person who sought and obtained the insurance was himself the proprietor in possession of the Malakoff at the time of the insurance, and must himself have known what was to be done with the boat during the season of navigation; that being in dock for repairs, she was there to fit her for the only purpose for which she was originally built, that of navigating; that having possession of the Malakoff he was not only open to an offer, but actually bargained for the hiring of her for navigation purposes without reference to the Defendants. Moreover, why was the intention to navigate so particularly stated, specifying the line of voyage and business travel that she was to follow; the manner of the business to be done principally as a freight boat; the stipulation that after her navigating done, she should be laid up in some place to be approved by the Defendants; finally, that Defendants should not be liable for explosions by steam, her usual mode of propulsion, or by gunpowder, which might possibly form part of her freight. Permission to navigate does not seem to form any ingredient of these stipulations; on the contrary, taking the contract in the fair and obvious import of words and equivalent to an express statement of all the inferences naturally and necessarily arising from it, a positive promissory representation becomes plainly manifest, which it is proved had not been complied with, and the contract has, therefore, been rendered inoperative. It must be remembered that the statement is not a mere verbal representation extrinsic and collateral to the contract, mere verbal explanations previous to the contract, but, on the contrary, that it forms part of the contract itself, and that as a Court of Law will only construe not reform a policy, the construction adverted to above in the discussion of the question of representation gives to the written statement the significant character of a warranty. Now Philips on Insurance, No. 544, says, "it is law that promissory representations "of material facts made and referred to in the policy usually have the effect of express war- "ranties and come under that head." Arnould, p. 490, says, "that the same statement indeed, "whilst when made verbally or in writing *distinct from the policy* by the broker to the insurer "is construed as a positive representation and would if written in the face of the policy in almost "all cases amount to warranty, the insertion in the policy causing it to be so construed," and Ellis "p. 39, says, "it is the practice of most offices to insert the statement or representations made "at the time of effecting the insurance on the body of the policy. By this means they become a "warranty and prevent questions from arising on the subject of the materiality or immateriality "of the statements." In this case the statement being written on the policy, it is for the Court to decide upon its legal bearing as a warranty and condition, and upon the general effect of its non-fulfilment upon the rights and remedies of the party in fault. The provinces of court and jury are plainly distinct, here the Court decides upon the sense and constructions of the common words and phrases, of the language where no peculiar meaning is proved. Arnould, p. 142, says, "a warranty in "a policy of insurance in whatever form created is a condition or contingency and unless performed "there is no contract. It is styled a condition precedent which means that it is perfectly immaterial "for what purpose the warranty is introduced, and that no contract exists unless the warranty be "literally complied with." Any direct or even incidental allegation of a fact relating to a risk has been held to constitute a warranty. "It is simply sufficient and ought to be sufficient," observed Lord St. Leonards, "to avoid the policy that only one thing warranted is not true." In this case the stipulation undertakes for the peformance of a future act,—the navigating of the "Malakoff"—and is therefore classed among promissory warranties. The contract depends on the event taking place literally, and Phillips, at p. 762, says, "it is held that the intention of the parties in a warranty, "except as to the meaning of the words used, is not to be inquired into. The assured has chosen to "rest his claims against the insurers on a condition inserted in the contract, and whether the fact or "engagement which is the subject of the warranty be material to the risk or not, still he must bring "himself strictly within that condition. The rigid construction put upon warranties, in this parti- "cular, has perhaps arisen in part from the maxims of the Common Law, that conditions are to be "severely construed in regard to the party imposing them upon himself." And Ellis, p. 29, concludes the matter thus—"A breach of warranty will avoid the contract. The doctrine of warranties "has been a more frequent subject of discussion in cases of marine policies; but, so far as it is appli- "cable to the subject, that doctrine is of equal authority in cases of life and fire insurance. A War- "ranty is a stipulation or agreement on the part of the insured in the nature of a condition precedent, "and as applicable to fire policies, is usually of an affirmative nature, as that the property insured is "of the nature described in the policy. A Warranty being in the nature of a condition precedent, it "is quite immaterial for what purpose or with what view it is made; but, being once inserted in the "policy, it becomes a binding contract on the insured; and, unless he can show that it has been strict- "ly fulfilled, he can derive no benefit from the policy. The meaning of a Warranty is to preclude "all questions whether it has been substantially complied with or not; if it be affirmative it must be "literally true; if promissory it must be strictly performed. The breach of warranty, therefore, con- "sists either in the falsehood of an affirmative or the non-performance of an executory stipulation. In "either case the policy is void, and whether the thing warranted be material or not, whether the breach "of it proceeded from fraud, negligence, misinformations, mistakes of an agent, or any other cause, "the consequence is the same. With respect to the compliance with warranties, there is no latitude "nor equity. The only question is whether the thing warranted has taken place or not, or be true "or not; if not, the insurer is not answerable for any loss, even though it did not happen in conse-