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INSURANCE DECISIONS.

PROVINCE OF QUEBEC—SUPERIOR COURT.

February, 1881.

McNICHOLS es qual. v. CANADA GUARANTEE CO.

Official assignee—Surety—Liability of surety for default of official assignee acting under appointment of creditors.

The demand was against the defendant as surety for the late Alphonse Doutre for the due performance, fulfilment and discharge of the duties appertaining to the office on employment of an official assignee for the electoral district of Montreal.

The declaration alleged the insolvency of one George L. Perry, and the appointment of Doutre as official assignee to the estate, and Doutre took possession on the 11th April, 1876, and died on the 15th May, 1879; that plaintiff was then appointed assignee, and the sum of $364.42 was found to be due to the estate of Hughes by Doutre.

The defendant pleaded that at the time when Doutre became indebted in the sum claimed from the surety, he was not acting in the character of an official assignee, or as an employee of the Crown or public officer, in which capacity only the defendants by their bond became responsible for his acts. That on the 9th of May, 1876, Doutre was appointed assignee for the creditors, and thereby ceased to act as an official assignee, and from that date the surety became freed from any liability for the future as to any acts or defaults of Doutre subsequent to that date.

TORRANCE, J. It is admitted that the indebtedness of Doutre arose after the 9th May, 1876, that is, after his appointment as creditor's assignee. In "Delisle *et al.* v. Letourneux," Mr. Justice Johnson has already held (3 Legal News, pp. 207-8,) that the bond covered the defaults of the official assignee when acting as assignee of the creditors. On the other hand, it has been held by Chief Justice Hagarty that the bond did not cover defaults of the creditors' assignee. The ordinary rule is that the obligation of the surety is *strictissimi juris, et non extenditur de persona ad personam.* If the case came up for the first time, the Court might possibly apply these rules in the present case; but the only reported judgment is that of Mr. Justice Johnson in this Court, and I deem it right to follow the case of "Delisle *et al.* v. Letourneux" until reversed by a higher court.

Judgment for plantiff.

ARMSTRONG v. THE NORTHERN INSURANCE COMPANY.

Fire Insurance—Claim not made within delay stipulated by the policy.

The demand was to recover, under a fire policy, for loss by fire.

The defendant pleaded a number of pleas. 1. That the plaintiff who claimed for her absentee husband, the owner of the property, had no quality to claim. 2. That E. H. Bell, the party insured, had no insurable interest. 3. That it was a condition of the policy that unless the claim were made within three months after the fire, all benefit under the policy should be forfeited; that no claim was made within three months. 4. That an irregular, illegal claim was made by plaintiff within twenty days after the fire was immediately rejected, and no action was taken within twelve months, and it was a condition that unless an action was taken within three months after rejection the claim should be forfeited. 5. That the claim was fraudulent.

TORRANCE, J. The Court overrules the first and second and fifth pleas, but finds the third and fourth sustained by the evidence. The eleventh condition of the policy has not been complied with, and no waiver by the Company has been proved.

Action dismissed.

QUEEN'S BENCH.

CAMPBELL v. VICTORIA MUTUAL INSURANCE COMPANY.

Fire Insurance—Misrepresentation—Increndiarism.

Action on a fire policy dated May 21, 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 May, 13, 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 after the fire, which occurred October 28, 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 of 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 voided.

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

NICHOLSON v. PHŒNIX INS. CO.

In Banco.] [November 22, 1880.

Insurance—Grocery—Sale of Liquor—Non-avoidance of Policy.

Held, that by insuring a village "grocery," an Inurance Company had notice that liquor might be sold therein, and that the non-disclosure of the fact did not void the policy.

COMMON PLEAS.

[March Term, 1880.

DANCY v. BURNS.

Shipping—Stranding to save crew—General average.

Where a vessel was driven on a lee-shore, and becoming disabled so that she could not work off, and after the anchors had been let go and had dragged until the vessel began to pound on the bottom, the master, with the view not of saving the cargo, but of enabling the crew to escape, headed her round to the shore, and, in consequence of the stranding, the cargo was saved.

Held, that the cargo was not liable to general average.

ONTARIO SUPREME COURT.

GALLAGHER, Appellant, v. TAYLOR, Respondent.

[February, 1881.

Marine Policy—Total loss—Sale by Master—Notice of Abandonment.

This was an action brought against the appellant to recover, as for a total loss, the amount insured by appellant, as one of the underwriters, upon a marine policy issued by the Ocean Marine Insurance Association of Halifax, upon the shallop "Susan," belonging to the respondent, alleged to have been totally lost by a peril insured against. The vessel stranded on the 6th July, near Port George, in the County of Antigonish, adjoining the County of Guysboro', where the owner resided. The master employed surveyors, and on their recommendation, confirmed by the judgment of the master, she was advertised for sale on the 7th July, and sold on the 11th July. The captain had telegraphed to the agents of the vessel in Halifax, who informed defendants company, but he did not give any notice of abandonment, and did not endeavor to get off the vessel. The vessel, valued at $1,200, insured for $800, was sold for about $105 on the 11th July, and was immediately got off, and afterwards used in trading and carrying passengers.

Held, that the sale by the master was not justifiable, and that the loss was not such a loss as to dispense with notice of abandonment in claiming for total loss.