The Legal News.

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A CASE IN THE WINDWARD ISLANDS.

A case of some note, *Simmons & Mitchell*, has occurred in the Windward Islands, and we have received a copy of the *St. George's Chronicle*, in which the opinions of the Circuit Court of Appeal, the highest colonial tribunal in the islands, appear at length. The Judges who sat in the case were Chief Justice Armstrong (formerly of the Quebec bar) of St. Lucia, Chief Justice Wattley of Tobago, Chief Justice Trafford of St. Vincent, and Chief Justice Packer of Barbados. It was an action for slander, and the question was whether the Judge had properly instructed the jury to find a verdict for the defendant upon the ground that the words alleged to have been uttered by the respondent Mitchell were words of mere suspicion and not actionable. A rule was obtained by the appellant, for the respondent to show cause why the verdict should not be set aside and a new trial ordered, and the Court ordered the rule to be discharged. In the Court of Appeal two of the Judges—Chief Justices Armstrong and Wattley—were of opinion to affirm the judgment, and other two considered that it should be reversed. We presume, therefore, that the judgment was affirmed, though the report before us omits to state the fact.

The words complained of were that defendant said to the plaintiff's brother: "People that go to report others' characters to the Secretary of State should mind that their characters are clean and free. *Your brother lies here strongly suspected of having murdered a man years ago at the Spout.*" And he afterwards named the man referred to. These words were held to imply mere suspicion, and not to make any charge. The case was decided according to English law. The judgment of Tindal, C. J., in *Ward* v. *Weeks*, 7 Bing. 211, was cited, in which he says: "As the words spoken do not contain the charge of any legal definite crime, nor alleged to be spoken of the plaintiff in the way of any trade or business, so as to impute dishonesty to him in such trade, the words are not actionable *per se*." The recent cases of *Dublin, Wicklow & Wexford Railway* v. *Slattery*, 3 App. Cas. 1155, and *Metropolitan Railway Co.* v. *Jackson*, 3 H. L. 193, were also cited by Chief Justice Armstrong.

There was a further question in the case, if the Court had held the words to be actionable, whether they were not privileged. It appeared that Mitchell begged the plaintiff's brother "for God's sake not to tell his brother" what he had said. Baron Bramwell, in a case to be found in 34 *Law Times* (N.S.) p. 500, observed: "If I make a slanderous statement to a man and do not desire to authorize him to repeat it, but nevertheless he does so, he ought to do it upon his own responsibility, and I ought not to be liable for the consequences of his wrongful act." But as the words were held to be not actionable, this question did not require to be decided.

SHERIFF'S SALES.

It is necessary to revert to a case of *Comp. de Prêt & Crédit Foncier & Baker*, noted at pp. 345, 349 of Vol. 2 of the Legal News, in order to avoid a misapprehension as to the grounds of the decision there referred to. It was an action by the *adjudicataire* to have a *décret* set aside on the ground of misdescription, under Art. 714 C. P., which says that a sheriff's sale may be set aside at the suit of the purchaser, "if the immoveable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference." In this case the purchaser relied upon two errors of description, first, that the property was described as being forty-five feet front, whereas, in fact, it was only thirty feet front; and secondly, that the property was said to have a two-story wooden house thereon, whereas, in fact, the house stood partly on the lot sold, and partly on the adjoining lot. In appeal, the purchaser argued the case strongly upon the ground that the lot contained only two-thirds of its described contents, and that he would not have bought it if he had been aware of the error. In the note of this case previously published, the judgment of both Courts is represented as having sustained this pretension. But the opinion of the Chief Justice, which we believe was not read at

length (probably from want of time), shows that this was a misconception. The judgment of the Court below, confirmed in appeal, was really based on the ground that the error as to the building was sufficient under Art. 714 to vacate the sale. We give the following extract from the opinion of the Chief Justice (which will appear at length in the *Jurist* reports) to make the point quite clear :—

