THE OTTAWA AGRICULTURAL INSURANCE COMPANY..... } APPELLANTS;

AND

THOMAS SHERIDAN.....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

1879
*Nov. 8.

1880
*April 10.

Insurance—Transfer of Insurable Interest—Art. 2482 *C. C. L. C.*

The appellants granted a fire policy to one *T.* on divers buildings and their contents for $3,280. In his written application *T.* represented that he was the owner of the premises, while he had previously sold them to *S.*, the respondent, subject to a right of redemp-

* PRESENT.—Ritchie, C. J., and Strong, Fournier, Henry and Taschereau, J. J.

1879

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

tion, which right *T.*, at the time of the application, had availed himself of by paying back to *S.* a part of the money advanced, leaving still due to *S.* a sum of $1,510. Subsequent to the application, and after some correspondence, the respective interests of *T.* and *S.* in the property were fully explained to the appellants through their agents. Thereupon a transfer for—(the amount being in blank) was made to *S.* by *T.* and accepted by the appellants. The action was for $3,280, the amount of insurance on the buildings and effects.

Held,—That at the time of the application for insurance *T.* had an insurable interest in the property, and as the appellants had accepted the transfer made by *T.* to *S.*, which was intended by all parties to be for $1,510, the amount then due by *T.* to *S.*, the latter was entitled to recover the said sum of $1,510.

2. That *S.* having no insurable interest in the movables, the transfer made to him by *T.* was not sufficient to vest in him *T.'s* rights under the policy with regard to said movables (1).

APPEAL from a judgment of the Court of Queen's Bench for *Lower Canada* (appeal side). This was an action to recover $3,280 from the appellants, under a policy of insurance issued by them in favor of one *Thomas Thomson.*

The facts of the case, as set forth in the pleadings, are briefly as follows:—

The plaintiff's (respondent) declaration sets forth, that on or about the 25th of April, 1876, *Thomas Thomson*, of the Parish of *St. Brigide*, in the County of *Iberville*, made a contract of insurance in the said Parish of *St. Brigide*, with the defendants (appellants) to insure against fire divers buildings and their contents for a total sum of $3,280; that a policy of insurance was issued by appellants to the said *Thomas Thomson*, which covered the said buildings and effects; that on the 23rd of August, 1876, the said *Thomas Thomson* transferred to respondent the said policy of insurance and his interest therein; that the appellants accepted of this transfer; that the said buildings and effects were

(1) Art. 2482 C. C. L. C.

destroyed by fire on the 27th September, 1876; that the loss suffered by the insured, in consequence of the fire, amounted to $3,735; that respondent notified the appellants of the fire, and fyled with the company a sworn statement of the said loss.

The appellants fyled several pleas, but on this appeal relied on the third plea setting forth that *Thomson* obtained said policy of insurance on the representation that he was proprietor of the said immovable property insured, whereas, in truth, he was not the proprietor thereof, and said policy was void *ab initio;* that on or about the 25th of August, 1876, said *Thomson* transferred said policy to respondent, whom said *Thomson* represented to be the mortgagee of said property for $1,000; but, inasmuch as said policy was void *ab initio*, no interest or title was transferred to respondent; that, if said policy had any effect (which appellants denied) no interest or benefit could accrue or be transferred to respondent as regards the movables covered by said policy, inasmuch as respondent had no interest in said movables, respondent's mortgage, if any existed, applying only to the immovables, and the cash value of the immovables was not more than $900, and by the terms of said policy appellants would only be liable for two-thirds of that sum, viz., $600; that, in any event, respondent had no claim or right to recover from appellants the value of the contents of stables Nos. one and two, and that of the sewing machine mentioned in said policy, inasmuch as respondent had furnished no proofs of the contents of the said two stables, nor of the value thereof; nor of the value of the sewing machine alleged to have been destroyed by the fire in question.

The respondent replied that *Thomson*, in stating in his application that he was proprietor of the buildings insured, and that they were mortgaged for $1,000, stated what was correct; that although said *Thomson* had sold

1879

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

the property to respondent 5th Dec., 1871, he did so subject to redemption, as appeared by a *contre lettre* fyled; that he paid no rent therefor; that the transfer to respondent was made long before the fire, and with the consent of the company, and that appellants had no interest to plead that *Thomson* was not proprietor at the time the insurance was effected; that a regular claim was made out in one of the company's blanks; that this claim was correct and made in good faith; that respondent admitted that he had no right to claim for the contents of the two stables; that it was by error that a demand had been made for them in the present action, and respondent made the same admission regarding the sewing machine, excepting $5 as part of the value of it.

