The Legal News.

VOL. XIII. JULY 5, 1890. No. 27.

A Bill passed by the House of Lords early in the Session, has for its object to abolish Vice-Admiralty Courts, and to transfer the jurisdiction to the local Courts. In other words, the Admiralty Court will, in the colonies, be a purely colonial Court in theory, and not, as now, a Court emanating from the jurisdiction of the Admiralty of England. By section 5, the appeal from the local Admiralty Court is to be to the local Court of Appeal and thence (section 6) to the Privy Council. Thus the direct appeal which at present exists to the Queen in Council will be abolished.

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In the matter of the *Central Bank*, a judgment was rendered in the High Court of Justice at Toronto, May 14, 1890, following the principle laid down by Chief Justice Johnson in *Exchange Bank* v. *Montreal City and District Savings Bank*, M. L. R., 2 S.C. 51, and affirmed in appeal, Sept. 27, 1887. The Central Bank obtained a loan of $12,000 from the North American Life Insurance Company, on the security of a transfer of 135 shares in the capital stock of the bank. The loan was repaid by the bank two months afterwards, but the re-transfer of the shares was never accepted so as to divest the insurance company of their title and vest it in another holder, as required by the Bank Act. The Central Bank being now in liquidation, the liquidators made an application to enforce against the insurance company the double liability on the 135 shares. The Master in Ordinary, Mr. Hodgins, Q.C., in refusing the application, observed :— "The decision of the present Chief Justice of the Superior Court of Quebec on a clause of the Savings Bank Act (R. S. C., c. 122, s. 20), which has some analogy to the clause which I have cited from this insurance company's charter, is so much within the policy of the canon of corporation law I have referred to, that I have no hesitation in applying it to the case before me. Under a power conferred upon savings banks to loan their moneys on personal security, taking as collateral thereto 'stock of some chartered bank in Canada,' a savings bank acquired 307 shares in the the capital stock of the Exchange Bank as collateral security for loans made to several outside parties. On the winding up of the Exchange Bank, the liquidators sought to make the savings bank liable in respect of the 307 shares standing in its name in the books of the bank; but the Court held that the savings bank could not acquire or hold such shares except as pledgees, and could not become the owner of such shares within the meaning of the Bank Act, and was not therefore subject to the double liability imposed by that Act. ....The case of *Railway etc. Advertising Co.* v. *Molsons Bank*, 2 Leg. News, 207, is to the same effect." The canon referred to above is that stated in *Pickering* v. *Stephenson*, L.R., 14 Eq. 322, that the governing body of a corporation organized as a trading partnership cannot in general use the funds of its community for any purpose other than those for which they were contributed, or authorized to be used.

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## *COURT OF QUEEN'S BENCH— MONTREAL.**

*Constitutional law—City of Montreal—Butchers' private stalls—Taxation—37 Vict. (Q.) ch. 51, sect. 123, sub-sections 27, 31—By-law.*

*Held*, 1. That sub-sections 27 and 31 of sect. 123 of 37 Vict. (Q.), ch. 51, by which the Council of the City of Montreal is authorized to regulate, license or restrain the sale, in any private stall or shop in the city outside of the public meat markets, of fresh meats, vegetables, fish, or other articles usually sold on markets, is within the powers of the provincial legislature.

2. That the by-law passed by the City Council under the authority of the above-named sub-sections, fixing the license to sell in a private stall at $200, is valid.—*Pigeon & Cour du Recorder*, Dorion, Ch. J., Cross, Baby, Church, Bossé, JJ., June 26, 1889.

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* To appear in Montreal Law Reports, 6 Q.B.

*Expropriation—Railway—Arbitration — Arbitrator rendering additional services to party.*

*Held*, The fact that a person who has acted as arbitrator in behalf of the landowner, has been paid by the company the amount taxed as fees for his services as arbitrator, does not preclude him from recovering from the party appointing him the value of additional services rendered to such party in connection with the same arbitration, but outside of the ordinary duties of an arbitrator, such as interviews, consultations, etc.—*Evans & Darling*, Tessier, Cross, Baby, Church, Bossé, JJ., Nov. 20, 1889.

