The Legal News.

Vol. XIII. DECEMBER 6, 1890. No. 49.

Appeals to the Supreme Court are being prosecuted with considerable activity at present. The last list comprised sixteen Quebec appeals, nearly every case in which the amount was large enough to give jurisdiction being inscribed. The list indicates a singular disparity between the business of the Quebec and Montreal divisions—only one appeal coming from the former, while fifteen appeals are from the latter. There were twenty-two cases from Ontario, eleven from the Maritime Provinces, and two Exchequer appeals.

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An interesting question of *res adjudicata* was decided in a recent case of *Macdougall* v. *Knight* by the English Court of appeal. The action was for libel in respect of a certain pamphlet. The plaintiff had brought a previous action, which was dismissed, founded on other passages in the same pamphlet. The Court refused to allow the plaintiff to proceed with the second action, holding that the matter was *res judicata*, and that the new action was an abuse of the process of the Court.

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The vacancy in the English Court of Appela caused by the retirement of Lord Justice Cotton has been filled by the appointment of Mr. Justice Kay, a judge of the Chancery Division. Robert Romer, Q.C., has been appointed a judge of the Chancery Division to replace Mr. Justice Kay.

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A writer in the *London Law Journal*, referring to the subject of the capacity of the wife as a witness, gives some interesting facts showing the result of piecemeal legislation. "Here (he says) old legal fictions, resulting in curious limitations, are found to be in conflict with more modern views. It is still the existing rule that a wife may not give evidence against her husband in criminal cases except in proceedings under the Explosive Substances Act of 1883. But in a civil action the testimony of a wife can be received either for or against her husband. In this difference between the rules of evidence in criminal and civil trials there exists an example of the antagonism of the old rules of the Common Law with modern principles. Of course the inability of the wife to give evidence against her husband is a necessary consequence of the legal fiction that the legal existence of the wife was merged in that of the husband. Though based on this fiction, it has been strengthened by the idea that wives would be biassed in favor of their husbands, and that if they gave evidence it would, to use Coke's expression, be 'a cause of implacable discord and dissension.' This reason has certainly had much to do with the continuation of the rule, for it has a practical ring about it sufficient to enable many to believe in the value of the rule who would not be convinced by the common law theory. It has been repeated over and over again by judges and legal writers, but may always be traced back to Coke's dictum. Therefore, from the beginning of the reign of James I, a practical reason has been united with an old legal fiction which, without its more modern ally, would hardly have had strength to enable this particular rule to hold the field. It is interesting, before quitting this point, to notice shortly the progress of these changes. In 1846 the evidence of husbands and wives for or against each other was made admissible in actions in a county court. The curious aspect of this particular change is that the reform was introduced into the procedure of a class of law courts in which from the position of the litigants and from the general nature of the proceedings, there is more probability of false evidence being given than in the superior courts. But the rejection of such evidence would, in many instances, have greatly lessened the practical value of these tribunals. Three years later, a further inroad was made on the still existing rule, for in bankruptcy proceedings a wife was henceforth to be allowed to give evidence as to the bankrupt's affairs. She was, in fact, to be asked to give evidence which in many cases might be adverse to her husband's interests. But the Evidence

Acts of 1851 and 1853 finally broke down the old rule so far as civil proceedings were concerned, and in these cases husbands and wives could henceforth be called to give evidence for or against each other. The passing of these Acts was also the most practical refutation in the world of the arguments against the admission of what Bentham called 'family peace disturbing evidence.' As if to make the existing anomaly more ridiculous, the Married Women's Property Amendment Act, 1884, allows a husband or wife to give evidence against each other in proceedings under the principal Act,—that is to say in proceedings by a husband or wife against the other in respect of their separate property, whether civil or criminal; so that if a husband steals his wife's money which she has earned by her own exertions, she may appear at a police court and secure his conviction; but if the same person steals the cash-box from his neighbour's shop, the wife of the thief cannot be called as a witness, although out of her mouth his guilt may conclusively be proved.

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## COUR SUPÉRIEUR.

MALBAIE, 17 juillet 1890.

*Coram* GAGNÉ, J.

