ed that judgment should be given in their favor—were at liberty to present the motion in question on the 26th of September, the same day that the plaintiff presented his to the same effect. Both parties have in this respect the same delay and the same right.

It is necessary, therefore, to consider the effect of the answer of the jury to the 8th question, as it presents itself, and to see whether the condition contained in clause 12, should have its full effect, not having been observed by the plaintiff, inasmuch as his claim (though in the opinion of the jury neither false nor fraudulent) was, nevertheless not made "*in due form*," before the 14th day after the fire, or even afterwards.

The presentation of the claim within the delay and according to the form prescribed by the conditions of the policy, is a matter required both by English and French law, and if these forms and conditions are not strictly observed and fulfilled, within the prescribed time, the result is a forfeiture, and a prescription in favor of the insurers, and the insured cannot bring his action. I have to repeat here what I cited from *Quenault*, when I rendered judgment in the case of *Racine* v. *The Equitable Insurance Company*, (6 JURIST 89). In France the conditions of insurance policies, of the same nature as that which creates the difficulty in this case, are regarded as strictly binding on the insured. Quenault, Assurance Terrestre, No 252. "Si les assureurs ne satisfont point à la demande que l'assuré leur fait à l'amiable, il doit intenter contre eux l'action en paiement de l'assurance avant l'expiration du delai fixé pour la prescription de cette action." Further on, in his translation of the work of Marshall, chap. 5, p.377–384, he cites several judgments of the English Courts, which leave no doubt as to the necessity of the insured making proof of the production of his claim in due form before he can recover, even in the event of a *formal verdict* in his favor. It must be the same, and with a great deal more reason, in a case like this where the verdict is only special and qualified. It admits the claim and fixes the amount; but it expressly finds the fact that the insured did not make his claim in due form "according to the conditions of the policy," unless no meaning be attached to the answer to the 8th question, which is neither reasonable nor possible.—The Court cannot but give effect to this verdict, which, although as to the fact, and to a certain point is in favor of the plaintiff, is in law in favor of the defendants. I regret that it should be so, and that the plaintiff should fail on a point which may seem weak, after obtaining from the jury answers favorable to the real merits of the case, since the jury exonerates him from the reproach of fraud or false representation. But the mode in which I have viewed the case and framed my judgment, will have this advantage, that the case being reduced to a question of law, the plaintiff may have it reviewed at small cost without having recourse to a new trial. The second motion of the plaintiff is rejected, and the third motion of the defendants (for judgment) is granted.

*Perkins & Ramsay*, for the plaintiff.

*Torrance & Morris*, for the defendants.

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## SUPERIOR COURT.

November 28th.

## DORWIN ET AL. v. THOMSON.

*Promissory Note—Forgery of Endorsation—Proof.*

*Held*, that the genuineness of the signature to or endorsement upon a promissory note ceases to be presumed the moment the defendant denies it in his plea supported by affidavit; and the plaintiff must make proof of the same.

*Held*, also, that in the circumstances the plaintiffs were guilty of negligence in accepting the note without sufficient caution.

MONDELET, J. This is an action for the recovery of $2500, being the amount of a promissory note dated 2nd March, 1866, signed by Daniel McNevin, to the order of Johnston Thomson, the defendant, payable at the Bank of Montreal. The defendant admits having signed as endorser a note which was then for $500, but adds that since he so endorsed it, it was made into a note for $2500, and pleads that this forged note is null and void. The defendant has supported his plea by a special affidavit embracing an absolute traverse and denial of the genuineness