The Legal News.

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Mr. Jelf, a barrister of large practice, and leader of the Oxford Circuit, writes to the *Times*, July 28, earnestly contending that trial by jury in civil causes is, generally speaking, a mistake. He would have the right to a jury trial largely restricted, and would require the party asking for a jury to show that that mode of trial was desirable. The objections stated by him to the jury system are, first, the frequency of disagreement and consequent discharge of the jury. Secondly, a judge in a doubtful case may suggest a compromise, and save the parties large costs, but a jury is silent. Thirdly, the silence of the jury during the trial prevents counsel from grappling with the points which are really affecting them. Fourthly, a judge gives reasons for his judgment, while no one knows on what grounds a verdict is given. Fifthly, the presence of a friend or a foe of one of the parties on the jury may, even though it be unconsciously, turn the scale. Sixthly, a strong judge impresses the jury with his view, yet the finding is that of the jury, whose reasons are inscrutable, and can only be set aside if twelve reasonable men could not have so found. Seventhly, trial by jury, in the complicated problems of mixed law and fact which arise in the present day, puts an undue strain upon the ingenuity of the judge in disentangling the points on which the opinion of the jury ought to be taken. A judge with a logical mind can far better deal himself with the questions *seriatim*, eliminating at once those which are obviously open to only one proper answer, than submit them all alike to the jury, who often make contradictory findings and reduce the verdict to an absurdity. Eighthly, jurymen are put to great loss and expense in attending for trials which could often be better and more expeditiously conducted without their presence, and in which that presence is often, by consent, dispensed with after much time has been wasted. Mr. Jelf's communication will doubtless attract considerable attention. It will be observed that he is contending for a system similar to that which is established in this province.

An eminent doctor once stated that his errors—unavoidable errors—would fill a graveyard. Now we have evidence given by a dentist in a recent case of *Wright* v. *Neole*, before the Liverpool County Court, that there is not a practitioner in the land who has not at some time extracted a wrong tooth. The action was against a dentist by a victim. The dentist extracted a sound molar, instead of a decayed wisdom tooth, and then, without telling the patient what had occurred, tried to replant the sound tooth, thereby causing the patient great pain. The jury awarded the plaintiff five pounds damages.

The sudden illness of Baron Huddleston while on Circuit led to an unprecedented session at Lewes, Aug. 6. In consequence of a sudden and severe attack of gout in the course of the night the judge was utterly unable to leave his bed, and the medical gentlemen called in declared that the attempt to do so would be dangerous. The learned Baron at once telegraphed to London for assistance, but as no one could arrive within two or three hours, he thought it would not be well to keep the grand jury waiting all that time, so he considered whether he could not charge the grand jury in his bed. Happily, though the case had never before occurred, the terms of the commission of assize were wide enough to allow of it, for it was worded thus—'at such places and times as you may appoint,' and so the Baron 'appointed' his bedroom, and charged the grand jury in bed. The deputy clerk of assize announced in Court at the usual hour (eleven in the forenoon) that, by reason of the judge's illness, the assizes were adjourned to the judge's lodgings, and accordingly the high sheriff, attended by the under-sheriffs and the chaplain and the clerk of assize, and followed by twenty-three gentlemen of the county as grand jurors, walked to the judge's lodgings, and were ushered upstairs to the judge's bedroom. The high sheriff, with the two under-sheriffs, stood at the head of the

bed on one side, the clerk of assize on the other, and the gentlemen of the grand jury were ranged round the foot and sides of the bed. The usual formalities were then gone through, the commission was read, the names of the grand jurors were read over and they answered, and they were sworn in due form, and then the learned baron proceeded to charge them from his bed with his usual skill, clearness, and facility. It should be mentioned that at the judge's express desire the doors were left open and representatives of the press were present. His lordship said he desired it to be known that this was a public court, and that any of the public might come in who could—at which the grand jury laughed, the room being pretty full. The learned judge, who is seventy-three, subsequently resumed work with his usual energy.

COUR DE MAGISTRAT.

MONTRÉAL, 14 novembre 1889.

Coram CHAMPAGNE, J. C. M.

BOYER v. SLATER.

Manufactures — Règlements — Ouvriers—Amendes.

