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SUPREME COURT OF CANADA.

OTTAWA, June 13, 1890.

Nova Scotia.]

DUGGAN v. DUGGAN.

Will—Legacy under—Contingent interest—Protection against waste.

The will of J. D. contained a bequest to any child or children of a deceased brother of the testator who should be living at the death of the testator's wife. P. D. was the only son of such deceased brother, and during the life time of the widow he brought suit to have his legacy protected against dissipation of the estate.

Held, reversing the judgment of the Court below, that P. D. had more than a possibility or expectation of a future interest; that he had an existing contingent interest in the estate, and was entitled to have the property preserved, so that his legacy could be paid in the event of the interest becoming vested.

Appeal allowed with costs.

E. L. Newcombe, for the appellant.

Borden, for the respondent.

OTTAWA, June 13, 1890.

Nova Scotia.]

POWER v. MEAGHER.

Trustees—Commission to—Rule of law.

Prior to the passing of the Nova Scotia Statute 51 Vic. c. 11, sec. 69, there was no statutory authority for trustees to receive commission for their services when none was provided for by the instrument creating the trust. In a case which did not come within the statute,

Held, reversing the judgment of the Supreme Court of Nova Scotia (21 N. S. Rep. 184), that the English rule of law prohibiting such commission was applicable to, and in force in, that province.

Appeal allowed with costs.

Hon. L. G. Power, appellant, in person.

Henry, Q.C., for the respondent.

DECISIONS AT QUEBEC.*

Vente—Garantie de dettes, troubles, etc.—Radiation d'hypothèque—Vente libre et quitte d'hypothèques—Arts. 1535 *et* 1065, *C. C.*

Jugé:—L'acquéreur d'un immeuble, tant qu'il n'est pas troublé de fait, n'a pas d'action contre le vendeur, son garant "contre tous troubles, dons, douaires, dettes et tous autres empêchements généralement quelconques," pour le contraindre à faire radier une hypothèque inscrite avant la vente au bureau d'enregistrement contre l'immeuble vendu (Art. 1535, C. C.) Il en serait autrement si le vendeur avait vendu *quitte et libre* de toute hypothèque. (Art. 1065, C. C.)—*Beaudette* v. *Cormier*, en révision, Casault, Routhier, Andrews, JJ., 28 fév. 1890.

Copyright—Infringement—Measure of damages.

Held:—Where there is clear proof of the counterfeiting of a copyright, the damages will not be measured merely by the price realized through the sale of the counterfeit, but vindictive damages will be allowed.—*Bernard & Bertoni*, in appeal, Dorion, C. J., Tessier, Baby, Church, Bossé, JJ., Oct. 5, 1889.

Contrat de vente—Réserve de bois—Droit de superficie—Enregistrement et renouvellement.

Jugé:—La réserve, par le vendeur d'une terre, de tout le bois qui se trouve sur une partie de cette terre, et du droit de l'enlever quand bon lui semblera, et de couper et enlever sur une autre partie telle quantité de pieux et de perches qu'il voudra prendre pour son utilité, et ce, tant qu'il y en aura sur ce terrain, constitue un droit de superficie qui est un *jus in re* et non un *jus ad rem*, et n'a pas besoin, pour être conservé, d'être renouvelé au bureau d'enregistrement dans les deux ans qui suivent la mise en force du cadastre.—*Cadrain* v. *Theberge*, en révision, Casault, Routhier, Andrews, JJ., 28 fév. 1890

Procédure—Matières sommaires—Articles 5977 *et* 5869, *S. R. Q.*

Jugé:—1o. Les réclamations pour ouvrages et matériaux et pour argent déboursé

* 16 Q. L. R.

n'étant pas, aux termes de l'art. 5977 des S. R. Q., des matières sommaires pouvant être instruites comme telles, une action d'assumpsit général contenant ces allégations ne peut pas être instruite sommairement.

2o. Mais, si un compte en détail est annexé à l'action et signifié avec elle, et y réfère comme contenant les particularités de la demande, et qu'il ne contienne que des dettes comprises dans l'énumération que fait des matières sommaires cet art. 5977 des S. R. Q., la demande peut être instruite d'une manière sommaire.

