

if demanded, and, as it was not demanded, he was entitled to assume that the defendants waived their right. That could not be so. He knew that the function of the receiving teller was to receive money, and that the teller would have no right to receive as money in Canada that which was not in truth money in circulation here.

If there was any prejudice or loss to the plaintiff or his brother, it was the result of an unsuccessful experiment to trade in foreign currency, and the loss was not to be attributed to the mistake of the teller in failing to demand exchange when the notes were tendered for deposit.

The plaintiff's case seemed to be without merit or any foundation in law, and the action should be dismissed with costs.

MIDDLETON, J.

OCTOBER 5TH, 1920.

AMBLER v. FACTORIES INSURANCE CO.

*Insurance (Fire)—Reinsurance of Risks in another Company—Insolvency of Original Insuring Company—Conditions of Policies—Policy Becoming Void or Ceasing—Right to Recover Unearned Portion of Premium Paid to Reinsuring Company—Failure to Cancel Policy—Laches.*

Action by the liquidator of the American Union Fire Insurance Company to recover a proportion of a premium paid by that company to the defendant company upon a reinsurance policy with respect to certain risks insured by the company in liquidation.

The action was tried without a jury at a Toronto sittings.

W. K. Fraser, for the plaintiff.

D. L. McCarthy, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that the original policies had this condition endorsed upon them: "This policy shall be cancelled at any time at the request of the insured; or by the company giving 5 days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the pro rata premium."

This policy was issued on the 18th September, 1912.