

cas dans l'exception prévue par l'article 1927 du Code Civil.

Jugement pour le demandeur.

McGibbon, avocat du demandeur.

Ethier & Pelletier, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 2 mai 1889.

Coram CHAMPAGNE, J. C. M.

THIBAUT V. LEFEBVRE.

*Locataire et sous-locataire—Saisie-gagerie—
Dommage.*

JUGÉ:—*Qu'il n'y a pas lieu à accorder des dommages contre un locateur qui, de bonne foi, prend une saisie-gagerie contre un sous-locataire pour un montant de loyer dû par le locataire principal, quand même le sous-locataire ne devrait rien et avait légalement payé son loyer au temps de la saisie-gagerie au locataire principal.*

PER CURIAM:—Le défendeur ayant loué une maison à un individu qui après l'avoir occupé quelques mois l'a sous-loué au demandeur, a pris une saisie-gagerie contre les meubles du demandeur qui se trouvaient dans la dite maison, pour se faire payer des mois de loyer dûs pendant l'occupation du sous-locataire. De là, poursuite en dommage pour \$50 contre le défendeur. Par l'article 1621, C. C., le défendeur avait le droit de prendre cette saisie-gagerie contre les meubles du demandeur, son sous-locataire, et il n'y a pas lieu lorsque le sous-locataire a payé légalement au locataire principal, pour cela à accorder des dommages.

Action déboutée.

L. N. Demers, avocat du défendeur.

L. S. Descarries, avocat du défendeur.

(J. J. B.)

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

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CHAPTER IV.

WHO ARE BOUND TO INSURE.

[Continued from p. 240.]

§ 133. *Consignees, Commission Merchants.*

One of the most important duties which the safety of merchandize requires in factors

and consignees who act as factors is that of protecting it by insurance. (Paley by Dunlap [18]).

Shaw (upon *Ellis*) cites several cases in which in the United States it has been held that by the custom of merchants it is the duty of a consignee or commission merchant to insure the goods of his consignor, though he may have received no express directions to that effect. *Story, Agency*, § 111, says that consignees for sale are not positively bound to insure, unless they have received orders so to do, or the usage of trade, or their habit of dealing with their principal, has raised an implied obligation to insure. In the Louisiana Annual Reports of 1855 there is a case in which this was held.

A commission merchant is not bound to insure for his principal if not ordered. 3 Ch. Commercial law. But by general usage in a place, might not a commission merchant be held bound to have insured? *Story* says, yes; if the usage be general. See *Paley on Agency*, 18.

§ 134. *Insurance must be valid and effective.*

An agent or consignee procuring insurance must procure valid insurance, and insurance with solvent insurers, and communicate their names.¹

If a man covenant to keep insured, his procuring a mere slip unstamped, or an unstamped premium receipt, will not in England satisfy such covenant, unstamped papers not making legal insurance² A policy stamped (or interim receipt stamped) alone can make such an insurance. But in Lower Canada no such Stamp Acts exist, therefore insurance by slip or mere receipt for premium is good, for the case of such a covenant.

Question was as to right of plaintiff to enter up judgment and execute it. It was held he might; breach being of covenant to keep insured.³

The above defendant had no right to proceed, even at equity, to compel the insurers

¹ *Boulay Paty*, Tom. 3. *Hurrell v. Bullard et al.*, Q.B. Guildhall, Feb., 1863.

² *Xenos v. Wickham*, 14 C.B. Rep. cited.

³ 10 *Jurist*, N. S., *Parry case*.