The Legal News.

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THE MONTMAGNY ELECTION CASE.

On the 23rd ultimo, Mr. Justice Angers held in the Montmagny election case that as there were conclusions taken against the returning officer, he was entitled to security over and above the $1,000 deposited with the petition. In the Verchères case, which will be found in the present issue, there was no conclusion against the returning officer, and he was held by Mr. Justice Johnson not to be entitled to security, as he had not appeared or asked for it, and the candidate had no interest in asking it for him. The two decisions do not conflict; but if, as was held in the Montmagny case, every returning officer who is made a party to a petition is entitled to security, then, in case the candidates returned at the last election in Montreal had been petitioned against, and all the returning officers had been made parties to the petitions, $190,000 security would have been required, an inconvenience, to say the least, requiring perhaps the attention of the Legislature.

QUEEN'S COUNSEL.

The following members of the bar in the Province of Quebec have been appointed Queen's Counsel by the Governor General:—

Pierre C. Duranceau, Beauharnois.
Edmund Barnard, Montreal.
James Oliva, Montmagny.
Frederick W. Andrews, Quebec.
Didier J. Montambault, Quebec.
Benjamin A. Globensky, Montreal.
John Joseph Curran, Montreal.
Melbourne M. Tait, Montreal.
Charles Chamilly de Lorimier, Montreal.
Louis Olivier Taillon, Montreal.
Jules E. Larue, Quebec.
Ivan Tolkien Wotherspoon, Montreal.
Louis Tellier, St. Hyacinthe.
Ernest Cimon, Chicoutimi.
Donald Macmaster, Montreal.

Some remarkable omissions occur in the above list. For example, it has been generally noticed and as generally regretted that the name of the gentleman who fills the office of *Bâtonnier Général* of the Province as well as *Bâtonnier* of the District does not appear therein.

PROVINCIAL LEGISLATION ON THE SUBJECT OF INSURANCE.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

November 26, 1881.

Present:—SIR BARNES PEACOCK, SIR MONTAGUE SMITH, SIR ROBERT P. COLLIER, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

THE CITIZENS INS. CO. OF CANADA v. PARSONS.
THE QUEEN INSURANCE CO. v. PARSONS.

Insurance—Statutory Conditions—Effect of failure to comply with the statute.

Where a policy (issued in this case by a Company incorporated by the Dominion Legislature) contains the ordinary conditions of the Company's policies, without any reference to the statutory conditions, the policy becomes subject to the statutory conditions and to them only.

[Continued from p. 32.]

THE CITIZENS INSURANCE COMPANY OF CANADA v. PARSONS.

This Company, whose incorporation has been already described, has its head office in Montreal, and carries on business in Ontario and the other provinces of Canada.

The Respondent insured with the Company, through its local agent in the town of Orangeville, Ontario, a building situate in that town, occupied as a hardware store, for one year in $2,500, and, on the 4th of May, 1877, a policy of the Company containing this insurance was issued by the agent at Orangeville to him. This policy was made subject to the usual conditions of the Company, which were endorsed upon it. The following is alone material:—

"The assured must give notice to this Company of any other insurance effected on the same property, and have the same endorsed on this policy, or otherwise acknowledged by the Company in writing, and failure to give such notice shall void this policy.

* * * * * * *

"And this policy is made and accepted under the conditions above mentioned which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for."

The conditions contained in the Ontario Act were not printed in the policy, nor was any reference made to them in it.

On the 3rd August, 1877, the insured building was destroyed by fire. The Respondent thereupon brought the present action.

At the time the insurance was made and the

policy issued by the Citizens Company, another insurance had been effected on the same building with the Western Assurance Company, of which no notice was given by the Respondent to the Citizens Company, nor was it endorsed on or indicated in the policy, nor did the acknowledgment or assent of the Citizens Company thereto in writing in any way appear. These omissions constituted a breach not only of the conditions endorsed on the policy, but also of the condition in relation to prior insurances contained in the Ontario Act already set out, and consequently, if either of these conditions forms a part of the contract between the parties, the Respondent's action against the Company must fail. It is admitted that this is so, but it is contended, on the part of the Respondent, that neither the agreed nor the statutory conditions are binding upon him, and that the contract of insurance is subject to no conditions whatever. The Courts of Canada have sustained this contention.

