In *Wright* v. *Sun Mutual Life Insurance Co.*, and *Wright* v. *The London Life Insurance Co.*,[1] the seal was omitted. Reformation of the policy and equitable relief was sought for. The policy of the Sun Company had an attestation clause acknowledging it sealed. The London Company's policy had nothing to show seal; the policy only professed to be signed. Held, a mutual mistake, and the insured was held entitled to relief by reformation, by seals to be added; or, secondly, by debarring the defendants from defence on the ground of want of seals. An equitable replication was allowed. A trial took place on the policies as they appeared, and a verdict was found for the plaintiffs. The jury by their verdict seem to have found sealing. A new trial was moved for, for want of evidence of seals. In the plaintiff's declarations seals were not referred to or alleged. At the first trials the defendants did not object at all to want of seals. New trials took place, but on the merits. Then, when these new trials took place, defect of seals was urged. Yet verdicts were found for plaintiffs, and then again new trials were asked. The rule for it was discharged, with order that the pleadings should be amended. "We have "power under the Acts for the better ad- "ministration of justice to allow an equit- "able replication to be filed now, and such as "would justify us in restraining defendants "from relying on their pleas of *non est fac-* "*tum*," said one judge. *Nunc pro tunc* and verdicts to stand.

In *Snell et al.* v. *Insurance Company*, a suit in equity to reform a fire policy insuring S. L. Keith against loss of cotton; loss, if any, payable to Keith, Snell & Taylor. Keith did not own, but his firm did. After the fire this bill to have the error in the policy corrected and the firm's name substituted for Keith's. *Henkle* v. *Rl. Exc.*, 1 Vesey, Senr., was cited by the Court; parol proof of mistake may be. The judgment of the Court below was reversed. Judgment for the firm appellants.

CHAPTER XIII.

Fraudulent Firing.

§ 277. *Evidence of fraudulent setting fire to property insured.*

If the insured set fire to his property insured, it is plain that he will be repelled when he sues for his loss. Further, he will be liable to an indictment for arson.

As to the evidence requisite in a civil action to support a plea by the insurers that the plaintiff wilfully set fire to his property, see *Regnier* v. *Louisiana State M. & F. Ins. Co.*; *Hoffman* v. *Western M. & F. Ins. Co.* The better opinion in the United States is that the evidence need not be so strong as upon an indictment for arson. In Lower Canada the accused would have the benefit of all presumptions in his favor, and *Thurtell* v. *Beamont* would be approved. Evidence as strong as in a criminal case would be required probably; see *Dill's* case. But *semble*, in criminal cases, even for arson, evidence is circumstantial.

Upon an indictment, where the intent is laid to defraud the insurers, the policy is the best evidence on their part to show that the house was insured, and the books of the insurance company are not evidence without notice to the insured to produce the policy. And where the notice to produce it is insufficient, secondary evidence of it cannot be given.

The act of wilfully burning the property of a third person carries within itself sufficient evidence of an intention to injure that person, but where the accused is charged with setting fire to his own house the intent to defraud cannot be inferred from the act itself, but must be proved otherwise. See pp. 418-420 Archbold's Pl. & Evid. in Cr. Cases, 13th edition.

The *general* evidence in proof of the offence resolves itself into the probable motives of the prisoner, his opportunity and means of committing the offence, and his conduct; and where the prisoner is charged with setting fire to his own house with intent to defraud the insurers, the value of the property as compared with the amount insured is a question of importance, in order to establish or repel the inference of motive.

In *Wightman* v. *W. M. & F. Fire Ins. Co.*[1] it was held that in a civil case, where wilful firing is pleaded, the proofs need not be so

[1] 29 Com. Pl. Rep. Ontario, pp. 226, 228 (A. D. 1878). 8 Otto, S. Ct. (U. S.) Rep.

[1] 8 Robinson, La. See also to the same effect *Hoffman* v. *Western M. & F. Ins. Co.*, 1 Annual Rep., by Robinson, La.