The Legal News.

VOL. XIII. AUGUST 2, 1890. No. 31.

The weight to be given to the evidence of professional informers was considered by the Supreme Court of Iowa in *Dickenson* v. *Bently*, June 4, 1890. The Court held that the fact that a person is employed to visit places and purchase whisky in order to ascertain if saloons are illegally kept, is no ground for discrediting his testimony in a suit against the vendors for maintaining a liquor nuisance. "Is there," asked the Court, "anything dishonorable or unmanly in a faithful, conscientious discharge of such duty? If thieves were preying upon the possessions of the people, would it be dishonorable for a person to accept employment to procure the testimony that would result in the conviction of an actual thief? If murderers abound, and their detection is difficult, is an employment that will bring to light the evidence upon which the truth may be known, and the guilty punished, dishonorable? A statement of strong cases wherein good men have no sympathy sometimes aids us to better understand milder ones, as to which the sympathies of men may be directed. We must believe that all good people would commend an employment or service that would result in the prompt and sure punishment of persons guilty of these graver crimes, and such persons would as promptly condemn any employment or service which would result in the punishment of the innocent."

The *Law Quarterly Review*, referring to the subject of champerty and maintenance, says the law as it stands does undoubtedly tend to deprive the poor of a means of meeting the rich on equal terms in litigation by obtaining the assistance of others who believe in the probable success of their suit. "The consequence is, that in many cases a poor suitor (not, perhaps, quite poor enough to sue *in forma pauperis*, and even if he were, not able to afford expenses unavoidable even in that case) is either forced to give up all idea of enforcing his right, or is driven into the hands of the hedge-lawyers. . . . Without expressing a definite opinion, it is not going too far to say that it is at least a matter worthy of consideration whether the law of England should not be assimilated to that of India by enacting that the mere fact of maintenance or champerty shall not of itself be illegal. . . . It is not to be expected that a solicitor will readily undertake to promote a claim involving considerable outlay, and, however honest, some risk of failure, when his client is unable to provide money, merely on the chance of getting his ordinary costs in case of success."

In Mr. Longpré the district of Montreal had a prothonotary who introduced several useful reforms in the administration of his office. It is to be regretted on public grounds as well as for his estimable qualities as a citizen, that his career should so soon have been brought to a close.

COUR DE MAGISTRAT.

MONTRÉAL, 26 mai 1889.

Coram CHAMPAGNE, J. C. M.

BOW v. LEGAULT.

Pari—Courses de chevaux—Prêt—Droit d'action.

JUGÉ:—*Qu'une personne qui prête de l'argent à une autre pour lui permettre de faire un pari sur une course de chevaux, a droit d'action pour recouvrer ce montant, ces sortes de paris n'enlevant pas le droit d'action. C. C., Arts.* 1927, 1928.

Le demandeur a prêté $10 au défendeur pour sa mise dans un pari pour une course de chevaux, et poursuit maintenant le défendeur pour se faire rembourser l'argent ainsi prêté.

Le défendeur plaide que le demandeur lui a prêté cet argent sachant que c'était pour un pari dans une course de chevaux, et qu'il n'a pas d'action pour se faire rembourser.

La Cour a maintenu l'action, plaçant ce

cas dans l'exception prévue par l'article 1927 du Code Civil.

Jugement pour le demandeur.

McGibbon, avocat du demandeur.

Ethier & Pelletier, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 2 mai 1889.

Coram CHAMPAGNE, J. C. M.

THIBAULT v. LEFEBVRE.

Locataire et sous-locataire—Saisie-gagerie—Dommage.

JUGÉ:—*Qu'il n'y a pas lieu à accorder des dommages contre un locateur qui, de bonne foi, prend une saisie-gagerie contre un sous-locataire pour un montant de loyer dû par le locataire principal, quand même le sous-locataire ne devrait rien et avait légalement payé son loyer au temps de la saisie-gagerie au locataire principal.*

PER CURIAM:—Le défendeur ayant loué une maison à un individu qui après l'avoir occupé quelques mois l'a sous-loué au demandeur, a pris une saisie-gagerie contre les meubles du demandeur qui se trouvaient dans la dite maison, pour se faire payer des mois de loyer dûs pendant l'occupation du sous-locataire. De là, poursuite en dommage pour $50 contre le défendeur. Par l'article 1621, C. C., le défendeur avait le droit de prendre cette saisie-gagerie contre les meubles du demandeur, son sous-locataire, et il n'y a pas lieu lorsque le sous-locataire a payé légalement au locataire principal, pour cela à accorder des dommages.