3o. Lorsque le délai usuel est donné entre l'assignation et le jour du retour du bref de sommation, et que le défendeur n'est pas informé par le bref ou la déclaration de l'intention du demandeur de procéder sommairement, la demande ne peut pas être instruite sommairement. Autrement le défendeur, n'ayant aucun moyen de découvrir si le demandeur, qui en a le choix, veut procéder sommairement ou suivant le cours ordinaire, pourrait être pris par surprise et être condamné sans avoir pu se défendre.

4o. Une action d'assumpsit général ne permet pas d'obtenir jugement sur affidavit par le tribunal ou le protonotaire, lors même qu'il y est allégué que le défendeur a reconnu devoir et promis payer la dette; à moins, toutefois, qu'un compte en détail n'ait été signifié au défendeur en même temps que l'action à laquelle il était annexé et qui y référait comme particularités de la demande.—*Légaré* v. *Cloutier*, C. S., Casault, J., 6 mars 1890.

Servitude—Right of way—Road used in common—Arts. 540, 549, *C. C.*

Held:—1. A road established and used from time immemorial by a number of owners of contiguous farms to reach and work them, is different from an ordinary servitude of passage, and does not fall under the rule of Art. 549, C. C., respecting the proof of servitudes by title.

2. In an action *negatoria servitutis* respecting a road on the plaintiff's property, the defendant may plead that the road is one used in common from time immemorial by several contiguous neighbours, of whom he is one, to reach and work their farms, otherwise inaccessible, and in proof of such a plea oral testimony is admissible.—*Perron* v. *Blouin*, S. C., Andrews, J., Jan. 16, 1890.

FIRE INSURANCE.

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

CHAPTER III.

OF INSURABLE INTEREST, THE SUBJECT INSURED, AND WHO MAY BECOME INSURED.

[Continued from p. 224.]

In Quebec, a mere chirographary creditor cannot insure his debtor's stock-in-trade, or personal property.[1]

§ 114. *Partners.*

A partner can insure the partnership stock in the partnership name, and bind the insurer, and charge the firm the premiums; but insurance by a partner ought to be for his firm to protect the partnership property. In fact, it is questioned whether if he do not insure he is not liable in damages towards his co-partner, particularly in certain cases, as if one be absent and the other present and managing.

Insurance of my goods, my merchandise, does this cover merchandise of a commercial firm in which I am partner?[2] Some say no. Others, including Casaregis and Straccha, hold the insurance good for the value of the interest that the insured has therein. Others, again, hold it good for the whole. *Quia quod commune est nostrum esse dicitur.* If merchandise in ship be insured as *chargées "pour mon compte"* and that of others interested, and I insure simply for myself, firm property in such merchandise will not be covered, says Emerigon. So, if bills of lading be to a firm, insurance in the name of one partner will not cover the firm's property at all.[3]

[1] *Hunt* v. *Home Ins. Co.*, Superior Court, Quebec, April 1871. But see *ante*. Hettier says chirography creditors may insure, but what indemnity they may be entitled to after loss by fire may be very difficult to state. He gives examples.

[2] Emerigon, Vol. I, p. 298 (Edn. of 1827).

[3] Shipowners are not partners.

A partner for a firm insured cotton, property of the firm. By mistake the policy described the partner (the insured) as if insuring his own property. A bill was filed in equity after the fire, to have the policy reformed so as to read for the partnership. *Keith et al.* v. *Globe Ins. Co.*, Illinois, 1869; 4 Am. Rep.

§ 115. *Insurance for a person to be named.*

The name of the insured is sometimes kept secret till necessary to be disclosed. Troplong, mandat, No. 549.[1] The broker or agent of the insured in such case declares that he takes the insurance for account of a person to be named. Once the person is named the insurance is held to have always been his. *Ib.* Or the insurance may be "pour compte de qui il appartiendra." *Ib.*, No. 554.

Where Peter, without mandate, insures for Paul, Paul's property, his action must be approved "*en temps utile*," or it is valueless. This is to prevent gambling. "*Temps utile*" here is equivalent to *rebus integris*, before the loss. *Ib.* No. 626. But there are cases of implied mandate, and in such cases the *mandant* need not have ratified before the loss. *Ib.* No. 625.

The agent may take the insurance in his own name if the conditions of the policy do not prohibit, but read that insurances generally are for the insured or whoever may be interested.[2]

§ 116. *Interest, part personal and part as trustee.*

A person having an interest in his own name in part, and in quality of trustee for the rest, may insure all in his own name under a general description. Phillips, § 392.[3] So (says Phillips) a policy on a building described by the assured to be "his mill" was held applicable to his interest both as owner and mortgagee.[4]

[1] Observe: Nature of interest must be specified by our Code, Art. 2571.

