by policy making them so, and the by-laws being annexed to the policy by printed or written copy.[1]

CHAPTER VI.

The Conditions of the Policy.

§ 164. *Conditions—express or tacit.*

The contract of fire insurance is a conditional one. Conditions are express, or tacit. Express conditions are by clauses in or upon the policy, or making part of it by agreement, express or implied. These have for object to suspend the obligation of the insurer, to vacate it in certain cases, as to modify it; to suspend it, as when the insurer promises to pay *if* such a thing be lost or damaged; to vacate it, as when the insured agrees that if he alienate the subject insured the policy shall end and the insurance cease; to modify it, as when both agree that if the insured effect other or double insurance the first insurer shall benefit, or be liable to pay only a portion of the amount insured by him.

Such conditions are positive or negative. Under the former such an event or thing must occur or be done positively; under the second an event or thing must not happen, or be done.

Tacit conditions are those that are implied and exist, although not expressed by writing in the contract. These spring from the law and the nature of the contract, or from the intention presumed of the parties; for instance, though a policy be silent on the subject, the insured is bound to make fair disclosure of all circumstances affecting the risk; he must make no misrepresentation; the insured is not, after the policy is granted, to alter a house insured making it to differ, materially, from the description of it in the policy; the insured is to be indemnified only; if, though a fire happen, he lose nothing, he shall recover nothing; if the insured wilfully set fire to the subject insured he shall recover nothing.

The conditions of the policy involve the mutual stipulations of both parties, and are part of one and the same express contract.[2]

§ 165. *In what place the conditions should be written or printed.*

Conditions to be binding ought to be written upon the policy or on a paper annexed to it, and referred to in it as part of it. They may be collected from *proposals* for insurance where these are referred to in the policy as part of it, or by the by-laws of an insurance company if declared to be part of the policy; but whether mere annexing to the policy a paper of conditions and delivery of it will operate so is questionable.

Angell, § 14, says that a written memorandum wafered to a policy will not be held part of it, unless there be a stipulation in the policy that it shall be.

Conditions, though not expressly referred to in the policy, but being on the same sheet of paper, are to be taken *prima facie* as part of the policy.[1] In the case of *Roberts* v. *Chenango M. A. Co.*, it was held that conditions contained in a paper annexed to a policy and delivered with it ought *prima facie* to be considered part of the policy; but in *Bize* v. *Fletcher*,[2] Lord Mansfield would not allow that a mere slip of paper wafered to a policy and describing the subject insured, or containing other statements, could involve warranties, as conditions might, but that it could stand at most a representation.

Before the passing of Revised Statutes, Ontario, c. 162, insurance companies in that province could endorse any conditions upon their policies, whether hard or unreasonable, or the contrary. But now in Ontario, by statute (cap. 162) conditions have to be printed on policies in a particular way. The question often is: has the statute been complied with so as to bind the assured to observance of condition?[3]

Statutory conditions are imposed; and variations and additions the Court, or judge, at the trial, may hold to be reasonable, *or* unreasonable, (p. 72, Ib.) and so says the statute. And these variations and additions must be in conspicuous type and of different color.[4]

[1] *Taylor* v. *Ætna Ins. Co.*, 13 Gray's R.
[2] 1 Phillips (Ed. of 1854) No. 63.

[1] 3 Hill's R. 561. Flanders seems to approve: See p. 236.
[2] 1 Doug.
[3] *Ballagh* v. *Royal Mut. F. Ins. Co.*, Q. B. Rep., Vol. 44 of 1879.
[4] The Insurance Company cannot resort to special, their own conditions avoiding the policy for non-disclosure of a previous insurance, these not printed as "variations," in the mode prescribed by R. S. Ont. ch. 162; nor can the Company resort to the statutory conditions, they not being printed on the policy; *Parsons* v. *Citizens Ins. Co.*, 4 Ont. App. Rep. The first verdict was for plaintiff, the insured. The Q. B., 2dly, confirmed that, maintaining plaintiff in his verdict. On appeal, the appeal was dismissed in the Ontario Court of Appeals, 1879, and this was affirmed by the Supreme Court of Canada.