By the judgment of the court in the first instance, the company was condemned to pay $140, the value of a part of the movables insured, namely, $60 for a reaper and mower, and $80 for a threshing machine; this court specially holding that the insurance on the immovables was void. The reasons for so holding being "that *Thomson* must be held under his application and the policy to have so warranted that he was possessor and proprietor of the buildings insured; that so far from that condition warranted being true, he (*Thomson*) was not the owner of the property and buildings alluded to, either at the date of the insurance or of the fire, and so the policy, as regards said buildings, was by its proper conditions void; and that the company never took *Thomson* to be other than proprietor of the buildings insured, and had no knowledge before the fire of *Thomson's* sale to plaintiff.

The Court of Queen's Bench, by its judgment, held that the plaintiff (*Sheridan*) should recover for the value of the immovables, but that he had no right to recover the insurance on the movables, as he (*Sheridan*) had

no insurable interest therein. It is from this judgment of the Court of Queen's Bench that the present appeal was taken.

Mr. *Bethune*, Q. C, and Mr. *Hutchinson* for appellants:

By the written application made and signed by *Thomson*, and by the policy, any misrepresentation of facts in the application made by *Thomson* amounts to a breach of warranty, and is fatal to any claim of the insured.

That *Thomson*, in his application, misrepresented the facts, and made statements therein which were entirely untrue, is very evident. In his application he states that he is the owner of the property insured in fee simple, or in his own right, and that the property in question was mortgaged for $1,000.

[The learned counsel then contended upon the facts of the case that it was impossible to avoid the conclusion that *Thomson* was guilty of gross misrepresentation]

Then it is contended that the sale to respondent was subject to a right of redemption. The law on this point is very clear, and is laid down in Articles 1549 and 1550 C. C. L. C., which declare that the Court cannot extend the stipulated term for redemption.

As to the movables respondent had no insurable interest and cannot recover on the transfer. (See Art. 2472 C. C. L. C. The learned counsel also referred to Art. 2485 and 2487 C. C. L. C.; *Hazard* v. *Agricultural Insurance Co.* (1); *Wood* on Fire Insurance (2).

Mr. *Pagnuelo*, for respondent:

Contended that there was no misrepresentation, and that the company was made aware of the real interest of both *Sheridan* and *Thomson* in the property, and

(1) 39 U. C. Q. B. 419. (2) Sec. 103.

1879

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

with this knowledge accepted the insurance and issued the policy in the form they adopted.

As to the transfer with regard to the movables, that the transfer was made as a collateral security for a debt, and that in such a case the transferee had an insurable interest in the object of the policy, and cited *White* v. *Western Insurance Co.* (1); *Troplong vo. Mandat* (2); and *Fitzgerald* v. *The Gore Mutual Insurance Co* (3).

Mr. *Bethune*, Q. C., in reply.

RITCHIE, C J., concurred with *Fournier*, J.

STRONG, J.—

I am of opinion that the judgment of the Court of Queen's Bench ought to be affirmed for the reasons given by the Chief Justice of that Court, and also for those expressed by my brother *Fournier*, in whose judgment I concur.

FOURNIER, J:

Le 25 avril, 1876, l'appelante a émis en faveur de *Thomas Thomson* une police d'assurance au montant de $3,280, sur certaines bâtisses et leur contenu, détruits par un incendie qui a eu lieu le 27 septembre de la même année.

Du consentement de la compagnie, cette police fut ensuite transportée à l'intimé *Sheridan*, qui en a réclamé le montant par son action en cette cause.

La compagnie lui oppose pour moyens de défense:

1o. Nullité de la police, parce que le billet promissoire donné pour la prime n'avait pas été payé à son échéance.

2o. Que *Thomson* avait trompé la compagnie sur la valeur et le titre de propriété des bâtisses assurées.

(1) 22 L. C. J. 215. (2) No. 43 & No. 738.
(3) 30 U. C. Q. B. 97.

3o. Qu'il n'était pas propriétaire des bâtisses assurées en son nom.

4o. Que l'incendie des dites bâtisses avait été causé par sa négligence.

