The Legal News.

Vol. XIII. NOVEMBER 15, 1890. No. 46.

The tendency of the time, to convert a private business into a joint stock company, is illustrated by the enormous increase in the number of these companies in England. Last year there were no fewer than 2,788 companies registered. The nominal capital exceeded 241 millions sterling, over fifty-two millions of which were paid up. The total number of registered companies, in April of this year, was 13,323, having a paid-up capital of upwards of 800 millions sterling; and this remarkable total is increasing at the rate of about a thousand companies every year. A large number of these companies are annually wound up, but capital continues to overflow from full pockets into new concerns. It appears, however, from the report of the Inspector-General in Bankruptcy, that the total losses arising from insolvency of all kinds throughout the country are diminishing.

The English County Courts are now going to insist upon their dignity being respected. At the Southampton County Court recently, Judge Leonard protested strongly against the practice of solicitors appearing before him unrobed. The judge said he noticed that there were several solicitors at the table, but not one of them had his gown on. He always directed that the table should be kept clear and everything done for their convenience, and unless they showed some respect to the Court in return he should refuse to hear their cases. He did not think it right for advocates to appear in short jackets and top-coats. The solicitors excused themselves on the ground that no place had been provided for the purposes of a robing-room.

Of Lord Young, of the Second Division of the Court of Session (Scotland), the *Law Journal* tells the following anecdote illustrating his impatience, which constantly prompts to interlocutory remarks :—“ A civil case was being tried in the Court of Session. Lord Young was on the bench. Mr. Gloag, now a senator of the College of Justice, appeared for the pursuer, and proceeded to lay the evidence before the Court. The first witness was called, and a few preliminary questions were put and answered without interruption. Suddenly the judge roused himself and took the examination-in-chief into his own hands. Mr. Gloag, who had a lively and proper sense of his own importance, courteously endeavored to assert his rights, but the judicial catechist remained master of the field. When he had extracted by a number of skilful questions everything that the witness had to say, Lord Young looked down to the advocate with a complacent smile. Mr. Gloag had resumed his seat and made no motion to rise. ‘Now then, Mr. Gloag,’ interjected the judge, sharply, ‘let us get on.’ ‘I am waiting,’ was the answer, ‘for your lordship to call the next witness.’”

COUR DE MAGISTRAT.

Montréal, 23 octobre 1889.

Coram Champagne, J. C. M.

Malo v. Brien *dit* Desrochers.

Plaidoirie—Admission—Preuve.

Jugé :—*Qu'un plaidoyer de paiement, précédé d'une défense au fond en fait, n'est pas une admission de la dette, et ne permet pas au demandeur de prendre jugement sans prouver sa demande.*

Per Curiam :—L'action est sur compte.

Le défendeur par un premier plaidoyer nie les allégations de la demande, et par un second plaidoyer, il dit qu'il a payé au demandeur tout ce qu'il pouvait établir lui être dû. Le demandeur prenant le second plaidoyer comme une admission de son compte, déclara qu'il n'avait pas de preuve à faire. Le défendeur, de son côté, fit la même déclaration. Le compte est-il établi par admission de la part du défendeur ? Le second plaidoyer ayant été fait sous le bénéfice du premier, le demandeur ne se trouve pas par là dispensé d'établir sa créance ; et en l'absence de preuve, l'action doit être renvoyée sauf recours.

Action renvoyée sauf recours.

Autorités :—Leclerc v. *Girard*, 1 Q. L. R. 382; *Sarault* v. *Ellice*, 3 L. C. J. 137.

E. Desrosiers, avocat du demandeur.

Girouard & de Lorimier, avocats du défendeur.

(J. J. B.)

COUR DE MAGISTRAT.

MONTRÉAL, 12 décembre 1889.

Coram CHAMPAGNE, J. C. M.

LACASSE v. PAGÉ.

Injures—Lettre privée—Publication.

