The Legal News.

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A curious case of keeping a cause of action alive against a defendant during half a lifetime occurs in *Hume* v. *Somerton*, 59 Law J. Rep. Q.B. 420. A writ was taken out in 1861, and renewed every six months since. The point of the long-cherished weapon has at length been turned aside by the Court, it being held that though the writ had been renewed every six months under the old Act, it had become a nullity, because it had not been renewed under the rules of 1883, which require the order of the Court for such a purpose. The case serves as an illustration of the propriety of the new rules.

The *Law Journal* (London), in an article on the protection of wild birds, directs attention specially to the fact that during five months of the year, beginning 1st March, and ending July 31, all the wild birds of the kingdom are entitled to enjoy absolute immunity from molestation from the snare of the fowler, as well as from the fowling-piece of the gunner, subject to certain unimportant exceptions. This monition is evoked by the fact that one day last spring, a party of "officers and gentlemen" deliberately invaded the island rock of Grasshlom, the home of innumerable seabirds, for purposes of "sport." It seems that their idea of sport consisted in wandering about the rock, picking the eggs out of the eyries, smashing the bad ones, and knocking down the parent birds with sticks, because, as one of the sportsmen said, "it was better sport and fun than shooting them." This novelty in sport, however, led to an interpellation in Parliament, and the Government having declined to prosecute, a prosecution was duly instituted by the Royal Society for the Prevention of Cruelty to Animals, and a fine was imposed on the offenders.

A correspondent sends us a clipping from a New York journal, containing an account of the origin of the now famous chicken case. It appears that the magistrate or petty judge decided in favor of the hen that hatched out the egg, or her owner. This decision has been criticized. One critic says:—

"Hatching is a 'mechanical' process, and not at all characteristic of motherhood. Indeed, science has demonstrated that it isn't a hen at all which hatches, but heat, so that the sitting hen is simply a natural radiator. Moreover, you cannot imagine a mother without there being a father, and though no chick has ever asked who its father is, yet it is clear, only the hen that 'laid' the particular egg could have been mother to that father; and hence, *q. e. d.* to the chick. Besides, it seems to me, the judge should have noticed that it is the hen which lays that is constantly voicing motherly joy and pride over every newly laid though undeveloped offspring. Isn't the strutting about in great style, saying: 'This is my little lay. This is my little lay.' Or can it be that our great jurist and linguist hasn't yet mastered the cackle language? Down, say I, with the sitting hen. It is the hen that lays which justly claims the proud title of motherhood."

Another critic observes:—

"Judge McAdam makes the mistake of mixing up eggs and chickens, when it is merely a question, not between hen and hen, but between farmer and farmer. The law is clear, and the maxim 'that he who does a thing through another does it himself,' applies. Therefore, farmer A, through his duly authorized hen, laid the egg himself on B's premises. What stress or urgency of circumstances forced him to lay this egg in the wrong place need not concern us. The egg being there, farmer B came, and by his duly authorized agent, his sitting hen, hatched out the egg, whence the chicken in dispute. Now there was nothing which compelled farmer B, through his hen, to hatch out that egg. Having chosen to do so, he must be held to the consequences, and I think he is clearly chargeable with notice in the eyes of the law, that he, farmer B, had not, through his hen, laid this egg, and that therefore it was the egg laid by some other father. This being so, the law is clear. Farmer A is entitled to the egg which he laid and its proceeds and natural increase; at most farmer B is entitled to a mechanic's lien for work, labor and services in hatching out the egg. * * * * There is no need further to addle our brains over the matter."

