The Legal News.

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Mr. Justice Miller, of the United States Supreme Court, who died from the effects of paralysis on the 13th instant, is an example of a man finding somewhat late in life the profession for which he was specially fitted. Mr. Miller was born in Richmond, Ky., in 1812. His early years were spent upon a farm. Agriculture had no attractions for him, and he sighed for something higher. His ambition or his opportunities were limited at first to a drug store, in which he obtained employment. He then read medicine, and when twenty-two years of age entered upon the practice of medicine in Knox county. From medicine, after some years, he turned to law, and was admitted to the bar in 1847, when thirty-one years of age. Notwithstanding the disadvantage of entering the profession nine or ten years after the usual time, he speedily showed that in this instance change of avocation was not a mistake. In 1862 he was appointed by President Lincoln associate justice of the Supreme Court. Mr. Justice Harlan, one of his colleagues, said of him :—"He had a very bold, aggressive mind, which was shown in his treatment of questions outside of the law. I do not remember any instance since I have been with him upon the bench when he hesitated in the slightest degree to follow out to their legitimate results any conclusions which he ever reached on a question of law. He was not as learned in the books as some judges, but he had a natural aptitude for law. He saw very readily and promptly the real issues of a case and determined them in his own mind without much hesitation. I think that is true in the main, though at times there were questions also on which he expressed doubt. But when, upon reflection, he reached a conclusion that satisfied his own mind, he was prepared to announce it, and stand by it whatever might be the consequences. . . . It is safe to say that no judge in the country has ever delivered a larger number of opinions in cases involving great constitutional questions. It is also safe to say that, with the exception of Chief Justice Marshall, no American judge has made a deeper impression upon the jurisprudence of this country than he has."

"*Essentials of Forensic Medicine, Toxicology and Hygiene*," by C. E. Armand Semple, M.D., of London, is a work recently published by W. B. Saunders, Philadelphia, forming one of the series known as Saunders' Question Compends. Within the space of 196 pages, this treatise gives a clear synopsis of accurate information on a good many subjects useful to the lawyer, especially to one who has cases before criminal courts. There are many things which specially pertain to the medical profession, with which the lawyer must also be conversant in order to conduct the examination of medical witnesses, and to prevent imposition. Thus, the other day, in the *Ansell* case at Quebec, a physician testified to his suspicion that the prosecutrix was feigning epilepsy. We find that feigned epilepsy is one of the subjects noticed in this work. Among the matters treated are personal identity, age, rape, pregnancy, delivery, criminal abortion, infanticide, evidences of live birth, unsoundness of mind, examination of dead bodies, evidence of poisoning and methods of extraction of poison from the dead body, death by hanging, wounds, etc. The portion devoted to hygiene treats of the purity of air and water, and of milk and other foods. The work, which is copiously illustrated, may safely be commended to the reader who has not the time or inclination to master more elaborate treatises.

Mr. Justice Mathew, of the English bench, has recorded his opinion in favour of allowing prisoners to give evidence on their own behalf. In opening Bodmin Assizes, he said there was one change in the law that was clearly demanded by public opinion, and which would, doubtless, be legislated on before long. This was a change that would enable a prisoner to give evidence, if he desired, on his own behalf. It was a singular thing they had been dealing with questions of life and death for centuries without acting

on the maxim of hearing both sides. The proposed change would benefit innocent prisoners, and he doubted if it would be of advantage to the guilty. His Lordship further advocated a Court of Criminal Appeal.

In a recent number of the *Author*, Sir Fred. Pollock criticizes an article on Copyright which had appeared in a previous issue of that periodical. The former writer stated that "literary property is subject to the laws which protect all other property." Sir F. Pollock, in replying, states: "That literary property is recognized and protected by law as something of value is quite true; and probably this is all that the writer meant. But the laws which protect property differ greatly according to the kind of property. Land is not protected in exactly the same way as goods, and a trade-mark and a copyright are again protected by means different from those in use for tangible property, and differing in details from one another. Let not the unwary reader, therefore, imagine that he or she can have a literary pirate dealt with as a thief. Copyright is not, in the legal sense, a thing capable of being stolen." Again: it was asked, "Does anybody take the trouble to secure his copyright in a public lecture?" In reply to this, Sir F. Pollock refers to the well-known case of *Caird* v. *Sime*, 12 App. Cas. 326.

