

the books and records of the corporation, the amount collected from each tax imposed by the council, and the details of the expenditure.

2. The salary of officers appointed by the council of the city of Montreal must be fixed; and be either a stipulated sum for a given period, or a stipulated commission or percentage on collections.

3. The farming out of a tax imposed on horse dealers, whereby the farmer pays the council a stipulated sum for a given period, and collects the tax for his own benefit, is illegal; and a resolution of council sanctioning such an arrangement will be annulled.—*Kimball, petitioner, and City of Montreal, respondent, Würtele, J., July 8, 1890.*

#### FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

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#### CHAPTER VI.

#### CONDITIONS OF THE POLICY.

[Continued from p. 264.]

Where the agent of the insured makes concealment of a material circumstance, it is held to be the same as if the principal had knowledge, and the policy may be nullified.<sup>1</sup>

Flanders, p. 332, says that knowledge by the agent of the insurer of other insurances is knowledge of the insurer.

Suppose the risk to have been first offered to any other insurer, and declined. Ought that to be mentioned to a later insurer? Bunyon says, yes. It depends upon circumstances. Certainly it ought to be if the first insurer to whom application was made declined for reasons given, and if it appear that what passed—if stated to later insurer—might have influenced him, and led him also to decline the risk. For instance, suppose A. to have a house bounded on one side by a vacant lot, and to apply to B. for insurance. B. declines, stating that he does not like the risk; that he knows that the vacant lot is shortly going to be built upon &c. A. procures C. to insure the house, and states nothing of what passed between B.

and himself. The vacant lot is shortly afterwards entered upon by builders, a house is put up and while carpenters are finishing it, it is burnt, and the fire burns A's house. A. may be held guilty of a suppression avoiding his policy.

It might be held fraudulent concealment if a house next to A's was burnt on the 4th, and on the 5th A. insured his house without mentioning the fire of the 4th, and on the 5th A's house were burned; but it would not be so held if A's house took fire only 3 months afterwards.

An action was brought against the directors of the Phoenix Fire Office, upon a policy dated July 25, 1814, effected on a warehouse in Heligoland. The policy referred to a letter of the plaintiff of July 11, containing the instructions for the insurance. The defendants pleaded, that, before and at the time of the writing the plaintiff's letter referred to, the warehouse and merchandize intended to be insured were in imminent peril of being consumed by fire, which the plaintiff, at the time of writing the letter, well knew; that the policy was effected upon the representation contained in the letter, and that the plaintiff fraudulently, and with intent to induce the defendants to effect the policy, concealed from the defendants the fact, that the premises were in such peril, by reason of which concealment the policy was void. The cause was tried at Guildhall, in 1815. before Gibbs, C. J. It appeared that the plaintiff was possessed of two warehouses in Heligoland, one separated by only one other building from the workshop of Jasper, a boat builder, wherein a fire broke out in the evening of the 11th of July. That fire, however, was extinguished in half an hour but four persons were employed by the plaintiff to watch during the night, lest again fire should break out. The plaintiff, on the same evening, wrote the letter referred to to his agent in London, requesting him to effect the insurance for three months at 400*l.* upon the plaintiff's warehouse, (described,) as also upon the coffee in casks and bags then stored in the same, value 3500*l.* The letter left Heligoland on the same night and reached England on the 24th and the plaintiff's agent on the following day effected

<sup>1</sup> *Proudfoot v. Montefiore, ante.*