C. J. TREMBLAY v. LA CORPORATION DU VILLAGE DE LA POINTE-AU-PIC.

*Mandamus—Règlement municipal prohibant la vente des liqueurs enivrantes—Certificats pour licence d'auberge.*

JUGÉ:—1o. *Que le tribunal peut intervenir par bref de mandamus, s'il y a abus dans l'exercice du pouvoir discrétionnaire laissé au conseil municipal sur demande pour confirmation de certificat, ou erreur par suite de fausse interprétation de la loi.*

2o. *Que le requérant n'était pas tenu d'alléguer qu'il était dans l'intérêt public de confirmer son certificat.*

3o. *Qu'un réglement prohibitif dont copie n'a pas été transmise au percepteur du revenu, aux termes de l'art. 562 C. M est sans effet.*

4o. *Que le conseil est tenu de prendre en considération la demande de confirmation d'un certificat et d'exercer sa discrétion.*

En mars dernier, le conseil municipal de la défenderesse passa un règlement prohibant la vente des liqueurs enivrantes, mais omit d'en faire transmettre une copie au percepteur du revenu, avant le premier mai suivant.

Vu l'absence d'un reglement prohibitif en force, le requérant présenta au conseil un certificat pour licence d'auberge, dont il demanda la confirmation. Le conseil rejeta sa demande sans l'avoir examinée ni prise en considération. De là, requête pour bref de mandamus.

Jugement:—"La Cour adjugeant d'abord sur la défense en droit;

"Considérant qu le requérant ne demande pas que le conseil municipal du village de la Pointe-au-Pic, soit forcé de lui *accorder une licence* pour la vente des liqueurs enivrantes

"Que le requérant n'était pas obligé d'alléguer dans sa requête libellée, qu'il était dans l'intérêt public de confirmer son certificat;

"Que le dit requérant n'etait pas tenu de payer une taxe de deux piastres, ni de revêtir de timbres pour ce montant, son certificat ou sa demande de confirmation, la loi n'exigeant cette formalité que dans les cités de Montréal et de Québec;

"Qu'en supposant qu'il serait laissé à la discrétion du conseil d'accorder ou refuser la confirmation d'un certificat, le tribunal ou le juge peut encore intervenir par bref de mandamus quand il y a abus dans l'exercise de ce pouvoir discrétionnaire ou erreur par suite d'une fausse interprétation de la loi;

"Que la requête libellée allègue que le certificat a été refusé sans raison valable, et sans qu'aucune des raisons prévues par la loi ait été invoqué, qu'il était en conséquence important de connaître les circonstances et les motifs de ce refus du conseil, que preuve avant faire droit a eu lieu du consentement des parties et par ordre du juge, qu'il a été établi que le conseil a refusé, sans raison valable, de prendre en considération le certificat soumis par le requérant, et que ce refus est illégal tel qu'expliqué plus au long ci-après;

"Renvoyons la dite défense en droit sans frais;

"Et adjugeant ensuite sur le mérite de la requête libellée;

"Considérant que d'après les documents produits le conseil municipal du village de la Pointe-au-Pic, a, sans aucune discussion, refusé irrévocablement de sanctionner et accorder le certificat demandé par le requérant, pour l'unique raison qu'il considérait le règlement qu'il avait passé pour prohiber la vente des liqueurs enivrantes comme étant le seul en force, pleine vigueur et actualité, et qu'il *ne se croyait pas* en droit, après consulte à cet effet, de pouvoir statuer le dit jour, contrairement aux allégués et restrictions du dit règlement ;

"Qu'il résulte des procédés du conseil qu'il n'a pas voulu prendre en considération ni examiner le dit certificat, ne *se croyant pas en droit de statuer* contrairement au dit règlement ;

"Que le dit règlement n'a pas été remis ou signifié au percepteur du revenu avant le premier mai dernier, et qu'il n'a jamais été en force ;

"Qu'il y a donc eu erreur dans la décision du dit conseil, et qu'il aurait dû procéder à prendre en considération la demande du requérant, sans s'occuper du dit règlement ;

"Qu'en supposant qu'il fût laissé à la discrétion du conseil d'accorder ou refuser la confirmation du dit certificat, le dit conseil était tenu de le prendre en considération et d'exercer sa discrétion ;

