of gross mismanagement amounting to *dol*, and render the directors personally liable, jointly and severally, for losses sustained by the shareholders by reason thereof.

5. Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are nevertheless responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part.—*McDonald* v. *Rankin*, Pagnuelo, J., Dec. 13, 1890.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER X.

NOTICE OF LOSS.

[Continued from p. 37.]

§ 244. *Examples of particular requirements as to notice.*

In *Scott* v. *Niagara Dist. M. Ins. Co.*,[1] where a particular account was to be furnished within 30 days after loss, parol waiver of this condition was relied on by the plaintiff. The action, however, failed, it being held that a substituted parol contract cannot be set up against a sealed policy.

According to the Civil Code of Lower Canada, Art. 2478, the insured must, with reasonable diligence, give notice of loss to the insurer; and he must conform to such special requirements as may be contained in the policy with respect to notice and preliminary proof of his claim, unless they are waived by the insurer. If it be impossible for the insured to give notice or to make the preliminary proof within the delay specified in the policy, he is entitled to a reasonable extension of time.[2]

By the policies of some companies formal proofs, after notice of fire, are not required. The company undertakes, under such policies, to determine the amount of the loss at their own diligence.

In *Markle* v. *Niagara Dist. M. F. Ins. Co.*, 28 U. Ca. Q. B. Rep., the verdict for plaintiff was set aside. Incumbrances sometimes are required to be declared in 30 days after loss; incumbrances before and those after policy—sometimes one, sometimes both. This condition is a condition precedent. There being incumbrances not mentioned by insured, he lost his case. Condition may read so as to require declaration of no incumbrances, where none are.

In the case of *Stimpson* v. *Monmouth M. F. Ins. Co.*,[1] as to notice of loss to be given, it was held that the insurer's sub-agent writing to the head office, at the insured's request, (though this fact was not stated in the agent's letter) was sufficient notice of the fire; they could look out upon that.

If, after proofs, officer of the company visit the place of the fire and refer to the proofs, yet do not ask them to be put into better shape, and afterwards resist payment for particular reasons; then, when sued, go upon the defect of preliminary proofs, the insurance company must be held estopped, although the policy provide that no condition shall be held waived except by writing endorsed on or annexed to the policy, and signed by president or secretary. Well, what is the use of such clause against waiver? It is said that the insurance company may be estopped, but not thus would it be if defendants were seeking exemption from some obligation of the policy. In the case of notice and particulars, the conduct afterwards of insurance company may be such as to make it too late for them, at the trial, to object to form.[2]

Scott et al. v. *Phœnix Ass. Co.*[3] was a case in the Privy Council in which a judgment of the Court of Appeals of Lower Canada, reversing one rendered in the King's Bench at Montreal and dismissing appellants' action, was confirmed. The appellants had taken a policy which obliged them to procure and deliver to the insurers with particulars of loss a certificate under the hand of a magistrate,

[1] 25 U. C. Q. B. Rep.

[2] For example, see *Campbell* v. *Monmouth Mut. F. Ins Co.* (Maine), 5 Bennett's cases.

[1] 47 Maine, 5 Bennett, 400; approved in *Campbell* v. *Same Company*, A.D. 1871, 5 Bennett's cases.

[2] *Blake* v. *Exch. Mut. Ins. Co. of Philadelphia*, 12 Gray's R. See Waiver, *post*.

[3] Stuart's L.C. Reports.