The Legal News.

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REMINISCENCES OF THE FRENCH BAR.

In 1839, there was published an extremely amusing and interesting book, entitled "Souvenirs de M. Berryer, Doyen des Avocats de Paris de 1774 à 1838." The author, M. Berryer, the father of the celebrated orator of that name, entered the profession of the law in 1774, and continued in active practice upwards of sixty years.

He was the first advocate who condescended to plead before the revolutionary tribunals, and he was concerned more or less in almost all the causes of consequence which came before them. His reminiscences consequently comprise the ancient *régime*, the transition period, and the established order of things; and they are narrated fully and frankly, in clear, easy, familiar language, with some of the caution taught by experience, but with none of the garrulity of age. They have, moreover, a merit which few French contemporary memoirs possess,—that of authenticity.

M. Berryer begins his work by describing the courts of law as they existed when he first entered on his novitiate. At the head stood the Parliament of Paris,—an august and erudite body, justly venerated for the fearlessness with which, on many trying occasions, they had refused to register the arbitrary edicts of the Crown. This body was divided into chambers, which held their sittings in the Palais de Justice,—a building which rivalled Westminster Hall in the richness and variety of its associations, though far inferior in architectural magnificence. Around the Parliament of Paris were clustered a number of inferior jurisdictions, closely resembling those of which the ancient judicial system of England, and indeed of every country with feudal institutions, was made up. There existed provincial parliaments and other local tribunals, it is true,—for the administration of justice in France was never centralized; but what with appellate and exceptional jurisdiction, the concourse of suitors to the capital was immense. A countryman inquired of a lawyer whom he saw about to ascend the grand staircase of the Palais de Justice with his bag of papers, what that great building was for. He was told it was a mill. "So I see now," was the reply; "and I might have guessed as much from the asses loaded with bags."

It is a remarkable circumstance, that a great majority of the public buildings of London are of comparatively recent date, those which they replaced having been destroyed by fire. The same fate has befallen the public buildings of Paris; and M. Berryer states that the immense vaulted galleries which, from the shops established in them, had procured the Temple of Justice the name of the Palais Marchand, were swept away by a conflagration in 1774.

He also duly commemorates the Grand Châtelet, the seat of sundry metropolitan jurisdictions, and relates some curious circumstances regarding the ancient debtors prisons,—the Fort-l'Evêque and the Conciergerie.

In the former was confined no less a person than Maximilian, the reigning Duke of Deux Ponts, afterwards King of Bavaria. In the latter, M. Berryer tells us, a rich Englishman, Lord Mazareen, was detained during many years for a large sum due on bills of exchange, which, though possessed of ample means, he obstinately refused to pay, on the ground of his having been cheated out of them at play. He lived at the rate of more than a hundred thousand francs a year, kept open table, and had his servants and carriages.

A second edition of Lord Mazareen appeared more recently in the person of an American, Mr. Swan, who was confined twenty-two years in St. Pelagie. This gentleman was in the habit of publishing memorials against his detaining creditors, which he invariably commenced by stating that he possessed more than five millions (francs) in the United States; that it would be easy for him to pay twenty times the amount of the claim, but that it was unjust, and his

conscience did not permit him to purchase nis liberty by a dastardly sacrifice. Swan was nearly fifty-two years of age when he was arrested; he was seventy-four at the period of his release, which he owed to the revolution of July. He died two months afterwards.

But to return to M. Berryer. After describing the mode of becoming an advocate, which in those days was much the same as at the present day, the author tells the following anecdotes:—

"Le Maitre, a celebrated advocate of the age preceding, used to amuse himself during the vacation by going into the country, *incognito*, and pleading causes for the peasantry. On one occasion he made such an impression that the provincial magistrate told him he did wrong to waste his splendid abilities on trifling matters in the provinces. 'Go to Paris, you will there find a fitting field for them; you will become the rival of the famous Le Maitre!'"

On another occasion, Le Maitre, having introduced several Latin quotations with the view of embarrassing the judge, provoked a curious addition to the judgment: "We fine the advocate a crown for having addressed us in a language which we do not understand."

