The Legal News.

Vol. XIII. SEPTEMBER 27, 1890. No. 39.

CONVERSATIONS BY TELEPHONE.

The question of the admissibility in evidence of conversations over the telephone is one upon which there are already several decisions, and, owing to the rapid increase of telephonic communication, is of some importance.

Conversations by telephone are like no other communications. For instance, they have been compared to communications made through an interpreter, but, of course, this is grossly inaccurate, for, in the case of a conversation carried on through an interpreter, whatever doubt there may be as to the meaning of the exact words used, there is none as to the identity of the speakers. Again, they have been compared to conversations between blind persons or persons in neighboring rooms, not in sight of each other. This comes nearer to telephonic conversation, with the difference, however, that the voices of the speakers are not altered, as may be the case over the telephone.

While, however, there are obvious limitations to the reception in evidence of telephonic communications, their admission is in many cases necessary, and the law upon the subject may be considered as reasonably well settled.

The first case on the question, so far as we know, was People *v.* Ward (N. Y. Oyer and Terminer, 1885, 3 N. Y. Crim. Rep. 483), where it was held that it was competent for a witness to testify to a conversation over the telephone, and to statements made by the other party thereto, where the witness called said party to the instrument and recognized his voice in response.

It is to be noted in this case that the instrument was a private telephone. The witness Fish testified: "I went to the telephone and rung up Mr. Ward. It was a direct telephone between Grant & Ward's office and the bank. I had conversed with defendant, Ward, hundreds of times over the telephone, and could recognize his voice very distinctly. I recognized it on this occasion." This was held sufficient to admit testimony of what the defendant Ward said.

In the case of Wolfe *v.* Missouri Pacific Ry. Co. (97 Mo. 473; 10 Am. St. Rep. 331), the court went farther, it being held that when a person places himself in connection with a telephone system through an instrument in his office, he thereby invites communications in relation to his business through that channel. Conversations so held are as admissible in evidence as personal interviews by a customer with an unknown clerk, in charge of an ordinary shop, would be in relation to the business then carried on, and the fact that the voice at the telephone was not identified does not render the conversation inadmissible.

But the court properly added: The ruling here announced is intended to determine really the admissibility of such conversations in such circumstances, but not the effect of such evidence after its admission. It may be entitled in each instance to much or little weight in the estimation of the triers of fact, according to their views of its credibility and of the other testimony in support or contradiction of it.

We have always felt doubtful as to whether the court did not go a little too far in this case. It is evident that a clerk in an ordinary shop, in apparent charge thereof, has a somewhat different authority to speak for his employer than an unknown person speaking over a telephone. In each case it is a question of presumptive evidence, but the presumption is very much stronger in the case of the clerk in the store than of the speaker over the telephone. The question as to where is the clerk is absolutely determined; as to where is the speaker over the telephone is only a matter of very great probability.

On the second point, that an identification of the voice of the speaker through the telephone is not necessary to make his declarations admissible, we think the court went to a very great extreme, and we doubt whether this ruling should be followed.

A rather curious case, decided some years before the last one cited (Sullivan *v.* Kuykendall, 82 Ky. 483; 56 Am. Rep. 901), was that

of a conversation which took place, not directly between the parties over the telephone, but through the operator in charge of a public telephone station. It was held by a divided court that the person who received the message from the operator could state what was told him where there was evidence that the other party did in fact use the telephone at that time. It is evident that the operator could not be expected to remember the conversation. It would seem, however, that this case also goes pretty far, and that the statements of the party who alleges that he receives such a message should be strongly corroborated, at least as to the presence of the other party at the other end of the wire at the time testified.

In a recent case, Banning *v.* Banning (80 Cal. 271; 13 Am. St. Rep. 156), it was held that the fact that a married woman is not personally present before a notary at the time he takes her acknowledgment, through a telephone, she being three or four miles from him, will not vitiate such deed, because, in the absence of fraud, accident or mistake, the certificate of the notary in due form is conclusive of the material facts therein stated.

In this case it was clearly proved that the acknowledgment was made through the telephone.

These appear to be all the decisions so far on the question.—*N. Y. Law Journal.*

ROMANCE OF THE LAW.

