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TRANSFER OF INSURANCE POLICIES.

The decision of the Queen's Bench in appeal, in the case of *Black & The National Insurance Co.*, noted in the present issue, as the learned Chief Justice remarked, determines one of the most important questions that can come before a Court. Unfortunately, the judgment is rendered by the narrow majority of one, a Judge *ad hoc*, and as it is a reversal, the Judges stand three to three, there being two Appeal Court Judges and one Superior Court Judge on each side. It happens that the French speaking Judges have gone one way and the English speaking the other.

The principal point in the case is very clear. There was an insurance effected under the usual condition that "if the assured shall have, "or shall hereafter make any other insurances "on the property hereby insured, or any part "thereof, without the consent of this Company, "written hereon, then, and in every such case, "this policy shall be void."

The insurance was made payable to mortgagees, and subsequently the assured, or another mortgagee, did effect an insurance with another company, without notice to the first company. If the loss had been payable to the insured, the breach of the condition would have prevented him from recovering. Did it affect the claim of the mortgagees in the same way? That was the great question in the case, and the majority of the Court of Appeal have answered it in the negative.

The Court holds that "the said George W. "Farrar, (the insured) could neither by a release "of the said insurance, nor indirectly by any "act of his, destroy or impair the rights and "interests of the said John and Henderson "Black (the mortgagees) in the said policy." The decision has taken by surprise many lawyers who have had to do with the investment of moneys, and whose practice has long been guided by a different impression of the position of mortgagees under the circumstances. However, the decision seems to favor investors. If it be settled law that their claims cannot be prejudiced by any omission or neglect of the insured, (so long, of course, as the premium is paid), they will be the more ready to advance on the collateral security of insurance policies. It is somewhat singular that the question has not been clearly presented in any previous case in our Courts, and that very little light is thrown upon it by the jurisprudence of England or Ontario.

"*LAWYER'S LETTERS.*"

A question of considerable interest to the profession has been decided in the Circuit Court. Mr. Justice Rainville held last month that where a demand has been made upon a debtor for payment, and he neglects to pay, and then the case is intrusted to a lawyer, the latter is entitled to a fee of $1.35 for writing a letter demanding payment, and if the debtor refuses to pay this fee, the lawyer may take out a writ in the case, and enforce payment. It is understood that the learned Judge consulted his colleagues in reference to the point, and that they concur in this ruling.

It is obviously in the interest of debtors, that some fee should be exigible for a letter, otherwise, as has been the practice with some members of the profession, there is an inducement to issue a writ without previously sending a letter. The writing of a letter is merely an act of courtesy which the debtor often requites by refusing to pay more than the debt. It is right that a fee should be exigible. The only question which may arise in some cases is whether the lawyer should issue a writ in the name of his client for the original debt, or in his own name merely for the amount of the fee for the letter. In the Circuit Court case the tender of the debt alone was refused, and the writ then issued for the amount of the debt in the client's name. But if the client had accepted the debt without prejudice to the lawyer's rights, it would seem more correct that the latter should sue in his own name for the amount of the fee.

The Criminal Law Magazine. — The first number of this new magazine has been issued at Jersey City, N.J. It is edited by Mr. Stewart Rapalje, of the New York bar, and Mr. Robt. L. Lawrence, of the Jersey City bar. It is to appear bi-monthly, and to furnish digests of all current criminal cases, besides leading articles and reports in full. The first number is carefully edited, and augurs well. We trust it will meet with success.

NOTES OF CASES.

MONTREAL, Dec. 17, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, JJ.

LALONDE et al. (defts. below), Appellants, and BELANGER (plff. below), Respondent.

Damages caused by cutting wood—Prescription—Art. 2261, C.C.

The appeal was from a judgment of the Superior Court, Montreal, (Papineau, J.), condemning the appellants to pay the sum of $600 damages for wood cut and taken away from respondent's land.

