

Office, and was refused. Afterwards, on the 5th Oct., 1870, he applied to another agent in another place, and procured insurance by an interim receipt without telling the second that the first had refused. The insurance was subject to approval by the Head Office. The receipt read that the plaintiff was to be insured till notified to the contrary, and if the policy was not granted from the Head Office in thirty days there was to be no insurance. Fire and total loss occurred, 11th Oct., 1870. Fraud was pleaded against the plaintiff in and about his second application. On the 10th October, at Montreal, the Head Office repudiated the second agent's act, and told him to notify plaintiff and return the premium. This letter was mailed and post-marked at Montreal 10th October. The agent heard of the fire before the letter reached him. It was held that there had been concealment of a material fact, and that the insurance was void.

Suppose A's dwelling house insured. The company insuring him—informed that he has added buildings to his out buildings in his yard—appurtenance of the dwelling house—and considering risk increased, terminate the insurance. A does not want to remain uninsured, so he goes to another company, and they take the risk. A tells them nothing of what the former company did. Is A's insurance bad, as for non-disclosure? *semble*, no, unless there be a condition to the contrary.

The Courts in the United States have in some cases recognized a distinction between fire and marine insurance in regard to the strictness of the rule on the subject of concealment. The distinction, however, is very slight; it may just be said, as in 3 Kents' Comm., that "the strictness and nicety required in the contract of marine insurance do not so strongly apply to insurances against fire; for this risk is generally assumed upon actual examination of the subject by skilful agents on the part of the insurance offices."

Taylor, Evid., § 1277, says, where an action is brought on a policy and the question is whether facts withheld were material, can persons conversant with the business of insurance be asked their opinions on the subject? As to this there is no satisfactory

answer. It was held in a case in the Queen's Bench¹ that the evidence cannot be received; in another case the Court of Common Pleas decided that it can.²

Jeff. Insurance Co. v. Cotheal,³ is like the case in the Queen's Bench. As to the case of *Chapman v. Walton*, is it not to be held unimportant, approving as it does, *Rickards v. Murdoch*, which is overruled? Kent approves of *Rickards v. Murdoch*, Vol. 3 (note on page 284) and the decision in *Chapman v. Walton*, *McLanahan v. Universal Insurance Company*,⁴ seems to agree with Kent.

Phillips mentions the case of *Chapman*, but passes no judgment on it. He mentions the contrary cases as so many decisions.

Opinions of underwriters, whether upon certain facts being communicated to them they would or would not have insured, ought not to be received. *Durnell v. Bederly*, 1 Holt. N. P. Cas, approved *Jeff. Ins. Co. v. Cotheal*, 7 Wend. But see 2 Kent, note on p. 284. In *Carter v. Boehm* (Smith L. C.) it was held that the jury ought not to pay the least regard to evidence of the insurance broker that certain letters ought to have been shown, and that if they had been, the policy would not in his opinion have been granted. [*Semble*. It is not irregular to ask the insurance agent whether more premium would have been required had certain facts been stated].

Greenleaf, Vol. 1, § 441, says, opinions of agents of insurance companies that a premium would have been higher had certain facts been communicated, are inadmissible. The case of *Campbell v. Rickards*,⁵ is cited.

The concealment must be of a fact that the insurer is presumed to trust the insured for information about. The facts, though material, if the knowledge of them be equally within the reach of both parties, need not be disclosed; for such things the insurer is not presumed to trust to the insured.⁶

In the case of *Bates v. Hewitt*, 1865,⁷ concealment by the insured of a material fact

¹ *Campbell v. Rickards*, 5 B. & Ad. ; 2 Nev. & M.

² *Chapman v. Walton*, 10 Bing.

³ 7 Wend. R.

⁴ 1 Peters (per Story).

⁵ 5 B. & A.

⁶ *Alsop v. The Commercial Ins. Co.*, 1 Sumner's R.

⁷ 4 Foster & F. 1023, A.D. 1865.