The Legal News.

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SUPREME COURT OF CANADA.

Ontario.]

PARTLO v. TODD.

Trade mark—Registration—Effect of—Exclusive right—Property in words designating quality—Rectification of registry.

P., a manufacturer of flour, registered a trade mark, under the Trade Mark and Design Act, 1879 (42 Vic. ch. 22), consisting of a circle containing the words, "Gold Leaf," surrounded by the No. 196 and with the word "flour," and P's name underneath, the whole surrounded by the words "Ingersoll Roller Mills, Ont., Can." In an action against T, for using a similar mark, and selling flour purporting to be the "Gold Leaf" of P., the defendant was allowed to offer evidence to show that "Gold Leaf" was a description applied to flour made by a particular process and was in common use by the trade, both in Ontario and the Maritime Provinces, prior to the registration of such trade mark. Section 8 of the Act provided that after registry, the person registering a trade mark "shall have the exclusive right to use the same to designate articles manufactured by him," and the said evidence was objected to on the ground that under this section the validity of the trade mark could not be impugned.

Held, affirming the decisions of the Divisional Court (12 O. R. 171) and of the Court of Appeal (14 O. A. R. 444) Taschereau, J., dissenting,—that the evidence was properly admitted; that a trade mark is not made such by registration, but it is only a mark or symbol in which property can be acquired and which will designate the article on which it is placed as the manufacture of the person claiming an exclusive right to its use that can properly be registered; and that the statute does not prevent a person accused of infringing a trade mark from showing that it is composed of words or symbols in common use to which no exclusive right of user can attach.

Held also, that where the statute prescribes no means, by way of departmental procedure or otherwise, for rectification in case of a trade mark so improperly registered, the Courts may afford relief by way of defence to an action for infringement.

Held per Gwynne, J., that property cannot be acquired in marks, etc., known to a particular trade as designating quality merely, and not, in themselves, indicating that the goods to which they are affixed are the manufacture or stock in trade of a particular person. Nor can property be acquired in an ordinary English word expressive of quality merely though it might be in a foreign word or word of a dead language.

Appeal dismissed with costs.

W. Cassels, Q.C., for the appellant.

Moss, Q.C., and *McCarthy, Q.C.*, for the respondent.

Ontario.]

BROWN v. LAMONTAGNE.

Chattel mortgage—Fraud against creditors—Prior agreement—Additional chattels in mortgage—Effect of.

B. sold a quantity of machinery, tools and fixtures to one P. for $3120.96. The goods were in a factory owned by B., and were to be paid for by monthly payments extending over a period of forty-eight months. P. agreed to keep them insured in favour of B. and to give B. a hire receipt or chattel mortgage as security for payment. P. was put in possession of the property, and received letters from B. recommending him to certain merchants in Montreal, and he went to Montreal and purchased goods from L. among others. Two months after, L. sued P. for the price of goods so purchased, amounting to about $1000, and after being served with the writ in such suit, P. gave B. a chattel mortgage on the goods originally purchased and other goods which it was alleged, would have been included in the purchase from B. had it not been claimed that they were not in the factory at the time, but were afterwards found to be there. P. had not given a hire receipt or chattel mortgage at the time of the original purchase from B.

L. having signed judgment against P., issued executions and caused the mortgaged

goods to be seized thereunder. On the trial of an interpleader issue to try the title in said goods, judgment was given in favour of B. for the goods originally sold to P. but not for those added in the mortgage. The Divisional Court held on motion to set aside this judgment, that the mortgage was void for the inclusion of the goods not mentioned in the original agreement, and reversed the judgment at the trial in B's favour. This decision was affirmed by the Court of Appeal. On appeal to the Supreme Court of Canada:

Held, that the judgment of the Court of Appeal was right and should be affirmed.

Appeal dismissed with costs.

O'Gara, Q.C., for the appellant.

Belcourt, for the respondent.

Nova Scotia.]

FORSYTH v. BANK OF NOVA SCOTIA.

In re BANK OF LIVERPOOL.

Insolvent Bank—Winding up Act—Appointment of liquidators—Discretion of judge.