Sir A. A. DORION, C.J., said the Court was of opinion, on the evidence, that the judgment was well founded, and must be confirmed, (save as to one particular.) On the appeal a question of prescription had been raised, the appellants contending that the two years' prescription under Art. 2261, par. 2, applied to the case, and that all damages prior to two years before the institution of the action should be excluded. The answer to this was two-fold. In the first place, prescription was not pleaded, but the defendants had offered to confess judgment for a certain amount. In the second place, the two years' prescription did not apply to a case like this, where it was the price and value of the wood that was claimed. This Court had so held in *Bulmer & Dufresne*, and that judgment had been confirmed by the Supreme Court.*

Judgment confirmed.

Duhamel, Pagnuelo & Rainville for Appellant.
De Bellefeuille & Turgeon for Respondent.

DUFRESNE (claimant in Court below), Appellant, and THE MECHANICS BANK (contestant below), Respondent.

Contestation of claim in insolvency—Contestant must show an interest.

The appeal was from a judgment of the Superior Court, Sherbrooke, Doherty, J., 29th May, 1878, maintaining the contestation of a collocation in favor of appellant and Rev. J. B. Chartier, in a dividend sheet prepared by the assignee *in re* Lemieux, insolvent. By the collocation Dufresne and Chartier were collocated on registered hypothecary claim for the full balance in assignee's hands, $2,072.80. The contestation was made by the Mechanics Bank on the ground that the hypothec in favor of Dufresne and Chartier was granted for a pre-existing debt at a time when the Rev. J. O. Leblanc, who granted it, was notoriously insolvent, and the mortgagees knew the state of his affairs.

The judgment maintaining the contestation was in these terms :—

"The judge having heard the parties respectively by their counsel, on the merits of the contestant's contestation of the collocation made by the assignee in favor of the said Reverend A. E. Dufresne, and examined the proceedings, *pièces produites*, and proof of record and deliberated ;

"Seeing that the mortgage contested in this matter, upon which the collocation now contested is based, was given on the eighth day of May, in the year 1874, and that the Reverend J. O. Leblanc, the mortgagor, within thirty days thereof i. e., to wit, on the fifth day of June, in said year, made a sale or transfer of his property equivalent to a *cessio omnium bonorum* to Lemieux, the insolvent in this matter, who did not pay and had not the means of paying for the same nor of paying the debts of the said Revd. J. O. Leblanc thereby and by the deed thereof by him assumed ;

"Considering that the said contesting party has established by legal parol evidence as well as by said transfer so made within thirty days of the date of such mortgage, that the said mortgagor was, at the date of said mortgage, in insolvent circumstances, and that it is also established by such parol evidence by the deposition as a witness in this matter of the Reverend A. E. Dufresne, one of claimants collocated, and the reasons by him therein given for taking a mortgage for $6,000 to cover a debt of $3,000, that the claimants feared and believed that said mortgagor was then insolvent, and that they had then probable cause for believing him unable to meet his engagements and to be so insolvent ;

"Considering that the granting and accepting of said mortgage under the circumstances established in evidence on this contestation gave, and by said collocation gives to the claimants an undue and illegal preference over

* Decided in 1879. Not yet reported. See 21 L.C.J. 98.

the other creditors of the said mortgagor, and that the so giving of said mortgage is and operates a legal fraud as against such other creditors;

"Considering that the estate put into insolvency by the proceeding taken in this matter is virtually the estate of the said Reverend J. O. Leblanc and not that of the insolvent Lemieux, and that the creditors of said Leblanc are injured, and their just rights defeated by said mortgage, and that claimants cannot legally be collocated thereon to the entire exclusion of the other concerned creditors of the said Reverend J. O. Leblanc or of the insolvent Lemieux, as hath been done by said collocation;

"And considering that the contestant hath established by legal proofs and evidence the allegations of the said contestation in so far as the same are material and essential to maintain said contestation, and that the said contestants so collocated have failed to prove the allegations of their answers to said contestation or any of the material allegations thereof, I, the said judge, dismissing said answers, declare and adjudge the said mortgage to have been illegally and in legal fraud of the creditors of the mortgagor, obtained and accepted, and to be null as against such creditors, and in consequence, I annul and set aside said collocation based thereon, and maintain the said contestation thereof, with costs for which this judgment is hereby made executory as in an ordinary judgment of the Court, distraits to Edmund Barnard, Esquire, attorney for contestants, and it is further ordered that the sum of $2,072.80, to wit: the amount of said collocation, be distributed *au marc la livre*, or otherwise, according to their rights in the premises, among the creditors entitled to the same, and that to that end a regular collocation and dividend sheet be made and published according to the usual practice and manner of proceeding in such behalf prescribed in the preparation of dividend sheets in matters of insolvency."

