

mandeur la somme de \$320, pour la perte qu'il a soufferte par le feu ; avec intérêt," &c.

Cross, J. (*diss.*), was of opinion that the policy was a nullity. The agent had no authority to make a contract binding on the Company in consideration of board given to himself. The principle which had been laid down in *Mechanics Bank & Bramley* (p. 389) should be applied here, and the policy should be declared null.

Ramsay, J., said the majority of the Court were of opinion that the judgment must be affirmed. There was no doubt in the world that the agent, Labonté, could not make a contract insuring the respondent for his board. But the question was this, if such contract were confirmed by the insurers, would it not be binding? Now, here the contract was confirmed by the Company. The contract was that the insured, instead of getting money from the agent for his board, should be insured by him, and the agent made such representations to the Company, out of the presence of Boutigué, that they issued the policy. Boutigué never knew that the policy had been obtained by fraud, and he naturally held himself insured. It was only when the fire took place that he was told "You have not paid your note." In the *Mechanics Bank & Bramley*, the ground of the judgment was that the Bank knew perfectly well that the note given to them for McNaughton's debt was not the property of McNaughton, but the property of the Sincennes-McNaughton Line. Here, it was a matter of fact that the representation that the agent made to the Company was that he held Boutigué's note, while the latter had never made such note, and knew nothing of the agent's representation to the Company, his principal.

The following was the judgment:—

"La cour, etc.

"Considérant que l'intimé a constaté par la preuve faite en cette cause que partie de la grange et étable décrites dans la police d'assurance du 13 Mars, 1877, a été détruite par un incendie qui a eu lieu le 4 Septembre, 1878, pendant que cette police était encore en force ;

"Et considérant que les pertes que l'intimé a souffertes, par suite du dit incendie, et dont l'appelante est responsable, s'élèvent à \$296, savoir \$75 pour dommages causés à la grange, et à l'étable, \$45 pour perte sur les effets y

contenus, et non à \$320, tel que porté au jugement de la cour inférieure ;

"Et considérant que cette police d'assurance a été emise en faveur de l'intimé sans aucune connaissance des fausses représentations que le nommé Labonté, l'agent de la compagnie appelante, ait pu faire à la compagnie, et auxquelles il n'a aucunement participé ;

"Cette cour confirme, etc., excepté quant à la somme de \$24 qui doit être déduite, etc." Appellant to pay costs in both courts.

Hutchinson & Walker for Appellant.

A. Dalbec for Respondent.

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

FAIR, assignee of insolvent Rooney (contestant below), Appellant, and DOLAN (claimant below), Respondent.

Cancellation of agreement — Pleading — Writing signed by one party only.

Rooney and Dolan owned jointly a property near Montreal known as the Gregory property, and on the 16th August, 1878, by an agreement in writing, Dolan sold his interest to Rooney for \$7,500, payable in goods. The next day Rooney desired to have this agreement cancelled, and he caused his clerk to draw up a receipt for certain payments which he had made, and to embody in it a clause cancelling the agreement of the previous day. Dolan happening to come into his store, Rooney produced this paper, and as Dolan was unable to read it without his spectacles, Rooney's clerk commenced to read it, but being called away, Rooney finished reading it himself. The agreement of 16th August first above referred to was as follows :

"Mr. Dolan sells his interest in the Gregory property to Mr. Rooney for \$7,500, and the assumption of his half in the Trust & Loan Company's claim, the said \$7,500 payable in goods. The sale made subject to right of redemption for one year. Mr. Dolan will give Mr. Rooney notes payable in one and two years for \$7,500; Mr. Dolan to pay notes if he wishes to redeem; otherwise Mr. Rooney will pay them. The notes to be given as the goods are delivered. Goods at regular market price from 70 to 75 advance on Stg. costs. Goods for \$2,500 at once.

"Mr. Dolan to pay half interest to Trust & Loan Company, and also taxes for one year, also to,