The liquidators appointed by a judge of the Supreme Court of Nova Scotia to wind up the affairs of the insolvent Bank of Liverpool, were those nominated at the meeting of creditors called for that purpose according to the requirements of the Winding-up Act R. S. C. c. 129. The Bank of Nova Scotia was one of the said liquidators, and by a judge's order, the local manager at Halifax was appointed to act for the bank in such liquidation. On appeal to the Supreme Court of Canada from the decision of the Supreme Court of Nova Scotia affirming the appointment of liquidators:

Held, that a bank can be one of the liquidators of a bank under the Winding-up Act.

2. That the Act does not require the nominees of both creditors and shareholders to be represented on the board of liquidators, and the judge having, in his discretion, appointed the representatives of one class only to be appointed such, such discretion should not be interfered with.

3. The appointment would not be overruled by an appellate Court unless it appeared that the judge making it was clearly wrong in his law, or that he acted under an evident mistake as to the facts.

Appeal dismissed with costs.

C. W. Weldon, Q.C., for the appellants.

R. L. Borden, for the respondents.

Nova Scotia.]

WYMAN v. IMPERIAL INSURANCE CO.

Fire insurance—Insurable interest—Mortgagee—Assignment of policy.

In 1877 T. held a policy of insurance on his property which he mortgaged to W. in 1881, and an endorsement on the policy, which had been annually renewed, made the loss payable to W. In 1882, T. conveyed to W. his equity of redemption in the property, and a few months after, at the request of W., an endorsement was made on the policy, permitting the premises to remain vacant. The policy was renewed every year until 1885, when all the policies of the insurance companies were called in and replaced by new policies, that held by W. being replaced by another in the name of T., to which W. objected and returned it to the agent, who retained it. The premiums were paid by W. up to the end of 1886.

The insured premises were burned, and a special agent of the company, having power to settle or compromise the loss, gave to W. a new policy in the name of T., having the vacancy permit and an assignment from T. to W., endorsed thereon and containing a condition not in the old policy, namely, that all endorsements or transfers were to be authorised by the office at St. John, N.B., and signed by the general agent there. The company having refused payment, an action was brought on the new policy against them, and the agent who first issued the policy to T. was joined as a defendant, relief being asked against him for breach of duty and false representations. The Supreme Court of Nova Scotia set aside a verdict for the plaintiff in such action, and ordered a new trial on the ground that his interest was not insured, and that T. had no insurable interest to enable W. to recover on the assignment. On appeal from such decision to the Supreme Court of Canada:

Held, reversing the judgment of the Court below (20 N.S. Rep. 487) that the company having accepted the premiums from W. with knowledge of the fact that T. had ceased to

have any interest in the property, they must be taken to have intended to deal with W. as owner of the property, and the contract of insurance was complete.

Appeal allowed with costs.

Graham, Q.C., for appellants.

Henry, Q.C., for respondents.

New Brunswick.]

MARITIME BANK OF CANADA v. THE RECEIVER GENERAL OF NEW BRUNSWICK.

Insolvent bank — Winding-up Act — Assets— Crown prerogative—Right of Provincial Government to exercise—Lien.

The Government of New Brunswick, as creditors of the insolvent Maritime Bank of Canada, claimed a first lien on the assets of the bank, as representing the Crown in the Province.

Held, reversing the judgment of the Supreme Court of New Brunswick, Gwynne, J., dissenting, that the Government was entitled to such lien; But

Held also, Strong and Taschereau, JJ., dissenting, that the lien was to be exercised only after the note-holders were paid, the prerogative being postponed to the lien of the note-holders by virtue of Bank Act, R. S. C. c. 120 s. 79.

This case was decided by Strong, Fournier, Taschereau, Gwynne and Patterson, JJ.

A. A. Stockton and *C. A. Palmer*, for appellants.

Blair, Atty. Gen. of New Brunswick, and *Barker, Q.C.*, for the respondents.

New Brunswick.]

MARITIME BANK OF CANADA v. THE QUEEN.

Prerogative of Crown—Insurance Company— Money deposited in insolvent bank—Lien for.

The Dominion Safety Fund Life Association, a mutual insurance society doing business in Canada, deposited $45,000 in the Maritime Bank of Canada at St. John N. B., and sent the deposit receipt to the Receiver General of the Dominion to hold as the deposit of the Association with the Government as required by the Insurance Act, R. S. C. c. 124. The Maritime Bank having become insolvent a claim was made by the Dominion Government for this sum of $45,000 and a further sum of $15,000 held on ordinary deposit in the bank by the Crown to be recognised as Crown monies and entitled to a first charge upon the assets.