JUGÉ :—*Qu'une lettre injurieuse adressé à une personne peut donner lieu à une action en dommages en réparation d'injures, quoiqu'elle ne soit pas publiée, le défaut de publication n'étant qu'une raison pour diminuer les dommages.*

Le défendeur Charles Pagé écrivait à la demanderesse le 16 octobre 1889, la lettre suivante: "Vous êtes venu la semaine der-"nière chez moi pour vendre des mor-"ceaux de machine à coudre, je les "ai achetés, il est vrai, et il me semble "que la somme de $3 que je vous "ai donnée payait grandement votre lot de "bricoles, alors je ne vois pas pourquoi vous "voulez vous faire payer deux fois. En les "prenant d'abord je vous ai donné qu'une "piastre, n'ayant que cela sur moi, vous êtes "venu le 14 courant pour avoir la balance, et "je n'y étais pas moi-même, alors mon frère "vous a donné deux bills de $1, il me semble "que cela doit faire $3 comme il était con-"venu. Si vous voulez faire comme votre "défunt mari a toujours fait dans son com-"merce de machine à coudre, alors rien ne "m'étonne que vous agissiez de la sorte. Si "vous tenez à votre honneur j'espère que "vous serez assez dame de rapporter cette "piastre."

La demanderesse prit une action contre le défendeur, signataire de cette lettre, pour $50 de dommages comme réparation pour les injures contenues dans la lettre.

Le défendeur plaida que cette lettre n'avait fait aucun tort à la demanderesse, qu'elle n'avait aucunement été publiée, qu'elle était restée privée entre eux et était ainsi privilégiée; que son intention n'avait jamais été d'injurier la demanderesse, mais seulement de réclamer ce qui lui était dû.

Le défendeur a été condamné par le jugement suivant :

PER CURIAM :—Une lettre injurieuse adressée à une personne peut donner lieu à l'action pour injure, bien qu'elle n'ait pas été publiée; il appartient au tribunal de voir si le défendeur a agi par malice, et dans ce cas le défendeur doit être condamné. Le défaut de publication de la lettre est une raison suffisante pour que les dommages accordés soient moins élevés.

Autorités :—Dareau, Traité des injures, p. 54, No. 8; *Sirey, Recueil général des lois*, 1851 à 1860, vo. *Injures;* do do 1791 à 1850, vol. 3; vo. *Injures; Roy* v. *Turgeon*, 12 Q. L. R. 186; *Larombière*, vol. 5, art. 1382.

Jugement pour $6 de dommages et $6 de frais.

Augé & Lafortune, avocats de la demanderesse.

Sicotte & Murphy, avocats du défendeur.

(J. J. B.)

FIRE INSURANCE.

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

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CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 358.]

In the *Bay State Glass Co.* v. *People's F. I. Co.*[1] one question was: "State distance and materials of other buildings within 100 feet of building to be insured." Insured answered: "See plan." The application provided that if any statement is omitted where it is required, all facts will be assumed against insured and most favorably to the risk. The applicant also covenanted that he had "made a full and true exposition of all the facts in regard to "situation, etc., and risk of the property to be insured, so far as known to him." The plan stated some, but omitted to state others of the buildings within 100 feet of the one insured. The verdict was given for plaintiff, contrary to the charge of the Judge.

A restaurant has been held in New York not to be an inn, and a restaurant-keeper is

[1] Monthly Law Reporter of 1857.

not liable as an inn-keeper, for things lost in his rooms by a person eating a meal.[1]

Where there has been an omission in the description of the buildings insured, whereby the risk is not exhibited properly, the insured may prove that the inexactitude of the description resulted from the act of the agent of the company-insurer in writing the policy, provided all be shown to be unaltered and just as the agent saw them.[2]

Where a house insured is described as within three miles from Montreal, the distance must be measured in a straight line on the horizontal plane from point to point, and not by the roads in existence when the insurance was effected. So, if toll were prohibited within three miles from Montreal, the distance would have to be calculated in the same manner.[3]

A building fifty feet off was held not "contiguous" in *Arkell* v. *Comm. Ins. Co.*—69 N.Y. (Gas was prohibited to be in the insured building or contiguous thereto)

The condition of a policy was as follows:—"The application shall contain the place where the property is situated; of what materials it is composed; its dimensions; how constructed and for what occupied; its relative situation as to other buildings; distance from each if less than ten rods." The conditions were part of the policy; the application was not. The policy covered $750 on a paper mill, and an equal amount on personal property therein. The defence was that the application did not mention all the buildings within ten rods of the mill. Held, that the condition related exclusively to applications upon buildings, and therefore furnished no ground of defence to the plaintiffs' claim respecting the personal property covered by the policy. *Trench* v. *Chenango Co. Mut. Ins. Co.*[4] This case was overruled, however, in the case of *Smith* v. *Empire Ins. Co.*[5] Here B, the insured, signed the application, and gave it to the company's sub-agent C, telling him to fill it up. He did so, and stated only one mortgage, whereas there were more. It was held that B was responsible, as C was *his* agent, and the insured could recover nothing. A later case, *Rowley* v. *Empire Ins. Co.*,[1] is opposed to the above. In this case the defendant's agent filled up the application. The agent was told everything, but made a mistake. He was held to be the company's agent, and the company was estopped from saying that the application was not according to the conditions.

