The Legal News.

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Chief Justice Coleridge, in an article entitled, "The Law in 1847 and the Law in 1889," which appeared in the *Contemporary Review* of June last, reflects with perhaps undue severity upon Baron Parke and his adherence to technicality. "The ruling power of the Courts in 1847 (he says) was Baron Parke, a man of great and wide legal learning, an admirable scholar, a kind-hearted and amiable man, and remarkable force of mind. These great qualities he devoted to heightening all the absurdities, and contracting to the very utmost the narrowness of the system of special pleading. The client was unthought of. Conceive a udge rejoicing, as I have myself heard Baron Parke rejoice, at nonsuiting a plaintiff in an undefended cause, saying, with a sort of triumphant air, that 'those who drew loose declarations brought scandal on the law'! The right was nothing, the mode of stating everything. When it was proposed to give power to amend the statement, 'Good Heavens'! exclaimed the Baron, 'think of the state of the record'!—*i. e.* the sacred parchment, which it was proposed to defile by erasures and alterations. He bent the whole powers of his great intellect to defeat the Act of Parliament which had allowed of equitable defences in a common law action. He laid down all but impossible conditions, and said with an air of intense satisfaction, in my hearing, 'I think we settled the new Act to-day, we shall hear no more of equitable defences'! And as Baron Parke piped, the Court of Exchequer followed, and dragged after it, with more or less reluctance, the other common law courts of Westminster Hall. Sir William Maule and Sir Cresswell Cresswell did their best to resist the current. Lord Campbell for some time struggled in vain against the idolatry of Baron Parke to which the whole of the common law at that time was devoted. 'I have aided in building up sixteen volumes of Meeson & Welsby,' said he proudly to Charles Austin, 'and that is a great thing for any man to say.' He repeated his boast to Sir William Erle. 'It's a lucky thing,' said Sir William to him, as he told me himself, 'that there was not a seventeenth volume, for if there had been, the common law itself would have disappeared altogether, amidst the jeers and hisses of mankind.'"

De Francesco v. *Barnum*, in the Chancery Division of the High Court of Justice, (Aug. 4, 5) was an action brought by a teacher of stage-dancing, to enforce apprenticeship indentures made in December, 1886, between himself, two infants named Ada and Helen Maude Parnell, and their mother, who was a widow, and to obtain damages against third persons for inducing the pupils to break their engagements with him. The indentures of apprenticeship contained provisions to the following effect:—The period of the apprenticeship was seven years, and the deeds contained covenants by the plaintiff to instruct the girls "in the higher branches of the choreographic art," and to pay to the apprentices for all or any "choreographic" engagements—in London and the suburbs—for the first three years 9*d.* per night, and 6*d.* for each *matinée*, and for the remainder of the term 1*s.* per night and 6*d.* for each *matinée*, the plaintiff having the right to engage the apprentices for performances abroad, but being under the obligation during such last-mentioned class of engagements to pay 5*s.* per week to the apprentice and provide her with board and lodging, and there were to be other payments of 6*d.* per performance when the apprentices were required for 'utility' business. The deeds contained a provision that the services of the apprentices should be entirely at the plaintiff's disposal, and that the apprentices should not, during the term of seven years, enter into professional engagements without the permission in writing of the plaintiff; and it was also provided that on failure of compliance with this and other provisions of the deeds the same might be determined by the plaintiff, and the parents be liable to pay to the plaintiff £50 as liquidated damages. Barnum's agent came and engaged

the apprentices at a guinea per week each for two daily performances at his entertainment at Olympia. The plaintiff claimed against the girls an injunction to prevent their performing at Olympia or otherwise without his leave, against the mother an injunction to prevent her allowing the girls so to perform, and against all the defendants, except the infants, he alleged that they had induced or enticed the infants to break their engagement with him and leave the employment of their lawful master, and he claimed damages. Lord Justice Fry, in dismissing the action with costs, remarked that an infant could enter into a contract to be taught a profession or occupation by which he might hereafter be benefited; but where the contract contained extraordinary and unusual terms, and it was not reasonable or for the benefit of the infant, the contract was void. His lordship held that the terms of the contract in the present case were extraordinary and unfair, and not for the benefit of the minors; and he also observed that he "had a strong impression and feeling that it was not in the interest of mankind that persons should be compelled specifically to perform engagements for personal service they were unwilling to continue, and there would be danger, if specific performance were enforced, that a contract for service would be converted into a contract of slavery."

