

Tessier, Cross, Baby, Bossé, J.J., September 26, 1889.

Street railway—Collision between tramway car and cart—Negligence of conductor of car—Responsibility of employer.

Held :—(Affirming the decision of the Court of Review, M.L.R., 4 S.C. 193), Where the respondent, a passenger on a street car, while standing on the platform or step of the car, was injured by a passing cart loaded with planks, that as the immediate cause of the accident was the conductor's want of vigilance in failing to stop the car (as he might have done) in time to avoid the collision, the appellants, his employers, were responsible. The fact that the respondent was standing on the platform at the time of the accident did not relieve the appellants from responsibility, inasmuch as the car was crowded, and he was permitted to stand there by the conductor, who had collected fare from him while he was in that position.—*La Cie. de Chemin de Fer Urbain & Wilscam*, Dorion, Ch. J., Cross, Baby, Church, Bossé, J.J., Nov. 23, 1889.

Insurance, Fire—Loss, if any, payable to person named in policy—Conditions of policy—Breach by owner of property—Preliminary proofs of loss.

Held :—(Cross and Doherty, J.J., diss.), following *Black & National Ins. Co.*, 24 L. C. J. 65, that where a policy of insurance against fire, taken out by the owner of real property, declares that the loss, if any, is payable to a person named therein, (without specifying the nature of his interest), such person becomes thereby the party insured, to the extent of his interest, and his right cannot be destroyed or impaired by any act of the owner of the property; (e.g. an assignment of the property insured without notice to the company); and he may make the preliminary proofs of loss in his own behalf. *National Assurance Co. & Harris*, Dorion, Ch. J., Tessier, Cross, Bossé, Doherty, J.J., Jan. 25, 1889.

Donation—Registration—Arts. 806-808 C.C.—Testamentary Executor—Substitution.

Held :—1. That the *don mutuel d'usufruit* between future consorts, by their contract of

marriage, in favor of the survivor, is subject to registration.

2. A testamentary executor, who has fulfilled the requirements of the will, and has left the movables of a substitution, created thereby, in the possession of the tutor to the institute (a minor), has no action against the tutor, upon the death of the institute within a year and a day from the death of the testator, to revendicate these effects for distribution among the substitutes,—the tutor being bound to account only to the substitutes or to the curator to the substitution.—*Marchessault & Durand*, Dorion, Ch. J., Cross, Church, Bossé, J.J., Nov. 23, 1889.

COUR DE MAGISTRAT.

MONTRÉAL, 5 juin 1889.

Coram CHAMPAGNE, J. C. M.

LEFAIVRE V. ROY.

Offres réelles—Domage—Cumulation d'actions—Evaluation du domage.

- JUGE :—1o. *Que des offres réelles qui ne sont pas renouvelées avec le plaidoyer ne valent rien ;*
 2o. *Que lorsque le domage a été causé par plusieurs personnes en même temps, le demandeur ne peut prendre une pareille action en domage contre chacun d'eux séparément, mais il doit les poursuivre ensemble pour le montant du domage qu'il a souffert ;*
 3o. *Que celui qui a causé du domage ne peut offrir de mettre les choses endommagées dans le même état qu'avant, mais qu'il doit payer le montant du domage en argent.*

PER CURIAM :—Le petit garçon du défendeur et deux autres petits garçons ont démoli en jouant une petite bâtisse appartenant au demandeur. Les parents de ces enfants, informés de la chose, font offrir au demandeur de rétablir sa bâtisse comme elle était auparavant, ce que le demandeur a refusé, exigeant la valeur du domage en argent. Deux semaines après, le demandeur estimant le domage à \$5 prend trois actions de \$5 chacune contre le père de chacun de ces enfants. Les défendeurs firent motion que les trois causes fussent réunies, et cette motion fut accordée. Ils avaient après la signification de l'action fait estimer le domage à \$2, et les ont offert au demandeur sans frais. L'offre de \$2 au-