La compagnie peut, d'après ses conditions, accepter un billet promissoire pour le paiement de la prime d'assurance, mais à défaut de paiement de tel billet à son échéance, il est stipulé que la police devient caduque. Par une autre condition de la police, il est déclaré qu'il n'est pas permis aux agents de donner leur consentement à aucun transport de police ni de dispenser (*waive*) de l'exécution d'aucune stipulation ou condition y contenue. Le billet que *Thomson* avait donné pour la prime était dû depuis deux mois lorsqu'il a été payé. *Patterson*, l'agent de la compagnie à *Montréal*, en a reçu le montant sans faire aucune observation sur l'expiration du délai ni sur la condition de déchéance en pareil cas. L'argent ainsi payé a été ensuite reçu par le bureau principal de la compagnie à *Ottawa*. La compagnie n'a jamais offert de rendre ces deniers, ils sont encore dans sa caisse. Sous ces circonstances il est impossible de ne pas considérer la compagnie comme ayant donné son consentement à l'exécution d'un contrat qu'elle aurait pû considérer, il est vrai, comme ayant cessé d'exister faute de paiement dans le délai fixé. Mais pour se prévaloir de ce défaut, il était d'abord du devoir de son agent à *Montréal* de ne pas recevoir les deniers, puis lorsqu'ils furent plus tard transmis au bureau principal, la compagnie elle-même aurait dû répudier l'acceptation qui en avait été faite par son agent. Rien de cela n'a été fait. C'est avec les deniers dans ses mains que la compagnie se présente en cour pour se plaindre de n'en avoir pas été payée. Il n'est pas surprenant que cette objection ait été rejetée comme futile par les deux cours qui ont déjà été appelées à se prononcer sur cette cause.

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Fournier, J.

Lors de l'argument, cette cour a été du même avis, et c'est mon opinion que le défaut d'avoir offert de rendre les deniers aussitôt que le paiement en est parvenu à sa connaissance, doit nécessairement faire présumer le consentement de la compagnie à l'exécution du contrat d'assurance.

Quant à l'exagération de l'évaluation des propriétés, il serait injuste d'en rendre *Thomson* responsable, car elle n'a pas été faite par lui, mais par *Valois*, l'agent de la compagnie. Il était tout naturel pour lui de croire qu'une évaluation ainsi faite serait de nature à donner plus de satisfaction à la compagnie que celle qu'il pourrait faire lui-même. Aussi, s'est il contenté d'adopter celle qui a été faite par *Valois*. Il y a eu erreur dans cette évaluation, mais il n'y a pas eu dessein de tromper. La compagnie ne se plaint pas qu'il y a eu pour cela une entente frauduleuse entre *Thomson* et *Valois*, et elle n'a pas tenté d'en faire la preuve.

L'objection la plus sérieuse est celle faite au sujet du droit de propriété dans les bâtisses assurées. Dans son application pour obtenir une police d'assurance, *Thomson* s'est déclaré le propriétaire des immeubles y désignés, et il a ajouté qu'ils étaient affectés par hypothèque au montant de $1,000. C'est sur ces déclarations que la compagnie considère fausses et comme ayant été faites dans le but de la tromper, qu'elle s'appuie principalement pour refuser le paiement réclamé.

Ces déclarations ne sont certainement pas exactes; mais l'explication que *Thomson* en a donnée fait voir que s'il était en erreur sur la nature de ses droits concernant les immeubles en question, il n'agissait nullement avec l'intention de commettre une fraude au détriment de la compagnie. Voici, d'après les faits en preuve, quelle était sa position :—

En 1871, *Thomson*, se trouvant endetté envers plu-

sieurs personnes, et, désirant les payer toutes pour n'avoir plus affaire qu'à un seul créancier, fit avec l'Intimé *Sheridan* un arrangement par lequel celui-ci s'engagea d'avancer les deniers nécessaires pour l'exécution de ce projet. Les parties donnèrent à cette convention la forme d'un acte de vente par lequel *Thomson* vendait à *Sheridan* (5 décembre 1878) sa propriété de neuf arpents de front sur trente de profondeur pour $4,000 que ce dernier devait, dans le délai de trois ans employer à payer les hypothèques affectant la propriété vendue,—tenir compte des paiements faits et remettre la balance au vendeur. *Sheridan* ne devait prendre possession que d'une partie de la propriété vendue, savoir : les deux arpents adjoignant la propriété de *F. X. Paquet*. Le vendeur *Thomson* devait demeurer et est de fait toujours demeuré en possession du reste de la propriété, à condition de payer un loyer de $400 par année, et de remplir certaines autres charges.

Le même jour *Sheridan* signa une contre-lettre par laquelle, sur remboursement de ses avances, dans le délai de trois ans, il s'obligeait à revendre à *Thomson* la propriété achetée comme on vient de le voir.