An advocate, by way of accompaniment to his speech, was flourishing about his hand in such a manner as to show off a magnificent diamond ring. He was young, good-looking, and pleading for a lady of quality who had demanded a separation from her liege lord. The husband, who happened to be present, interrupted him in the midst of his appeal, and turning to the magistrates, said: "My lords, you will appreciate the zeal which M— is displaying against me, and above all, the purity of the grounds on which he relies, when you are informed that the diamond ring he wears is the very one which I placed on my wife's finger on the day of that union she is so anxious to dissolve." The Court, says M. Berryer, rose immediately; the cause was lost, and the advocate never had another. What adds to the point of the catastrophe, is the fact that it does not appear that the husband's statement had the slightest foundation, or that he entertained any suspicion of the sort.

Gerbier, the Erskine of the French bar when M. Berryer first joined it, had a fine Roman head, with a voice of great compass, and his action was peculiarly impressive. He consequently excelled in passages where a dramatic effect was to be produced; and these may almost always be introduced with little risk of failure in France. Thus, in his defence of the brothers Du Queyssat, tried for a cowardly murder, he introduced the Chapel of the Palatinate, in which the sword of one of them, a gallant soldier, had been suspended by the express command of his general, and demanded if this could be the same sword which had been basely turned against the murdered man.

The peroration of his speech for the Bishop of Noyon, prosecuted by his own chapter, affords another example of his style:

"It once fell to the lot of Constantine the Great to receive at his imperial levee several deputies from the clergy, who came to denounce the shamefully irreligious conduct of the primate, their chief. To these virulent accusations, the prince, after having listened to them with the most conscientious attention, made answer: 'My duty and yours are to place no faith in suspicions, which the impious may be anxious to raise against the sacred character of the primate; so that —to suppose an impossibility—if I surprised him in the very act of sin, I would cover him with my purple!' It is now for you, my lords, to cover by your decree the sacred person of the Bishop of Noyon."

Gerbier, aware probably of his weak point, was wont to get two of the best lawyers to to discuss the merits of his great causes in his presence. He then chose his topics and formed his plan, but trusted to the inspiration of the moment for the language and the imagery. That the required aid might be constantly at hand, he had always an advocate or two content to play the part of crammers in his cabinet. It was said that Gerbier, in a single cause, had received a fee of 300,000 francs.

M. Duvaudier—an able advocate, though of inferior celebrity, whom the high society

of Paris received on a footing of equality—had an aged client, a woman of quality, who, in the intoxication of success at the happy termination of a suit, conceived the idea of presenting a fee in a novel manner. She repaired first to a notary, by whom she caused the grant of an annuity of 4,000 francs a year to be prepared; then to a coachmaker's, where she ordered a handsome carriage; to a horse-dealer, of whom she purchased two superb horses; lastly, to a tailor, who, by a day named, was to make complete liveries for coachman, footman, and porter.

On the day chosen by the lady, M. Duvaudier was summoned to the Palais for another suit. At its termination, he was accosted by his servant, attired in livery, who informed him that Madame Duvaudier had given orders for the carriage to come for him. M. Duvaudier, a little surprised at the dress of his servant, decided, notwithstanding, to follow him, expecting to learn the key to this enigma from his wife. On reaching the carriage, his surprise increased at finding the coachman similarly arrayed. The footman, on opening the door, begged, in Madame Duvaudier's name, that he would look at a paper which he would find under the cushion. This was the deed for the annuity destined to maintain the equipage.

Toward the close of 1789, the principal tribunals were broken up, and the order of advocates was suppressed. New courts were established, and suitors were permitted to appear by deputy, so that the public gained nothing beyond the substitution of a set of ignorant adventurers for a body of men distinguished by learning and integrity. A small proportion of the ancient bar continued the practice of their profession under its new titles, and amongst the most conspicuous was M. Berryer.

A remarkable suit was instituted by the journeymen carriers against their masters for the amount of a certain percentage on their wages, retained during many years, as the masters alleged, to form a fund in case of sickness. The journeymen were represented by M. Berryer, who seems to have entertained no very exalted opinion of the justice of their claim. But at the time in question, it was a crime of the deepest dye to be a proprietor or a capitalist. Equal rights required unequal judgments, and Le Roy-Sermaise, a judge of the genuine democratic school, decided almost without hesitation for the journeymen.

