

COUNTY COURT.

INSURANCE LAW.

DARLING v. INSURANCE COMPANIES.

*Fire insurance—Wholesale stock—Measure of value—"Goods sold but not delivered."*

The owner of goods destroyed by fire is entitled to receive from the insurers only the actual cash value of the goods, which value is represented by a sum equivalent to the cost of replacement. The liability of the insurer is not increased by reason of the fact that the assured had before the fire contracted to sell the goods destroyed and that he could not replace them in time to enable him to carry out his contracts.

[TORONTO, July 14, 1896—MORGAN, J.J.]

This was an arbitration before His Honor Judge Morgan, Junior Judge of the County Court of the County of York.

The claimant, a wholesale merchant, was insured in the defendant companies to the extent of more than ninety thousand dollars against loss by fire to his stock of dry goods, etc. The policies expressly covered "goods sold but not delivered." Some of the goods having been destroyed and others damaged by fire, it was agreed that the companies should take over the whole stock and should pay therefor some ninety-six thousand dollars (being the cost price of the stock as laid down in the warehouse of the assured) and that the question whether or not the assured was entitled to any further sum by reason of his having before the fire contracted to sell certain of the goods at a price largely in excess of the cost price, should be submitted to arbitration.

The evidence was taken on April 22, 23, 1895, and the matter came on for argument on May 1, 1895.

*Shepley, Q.C.*, for the assured. The assured is entitled to recover the actual cash value in the market in which he sells, or his actual loss without reference to cost price. In this case the claimant had contracted to sell certain of the goods, and as to them he is to recover (a) a sum equivalent to the price at which he had agreed to sell, or (b) at least his expenses, such as travellers' wages, etc., incurred in securing the contracts. These expenses represent labor expended upon the subject matter of the insurance, which has by reason of that labor acquired a new value. Moreover certain of the goods had actually been cut up and made ready for delivery, and even if all the goods contracted to be sold had not acquired a new value, these, at least, had, and that new value is to be estimated in one of the ways suggested with regard to all the goods contracted to be sold, *i.e.*, the sale price must be taken, or else there must be added to the cost price the amount expended in effecting the sales. See *Equitable v. Quinn*, 11 L.C. Rep. 170; *Hoffman v. Aetna*, 19 Abb. Pr. 325; affirmed 32 N.Y. 405; *Fowler v. Old N. State Ins. Co.*, 74 N.C. 89; *Mack v. Lancashire*, 4 Fed. R. 59; 2 McCrary 211, (U.S. Cir.); *Fisher v. Crescent*, 33 Fed. R. 544; *Western v. Studebaker*, 124 Ind. 176; *Grubbs v. N. Car. H. Ins. Co.*, 108 N.C. 473; *Mitchell v. St. Paul etc., Ins. Co.*, 52 N.W. Rep. 1017 (Mich.); *Birmingham Ins. Co. v. Pulver*, 126 Ill. 329; *Washington Mills Co. v. Weymouth Ins. Co.*, 135 Mass. 503; *Snell v. Delaware Ins.*