The *Law Journal* (London) protests against the use of the plural instead of the singular in such instances as the Patents Acts, the Trade Marks Act, and the Bills of Sale Act. The plural is not incorrect, but less euphonious than the singular. In Canada, in fact, we always say the Patent Act, and not the Patents Act. So, too, we say the Indian Act, the Railway Act, etc., just as we speak of the stamp office, the appeal office, the record office, etc.

COUR DE CIRCUIT—SAGUENAY.

Coram ROUTHIER, J.

FRENETTE v. BÉDARD.

Solidarité entre mandants ad litem.

JUGÉ:—*Que les clients défendus par un avocat dans une même cause, par une seule et même défense, sont tenus solidairement au paiement des honoraires de cet avocat.*

PER CURIAM.—Les clients défendus par un avocat dans une même cause, par une seule et même défense, sont-ils tenus solidairement ?

Dalloz, Répertoire Vbo. Avocats, No. 252 dit : "dans le cas où l'avocat croirait devoir "poursuivre judiciairement le paiement de "ses honoraires, il nous semble qu'il aurait "pour obtenir ce paiement, une action *soli-* "*daire* contre les clients qui l'ont chargé de "leur défense dans une même affaire où ils "avaient le même intérêt."

Idem, Vbo., honoraires, No. 3 : "Les hono- "raires sont dûs *solidairement* par ceux qui "ont demandé les conseils, les travaux, les "soins pour lesquels ils sont dûs." No. 4, même chose. No. 8 : "L'avoué a une action "*solidaire* contre toutes les parties qui l'ont "chargé de les défendre."

Cette doctrine de Dalloz se trouve conforme aux principes généraux du mandat, et elle se déduit logiquement des articles 1732, 1722 et 1726 de notre Code Civil.

Berriat St. Prix vol. 1, p. 77—*Rogron*, codes français expliqués, art. 2002—*Carré & Chauveau*, vol. 1, p. 655, question 553.

Pigeau et Domat—Répertoire du Journal du Palais Vbo. Honoraires No. 77.

F. X. Frenette, pour le demandeur.

J. S. Perrault, pour le défendeur.

(C. A.)

COUR DE MAGISTRAT.

MONTRÉAL, 16 septembre 1889.

Coram CHAMPAGNE, J. C. M.

TASSÉ v. SAVARD, & DUDEVOIR, *mis en cause.*

Saisie-gagerie par droit de suite—Loyer—Demande de paiement.

JUGÉ: *Que bien que le loyer soit quérable, lorsque le locataire quitte les lieux, sans raison et sans donner d'avis, le demandeur n'est pas obligé de faire la demande de paiement du loyer ailleurs qu'aux lieux loués.*

PER CURIAM :—Le défendeur avait loué une maison du demandeur, pour un an, au prix de $4.50 par mois, payable mensuellement. Au mois de juillet, alors qu'il y avait un

mois d'échu et non payé, sans avis et sans raison valable, il quitta les lieux loués. Le demandeur prit alors une saisie-gagerie par droit de suite pour le loyer échu et pour celui du reste de l'année.

Le défendeur plaide qu'il ne devait payer que le mois échu, et sans frais, parce que le demandeur n'avait pas fait une demande de paiement avant l'action.

Bien que le loyer soit quérable, le demandeur n'était pas tenu de courir après le défendeur pour lui en faire la demande avant l'action. Le défendeur ayant quitté les lieux loués, sans raison et sans le consentement du demandeur, et ayant déplacé ses effets, la saisie-gagerie par droit de suite est bien fondée pour le tout.