JUGÉ:—*Qu'un manufacturier qui emploie des ouvriers a le droit de faire, pour la régie de sa manufacture, des règlements qui lient les ouvriers qui les connaissent, entr'autres, d'imposer des amendes à ceux qui arrivent tard à l'ouvrage.*

L'action était en réclamation de salaire pour un montant de $11.08, pour 6¾ jours à $10.00 par semaine.

Les défendeurs plaidèrent à l'action que le demandeur était engagé à la semaine et qu'il devait être payé tous les samedis, pour la semaine finissant la veille, qu'il devait se conformer à un règlement de l'établissement qui comportait entr'autres choses que si un employé arrivait plus de cinq minutes en retard, il devait perdre ¼ de jour, et que le demandeur dans la semaine finissant le 25 octobre, celle réclamée, ayant perdu ½ heure, n'avait droit qu'à $9.58, laquelle somme lui avait été offerte avant l'action, et déposée en Cour avec le plaidoyer.

PER CURIAM.—Les défendeurs avaient le droit de faire des règlements pour la régie de leur établissement, et étant prouvé que le demandeur les connaissait, et s'y était déjà soumis, il n'avait pas droit pour sa semaine à plus qu'au montant offert.

Offre maintenue, avec dépens.

David, Demers & Gervais, avocats du demandeur.

McCormick & Duclos, avocats des défendeurs.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 25 novembre 1889.

Coram CHAMPAGNE, J. C. M.

CYR v. FRANCŒUR ET AL. & FOWLER ET AL., *mis en cause.*

Statut 51-52 *Vict. ch.* 27—*Ouvriers—Saisie—Poursuite.*

JUGÉ:—*Que le recours que le statut de Québec de* 1888, *donne aux ouvriers employés à la construction d'une bâtisse de saisir avant jugement pour leur salaire, par un simple avis, entre les mains du propriétaire, ce qui est encore dû aux entrepreneurs ou sous-entrepreneurs, n'enlève pas à ces ouvriers le droit de poursuivre ceux qui les ont employés.*

PER CURIAM:—Le demandeur, ouvrier maçon, ayant une réclamation contre les défendeurs, pour ouvrages faits à la maison des mis en cause, dont les défendeurs étaient les entrepreneurs, a produit entre les mains des dits propriétaires, sa réclamation conformément au statut de Québec, 51-52 Vict. (1888) ch. 27. Plus tard, n'étant pas payé, il aurait poursuivi les défendeurs et mis en cause les propriétaires. Les défendeurs ont contesté l'action; ils offrent d'abord de confesser jugement sans frais, puis allèguent qu'en saisissant ainsi entre les mains des propriétaires, le demandeur a choisi son mode de se faire payer, et qu'après cela il ne peut les poursuivre. Mais, le demandeur n'a pas, pour cela, perdu son droit d'action contre les défendeurs.

Jugement contre les défendeurs avec dépens.

David, Demers & Gervais, avocats du demandeur.

F. L. Sarrasin, avocat des défendeurs.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 11 décembre 1889.

Coram CHAMPAGNE, J. C. M.

LOISELLE v. JOULIN ET AL.

Exception à la forme—Mari et femme—Signification—Domicile.

JUGÉ, *sur exception à la forme:*—1o. *Que les défendeurs, mari et femme, étant poursuivis conjointement et solidairement, il doit leur être laissé, à chacun, une copie du bref et de l'assignation;*

2o. *Que les pièces laissées au mari, au domicile commun des défendeurs, sont une assignation suffisante pour les deux;*

3o. *Que le retour de l'huissier, qui n'est pas attaqué, faisant voir que copies des dites pièces ont été signifiées aux défendeurs, en parlant et en les laissant au mari, au domicile commun, est une assignation régulière pour les deux;*

4o. *Que dans le cas où la femme n'aurait pas été régulièrement assignée, ce n'était pas une raison suffisante pour le mari de demander le renvoi de l'action, la femme seule pouvant s'en plaindre.*

Autorités:—C. P. C. 59, 67; *Frigon* v. *Coté*, 1 Q. L. R. 152; *Vermette* v. *Genest*, 11 Q. L. R. 376; *Duval* v. *Anctil*, 16 R. L. 328; *Dansereau* v. *Archambault*, 1 Leg. News, 327.

A. Laferrière, avocat du demandeur.

Lebeuf & Dorval, avocats des défendeurs.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 14 avril 1890.

Coram CHAMPAGNE, J. C. M.

BLANCHARD v. TERRILL.

Exception à la forme—Cause sommaire—Bref de sommation.

