

It was open to defendant to move to set aside the amendment, and, if he had done so, that would have resulted, doubtless, in a new trial; at all events it was the subject of a motion before the Judge who made the amendment, not of a motion for prohibition. Dealt with strictly, the judgment pronounced at the trial was regular and binding.

All that the applicant complains of, all that he can feel aggrieved about, is that he has not had opportunity, or rather the kind of opportunity he now thinks he should have had, for applying for a new trial; that . . . is his own and his new solicitor's fault more than the fault of any one else; and, besides that, a new trial is now offered to him, and at the first a new trial was offered his solicitors, but with great inconsistency the offer was rejected.

The motion must be dismissed, and dismissed with costs payable forthwith after taxation, if plaintiffs remain willing to have a new trial; otherwise without costs.

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STREET, J.

FEBRUARY 22ND, 1905.

TRIAL.

LOUNT v. LONDON MUTUAL FIRE INS. CO.

*Fire Insurance—Statutory Conditions—Variations—Printing of—Conspicuous Type—Compliance with Statute—Existence of Incumbrance—Failure to Disclose—Materiality—Unjust and Unreasonable Variation—Alteration in Risk—Notice to Local Agent—Variation Requiring Notice to Company—Just and Reasonable Variation—Policy Avoided.*

Action upon an insurance policy upon the "machinery, belting, gearing, and shafting, all owned by the assured and contained in a 3-storey stone and frame shingle-roofed building, used as a brush handle factory, water power only."

Plaintiff, Abbie E. Lount, was the assured, and the loss, if any, was made payable to defendant Elizabeth Lount, mortgagee, as interest may appear.

Plaintiff's husband and one Taylor formerly owned the property, and on 24th May, 1890, made a chattel mortgage of the machinery to defendant Elizabeth Lount. Later in the same year they became insolvent, and plaintiff became the owner, by purchase from their assignee for the benefit of