Le loyer stipulé n'a jamais été payé, et *Thomson* a continué de jouir de sa propriété comme auparavant. Quelques jours seulement après cette vente, le 11 novembre 1871, *Sheridan* a revendu, pour $2,200, deux arpents sur trente, c'est-à-dire moins du quart de la propriété pour le total de laquelle il avait promis de payer $4,000. Par cette vente, *Sheridan* touchait immédiatement $1,200 et devait recevoir la balance de $1,000 dans un court délai. Il rentrait ainsi très promptement dans plus de la moitié des avances qu'il avait promis de faire. D'autres remboursements furent faits par *Thomson* qui, à l'époque de son application ne devait plus à *Sheridan* que $1,500.

Bien que le délai de trois ans fixé pour le rachat fût

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Fournier, J.

alors expiré, *Sheridan* n'ayant manifesté aucune intention de s'en tenir à la lettre du contrat de vente, ayant au contraire laissé *Thomson* en jouissance comme auparavant, il n'est pas surprenant que celui-ci se soit, lors de son application, cru justifiable de se considérer comme le propriétaire. L'acceptation que *Sheridan* a faite plus tard d'un transport de partie de la police d'assurance où *Thomson* se déclarait propriétaire, prouve bien que telle était aussi sa manière de voir à cet égard. Cependant *Thomson* et son fils déclarent positivement dans leur témoignage qu'ils ont informé l'agent *Valois* que le titre de propriété était au nom de *Sheridan*, comme sûreté du paiement d'une somme d'environ $1,000. Il paraît d'après la preuve qu'il y a eu entre eux un malentendu à ce sujet. Cela s'explique facilement par le fait que *Thomson* comprend peu le français et que *Valois* parle peu la langue anglaise. Ce dernier ayant demandé le montant exact de la créance de *Sheridan*, *Thomson* lui déclara qu'il n'était pas alors en état de le lui dire exactement et demanda à retarder l'assurance à un autre jour afin de s'en assurer. Sur cette réponse *Valois* lui dit que ce n'était pas nécessaire, et il compléta lui-même l'application. C'est sous ces circonstances que la déclaration de *Thomson* a été faite et que le montant dû à *Sheridan* a été porté à $1,000, au lieu de $1,500 qu'il était réellement.

Si les choses en étaient restées là, on pourrait dire, sans toutefois pouvoir en rejeter la responsabilité morale sur *Thomson*, que la compagnie a été induite en erreur par ce malentendu et qu'elle n'est par conséquent pas tenue d'exécuter un contrat fondé sur l'erreur. Mais telle n'est pas sa position. L'erreur commise par l'entrée du nom de *Thomson* au lieu de celui de *Sheridan* ayant été découverte, elle fut rectifiée lors du transport de la police que *Thomson* a fait à *Sheridan*,

du consentement de la compagnie. La véritable position des parties concernant leurs droits respectifs dans la propriété en question est exposée dans tous ses détails dans la correspondance échangée entre *Valois* et *Patterson*, l'agent général de la compagnie, à propos de ce transport Cette correspondance étant de la plus haute importance pour la décision de cette cause, je crois devoir en donner l'analyse aussi correcte que concise qui se trouve dans les notes de *Sir A. A. Dorion.*

As regards the ownership of the property, it is true that in his original application, *Thomson* represented that he was the owner of the premises which he sought to insure, while he had previously sold them to the appellant subject to a right of redemption.

This was evidently the result of a misunderstanding, and the respective interests of *Thomson* and of the appellant in the property in question were fully explained to the Company through its agents, before the policy was transferred, and the transfer was accepted after all the circumstances had been fully disclosed. *Valois*, in a letter of the 8th August, 1876, wrote to *Patterson*, the general agent of the Company at *Montreal*, that the property belonged to *Sheridan*, and that *Thomson* wanted to know if, in case of fire, he would be entitled to receive the insurance without this being mentioned in the policy.

On the 14th of the same month, he again writes to *Patterson* that *Thomson* was not the proprietor of the premises, at the time the insurance was effected; that in order to pay his debts, *Thomson* had previously transferred his property to the appellant, on condition that he would get it back on payment of what he owed him; that he had already paid a large amount and expected to have his property returned to him. In this letter, *Valois* says: "Now these two gentlemen" (alluding to *Thomson* and to *Sheridan*), "wish to have their property insured—is it necessary to make two policies, one for the buildings in the name of *Sheridan*, and one for the contents in the name of *Thomson*, or will one policy containing all the facts be sufficient? do what you think proper."

