fait alors protester le défendeur de la faire disparaître. Le défendeur se soumit au protêt, obtint main-levée de l'hypothèque, mais il refusa de payer les frais du protêt. De là l'action.

Le demandeur en vendant quitte et nette s'exposait à l'obligation d'indemniser le demandeur de tous frais qu'il serait tenu de faire pour dégrever la propriété. Or, le protêt était nécessaire pour forcer le défendeur à faire lever l'hypothèque, et ayant été occasionné par la négligence de celui-ci, il doit en payer le coût.

Jugement pour le demandeur.

Adam & Duhamel, avocats du demandeur.

Judah, Branchaud & Bauset, avocats du défendeur.

(J. J. B.)

FIRE INSURANCE.

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

CHAPTER VI.

The Conditions of the Policy.

[Continued from p. 319.]

In Lower Canada non-declaration of other insurances is not a cause of nullity of a policy in the absence of a condition to that effect, and many things required by policies to be done may, yet, not be done exactly as stipulated and no nullity will ensue. Generally the *peine de nullité* must be stipulated in the policy, else it will not be supplied.[1]

In Lower Canada, as in England, if a notice be required to be given to the insurers within a certain time, and to be endorsed within a certain time, under pain of nullity, the notice must absolutely be so given and endorsed.[2]

Where a policy orders the insured to declare all existing insurances on the same subject, if he insures without so declaring to the new insurer, he commits a reticence, but not fatal to him in case of fire, unless there be a penal clause in the policy to that effect.[3] If there were such a penal clause, in vain would the insured say that the earlier insurance was infected with a vice fatal to it.[1]

If the condition read that other insurance on any house or buildings insured must be notified without delay, insurance on goods need not be so notified.

If a condition in a policy read that prior insurance "must be mentioned in, or endorsed upon," such policy, mere verbal notice of prior insurance given to the agent of second insurers, though he make a memorandum of it in a private book, will be of no use.[2]

If a by-law of an insurance company provide that insurance subsequently obtained without the written consent of the president, shall annul the policy, subsequent insurance followed by the mere verbal assent of the president avoids the policy, though payable, in case of loss, to a third person. That is, I take it, if the president denies. *Sed*, can the president avoid by-laws by his parol? Sometimes the consent of the president and secretary in writing is required (by by-laws) to validate after insurances, as on p. 281, Law Rep. of 1856, Boston.[3]

But a by-law does not bind an assured unless he has contracted to be bound by it. If by-laws be printed on or annexed to policy and made part of it, well; but otherwise. (?)

In *Hale* v. *Mech. M. Ins. Co.*, (4) the policy prohibited other insurance unless the consent of the president should be obtained in writing. Held, that a waiver could not be proved, and that the president's parol consent was null.

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[1] Dalloz, 2nd part of 1857, p. 31.

[2] 2 Am. L. Cas., p. 610.

[3] Dalloz A.D. 1869, 2nd part, p. 70.

[1] See *Bigler* case to this effect, *post.*, but in this case Gros insured with "La Normandie" his workshop and stock in a street named. He transferred it all to another street and insured it here with "Le Nord," as if never before insured. Fire happened, the company, "La Normandie," paid the insured 1,000 frs., and Le Nord would not pay, saying that the things burned were already the subject of another insurance not declared. This was in violation (said "Le Nord") of the clause of its policy; *à peine de nullité* was in the policy of Le Nord. Gros' action was dismissed on the ground that he and La Normandie considered the first insurance subsisting.—Cour. Imp. Paris, 17 Jany., 1867. Here I see a clear case of first insurance being as non-existing, and the Cour Imp. judgment I do not approve.

[2] *Pendar* v. *American M.I. Co.*, 1853, Mass.

[3] *Hale* v. *Mech. M. F. I. Co.* (Mass.), Monthly Law Reporter of 1856.

[4] 6 Gray; 15 Alb. Law J., p. 326.