latter. It was asked that the policy be nullified only *pro tanto*, and judgment was rendered accordingly.

In *Somers* v. *The Athenæum Fire Ass. Co.*[1] it was held that where the insurer's inspector makes a visit and diagram, and a policy upon that describes a house as detached, which really is not, and two tenants where there were four insured, he shall nevertheless recover; error will be presumed and the insurer blamed. The company in vain argued that plaintiff had been negligent, and that misdescription, whether by negligence or fraud, vitiates the policy. The Court held that the plaintiff had accepted a policy with an error in it, which he had not perceived, and had done no more; and the agent was held to be competent to prove the assured's case.

If a condition of a policy provide that the insurer's surveyor shall be held the applicant's agent and surveyor as well as the insurer's, the applicant will be affected by errors and misdescription in a survey or plan.[2]

If there be interrogatories in the application unanswered, and the policy have been granted notwithstanding, the omission is immaterial.[3]

If a survey or description be a part of the policy and a warranty, they must be regarded so. It cannot be left to the jury in such a case whether the non-correspondence with the survey or description increased the risk or not.[4]

The assured is responsible for material representations, whether before the policy, leading to it, or at the time the insurance is obtained. Phillips, vol. 2 (ed. of 1854). Representations need not be in writing. *Ib.*, § 545.[5]

Art. 2487 of the Civil Code of Lower Canada says that misrepresentation or concealment, either by error or design, of a fact of a nature to diminish the risk or change the object of it, is a cause of nullity.

Art. 2570 says, representations not contained in the policy or made part of it, are not admitted to control its construction or effect.

A promissory representation Duer holds to be equivalent to a warranty. It has been held in some cases that representations promising things must be in writing.

Can the application be referred to? It is certainly equivalent to parol representation, and if false, the policy is null if materiality be seen and found by the jury.

A person insured stating that there was a prior insurance of $3,000 on the same subject, where really it was only of $2,500. Held, that this was not a misrepresentation affecting the risk, but that the insured was to be considered as his own insurer to the extent of the $500 difference; the insurer getting, so, the full benefit of the statement made.[1]

Suppose a man takes a fee simple deed of sale to him of land and house as security, may he not call himself owner for insuring?

In Louisiana, the Court held a policy void because the insured did not communicate to the underwriters the fact of a rumor of an attempt to set fire to the building adjacent to the one on which he requested insurance.[2]

In the following case the misdescription was held immaterial. Buildings were described as of brick and slated roof; but one was covered with tarred felt (not burnt). This roof was not easy to be seen, buried up as it were inside of other buildings and walls, and if the error was material, it was made by the company's agent, and the insured was not responsible.[3]

Of course, if a description is in the form of a warranty, it must be true, or the policy is void.[4]

---

[1] 9 L. C. Rep.; 3 L. C. Jurist.

[2] *Sexton* v. *Montgomery Co. M. I. Co.*, 9 Barbour's R.

[3] *Hall* v. *People's, &c.*, 6 Gray.

[4] *The Market F. Ins. Co. of New York* v. *Leroy*, 12 Tiffany R. (N. Y.)

[5] Mistakes or misrepresentations towards the policy do not avoid the policy in New Hampshire, unless fraudulent. See Albany Law Journal, 1st volume of 1880, p. 97.

[1] *Hood* v. *Farmers' Mut. Ins. Co.*, Vermont, A. D. 1857.

[2] *Walden* v. *Louisiana Ins. Co.*. 12 La. R. 135.

[3] *In re Universal Non-Tariff F. Ins. Co., Forbes & Co.'s* claim (1875). The agent had inspected and made report to his company. The company relied on *Newcastle F. Ins. Co.* v. *McMorran*, and *Anderson* v. *Fitzgerald*; but this case was held different, for the insured here never was called upon for any representation.

[4] *Newcastle Ins. Co.* v. *McMorran.*