The Legal News.

Vol. XIII. SEPTEMBER 13, 1890. No. 37.

The *Scottish Law Review*, on the subject of judicial remuneration, gives some figures which are interesting. The thirteen judges of Scotland receive £ 49,400 amongst them, or an average of £ 3,800 each. In England there are thirty-four judges, counting Lords Watson and Morris as English judges. The Lord Chancellor receives £ 10,000 per annum; the Lord Chief Justice £ 8,000; the three Lords Ordinary of Appeal and the Master of the Rolls £ 6,000 each; and the remaining twenty-eight judges of first instance and of appeal, £ 5,000 each: in all, £ 182,000, or, on the average, £ 5,353 each. In Ireland there are twenty-two judges who receive altogether £ 81,300, or £ 3,695 on the average each. The diversities of salary are considerable. The Lord Chancellor receives £ 8,000 per annum; the Chief Justice, £ 5,000; the Chief Baron £ 4,600; the Master of the Rolls, the three Lords Justices of Appeal, and the Vice-Chancellor, £ 4,000 each; the two judges of the Bankruptcy Court, £ 2,000 each; the Admiralty judge, £ 1,200; and the remaining eleven judges, £ 3,500 each. The remuneration of County Court judges, (of whom there are fifty-seven) is now fixed by Statute at £ 1,500 per annum and travelling expenses. There are also twenty-six metropolitan police magistrates; the senior receives £ 1,800 per annum, and the rest £ 1,500 per annum. In India the salary of a judge of the Supreme Court ranges from £ 4,500 to £ 7,200; in the more important parts of Australia, from £ 1,700 to £ 3,500. In continental Europe judicial salaries are small. In the Imperial or highest Court of Appeal in Germany the ordinary judges have only £ 600 a year, and the president £ 1,250 and an official residence. In France, with 18,650 judges, the salaries of local judges range from £ 75 in the lowest class to £ 320 in the highest. In Austria and Holland the salaries of local judges are from £ 150 to £ 250; in Russia from £ 244 to £ 350; in Belgium £ 120; in Switzerland £ 180; and in Italy £ 100.

In *Gordon* v. *Silber*, Lord Justice Lopes decided, Aug. 9, that where husband and wife are guests at a hotel, the landlord has a lien on the goods of the wife for the expenses of the husband and wife. The question does not appear to have been previously decided in England. The husband had been staying at the hotel for some time alone, and had incurred expenses which he had paid; he was then joined by his wife, who came to the hotel with a large quantity of luggage, which it was admitted was her separate property. The husband and wife occupied the same rooms, and they remained at the hotel together for some time, the husband leaving some days before the wife. The husband having become insolvent, it was sought to render the goods of the wife liable for the balance of the hotel bill incurred by husband and wife. Lord Justice Lopes said, it is only fair to give the innkeeper rights co-extensive or commensurate with his obligation to receive his guest and keep his goods safely and securely, and in accordance with this principle, as the guests received were the husband and the wife, and as all the goods received by the hotel-keeper were received by him as the goods of the husband and the wife, and as he was responsible for all the goods so received by him, whether they belonged to the husband or the wife, his right of lien was co-extensive with these liabilities, and extended to all the goods which had been brought by his guests to the hotel, whether they were the separate property of the wife or not, inasmuch as such goods satisfied the condition laid down by Chief Justice Wilde in *Smith* v. *Dearlove*, 6 C. B. 132, where he said, "The right of lien of an innkeeper depends upon the fact that the goods came into his possession in his character of innkeeper as belonging to a guest."

PUBLIC SPEAKING.—Lysias, says Plutarch, wrote a defence for a man who was about to be tried before one of the Athenian tribunals. Long before the defendant had learned the speech by heart, he became so much dissatisfied with it that he went in great distress to the author. 'I was delighted with your speech the first time I read it; but I liked it less the second time, and still less the third time; and now it seems to be no defence at all.' 'My good friend,' said Lysias, you quite forget that the judges are to hear it only once.'

SUPERIOR COURT.

[In Chambers.]

Sherbrooke, Aug. 15, 1890.

Coram Wurtele, J.

McManamy et al. v. Corporation of the City of Sherbrooke.

Procedure — Injunction — Case before Supreme Court.