Sir A. A. DORION, C. J., remarked that there was no allegation, or proof made, of the fact that the Mechanics Bank was a creditor of Leblanc when he made the obligation in question. The judgment of the Court below would, therefore, be reversed for reasons which are set out in the judgment as follows:—

"Considérant que la collocation de l'appelant et de Messire J. B. Chartier, pour la somme de $2,072.80, sur le produit de la vente des immeubles du failli, Guillaume Lemieux, est fondée sur une obligation que leur a consenti le Rév. Messire Joseph O. Leblanc, le 8 Mai 1874, pour la somme de $6,000, et que sur cette somme l'appelant et le dit Sieur Chartier n'ont réclamé que $3,000;

"Et considérant que l'intimée, qui a contesté cette collocation en alléguant que la dite obligation du 8 Mai 1874, a été consentie par le dit Messire J. O. Leblanc lorsqu'il était en déconfiture et en fraude des droits de ses créanciers, n'a pas allégué ni prouvé qu'elle fut créancière du dit Messire J. O. Leblanc lorsque cette obligation a été consentie;

"Et considérant que l'intimée n'a pas prouvé qu'à l'époque où cette obligation a été consentie, le dit Sieur J. O. Leblanc fut insolvable, ni que l'appelant sut qu'il fut insolvable;

"Et considérant de plus que l'intimée n'a pas allégué ni prouvé que les transactions entre le dit Messire J. O. Leblanc et le failli, Guillaume Lemieux, aient été faites pour la frauder ou pour frauder les créanciers du dit Rév. J. O. Leblanc ou du dit Guillaume Lemieux, de leurs droits sur les biens vendus dans la faillite de ce dernier;

"Et considérant que l'intimée n'a pas fait voir qu'elle eut aucun intérêt à contester la collocation de l'appelant;

"Et considérant qu'il y a erreur dans le jugement rendu le 29 Mai 1878, par un Juge de la Cour Supérieure siégeant à Sherbrooke, en vertu de l'Acte de faillite de 1875;

"Cette cour casse et annule le dit jugement du 29 Mai 1878, et procédant à rendre le jugement qu'aurait du rendre le dit Juge siégeant en vertu de l'Acte de 1875, cette cour renvoie la contestation de l'intimée à la collocation de l'appelant et du dit Rév. J. B. Chartier, sauf recours, et condamne l'intimée a payer à l'appelant les frais encourus tant en cour inférieure sur la dite contestation que sur le présent appel."

Judgment reversed

Lacoste & Globensky for Appellant.

Barnard, Monk & Beauchamp for Respondents

FONTAINE (deft. below), Appellant, and MONTREAL LOAN & MORTGAGE Co. (plffs. below), Respondents.

Procedure—Missing original of plea supplied by plaintiff's copy.

The judgment appealed from maintained a hypothecary action brought by the respondents. The principal ground of appeal was an alleged irregularity of procedure. The original plea had not been filed by the defendant, and the plaintiffs, in order to complete the record, filed the copy which had been served on them, and obtained judgment. The copy was simply filed with the prothonotary, without leave of the Court being first obtained, or notice served on the defendant.

MONK, J. (*diss.*), thought that by confirming this judgment the Court would be sanctioning an irregularity which might become very alarming. There was no proof that the plea filed had been served on the plaintiff. It was just a piece of waste paper.

Sir A. A. DORION, C. J., said there was doubtless a good deal of irregularity in the record. The defendant had been notified to plead; he took a copy of his plea to the office of the plaintiffs' attorney, and got a receipt therefor. The case proceeded at *enquête*, and was inscribed on the merits. But defendant's attorney never filed the original plea; he never complained that he was being proceeded against to his detriment. He allowed the plaintiff to go on, and the case was taken *en délibéré*. Then it was discovered that the original plea had never been filed. Three or four months elapsed; then the plaintiffs' attorney took the copy which had been served on him and filed it, paying the $8 stamps, and got judgment on that. There was no doubt all this was most irregular; but how was the defendant injured? He had been notified of the *enquête* and of the hearing. Now he complained that his own plea had been filed in the case. He had no ground of complaint. If there was irregularity, it was his fault. He had been repeatedly asked to file the original, and did not do so. He had not made any complaint when notified of the inscription for *enquête*, or for hearing. This Court had repeatedly passed over irregularities of procedure which had not been noticed or complained of in the Court below, when the party did not suffer by them.