[2] *Browning* v. *Provincial Ins. Co.*

[3] *Hiscox* v. *Barrett*, cited in 16 East, 145. *Murray* v. *Col. Ins. Co.*, 11 Johns., is *contra*.

[4] *Lawrence* v. *Col. Ins. Co.*, 2 Peters, cited; and *Irving* v. *Richardson*, 2 B. & Ad.

Interest of co-partnership cannot be given in evidence to support averment of individual interest.[1]

Averment of interest of a company cannot be supported by proof of a contract relating to the interest of an individual.[2]

In Lower Canada three men may by one policy insure "to the extent of their respective interests for £1,000."

§ 117 *Insurance on joint account.*

Where several are jointly interested, and a policy is made on their joint account, it is not sufficient to state that one was interested, and that the policy was for his account, and where he had got a verdict it was set aside.[3]

If one own only a fourth of a thing, but insure it generally, he will only recover to the extent of his interest, but he can recover to that extent.[4]

A joint tenant has an interest in the entirety entitling him to insure it, but unless he insure for all expressly he can only recover part of any loss. *Page* v. *Fry*, 2 Bos. & P. 240.

An insurance by one of several tenants in common will not protect the shares of the others; each of such tenants' interest is distinct from his co-tenants' interest. But, I take it, one can insure a ship property of self and others part owners, and for all, if expressly so insured.

In New York and in Pennsylvania a judgment creditor cannot insure specific buildings of his debtor. It is otherwise in the Province of Quebec.

One of two co-heirs insured a house, property of himself and co-heirs, as owned by assured. He was held entitled to recover only half of the loss.

[1] Per Marshall, Ch. J., 2 Cranch 440. This is the correct principle. The decision by Kent in *Holmes* v. *U. Ins. Co.*, 2 Johns. R., seems wrong; that one of several partners can separately insure a thing of the firm, and that an averment that he had interest to the amount will be supported by proof of the partnership interest to that amount. See *Lawrence* v. *Van Horn*, in note to 16 East.

[2] *Graves* v. *The Boston M. F. Co.*, 2 Cranch. Graves is insured to the extent of his own interest, but his co-partner is not. *Page* v. *Fry*, 2 Bos. & P., was refused weight in the above case in 2 Cranch.

[3] *Bell et al.* v. *Ansley*, 16 E. R.

[4] *Lawrence* v. *Van Horn*, 1 Caine's R.

If one co-heir can be considered agent of the others he ought not to use his sole name as if owner.

§ 118. *Lessees.*

A farmer whose harvest has been destroyed by accident (say hail) may claim reduction of rent from the proprietor, in the terms of Art. 1650 C. C. of Lower Canada, though he may be entitled, for the same loss, to an indemnity from an insurance company. In such a case, the proprietor may be declared without right to profit by this latter indemnity stipulated in a contract to which he was not a party. *Thiroux* v. *Filion*.[1] Filion had insured against hail. Thiroux contended that a farmer's right against the proprietor to go free of rent ceased on his being paid by the insurance company. The case of *King* v. *The State Mutual F. Ins. Co.*, (*supra*), differs from that of *Thiroux* v. *Filion*, it seems, only in this, that the insurance company paid Filion, and did not ask from him subrogation, apparently, and Filion sued his landlord.

Is not Shaw, Ch. J., in the *King* case, in a dilemma? How hold, as he does, and at the same time admit that the mortgagee can only insure to the amount of his debt claim? And again, that if his debt be paid the policy cannot operate?[2]

§ 119. *Mandataries.*

Troplong, Mandat, No. 624, speaks of the *mandataire* being authorized to go to expense to carry out the *mandat* and to conserve the subject. He may incur necessary expenses, and even *dépenses utiles* must be reimbursed him. Thus he may insure and reimburse himself the moneys paid in premiums. It suffices that insuring was or might be *utile*. Can it be opposed that a *mandataire* without mandate to insure has no right to insure? No, for power is implied, in most mandates, to *soigner*.

[1] Cour de Cassation, 4 May, 1831; reported in Dalloz, Jur. Gén. du R.

[2] The *Filion* case is not as bad as the *King* case; for Filion was not master to make a hail storm; but King could set fire. King's case is as bad as Harman's, mentioned in Marshall on Insurance, and called there a gaming case (and overruled apparently).

