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SUPREME COURT OF CANADA.

OTTAWA, Feb. 23, 1892.

New Brunswick.]

GUARDIAN ASSURANCE Co. v. CONNELLY.

*Fire insurance—Application—Description of building—Variance—
Falsa demonstratio non nocet.*

An insurance policy insured goods in a one-and-a-half story building with shingled roof, occupied as a storehouse for storing feed and provisions, said building shown on plan on back of application for insurance as "feed house," situate attached to woodshed of assured's dwelling house. The building marked feed house on the said plan was not a one-and-a-half story building with shingled roof, was not attached to the wood shed, and was not used as a store house; but another building on the plan answered the description in the policy, and the goods insured were in said last mentioned building when they were destroyed by fire. The plan had been drawn by a canvasser who had obtained the application. He was not a salaried officer of the insurance company, but received a commission on each policy obtained through his efforts.

The insurance company refused to pay the loss, claiming that the policy was made void by the alleged misrepresentation as to the building. On the trial of an action on the policy the jury found for the plaintiff, leave being reserved to move for nonsuit on the ground of misrepresentation. The full Court refused to nonsuit.