Judgment confirmed.

C. S. Burroughs for Appellant.

G. B. Cramp for Respondents.

PIERCE et al. (defts. below), Appellants, and BUTTERS et vir (plffs. below), Respondents.

Action to account—First account and discharge must be set aside before another account can be claimed—C. C. 311.

The appeal was from a judgment of the Superior Court, Sherbrooke, Doherty, J., ordering an account to be rendered by appellants, as residuary legatees and representatives of the late Isaac Butters, to his daughter, the female respondent. It appeared that Isaac Butters had rendered an account, and got a discharge, but respondent had treated this as an absolute nullity, and brought an action claiming another account.

Sir A. A. DORION, C. J., said the Court was of opinion that the nullity referred to in art. 311 of the Civil Code was a relative nullity which should be invoked. The minor could ask to be relieved from such a transaction, but could not *de plano*, ask for another account while the discharge existed. The Court had already held this in *Desgroseillers & Riendeau.** In that case there had been a settlement by the female respondent with her tutor. Then, an action was brought for another account without mentioning the first account, and the Court held that the action could not be maintained in that form. In the present case, the respondent treated the first account as a perfect nullity, and there was no conclusion for setting it aside. On this ground the appeal would be maintained, and the action dismissed.

The judgment is as follows :—

"Considering that the female respondent has by her attorney by act of the 15th day of April, 1870, passed before C. A. Richardson, notary, acknowledged that her late father Isaac Butters, had rendered her a true and faithful account of his administration, which he had as tutor to the said female respondent, of the property of the said female respondent, and had paid unto her the sum of $12,500 as the balance or residue

*Decided at Montreal, 22 June, 1877.

of said account, for which through her said attorney, she gave the said Isaac Butters a full and complete discharge,—which act was subsequently, to wit, on the 5th of May, 1870, duly ratified by the said female respondent;

"And considering that the said female respondent cannot claim another account from the representatives of the said late Isaac Butters for his administration as tutor of her property, without first demanding that the said discharge so given by her said attorney, and ratified by her as aforesaid, be set aside and declared null and void;

"And considering that the female respondent has instituted the present action without having first demanded the resiliation of the said discharge of the 15th of April, 1870, and of the said ratification of the 5th day of May, 1870;

"And considering that there is error in the judgment rendered by the Superior Court sitting at Sherbrooke on the 2nd day of July, 1878;

"This Court doth cancel and annul the said judgment of the 2nd July, 1878, and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the action of the said respondent, and doth condemn her to pay to the appellant the costs incurred as well in the Court below as on the present appeal."

Hall, White & Panneton for Appellants.
Ives, Brown & Merry for Respondents.

Sir A. A. DORION, C.J., RAMSAY, TESSIER, CROSS JJ., and ROUTHIER, J. *ad hoc.*

PINSONNEAULT et al. (defts. below), Appellants, and DESJARDINS (plff. below), Respondent.

Statute of Frauds—Evidence of interruption of Prescription—C. C. 1235—Agent—Principal not bound by admissions made by agent after his agency has terminated.

The judgment appealed from was rendered by the Superior Court, Montreal, Johnson, J., maintaining an action against the heirs and legal representatives of the late Alfred Pinsonneault, for work and labor, and materials.

Sir A. A. DORION, C.J., said the action was by the *cessionnaire* of a builder, against the representatives of the late Alfred Pinsonneault, for work done for him. The appellants admitted and tendered the last item of the account, $3.20, but pleaded prescription as to the rest. The respondent answered that there had been interruption of prescription by an acknowledgment of the debt. The question was as to the proof of interruption. It was only proved by the verbal evidence of H. Cotté, who had been agent of the deceased. The Court below accepted this evidence, but this Court was of opinion that it was inadmissible. The authority of Bonnier was positive on the point. Greenleaf had been cited by the respondent, to the effect that the admissions of the agent bind the principal. But the principal is only bound by such admissions when they are made before the agency terminates. Here Cotté, when he is no longer agent, says that when he was agent, he admitted the account. This did not bind the principal. The Code requires written proof of interruption, and there being no such proof here, the claim must be held to be prescribed, and the judgment reversed accordingly.

