stipulations, either in whole or in part, shall be deemed to have been waived by or on the part of the company, unless the waiver be clearly expressed in writing by endorsement on the policy, signed by the manager of this company for Canada." The defences pleaded *inter alia*, that the amount of loss was payable to Anderson; that there had been a breach of condition requiring proof of loss to be delivered within five days: that the policy had been delivered up and cancelled, and the risk terminated. To the plea of non-delivery of proofs, plaintiff replied a waiver of the conditions in that respect, to which the defendants rejoined that the waiver was not in writing as required by the conditions.

The policy was issued on the 10th August, 1875, and while in force the appellants conveyed the property on which the insured building was erected, to one T. B. in fee, who on the next day conveyed the same to the appellant Sarah C. Caldwell in fee. On 30th June, 1877, the respondent's agent at Halifax, sent to Anderson, who held the policy for his security as mortgagee, a circular to the effect that the company had cancelled the policy, adding that "the unearned premiums will be returned hereafter." Anderson handed the policy to the agent, who was also agent for the Western Assurance Company, telling him he wanted to be insured in that company, and the respondents from that date held it, or until it was produced by them on the trial. The unearned premium was not returned or offered to be paid. While in this position the fire occurred. At the suggestion of the agent, the putting in of proofs was deferred, to allow him to communicate with his head office, and ultimately they were furnished, and received with objection, and retained by the agent. Plaintiff got a verdict for $4,000 and interest. The Supreme Court of Nova Scotia on a rule *nisi* to set aside the verdict, made it absolute on the ground that though a waiver of the requirements of the ninth condition as to delivery of proofs of loss within five days had been sufficiently made out, if parol evidence had been admissible, yet that the twelfth condition requiring waiver to be expressed in writing by endorsement on the policy applied, and there had been no such waiver in writing.

On appeal to the Supreme Court, in addition to the defences above stated, it was urged that the appellant Caldwell had not, at the time of loss, an insurable interest in the property by reason of his change of interest arising from the alienation in favour of his wife by means of the conveyance to B., and the reconveyance to the latter.

Held, (1) (reversing the judgment of the Supreme Court of Nova Scotia), that as the agent of the company had requested the respondent to delay putting in the proofs of loss, the company were estopped from setting up as a defence the 12th condition requiring that a waiver of condition No. 9 should be in writing.

(2) That although the insured, during the currency of the risk, had alienated his interest in the property insured, still at the time of the loss he had such an interest by reason of being seised of an estate in fee simple in right of his wife, as to entitle him to recover.

FOURNIER, J., dissenting, on the ground that the sending of the circular by the company, and the compliance with the terms of the circular by the assured by giving up the policy to the company's agent, had effected a surrender.

Appeal allowed with costs.

Gormully, for appellant.

Casgrain, for respondent.

FARMER V. LIVINGSTONE.

The Dominion Lands Act, 35 Vict. c. 23, sec. 33, sub-sects. 7 and 8—Patent, validity of—Bill—Equitable or statutory title—Demurrer.

This was an appeal from a judgment of the Court of Queen's Bench (in Equity) for the Province of Manitoba, reversing on re-hearing the judgment of Mr. Justice Miller, allowing with costs the demurrer of the appellant (defendant) to the bill of complaint of the respondent (plaintiff,) and overruling the said demurrer with costs.

The plaintiff, in his bill of complaint, alleged in the 6th paragraph as follows:—

"Prior to the 1st of May, 1875, the plaintiff made application to homestead the said lands in question herein and procured proper affidavits according to the Statute whereby he proved to the satisfaction of the Dominion lands agent in that behalf (and the plaintiff charges the same to be true), that the said defendant Farmer had never settled on or improved the said lands assumed to be homesteaded by him or the land herein in question, but had been absent therefrom continuously since his pretended homesteading and