Held, affirming the judgment of the Supreme Court of New Brunswick, Gwynne, J., dissenting, that the Dominion Government as representing the Crown in Canada was entitled to a first lien upon the assets of the insolvent bank in respect to the said sum of $15,000, and that the lien was not taken away by the section of the Bank Act R. S. C., c. 120, which gives note holders a first lien on such assets, it not being competent for the legislature to deprive the Crown of its prerogative except by express words to that effect. See The Interpretation Act, R. S. C. c. 1, s. 7 subsec. 46.

Held, also, reversing the judgment of the Court below, Strong, J., dissenting, that the Government could not claim such lien in respect of the sum deposited by the insurance association, it not being public money but held by the Crown merely as trustees for the society.

The judges deciding this case were Sir W. J. Ritchie, C. J., and Strong, Taschereau, Gwynne and Patterson, J J.

Appeal allowed as to the sum of $45,000; and dismissed as to the sum of $15,000.

A. A. Stockton and *C. A Palmer* for the appellants.

Weldon, Q. C., and *Barker, Q. C.*, for the respondents.

FIRE INSURANCE.

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

CHAPTER I.

OF THE CONTRACT OF INSURANCE, HOW MADE, WHEN PERFECTED, AND OF THE APPLICATION.

(Continued from page 159.)

In *Tough* v. *Provincial Insurance Co.*,[1] an interim receipt given in the country by an agent was cancelled from the Head Office by mail within the 30 days. A fire occurred before the arrival of the mail at the insured's residence. It was held by the Court of

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[1] 17 L. C. Jurist.

Queen's Bench that the interim receipt was in force.[1]

In *Browning* v. *Provincial Ins. Co.*, a certicate of insurance was got by one Joel Leduc, reading "said insurance to be subject to all the conditions in the policy of the company." The policies of the company read "A. B., as well in his own name as for and in the name of every other person to whom the same doth or may, or shall appertain in part or in all, doth make insurance," &c. Leduc insured so in Montreal flour that he was shipping to Newfoundland, property of Browning. The vessel on her way to Newfoundland was lost, and almost all the flour. Browning sued on the insurance that Leduc, his agent, had effected. [2] The certificate was held not to be the complete contract, but that reference to the policies usual was to be made, and might be made.[3]

In a case in the Queen's Bench, Upper Canada (A.D. 1858), *Goodfellow* v. *The Times and Beacon Ass. Co.*, the insured was given a provisional receipt in these words: "Received from Messrs. J. G. & Co., $14 premium for an insurance of $2,000, on property described in the order of this date, subject to the approval of the board at Kingston; the said party to be considered insured for 21 days from the above date, within which time the determination of the board will be notified. If approved, a policy will be delivered; otherwise the amount of the receipt will be refunded less the premium for the time so insured. This was held not an absolute insurance for 21 days certain, but that the company might reject the risk within the 21 days at any time, and on notice the risk would end (one judge dissenting).

In *Fried* v. *Royal M. Co.*[1] a premium was taken by an agent in New York, conditioned that the policy should be issued from the Head Office at Liverpool, or the premium returned if the insurance were declined. The policy was sent from Liverpool to the New York agent. He retained it, yet the insurance was held good; the contract was held perfected though the policy was not had by the insured, save so; the company was condemned.

§ 23. *Interim receipts operation.*

Interim premium receipts may really operate insurances during the interim term unless the wording be special.[2]

A memorandum or receipt, such as mentioned above, means that the insurance is to be according to the terms of the policies ordinarily used by the insurer.[3]

§ 24. *Negotiation for insurance by letter.*

A question may arise as to the time at which the contract becomes complete when the negotiation for the insurance is carried on by letter. The doctrine that an offer to insure made by letter remains open till the letter is received by the other party, and that the offer cannot be retracted before that time, except personally or by letter so that the notice of the retraction may reach the party before he has dispatched a letter accepting the offer, is approved by many. The contract

[1] There was a conflict of opinion among the judges who took part in this case. There were two judges who dissented from the judgment of the Queen's Bench, and this judgment reversed the unanimous judgment of the Court of Review. So the opinion which prevailed was held by four judges only, while five were in favor of the Company, which was held liable.