The judgment is as follows:—

"Considérant que le compte sur lequel est porté cette action était prescrit lorsqu'elle a été portée, à l'exception du dernier item offert par les appelants avec leur défense;

"Et considérant que l'interruption de prescription invoquée par l'intimé ne peut être prouvé par témoins, et que le témoignage de Honoré Cotté, pour prouver la reconnaissance qu'il a faite de la dette, est d'après l'article 1235 du Code Civil, illégale et inadmissible;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure, à Montréal, le 30 Décembre 1878;

"Cette cour casse et annule le dit jugement, et procédant à rendre le jugement qu'aurait dû rendre la Cour Supérieure, déclare les offres faites par les dits appelants bonnes et valables, ordonne que les deniers ainsi offerts soient payés à l'intimé, et renvoie l'action de l'intimé quant au surplus avec dépens, tant en cour inférieure que sur le présent appel."

Lacoste & Globensky for Appellants.
Roy & Boutillier for Respondent.

MONTREAL, December 20, 1879.

SIR A. A. DORION, C. J., MONK, RAMSAY, TESSIER, JJ., and SICOTTE, J., *ad hoc.*

BLACK et al., (plffs. below), Appellants, and NATIONAL INSURANCE CO., (deft. below), Respondent.

Insurance (Fire)—Transfer of amount of insurance to mortgagee—A subsequent insurance effected by the mortgagor without notice to company does not affect the rights of the mortgagee.

The action was brought by John Black, Henderson Black and G. W. Farrar, setting up that respondents insured Farrar against loss by fire for $1800, the loss, if any, payable to J. & H. Black (the other two plaintiffs) as mortgagees; that a fire occurred, and the conclusions were that the respondents be condemned to pay J. & H. Black, to the acquittal of Farrar, the sum of $1800.

The principal plea was that Farrar, with the consent of the company, effected several insurances in other companies, in each of which, the loss, if any, was stipulated to be paid to the Blacks. But that on the 12th July, 1876, Farrar effected still another insurance in the Royal Canadian, loss if any, payable to E. & D. McDonald, and that this was in force up to the time of the fire, but was never made known to respondents, or consented to by them in the form required by the policy.

The answer of the plaintiffs was that the insurance had been effected by E. & D. McDonald without Farrar's interference.

The judgment appealed from (Mackay, J.) maintained the pretention of the respondents on this point, and the action was dismissed, the *considérants* being as follows:—

"Considering that plaintiffs have not proved their allegation to the effect that plaintiff Farrar *en tems utile*, to wit, in October, 1876, furnished to the defendants a claim regular and attested in respect of losses suffered by him by the fire of the 10th of September before; that on the contrary it appears that no regular claim signed and legally attested as required by the terms of Farrar's policy, was in October, after the fire, rendered by him to defendants, and that he and Farrar did not *en tems utile* produce such a claim, or any certificate under hand and seal of a magistrate, or notary public as required by the terms of his (Farrar's) policy, basis of the present action, but that he (Farrar), up to the 13th November, was refusing to sign any claim papers;

"Considering that at the time of plaintiff (Farrar) obtaining the policy sued upon, he was the owner of the property, or subjects insured, and George Henry Farrar and Lucius Edwin Farrar were not, and that the plaintiff George Whitfield Farrar continued afterwards and up to the time of the fire of September, 1876, to be the owner of the said property, subjects insured, and that after obtaining from the defendants the insurance policy, base of this action, he procured by the name George Henry Farrar and Lucius Edwin Farrar other insurance, to wit, in the Royal Canadian Insurance Company, on the principal of the same subjects as covered by defendants' policy, loss, if any, payable to E. & D. McDonald, and the said Farrar, plaintiff, made such last insurance without the consent of the defendants written upon the policy sued upon, and so he violated the terms of his contract and the said policy; that in fact the other or subsequent insurance was made by and for plaintiff Farrar at his expense and by his authority and was not an insurance by E. & D. McDonald at their own expense; that the defendants did not, till long after the fire, know of the said other and subsequent insurance, which has in fact inured to plaintiff's (Farrar's) benefit, after proofs made by him of his ownership of the subjects insured, to the satisfaction of the Royal Canadian Insurance Company;

