# HATCH v. METROPOLE INS. CO.

Case No. 6,207a.

{13 Reporter, 293.}[1]

Circuit Court, D. Colorado. Jan., 1882.

FIRE INSURANCE—ACTION—CREDITOR.

A policy of fire insurance was payable to the creditor of the insured "as his interest may appear." *Held,* that the creditor had no right of action on the policy.

Action on a fire policy of insurance, payable to plaintiff "as his interest may appear." The plaintiff was a creditor of Mrs. Oray, the insured, the indebtedness being secured by trust deed upon the premises covered by the insurance. It does not appear in the pleadings what was the amount of the insurance or the amount due plaintiff. On demurrer to complaint.

H. Butler, for plaintiff.

Charles & Dillon, for defendant.

HALLETT, District Judge. If it appeared in the complaint that insurance was taken out by Mrs. Oray, and that the stipulation of the policy was, that the loss, if any should occur, should be paid to the plaintiff, all of it,—the entire sum,—a question would be presented as to the right of the plaintiff to recover on such an instrument, which is not very well settled in the authorities. Perhaps the weight of authority is that in such case the plaintiff would be entitled to maintain the action. That is to say, if two persons contract for the benefit of a third, the third party, although a stranger to the consideration, may maintain a suit upon that contract. But that is not the ease as presented here. It is entirely consistent with the allegations of this complaint that the sum due the plaintiff was much less than the amount for which the policy of insurance was issued. And at all events, whatever the fact may be as to that, the policy of insurance provided for payment to the plaintiff as his interest might appear. At the time of insurance he was a creditor of the party taking out the policy, and his indebtedness might be entirely extinguished or greatly reduced before the policy should mature. That was, perhaps, the reason for putting in the policy this clause in this phraseology, "payment should be made to him as his interest might appear." That is, more or less; the sum due him, whatever it might be; and upon that no right of action can arise to the plaintiff, because it is not a stipulation to pay the plaintiff the loss, all of it, whatever it may be, upon maturity of the policy; and that must be the agreement to enable the plaintiff, under a stipulation of this kind, to recover in the action. That is very well expressed in an opinion in Hartford Fire Ins. Co. v. Davenport, 37 Mich. 613. Mrs. Oray is the owner of this policy and entitled to sue upon it. Mr. Hatch has no right of action whatever. Demurrer sustained.

[1] {Reprinted by permission.}