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SUPREME COURT OF CANADA.

OTTAWA, June 28, 1892.

New Brunswick.]

NORTH BRITISH & MERCANTILE INS. CO. v. McLELLAN.

Fire Insurance—Insurable interest—Property in goods—Construction of contract—Statement in application—Warranty or representation—Breach of condition—Evidence.

By a contract in writing M. agreed to cut and store a certain quantity and description of ice, the said ice houses and all implements to be the property of P. who, after the completion of the contract was to convey the same to M.; the ice was to be delivered by M. on board vessels to be sent by P. during certain months; P. was to be liable to accept and pay for only good merchantable ice delivered and stowed as agreed. The property on which the buildings for storing said ice were situate was leased to P. by the owner, the lease containing a covenant by the owner to grant a renewal to M. A bill of sale was made by him to a third party of the buildings on said land. M. effected insurance on the whole stock of ice stored, and in his application, to the question, does the property to be insured belong exclusively to applicant, or is it held in trust or on commission, or as mortgage? "he answered: Yes, to applicant." The application contained a declaration that the same was a just, full and true exposition of all the facts and circumstances in regard to the condition of the property so far as known to the applicant and so far as material to the risk, and it was to form the basis of the liability of the company.

The property insured was destroyed by fire, and payment of