condemned by its opponents, many prefer to bear the ills they have, to running the risk of others they have not. The recent run, though not unnatural under the circumstances, will prove to have