goods could be delivered for carriage, and shipping receipts given. He was a member of the firm of B. & Co., to the knowledge of defendants, but not of the plaintiffs. C. gave a printed receipt or shipping note in the common form used by the defendants, which was filled in by him and signed by his direction by one of defendants' clerks, as was the universal custom at Chatham. The receipts acknowledged that defendants had received from B. & Co. 500 barrels of flour addressed to the plaintiffs to be sent by the defendants' railway. A draft was drawn by B. & Co. to their order on the plaintiffs, and was discounted by the Merchants' Bank on the faith of the shipping receipt which was attached, and was then sent by the bank to Montreal, and accepted by the plaintiffs also on the faith of the shipping note. No flour was ever received by the defendants, but the whole transaction was a fraud on C.'s part. In an action by the plaintiffs against the defendants to recover the amount of the draft,

Held (Hagarty, C. J., dissenting), that the defendants were not liable, for that C. in falsely and fraudulently giving the shipping receipt as for goods received by the company when none were received, was not transacting the business of the Company or acting within the scope of his authority as their freight agent.

Per Hagarty, C. J., that the Company who can only act by agents, notify the commercial world that at a named point, their agent C. is authorized to receive produce and give receipts therefor, and in the course of business money is raised from innocent discounters and consignees on the faith of the truthfulness of such receipts. That the defendants' contract was to employ competent and faithful agents, and to be responsible for their defaults and frauds.

Held, that the Act, 33 Vict. chap. 19, sec. 3, did not apply, as the receipt did not represent that the flour had been shipped on board the train and thereby as having been received to be forwarded.

Ferguson, Q. C., for the plaintiffs.

M. C. Cameron, Q. C., for the defendants.

December 8, 1877.

Johnston v. The Canada Farmers' Mutual Insurance Company.

Insurance Policy—Mis-statement in Description—Alteration—Secondary Evidence.

Action on a policy of insurance on certain buildings, averring a total loss by fire, and performance of conditions precedent. The defence set up by the second plea was that there was a breach of one of the conditions endorsed in the policy in its misstatement of a fact material to be known to the defendants, namely, that by the application, which was stated to be embodied in the policy, plaintiff stated that the buildings were occupied as a dry goods and grocery store, a butcher's shop and a waggon maker's shop. The third plea set up another condition, that, except with the defendant's consent in writing added to or endorsed on the policy, if the premises were altered, appropriated, applied or used for the purpose of carrying on or exercising therein any trade, business, or vocation, which, according to the by-laws and conditions, or class of hazards would increase the risk, then during such alteration, &c., the policy was to cease and be of no force or effect, averring the carrying on of other trades, &c., without such consent, whereby the policy ceased, &c.

Held, that the second plea was not proved as it appeared in the application that the premises were described as "dry goods, groceries," and not as "a dry goods and grocery store." Also that this and the third plea were bad in not stating that the matters therein complained of increased the risk, which it was proved that they did not do, in that defendants had charged the plaintiff a much higher rate than the highest of the rates mentioned in the table of rates for the objected trades; and on this ground also the alteration in the occupation was held not to be material.

Held, that the production of a form of policy similar to that furnished to the plaintiff and filled in from the application is sufficient secondary evidence of the policy.

Armour, Q.C., for the plaintiff.

Hector Cameron, Q.C., for the defendants.

Davis v. Vandicar.

Trespass—Costs—Certificates.

Held, that the Act, 31 Vict. chap. 24, sec. 1, O., deprives a plaintiff of costs in all cases of trespass and trespass on the case, no matter what defence may be pleaded, and whether title be or be not alleged to be out of the plaintiff or in the defendant, when the verdict is under $8.00, and there is no certificate from the presiding judge.

In an action of trespass quare clausum fregit, where there was a plea that the land was not