

that they, the Citizens' Insurance Company, had received from the said Limoges, the sum of \$5, being the premium of assurance against loss or damage by fire effected with the Company to the extent of \$2000, on a brick encased building in course of construction, on Champlain street, Point St. Charles, near Montreal, (including carpenters' risk) for one month, subject to the conditions of the fire insurance policies of the said Company;

"And considering that the said brick encased building was destroyed by fire on the night of the 31st of August, and morning of the 1st of September, 1876, and that the said F. X. Limoges thereby suffered damages to an extent exceeding the amount of the insurance effected thereon, and although it has been pleaded and established in proof on behalf of the said Citizens' Insurance Company, that one of the conditions of their fire policies is to the effect and in the words following: "The assured must give notice to this Company of any other insurance effected on the same property, and have the same endorsed on this policy, or otherwise acknowledged by the company in writing, and failure to give such notice shall avoid this policy;" and that after the delivery to said Limoges of said receipt and undertaking on the said 28th day of August, 1876, he applied for and obtained from the Royal Insurance Company a like receipt and undertaking insuring the same property to the extent of a further sum of \$1000, whereby (*sic*) notice was not given nor allowance thereof made in writing before the said fire on any policy of the said Citizens' Insurance Company; yet it has been established and proved that upon the delivery to him the said Limoges, by the said Citizens' Insurance Company of the aforesaid receipt and undertaking, he asked for and was refused a policy by the said last named company;

"And considering that if the said François Xavier Limoges was under any obligation in respect to such notice and allowance, it was thereby suspended and waived until such policy should be delivered to him, which was not done;

"And considering that upon delivery to him of a policy containing said condition, he was entitled to a reasonable delay to give to the said Citizens' Insurance Company said notice, and get the said allowance in writing;

"And considering that in the said judgment rendered by the Superior Court at Montreal, on the 28th day of June, 1877, dismissing the contestation made by the said appellants to the declaration of the said Citizens' Insurance Company, as garnishees in this cause, there is error;

"This Court doth reverse," &c.

Sir A. A. Dorion, C. J., and Monk, J., dissenting, held that the insured was bound by the condition.

Judgment reversed.

De Bellefeuille & Turgeon for appellants.

Abbott, Tai, Wotherspoon & Abbott for respondents.

COOBY (petitioner in the Court below), appellant; and THE CORPORATION OF THE COUNTY OF BROME (defendants in the Court below), respondents.

Voting on the Dunkin Act—Irregularity.

Held. that in a vote of the ratepayers under the Dunkin Act, the failure to keep one of the polls open during the day of voting was a fatal irregularity.

DORION, C. J., differing from the majority of the Court, remarked that the county of Brome passed a by-law to prohibit the sale of intoxicating liquor within the municipality, and it was provided that the by-law should be submitted to the electors for ratification. The voting took place on the day appointed, and there was a majority for the by-law. The appellant, Cooby, petitioned that the by-law be set aside, first, because the County Council has no jurisdiction to pass such a by-law; secondly, because the by-law was never properly ratified by the electors, inasmuch as in one township—West Bolton—no poll was held, and no vote was taken on the by-law. It was admitted that the poll was not held according to law in this township, and the questions presented for the consideration of the Court were: First. Had the County Council the right to pass the by-law? Second. Did the failure to take the vote in one township annul the voting generally? It was unnecessary to go into all the legislation. As to the question whether the Provincial Legislature in adopting the Municipal Code had repealed so much of the Temperance Act of 1864 as authorized County Councils to enact prohibitory by-laws,