§ 120. *Insurance for owner without his authority.*

One may insure in his own name the property of another for the benefit of the owner without the latter's previous authority. Such insurance will enure to the party's interest intended to be protected, upon his subsequent adoption of it, even after a loss. Angell, § 79;[1] and so in Quebec.

In *Dumas* v. *Jones*[2] the policy (a marine one), was in the name of the plaintiff only. It was an insurance on freight valued at $5,000. The defendant underwrote for $1,000; five others had underwritten previously for $2,500. At the trial it appeared that plaintiff's interest was only one-half of $5,000; another person being interested in the subject insured. Plaintiff was limited to his own loss, and had recovered that from earlier underwriters, before suing Jones. Jones was therefore condemned only to return to plaintiff the premium received on the amount insured beyond the plaintiff's insurable interest.

One of several owners of a vessel and cargo took a policy in his sole name, he intending the insurance for all. On a loss the insurers paid the insured more, considering his individual interest, than he was entitled to, and the insurer was declared entitled to recover back the excess, as paid in ignorance of fact.[3]

§ 121. *Beneficiary heirs, tutors, etc.*

The beneficiary heir may insure. Tutors may insure, in fact ought to be held bound to do so if in funds. Assignees of a bankrupt's estate may insure. So, churchwardens and trustees may; and the *cestui que trust*.[4]

[1] 9 Barr (Penn.) R. On peut faire le bien d'une personne à son insu. Beneficium est etiam invito prodesse. A man may become surety for B towards A without B's knowledge.

[2] 4 Mass. R.

[3] *Pearson* v. *Lord*, 6 Mass. R. Our article 1047, C. C., would allow so.

[4] *Hill* v. *Secretan*, 1 Bos. & Pul. Though the trustee insure, the *cestui que trust* may, by the condition, be the person to get the money. Monthly Law Reporter, A. D. 1858, *Brown* v. *H. Ins. Co.*

§ 122. *Pawnbrokers.*

A pawnbroker has an interest to insure things held by him in pledge; for he is liable (in the Province of Quebec and in France) even for *faute legère*; but if insured, though there may have been *faute legère*, he will recover the sum insured. Goods in pawn are generally required to be insured as such.[1]

§ 123. *Innkeepers.*

An innkeeper can insure to cover the value of his own and traveller's goods; for if traveller's goods be lost in the inn, or damaged, they are presumed to have been so through the negligence of the innkeeper who must pay.[2]

§ 124. *Agents.*

An agent insuring ought to say for those interested, for whom it may concern; for otherwise he may not be able to recover the amount insured. How can he in his own name, having lost nothing? Where he has a lien he may perhaps claim indemnity to the extent of it. It was held in the case of *Cusack* v. *Mut. Ins. Co. of Buffalo* [3] when an agent claims indemnity he will have to declare his interest.

The *negotiorum gestor* may insure but ought to state his quality.

Where an insurance is effected by A as agent for B, nobody is insured but B. If he have no interest at the time of the loss he cannot recover.[4]

An agent may insure simply "as agent." It may be shown afterwards who was principal; but there must not be fraud.[5]

§ 125. *Consignees.*

An ordinary consignee having a beneficial interest may insure for the benefit of the owner, though a naked consignee, being a mere agent of the consignor, cannot do so, as he can suffer no damage from the loss, as *e. g.* commission. Only in his principal is there an insurable interest.[1] He is not like a trustee having the legal interest in the thing.[2]

In *Crowley* v. *Cohen*[3] it was held that where a consignee or trustee insures as such, he need not specify the exact interest he has; the nature of his interest may be left at large. But it must be observed that by our Civil Code the nature of interest must be specified, (2571).

Whether consignees merely to take possession, but not having power to sell, can insure for themselves or principal is unsettled, says Story, (Agency). Evidently Lord Eldon thought that such consignees could insure, stating the interest in the principal; [4] and to the same effect is Boudousquie.

Consignees for sale may insure for themselves to the extent of their own interest. They have also an implied authority to insure for their principal.

The better to keep covered what he has on consignment the consignee ought to insure (says Boudousquie) for account of whom it may concern. This will cover any interest existing at the date. As to his commission in expectancy, the consignee may insure that, valued at some sum stated. If his interest be so declared he will recover if a loss happen.

