

Law Report.

AN INSURANCE POLICY DECISION.—The Supreme Court of Illinois has recently rendered a decision of considerable importance to insurance interests, concerning the power of insurance companies to vitiate policies. The case involved was that of a butcher, (or rather the keeper of a meat shop), who kept a keg of saltpetre in his shop, notwithstanding that the terms written in his policy of insurance declared that the keeping of saltpetre should vitiate it. It also appeared that on one occasion he sold a quantity of saltpetre to a customer. The proof showed that it was customary for dealers in meat to use saltpetre in small quantities in their business. The court held that such customary use of the article implied a knowledge of the fact on the part of the underwriter; and that the mere fact of use, or of keeping for use, in a reasonable quantity, would not vitiate the policy. But a keg of saltpetre was, under the proofs, more than a reasonable quantity; and the fact of selling to a customer made the butcher a dealer in the article to such an extent as clearly to render the policy void under its terms.

SALE OF STOCK—DIVIDENDS ACCRUED.

In a case of *Currie vs. White*, in the Supreme Court of New York (March 4), it appeared that the defendant sold to the plaintiffs, by a contract dated February 18th, 1867, 1,000 shares of Hudson River Railroad stock at 128, the purchaser to pay interest on the purchase money, and the vendor to deliver, at his option, at any time during the year 1867. While this contract was pending, and in April, 1867, the capital stock was doubled, by the issue of new shares, each stockholder receiving a number of new shares equal to the number of old shares held at the time of the increase, on the payment of fifty per cent in cash. The whole of the new stock was taken by the stockholders on these terms. Dividends were also declared and paid in cash, as follows: On the 15th of April, 1867, four per cent. on the old stock, and on the 15th of October, 1867, four per cent. on the stock as increased, on both the old and new.

On the 18th of December, 1867, the vendor gave notice that he would perform his contract, and tendered the first 1,000 shares, and demanded the contract price—128 and interest. The purchasers offered to take the stock and pay this price, and also demanded the second 1,000 shares of the new issue, and the cash dividend. The vendor refused to comply with these demands, or to deliver the first 1,000 shares.

The plaintiffs, the purchasers, then sued to recover damages for the non-delivery of the first 1,000 shares mentioned in the contract, claiming the difference between the contract price, 128, and the highest price, 149, which the stock had reached before the trial; and also claiming the value of the second 1,000 shares, the new issue, less the price, 50, at which the same had been issued, and also the dividends.

The purchasers claimed these on the ground that they paid interest on the purchase money from the date of the contract, and were, therefore, entitled to the dividends and advantages accruing to the stock while it remained in the owner's hands awaiting delivery.

The Court, at special term, Jones, J., decided against these claims of the plaintiffs, and held that the contract was executory, operating as an agreement to sell, to be carried into effect on a future day; that the dividends declared and the additional stock issued became the property of the owner of the stock at the time they were declared and issued; that the owner did not, by such a contract, deprive himself of any profit which might accrue from the property, or of any advantages which might arise from its possession or use during the time he held it under his option to deliver; and that such profits or advantages

did not pass to the purchaser in the absence of an express contract that they should pass.

He also held that the measure of damage which the purchaser could recover on a breach of contract by the vendor was the market value of the stock on the day of the breach, and not the higher value which the stock might reach before the trial; that the market value on the day of breach was not equal to the contract price and interest, and that therefore the purchaser suffered no actual damage.

The plaintiffs appealed from all this decision to the General Term, and argued that the agreement to pay interest on the purchase money, from the date of the contract, controlled its interpretation.

That the contract contemplated that there was something existing to be bought and sold; that 1,000 shares of the stock, as it existed at the date of the contract before the increase, was the existing thing sold; that the vendor must deliver, with the stock, all the dividends and accretions which he has received pending the contract; and that his contract was not satisfied by the delivery of 1,000 shares of the stock after the increase.

That the agreement to pay interest bound the purchaser to keep the purchase money at all times in readiness to answer the vendor's demand for it, and also to pay interest on it; and that the vendor must be held to the reciprocal obligation of performing as at the date of the contract, and of delivering the stock as it then existed, with all the increments; that the purchaser's rights attached to the stock as it existed at the date of the contract; and that although the contract on its face bound the purchaser to pay the interest, and did not bind the vendor to deliver the dividends and accretions, such an obligation, though not expressed, could be implied as a correlative and reciprocal obligation.