There is no doubt that the process of hatching may be regarded as mechanical; still, without that process, the embryo chick would never have seen the light. The egg, if not taken care of by the sitting hen, would soon have been worthless. We find some support for the hatcher's claim in the articles of our Civil Code. Art. 429 says: "The right of accession, when it has for its object two movable things, belonging to two different owners, is entirely subordinate to the principles of natural equity." Art. 430 says: "When two things belonging to different

owners have been united so as to form a whole, although they are separable and one can subsist without the other, the whole belongs to the owner of the thing which forms the principal part, subject to the obligation of paying the value of the other thing to him to whom it belonged." Therefore, if the hatching be the principal part, the hatcher is only obliged to pay the value of the egg to him to whom it belonged. This is further confirmed by Art. 433: "If of two things united so as to form a whole, one cannot be considered as the accessory of the other, the more valuable, or if the values be nearly equal, *the more considerable in bulk* is deemed to be the principal." The chicken is certainly more considerable in bulk than the egg, and therefore the hatcher of the chicken is entitled to keep it, on paying the value of the egg. But, on the other hand, we must quote Art. 434. which seems to upset this reasoning, for it says: "If an artisan or any other person have made use of any material which did not belong to him, to form a thing of a new description, whether the material can resume its previous form or not, he who was the owner of it has a right to demand the thing so formed, on paying the price of the workmanship." So, the owner of the egg would be intitled to demand the chicken on paying compensation for the hatching. But Article 435 says: "If, however, the workmanship be so important that it greatly exceeds the value of the material employed, it is then considered as the principal part, and the workman has a right to retain the thing, on paying the price of the material to the proprietor." So it would resolve itself into a question of fact whether the value of the hatching greatly exceeds the value of the egg employed. This is a question on which we are without exact information.

COUR DE MAGISTRAT.

MONTRÉAL, 30 avril 1890.

Coram CHAMPAGNE, J. C. M.

BRUNEAU v. De. BERTHIAUME, et BEAULNE, intervenant.

Locateur et locataire—Privilége—Présomption—Pensionnaires.

JUGÉ:—1o. *Que le privilége du locataire étant basé sur la présomption, en faveur du propriétaire, du droit de propriété du locataire sur les meubles qui meublent la maison, ce privilége cesse d'exister quand le propriétaire est informé que certains meubles qui garnissent la maison n'appartiennent pas au locataire.*

2o. *Que les effets d'un pensionnaire dans une maison de pension ne sont pas sujets au privilége du locateur.*

Le demandeur poursuit pour $50 pour loyers échus, et ayant accompagné son action d'une saisie-gagerie il fit saisir tous les meubles qui se trouvaient dans la maison louée.

L'intervenant dans son intervention allègue qu'il était et est le seul et unique propriétaire absolu d'un piano saisi dans la dite maison; que le demandeur avait été averti des l'entrée du dit piano dans la maison qu'il n'appartenait pas à la défenderesse, mais à l'intervenant; que de plus la défenderesse tenait maison de pension, qu'il était pensionnaire chez elle et qu'il ne devait rien pour sa pension.

Le demandeur cita: *Thomas* v. *Coombe*, 7 Leg. News, 77.

L'intervenant cita: *Nordheimer* v. *Hogan*, 2 L. C. J. 281; *Delvecchio* v. *Lesage*, 9 R. L. 550; *Easty* v. *Fabrique de Montréal*, 17 L. C. R. 418; *Sheridan* v. *Tolan*, 5 Leg. News, 298; *Lorrain, Code des locataires*, p. 138, No. 383, No. 387.

La Cour soutint les prétentions de l'intervenant.

Saisie-gagerie cassée quant au piano, et intervention maintenue avec dépens.

Jodoin & Jodoin, avocats du demandeur.

Beauchamp & Dorval, avocats de l'intervenant.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 6 décembre 1889.

Coram CHAMPAGNE, J. C. M.

LALUMIÈRE v. ROY.

Protêt—Frais—Action.

JUGÉ:—*Que lorsqu'un protêt est indispensable, et que celui qui proteste a raison de protester, le demandeur a une action en recouvrement des frais du protêt.*

PER CURIAM:—Le défendeur a vendu au demandeur une propriété quitte et nette. Plus tard, le demandeur découvre que la propriété est grevée d'une hypothèque de $1,000; il

fait alors protester le défendeur de la faire disparaître. Le défendeur se soumit au protêt, obtint main-levée de l'hypothèque, mais il refusa de payer les frais du protêt. De là l'action.