"Considering that defendants have not waived the objections set forth in their pleas, to wit, the objection founded upon the other or subsequent insurance, and the one founded upon the want of notice and particulars of loss hereinbefore referred to;

"Considering under all these circumstances and these findings that this suit or action cannot be maintained, and that the policy sued upon had no force, but was void at the time of the institution of the present action, and is void, doth dismiss the said action with costs, *distraits*."

RAMSAY, J. (*diss.*) This case has given rise to a good deal of discussion and difficulty, on several questions. With all but one of these questions, I agree with the conclusion arrived at by the majority of the court, and I shall, therefore, refrain from entering at length into any of the questions. It will be sufficient for me to say that I think the plea by which it is attempted to insinuate, without saying it in so many words, that the Blacks set fire to the building, is wholly unjustifiable. If it is intended to make a defence on the ground of the

criminality of the insured, the fact should be formally pleaded. For myself, I may say, that I should not consider any evidence, no matter how conclusive it might appear, on a plea so drawn. I also consider that the insurance is that of the father, although taken out in the names of the sons, and that the re-insurance is also that of the father. I also consider that as there was no notice of the re-insurance, as required by the conditions of the policy, the policy became inoperative, at all events so far as Farrar is concerned. But there was a stipulation in the policy "loss if any payable to Messrs. J. & H. Black, as mortgagees, to the extent of their claim," and it is now contended that although the policy is void as regards Farrar, the stipulation survives, and entitles the appellants, J. & H. Black, to recover to the extent of their interest. It is on this question I am unable to concur with the opinion of the majority of the Court. In England it seems this question has not arisen, probably owing to some difference in the way of dealing with the interests of mortgagees; but it has come up on several occasions in Ontario. It is to be regretted that the jurisprudence there is in a very unsettled state, and I have been unable to discover on which side the weight of authority leans. Had that appeared clearly it is not probable that I should have entered any dissent on this occasion. Two systems seem to divide opinion. By one the terms of the contract between the party claiming and the insurer are interpreted precisely in the same manner as we interpret the terms of any other contract. By the other the policy is treated as being transferred or assigned to the mortgagee in whatever terms the stipulation is couched, and whether the mortgagee becomes the insured or not. It will be at once perceived that these two systems lead to very different results, and I think the former is much more consonant with principle than the latter. The stipulation is plainly an undertaking to pay B out of the money coming to A if any there be. The other system is that of a fictitious assignment, the policy being held in trust for the original insurer, should the mortgage be paid off, or should there be a balance over. Whatever may be the practical convenience of the latter system, it is one hardly in accordance with the principles of our law, or indeed compatible with any sound principle. It alters the obligation of the insurer, and exposes him to perils which the contract he has entered into on its face, does not contemplate. I should, therefore, confirm the judgment on the simple motive that the policy being void there was no "loss," and therefore nothing coming to appellant.

MONK, J., also dissenting, concurred substantially in the above remarks of Mr. Justice Ramsay.

Sir A. A. DORION, C. J., said perhaps no more important case had come before the Court than this one. It affected the interests of all those who lend money on the security of real estate, and stipulate that the mortgagor shall insure the property and transfer the amount to the mortgagee for the purpose of securing the debt. If the doctrine of the minority were sustained, the insured might at any time destroy the security by some irregularity on his part. The Chief Justice proceeded to deliver an elaborate opinion, in which Sicotte and Tessier, JJ., concurred, reversing the judgment of the Court below. The grounds are in substance contained in the written judgment of the Court, for which alone we have space. It is as follows:—

"Considering that by a deed of the 14th day of February, 1874, George W. Farrar, one of the plaintiffs and appellant, and George H. Farrar and Lucius E. Farrar, hypothecated in favor of John Black and Henderson Black, the two other plaintiffs and appellants in this cause, a certain lot of land and buildings thereon situated in the town of St. John's, for the sum of $4,000 currency;