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*Trustees—South Eastern Railway Company—43-44 Vict. (Q.), ch. 49—Supplies furnished to company before trustees took possession.*

By the Act 43-44 Vict. (Q.), ch. 49, the South Eastern Railway Company were authorized to issue mortgage bonds to a certain amount, and to convey the railway franchise rights and interest to trustees, representing the bondholders. The trustees were empowered to take possession of the road in the event of default by the company to pay the bonds or interest thereon for 90 days. It was also provided (by sect. 10) that neither the company nor the trustees should have power to cease running any portion of the road. The respondent furnished supplies necessary for operating the road, after the execution of a trust deed in conformity with the statute above mentioned, but before the trustees took possession of the road for default by the company to pay interest on the bonds. The respondent first sued the company for the amount of his claim, and obtained judgment, and then brought the present action for the same causes against the trustees.

*Held*, (Reversing the judgment of Jetté, J., M. L. R., 3 S. C. 238), That the effect of the Act above mentioned, and of the deed executed in conformity thereto, was not to convey the possession of the road to the trustees from the date of such deed, so as to constitute them pledgees; and the trustees were not liable even for supplies necessary for operating the road, furnished before the time they assumed possession.

2. That although the supplies for which payment was claimed in this case, were furnished at a time when the railway company was in default to pay interest on bonds, and when the trustees might have taken possession under the terms of the Act, but neglected to do so, the company was not thereby constituted *negotiorum gestor* of the trustees, so as to render the latter liable for supplies necessary for the operation of the road, obtained by the company before the trustees took possession.—*Farwell & Walbridge*, Tessier, Cross, Church, Bossé, Doherty, JJ., (Tessier, J., diss.), May 28, 1889.

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## *CIRCUIT COURT.*

MONTREAL, May 12, 1890.

*Before* BELANGER, J.

JOHNSTON *v.* COFFIN.

*Lessor and Lessee—Delay for summons—One nonjuridical day sufficient.*

A writ of ejectment was served on Saturday, returnable on Monday.

The defendant, by an exception to the form, pleaded that the delay was insufficient, that one juridical day should intervene between the day of service and day of return, and referred to *Darby* v. *Bombardier*, 2 Leg. News, p. 202, and *Metayer dit St. Onge* v. *Larichelière*, 21 L. C. J. p. 27.

The plaintiff cited arts. 75, 89 and 24 C. C. P., and *Boulerisse* v. *Hebert*, 2 Leg. News, p. 196, and *Preston* v. *Paxton*, 23 L.C.J. p. 210, *Gates* v. *Stewart*, 23 L. C. J. 62; *Crebassé* v. *Ethier*, 2 R. L. 332.

BELANGER, J., said that he could not decide otherwise in this case than he had already decided in *Boulerisse* v. *Hebert*, 2 Leg. News, 196, cited by the plaintiff, and since the rendering of the judgment, the Courts had adopted that ruling. The Code of Procedure did not require that the intermediate day be juridical. The case cited as to the sufficiency of the delay should be followed.

*Exception à la forme* dismissed.

*W. S. Walker*, for plaintiff.

*Busteed & Lane*, for defendant.

## FIRE INSURANCE.

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



### CHAPTER III.

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

[Continued from p. 208.]

A French clause is to this effect: This insurance is meant to guarantee the insured his mortgage claim in the case of a fire damaging the said house, and of the property mortgaged not offering longer a sufficient guaranty.

The money received is the mortgagor's money; the mortgagor pays the premium. If the debt has been paid before the loss, or there is overplus, the mortgagee is trustee for the mortgagor; but the insurer cannot go free. As to the relations between the mortgagee and the mortgagor, the insurer has no concern.