A correspondent writing to the *Chicago Legal News* records his obligations to that journal, remarking, "in one instance alone a hint obtained from its columns enabled me to obtain a rehearing, and finally win a case in the Supreme Court, and with it a fee of $3,000 cash, that, but for your journal I should have given up as lost." Similar good fortune has, in several instances, befallen readers of this journal.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Tutor—Appeal from Judgment—Authorization—Art. 306, *C.C.—Procedure.*

Held:—1. That a tutor cannot appeal from a judgment, until he is authorized by the judge, or the prothonotary, on the advice of a family council. (Art. 306, C.C.)

2. That when an appeal has been taken by a tutor without such authorization, and the respondent moves for the dismissal of the appeal for want of authorization, the Court of Queen's Bench sitting in appeal, may continue the motion to the next term, with leave to the appellant to produce the necessary authorization; and on the production thereof, will permit the authorization to be filed on payment of costs of motion.—*Laforce & Le Maire, etc., de La Ville de Sorel*, Dorion, Ch. J., Cross, Baby, Church and Bossé, JJ., Nov. 16, 1889.

Bank—Powers of—Contract of Guarantee—Ultra Vires.

Held:—That a Bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party.—*Johansen & Chaplin*, Dorion, Ch. J., Tessier, Baby, Church and Bossé, JJ., November 20, 1889.

Sale—Latent defect—Redhibitory Action—Art. 1530, *C.C.*

Held:—1. Where horses, at the time of their sale, were suffering from glanders, but the disease was not sufficiently developed to be apparent until about twenty days afterwards, and the purchaser then notified the vendor of the fact, and that they would be destroyed if not removed within three days: that a redhibitory action instituted four weeks after the sale and delivery was brought with reasonable diligence.

2. That where evidence is conflicting and evenly balanced (as in this case as to the existence of the disease at the time of the sale), the Court of Appeal will not disturb the decision of the Court below.—*Montreal Street R. Co. & Lindsay*, Dorion, Ch. J., Tessier, Baby, Church and Bossé, JJ., January 22, 1890.

Injury Resulting in Death—Claim of Widow—Prescription—Arts. 1056, 2261, 2262, 2267, *C.C.—Verdict—Damages.*

The husband of the respondent was injured while engaged in his duties as appellants'

* To appear in Montreal Law Reports, 6 Q.B.

employee, and the injury resulted in his death about fifteen months afterwards. No action for indemnity was instituted by him during his lifetime. In an action for compensation brought by his widow (under Art. 1056, C.C.) within one year after his death, the jury found negligence on the part of appellants, and awarded the respondent damages.

Held: (affirming the judgment of the Court of Review, M. L. R., 5 S. C. 225)—1. That the action of the widow and relations under Art. 1056, C.C., in a case where the person injured has died in consequence of his injuries without having obtained indemnity or satisfaction, is a right distinct from that of the injured person, and is prescribed only by the lapse of a year from the date of death.

2. That the action under Art. 1056, C.C., exists, even supposing that at the date of death the injured person's action was prescribed by the expiration of one year from the date of the injury,—the fact that the claim of deceased was extinguished by prescription at the time of his death not being equivalent to his having obtained "indemnity or satisfaction" within the meaning of Art. 1056, C.C.

3. Where on a former trial the jury awarded the respondent $3,000 damages, but the verdict was set aside by the Supreme Court on the ground of misdirection, and on the second trial the jury awarded $6,500 damages: that the amount was not so excessive that the Court should set aside the verdict and order a new trial.—*C. P. R. Co. & Robinson*, Dorion, Ch. J., Cross, Baby, Bossé and Doherty, JJ., June 19, 1890.

Habeas Corpus—Appeal from judgment of the Superior Court—Jurisdiction.

Held:—That the Superior Court and the judges thereof having concurrent jurisdiction with the Court of Queen's Bench in matters of *habeas corpus ad subjiciendum*, there is no appeal to the Court of Queen's Bench sitting in appeal from the judgment of the Superior Court, or of a judge thereof, in such matters. —*La Mission de Grande Ligne et al. & Morissette*, Dorion, Ch. J., Tessier, Cross, Baby, Bossé, JJ., June 26, 1889.

Prescription—C.S.C., ch. 85, s. 3—Negligence.

Held:—1. That the prescription of three months under C.S.C., ch. 85, s. 3, is not applicable where the injury is sustained without the limits of the city or town, though the road be made and maintained by the corporation of the city or town.