Held:—*That when an appeal to the Supreme Court of Canada, from a judgment of the Court of Queen's Bench sitting in appeal, has been regularly allowed, and the case is before the Supreme Court, the Superior Court has no power by injunction, to suspend or interfere with the proceedings before the Supreme Court; the remedy being by application to the Supreme Court.*

The judgment was as follows:—

"We the honorable Jonathan S. C. Wurtele, one of the judges of the Superior Court for the Province of Quebec, after having heard the parties, by their counsel, upon the application of the petitioners for the issue of a Writ of Injunction against the respondent ordering and enjoining it to suspend all proceedings in connection with an appeal instituted by it to the Supreme Court of Canada in a certain cause wherein the respondent was plaintiff, and the petitioners were defendants, until the petition which has been served upon the respondent and by which the petitioners ask for the annulment for the cause of illegality of the resolution of the Council of the City of Sherbrooke, authorizing the appeal, has been adjudicated upon; having examined the petition for the Writ of Injunction and the exhibits produced in support thereof and having deliberated;

"Seeing that the petitioners allege that the resolution authorizing the institution of the appeal to the Supreme Court of Canada in the above mentioned case, adopted at a special meeting of the Council of the City of Sherbrooke on the 28th day of June last (1890), is null by reason of illegalities in the proceedings of the Council prior to and in connection with its passing, and that they are proceeding to obtain its annulment by a petition which was duly served on the respondent onthe 26th day of July last (1890), and which will be presented to the Circuit Court for the district of St. Francis on the 1st day of September next (1890), and that they ask for a Writ of Injunction to restrain the respondent from proceeding with its appeal until the petition asking for the annulment of the said resolution has been adjudicated upon;

"Considering that the appeal to the Supreme Court has been allowed by one of the honorable judges of the Court of Queen's Bench of the Province of Quebec, and that another of the judges of the said Court has settled the case for the appeal;

"Considering that the appeal in the said case is now regularly before the Supreme Court of Canada, and that the Superior Court for the Province of Quebec, which is a Court inferior to it, has no power to retard, or in any way to interfere in the proceedings therein;

"Considering that it is possible for the petitioners to obtain the suspension of proceedings, which they desire to get, by applying to the Supreme Court or to one of the judges thereof under rule 42 of the general rules and orders of the Court;

"Considering that the petitioners have an easy remedy without recourse to a Writ of Injunction against the respondent;

"Considering moreover that under and in conformity with Article 461 of the Municipal Code, the said resolution of the Council of the City of Sherbrooke is executory until its annulment has been decreed by either the Magistrate's Court or the Circuit Court, and that it should therefore be left to its effect;

"Considering that the effect, whatever it may be, will not be irremediable, and that the respondent is responsible under the provisions of Article 706 of the Municipal Code for all the damages which the petitioners may suffer by reason of its enforcement should it be subsequently annulled;

"Considering that under the circumstances a Writ of Injunction does not lie in the present instance;

"Do refuse to order the issue of the Writ of Injunction prayed for, and do reject the petitioner's application therefor, but without costs."

L. C. Bélanger, for petitioner.

H. B. Brown, Q.C., for respondent.

SUPERIOR COURT—MONTREAL.

Billet promissoire—Signature en blanc—Responsabilité du faiseur—Tiers.

Jugé:—Qu'une personne qui donne à une autre personne un billet signé en blanc, avec l'entente que cette derniere le remplira pour une somme déterminée, est responsable vis-à-vis d'un tiers, du plein montant qui apparaît à la face du billet, quand même il serait plus élevé que celui convenu; le signataire du billet ne fait alors que subir les conséquences de sa propre négligence.—*Bank of Nova Scotia* v. *Lepage*, Pagnuelo, J., 9 octobre 1889.

Opposition—Mise en demeure—Parties en cause.

Jugé:—Que même dans une cause où le défendeur n'a pas comparu, la Cour ne peut adjuger sur une opposition sans que toutes les parties en cause aient été préalablement mises en demeure d'admettre ou de contester l'opposition.—*Lang Manufacturing Co.* v. *Cocker*, Würtele, J., 13 juin 1890.

Production des exhibits—Exception à forme—Parties en cause—Exception dilatoire.

