

ations of Duval that the lumber insured was worth \$30,000, whereas at no time during the existence of the policy was it worth half that sum.

2. That Duval in the application materially exaggerated the quantity and value of the lumber mentioned therein, and thereby obtained from the appellants and other companies, represented by the same agent, simultaneous insurances to the amount of \$17,000 over and above \$12,000 prior insurance—thus making \$29,000 of insurance in all; whereas the lumber thus insured was worth not more than \$11,500, the whole contrary to one of the conditions of the policy, which was to be null in such an event.

3. That the insurance was forfeited in accordance with a clause in the policy, because Duval falsely and fraudulently exaggerated the amount of the loss in his claim, by putting it at \$36,515.68, whereas it did not exceed \$11,500.

After a protracted and voluminous *enquête* the Superior Court gave judgment for the amount claimed. This judgment was confirmed by the majority of the Court of Queen's Bench; Hall, J., in a dissenting opinion, holding that though the charge of fraud had not been made out, yet the lumber destroyed was proved to have been worth not more than \$15,482.

The company now appeals from that judgment.

The controversy here, as in the courts below, bears exclusively on questions of fact.

We are of opinion that the appellants have fully made out their case.

It is in order, before reviewing succinctly the salient parts of the evidence adduced on both sides, to consider a proposition of law strenuously relied upon by the respondents. Conceding, on this argument at least, that if the appellants' contentions as to over-valuation and over-insurance by Duval prevail, a clear case of fraud has been made out against him, they pressed upon us the incontrovertible maxim that fraud is not to be presumed, *odiosa et inhonesta non sunt in lege præsumenda*, and argued therefrom that as the appellants' proof of over-valuation rests entirely on presumptions and inferences of facts, their defence must fail. The respondents would thus seem to contend, indirectly at least, that the courts cannot find fraud, unless it be directly proved. But, for obvious reasons, this proposition is untenable.

There would be very little protection against fraud if such was the law. Those who intend to defraud do all in their power to conceal their intent. Their acts could not defraud if they were not clothed with the garb of honesty. A maxim of the criminal law based on the same principle is that the guilt of the accused is never to be presumed. But that does not mean that a criminal shall not be convicted if he has not taken a witness for his crime.

It is, likewise, as a general rule, only by presumptions and circumstantial or inferential evidence that dishonesty can be proved.

As Coquille said a long time ago:

"Selon les règles de droit, la fraude ne peut être prouvée que par con-