The question turns on the construction of the Ontario Act. It is not disputed by the Company that the conditions endorsed on the policy, which form the actual contract between the parties, are, by force of the statute, displaced, inasmuch as they are not shown to be variations from the statutory conditions in compliance with the provisions of the Act. The question to be decided is, whether the effect of this non-compliance is to make the contract subject to the statutory conditions, or to reduce it to a bare contract of insurance without any conditions.

Section 1 enacts that "the conditions set "forth in the schedule to the Act shall, as "against the insurers, be deemed to be part of "every policy." Notwithstanding this express enactment, it is contended that they are not to be so deemed, unless they are printed on the policy. The section, no doubt, goes on to enact, but not in the form of a proviso or condition, that the conditions "shall be printed on "every such policy with the heading 'Statutory Conditions'"; but it does not enact that, if there be an omission so to print them, they shall not be deemed to be a part of the contract. Printing the statutory conditions is made a necessary part of the mode prescribed by the Act of showing variations from them, and is unquestionably essential to the validity of any such variations, for the section further enacts that if insurers desire to vary the statutory conditions, or to omit any of them, or to add new conditions, "there shall be added, in con- "spicuous type, and in ink of different colour, words to the following effect:—

Variations in Conditions.

"This policy is issued on the above statutory conditions, with the following variations and additions."

Section 2 provides what may be called a penalty for the non-observance of these last-mentioned provisions. It enacts that, unless distinctly indicated in the manner prescribed, "no such variation, addition, or omission shall "be legal and binding on the insured," and, "on the contrary,"—here follows the consequence and the penalty,—"the policy shall, as "against the insurers, be subject to the statut- "ory conditions only." The effect of these enactments in the present case is that the conditions written on the policy are not binding on the insurer, either by virtue of the actual contract, or as variations from the statutory conditions, because they are not indicated to be so in the manner prescribed by the statute. Printing the statutory conditions is a necessary part of the manner prescribed for indicating these variations, and the penalty provided by the Act for not observing that manner is that *the policy becomes subject to the statutory conditions.* No provision is made for the omission to print the statutory conditions as a separate default; and their Lordships think, looking at the object and scope of the two sections, that, in the absence of an express enactment to that effect, it cannot be implied that the intention of the legislature was that, in a case where the company had printed its own conditions, but had failed to print the statutory ones, the policy is to be deemed to be without any conditions. Indeed, such an implication would seem to be opposed to the principle of the Act, which is that, except in the case of variations properly indicated, the statutory conditions shall be deemed to be part of every policy.

It was further contended, and the contention seems to have been supported by some of the Judges, that if the statutory conditions, in cases like the present, are to be deemed to be a part of the policy, they form a part of the contract only as against the insurers, and are not bind-

ing on the assured. Their Lordships cannot agree with this construction of the Act. The first section of the Act, which declares that the statutory conditions shall be deemed to be part of every policy of fire insurance, also contains the words "as against the insurers," and it is evident that these words must have the same meaning in both sections. If the construction put on them by the Respondent be correct, it would follow that in a case where an insurance company implicitly followed the direction of the statute, and printed the statutory conditions on its policies without more, the conditions would still be a part of the contract only as against the Company, and the assured would not be bound by them. Such a construction leads to manifest absurdity, and to consequences which the legislature could not have intended. The preamble of the Act shows that the conditions were passed by the legislature as being "just and reasonable." On looking at the twenty-one conditions contained in the schedule, it will be found as might naturally be expected, that they are all, with a trifling exception, protective of the insurers, though probably less stringent than those usually imposed by the companies themselves. They impose obligations, not on the insurers, but the assured. To construe the statute, therefore, as enacting that these conditions are binding only on the insurers for whose protection they are introduced into the contract, and not on the assured by whom they are to be performed, would be to affirm that the Legislature had used words signifying, in effect, that the conditions which it has declared shall be a part of the contract shall not be binding at all. But effect may be given to the words in question without resorting to such a construction of them.