"Que par suite de l'erreur dans laquelle est tombé le dit conseil, et de la fausse appréciation qu'il a faite de la loi, relativement aux règlements prohibant la vente des liqueurs enivrantes, le dit requérant n'a pas eu l'avantage d'avoir une décision sur le mérite de sa demande ;

"Déclarons la requête libellée du dit requérant bien fondée, et ordonnons qu'il émane un bref péremptoire, enjoignant à la défenderesse de prendre en considération la demande du requérant pour la confirmation du certificat produit par lui, et de donner sa décision sur cette demande suivant la loi, et ce sous un délai de six jours, et à défaut par la dite défenderesse de se conformer au dit bref dans le susdit délai, elle est condamnée purement et simplement à payer au requérant, par voie d'amende, la somme de $500, le tout avec dépens distraits à MM. Angers et Martin, procureurs du requérant."

*Angers & Martin* pour le requérant.

*J. S. Perrault*, pour la défenderesse.

(C. A.)

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## *APPEAL REGISTER—MONTREAL.*

*Saturday, November* 15.

*Desmarteau & Thompson.*—Motion to dismiss appeal. Granted.

*Vincent et al. & Poupart.*—Motion for leave to appeal from an interlocutory judgment. Granted.

*Thompson & Molson.*—Heard. C. A. V.

*Elliott & Simmons.*—Part heard.

*Monday, November* 17.

*Claude & Jasmin.*—Motion for leave to plead *in formâ pauperis;* motion for new security, etc. C. A. V.

*Elliott & Simmons.*—Hearing concluded. C. A. V.

*Daveluy & Société Canadienne-Française de Construction de Montréal.*—Heard. C. A. V.

*Hart & Joseph* (two appeals).—Heard. C. A. V.

*Tuesday, November* 18.

*Claude & Jasmin.*—Motion for leave to plead *in formâ pauperis* granted. Motion for new security rejected without costs. Motion for more definite reasons of appeal rejected without costs.

*Atlantic & N. W. R. Co. & Lavallée.*—Heard. C. A. V.

*DeLaet & Mallette.*—Heard. C. A. V.

*Gaudry & Gaudry.*—Heard. C. A. V.

*Corporation du Comté de Verchères & Corporation du Village de Varennes.*—Heard. C. A. V.

*Wednesday, November* 19.

*Barnard & Molson.*—Motion for leave to appeal from interlocutory judgment. C. A. V.

*The Queen* v. *Berthiaume.*—Heard on reserved case. C. A. V.

*Bruneau & Moreau.*—Heard. C. A. V.

*Lomer & City of Montreal.*—The appellant files a discontinuance of the appeal, by and with the consent of respondent. *Acte* granted accordingly.

*Ontario & Quebec R. Co. & Curé et Marguilliers de l'Œuvre et Fabrique de Ste-Anne de Bellevue.*—Heard. C. A. V.

*Thursday, November 20.*

*Inglis & Phillips.*—Heard. C. A. V.

*Durocher & Lacoste.*—Heard. C. A. V.

*Friday, November 21.*

*The Queen* v. *Berthiaume.*—Conviction maintained.

*Thomson & Dominion Salvage & Wrecking Co.*; *Brown & Do.*—Part heard.

*Lacroix & Fauteux.*—Declared privileged.

*Saturday, November 22.*

*Reburn & Ont. & Quebec R. Co.*—Confirmed.

*Benning & Rielle.*—Confirmed.

*Watts & Wells* (two appeals).—Confirmed.

*Lindsay & Chaplin.*—Confirmed. Motion for appeal to Privy Council granted.

*Poudrette Lavigne & Poudrette Lavigne.*—Confirmed, Tessier J., *diss.* as to costs, being of opinion to confirm without costs.

*Robillard & Dufaux.*—Confirmed.

*Lambe & Allan.*—Confirmed. Tessier, J., *diss.*

*Guevremont & Guevremont* (two appeals).—Confirmed.

*Rhéaume & Trudel.*—Confirmed.

*Ford & Whelan.*—*Désistement* from the appeal filed.

*Lalonde & Rozon.*—Reversed.

*Reburn & O. & Q. R. Co.*—Confirmed.

*Benning & Atlantic & N. W. R. Co.*—Confirmed.

*DeLaet & Mallette.*—Confirmed.