§ 202. *Effect, where the insurance is divisible.*

Sometimes insurance is divisible, sometimes indivisible. The objects insured, being distinct and in different situations, make as many insurances as subjects. Journal du Palais, A. D. 1877, p. 1885. Reticence as to one by the assured may not be fatal to the whole policy. *Ib.*[2]

The sum of $1,150 was insured, the insurance being distributed over several items. There was a condition that in case the insured shall mortgage the property without notifying the secretary, then the insured shall not recover any loss or damage which may occur in or to the property insured, or any part or portion thereof. The insured mortgaged one of the subjects. Held, that the contract was one and indivisible, and the entire policy was avoided.[3]

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[1] *Carpenter* v. *Taylor*, Com. Pleas, N. Y., A. D. 1856.

[2] Cour de Cassation, 19th January, 1870; Journal du Palais, A D. 871, p. 239.

[3] *Jewell* v. *Stead*, Q. B., England, A. D. 1856.

[4] 7 Hill, 122.

[5] 25 Barbour, 497.

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[1] 36 N. Y. Rep. (March, 1867).

[2] See strong argument for indivisibility by Avocat Général Reverchon (Journal du Palais, A.D. 1878, p. 147), where a policy is issued covering different subjects for different sums, and the insured has been guilty of fraud, leading to insurance, as to one subject. Yet the original Court held the policy in this case to involve two contracts, and the Cour de Cassation said it could not interfere in such case, which the editors seem to question. See also *Gore Dist. Mut. F. Ins. Co.*, appellants, & *Samo et al.*, respondents. A building was insured for $1,000; stock, $2,00). The policy was subject to 36 Vict., c. 44 (Ont.) Its sect. 36 has been repealed by 39 Vict., c. 7. The insured made further incumbrances after the policy, and did not notify. The policy was held by the Court of Error of Ontario to be divisible. But the Supreme Court in 1878 held it indivisible and the policy wholly void. Bramwell, B., in *Hains* v. *Venables*, L. R., 7 Exch. 240, is approved by the Supreme Court, and in New Brunswick the same has been held. See 2 Supreme Court Rep. of Canada, p. 423.

[3] *Platt* v. *Minnesota Farmers' M. F. Ins. Co.* (A. D. 1877), Albany Law Journal, A. D. 1877, p. 483. *Day* v. *Ch. Oak Ins. Co.* cited, 51 Maine. *Lee* v. *Howard Ins. Co.*, 3 Gray, also cited in Albany Law Journal, p. 483.

A man insures £1,000 on his house and £500 on his furniture in that house. The obligation of the insurers may be indivisible or divisible, according to circumstances. If the house be described as covered with slates, whereas it was covered with shingles, and it is burned, the insurers need not pay for it, nor need they for the furniture burned with it, under first clause.[1]

Buildings were on two lots insured. One lot was mortgaged. The application required all mortgages to be stated. The insurance company's agent seems to have written the application. He was held the applicant's agent, for so the application itself ordered. The insurance was vitiated totally, the mortgage not being stated.[2]

Some policies contain a clause as to description of interest,—that if the interest is misdescribed in the application, the policy shall be void: Also, another clause as to claim sworn to (after the fire), that if false or fraudulent in any particular the policy shall be void. What is the effect in a case where by one policy many different subjects are insured, as house, furniture in it, movables elsewhere, values stated, and a rate, say, of one per cent. on all? Suppose the house not to belong to the insured. Is his total policy null? *Semble*, it ought not to be. Can it be said that the risk is greater of a house not belonging to assured? It ought to be held that the policy did not mean it, and is divisible. Then, suppose the same case, but all to belong to the assured, and, after the fire, the claim contain a fraudulent statement of some of the loss (*e.g.*, some subject alleged lost that was not, or values of some of the movables sworn to at double their values), ought the whole policy to be avoided? It would seem that it ought, if it contain a clause to that effect. Again, suppose the same as the last insurance, and a clause to read—If coal oil or benzine be used in the house insured, this policy to be void. Ought the total policy to be avoided if coal oil be used? In France they lean against divisibility.[3]

[1] Agnel, p. 64, Arrêt of 1851.

