

tions—Removal of goods—Change of occupation—Proofs of loss—Sufficiency of—False swearing as to.

To a policy of insurance against fire on household furniture, etc., in a dwelling house at B., the defendants pleaded as a defence that by the application, which was made part of the policy, the plaintiff falsely and fraudulently represented as a warranty, amongst other things, that the furniture, etc., was of a named value; that there was no prior insurance, that the plaintiff had never sustained any loss by fire, and that plaintiff was the owner of the property destroyed, setting up a breach of a condition of policy.

The values of the furniture given in the application were proved to correspond with those contained in a book made up at the time the insurance was effected, which was shown not to be extravagant, and no goods were shown to have been afterwards removed. The prior insurance referred to was effected while plaintiff was residing at M., where she resided before moving to B., but on going to reside at B. the present insurance was taken out under the belief that by the removal a new insurance was necessary, and it did not appear that the prior insurance was then in force. There had been a prior loss by fire of about \$10 through the overturning of an oil lamp or stove, thereby burning or injuring a piece of oilcloth, which being considered a small matter, was overlooked. While plaintiff was living at M. the furniture contained in the house occupied by her and her husband belonged to plaintiff. This was sold and the money derived therefrom received by the husband. Afterwards other furniture was purchased and again sold, the husband receiving the money. The husband also received certain moneys for plaintiff from the mother. Subsequently the furniture in question was purchased by the husband, and on the plaintiff moving to B. the furniture was taken there. The husband said that instead of paying back the money so received by him he had purchased the furniture for plaintiff, and both he and his wife said it was hers. There was no question as to the husband's solvency nor of any claim of creditors, and as to a marriage contract which was set up whereby the husband and wife were to have and enjoy their separate estates, the respective properties then

or thereafter owned by them, no evidence was given as to its effect in the Province of Quebec or this province.

Held, that the contract contained no such warranty as alleged: and that the evidence failed to show any false and fraudulent representations as alleged; that though the statement as to previous loss by fire was technically untrue, it was in no sense false or fraudulent, and it was a question whether it came within the meaning of the condition, and that as regards the furniture it must be deemed to be the plaintiff's, though different considerations might arise had the husband been proved to have been insolvent, and the contention was with his creditors.

The defendants set up as a further defence that by a condition of the policy any change material to the risk, etc., avoided the policy, alleging the removal of part of the goods insured, and also a change of occupation and consequent increase of risk. The plaintiff having become ill, desired to consult the same medical practitioner who had attended her while at M., where she formerly resided, and for such purpose went with her children to her mother at M.—her husband remaining in the house—taking with her some little furniture and bed clothes. No claim was made for the property so removed, and the rest was not thereby affected.

Held, that this defence failed.

The defendants also set up as a further defence that by another condition proofs of loss must be made by assured, and that they could only be made by an agent of insured when insured's absence or inability to make them was satisfactorily accounted for, and that the loss should not be payable until sixty days after completion of proofs.

The evidence showed that the proofs were not furnished by plaintiff in consequence of her illness, and that they were furnished by plaintiff's husband through a power of attorney from the plaintiff suggested by defendants. Proofs were furnished by the husband together with the power of attorney on the 24th November, which defendants acknowledged on the 26th. On December 10th, defendants wrote requiring invoices and vouchers, and on December 16th the husband wrote sending all the invoices and vouchers he was able to give. This was acknowledged on the 16th November, and