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*Oct. 29.

HENRY HOWARD (Plaintiff)..... .....APPELLANT;

AND

THE LANCASHIRE INSURANCE COMPANY (Defendants)..... } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Appeal—New trial ordered by Court below—Questions of law—Insurance policy—Insurable interest—Special condition—Renewal—New contract.

J., the manager of appellant's firm, insured the stock of one S., a debtor to the firm, in the name and for the benefit of the appellant. At the time of effecting such insurance J. represented appellant to be mortgagee of the stock of S. S. became insolvent and J. was appointed creditor's assignee, and the property

*PRESENT—Sir W. J. Ritchie, C.J., and Fournier, Henry, Taschereau and Gwynne, JJ.

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of the insolvent was conveyed to him by the official assignee. On March 8, 1876, S. made a bill of sale of his stock to J., having effected a composition with his creditors under the Insolvent Act of 1875, but not having had the same confirmed by the court. The insurance policy was renewed on August 5, 1876, one year after its issue. On January 12, 1877, the bill of sale to J. was discharged and a new bill of sale given by S. to the appellant, who claimed that the former had been taken by J. as his agent, and the execution of the latter was merely carrying out the original intention of the parties. The stock was destroyed by fire on March 8, 1877. An action having been brought on the policy it was tried before Smith, J., without a jury, and a verdict was given for the plaintiff. The Supreme Court of Nova Scotia set aside this verdict, and ordered a new trial on the ground that plaintiff had no insurable interest in the property when insurance was effected, and that no interest subsequently acquired would entitle him to maintain the action.

One of the conditions of the policy was "that all insurances, whether original or renewed, shall be considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make when the risk has been changed, either within itself or by the surrounding or adjacent buildings."

On appeal to the Supreme Court of Canada.

Held,—1. That the appeal should be heard. *Eureka Woollen Mills Co.* v. *Moss* (1) distinguished.

2. That the appellant having had no insurable interest when the insurance was effected, the subsequently acquired interest gave him no claim to the benefit of the policy, the renewal of the existing policy being merely a continuance of the original contract.

THIS was an appeal from a judgment of the Supreme Court of Nova Scotia (1), making absolute a *rule nisi* for a new trial.

The facts of the case are sufficiently stated in the head note.

Gormully for the appellant:

The court decided yesterday, in the case of *The Eureka Woollen Mills Co.* v. *Moss*, that they would not hear an appeal when the court below had ordered a new

(1) 11 Can. S. C. R. 91. (2) 5 Russ. and Geld. 172.

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trial on the ground that the verdict was against the weight of evidence. In this case the ground for ordering a new trial was that no insurable interest in the plaintiff had been shown, and, by the practice of the Supreme Court of Nova Scotia, a verdict for the defendant could not be entered, and the only course open to the court was to grant a new trial. Under sec. 20 of the Supreme and Exchequer Courts Act I submit that we are entitled to have this appeal heard.

[RITCHIE, C.J.—This case is distinguishable from *Eureka Woollen Mills Co.* v. *Moss*. We will hear the appeal.]

When Strong gave the bill of sale to Jenkins he was in possession of the goods, and his discharge by the court made the mortgage of the eighth of March valid. On the fifth of August a new premium was paid, and I contend that each payment of premium is a new contract. It was not intended to make a change in the policy, but to continue a binding contract of insurance.

I am going to contend that a party need not have an interest in the property at the time of effecting the insurance; it is sufficient if he has such interest at the time of the loss.

Tremaine for the respondents was not called on.

RITCHIE, C.J.:—

I do not think this is an arguable case at all. I think that before a man can recover on a policy of insurance he must have an insurable interest in the property when he effects the insurance. The renewal was merely a continuance of the original insurance and not a new policy. This appeal must be dismissed.

Appeal dismissed with costs.

Solicitor for appellants: *Robert Motton.*

Solicitor for respondents: *F. J. Tremaine.*