PROVINCE OF CANADA, } LOWER CANADA TO WIT. }

In the Queen's Bench.

APPEAL SIDE.

JOHN CHALMERS,

Plaintiff in the Court below,
APPELLANT.

vs.

THE MUTUAL FIRE INSURANCE COMPANY FOR STANSTEAD AND SHERBROOKE COUNTIES,

Defendants in the Court below,
RESPONDENTS.

RESPONDENTS' CASE.

Appellant sued, in the Court below, for £375, amount of policy of insurance upon goods in store at Richmond. Policy dated 24th March, 1854. Respondents pleaded

1. That the goods were insured in a different Store from the one where they were burned, and policy rendered void.
2. That while Appellant had policy from Respondents, he insured £800 upon same goods in the Ætna Company, without giving Respondents notice, which vitiated his policy.
3. That Appellant did not comply with the requirements of 4 William IV. c. 33, in serving notice within twenty days, shewing amount of loss sustained and naming *expert*.
4. That the fire was occasioned by negligence and fraud on part of Appellant.
5. That Appellant made a fraudulent statement and representation of the goods saved at the fire, that a far greater quantity of goods were saved than were represented to have been, and the statement of the goods destroyed was wholly fabricated and untrue.

Respecting the first point it appears in evidence that subsequent to the making of the policy of insurance the Appellant removed his goods into another store from the one where they were insured, and thereby changed the nature of the risk. By 19th section of 4 William IV, c. 33, every policy must be signed by the President, and countersigned by the Secretary of the Company. Respondents contend that such a change in the policy of insurance requires all the formalities of the original policy. It is in fact a new policy. The policy being executed by an incorporated Company, it can only be made or changed in accordance with the directions of the charter. Phillips on Insurance, Vol. 1, p. 4. "Insurance is most frequently made by an incorporated Company, and such a Company is the mere creature of the act to which it owes its existence, and may be said to be precisely what the incorporating act has made it, to derive all its powers from that act and to be capable of exerting its faculties only in the manner which that act authorizes. To make a contract of insurance binding upon such Company, therefore, it must be executed in pursuance of its charter." Same authority Vol. 1, p. 12:

"An alteration in the contract is commonly made by an indorsement on the policy, signed by the insurers. A contract varying the policy or to cancel it, is as solemn an act as the insurance itself, and must therefore, be executed with as much formality, whether it be done by endorsement, or by a separate instrument. If a part of the underwriters on a policy consent to an alteration, the others are not bound by it. * * * "Where the policy was altered in a material part by the agreement of the parties, but could not be enforced as altered for want of a new stamp, it was held that the alteration had superseded the contract first made so that no action could be brought upon the contract as it stood originally."

The Appellant pretends that a consent to the change, by the Secretary of the Company, of goods to another building written upon his policy, is good, and binding upon the Company. This cannot be. The Secretary could not make a policy, and of course could not change one. The policy is made in duplicate and the consent was only entered upon the one in the possession of Appellant, as appears by Respondents' Exhibit "M." The only contract that is perfect is the original in duplicate, which has not been legally altered.

On second point, Vide 23rd section of 4 William IV. c. 33. Ellis on Insurance, p. 14:

"It is made a condition with most offices, that persons insuring property, should give notice of any other insurance, made elsewhere on the same property on their behalf, and cause a minute or memorandum of such other insurance to be endorsed on their policies, and in this case the Company is only to be liable to the payment of a rateable proportion of any loss or damage which may be sustained, and unless such notice be given, the insured are not entitled to any benefit under the policy."

Marshall on Insurance, Vol. 2, p. 789 * * * "Unless such notice be given of each insurance, to the office where another insurance is made on the same effects, the insurance made without such notice will be void."

Vide also Atwell vs. Western Insurance Company, Canada Jurist, p. 278, also Soupras vs. Mutual Fire Insurance Company of Chambly and Huntingdon, Ca. Jurist, p. 197.

Respecting the third ground of defence, Respondents refer to the 10th Section of 4 William IV. c. 33. The requirement to give notice of the occurrence of the fire and statement of loss, within the delay fixed by law, or the policy, as the case may be, is regarded, as a general rule, as imperative, and a failure to do it on the part of the insured, unless a further delay is stipulated or consented to, is fatal to his claim. This doctrine is recognized in an elaborate decision in the case of Dill vs. the Quebec Insurance Company, Revue de Jurisprudence, Vol. 1, p. 113. In this case the Plaintiff was only relieved from the voiding of his policy by establishing a positive agreement of extension of time.

The fourth ground of defence is not sustained by direct evidence, but is rendered worthy of consideration in connection with the fraudulent statement of loss.

The fifth ground of defence is well founded in law, and sustained by abundant evidence. Ellis on Insurance, p. 9, in case Wood vs. Musterman, "Lord Tenterden told the jury that if they thought the Plaintiff had overrated the amount or value of his loss from mere mistake or misapprehension, they would find only for