

No. 112, to amend the Act passed in the 28th Vic., respecting the granting of charters of incorporation to manufacturing, mining and other companies.

Among the bills assented to by the Governor were:—An Act for the incorporation of the Ontario Mutual Life Assurance Company. An Act to explain the 36 sec. of Hamilton Debenture Act of 1864, and to legalize the application of the rates issued by the City of Hamilton under the By-law referred to in that section.

### Law Report.

**FIRE INSURANCE—FORFEITURE—WAIVER.**—In a recent case of the Supreme Court of Iowa, the following judgment was given:

1. Where a policy for insurance provides that if the risk of fire to the building insured shall be increased by a change of occupation or other means within the control of the insured, without the written consent of the insurers, the policy "shall be void"—this condition being inserted for the benefit of the insurers—they may dispense with compliance therewith, or waive a forfeiture of the policy incurred by a breach of the condition, and thereby preclude themselves from setting up the condition, or such breach thereof, as a defense to an action for a loss subsequently occurring. And such dispensation or waiver need not be in writing nor founded on any new consideration.

2. Any acts, declarations, or course of dealing by the insurers, with notice of the facts constituting a breach of a condition in the policy, recognizing and treating the policy as still in force, and leading the insured to regard himself as still protected thereby, will amount to a waiver, of a forfeiture by reason of such breach, and prevent the insurers from setting up the same as a defense when sued for a subsequent loss.

3. A local agent for a foreign insurance company, authorized to effect insurances, and entrusted with the blank policies of the company, with authority to fill up, countersign, and issue them, to fix rates of premium, give consent of the company to change of occupation and risk, assignment of policies, and other things which by the terms of the policy require such consent, and to cancel policies in his discretion for increase of risk or other causes is to be regarded as the general agent of the company, authorized to transact the business of insurance for them at the place of his agency; and has power, in the absence of a limitation of his authority, known to those with whom he deals, to waive forfeitures of policies, by reason of breaches of conditions therein, and to dispense with such conditions, and the acts and declarations of such agent, recognizing and treating a policy as valid and subsisting, with knowledge of facts constituting a breach of its conditions, will be binding on the insurers.

4. A consent by the insurers to the occupation of the insured building for a certain manufactory, carries with it a consent to the keeping and use on the premises of any article necessary to the manufactory, or commodity used therein, although the keeping of such articles without the written consent of the insurers is expressly prohibited in the policy. And such consent to the occupation for the manufactory operates to waive or dispense with such prohibition in the policy.

5. Where the agent of the insurers, after a change in the occupation of the insured building, involving an increase of risk, consented to the continuance of the policy, on condition that an iron door should be put into the building, but without limiting any specific time within which this should be done, the insured was entitled to a reasonable time to put in the door, and its being put in was not a condition precedent to the continuance of the policy. And if, after the exercise of reasonable diligence to get the door put in, but before it was in fact put in, the building was destroyed by fire, the insurers cannot resist payment of the loss on the ground of the door not having been put in.

**JETTISON—LIABILITY OF INSURER.**—If goods are thrown overboard in order to save a vessel from some danger, there arises a right on the part of the owner of these goods to claim general average from the owners of the ship, freight, and of the rest of the cargo—that is, the owner of the goods jettisoned having been deprived of his goods for the benefit of the owners of the rest of the cargo and of the ship, is entitled to claim from these latter compensation for the loss thus sustained. The owner of the jettisoned goods does not recover the whole of the value of his goods, as it is but right that he, as well as others, should contribute to make good the loss. All the owners of ship, freight and cargo, including the owners of the jettisoned goods, pay in proportion to the value they had at stake when the jettison took place.

In *Dickinson v. Jardine*, 16 W. R. 1169, goods had been properly jettisoned, and the ship and cargo had consequently come safe to port, and were therefore liable to a claim for general average. The jettisoned goods were insured, and their owner (the plaintiff), instead of first claiming payment of the general average to which he was undoubtedly entitled, and then claiming from the underwriters the amount of his actual loss, claimed directly from the underwriters the whole value of the goods, and contended that it was for the underwriters, and not for him, to obtain payment of the general average. The underwriters refused to do this, and argued that although they were liable to pay the whole loss actually suffered, they were not bound to pay more, and that the plaintiff must obtain payment of the general average contribution for himself; and that the underwriters were only liable for the amount of loss that remained after deducting the amount so due to the plaintiff, as that was really the amount of his loss.