Saisie-gagerie maintenue avec dépens.

Autorités :—C.P.C. 873; *Houle* v. *Godère*, 18 L. C. J. 151.

A. A. Laferrière, avocat du demandeur.

F. L. Sarrasin, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 31 octobre 1889.

Coram CHAMPAGNE, J. C. M.

ATKINSON ET AL. v. DADE.

Judicatum solvi—Société.

JUGÉ :—*Que lorsque dans un bref d'assignation un des demandeurs formant partie d'une société commerciale est décrit comme résidant en dehors de la Province de Québec, il ne sera pas tenu de donner un cautionnement pour frais.*

L'un des demandeurs formant partie de la société commerciale demanderesse faisant affaires à Montréal, était décrit comme résidant au Manitoba, dans la Puissance du Canada.

Le défendeur fit motion pour qu'il fût tenu de fournir un cautionnement pour frais, *judicatum solvi*.

PER CURIAM :—La jurisprudence sur cette question est très contradictoire. Mais devant cette Cour où les frais sont très peu élevés, il n'y a pas lieu dans une cause comme celle-ci de donner un cautionnement pour frais.

Motion renvoyée sans frais.

Autorités :—*Globe Mutual Life Ins. Co.* v. *Sun Mutual Life Ins. Co.*, 1 Leg. News, 139; *Howard* v. *Yule*, 3 Leg. News, 373; *Victoria Mutual Fire Ins. Co.* v. *Carpenter*, 4 Leg. News, 351; *Beaudry* v. *Fleck*, 20 L. C. J. 304; *The Niagara District*, etc. v. *MacFarlane*, 21 L.C.J. 224; *Globe Mutual Ins. Co.* v. *Sun Mutual Ins. Co.*, 1 Leg. News, 53.

McCormick & Duclos, avocats des demandeurs.

Sicotte & Murphy, avocats du défendeur.

(J. J. B.)

SUPERIOR COURT—MONTREAL.[1]

Mari et femme—Marchande publique—Responsabilité—Mandat.

Jugé—Qu'un mari dont la femme, marchande publique, tient au domicile commun un commerce sous le nom du mari seul, et qui achète des marchandises pour le commerce de sa femme, mais en son nom personnel, sans que le vendeur sache que c'est pour sa femme, est responsable du montant vis-à-vis de l'acheteur.—*Adams* v. *Brunet*, Wurtele, J., 20 mai 1890.

Exception dilatoire— Discussion— Dommage— Responsabilité des directeurs de compagnie incorporée—Ratification des actionnaires— Action des actionnaires contre les directeurs Dividendes fictifs—Plus-value des biens.

Jugé—1o. Qu'un plaidoyer de discussion préalable d'un gage doit se faire par exception dilatoire indiquant les biens à discuter et accompagnée d'une somme suffisante pour parvenir à cette discussion;

2o. Qu'une personne qui a une action en dommage contre son débiteur et qui en a reçu un gage, n'est pas tenu de discuter le gage avant de prendre son action en dommage;

3o. Que l'action en dommage que les actionnaires d'une compagnie incorporée peuvent prendre contre les directeurs, pour mauvaise administration, paiement de dividendes fictifs pris à même le capital etc., ne se prescrit que par trente ans;

4o. Qu'une corporation ne peut, pour déclarer un dividende, prendre en considéra-

[1] To appear in Montreal Law Reports, 6 S.C.

tion la plus-value, ou accroissement en valeur de ses immeubles et de son matériel durant l'année, car, ce serait le mettre en danger, en l'escomptant, mais, elle peut justifier un dividende sur un fonds dit "de reconstruction" fait et accumulé à même les profits annuels, quoique ce fonds soit destiné au renouvellement du matériel;