Le demandeur en vendant quitte et nette s'exposait à l'obligation d'indemniser le demandeur de tous frais qu'il serait tenu de faire pour dégrever la propriété. Or, le protêt était nécessaire pour forcer le défendeur à faire lever l'hypothèque, et ayant été occasionné par la négligence de celui-ci, il doit en payer le coût.

Jugement pour le demandeur.

Adam & Duhamel, avocats du demandeur.

Judah, Branchaud & Bauset, avocats du défendeur.

(J. J. B.)

FIRE INSURANCE.

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

CHAPTER VI.

The Conditions of the Policy.

[Continued from p. 319.]

In Lower Canada non-declaration of other insurances is not a cause of nullity of a policy in the absence of a condition to that effect, and many things required by policies to be done may, yet, not be done exactly as stipulated and no nullity will ensue. Generally the *peine de nullité* must be stipulated in the policy, else it will not be supplied.[1]

In Lower Canada, as in England, if a notice be required to be given to the insurers within a certain time, and to be endorsed within a certain time, under pain of nullity, the notice must absolutely be so given and endorsed.[2]

Where a policy orders the insured to declare all existing insurances on the same subject, if he insures without so declaring to the new insurer, he commits a reticence, but not fatal to him in case of fire, unless there be a penal clause in the policy to that effect.[3] If there were such a penal clause, in vain would the insured say that the earlier insurance was infected with a vice fatal to it.[1]

If the condition read that other insurance on any house or buildings insured must be notified without delay, insurance on goods need not be so notified.

If a condition in a policy read that prior insurance "must be mentioned in, or endorsed upon," such policy, mere verbal notice of prior insurance given to the agent of second insurers, though he make a memorandum of it in a private book, will be of no use.[2]

If a by-law of an insurance company provide that insurance subsequently obtained without the written consent of the president, shall annul the policy, subsequent insurance followed by the mere verbal assent of the president avoids the policy, though payable, in case of loss, to a third person. That is, I take it, if the president denies. *Sed*, can the president avoid by-laws by his parol? Sometimes the consent of the president and secretary in writing is required (by by-laws) to validate after insurances, as on p. 281, Law Rep. of 1856, Boston.[3]

But a by-law does not bind an assured unless he has contracted to be bound by it. If by-laws be printed on or annexed to policy and made part of it, well; but otherwise. (?)

In *Hale* v. *Mech. M. Ins. Co.*, (4) the policy prohibited other insurance unless the consent of the president should be obtained in writing. Held, that a waiver could not be proved, and that the president's parol consent was null.

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[1] Dalloz, 2nd part of 1857, p. 31.

[2] 2 Am. L. Cas., p. 610.

[3] Dalloz A.D. 1869, 2nd part, p. 70.

[1] See *Bigler* case to this effect, *post.*, but in this case Gros insured with "La Normandie" his workshop and stock in a street named. He transferred it all to another street and insured it here with "Le Nord," as if never before insured. Fire happened, the company, "La Normandie," paid the insured 1,000 frs., and Le Nord would not pay, saying that the things burned were already the subject of another insurance not declared. This was in violation (said "Le Nord") of the clause of its policy; *à peine de nullité* was in the policy of Le Nord. Gros' action was dismissed on the ground that he and La Normandie considered the first insurance subsisting.—Cour. Imp. Paris, 17 Jany., 1867. Here I see a clear case of first insurance being as non-existing, and the Cour Imp. judgment I do not approve.

[2] *Pendar* v. *American M.I. Co.*, 1853, Mass.

[3] *Hale* v. *Mech. M. F. I. Co.* (Mass.), Monthly Law Reporter of 1856.

[4] 6 Gray; 15 Alb. Law J., p. 326.