This worthy was once trying a cause between two peasants, regarding the property in a field. The claimant produced a deed which had nothing to do with the question. The defendant relied upon long possession exclusively. "How long?" inquired the judge. "Why, citizen president, from father to son, eighty or ninety years at least." "In that case, my friend, you ought to be satisfied: each in his turn; it is now your adversary's." He ordered the claimant to be put into possession without delay.—*The Green Bag.*

COUR SUPERIEURE.

MALBAIE, juillet 1890.

Coram GAGNÉ, J.

BOUCHARD v. BLACKBURN.

Certiorari—Cautionnement pour la paix.

JUGÉ:—*Que le plaignant sur poursuite pour cautionnement pour la paix, doit être présent à l'enquête, pour être transquestionné par l'inculpé;*

Que l'enquête faite en l'absence du plaignant donne lieu à certiorari, *si l'accusé exige sa présence.*

PER CURIAM. — L'accusé sur demande de cautionnement pour la paix, n'a pas droit de contredire les faits articulés contre lui; mais il a le droit de transquestionner le plaignant et ceux qui déposent contre lui. Voir Lanctôt qui cite Woolrych. Carter, Traité sur les conv. som., p. 189.

"He cannot be allowed to controvert the "facts stated in the complaint, but he should "be permitted, from the cross-examination "of the complainant or otherwise, to estab-"lish that the complaint is preferred from "malice only."

Le juge de paix doit faire comparaître le plaignant, si l'accusé l'exige, pour le transquestionner.

S'il n'en était pas ainsi, si l'accusé n'avait pas au moins le droit de transquestionner le plaignant, les citoyens les plus respectables ne seraient-ils pas à la merci du premier venu qui voudrait porter une plainte contre eux?

Je crois que le fait de priver, en pareil cas, l'accusé de l'avantage de transquestionner le plaignant, est suffisant pour justifier l'émanation d'un bref de *certiorari*.

Suivant moi, le juge de paix qui, dans une cause ordinaire, où l'accusé peut offrir une défense, faire entendre des témoins, etc., etc., refuserait à ce dernier le droit de transquestionner les témoins à charge, commettrait une grave injustice, un abus de pouvoir suffisant pour justifier l'émanation d'un bref de *certiorari*. A plus juste raison doit-il en être ainsi quand l'accusé n'a pas d'autre droit que celui de transquestionner.

Quant à savoir s'il y a lieu à *certiorari* sur demande de cautionnement pour la paix, je n'ai aucun doute à ce sujet.

Tous ordres ou jugements des juges de paix peuvent être évoqués à la Cour Supérieure par *certiorari*.

Voir d'ailleurs, New Digest of cases on criminal law, vo. Articles of the peace.

"The Court of Queen's Bench has authority "to examine the allegations contained in "articles of the peace when they are brought "up *by certiorari*, and to *quash the articles*, if "no sufficient offence is alleged to justify the "justices in ordering the defendant to give "sureties of the peace."

Angers & Martin for complainant.

J. S. Perrault for accused.

(C. A.)

CIRCUIT COURT.

MONTREAL, December 13, 1888.

Coram LORANGER, J.

SMITH *et al.* v. BLUMENTHAL *et vir.*

Note given to creditor to secure his assent to composition.

The action was brought on a promissory note against the defendant, the maker thereof, who pleaded that the note had been given to the plaintiffs to secure their assent to a composition effected by the defendant with her creditors; that this was a fraud on her other creditors, that the consideration was illegal and the note was in consequence void.

Crankshaw, for defendant, cited in support of his plea, *Sinclair* v. *Henderson*, 9 L. C. J. 306; *Doyle* v. *Prevost*, 17 L. C. J. 307; *Prevost* v. *Pickle*, 17 L. C. J. 314; *Decelles* v. *Bertrand*, 21 L. C. J. 291; *McDonald* v. *Senez*, 21 L. C. J. 290.

Duclos, for plaintiffs, submitted,

1o. That the note was valid and consideration legal:—*Greenshields* v. *Plamondon*, 8 L. C. J. 194; *Perrault* v. *Larin*, 8 L. C. J. 195; *Bank of Montreal* v. *Audette*, 4 Q. L. R. 254.