A letter of acceptance mailed can't be recalled, but you can recall the private messenger, it was said in argument in *Household Fire, &c.*, v. *Grant*. "The post office is treated as the agent of both parties," by Thesiger, L.J., in above case, and he approves *Taylor* v. *Merchants F. Ins. Co. Bramwell*, diss., seems to say the law ought to be the same as if we had no post, —sed? For we have a post.

In Scotland they used to hold acceptance not effectual till it reached its destination, and in a case in which an acceptance and an after refusal to accept reached the offerer at the same time, by an irregularity in the post office, acceptance was held neutralized. *Countess of Dunmore* v. *Alexander, Bell's Illustrations, Law of Scotland*, 1830, p. 86, vol. 1. That would not be held now in England, for acceptance mailed would be irrevocable.

[2] In England undisclosed principal may sue on mercantile contracts made by his agent, subject to any defences which may exist against the agent. ? In Quebec province. See Hudon case.

[3] Arnould, Vol. 1, p. 223 (3rd ed.) to the contrary notwithstanding.

[1] 47 Barbour, 127.

[2] See the two interim receipts in *Montreal Assurance Co.* v. *McGillivray*.

In England interim receipts must be upon stamped paper (not so in Quebec).

[3] See observations of Aylwin, J., in case of *McGillivray*.

has been held to be completed as soon as the letter of acceptance is dispatched.[1] *Tayloe* v. *Merchants Fire Ins. Co.*,[2] seems to be an approved case.

Again, it has been held that it is not sufficient that the letter of acceptance should be merely written: it must be dispatched and beyond the control of the writer, and that within a reasonable time after the receipt of the offer, or, if any time is prescribed, within that time.[3]

§ 25. *Revocation of acceptance.*

Again says Phillips, Vol. 18 the letter of acceptance, after its despatch, may be countermanded or retracted, provid the notice to that effect reach the her party in advance of the letter. *Tayloe* v. *Merchants F. Ins. Co.*, cited by Phillips in support of this doctrine does not expressly sustain it. Certainly not. That was a case of insurance by correspondence (probably with a joint stock company unincorporated). The insurers made known their terms, the insured mailed a letter of acceptance (Dec. 21,) enclosing a check for the premium as he had been requested; the subject insured was burned (Dec. 22,) while the acceptance was being carried by mail. The Company was held liable. That case might better be cited to support the doctrine that as soon as the offer is accepted the contract is complete, and that despatch of a letter is such acceptance. But Phillips' doctrine is sound enough that the contract is, so, completed, "subject only to "the contingency of the acceptor's revoking "his acceptance before notice of it reaches the "insurer."

Phillips' position is by Shaw (Shaw on Ellis) said to be supported by a dictum of Ch. Justice Parker in *McCulloch* v. *Eagle Ins. Co.* That case decided that where an offer has been made by a letter and accepted by another, there may be revocation of the *offer* before the acceptance *reaches the offerer*. The plaintiff on the 29th of December, wrote asking upon what terms defendants would insure. On the 1st of January the defendants wrote their offer stating their terms. On the 2nd they wrote again, declining to insure. The plaintiff, on the 3rd, mailed his letter accepting the 1st of January offer (this was before he had received the letter of the 2nd). That was all the correspondence; no premium was paid. The subject insured (a vessel) was, three months afterwards, announced to have been lost. The plaintiff was non-suited.[1]

If I mail at Montreal a letter to B at Toronto, agreeing to a proposal of his, I can revoke that acceptance by telegram before it reaches B.[2]

The decision in McCulloch v. Eagle Ins. Co. was held to be correct as to contracts by letters;[3] but Kent and Duer do not concur in the opinion.

§ 26. *The law on this point in France, and in the Province of Quebec.*

Upon the question when a contract is perfected that is made by letter missive, there are differences of opinion; in Quebec as in France and elsewhere, the question is debated. Toullier, Pardessus and Troplong are of one opinion, Duranton and Marcadé of another, and Pothier, it is said, has not clearly expressed himself. Toullier, Vol. 6, note on p. 33, puts this case: On the 1st of January, I write from Rennes to a merchant in a distant town, proposing for merchandise at a certain price. On the 5th he answers that he accepts and will send the merchandise. His answer arrives at Rennes on the 8th; but on the 7th I had sent off a revocation of my offer. Toullier says this revocation is valid.