"And considering that in and by the said deed it was covenanted and agreed, that the said George W. Farrar and his co-debtors should cause the said real estate to be insured for $8,000 and should transfer the policy of such insurance to the said John Black and Henderson Black;

"And considering that in pursuance of said agreement the said George W. Farrar did, on the 3rd day of July, 1876, effect with the respondents an insurance on the said buildings for the sum of $1,800, for which the respondent issued an insurance policy on the said 3rd July, 1876, for said sum of $1,800, and that it is declared in the said policy that the loss if any shall be payable to J. & H. Black, (the said John & Henderson Black) as mortgagees to the extent of their claim;

"And considering that the said insurance was so effected by the said George W. Farrar to carry out his undertaking to have the said buildings insured and the insurance policy transferred to the said John & Henderson Black, to secure their interest as mortgagees;

"And considering that the said declaration in the said policy, that the loss, if any, would be paid to the said John & Henderson Black, having been made at the instance and with the consent of the said George W. Farrar, amounted to a delegation of the amount of the said insurance, which delegation, being accepted, had in law the same effect as an accepted transfer of the said policy would have had as to all parties concerned;

"And considering that the contract of insurance is one by which the insurer agrees to indemnify the insured for the loss he may suffer by the risks insured against, and that under articles 2480 and 2482 of the Civil Code of L. C., wager policies are illegal, and a fire insurance policy pending the risk is not transferable except to a person having an insurable interest in the object of the policy;

"And considering that as a consequence of the provisions of said articles, the contingent claim secured by an insurance policy is not transferable, and the only transfer allowed by law is a transfer of the policy itself from one party interested to another party acquiring the same interest, or from the interest of one party in the property insured to that of another party in the same property;

"And considering that in effecting the said insurance with the respondents, the said George W. Farrar was acting both in his own interest, and in the interest of the said J. & H. Black, and as their agent, and that the policy issued by the respondents must be considered and held to be a policy issued in their joint interest, and to cover first the loss of the said J. & H. Black, if any, and secondly, the loss of the said George W. Farrar for any balance of the policy after payment of the loss sustained by the said John & Henderson Black;

"And considering by virtue of the delegation and transfer of the said policy, the said John and Henderson Black became the parties insured to the extent of their interest in the said buildings as mortgagees;

"And considering that the said George W. Farrar could neither by a release of the said insurance, nor indirectly by any act of his, destroy or impair the rights and interests of the said John and Henderson Black in the said policy;

"And considering that the subsequent insurance on the said buildings was not effected by the said George W. Farrar, but by D. & E. McDonald to secure the payment of their interest in the said buildings as mortgagees and that the same was so effected without the knowledge of the said J. & H. Black, and that such insurance, even if it had been effected by the said George W. Farrar, could not be considered a violation of the condition of the policy as regards subsequent insurances, and could not affect the right of the said J. & H. Black to recover the amount of their loss;

"And considering that it is in evidence that the said buildings were destroyed by fire on the 10th September, 1876, while the said policy was still in force, and that the said J. & H. Black had at the time of the said fire an insurable interest in the same, as mortgagees to an amount exceeding that mentioned in the said policy;

"And considering that the said John Black and H. Black have given due notice of their loss, and have furnished a preliminary proof of the same within a reasonable time, and as requested by the respondents, and that the said respondents have by their agents waived any right to complain of any delay in furnishing such preliminary proof;

"And considering that the said John Black and Henderson Black are entitled to recover the amount of their demand, and that there is error in the judgment rendered by the Superior Court sitting at Montreal on the 31st of January, 1878;

"This Court doth reverse the said judgment of the 31st January, 1878, and proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the said respondents to pay to the said John Black and Henderson Black, to the acquittance of the other plaintiff and appellant George W. Farrar the sum of $1800, with interest from the day of service, and costs as well those incurred in the Court below as on the present appeal (the hon. Justices Monk and Ramsay dissenting)."

Geoffrion, Rinfret & Archambault for appellants; *E. Carter, Q.C.*, counsel.

Davidson & Monk for respondents.