It was held by the Court of Common Pleas that the plaintiff was entitled to recover directly from the underwriters the whole value of the goods, and that it was for the underwriters to obtain payment of the general average.

There seems to have been no reported case in the English courts which decided this point, although there were several American authorities upon the question. Bovill, C. J., cites a passage from *Phillips on Insurance*, to the following effect:—"It is not a condition that the assured on goods must claim contribution by the other parties for a jettison before he can demand indemnity from his underwriters. He may demand it of them in the first instance." The Court decided in accordance with this passage, which now, therefore, correctly states the English law on the subject. We believe it has generally been the practice in London to consider the underwriters in such circumstances as those in *Dickinson v. Jardine* liable only for the actual loss caused by jettison after debiting the owner of the jettisoned goods with the amount due for the general average contribution. This is, however, quite opposed to the general principles of insurance law, and although it may be a convenient way of settling accounts between insurers and insured, it can have no legal force unless perhaps an unvarying custom to this effect could be proved. It is, however, of course competent to underwriters to insert in their policies an express stipulation limiting their liability in these cases, and there is no legal objection to such a course.

### Commercial.

#### Montreal Correspondence.

(From our own Correspondent.)

Montreal, Dec. 15, 1868.

Our river is nearly frozen across, and all traffic has ceased except such as comes through the Victoria Bridge. We now see the importance of that vast, though expensive, structure. Our communication with the States and the south side of the river remain unbroken; usually at this period, till the ice bridge took all connection with the opposite side ceased, or was carried on by canoes at

very considerable risk to life and property. The same as with the Grand Trunk, we every year more and more appreciate the great advantages we derive from it; true we have paid rather dearly for our whistle, but now we could not do without it.

Our produce market remains very quiet, and flour has not materially changed from my last week's quotations. The sales are merely for local wants, nor do we now look for any export trade. The Grand Trunk Railroad brings us down our necessary supplies, and all shipped goes direct to Portland, so that we in Montreal have not the handling of it. Grain is nominal in price for all descriptions, and the same remark applies to provisions.

In my last week's letter to you I gave a short resume of the dry goods trade. Now I will give you a sketch of the grocery market for the fall season:

**GROCERIES.**—The trade generally during the fall has been satisfactory. Some of our large jobbing firms have been operating beyond their means, and forcing goods off to all sorts of buyers in the West; others, not content with a good healthy business, have speculated in gold and other tempting things, and the consequence has been that some of our leading jobbers have gone down, but this by no means shows anything wrong in the general business. On the contrary, greater caution has been exercised than usual, and the losses have been lighter.

**CHEMICALS** have sold largely but at almost a nominal profit: this is owing to the large quantity, especially of soda ash, sent here on consignment, and therefore forced off at any price that will clear cost, thus leaving the importers a small chance of making a profit. Prices have ruled low.

**COFFEE.**—Owing to the low prices which have ruled during the last few months, a considerable business has been done, but I doubt if sales have been satisfactory to importers.

**FISH** have sold freely during the fall, and prices have ruled high; the catch generally has been light and consequently our supplies have been light. The fish market here is very much regulated by the price of pork, and when that is high the price of salted fish always rules proportionately high. The exception has been in dry cod, of which there has been a good supply, and prices are rather easier. Of good mackerel there are none on the market, and the stock of fish generally is light.

**FRUIT (imported).**—The result to importers has been disastrous as regards raisins, but this has been the experience of the last two years. Our merchants have steadily over-imported. This year it was considered that the comparative failure of green fruit here would justify a larger import than usual, but such has not been the case, and importers have been the losers. In currants on the contrary an active business has been done at remunerative rates.

**IN NUTS, SARDINES, &c.**, the usual amount of business has been done at fair prices.

**MOLASSES.**—The business in this article is mostly regulated by the price of butter. This fall the price of molasses has ruled very low, and that of butter very high, consequently a very large business has been done. The market closes low but active.

**NAVAL STORES.**—A fair business has been done, prices having followed the fluctuations of the New York market.

**OILS.**—In *Cod* and *Seal* the rapid increase of price early in the fall restricted the amount of business; at the end of the season the market closed easier, and there was more disposition to realize on the part of holders. Stocks are light. In *Linseed Oil* business has been light, chiefly owing to the decline in England, which has caused buyers here to operate only from hand to mouth. From what I can hear prices of linseed oil have touched the bottom in England, and consequently we may look for a safe trade here.