Expropriation under Railway Act (R. S. C., cap. 109)—Requirements of arbitrators' award—Inadequate compensation amounting to fraud—Objections to arbitrators.

Judgment of WURTELE, J., M. L. R., 5 S. C. 136, affirmed, Dorion, C. J., Baby, Bossé, Doherty, JJ., Nov. 22, 1890.

FIRE INSURANCE.

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

[Registered in accordance with the Copyright Act.]

CHAPTER X.

NOTICE OF LOSS.

[Continued from p. 88.]

§ 247. *Fraudulent statement of loss.*

In Louisiana it has been held that a mere difference between the amount demanded and that proved at a trial is not conclusive evidence of fraud and false swearing. [1]

In Lower Canada in *Dill* v. *Quebec Ass. Co.* (before referred to) there was a clause in the policy avoiding it in case of false or fraudulent swearing, and the insurers objected to plaintiff that the verdict of the jury was itself proof clear of a false and fraudulent overvaluation, in violation of the policy; but the court held that false swearing and declaration were not to be presumed easily, and that it was not necessary to conclude that the insured had never possessed things, merely because he had failed to prove perfectly. He claimed £600 and the verdict awarded him only £387 16s 1½d.

In *Grenier* v. *Monarch F. & L. Ass. Co.*, [2] the female plaintiff insured £500 on stock and £100 on furniture. A fire happened and she filed statement of loss, and swore to a loss of £485 4s 11d for which she sued. The policy contained a clause against fraud, and vacating it in case of false swearing. The defendants pleaded that the plaintiff's statement was fraudulent, that she had sworn falsely, etc. The plaintiffs were man and wife, and the wife kept a small store in a country village. She stated more silk plush lost by the fire than the largest wholesale houses in Montreal were in the habit of importing in a year; she could not produce any invoices for this plush, or for many other things. Her stock had been assessed, under the municipal act, as of a value of £25, etc. The plaintiff's action was dismissed in 1859 in the Superior Court, Montreal, and the judgment dismissing it was afterwards confirmed in the Queen's Bench.

[1] *Hoffmann* v. *Western M. & F. I. Co.*, 1 Annual R. by Robinson, 216.

[2] 3 L. C. Jurist.

CHAPTER XI.

ADJUSTMENT AND SETTLEMENT OF LOSSES.

§ 248. *Adjustment of losses.*

There is a distinction between marine and fire insurance as regards the mode of adjusting losses. In the former, in all cases of partial loss, the insurer pays only such a proportion thereof as the amount insured bears to the whole value of the property at risk; while usually in the latter he is to make good all the damage sustained within the amount insured, whether the loss be total, or partial.

In the case of partial loss or damage to goods insured by a valued policy, there must be an enquiry. The insured can only recover his real loss: the value in the policy is the agreed standard of value by which the amount of indemnity is to be ascertained, the ratio being found by a comparison of the prices of the sound and of the damaged goods.

In the case of *McNair* v. *Coulter* there was total loss save of about £23 value which was deducted from the value stated in the policy and the insured got the balance.

In *Harris* v. *Eagle Ins. Co.*, Harris got a proportion of the value of the policy equal to the proportion that the kegs lost bore to the total kegs insured. The insurer was held liable for a total loss *pro tanto*.

Is an adjustment binding before actual payment? No, if the insurers can show a strong case against it. [1]

A loss once paid, the money paid cannot be recovered back, unless gross, actual fraud be proved.

Adjustment signed by the assurer in ignorance of fraud practised against him by the assured may be set aside. [2]

[1] 1 Camp. 134, also 274.

[2] *Matthews* v. *The Gen. Mutual Ins. Co.*, Vol. 9. Louis. Annual R. of year 1854.