If verification of the old saying that "Truth is stranger than Fiction" were needed, it can be found in the account of the extraordinary case of *Pickett* v. *Lyon* tried at Lewes before Mr. Baron Huddleston and a special jury, on the 13th, 14th and 15th August last. A full report of the case will be found in *The Times* (weekly edition) for 22nd August.

The plaintiff was a "costumier" or lady's dressmaker, and he sued to recover a balance of nearly £900 on a total account for nearly £2,000, for dresses supplied to defendant's wife since their marriage in June, 1888, down to February, 1889, during which period of scarcely nine months, the bills came to over £1,900.

The defendant's wife, who had run away from home, came to London in 1877 at the age of sixteen, and had for many years lived an immoral life. She subsequently assumed the name of "Mrs. Spencer Stanhope," used the crest of that family on her cards and writing paper, lived in fashionable neighbourhoods and pretended to be a widow, receiving money from unknown, but easily imagined sources. She became acquainted in August, 1886, with Captain Warner, a gentleman of large property in Leicestershire, who allowed her, for two or three years, the very large sum of £4,000 annually. She lived with the Captain, when in town, in Belgrave-road as Mrs. Stanhope, he taking the name of Captain Stanhope.

Early in 1888, while in London, she casually made the acquaintance of Lieut. Lyon, of the Life Guards, then twenty-six years of age, and married him secretly in June the same year, under the name of Fitz-Lyon. He had, after the payment of his regimental and customary expenses, some £500 per annum. She represented to him that she was a woman of ample private means. They took a house in Portland terrace and lived there till September. She desired her husband, for the sake of secrecy, not to call at the house in Belgrave-road, though she herself was in the constant habit of repairing thither to meet Captain Warner, who, however, had no idea till March, 1889, that "Mrs. Stanhope" was married, nor did the husband know of Captain Warner. When she then informed Captain Warner of her marriage, he completely parted from her, giving her £1,000 as a wedding present.

The deluded husband had no idea of this state of affairs, till it was accidentally disclosed to him during the course of an action that had been brought, in April, 1890, by one Bonner, a jeweller, for jewelry supplied to his wife. On receiving this dreadful intelligence from his counsel in the case, the unfortunate man was so shocked that he burst into tears and was removed from the court room. He refused to see his wife and instituted divorce proceedings which are still pending. In the present case the wife actually appeared as a witness on behalf of the costumier, against

her deeply wronged husband, and went so far as to allege that her husband was not only aware all along of her intercourse with Warner, but really sanctioned her visits to him, and knew of her receiving money from him! This incredible statement was repelled by the husband and further negatived by expressions in letters of the witness herself. The learned judge in addressing the jury charged strongly against the plaintiff and made severe strictures upon the conduct of the wife, remarking: "I should have put an end to the case if it had not been that a most frightful accusation has been introduced against Mr. Lyon, which I thought, ought to be submitted to you. For the plaintiff's counsel was not content to put the case upon mere authority. He has charged that this gentleman connived or conspired with his wife to allow her to have intercourse with another man during their married life, and that, therefore, from that bare motive he endorsed or allowed the plaintiff to give her credit. That is a frightful issue."

The jury retired, about 3 o'clock, to consider their verdict, one of them observing (as was understood) that all but one were agreed for a verdict in the defendant's favour. This juryman still proving obdurate, they were discharged by the learned judge, on their coming into court at 10 minutes past 7, and judgment was by his direction entered in favour of the defendant husband, with costs. Explaining his action in taking this unusual step the judge remarked that at the close of the plaintiff's case the Solicitor-General had requested him to rule that there was no case to go to the jury. He intimated his opinion pretty strongly that there was not, but did not say then what ought to be done in that connection, and with a view of giving the jury an opportunity of indicating, still further, Mr. Lyon's character, he left the matter to them. When, however, they were discharged without a verdict, in furtherance of the repeated request of the Solicitor-General, he gave judgment for the defendant with costs as above stated. So ends a very sad case which, says *The Times*, is "one of the most extraordinary, perhaps, that ever came before a court of law," and concerning which the learned judge remarked "We have here the history of the modern Aspasia."—*Western Law Times.*

COUR DE MAGISTRAT.

MONTRÉAL, 23 mars 1889.

Coram CHAMPAGNE, J. C. M.

TURGEON v. DELORME.

Transport de créances—Signification—Droit d'action.