JUGÉ:—1o. *Qu'il n'est pas nécessaire d'indiquer sur le bref que la poursuite n'est pas sommaire;*

2o. *Que le bref de sommation peut être fait rapportable un jour indiqué, sauf au défendeur à voir par la nature de l'action, si la poursuite est sommaire ou non, et s'il doit comparaître le jour même ou le lendemain.*

PER CURIAM.—Le bref de sommation en cette cause ordonnait au défendeur de comparaître un jour fixé, sans lui donner jusqu'au lendemain pour comparaître. Mais avant le statut de 1888, concernant les causes sommaires, les brefs étaient faits rapportables un jour fixe suivant la formule de l'appendice du Code de Procédure Civile No. 35; néanmoins, le défendeur avait jusqu'au jour suivant pour comparaître, par une coutume bien établie.

Autorités;—1097, 1099, 81, 83, 1065 C. P. C., Appendice No. 35; 37 Vict., ch. 8, sect. 7.

James Crankshaw, avocat du demandeur.

C. H. St-Louis, avocat du défendeur.

(J. J. B.)

FIRE INSURANCE.

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

CHAPTER VI.

THE CONDITIONS OF THE POLICY.

[Continued from p. 272.]

A mill is insured:—Suppose two watchmen to be kept—two start and watch for a month, then for two weeks only one—then two again and mill destroyed by fire while two were being kept. Is the owner of the mill to get his insurance money? or is it forfeited?

If the risk be increased the insurer is discharged. For instance, if a ship insured is to sail from Quebec with twenty-five men, if she sail from Quebec with only twenty, though before loss she take in five more at Father Point, and go on, and sail in safety ten days after, afterwards being lost, the insurers are free, as in *De Hahn & Hartley;* case of the African ship mentioned by Marshall and by the Lord Chancellor in *Rees* v. *Berrington.*[1]

It is for the jury to say whether there has been a concealment of material facts, and whether facts not stated were material, or not.[2]

The Court must not take it upon itself to say that things not communicated were material.[3]

Yet the judge may state an opinion, not

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[1] *Rees* v. *Berrington* is a case in the law of principal and surety. Vol. 2 [540] Vesey, Junior—Reports.

[2] *Campbell* v. *Rickards*, 5 B. & Ad.

[3] *McLanahan* v. *Universal Ins. Co.*, 1 Peters R. p. 181.

withdrawing the case from the jury.[1] The ultimate test of materiality is "whether the risk be increased so as to increase the premium." *Per* Story J., in 1 Peters p. 188. *Ib.* [*Semble*, if the judge charge that a material concealment was to be held, and found, a new trial will be granted.] But see 1 Peters, Rep.

Where a policy is altered and the risk enlarged, the obligation of disclosing all material facts undoubtedly exists, and the effect of a concealment will render void the altered contract, and yet not restore the original contract, but will annul the whole policy. 2 Duer, Lec. 13, p. 429.

§ 169. *Alterations, and change of use of buildings insured.*

Increased hazard by mere temporary change in the occupation of a building, or by the occasional use of fire, or occasional deposit of hazardous goods after a policy has been effected, will not always avoid or vitiate a policy; unless a condition order that it shall.

A change to a hazardous trade from a non-hazardous, even without condition, will avoid the policy. The nature of the contract is such that if the risk be increased, the insurer (surety) is discharged, according to the principle stated in *Rees* v. *Berrington*. As in cases of deviation, however slight, the insurer is discharged; and as the Lord Chancellor in *Rees* v. *Berrington* said, the judge cannot try what mischief it may have done. It is sufficient that if the surety had been informed he might have declared unwillingness to continue bound.

Pim v. *Reid*,[2] was a case in which there was increased hazard after the policy had been effected, yet it was held not to vitiate the insurance. But the decision in this case, or in *Shaw* v. *Robberds*, must not be taken as deciding generally that a more dangerous trade can be carried on than is mentioned in a policy without vitiating the policy. The decision in *Pim* v. *Reid* was founded in part on the fact that the pleas did not state or show that a reasonable time had elapsed for giving notice. In *Sillem* v. *Thornton*,[3] the judgments in *Pim* v. *Reid* and *Shaw* v. *Robberds* are explained.