Action déboutée.

L. N. Demers, avocat du défendeur.

L. S. Descarries, avocat du défendeur.

(J. J. B.)

FIRE INSURANCE.

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

CHAPTER IV.

WHO ARE BOUND TO INSURE.

[Continued from p. 240.]

§ 133. *Consignees, Commission Merchants.*

One of the most important duties which the safety of merchandize requires in factors and consignees who act as factors is that of protecting it by insurance. (Paley by Dunlap [18]).

Shaw (upon Ellis) cites several cases in which in the United States it has been held that by the custom of merchants it is the duty of a consignee or commission merchant to insure the goods of his consignor, though he may have received no express directions to that effect. Story, Agency, § 111, says that consignees for sale are not positively bound to insure, unless they have received orders so to do, or the usage of trade, or their habit of dealing with their principal, has raised an implied obligation to insure. In the Louisiana Annual Reports of 1855 there is a case in which this was held.

A commission merchant is not bound to insure for his principal if not ordered. 3 Ch. Commercial law. But by general usage in a place, might not a commission merchant be held bound to have insured? Story says, yes; if the usage be general. See Paley on Agency, 18.

§ 134. *Insurance must be valid and effective.*

An agent or consignee procuring insurance must procure valid insurance, and insurance with solvent insurers, and communicate their names.[1]

If a man covenant to keep insured, his procuring a mere slip unstamped, or an unstamped premium receipt, will not in England satisfy such covenant, unstamped papers not making legal insurance[2] A policy stamped (or interim receipt stamped) alone can make such an insurance. But in Lower Canada no such Stamp Acts exist, therefore insurance by slip or mere receipt for premium is good, for the case of such a covenant.

Question was as to right of plaintiff to enter up judgment and execute it. It was held he might; breach being of covenant to keep insured.[3]

The above defendant had no right to proceed, even at equity, to compel the insurers

[1] Boulay Paty, Tom. 3. *Hurrell* v. *Bullard et al.*, Q.B. Guildhall, Feb., 1863.

[2] *Xenos* v. *Wickham*, 14 C.B. Rep. cited.

[3] 10 Jurist, N. S., *Parry* case.

to execute a policy stamped (in pursuance of unstamped slip).

Where there is a covenant to insure, if the covenantor do not act promptly and pay the premiums, the covenantee may pay them and sue for the amount.[1]

In Louisiana, it is held that no bailee is liable to insure unless he have instructions to do so. *Duncan* v. *Boye*, 17 Ann. Rep. Yet he may have to pay sometimes, if fire occur, and he had better insure, apparently, (for himself, at his own expense).

If a man agree to keep insured, and get delay in consequence, he must not allow the property to be uninsured even for two days; else he breaks his agreement and his delay ceases.[2] This treaty is frequent where compromises are made.

By covenant people may bind themselves to insure, *e.g.*, a tenant may, often does, under pain of forfeiture of lease. Such covenants are strictly enforced.[3]

And if a lessee bind himself to insure in the joint names of himself and lessor he must do so literally. Mere verbal evidence of the lessor saying that he would be satisfied with less (evidence of waiver pretended) is *nil*. (*Ib.*)

So a purchaser of a house, paying part, promising always to keep insured, for security extra of balance, failing to do so must pay balance if that be stipulated.

The plaintiff, a lessee, promises to keep insured. He does not. The landlord insures. No fire happens. Afterwards the landlord charges the tenant. It was held that he has no right to be repaid specifically the money spent by him in premium of insurance; unless as a kind of nominal damages. The jury, in this case, gave the plaintiff nominal damages against the lessee, viz., the very amount the plaintiff had expended (in reality more than nominal damages). But this verdict the Court would not interfere with.[4]

§ 135. *Gratuitous mandatary.*

In the United States a mere gratuitous promise to insure, unconnected with any relation of principal and agent subsisting between the parties, or with any duty arising from usage, is not binding, provided the promisor does not enter upon its performance. Such gratuitous mandatary can only be held liable for misfeasance, not nonfeasance,[1] and so it would be in England. But in Lower Canada it would be otherwise.