5o. Que quoique les créanciers d'une compagnie incorporée et les tiers soient recevables à se plaindre que les directeurs aient payé des dividendes fictifs en augmentant la valeur réelle des biens de la compagnie, les actionnaires qui ont assisté aux assemblées annuelles et autorisé ces dividendes après avoir pris communication des états et inventaires soumis par les directeurs, sont non recevables à prétendre que le paiement de ces dividendes les a trompés sur l'état de la compagnie; que les actionnaires qui n'ont pas assisté à ces assemblées ne sont non plus recevables, parce qu'ils pouvaient y assister et se renseigner comme les autres, et qu'ils doivent s'imputer leur négligence;

6o. Que l'action qu'ont les actionnaires d'une compagnie incorporée contre les directeurs pour mauvaise administration des affaires de la corporation est une action commune résultant des rapports de mandant à mandataires; et que cette action est anéantie par la sanction de l'administration des directeurs donnée par les actionnaires.—*La Banque d'Epargne* v. *Geddes et al.*, Pagnuelo, J., 24 février 1890.

Acte électoral de Québec—Rentiers—Rôle d'evaluation—Preuve—Locataires—Propriétaire—Fils de propriétaire—Erreur de nom.

Jugé—1o. Que la qualification des rentiers, sous la loi électorale de Québec, est personnelle, et que partant les rentiers doivent être inscrits comme électeurs sur la liste des électeurs de la municipalité où ils demeurent et non sur celle de la municipalité où sont situés les immeubles pour lesquels leurs rentes ont été constituées;

2o. Que si la valeur réelle de l'immeuble loué doit être constaté uniquement par le rôle d'évaluation, les autres faits que constituent chez un locataire la qualité d'électeur peuvent être établis par une autre preuve, et que sa qualité de locataire d'un bien-fonds entré au rôle peut être prouvée oralement ou par la production d'un écrit;

3o. Que le fait qu'un locataire occupant tout un lot suffisant pour le qualifier, aurait convenu de laisser à son propriétaire certaines réserves, ne l'empêche pas d'être inscrit comme électeur;

4o. Qu'une personne qui n'est pas locataire d'un immeuble, mais qui l'occupe comme le serviteur du propriétaire, n'a pas la qualité requise pour être électeur;

5o. Que pour être inscrit sur plainte comme électeur, il n'est pas nécessaire que le nom d'un propriétaire soit entré sur le rôle d'évaluation, si la qualité de propriétaire est établie par la production du titre, et si la valeur voulue est établie par le rôle d'évaluation;

6o. Que pour être qualifié comme électeur, un fils de propriétaire doit avoir demeuré depuis un an, avec son père ou autre ascendant possédant un immeuble suffisant en valeur, d'après le rôle d'évaluation, pour la qualification foncière des deux, mais qu'il n'est pas nécessaire qu'ils résident sur le bien-fonds, qui peut même être situé dans une municipalité autre que celle où ils demeurent;

7o. Que lorsqu'un nom d'électeur est entré erronément sur la liste des électeurs, le conseil municipal ne doit pour cela le retrancher de la liste, mais il doit le corriger et l'inscrire correctement.—*Jeannotte* v. *La Corporation de la paroisse de Belœil*, Würtele, J., 2 juin 1890.

Capias—Affidavit—Signature du jurat.

Jugé—Que la Cour ne peut accorder au protonotaire ou à son députe devant lequel un affidavit devant servir à l'émanation d'un *capias* ou d'une saisie-arrêt avant jugement est assermenté, et qui oublie de signer le *jurat*, la permission d'y apposer sa signature après l'émanation et la signification du bref.—*Dubois* v. *Persillier*, Würtele, J., 9 juin 1890.

Municipal powers—City of Montreal—Collection of tax—Farming out system.

Held—1. The electors and rate payers of a municipality have the right of knowing, from

the books and records of the corporation, the amount collected from each tax imposed by the council, and the details of the expenditure.

2. The salary of officers appointed by the council of the city of Montreal must be fixed; and be either a stipulated sum for a given period, or a stipulated commission or percentage on collections.