"S'il ne s'agissait ici que de la contenance de l'immeuble vendu, nous jugerions comme nous l'avons fait dans la cause du *Séminaire & Douglas*, et conformément à l'article 708, que l'adjudicataire n'a pas de garantie, et qu'il n'a pas droit à une diminution de prix à raison du défaut de contenance de l'immeuble acheté à une vente faite par le shérif. Mais nous n'avons pas décidé dans cette cause-là que si un adjudicataire achète un terrain bâti de maison, et que la maison soit sur le lot voisin, il est obligé de se contenter d'un lot vacant au lieu d'un terrain avec une maison. Ce n'est pas l'article 708 de Code de Procédure qui est applicable dans ce cas, mais le 3e alinea du § 2 de l'article 714. Cet article dit :—'Le décret peut être déclaré nul (2) à la poursuite de l'adjudicataire, si l'immeuble est tellement différent de la description qui en est donnée dans le procès verbal de saisie, qu'il est à présumer que l'adjudicataire n'aurait pas acheté s'il eût connu cette différence.' Dans l'espèce non seulement il est à présumer, mais il est clairement prouvé que les adjudicataires n'auraient pas acheté s'ils avaient cru que l'on ne vendait que les cinq septièmes d'une maison et des bâtiments dont la totalité était indiquée dans les annonces comme devant faire partie de la vente. Il ne s'agit pas ici de deux corps de bâtiments dont l'un serait sur le terrain adjugé aux intimés, et pourrait leur être attribué tout en laissant l'autre au propriétaire du terrain voisin ; il n'y a réellement qu'une seule maison et un seul corps de bâtiments, et les intimés seraient obligés de les démolir et refaire en partie pour jouir de ce qui se trouve sur le No. 620 qu'ils ont acheté."

PUBLICATIONS.

A JURIDICAL GLOSSARY, by Henry C. Adams, Counsellor-at-Law. We have received some specimen pages of what promises to be a magnificent work, being "a collection of the most celebrated Maxims, Aphorisms, Proverbs, Precepts, Technical Phrases and Terms employed in the Roman, Feudal, Canon and Common Law, and quoted in the standard elementary works and reports of the British and American Courts," the whole being alphabetically arranged and translated into English, with explanatory notes and citations. Mr. Adams says he has labored ten years in gathering the materials for this extensive work, and he now appeals to the profession for their patronage, in order that he may be enabled to incur the necessary expenses of publication. The cost to subscribers will be only one cent per page, payable as the volumes are delivered, the whole to comprise about 2,500 pages. Judging from the pages that we have looked at, the Glossary will be a perfect treasury of learning, and no lawyer's library will be complete without it. We hope Mr. Adams will receive such a response to his appeal that he will feel justified in proceeding at once with the publication of his valuable book. His address is 59 Broadway, New York.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, February 3, 1880.

SIR A. A. DORION, C.J., MONK, RAMSAY and CROSS, JJ.

THE CANADA MUTUAL BUILDING SOCIETY OF MONTREAL (defts. below), Appellants, and O'BRIEN (plff. below), Respondent.

Mutual Building Society—Property within the city offered as security, if sufficient, cannot be rejected on the ground of locality.

RAMSAY, J. This is an action to compel the appellants to pay over $4,000 to plaintiff (respondent), inasmuch as the said sum has been appropriated to him on his shares, and he has fulfilled all the obligations of his part of the contract. The plaintiff also alleges that the Company acquiesced in all this by taking a cheque payable out of the proceeds of these shares and making use of it; and that now, without reason, the defendants refuse to make the appropriation. There is also a demand for damages.

The Society (appellants) pleaded that it was purely optional with them to approve of the security offered, and that they de-

clined the security as not being satisfactory, and they cite Rules IX. and X. in support of this pretension. They deny having acquiesced, and say that the cheque which they got was for arrears due by respondent, that this transaction had nothing to do with the appropriation, that defendants had nothing to do with the condition on the cheque, and that if plaintiff has anybody to complain of in the matter it is the Bank, and that the Society has only got its due.