The *negotiorum gestor* ought to declare his quality, and insure.

In the United States and England, if such agent or person attempts to fulfil his promise, and is guilty of *gross* negligence or unskilfulness in the execution of his voluntary trust, he will be liable to the other party in an action on the case for all damages resulting from such negligence.[2]

But when the situation or profession of the one who makes this gratuitous offer is such as to *imply* skill, as if, for instance, he is an insurance broker, or known to be well acquainted with the business of insurance, an omission of that skill will be held to be *gross negligence*.[3]

§ 136. *Effect of usage.*

Usage undoubtedly may impose obligation to insure. Neglect to effect insurance where the usage is and has been to insure will give an action of damages. By a general custom of the trade a printer may be bound to insure paper and printed work of a work that he is printing for an author or third person. True, that in *Mauman* v. *Gillett*[4] no such custom having been proved the printer got free.

§ 137. *Joint owners, etc.*

Plaintiff and the defendants were joint owners and partners in a ship of which the defendants had the care and exclusive possession. Defendants had insured plaintiff's interest and their own; subsequently they

[1] Mayne on Damages, p. 200. *Hey* v. *Wyche*, 12 L. J. Q. B. 83.

[2] *Parry* v. *Great Ship Co.*, English Jurist of 1864.

[3] *Doe* v. *Gladwin*, 6 Q. B. R.

[4] *Hey* v. *Wiche*, 2 Gale & Dav. New York Legal Observer, Vol. 2, p. 285.

[1] 4 Johns. 84.

[2] *Tracy* v. *Wood*, 3 Mason, 132; *Thorne* v. *Deas*, 4 Johns. 84.

[3] *Skiels* v. *Blackburne*, 1 H. Bl. 158; *Wyld* v. *Pyckford*, 8 Mees. & Wels. 443.

[4] 2 Taunt.

insured for themselves and not for plaintiff; they were held liable in damages, as for negligence, and because they ought not to have discontinued insuring for plaintiff, without notice to him.[1] See Domat, Liv. 1, Tit. xv, sec. 3, art. 4.

If two accept a procuration they are liable *in solido*, if *préposés*, for instance, to keep safely a house or a thing.

If a vendor at a distance from the vendee has, in former transactions, insured the goods sold, or if he receive instructions to insure, he must insure.[2]

In *Mawman* v. *Gillett*[3] it was held that printers getting from booksellers paper, are not bound, in the absence of contract, to insure for the booksellers the paper of the works that they print.

§ 138. *Tutors.*

Are tutors to minors bound to insure their ward's property? I would hold them bound, generally. *Quotiescunque non fit nomine pupilli quod quivis paterfamilias idoneus facit, non videtur defendi*; l. 10, Dig. De adm. et per. tut. Certainly a tutor, careful about his own property and insuring it, ought to insure his ward's. Certainly, if property left by a father be insured and the policy, after the death of the father, expire with notice to the tutor, if he have funds of his ward he must insure.

According to Rolland de Villargues,[1] a tutor is not bound to insure his minor's property. As to the tutor's responsibility, it is not to be that of extreme diligence of a *père de famille*. Yet he is bound to renew registrations (*ib.*), and I would say to keep up insurances.

As to the tutor, he is responsible if guilty of *mauvaise gestion*. Art. 290 C. C. of Quebec. This is reasonable. Certainly if, having funds in hand and being in the habit of insuring his own property, he do not insure his ward's, and it be burnt, the tutor ought to pay, being in fault. So if he be appointed tutor to minors owning houses always kept insured by their father, and he (the tutor) fail to renew, though the father never did insure, or had so much property that he was always his own insurer, the tutor may not go free. Because he (the tutor) is guilty of *mauvaise gestion*. This is clear.

The modern law of France makes the *héritier par bénéfice d'inventaire* liable in his administration only for *fautes graves*. He need not insure, C. N. Art. 804. But Art. 673 of our Civil Code puts upon the beneficiary heir the care of a prudent administrator. It obliges the guardian of *chose d'autrui* to all the care of a good father of a family (the omission of this care is *faute moyenne*), C. N. Art. 1137.