Mellen v. *Hamilton F. I. Co.*[1] was an action by an assignee for the benefit of the creditors of one O'Brien (assured.) The policy prohibited other insurance, unless notified with all reasonable diligence, and indorsed on the policy, or otherwise acknowledged in writing by the insurers. Before the fire the insured did effect other insurance without endorsement or acknowledgment such as required. The agent of both companies was the same man, and he knew of everything, (said the insured;) but, *per* Duer J., "this is no sufficient answer to the insurers' objection." The loss was held not recoverable, and verdict against the insurers was set aside. (Notice of other insurance is required sometimes by condition partly that the insurers may determine the policy, returning portion of premium—*per* Duer, J.)

Suppose insurance to have been effected, and the insured to take a new policy with condition at head of this section, suppose the first insurance to have been notified and endorsed, but not "at or before the time of making insurance," would the new policy be of no avail? No. Yet, under literal interpretation, yes.

Suppose A insuring his property under conditions at head of section, to have a prior insurance, but expiring two days afterwards, and which he does not intend to renew, is he bound absolutely to give notice of it? Just as much as if it was to expire only in one month or three.[2]

The condition that the person effecting an insurance must, at or before the time of making insurance, under pain of nullity, give notice of any "other insurance made," will not bind the insured to give notice of insurances afterwards made, under pain of nullity.

If the condition read that the insured effecting an insurance must declare all insurances existing on the property insured, the insured is not bound to declare posterior or subsequent insurances.[3] Declaration by the insured of a previous insurance does not amount to a warranty to keep up such insurance, yet ceasing to do so, the risk on the insurer is aggravated.

If double or after insurance be prohibited by the first policy, this policy will be vacated by later or after insurance being taken by the insured.

In a Massachusetts case, where there was a condition against double insurance, a subsequent invalid policy was held not fatal, and the insured was permitted to recover.[1] But in New York, in one case,[2] the condition was held fatal whether the second insurance could be avoided or not. In another case,[3] in the same State, the contrary was held. In Ohio also, it was held[4] that a condition against subsequent insurance was not broken by the taking of subsequent policies which never took effect by reason of conditions therein contained. The Louisiana rule is different.[5]

If the charter of the defendant company say that it shall go free in all cases of other insurances by the insured, not endorsed upon the defendant's policy under the hand of their secretary, the company cannot waive this form.[6]

Where previous insurance has to be notified and endorsed, or the policy is to be null, parol evidence cannot be adduced to prove that, though there was previous insurance, the second insurers (defendants) knew of the previous insurance.[7]

In such cases as the above, what if two or three subjects be insured at first, and other insurances be effected only on one of them? Is there to be divisibility?

Is a mortgage creditor insuring bound to declare other insurances save of his own? *Semble*, No! not, for instance, the owner's

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[1] 5 Duer's R.—Flanders, p. 246, is against Duer. He does not notice the Mellen case.

[2] See *ante*, Jacobs case.

[3] It has been so judged in France, Colmar, 20 January, 1835.

[1] *Thomas* v. *Builders' Fire Ins. Co.*, Mass., A.D. 1875. It has been so held in Iowa, and in Maine a negatory policy constitutes no contract at all.

[2] *Bigler* v. *N. Y. Central Ins. Co.*, 22 N. Y.

[3] *Carpenter* v. *The Prov. Washington Ins. Co.*, 16 Peters.

[4] *Insurance Co.* v. *Holt*, Albany L. J., A.D. 1880, p. 284; *Thomas* v. *Builders' F. Ins. Co.*, 119 Mass.; 20 Am. Rep. is cited.

[5] *Allan* v. *Merchants' Mutual Ins. Co.*, 30 La. Annual.

[6] *Couch* v. *The City F. Ins. Co. of Hartford.* Flanders, p. 49, in note.

[7] *Barrett et al. Union M. F. Ins. Co.*, 7 Cushing.

insurances, though known to the mortgage creditor.