A consignee insuring in his own name insures only his own interest. If he wish to cover the owner as well as himself, he must take a policy as well in the name of the owners as in his own name, or for himself and as agent.[5] Then, as regards the owner he must sue for himself.

Goods "owned or held in trust or on commission" will cover goods sent and held for sale, and the owner can hold the consignee or trustee accordingly. Angell, § 80. And this is the case though he did not order insurance previously.

[1] Can the pawnbroker charge premium against the pawner? Apparently not.

[2] *Dawson* v. *Chamney*, 5 Q. B. Ad. & Ell.

[3] 6 L. C. Jurist.

[4] *Russell* v. *N. E. M. Ins. Co.*, 4 Mass. R. In the Province of Quebec it would be for B. to sue in case of loss.

[5] 12 Mass. R.

[1] *Lucena* v. *Crawford*, 2 B. & P. 306, 307.

[2] *De Forest* v. *Fulton Ins. Co.*, 1 Hall, is approved in *Elsworth* v. *Alliance Marine Ins. Co.*, Common Pleas, England, 1873. It follows a good deal *Lucena* v. *Crawford*.

[3] 3 B. & Ad.

[4] 2 Bos. & P. 324, new R.

[5] *Cusack* v. *Mutual Insurance Co. of Buffalo*, 6 L. C. Jur.

Aliter, if previously he had refused to pay premiums.

§ 126. *Warehousemen.*

A, a wharfinger and warehouseman, insured goods in his warehouse, and "goods in trust and on commission therein." A had goods belonging to his customers, on which he had a lien for rent and charges, but no further interest of his own. He had never charged his customers insurance, nor did they know of the policy. The warehouse and goods insured were all consumed. The insurers refused to pay for customers' goods beyond the amount of A's lien. Yet A was declared entitled to get the whole insurance. He would be a trustee for part of it.[1]

Troplong, (Mandat) says that an agent charged to buy and ship things may insure, and charge the premium against his principal.

An agent not generally authorized to insure, may, in unforeseen exigencies, acquire a right to insure, to prevent a loss to his principal. Story, Agency, § 141.

In *Waters* v. *The Monarch Ins. Co.*,[2] the plaintiffs (warehousemen) not insurers were not liable to the owners of goods which were burnt. But the plaintiffs had insured the whole value of the goods, though their personal interest was only for their charges as warehousemen, for which they had a lien. The insurance company was held liable in full.

Warehousemen and wharfingers may insure goods deposited with them, though without the previous authority of the owners, and the insured are entitled to recover the whole value. Then they must account to the true owners for all except their own interest (say for charges on the goods).[3]

A warehouseman is *negotiorum gestor* of those who have goods with him, so that if he insure such goods, and get paid, he may be sued by those who had goods. It is not so, however, in England—at law at any rate.

A ship's husband cannot insure and charge the owners with the premium.[1]

A managing owner of a ship has no power to insure and charge part owners with premiums.[2]

In *Sideaways et al.* v. *Todd et al.*[3] a wharfinger without the knowledge of the depositor insured goods deposited. The goods were placed with the wharfinger in storage and for sale by him. A fire happened and the goods were lost. The wharfinger received the insurance money. It was held that though he needed not insure,[4] yet having done so, and received the money he was bound to account to the depositors. He held the goods for them.

§ 127. *Common carriers.*

In *London & N. W. R. Co.* v. *Glynn*,[4] the plaintiffs, common carriers, insured goods "their own and in trust as carriers," against all loss that the assured should suffer by fire on the property particularized in the policy. It was held that, to the amount of the policy, the whole value of the goods in plaintiffs' possession as carriers was insured, and not merely their interest as carriers; and that plaintiffs would be trustees for the owners of the goods of the amount recovered, less plaintiffs' charges as carriers, and in respect of the goods.[5]

In *Crowley* v. *Cohen*,[6] an insurance "on goods" was held sufficient to cover the interest of carriers in the property under their charge; for in general, if the subject of insurance be rightly described, the particular

[1] *Waters* v. *The Monarch F. & L. Ass. Co.*, 5 El. & Bl. Also Jurist, A. D. 1856.

[2] 5 Ell. & Bl.

[3] *Watts* v. *The Monarch L. & F. Ins Co.*, 34 E.L. & Eq. R.

[1] *French* v. *Backhouse*, 5 Burr.

[2] *Bell* v. *Humphries*, 2 Starkie R.

