

creditors, of the building and machinery, subject to the chattel mortgage. On 1st April, 1892, plaintiff and her husband mortgaged the property to one Harriet White for \$2,500; that mortgage was still unpaid to the extent of \$600, and had been assigned to one Britton. On 24th May, 1898, plaintiff and her husband made a mortgage of the real estate to defendant Elizabeth Lount as collateral security to the chattel mortgage for \$600, which was still unpaid.

Plaintiff on 1st June, 1901, applied to W. H. Johnston, defendants' local agent at Whitby, for an insurance of \$600 upon the machinery, belting, gearing, and shafting contained in the mill. In the written application there were the following questions and answers:—

“13. Is applicant owner, mortgagee, or lessee? A. Owner.

“(a) If mortgagee, to what amount? A. \$600.

“14. If incumbered, state how and to what amount. A. Mortgaged to Mrs. E. Lount.”

Then followed a warranty that the answers were correct, so far as known to the applicant.

The application was forwarded by the local agent to the head office of the company. It was approved, and a policy, dated 18th June, 1901, issued to plaintiff, the loss being made payable to Mrs. E. Lount as her interest might appear.

Indorsed upon the policy were the statutory conditions, with certain variations printed below in red ink.

One of the variations was as follows: “Any incumbrance by way of mortgage . . . shall be deemed ‘material to be made known to the company,’ within the provisions of the first statutory condition.”

By another variation it was provided that “the words ‘or its local agent’ in the 3rd statutory condition are struck out, and whenever the words ‘agent’ or ‘authorized agent’ occur elsewhere in the said statutory conditions, such agent or authorized agent shall be held to mean the company’s secretary only.”

At the end of June, 1901, the dam from which the power was obtained gave way, and plaintiff put in a boiler and engine, and began to run the mill by steam power on 1st August, having previously notified the local agent, by post card, of her intention in that regard. The agent did not