

On the street crossing in question snow had accumulated, partly from being shovelled there from the sidewalk and partly from the action of passing sleighs, so that there was a descent of some inches from the crossing to the sidewalk, and the plaintiff slipped on this descent and was injured.

Held, per HAGARTY, C.J.O., and MACLENNAN, J.A., that the municipality was not liable.

Per BURTON, and OSLER, JJ.A., that there was evidence of negligence to go to the jury.

In the result the judgment of the Common Pleas Division was affirmed.

Walkem, Q.C., and *Shepley*, Q.C., for the appellants.

J. B. Hutcheson, for the respondents.

From Meredith, C. J.]

[May 12.]

MCPhillips v. LONDON MUTUAL FIRE INSURANCE CO.

Fire insurance—Assignment of insurance before loss.

A policy of insurance upon chattels may, before loss, be validly assigned by the insured to the mortgagee of the buildings owned by the insured in which the chattels are, and the assignee may, in the event of loss, recover in his own name.

Judgment of MEREDITH, C.J., affirmed.

E. R. Cameron, for the appellants.

Aylesworth, Q.C., for the respondent.

From Q. B. Div.]

[May 12.]

FARWELL v. JAMIESON.

Landlord and tenant—Distress—Goods of stranger—Person in possession
"under or with the assent of" the tenant—R.S.O., ch. 143, sec. 28,
sub-sec. 3.

The plaintiffs were let into possession of certain demised premises by the agent of the tenants, who afterwards repudiated the agent's authority and refused to recognize the plaintiffs as sub-tenants. The defendant, who was head landlord, in the meantime distrained the plaintiffs' goods for arrears of rent, and the plaintiffs brought this action to recover damages.

Held, per HAGARTY, C.J.O., and OSLER, J.A., that notwithstanding the tenants' repudiation of the agent's authority the plaintiffs were in possession "under" the tenants, within the meaning of sub-section 3 of R.S.O., ch. 143, sec. 28, and the distress was lawful.

Per BURTON and MACLENNAN, JJ.A., that the right of distress is limited to cases where some privity exists, and the distress was unlawful.

In the result the judgment of the Queen's Bench Division, dismissing the action, was affirmed.

Kappele and *J. Bicknell*, for the appellants.

Kilmer and *W. H. Irving*, for the respondent.