[2] *Bleakley* v. *Niagara Dist. Mut. Ins. Co.*, 5 Bennett's Fire Insurance Cases, p. 277.

[3] Pouget's Table, p. 13. And see Pouget, p. 94, Toulouse and Bordeaux. *Dechéance*, for inexecution of clauses, applies to movables as well as houses. If a claim sworn to, be falsely exaggerated the whole policy falls; Paris, 6th March, 1856. A policy is indivisible by its nature, says Pouget, p. 77; so it is null as to houses insured where the value of movables only is falsely exaggerated.

A house is described as covered with slate or built of brick, when one or the other is not the case, the policy is null even as to movables in it.

A policy providing that the application should be the basis of the contract, contained a statement of the value of the goods insured. Held, that this statement was a warranty, and that the direction of the judge, that it was only a representation, was error.[1]

§ 203. *Misdescription sometimes immaterial.*

In Lower Canada trivial discrepancies in description will not avoid a policy. Mere omissions to mention things, without fraud, will not avoid policy. But what of policy condition? Not mentioning a door of communication between two buildings will not necessarily avoid a policy, unless it was fraud that led to the non-mentioning of the door, and the fire extended through that door and increased the loss.

Where the insurers plead fraudulent concealment in the description of buildings insured, or the non-mentioning of a door between two buildings, they must prove fraud and not merely the misdescription.[2]

In *Friedlander* v. *London Assurance Co.*[3] goods were described as in the dwelling-house of the insured, but he had but one room as a lodger where the goods were kept; but it was held that they were well described within the condition, which required that the houses, buildings or other places where goods are deposited shall be truly and accurately described: it was considered that such condition related to the construction of the house and not to the interest of the party.

In a case in Illinois[4] an insurance was effected on buildings so much, on fixtures so much. There was double insurance on the

[1] *Babbitt* v. *Liverpool, London & Globe Ins. Co.*, 5 Bennett. The contrary was judged in Owen's case, 5 Bennett, 554. It is well to refer in the policy to the application, for see 5 Bennett, p. 434.

[2] *Casey* v. *Goldsmid*, 4 L. C. R.

[3] 1 Mood. & Rob. 171.

[4] 5 Am. Rep. (A. D. 1872).

latter. It was asked that the policy be nullified only *pro tanto*, and judgment was rendered accordingly.

In *Somers* v. *The Athenæum Fire Ass. Co.*[1] it was held that where the insurer's inspector makes a visit and diagram, and a policy upon that describes a house as detached, which really is not, and two tenants where there were four insured, he shall nevertheless recover; error will be presumed and the insurer blamed. The company in vain argued that plaintiff had been negligent, and that misdescription, whether by negligence or fraud, vitiates the policy. The Court held that the plaintiff had accepted a policy with an error in it, which he had not perceived, and had done no more; and the agent was held to be competent to prove the assured's case.

If a condition of a policy provide that the insurer's surveyor shall be held the applicant's agent and surveyor as well as the insurer's, the applicant will be affected by errors and misdescription in a survey or plan.[2]

If there be interrogatories in the application unanswered, and the policy have been granted notwithstanding, the omission is immaterial.[3]

If a survey or description be a part of the policy and a warranty, they must be regarded so. It cannot be left to the jury in such a case whether the non-correspondence with the survey or description increased the risk or not.[4]

The assured is responsible for material representations, whether before the policy, leading to it, or at the time the insurance is obtained. Phillips, vol. 2 (ed. of 1854). Representations need not be in writing. *Ib.*, § 545.[5]

Art. 2487 of the Civil Code of Lower Canada says that misrepresentation or concealment, either by error or design, of a fact of a nature to diminish the risk or change the object of it, is a cause of nullity.

Art. 2570 says, representations not contained in the policy or made part of it, are not admitted to control its construction or effect.

A promissory representation Duer holds to be equivalent to a warranty. It has been held in some cases that representations promising things must be in writing.

Can the application be referred to? It is certainly equivalent to parol representation, and if false, the policy is null if materiality be seen and found by the jury.