It was stipulated that when a subsequent insurance on the same property should be made without the consent in writing of the defendants, it should, *ipso facto*, annul the first policy, and in a subsequent policy issued by later insurers, it was stipulated that if the insured "shall have made," or shall hereafter make, other insurance without the consent of such *subsequent* insurer, the (subsequent or later) policy should be null; it was held that the subsequent policy, being inoperative, could not be set up by the defendants as evidence of a subsequent insurance (a valid policy, only, being such), and that, consequently, the first policy remained in force.[1]

In *Traders' I. Co.* v. *Roberts*[2] (decided in 1832) R. insured with one company, 5th June, 1827, and at once transferred to B. a mortgagee. The policy contained a clause that if the insured effected other insurance, and did not give notice, the policy should cease. On the 3rd June, 1828, R. insured the same property with another company, and gave no notice. Fire happened. B sued in the name of A. He recovered. It was held that A had not power to affect B's rights by a release, and that he could not do so by breach of a condition. But the principle of this case and of *Tillon* v. *Kingston M. I. Co.*, which relied upon it, was afterwards, very properly, it would seem, disapproved in *Grosvenor* v. *Atlantic F. Ins. Co. of Brooklyn*, in the New York Court of Appeals.[3]

In the case of *Tillon v. Kingston Ins. Co.*[4] it was held that A, assigning his policy to secure B his mortgage claim, if A break the conditions afterwards, B gets nothing. The *Tillon* case would not be followed now, says Flanders (p. 503), who approves of the *Grosvenor* case as good law.[1]

A second insurance may be voidable by second insurers, and yet be a good and sufficient insurance to set aside a first insurance; being unnotified to the first insurers, contrarily to the conditions of their policy.[2]

Art. 359, Code de Commerce, orders to have no effect second or subsequent maritime insurances, when the value of the subject is covered by a first insurance. This nullity is held not to exist where the first insurance is ineffectual, owing to some breach of contract by the insured towards his first insurers.[3]

In the case of *Gilbert* v. *The Phoenix Ins. Co.*,[4] the condition was that notices of other insurances were to be endorsed on the policy or acknowledged in writing, otherwise the policy to be void. Verbal notice was given to an acknowledged agent of the company. But it was held that such agents have no authority to vary the original written policy agreement.[5]

Some companies have a clause reading against other insurance, or other policies on the same property, whether valid or invalid; but the validity of this condition has been questioned in New Hampshire in the case of *Gee* v. *Cheshire Mut. F. Ins. Co.*[6] On the other hand, its validity was not questioned but rather admitted in Maine, in the case of *Lindley* v. *Union Farmers' Mut. F. Ins. Co.*[7]

In *Bigler et al.* v. *The New York Central Insurance Company*,[8] it was held: When the condition of a fire policy requires the insured to give notice of any subsequent insurance, the policy is avoided by a failure to give notice of a subsequent insurance, although

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[1] *Jackson* v. *Mass. M. F. I. Co.*, 23 Pick. R. The authors of American leading cases doubt the above. Hunt's Magazine approves of the Massachusetts and Maine decisions instead of the New York cases.

[2] 9 Wend. Rep.

[3] Monthly Law Reporter, A.D. 1858. The Grosvenor case was approved by the Supreme Court of Illinois in 1870; *Illinois Mut. F. Ins. Co.* v. *Fix*, 5 Am. Rep.

[4] 1 Seld. 405.

[1] Yet the majority of the Queen's Bench, Quebec, followed *Traders' Ins. Co.* v. *Robert*, and *Tillon* v. *Kingston*, in *Black* v. *National Ins. Co.*, A.D. 1879.

[2] *Jacobs* v. *Equitable Insurance Company*, 18 U. C. Q. B. Rep., contrary to *Potter* v. *Ontario & L. Mutual Insurance Company*, 19 U. C. Q. B. Rep.

[3] So held in France, page 1092, Pouget.

[4] 36 Barbour, 376, A.D. 1862.

[5] The cases of *Bigler* v. *N. Y. Central Ins. Co.*, and *Hale* v. *Mech. Mut. F. Ins. Co.* were mentioned.

[6] 20 Am. Rep., A.D. 1874.

[7] 20 Am. Rep. See p. 320 for cases for and against.