2o. That the cases relied upon by the defendant had all been decided under one or other of the Insolvent Acts of 1864, 65, 69 and 75 and were therefore not applicable.

3o. That the defendant could not plead her own fraud:—*Gareau* v. *Gareau*, 24 L. C. J. 248; *Leblanc* v. *Beaudoin & Bedard*, 2 R. L. 625; *Dorion & Dorion*, 3 Q. B. R. 376; *Chapleau* v. *Lemay*, 14 R. L. 198.

The Court held, following *Chapleau* v. *Lemay*, that an insolvent debtor, who makes a composition with his creditors, and who, to obtain the assent thereto of one of them, enters into a private agreement with him, cannot subsequently plead the nullity of this agreement.

McCormick, Duclos & Murchison for plaintiffs.

James Crankshaw for defendant.

(C. A. D.)

FIRE INSURANCE.

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

CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 391.]

§ 213. *Construction of warranties and representations.*

Every statement upon the face of the policy is not necessarily a *warranty*. It must, in order to be a *warranty*, relate to the risk, and contain something more than "facts incidentally expressed, or introduced by way of recital, or to identify the subject insured, and not purporting on the face of the policy to be stipulations."[1]

Where warranties are supposed by the insurers to be involved by the description of the subject insured, must breach of them be

[1] 1 Phillips Ins. Co., 418; *Wood* v. *Hartford Fire Ins. Co.*, 13 Conn. 533.

pleaded, and if not, are they not waived? It ought to be so.[1]

Where a policy was issued against sea-risks only on the "good British Brig, called the John," it was held that this description did not constitute a warranty that the vessel was *British*, because the risk of capture being excluded from the policy, the national character of the vessel could have no relation to, or effect upon the risk.[2]

Also where in a policy against fire, the premises insured were described as occupied by a certain individual as a private residence, it was held that this did not amount to a warranty that that person would continue to be the occupant during the whole duration of the risk; and that if it was a warranty at all, it was merely one that he was the occupant at the date of the policy, and so *semble*, if the policy said, "intended to be occupied by assured as a private residence."[3]

The Court, however, held in *O'Neil* v. *Buffalo Fire Ins. Co.*, that if a fact is in express terms *warranted*, it will be considered a warranty, and must be literally fulfilled, notwithstanding its unimportance and entire disconnection from the risk, but where it is otherwise, and is sought to be made a warranty because it is stated upon the face of the policy, it must relate in some degree to the risk.

Arnould favors the rigid rule that every allegation in the policy amounts to a warranty and must be literally fulfilled. 1 *Arnould, Ins.* p. 584, *Perkins' Ed.* 1850; while Phillips recognizes the distinction taken in the cases above cited, but holds that it must be rigorously confined to cases where it plainly appears that the fact alleged could not possibly, in the opinion of any man, have any relation to the risk assumed. 1 *Phillips, Ins.* 418. But it will be presumed that every fact stated in the policy does relate to the risk, until the contrary is shown, *id.*

In the *Sexton* case,[1] the judge said the statement in descriptions or policy that *house insured* is distant —— feet from other buildings, make a warranty. Some judges, in other cases, say if only moveables are insured, and such statement as to buildings be incorrect, that the insured may yet recover.

In *Blood* v. *Howard Fire Ins. Co.*,[2] it was held that a statement that the building insured *is* fastened up and occupied only occasionally for a stated purpose, although a warranty by the express terms of the policy, is only a warranty of the *then* situation of the property, and is *not* a warranty that it shall so continue. A change in the use of the building, not increasing the risk, will not of itself avoid the policy.

In *Bay State Glass Co.*, v. *People's Fire Ins. Co.*,[3] to the question, What is used for fuel? the applicant answered coal, wood and resin in small quantity. The answers were made warranties, and one condition on the policy was that the insured should notify the company of any change or alteration of risk. Held, that this was a warranty of the *then* existing habit or custom, which might afterwards be changed if in good faith, and so that the risk was not increased.

A statement by the assured that a machine in the building insured "is for burning hard coal," is not a warranty not to burn other fuel.[4]

But the courts will look into the intention of a warranty, and will not construe it more strictly than it really imports.