JUGÉ:—*Qu'il n'y a pas de lien de droit entre le demandeur et le défendeur si le transport n'a pas été signifié avant l'action; et que la signification de l'action ne tient pas lieu de signification du transport.*

Ce jugement fut rendu conformément à la jurisprudence établie par la Cour d'Appel, à Montréal, dans *Prowse & Nicholson*, M. L. R., 5 Q. B. 151.

P. U. Renaud, avocat du demandeur.

Préfontaine, St-Jean & Gouin, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 22 juin 1889.

Coram CHAMPAGNE, J.

GRANGER et al. v. DAVID.

Billets de concert—Vente—Agent—Reddition de compte.

JUGÉ:—*Qu'une personne qui se charge de vendre des billets de concert pour un autre, et en reçoit une certaine quantité, doit en rendre compte, soit en en remettant la valeur en argent ou les billets mêmes non vendus à moins de perte de ces derniers par force majeure.*

Les demandeurs poursuivent le défendeur sur un compte. Le défendeur admet le compte et offre en compensation jusqu'au montant de $2.25, la valeur de billets de concert que les demandeurs se seraient chargés de vendre pour lui, à son profit, et qu'ils n'ont pas vendu et qu'ils ne lui ont pas remis. La balance du compte ayant été offerte avant l'action, il renouvelle ses offres avec consignation.

Le jugement fut rendu suivant les offres; les demandeurs ayant accepté du défendeur des billets à vendre pour un concert devaient

les lui remettre dans le cas où ils n'ont pas été vendus, à moins d'établir que ces billets sont disparus par force majeure.

Jugement pour le défendeur.

P. B. Laviolette, avocat des demandeurs.

Loranger & Beaudin, avocats du défendeur.

(J. J. B.)

---

*SUPERIOR COURT—MONTREAL.**

Capias—Affidavit—Réponse en droit.

Jugé :—Que dans une requête en contestation d'un *capias*, le requérant ne peut invoquer que des moyens se rapportant à la fausseté ou à l'illégalité de l'affidavit, mais non ceux qui ont rapport à l'irrégularité de l'émanation du bref.—*Chaput et al.* v. *Porcheron*, Taschereau, J., 13 mai 1890.

Opposition—Contestation en droit—Réponse en fait—Motion.

Jugé :—Que l'on ne peut répondre par des questions de faits à une défense en droit en contestation d'une opposition, et que semblable réponse en fait pourra être renvoyée sur motion.—*Ewart* v. *Wyatt*, Mathieu, J., 29 mai 1890.

Déclaration de paternité — Juridiction — Aliments — Administrateur.

Jugé :—Que l'obligation alimentaire est purement personnelle, et que les dispositions de l'article 34 C.P.C. n'y sont pas applicables ; de sorte qu'un fils naturel ne peut poursuivre l'administrateur de la succession de son père, nommé et domicilié dans la Province d'Ontario, en déclaration de paternité et pour pension alimentaire ; parce que son prétendu père avait, avant sa mort, son domicile dans le district de Montréal, où sa succession se serait ouverte ; la Cour Supérieure dans ce dernier district n'ayant pas juridiction.—*Dion* v. *Gervan*, Ouimet, J., 30 mai 1890.

Billet promissoire -- Endosseur — Protêt — Notaire—Prête-nom—Délai.

Jugé :—1o. Qu'un notaire qui est un des endosseurs sur un billet promissoire n'a pas le droit d'instrumenter comme notaire, pour protester le billet, quand même étant le porteur de ce billet, il aurait effacé son nom et l'aurait transporté à un prête-nom à la requisition duquel se ferait le dit protêt ; un pareil protêt est nul, et les endosseurs sont déchargés ;

2o. Qu'en loi, un endosseur porteur d'un billet, qui accorde du délai au faiseur, sans le consentement des autres endosseurs, perd son recours contre ces endosseurs, lesquels se trouvent déchargés.—*Pelletier* v. *Brosseau*, Ouimet, J., 30 mai 1890.

Charte de la Cité de Montréal—Amendes—Action qui tam.

Jugé :—1o. Que d'après la Charte de la Cité de Montréal, en force depuis le 21 mars 1889, les poursuites pour le recouvrement des amendes ou pénalités imposées par la Charte doivent être portées devant la Cour du Recorder, qui seule a juridiction ;

2o. Que ces actions doivent en outre être intentées par la Cité de Montréal, qui seule doit en bénéficier en entier, et ne peut l'être par des actions *qui tam* ordinaires.—*Davelny* v. *Hurteau*, Taschereau, J., 8 mai 1890.