[8] 22 N. Y. Rep. Hunt's Merchants' Magazine, vol. 45, A.D. 1861.

the latter be void (its invalidity, however, not appearing on its face). Second insurance here was stipulated to be null if other insurance existing, not notified. The agreement making null the second policy was for the benefit only of second insurers, and it was and is competent for second insurers to waive it. *Carpenter* v. *The Providence Washington Insurance Company*, 16 Peters, approved.

37 Maine and 23 Pickering are against such holding that second insurance is null, and that, a second valid insurance not being, first is valid. So held in Massachusetts too, See Flanders.

In the case of *Western Assurance Co.*, appellants, and *Atwell*, respondent,[1] on the 18th of June A insured his stock in trade with the Western Assurance Company, and paid premium. On the 28th the policy was sent to him, dated that day, but insuring from the 18th June for a year. It contained the condition at head of this section. Between the 18th and 28th June A effected other insurance with another company, but gave no notice to the Western Assurance Company. A fire afterwards destroyed the stock insured. A gave notice of loss and made claim. The agent of the Western Assurance Company complained that the particulars of the loss were not satisfactory, &c., but he said nothing about the want of notice of the second insurance. In a suit by A the Western Assurance Company pleaded that their policy had, before the fire, ceased to have effect, owing to plaintiff's failure to give them notice of such other insurance. A replied that the defendants were aware of such other insurance, and had waived formal compliance with the condition requiring notice; that the conduct of the defendants' agent in not complaining of such want of notice, but only of other things, amounted to such waiver.

The case was tried in the Superior Court, Montreal, before a jury, who found for the plaintiff, the judge leaving to them to determine whether there had been a waiver by defendants of their right to urge want of notice, and the jury finding that there had been, "without doubt, by the conduct of the defendants subsequently to the fire." A motion for new trial was made by defendants and refused (Day, J. diss.), but this judgment was reversed by the Queen's Bench which considered that the jury had been misdirected, and that there had been no proof of the waiver alleged, and that the jury ought to have been charged to find a verdict for defendants. It granted the motion for a new trial.

In *Pacaud* v. *The Monarch Ins. Co.*[1] P took from the Monarch Insurance Company a policy having condition prohibiting new insurance without notice, under pain of nullity of the policy. A prior insurance had been effected with another company, of which notice was taken by the Monarch Insurance Company. Afterwards P substituted for this earlier insurance two others in other companies without notice to the Monarch Insurance Company, but to the knowledge of their agent. In a suit by P, the Superior Court, Montreal, held that this did not invalidate the policy granted by the Monarch Insurance Company, and that the substitution of two policies for one formerly subsisting, the total insured being the same amount all the time, was not a new or double insurance within the meaning of the parties. Neither the record nor the report shows whether there was a time at which the insured was merely under the insurance of the Monarch, the other having died.

Had such been the condition of forfeiture, it ought to have worked; for in such case the later insurances would have been new, and the Monarch might have been kept ignorant of them, and one of its objects so defeated.

An insurance company may sometimes rescind and cancel their policies, if they observe new insurances, and not like to see them.

In *Blake* v. *Exc. Mutual Ins. Co. of Philadelphia*[2] there were two clauses in the policy, one reading: "Other insurance permitted

[1] 2 L. C. Jurist. This case was disregarded by the Privy Council and by the Queen's Bench in the case of *Chapman*.

[1] 1 L. C. Jurist.

[2] 12 Gray's Rep. 266, A.D. 1858.

without notice until required;" the other: "In case assured shall have already any other insurance on the property hereby insured, not notified to the company, and mentioned in or indorsed upon this policy, the policy shall be void." It was held that though other previous insurance exist, the first clause saves from nullity of policy, though there was no notification to the company of the said other previous insurance.