*Thompson & Dominion Salvage & Wrecking Co.*; *Brown & Do.*—Hearing resumed.

*Monday, November 24.*

*Meunier & City of Montreal*—Motion for leave to appeal from interlocutory judgment. Rule *nisi* returnable first day of next term.

*Ricard & City of Montreal: Renaud & City of Montreal*; *St-Pierre & City of Montreal.*—Same entry in each case.

*Benning & Atlantic & N. W. R. Co.*—Motion for leave to appeal to Privy Council granted.

*Watts & Wells* (two cases).—Motion for leave to appeal to Privy Council granted.

*Thompson & Dominion Salvage and Wrecking Co.*; *Brown & Do.*—Hearing concluded. C. A. V.

*Tuesday, November 25.*

*Elliott & Simmons.*—Confirmed.

*Hart & Joseph* (two appeals).—Reversed.

*Laflamme & St-Jacques.*—Heard. C. A. V.

*Lambert & Desaulniers.*—Heard. C. A. V.

*Merrill & Ryder.*—Heard. C. A. V.

*Wednesday, November 26.*

*Hall & Read.*—Heard. C. A. V.

*Johnson & Landry.*—Heard. C. A. V.

*West & Page.*—Part heard.

*Thursday, November 27.*

*Barnard & Molson.*—Motion for leave to appeal granted; costs to follow suit.

*Merchants Bank & Parker* (two cases)—Confirmed.

*Ontario Bank & Parker.*—Confirmed.

*Molsons Bank & Parker.*—Confirmed.

*Hill & Ferreri.*—Re-hearing ordered.

*Watson & Johnson.*—Reversed, Tessier, J., *diss.*

*Brock & Gourley.*—Reversed.

*Turnbull & Browne.*—Judgment modified, each party paying his own costs in both courts; Tessier, J., *diss.*

*Wells & Burroughs.*—Reformed, Tessier, J. *diss.*

*Vigeant & Poulin.*—Reversed, without costs in either court.

*Perrault & Montreal & Sorel R. Co*—Confirmed.

*Hastie & Hastie.*—Reformed, with costs; security for the whole amount of the condemnation; Tessier, J., *diss.* as to costs.

*Dandurand & Mappin.*—Confirmed.

*Smith & Ives.*—Appeal dismissed.

*Montreal Union Abattoir Co. & City of Montreae.*—Appeal dismissed.

*West & Page.*—Hearing concluded. C. A. V.

Mr. Justice Cimon, who has been appointed assistant judge of this Court, to replace Mr. Justice Tessier, appears.

And the Court is adjourned to Jan. 15, 1891.

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## FIRE INSURANCE.

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



### CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 375.]

In the case of *Benham* v. *United States Guarantee and Life Assurance Co.*,[1] the assured had stated a check (by fortnightly examination of his accounts) on their secretary whose

[1] 14 Engl. Law & Eq. Rep., 1852-3, p. 524.

fidelity the defendants had guaranteed. The court held that all the assured had done was to declare a course that he intended to pursue, and that it was not a warranty.

Suppose a ship insured for Rio Janeiro, and after the description is written "intended to touch at St. Thomas." Surely such a clause gives the assured liberty, but he does not thereby warrant to touch.[1]

In a case of *Notman* v. *The Anchor Ins. Co.*,[2] a man's life was insured—he "about to proceed to Belize," and he paid an extra premium to cover twelve months' residence at Belize. He did not soon go to Belize—not for upwards of a year; afterwards he went to Belize, and before twelve months' residence there had expired, he died. Held, that he had not warranted to go to Belize at any fixed time, and that the company was liable.

§ 207. *Burden of proof.*

Where misrepresentation is alleged, the onus of proving it is on the insurers. They must prove the representation false, and false in a point material. The insurer is to have the benefit of doubts.

In a case of *Fowkes* v. *Manchester and London Life Assurance Association*,[3] the Court of Queen's Bench held that a mis-statement did not vitiate the policy unless it was wilful.

§ 208. *Materiality of representation is a question of fact.*

Duer is of the opinion, and such is certainly the inference from the authorities cited below, that when the materiality does not "depend on the testimony of witnesses, but results as a necessary consequence, from the nature of the fact, or has been established by prior adjudications, it is the duty of the judge to give a positive instruction to the jury, and that their verdict in opposition to his charge would be set aside as contrary to law."

