Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Sun Fire Office v. *Hart and others, from the Court of Appeal for the Windward Islands; delivered* 16*th February* 1889.

Present:

LORD WATSON.
LORD FITZGERALD.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR WILLIAM GROVE.

[*Delivered by Lord Watson.*]

The facts of this case are not in dispute, and may be shortly stated. On the 12th May 1885, Alice Creagh Hart, and five others interested, effected a policy of insurance with the Sun Fire Office, to run from its date until the 30th July 1886, on forty acres of sugar canes, uncut, situate on Fairfield Plantation, parish St. Philip, Barbados. The policy was issued subject to the general conditions endorsed thereon, one of which was in these terms:—

"3. If after the risk has been undertaken by the Society anything whereby the risk is increased be done to property thereby insured, or to, upon, or in any building thereby insured, or building or place in which property thereby insured is contained, or if any property thereby insured be removed from the building or place in which it is therein described as being contained, without in each and every of such cases the

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assent or sanction of the Society, signified by endorsement thereon, the insurance as to the property affected thereby ceases to attach.

"If by reason of such change, or from any other cause whatever, the Society or its agents should desire to terminate the insurance effected by the said policy, it shall be lawful for the Society or its agents so to do, by notice to the insured, or to the authorized representatives of the insured, and to require the policy to be given up, for the purpose of being cancelled; provided that in any such case the Society shall refund to the insured a rateable proportion, for the unexpired time thereof, of the premium received for the insurance."

There were three fires on the Fairfield Plantation in June, three in July, one in August, and another on the 25th September 1885, by which nearly twenty-three acres of canes were burnt. In August an anonymous letter was received by one of the insured, threatening continued incendiarism, and that letter was exhibited to the Society's agent. On the 8th October 1885 the agent gave written notice in due form to the insured that, in consequence of these occurrences, the Society terminated the policy from that date, in accordance with Clause 3 of the general conditions; and he at the same time tendered repayment of 5*l.* 6*s.* 11*d.*, being the rateable proportion of the premium received for the unexpired term of the insurance. The insured refused to accept the sum tendered, or to give up the policy. The lossses sustained through fires occurring before the 8th of October were adjusted and paid by the Society. Two fires occurred after that date, the one upon the 20th December 1885, and the other upon the 30th January 1886.

The suit in which this appeal is taken was brought by the insured for recovery of the

damage occasioned by the fires last mentioned. In defence the Society relied solely on the effect of its notice of 8th October 1885, as determining the policy, before either of the losses sued for was incurred. The action was tried in the Court of Common Pleas, at Princetown, on the 7th March 1887, before His Honour Isaac Richard Reece, Acting Chief Judge, and a special jury. The facts already stated were put in evidence; and the learned Judge directed the jury to the effect that, the facts not being disputed, the question to be determined was one of law, and not of fact, and that he decided the law in favour of the Plaintiffs. The learned Judge ruled as matter of law:—(1) That the words "any other cause whatever," in the third general condition, mean "any change of the same genus" as the changes previously specified, and that the facts in evidence did not amount to such changes in respect of the subject matter of the suit; and (2) that, assuming the Defendants' construction of the third general condition to be correct, they were precluded from exercising their right to determine the policy, by reason of their having advisedly paid for no less than seven fires, in the full knowledge of the circumstances referred to in their notice of the 8th October. The jury accordingly returned a verdict for the Plaintiffs, and the Court gave the Defendants leave to apply for a rule Nisi for a new trial.

The Defendants obtained a rule to show cause why the verdict should not be set aside, and "instead thereof a new trial granted between the parties," which was discharged by an order of the same Judge who tried the action, dated the 23rd March 1887. His decision was thereafter affirmed by the Court of Appeal for the Windward Islands, consisting of three members, the Chief Justices of St. Lucia and Tobago,

Grenada, and St. Vincent. It appears from the judgement of Trafford, J., Chief Justice of St. Vincent, that the Defendants' Counsel submitted three alternative constructions of the third condition, (1) that it authorized the Society to cancel the policy for any cause whatever, (2) that it authorized them to terminate the policy on any reasonable grounds, and (3) that, even on the *ejusdem generis* principle of construction, the facts proved showed a material increase of risk, and justified their notice. On the other hand, the Plaintiffs' Counsel contended for the law as laid down at the trial.

Upon the first ruling, two members of the Court of Appeal, Gresham, J., Chief Justice of Grenada, and the Chief Justice of St. Vincent, agreed with the presiding Judge. Carrington, J., Chief Justice of St. Lucia and Tobago, differed, being of opinion that the jury ought to have been directed that the words "other cause whatever" would include any event or circumstance of such a character as to induce a desire on the part of a fair-minded and reasonable man to put an end to the policy; and that it was for the jury to say whether the reasons put forward by the Defendants for terminating the insurance were, or whether any of them was, of such a character. Upon the second ruling the same learned Judge held that the presiding Judge was wrong in law. The Chief Justice of St. Vincent considered it unnecessary, in the view which he took of the first point, to deal with that part of the direction. The Chief Justice of Grenada concurred in the ruling, but on a different ground from that assigned by the presiding Judge. He was of opinion that a letter of the Defendants' agent, dated the 22nd December 1885, amounted to a waiver of their notice of the 8th October. The letter contains nothing beyond a request that the insured will delay proceedings for the

enforcement of certain claims which had arisen before the date of the notice, until the writer had an interview with an agent of the office who was expected from England; and it is difficult to understand how such a request could possibly imply an intention to depart from a notice which did not affect these claims, especially when the communication expressly bears to be "without "prejudice, and without any intention of ad- "mitting any liability against the Sun Fire Office "under the policy."

