JUGÉ :—*Que la demande de paiement exigée par la loi une fois faite est suffisante et n'a pas besoin d'être faite de nouveau, après le décès du débiteur, à son légataire universel.*

PER CURIAM :—Le demandeur réclame de la défenderesse, comme légataire universelle de son défunt mari, le montant d'un compte de marchandises dû par ce dernier.

La défenderesse plaide que demande de paiement ne lui a jamais été faite avant l'action, et offre de payer sans frais.

Mais il est prouvé que la demande de paiement a été faite au mari, et il n'était pas nécessaire de renouveler cette demande à la défenderesse légataire universelle de son mari.

Jugement pour le demandeur.

Marceau & Lanctot, avocats du demandeur.
Chauvin & Chauvin, avocats de la défenderesse.

(J. J. B.)

SUPREME COURT OF MINNESOTA.

JULY 1, 1890.

MOORE v. RUGG.

Photographs—Use of negatives.

Where A employs a photographer to make and sell to him a number of photographs of himself, there is by implication an agreement that the negative for which A sat shall only be used to print such portraits as A may order or authorise.

COLLINS, J.—The complaint in this action is not a model, as is admitted by the attorney who drew it, but it appears therefrom that defendant, a photographer, had been employed to make, and had made and sold to plaintiff, a number of photographic portraits of herself; and that subsequently, without the order or consent of plaintiff, he made and delivered to a detective another of these photographs, who used it in a manner particularly stated in the pleading, and claimed to have been highly improper. In justice to defendant, it is right that we should here remark that it is nowhere averred in the complaint that the occupation of the detective was known to him, or that he knew that the photograph so delivered was to be used in the manner stated in the complaint, or in any other improper way. This action was brought to recover damages, and this appeal is from an order overruling a general demurrer to the complaint.

A good cause of action was therein stated, for which nominal damages, at least, may be recovered. The object for which the defendant was employed and paid was to make and furnish the plaintiff with a certain number of photographs of herself. To do this a negative was taken upon glass, and from this negative the photographs ordered were printed. An almost unlimited number might also be printed from the negative, but the contract between plaintiff and defendant included, by implication, an agreement that the negative for which plaintiff sat should only be used for the printing of such portraits as she might order or authorize: *Pollard* v. *Photographic Co.*, 40 Ch. Div. (C. D.) 345. The complaint shows that there was a breach of this implied contract.

Order affirmed.

FIRE INSURANCE.

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

CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 344.]

There was, therefore, in the case under consideration (and this is acknowledged by Judge Oakley, in his opinion), an implied stipulation or promise on the part of the insured, that the situation of the premises with respect to the adjacent buildings should not be changed by any act of his so as to increase the risk, or, in other words, that the ground marked *vacant*, should remain so; the insurers must have relied upon this stipulation in fixing the rate of premium ; and the contract is necessarily avoided by its nonfulfilment, whether it is put on Arnould's ground of *legal* fraud, or on that of Duer, that the representation is a part of the contract, and its performance a condition precedent to the validity of the policy. It seems, therefore, that the question whether the loss is occasioned by the fact misrepresented, has nothing to do with the liability of the insurer, but that the sole inquiry must be