3. The farming out of a tax imposed on horse dealers, whereby the farmer pays the council a stipulated sum for a given period, and collects the tax for his own benefit, is illegal; and a resolution of council sanctioning such an arrangement will be annulled.—*Kimball, petitioner, and City of Montreal, respondent*, Würtele, J., July 8, 1890.

FIRE INSURANCE.

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

CHAPTER VI.

Conditions of the Policy.

[Continued from p. 264.]

Where the agent of the insured makes concealment of a material circumstance, it is held to be the same as if the principal had knowledge, and the policy may be nullified.[1]

Flanders, p. 332, says that knowledge by the agent of the insurer of other insurances is knowledge of the insurer.

Suppose the risk to have been first offered to any other insurer, and declined. Ought that to be mentioned to a later insurer? Bunyon says, yes. It depends upon circumstances. Certainly it ought to be if the first insurer to whom application was made declined for reasons given, and if it appear that what passed—if stated to later insurer—might have influenced him, and led *him* also to decline the risk. For instance, suppose A. to have a house bounded on one side by a vacant lot, and to apply to B. for insurance. B. declines, stating that he does not like the risk; that he knows that the vacant lot is shortly going to be built upon &c. A. procures C. to insure the house, and states nothing of what passed between B. and himself. The vacant lot is shortly afterwards entered upon by builders, a house is put up and while carpenters are finishing it, it is burnt, and the fire burns A's house. A. may be held guilty of a suppression avoiding his policy.

It might be held fraudulent concealmen if a house next to A's was burnt on the 4th, and on the 5th A. insured his house without mentioning the fire of the 4th, and on the 5th A's house were burned; but it would not be so held if A's house took fire only 3 months afterwards.

An action was brought against the directors of the Phœnix Fire Office, upon a policy dated July 25, 1814, effected on a warehouse in Heligoland. The policy referred to a letter of the plaintiff of July 11, containing the instructions for the insurance. The defendants pleaded, that, before and at the time of the writing the plaintiff's letter referred to, the warehouse and merchandize intended to be insured were in imminent peril of being consumed by fire, which the plaintiff, at the time of writing the letter, well knew; that the policy was effected upon the representation contained in the letter, and that the plaintiff fraudulently, and with intent to induce the defendants to effect the policy, concealed from the defendants the fact, that the premises were in such peril, by reason of which concealment the policy was void, The cause was tried at Guildhall, in 1815. before Gibbs, C. J. It appeared that the plaintiff was possessed of two warehouses in Heligoland, one separated by only one other building from the workshop of Jasper, a boat builder, wherein a fire broke out in the evening of the 11th of July. That fire, however, was extinguished in half an hour but four persons were employed by the plaintiff to watch during the night, lest again fire should break out. The plaintiff, on the same evening, wrote the letter referred to to his agent in London, requesting him to effect the insurance for three months at 400*l.* upon the plaintiff's warehouse, (described,) as also upon the coffee in casks and bags then stored in the same, value 3500*l.* The letter left Heligoland on the same night and reached England on the 24th and the plaintiff's agent on the following day effected

[1] *Proudfoot* v. *Montefiore*, *ante*.

the policy in question. Early in the morning of the 13th, a fire again broke out in the work-shop of Jasper, and consumed the premises insured. The jury acquitted the plaintiff of any fraud or dishonest design, the fire being apparently extinguished when he ordered the insurance, but thought that the circumstance of the fire on the 11th ought to have been communicated to the defendants, who, without this information, did not engage on fair grounds, and for whom they gave their verdict. A motion was made, to set aside the verdict and have a new trial, but refused.[1]

The insured has no right by tendering an increase of premium to require the insurer to confirm a contract invalid in itself; for the insurer has in such a case a right to say, that he would not have subscribed the policy upon *any terms* if he had been informed of the circumstances which were withheld from him. His intention being to undertake only for the risks that were communicated to him, if he is deceived, that is sufficient to avoid the contract.

