WILLIAM PARSONS.....APPELLANT;

AND

THE STANDARD FIRE INSURANCE COMPANY..... } RESPONDENTS.

1880

*May 14.

*June 10.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Fire Insurance—Subsequent and further insurance—Substituted Policy.

The appellant sued upon a policy of insurance made by the respondents on the 28th April, 1877. On the face of the policy it appeared that there was "further insurance, $8,000," and the policy

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

1880

PARSONS
v.
THE STANDARD FIRE INS. CO.

had endorsed upon it the following condition, being statutory condition No. 8, R. S. O. ch. 162: "The company is not liable for loss if there is any prior insurance in any other company, unless the company's assent thereto appears herein or is endorsed hereon, nor if any subsequent insurance is effected in any other company, unless and until the company assent thereto by writing signed by a duly authorized agent." Among the insurances, which formed a portion of the "*further* insurance" for $3,000 mentioned in the policy, was one for $2,000 in the *Western Insurance Company*, which appellant allowed to expire, substituting a policy for the same amount in *The Queen Insurance Company*, without having obtained the consent of or notified the respondents.

Held,—Reversing the judgment of the Court *a quo*, that the condition as to *subsequent* insurance must be construed to point to *further* insurance beyond the amount allowed by the policy, and not to a policy substituted for one of like amount allowed to lapse, and therefore the policy sued upon was not avoided by the non-communication of the $2,000 insurance in *The Queen Insurance Company*.

APPEAL from a judgment of the Court of Appeal for *Ontario*.

The action was brought in the Court of Queen's Bench, for *Ontario*, on a policy of insurance made by the defendants, dated 28th April, 1877, insuring plaintiff against loss or damage by fire to the amount of $2,000, on a general stock of hardware, &c.

The property was destroyed by fire on the 3rd August, 1877.

The case was tried at the Fall Assizes of 1878, at *Guelph*, before Mr. Justice *Galt*, without a jury, and a verdict entered for the plaintiff for $2,142.50.

In Michaelmas Term, 42nd *Vic.*, *Bethune*, Q. C., obtained a rule *nisi*, calling upon the plaintiff to shew cause why the verdict for plaintiff obtained at the trial should not be set aside and a verdict rendered for the defendants, on the ground that the plaintiff was not entitled to recover, and on the grounds that the defendants established the defence relied upon by the defen-

dants at the trial; that is to say, that the plaintiff did not disclose, at the time of the making of the application, the existence of the policy in the *Provincial Insurance Company*, and that there was a breach of warranty in not disclosing buildings within one hundred feet of the risk, and that there was no notice to defendants of the subsequent insurance in the *Queen Insurance Company*.

The rule *nisi* was discharged by the Court of Queen's Bench. The defendants appealed to the Court of Appeal, and the appeal was allowed.

The principal point argued on this appeal was whether or not an insurance effected with the *Queen Insurance Company* subsequently to the granting of the policy sued upon, and which was in substitution only for a lapsed policy for the like amount which was in existence with the *Western Insurance Company* at the time of the policy sued upon being effected, was a *subsequent* insurance and within the meaning of statutory condition No. 8, R. S. O. c. 162.

Mr. *McCarthy*, Q. C., for appellant:—

The only ground upon which the respondent's counsel can rely before this court is, that the Court of Appeal were right in their construction of the condition as regards *subsequent* insurance. Now what are the facts:

1. The respondent company assented to other insurances on the property covered by their policy, to the extent of $8,000; 2. The appellant never had insurance on this property beyond that amount at one time, exclusive of respondent's policy; 3. The respondents make no pretence that the *Queen Insurance Company* was not as respectable and as well managed a company as any of the companies with whom the appellant was insured to their knowledge.

Can it be fairly said that if one of these policies

1880

PARSONS v. THE STANDARD FIRE INS. CO.

lapse, the re-insuring for the same amount in the same company, on precisely the same terms, is a "subsequent insurance," within the meaning of the condition? It is the rule of insurance offices, when the insurance is for three years, not to renew, but to require a new application, and to issue a new policy; this is clearly a new contract of insurance, and in every such case, unless the consent of the other insuring companies be obtained, vitiates every other insurance.

And if the making of a new contract of insurance in the same company cannot in reason be deemed a subsequent insurance, why should insuring in a different company be differently viewed?