I think appellants are perfectly right in the reading given to Rules IX. and X., and that the security must be to the satisfaction of the Board as well as of the valuator; but I think appellants push this too far in saying that the Board is not obliged to render an account of the exercise of its discretion. Courts will doubtless be very slow to interfere with the exercise of the discretion of a Board in valuing anything so variable as real property in a great town, where fashion, and a variety of causes more or less difficult to appreciate, are constantly in operation; but in this case the Board has offered an excuse for its conduct which is not a good one. They do not wish, they say, to increase their risks in the part of the town where plaintiff's property is situated. But the rules distinctly state that all property in Montreal is available as security, if sufficient. To strike out a certain portion of the territory circumscribed by the rules, and to say no amount of this property will be sufficient, is to subvert the basis on which the association is framed. Again, I cannot think the Society was justified in using the cheque which, on the face of it, appeared to be given on the understanding that the appropriation would be carried out. By doing so, I think they give the plaintiff some right to say that they had given him an assurance that the appropriation would be made. It is not a question solely between the plaintiff and the Bank. But it is not on this point, I think, the case should turn. What we have before us is a right acquired, subject to the approval of a Board. The refusal to approve must be a reasonable objection, and in this case I think the excuse put forward is not only unreasonable, but is a violation of the understanding among the subscribers. The judgment is, therefore, confirmed.

TESSIER, J., transmitted a dissent in writing.

Judgment confirmed.

D. R. McCord for appellants.

John L. Morris for respondent.

CHRISTIN (plff. in warranty below), Appellant, and VALOIS et al. (defts. in warranty below), Respondents.

Commencement de Preuve—Division of aveu.

The judgment appealed from was rendered by the Superior Court, Montreal, Johnson, J. (See 2 Legal News, p. 27.)

RAMSAY, J., (*diss.*) The Union Navigation Company sued the appellant for the sum of $1,448.04, balance due by him on a subscription of $2,000 of stock. There is no question as to the validity of the demand; but the appellant alleges that he was induced to subscribe this stock on the representations of three of the Directors—Valois, Leduc and Charlebois—that payment would be taken of his calls in the merchandise in which he (appellant) deals, and he therefore calls them in as his *garants* to protect him from the demand of the Company for money, and he offers to continue to supply merchandise. The three defendants *en garantie*, examined as witnesses, denied in general terms that they had rendered themselves liable on an undertaking that the plaintiff *en garantie* should pay in merchandise, or that they had assured him that merchandise would be taken; but they all admit there was a conversation to the effect that probably he would not have to pay. Mr. Valois says:—"Nous lui avons dit, pour le mettre à l'aise, que nous n'avions pas besoin d'argent immédiatement, que rendu au printemps, à l'ouverture de la navigation, nous prendrions de lui tous les effets que la compagnie avait besoin dans sa branche de commerce, en accompte sur ses parts. M. Christin a consenti à la chose, *je pense bien* qu'il avait dans le moment l'espérance de tout payer en effets, mais nous ne pouvions pas garantir à M. Christin que la compagnie prendrait tout ce montant-là en effets, parce que nous ne voulions pas nous rendre personnellement responsables vis-à-vis de lui de prendre ces effets là pour le montant des $2,000.

"Q.—Vous n'avez pas promis que la compagnie le ferait?

R.—Nous avons promis que tant que la compagnie marcherait, qu'elle prendrait tout le

montant de la souscription de M. Christin en soda et effets de commerce.

Q.—A-t-il été spécialement fait mention que cette convention n'aurait lieu que pendant que la compagnie marcherait?

R.—*Il n'a pas été fait mention de ce fait*, mais intérieurement, moi, je n'entendais pas me rendre personnellement responsable, mais j'étais convaincu dans le temps que M. Christin n'aurait pas à payer en argent, et c'est l'impression qu'il a dû avoir et que j'ai gardée moi-même.

Q.—Vous rappelez-vous si M. Christin lorsque vous lui avez proposé de souscrire, ne vous a pas dit qu'il ne voulait pas souscrire en argent?

R.—En autant que je me rappelle, M. Christin, je pense, avait décidé de souscrire $1000, et nous l'avons décidé de souscrire $2,000, en lui disant que la compagnie prendrait des effets de lui pour le montant de $2,000.

Q.—L'impression qui vous est restée de cette conversation est que vous promettiez la préférence de la Compagnie à M. Christin pour les marchandises de ce dernier, mais que vous ne faisiez pas de marché que sa souscription serait payée en marchandises?

R.—Je n'ai pas compris que nous garantissions à M. Christin que son stock de la compagnie serait tout pris en marchandises, mais je ne suis étonné qu'il ait compris que la compagnie prendrait des effets pour le montant."