Thus, in regard to the insured's representation, that he is the owner of property, when he is not the actual and legal owner, but his interest is inchoate, equitable, qualified or contingent, the Courts of New York and Massachusetts have decided that it is not material to the risk, while in the United States Courts, as well as in Tennessee and Illinois, directly the contrary is held, and in neither case was the question of materiality submitted to the jury.[1] This would be so in Quebec Province. If the insured be proved not owner he cannot recover.

Bunyon, p. 78, says it is the duty of the judge to see that the jury are not misled by the evidence.

It is the practice of most offices to insert the statements or representations, made at the time of effecting the insurance, in the body of the policy. By this means they become a warranty, and preclude questions from arising upon the subject of the *materiality* or *immateriality* of the statements.

Representations in life insurance, observed Lord St. Leonards, in *Anderson* v. *Fitzgerald*,[2] need not be material if false. It is sufficient to ask the jury, was the representation, or were the statements, false. Secondly, were they made in effecting or obtaining the policy?

The judges were asked:—Was it necessary for the insurance company to prove on the trial that the answers given by Fitzgerald to questions twenty-one and twenty-two were or was material, as well as false. All the judges answered: That it was not necessary.

Conditions often apply to material misrepresentatious and go on (as in this case) that if any fraud shall have been practised, or any false statements made in or about obtaining the policy, the policy shall be null. (*Per* the eleven judges.)

The words of the assured in his answers are to be construed as the words of the assurers and most strongly against them if ambiguous. (*Per* the eleven judges.)

[1] And so of Grant's warranty pretended.

See *Elliott* v. *Wilson*, 7 Brown's Cases in Parliament. Liberty to touch at Leith was held not a warranty to do so.

[2] English Jurist, A.D. 1858, p. 714.

[3] Q. B. England, A.D. 1863.

[1] *Strong* v. *Manufacturers' Ins. Co.*, 10 Pick. 40; *Curry* v. *Commonwealth Ins. Co.*, *id.* 535; *Fletcher* v. *Commonwealth Ins. Co.*, 18 Pick. 417; *Ætna Ins. Co.* v. *Tyler*, 12 Wend. 507; *S. C.*, 16 *id.* 385; *Columbian Ins. Co.* v. *Lawrence*, 2 Peters 25; *S. C.*, 10 *id.* 507; *Carpenter* v. *Providence Washington Ins. Co.*, 16 Peters 495; *Brown* v. *Williams*, 15 Shepley, 252; *Illinois Mut. Fire Ins. Co.* v. *Marseillles Manufacturing Co.*, 1 Gilman 236.

[2] 4 House of Lords cases, English Jurist of 1853.

Representations here were embodied in the contract. (*Per* the Lord Chancellor.)

But Lord St. Leonards said the "word "'false' being used in connection with the "earlier word 'fraud' means not that that "is merely false, but false to the man's "knowledge, fraudulently false, 'the untruth "must be wilful.' The latter branch of the "clause I would advise the company to put "wilful into—'wilful' before 'false state-"ment.'" Phillips approves, vol. I.

§ 209. *What is a Warranty?*

A warranty is a stipulation or agreement on the part of the insured, in the nature of a condition precedent, and as applicable to fire policies is usually of an *affirmative* nature, as that the property insured is of the nature described in the policy.

A warranty being in the nature of a condition precedent, it is quite immaterial for what purpose or with what view it is made; but being once inserted in the policy it becomes a binding condition on the insured; and unless he can show that it has been strictly fulfilled, he can derive no benefit from the policy.

But sometimes warranties need not be alleged as fulfilled, as if they be gathered by insurers from the description of the subject insured. In such case the insurer ought to allege the warranty, and breach of it.

The meaning of a warranty is to preclude all question whether it has been substantially complied with or not. If it be affirmative, it must be literally true; if promissory, it must be strictly performed.

An express warranty being in the nature of a condition precedent, it must appear on the face of the policy.

The stipulations and conditions printed upon the same sheet as the policy, and delivered with it, form a part of the policy, and are considered as express warranties.[1]

Instructions in writing for effecting the policy, unless inserted in the instrument itself, do not amount to a warranty, but only to a representation.

