Held, under 31 Vict. cap. 8, and the order in Council of 4th October, 1871, confirmed by 37 Vict. cap. 23, O., the locatee had a right to make the sale: that no limitation as to the time within which the timber should be removed could be implied from these statutes; and that the plaintiff therefore could not recover.

McCarthy, Q.C., for plaintiff.

Rose for defendant.

Fisken and Gordon v. Meehan.

[Jan. 2, 1877.

Promissory note—Accommodation maker and indorser—Relation of suretyship—Consideration.

Action on a note for $1500, dated 25th February, 1872, made by defendant payable to the order of S., and alleged to have been endorsed by S. to the plaintiffs.

It appeared that one M., on the 17th January, 1872, had given his bond to the assignee in insolvency of S. conditioned, if S. should fail to pay forty-three cents in the $ by the 10th July, to pay to the assignee $500, or so much as should be required to make up the deficiency. S. got the defendant to make this note for his accommodation, and got F. to endorse it afterwards, in order to give it to M. as security against his bond, which he did. M. having been sued on this bond, compelled F. to pay him the amount of the note, and F. and his partner then sued defendant as maker.

The learned Chief Justice of the Common Pleas, who tried the case without a jury, found that defendant, when he signed the note, understood from S. that F., one of the plaintiffs, would endorse as co-surety; and that defendant would be liable only for half the amount; but that F. knew nothing of this, but endorsed in the ordinary way, considering that defendant would be liable to him for the whole.

Held, Wilson, J., dissenting, that the relationship of co-sureties between F. and defendant was not established, so as to prevent the plaintiffs from recovering from defendant more than half the amount of the note.

Per Wilson, J.—F. and defendant each knew that the other was a surety for S., and that being so, there was the relation of suretyship between them for the common debtor.

Ianson v. *Paxton*, 23 C. P. 439, and its effect as a judgment of our Court of Appeal, commented upon.

Held, also, that M. held the note on a good consideration as between himself and the other parties thereto.

Ferguson, Q.C., for plaintiff.

Hodgins, Q.C., for defendant.

Abrahams v. Agricultural Mutual Assurance Association.

[Jan. 2.

Fire policy—Non-occupation of premises.

A fire policy, granted to the plaintiff on a dwelling house in a town, contained the following condition: "Unoccupied dwelling houses, with the exceptions undermentioned, are not insured by this association, nor shall it be answerable for any loss by fire which may happen to, in, or from any dwelling-house while left without an occupant or person actually residing therein. The temporary absence of a member or his family, however, none of the household effects being removed, is not to be construed into non-occupancy. And this condition is not construed to apply to the temporary non-occupation of small dwellings for the accommodation of hired help on a farm, the main dwelling on the same continuing to be occupied. But the main dwelling house must not be unoccupied for longer than forty-eight hours at any one time."

The plaintiff lived several miles from the house, which was leased to a monthly tenant, who had removed his goods within forty-eight hours before the fire, and no one had resided in the house for ten days before. The fire took place on the 10th September, and the tenant's month was up on the 24th. He was in arrear for rent, for which his goods had been distrained; but the plaintiff, who had a person ready to take possession, did not suppose that the tenant would leave before his month was up.

Held, that the exception as to forty-eight hours applied only to dwellings on a farm; that the condition which required an actual residence of the occupant was broken; and that the plaintiff could not recover.

Held, also, that a demand of the claim proper and proof of loss, without reference to this condition, could not be construed as a waiver of it:

Canada Landed Credit Co. v. *The Canada Agricultural Ins. Co.*, 17 Grant 418, departed from on this point.

No such waiver having been set up at the trial, which took place without a jury, *quære* as to the propriety of allowing it to be urged in term.

D. B. Read, Q.C., for plaintiff.

McMillan, for defendant.