In an application for insurance on a building, which was in terms referred to in the policy as forming a part thereof, occurred the question, "How bounded, and distance from other buildings if less than ten rods." The answer in the same application stated the *nearest* buildings on the several sides of the insured premises, but did not mention *all* the buildings within ten rods. Held that

[1] *Mayall* v. *Mitford*, 6 Ad. & E.

[2] *Mackie* v. *Pleasants*, 3 Binney, 363; and see also a dictum of Sutherland, J, to the same effect in *Francis* v. *Ocean Ins. Co.*, 6 Cowen, 430.

[3] *O'Neil* v. *Buffalo Fire Ins. Co.*, 3 Comstock, 122; See also *Catlin* v. *Springfield Fire Ins. Co.*, 1 Sumner, 434.

[1] 9 Barbour.

[2] Monthly Law Reporter, A.D. 1858, Supreme Court, Mass.

[3] Monthly Law Reporter, A.D. 1857, p. 565.

[4] *Tillon* v. *Kingston Mut. Ins. Co.*, 7 Barb. 570.

such answer was not a warranty, that there was no other building within that distance than those mentioned.[1]

But *aliter*, when the question in the application was "relative situation as to other buildings, distance from *each* if less than ten rods.[2]

Per Story, J., in *Catlin* case:—"Suppose a policy against fire insuring the house of A in Boston described as occupied as a dwelling house, would the policy be void, if the house should cease for a time to have a tenant? Such a doctrine has never been asserted."

If asked how many stoves in the house the applicant say two when there are three or six, the untrue statement will avoid the policy, where the statements in the application are stipulated warranties.[3]

Suppose A to insure a house bought by him by this description:—A house in the parish of———upon the lot of land next to ———in which house the assured intends to reside and in which he has now a servant man. Does that warrant that he should reside? No! he need never reside.

A statement on a plan, or diagram, that ground contiguous to the building insured *is* "vacant" does not amount to a warranty that it shall continue vacant during the continuance of the risk. (373) 3, Kent's Com. No; unless the vacant land were property of the insured. If it were, and if insured himself were to build upon it, after effecting a policy, and if extra hazard was created by the new building, the insurer would be free. *Stetson* v. *Mass. M. F. I. Co*, 4 Mass. R. But if extra danger or hazard not proved, policy not to be voided.

If the diagram be part of the policy, would it not be warranty? Yes. In the case of *Stebbins* v. *The Globe Ins. Co.*, 2 Hall, the diagram was not part of the policy.

[1] *Gates* v. *Madison Co. Mut. Ins. Co.*, 2 Comstock, 43; *S. C.*, 1 Selden, 469.

[2] *Burritt* v. *Saratoga Co. Mut. Ins. Co.*, 5 Hill 188; *Jennings* v. *Chenango Co. Mut. Ins. Co.*, 2 Denio 75; See also *O'Neil* v. *Buffalo Fire Ins. Co.*, 3 Comstock 122; *Catlin* v. *Springfield Fire Ins. Co.*, 1 Sumner 434; *Houghton* v. *Manufacturers' Mut. Ins. Co.*, 8 Metcalfe 125.

[3] *O'Neill* v. *Ott. Agr. Ins. Co.*, vol. 30, C. Pl. Rep.

Mayall v. *Mitford* (6 Ad. & E.) was a case of insurance of machinery in mills, and assured "warranted that said mills are brick built, warmed and worked by steam, lighted by gas, and *worked by day only;*" it was held that the stipulation as to *working by day only* meant that the usual cotton manufacture carried on by the mills in the day time should not be carried on at night; and that it was not a breach of the warranty that on one occasion, in order to turn machinery in an adjacent building, the steam engine and certain perpendicular and horizontal shafts in the mill were at work.

Macmorran & Co,[1] cotton and woollen spinners, insured goods and machinery in their mill, with the Newcastle-upon-Tyne Fire Insurance Company. The policy was dated April 16, 1805, and contained a receipt for the premium, which was accounted for to the company by Hamilton, their agent at Glasgow, through whom the insurance had been effected. The policy was retained by Hamilton till September 5, 1805, when it was deli vered to the insured upon their paying him the premium.