Shaw upon Ellis says that in Louisiana it was held that if the jury considered that the vicinity of a gambling establishment to the building insured enhanced the risk, the concealment of that fact would discharge the insurers. [2]

Such was not held. The mere fact of the vicinity of a gambling establishment to the building insured could no more discharge insurers than could the vicinity of a grocer's shop. In this case of Lyon the insured was lessee of a big building and insured his own stock in it. He had a gambler as his tenant in the second story. Pending negotiation for the insurance the insurer stated objection to insure near gambling establishments, and plaintiff withheld information about his subtenant gambler; he made a concealment in fact. But, as the materiality of it was left to the jury, plaintiff recovered.

In *Westbury* v. *Aberdein*,[3] insurance on a ship, the jury found for plaintiff, and that a fact not communicated was not a material one. The Court granted a new trial, the defendant paying the costs. A fact had not been observed upon by the Judge at the first trial in his charge, which fact the Court thought might have affected the Jury's finding, had it been put, viz. the fact of one ship having arrived three days before the insurance of the others.

In the United States it is not considered incumbent upon the insured, unless inquiries are made especially in regard thereto, to describe his property particularly, or represent its situation in respect to other buildings, provided there is no extraordinary circumstance in the case. In the absence of inquiries, no representation need usually be made of what materials a building is constructed, how it is situated in reference to other buildings, to what uses it is applied, or how it is heated. [1]

But if the circumstance concealed be of an extraordinary and unusual nature, the existence of which would not naturally be presumed or expected by the insurers, the strict rule as in marine insurance applies, and the concealment, if material, will avoid the policy. The consent of the insurer must not be obtained by a surprise.

In *Drury* v. *The Staffordshire Fire Ins. Co.*,[2] one Thacker, a furniture maker, applied to a company for insurance, but refused to take the policy because the agent would not take the premium in furniture. Subsequently upon another application, the company refused to send down a policy, they having already sent one which had not been taken up. He afterwards insured in another company. One of the questions was, have you been refused by any other office? This question Thacker answered in the negative. Mr. Justice Stephen held that it was immaterial upon what ground the refusal was based, and Thacker was not allowed to recover.[3]

In *Goodwin* v. *The Lancashire F. & L. Ins. Co.*,[4] the insurance company had many agencies. The plaintiff applied, in August, 1870, in one place for insurance upon a tannery. The application was sent to the Head

[1] *Bute* v. *Turner*, 6 Taunt.
[2] *Lyon* v. *Commercial In.* 2 Rob. (La.) 266.
[3] 2 M. & W. 268.

[1] *Clark* v. *Manufacturers' Ins. Co.*, 8 Howard, 235.
[2] 2 M. & W. A.D. 1837.
[3] Midland Circuit, A.D. 1880.
[4] 16 L. C. J. (A.D. 1872).

Office, and was refused. Afterwards, on the 5th Oct., 1870, he applied to another agent in another place, and procured insurance by an interim receipt without telling the second that the first had refused. The insurance was subject to approval by the Head Office. The receipt read that the plaintiff was to be insured till notified to the contrary, and if the policy was not granted from the Head Office in thirty days there was to be no insurance. Fire and total loss occurred, 11th Oct., 1870. Fraud was pleaded against the plaintiff in and about his second application. On the 10th October, at Montreal, the Head Office repudiated the second agent's act, and told him to notify plaintiff and return the premium. This letter was mailed and postmarked at Montreal 10th October. The agent heard of the fire before the letter reached him. It was held that there had been concealment of a material fact, and that the insurance was void.

Suppose A's dwelling house insured. The company insuring him — informed that he has added buildings to his out buildings in his yard — appurtenance of the dwelling house—and considering risk increased, terminate the insurance. A does not want to remain uninsured, so he goes to another company, and they take the risk. A tells them nothing of what the former company did. Is A's insurance bad, as for non-disclosure? *semble*, no, unless there be a condition to the contrary.

