ment was given for plaintiff. This is totally bad law, yet it was judged as *per* Judge Smith in Paris.[1]

The Court of Queen's Bench, Montreal, however, in December, 1869, in the case of *Cornell* v. *The London & Liverpool Assurance Co.*, held that a clause in a policy requiring suit to be brought within a year is not penal, but *de rigueur*, and that an action brought after the year will be dismissed.

In a case of *Madison Ins. Co.* v. *Fellowes* (Disney, 217), it was held that where the action is brought within the year, if it have to be abandoned, a new one may be promptly instituted. This seems bad law, if it be meant that suit may be brought outside of the year, if a renewal of suit abandoned. Art. 2226 C. C. of L. C. is opposed to it. An hypothecary action, if it fail after the ten years or thirty years, cannot be renewed.

Can a civil suit be put off till criminal trial be had, or prosecution (by defendants insurers) of the plaintiff insured for arson? *Guildstone* v. *R. Ins. Co.*, 1 F. & F.[2]

In *Reg.* v. *Kitson*, in the Court of Criminal Appeal, on a trial for arson, notice was given at midday the day before the trial to the prisoner to produce the policy. He did not produce it. Parol secondary evidence was given of it. Kitson was convicted and the conviction was afterwards quashed.

In civil cases it is not always necessary that the policy be produced, but most often. Martin, B., says he cannot understand why always it ought not to be produced.

§ 273. *Proof upon the trial.*

The receipt of the premium is usually recited in the body of the policy, upon proof of the policy, therefore, proof of that payment is unnecessary, if the loss or damage take place during the period of time which the premium covers.

The insured must also prove his interest, for as we have seen by stat. 14 George III, c. 48, s. 31, he can only recover to the amount or value of his interest. It appears that a slight interest is sufficient for the purpose of enabling the insured to recover, as that of an agent for the sale of goods, a pawnee or depository for hire, and perhaps a bailee generally. Possession alone *vaut titre*.

Every material averment in the declaration must be proved; one of the most material is that of the truth of such warranties as constitute conditions precedent; as the delivering in an account of the loss and damage to the office, with evidence in support of it, according to the rules laid down by the respective offices; the construction of the building, if the question be raised; and the nature of the property insured.

The accident of fire, which was the cause of the loss or damage, must also be set forth in the declaration, and proved, if not admitted, as it generally is; the loss or damage must be shown; and the loss or damage must appear to have happened during the continuance of the risk.

Is the fire not presumed accidental? Is it not enough to prove the fire? Rev. de Leg., vol. i, p. 113. As between landlord and tenant, fire is presumption of negligence; yet the insurer is liable.

The rule of evidence in regard to usages is the same in policies of insurance as in other contracts; they are admitted in evidence to explain and interpret the policy, but not to control or contradict its obvious meaning.[1]

P. 159 Indian Evidence Act.—A, accused of setting fire to his house (well insured) to cheat. It may be proved that he was burnt out in three other places, insured, though in different companies.

On an indictment for arson the books of the company cannot prove the insurance, unless notice has been given to the accused to produce his policy. *Rex* v. *Doran*, 1 Esp.

The Court will not compel assurers to produce the reports made to them by their surveyors after the fire. *Wolley* v. *Pole*, 32 L. J., p. 263.

Parol evidence is not admissible to alter or vary the policy; what the parties said before the policy is not to be proved, unless mistake, fraud or fraudulent misrepresentation be

[1] Dallos of 1850, 2nd part, p. 40.

[2] As to influence of criminal proceedings or verdict on civil suit, see 1505 Taylor on Evidence; Dickson, vol. 2, p. 652.

[1] *Colt* v. *Commercial Ins. Co.*, 7 Johns. 385; *Fowler* v. *Ætna Ins. Co.*, 7 Wend. 270: *Mut. Safety Ins. Co.* v. *Hone*, 2 Comstock 235: *DeForest* v. *Fulton Ins. Co.*, 1 Hall 84: *Homer* v. *Dorr*, 10 Mass. 26; 1 Phillips Ins. 86; 2 Greenleaf, Evid.