2. That a municipality is not responsible for an injury sustained through the imprudence of the person injured; as where a person crossing the ice on the St. Lawrence in winter, deviated from the course marked out by branches, and plunged into an opening in the ice, and was drowned.—*Laforce & Le Muire etc. de la ville de Sorel*, Dorion, Ch. J., Tessier, Baby, Church, Bossé, JJ., Jan. 22, 1890.

Sale with suspensive condition—Insolvency of purchaser — Collocation — Privilege — Art. 1998, C.C.

Held:—Where a movable thing is sold with the stipulation that the title shall remain in the vendor until the price shall be entirely paid, and before payment of the price, but more than fifteen days after the delivery of the thing, the purchaser becomes insolvent and makes an assignment; that the vendor is not entitled to be collocated by privilege, for the price of the thing, on the insolvent estate of the purchaser.—*Irving & Chapleau*, Dorion, Ch. J., Tessier, Cross, Bossé, JJ., May 23, 1890.

COUR DE MAGISTRAT.

MONTRÉAL, 10 mars 1890.

Coram CHAMPAGNE, J. C. M.

VINCENT v. SAMSON.

Locataire—Maison fermée—Résiliation—Loyer —Demande.

JUGÉ:—1o. *Qu'un locataire n'a pas le droit de laisser la maison qu'il a louée fermée et non chauffée, et que s'il le fait, c'est une cause de résiliation de bail;*

2o. *Qu'un propriétaire n'est pas tenu d'aller faire la demande de son loyer ailleurs que dans les lieux loués.*

PER CURIAM:—Le demandeur réclame trois mois de loyer échus et demande la résiliation du bail pour défaut de paiement du loyer, et parce que le défendeur n'habite plus la maison qui n'est pas chauffée.

Le défendeur plaide qu'il doit le loyer, offre le paiement, mais sans frais, parce que le demandeur n'en a pas fait la demande avant l'action.

Bien que le loyer soit quérable, le locateur ne peut être tenu de faire la demande que si le locataire reste sur les lieux loués, mais s'il les quitte, il ne peut forcer le locateur à le chercher ailleurs. Quant à la résiliation du bail, celui qui loue une maison pour l'habiter, n'a pas le droit de l'abandonner avant l'expiration du bail, et de la tenir fermée et non chauffée ; s'il le fait c'est une cause suffisante pour donner droit au locataire de demander la résiliation du bail.

Jugement pour le demandeur.

Lareau & Brodeur, avocats du demandeur.

A. Rocher, avocat du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 10 février 1890.

Coram CHAMPAGNE, J. C. M.

LEPROHON v. ST-GERMAIN, et TARDIF, T.S.

Salaire des journaliers—Compagnon barbier—Insaisissabilité.

JUGÉ :—*Que le statut* 51-52 *Vict., ch.* 24 (1888) *qui déclare les trois quarts du salaire des journaliers insaisissables ne s'applique pas à un compagnon barbier.* *

2o. *Qu'un tiers-saisi n'est tenu de déclarer que le salaire qu'il doit au moment de la signification d'une saisie-arrêt, et non ce qu'il doit au temps où il fait sa déclaration vu que le salaire n'est pas saisissable d'avance.*

Le défendeur était un compagnon barbier. Le demandeur ayant pris une saisie-arrêt entre les mains de son patron, le tiers-saisi vint déclarer qu'au jour de la signification, il devait soixante-et-dix centins, et que le salaire du défendeur était de $10 par semaine.

Le demandeur contesta cette déclaration prétendant que le tiers-saisi devait dire ce qu'il devait le jour qu'il a fait sa déclaration et non le jour de l'assignation, ce qui faisait une différence de $5.

PER CURIAM :—Les gages non échus sont insaisissables excepté dans le cas d'un *operarius*, et le tiers-saisi ne peut être condamné à payer que ce qui était échu au moment de la signification de la saisie-arrêt (C. P. C. 558, § 5). Le défendeur ne tombe pas sous le coup de la loi 51-52 Vict., ch. 24 (1888), 62a C. P. C., n'étant pas un journalier (*operarius*) dans le sens de cet article, qui ne s'applique qu'à l'homme de peine ; et le tiers-saisi a intérêt à soulever cette question lorsqu'on veut le forcer à déclarer de nouveau au désir de l'article susdit. (*Bescherelle & Bourguignon*, vo. *barbier* ; 7 Leg. News, 354).