A condition that notice of all previous insurances upon the property insured shall be given, or the policy shall be void, applies only to insurances effected by the assured; and not to previous insurances by the former owners of the property.[1]

A condition of a policy issued by a fire insurance company was, that notice of any other insurance on the property insured should be given to the company, and that the same should be endorsed on the policy, or otherwise acknowledged and approved by them in writing, else the policy to cease. The insured subsequently effected another insurance on the property, and forwarded a written notice of the fact to the secretary of the company, who replied the next day, "I have received your notice of additional insurance." Held that the assured had done enough, and that there was no breach of the condition, because the insurance company must have apprehended that plaintiff would understand it so, according to all fair interpretation.[2]

A insured with one company, stating that $8,000 of other insurance existed. A sum of $2,000 of it dropped afterwards. Then $2,000 insurance was effected in another company instead of it, but not notified. This is not new insurance destroying the first contract or policy taken by A[3]

THE EGG AND THE CHICKEN.

What is described as an entirely new point has been raised in a recent suit which threatens to mar the pleasant relations that have hitherto existed between two residents of Parkville, L. I. The case involves the ownership of a valuable game chicken that was hatched in Parkville a month ago by a very ordinary sort of chicken without any particular pedigree.

It came about in this way: James McCaughn, who has made a fortune as a truckman in New York, lives in a handsome house in Washington Avenue, Parkville, and amuses himself by breeding game fowl. His birds are very valuable, and bring from $20 to $30 apiece. Mr. McCaughn's henyard in the rear of his house adjoins the back-yard of James Gormley's house. Mr. Gormley retired from the truck business about four years ago, and since that time has been living at Parkville. His house, which is as imposing as Mr. McCaughn's, faces Foster Avenue. Gormley, however, has been breeding a common lot of hard-working chickens. A picket fence separates his hennery from that of McCaughn's, but occasionally the chickens get mixed up. This never was a cause of dispute between the two neighbours, as it was easy to distinguish McCaughn's high-born fowls and bring them back to their own coop.

A month ago one of Gormley's hens hatched a brood of chickens, and among them was one that gave evidence of game blood. Several days later McCaughn noticed the stranger in Gormley's coop, and immediately put in a claim for it on the ground that one of his fancy hens must have flown over into Gormley's yard and laid an egg in Gormley's hen's nest. On this theory he claimed the chicken. There was no doubting that the chicken was of the same breed as McCaughn's chickens, but Gormley refused to give it up. He admired the chicken. He offered to pay McCaughn $1 for the egg, but he said that McCaughn's claim on the bird was offset by the fact that one of his hens had worked twenty-one days to hatch the egg. McCaughn would not accept the offer. He wanted the chicken, and he was willing to pay a reasonable price for the services of his hen in hatching the egg, and for whatever corn and other food the chicken had eaten. Gormley rejected McCaughn's offer, and words passed between the neighbours.

After the passage of the words, McCaughn engaged Judge Callahan to bring suit for the

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[1] *Tyler* v. *Ætna Ins. Co.*, 12 Wend. 507.

[2] *Potter* v. *Ontario & Livingston Mut. Ins. Co.*, 5 Hill, 147.

[3] *Parsons* v. *Standard Ins. Co.*, 43 Q. B. Rep. Ontario.

recovery of the chicken, and Gormley has engaged Wanhope Lynn to defend his case. Judge Callahan says:

"I have searched the legal reports in vain to find a parallel case, and I am convinced that the point at issue is new. It seems to me that McCaughn has the best right to the chicken. It is a thoroughbred, and his hen undoubtedly laid the egg from which it was hatched. He is willing to compensate Gormley for his trouble and the hen's services. The case will have to be argued on equity. If Justice McManon of Parkville decides against us we will appeal the case. It is not a question of the money value of the case, but of the right of the case."

Mr. Wanhope Lynn has put in his answer, which is a general denial of McCaughn's claims. If Gormley's hen had not protected this egg, he says, the chicken in question would never have been hatched. Then again if the eggs had been collected and cooked, the game chicken would have been lost. Then there is another theory which he asserts the appearance of the chicken seems to bear out. There was nothing to prevent one of Gormley's roosters from being the father of the egg. A father's claim according to law is paramount, and if this theory is correct, then the chicken belongs to Gormley's coop.

