Hodgins, J.A.					June 21st, 1916.

*DRUMBOLUS v. HOME INSURANCE CO.

Insurance—Fire Insurance—Arbitration— Quantum of Loss— "Direct Loss or Damage by Fire"—Damage Caused by Freezing because of Disconnecting Furnace Pipe to Check Spread of Fire—"Property Owned by any other Person"—Vendor of Article Injured by Fire—Price Paid in Part only—Property not Passing—Ownership of Purchaser—Recovery to Extent of Cash Interest—Order for Payment of Portion of Insurance Money to Stranger—Right of Assured to Sue for—Protection of Rights of Vendor and Holder of Order—Paymen into Court.

Action upon a fire insurance policy, tried without a jury at Port Arthur.

J. C. Ross, for the plaintiffs.
F. Babe, for the defendants.

Hodgins, J.A., in a written opinion, said that many issues were raised by the pleadings, but only three were presented in argument.

The first was, whether the amount of the loss had been ascertained by arbitration under statutory condition 21. As to this, the learned Judge found that no binding arbitration had been proved.

The second issue was as to the actual quantum of the plaintiffs' loss. The learned Judge estimated it at $902.

The fire occurred under the plaintiffs' ice-cream parlour in Port Arthur. The damage to the plaintiffs' fountain and accessories and to the carbonator and motor was within the terms of the policy. The fire did not spread above the floor of the parlour; but, in order to confine it below, the pipe of the furnace and the door were taken off. The result was, that the water froze in the pipes and plumbing fixtures of the fountain and carbonator. This was the immediate consequence of the fire and the method adopted in dealing with it, and so might be recovered for as "direct loss or damage by fire:" Stanley v. Western Insurance Co. (1868), L.R. 3 Ex. 71; Lewis v. Springfield Fire and Marine Insurance Co. (1857), 10 Gray (Mass.) 159; Inglis v. Stock (1885), 10 App. Cas. 263; Thompson v. Montreal Insurance Co. (1849), 6 U.C.R. 319; McLaren v. Commercial Union Insurance Co. (1885), 12 A.R. 279.