§ 78. *Insurance, loss payable to mortgagee.*

Where the mortgagor insures a house, loss if any payable to mortgagee, the mortgagor's interest is insured with power of attorney irrevocable to mortgagee to receive the avails of the policy, if fire happen. In such case, if fire happen the insurers must pay, whether the mortgagor have previously paid the mortgagee or not. If the debt have been paid, then the amount of loss received by the mortgagee is received from a fund placed in his hand for a special purpose now accomplished. The mortgagee receives it to the use of the mortgagor and must account for it.[1]

Where the mortgagee insures solely on his own account, it is but an insurance of his debt.[2] If his debt be paid the policy can have no operation;[3] nor can the mortgagor in such case claim, for *he* has no interest in the policy.[4] How can any Court hold that a policy taken by A in his sole name shall avail to B, a stranger to the policy? observes Story, J., in the case of *Carpenter* v. *Prov. W. Ins. Co.*[1]

§ 79. *Value of land mortgaged must be equal to claim insured.*

The mortgaged land (claim against or upon which is insured) must offer at the time of the insurance a value equal to the claim insured and all other, earlier, claims against it. Otherwise the insurance is improper, the creditor not having any real valuable *gage*.[2]

The contract with the insurance company is a contract of indemnity, legal only as an indemnity commensurate with the interest of the insured.[3]

§ 80. *Sale under execution.*

In the United States a sale, by a Master in Chancery, of the property mortgaged, under a decree of foreclosure will terminate the interest of the mortgagor, although the decree may not have been enrolled, and no deed executed by the Master.[4]

§ 81. *Liability of carrier until delivery of goods to consignee.*

A carrier is liable for loss by fire, though the carriage be ended; if the goods have not been delivered to the consignee, and he has

[1] See observations of Shaw, C.J., in *King* v. *The State M. F. Ins. Co.*, 7 Cush.

[2] *Carpenter* v. *The Prov. W. Ins. Co.*, Supreme Court, United States, Story, J. 16 Peters.

[3] This is conceded by Shaw, C. J.

[4] Boudousquie *contra*.

[1] 16 Peters.

[2] Boudousquie.

The Code of Holland prohibits insurance of a hypothecary claim, unless the creditor could be usefully collocated if there had been no loss by fire.

[3] Per Vice. Chan. in *Ex parte Andrews, in re* Emmett, 2 Rose R.

A creditor insured his debtor's house for the full value of it. It was burnt. The insurance more than sufficed to pay the creditor. The debtor, a stranger to the contract, asked for the difference, and he got it, the insured hypothecary creditor being held *negotiorum gestor* of the debtor for the excess. There was no mention in the policy of the amount of the mortgage debt, and the insured was held to have acted in his own interest and the debtor's. Boudousquie, No. 97.

[4] *McLaren* v. *Hartford Ins. Co.*, 1 Selden, 151.

Query, as to sheriff's sale alone in Lower Canada. Suppose the purchaser not to pay, may not the mortgagor, after that, have an insurable interest, or is his *property* defeated? Where the tenant has promised to insure, can the landlord *do it at once* and charge the tenant, or must his recourse be in damages? *Dufresne* v. *Lamontagne*, Superior Court, Montreal, June, 1874.

not had a chance to get them away after arrival.[1]

When one is so connected with property that he is liable to indemnify the owner in case of its destruction, or of damage to it, he has an insurable interest therein.

Such is the interest of a carrier, wharfinger, or other bailee, of an agent, or other person who has taken property at his own risk, or agreed to get it insured for the benefit of the owner, and who will be liable for any loss if he fail to do so. Under this class of interests comes that of a tenant in Lower Canada, also that of an insurer, which supports a contract of re-insurance for his benefit.