Strong reasons would be required to show that the words "as against the insurers" are used in the 2nd Section in a different sense from that in which they are used in the 1st, but none can be suggested. The 2nd Section provides as an alternative, that unless the variations are shown in the prescribed manner, the policy shall, as against the insurers, be subject to the statutory conditions only, that is to say, the variations as against the Company shall not, and the statutory conditions shall, avail. If the Respondent's construction were to prevail, though the consequences under this section might not be so manifestly absurd as in the case already adverted to of a company having simply printed the statutory conditions without more, it would still lead to much injustice; for if a Company in making variations, though in all other respects complying with the statute, should not use what might be thought conspicuous type or ink of the right colour, not only would the variations it had attempted to make be of no effect, but it could not invoke the statutory conditions, and the insured would be free from any conditions whatever.

It may possibly have been intended to give to the assured an option, if he thought the Company's conditions more favourable to him than the statutory ones, to stand upon the actual conditions; but it could not have been intended, nor does the language of the Act need such a construction, that he should be set free from both sets of conditions. The meaning of the legislation, though no doubt unhappily expressed, appears to be, that whatever may be the conditions sought to be imposed by insurance companies, no such conditions should avail against the statutory conditions, and that the latter should alone be deemed to be part of the policy, and resorted to by the insurers, notwithstanding any conditions of their own, unless the latter are indicated as variations in the prescribed manner.

Their Lordships being of opinion that the policy in this case became subject to the statutory conditions, and there having been a breach of those conditions, the plaintiff's action against the Citizens Insurance Company fails. They will therefore humbly advise Her Majesty to order that the judgments appealed from be reversed, and that the rule obtained by the company to set aside the verdict and enter a nonsuit be made absolute.

THE QUEEN INSURANCE COMPANY v. PARSONS.

Insurance—Interim Receipt—Conditions.

Where a fire occurred after an interim receipt was granted (in this case by an English Corporation), but before a policy issued, the usual conditions of the company's policies apply, subject to the determination of the Courts as to their being just and reasonable.

This English corporation carries on business at Orangeville through an agent. On the 3rd

August, 1877, the Respondent applied to this agent to effect with the Company an insurance for $2,000 on a general stock of hardware and other goods contained in the building in Orangeville, which was the subject of insurance in the other action, and a premium of $40 was agreed on.

An interim receipt was thereupon given to the Respondent by the agent, which is in the following terms :—

"Interim Receipt.

"Fire Department. Interim Protection Note.

"Queen Fire and Life Insurance Company.

"Chief Office, Queen Insurance Buildings, Liverpool. Canada Head Office, 191 St. James Street, Montreal.

"No. 33 Orangeville Agency, 3rd August, 1877.

"Mr. William Parsons, having this day proposed to effect an insurance against fire, subject to all the usual terms and conditions of this Company, for $2,000, on the following property in the town of Orangeville, for twelve months, namely, on general stock of hardware, paints, oils, varnishes, window glass, stoves, tinware, castings, hollow ware, plated and fancy goods, lamps, lamp glasses, and general house furnishing goods.

"And having also paid the sum of $40 as the premium on the same, it is hereby held assured under these conditions until the policy is delivered or notice given that the proposal is declined by the Company, when this interim note will be thereby cancelled and of no effect.

"(Signed), A. M. KIRKLAND,
Agent to the Company.

"N.B.—The deposit will be returned, less the proportion for the period, on application to the agent signing this note, in the event of the proposal being declined by the Company. If accepted, a policy will be prepared and delivered within 30 days. If the holder does not receive a policy during the specified period, he should apply to the head office in Montreal.

A fire happened on the same day, before a policy had been delivered to the Respondent.

The action was brought upon the interim receipt. The declaration which was framed upon it, as originally drawn, set out the conditions of the Company as those to which the insurance was declared by the interim note to be subject. It is agreed that the declaration was afterwards amended by striking out these conditions, though the amendment does not appear on the record.