That the vendor in this case, having received the dividends and increased stock, must deliver the same. The plaintiff's counsel cited many cases showing that where the purchaser had paid interest he was entitled to the increase, where that increase had accrued to the property in the shape of dividends, rents, additions to insurance policies, and to estates by the dropping of lives; and that it was inequitable that one party should receive interest, and also the profits and increase from the possession of the estate.

That the thing sold was the stock as it stood before the increase of the capital; that the new stock was issued one-half for cash and one-half as bonds; that to allow the defendant to perform his contract by the delivery of 1,000 shares of the stock, after such an increase, would be like allowing a man who sold 1,000 gallons of specific wine to mix that wine with 1,000 gallons composed one-half of the same wine and one-half water, and then to deliver 1,000 gallons of this 2,000 gallons of compound in performance of his sale; or to allow a man to sell stock before it was watered, and then to perform his contract by a delivery of watered shares.

They also claimed that the defendant had broken the contract, and that the plaintiffs were entitled to recover the highest market value of the stock, after the breach and before the trial, as the just measure of damages.

FAILURES IN MONTREAL.—A despatch dated March 15 says Smyth & Edminston, large boot and shoe manufacturers in McGill street, stopped payment to-day; liabilities stated at \$108,000. One of the partners in the firm of C. Dorwin & Co., brokers, left the city on Saturday, and his whereabouts cannot be discovered. It seems to be a fact that this old house has also suspended, and it is stated that Mr. Dorwin has taken \$8,000 with him. Extent of liabilities not ascertained. Mr. Dorwin's partner, Mr. Gault, is still here.

The Propeller, *Georgiana* was sold at Montreal, a few days since, to Mr. W. M. H. Irish, for \$8,500.

MONTREAL CIVIC AFFAIRS.

At the installation of the Mayor of Montreal, W. Workman, Esq., the following statement was made by him respecting the city affairs:

The financial statements, which in a few days will be laid before you, will exhibit the affairs of the city in a most prosperous condition. Notwithstanding that the city of Montreal, in comparison to other cities on the continent, is very lightly taxed, our revenue is ample for all purposes, and without any increased burthens upon the citizens, is annually increasing.

In the year 1866 it was.....\$621,834
In the year 1867 it was.....705,679
And the year just closed, 1868, it has risen to.....812,300

Our floating casual indebtedness to banks and other sources has been paid off; and had it not been for the very large amount we have, from the operation of the expropriation law, been compelled to deposit in Court for expropriation purposes, our cash account would exhibit a large balance on hand for employment, if we thought fit, in the redemption of our immatured bonds.

Whilst, upon the one hand, the actual revenue of the city exhibits these pleasing features, the consolidated liabilities and fixed assets of the Corporation, exhibit results which are not less gratifying. Although the present bonded or consolidated debt of the city is put down, in round numbers, at five million of dollars (\$5,000,000), it is, strictly speaking, not more than one million, because we have in fixed property and actual *bona fide* assets, the safe representative of four millions, yielding a corresponding revenue, so that in reality our taxation has only to provide for the interest on one million. That these gratifying results are properly appreciated in the financial world is fully demonstrated by the present price of our city obligations, as compared with other securities and with former years, in our money market—our seven per cent Consols having reached a premium of ten per cent.

It is to be hoped that the doubts and anxieties which have so long pervaded the Council, and the city generally, upon the question of the water supply, have found a solution, and will soon entirely disappear under the successful application of steam power, and an auxiliary pumping force. The present temporary derangement of this power, consequent upon some defect, not in the engine, but between the engine house and supply basin or settling pond, though certainly very inconvenient at this season, ought not to discourage, inasmuch as such "contretemps," or mishaps, are almost inseparable from new enterprises of this magnitude. All intelligent, impartial judgments will discern that a defect or derangement in the supply pipe which brings the water to be pumped would easily derange breast wheel, turbine wheel, steam, or any other power, and should, therefore, not be chargeable as an inherent defect against any of these modes of pumping. I entertain no doubts myself that in a few days the defect will be repaired, and the steam engine be again permitted to proceed with its work, fill the reservoirs, and supply the city as before. Let us earnestly hope that during the coming year our progress as to good results and further improvements in this important service may be equally successful, and that ere long a permanent and abundant supply of water, at all seasons of the year, may be secured to the city.

Our fire force and fire alarm system are equally creditable to the city. In true efficiency and prompt action in extinguishing fires, they are, perhaps, unrivalled on this continent; and with such perfect discipline and working as they exhibit, it is difficult to see, under a proper supply of water, how any extensive conflagration could again afflict our city. Everything in relation to the administration of these most important departments reflects credit upon all connected with them.