

no quality to claim. 2. That E. H. Bell, the party insured, had no insurable interest. 3. That it was a condition of the policy that unless the claim were made within three months after the fire, all benefit under the policy should be forfeited; that no claim was made within three months. 4. That an irregular, illegal claim made by plaintiff within twenty days after the fire was immediately rejected, and no action was taken within twelve months, and it was a condition that unless an action was taken within three months after rejection the claim should be forfeited. 5. That the claim was fraudulent.

TORRANCE, J. The court overrules the first and second and fifth pleas, but finds the third and fourth sustained by the evidence. The eleventh condition of the policy has not been complied with, and no waiver by the Company has been proved.

Action dismissed.

S. Pagnuelo, Q.C., for plaintiff.

Trenholme & Taylor for defendant.

SUPERIOR COURT.

MONTREAL, Feb. 24, 1881.

Before TORRANCE, J.

COURT ES QUAL. V. WADDELL.

Calls on shares—Director—Informality—Waiver.

The plaintiff sought to recover from Mr. Waddell the sum of \$7,500, being the balance due on his subscription of 50 preferential shares in the Mechanics' Bank, including double liability. Since the action the defendant had paid \$2,500, reducing the claim to \$5,000.

Mr. Waddell pleaded that by 39 V., c. 42, s. 2, a by-law had to be passed authorizing the issue of the preferential stock, and that no such by-law was passed; and the Act could only have effect on acceptance by shareholders by resolution passed at a special general meeting of shareholders called for the purpose, and concurred in by at least two-thirds of the holders of paid-up stock present, and no such meeting was called or held. That no by-law by a qualified board of directors was ever passed authorizing the issue of the said stock; that at the date of said pretended issue, Charles J. Brydges, Walter Shanly, John Atkinson, Charles Garth and John Macdonald were Directors, and

Brydges, Shanly and Macdonald were not qualified, and any act by them was illegal. Moreover, that defendant was not liable for the additional calls pretended to be due under the double liability clauses of the Banking Act.

The plaintiff answered the pleas by alleging that Mr. Waddell had waived any irregularities which might have existed in the issue of the stock by paying the balance of original subscription since the institution of the action, and by acting as Director on such stock and holding himself out to the public as such Director.

TORRANCE, J. The facts of this case are simple. Mr. Waddell subscribed for 50 shares of the preferential stock of this institution and has paid it all. He has acted as director thereof for years. He drew a dividend on the stock. The ingenuity of his counsel has suggested the absence of a by-law by the shareholders, and the invalidity of the proceedings of the directors, owing to two of them not being properly qualified. The objection does not come with a good grace from one of the directors. The question here is his double liability as a shareholder. If he is not a shareholder of this preferential stock, he is an ordinary partner liable to the extent of his estate. This would be a much more serious alternative. The pleas are overruled, and judgment will be entered up for the balance unpaid.

Maclaren & Leet for plaintiff.

I. N. Benjamin for defendant.

SUPERIOR COURT.

MONTREAL, Feb. 24, 1881.

Before TORRANCE, J.

MCNICHOLS ES QUAL. V. CANADA GUARANTEE CO.

Official assignee—Surety—Liability of surety for default of official assignee acting under appointment of creditors.

The demand was against the defendant as surety for the late Alphonse Doutre for the due performance, fulfilment, and discharge of the duties appertaining to the office on employment of an official assignee for the electoral district of Montreal.

The declaration alleged the insolvency of one George L. Perry, and the appointment of Doutre as official assignee to the estate, and Doutre took possession on the 11th April, 1876, and