

stance material to be made known to the company, within the provisions of the first statutory condition, is too wide to be treated as a just and reasonable variation of the statutory conditions. The existence of a trifling incumbrance upon a valuable property would probably not, in ordinary circumstances, be a material fact, and yet the proposed variation would invalidate a policy, however trifling the incumbrance might be. The statutory condition is broadly fair to both insurer and insured, for it obliges the latter to disclose all facts material to the risk, and leaves to be tried as a matter of fact whether the undisclosed facts are material. The proposed variation seeks to lay down a hard and fast rule in favour of the insurer, declaring the existence of an undisclosed incumbrance, however small, to be fatal to the validity of the policy.

Under the statutory condition I am to determine whether the non-disclosure of the \$600 mortgage held by Britton was a material fact, the onus being upon defendant company, who assert its materiality. No evidence was given of the value of the mill . . . ; no one gave any evidence from which I can judge of the materiality of the circumstance relied on, and I am therefore unable to say that defendant company have made out their defence on this branch of the case.

2. The next ground of defence is, that plaintiff altered the power used in the mill from water to steam, and did not notify the company of the fact.

The 3rd statutory condition indorsed on the policy provides that "any change material to the risk . . . shall avoid the policy . . . unless the change is promptly notified in writing to the company or its local agent; and the company, when so notified, may return the premium for the unexpired period, and cancel the policy," etc.

What happened was that plaintiff notified the local agent in writing of her intention to change the power from water to steam, and that the local agent did not forward the notice to the company . . . so that at the time of the fire the mill was being operated by steam without the knowledge of defendants, though expressly limited in the policy to "water power only."

Evidence was given at the trial that the change from water power to steam power was material to the risk, and that upon a factory operated by steam power the rate was nearly double that upon one operated by water power.