H. A. Cholette, avocat du demandeur.

H. Lanctot, avocat du tiers-saisi.

(J. J. B.)

* Le 11 décembre 1889, *re Germain* v. *Ducharme* et *Sabourin*, la Cour de Magistrat (Champagne, J.) a décidé que le même statut ne s'appliquait pas à un commis.

*DECISIONS AT QUEBEC.**

Pari—Dépôt et retrait d'enjeu—Preuve—Course de chevaux—Arts. 1927, 1928, *et* 1234, *C.C.*

Jugé :—1. Lorsqu'un pari est fait à la condition que les sommes pariées seront déposées entre les mains d'un tiers, le retrait de son enjeu par l'une des parties, met fin au pari et donne à l'autre le droit de recouvrer du dépositaire ce qu'elle avait elle-même déposé sur son enjeu ;

2. Lorsqu'un pari est constaté par un écrit, la preuve testimoniale est inadmissible pour en changer les termes ;

3. Tant que le pari n'est pas gagné par l'un des parieurs, la somme déposée en mains tierces ne cesse pas d'être la propriété du déposant, et il peut la retirer ;

4. Le pari pour courses de chevaux ne donne pas droit d'action pour le recouvrement de deniers ou autres choses pariées.—*Swift* v. *Angers*, en révision, Casault, Routhier, Andrews, JJ., 31 mars 1890.

Cession de biens—48 Vict. ch. 22—Saisie-gagerie—Action par créancier contre curateur.

La femme de l'intimé, marchande publique, ayant fait cession de biens pour le bénéfice de ses créanciers, l'intimé produisit entre les mains de l'appelant, nommé curateur, une réclamation de $1,500, pour loyer du magasin occupé par la faillie. Quelques mois plus tard le curateur, dûment autorisé, vendit le fonds de commerce, et comme l'acheteur en prenait possession, l'intimé le fit sai-

* 16 Q. L. R.

sir pour loyer susdit, par bref de saisie-gagerie adressé au curateur es qual. et à l'acheteur mis en cause. Défense en droit de la part de l'appelant.

Jugé:—Que l'appelant était, en sa qualité de curateur, légalement en possession des dits biens, pour en disposer et en distribuer le produit entre les créanciers, et l'intimé n'avait aucun droit de les saisir-gager ni de poursuivre l'appelant pour sa créance; la loi relative à la cession de biens lui ayant conservé le droit de produire sa réclamation entre les mains de l'appelant pour être payé selon et d'après le rang de ses droits et priviléges sur le prix des dits meubles.

Lorsqu'un marchand insolvable a fait cession de ses biens pour le bénéfice de ses créanciers, et qu'un curateur a été nommé, un créancier du failli ne peut poursuivre le curateur et le déposséder des biens dont la loi lui a confié la garde et l'administration dans l'intérêt de tous les créanciers en général.—*Bédard & Lemieux*, en appel, Dorion, J. C., Cross, Baby, Church, Bossé, JJ., 7 fév. 1890.

Servitude—Droit de passage—Barrière—Art. 557, *C. C.*

Jugé:—Le propriétaire du fonds servant, sur lequel est établie une servitude de passage, a le droit, en clôturant ce fonds, de mettre au passage une barrière qui ouvre et ferme facilement.—*Royer* v. *Lachance*, en révision, Casault, Routhier, Caron, JJ., 30 avril 1890.

Listes électorales, P. Q.—Appel au juge de la Cour Supérieure—Employés du gouvernement—S. R. Q. arts. 206, 207, 176—52 *Vict. ch.* 6.

Jugé:—1. L'appel au juge de la Cour Supérieure des décisions des conseils municipaux au sujet des listes électorales, donné par l'art. 206 des S. R. Q., ne peut être pris que lorsque ces décisions sont rendues sur des plaintes produites au bureau du secrétaire-trésorier dans les délais voulus;

2. Les personnes employées à la journée au chemin de fer Intercolonial par le gouvernement de la Puissance, et qui peuvent être renvoyées à la fin de chaque jour sans raison ni excuse, ne tombent pas sous le coup de l'art. 176 des S. R. Q. amendé par la 52 Vict. ch. 6, s. 2, qui enlève le droit de vote à ceux qui occupent une position "salariée et permanente" sous les gouvernements de la Puissance du Canada ou de cette province.—*Beaumont* v. *Corporation de Lévis*, C. S., Casault, J., 4 mai 1890.