§ 210. *When representations become warranties.*

A reference in the policy to the application, or to a plan on file in the office, for a further description of the subject insured will not constitute the statements therein made warranties.[1]

But if the application is in terms made a part of the policy, or referred to as forming a part of the policy, or if the plan be attached to the policy and referred to in it as part of it, the statements of the insured, which would otherwise be merely *representations*, are thereby converted into *warranties*, and are binding upon him as such.[2]

The breach of warranty, therefore, consists either in the falsehood of an affirmative, or the non-performance of an executory stipulation. In either case the policy is void, and whether the thing warranted be material or not, whether the breach of it proceeded from fraud, negligence, misinformation, mistake of an agent, (unless the agent of the insurers,) or any other cause, the consequence is the same. With respect to the compliance with warranties, there is no latitude nor equity.

§ 211. *Warrantics affirmative or promissory.*

Warranties in policies are of two kinds: Affirmative, affirming something, and promissory, something to be done or not to be done. Both are in the nature of conditions precedent.[3]

But, query, have they all the incidents; for instance, must all warranties be set out with allegations of compliance with them? or must the insurer set them out and defend himself by plea of breach of warranty? It depends: warranty from mere description, *semble*, need not be set out.

The law of the continent of Europe allows substantial compliance with warranty to be

[1] *Duncan* v. *Sun Fire Ins. Co.*, 6 Wend. 488.

[1] *Houghton* v. *Manufacturers' Ins. Co.*, 8 Met. 114: *De Longuemare* v. *Tradesmen's Ins. Co.*, 2 Hall 589; *Stebbings* v. *Globe Ins. Co.*, *id.* 633; *Jefferson Ins. Co.* v. *Cotheal*, 7 Wend. 72; *Farmers' Ins. Co.* v. *Snyder*, 13 *id.* 92; *S. C.*, 16 *id.* 481; *Burritt* v. *Saratoga Co. Mut. Fire Ins. Co.*, 5 Hill, 188.

[2] *Burritt* v. *Saratoga Co. Mut. Fire Ins. Co.*, 5 Hill, 188; *Jennings* v. *Chenango Co. Mut. Ins. Co.*, 2 Denio, 75; *Egan* v. *Mut. Ins. Co.*, of Albany, 5 Denio, 326; *Kennedy* v. *St. Lawrence Co. Mut. Ins. Co.*, 10 Barbour, 285; *Murdock* v. *Chenango Co. Mut. Ins. Co.*, 2 Comstock, 210.

[3] *Goicoechea* v. *Louis. S. I* Co., 3 Cond. R.La.

sufficient. In Louisiana it must be strictly performed.

If there be breach of a warranty, though that may not have led to the loss, the insurers are discharged. And so in case of marine insurance in condemnation cases. (Ib.)

Insurance was effected upon a distillery which it was agreed should be suspended in six weeks. It was used ten weeks. A fire occurred in the twelfth week. The action by the insured was held to be not maintainable; he had violated the contract. And this applies to buildings and merchandise.[1]

The rule, which prevails upon sales of property, that a warranty does not extend to defects which are known to the purchaser, does not apply to warranties contained in contracts of insurance.[2]

The only question is whether the thing warranted has taken place, or be true or not? If not, the insurer is not answerable for any loss, even though it did not happen in consequence of the breach of the warranty.[3]

Twelve pails full of water were agreed to be kept on each flat of a building. The fact of their not being kept was held fatal; though had they been, it could not have prevented the fire.[4] The above is the promissory warranty of the authors.

§ 212. *Papers attached to or folded up in policy.*

Where a slip of paper describing the state of a ship, the particulars of the voyage, etc., was wafered to a policy at the time of subscribing, Lord Mansfield held that this was not a warranty, nor to be considered part of the Policy, but only a *representation*. *Bize* v. *Fletcher*.[5] But the circumstances of the case must be looked at. If "conditions of insurance" be wafered to a policy they may make warranties.