### § 82. *Insurance by tenant.*

In Lower Canada, as in France, a tenant must pay his landlord's damage where the house occupied by the tenant is burned by negligence, and where a house is burnt the tenant is presumed negligent. Such a tenant can insure himself against the loss to which he is exposed by a landlord's suit against him in such a case.

A tenant in England cannot, in the absence of special agreement, be called upon to rebuild the house burned down accidentally during his occupation.[2]

If the lessee covenants to repair, and the house is burned down by act of God, negligence or accident, he must restore (Comyn).

Is the landlord, in the absence of express contract, bound to rebuild; suppose he receives the insurance money, and that the tenant is willing to hold on? In England it is said, no; but that the landlord shall not ask rent (Comyn).

In France it is not so; total destruction ends the lease, but if the loss be partial the lease is not broken, and the landlord must repair (Troplong—Louage). But if the loss be through the fault of the tenant, he must pay.

### § 83. *Tenant may insure risk of having to rebuild.*

The *risque locatif, i.e.*, the risk on the tenant to rebuild or pay damages in case of fire, is insurable. And a proprietor may insure the risk he has of trouble from his neighbours, if from negligence his house burns and the fire spreads to the neighbour's houses.

The tenant who has insured the *risque locatif* cannot go against the insurer, if the proprietor be quite satisfied and do not trouble the tenant, *e.g.* if he be satisfied from other personal insurances.[1]

In case of *risque locatif* insured and fire happening, can the proprietor intervene and claim from the insurance company as if he, the proprietor, had a subrogation into the place of his tenant? Not in France.

If insured be bankrupt, all his creditors take of the proceeds of insurance of *risque locatif*. The proprietor suffers, so, in France.

In the case of *Pennsylvania R. Co.* v. *Kerr*, sparks from a locomotive set on fire a warehouse near the track, and from the warehouse the fire went on to a hotel 39 feet off, which was destroyed. Suit was brought against the railroad company for damages suffered by loss of the hotel, and they were recovered in the original Court. But the Supreme Court reversed the judgment on the ground that the fire came from the warehouse, and not from the locomotive directly. Secondary cause operating from an intervening cause is too remote.[2] It may be questioned whether the above case is not in conflict with *Smith* v. *London & Southwestern R. Co.*[3] In this case heaps of hedge trimmings were left by servants of the railroad company near the track, and were set on fire by sparks from the locomotive. The wind spread the fire to a cottage 200 yards off, and the plaintiff recovered the value of goods burnt in the cottage.

### § 84. *When lessee is liable in Louisiana.*

According to Article 2693 of the Civil Code of Louisiana, the lessee can only be liable for destruction by fire when it is proved that the

[1] *Moses* v. *Boston & Maine R. Co.*, A. D. 1856.
[2] Comyn (Landlord and tenant) [201].

[1] Paris, 10 March, 1871.
[2] Yet in collision cases, one ship A, coming upon another B, and making it go out of its way but hit another C, damaging it, C must sue A, and will fail against B. Law Rep. A.D. 1877. In Lower Canada, however, direct action would probably lie by C against B, B going *en garantie* against A.
[3] Law Rep. 5 C. P. (Jan., 1870).

same has happened either by his own fault or neglect or by that of his family. [11 Toullier, p. 206, is cited.]

§ 85. *Burden of proof as to person in fault.*

Suppose A's house to burn, is the burden on B his neighbour to prove his fault, whereby he, B, has suffered, or are fault and negligence to be presumed? Some say that A is blameable and has burden to free himself, for fires occur most frequently from fault. But the majority hold that neighbours prosecuting indemnity have burden of proof, because the *actor* has to prove—he who alleges has to prove.[1]

Ad legem Aquiliam, lib. ix, tit. 2. Voët, sec. 20. Fire happening in a house, is the occupant, or tenant, bound to prove his own diligence and freedom from fault? Or, has the proprietor, or have the neighbours injured, the burden of proving fault of occupant of the house first burnt?

