

"in otherwise specially provided for, or hereafter agreed by this Company in writing, or added to, or endorsed on this Policy, then, and so long as the same be so appropriated or used, these presents shall cease and be of no effect."

Under these two clauses I will treat of misdescriptions and misrepresentations; of concealment; of the changing the appropriation or use of buildings, to the increase of the risk of fire; and of the storing, using or vending of goods in buildings hazardingly.

§ 167. *Whole policy avoided by false swearing as to one item.*

Where three things are insured for several amounts by one policy with the above condition, *semble*, if there be false swearing as to one item, the whole policy is avoided. In the absence of the above condition, express, what would be the effect of an over-valuation in the statement? It would be presumed not fraudulent, and could not hurt, *semble*, under the system of the insured never recovering beyond the real loss proved. But under the above condition a real loss, proved, would not save. The clause in *paré* under the condition, would be held as in England and the United States. But see *Dill's case ante*.

In *Gore Dist. M. F. Ins. Co. v. Lamo*,¹ insurance on building and stock was held entire and indivisible. In this case building and stock were insured separately though by one policy. The consideration was one sum, and the stipulation was that the policy was to be avoided, &c.²

In *Moore v. Virginia F. & M. Ins. Co.*, 26 Am. Rep., several subjects were insured, \$2,000 on buildings, \$1,000 on machinery, \$2,000 on stock of grain. A fire happened. The statement of loss was false as to stock of grain; the entire policy was held forfeited. So the policy read all claim under the policy was to be forfeited in case of any fraud or false swearing. So *Platte v. Minnesota Farmers' Mut. F. Ins. Association*, 23 Am. Rep.; consideration single; a gross sum insured; contract held entire; but in N. Y. 29 Am. Rep. *Merrill v. Agric. Ins. Co.*, the loss was held severable.

Ellis says that when a person demands twice as much in respect of his loss as he can give probable evidence of, or a jury will give him, it strongly indicates fraud.¹ *Dill's case* is not against this. He did not ask twice as much. Had he done so he probably would have met a different judgment.

In the absence of condition, exaggeration of claim, apparently, is not fatal. The existence of a condition is necessary to operate fatality. In the absence of it, why should the insured not get his real loss?

Demand wilfully exaggerated may by conditions be made to avoid the policy. 4 F. & F. Also in France, Nancy, 23 June, 1849.

In *Britton v. Royal Ins. Co.*,² there was insurance on stock and furniture for £550. Arson and fraud were pleaded. The judge (Willes, J.), advised the jury to confine themselves to the question of fraud. The jury found the claim made after the fire wilfully false and fraudulent. The plaintiff alleged loss of over £700. The plaintiff had assumed the name of Britton, having formerly used the name of Bitton; he had previously twice been burnt out, and on both occasions was insured. The plaintiff was not allowed to recover at all.

§ 168. *Concealment.*

Insurance is a contract upon speculation; the special facts upon which the risk is to be computed lie commonly in the knowledge of the insured only. The insurer trusts to his statement, and proceeds upon confidence that he does not keep back any circumstances within his knowledge to mislead into a belief that the circumstances do not exist, and to induce the insurer to estimate the risk as if they did not exist. The keeping back such circumstances is a fraud. Although the suppression should happen by mistake, without fraud, yet still the insurer is deceived, and the policy is void; because the risk run is really different from the risk understood and intended to be run at the time of the agreement.

The law in France agrees with that of England that a concealment or suppression of a material fact, though unintentional, suffices

¹ 2 Supreme Court, Rep. (Canada).

² *Hopkins v. Prescott*, 4 C. B. Rep. is cited.

¹ See Kent's observation, *ante*.

² 4 Foster & Finlayson, 905.