The third general condition of the policy consists of two branches which differ in their purpose and effect. The object of the first is not to void or terminate the policy, but to prevent its attaching to such portions of the subjects which it is framed to cover as may, by reason of some act done after its date, without the consent of the insurers, be exposed to increased risk of fire. The object of the second, with which we have to deal in the present case, is to enable the insurers to release themselves from their contract during its currency, leaving it in full vigour down to the time of notice. The words in which the power of determination is expressed, taken by themselves, are very wide and comprehensive. According to their primary and natural meaning, they import that, in order to justify the exercise of the power, nothing is required except the existence of a desire, on the part of the insurers, to get rid of future liability, whether such desire be prompted by causes which prevent the policy attaching, or by any other cause whatever. That construction of the words, read apart from the preceding context, appears to have been accepted by the majority of the Court of Appeal. The Chief Justice of Grenada said, "It is impossible for words to be more "general, and, if construed literally, any, the "most absurd, construction could be put upon "them." It can hardly be suggested that the literal construction of the words would go farther

than giving the insurers the option of determining the policy at will; and the learned Chief Justice was apparently of opinion that it would go that length. So far their Lordships agree with him, but they are unable to concur in his view that such a construction would, in any aspect of it, be absurd. The condition does not involve the avoidance of the policy *ab initio*, or forfeiture of the premium paid by the insured. There may be many circumstances calculated to beget, in the mind of a fair and reasonable insurer, a strong desire to terminate the policy, which it would be inconvenient to state and difficult to prove; and it must not be forgotten that the whole business of fire insurance offices consists in the issue of policies, and that they have no inducement, and are not likely, to curtail their business, without sufficient cause. On the other hand, the insured gets all the protection which he pays for, and, when the policy is determined, can protect his own interests by effecting another insurance.

In two of the learned judgements delivered in the Appeal Court numerous authorities are referred to, which their Lordships forbear to notice, because they have really little or no bearing on the interpretation of the clause upon which the decision of this case must turn. It is a well known canon of construction, that, where a particular enumeration is followed by such words as "or other," the latter expression ought, if not enlarged by the context, to be limited to matters *ejusdem generis* with those specially enumerated. The canon is attended with no difficulty, except in its application. Whether it applies at all, and if so, what effect should be given to it, must in every case depend upon the precise terms, subject matter, and context of the clause under construction. In the present case there appears to their Lordships to be no room for its application. The theory upon which the ruling of the presiding Judge, and its affirmance by the majority of the Court of Appeal, pro-

ceeds, appears to be this, that the words "by "reason of such change" are equivalent to an enumeration of certain particular changes or causes specified in the preceding condition; and that the following words "or from any other "cause whatever" must be confined to causes *ejusdem generis* with these. The antecedent context does not contain a mere specification of particulars, but the description of a complete genus, if not of two genera. The first of these is any and every act done to the insured property whereby the risk of fire is increased. Taking that as a particular, none of the learned Judges has suggested what circumstances would constitute *alia similia.*

Their Lordships are accordingly of opinion that the condition must be read in the literal and natural sense of the language which the contracting parties have chosen to employ, and that it includes any and every cause which could reasonably induce an insurer to desire the termination of the policy.

The question remains whether the clause gives the insurers the right to act upon their own judgement, or whether they are bound, if so required, to allege and prove to the satisfaction of a Judge or jury, not only that a desire exists on their part, but that they have reasonable grounds for entertaining it. If the determination of the policy would be for the advantage of its business, that would obviously be a reasonable ground for the office desiring to put an end to it; and, *à priori*, one would suppose that the insurers themselves must be the best if not the only capable judges of what will benefit their business. An insurance office may deem it prudent, and resolve to limit its outstanding engagements, and, unless the words of the clause clearly imply the contrary, it cannot be presumed that the parties meant to make such a question of prudent administration the subject of

inquiry in a court of law. These and other considerations, already adverted to, have led their Lordships to the conclusion that the sufficiency of the reasons moving them to desire the termination of the risk which they had undertaken is a matter of which the insurers are constituted the sole judges. That conclusion is not only supported by these considerations, but it appears to their Lordships to be in accordance with the natural construction of the language of the clause.

In regard to the second ruling of the presiding Judge, and the opinion expressed by the Chief Justice of Grenada with respect to waiver of the notice of 8th October 1885, their Lordships do not think it necessary to say more than this, that they appear to be founded upon some misconception of the law.

The necessary legal result of their Lordships' opinion is that judgement ought to have been entered for the Defendants, who are Appellants here, at the trial of the cause. But the Appellants, in the Court below, only moved for a new trial, and the judgement appealed from was given with reference to that motion. The case must therefore go back to the Court of Common Pleas for Barbados, in order that the proper order may be pronounced. Accordingly, their Lordships will humbly advise Her Majesty to reverse the judgement appealed from, to make the rule Nisi obtained by the Appellants absolute, and to order the Plaintiffs Respondents to pay to the Defendants Appellants the costs incurred by them in the Court of Common Pleas and in the Court of Appeal. Seeing that this appeal was brought by special leave, being below appealable value, on the ground that its decision was of general importance to Insurances Offices, their Lordships think that there ought to be no order as to costs here.