Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The National Protector Fire Insurance Company, Limited, v. Charles Nivert, from His Britannic Majesty's Supreme Consular Court for the Dominions of the Sublime Ottoman Porte, delivered the 14th March 1913.

PRESENT AT THE HEARING:

LORD ATKINSON.

LORD SHAW.

LORD MOULTON.

[DELIVERED BY LORD ATKINSON.]

This is an Appeal from a judgment of His Majesty's Supreme Court for the Dominions of the Sublime Ottoman Porte in an action in which Charles Nivert, the Respondent, was Plaintiff, brought to recover from the Appellant Company the sum of 1,200*l.* under two policies of fire insurance effected with them in respect of the loss alleged to have been sustained by him through the destruction by fire of the insured property, namely, a skating rink named "Femina," situated at Smyrna, and the furniture and fittings contained in it.

The Plaintiff is a French citizen, but by instituting the action in this Court of His Britannic Majesty, he has necessarily submitted himself to the jurisdiction of the Court.

On the 28th of March 1910, the Respondent had leased this skating rink and the furniture contained in it to one M. Paul Verdreau for a period of one year from the 1st April then next following. The lessee went into possession.

It is not disputed that while he was in possession, namely, on the 10th of March 1911, the Rink and its contents were burned. Nor is it disputed that the Policies of Insurance sued on (which are in French) dated the 7th and 15th of October 1909 respectively, were validly entered into and were at the date when the fire occurred current.

The defences of the Company are based upon two of the conditions printed on the back of each of these policies.

The first defence, which was scarcely seriously relied upon in the argument before their Lordships, was that this lease of the 28th of March 1910 was within the meaning of the eighth condition, such a "transfert à autrui autrement que par testament ou du fait de la loi de l'interet que l'assuré peut avoir dans les objets garantis" as under the terms of that condition rendered the policies void.

In their Lordships' opinion this lease for one year did not at all amount to a transfer to the lessee of the Plaintiff's interest in the property insured within the meaning of this condition, inasmuch as the ownership of all that property subject to the lease remained in him, and was not transferred to anyone.

The second condition on which the Company relied, No 3, ran as follows :—

"III. Si tout ou partie des objets sur lesquels, porte la "présente police sont également garantis par d'autres "contrats souscrits avant ou après l'entrée en vigueur de la "dite police, l'assuré est tenu de le déclarer à la Com- "pagnie, par écrit, et de le faire mentionner soit dans "la police même, soit par un endos inscrit par la Compagnie "sur ladite police. Faute des susdites déclaration et con- "statation, avant tout sinistre, l'assuré n'aura droit à aucune "indemnité visant la présente police."

It is to be observed that the words "de le déclarer" and "de le faire mentionner" only mean that the fact that the property insured was further insured, "egalement guarantis par d'autres

contrats," should be declared to the Company or mentioned in the manner provided. It is not required that any of the details of the policy should be given, not even its date, the name of the insurers or the assured, or the amount covered by it. The further insurance of the property already insured by the Appellants would be a benefit to them in this respect, that in the event of a loss being sustained by the assured the several insurers would share the liability between them; and the only danger to their interests which could arise from the excessive insurance of the property would be that the assured might through negligence or by design bring about the destruction of or some injury to his own over-insured property. Thus the fact of the existence of insurances additional to their own, is the matter which really concerns the insurers. It can make no real difference to them whether the additional assurances of which they were informed are kept up with the original insurers or are transferred to some other insurers, nor even whether they were allowed to drop if new policies for the same amount were effected to replace them. The danger of the destruction or injury by fire of the property insured would remain the same, the advantage of the distribution of the loss the same, in each of the three cases. The words "avant ou après" are introduced to secure that the really important fact, the existence of an insurance additional to those of the Appellants, should be communicated to them.

These considerations are to be borne in mind when the meaning and object of a condition such as this third has to be determined. Now the facts which are relied upon to bring the Respondent's claim within the reach of the condition are these :--

At or before the date of the policies sued on the Respondent effected two concurrent policies on this Rink for 300*l.* each. One with the

General Insurance Company and one with the Law Guarantee Company. Notice of these policies was duly given to the Appellants, and a memorandum was endorsed on the Respondent's policy of the 7th of October to the effect that the policies had been effected with these Companies, and further, that in lieu of the General Insurance Company the United Counties Insurance Company had taken over the risk on one of them.