The tutor to minors is bound to observe the same care and he is responsible for bad administration (*semble*, he is bound to insure, C. N. Art. 450, 290 C. C. of L. C.). Yet the Court of Besançon held that neither tutor nor *usufruitier* was bound to insure, there not being breach of positive obligation. But the Court added, if the tutor insure, and then fail to continue, he will be held liable, in case of a house insurance. Moveable property only was in question, and in the case judged, as he had never insured it, he was held free.[2]

§ 139. *Trustees, Executors, etc.*

Are trustees bound to insure? Yes, under many circumstances, and where they are in funds they ought to.

In *Garner* v. *Moore*[3] an executor without special authority applied the testator's assets for several years in insuring the life of a debtor to the estate. He then dropped it without consulting anybody. He was held liable for the sum that would have been received had he kept up the policy.

In *Fry* v. *Fry*[4], the testator, as a lessee, bound himself to insure. He allowed the insurance to expire 25th March. He died on the 27th March, without the insurance

[1] *Ralston* v. *Barclay et al.*, 1 Cond. R. La. p. 519.

[2] *Smith* v. *Lascelles*, 2 D. & E.; *Cothay* v. *Tate*, 3 Camp.

[3] Note on p. 325, 2 Taunton.

[1] Dict. Vo. Ass. Mar. No. 21, § 2. Grun cited, 170.

[2] Bioche, Vol. 29, Art. 8118.

[3] 3 Drew. 277; 24 Law Journal (Chancery) 687.

[4] 27 Beavan. The case is cited on p. 79, Digest of English Jurist for 1860. Reported also in 28 Law Journal (Chancery).

having been renewed. His executors did not effect any insurance. A fire took place 26th May. It was held that the executors were not personally liable.

Query, is an executor bound to insure houses more than the lives of debtors of his testator? Yes; insurance on lives of debtors is rare.

§ 140. *Creditors — Common carriers — Pawnbrokers.*

Is a creditor holding a house *ut in pignore* bound to insure it? He is liable even for *faute très legère*, says Merlin. So, he says, is a partner. Yet he does not support the doctrine that they are bound to insure.[1]

Common carriers generally are liable in England, if goods entrusted to them be burned, even by accident (unless, indeed, by lightning). So they ought to insure. A carrier is in the nature of an insurer, said Lord Mansfield.

In England, under the Pawnbrokers' Act of 1872, pawnbrokers must insure, and may do so to the extent of the estimated value. The person holding a pledge is bound to use the diligence of a diligent pater-familias. If a fire happen he is to prove that he was in no fault. Even then I would hold him bound to insure,—certainly if, habitually, he insured his own goods.

If fire happen, the pawnbroker, in Lower Canada, must prove that he could not prevent it; if *faute* even *legère* can be shown against him he is bound to pay. A depositary, in Lower Canada and in France, is only liable for *faute lourde*; a pawnbroker for *faute legère*. Even in England a pawnbroker is liable for loss by fire if he be negligent or in default.[1]

§ 141. *Directors of Joint Stock Companies.*

I would hold the assignee of a bankrupt's estate, as he is bound to take care of it, liable in damages for bad gestion; and not insuring stock I would consider such; and buildings if insurance of them would profit the mass, but not otherwise.

[1] It has been seen that if a mortgagee officiously insure, he cannot recover the premiums from the mortgagor. *Dobson* v. *Laud.*

[1] *King* v. *Lording*, 1 Nev. & Mann, *per* Parke, J.

When is there fault in such persons? What is due diligence or care? This is best to be decided by a jury, says Bell, Princ. No. 232; and Proudhon says[1] "by judge exercising office of jury."

CHAPTER V.

THE POLICY.

§ 142. *Policies—Open and valued.*

Policies are either open or valued. An open one contains no declaration of the value of the subject insured, or of the insured's interest, and under it the insured has the burden of proving the value and loss, when a loss happens. A policy is valued when it has admitted, or specified, in it a sum as value of the subject insured, or of the insured's interest, as when the policy reads to cover goods "worth £500 value fixed," or "valued by all parties," or "valued at £500 without further account."

