

A man insures £1,000 on his house and £500 on his furniture in that house. The obligation of the insurers may be indivisible or divisible, according to circumstances. If the house be described as covered with slates, whereas it was covered with shingles, and it is burned, the insurers need not pay for it, nor need they for the furniture burned with it, under first clause.¹

Buildings were on two lots insured. One lot was mortgaged. The application required all mortgages to be stated. The insurance company's agent seems to have written the application. He was held the applicant's agent, for so the application itself ordered. The insurance was vitiated totally, the mortgage not being stated.²

Some policies contain a clause as to description of interest,—that if the interest is misdescribed in the application, the policy shall be void: Also, another clause as to claim sworn to (after the fire), that if false or fraudulent in any particular the policy shall be void. What is the effect in a case where by one policy many different subjects are insured, as house, furniture in it, movables elsewhere, values stated, and a rate, say, of one per cent. on all? Suppose the house not to belong to the insured. Is his total policy null? *Seem*, it ought not to be. Can it be said that the risk is greater of a house not belonging to assured? It ought to be held that the policy did not mean it, and is divisible. Then, suppose the same case, but all to belong to the assured, and, after the fire, the claim contain a fraudulent statement of some of the loss (*e.g.*, some subject alleged lost that was not, or values of some of the movables sworn to at double their values), ought the whole policy to be avoided? It would seem that it ought, if it contain a clause to that effect. Again, suppose the same as the last insurance, and a clause to read—If coal oil or benzine be used in the house insured, this policy to be void. Ought the total policy to be avoided if coal oil be used? In France they lean against divisibility.³

¹ Agnel, p. 64, Arrêt of 1851.

² *Bleakley v. Niagara Dist. Mut. Ins. Co.*, 5 Bennett's Fire Insurance Cases, p. 277.

³ Pouget's Table, p. 13. And see Pouget, p. 94, Toulouse and Bordeaux. *Dechéance*, for inexecution of

A house is described as covered with slate or built of brick, when one or the other is not the case, the policy is null even as to movables in it.

A policy providing that the application should be the basis of the contract, contained a statement of the value of the goods insured. Held, that this statement was a warranty, and that the direction of the judge, that it was only a representation, was error.¹

§ 203. *Misdescription sometimes immaterial.*

In Lower Canada trivial discrepancies in description will not avoid a policy. Mere omissions to mention things, without fraud, will not avoid policy. But what of policy condition? Not mentioning a door of communication between two buildings will not necessarily avoid a policy, unless it was fraud that led to the non-mentioning of the door, and the fire extended through that door and increased the loss.

Where the insurers plead fraudulent concealment in the description of buildings insured, or the non-mentioning of a door between two buildings, they must prove fraud and not merely the misdescription.²

In *Friedlander v. London Assurance Co.*³ goods were described as in the dwelling-house of the insured, but he had but one room as a lodger where the goods were kept; but it was held that they were well described within the condition, which required that the houses, buildings or other places where goods are deposited shall be truly and accurately described: it was considered that such condition related to the construction of the house and not to the interest of the party.

In a case in Illinois⁴ an insurance was effected on buildings so much, on fixtures so much. There was double insurance on the

clauses, applies to movables as well as houses. If a claim sworn to, be falsely exaggerated the whole policy falls; *Paris*, 6th March, 1850. A policy is indivisible by its nature, says Pouget, p. 77; so it is null as to houses insured where the value of movables only is falsely exaggerated.

¹ *Babbitt v. Liverpool, London & Globe Ins. Co.*, 5 Bennett. The contrary was judged in *Owen's case*, 5 Bennett, 554. It is well to refer in the policy to the application, for see 5 Bennett, p. 434.

² *Casey v. Goldmid*, 4 L. C. R.

³ 1 Mood. & Rob. 171.

⁴ 5 Am. Rep. (A. D. 1872).