Jugé:—1o. Que lorsque toutes les parties qui doivent être en cause, n'y sont pas, le défendeur ne peut s'en prévaloir par exception à la forme, mais par une exception dilatoire;

2o. Que quoique par l'article 103 du C.P.C. il est décrété que jusqu'à ce que les pièces aient été produites, le demandeur ne peut procéder sur sa demande, néanmoins, le défendeur peut également produire une exception dilatoire pour arrêter la poursuite jusqu'à la production des pièces nécessaires. —*Stewart* v. *The Molsons Bank*, Mathieu, J., 2 mai 1890.

THE COINAGE.—The Chancellor of the Exchequer, replying to a memorial signed by 153 members of Parliament, advocating that the value should be stamped on all British coins, says, in a letter to Mr. Sinclair, M.P., published at Belfast on August 12, that while he may, to a great extent, meet the wishes of the memorialists regarding the silver coinage, the familiarity of the public with the sovereign and the half-sovereign makes the risk of mistake with these coins infinitesimal. He is, therefore, reluctant to break with historical traditions and set a new precedent in their case.

FIRE INSURANCE.

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

CHAPTER VI.

THE CONDITIONS OF THE POLICY.

[Continued from p. 288.]

§ 174. *Buildings destroyed to prevent extension of fire.*

Ellis says that it "has become a practice of the London firemen in order to prevent the extension of a fire, to pull down, or blow up with gunpowder, the adjoining buildings. It would be difficult to assert that the common fire policy will, as regards such buildings, indemnify the insured in such a case." He adds: "It would be more prudent to introduce an express stipulation. In the policies of a recently well constituted company, explosion is expressly excepted from indemnity." This affords an argument for fire from gunpowder fired being a loss within policies not containing the exception. I can't doubt that if a house insured be blown up by firemen firing gunpowder in it the insurers have to pay.[1]

In *City Fire Ins. Co.* v. *Corlies*,[2] it was held that the destruction of the property insured by the blowing up of it with powder under the direction of the Chief Magistrate of a city, was a loss within a policy against fire, and that a loss by the explosion of gunpowder is a loss by fire. The question of the necessity or legality of the explosion does not affect the liability of the insurers. It ought not to, under policies that do not contain the exception introduced by the well constituted company referred to by Ellis.

Demolition or destruction to stop the march of a fire. Who is to be judge of the necessity? *Semble*, if necessary, the common safety allows the destruction. Ought the loss to be shared by all who are benefited? Yes! says *Bunyon*, as where general average is in

[1] A Massachusetts statute appoints that three persons designated may direct any house to be pulled down to stop fire: and in such case, if it is the means of stopping the fire, the city is liable for the value of the building.

[2] 21 Wend. 367.

marine insurance cases. In London the fire brigade can pull down houses to stop a fire (Act of 1865), and this shall be held damage by fire. In New York, houses may be pulled down or destroyed, the municipality is to pay all damage. If insurer pay he can go against the municipality in the name of the insured.

The common law of England allows any one to destroy a house if necessary for the public safety, and nobody shall be liable as for trespass, for so doing. 2 Kent's Comm., 338, 339; 12 Coke.

If firemen or magistrates, to stop a fire, *pull down* a house insured, the insurers are not liable under common policies; some French policies stipulate for this case in favor of the insured. Alauzet, vol. 2.

Under the Droit Commun of France, in case of *péril évident il est permis d'abattre les maisons voisines pour arrêter un incendie.*

Celsus scribit circà eum qui incendii arcendi gratia vicinas ædes intercidit....cessare Aquiliæ actionem. Sive pervenit ignis, sive ante extinctus est. Law 49 § 1. Digest ad legem Aquiliam.

Rarely, however, except in villages, can the case occur now, says Merlin, Rep. vol. 36, Voie de fait.

In cities, private persons can't do it, but magistrates may, says Merlin.

See what I have said in earlier chapter. In France companies pay where demolition takes place of house insured.

