3. Qu'aucune faute n'étant imputable aux parents de l'enfant décédé, il n'y a pas lieu d'appliquer la question de la responsabilité contributoire; qu'à tout évènement elle ne pourrait donner lieu qu'à une diminution des dommages.

4. Que dans l'espèce il y a eu négligence de la part de la compagnie défenderesse, et qu'il y a lieu d'accorder au père de l'enfant comme partie des dommages réels une compensation suffisante pour les frais encourus par lui depuis l'époque de la naissance de l'enfant jusqu'à sa mort.—*Dufresne* v. *La Compagnie du Chemin de fer à passagers de Montréal*, Loranger, J., 29 déc. 1889.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER IX.

ALIENATION OF SUBJECT AND ASSIGNMENT OF POLICY.

[Continued from p. 5.]

§ 225. *Endorsement on policy.*

In *Wilson* v. *Genessee*,[1] an endorsement was required. The agent of the company was applied to for it, but he said it was not wanted. This was held sufficient. The notice in this case was proved and not denied.

Suppose A to insure, and six days after his death, a fire to happen. Because there was no endorsement on the policy at the request of his successor, shall the company (under English clause *supra*), go free?

Under a literal interpretation, yes; but *semble*, a reasonable time should be allowed to the successor.

Under a clause prohibiting "the subject insured" being alienated (*à peine de nullité* even), will alienation of a part vacate the policy *in toto*?

(In leases prohibitions to sublet are, yet sublease of part may be, if prohibition be not exact.)

A valid and binding agreement to convey the insured premises is not an alienation under this clause, so long as the assured remains in possession, and the contract is not performed.[1]

A contract by A to sell a house to B at a future time, if certain things be done by B, is not an alienation, within a policy stipulating against alienation by sale or otherwise; though possession be at once given to B.[2]

Where warehouse receipts are given to banks, the banks are held to be the owners.

Grain was insured. The plaintiff who insured it gave warehouse receipts to the banks. A fire happened. The insurance company was discharged.[3]

§ 226. *Insurable interest, how affected in certain cases.*

No change of movables is seen, though a charge on them was created for advances, with possession of them given in advance, the occupation of the owner having ceased in favor of the advancer. The advancer got the goods given to him where they were, and got a lease to him of the place where they were, and held the key.[4] The clause following was held to operate only in case of real property insured:

If the interest in property to be insured be a leasehold, trustee mortgage or reversionary interest or other interest not absolute, it must be so represented to the company and expressed in the policy in writing; otherwise the insurance shall be void.[5]

In Lower Canada, by law, a sale of land is perfect without writing even, and without possession taken by the purchaser. Suppose A to own a house, insured for $10,000, and to put it up for sale at auction, and B to buy it for say $12,000, payable by twelve annual instalments, the first payable at the time of the adjudication. No deed of sale is signed, nor actual possession taken by B, though he has paid the first $1,000; no notice of the sale is given to the insurer; six days later the house is destroyed by fire.

Is the insurer to pay? It says: "There

[1] 16 Barbour.

[1] *Trumbull* v. *Portage M. F. Ins. Co.*. 12 Ohio R., 305.

[2] *Masters* v. *Madison Co. M. Ins. Co.*, 11 Barbour R.

[3] *McBride* v. *Gore Dist. Mut. F. Ins. Co.*, Queen's Bench, Ontario, A.D. 1870.

[4] *Chapman* case.

[5] Privy Council, *Lanc. Ins. Co.* v. *Chapman*. Stanton lent the money. Bradford got the lease and was to hold to secure Stanton.