LEGAL INTELLIGENCE.

IN THE SUPERIOR COURT.

Before Mr. Justice TORRANCE and a Special Jury.

John Redpath and others, Plaintiffs, vs. The Sun Mutual Insurance Company, of New York; and Peter Redpath and others, Defendants, par reprise d'instance.

JUDGE TORRANCE'S CHARGE TO THE JURY.

On Thursday morning His Honor Mr. Justice Torrance delivered the following charge to the jury :—

He said : In reviewing the facts which have come before you, gentlemen of the jury, it is right that I should remind you of what are the respective duties and powers of the Court and jury. They are stated as follows in the two articles of our civil code (sec. 406) It is the duty of the judge to declare whether evidence is legal, and it is the duty of the jury to say whether the evidence admitted is sufficient. The jury decides as to facts, but must be guided by the directions of the judge as regards the law. All questions of fact therefore, gentlemen, are within your province, and matters of law are within the province of the Court; and it is your duty with regard to these matters of law to take the direction of the Court. The whole litigation between the parties may be summed up in the answers to five questions. The first and not a material question I think is, whether there was in existence, with regard to the Columbian Co., a valid policy of insurance at the time of the loss of the "Thomas Connor," and the application in this matter in the Columbian Insurance Co., and if its existence prevented the alleged contract with the defendants from taking effect or being enforced. Now, no stress has been laid upon this point by the defendant, and I take it they do not rely upon it, and at any rate there is no difficulty in the case arising out of this point—the existence of the other policy with the Columbian Insurance Co. The next question is if there was a contract of insurance effected on behalf of the Sun Co., through Mr. Hart, with the plaintiffs, Redpath & Son, was there concealment by the plaintiffs of the fact that the "Thos. Connor" was overdue, and had not been heard of? Was the fact material andfatal to the contract of insurance? Was the concealment a material fact in this matter? The evidence with regard to the materiality of the concealment is before you. * * * * This is a matter peculiarly within your functions to decide with regard to the answer of this question, and I shall say nothing more about it. The next question is—Did Mr. Hart, on behalf of the Sun Mutual Insurance Co., make a contract of insurance with Messrs. Redpath & Son on the cargo of the "Thos Connor?" Now, with regard to the meaning of the word "agent," a great deal of discussion has been had on one side and on the other according to the views of the counsel who are concerned here, and according to the interests of the parties in the matter. That the word "agent" has a very wide meaning, there is no doubt; but we have to see what the parties understood to be the meaning of the word For example you may employ a house agent in the city to collect your rents but that agency does not justify him in mortgaging your property and signing notes for you. That is not the meaning of the word. The question then comes up—what really was the agency in this matter; what was assumed by Mr. Hart. You have the evidence of Mr. Falkiner on the one hand, and the evidence of Mr. Hart on the other. Mr. Falkiner says very decidedly and positively that he was covered—that the plaintiffs were covered by the agreement which was entered into between Mr. Hart and the plaintiffs, that there was an agreement at the time that the insurance should take effect and cover the risk in question. Mr. Hart, on the other hand, denies emphatically, that he was anything more than a medium of communication with the defendants, the Sun Insurance Company, and says all he did was to receive the application and send it to New York. You have heard the evidence on the one side and on the other; with regard to the statements of these witnesses it is a matter which is peculiarly within your functions; you have seen both of these witnesses give their evidence before you; you have heard the explanations given on the one side and on the other; and you are judges of the circumstances of the case; you can make up your minds for yourselves as to the truth of the story which is told on the one side or on the other. * * * * * * * s * * I would remind you of what took place in connection with the transmission of the application for insurance to New York. The application being enclosed in a letter with the notice accompanying it to each of the defendants would show plainly that Mr. Hart intended simply to be a medium of communication with the Insurance Company, and transmit the application of the plaintiffs to New York. * * * * The next question which comes up is whether Mr. Hart on the 23rd of January—the day of the insurance—was the agent of the company, carrying on business for them at Montreal, with power to effect insurances on their behalf. Was he, on the 23rd day of January, the agent of the company, empowered on their behalf to make this policy of insurance? The plaintiffs have considered this a very important point in the case, and they have exhibited a great deal of ingenuity in the exhibition of circumstances and business transactions between Mr. Hart and persons insured in the company, and have cited among other cases brought before you three cases—one the Gas Company against the Sun Mutual Insurance Company, which was litigated in the year 1863; another, the case of Janes against the same company, litigated in the year 1865; and the case of the Commercial Bank, litigated in the year 1868. I have carefully looked at the circumstances connected with these three cases, and