In *Shaw* v. *Robberds*,[1] the premises insured were described in part as a kiln for drying corn, and a condition stated, that unless the trade carried on in the insured premises be accurately described, or if a kiln or any process of fire heat be used and not noticed in the policy, the policy should be void; the sixth condition stated, that if the risk to which the insured premises were exposed should be by any means increased, notice should be given at the office and allowed by endorsement on the policy, otherwise the insurance should be void; it appeared that a cargo of bark had sunk near the premises of the insured, and he allowed the bark to be dried at his kiln grates, and in consequence of the fire during this process the premises were burnt down; it was found, as a fact, that drying bark was a more dangerous trade than drying corn; it was held that the use of the corn kiln for a different purpose from that intended at the time of making the policy was not a misdescription within the meaning of the third condition; secondly, that the said use of the kiln was not such an alteration or increase of risk as required notice to the office; thirdly, that no clause in the policy amounted to express warranty that nothing but corn should ever be dried, and that a warranty to that effect was not to be implied.

In *Sillem* v. *Thornton*,[2] the house insured was described as two stories, roof of zinc, with further particular description, and the description was part of the policy. It was held a warranty that the building should not be altered so as to increase the risk; and a third story having been added to it, and a new roof not covered with zinc having been put upon it, the house having been burned in a large fire, the insurer was held free. [In this case the question of increased risk was left to the Judges by consent.]

It is important in conditions like this to have the wording "so long as the same shall be so used" etc, else the insurance may

[1] *Ib.* p. 190.
[2] 6 Scott's N.R., 6 M. & G.
[3] 26 E. L. & Eq. R.

[1] 6 Ad. & E.
[2] 18 Jurist 748; 26 E. L. & E. R.

become vacated through an user which ceased long before the fire. [1]

A stock was insured in premises occupied by the insured, privileged for a printing office, bindery, &c., (*written so*). This clause, it was held, controlled the printed parts of the same policy, and *camphene* oil might be used, though a printed condition forbade it; the user being such as usual in a printing office and necessary in the printing and book business. [2]

In the United States also it is held that the change in the occupation of a building must be permanent, and the policy is not made void by the mere temporary exercise therein of a hazardous trade or vocation. [3]

In *Dobson* v. *Sotheby* [4] a policy was upon "a barn, situate in an open field, timber-built, and tiled." The conditions required the usual description of the property. The policy was effected at the lowest rate of premium, such as was only payable for buildings where no fire is kept, and no hazardous goods deposited. There were articles fixing a higher rate of premium for buildings of other descriptions, with the proviso against hazardous goods; and a proviso, that "if buildings of any description insured with the company shall at any time after such insurance be made use of to stow or warehouse any hazardous goods" without leave from the company, the policy should be forfeited. The premises were agricultural buildings; but none of them such as, strictly, could be described as *a barn*, but they were such that they would have been insured at the same rate if they had been more accurately described. They required tarring; a fire was lighted in the warehouse, and a tar-barrel brought into the building for the purpose of performing the operation. By the negligence of the plaintiff's servant, and in his absence, the tar boiled over, took fire, and the premises were burned down.

It was contended that the plaintiff could not recover, 1st, because the premises were incorrectly described as a barn; 2d. because the lighting a fire was a contravention of the terms of the policy, which required that no fire should be kept in such buildings; 3d. that the tar-barrel came under the description of hazardous goods, which was a breach of the condition. But the plaintiff did recover. Is this not going far? The plaintiff's servant was negligent. [1]

Lord Tenterden, C. J., said: "If the property insured has not been correctly described, the defendants are not liable; but I do not think there is in this case any misdescription which will discharge them. The word "barn" is not the most correct description of the premises, but it would give the company substantial information of their nature; the insurance would have been at the same rate whether the word "barn" or a more correct phrase had been used; I think, therefore, that they are substantially well described. Nor do I think that the other circumstances relied on furnish any answer to the action. If the company intended to stipulate, not merely that no fire should habitually be kept on the said premises, but that none should ever be introduced upon them, they might have expressed themselves to that effect; and the same remark applies to the case of hazardous goods also. In the absence of any such stipulation, I think that the condition must be understood as forbidding only the *habitual* use of fire or the *ordinary* deposit of hazardous goods, not their occasional introduction, as in this case, for a temporary purpose. The common repairs of a building necessarily require the introduction of fire upon the premises, and one of the great objects of insuring is security against the negligence of servants and workmen. I cannot therefore be of opinion, that the policy in this case was forfeited?