Suppose a house *pulled down* to arrest the progress of a fire. In New York the mayor was authorized to do this, and there was to be an assessment to pay it. If *pulled down* the insurers are not liable, and the insured had no other remedy than the one of moving for and getting the assessment.[1]

P. 304, 17 Wendell. If the Legislature allow city magistrates to order a demolition, to stop a fire, and go no further, perhaps the city would not be liable to make up the loss; but the Legislature would have to be applied to to legislate further. This legislation further has been done in New York by the Revised Statutes. Houses may be blown up, or pulled down, to stop a fire, upon order of certain magistrates; and damages are ordered to be paid by the city in such cases, and the mode of ascertaining them is fixed; and in New York not only will the city be made to pay for the *houses* blown up so, but also for the movables in them, lost through the blowing up of the houses.[1]

24 Wendell. The *Mayor et al. of New York* v. *Pentz*, Court of Errors of New York. Pentz's property was destroyed by order of the Mayor to stop a fire. Property destroyed by authority to stop a fire. Semble, evidence by opinions of witnesses, ruled out in New York, good in Lower Canada. Montreal Corporation Acts allow order to demolish. It is silent as to indemnity or none.

The Chancellor of New York was in favor of making all benefited by the demolition of a house to stop a fire, whether the demolition was upon order of a magistrate, or not, contribute to make up the loss, and pay the owner of the house demolished (as in case of jettison.)[2]

Casaregis, Disc. 46, No. 45, states the case of a ship destroyed in port to save other ships. He asks, would those saved be held bound to pay a kind of salvage?

During a fire, A's house is knocked down to stop the fire running. He can claim contribution from his neighbours. Proudhon, Usuf. Tom. 3, 1594. *Contra* Toullier, vol. xi, No. 180.

In *Bowditch* v. *City of Boston*,[3] buildings were blown up to check the extension of a fire. The chief engineer authorized fire wards A, B, and C to blow up buildings. A was assigned to the ward in which was the building blown up. The Massachusetts statute authorized three fire wards of the city to do so. A board of engineers were the fire wards. When the chief engineer authorized A, only one other engineer was present. The city was not held liable, the statute not having been followed so as to bind it.

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[1] Monthly Law Reporter of 1863-4, page 624. Compare with *City Fire Ins. Co.* v. *Corlies, ante.* Is pulling down worse for the owner of house than firing by explosion?

[1] *The Mayor et al. of New York* v. *Lord et al*, 18 Wendell: p. 314, Sedgwick, 2d. edition.

[2] 18 Wendell.

[3] 11 Albany Law Journal, A. D. 1875.

In June, 1845, a fire occurred in Quebec. The house of a man named Mackenzie was demolished by order of a magistrate. Mackenzie moved in the Queen's Bench, Quebec, for a *mandamus* to compel the city to raise an assessment to indemnify him, but a *mandamus* was refused. Though the Corporation had power to make by-laws, and did make them, authorizing such demolition, the Legislature had not gone further to authorize assessments to pay the loss consequent. Neither Act nor by-law provided for assessment of the damages to owner. A by-law alone could not do it, and the Act of Parliament had not done it.

Chap. 24 of the Consolidated Statutes of Lower Canada (p. 178) allows by-laws to be made by municipalities, to authorize blowing up a building and pulling down of houses to stop a fire.

The statutory liability is not to be extended. Certain officers are authorized by the charter of Buffalo in case of fire to tear down or blow up any *buildings* likely to communicate fire, and the common council is to pay the damage as if the property were taken for public improvement, unless it should appear that the property would have been destroyed by such fire any way. The officers blew up a building, and the shock broke the glass in the house opposite. The city was held not liable for this.[1]

In a case in 32 Am. Rep. (published 1880) the fire department of a city destroys a house, so; at common law the city is not liable. If by a statute, the remedy of the statute must be pursued. The city, sued in this case, was freed. The statute remedy alone competed to plaintiff who had not resorted to it.

In Texas is a general incorporation of Cities Act, and a clause allows the engineer and mayor to direct buildings to be demolished or blown up to stop fire, and "no suit to be brought against the city or any person therefor," but on application of owner, assessment of damages to be &c., and city must pay accordingly; and so in *Fisher* v. *Boston*, 6 Am. Rep., it was held that at common law, destruction of house did not authorize suit against the city, for the engineers and fire department officers were public officers, and not agents of the city.

At common law anybody or everybody has a right to destroy real property in case of actual necessity to prevent fire spreading, and no responsibility is on the destroyer. So held in Massachusetts. *Semble*, so in old Quebec. The common law so adopts the natural law. Burlamaqui cited, 145, § 6, see p. 620, 32 Am. Rep.