The Courts in the United States have in some cases recognized a distinction between fire and marine insurance in regard to the strictness of the rule on the subject of concealment. The distinction, however, is very slight; it may just be said, as in 3 Kents' Comm., that "the strictness and nicety required in the contract of marine insurance do not so strongly apply to insurances against fire; for this risk is generally assumed upon actual examination of the subject by skilful agents on the part of the insurance offices."

Taylor, Evid., § 1277, says, where an action is brought on a policy and the question is whether facts withheld were material, can persons conversant with the business of insurance be asked their opinions on the subject? As to this there is no satisfactory answer. It was held in a case in the Queen's Bench [1] that the evidence cannot be received; in another case the Court of Common Pleas decided that it can.[2]

Jeff. Insurance Co. v. *Cotheal*,[3] is like the case in the Queen's Bench. As to the case of *Chapman* v. *Walton*, is it not to be held unimportant, approving as it does, *Rickards* v. *Murdoch*, which is overruled? Kent approves of *Rickards* v. *Murdoch*, Vol. 3 (note on page 284) and the decision in *Chapman* v. *Walton*, *McLanahan* v. *Universal Insurance Company*,[4] seems to agree with Kent.

Phillips mentions the case of Chapman, but passes no judgment on it. He mentions the contrary cases as so many decisions.

Opinions of underwriters, whether upon certain facts being communicated to them they would or would not have insured, ought not to be received. *Durnell* v. *Bederly*, 1 Holt. N. P. Cas, approved *Jeff. Ins. Co.* v. *Cotheal*, 7 Wend. But see 2 Kent, note on p. 284. In *Carter* v. *Boehm* (Smith L. C.) it was held that the jury ought not to pay the least regard to evidence of the insurance broker that certain letters ought to have been shown, and that if they had been, the policy would not in his opinion have been granted. [*Semble*. It is not irregular to ask the insurance agent whether more premium would have been required had certain facts been stated].

Greenleaf, Vol. 1, § 441, says, opinions of agents of insurance companies that a premium would have been higher had certain facts been communicated, are inadmissible. The case of *Campbell* v. *Rickards*,[5] is cited.

The concealment must be of a fact that the insurer is presumed to trust the insured for information about. The facts, though material, if the knowledge of them be equally within the reach of both parties, need not be disclosed; for such things the insurer is not presumed to trust to the insured.[6]

In the case of *Bates* v. *Hewitt*, 1865, [7] concealment by the insured of a material fact

[1] *Campbell* v. *Rickards*, 5 B. & Ad.; 2 Nev. & M.
[2] *Chapman* v. *Walton*, 10 Bing.
[3] 7 Wend. R.
[4] 1 Peters (per Story).
[5] 5 B. & A.
[6] *Alsop* v. *The Commercial Ins. Co.*, 1 Sumner's R.
[7] 4 Foster & F. 1023, A.D. 1865.

known to plaintiff, unknown to defendant, was pleaded. The insurance was on "the Georgia" Confederate Steamer, but the insurance was effected without communicating this fact. She was afterwards captured by the United States. Capture was not excepted. Plaintiff replied that the defendant knew the fact. It is doubtful, where the assurer does not know a thing whether his having means of knowledge, would be enough; (if he chose to avail himself of them, or go to them).

Would the insurer go free in the following case? Suppose a furnace case; city fire police regulation to be that no furnace to be set and used in houses until certified by the fire inspector; then suppose insurance to be effected with a company whose policies state that no furnace is to be used unless such as are allowed by the city police regulations. The insured puts up a furnace, does not get it it certificated—uses it ten months—then gets it certificated. A fire afterwards occurs in the twelfth month. In this case, suppose the winter season to have passed while the furnace was used uncertificated, and summer to have come before a certificate was obtained, and fire not to have been in the furnace in the summer after the certificate obtained, and the fire to happen in summer. Again suppose a house four stories high "with city water supply on every story," (so described). Yet for eleven months no water except on the basement and first story; but in the twelfth month put all over, and in that month fire to happen; would the insurer be free? According to the Lord Chancellor in *Rees* v. *Berrington*—Yes.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 23.