Corporation municipale— Poursuite en dommages—Avis.

Jugé :—Que l'on ne peut poursuivre en dommages une corporation municipale soumise au Code Municipal, pour défaut d'entretien des chemins ou cours d'eau, sans lui avoir donné un avis de quinze jours (C.M. arts. 793 et 878) ; l'avis est nécessaire même dans le cas où dans une action d'une autre nature, le demandeur joint à son action une demande de dommages.—*Senécal* v. *Corporation de la paroisse de St. Bruno*, Taschereau, J., 14 mai 1890.

Shérif—Vente de meubles et immeubles—Opposition—Art. 554, C.P.C.

Jugé :—Que lorsque le shérif a saisi les meubles d'un défendeur, et que l'épouse de ce dernier a fait une opposition afin de distraire réclamant les meubles comme sa propriété, en vertu de son contrat de mariage, rien n'empêche le dit shérif de saisir et de procéder à la vente des immeubles du défendeur nonobstant l'article 554 C.P.C.—*Parsons* v. *Berthelet*, Mathieu, J., 23 mai 1890.

* To appear in Montreal Law Reports, 6 S.C.

Diffamation—Défense—Aggravation d'offense—Rumeurs publiques—Réponse en droit.

Jugé:—Que dans une action en dommage pour diffamation de caractère, dans laquelle la demanderesse se plaint que la défenderesse a fait circuler dans sa paroisse de calomnies propres à la ruiner dans son honneur et sa réputation, la défenderesse peut plaider que les accusations incriminées avaient notoirement cours dans la dite paroisse, et étaient répétées publiquement par diverses personnes, une réponse en droit à cette partie de la défense sera renvoyée.—*Robert* v. *de Montigny*, Loranger, J., 31 mai 1890.

Assignation—Huissier—Différents districts.

Jugé:—Qu'un bref doit être exécuté par l'huissier auquel il est adressé; qu'ainsi un bref adressé à aucun des huissiers du district de Joliette, ne peut être exécuté par un huissier du district de Montréal, à Joliette, district de Joliette. — *Laforce* v. *Landry*, Mathieu, J., 29 mai 1890.

Carte-postale—Injures—Dommages exemplaires.

Jugé:—Que l'envoi d'une carte-postale avec les mots suivants écrits dessus: "*Received the amount all right—nicely caught in your own trap—honesty is the best policy—your confidence games will work no more—you do not need a diploma—rest on your laurels, deeds go further than words—though your words of Saturday and Monday were strong enough. Au revoir,*" est une injure; et que, en l'absence d'aucun dommage réel, le défendeur doit être condamné à des dommages exemplaires. $40.00 de dommages accordées.—*O'Brien* v. *Semple*, Mathieu, J., 30 mai 1890.

FIRE INSURANCE.

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

CHAPTER VI.

The Conditions of the Policy.

[Continued from p. 303.]

The reporter disapproves of this ruling and he cites several cases, one the *Phœnix Ins. Co.* v. *Taylor* in Minnesota. The insurance was "on a stock of goods consisting of a general assortment of dry goods, groceries, crockery and such goods as are usually kept in a general retail store." By a printed clause keeping of gunpowder was prohibited "unless consented to in writing on the policy."

It was held that the writing controlled the printing, and that the written words would authorize the gunpowder, it being proved that it was usually kept in general retail stores. Angell § 14, 15 cited.

In a case of *Morse* v. *Buffalo F. & Mar. Ins. Co.*, in Wisconsin,[1] the insurance was on a steamer, the policy to be null if camphene, naptha, benzole, benzine, crude or refined coal or earth oils were used on the premises without written consent. Kerosene oil was used to light the cabin and saloon, and the insurers were condemned though kerozene was admitted to be refined coal or earth oil.