Zachinœus and Vinnius put the onus on the occupant; as fire is most often caused by some fault of the occupant, so he must prove himself *not* in fault. More regular is it, says Voët, to put the burden of proof of fault upon the landlord or the neighbour suing the occupant; for "actori incumbet probatio;" and "affirmanti probatio imponenda." 3rdly (Voët says), because in doubt everybody is to be supposed diligent until the contrary be proved. Peresius, Mascardus and others support this, says Voët.

§ 86. *Presumption in favor of lessor.*

Article 1629, Civil Code of Lower Canada, says: When premises leased are hurt by fire, there is a legal presumption in favor of the lessor that it was caused by the fault of the lessee, and unless he prove the contrary, he is answerable to the lessor.

Art. 1630 says the presumption of 1629 against the lessee is only in favor of the lessor, and *not* in favor of a neighbouring proprietor who suffers loss by fire which has originated in the premises occupied by the lessee.

*Semble*, the usufructuary has not presumption of fault ordered against him, and fire in his case is presumed an unforeseen event—*cas fortuit*—and he who alleges fault must prove it.

§ 87. *Covenant to repair.*

Where there is a covenant to repair, and further covenant that the tenant shall insure for a sum stated, and the house is burned, the lessee is to repair, he cannot pretend limitation of liability—(to the amount of the insurance sum stated); there were and are two covenants.[1]

A tenant who is obliged to leave the premises in repair must rebuild if a fire occur.[2]

§ 88. *Obligation to rebuild for tenant.*

If the landlord's house be burned without fault of the tenant, but it be insured, and the landlord get the money, if he have a tenant in it for a term of years, can this tenant hold on for a term of years and insist on the landlord spending the insurance proceeds in rebuilding?[3] Troplong, Louage, No. 219, would seem to say so.[4]

§ 89. *Lease terminated by total destruction of building.*

Art. 1660 of the Code of Lower Canada says, if the house be totally destroyed the lease is ended. If partially destroyed the tenant may hold on at a diminished rent, or he may claim resiliation of the lease, but can claim no damages.

§ 90. *Exemption of tenant in England.*

In England, in case of accidental fire and the destruction of the leased house, the tenant at common law would have been guilty of waste if he neglected to rebuild. But by 6 Anne, c. 31, made perpetual by 10 Anne, it is enacted that no suit shall lie against any person in whose house accidental fire shall begin, or recompense made by such person for any damage suffered, except in

[1] Voët ad. P. lib. 9, Tit. 2.

[1] *Digby* v. *Atkinson et al.*, 4 Camp.

[2] *Pym* v. *Blackburn*, 3 Cases in Chanc. Vesey, Jr.

[3] Dalloz of 1833, 2nd part, p. 193.

[4] But the above has received some *echecs*, says Troplong, referring to Sirey, A.D. 1828, 2nd part, p. 18, Arrêt of 5 May, 1826. Troplong says he would always allow the tenant to claim the repairs in case of partial loss, so as to secure him perfect *jouissance*.

case of contract between lessor and lessee to the contrary.[1]

If the lessee covenant to repair, and the house is burned by accident or otherwise, he is bound to rebuild.[2] So it is common to stipulate in leases against accidents by fire.

§ 91. *Proprietor may insure against loss of rent by fire.*

Loss of rent through a house being burnt is not a loss by fire within the meaning of ordinary policies. By condition on many policies such loss is declared not to be insured against. But it may be made, by agreement, the subject of insurance. Any person having interest in rent may insure the rent from loss by fire, and he gets paid in case of loss, rent from the time of the fire up to the time fixed by the policy.[3]

A rector of a parish in Lower Canada insured himself against loss of his salary if his church were burned down. (He depended chiefly upon the pew rents.) The church was totally destroyed by fire, and the rector got paid by the insurers until it was rebuilt.

A railway company has an insurable interest in buildings liable to be burned by sparks from its locomotives, and for which injury the company would be obliged to indemnify.

