

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

pany and its said agent, or against the latter as the agent of the company, or against either of them.

Held, that the insurance premiums in question were personal property of the company, and, therefore, assessable under 43 Vict. c. 27, s. 3., and under that enactment, both the company and agent were properly assessed for the income, which the premiums constituted. And the fact that the premiums, having been previously sent by the agent, after collection, to the head-office in Montreal, were not in the municipality of Kingston, when the assessment was made, did not make any difference.

Britton, Q.C., for the plaintiff.

Walkem, Q.C., and *Agnew*, for the defendants.

Proudfoot, J.]

[June 25.]

BANK OF BRITISH NORTH AMERICA V.
WESTERN ASSURANCE CO.

Marine Insurance—Condition precedent—Adjustment—Double insurance—Contribution.

Where by a certificate of insurance, representing and taking the place of a policy, it was provided, as the condition of payment, that all claims should be reported to the Union Marine Insurance Company of Liverpool as soon as the goods were landed or the loss known to be adjusted according to usages there, and the special condition of the contract of insurance.

Held, that the *adjustment* by the Marine Insurance Co. was not a condition precedent to the plaintiffs' right to recover. All that was required to be done by the insured was duly to report to that company the claim to be adjusted.

To constitute a double insurance there must be two or more insurances on the same subject, the same risk and the same interest, and variations in the several policies as to the extent of liability cannot be said to vary the risk.

If such concurrent policies have been taken, and subsequently cancelled without communication with and without the assent of another insurer, the remaining insurer is only liable for the rateable proportion of the loss. If, on the other hand, the several policies exist in full force at the time of action brought against one of the insurers, the defendant is liable for the whole amount of the loss, but has his remedy over against the other insurers for contribution.

S. H. Blake, Q.C., *Hardy*, Q.C., and *Wilkes*, for the plaintiffs.

Bethune, Q.C., and *R. M. Wells*, for the defendants.

Ferguson, J.]

[June 30.]

CARLING BREWING CO. V. BLACK.

Assignee in trust for creditors—Notice of creditor's claims—Distribution—Liability of trustee.

The defendant was assignee of B. in trust for creditors. After the assignment he got possession of B.'s books, and in the ledger saw that the plaintiffs were credited with a certain sum. B. also told him that the plaintiffs had sued him, and it appeared that writs of execution were in the sheriff's hands. The defendant inserted a notice in the local newspapers for creditors to send in their claims, and that he would distribute the estate on or before a certain day, having regard only to those claims of which he had notice. The plaintiffs did not send in their claim, but wrote to the defendant advising him of it, which letter the defendant admitted he received on the day of the distribution of the estate, but after he had sent off to the creditors bank drafts for their dividends. He made no effort to stop payment of the drafts.

Held, that the defendant had notice of the plaintiff's claim within the meaning of 46 Vict., cap. 9, sec. 1, and that he was liable to the plaintiffs for the amount of their dividend.

Street, Q.C., for the plaintiffs.

Meredith, Q.C., for the defendant.

Ferguson, J.]

[July 2.]

BECHER V. HOARE.

Will—Mortmain Acts—Charity—Imperfect assignment.

H. S., by his will, bequeathed certain pure and impure personalty to the London City Mission, voluntary charitable organization, and died in 1865. In 1866 A. S., his heiress and next of kin, sent a signed writing to the executor of the will, in which it was recited that doubts might arise whether the impure personalty passed to the executor in trust for the charity, declared her acquiescence, in what she said she knew had been the testator's intention, viz.: that the whole of the personalty, pure and impure, should be treated