Agnel (p. 87) seems to hold the insurance company liable to pay for houses knocked down by necessity or public authority just as if burned.

Toullier, Tom. xi., No. 181, cited, says: He who caused the fire has to pay for house demolished by authority. Boudousquie, No. 324. Toullier does not treat of insurance company.

The old law upon this point is as follows: A house being destroyed in a large conflagration, to save others, shall those saved pay the owner of the house destroyed? *Labeo* says yes. *Ulpian*, law 3, § 7, — de incendio (also Celsus) says no. Book 47, title 9, digest.

Rousseau de Lacombe vo. "Incendie," No. 14, says that if the neighbours knock down a house, to stop a fire on a magistrate's order, those whose houses are saved need not pay; and that in no case, even though no order be given by the magistrate, can the owner of a house destroyed to stop the progress of a fire, make others pay him if his house would have been burnt in the fire, had it not been destroyed otherwise. He says law 7, § 4, — *quod vi aut clam*[1] treats of the case, and allows the owner to get indemnity where the neighbours act *ex mero motu*, without magistrate's order.[2]

The Coutume de Bretagne had an article on the subject; houses saved had to contribute; as by the law *Rhodienne de jactu*, page 205, 2 Fournel.

The following case is to be found in Journal des Audiences, folio vol. 1, p. 693: A fire was raging in the town of Mans; six houses had been burnt when the seventh was seized

[1] Albany Law Journal, A. D. 1879, p. 336.

[1] Quod vi &c., is 43rd book of Digest, title 24.

[2] See J. des Aud. Tom. 2, liv. 1, ch. 17, Arrêt of 1657.

by the fire, but was immediately demolished by order of the Juge Prevôt, whereby other neighbouring houses were saved. The owner of the house demolished claimed a contribution from the neighbours whose houses were saved, and sued one. The judgment of the President of the Town of Mans put the parties *hors de cour*, so dismissing the action, and this judgment was confirmed upon appeal. The appellant claimed to be in a case like that of the law 2 ad legem Rhodiam de jactu, and said he might also invoke the Aquilian law. The respondent succeeded, chiefly because the fire had seized appellant's house before the demolition was ordered; but in the original court, apparently, because the *prevôt* had ordered the demolition.

There is no action against a man for knocking down a neighbouring house in a conflagration, to save his own, if the fire had already reached that neighbouring house; for, if he had not pulled down the house, it would have burned and perished; it was to be lost; so no injury was done by pulling it down.[1]

Suppose that during a fire a wall is pulled down by the authorities, or say the house is blown up next to the one in which the fire commenced; no action can be for these things against the man who is to be blamed for his own house catching fire. But if one part of the same house catch fire, and all has to go, explosion or knocking down may be resorted to, and the author of the fire will be chargeable with all the consequences. No. 44, Sourdat.

Rolland de Villargues, *Assurance Terrestre*, No. 95, says that the insurer must pay if the house insured be demolished by lawful authority to cut off a fire.

The man who first causes a fire has to pay all resulting damages, and Toullier, vol. xi., No. 181, says he must pay damages for demolition of a house to cut off a fire, because it is a consequence of his fault, if competent authority have ordered the demolition. This is so as against the author of the fire, in fault, but is the insurer to pay the owner of the house? Yes! says Rolland de Villargues.

No action of damages lies against a man who hurts *se defendendo*, &c., repelling midnight burglar, &c. In the same class is the man who demolishes a neighbour's house to prevent fire spreading to his own, (*siquidem*) particularly where the fire has already reached the neighbour's house; for he can't be seen to have hurt anybody, the building demolished being bound to go by fire *sine dejectione*, if left alone undemolished. But if it be quite doubtful whether the fire would have reached the house demolished, the demolisher is liable to an action, but not the one ex lege aquiliâ.[1]

In France, insurance companies pay for house insured that is demolished to prevent spread of fire, and often agree to do so by express convention.

If my house being insured (in France), the next one not insured be damaged and broken to save mine, this is held *frais de sauvetage*, to be paid by insurance company of my house. Boudousquie; but Pouget is against this.

§ 175. *Loss by explosions.*

In American policies such a condition as this occurs frequently:

"This company will not be liable for damage by the explosion of a steamboiler, nor for damage by fire resulting from such explosion."