Notwithstanding what is said there of repairs being to be allowed in all cases, a condition may prohibit them even; certainly hazardous repairs it may be stipulated shall not be allowed without permission of the

[1] See Flanders, p. 510.

[2] *Harper et al.* v. *The N. Y. City Ins. Co.*, 22 N. Y. Rep. 1861.

[3] *Gates* v. *Madison Co. Mut. Ins. Co.* 1 Selden, *O'Neil* v. *Buffalo Fire Ins. Co.*, 3 Comstock, 122. In O'Neil's case, paint and turpentine were in a house that was being repaired, in its painting, or decoration. It is a good enough judgment, perhaps, if no condition of the policy prohibited.

[4] 1 M. & M.

[1] The description "where no fire is kept" was held to mean "habitually kept." Smith, Mercantile Law, seems to approve.

insurer. "Carpenters repairing buildings" is stated sometimes as extra hazardous.[1]

Ordinarily, increase of risk from making reasonable necessary repairs is part of the risk on the insurers, and will not avoid a policy, but a clause in the policy may put the risk of any, even small, repairs on the insured. [2]

If a condition prohibit so, ought it to operate absolutely? Suppose that they have been made, that they took a week to make but have long been finished. Suppose fire to happen while they are going on. Query if then even the insurers ought to go free if the fire proceed from a foreign cause; but if a fire happen only six months afterwards and from a general conflagration, the insurers ought to be held to pay, *semble*. Parsons M. Law, p. 505.

In the conditions at head hereof the two clauses occurring together, *semble* the condition is restrained by the words, "and so long as the same be so appropriated."

Alterations that do not increase the risk do not affect the policy;—Art. 2574, C. C. of L. C.

Some policies avoid the insurance if any additions be made to buildings insured whereof written notice is not given to the Secretary, and endorsement made on the policy of the consent of the Board of Directors.

In *Lindsay* v. *Niagara District M. F. Ins. Co.* [3] it was held that an addition without notice is fatal, although the Jury find the risk not increased. It is in vain to allege parol waiver against such condition and forfeiture. The verdict was for plaintiff. Rule afterwards to enter nonsuit was made absolute.

The plea in the above case alleged increase of risk. This allegation which was disproved, was held as mere surplusage.

"If the assured shall alter or enlarge a building so as to increase the risk or appropriate it to other purposes than those mentioned in the application," the policy was held not avoided by an appropriation of the building to a new use which did not increase the risk;—*Rice* v. *Tower*. [1]

A house was insured; afterwards change of occupation was allowed by a company once. Another change was subsequently made without allowance, but the jury specially found this one not to have increased the risk. It was held that the insurance company could not complain. [2]

In *Barrett* v. *Jermy* [3] it was admitted that if an alteration increasing the risk were made and a fire took place, it would not be enough to show that the risk was increased, but that the loss was occasioned by the increased risk.[4] Sed?

Glen v. *Lewis, post contra;* yet so the Court of Appeals held in *Casey* v. *Goldsmidt*.

In the note to page 374, 3 Kent's Com., it is said that in "*Shaw* v. *Robberds* the rule was stated to be that if the policy be silent as to alterations in trade or business carried on upon the premises, such alteration does not avoid the policy though the trade be more hazardous and no notice of the alteration."—But this is going too far. *Shaw* had not changed his trade; he had not taken to drying bark as a trade.

Suppose A. to insure his dwelling and outbuildings with description of all; afterwards he adds a building (increasing the risk); gives no notice of it. Fire happens in B's house, next door, and A's house and buildings are all destroyed. Are the insurers to pay A? They say no! A. says his additional building did not cause the fire, and that his dwelling house was burned first, and additional building last. Yet *semble*, A. has forfeited his insurance. Suppose his additional building had been burnt first, and that A's dwelling had taken from it. Surely A. would not recover anything.

In *Ottawa & Rideau Forwarding Co.* v. *Liver-*

[1] Generally the insured may make necessary and usual repairs, says Flanders, p. 532; but they must not go into alterations materially affecting the risk. See *ante*, *Dobson* case, which goes for allowing fire even.

[2] 18 N. Y. 168 (A.D. 1858.)

[3] 28 U. C. Q. B. Rep. (A.D. 1869.)