FIRE INSURANCE.

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

CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

§ 193. *What is a representation?*

A representation in insurance is either by writing[1] or by *parol*, and is a communication before or at the time of effecting an insurance as to facts and objects which may determine the will of the insurer. Sometimes it is an affirmation of some past or existing fact, sometimes a mere statement of expectation, intention or belief. A representation is said to be *material*, when it communicates any fact or circumstance which may be reasonably supposed to influence the judgment of the underwriters in undertaking the risk, or calculating the premium; and whatever may be the form of expression used by the insured or his agent in making a representation, if it have the effect of imposing upon or misleading the underwriter, it will be material, and fatal to the contract.

A positive representation in a material point is essentially a warranty, says Kent, though not inserted in the policy.

Representations (says Duer) relate either to facts, information, or, lastly, to intentions, expectation, or belief of the assured.

§ 194. *How distinguished from a warranty.*

There is no difficulty in distinguishing a representation from a warranty, the former being part of the preliminary proceedings[2], (something before the subscription to the policy and delivery of it); while warranty is part of the contract as it has been completed.[3]

[1] It may be inserted in the policy, Kent, p. 282.
[2] According to Duer, it may be in the policy.
[3] Angell, § 147 *a*.

Representations, though in writing, said Lord Mansfield, in *Bize* v. *Fletcher*, hold less than a warranty.

There is this material difference between a *representation* and a *warranty*—a *warranty* is always a part of the written policy, and must appear upon the *face* of it; but a *representation* is only a matter of collateral information on the subject of the insurance, and makes no part of the policy. A *warranty* must be *strictly* and *literally* complied with; but it is sufficient if a representation be *substantially* correct. An *untrue* representation is not in itself a breach of the contract (although by the terms of the contract it may become so), but if the untrue representation be *material*, it will in itself avoid the policy either on the ground of *fraud*, or because it has misled the insurer. (1 Park, 285, 7th ed.) Duer differs; lect. xiv.

When a man is asked how old he is, and he says thirty, though he be fifty, as he is thirty and more, it may be said he answers not untruly. Yet, it must be held that the answer is not true.[1]

Suppose the insured is asked: State the highest rate of premium ever paid by you for insurance of this same subject. If he answer falsely, it will be held a false representation in matter essential; falsely inducing undue confidence, the insured must not gain. The policy is null. So held on appeal in Scotland in 1814. Vo. "Fraud," Shaw's Digest.

§ 195. *Effect of insurer's knowledge of a fact.*

Will the insurer's knowledge about a fact save the insured from the accusation of representing facts untruly, where the insurer's knowledge aided him to see the exact position of things?

Will knowledge of the agent be held that or [illegible] al and estop him? It was held in the affirmative in *Rowley* v. *Empire Ins. Co.*[2] In this case the agent filled up blanks in the application, and it contained a material misrepresentation not authorized by the applicant; it was held the act of the company, and so it was held in *Drury* v. *Conway Ins. Co.*[3]

Insurance Co. v. *Wilkinson*[1] was a life insurance case. The age of the mother of insured was not given by him, except as he got it from the insurer's agent, who got it from some other source, and his report of it was adopted by the applicant and stated in the application, and it was untrue in fact.

If the insured be misled by the insurers he is *not* to suffer, *Newcastle F. Ins. Co.* v. *Macmoran*, 3 Dow, 255; *Hartford Prov. Ins. Co.* v. *Harmer*, 3 Bennett.

Parol evidence is admissible to show that description annexed to a policy was drawn by the agent of the insurer. P. 408, 2 Sup. Ct. R. of Ca.

In *Harris* v. *Queen Ins. Co.*,[2] the plaintiff sued as executor upon what is called an "indisputable" life policy which had been effected by his testator, the deceased. The company set up a misstatement by the assured as voiding the policy. The plaintiff replied that the company published to the assured advertisements containing this statement: "A Queen's life policy is unchallengeable, except on ground of fraud." The Court held the company bound by their advertisements, and gave judgment for the plaintiff.

