would understand that the word alone was intended to be used as a trade-mark; that in none of the alleged instances of user now before the Court had the words "Monopole" or "Dry Monopole" been so used; and made an order accordingly, expunging the trade-marks in question, with costs.

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER VIII.

INTERPRETATION OF THE CONTRACT.

[Continued from p. 406.]

The *proferens verba* in the Roman law (or stipulator) was the person to whom the stipulation was made. He put the question. The other answered. Burge Suretyship, p. 42. Yet words of warranty by an assured if written by the assurer, ought to be interpreted against the *writer*. (*Sed* is not the assured the writer of such?)

In *Notman* v. *The Anchor Insurance Co.*, 4 C.B. (N.S.) 476, the Court held the insurance company to be the *proferens*, and that interpretation was to be against it.

If obscurity be in an expression in a policy by the fault of the agent of the insurer, who wrote it, *semble* interpretation is to be against him, as against a seller.

"La rédaction de la police étant le fait des assureurs, les obscurités doivent être interprêtées contre eux." No. 66, Rolland de Villargues, Ass. Terr.

Query? as to this rule. It might be so as regards the obligations assumed by the assurer by the policy. But query as regards obligations such as warranties assumed by the assured, or stated in the policy to be upon him. He ought to check the writing. The agent writing may, as regards such obligations, be held agent of the assured.

Where there is a covenant in a lease not to assign without the lessor's leave in writing first had and obtained, a parol license will be in vain (2 Troplong, Louage) unless admitted.

Roe exd. Gregson v. Harrison, 2 T. R., cited in Espinasse's N. P. Ev.

Ought the above to be? Yet is it ever unfair to hold that the parties most probably meant what they expressed? that they could make that convention to have force between them as Code Civil has force for all?

In Judge Smith's case[1] it was otherwise judged. His builder was to have no claim for extras except he could produce an order, *in writing*. The builder took a parol order and asked Judge Smith on *faits et articles*, did you not order so and so? Judge Smith declined to answer, and the Court of Appeals condemned him, taking the question as answered in the affirmative, and himself liable though no order in writing was produced.

§ 218. *Suretyship.*

The contract of suretyship may be subject to a condition, so that the surety will be discharged if the condition be not performed by the creditor. In French law, interpretation is to be in favor of *cautions*. There are paid cautioners now, commonly.

Exceptiones assecuratorum, si aliquid dubii habent, non admittuntur. No. 94. 1 Disc. Casaregis.

Exceptions in policies are to be interpreted against insurance companies.[2]

Insurance is effected on wheat, corn, *or* pease in ship so and so; what is covered? Only wheat, only pease, only corn? Or all of them, in such quantities as may be? *Semble*, all; the interpretation being "whether wheat, corn, or pease."

Conditions are to be construed against those for whose benefit they are introduced.[3]

Arnould says the insured are to have the benefit of doubt.

Suppose a bond by a debtor for £500 repayable fifteen days after demand in writing upon him; surely verbal demand won't do.

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[1] *Kennedy*, appellant, v. *Smith*, respondent, 6 L.C.R., Upon a building contract though no extra work is to be allowed except upon written orders of the proprietor, verbal orders by him will bind him, if they be proved either by written order, or by oath of the proprietor. The proprietor cannot refuse to answer on oath as to the orders. Art. 1793, modern C. C. orders writing for such extras, so oath cannot be according to Troplong; but Merlin *contra*. See *Merlin*, Police et Cont. d'Assurance.

[2] *Blackett* v. *R. Exc. Ass. Co.*, 2 Cr. and Jer. *Palmer* v. *Warren Ins. Co.*, 1 Story.

[3] Catlin v. Springfield F. Ins. Co., 1 Sumner's Rep. 434.