Ordinarily, injuries to property from explosions of boilers are not covered by a fire policy; it is otherwise, however, with damage from explosion of gunpowder in houses insured. This supposes the explosion to be by fire. *Shaw* (upon Ellis) asks: How would it be if it were produced by lightning? To which it may be answered that lightning does not burn powder, but by fire.

Some policies contain this clause: "*Neither will the company be responsible for loss or damage by explosion, except such loss or damage as shall arise from explosion by gas.*"

In the case of *Stanley* v. *Western Insurance Co*,[2] the plaintiff's business was that of extracting oil from shoddy, which is done in

[1] Voët's summary 28, or sec. 28, title 2, book 9, Pandects ad legem Aquiliam. Onus probandi, sec. 20, see Voët.

[1] Ad legem Aquiliam, lib. ix, tit. 2, Voët, section 28.
[2] Exchequer, Jan. 1868.

the following manner: — The shoddy is placed in an "extractor," into which is pumped from below bisulphide of carbon; this, rising through the shoddy, disengages the oil, which flows off through a hole at the top of the extractor. The bisulphide is then drawn off, and steam is introduced, which carries off the residue of bisulphide and oil remaining in the extractor into a still, where they are separated. The vapour which thus passes from the extractor would, in chemical terminology, be called a vapour, and not a gas, being condensible at a temperature above 32° (viz 109°); it is highly inflammable, and, when mixed with air in the proportion of one to fifteen, is explosive.

The accident was caused by a leakage in the gaskin (or packing of canvas), which lies between the lid and rim of the extractor, coupled with a stoppage in the pipe between the extractor and the still. The vapour, escaping through the hole, took fire at the lamps, and ignited some matting and bags lying near; and then, becoming sufficiently mixed with air, exploded. The explosion blew off the roof, and blew down part of the walls, and the fire then became general and burned for some time.

The defendants paid £25 into court for the damage done by the fire before the explosion took place, and contended that they were not liable for any further damage, as it did not arise from an explosion of gas within the meaning of the exception in the policy.

The total damage by the explosion and fire was found by the arbitrator, to be £483 16s 6d.—Mr. Quain, Q.C., contended, on the part of the plaintiff, that he was entitled to the whole sum, on the ground that it was a loss by fire within the meaning of the policy; secondly, that if it was not a loss by fire, it was a loss by the explosion of gas within the exception in the policy; and thirdly, that in any case he was entitled to £177 (minus the money paid into court), which the arbitrator had found was the amount of damage caused by the fire both before and after the explosion.

The Court held that the word "gas" applied only to ordinary illuminating coal gas, and did not include the vapour in question; and, further, held that the defendants were exempted from liability for the damage done by the further fire, which was caused by the explosion; but the heads of damage not being severally found, they remitted the case to the arbitrator.

Loss from breakage by distant explosion, being a loss by concussion, is not covered by ordinary policies.[1]

The case of *Taunton* v. *The Royal Ins. Co.*, which arose out of the explosion of the ship Lotty Sleigh, while lying at anchor in the Mersey, raised a question of some importance as to the discretion of directors of an insurance company to make good losses not covered by the policies of insurance.

On the 15th of January, 1864, the Lotty Sleigh, then lying at anchor in the Mersey, with a large quantity of gunpowder on board, caught fire and blew up. The concussion of the air produced by the explosion of the gunpowder caused great damage to property for several miles round, and in particular shattered the windows of several houses and manufactories in Liverpool and Birkenhead. Many of the persons whose property was thus injured were insured in the Royal Insurance company. The directors, acting upon what they termed a liberal construction in favour of the insured, had come to the determination to pay all losses consequent on the explosion which had been sustained by parties insured with the company, and had already paid claims for small sums, to the amount of 960*l*. The plaintiff, who was a shareholder in the company, protested against any application of the funds to make good these losses, on the ground that they were not within the terms of the policies, which contained a distinct provision that the company would not "be responsible for any loss or damage by explosion, except for such loss or damage as shall arise from explosion of gas." He accordingly filed the present bill to obtain a declaration that the application of the funds in making good any loss occasioned by the explosion to persons insured against loss or damage by fire was

[1] *Everett* v. *London Ins. Co.*, Jurist, A.D. 1866, p. 311; *Ib.* A. D. 1865, part 1, p. 546.

