

" jectures, parceque ceux qui veulent frauder travaillent de tout leur pouvoir pour la couvrir." Or, as says Dumoulin: " Elle ne serait pas fraude si elle n'était occulte. Ce sont donc les circonstances qu'il faut principalement considérer, *fraus consistit in circumstantiis.*"

It is useless to insist further on this point.

Another legal proposition put forward by the respondents at the hearing is just as untenable. They argued that, even if Duval's fraud has been established, they nevertheless are entitled to recover against the company, because, as they contend, they cannot be held answerable for his fraud. This is a startling proposition. They as assignees would have a right of action, though their assignor had none. They would have been subrogated to a claim vitiated by fraud, but would yet claim the right to pocket the benefit of that fraud. What a protection to frauds on the insurance companies would such a doctrine carry if it were to prevail.

I will now briefly review the facts of the case.

They, *in limine*, are of a nature to throw discredit on the respondents' claim. Duval, when he took this insurance in his own name, did so, he has to admit, in direct violation of a contract he had with the respondents, by which he had covenanted that all insurances on this lumber would be taken in their name, as security for their advances. And he not only concealed this from the agent, but concealed it also from the respondents till after the fire. Nay, more, during two days after the fire that one of the respondents was down at Nicolet discussing with him the loss and the claim against the insurance companies, he, Duval, never said a word of these additional insurances he had so taken on the 7th of September. It is only later, and then not from him at all, but from the companies, that the respondents heard of these new insurances.

Now this *suppressio veri*, though perhaps not alone directly affecting the result here, as it may be that Duval was not bound to disclose it, yet cannot but, at the very outset of the case, under the circumstances, tell unfavourably against him. And it may be doubtful that if he had revealed the fact that he was so acting in fraud of an express agreement with his creditors, the agent would have taken the risk at all.

Another feature of the case which, at its inception, cannot but strike one's attention, is the enormous addition made by Duval to the insurance previously carried by the respondents on this lumber. The latter, though they had over \$25,000 at stake, and usually kept this lumber pretty fully covered, had insured for \$12,000 only, and Duval was aware of it. He, however, on the 1st of September, not only doubles that amount, but takes additional insurances to the amount of \$17,000, thus, behind the respondents' back, increasing the insurance from \$12,000 to \$29,000. The reason he gave to the agent for this large increase was the accumulation of sawn lumber in his yard, caused by the Whitehall Company not taking delivery as agreed. Now, it was then not over two working weeks since this Whitehall Company had ceased their shipments. And so, it would have been in that short space of time, if we believe him, that the