Troplong, Vente, No. 25, says that the consent of the writer of a letter containing an offer must be persevered in, not only until his letter reaches the person addressed, but until the moment of the acceptation by this

[1] *Adams* v. *Lindsell*, 1 B. & Ald., highly approved by Kent, Vol. 2, p. 477, note. See also *Maetier* v. *Frith*, 6 Wend.

[2] 9 Howard. And see *Dunlop* v. *Higgins*, 12 English Jurist.

[3] *Thayer* v. *Middlesex M. F. Ins. Co.*, 10 Pickering.

[1] 1 Pickering. *Brit. Am. Tel. Co.* v. *Coulson* L. R., 6 Exch. is of no authority, says Alb. L. J. Vol. 22, p. 424. Yet *McCulloch* v. *Eagle Ins. Co.* is like the decision in the *B. Am. Tel. Co.* case. Both Story and Parsons disapprove the *McCulloch* case, says the Albany L. J.

[2] 16 Journal du Palais, A. D. 1877.

[3] 7 Am. Law Review, p. 453 (A. D. 1872-3)

person reaching the original offerer. He says that Pothier seems of a contrary opinion, exacting only persistence of the offerer until the time of the person addressed declaring acceptance of the offer. He adds that he thinks Pothier has fallen into an error, or has not fully stated his ideas.[1]

Troplong puts this case; I write from Nancy to you at Lyons, proposing that you should buy my house for 40 000 francs. You answer from Lyons, on the 5th December, that you accept. On the 6th, before having received your letter, I write to you that I have changed my mind. We must decide, he says, that there is no sale. At No. 26, he says: Upon the same principle, the letter which you wrote accepting my offer did not bind or fix you, so long as that letter did not actually reach me. You were free to change your mind; you could retract by a letter, and this letter might arrive before the first, or at the same time.

Toullier, after stating the revocation to be valid in the case put by him, adds: But can it not be said that in making an offer by letter, the writer tacitly obliges himself not to revoke the offer before the return of the courier, or before the expiry of the time necessary for answer to him to reach? This would be most equitable, he says, and has been carried into the Prussian Code.

§ 27. *The law in Scotland.*

Bell, Principles of Law of Scotland, No. 78, says: "The acceptance completes the con-"tract. The agreement is not suspended till "the offerer has received notice of the accept-"ance; but this is under the qualification "that there shall be no undue delay in noti-"fying the acceptance."

§ 28. *Acceptance by letter revocable until it has reached the other party.*

The question is most interesting in other contracts of sale. I cannot see contract perfect without right acquired by each of the parties against the other. In the case put by Toullier, the merchant in the distant town had right, even after despatching the letter of the 5th, to take or get it back on the 6th or the 7th, or to revoke it, before it reached me at Rennes, by another letter arriving at Rennes before it, or at the same time. If he did so, his original acceptance, even if I had never written my letter of the 7th, could not bind him; I could not claim fulfilment of the letter of the 5th.[1]

Duorum in idem placitum consensus is true where two are present, one asking, the other answering, each binding himself; but the mere fact of there having been a point of time when the consent of both of two contracting parties, domiciled at distances from one another, existed together, ought to be held for naught where this consent was only in the mind of one, and unknown to the other. In the law of bills, it might be said that once the drawee had written acceptance upon a bill, though he had not spoken a word, nor delivered the bill accepted, there was contract perfected, the consent of the parties having met; yet we know that such an acceptance may be retracted, scored out, before delivery.[2]

Shaw says that the offer of one party and the acceptance of the other do not stand upon the same grounds; that the offer does not create a contract, and may be withdrawn if notice to that effect can reach the other party before he has done anything to indicate acceptance; but that as soon as the offer is accepted, (and a dispatch of a letter has been held such acceptance) the contract is completed and cannot be rescinded except by mutual consent. He cites 1 Duer, p. 130; *Brisban* v. *Boyd*, 4 Paige's Ch. R.[3]

It was held, *per* the Lord Chancellor, in *Dunlop* v. *Higgins*,[4] that an offer by letter made by A to B, when accepted by B, makes a final contract, even before B's acceptance reaches A, provided it be mailed or sent off. B's posting his letter of acceptance is as much

[1] Kent agrees with Pothier; 2 Kent Comm. 472.