A man insures a building used as a distillery, but says that all distilling shall cease in ten days. He carries it on for thirty days; then a fire occurred afterwards. The insurance company was freed from liability.[2]

Ch. J. Abbott's (Lord Tenterden) judgment in *Weir* v. *Aberdein*[3] seems not to be approved by *Story*, J., in *McLanahan* v. *Univ. I. Co.*,[4] but is approved seemingly by *Kent*, Com: Vol. III. [289]. Kent says Lord Tenterden's argument is "very weighty" to the effect that a "defect cured before a loss, subsequent loss recoverable." (In marine insurance where ship was unseaworthy at first.[5])

Ch. J. Abbott supposes two anchors to be required, the vessel sails with only one. Before the loss it has gotten a second. The loss happening later, the insurers shall pay, he says.

But Story seems to say *no*, in 1 Peters, Ib. Wherein does this case differ from one of a vessel said on face of the policy to sail with 50 men; but sailing with only 46? There was breach of warranty; though it get four a month afterwards and before loss, the insurers are free. *DeHahn* v. *Hartley*. "Proper

---

[1] 11 Am. Rep.

[2] Cassation, 5 Feby., 1856. Nullity was held even as to movables therein.

[3] 2 Barn. & Ald.

[4] 1 Peter's R.

[5] The contrary was judged in the privy council in a case from Quebec, 1869.

manning" is even an implied warranty, says Marshall.

In *Weir* v. *Aberdein*, the underwriters were held to have been aware of things, and to have assented to the vessel's putting back, and so were condemned. It really was not a decision contrary to *Forshaw* v. *Chabert* [1] in which last case the underwriters were freed, though the loss of the vessel was after all that had been wrong was rectified. A ship was sent out unseaworthy, and put into a port and was made seaworthy, and afterwards was lost.

§ 179. *Loss by negligent deposit of ashes.*

"This Company will not be liable for any "damage caused by fire originating from "depositing ashes or embers in wooden "vessels."

Losses by negligence of servants or tenants, must generally be paid by the insurers, but if, in the face of a condition such as above, fire happen by violation of the condition, the insurers will be free.

Even without such a condition, gross personal negligence of the insured or his servants may amount to fraud, and the insurers in such case will go free; if for instance the insured's servants be in the habit of depositing ashes in wooden vessels in a stable adjoining the insured's house insured, and the insured be notified of the fact, and asked to prevent such conduct, but does not, and the stable catch fire and communicate fire to the house insured, the insurer may be freed.

Suppose a policy for 12 months, renewable by annual payments of premium, that obliged the insured to conform to all regulations of police, and he having introduced a furnace, to heat his house, had not gotten it certificated, if fire happened from any cause whatever, *semble*, the insurer would be free. But if after the insured had got it certificated, a renewal premium be taken by the insurer and a fire later happen, *semble* the insurer, would be liable, and not to say that the policy once was void for a time of no certificate.

Suppose a condition to forbid entering a stable at night with a lighted candle. Though no mischief has ensued, the policy is vacated by entering the stable at night with a lighted candle. There was a possibility of causing a conflagration. [262] Vattel by Chitty. But *Alauzet* says that in *assurance terrestre* it is *not* as in marine insurance, where a deviation once made, the policy is avoided. He would not be free if fire happened in a general conflagration for instance, *not* from the lighted candle.

Parsons favors Alauzet.—Parsons on Contracts—Conditions—Introduction. He says there is a difference where one is bound to do a thing actively before the other shall be bound to pay. But query? If a man say, you to pay me, but not if I do a thing, (passively even) or allow a condition of things stated, surely the man ought to be bound.

If a condition order the insured to comply with police or city regulations as to sweeping of chimneys, if he do not comply, and fire take from a chimney, the insurer is free. If the condition be that chimneys shall all be swept once a month, default on the part of the insured will free the insurers. If the condition read that the insured shall observe the police regulations as to sweeping of chimneys, and these order sweeping once a month, it is the same thing.

§180. *Fires resulting from hurricanes, earthquakes, and burning of forests.*

Some companies except fires resulting from hurricanes, earthquakes, and burning of the forests, or from fire set for clearing lands.[1]

Shaw, upon *Ellis*, says: "In order to bring a loss within the protection of a fire policy, it must appear that fire was its *proximate*, or rather its *efficient* cause, and not merely incidental to it." [2]

If he mean that the falling of a mill, and fire afterwards happening in it from displacement of the stoves, would give no action to the insured, he is wrong. Suppose a fire to take place from the falling of a building having stoves in it. The insurer must pay. The amount of loss is another question, and

[1] 3 Br. & B.

[1] See *Gilman* v. *The Queen*, at Cornwall, Oct., 1871.