I certainly do not see that they touch the question that is before the Court and jury at the present time. With regard to the Gas Company's case it was a question with regard to the classification of a vessel—if I remember rightly—quite a distinct matter. In the Janes case the question, the trouble between the parties arose in this way : A judgment for a considerable amount had been obtained against the Company without serving them with a process, without giving them a writ in the usual way by a service upon the defendants at their place of business or at the office of the Company's agent. They were advertised in the newspapers. Naturally they made an attempt to get rid of this judgment, and they did so; at least they attempted to do so by presenting a petition in court representing that they had an office and place of business in Montreal, and that there was an agent there who could receive service for them, and these were sworn to by Mr. Hart. Now, I think unnecessary trouble has been made in this matter with regard to the nature of Mr. Hart's affidavit. Here I must consider with regard to the meaning of that affidavit what the objects of the parties was; and the object simply was to shew to the Court as distinctly as could be done, as plainly as words could make it, that the company had an office here and a person here who was authorized on their behalf to receive processes for them. * * * * * * * * * * * I shall now, in connection with this fourth heading as to the company authorizing Mr. Hart to make contracts of insurance on their behalf in Montreal, refer to two of the letters of the company. There is, first, the letter written from New York on the 17th January, 1864; and in the "P. S." it is intimated that they would be happy to open a business with Mr. Hart. The writer is Mr. Nelson; and, he adds, "any other risks offered to you for our consideration." What does that mean? It means it must be submitted to them and considered by them and they could assume the risk or not as they considered would be for the interests of the shareholders whom they represented. "Any other risk offered to you for our consideration similar to those covered by the policies of Mr. Thomas and Mr. Urquhart, the latter of which gentlemen insure wholly with us, we shall be happy to entertain on the same terms." Then there is the letter of the 8th of January, 1855, which comes up, and the first part of which notices an abandonment which had been imprudently accepted by Mr. Hart. "There is no objection," they say, "to your being a medium of transmission, but nothing more; that is a point upon which we must be peremptory in all cases." Then there is the evidence of Mr. Anthony, which is very clear on the subject of Mr. Hart's powers. That they were of a very limited character; that he was authorized to accept service since 1861; that he was authorized specially in cases that came before the company to make extensions of policy and to receive notices. The counsel for the defence made a point of the evidence of Mr. Thomas, Mr. Ross and Mr. A T Patterson who received from Mr. Hart certificates to the effect that they were insured; but Mr. Patterson explains this by saying that this was done he supposes upon an open policy which Mr. Hart held himself. "I understood" he says, "that Mr. Hart himself had an open policy in the company upon which these certificates were insured, and understood from Mr. Hart that he had an open policy with the company himself upon which he insured us." The Court here would make a remark which it should have made some time ago. You should carefully separate the acts of Mr. Hart from the acts of the company; you can decide for yourselves what Mr. Hart actually did in this matter—in his interview with the Messrs Redpath and son; and it is another question how far he was authorized by the company. And one other point to which I would call your attention is the question whether the defendants here may be bound in the case, whether he defendants can be bound to any contract of insurance effected elsewhere than at the place and otherwise than in the manner authorized by their charter and by-laws? In 1841 an Act is passed and it refers to another act which incorporated a company previously to insure—the United Insurance Company,—and that very company had power, by instrument or otherwise, to make marine insurances upon vessels, their goods, and so on, and all corporate powers of the said company shall be exercised by a board of trustees, and there are no less than thirty two of these trustees, who shall have a President a vice-president and so on. Then comes a very important clause in the Act, which says that the operations of this corporation shall be carried on in such a place in the city of regard to the rules which should guide courts and all persons with regard to attachments of parties, these rules are familiar rules, they are all "as old as the hills" and a rule of this kind stated with regard to the meaning of a contract, "however general the terms may be in which the contract is expressed, they extend only to the things concerning which it appears the principals intended to contract." This rule applies to contracts, but the same rule applies to everything in which the object is said to be changed. You must look at what object the parties had in view. Bacon in one of his general maxims says, general words shall be aptly restrained according to the principle or person to which they relate, and in a book which we continually use with regard to the intrepretation of contracts (Brown's Maxims) there is a commentary on the meaning of this very maxim, and looking at the statement of the company, in that case and the affidavit which is made in support of it, it is impossible to