[1] 1 Gray. See also Hokes v. Cox, 1 Hurls. & Norman. *Rice* v. *Tower* was approved in 1867 in *Lyman et al.* v. *State M. F. I. Co.*

[2] *Campbell* v. *Liverpool, London & Globe, F. & L. Ins. Co.*, 13 L. C. Jurist.

[3] 3 Exch.

[4] *Barrett* v. *Jermy* is for a case in absence of warranty. Flanders, p. 515. *Glen* v. *Lewis* was a case of warranty. See further, use of buildings, *post*.

pool, London & Globe Ins. Co.[1] it was held that change "of (or in) occupation," is different from "change in the nature of the occupation." But it was held by the Court if the condition is directed against change of occupant, it must be enforced. The person in actual occupation may be material, and may have led to the policy.

But if the condition be against change in the nature of occupation by which the degree of risk is increased, without notice, etc., *semble* both must concur, else the policy is not nullified.[2]

By the Liverpool & London Insurance Co's policy, condition 2, change in nature of the occupation is provided for. *Semble* change of occupant is different from "nature of the occupation," and the risk must be increased according to the condition of the above company to vitiate the insurance.

Alterations complained of should be averred to have increased the risk; otherwise as was said in *Stokes* v. *Cox*,[3] if a house used for making fireworks were converted into an icehouse, the policy would be vitiated. So a plea is bad for not stating increase of risk.[4]

There must be occupation of the insured premises, or the policy is held to be of no force.[5]

§ 170. *Increase of risk by more hazardous trade.*

While the risk is running, no alteration ought to be made by the insured enhancing the liability of the insurer. A butcher's shop cannot be changed into a fireworks shop with impunity; though no special condition of the policy prohibit it. Per Lord Campbell in *Sillem* v. *Thornton*.

In 8 Howard, 235, insurance was on a cotton factory. The insured represented in writing that there was "a picker inside the building, but no lamps used in the picking room." Fire took place originating in the picking room in which lamps were being used. A verdict for return of four years, premium was set aside upon a technicality, but the Court evidently was of opinion that the insurance company was free.

May manufacturing of barrels be incidental to business of flour milling; or tobacco pressing building insured described as used for "tobacco pressing, no manufacturing." The insured recovered, but the judgment was reversed.[1]

Introduction of lamps is an aggravation of risk, and *semble* though no warranty were given, the policy ought to be, so, avoided.

Where a policy contained a clause prohibiting the use of a building for storing therein goods denominated in the memorandum annexed to the policy as hazardous, the keeping of such goods as oil and spirituous liquors by a grocer in ordinary quantity for his ordinary retail was held not to be, under the circumstances, a storing of them avoiding the policy.[2] I cannot but think that that decision was equitable and proper. Store implies accumulated quantity, provision laid up for the future purposes.

A condition avoiding the policy in case the building insured shall be used for the purpose of carrying on any one of certain specified hazardous trades, or any such trade generally, is not broken by exercising any such business in the building, provided it be auxiliary to, and necessary for, the business recognized in the policy as carried on therein. Thus, where a building was insured as a manufactory of hat bodies, and privilege was given in the policy for all the process of said business, it was held that the policy was not avoided by the existence of a carpenter's shop in the building, which

[1] 28 U. Ca. Q. B. R.

[2] *Ottawa & Rideau Forwarding Co.* v. *Liverpool, London & Globe Ins. Co.* 28 U. C. Q. B. Rep.

[3] 1 H. & W.

[4] *Johnston* v. *Ca. Farmers M. F. I. Co.* Com. Pl. Rep. Ontario, Vol. 28, referring to *Gould* v. *B. Am. Ass. Co.* 27 U. Ca. R.

[5] "If building become vacant or unoccupied and so remain without notice to insurer and his consent in writing, policy is void." The tenant moved out and the house was vacated and unoccupied for 17 days, when it was destroyed by fire. Held that the policy was avoided. *Denison* v. *Phœnix In. Co.* Iowa, Sup. Ct. citing Newton (*ut supra*) *Harrison* v. *City F. In. Co.*, 9 Allen (Mass), and other cases. For what is *not* such occupation, see *Poor* v. *Humbolt Ins. Co.*, a Massachusetts case in 28 Amer. Rep. There are conditions against vacancy. Must all kinds of buildings be never vacant—Schoolhouses for instance, at night, or in vacation time? See Albany Law Journal, A D. 1880, p. 164.