Rent may be insured by the proprietor: *e.g.*, on the rental only of a house belonging to assured occupied by A, $400. This insurance is payable only in the event of the house being damaged or destroyed by fire so as to be untenantable, and the insurance covers the rental of said house from the time of the fire during the period necessary for its reinstatement, or of perfect repair, not exceeding one year's rent.

§ 92. *Proprietor may insure against liability to indemnify neighbour.*

In France and Lower Canada, a proprietor who, in case of a fire in his house, may be held liable to indemnify his neighbours for the losses of their houses burned by the fire communicating to them, can insure not only his own house but also himself against losses to which he is exposed by the operation of actions *en garantie* of his neighbours.

A tailor insuring the merchandize and furniture of his shop can't, on fire happening, claim as for damages through suspension of his commerce during the reinstatement. The arbitrator had ordered indemnity for such alleged damages. The company insurer appealed, and succeeded in striking off these damages, 340 francs.[1]

§ 93. *Proprietor of house adjoining that wherein fire commences.*

Where the burning of a house is caused by negligence, and fire from the burning destroys an adjoining house, the owner of the latter has not an action on account of the negligence which originated the fire.[2]

But it is not thus in Lower Canada, Comyn's Dig. "Action on the case for negligence," A. 6, "Man who by negligence burns his own house and mine also must pay me."

In Lower Canada if you stow hay in your hayloft, and it cause fire, you must pay me, your neighbour, for my property burned by reason of your fire. In Lower Canada the tenant of the hayloft would be liable in such a case towards his landlord, and then to all others.

In the case of *Whyte* v. *The Home Insurance Co.*,[3] a miller insured a house upon land which was another's, yet he recovered.[4]

§ 94. *Insurable interest of vendee, goods stopped in transitu.*

A vendee insures goods bought by him. If he become bankrupt and the goods be stopped *in transitu*, can anybody recover? See *Clay* v. *Harrison*.[5] In this case it was held that, *under the circumstances*, the vendee after the stoppage *in transitu*, which followed an abandonment, had no property in the goods insured. But, generally, after stoppage *in transitu* has the vendee an insurable in-

[1] Comyn [201].
[2] Comyn [202].
[3] 3 Kent.

[1] Cour Royale, Paris, 26 April, 1833.
[2] *Ryan* v. *N. Y. Central R.R. Co.*, 35 N. Y. Rep. Compare *Pennsylvania R. Co.* v. *Kerr*, Flanders, p. 546.
[3] 14 L. C. Jurist, 301.
[4] 18 Pick. 419. See also *Tyler* v. *Ætna Ins. Co.*, 12 Wend. 507; Flanders, p. 305.
[5] 10 B. & C.

terest? I cannot doubt it. Stoppage *in transitu* assumes the continuance of the contract of sale; the vendor may sue for the original price, notwithstanding the stoppage *in transitu*, if he be ready to deliver the goods on payment of their price. Moreover, the vendor has no right to resell till the period of credit has expired; till then the goods, though stopped, are at the risk of the vendee. Even after the period of credit has expired the goods are the vendee's, who is not divested of them until put *en demeure* (until he has had the goods offered to him but has refused to take them and pay). Up to the last minute, so long as the vendee has not been divested of his property in the goods, he may pay, get the goods, make a profit. I see clearly that he has an insurable interest. I would add that stoppage *in transitu* may be made though the goods have been paid for in part. Nobody can doubt that in this case the vendee has insurable interest.

