of was caused by the fall of a wall during a high wind, seven days after a fire by which a building of defendant was destroyed and the wall in question left standing, and the defendant had taken no precautions to prevent the accident by pulling down the wall, although there had been ample time to do so, and he had been notified of the danger, it was held that it was not a case of inevitable accident, and that the defendant was liable.—*Nordheimer & Alexander*, Dorion, Ch. J., Tessier, Cross, Baby, Bossé, JJ., June 26, 1889.

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*Sale of real estate—Action by purchaser to enforce sale—Putting vendor in default.*

*Held*:—Where by a contract for the sale of real estate the buyer is to pay part of the price in cash within a fixed delay, in order to put the vendor legally in default to execute a deed, the buyer must tender the cash payment within the delay, and in a suit to enforce the sale, and asking that the judgment be equivalent to title, he must renew the tender and pay the money into Court.—*Foster & Fraser*, Dorion, C. J., Tessier, Cross, Bossé, Doherty, JJ., May 21, 1890.

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*Constitutional law—47 Vict. (Q.), ch. 84, s. 8—Power of local legislature to authorize municipal corporation to tax wholesale liquor dealers—Statute imposing taxation must be specific.*

*Held*:—1. An Act authorizing a municipal corporation to levy an annual tax for municipal purposes, on wholesale liquor dealers doing business within the municipality, is within the powers of the local legislature.

2. Where an Act of the local legislature authorizes a municipal council to tax certain trades and occupations specially enumerated in the statute, and generally all commerce, manufactures, etc., exercised in the city, a by-law made by the council under the authority of such Act, taxing certain trades and occupations, and omitting to tax other trades and occupations, is not illegal on the ground of discrimination.

3. Where the legislature authorizes the council of a municipality to levy taxes for municipal purposes, the trades or occupations subjected to taxation must be clearly designated in the statute. Hence a power to levy annual taxes on wholesale liquor dealers and "generally on all commerce, manufactures, callings, etc.," does not sufficiently authorize the municipal council to impose a special and additional tax as compounders on persons who compound or bottle spirituous liquors for the purposes of their business as wholesale liquor dealers.—*McManamy et al. & Corporation of Sherbrooke*, Dorion, C. J., Tessier, Cross, Bossé, Doherty, JJ., May 21, 1890.

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## FIRE INSURANCE.

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

### CHAPTER XII.

PROCEEDINGS ON POLICIES.

[Continued from p. 159.]

In *Willson* v. *The Ætna Ins. Co.*,[1] the Supreme Court of Vermont held the condition, that the action was to be brought within twelve months, to be a good condition. And in *Cray* v. *Hartford F. Ins. Co.*[2] it was held that where a condition of the policy provided that no action should be brought thereon, unless commenced within the term of twelve months after the cause of action should accrue, it was a binding and valid condition, and that it was a good defence to an action on the policy that it was not brought within the time specified.

But the limitation ought not to avail the insurance company if it has brought about the result of no action within the time fixed, say, by proposing arbitration and so forth.[3]

Where the action is required to be brought within a fixed time, what is considered an action? Is it the lodging of a *fiat* only, or the service of a writ of summons? The latter is necessary.

In *Wilson* v. *The State Ins. Co.*[4] Judge Smith said the clause that the action shall be brought in six months is of no effect. "We have our own prescriptions." Judg-

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[1] 27 Vt. Rep.; 18 Law Reporter.

[2] Blatchford C. C. R. 280. See also *Amesbury et al.* v. *Bowditch M. F. Ins. Co.*, 6 Gray's R.

[3] *Ib.*

[4] Superior Court, Montreal, Dec., 1862.