§ 196. *Different kinds of representations.*

Representations are divided into promissory and others.[3]

§ 197. *Substantial compliance.*

The representation that ashes are kept in brick is sufficiently complied with, if they be kept in iron, or equally safe mode of deposit. So the representation that casks of water with buckets are kept in each story, though untrue, if a reservoir be at the top of the house with pipes from it to each story, if found by skilled persons equally efficacious, it would be a substantial compliance, says Angell, 158.

Arnould and Duer are directly at variance in regard to the nature of a representation, and its connection with the contract of insurance. Arnould maintains, and the other English writers on insurance are of the same opinion, that a representation is *collateral* to

[1] *Cazenove v. Br. Eq. Ins. Co.* Jurist of 1860,
[2] 36 N. Y.
[3] 13 Gray.

[1] 13 Wallace R.
[2] Queen's Bench (Eng.), 1864.
[3] Query: Are promissory representations anything else than warranties?

the contract, and invalidates the policy only on the ground of fraud upon the insurer. But he holds that the fraud required is not moral, but simply *legal* fraud; it is sufficient if the insurer is misled, even by an innocent mistake of the other party, this constituting a fraud in contemplation of law. 1 *Arnould* on *Ins.*, 495. Duer, on the other hand, insists with his accustomed force and clearness, that every positive representation, is a part of the contract of insurance, though not inserted in the policy: and that its substantial correctness is thereby made a condition precedent, on which the validity of the policy depends; that a representation is equivalent to a warranty, except in regard to the strictness of fulfilment required; "that where there is no actual intention to deceive, there is no other fraud than exists in every case where a party relies on a promise that is not fulfilled;" and that, therefore, the effect of an innocent misrepresentation in invalidating a policy, cannot be on the ground of fraud, but on account of the non-performance of a condition precedent. *Duer* on *Ins.*, *Vol.* 2, *Lect.* 14, p. 653.

Concealment must be of something that the party concealing was bound to disclose. A, wishing to insure, is asked by one office 50s. He goes to another that offers to insure him at 25s. A is not bound to say that the other asked 50s.[1]

Where the insured said so-and-so was the highest premium he had ever paid, and this was false, and induced undue confidence, the Supreme Court of Scotland reversed the original judgment, which held that representation not essential to the policy. 1 Bell, 619.

If one party conceals or misrepresents, but the other discovers everything and the truth, and then both sign the contract, concealment or misrepresentation will be in vain urged.[2] *E. G.*—A being asked if he has proposed elsewhere, and what was asked, says: "Yes, and they asked 30s." The company enquires and finds that they asked 50s.

But by the forms of pleading, it is seen that every action for the breach of a promise is founded upon *legal* fraud, and it is always so charged in the declaration. Therefore, inasmuch as insurance is a contract of a peculiar nature, entirely on speculation, and *uberrimae fidei*, it would seem that the slightest fraud is sufficient to defeat it, and that anything which the law terms fraudulent will produce that result.

Mr. Phillips' doctrine is that "it is an implied condition of the contract of insurance, that it is free from misrepresentation or concealment, whether fraudulent or through mistake." 1 *Phillips*, *Ins.*, 287.

Art. 2487, C.C. of L.C., says that concealment, either by error or design, of any fact of a nature to diminish the assurer's appreciation of the risk, is a cause of nullity.

No point in the law of insurance is better settled than that, in every case of misrepresentation of existing facts material to the risk, the insurer is not liable for an injury to the property insured, though it has no connection with the fact misrepresented, but is owing entirely to another cause. This is on the ground that the insurer has been misled by the misrepresentation, and would, if the fact had been truly stated, either have declined the risk entirely, or demanded a larger premium. But the case of *Stebbins* v. *Globe Ins. Co.*[1] denies the applicability of this doctrine to *promissory* representations, and holds that the material increase of the risk by a breach of a representation of that character constitutes in itself no defence for the insurer, but that he must also show that but for its non-fulfilment, the loss would not have occurred.

The case referred to was an action on a policy of insurance against fire, and the facts material to the point in question were these: The plaintiff's application for insurance, after giving a general description of the property, referred for particulars to a diagram annexed thereto. On this diagram the space in the rear of the buildings on which insurance was requested was marked *vacant*. After exhibiting the diagram, the defendants offered to prove that after the insurance was effected, and during the continuance of

[1] Argument from judgment of Lord Brougham in 1850, in *Irvine* v. *Kirkpatrick*, 3 E. L. and Eq. R.