Having regard to the arguments addressed to their Lordships, it is only material to refer to one of the company's usual conditions, the 4th, which provides, among other things, that the Company will not be liable for any loss or damage when more than 10 lbs. weight of gunpowder is deposited or kept on the premises, unless the same is specially allowed in the body of the policy, and suitable extra premium paid. This quantity of gunpowder is smaller than that mentioned in the statutory condition above set out, 10 (*g*), which provides that the Company is not liable for loss or damage occurring while, among other things, more than 25 lbs. weight of gunpowder are stored or kept in the building containing the property insured.

It is admitted that at the time of the fire gunpowder exceeding 10 lbs. in weight was kept in the building destroyed by the fire, and the jury have found that the quantity so kept was less than 25 lbs.

It is contended on the part of the Respondent that the contract must, by force of the Ontario Act in question, be treated as being without any conditions ; or, if subject to any, to the statutory conditions only.

The judgment of their Lordships in the other action has disposed of the first of these contentions. The second raises the question, whether the Company's own conditions or the statutory conditions are to be regarded as forming part of the contract, and its answer depends upon a consideration of the further question, whether the interim note is a policy of insurance within the meaning of that term in the Ontario Act.

This note is not a policy of insurance in the common understanding of that word, and was certainly not understood to be so by the parties to it. It is expressly a contract for a policy, making interim provision until a policy is prepared and delivered. It contains a proposal for insurance, which, if accepted by the Company, would result in a policy to be based on the terms of the proposal, and issued by the Company to the Respondent ; the Company having an option to decline the proposal, in which case no policy would be delivered. The proposal thus offered for acceptance is "to effect an insurance subject to all the usual terms and conditions of this Company," and pending the acceptance or refusal of the Company, and until the policy is delivered or notice given that the insurance is declined, the property is "held assured by these conditions." No doubt this last stipulation forms a contract of insurance during this interval ; but the whole agreement is preliminary only, and, in substance, the note is a proposal for a policy to be carried into effect, if accepted by the delivery of a

policy; as subsidiary thereto, and for the convenience of the person proposing to insure, immediate protection is granted to him. The practice of issuing interim notes must have been well known, and apt words might have been found by the legislature to describe them if they had been intended to be included in the Act. It may have been thought that it would be a clog upon the business of insurance, and would place difficulties in the way of obtaining these interim protection notes, if companies were obliged to prepare them with all the fulness and formalities which the Act requires in the case of policies.

Their Lordships, therefore, are disposed to come to the conclusion that the interim note in question is not a policy of insurance within the meaning of the Act. If in any case it should appear that an interim note or any like instrument was intended by the parties to be the complete and final contract of insurance, and that this shape was given to the instrument for the purpose of evading the Act, the present decision would not be opposed to the instrument being treated as a policy of insurance; the ground of their present decision being that the interim note in this case is what it professes to be, preliminary only to the issuing of another instrument, viz., a policy, which the parties *bona fide* intended should be issued.

These interim protection notes, given by fire insurance companies, bear an analogy to the "slips," commonly used in case of marine insurance, preliminary to the issuing of policies. The slip contains the heads of the contract, and is in itself a contract of insurance, though by the statute law of England, passed for revenue purposes, it could not, until the recent Act of 23 Vict., c. 23, be looked at by a court of law for any purpose. Since that Act, it may, for some purposes, be given in evidence. In a case in the Court of Queen's Bench in England, in which the nature and effect of these slips came under discussion, Mr. Justice Blackburn says, "As the slip is clearly a contract for marine insurance, and as clearly is not a policy, it is, by virtue of these enactments, not valid, that is, not enforceable at law or in equity; but it may be given in evidence wherever it is, though not valid, material."

What then are the conditions of the contract which is the subject of this action? The interim note contains a proposal by the Respondent to effect an insurance on the Company's "usual terms and conditions," and the interim insurance is made subject to these conditions. If the contract of the parties had come to be executed, the Company would perform it by issuing a policy, subject to their own conditions, if they could legally do so. Indeed, if the assured so required, it would be obligatory on them to perform it in this manner. In the view their Lordships take of the Act in question, the Company might, conformably with its enactments, issue a policy with their own conditions, provided that care was taken to print the statutory conditions, and show the variations from and the additions to them which their own conditions present, in the manner prescribed. They think that it ought to be presumed that the Company would thus perform their contract when they came to issue a policy; and this being so, that their own conditions ought to be read into the interim contract to the extent to which they might lawfully be made a part of the policy when issued, by following the directions of the statute, subject always to the statutable condition that they should be held to be just and reasonable by the Court or Judge.