[2] In concussion, by explosion of gunpowder far off, fire is not the proximate cause of loss.

where only goods are insured, the question might be different, as to their value, from what would be the question of the value of the fallen house.

If companies wish to avoid such losses, let them stipulate against them as against losses from hurricanes, etc.

A church takes fire; its steeple, burning, falls on a house and damages it. This house is insured; the owner of it must recover against his insurer.

So of a factory, the chimney of which might so fall.[1]

A brick building is insured; it falls; all is ruin. Immediately a fire takes place in the ruins. The insurance company is freed.[2]

A collision of steamers took place, followed by a fire almost immediately. The insurance company was held liable.[3] So fire may be the result of a flood.

In the case of *Commercial Union Ass. Co.* v. *The Canada Iron Mining & Manufacturing Co.*,[4] the policy contained a condition against loss by fire, by earthquakes, or by *burning of forests*. During the existence of any of the contingencies aforesaid, the policy to be suspended. The forests in the neighborhood were burning at the time of the loss; so the company was freed. The original Court held that it had not been proved that the buildings insured were destroyed by forest fire, so it condemned the insurance company. The Queen's Bench reversed, and dismissed the plaintiff's action.

§181. *Damage caused by mismanagement of furnaces, etc.*

The insurers sometimes stipulate not to be answerable for loss or damage on stock of any kind, occasioned by misapplication of fire heat in manufactories, or for loss or damage by natural heating of hay, corn, or goods of other kinds.

Damage (from mismanagement of regulators or furnaces) by heat alone, without *ignition*, even where there is no express provision, is not covered by the ordinary policy against loss or damage by fire; *a fortiori*, where the above stipulation is introduced, and the *misapplication of fire heat* occasions ignition, the insurers will not be liable.[1]

But a policy would have to be very special to work to prevent an insured recovering loss caused to his goods by mere fire heat, if these goods were damaged, in his house, from a fire burning down his neighbour's, adjoining his. It is going too far to say, as some do, that the loss must not be by mere heat, without ignition. There are cases in which no ignition may be on the insured premises, yet damage may be done to goods in them by fire heat, for which the insurer, under the usual policy, would be liable.

If a house opposite mine be burning, and mine be singed, and threatened, the insurers must pay the damage by heat. And if water be thrown into my house then and there, to prevent fire seizing it, the company is to pay.

Art. 2581 of the Civil Code of Lower Canada says that the insurer is not liable for losses caused merely by excessive heat in a furnace stove, or other usual means of communicating warmth, when there is no actual burning or ignition of the thing insured.

§182. *Goods held in trust or on commission.*

"Goods held in trust or on commission "must be assured as such, otherwise this "policy will not cover such property; and in "case of loss, the names of the respective "owners shall be set forth in the preliminary "proofs of such loss, together with their res-"pective interests therein. Goods on storage "must be separately and specifically in-"sured."[2]

Goods were insured by R., which he had taken in pawn; he insured them as his. They were lost by fire, and it was held that the insured could not recover for them, not having declared as the condition required.[3]

---

[1] *Johnston* v. *West of Scotland Ins. Co*, Bell's Illustrations, Vol. 1.

[2] *Nave et al.* v. *Home Mut. Ins. Co.* Missouri, 1866. Bennett, p. 88.

[3] *German Ins. Co.* v. *Sherlock.* Ohio, A.D. 1874. Bennett, p. 564.

[4] 18 L. C. Jurist, Queen's Bench, Montreal, A.D., 1873.

[1] *Austin* v. *Drew*, 6 Taunt.

[2] See *ante*, who may insure? In *Waters* v. *The Monarch L. & F. I. Co.*, it was decided that, held in trust means in any way in trust, directly or indirectly.

[3] *Rafel* v. *Nashville M. & F. Ins. Co.*, La. Annual Rep. of 1852.

