Held, reversing the judgment of the Court below, that as the manufacture of excelsior was, in itself, a hazardous business, the introduction of it into the building insured would avoid the policy under the first of the clauses above set out, even if the jury were right in their finding that it was less hazardous than the manufacture of spools.

Held, also, that the addition of the manufacture of excelsior to that of spools in the said premises was a change material to the risk and avoided the policy under the second clause above recited.

Henry, Q.C., for appellant.

Borden for respondents.

Nova Scotia.] [Feb. 16.

MARSHALL v MUNICIPALITY OF SHELBURNE.

Onus probandi.

In an action on a bond against the sureties of the defaulting clerk of the Municipality of Shelburne, the defence raised was that the bond was not executed by them as it had no seals attached when the sureties signed it.

Held (HENRY, J., *hesitante*), that as the plaintiffs had proved a *prima facie* case of a bond properly executed on its face, and had not negatived the due execution of the bond, it being quite consistent with his evidence that it was duly executed, the onus of proving want of execution was not thrown off the defendant, and as neither the subscribing witness nor the principal obligor was called at the trial to corroborate the evidence of the defendant, plaintiffs were entitled to recover.

Borden, for the appellants.

Sedgewick, Q.C., for the respondents.

Nova Scotia.] [Feb. 17.

PICTOU BANK v. HARVEY.

Contract.

On July 14th, 1884, H. forwarded a lot of hides from Halifax, addressed to J. L., Pictou, the bill of lading specifying that they were to be carried to Pictou station. H. had been selling hides to L. for three or four years. An invoice was sent to L. for the price of the hides at the rate previously paid, and L. sent H. a note for the amount which was discounted. The course of dealing between H. and L., was for H. to receive a note for the amount according to his own estimate of weight, etc., and if there was any deficiency to allow L. a rebate on a final settlement.

This lot of his was put off at Pictou landing and remained there until August 5th. On that day L. sent his lighterman to Pictou Landing for some other goods, and he, finding the hides there, took them in his lighter and brought them to L.'s tannery with the other goods. The next day L., on being informed that the hides were at the tannery, had them put in the store of D. L., whom he told to keep them for the parties who sent them, there being at the time, other hides of L. in the said store. The same day, August 6th, L. sent a telegram to H. as follows:—"In trouble. Have stored hides. Appoint some one to take charge of them." H. immediately came to Pictou, and having learned what L. had done, expressed himself as satisfied. He did not take possession of the hides, but left them where they were stored, on L.'s assurance that they were all right.

On August 6th a levy was made under an execution of the Pictou Bank against L. on all L.'s property that the sheriff could find, but these hides were not included in the levy. On August 12th L. gave the bank a bill of sale on all his hides in the store of D. L., and the bank, on indemnifying D. L., took possession of the hides so shipped by H. and stored with D. L. In a suit by H. against the bank and D. L.,

Held (affirming the judgment of the court below), that the contract of sale between L. and H. was rescinded by the action of L. in refusing to take possession of the goods when they arrived at his place of business, and handing them over to D. L. with directions to hold them for the consignor, and in notifying the consignor who acquiesced and adopted the act of L., whereby the property and possession of the goods became re-vested in H., and there was, consequently, no title to the goods in L. on August 12th, when the bill of sale was made to the bank.

Sedgewick, Q.C., for the appellants.

Borden, for the respondents.