Charlebois, another of the defendants, says:—"Je me rappelle que dans le mois de mars ou février, 1875, moi, M. Joel Leduc et M. Narcisse Valois, comme Directeurs de la Compagnie de Navigation Union, nous nous sommes transportés au bureau de M. Christin, lui demandant s'il aurait bien la bonté de vouloir souscrire au stock de la Companie de Navigation Union, lui représentant que c'était une institution canadienne et que c'était pour le bien public. Là dessus, M. Christin a souscrit la somme de $2,000 de stock. Avant de partir, M. Christin nous a demandé de lui donner la préférence pour vendre à la compagnie les marchandises dont nous pourrions avoir besoin dans sa ligne de commerce, de la même manière que nous l'avions donnée aux bouchers, aux boulangers et aux épiciers."

The Court below held that this was not a *commencement de preuve par écrit* sufficient to permit plaintiff *en garantie* to adduce verbal testimony of the undertaking of these Directors. I am inclined to think this is an error, and that further evidence should have been allowed. The rule as to non-divisibility of admissions is not an absolute one. It must be taken with the exceptions of the commentators. But here, I take it, the rule of C. C. 1243 is not applicable. What is to be established is not a complete proof. It is only a *commencement de preuve* in order to introduce a particular kind of evidence. Now, if it be held that an admission and denial is not sufficient to make a *commencement de preuve*, it may be as well at once to say that *commencement de preuve* can never be made out of the interrogation of the adverse party, and that such interrogation is valueless unless it results in unqualified confession. But in reality it is not a division of the evidence, for all that is contended for is this, that something of the kind took place, and that is suffic ent to admit parol testimony. Of course, I am only dealing with the question as it arises under the French law of evidence, for under the English rule a warranty of this kind could not be proved by parol. The other members of the Court are of the opinion that this is not a *commencement de preuve*, and probably the decision may not have any very evil results for appellant, for a warranty is a thing difficult to prove by reports of conversations. The evidence requires to be very precise indeed.

Sir A. A. Dorion, C. J. The majority think with the Court below that there is here no *commencement de preuve*. We hold that you can no more divide the *aveu* of the party to get a *commencement de preuve* than you can divide it to get complete proof. If you can divide it to get complete proof, then you can divide it to get a *commencement de preuve*. You cannot take part of the answer, in which the party says, "I made a contract," and then bring other witnesses to show that the contract was not what the party says it was. This is a commercial case: it is a subscription to a commercial undertaking. The respondents were promoters of the undertaking. They say that Christin was willing to subscribe $1,000, but they induced him to subscribe $2,000 by showing him the advantage that he might derive by selling his goods to the company.

Christin, taking his chance, on the representations which were made to him, subscribed. Was it a conditional subscription? Not at all. He subscribed purely and simply. Under C. C. 1239, a writing is required to prove any representation or assurance in favor of a person to enable him to obtain goods. A *commencement de preuve* must be very clear to supply the place of a writing, and we do not find one here. Personally, I would take another ground, viz. that when a party acting for another, shows his quality to a third person, he only binds himself in that quality. But this has been overruled by the Court in another case.

Judgment confirmed.

Lacoste & Globensky for Appellant.
Geoffrion & Rinfret for Valois.
Beique & Choquet for Charlebois and Leduc.

MONTREAL, February 4, 1880.

SIR A. A. DORION, C. J., MONK, RAMSAY, CROSS, JJ.

McCLANAGHAN (plff. below), Appellant, and THE ST. ANN'S MUTUAL BUILDING SOCIETY OF MONTREAL, (defts. below), Respondents.

Constitutionality of Dominion Act, 42 Vict., cap. 48, respecting liquidation of affairs of Building Societies—Costs.

This was an appeal from the judgment of the Superior Court, Torrance, J., dissolving an injunction. (See 2 Legal News, p. 413, for judgment of court below.)

Sir A. A. DORION, C.J. This appeal is from a judgment dissolving an injunction which the appellant obtained against the society respondent.

The appellant complains that having purchased an appropriation of $2,000 awarded by the society, he applied for the money and offered security, as required by the by-laws of the association; that the security was declared insufficient, and that he tendered additional and adequate security; that without adjudicating upon the new securities offered, the society entered into liquidation under the Dominion statute 42 Vic., c. 48, and was about to declare a dividend which would include the $2,000 which he was entitled to for his appropriation; that this statute was *ultra vires*, and the society had no right to go into liquidation under its provisions. Wherefore he applied for a writ of injunction, which was issued on the 26th of August, 1879, restraining the society and its officers from declaring a dividend, and from proceeding to the liquidation of the affairs of the society.