[3] 2 Starkie R., p. 400.

[4] Above it is said "though he needed not insure." But query; for he really had two qualities: he was agent to sell, as well as wharfinger, and a commission on sales was agreed for. As to fire insurance, wharfinger's liability, the decision of the Master of the Rolls was affirmed, *N. B. & Merc. Ins. Co.* v. *Liverpool, L. & Globe*, 36 L. T. 629. (A. D. 1877).

[4] 1 Ellis & Ellis. A. D. 1859.

[5] See also *London & N. W. R. Co.* v. *Glynn*, 1 Ell. & Ell. 5 Jurist N.S., in which it was held that carriers may insure goods entrusted to them, and to their full value, and not merely to cover their charges. But they must insure the goods as in trust, and for themselves in so far as interested.

[6] 3 B. & Ad.

interest need not be stated, (but there may be a condition reading otherwise or a code enactment).

In France, in the case of nominal insurance by broker, the principal may sue, and the insurer need not say the contrary.[1]

§ 128. *Fol encherisseur.*

In Quebec a *fol encherisseur* may insure for his own benefit, but once the re-adjudication has taken place at his *folle enchère*, if the house burn the company is free, for the insured is dispossessed.[2]

§ 129. *Borrowers.*

The borrower of a thing may insure it. The loan of it being for his sole advantage, if it be lost he has to pay, and negligence is to be presumed against him (in the Province of Quebec).

§ 130. *Vendors.*

The vendor, so long as he has or retains right to stop *in transitu*, may insure. The vendee, after the vendor's stopping the goods *in transitu*, has no insurable interest.[3]

§ 130. *Re-insurance.*

The insurer is a kind of *caution* and may as such get another person to assume his risk; re-insurance is allowed. The insurer has an insurable interest and can re-insure, to protect himself. Such re-insurance may be partial, or total, and at rates and conditions different from the original insurance. It is a contract between the first or other insurer and the re-insurer. Such is the law of France and Lower Canada, 2477 C. C., and of the United States.

Re-insurance is common in England. It is common for one office to take any large risk, and to re-assure say 50 or 60 per cent. with other offices willing to run the risk of a portion. It is said not to be the interest of the insured to insure a large amount in one office; that he had better divide his insurance, and not be, in the event of loss, at the mercy of one office. Where insurance is divided, there will be an honorable competition, it is said, in the settlement of the loss, among the several insurers. That may, or may not, be. I have seen an insured, insured by three policies, have to fight all three of the insurers till final judgments in appeal, and all the three combine to resist each of the insured's actions.

CHAPTER IV.

Who are Bound to Insure.

§ 131. *Agent undertaking to procure insurance.*

Where insurance is undertaken to be procured for another person by an agent, the general rules in the law of principal and agent will govern. In Lower Canada, if a person, even voluntarily and without reward, undertake to procure insurance to be effected, he will be answerable for negligence; and in England though there be no consideration moving to the person who has gratuitously undertaken to procure an insurance or to get a policy transferred, if this person proceeds to carry his undertaking into effect by getting his policy underwritten, etc., but does it so negligently that the insured can derive no benefit from it, as, for instance, if he have promised to get a policy transferred, but neglects to have it properly indorsed or admitted by the insurer, an action will lie against him.—(1. Esp. R.—2 T. R.)

An executor who drops a policy on the testator's estate, is held liable on a loss happening.[1]

§132. *When agent is bound to insure.*

An agent may be bound to procure insurance for his principal, either by express agreement, or by an implied one. Such last would be the habit of the agent in dealing

[1] 2 Pardessus, Dr. Com. pp. 569, 570. See Arnould on Insurance, p. 138.

[2] Sirey, A.D. 1856, p. 451.

[3] *Clay* v. *Harrison*, 10 B. & C. But query; for stoppage *in transitu* only acts to make a lien. The vendee can get the goods afterwards if he tender the price. 2 Kent Comm. And the vendor after stoppage *in transitu* may sue for the price. See *Martindale* v. *Smith*, Benjamin on Sales, p. 660. The effect of stoppage *in transitu* is to restore the goods to the vendor's possession, not to rescind the sale. The vendor may hold the goods till the price be paid. He has not a right to rescind the bargain.

[1] *Garner* v. *Moore*. Also *Hawkins* v. *Coulthurst*, 5 B. & S.

with his principal, an usage in the business in which the agent is engaged, or in the country of his residence, the custom of merchants, etc. Story, Agency, §190. Otherwise the agent is not bound.[1]

In England agent charged to buy and ship things must insure, and may debit principal.

