

forward the post card to the company or in any way notify them of the change.

A fire occurred on 29th September, 1901.

A. E. H. Creswicke, Barrie, for plaintiff.

J. C. Judd, London, and W. R. Meredith jun., London, for defendants.

STREET, J. (after setting out the facts):—Defendants set up various defences, all of which I disposed of at the trial, excepting the following:—

1. That plaintiff did not disclose to the company, in her application or otherwise, the existence of the mortgage for \$1,200 held by Britton, but disclosed only the \$600 mortgage to defendant Elizabeth Lount.

They rely upon the first statutory condition, which avoids the policy if the assured omits to communicate to the company any circumstance which is material to be made known in order to enable the company to judge of the risk . . . ; and they further rely upon the variation of this condition which explicitly declares that any incumbrance by way of mortgage shall be deemed material to be made known to the company. . . .

I think the variations are printed in a manner complying with the Act. The Act requires that they shall be printed in conspicuous type and in ink of a different colour. The object of this requirement is that the fact that they are variations shall be brought prominently to the notice of the assured. The type used is of the same size and shape as that of the statutory conditions; but the printing of the statutory conditions is in black ink; that of the variations is in a bright scarlet. The Act does not require that the type used in the variations shall be of a different size or shape; it only requires that it shall be in some way "conspicuous," besides being in ink of a different colour. If the statutory conditions were printed in black and the variations in dark blue, the same sized type being used, it might be difficult to say that the type of the variations was sufficiently conspicuous to comply with the statute. Looking, however, at the strong contrast between the black of the statutory conditions and the scarlet of the variations, I find that the Act has been complied with in both its requirements, by the conspicuous contrast between them.

I think the particular variation which declares that the existence of an incumbrance upon the property is a circum-