§ 143. *What may be recovered under an open policy.*

Most policies are open. Under such, when goods insured are lost by fire the insured gets the actual value of them. Quinn sued the Equitable Fire Insurance Company in the Superior Court, Quebec, upon a policy by which he, a block maker, insured his stock, consisting of blocks, for £200. He obtained judgment for that sum. By the policy the insurers agreed to pay the insured "all such loss or damage as he should suffer from fire," &c. Quinn claimed the value of the blocks in the market. The Company contended that it was liable only for the cost of them, particularly as Quinn had made no insurance on profits. Quinn proved the value of the blocks burnt to have been £200. The cost of them was proved to have been much less. The insurers appealed, at the same time offering Quinn £100 with interest and costs. In March, 1861, the Court of Queen's Bench dismissed the appeal.[2]

[1] Droits d'usage, No. 1523.

[2] See *Harris* v. *Eagle Insurance Co.*, 5 Johns.

§ 144. *What may be recovered under a valued policy.*

A valued policy proper involves an agreement by which a fixed value is substituted for an actual one. What is the force of such an agreement? In modern France the insurer under it cannot be debarred from the right to prove less value, or less loss. Boudousquie, No. 146, calls a clause containing an agreement to hold absolutely to the value stated in the policy a most abusive one. In England the writers were and are not clear. Marshall (after Lord Mansfield) stating that the value inserted in a valued policy is "in the nature of liquidated damages," goes on to say that the effect of the valuation is such that "it fixes the amount of the interest of the insured in the same manner as if the insurer were to admit it at a trial." Is not this going too far? We know what liquidated damages are. We know also the force of an admission at a trial, and that it estops a party from making proof at the same trial contrary to his admission. Marshall afterwards says that the value in such a policy ought only to be taken as *primâ facie* evidence of the amount of the interest of the insured, "for though the value is admitted by the insurer, yet as he admits it upon the mere representation of the insured, if he find that this was fallacious, that it was factitious and only a cover for a wager, it cannot be supposed that he is so far concluded by his admission as not to be at liberty to dispute the value. Valuation is rather the fixation of a maximum, says Angell. Bell (Comm.) says that a valued policy as much as admits the amount put in hazard, which unless challengeable as fraudulent, or exceptionable as a wager, will be held conclusive in the case of total loss.

McNair v. *Coulter* was a Scotch case appealed to the House of Lords. The insured had a policy upon a ship and cargo "valued at £1,000, without further account." The House of Lords held this to be a valued policy. The Court of Session had held the insured entitled only to part of the £1,000, equal to the damage proved to have been sustained by the loss of the ship. The House of Lords reversed the judgment, and McNair got the £1,000 less a trifling sum, value of what had been recovered of the subjects insured.[1] Fraud was pleaded and was pretty apparent, yet the House of Lords held the valuation in the policy conclusive on both parties. Lord Kenyon expressed himself strongly against opening valued policies, particularly where fraud was not shown.[2]

§ 145. *Valued policies in the Province of Quebec.*

Article 2575 of the Civil Code of Lower Canada allows special valuation to be conclusive. The value must be established, it says, after fire, according to the policy conditions and the general rules of proof, "unless there is a special valuation in the policy."[3]

In Lower Canada, as in old France, the value stated in a valued policy is only presumed fair and just until the contrary be proved. The insurers are free to prove less value, though opposing to a plaintiff's demand only a plea of exaggerated or too large demand. Under this system, in case of total loss of a thing insured by a valued policy made in good faith, the insured may sue to recover the sum insured, and the defendant may content himself with pleading less value than that of the policy. The plaintiff would be at first bound only to exhibit the policy, but proofs of less value, made by the defendant, could not be disregarded. Emerigon was not for favoring insurers making bargains by valued policies; he was against listening to them when urging fraud, after a loss, and offering proofs by witnesses only, or experts. (Tom. 1, p. 280, quarto, by Boulay Paty.)