The Superior Court maintained the defence set up by the society, and held that the board of directors, in the proper exercise of their discretion, were justified in rejecting the security offered by the appellant, as insufficient, and that the proceedings in liquidation were well taken under the Dominion Act, which was not *ultra vires*.

While these proceedings were pending in the court below, the Local Legislature of the Province of Quebec passed a statute re-enacting, as to the Province of Quebec, all the provisions of the Dominion Act, and also another statute ratifying all the proceedings adopted under its provisions. The last Act, however, was not to affect pending cases. These two statutes, 43 Vic., c. 32 and c. 33, were sanctioned on the 31st October, 1879.

The judgment has been rendered and the appeal taken since the passing of these two statutes, and since the proceedings of the society to wind up their affairs have been ratified by the Quebec Legislature.

We cannot agree with the court below that the Dominion Parliament had the right to pass the Act 42 Vic., c. 48. This Act is not in the the nature of an insolvency law, for it is intended to apply to all building societies, whether solvent or not. It is therefore essentially an Act affecting civil rights, which, under the provisions of the British North America Act, 1867, comes within the exclusive jurisdiction of the local or Provincial Legislatures.

The case of *L'Union St. Jacques & Belisle* (20 L. C. J. 29) is in point.

In that case the Lords of the Privy Council decided that a law authorising a benevolent association, in financial difficulties, to compel parties to accept a fixed indemnity in lieu of the annuities to which they were entitled under the rules of the Society, was within the legislative powers of the Legislature of the Province of Quebec—as affecting civil rights only. We cannot, therefore, consider the proceedings in liquidation adopted by the Society as legal. But, these proceedings having been rendered valid by the Quebec Legislature, there is now no ground to restrain the Society from proceed-

ing to the liquidation of their affairs, and there was none when the judgment of the Court below was rendered and when this appeal was instituted. The judgment dissolving the injunction must, therefore, be confirmed.

The only thing that the appellant might expect would be a reversal of the judgment as to costs.

In this country the awarding of costs has always been considered as within the discretion of the Courts.

The Ordinance of 1667, Tit. 31, Art. 1, was in these terms:—"Toute partie soit principale, "soit intervenante, qui succombera, même aux "renvois, déclinatoires, évocations ou règle- "mens de Juges, sera condamnée aux dépens "indéfiniment, nonobstant la proximité ou "autres qualités des parties; sans que sous pré- "texte d'équité, partage d'avis, ou pour quel- "qu'autre cause que ce soit, elle ne puisse être "déchargée," &c.

This article was only registered at the Conseil Supérieur de Québec subject to the following modification:—

"Sur le dit titre, que parce qu'en ce pays, il est difficile d'être bien conduit dans les affaires par de bons avis, ce qui cause souvent qu'on s'engage à plaider mal à propos, le Conseil sous le bon plaisir du Roi, se réserve la faculté de prononcer sur les dépens avec même délibération et selon l'exigence des cas, sans s'arrêter à présent, à tout ce qui est dit dans le dit titre, qui regarde plus les procureurs et avocats qui ne sont point établis dans ce pays que les parties," &c.

It has always been held by the French Parliaments that the Ordinances of the Kings of France had no force of law until they were registered in their respective jurisdictions.

The Conseil Supérieur of Quebec exercised here the same authority as regards the registration of Ordinances emanating from the King as the *parlements* did in France. Hence it is that the great Ordinances concerning Donations, Substitutions, Wills, the Ordinance de la Marine and many others which have not been registered at the Conseil Supérieur, have never been considered to be law in this Province. The celebrated Ordinance of 1629, although anterior to the establishment of the Conseil Supérieur, was also never considered law here, for the reason that it was not registered at the *parlement* de Paris and did not form part of the laws in force there, from whence we derived our laws up to the time of the establishment of the Conseil Supérieur. With regard to the Ordinance of 1667 it has only been in force here as modified by the representations which the Conseil Supérieur made when ordering its registration, and the particular article now under consideration has always been held to leave the adjudication of costs in this country entirely at the discretion of the Courts, unless otherwise provided for by statutory enactment, as was done by the 25th Geo. 3, c. 2, s. 4, with regard to costs in actions for personal wrongs.

