

Q. B.]

NOTES OF CASES.

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1880 finally quashed in so far as it changed the limits of the High School Districts.

*Held* (HAGARTY, C. J. dissenting), reversing the decision of GALT J. that the municipalities of the Townships of Winchester and Williamsburg were still liable to contribute their proportion towards the erection of the High School.

*McCarthy* Q. C. for the appeal.

*Bethune* Q. C. contra.

CAMPBELL V. VICTORIA MUTUAL INSURANCE COMPANY.

*Fire insurance—Misrepresentation—Incendiarism.*

Action on a fire policy dated 21st May, 1879, on ordinary contents of a barn, which was at the time of the insurance, empty, and on other articles of personal property. In the application for the insurance, dated 13th May, 1879, plaintiff answered "No," to the question, "Is there reason to fear incendiarism, or has any threat been made?"

At the trial it appeared that one M. had threatened to beat the plaintiff, and the latter being alarmed, had sent for the defendant's agent and had the premises insured, that he would not have insured but for his fear of M., and that he had sat up and watched for a week, and that he believed the premises had been set on fire, and that he had admitted this to an officer of the defendant's after the fire, which occurred on 28th Oct., 1869. At the time of the fire the barn contained some grain and hay, and a threshing machine, for the loss of which an action was brought. One of the conditions on the policy was, that if the assured "misrepresent or omit to communicate any circumstance, which is material to be made known to the Company in order to enable them to judge of the risk," the policy would be avoided.

*Held*, ARMOUR J. dissenting, that the plaintiff could not recover, on the ground that, the insurance having been effected solely on account of his fear of M., the answer to the above question was untrue.

*Per* CAMERON, J., the question is equivalent to "have you reason to fear, or do you fear incendiarism?" and, though the bodily threat does not furnish valid grounds for believing that incendiarism was to be feared from the person threatening, yet, since the insurance was effected on account of such fear, there was a clear

misrepresentation in answering the question, and it made no difference that the property to be covered by the policy was not yet in existence.

*Per* ARMOUR, J., the word "incendiarism" commonly applies to buildings only, and its meaning ought not to be extended in this case to cover personal property. The property insured was not of an inflammable nature, and the question would be insensible if so extended. The question should be construed strictly with reference to some particular ground of fear; otherwise, the answer "No" referring to the first part only, viz: "Is there reason to fear incendiarism?" would be in every instance untrue; for every insurance is effected because the assured fears the happening of fire by accident, neglect, or design. And the evidence in this case showed that there was no such reason as, operating on the minds of the majority of prudent men, would cause them to fear incendiarism, and therefore the question was truly answered.

The question was also properly answered as to property intended to be covered by the policy, but not then in existence, as to which no fear could exist.

*Lount*, Q. C., for plaintiff.

*McCarthy*, Q. C., for defendant.

IN RE LEIBES V. WARD.

*Prohibition—Deputy Judge—Jurisdiction of—Powers of to give judgment outside of Division to which his deputation refers.*

Under the authority of the following deputation:—"Belleville, Ont., 24th July, 1880. I hereby appoint E. B. Fralick, Esq., Barrister-at-Law, as my Deputy to hold the 2nd Division Court of the County of Hastings on Monday the 26th day of July instant at the Town Hall in the Township of Sidney.—T. A. Lazier, Junior Judge, C. H.," the learned gentleman therein named tried the case at the time and place appointed but delivered his judgment according to a postponement made for that purpose on the 2nd August following at the judge's chambers, Belleville, outside the limits of the 2nd division, but within the county, without having named a subsequent day and hour for delivery thereof in writing at the clerk's office.

*Held* (1) That the word "Judge" in s. 20 of R. S. O., cap. 47, includes the Junior Judge, and