

by Stanton, could not avail as a notice within the conditions of the policy, since Ruston was the person insured.

In appeal,

MONK and TESSIER, JJ., (*diss.*) thought the judgment should be reversed. The Court here was unanimously of opinion that the ground assigned by the Court below for dismissing the action was not well founded. But the majority of the Court were of opinion that it was not made out that the oil was in the shed at the time of the fire; therefore the insured sustained no loss, and the judgment should be confirmed on this ground. The question arose, as to the party on whom the burden of proof lay. As a general rule it was the insured who had to prove the loss. But, under the circumstances, the judges in the minority were inclined to believe that it was the duty of the insurers to prove that the oil was not there. They appeared to have attempted to make such proof, and had failed.

RAMSAY, J., for the majority of the Court, said the judgment could not be sustained on the ground that due notice had not been given. Though Ruston was the party insured in one sense, yet the acceptance of the transfer on the receipt was an acceptance of the new owner as the party really insured; and under the circumstances Stanton was in a position to give the notice required. But the action must fail upon another ground—that it was not proved that the oil existed. It was for the insured to show that the object insured really existed. This had not been done. On the contrary, it appeared from the evidence that oil of the brand in question was not in the shed. On this ground the judgment must be confirmed.

*Abbott, Tail, Waterspoon & Abbott*, for appellant.

*E. Carter, Q. C.*, for respondent.

LEWIS McLEOD (def. below), Appellant, and THE EASTERN TOWNSHIPS BANK (plffs. below), Respondents.

*Evidence—Promissory Note—Interested Witness.*

The action was against Lewis McLeod and Donald McLeod on a note made by Donald McLeod, endorsed by appellant, and then endorsed by one Buck (not sued).

Plea of appellant, supported by affidavit, that the signature "Lewis McLeod," on the back of the note was a forgery. This plea was maintained and the action dismissed. But in Review, the judgment was reversed, and the action maintained.

SIR A. A. DORION, C. J. The appellant raised pointedly the question that Buck was an incompetent witness because he was interested. Under 2340 C.C., in all matters relating to bills of exchange not provided for in the Code, recourse must be had to the laws of England in force on the 30th May, 1849. The law of England, as it existed at that time, had therefore to be consulted. Before 1843, the law of England rendered incompetent as witnesses all persons who were interested in the suit. But in 1843 an Act was passed which rendered interested persons competent, with a few exceptions, one of which was: "any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part." The action here was not brought in the immediate behalf of Buck, within the meaning of this exception. He was in no other position than a *garant*, and was a good witness. Of course, his evidence was open to suspicion, because he was interested, and the evidence of another disinterested witness would be taken in preference to his. But here the evidence of Buck was corroborated, and the judgment being correct, should be confirmed.

RAMSAY, J., concurring, would not be inclined to say that Buck was disqualified as a witness unless the Bank had taken the action with his guarantee for the whole affair. The test was whether Buck had to pay for this suit. This not proved. Therefore the Bank had a right to Buck's evidence.

MONK, J. All that the Court holds is this: that in an action against the maker, the endorser may be a witness.

*J. Calder* for the appellant.

*Brooks, Capirand & Hurd* for the respondents.

CHEVALIER (plff. below), Appellant, and CUVILLIER et al. (defts. below), Respondents.

*Succession—Dower.*

This action was brought in the court below by the appellant as universal legatee of his wife, Marguerite Françoise Cuvillier, the daughter of