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 \* Oct. 26, 27. THE MORTGAGE CORPORATION OF NOVA  
 SCOTIA v. LAW UNION & ROCK INSURANCE  
 CO. LTD.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA  
 IN BANCO

*Fire insurance—Cause of loss—Statutory condition—Explosions—Nature of explosions—Whether fire preceded explosion or explosion preceded fire—Amount of damage recoverable under policy.*

APPEAL by the Mortgage Corporation of Nova Scotia (one of the plaintiffs) from the judgment of the Supreme Court of Nova Scotia *in banco* (1).

The action was brought to recover payment from the defendant (the present respondent) under certain fire insurance policies on a certain building. The present appellant was mortgagee of the building and of the land on which it stood, and loss under the policies was made payable to it as its interest might appear.

Statutory condition 6 provided that:

The insurer will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gasworks, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; \* \* \*

An explosion or explosions had occurred on the occasion of the fire. As between the present appellant and the defendant the main questions in dispute had to do with facts concerning the cause or causes of the destruction of the building and the amount recoverable under the policies, having regard to those facts and the statutory condition above quoted.

The trial judge, Graham J., after discussing the evidence, stated as follows:

I cannot find affirmatively that the explosions were coal gas explosions; I find the cause of the explosions not proven. So far, however, as this conclusion is concerned I have no advantage from having heard and seen the witnesses. I think that a fire which preceded and caused the first explosion or a fire caused by the first explosion, which was a minor one, and therefore did little or no damage probably caused the second explosion, which followed the first after the lapse of an appreciable time—a second or two—and which wrecked the building. That being the situation, the damage (both that caused by fire or by the second explosion) resulted from a fire ignited before, or by, the first explosion, which fire during its continuance (in the second event though brief, it was for an appreciable time) caused the second explosion \* \* \*

\* PRESENT:—Duff C.J. and Rinfret, Crocket, Davis and Kerwin JJ.  
 (1) 10 M.P.R. 483; [1936] 2 D.L.R. 593.

and he held that, therefore, the present appellant was entitled to judgment for its full claim (1). (He dismissed the claim of the other plaintiffs with regard to the loss of the building, on a finding as to a certain statement in the proof of loss; an appeal from his decision on this question was dismissed by the Court *in banco*; and no appeal was brought thereon to this Court).

The defendant's appeal from the said judgment of Graham J. in favour of the present appellant was allowed by the Court *in banco* (2), which rescinded and set aside the said judgment and held that the present appellant was only entitled to recover from the defendant the damage or loss caused by fire after the collapse of the building, and directed a reference as to the amount of such damage or loss by fire. The reasons of the Court *in banco* were delivered by Chisholm C.J., who, after referring to the trial judge's findings, stated that the question of fact which was important was "whether the fire preceded the explosion or the explosion the fire," and, after discussing the evidence, held that it was not "sufficiently persuasive to shew that a fire preceded the explosion"; and that "the plaintiffs have failed to prove their whole case"; and that what was recoverable was the damage caused after the collapse; to fix which damage there should be a reference.

On the appeal of the Mortgage Corporation of Nova Scotia to the Supreme Court of Canada, after hearing the argument of counsel for the appellant, the Court (on the following day), without calling on counsel for the respondent, gave judgment orally, dismissing the appeal with costs. The Chief Justice stated that the members of the Court had had an opportunity of considering over-night the very able and comprehensive argument of counsel for the appellant, and, after very carefully examining the evidence, they had come to the conclusion that there was no ground upon which the Court could properly reverse the judgment of the Supreme Court of Nova Scotia *in banco*.

*Appeal dismissed with costs.*

*George E. Harris* for the appellant.

*L. A. Lovett K.C.* for the respondent.

(1) 10 M.P.R. 483, at 484-488; [1936] 2 D.L.R. 593, at 594-597.

(2) 10 M.P.R. 483; [1936] 2 D.L.R. 593.