The Respondent had also effected a policy concurrent with the Appellants' on the contents of this Rink for 600*l.* with the British Crown Company, and a memorandum was accordingly endorsed on the Respondent's policy of the 15th of October to the effect that this property was insured to that amount. It is admitted that the requirements of the third condition were up to this time fully, indeed more than fully, complied with.

The controversy arises out of what followed.

On the 2nd of November 1910 a fire policy was effected by the Respondent on the Rink with the Property Insurance Company, Limited, for the sum of 350*l.* And on the 15th December 1910 a further policy on the Rink and some of its contents was effected with the same Company for the sum of 350*l.* No point is taken upon the increase by 50*l.* in the amount of these policies. On the 9th November 1910 the Respondent effected with the same Company a third policy against loss by fire on this Rink for the sum of 650*l.*

No formal declaration was made to the Appellant Company that any of these policies had been effected, nor was any endorsement made on the policies sued on in reference to any of them.

The main question for decision is, therefore, whether this omission deprives the Respondent, under Condition No. 3, of all right to recover on

the policies sued upon. It was contended on behalf of the Respondent that the policy effected with the British Crown Company for 600*l.* merely replaced those previously effected with the General Insurance Company and the Law Guarantee Company respectively for 300*l.* each, and that the policy effected with the Property Insurance Company for 650*l.* replaced the policy previously effected with the British Crown Insurance Company for 600*l.*, the extra 50*l.* being intended in each case to cover some new decoration of the building and some additional furniture put into it.

The dates at which the several policies were effected with the British Crown Company would of themselves suggest that some such replacement or substitution was designed to be effected. If it, in fact, took place, then, as the increases by the sum of 50*l.* are to be disregarded, the amount covered by the policies of insurance remained the same, nothing was altered but the identity of the insurers, which is one of the very things Condition 3 did not require to be disclosed. The evidence is not fully or satisfactorily reported. It appears from it, however, that the Respondent left Smyrna in March 1910 for Rio de Janeiro, and was there at the date of the trial, so that he could not be examined as a witness, and his evidence was not taken by Commission. Before leaving, he appointed, by power of attorney, one Constant de Mizures his agent to represent him in Smyrna. This gentleman was examined as a witness at the trial. The following passages from his evidence are most important :—

"The insurance premium was being paid the whole "time by Mr. Nivert. Mr. Kesshekogolu, my clerk, "transferred the insurance from Company General "Insurance and Law Guarantee Insurance Company to "the Property Insurance Company. The two former "policies of 300*l.* were transferred to one of 600*l.* And "then the policies of British were transferred to Property.

" There was an increase on furniture policy of 50*l*. as more " furniture was put in, and an increase of 50*l*. on account " of extra decoration made to the building.

" I know Mr. Verdreau was an engineer of French " Navy.

" From what I know of him he was a substantial and " honourable man. I visited continually to see the premises " and to see that business was properly conducted.

" I went once a week, sometimes oftener.

" The machinery was in good order up to the time of the " fire.

" I think it was the agent of the Protector Insurance " Company who recommended the Property Insurance " Company, Limited. His name is Antoine Walter.

" Cross-examined by Mr. Turrell:—

" I was the Agent and friend of Plaintiff. I had no " interest in business with exception of 600 francs. I " received five per cent. on all profits and on all amounts " collected.

" I did not sign a contract on behalf of Mr. Nivert. " I gave my clerk general instructions to renew policies."

It is clear from the course of the trial and the judgment of the learned Judge that it was not suggested that the policies, memoranda of which were endorsed on the policies sued on, were still in existence. They must, therefore, have either been surrendered or allowed to lapse, or the risk they covered must have been taken over by the British Crown Company through the machinery of the new policies, which last, is what would appear to have been intended to be described by the word "transferred." It is not suggested that they were allowed to lapse or were surrendered. And if the third course was that which was, in fact, taken, then that particular condition of things of which the third condition required the Respondent to be informed, namely, the fact that premises were insured by others remained practically unaltered, save to this extent, that the identity of the insurers was not the same.

Conditions such as this third condition are always in Courts of Law construed strictly

against insurance companies, and should always be interpreted in a reasonable sense, having regard to the business nature of insurance transactions. Their Lordships so construing and interpreting the condition are of opinion that its requirements have been complied with, and that it affords no defence to the Plaintiff's claim.

The Appeal, they think, must therefore be dismissed, and they will humbly advise His Majesty accordingly.

The Appellants must pay the costs of the Appeal.

In the Privy Council.

THE NATIONAL PROTECTOR FIRE INSURANCE COMPANY, LIMITED,

v.

CHARLES NIVERT.

DELIVERED BY LORD ATKINSON.

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