In *Bize* v. *Fletcher*, how was it? Lord Mansfield did hold it a written representation binding on the insured That is all that it was pretended by insurers to be. They held that by it the voyage of the ship insured was restricted, but restriction such as alleged to be was not found to be derivable from the slip of paper, and the policy was clearly protective of the amplest voyage. Where evidence was offered to prove that a written memorandum enclosed in the policy was always among merchants considered as a part of the policy, Lord Mansfield held, that whether this was or was not a part of the policy, was a question of law, and therefore that such evidence could not be received, and that a written paper, by being folded up in the policy, did not become a warranty.[1]

But it is sufficient that the warranty appear upon the face of the policy, although not written in the body of it. If it be written in in the margin, either in the usual way, or transversely, it being part of the written contract when signed, it will be a good warranty.

Any paper or application referred to in the policy is a warranty by the Royal Insurance Company conditions.

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*GENERAL NOTES.*

OATHS IN INDIAN COURTS.—The Advocate-General of Bengal, in addressing the High Court recently on the subject of Mohammedan oaths, in the old Supreme Court of Calcutta, said that the Moslem interpreter employed in administering oaths to witnesses made a good deal of money by means of a private understanding with the witness as to the mode of adjuring him. The form binding on the Mohammedan conscience is to make the Koran rest on the head while the oath is administered. But if the Koran is skilfully held just above the head, so as not to be in actual contact with it, the form is not valid and the oath not binding. Many witnesses were thus enabled, through the aid of the interpreter, to lie without perjury. In an insolvency case, in which a Jew sought the benefit of the Act, a well-known barrister represented an opposing creditor. His instruction had been to question the applicant in regard to certain matters in which his answers, if affirmative, would disclose valid ground for refusing the application. To the surprise of counsel the Jew denied everything, and it seemed as if his instructions were not correct. At this juncture it was

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[1] Cassation, 5 Feby., 1856; Sirey, A.D. 1856, 1, p. 471.

[2] *Jennings* v. *Chenango Co. Mut. Ins. Co.*, 2 Denio, 75; *Kennedy* v. *St. Lawrence Co. Mut. Ins. Co.*, 10 Barbour, 285; *Vandevoort* v. *Columbian Ins. Co.*, 2 Caines, 155; *Cheriot* v. *Barker*, 2 Johns. 346; *Higginson* v. *Dall*, 13 Mass. 96.

[3] *Fowler* v. *Ætna Fire Ins. Co.*, 6 Cowen, 673; *S. C.*, 7 Wend. 270; *Duncan* v. *Sun Fire Ins. Co.* 6 Wend. 488; *Farmers' Ins. Co.* v. *Snyder*, 16 Wend. 481; *Burritt* v. *Saratoga Co. Mut. Fire Ins. Co.*, 5 Hill, 188; *Gates* v. *Madison Co. Mut. Ins. Co.*, 2 Comstock, 44.

[4] *Garrett* v. *Provincial Ins. Co.*, 20 U.C.Q.B. Rep. 201.

[5] 1 Dougl.

[1] Dougl, 12.

suggested that the Jew be required to swear on the life of his son. The advocate put this unusual suggestion to the presiding judge (Sir J. Colville), who adopted it, and the Jew was adjured accordingly. The same questions were again put to him, but this time they elicited affirmative replies, and counsel's object was accomplished.

THE NEWSPAPERS OF THE WORLD.—The number of newspapers published in all countries is estimated at 41,000; 24,000 appearing in Europe. Germany heads the list with 5,500, then comes France with 4,100, England with 4,000, Austria-Hungary with 3,500, Italy with 1,400, Spain with 850, Russia with 800, Switzerland with 450, Belgium and Holland with 300 each, and the rest is published in Portugal, the Scandinavian and the Balkan countries. The United States have 12,500 newspapers, Canada has 700, and Australia also 700. Of 300 journals published in Asia, Japan alone has 200. Two hundred journals appear in Africa, and three in the Sandwich Islands. In the principal languages there are published 17,000 newspapers in English, 7,500 in German, 6,800 in French, 1,800 in Spanish, and 1,500 in Italian.

STOPPING AN EXPRESS TRAIN.—The charge against Mr. Fountaine, of Norford Hall, justice of the peace, deputy-lieutenant of Norfolk, and master of the West Norfolk Foxhounds, of stopping a Great Eastern express train on March 18, was heard at Swaffham Quarter Sessions on July 9. The station-master at Eastwinch having declined to stop the train, the defendant went into the four-foot way, threw up his arms, and caused the driver to draw up. He then entered and proceeded on his journey. Letters from the company had been ignored. Defendant now pleaded guilty, and after a long address from the chairman, Lord Walsingham, he was fined £25, and bound over in the sum of £100 to keep the peace for six months.

