

course calling on the party, against whom the award was rendered, to show cause why the award should not become a judgment. The defendant met this rule by a contestation. Besides minor objections, it was alleged that he had not received written notice from the Board of Review, as the law required. The Secretary was brought up, and said he believed he had given defendant notice, but he did not find any trace of it, and could not remember whether he had done so. The award was therefore bad upon this ground alone. But there was another objection more fatal than this. The award condemned Taylor Bros. to pay certain freight, but the amount which they were to pay was not mentioned in the award at all. The omission might, probably, be rectified by reference to the proceedings: but the Court had no power to add to or subtract from the award; so that being absolutely null in consequence of this omission, the action must be dismissed with costs.

DRAPEAU v. FRASER.

HELD.—*That the sheriff must be made a party to an action to set aside a sheriff's sale.*

The question in this case was whether the Sheriff should be made a party to the suit brought to set aside a Sheriff's sale. It was asked by the plaintiff, why bring in the Sheriff? We do not complain of him. Why go to the expense and trouble of including him? There was a good deal of force in this. Upon philosophical grounds it was right; but the Court had to look to the jurisprudence for its guidance. In this case it might be urged that the Sheriff must be brought in, because he executed the writ. He was the man who did the wrong, and a copy of the judgment must be served upon him. The mere fact that the judgment of the Court was to be served upon him, and that this judgment went to set aside an act of his, was sufficient ground. But there was another reason for it. The plaintiff complained of the Sheriff's act; he did not say it was fraudulent; but the Sheriff might have a good deal to say about it. There was another ground beyond this. The Sheriff was an officer of the Court. He was ordered by the Court to do a certain thing, viz., to sell the defendant's property in satisfaction of the debt; and he went and sold, not only the defendant's property, but that of other people. He should be brought before the Court to explain this. Further, it was in accordance with the uniform practice of the Court. Widows of Sheriffs had even been brought in after their husbands had died. A practice so uniform could not be considered a useless practice. Therefore, although the case had been allowed to go *ex parte*, the Sheriff must be brought in.

COURT OF REVIEW.—JUDGMENTS.

31st OCTOBER, 1865.

PRESENT.—BADGLEY, J., BERTHELOT, J., and MONK, J.

BRITISH AMERICAN LAND CO., v. MUTUAL FIRE INSURANCE CO.

HELD.—*That a policy of insurance is vitiated*

by changes increasing the risk, made in the buildings insured without legal notice to the insurers.

BADGLEY, J.—This was a case from the Circuit Court of the St. Francis District. The action was founded upon a policy of insurance on certain buildings in Sherbrooke, comprising a manufactory and certain detached buildings near the manufactory. After these buildings had been occupied some time, the proprietor thought proper to make certain changes and additions, and, unfortunately, without giving the required notice to the Company. It was true he did intimate verbally to the Secretary-Treasurer of the Insurance Company in conversation that certain changes were being made in the buildings, but there was no notice according to law. There was nothing to show that the Company had ever been made aware of the changes that had taken place. It is a principle of insurance that where changes have been made increasing the risk, and no notice has been given of this increased risk, nor any consent given by the Insurance Company, the insurers are not liable. Unfortunately the fire in this case was found to proceed from the part of the buildings where the changes and additions had been made. There was no doubt, therefore, that the judgment must be reversed and the action dismissed. The original policy had been changed by additional buildings of a more risky character, and these buildings being burned down the Insurance Company could not be held liable upon the policy. Judgment reversed.

MORIN, fils, v. PALSgrave.

HELD.—*That in order to bring an action en complainte, the plaintiff should have had actual possession of the property for a year and a day before the institution of his action.*

BADGLEY, J.—This was a case from the District of Richelieu. It was an action *en complainte*, and the legal ground of that action is the actual possession of the plaintiff for a year and a day before the institution of his action. In this case the plaintiff claimed to be in possession of a certain property, but his possession had been interfered with by the defendant, the action not being brought within a year and a day of the trouble. The testimony was clear that both the parties had been in possession of the property at different times up to and before the institution of the action. Now the possession should be in the plaintiff alone, and not divided with any one else, otherwise the action *en complainte* could not hold. The parties in this instance had agreed that they would not go upon the land till the case was settled. Under these circumstances the judgment of the Court of the District of Richelieu in favor of the plaintiff must be reversed.

WARD v. BROWN and BROWN, opposant.

Deed of donation declared fraudulent, under the circumstances stated.

BADGLEY, J.—This was an appeal from a judgment rendered in the District of Iberville. The plaintiff obtained a judgment, on the 10th May 1863, against the defendant, for a debt due