[1] But if it be in the mail bag for me, Lord Bramwell would say, this bag was as my bag. The Post Office will not allow letters once mailed to be claimed back by despatcher.

[2] See further on the subject of offers, promises, acceptations and revocations, Grotius by Barbeyrac, liv. 2, c. 11.

[3] Is not this the doctrine which Dunlop v. Higgins, (*post*) supports?

[4] 12 (English) Jurist.

as if he addressed the party present in words.[1]

The language used at the place where the writer of the first letter lives will generally be regarded, not that of the place of the receipt and assent: though the contract is held concluded at the latter, says Savigny, by Guthrie, p. 196.

An example of contract by letter is to be found in *Harris'* case, L. R. 7 Chanc. A applies for shares in a company. The application is by letter, and an answer granting the shares, is posted by the company. Before receipt of this answer, A posts another letter recalling his application. Held, that the contract of allotment was complete from the moment the answer of the company was posted.

§ 29. *Tacit reconduction.*

Some policies agree to allow *tacit reconduction*, or renewal of the insurance, by new payments of premium on conditions, (*e.g.*, on the company agreeing to accept the same) made before the expiration of the original term, or at a time fixed. In the absence of such an agreement fire insurers generally cannot be compelled to renew insurance.

In Canada, there is no usage under which days of grace are allowed, within which to pay premiums for renewals, or to continue a fire policy. In England, in the case of annual insurances, many offices allow fifteen days from the expiration of each year for the payment of the premium for the next year, and the insured is under protection of the policy until the expiration of the fifteen days, though after the happening of a fire. But under some policies, the insured, to have the benefit of insurance during the said fifteen days, must not only pay the premium, but the insurers must "agree to accept it."[2]

When an insurance exists, verbal contracts of renewal by agents are generally held valid in the United States.

§ 30. *Premium falling due on Sunday.*

If a policy be for a term of years, the premium payable semi-annually, the premium falling due on a Sunday may be paid on the Monday following, and may be tendered accordingly, though the property insured has been lost by fire on the last Sunday.

In France the policies of most companies allow fifteen days of grace to pay renewal premiums in, and insurers cannot refuse to accept during the fifteen days.

§ 31. *Abandonment.*

Abandonment (*délaissement*) is not allowed in fire insurance; but there is nothing to prevent a stipulation that if things insured for, say £500, be damaged say 75 per cent., they may be abandoned, and the whole £500 be payable.[1]

§ 32. *Some things the insured should look to.*

The policies of the companies doing business in Canada are generally favorable enough to the insured as regards the right of action that they confer, in the event of loss. They stipulate generally that the stock or funds of the company insuring shall be liable to make good to the insured all his loss, and they bind the company to the extent of its funds and capital to pay; so it is hardly necessary to advise the insured to see that the policy does clearly allow him a right of action at law against the company insuring or the parties executing the policy to such extent. In England the insured is advised to see that his right is not confined to a mere order for payment made by the subscribing directors upon the general body of the directors, or upon the company, to pay the loss, if loss should happen; as in *Alchorne* v. *Saville*,[2] where the policy read: "now we "the trustees and directors of the said society "whose names are subscribed, do order, "direct, and appoint the directors for the "time being of the said society to raise and

[1] The ruling in this case is very like that in *Taylor* v. *M. F. Ins. Co.*, 9 Howard. *Quaere*, could A's letter not be revoked by telegram to B?

[2] See *Tarleton et al.* v. *Staniforth*, 1 Bos. & P. Article 2583 of the Civil Code of Lower Canada says, when by the terms of the policy a delay is given for the payment of the renewal premium, the insurance continues, and if a loss occur within the delay, the insurer is liable, deducting the amount of the premium due.

[1] See *post* (abandonment guarded against).

[2] 6 Moore.