LIBELLING JUDGES.—Thomas Beardmore, who has been residing in Duke street, Southport, but who was formerly a farmer at Hipstone, in Staffordshire, was charged in the Police Court on July 14th, with sending cards through the post containing offensive writing. Some time ago the defendant was a litigant before Judge Jordan and lost his case. He afterwards commenced writing libellous postcards, and for a libel on Judge Jordan he was sentenced to six weeks' imprisonment and a fine of £20 for contempt of Court. Not paying the fine, he suffered a further imprisonment of seven months, and subsequently he commenced sending postcards to all connected with his trial, from the Lord Chancellor downwards. He was now fined 40s. and costs in three cases, or a month's imprisonment for each.

PROLONGED SITTINGS.—Some extraordinary judicial doings are reported from Queensland, Australia. The presiding judge was in a hurry to get away, and tried cases continuously for thirty-six hours. At one stage all the available jurors were occupied in considering verdicts, and, not to lose time, the judge ordered the doors of the court room to be locked, and then impounded every person in the audience qualified to serve. Many of the jurors were so exhausted by continuous service that they fell asleep in their seats, but the trials went on.

## *INSOLVENT NOTICES, ETC.*

*Quebec Official Gazette, Nov. 29.*

*Judicial Abandonments.*

John E. Bradford, trader, Lachute, Nov. 26.

Gendron & Gauthier, traders, village of Megantic, Nov. 25.

*Curators appointed.*

*Re* Ulric Baril, Gentilly.—Bilodeau & Renaud, Montreal, joint curator, Nov. 22.

*Re* M. J. Dayet & Co., wine merchants, Quebec.—N. Matte, Quebec, provisional guardian, Nov. 20.

*Re* Alphonse Durand, contractor.—D. Guilbault and P. E. McConville, Joliette, joint curator, Nov. 17.

*Re* Kenniburgh & Boyce, traders, Lachute.—G. J. Walker and W. J. Simpson, Lachute, joint curator, Nov. 20.

*Re* Placide Larochelle.—F. A. Mercier, St. Michel de Bellechasse, curator, Nov. 26.

*Re* J. H. Marceau & Co., Montreal.—Kent & Turcotte, Montreal, joint curator, Nov. 24.

*Re* George Rhéaume.—Pierre F. Renault, parish of St. Francis, curator, Nov. 19.

*Dividends.*

*Re* Bénoni Beaudin.—First and final dividend, payable Nov. 16, C. Desmarteau, Montreal, curator.

*Re* Gilbert Currie Campbell.—Dividend, H. Hartland, Ormstown, curator.

*Re* Mary Bélanger, wife of Joseph Labelle.—First and final dividend, payable Dec. 10, A. F. Gervais, St. John, curator.

*Re* Henriette Dompierre.—First and final dividend, payable Dec. 16, W. A. Caldwell, Montreal, curator.

*Re* Wilbrod Doré, grocer, Quebec.—First and final dividend payable Dec. 15, H. A. Bédard, Quebec, curator.

*Re* Joseph N. Massicotte.—Dividend, E. Audette, Farnham, curator.

*Re* Amable D. Porcheron.—First and final dividend, payable Dec. 17, Millier & Griffith, Sherbrooke, joint curator.

*Re* L. L. Raymond, L'Ange Gardien.—Second and final dividend, payable Dec. 18, A. W. Wilks, Montreal, curator.

*Re* A. F. Weippert & Co., grocers.—First and final dividend, payable Dec. 15, H. A. Bédard, Quebec, curator.

*Separation as to property.*

Zoé Benoit vs. Dominique Desautels, Jr., farmer, parish of St. Pie, Nov. 24.

Julie Boulais vs. Jean Bte. Barré, farmer, Ste Marie de Monnoir, Nov. 8.

Sophranie Lemire dit Marsolais vs. Isaïe Forget dit Dépatie, contractor, Nov. 22.

Almaïde Tétreault vs. Sergius Archambault, trader, Ste. Théodosie, Nov. 17.