sant, opposant said: The property had been seized under my writ, which, at the time of second seizure, had been stayed by opposition, but still the second seizure was null.

Our opinion has always been that the oppositions in both cases must have been decided according to the position of the respective cases, *when the oppositions were filed;* subsequent action could not affect them.

The legal proposition stated in both oppositions was the same—*i.e.*, a second seizure cannot, under art. 642 of Code of Procedure, be made, although the writ under which the first seizure has been made had passed out of the sheriff's hands.

We are,
Your obedt. servts.,
BROOKS, CAMIRAND & HURD.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, December 17, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LA COMPAGNIE D'ASSURANCE DES CULTIVATEURS, etc., (defts. below), Appellants; and GRAMMON (plff. below), Respondent.

Insurance—Premium paid by note—Failure of insured to pay note at maturity does not annul the policy, where note was accepted as cash, and receipt acknowledged by the policy.

The respondent obtained an insurance from the appellants' company for $430, and the premium was paid by a promissory note for $4.30, payable three months after date. The policy was delivered to the insured, and by the terms of the policy the sum of $4.30 was acknowledged to have been received. A fire occurred, and the company refused to settle the loss, because the promissory note had not been paid at maturity. The court below held that the company, having by the policy acknowledged payment of the premium, could not be permitted now to plead non-payment in defence to the action. The judgment (St. Hyacinthe, Sicotte, J., 8th July, 1878,) was in these terms:—

"La cour, etc.....

"Considérant qu'il est prouvé par le contrat et police d'assurance, octroyé en la forme ordinaire et permise, le 22 Décembre, 1875, que la défenderesse, en considération de la somme de $4.30, qu'elle reconnut avoir reçue, assura le demandeur contre les pertes et dommages par le feu, jusqu'à concurrence du montant de $430, sur une maison indiquée plus au long dans l'application, évaluée à $300, et son contenu, évalué à $130, pour trois ans;

"Considérant qu'il est prouvé que le demandeur a souffert des pertes et dommages par le feu qui a brûlé et détruit, le 14 mai, 1876, la maison susdite et son contenu, pour et de la somme de $400;

"Considérant que le demandeur s'est conformé à tout ce qui était requis de lui, pour informer la défenderesse de cette perte, et obtenir d'elle l'indemnité qu'elle lui devait;

"Considérant que le contrat d'assurance est réglé d'une manière finale et absolue par l'affirmation faite dans la police, par la dite compagnie d'assurance, et qu'elle ne peut être admise à prouver que cette affirmation est fausse, et détruire cet acte par preuve verbale;

"Considérant que la prime peut être payée par toute valeur acceptée par l'assureur;

"Considérant que la preuve constate que le demandeur a agi de bonne foi, et que la defenderesse a connu les faits de l'agent employé par elle pour effectuer l'assurance avant l'octroi de la police;

"Considérant que le demandeur a prouvé sa demande, et que la défenderesse est mal fondée dans ses défenses, condamne la défenderesse à payer au demandeur la somme de $400, avec intérêt du 28 Octobre ,1876, jour de l'assignation, et les dépens distraits aux avocats du demandeur."

The appellants urged that the taking of a note did not operate novation; that the intention of the parties was that the insurance should be valid until the note matured; but that if the note was not then paid the contract was cancelled. The cases of *Jones* v. *Lemesurier*, 2 Rev. de Leg., 317, and *Noad & Lampson*, 11 L. C. R. 29, were referred to.

Sir A. A. DORION, C.J., said the court was of opinion to confirm the judgment. The note was received as money, and the fact that it was not paid at maturity could not annul the contract in the absence of any stipulation to that effect. The insurers chose to give the insured credit, and they could not now escape liability.

Judgment confirmed.

Loranger, Loranger, Pelletier & Beaudin for Appellants.

Hon. F. X. A. Trudel for Respondent.