

The plaintiff, mother of Ferrier Mathieu, a minor, brought an action for \$200 damages, against the defendant, a constable duly appointed to maintain order during public worship in the parish church of Lachenaie.

The complaint was that the constable had maliciously and improperly interfered with the plaintiff's son, by ordering him to kneel during portions of the service, and had put him to shame in the presence of the congregation. The plaintiff sued as natural tutrix for the damages caused to her son.

The defence was first, absence of notice under C. C. P. 22, the defendant being a constable duly appointed to preserve order in the church; and secondly, that the plaintiff had no right of action as natural tutrix.

The Court maintained the defence,

"Considérant que le défendeur remplissait des devoirs publics, et que conformément à l'art. 22 du Code de Procédure Civile, il avait droit à un avis d'un mois, lequel avis ne lui a pas été donné;

"Considérant que la demanderesse ne réclame que des dommages soufferts par son dit fils;

"Considérant qu'elle n'a pas qualité comme tutrice naturelle et qu'elle ne pouvait agir que comme tutrice dûment nommée en justice, ce qu'elle n'a pas fait;

"Considérant de plus que le défendeur a agi dans les limites de ses attributions, et que le dit Mathieu contrevenait à l'ordre, en ne se tenant pas comme il le devait dans la dite église;"

etc.

Action dismissed.

C. Lebeuf for plaintiff.

Prévost & Turgeon for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, January 20, 1883.

Before DORION, C.J., MONK, RAMSAY & CROSS, JJ.

LA FONDERIE DE JOLIETTE (plff. below) Appellant,

& LA CIE. D'ASSURANCE DE STADACONA CONTRE LE FEU ET SUR LA VIE (deft. below), Respondent.

Insurance (Fire)—Waiver of condition requiring notice of other insurance.

By the condition of a policy of fire insurance, the insured was required, on pain of forfeiture, to notify the company of any other insurance effected on the property. The company, after the fire, and after knowledge that other insurance

had been effected, supplied forms for making claim, and joined in an arbitration to settle the amount of damage, and otherwise treated the contract as binding on the company. Held, that this was a waiver of all objection based on the condition requiring notice of other insurance.

The action was based on a policy of fire insurance for \$2,000, and the case was dismissed in the Court below, on the ground that the plaintiff had violated one of the conditions of the policy, which required notice to the company of any other insurance on the property existing at the time, or which might be effected thereafter. The Court held that before the fire occurred the appellant had effected two other insurances on the same buildings, one in the North British and Mercantile Insurance Company, and the other in the Citizens' Insurance and Investment Company, and that the respondent had not received notice of such other insurance, as required by the condition of the policy.

Pagnuelo, Q.C., for appellant, submitted that the judgment contained an error in stating that the insurance in the Citizens' Company was subsequent to the policy sued on. As a matter of fact it was antecedent, and was mentioned in the policy. The condition relied upon by the opposite party simply required notice of other insurance, and notice in writing was not necessary. The company respondent had received notice of the insurance in the North British Company. The Stadacona Company in 1876 and in the beginning of 1877 had suffered considerable losses, the last of which was by the fire in St. John in June, 1877. Immediately after that fire the directors of the Stadacona decided to liquidate, and the secretary on the 28th June, telegraphed to all the agents to the following effect:—"No new business and no renewals to be taken. Notify policy holders to insure elsewhere, and the unearned premium will be returned hereafter," etc. The appellant, on being notified of the contents of this despatch, resolved, on the 3rd of July, to effect another insurance in the North British Company for the same amount. This was done with the knowledge of the Stadacona's agent, Mr. McConville. On the 5th of July, the agent was notified from the head office not to return any cash in acknowledgment of unearned premium. Other telegrams and circulars succeeded this, and finally, on the