In the construction of contracts, it is the spirit and not the letter that governs, and it is the business of courts to ascertain the spirit, or, in other words, what was intended by, or the intention of, the parties, and that being ascertained, it overrides every other consideration. *Verba intentioni debent inservire. Per cur., Ford* v. *Beech* (in error) (1), and, as observed by Lord *Hale*, the Judges ought to be anxious and subtle to invent reasons and means to make acts effectual, according to the just intent of the parties. *Broom's* legal maxims, (2).

The learned counsel also cited: *Carpenter* v. *The Providence Washington Ins. Co.* (3); *Prop., &c., in Dunstable* v. *Hillsborough Mut. Ins. Co.* (4); *Lixom* v. *Boston Mut. F. Ins. Co.* (5).

Mr. *Bethune*, Q. C., for respondent:—

After stating that he relied also on the construction put on the eighth statutory condition as varied in the case by the court below, contended that the insurance with the *Queen Insurance Company* was a subsequent

(1) 11 Q. B. 852, 866.
(2) 540-41-42, 5th Ed.
(3) 16 Peters U. S. 495.
(4) 19 N. Hamp. 580.
(5) 9 Met. (Mass.) 205.

insurance, and was within the meaning of the condition already referred to, and that its having been effected without the consent of the respondents having been obtained, made the policy void.

The respondents had an interest in knowing in what other companies insurances were effected, as the respondents were entitled to cancel the contract of insurance made by them, and might have done so if they had known that the insurance had been effected in a company with the management of which the respondents were not satisfied.

It seems quite clear that the respondents were entitled to withhold their assent to this subsequent insurance, and the simple withholding of such assent avoided the policy.

The learned counsel cited: *McBride* v. *The Gore District Fire Ins. Co.* (1); *Hatton* v. *The Beacon Ins. Co.* (2); *Mason* v. *The Andes Ins. Co.* (3); *Weinaugh, Administrator of Burgy* v. *The Provincial Ins. Co.* (4); *Hendrikson* v. *Queen Ins. Co.* (5); *Bruce* v. *Gore Dist. Mut. Ins. Co.* (6).

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

The judgment of the Court was delivered by

GWYNNE, J.:—

The argument before us became reduced to the question whether or not an insurance effected in the *Queen Insurance Company* subsequently to the granting of the policy sued upon, and which was in substitution only for a lapsed policy for the like amount which was in existence with the *Western Insurance Company* at the time of the policy sued upon being effected, avoided this latter policy? The policy sued upon in the body of

(1) 30 U. C. Q. B. 451.
(2) 16 U. C. Q. B. 316.
(3) 23 U. C. C. P. 37.
(4) 20 U. C. C. P. 405.
(5) 31 U. C. Q. B. 547.
(6) 20 U. C. C. P. 207.

1880

PARSONS v. THE STANDARD FIRE INS. CO.

it contained a recognition of $8,000 further insurance, (in addition to the amount secured thereby) being in existence and allowed. The contention of the respondents was, that the $8,000 thus allowed included the policy in the *Western*, which was for $2,000, and that the effecting a policy in the *Queen* for $2,000, although merely in substitution for this in the *Western*, which was allowed to lapse, without the consent of the respondents, was in breach of a condition on the policy to the effect that

> The company is not liable for loss if there is any prior insurance in any other company, unless the company's assent appears herein or is endorsed hereon, nor if any subsequent insurance is effected in any other company, unless and until the company assent thereto in writing signed by a duly authorized agent.

The body of the policy must be read with the conditions endorsed, so as to give to the whole a rational construction; and, in my opinion, the construction put upon it by the Court of Common Pleas is the correct one.

In view of the fact that the policy on its face allows additional insurance to the amount of $8,000, over and above the amount covered by the policy sued on, the condition as to subsequent insurance must, I think, be construed to point to *further* insurance beyond the amount so allowed, and not to a policy substituted for one of like amount allowed to lapse.

The respondents, if they desired to avoid their policy in the event of such a substitutional policy being effected, should be more precise in the language used.

The appeal should, in my opinion, be allowed with costs, and the judgment of the Court of Common Pleas be re-affirmed.

Appeal allowed with costs.

Solicitor for appellant: *Maitland McCarthy.*

Solicitor for respondents: *Thomas C. Haslett.*