"pay by and out of the monies and effects "of the said contributionship;" and where the recourse of the insured was held to be only in equity, not action at law. Much more necessary is it in America to advise the insured to see to the character of the company with which he insures, its capital *paid up*, the conditions printed upon its policies, and its manner of dealing, usually, with sufferers after a fire. Companies that advertise largely cards of thanks, as from the insured to them, upon their paying their debts, ought to be avoided. I can never read such immoral "cards" without these words being recalled to my memory, from an old comedy :

. . . . . hoc tempore,
Si quis quid reddit, magna habenda est gratia.

§ 33. *Particular stipulations of some English companies.*

An English policy declared that in case of loss the society would pay out of their funds, etc., and stipulated and declared that the subscribing three directors should not as members of the society be liable except under the articles of the society. The plaintiff stated that the funds of the association were adequate to pay. It was held that the defendants' declaration and stipulation were substantially a covenant by them to be responsible as far as the funds of the insurers would suffice, and the plaintiff obtained judgment at law.[1]

§ 34. *Trivial conditions and important.*

Matters apparently insignificant are often of great importance. It is all very well to talk of things as trivial, but it is difficult to define what should fall within the category of small things, and what should not, observed Lord Penzance in the case of *Quebec Marine Ins. Co.* v. *Commercial Bank of Canada.*[2]

§ 35. *Defects in application sometimes not fatal.*

A policy required the application to set forth whether the property was incumbered, and to what amount; also, whether the insured had estate less than fee, and its nature. The application was silent, and contained no question on this head; but a policy was issued. Held, that it was no defence to the action that the application was silent, and ought to have declared things.[3]

[To be continued.]

[1] *Andrews* v. *Ellison et al.*, 6 Moore.
[2] In the Privy Council, 1869.
[3] *Dohn* v. *Farmers' Joint Stock Ins. Co.*, 5 Lansing, 275; 5 Bennett, 361.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, May 17.

Judicial Abandonments.

Michael Babcock, doing business under name of R. Millard & Co., railway supplies, Montreal, May 1.

Dame Elodie Côté, doing business under name of J. E. Dupuis, St. Henri, May 7.

Elzéar Hudon dit Beaulieu and Marie Delima Auger (E. Beaulieu & Co.), Windsor Mills, May 9.

Jean Baptiste Lafontaine, Chambord, lumber merchant, May 7.

Prosper Lafontaine, Lake Bouchette, lumber merchant, May 7.

Pierre Plourde, Fraserville, May 13.

Curators appointed.

Re Michael Babcock (R. Millard & Co.), Montreal.—A. F. Riddell, Montreal, curator, May 8.

Re Jean Baptiste Généreux.—C. Labelle, Sorel, curator, May 13.

Re Arthur Laurent, Sherbrooke.—Kent & Turcotte, Montreal, joint curator, May 12.

Re Cléophas Martineau, St. Felix de Valois.—Kent & Turcotte, Montreal, joint curator, May 12.

Re P. Massicotte, St. Luc.—Kent & Turcotte, Montreal, joint curator, May 13.

Re J. P. Perrault, Ste. Anne la Pérade.—H. A. Bedard, Quebec, curator, May 13.

Re Phillips & O'Sullivan, plumbers, Quebec.—L. P. Robitaille, Quebec, curator, May 9.

Dividends.

Re Anselme Asselin, St. Joseph d'Alma.—First dividend, payable May 30, D. Arcand, Quebec, curator.

Re A. E. Désautels, trader, St. Pie.—First and final dividend, payable June 2, J. C. Désautels, N. P., St. Hyacinthe, curator.

Re Isaïe Fréchette, St. Hyacinthe, doing business as James Aird & Co.—Second dividend, payable June 3, J. Morin, St. Hyacinthe, curator.

Separation as to Property.

Marie Plessis dit Laferté vs. Hilaire Ricard, trader, St. Guillaume d'Upton, May 2.

Mathilda Millette vs. Gustave Bousquet, baker, Montreal, Aug. 3, 1889.

APPOINTMENTS.

Joseph E. Robidoux, to be Secretary and Registrar of the Province of Quebec, May 8.

J. R. Thibaudeau, to be sheriff for the district of Montreal, in the place of P. J. O. Chauveau, deceased, May 9.

C. A. E. Gagnon, N. P., to be sheriff for the district of Quebec, in the place of Alleyn & Paquet.