presentation on the part of the insured, as a defence to an action on the policy, by having, with a full knowledge of the breach, laid assessments upon the premium note of the insured;[1] *aliter*, if they were not aware of the breach.[2]

In *Howard F. Ins. Co.* v. *Bruner*[3] the insurance company was held estopped from setting up breach of warranty (arising from misdescription) by proof that the description had been prepared by its agent, with knowledge of everything.

§ 205. *Insertion of representations in the policy.*

By the law of France, says Duer, all representations must be inserted in the policy. This is thus stated by Pothier: "The policy contains the conditions. Unless expressed, one party cannot impose conditions upon the other, who disagrees, and denies them. They shall be reputed 'comme n'ayant pas été convenues,' and shall not be established otherwise than by the policy."

Semble, by the law of Lower Canada representations before policy must be written in the policy.

It would be wise to order so all over the world. Even fraud alleged is nothing; had fraudulent representations been made, they would only have been more plainly proved had there been a writing. The door is open to great frauds against the assured by the contrary doctrine, and perjuries are invited. Yet conditions (Merlin says) may be (in contracts) express or implied.

There is no adjudged case in which it has yet been explicitly acknowledged that the rule of evidence in relation to policies is different from that which prevails in regard to other written agreements, says Duer, Lect. 14, note 3. On the contrary, the fact is denied, he says.

It would have the worst effect if a broker could be permitted to alter a policy by parol accounts of what passed when it was effected, said the Court in *Weston* v. *Ames*.[4]

Powell v. *Edmonds*, 12 East's R.—Parol evidence of what an auctioneer said at the sale of an estate, to explain an alleged ambiguity in conditions, was rejected.

Lord Ellenborough said:—"The purchaser ought to have had it put into writing at the time, if the representation then made swayed him to bid. If the parol evidence were admitted in this case, I know of no instance where a party may not by parol testimony superadd any term to a written agreement." This is very applicable in insurance.

The companies it is who seek to make out these representations generally. Now suppose the insured were to offer parol proof to restrain the effect of the policy. He would be hooted at. Yet he is as right as others in proving, as they do beyond the agreement, and deducting from it.

Misrepresentation and fraud will often be proved by insurance companies' clerks. If the doctrine be admitted that parol evidence of misrepresentation may be received, the effect of every defence founded on a misrepresentation without fraud is to alter the construction of the policy. Per Lord Tenterden, in *Flinn* v. *Tobin*, 1 Moody & M.[1]

In *Alston* v. *Mech. Mut. Ins. Co.*,[2] the assured promised verbally (it was said) to discontinue the use of a fireplace in the basement, and to use a stove instead. Fire happened. He had not discontinued. The Court would not allow this to be a defence to an action after a loss, the policy not mentioning such promise.

Promises for future conduct must be inserted in the policy. By parol proof the terms of a policy cannot be added to nor varied. [Two witnesses in this case proved the representation.] Clearly the loss was covered by the terms of the policy. Part of the contract had been omitted from the policy (according to defendants). If so, it ought to have been written, for it was a warranty, though called a "promissory representation" by defendants.

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[1] *Frost* v. *Saratoga Mut. Ins. Co.*, 5 Denio, 154.

[2] *Allen et al.* v. *Vt. Mut. Fire Ins. Co.*, 12 Vt. 365.

[3] 11 Hun.

[4] 1 Taunton.

[1] See [25-26] Smith on Contracts, as to parol proof against writings.

[2] 4 Hill, 329.