Patterson answers on the 16th: "If I understand well the position of this matter, *Thomson* is the owner of the real estate, but he owes something to Mr. *Sheridan*; if it is so, the policy is good as it is, excepted that to enable *Sheridan* to claim the insurance the policy must be transferred to him by *Thomson*."

After indicating how the transfer is to be made, *Patterson* adds;

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Fournier, J.

"This plan dispenses with the necessity of making two policies, it will save expenses. I believe it is all that is required."

Finally, *Valois* writes to *Patterson*, on the 22nd August: "I return the policy of Mr. *Thomson* after getting him to sign, and having signed myself; the sum which is to be transferred is one thousand, five hundred and ten dollars ($1,510), being the amount for which the buildings are insured."

It was after this correspondence had taken place, that the transfer was made by *Thomson* and accepted by the Company. The intention of both *Thomson* and *Sheridan* on the one part, and of *Patterson* acting for the Company on the other, was unmistakably to insure *Sheridan's* interest in the property described, and if after the explicit statement made by *Valois*, that *Sheridan* owned the buildings, and *Thomson* the chattel property they contained, the agent of the Company made a mistake by causing a transfer to be made by *Thomson* to the appellant, instead of issuing a new policy to cover *Sheridan's* interest in the buildings, the latter should certainly not suffer, as the Company cannot take advantage of its own agent to resist the claim of the appellant. It is to be noticed that whether the property was insured in the name of *Thomson* or in that of *Sheridan* made no difference in the risk, since the property was all the time occupied by *Thomson*.

Il est évident d'après cette correspondance que c'était l'intention des parties d'assurer les intérêts de *Sheridan* dans la propriété en question. Si la chose n'a pas été faite comme elle aurait dû l'être au moyen de deux polices, une pour *Thomson* et une pour *Sheridan*, la faute n'en peut être attribuée qu'à l'agent de la compagnie qui n'a pas donné aux faits qui lui ont été communiqués leur véritable signification. Adoptant sur ce point le raisonnement de la Cour du Banc de la Reine, je crois qu'il serait injuste de rendre *Sheridan* responsable de l'erreur de la compagnie. C'est à cette dernière à en supporter les conséquences, puisque c'est après avoir été spécialement informée de tous ces faits qu'elle a accepté un transport de la police dans laquelle *Thomson* est désigné comme le propriétaire. Pour cette raison le jugement accordant à l'intimé $1,510, balance qui lui était due lors du transport, devrait être confirmé,

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Fournier, J.

Malheureusement pour *Thomson* il s'est glissé dans le transport de la police une autre erreur qui, suivant le jugement de la Cour du Banc de la Reine, doit être fatale à ses prétentions de retirer sous le nom de *Sheridan* le surplus de la somme transportée à ce dernier, Cette erreur, aussi commise par l'agent de la compagnie, consiste dans l'oubli d'avoir inséré dans le transport la somme pour laquelle la compagnie donnait son consentement, ce qui a l'effet de constituer *Sheridan* cessionnaire non seulement de l'assurance sur les bâtisses, mais aussi de celle sur les meubles de *Thomson*. La correspondance citée plus haut démontre à l'évidence que l'intention de toute les parties était de ne transporter à *Sheridan* qu'un montant suffisant pour garantir sa créance. En conséquence de cette omission le transport se trouve être de tous les intérêts de *Thomson* dans la police. Ce n'était certainement pas son intention.

D'ailleurs *Sheridan* n'avait point dans les meubles assurés qui étaient toujours restés la propriété de *Thomson*, d'autre intérêt que celui d'un créancier ordinaire, dans le cas où la balance qui lui était due n'aurait pû être payée en vertu de son transport. Il pouvait dans ce cas exercer son action personnelle sur ces meubles comme sur tous les autres biens qui restaient encore à *Thomson*, ou faire saisir entre les mains de la compagnie ce qu'elle aurait pû devoir à *Thomson* en vertu de cette police. Mais cet intérêt n'est pas suffisant pour rendre légale l'acceptation d'un transport d'assurance. Il faut, d'après l'art. 2482 C. C., pour qu'un transport soit valable que la personne à qui il est fait ait un intérêt dans la chose assurée, c'est-à-dire que dans le cas actuel, pour la validité du transport, il aurait fallu faire voir que *Sheridan* avait un intérêt dans les meubles en question, comme propriétaire, gagiste ou usufruitier, etc. A défaut d'un intérêt

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Fournier, J.

de ce genre, le transport se trouve nul d'après l'article du code cité plus haut, et cette cour doit le considérer comme tel.