If A procure one insurance from B by valued policy, insuring £600 on ship valued at £6,000, and subsequently make another insurance for £6,000, valuing ship at £8,000, and total loss happen, and ship be worth £8,000; let A collect first his £600 and subsequently his £6,000, making in all £6,600. But if he first collect his £6,000, I cannot see right by him to ask his £600; for between him and B, insurer for £600, there has been agreement that, on all occasions, between

[1] 6 Brown's Cases in Parliament.
[2] 2 East, 114.
[3] 1 Bell, Comm., 542-3 cited.

them, the ship is to be held of the value of £6,000 and no more; and A, having received that, is without interest as against B. *Bonsfield* v. *Barnes*[1] I cannot approve, though Bonsfield might have recovered his whole £6,600 by merely suing firstly Barnes, before touching the £6,000, amount of his (Bonsfield's) other insurance. But I do approve *Bruce* v. *Jones*.[2]

§ 146. *Decisions on the subject of valued policies in England.*

The case of *Tobin* v. *Harford*, in the Exchequer Chamber (A. D. 1864), was an appeal against a decision of the Court of Common Pleas, which ordered a verdict for the plaintiff to be set aside and entered for the defendant. The action was brought by a merchant against an underwriter, on an insurance of cargo on a valued policy. The policy was for all times, at all seasons, with whatever cargo, with leave to discharge or otherwise at all or any ports on the coast of Africa at a certain sum of £8,000. It was contended that in the absence of fraud there could be no objection to this contract, and that the underwriter was liable for the £8,000. The decision in favor of the defendant was, however, affirmed. "Suppose only two muskets of cargo," said Chief Baron Pollock.

Barker v. *Janson* [3] was a case of valued policy. A ship valued at £8,000 was insured for £6,000, and was not worth half. The ship was totally lost. No fraud or wagering was proved. The verdict was given for £6,000, and this was maintained by the Court.

In *North of England Iron S. S. Ins. Assn.* v. *Armstrong* [4] it was held that a valued policy means that, for all purposes, the value shall be held to be the sum named—no more, no less,—as between insurers and insured. So, if a ship valued at £6,000 be insured, and totally lost; and having been worth £9,000, that sum is recovered against another ship by name of damages for sinking the insured one, the £9,000 must go to the insurers; who only paid £6,000.

[1] 4 Camp. 229.
[2] 9 Jur, 628, (A. D. 1863.)
[3] Common Pleas, England, January, 1868.
[4] Law Rep. 5 Q. B. (A.D. 1870).

§ 147. *Where value is stated in good faith.*

The general rule is that the claim cannot exceed the amount of the loss; but the parties may agree upon an arbitrary value; and in the absence of fraud this will be the measure of the liability of the insurers.[1] It was held by Lord Mansfield in *Da Costa* v. *Frith* [2] that where a valued policy has been obtained in a fair way, and without fraud or misrepresentation, the insurer having so agreed, is concluded from disputing it.

In a case of *Alsop* v. *Commercial Insurance Co.*, decided by Story, J., it was held, if the plaintiff expected more goods than in reality were shipped, and valued his profits accordingly, then the insured, though the policy be a valued one, is only entitled to recover *pro ratâ*, according to the proportion between actual shipments and the expected or supposed ones. It was also held in the same case that a designed gross overvaluation is a constructive fraud and avoids the policy; and a trivial interest will not save the policy; nor will a substantial interest where intent to defraud is clear. Gross overvaluation, if suggested as a question of fraud, is solely for the jury.[3]

[1] Bunyon, p. 15; *Irving* v. *Manning*, 6 C. B.; *Bonsfield* v. *Barnes*, 4 Campb. Yet, says Bunyon, valued policies are very rare. The *onus*, even where values are in list of things insured, is on the insured to prove loss by values. (*Ib.* p. 15.)

[2] 4 Burr.

[3] In marine insurance, by valued policies, more than the actual value can be recovered, and over-insurance is facilitated. Mr. G. S. Gibb, in an article in the Law Magazine for February, 1876, complains that no checks exist, by law, upon over-insurance. Insurers ought, he says, to be allowed to *open* the policy. The case of *Lucena* v. *Crawford*, he remarks, contains the best exposition of the nature of marine insurance. The value of a ship—what she could be sold for at the time of the loss—he considers the fair and proper limit of the insurer's liability. Yet a ship may be worth more than her selling value, he says. As in the case of the *The African S. S. Co.* v. *Swanzy*, 25 L. J. Ch. 870; *Grainger* v. *Martin*, 31 L. J. Q. B. 186; 4 B. & S. Exch. Chamber. In this case the insurance was for £16,000 on a ship valued at £17,000. She was damaged and abandoned. The ship had cost £20,000. What could such a ship be built for and brought to a person, may be nearer the proper value than the selling price. *Irving* v. *Manning*, 6 C. B.; 1 H. of L. cases; the parties may agree to value by way of liquidated damages.