Printed proposals formed part of the contract, and besides being referred to, a copy was delivered to the party insuring; and it was there set out, among other things, that if any "person or persons shall insure "his, her or their houses, mills, &c., and "shall cause the same to be described in "the policy otherwise than as they really are, "so as the same shall be insured at a lower "premium than proposed in the table, such "insurance shall be of no force."

December 7, 1805, the mill was burnt, and the insurers refusing to pay, the insured brought an action before the Court of Session, concluding for payment of £1647 and interest from December 7, 1805. The insurers stated several reasons of refusal to pay: first, that there was fraud and false swearing as to the amount of the loss; second, that the fire was intentional; thirdly, the mill was warranted of first class.

Upon proof it appeared that there was no foundation for charge of intentional firing;

[1] *Newcastle Fire Insurance Company* v. *Macmorran & Co.*, 3 Dow. 255.

but it also appeared that at the date of the policy the premises were of the second class, contrary to the warranty. In answer to this it was alleged that Hamilton, the agent, had taken it for granted that the premises were of the first class, and made out the policy accordingly, without any representation on the part of the insured; and that before the policy was delivered, the premises had been altered so as to bring them within the first class. The Court below decerned against the insurers and they appealed.

Lord Eldon, C.—This is an appeal by the Newcastle Company from a judgment of the Court of Session, by which they were held liable in the payment of a sum of £1647 upon a policy of insurance, and the question is, whether this judgment was right or not?

The policy described the subjects insured, and then followed the words "warranted "that the above mill is conformable to the "first class of cotton and woollen rates "delivered herewith."

The materiality of them consisted in this, that if the mill was not of the first class, a larger premium ought to have been given.

The appellants represent that in the second set of proposals for the insurance of cotton mills, &c., certain classes of buildings were specified, according to the particulars of which the premium is at a higher or a lower rate.

Thus, class 1 comprehends "buildings of "brick or stone and covered with slate, tile, "or metal, having stoves fixed in arches of "brick or stone on the lower floors, with "upright metal pipes carried to the whole "height of the building, through brick flues "or chimnies, or having common grates, or "close or open metal stoves or coakles stand-"ing at a distance of not more than one foot "from the wall, on brick or stone hearths, "surrounded with fixed fenders." I request your lordships' particular attention to the words following, "and not having more than "two feet of pipe leading therefrom into the "chimney," &c.

Class 2 comprehends "buildings of brick "or stone, and covered with slate, tile, or "metal, which contain any singeing frame, "or any stove or stoves having metal pipes "or flues more than two feet in length," &c.

This mill was burnt and an action was brought to compel payment. As to the defence that the premises had been wilfully set on fire, there was no ground for it; and the Court of Session seems to have thought that there was no ground for the imputation of fraud and overvalue.

But there was another very material point of defence stated, that this mill which was warranted as being of the first class, with a pipe of two feet, was in reality of the second class; and that being of the second class whether there was fraud or not; whether the mis-statement on the part of the insured arose from fraud, or from mere error or inattention, or the mistake of an agent, (unless they were misled by the agent of the Newcastle Company,) or from whatever other cause, the contract never had effect.

Evidence was gone into as to whether the mill was of the first or second class. The Court of Session seems to have thought it immaterial whether it was or not. But if the mill was warranted as of the first class and was really of the second the judgment of the court below was clearly erroneous; for it is a first principle in the law of insurance on all occasions that where a representation is material it must be complied with; if immaterial, that immateriality may be inquired into and shown; but that if there is a warranty, it is part of the contract that the matter is such as it is represented to be. Therefore the materiality or immateriality signifies nothing. The only question is as to the mere fact.

My impression is, that the mill was not such as it was warranted to be, and that therefore all consideration of fraud or overvalue is out of the question, unless it can be effectually answered that the insured were misled by the insurers or their agent.

They say that the misrepresentation was owing to the agent of the Newcastle Fire Company. I cannot say, however, that they have made out that point.