La dernière objection, celle par laquelle *Thomson* a été accusé d'avoir causé l'incendie par sa négligence, a été unanimement rejetée par la Cour du Banc de la Reine. La preuve établit que le 27 septembre, jour de l'incendie, *Thomson* et sa femme sont partis dans l'après-midi, pour aller dans une paroisse voisine visiter un de leurs enfants. Après leur départ les deux fils de *Thomson* et sa fille ont aussi laissé la maison vers 6 heures du soir pour aller passer la veillée chez des amis. Au moment de leur départ pour le retour ils s'aperçurent que la maison et les autres bâtisses étaient en feu. Lorsqu'ils arrivèrent, elles étaient déjà à moitié détruites.

Il n'y avait certainement rien d'extraordinaire et d'inusité dans l'absence de *Thomson* et sa famille. Ces courtes absences d'une famille entière, à la campagne sont assez fréquentes. Celle qui a eu lieu dans ce cas-ci ne peut établir contre *Thomson* le fait d'une négligence qui le rendrait responsable de l'incendie, et encore moins créer une présomption qu'il en soit l'auteur, puisque le plaidoyer n'a pas porté contre lui cette grave accusation.

Il y a bien quelques circonstances qui portent à croire que le feu est l'œuvre d'un incendiaire, mais rien dans la preuve n'implique *Thomson* comme y ayant eu la moindre participation. Telle a été l'opinion unanime de la Cour du Banc de la Reine, et c'est aussi celle que j'ai adoptée après un examen sérieux de la preuve.

HENRY, J.:—

This is an action on a policy of Insurance for loss and damage by fire to a dwelling house, a barn and

shed, with their contents, insured by a person named *Thomson*, who, subsequently, with the assent of the appellants company, assigned it to the respondent, being, as he was shown to have been, interested in the real estate covered by it.

Before determining the legal questions involved, it is necessary to look at the facts as they existed before the policy sued on issued.

On the 25th of April, 1876, *Thomson* signed a written application in which the property is described. A number of questions submitted by the company are printed in and form part of the application; but it is only necessary to refer specifically to two of them. One is: "Does the applicant possess in fee simple, or in his own right, and if not, who possesses? The reply to it was "Yes." The other is: "State if is mortgaged or otherwise affected, and if so, how, and for what amount?" The answer is "$1,000."

It thus appears that although the first answer was incorrect, the subsequent statement that the property was mortgaged or otherwise encumbered, effectually corrected the first and clearly showed the state of the title, and that the party intended no misrepresentation. He could not, therefore be said, as alleged in some of the pleas, to have falsely and fraudently made the representations by which it is sought to avoid the policy.

We find, however, that *Thomson*, in August following, fearing that the transfer to the respondent might affect the insurance, applied to *Valois*, the local agent; and, after giving him full knowledge of the transfer and its objects, got him to communicate the same, which he did, to *Patterson*, the general agent at *Montreal*. A correspondence, commenced by a letter from *Valois* to *Patterson*, of the 8th August, and which terminated on the 29th of the same month, shows that the relative position of the respondent and *Thomson*

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Henry, J.

in regard to the property was fully made known to *Patterson*. On the 14th *Valois* wrote *Patterson*, fully explaining the matter. On the 16th *Patterson* acknowledged the receipt of the letter, and his letter shows he understood the nature of the transfer, as it came out in evidence, and says:

> If that is the case, then the policy is all right as it is, except that Mr. *Sheridan* may be able to claim the insurance the policy must be transferred and made over to him by Mr. *Thomson*. I return you the policy, having made up another because the other did not look right. Please destroy the old one so soon as you shall be satisfied that the new one is similar. You will make Mr. *Thomson* sign his name in the interior of the policy opposite and return it to me with fifty cents for the transport. I shall then enter it in my books, and I'll send it to you immediately. This plan will obviate the necessity of making two policies, and will save expense. I believe that is all that is required. Please collect the amount of Mr. *Thomson's* note, and I'll send him his.

On the 22nd, *Valois* wrote *Patterson*:

> I return Mr. *Thomson's* policy, which we have both signed. The sum to be made over to Mr. *Thomas Sheridan* is fifteen hundred and ten dollars, that is to say, the amount for which the buildings are insured.

On the 29th *Patterson* wrote again to *Valois*:

> I send you this day Mr. *Thomson's* policy transferred.