In the United States the vendee of property under an executory contract of sale has an insurable interest, though he has paid no part of the consideration, nor even obtained actual or constructive possession of it. The test of his interest, if he has expended nothing upon the property, is his liability to the vendor. If the destruction or injury of the property will not cancel or diminish this liability, his interest is insurable. Neither will his interest be affected by his failure to do some act, upon the performance of which the obligation of the vendor depends, because, notwithstanding this breach of the contract by the vendee, the vendor may not choose to take advantage of it, and may still compel the vendee to receive the property, and comply with the remaining terms of the purchase.[1]

§ 95. *Insurable interest of unpaid vendor.*

The vendor also, as long as he retains the legal title, has an insurable interest to the amount of the sum remaining due upon the contract, for though he has the right to compel the purchaser to pay for the property, notwithstanding its destruction by fire before the execution of the contract, still he may be unable to do so by reason of the insolvency of the vendee, or from some other cause, in which case the property is his only security, and any injury to it will be a loss to him.[1]

The interest of a vendor, mortgagor, etc., is so entirely distinct from that of the vendee or mortgagee, that the simultaneous existence of two policies on the same property, one affected by the former, and the other by the latter, will not amount to a double insurance.[2]

§ 96. *Person who has promise of sale.*

The vendee of property under an executory contract of sale has an insurable interest to its full value, provided the destruction or injury of the property would not affect his liability to the vendor. If he has paid the purchase money, or expended anything upon the subject insured, he has a direct insurable interest in the nature of an equitable ownership, without regard to his liability to the vendor, and if he has not, he may still be obliged to pay the price and receive the property, notwithstanding any diminution of its value, and he is consequently materially interested in its preservation.[3]

In Lower Canada, a man, having obtained a promise of sale to him of a house and paid for it, may insure the house to the extent of his interest. But he ought to describe his interest?

§ 97. *Bailee who is liable for loss.*

In England and the United States, a bailee of property, who is liable to the owner in case of its loss, has an insurable interest therein to the full extent of its value;[4] and the value of the insurable interest of an in-

[1] *Sparks* v. *Marshall*, 2 Bing. N. C. 761; *Kenny* v. *Clarkson*, 1 Johns. 385; *Rider* v. *Ocean Ins. Co.*, 20 Pick. 259; *McGivney* v. *Fire Ins. Co.*, 1 Wend. 85; *Ætna Fire Ins. Co.* v. *Tyler*, 12 Wend. 507; S. C. 16 *id.* 385; *Columbia Ins. Co.* v. *Lawrence*, 2 Peters 25. But the contract must be a valid one, and made according to law, or an insurance will not be sustained. *Stockdale* v. *Dunlop*, 6 Mees. & W. 224; *Warder* v. *Horton*, 4 Binney 529.

[1] *Ætna Fire Ins. Co.* v. *Tyler*, 16 Wend. 385.

[2] *Ætna Fire Ins. Co.* v. *Tyler*, 12 Wend. 507; S. C., 16 *id.* 385.

[3] *Ætna Fire Ins. Co.* v. *Tyler*, 12 Wend. 507; S. C. 16 *id.* 385; *Columbian Ins. Co.* v. *Lawrence*, 2 Peters 25.

[4] *Crowley* v. *Cohen*, 3 B. & Ad. 478.

surer of property is the amount he has at risk upon it.[1]

§ 97. *Consignee with power to sell.*

In New York a consignee or commission merchant, in possession of goods with a *power to sell the same,* may insure them against fire in his own name *to their full value.*[2]

The Court in this case lay stress upon the fact that the insured was something more than a *naked consignee,* and because he is intrusted with a power to sell, they put his interest upon the same ground as that of a trustee, and whatever amount he may recover from the insurers he will hold in trust for his consignors. This case has been recognized as authority in Kentucky in the case of *Jackson* v. *Ætna Ins. Co.*, reported in Am. Law Reg. Apr. No. 1854, p. 374.