§ 148. *Insurance of profits.*

In the case of insurance of profits, a great overvaluation of them will not avoid the policy; but if the overvaluation be for the purpose of fraud it may.[1] It is not sufficient that doubt should exist whether the overvaluation was innocent; it must be seen that it was fraudulent, in order to avoid the policy.[2]

In the case of *Bruce* v. *Jones*,[3] the defendant had insured the plaintiff for £125 by a policy on a ship valued at £3,200. The plaintiff, before suing, had received from other insurers £3,126.13.6, and now was allowed against Jones only £73.6.6. The amount which the plaintiff may recover in such cases *may* depend upon the order in which he proceeds against the different underwriters.

§ 149. *Where there have been fraudulent representations as to value.*

A valued policy obtained upon false and fraudulent representations by the insured as to the value of the subject insured ought to be held null and void. Some companies stipulate by their policies that "in a valued "policy, an overvaluation shall render "absolutely void a policy issued upon such "valuation."

§ 150. *Fraud not presumed unless overvaluation be excessive.*

There is not, in Quebec, a presumption of fraud against one who insures a thing for more than its real value. The presumption is rather that he has done so with no bad faith. If fraud be alleged it must be proved. Men, it is said, differ as to values, and insurers may gain by overvaluations. But if the insured overvalue and persist in a valuation greater than his loss, particularly under an open policy, the appearances of good faith diminish. But a slight excess ought not to be regarded. In the old marine insurance cases, Emerigon was for holding that the excess should be of a fourth at least, to be regarded.[1]

Phillips, § 1183, holds that the fact of property being valued too highly is not, under the English law, of itself, a badge of fraud; but Marshall, after Lord Mansfield, says, if much overvalued it must be with a bad view. Kent says that if the valuation be grossly enormous it gives rise to a strong presumption of fraud.[2]

[1] So held by Story, J., in *Alsop* v. *Commercial Ins. Co.*, 1 Sumner R. The case of gross overvaluation as a question of fraud is solely for the Jury; *Ib.* Overvaluation by mistake, it seems, will not avoid the policy, *Ib.*; observations of Story, J.

[2] *Alsop* v. *Commercial Ins. Co. supra.*

[3] 9 Jurist. (A.D. 1863.)

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 2.

Judicial Abandonments.

William H. Arnton, auctioneer, Montreal, July 29.
William Beattie, trader, Melbourne, July 23.
François Bourgoing, trader, Tadoussac, July 31.
Appolinaire Morency, tailor, Quebec, July 25.

Curators appointed.

Re R. P. Dinahan.—Bilodeau & Renaud, Montreal, joint curator, July 25.

Re John G. LeBlanc, trader, Carleton.—H. A. Bédard, Quebec, curator, July 25.

Re John LeBoutillier & Co., Gaspé Basin.—N. Matte, Quebec, and C. S. LeBoutillier, Gaspé, joint curator, July 16.

Dividends.

Re Philéas Faucher, St. François Xavier de Brompton.—Second and final dividend, payable Aug. 19, J. A. Begin, Windsor Mills, curator.

Re Tancrède Robitaille, St. Hyacinthe.—First and final dividend, payable Aug 20, J. Morin, St. Hyacinthe, curator.

Minutes of notaries transferred.

Minutes of Charles Robert, N.P., Ste. Pudentienne, transferred to Joseph Gingras, N.P., Ste. Claire, county of Dorchester.

Minutes of late G. M. Prévost, N.P., and François de Salles Prévost, N.P., Terrebonne, to be transferred to E. S. Mathieu, N.P., Terrebonne.

Minutes of late J. T. Langlois, N.P., Sutton, to F. L. Mongeon, N.P., township of Sutton.

[1] Tome 1, p. 279.

[2] Kent, Vol. III, note to [375], says that in France valued policies are rejected. This is not the case, but they do not estop the insurers.