Where an insurance is taken for the benefit of another than the party effecting the insurance, extrinsic evidence may be resorted to for the purpose of ascertaining the interests intended to be covered.[1]

In the case of *North British Mercantile Ins. Co.* v. *Moffatt et al.*, a policy was issued covering "merchandize (the assured's own), in trust or on commission, for which the assured are responsible," in or on certain warehouses, wharves, &c., of which Beal's wharf was one. Certain chests of tea were destroyed by fire at Beal's wharf. The teas had been deposited in bond by the importers with the wharfinger, who issued warrants for them. Moffatt *et al.* had bought the teas from the importer, who endorsed the warrants to Moffatt *et al.* in blank. Moffatt *et al.* had resold the teas in lots, and been paid for them. They held the warrants, however, but for their customers. Fire happened. The insurance company paid what Moffatt *et al.* claimed, it being agreed that they might sue to recover it back, on the ground that they were not liable. The Common Pleas held plaintiffs to be right, and that at the time of the fire the teas were no longer at the risk of Moffatt *et al.*; the teas were not within the words of the policy, "in trust or on commission, for which they are responsible." Judgment went for plaintiff.[2]

[1] *Lee et al.*, Respdts., v. *Adsit et al.*, Applts., 16 Tiffany, N.Y. The policy contained a clause: "property held in trust or on commission must be insured as such, otherwise the policy will not cover such property." L. & H. were paid in full for their loss, but would not admit A. & Co. to participate, though A. & Co. declared, after the fire, to approve all policies taken by L. & H. It was proved that before the fire A. & Co. had in conversation admitted that their stuff with L. & H. was at their own risk at their agents. A. & Co. were sued *in assumpsit* on account, and were condemned in favor of L. & H., who wished to get some insurance money. 10 Tiffany's Rep., p. 89. It is not sufficient, in such cases, that the owners had an interest to which such an insurance might extend. It must be shown that the owner was the one for whom the insurance was, in fact, intended. Extrinsic evidence may be resorted to, to show what interests were, in fact, meant to be insured. Duer, 9th Lect. cited.

[2] Common Pleas, Nov., 1871.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Sept. 20.

Judicial Abandonments.

Robert G. Berry, veterinary surgeon, Sherbrooke, Sept. 16.

Dame Marie Goyette, doing business under name of Dame Louis Baril & Cie., Iberville, Sept. 11.

George H. Gauvreau, dry goods, Montreal, Sept. 17.

Curators appointed.

Re France Binette, carriage-maker, St. Ferdinand d'Halifax.—J. E. Méthot, Arthabaskaville, curator, Sept. 15.

Re Wm. Donahue & Co, wholesale grocers, Montreal.—A. L. Kent and A. W. Stevenson, Montreal, joint curators, Sept. 18.

Re Emery Lacasse, plumber.—Bilodeau & Renaud, Montreal, joint curator, Sept. 15.

Re Joseph L'Abbé, trader, Quebec.—H. A. Bedard, Quebec, curator, Sept. 15.

Re Albert Manseau.—C. Desmarteau, Montreal, curator, Sept. 11.

Re James Roberts.—C. Desmarteau, Montreal, curator, Sept. 12.

Re A. F. Weipert & Co., traders, Quebec.—H. A. Bedard, Quebec, curator, Sept. 17.

Dividends.

Re A. Barré, trader, l'Ange Gardien.—First and final dividend, payable Oct. 10, J. Morin, St. Hyacinthe, curator.

Re A. Hubert Bernard, trader, St. Jean, Isle d'Orléans.—First and final dividend, payable Oct. 6, H. A. Bedard, Quebec, curator.

Re Thos. Gédéon Chenevert, St. Cuthbert.—First and final dividend, payable Oct. 6, A. Lamarche, Montreal, curator.

Re Auguste D'Anjou, trader, St. Mathieu.—First dividend, payable Oct. 6, H. A. Bedard, Quebec, curator.

Re P. E. Fugère, grocer.—First and final dividend, payable Sept. 26, Bilodeau & Bedard, Montreal, joint curator.

Re Wm. Gariépy, Montreal.—Dividend, payable Oct. 10, J. Frigon, Montreal, curator.

Re J. P. Perrault, trader, Ste. Anne de la Pérade.—First and final dividend, payable Oct. 6, H. A. Bedard, Quebec, curator.

Separation as to Property.

Marie Léa Bessette vs. Xénophile Barbeau, Montreal, Sept. 12.

Marie Lacouture vs. Bruno Mongeon, N.P., Montreal, Sept.

Appointments.

Louis Rainville and Henri Laurier, of Arthabaskaville, to be joint prothonotary of the Superior Court, Clerk of the Circuit Court, Clerk of the Crown, Clerk of the Peace and of the Sessions of the Peace for the district of Arthabaska.