Thus, then, the old policy was cancelled in consequence of the correspondence just referred to, and a new one issued some time between the 8th and 16th of August. It is, however, dated the same as the previous one—the 25th of April, 1876. The issuing of that second policy is therefore the act, not merely of the two agents, but that of the company itself by the signatures of its president and secretary, countersigned by "*H. Patterson*, general agent at *Montreal*," and under the corporate seal. The consent of the company to the transfer, dated 25th August, is signed by the secretary of the company.

The insured in the early part of that month, through

the local agent, asked that "General Manager," if under the circumstances two policies were necessary? (one for *Thomson* to cover the movables, the other to *Sheridan* to cover the buildings.) He had paid for a full insurance on both, and wished to have no doubt of all being in order. *Patterson* makes out a new policy and tells him that by transferring the interest in the policy which covered the buildings it would be all right; that *Sheridan* would then be insured as to the latter and *Thomson* as to the chattel property. A loss as to both takes place. The company refused to pay either, and charge *Thomson* with false and fraudulent representations, and invoke in their attempt to evade payment, a clause in the policy providing that "agents of the company are not permitted to give the consent of the company to assignments of policies, or to waive any stipulation or condition contained therein."

The general agent was fully informed of everything before the issue of the second policy, and through his management and direction it was issued by the company, and intended by all parties to cover the buildings for *Sheridan* and the movables for *Thomson*. The respondent does not, however, claim by virtue of an assignment of the policy made by an agent or through any waiver since the policy issued. The provision of the policy just noticed does not therefore apply.

Conditions in policies are intended to prevent injustice to companies by false and fraudulent representations, but not to enable them to act dishonestly, dishonorably, or fraudulently towards others whose money they have received, and who are by the acts of their authorized agents lulled into security, to find subsequently the company endeavor to repudiate the acts of those who are held out by them, not as mere local, but general agents. If any wrong was in this case done to the company by their general agent withholding the

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Henry, J.

information he had obtained before the second policy was issued, it certainly would be most unjust, and contrary to all legal and equitable principles, to make the insured to suffer. It was the duty of those at the head office to know, and they must be presumed to have known, everything, before they signed the second policy, and if, instead of which, they relied on the general agent and accepted his suggestions, they virtually adopted his acts and must be held bound by them.

In all cases, except those to which I have referred as a condition of the policy, a general agent has implied authority to act for and bind his principal, so far as is necessary to the performance of his duties, and the principal is no less bound by his acts than those with whom on behalf of his principal he enters into agreements. His acts and knowledge are necessarily in such cases deemed to be the acts and knowlege of his principal. *Patterson* was fully authorized as the general agent of the company to receive applications and represent them in every respect, at all events up to the issue of the policy. Notice to him in respect of the property and otherwise, is in law notice to the company. Local agents are considered to occupy a more subordinate position, and their powers are generally more limited. To bind a company for all the acts of local agents, often of little experience, in every hamlet or village, would be widely different from binding them for the acts and dealings of a general agent selected on account of his special business knowledge. The latter often act under powers of attorney and issue policies without consulting the head office, and in other cases policies are issued to them in blank fully executed by officers of the company, and requiring only to be filled up and countersigned by the agent. In the latter cases, also, policies are issued without consulting the head office. In such cases the agent is virtually the company. I presume,

as the policy in this case is countersigned by *Patterson*, as such general manager, he had authority to issue policies in that way. I draw this conclusion from his letters to *Valois*, in which he does not speak of referring the matter to the officers of the company, but in such a way as to shew he alone could deal with the matter. To contend, therefore, that a party dealing with the company through the agent, should duplicate his negotiations by directly communicating with the head office would, in my opinion, be simply absurd. The notice, then, to the general agent binds the company, and the policy being issued after that notice, no defence can be set up for any representation in the application. That under the circumstances the company should endeavor to evade responsibility for the loss by pleading as they have done in this respect is, I think, not justifiable. To give legal effect to such pleading would be, I think, subversive of every legal principle. With a full knowledge of the transfer to the respondent the company not only admits *Thomson's* insurable interest, but with that same knowledge, suggesting and approving of the assignment of the interest in the policy which covered the buildings to *Sheridan*, they would, I think, be estopped from setting up against *Sheridan* the absence of the insurable interest in *Thomson* if he had none. They substantially say to *Sheridan*: "We know your relations with *Thomson* as to the property, and whether his right to insure was good or not, which question we waive, if you get an assigment of his interest in the buildings, we will consent to it as provided in the policy, and in case of loss will pay you." The assignment was made and the company having consented to it, their compact was from that with *Sheridan*, and they are estopped from setting up the absence of the insurable interest in *Thomson*.