For these reasons, their Lordships think that the judgment of the Court of Queen's Bench discharging the Appellants' rule for setting aside the verdict for the Plaintiffs, and the judgments affirming it, ought to be reversed, but their Lordships do not see their way to decide the question which now arises, and was not determined by the Judge who tried the action, or by any of the Courts in Canada, whether the Company's condition with respect to the quantity of gunpowder kept in the building containing the property insured is just and reasonable. They think the rule Nisi should be kept open, and the action remitted to the Court of Queen's Bench in order to the trial of this question, with a direction that the rule be disposed of according to the decision that may be come to upon it, and they will humbly advise Her Majesty to this effect.

The Appellants, though successful on other points, having failed on the important question of the validity of the Ontario Statute, on which special leave to appeal from the judgment of the Supreme Court was granted by this Board,

their Lordships think it right to make no order as to the costs of these appeals.

SUPERIOR COURT.

MONTREAL, January 21, 1882.

Before JOHNSON, J.

JOSEPH DANSEREAU, petitioner, and ABRAHAM BERNARD, respondent.

Quebec Controverted Elections Act, 1875—*Petition—Deputy Returning Officer—Security for Costs.*

Where an election petition under the Quebec Controverted Elections Act against the candidate returned, charges illegal acts against a deputy returning officer by name, who does not appear in the suit, the respondent cannot ask for any security other than that which is required to be given upon a single petition.

A deputy returning officer against whom nothing is prayed for by the petition, and who does not appear, is not a respondent within the meaning of the Act.

The case came up on a preliminary exception to a petition contesting the return for the Electoral District of Verchères.

PER CURIAM. The petition in the present case, with a certified deposit of $1,000, as required by law, was filed on the 5th instant, and it alleged that the candidates had been the respondent Bernard, and Joseph R. Brillon, the latter having the majority according to the reckoning of the returning officers; but that on a recount before a Judge, Bernard was found to have the greatest number of legal votes, and was so returned, under the law, to the Clerk of the Crown in Chancery.

Then the petition alleges against the return of Bernard a great number of grounds for avoiding the election, and which I need not now notice, with the exception of one in particular, which sets forth that several deputy returning officers incorrectly counted ballots and rejected ballots legally given for Brillon, and admitted ballots illegally given for Bernard, so as to affect the result injuriously to the former. Then the petition goes on to say that the election was irregularly and informally conducted in respect of the mode of voting, and of reckoning the ballots, and marking them in a way to make it apparent for whom the electors had voted. All this is charged against certain deputy returning officers not named, with the exception of one—a Mr. Louis A. Bousquet: and the conclusion of the petition is that the election may be avoided by reason of the acts of the candidate and of his agents, and also by reason of the illegal acts and irregularities of certain deputy returning officers not named, with the exception of one of them named Bousquet. There are other conclusions as to personal disqualification both of the candidate returned, and of those of his partisans who may be shown to have acted corruptly; and costs are asked against Bernard only; and Bernard alone has appeared; and has made a preliminary objection alleging that the petition constitutes several persons respondents, *i. e.*, Bernard, the candidate returned, the returning officer, and the deputy returning officer, Bousquet. This is a mistake, both as regards the fact, and as regards the law. As to the fact, there is not a word in the petition about the misconduct of the returning officer, and as I have said already, none of the deputies are mentioned by name except Bousquet, who is merely alleged to have acted irregularly, and to have vitiated the election of the successful candidate; and even against Bousquet there is no conclusion taken whatever,—no condemnation asked; and he has neither made any preliminary objection, nor even filed an appearance. The objection, as I have already said, is made by Bernard alone.

