The Legal News.

VOL. XIII. JULY 19, 1890. No. 29.

SUPREME COURT OF CANADA.

OTTAWA, June 12, 1890.

Nova Scotia.]

SPINNEY v. OCEAN MUTUAL INS. CO.

Marine insurance—Delay in prosecuting voyage —Deviation—Increase of risk.

The cargo of a coasting vessel was insured for a voyage from Pubnico, N.S., to Lunenburg and, or Halifax, the policy containing the usual clause allowing the vessel, in case of extremity, to put into and stay at any port or ports without prejudice to the insurance. The vessel sailed on December 15th, 1886, and on December 21st arrived off Shelburne harbour, and put in there for shelter. The next day she started again, but returned to the harbour, remaining until December 27th, when she went out and again returned. She did not attempt to sail again until January 3rd at midnight, and was driven back by a storm, and on January 4th she got out of the harbour, and there being a heavy sea, attempted to get back, but got on shore and was wrecked. In an action to recover the insurance, evidence was given by the shipmasters, and the log of a Government vessel cruising in the vicinity, that the vessel could have proceeded on her voyage several times during the stay in Shelburne, and it was shown that other vessels had put into Shelburne during the same time and had gone to sea again. The insurance company pleaded, among other pleas, barratry and deviation. The trial judge held that the conduct of the master of the insured vessel, there being no satisfactory explanation or excuse offered for his delay, amounted to barratry, and gave judgment for the defendants on that plea. The full Court, on appeal, held that barratry was not established, as it depended on the evidence of a witness to whom the trial judge attached no credit, but they sustained the verdict on the ground of deviation. On appeal to the Supreme Court of Canada:

Held, affirming the judgment of the Court below (21 N. S. Rep. 244), that there is an implied condition in a contract of marine insurance, not only that the voyage shall be accomplished in the ordinary track or course of navigation, but that it shall be commenced and completed with all reasonable and ordinary diligence; any unreasonable or unexcused delay, either in commencing or prosecuting the voyage, alters the risk and absolves the underwriter from liability for subsequent loss.

Held, also, that in case of deviation by delay, as in that of departure from the usual course of navigation, it is not necessary to show that the peril has been enhanced in order to avoid the policy.

Appeal dismissed with costs.

Henry, Q.C., and *Bingay*, for the appellants.
Borden, for the respondents.

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FITZRANDOLPH v. MUTUAL RELIEF SOCIETY OF NOVA SCOTIA.

Life insurance—Application for policy—Reference to application in policy—Construction —Warranty—Mis-statement.

An application for membership in a mutual insurance society contained a declaration by the applicant warranting the truth of the answers to the questions, and of the statements in such application, and an agreement that if any of the same were not true, full and complete, the bond of membership issued thereon should be void.

Among the questions in the application was one requiring the applicant to answer "yes" or "no" as to whether he had ever had any of certain diseases named. The list of such diseases was printed in perpendicular columns, and opposite the disease, at the head of each column, the applicant wrote "no," and underneath it, opposite the other diseases named, placed marks like inverted commas.

On the trial of an action to recover the amount insured by a bond issued in pursuance of this application, it was found as a