[2] Before the Vice-Chancellor's Court, Feb. 29, 1864.

unauthorized and improper. The bill also prayed an injunction to restrain any such payments, and that the directors might be declared personally liable to make good any payments already made by them.

The directors submitted that although the losses in question were not strictly within the terms of the policies, they had exercised, a wise discretion in at once offering to satisfy the claims as a matter of favour, and not admitting any liability, believing as they did that such a course was much more conducive to the real interests of the company than a narrow-minded adherence to the strict letter of the provisions contained in the policies. They had obtained the concurrence of a majority of the shareholders to the course taken by them, and the principal insurance-offices, such as the Sun, the Phœnix, the Royal Exchange, and the Alliance, had taken the same view, and voluntarily paid the losses occasioned by the explosion. The Vice-Chancellor said that the question was one of considerable importance as to the management of companies of this description. The Court was extremely careful to prevent the application of money intrusted to direc tors by the shareholders for any other than the legitimate purposes of the business. At the same time it would not be for the benefit of shareholders that those purposes should be impeded or narrowed. Looking at the provision excluding payment for damage occasioned by explosions, except explosions by gas, he was strongly of opinion that the policies would not cover the loss occasioned by the particular accident. The directors themselves thought that they were under no legal liability, but professed to make the payment *ex gratiâ*, and in order to promote the interests of the company. Could not, then, the whole body of shareholders sanction such a payment? The damage having been occasioned by something analogous to, though not falling within, the risks insured against by the policy, the question was, whether the company were not entitled, by way of preventing any complaint or litigation, to make good these small losses, rather than incur the risk of being damaged in reputation as an illiberal office.

Upon this question the evidence of the mode of carrying on business by companies of this nature was very material. It appeared that other offices were in the habit of acting liberally in respect of claims of this description not falling strictly within the terms of the policies. Looking at the usage in this respect, there was nothing extreme or unreasonable in the conduct of the company in determining that these losses should be paid. He could have very little doubt that the course taken by the directors, and approved by the majority of the shareholders, was conducive to the welfare of the company, and likely materially to promote its interests. Upon the whole, therefore, the plaintiff was not entitled to a decree, and as he had not come here to secure any benefit to the company, the bill must be dismissed with costs.[3]

[3] Query, as to soundness of this judgment, for the losses might be huge; as in the later case of the explosion at Erith, Sept. 1864.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Sept. 6.

Judicial Abandonments.

Joseph L'Abbé, trader, Quebec, Aug. 29.

A. F. Weipert, trader, Quebec, Sept. 3.

Curators appointed.

Re Amedée Bayard.—P. E. E. de Lorimier and J. M. Marcotte, Montreal, joint curator, Sept. 2.

Re François Bouchard, general merchant, St. Félicien. —N. Matté, Quebec, curator, Aug. 29.

Re Joseph Cadieux.—D. Parizeau, Montreal, curator, Sept. 1.

Re Philippe A. Donais.—C. Desmarteau, Montreal, curator, Sept. 3.

Re Isaac Harris, Lachine.—Kent & Turcotte, Montreal, joint curator, Sept. 3.

Re W. C. Ravenhill, agent.—Kent & Turcotte, Montreal, joint curator, Sept. 3.

Dividend.

Re Lagrenade, Beauchamp & Co.—First and final dividend, payable Sept. 23, C. Desmarteau, Montreal, curator.

Separation as to Property.

Marie Appoline Angéline Boisseau vs. Alfred Massé, trader. Montreal, Aug. 27.

Bella Nachtigall vs. James Lipsky, trader, Montreal, Aug 27.

Virginie Richard vs. Joseph Massé, trader, Ste. Angèle, Aug. 26.

Court Terms altered.

Circuit Court for County of Brome to be held at Knowlton, 16th and 17th January, March, May, Sept.

Circuit Court, County of Shefford, to be held at Waterloo, 10th, 11th and 12th February, April, June and October.

Circuit Court, County of Missisquoi, to be held at Bedford, 15th and 16th February, April, June and October.

Circuit Court, County of Missisquoi, to be held at Farnham, 18th and 19th January, March, May, and September.