Independently, however, of that position, I think

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Henry, J.

Thomson had all along an insurable interest. The transfer to *Sheridan*, although on its face absolute and final, was nevertheless agreed upon only as lien or mortgage, as by the declaration in writing of the latter, signed at the same time, appears. The time for redemption as stated in the latter was three years, and possibly *Sheridan* might at the end of that time have refused to permit redemption by *Thomson*, but it is plain that the transfer was intended by the parties to it to be only a security for monies to be subsequently paid and advanced for *Thomson*, which *Thomson* was to repay with interest. It appears that up to the time of the issuing of the second policy, the same relations existed between *Sheridan* and *Thomson*, as it is shown that the one had been paying off the advances and the other receiving them. The understanding when the assignment was made, was that *Sheridan* was, in case of loss, to recover the insurance on the buildings as the assignee of *Thomson*, then acknowledged and understood to have the beneficial interest in the policy, and *Sheridan*, in accepting it, admitted the position. He would therefore be held to receive the amount of the policy so assigned to the credit of *Thomson* in repayment of his advances. If by the receipt of direct payments by *Sheridan*, and the recovery of the amount of the policy so assigned to him, he should be paid in full, he would be held bound to reconvey to *Thomson*. *Thomson* had therefore a good insurable interest as long as the relation I have stated remained understood and acknowledged by and between him and *Sheridan*, and the absolute nature of the transfer could not be insisted on by outside parties. That relation existed when the application was made and has since continued. I am of the opinion that had the policy not been assigned, *Thomson* could himself have recovered for the loss on the buildings.

There is one feature in the case to which it is desir-

able to refer. *Thomson* became by lease the tenant of *Sheridan*, but the holding under it did not in my view in any way affect the nature of the transaction or the legal right of *Thomson* to redeem the property. The understanding, or rather agreement, was that *Thomson* was not to give up possession of the property, but to pay in the shape of rent $400 a year. How that rent, if paid, would have been credited to him by *Sheridan* is not stated, but as I understand the agreement, he would be credited, as against the advances and interest and costs, any sums paid by him on a final account between the parties. That would be in accordance with the memorandum or declaration of trust signed by *Sheridan*, in which, on payment of "all moneys, interests and costs, &c.," by him "advanced or to be advanced and paid under the terms and conditions of a deed of sale passed between us this day," he engaged "to remit, return and re-sell unto him the property by me purchased under said deed." The execution of the lease by which *Thomson* became for the time tenant to *Sheridan* did not affect the right of redemption of the former. His position, as communicated to and considered by *Patterson*, was that of a mortgagor.

An objection to the whole action is taken under a clause of the policy which provides that "in case of loss the assured shall give immediate notice thereof to the company, stating the number of the policy and name of the agent, and shall deliver to the company as particular an account or statement of such loss or damage as the nature of the case will admit, and shall sign the same and verify by oath or affirmation, &c." The issue raised by the plea is not one applicable to the provision or condition of the policy just referred to. It alleges "that said *Thomson* has violated the terms and conditions contained in said policy, inasmuch as he has not delivered to said defendant a particular account or

1880

THE OTTAWA AGRICULTURAL INS. CO. v. SHERIDAN.

Henry, J.

statement of the loss or damage which he alleges he suffered." The plea therefore raises an issue not justified by the condition. He (*Thomson*) did not bind himself, as a condition precedent to his right to recover, to furnish in any event or under all circumstances any "particular account or statement" of loss, but only such an one as the case admitted of, and the plea does not allege or aver that the case admitted of a more particular account. He made an account, attested to in general terms, and, if objected to, the plea should have alleged that it was not as particular as the nature of the case admitted. Without such an allegation in the plea, no proof could be regularly admitted that a more particular account could have been given. It is not, however, contended that the plea applies to the buildings, or that, if it did, any more particular account was necessary. There are many cases in which anything more than a general estimate of loss could not be be given, and in others where only a partially particular account could be made out, and therefore in such cases the party can be called upon to furnish only such information as is in his power. The plea for the reasons stated, in my opinion, is no defence to the action.

There are one or two minor points which I have not thought it necessary to refer to, further than to say that, in my judgment, they don't affect the right of the respondent to recover according to the judgment of the court appealed from to this court. I think the appeal should be dismissed and the judgment referred to affirmed with costs.

TASCHEREAU, J., concurred.

Appeal dismissed with costs.

Solicitors for appellants: *Hutchinson & Walker.*

Solicitors for respondent: *Duhamel, Pagnuelo & Rainville.*