The Code of Civil Procedure, Art. 478, admits this discretion:

"The losing party must pay all costs, unless "for special reasons the Court thinks proper to "reduce them, or compensate them, or orders "otherwise."

It is therefore difficult to say that a judgment refusing costs or condemning a party to pay costs is wrong, when so much discretion is left to the Judges in matters of costs, and it is seldom that a Court of Appeal will feel disposed to reverse a judgment simply because the appellant was refused costs in the Court below,—whether he was then successful or not. We do not think that in this case, the appellant is deserving of any particular favour. He began his proceedings after the Society had, by an almost unanimous vote of its members, resolved to wind up its affairs which were no more profitable. This was after the passing of the Dominion Act, and while a bill was before the local legislature to enact for this Province the same provisions as those of the Dominion Act.

The main objection of the appellant to the winding up of the affairs of the Society was that he was entitled to an appropriation of $2,000, of which he would be deprived by the liquidation of the affairs of the Society and payment of dividends, and it was to compel the Society to pay him this appropriation that he asked for an injunction to restrain the company from paying a dividend and from proceeding to liquidation.

The appellant failed on this first and most important of his contentions. This Court agrees with the Court below that the appellant's offer of security was properly rejected, and that

not having fulfilled the conditions required to obtain the loan before the proceedings in liquidation were begun, he is not entitled to do so now.

The demand for an injunction was as it were subsidiary to the appellant's claim that he was entitled to the $2,000. After their proceedings had been ratified by the Quebec Legislature, the appellant did not restrict his demand to the costs he had incurred, but pressed his other claims, on which he failed.

The Society proceeded in good faith to wind up its affairs under the Dominion Act. The appellant must have known that legislation was going on in Quebec to supplement the Dominion legislation, and we do not think that this is such a favorable case, that we ought to mulct the respondents in the heavy costs incurred in both courts, when the appellant while insisting upon his extreme demand is declared unfounded in the most important portion of it.

The judgment is confirmed with costs against the appellant.

RAMSAY, J., concurred in the judgment, especially in so far as it reversed the decision of the Court below as to the constitutionality of the Dominion Act. This act did not pretend to be in any way connected with insolvency, and was clearly *ultra vires*. But his Honor differed on the question of costs; the appellant came here with the law in his favor, and he could not, therefore, concur in the part of the judgment which condemned him to pay the costs of the appeal.

Lacoste & Globensky for Appellant.
D. R. McCord for Respondents.

COURT OF REVIEW.

MONTREAL, January 31, 1880.

JOHNSON, RAINVILLE, JETTÉ, JJ.

KELLY v. THE HOCHELAGA MUTUAL FIRE INSURANCE CO.

[From S. C., Montreal.

Fire Insurance—Preliminary proof—Waiver—Material Fact—A threat, made four months before the insurance was effected, that certain persons would burn the store of insured in a certain contingency which never occurred, (which threat, moreover, was not shown to have had any connection whatever with the fire) held, not a circumstance material to be made known to the insurer.

This case came up in Review of a judgment of the Superior Court, Montreal, Torrance, J., noted at 2 Legal News, p. 347, maintaining the plaintiff's action.

JOHNSON, J. In this case the action was brought to recover $2,000 for a loss by fire under an interim agreement to insure the stock in trade of the plaintiff, and the defendants pleaded, admitting the contract, but alleging it to have been made subject to the conditions of the Company's policies, one of which was that there was to be no recourse if there was any misrepresentation, or omission to communicate any circumstance material to be made known to the insurer; and that, previous to the contract, the plaintiff had been warned that the store was to be set on fire by an enemy, and that the fire was, in fact, the result of this threat or warning; and the plaintiff concealed the fact from the Company, which, if it had been known to them, would have prevented them from insuring. There was a second plea under which the Company contended that the plaintiff had failed to furnish proof of his loss to the satisfaction of the Company on the printed forms in use, and in conformity with another condition of the policy, within 30 days from the occurrence of the fire. The plaintiff made special answers to both of these pleas. To the first he said that during the excitement of a municipal election, at which he was a candidate, he had been informed that somebody had threatened to burn his store, but no names were mentioned, and he thought the threat was of such a character that he paid no attention to it at the time, and only remembered it after the fire, when the suspicion he had that the thing had really been the act of an incendiary, made him recall it. To the second plea of the defendants—as to the notice of loss—the plaintiff replied that he was wholly ignorant of the stipulation as to the notice being required to be given on the printed forms of the Company; that he gave such proofs as the nature of the case admitted of, the fire having occurred at New Carlisle, and all his books and papers having been destroyed; that the Company received all the information he had to give without raising any objection on that score; and in fact the notice and claim were made afterwards (on the 24th August) on a printed form furnished by the Company, and which he

