NOTES OF CASES.

SUPERIOR COURT.

DISTRICT OF TERREBONNE, March 24, 1879.

DE BELLEFEUILLE et al. v. PICHÉ.

Seigniory—Censitaire holding more land than set down in the cadastre—Survey to be made before suit.

The plaintiffs alleged that by error the defendant's property within their seigniory was set down in the *cadastre* of the seigniory as containing 335 arpents, 8 perches, whereas it really contained 1084 arpents, 35 perches. They claimed $159.20 for five years' arrears of *rente* on the excess of land on which nothing had been paid. They also claimed $100 for another cause.

The defendant pleaded to the demand for *rente* that the plaintiffs could not claim *rente* for more than was entered in the seigniorial schedule, the *cadastre* being a final title between the parties.

BELANGER, J. The question raised by the plea is whether the plaintiffs are entitled to more *rentes constituées* than for the extent of land set down in the *cadastre* of the seigniory, and if so, on what conditions. The defendant invokes the preamble and Sect. 1 of 32 Vict., c. 30 (Que.) That Act was passed to avoid the necessity of renewal deeds in certain cases, and to give a personal action against the holders of the lands. It does not affect or amend in any respect the Act, 29-30 Vict., c. 30, which was passed to provide for the correction of errors in the schedule of a seigniory. The plaintiffs are, therefore, entitled to avail themselves of the last mentioned Act, and the case comes under Sect. 2: "Any *censitaire* whose name shall have been inscribed on the schedule as holding an extent of land less than that which he actually possesses, shall nevertheless be bound to pay the *rente* for the whole extent of land which he possesses; and the seignior, after he has caused a survey to be made establishing the extent of the land in question, may claim from the *censitaire* payment of the *rente* due on such land, at the rate fixed for that part thereof which has been set down in the schedule."

According to the clause cited above, a survey should have been made establishing the extent of the land, before the institution of the action, and notice thereof should have been given to the *censitaire*. Here, there was no survey until long after the action was taken out, and notice was not given, for I cannot consider that the bailiff's certificate on the back of the surveyor's notice makes proof of the service of the notice. Bailiffs are officers of the Superior Court for judicial matters, and outside of such matters their certificate proves nothing. The *exception en droit* of the defendant is, therefore, maintained, and the part of the demand asking for $159.20 is dismissed. The other portion of plaintiff's demand is not proved.

Action dismissed.

C. L. Champagne, for plaintiffs.
De Montigny & Co. for defendant.

MONTREAL, March 31, 1879.

DUHARME v. THE MUTUAL FIRE INS. CO. OF THE COUNTIES OF CHAMBLY, LAVAL AND JACQUES CARTIER.

Fire Insurance—Misrepresentation as to encumbrances—Delay to file claim—Waiver.

The plaintiff sued for $1,000, amount of insurance on a house, furniture, &c. The Company pleaded, *inter alia*, that by his application, which formed the basis of the insurance, plaintiff had falsely declared that there was no encumbrance on the property, whereas there was a hypothec exceeding $107; and also, that he could not recover because he did not file his claim within 20 days, as provided by the policy and C. S. L. C., chap. 68, sec. 13.

In the application the 12th question reads:—"What encumbrance, if any, is now on said property?" And the answer, "Not any." Plaintiff, examined as a witness, admitted that the last $100 of the purchase money, with interest, was only paid on the 26th of August, 1878, the fire having taken place on the 3rd of January, 1878. He subsequently sold the land for $232.

JETTÉ, J., gave judgment for $730, property of the value of $270 having been saved. His Honor held that the Company had waived its right to object on account of the delay, as the Board, by its resolution of March 26th, 1878, had resisted the claim on other grounds alone. He also held that as the mortgage on the property did not affect the risk, and as