Mr. Lynn is also resolved to appeal the case if the decision is against him. He has submitted the problem to a number of lawyers, and they are about equally divided in their opinions as to the equity of the suit. The Hon. Bourke Cockran thinks that McCaughn has the best claim to the chicken, on the ground that one of his hens laid the egg. Robert H. Racey, the criminal lawyer, warmly and pertinaciously supports the claims of Gormley's hen. The question is being debated on lay grounds in Parkville, where, on account of the prominence of McCaughn and Gormley, it has excited a great deal of interest. Nearly all the ladies think that Gormley has the better claim to the chicken. The suit will come up for a hearing before Justice McMahon next week.

In the meantime the game chicken is industriously scratching in Gormley's backyard.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 4.

Judicial Abandonments.

Godfroi Bedard, lumber merchant, Montreal, Sept. 30.

Olivier Bégin, shoe manufacturer, Quebec, Oct. 2.

Marie Bélanger, doing business in name of Joseph Labelle & Cie., St. Johns, Sept. 25.

F. X. Billy, trader, Victoriaville, Sept. 30.

Chactas Henri Desmarais, trader, Montreal, Sept. 30.

Wilbrod Doré, trader, Quebec, Sept. 24.

Albert Marquette, Quebec, Oct. 2.

Auguste Perron, St. Sauveur de Québec, Sept. 27.

Curators Appointed.

Re Beauchamp & Co., grocers.—Bilodeau & Renaud, Montreal, joint curator, Sept. 29.

Re Emile Bécu, trader, Anse aux Gascons.—L. P. Lebel, New Carlisle, curator, Sept. 15.

Re Robert G. Berry.—Millier & Griffith, Sherbrooke, joint curator, Sept. 29.

Re Cantin & Dulong, contractors, Montreal.—Charles E. L. Deslauriers, Montreal, curator, Sept. 30.

Re Dame Marie Goyette, doing business under the name of Dme. Louis Baril & Cie., Iberville.—J. A. Nadeau, N. P., and Joseph Lavoie, Iberville, joint curators, Sept. 24.

Re Geo. H. Gauvreau, trader, Montreal.— David Seath, Montreal, curator, Sept. 24.

Re Léandre Larivée, Montreal.—Kent & Turcotte, Montreal, joint curator, Oct. 2.

Re Benjamin Leclaire, St. Michel de Napierville.—Kent & Turcotte, Montreal, joint curator, Sept. 30.

Dividends.

Re Eugène Corriveau, jeweller, Quebec.—First and final dividend, payable Oct. 20, H. A. Bedard, Quebec, curator.

Re C. N. Falardeau, trader, l'Ancienne Lorette.—Second dividend, payable Oct. 20, H. A. Bedard, Quebec, curator.

Re Germain & Payette.—First and final dividend, payable Oct. 21, C. Desmarteau, Montreal, curator.

Re F. X. T. Hamelin, paper manufacturer, N. D. Portneuf.—Second dividend, payable Oct. 21, A. O. Mayrand, Desmarteau, curator.

Re J. P. Morin, Stanhope.—First and final dividend, payable Oct. 22, Kent & Turcotte, Montreal, joint curator.

Re Antoine Perroton, Hull and North Nation Mills.—First and final dividend, payable Oct. 20, J. McD. Hains, Montreal, curator.

Separation as to property.

Adéline Bernard vs. Joseph Emond, farmer and trader, Sherbrooke, Oct. 2.

Marie Laforest vs. Jean Bte. Magnan, butcher, Montreal, Sept. 30.

Notarial minutes transferred.

Minutes of late Thomas Brassard and L. P. Tremblay, notaries, Waterloo, and of Joseph H. Lefebvre, N. P., Waterloo, transferred to E. F. de Varennes, N. P., Waterloo.

Appointment.

Cyrille Auger and Charles L. Champagne, appointed joint registrar for the registration district of Montreal East.