immediately used for the purpose. That even after this information had been furnished in the form requested (it having been impossible for him to use this form before he got one), the Company asked for and got further information, which they asked for by a subsequent letter of the 27th of September.

There are, therefore, two points to be considered: first, whether there was a material concealment, and, secondly, whether the thirty days rule had been complied with to the extent of the plaintiff's power, and with the consent of the Company, which would thus have waived the condition. We are unanimously for the plaintiff on both points. With respect to the proof of these special answers, it is complete on all points. The so-called threat was apparently one of those senseless things that reckless men say at times of excitement to show their fitness for free institutions. No one attached any importance to it; and such as it was, it referred to that very night, which not only passed away without harm, but the application for insurance itself was only made four months afterwards. As to the second point, it seems to have been virtually abandoned by the Company itself. The evidence of Alexander Taylor shows that the agent of the Company, when certain invoices were produced which the Company had called for—stated that he had all that was required to lay before the Board, and the claim was resisted solely on the ground of the non-disclosure of the threat. The doctrine with respect to furnishing proofs within a stipulated time was enforced in the case of *Whyte* v. *The Western Assurance Company*. That doctrine never extended to saying there could be no waiver; but merely applied the stipulation where there was nothing to modify it. We therefore confirm the judgment which was given for the plaintiff.

Bethune & Bethune for plaintiff.

Davidson, Monk & Cross for defendants.

SUPERIOR COURT.

MONTREAL, February 16, 1880.

MACDOUGALL v. THE MONTREAL WAREHOUSING CO.

Rate of Interest on Company Debentures—Interest on amount of coupons.

The plaintiff claimed the sum of $170.33, amount of coupons due on bonds. The defence was that the bonds were issued under 37 Vic., ch. 57 (Quebec), and that the Legislature could not enact a law authorizing the Company to enter into any contract binding on the Company, by which a rate of interest higher than six per cent. was to be paid, and that the coupons being at the rate of seven per cent, the obligation was void, or at most, good only for six per cent. The answer to this was that the Company was authorized to borrow, and could legally agree to pay seven per cent., or such other rate as might be specially agreed on, which was all that was done here.

MACKAY, J., maintained the pretention of plaintiff, and judgment went for the amount sued for, $170.33. There was a question raised as to interest on the amount of the coupons. The plaintiff contended that they were like promissory notes, on which interest commenced to run as soon as they became due. The Court did not find this view to be in accordance with the law in force here, and allowed interest only from the institution of the action.*

R. A. Ramsay for plaintiff.

Lunn & Cramp for defendants.

GENERAL NOTES.

RESULT OF APPEALS IN ENGLAND.—London *Truth* says:—"Some time ago I published some statistics as to the reversals of the various judges. Here are the complete returns for the year 1879, as contained in volumes X., XI. and XII., Law Reports, Chancery Division:—M. R. Jessel—Affirmed, 7; reversed, 4. V. C. Malins—Affirmed, 8; reversed, 10. V. C. Bacon—Affirmed, 17; reversed, 12. V. C. Hall—Affirmed, 8; reversed, 9. Fry, J.—Affirmed, 4; reversed, 13. Total affirmed, 44; total reversed, 48. In the volume of House of Lords appeals for 1879, it appears that the Court of Appeal was affirmed sixteen times and reversed three, and that the Scotch Court of Session was affirmed sixteen times and only reversed twice. Every lawyer should remember the Vice Chancellor in his prayers."

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* A similar judgment was rendered on the same day in the case of *Davidson* v. *Montreal Warehousing Co.*