Now as to the very interesting point of law that was raised and discussed so thoroughly by the learned counsel on either side, it was this: It was said that the law made these deputies respondents, and also that, as matter of law, there are as many petitions as persons who are made respondents; and the 28th and 29th sections of the Act were relied upon to show that the deposit is insufficient, and that the petition should consequently be dismissed. Now, those sections say, (29) that whenever an election petition complains of the conduct of a returning or deputy returning officer, such officers shall, for all the purposes of the Act, except their replacement by other respondents under sect. 112, be deemed to be respondents; and section 28 had already said that several persons may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time; and it added that "as regards the security required by sections 26 and 27, and for all other purposes of this Act, such

petition shall be deemed a separate petition against each respondent." There is no doubt for what object this security is required. Section 26 tells us that at the presentation of the petition, the petitioner shall give security for the payment of all costs—1st, to any person assigned as a witness on his behalf; 2nd, to the member whose election or return is called in question; 3rd, to the returning, or deputy returning officer, if their conduct is complained of; 4th, to the candidate not elected whose conduct is complained of.

Section 27 says that the security shall be $1,000; and in the present case such security has been duly given. It is clear, therefore, that if Mr. Bousquet has been made a respondent in this case, within the meaning of the law, he has an interest in the amount of the security that may be given; and also that if his conduct is complained of, within the meaning of the law, in the petition, he is to be deemed a respondent It is, perhaps, not equally clear, although the language used is that the amount of the security is to be $1,000, and for all costs that may be incurred to any of the persons named (of whom the deputy returning officer is one, if he is complained of) whether there is any provision for making the security larger, except by sections 98 and 99, where it can be so ordered in case of the withdrawal of the original petitioners and the substitution of others. I expressly decline to give any opinion upon that point, however, for reasons which I will presently state. I only observe that the 26th and 27th sections may mean that the security is to be given at the time of the presentation of the petition, and that such security has been actually given; and that by the express terms of the section it is security for the payment of all costs to four classes of persons there named, and the third on the list of these persons is the deputy returning officer, if his conduct is complained of. But in reality is his conduct complained of? He may be deemed to be a respondent, no doubt, and if it is complained of in the sense of the law, he may actually be a respondent; but is his conduct so complained of here? We have seen that there is nothing asked for by the petition as against him. What is he to respond to? Surely not to the mere recital or mention of his name as having failed to observe the due formalities about the ballots, without even alleging anything wilfully unlawful, or taking any conclusion against him. Accordingly we find that though the petition has been served upon him, he has failed to appear. He does not even come here to ask for anything. Can Mr. Bernard, who alone has appeared and made this objection, ask anything for anybody but himself? I hold that if the deputy returning officer is not made a party by something being asked for against him which he has an interest to answer, he is not before the Court. To be "complained of," in the sense of the law, can only mean a complaint from which a legal consequence will follow on being prayed for, as in ordinary proceedings. There is no *demande* here against him, or against any of the other deputy returning officers. It is not alleged against any of them that they did anything wilfully or corruptly, or for which any penalty is, or could be, asked. It is only said as a thing which affects the candidate alone, that these informalities occurred; and that, I suppose, is the reason why there is no regular complaint against the deputy returning officers; and by such a complaint I understand an available complaint carrying a legal consequence which could be concluded for, and granted or refused by the Court.

If in an ordinary case half a dozen persons are sued by a plaintiff not residing here, it is, of course, conceivable that each might have a separate defence, and a separate right to security; and it would be undeniable that each was to be deemed a defendant, whether he appeared or not, and that for all the purposes of the security there would be as many demands as there would be defendants; but none of them could get security without appearing and asking for it. It is not every defendant nor every respondent, therefore, who is entitled to security, but only those who appear and ask for it. The only respondent here who has appeared is the candidate returned, Mr. Bernard. What he is entitled to ask for must be measured by his interest. There is clearly only one petition before the Court, unless there are several respondents in a position to ask that it be considered as several petitions; and as regards the only respondent before the Court. the security required by law has been given; and as there is no other respondent before the Court who is in a position to ask for further security, and the present respondent's security cannot therefore

be diminished, he has no right, under any view of the law, to have the petition dismissed. The preliminary objection of Mr. Bernard, the only respondent in the case, is overruled with costs.

Lacoste, Globensky & Bisaillon for the petitioner.

Mercier, Beausoleil & Martineau for the respondent.

