

veyor executing the judgment could do nothing else but start his line at the said point.

Appeal allowed with costs.

*Belleau, Q.C.*, for the appellants.

*Lane* for the respondent.

Quebec].

9 Dec., 1895.

NORTH BRITISH & MERCANTILE INSURANCE CO. v. TOURVILLE.

*Insurance against fire—Condition of policy—Fraudulent statement—Forfeiture by—Proof of fraud—Presumption—Assignment of policy—Fraud of assignor—Appeal—Reversal on questions of fact.*

In an action on an insurance policy by an assignee the company pleaded that the insured, in his application for insurance on his lumber, had materially exaggerated the quantity and value of the lumber mentioned in such application and thereby obtained excessive insurance on said goods, and that after the loss he had falsely and fraudulently exaggerated the amount thereof, whereby the policy was forfeited under a condition therein that it should be forfeited if the claim was in any respect fraudulent. On the trial of the action there was no direct evidence of fraud, but a strong presumption was raised that the insured could not have had nor lost the quantity of lumber claimed for. The trial judge held that fraud had not been established, and gave judgment for the plaintiffs, which was affirmed by the Court of Queen's Bench.

*Held*, reversing the judgment of the Court of Queen's Bench, that direct proof of the fraud was not essential; it was sufficient that it had been clearly established by presumption or inference or by circumstantial evidence.

*Held*, further, that fraud by the insured having been established his assignee could not recover.

If a sufficiently clear case is made out the court will allow an appeal on mere questions of fact against the concurrent findings of the two courts below. The rule to the contrary may also be departed from where the action was not tried by a jury; the trial judge did not hear the witnesses but gave judgment on written depositions; the judges of the intermediate Court of Appeal were not unanimous, and the majority expressed great