

for money had and received to their use, to recover back the sum improperly demanded and paid; but if at the time they paid the money they knew, or might upon inquiry have been informed of the grounds upon which they could have resisted the claim, they cannot afterwards recover it back, for this would open a door to infinite litigation. It seems too, as Mr. Sergeant Marshall conceives,¹ that even after the insured has recovered the loss by process of law, the insurers receive intelligence of fraud which they could not possibly have known whilst the suit was depending, they may in that case maintain an action to recover back the money.² If money be actually paid, it cannot be recovered back without proof of fraud, but a promise to pay, as by an adjustment, is not binding, unless founded on a previous liability. *Herbert v. Champion*, 1 Camp. 134.

These observations, though applied by the learned sergeant to marine insurances, appear to be equally applicable in principle to insurance against fire.

Adjustment under a policy if by error (money not paid) may be corrected. *Herbert v. Champion*, 1 Camp. If the money be paid, unless there be fraud, it cannot be recovered back in England. *Id.*

If the underwriter pays a loss on a policy, and afterwards finds that a warranty was not complied with, he may recover back the money paid. 1 Term R. 343.

§ 322. *Actions of damages.*

An insurance company after fire at insured's factory resisted paying, accumulating law process after law process against assured, whereby he was prevented getting possession of his machinery in so far as saved, and lost chance to sell it, or to set to work again. The insurers, after the fire, took the *sauvetage* into their possession, putting part of it into a locked place. The insurers were held liable for damages to some of the things so taken by insurers into their possession—26,000 francs; also for *procedures abusives*, 5,000 frs., besides insurance money.

The insurance company contended that, as to damages, 5,000 francs, it could not be made pay them, the only damages for *retard* to pay money being the interest. But it was held that damages had been lawfully allowed. Cour de Cassation, 13th January, 1873, p. 148 J. du Pal. of 1873. This is called *jurisprudence constante* by the Reporters. As to the damages for depreciation, they were allowed, too, though the *assuré* allowed the company to take possession. It was held that a *mandat tacite* had been by the assured to insurers, and that the latter had to *veiller*. Yet the *mandat* was not *sularié*.

[THE END.]

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, June 27.

Judicial Abandonments.

David Courchène, trader, l'Avenir, June 23.

Curators appointed.

Re Hormidas Barrière.—Bilodeau & Renaud, Montreal, joint curator, June 19.

Re Joseph Daigneau.—Bilodeau & Renaud, Montreal, joint curator, June 19.

Re Bernadin Desbiens, trader, Hébertville.—H. A. Bedard, Quebec, curator, June 17.

Re T. A. Duval & Co.—Bilodeau & Renaud, Montreal, joint curator, June 20.

Re Henry Gardner, trader, St. Ferdinand d'Halifax.—H. A. Bedard, Quebec, curator, June 23.

Re Adélarde Gravel.—C. Desmarteau, Montreal, curator, June 23.

Re H. B. Lafleur, Ste. Adèle.—Kent & Turcotte, Montreal, joint curator, June 18.

Re Ida F. Tenney, Montreal.—A. F. Stevenson, Montreal, curator, June 23.

Dividends.

Re J. Bte. Adam.—First dividend, payable July 16 C. Desmarteau, Montreal, curator.

Re F. Barbeau, Montreal.—First and final dividend, payable July 15, Kent & Turcotte, Montreal, joint curator.

Re François Bourgoing, trader, Tadoussac.—First and final dividend, payable July 13, N. Matte, Quebec, curator.

Re Naz. Caron, trader, Fraserville.—First and final dividend, payable July 14, H. A. Bedard, Quebec, curator.

Re Alfred Corbeille, trader, Salaberry de Valleyfield.—Dividend payable on proceeds of immovables, R. S. Joron, Salaberry de Valleyfield, curator.

Re Napoléon Desjardins, baker, Pointe au Pic, Malbaie.—First and final dividend, payable July 13, N. Matte, Quebec, curator.

Re Dame Alice Wesley, (A. Rae).—First dividend, payable July 14, H. T. Cholette, Montreal, curator.

Re Napoléon Dubuc, St. Isidore.—First dividend,

¹ 2 Marsh. 740; *Bilbie v. Lumley*, 2 East 469.

² Emerigon, chap. iv, s. 6.