RECENT U. S. DECISIONS.

Nuisance—Conduit pipe leading water from roof into street—Ice on sidewalk from conduit pipe.—In an action for injury received by plaintiff slipping on ice formed on the sidewalk from water which flowed through a conduit pipe in front of defendant's house across the sidewalk to the street gutter, it appeared that the owner of two houses upon lots numbered 18 and 20, constructed the conduit which led the water from the roofs of both houses through an opening on the party line across the sidewalk upon lot 18, just inside of the line between that lot and 20. Thereafter defendant became owner of 18 and altered the roof of the house upon that lot so that the water therefrom did not go through the conduit, but only the water from the house on 20, and it was the ice from this water upon which plaintiff slipped. At the time of the accident the premises were not in defendant's possession but in that of his lessee. The pipe did not reach the street nor abridge the area of the sidewalk. The trial court charged the jury that defendant was "liable from the fact that he had permitted this pipe to run across his premises and be used by his neighbor," and gave judgment on the verdict against defendant on the ground that the pipe was a nuisance, "and the defendant's liability the same as if the water came from his own premises." At the General Term the judgment was upheld upon the ground that "the leader" was "a nuisance." *Held*, error. A conductor pipe designed to convey water from a roof to the ground when constructed with due care and proper precaution is not a nuisance, even if its mouth is towards the walk and it discharges upon it. To direct rain or watery snow from the roof on to the sidewalk or street, unless prohibited by positive regulation, is not an offence. Once upon the sidewalk and there frozen it may subject the municipality to an action by one slipping on the ice. Todd v. City of Troy, 61 N. Y. 506. While under like circumstances it was held in Kirby v. Boylston Market Association, 14 Gray 249, that an action would not lie against the property owner and that the remedy for damages so incurred was exclusively against the city. Defendant did not cause the obstruction here nor was he benefited by it. In such a case he was like the owner of land on which a nuisance is erected by a third party. He is not liable for its continuance unless requested to abate it. If he repaired or used it he might be liable. The statement that it is enough to charge a defendant that having acquired title to land after a nuisance was erected he continued it (2 Greenl. on Ev., § 472), must be taken to mean more than an omission to abate or remove it, something amounting to an actual use. As if the defendant simply suffer a dam erected upon his land by a former owner to remain without being used by him, it is no continuance of the nuisance unless he be first requested to remove it. Pearson v. Glean, 2 Green, 36. Morris Canal Co. v. Ryerson, 27 N. J. Law 459. To the same effect is Berwick v. Camden, Cro. Eliz. 520. See also Moore v. Dame, Browne 3, Dyer, 319; Brown v. Cay. & Sus. R. Co., 80 id. 212; Irvine v. Wood, 51 id. 224; Clifford v. Dam, 81 id. 56. The case Walsh v. Mead, 8 Hun, 387, distinguished. Judgment reversed and new trial ordered. *Wenzlick* v. *McCotter*. (New York Court of Appeal, Nov. 22, 1881.)

GENERAL NOTES.

Judge Laframboise, one of the Justices of the Superior Court, died very suddenly at Montreal, Feb. 1st. The deceased was born in Montreal in 1821, educated at the Montreal College, and admitted to the bar in 1843. For some years he was engaged in practice at St. Hyacinthe. In 1857 he was elected for Bagot which he continued to represent in the Parliament of Canada until Confederation. In 1863-4 he was Commissioner of Public Works in the Sandfield Macdonald-Dorion Government. After Confederation, from 1871 to 1878, he represented Shefford in the Local Legislature, and in the latter year was appointed Judge for the District of Gaspe.

The following statistics have been prepared of the business of the Montreal Circuit Court during 1881: There were 7,410 writs issued, of which 2,585 were for cases over $25, and 4,875 for cases under that amount. The number of writs entered in Court was 4,585, and 1,352 cases were contested. Defaults, in which defendants did not appear, numbered 3,233. There were 1,567 judgments delivered on cases contested during the year, and 2,248 judgments given on cases by default or *ex parte*. Judgments given by the Clerk of the Court 588. The total number of judgments was, therefore, for one year, 4,403.