The insured say that there was no effectual policy till the premium is paid, and refer to the term of the fourth article of the printed proposals, which declares "that no insurance is considered by this office to take place till the premium is actually paid by the insured,

his, her, or their agent or agents." The premium they say was not paid till a considerable time after the date of the policy, and that the alteration was made which brought this mill within the description of the first class of mills before the premium was paid, and that the alteration had been communicated to the agent of the company. The company deny that any such communication was made, and even if it had been made, it would have been still necessary to consider how far that circumstance could alter the law as applicable to the case. But as the fact was denied, and there was no proof of it, that point may be considered as out of the question. With respect to the effect of the article referred to, the appellants contend that it did not relate to the first policy, but to the renewals of policies. But in the present case it is not necessary to consider whether it related to the first policy or any renewals of it, as they say that as between the respondents and them the premium had in point of fact been paid before the alteration took place, as the Scotch agent had accounted for it to his constituents, the Newcastle Company, before the period of the alteration, and it had therefore become a personal debt due to him from McMorran & Co. That may be considered as an answer to the argument raised upon that ground. But suppose that were entirely out of the question, we must proceed secundum allegata et probata. If the assured could succeed at all on this summons it must be on a policy or contract dated April 16, 1805, and when they have founded upon that only, they cannot afterwards turn round and say, though we cannot succeed on that policy we are entitled to recover on a subsequent contract. See how the contract would be varied. This was a bilateral contract of the date of April 16, 1805, from which period to June 24, 1806, the premium was acknowledged to have been paid; and it was agreed that a certain premium should continue to be paid on June 24, de anno in annum. Can your lordships convert that into a transaction commencing not in April, but in September 1805?

Acquitting McMorran & Co. of all fraud in the business, the question is reduced to this: "Are you, McMorran & Co., looking to the facts and evidence as applicable only to the policy of April, 1805, entitled to recover under this contract?"

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Dec. 6.

Judicial Abandonments.

A. David Damphouse, farmer, parish of St. Timothé, Nov. 11.

Charles O. Dubois, trader, Hull, Nov. 26.

Riopel & Hétu, contractors, Montreal, Nov. 28

Edouard F. Lavoie, provision merchant, Quebec, Dec. 4.

Victor Lesage, trader, parish of St. Jeanne de Neuville, Nov. 29.

P. & F. Ouellet, traders, Quebec, Nov. 26.

Ananias Renaud, trader, parish of St. François Xavier de la Petite Rivière, Nov. 12.

J. Philéas Samson, boot and shoe dealer, Lévis, Nov. 7.

Curators appointed.

Re Dumas & Lortie, traders, Hébertville.—H. A. Bedard, Quebec, curator, Dec. 2.

Re J. E. Garneau, dry goods, Three Rivers.—David Seath, Montreal, curator, Nov. 29.

Re James Jessup, trader, Newport, Gaspé.—H. A. Bedard, Quebec, curator, Dec. 1.

Re Achille Labine, Montreal.—Kent & Turcotte, Montreal, joint curator, Nov. 29.

Re Arsène Morin.—C. Desmarteau, Montreal, curator, Dec. 2.

Re Francis Charles Silcock, agent, Montreal.—P. E. E. de Lorimier, Montreal, curator, Nov. 29.

Re A. Tardif & Co., traders, Quebec.—H. A. Bedard, Quebec, curator, Nov. 29.

Re Charles H. Wade, Montreal.—A. W. Stevenson, Montreal, curator, Dec. 2.

Dividends.

Re Jos. Beaudoin, St. Luc de Champlain.—Second and final dividend, payable Dec. 23, C. Desmarteau, Montreal, curator.

Re A. P. Desroches.—First and final dividend, payable Dec. 24, C. Desmarteau, Montreal, curator.

Re E. T. Favreau.—First dividend, payable Dec. 17, Bilodeau & Renaud, Montreal, joint curator.

Re Dame Marie Goyette.—First dividend, payable Dec. 20, J. A. Nadeau and Joseph Lavoie, Iberville, joint curator.

Re Letourneau & Paré, merchant tailors, Quebec.—First dividend, payable Dec. 22, H. A. Bedard, Quebec, trustee.

Re J. D. Tellier, Sorel.—First and final dividend, payable Dec. 26, Kent & Turcotte, Montreal, joint curator.

Separation as to property.

Marie Louise Milot vs. Joseph Major, carriage-maker, Montreal, Nov. 27.