Where the course of dealing between the principal and the agent is such that the latter has been used to effect insurances by direction of the former, he is bound to comply with an order to insure, though he have no effects in hand at the time of receiving the order, unless notice has been previously given by him to discontinue that mode of dealing. If he have effects in hand he cannot in any case refuse to comply with the order; or, if the bills of lading from which his authority is derived contain an order to insure, this is an implied condition which the agent must fulfil if he accept the employment.[2] The mere endorsement, by the consignee, of the bill of lading is such acceptance.[3]

THE LATE MR. J. S. HONEY.

It is now eight years since Mr. Honey celebrated the fiftieth anniversary of his connection with the prothonotary's office in Montreal. At the commencement of the long vacation he has passed away, after a very brief illness, at the ripe age of 78. He was in his usual place in the Court of Review on June 30, the last day of the legal year, and he continued in attendance at his desk until Saturday, July 12. On Monday he was no more. Montreal has been noted for long tenure of office by its legal officials. The little band has been sadly thinned during the last few years, and Mr. Honey has now followed Messrs. Monk, Coffin, Terroux, Pyke, Campbell, Vilbon, and others long associated with him. During his long term of fifty-eight years he has been a model of patient assiduity and unfailing courtesy, and the courts in which he was wont to sit, as well as the office in which he so long reigned, will for a long time to come wear a strange aspect without his familiar presence.

[1] *Lee* v. *Adsit*, 37 N. Y. Rep: 10 Tiffany's Rep: Agent not bound to insure for principal unless specially instructed, or an understanding be shown that it shall be done. A ship was owned by three persons in equal shares. A, one of the owners at her port of departure, has always insured her upon her departure on voyage. At her last departure he omitted to do so, and the ship was lost. Have the other owners an action against A? Yes, for he has *manqué* to *mandat tacite*, No. 141, Troplong, Mandat.

[2] 27 Russel. *Smith* v. *Lascelles*, 2 D. & E.

[3] 3 Camp. 472.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, July 26.

Judicial Abandonments.

A. Hubert Bernard, trader, St. Jean, l'Isle d'Orléans, July 24.

Curators appointed.

Re J. B. Denis.—C. Desmarteau, Montreal, curator, July 15.

Re Camille Lamarche.—J. M. Marcotte, Montreal, curator, July 22.

Re Joseph Massé.—C. Desmarteau, Montreal, curator, July 17.

Re G. L. Paradis & Co., Roberval.—J. B. Letellier, Quebec, curator, June 30.

Re Adolphe Parent, trader, St. Elphège.—C. A. Sylvestre, Nicolet, curator, July 17.

Re W. E. Potter, Montreal.—Kent & Turcotte, Montreal, joint curator, July 22.

Re George Stewart, absentee.—C. Desmarteau Montreal, curator, July 19.

Re The Dominion Safety Boiler Co.—J. McD. Hains, Montreal, curator, July 11.

Dividends.

Re Duncan Everett Dewar, Aylmer.—First and final dividend, (13c.) payable August 11, at office of Mutchmor, Gordon & Co., Ottawa.

Re Pierre Avila Gouin.—First dividend, payable August 13, T. Darling, Montreal, curator.

Re Allan J. Lawson, Montreal.—First and final dividend, payable August 11, A. W. Stevenson, Montreal, curator.

Separation as to property.

Caroline Bouchard vs. Nephtalie O. Rochon, Montreal, July 10.

Cordelia Moreau vs. Edouard Lescarbeau, Montreal, July 22.

Dorila Sicotte vs. Napoléon Vallée, clerk, Montreal, July 22.

A PLAINTIFF IN PERSON.—An amusing scene occurred in the Sullivan county (N. Y.) court house recently. The wife of one of the parties to a suit was on the witness stand and had entrusted her baby to the care of another woman, who was tending it in a room below. The child became restless after awhile and announced its desire to see its mother in notes of unmistakable pathos, which might be traced to hunger. After trying in vain to quiet the child the woman came up stairs and into court, the baby all the time crying at the top of its lungs. Judge Thornton exclaimed "Take that child out of court." The woman addressed continued to advance, and holding the youngster out to its mother over the head of a prominent lawyer, responded "Court or no court, this child has got to be attended to."