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 *Nov. 8.
 *Nov. 21.

COMMERCIAL UNION ASSUR- } APPELLANT ;
 ANCE COMPANY (DEFENDANT) }

AND

THOMAS A. TEMPLE (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW
 BRUNSWICK.

*Fire insurance—Condition in policy—Notice of subsequent insurance—
 Inability of assured to give notice.*

By a condition in a policy of insurance against fire the insured was “forthwith” to give notice to the company of any other insurance made, or which might afterwards be made, on the same property and have a memorandum thereof indorsed on the policy, otherwise the policy would be void ; provided that if such notice should be given after it issued the company had the option to continue or cancel it.

Held, affirming the judgment of the Supreme Court of New Brunswick, that this condition did not apply to a case in which the application for other insurance was accepted on the day on which the property insured was destroyed by fire and notice of such acceptance did not reach the assured until after the loss.

APPEAL from a judgment of the Supreme Court of New Brunswick sustaining a verdict for the plaintiff at the trial.

The plaintiffs property was insured with the defendant company for \$1,500, the policy containing the following, among other conditions :

“ 11. Persons who have insured property with this company must forthwith give notice of any other insurance already made, or which shall afterwards be made, on the same property, and have a memorandum of such other insurance indorsed on the policy or

*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

policies effected with this company, otherwise this policy will be void; provided, however, that on such notice being given at any time after the issue of the policy, it shall be optional with the company to cancel such policy. In the event of any other insurance on the property herein described having been once declared as aforesaid, then this company shall, if this policy shall remain in force, on the happening of any loss or damage, only be liable for the payment of a ratable proportion of such loss or damage whether such other insurance be in force or not, unless the discontinuance of such other insurance shall have been previously agreed to by this company by indorsement upon this policy.

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The property insured was destroyed by fire on the eighteenth day of July, 1895. On the tenth of that month the plaintiff's son, the plaintiff being ill at the time, forwarded to the head office of the Quebec Fire Assurance Company at the City of Quebec an application for further insurance of one thousand dollars upon the property, which application was accepted by the Board on the seventeenth of July, 1895, the day before the happening of the fire. The plaintiff did not receive notice that the insurance in the Quebec Fire Assurance Company was accepted until after the fire occurred.

The question for decision was whether or not, under the circumstances, the policy was void for want of notice of the subsequent insurance and indorsement thereof on the policy as required by the above condition.

Stockton Q.C. and *Dixon* for the appellant. The condition requires the assured to give the notice even after a loss has occurred. See *Western Assurance Co. v. Doull* (1); *Logan v. Commercial Union Ins.*

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Co. (1); Inland Ins. Co. v. Stauffer (2); Jewett v. Home Ins. Co. (3); Bruce v. Gore District Mutual Assurance Co (4).

Pugsley Q.C. for the respondent. The notice is to be given "forthwith," which means within a reasonable time. *Mellen v. Hamilton Fire Ins. Co. (5)*. Bunyon on Fire Insurance, 4 ed, p. 109.

The judgment of the court was delivered by :

SEDGWICK J.—On the 22nd day of August, 1891, the plaintiff insured his dwelling house for \$1,500 with the appellant company for three years. The property was burned on the 18th of July, 1895. One of the conditions of the policy was as follows :

11. Persons who have insured property with this company must forthwith give notice of any other insurance already made, or which shall afterwards be made, on the same property, and have a memorandum of such other insurance indorsed on the policy or policies effected with this company, otherwise this policy will be void ; provided, however, that on such notice being given at any time after the issue of the policy, it shall be optional with the company to cancel such policy. In the event of any other insurance on the property herein described having been once declared as aforesaid, then this company shall, if this policy shall remain in force, on the happening of any loss or damage, only be liable for the payment of a ratable proportion of such loss or damage whether such other insurance be in force or not, unless the discontinuance of such other insurance shall have been previously agreed to by this company by indorsement upon this policy.

Upon the plaintiff suing for the amount of his policy, the defendants set up failure on the part of the assured to comply with this condition as a defence, alleging that the assured had effected other insurance on the property but had not forthwith given notice thereof and had a memorandum relating to it indorsed on the policy.

(1) 13 Can. S. C. R. 270.

(2) 33 Penn. 397.

(3) 29 Iowa 562.

(4) 20 U. C. C. P. 207.

(5) 17 N. Y. 609.

The facts upon which this defence is based are practically undisputed.

The plaintiff was an insurance agent in St. John, New Brunswick, where he lived, one company of which he was agent being the Quebec Fire Assurance Company, an institution having its head office in the city of Quebec. On the 10th July, several days before the fire, the plaintiff's son, in the absence of his father through illness, but with his implied authority, wrote to the office at Quebec requesting an additional insurance of a thousand dollars upon the property. On the 17th of July, the day before the fire, the directors of the Quebec company passed a resolution authorizing the additional insurance asked for to be effected. This resolution was not communicated to the plaintiff either directly or indirectly until the 20th of July, two days after the fire, and the plaintiff received notice of it in the course of mail on or about the 21st or 22nd July. The plaintiff being thereby expressly authorized by the Quebec company, after knowledge of the fire, to issue in their name the policy asked for did so, and the company paid him the amount of it, there being no question as to the accidental character of the fire and the property being worth an amount largely in excess of the insurance upon it.

We are of opinion that under the circumstances the verdict of the jury in favour of the plaintiff was right, and that upon two grounds: First, that there was no valid insurance such as that set up by the defence existing at the time of the fire; no policy was issued until some time subsequent to the fire. At the time of the fire there was no obligation on the part of the Quebec company to effect any insurance at all. The resolution authorizing the insurance passed on the 18th of July might have been rescinded immediately afterwards, and was not in any respect binding upon them

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until the 20th, after the fire, when it was communicated to the plaintiff. The fact that the company subsequently recognized the transaction as an insurance and paid it in fulfilment of what doubtless they conceived to be an honourable obligation does not support the allegation that there was an existing insurance at the time of the fire, and the ground upon which the court below proceeded was equally a bar to the defendants' contention.

Secondly, the condition in the policy must be given a reasonable meaning. It cannot mean that a party is bound to give notice of an insurance of which he has not and cannot have any knowledge. Neither can we presume that it was intended to provide for a case where an insurance happened to be effected subsequent to a fire of which the assured was bound to give notice, and that under such circumstances the company should have the option of cancelling the policy. That could not have been the intention of the parties. It could solely have reference to an insurance effected before a fire of which subsequent insurance the assured before the fire could have given notice to the company.

If it is in the interest of assurance companies that policy holders should give such a notice as that contended for, it will be necessary that the condition be changed so as to compel notice of application for subsequent insurance rather than of the insurance itself.

We are all of opinion that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *M. B. Dixon.*

Solicitor for the respondent: *William Pugsley.*