Judicial Abandonments.

Emile Bécu, Anse-aux-Gascons, county of Bonaventure, July 31.

François Bouchard, St. Félicien, Aug. 16.

Wm. Rourke, grocer, Montreal, Aug. 14.

Curators appointed.

Re Joseph Bécotte, Gentilly.—Bilodeau & Renaud, Montreal, joint curator, Aug. 18.

Re Thomas Gédéon Chenevert, St. Cuthbert.—A. Lamarche, Montreal, curator, Aug. 19.

Re Moïse Dosithé Clairoux, trader.—Wm. Grier, Montreal, curator, Aug. 15.

Re Valérie Thérien *et vir.*—A. Gauthier, Montreal, curator, Aug. 15.

Re Joseph H. Lauzon.—C. Desmarteau, Montreal, curator, Aug. 21.

Re Leduc & Co., traders, Montreal.—B. M. O. Turgeon, curator, Aug. 19.

Re John Lemelin, grocer, Quebec.—H. A. Bedard, Quebec, curator, Aug. 19.

Re Maxime Massé, jun.—C. G. H. Beaudoin, Joliette, curator, Aug. 5.

Re Edward O'Reilly, Aylmer.—J. McD. Hains, Montreal, curator, Aug. 15.

Re Germain & Payette.—C. Desmarteau, Montreal, curator, Aug. 19.

Re Majorique Tardif.—C. Desmarteau, Montreal, curator, Aug. 19.

Dividends.

Re E. N. Blais & Co., Quebec.—First dividend, payable Sept. 1, H. A. Bedard, Quebec, curator.

Re Didace Bonin, contractor.—First and final dividend (11c.), payable Sept. 8, A. M. Archambault, St. Antoine, curator.

Re Louis Depocas, Valleyfield.—First and final dividend, payable Sept. 15, Kent & Turcotte, Montreal, joint curator.

Re David Ethier.—First and final dividend, payable Sept. 1, C. Desmarteau, Montreal, curator.

Re Laurent Hébert, St. Remi.—First and final dividend, payable Sept. 15, Kent & Turcotte, Montreal, joint curator.

Re James Hoolahan.—First dividend, payable Sept. 10, Kent & Turcotte, Montreal, joint curator.

Re T. Lamy, Louiseville.—First and final dividend, payable Sept. 15, Kent & Turcotte, Montreal, joint curator.

Re Ferdinand Mailhot, trader, St. Jean Deschaillons.—First and final dividend, payable Sept. 1, H. A. Bedard, Quebec, curator.

Re Jacques Neveu, Ripon.—First and final dividend, payable Sept. 15, Kent & Turcotte, Montreal, joint curator.

Re Pacaud & Prévost, Sorel.—First dividend, payable Sept. 10, Kent & Turcotte, Montreal, joint curator.

Re Alexis Potvin, contractor, St. Césaire.—First and final dividend, payable Sept. 8, G. A. Gigault, St. Césaire, curator.

Re Nazaire Prévost, Sorel.—First dividend, payable Sept. 10, Kent & Turcotte, Montreal, joint curator.

Re Victor Vachon, St. Dominique.—First and final dividend, payable Sept. 1, J. O. Dion, St. Hyacinthe, curator.

Separation as to Property.

Flavie Domingue vs. Joseph Messier, carriage maker, township of Farnham, Aug. 19.

Angéline Gravelle vs. Jacques Neveu, trader, township of Ripon, Aug. 13.

Olivia M. Hitchcock vs. James Edson, farmer, Hatley, Aug. 16.

Notarial minutes transferred.

Minutes of late Romuald Gagnon, N.P., of St. Johns, transferred to F. X. Archambault, N.P., of the same place.

APPOINTMENTS.

Hon. J. E. Robidoux, to be Attorney-General.

Hon. C. Langelier, to be secretary and registrar.

A. Turcotte, to be prothonotary of the Superior Court, in the place of A. B. Longpré, deceased.