§ 98. *Person who has contracted to purchase.*

A person having contracted for the purchase of buildings, and made part payment, on a contract to receive a deed when the whole payment is made, has an insurable interest in the premises to their entire value.[3]

§ 99. *Liability of reinsurer.*

The amount of the reinsurer's liability to the reassured is the sum which the latter is legally liable to pay the original insured, and is not subject to be reduced by the insolvency of the reassured, and his consequent inability to pay to the original insured the full amount, for which he is liable.[4]

A insures his goods at the Phœnix for £1500. The Phœnix reassures at the Colonial for £500. Fire happens. A's loss is total. The Phœnix becomes bankrupt, and is in liquidation; only paying one shilling in the £.

A can't go to the Colonial, but the assignee of the Phœnix bankrupt estate does, and gets £500. Yet A can only get from the estate of the Phœnix £75.

[1] *Olive* v. *Green*, 3 Mass. 133; *Bartlett* v. *Walter*, 13 *id.* 267; *N. Y. Bowery Fire Ins. Co.* v. *N. Y. Ins. Co.*, 17 Wend.

[2] *De Forest* v. *Fulton Fire Ins. Co.*, 1 Hall, 84. For later law on subject of consignee's insurable interest, see *Ebsworth* v. *Alliance M. Ins. Co.*, L. R. 7 C. P. (July 1873). *Forest* v. *Fulton Ins. Co.*, founded a good deal upon *Lucena* v. *Crawford*, was approved, Duer notwithstanding.

[3] *McGirney* v. *Phœn. Ins. Co.*, 1 Wend. 35 (A.D. 1829).

[4] 1 Marshall on Ins. 143; *Hone* v. *Mut. Safety Ins. Co.*, 1 Sanford Rep. Sup. Ct. of City of N. Y. 137; *Herckenrath* v. *Am. Mut. Ins. Co.*, 3 Barbour's Chan. R. (N. Y.) 63.

## *INSOLVENT NOTICES, ETC.*

*Quebec Official Gazette, June 28.*

*Judicial Abandonment.*

Charles Leboutillier, doing business under name of John Leboutillier & Co., Gaspé Basin, June 13.

*Curators appointed.*

*Re* Allan J. Lawson, Montreal.—A. W. Stevenson, Montreal, curator, June 23.

*Re* Pronovost & Roy, traders, St. Félicien.—J. B. A. Letellier, curator, June 9.

*Dividends.*

*Re* Blake Bros.—Final dividend, payable July 14, J. Patrick, Carmel Hill, curator.

*Re* Alexander Maheu, St. Chrysostôme.—First and final dividend, payable July 28, Kent & Turcotte, Montreal, joint-curator.

*Re* Nazaire Prevost, Sorel.—First and final dividend, payable July 28, Kent & Turcotte, Montreal, joint-curator.

*Re* L. O. Roy, trader, St. François Montmagny.—First and final dividend, payable July 14, H. A. Bedard, Quebec, curator.

*Separation as to property.*

Rosalie Bouffard vs. François-Xavier Lamothe, village of Upton, June 11.

LORD ELDON'S MARRIAGE.—John Scott, afterwards Lord Eldon, ran away with his wife at a very early age. "The window from which Bessie Surtees descended into her lover's arms is still pointed out to every visitor to Newcastle as he pauses before the old house—the home of the wealthy banker, her father, in Sandhill, not five hundred yards from the great suspension bridge which spans the Tyne." In his old age, Lord Eldon used to tell how piteous was their condition. "On the third morning after the union our funds were exhausted; we had not a home to go to, and we knew not whether our friends would ever speak to us again." One of his earliest legal experiences was in reading, as substitute, the Vinerian law lecture. "I began," he says, "without knowing a single word that was in it. It was upon the statute of 'young men rnnning away with maidens.' Fancy me reading with about one hundred and forty boys and young men, all giggling at the professor. Such a tittering audience no one ever had." The scanty means of the young people had one unpleasant effect. They developed in the pretty young bride habits of thrift which hardened into extreme parsimony. She was also very a verse to society; for the run-away marriage made her delicately sensitive about society in the beginning, and at last it became distasteful to her. Curiously enough their eldest daughter married without the consent of her parents.