[1] *Simes* v. *State Ins. Co. of Hannibal*, 4 Am. Rep. (*semble*; no manufacturing might well be held *warranted*, in favor of insurance company.)

[2] 1 Hall, 226.

was used for the purpose of repairing the machinery in such manufactory necessary for making hat bodies; notwithstanding the fact, that in the printed conditions of the policy, among the trades and occupations denominated extra-hazardous, the introduction of which into the building was to invalidate the insurance, was specified "carpenters in their own shops or in buildings repairing."[1]

Thus, also, a policy on a chinaware factory, with a similar condition in regard to carpenters' shops, was held not to be invalidated by the fact that a room in the building was used by a carpenter in the ordinary and necessary business of the manufactory, as erecting shelves and making moulds and boxes, for instance.[2] The words "house building and repairing" mentioned among extra hazardous trades or businesses interdicted in the policy, were held not to apply to repairs made upon the building insured, but to mean carrying on the *trade* of house building or house repairing.[3]

The insured recovered, though his house was burned while undergoing extensive repairs. There was in the policy a condition that if the risk should be increased etc. the insurance should be void. Whether the risk had been increased in this case was left to the Jury, who found for the insured!

A city house was insured, no gas being in it. The insured introduces gas. Is this fatal to his policy if not allowed? *semble*—no! The use of gas being so common. To the above effect is Bunyon.

A policy of insurance was indorsed to the effect that in the event of any change in the occupation of the premises insured, of a nature to increase the risk, the insured should be bound to give notice thereof to the Company in writing. The premises were occupied as a saloon without notice to the Company. A fire having occurred:—*Held*, that the policy was voided.[4]

Insurance on a house with a building in rear used as a store house. If this be used as a kitchen, without consent of the insurers the policy is useless and avoided.[1]

Suppose a policy to cover a house "occupied as a grocery," surely notwithstanding clauses such as at the head of this section, ordinary grocery business may be carried on in that house, and liquors, and oils used and sold there.

[1] *Lounsbury* v. *Protection Ins. Co.* 8 Conn. 459.
[2] *De Longuemare* v. *Tradesmen's Ins. Co.*, 2 Hall, 589.
[3] *Grant* v. *Howard Ins. Co.*, 5 Hill, 10.
[4] *Campbell* v. *Liverpool & London Ins. Co.*, 2 L. C. Law Journal, 224.

[1] *Barsalou* case, 14 L. C. Rep.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 30.

Judicial Abandonments.

Joseph Cadieux, manufacturer, Montreal, Aug. 22.

Philip A. Donais, merchant tailor, Ste. Cunégonde. Aug. 26.

John McNiece, tobacconist, Montreal, Aug. 18.

Curators appointed.

Re Arnton Bros., coal dealers, Montreal.—S. C. Fatt, Montreal, curator, Aug. 23.

Re François Bourgoing, general merchant, Tadoussac.—N. Matte, Quebec, curator, Aug. 23.

Re C H. Craig & Co.—F. Valentine, Three Rivers, curator, Aug. 27.

Re Gédéon Genest, St, Thomas de Pierreville.—Kent & Turcotte, Montreal, joint curator, Aug. 23.

Re M. Lajoie & Co., tinsmiths.—T. Gauthier, Montreal, curator, Aug. 23.

Re P. P. Lanoie.—C. Desmarteau, Montreal, curator, Aug. 23.

Re John McNiece, tobacconist, Montreal.—E. H. Davis, Montreal, curator, Aug. 26.

Re William Rourke, grocer, Montreal.—J. N. Fulton, Montreal, curator, Aug. 22.

Dividends.

Re R. F. Dinahan.—First dividend, payable Sept. 10, Bilodeau & Renaud, Montreal, joint curator.

Re Norbert Lemaitre Duhaime.—First and final dividend, payable Sept. 23, H. Hebert, Montmagny, curator.

Re Alf. Laurin.—First and final dividend, payable Aug. 16, C. Desmarteau, Montreal, curator.

Re C. M. Lavigne.—First and final dividend, payable Aug. 16, C. Desmarteau, Montreal, curator.

Re Victor Turcotte, Sherbrooke.—Second and final dividend, payable Sept. 8, J. McD. Hains, Montreal, curator.

Separation as to Property.

Martine Chagnon vs. Aimé Senécal, milkman, Montreal, Aug. 25.

Marie Anodine Fairant vs. George Robin dit Lapointe, builder, Aug. 22.