plaintiffs shipping the cheese, not in their own name, but in the name of defendant as the owner, as is shown by the bill of lading. This is, I consider, the most conclusive evidence possible, taken in connection with defendant's undertaking to pay for the cheese on the 1st and again on the 6th of November, that plaintiffs intended to give and did give the credit to defendant. It would appear that plaintiffs afterwards tried to obtain payment of their claim from Boden & Co. who by law were equally liable with defendant, but it is quite immaterial so far as defendant's liability is concerned what plaintiffs may have done with Boden & Co., so long as they did not discharge him; and there is no proof of any such discharge. It was incumbent on defendant to prove that he acted, in the purchase of the cheese, as the agent of Boden & Co., to the knowledge of plaintiffs; and he has completely failed to do so.

The case is, without doubt, one of hardship to defendant; but agents must understand the liability which they incur in contracting in their own name, without distinctly making known the name of the person for whom they act.

Judgment must go maintaining plaintiffs action.

Jno. P. Noyes, Q. C., for plaintiffs.

H. T. Duffy, for defendant.

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER X.

NOTICE OF LOSS.

[Continued from p. 80.]

§ 247. *Fraudulent statement of loss.*

Under the second and third clauses at the beginning of this chapter, it is ordered that if, after a fire, in the particular account or proofs, fraud or false swearing appear, the insured is to forfeit all claim, so any wilful or fraudulent false statement of the loss with a view to defraud the insurers will subject the insured to lose his total claim.

In *Wood* v. *Masterman et al.*, in which a claim was resisted, and the condition vacating the policy in case of fraud was insisted upon by the insurers, Lord Tenterden told the jury, that if they thought the plaintiff had overrated the amount or value of his loss from mere mistake or misapprehension, they would find only for such loss or damage as he had actually incurred; but if, on the other hand, they thought he had done so with a fraudulent intent, then they should find a verdict for the defendants.

In *Levi* v. *Baillie et al.*,[1] the policy required the insured to deliver in as full an account as the case would admit of, accompanied by the usual evidence, and it contained the condition that "if there should be any fraud in the claim made, or false swearing or affirming in support thereof, the claimant shall forfeit all benefit under such policy." The plaintiff carried on business in the New-cut, in the St. George's Fields, and the insurance to the amount of £1,000 was effected on his stock in trade, the 22nd of November, 1827. The premises were burnt down on the night of the 14th of February, 1830. The plaintiff made affidavit that he had sustained a loss of stock to the amount of £1,085, viz. £85 for goods which were injured in removal, and £1,000 for goods abstracted by the crowd on the occasion, and never recovered. The goods so lost were alleged to consist of four-post bedsteads, mahogany tables of various sizes, couches, chairs, stools, chimney glasses, pier glasses, carpets, and the like. The defendants contended that this claim was *fraudulent*, and called witnesses to show that it was impossible for goods so numerous and bulky to have been carried off undiscovered. These witnesses stated, that policemen were on the spot as soon as the fire broke out; that a cordon was established round the premises almost immediately; that the fire was over in about two hours, and that no article of size could be carried away. The plaintiff's witnesses denied that the blockade had been so effectual; and the chief justice left it to the jury to say whether the plaintiff had made a fraudulent demand or not. The jury having found a verdict for the plaintiff with £500 damages, a rule nisi for a new trial was obtained, on the ground that the finding of £500 damages instead of the whole amount sworn to by the plaintiff, amounted, in effect,

[1] 7 Bing.