[2] Per Lord Brougham, *Ib.*

[1] 2 Hall, 632.

the risk, the plaintiff had erected other buildings on the ground marked *vacant*, and immediately contiguous to the premises insured, and that the risk was thereby increased. But the Court rejected the evidence, unless the defendants meant to show that the intention of the plaintiff at the time of effecting the insurance, was to erect these buildings, and that he had concealed that intention, or that the fire was occasioned by or originated in the adjacent buildings so erected. The defendants appealed to the Superior Court of the City of New York, where, however, the decision of the Court below was affirmed. This case is referred to, and a similar decision made in *Gates* v. *Madison Co. Mut. Ins. Co.* [1] Is this sound? Is a man bound to keep *vacant* land?

Sometimes French companies' conditions allow them to cancel, in any case of fraud, all policies existing.

It will be observed, that by this doctrine, the effect of *promissory representations* [2] in invalidating the policy is not *entirely denied* as in *Alston* v. *Mechanics Mut. Ins. Co.*, but limited in an important particular. There appear to be no other cases in the reports where the same doctrine is maintained, neither is it recognized by any of the writers on insurance. Indeed, it seems to be opposed to the general principles governing that branch of the law, and to work an entire change in the mode of construing representations, whether affirmative or promissory. If, as has been before stated (and in regard to this the decisions leave no room for doubt), a representation of the occupation of a building, or the national character of a ship, means not only that such is the fact at the time the statement is made, but also that it will continue substantially so during the risk, it is difficult to see why a representation of the situation of the property insured in regard to other buildings, being a matter equally material to the risk, should not receive as broad a construction.

[1] 1 Selden, 469.

[2] What are promissory representations? Nothing but warranties after all. Where they are held by Duer to be warranties, are they not so in substance? Take the case in 1 Campb., for instance. It would be more correct to say, representations are not generally warranties, but may be so, when involving promise for future conduct.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Oct. 18.

Judicial Abandonments.

Adjutor Bernier, stationer, Levis, Oct. 14.

Widow Joseph Côté, St. Roch de Québec, Oct. 8.

F. X. L. Mercier, painter, St. Joseph de Levis, Oct. 14.

Curators appointed.

Re F. X. Billy, Arthabaska Station.—Kent & Turcotte, Montreal, joint curator, Oct. 15.

Re Armand Boyce.—Henry Miles, Montreal, curator, Oct. 13.

Re J. L. Laurier.—Bilodeau & Renaud, Montreal, joint curator, Oct. 15.

Re Damase A. Morin, Fraserville.—H. A. Bedard, Quebec, curator, Oct. 10.

Re Auguste Perron, Quebec.—D. Arcand, Quebec, curator, Oct. 13.

Re Wm. Sipling.—F. W. Bury, Montreal, curator, Oct. 15.

Re George Woods, trader, Montreal.—J. U. Faucher, Montreal, curator, Aug. 29.

Dividends.

Re Beaudet & Chinic, Quebec.—Third dividend, payable Nov. 4, D. Rattray, Quebec, curator.

Re Duncan Campbell & Son, Montreal.—Second and final dividend, payable Nov, 3, A. F. Riddell, Montreal, curator.

Re Charles Lemire.—First and final dividend, payable Oct. 25, Bilodeau & Renaud, Montreal, joint curator.

Re Albert Manseau, Plaisance.—First and final dividend, payable Nov. 4, C. Desmarteau, Montreal, curator.

Re Montreal Moulding & Mirror Manufacturing Co.—Second and final dividend, payable Nov. 4, A. F. Riddell, Montreal, liquidator.

Re Miss H. Mousseau.—First and final dividend, payable Oct. 25, Bilodeau & Renaud, Montreal, joint curator.

Re Louis Robert.—First and final dividend, payable Oct. 25, Bilodeau & Renaud, Montreal, joint curator.

Re Wm. Rourke.—First dividend, payable Nov. 3, J. N. Fulton, Montreal, curator.

Re Narcisse Théroux, St. David.—First and final dividend, payable Nov. 4, C. Desmarteau, Montreal, curator.

Separation as to Property.

Clara Nadon vs. Jean Baptiste Lalumière, Montreal, Oct. 9.

Ellen H. O'Brien vs. Charles N. Trudeau, blacksmith, Oct. 11.

Georgiana Paradis vs. Joseph N. Massicotte, tinsmith, Farnham, Oct. 7.