with the plaintiff, and the damages are generally laid at a sum somewhat larger than the sum insured for.

When the policy is not under seal, assumpsit is the proper form of action to be brought upon it against the insurers; and as the action in such case is founded on a particular and express undertaking made upon a consideration, upon which the law would not, by necessary implication, raise the promise specified in the policy, the plaintiff must declare specially upon it. The contents of a declaration upon such a policy are much the same, except in matter of form, as before stated to be essential to the declaration upon a policy under seal, and, as in the latter kind of policy, the contract must be set forth with precision, and any material variance or omission will be equally fatal.

In the case of the *Provincial Insurance Company of Canada* v. *Leduc*,[1] the Judicial Committee of the Privy Council held that an agent who insures for another with his authority may sue in his own name. Leduc insured in his own name the total subject.

§ 263. *Service of process.*

Service of process is allowed to be made on an agent of a foreign corporation.[2]

The Court of Review in Montreal[3] dismissed the plaintiff's action against the Mutual Fire Insurance Company of Stanstead and Sherbrooke because of the process being served on a man in Bedford district, called agent but who was not.

Where a policy was issued in Upper Canada, it was held that service in Montreal, at an office there, is not sufficient, the company being an Upper Canada one and the head office being in Upper Canada.[4] But a foreign insurance company may be sued by service of writ for it at an agency within Lower Canada, and such company on such service may be condemned to pay the amount of a policy issued by it at another agency in Upper Canada.[5]

[1] Privy Council, 26th June, 1874.

[2] *Chapman* v. *Mutual Fire Ins. Co. of New York*, A.D. 1865.

[3] *Pattison* v. *Mutual Fire Ins. Co. of Stanstead and Sherbrooke*, December, 1870.

[4] *McPherson et al.* v. *The Inland M. Ins. Co.*, Superior Court, Montreal.

[5] 3 Lower Canada Jurist, *Chapman* v. *Clarke and The Unity L. Ins. Co.* But ruled (later) in Review.

In *Vezina* v. *New York Life Ins. Co.*,[1] the defendant's home is New York; they granted a policy dated there; they have an office, the principal office for Quebec Province, in Montreal, also one in Quebec. At Quebec they were applied to for a policy, and forwarded it to Montreal, and granted the New York one; and the policy, reads to have issued upon statements and representations submitted to the officers in New York. Premium was paid in Quebec—to be sent to New York. Process has been served at the defendant's office in Montreal, and they have been summoned to appear in Quebec. But nothing shows the policy to have been made in Quebec. So as the right of action has not originated in Quebec, and service of summons has not been in Quebec district (the Code of Procedure being to govern) the declinatory exception was maintained, with costs.

Service on a foreign insurance company was allowed to be good where it was made at an agency in Montreal, though the contract was to pay elsewhere.[2]

A debt contracted in a foreign country is, of course, not exclusively payable there. Story, ch. viii. But if stipulation be, limiting to a particular place of payment, and the debt have been contracted in that place, *semble* it cannot be enforced here. Unless the suit be particular, seizing property here, as for insolvency, or fraud of debtor.

§ 264. *Proof of averments.*

Where there is an averment in the declaration which is not necessary to maintain the action, the plaintiff is not bound to prove it; as where in debt on a policy of insurance the declaration set forth an agreement in the policy that if any dispute arose it should be referred to arbitrators to be chosen, one by each party, and averred that it had not been referred, but *that* without default of plaintiff; at the trial plaintiff did not prove that he ever named a referee, and therefore it was objected that he had not proved his declaration. But on a case reserved, the Court held it to be no part of the contract, but a collateral agreement, therefore not necessary to be set out in order to

[1] April, 1876, Quebec Superior Court.

[2] 3 L. C. Jurist, 159.