A person insured stating that there was a prior insurance of $3,000 on the same subject, where really it was only of $2,500. Held, that this was not a misrepresentation affecting the risk, but that the insured was to be considered as his own insurer to the extent of the $500 difference; the insurer getting, so, the full benefit of the statement made.[1]

Suppose a man takes a fee simple deed of sale to him of land and house as security, may he not call himself owner for insuring?

In Louisiana, the Court held a policy void because the insured did not communicate to the underwriters the fact of a rumor of an attempt to set fire to the building adjacent to the one on which he requested insurance.[2]

In the following case the misdescription was held immaterial. Buildings were described as of brick and slated roof; but one was covered with tarred felt (not burnt). This roof was not easy to be seen, buried up as it were inside of other buildings and walls, and if the error was material, it was made by the company's agent, and the insured was not responsible.[3]

Of course, if a description is in the form of a warranty, it must be true, or the policy is void.[4]

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[1] 9 L. C. Rep.; 3 L. C. Jurist.

[2] *Sexton* v. *Montgomery Co. M. I. Co.*, 9 Barbour's R.

[3] *Hall* v. *People's, &c.*, 6 Gray.

[4] *The Market F. Ins. Co. of New York* v. *Leroy*, 12 Tiffany R. (N. Y.)

[5] Mistakes or misrepresentations towards the policy do not avoid the policy in New Hampshire, unless fraudulent. See Albany Law Journal, 1st volume of 1880, p. 97.

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[1] *Hood* v. *Farmers' Mut. Ins. Co.*, Vermont, A. D. 1857.

[2] *Walden* v. *Louisiana Ins. Co.*. 12 La. R. 135.

[3] *In re Universal Non-Tariff F. Ins. Co., Forbes & Co.'s* claim (1875). The agent had inspected and made report to his company. The company relied on *Newcastle F. Ins. Co.* v. *McMorran*, and *Anderson* v. *Fitzgerald;* but this case was held different, for the insured here never was called upon for any representation.

[4] *Newcastle Ins. Co.* v. *McMorran.*

Anderson v. *Fitzgerald* was a case of false representations (two) by the insured. The policy was void from the beginning.

The true principle is stated in Smith's Mercantile Law (8th ed., p. 405). If the description be substantially correct, and a more ample description or more accurate description would not have varied the premium, the error is not material.

In the case of *Gouinlock* v. *The Manufacturers & Merchants' Mut. Ins. Co. of Canada*,[1] the question was put, For what purposes occupied? The answer was, "Dwelling, &." This was held to mean "*et cetera*," and a drinking saloon was held covered. Yet the Ontario statute orders insurance to be of no force if the insured describe the subjects insured otherwise than they really are.

Where the policy required certain facts to be stated in the application by the assured, and these are made known to the company's agent, who omits to reduce them to writing, the company is liable.[2]

In the case of *Universal Non-Tariff Fire Ins. Co.* and *Forbes'* claim,[3] an insurance agent in Glasgow for a London company, to whom the assured applied for insurance with the Universal Non-Tariff Company (which agent represented himself as agent for the company), inspected the buildings proposed for insurance. The insurance agent was an agent for several companies, and he received a commission from the Universal Non-Tariff Company on Forbes' insurance. Forbes paid to him and got a policy from him. The company denied his being their agent, and styled him a correspondent. He inspected the buildings, and sent particulars to the head office. Misdescription was pleaded, too. The buildings were described as built of brick and slated. One, insured for £200, was not burnt, however. It was covered with tarred felt. Forbes never signed any representation about the roofs, but the company's agent alone did so, and it was put in the policy. It was held by Malins, V. Ch., that the misdescription was not material, and even if it were so, it was made by the company's agent, and Forbes was not to be considered responsible for it.

[1] 43 Q. B. R., Ontario.

[2] *Commercial Ins. Co.* v. *Spaukneble*, 4 Am. Rep. Illinois case of 1869.

Is not *Parsons* v. *Bignold*, 15 L. T. (N. S.) Chancery, to the same effect?

[3] Law Rep. 19 Eq. (A. D. 1875); Bennett's Insurance Cases, vol. 5.

In *Rohrback* v. *Germania F. Ins. Co.*[1] there was a condition that any person, other than the assured, who may have procured this insurance to be taken, shall be deemed the agent of the assured, and not of the company under any circumstances. The assured made application to the company's agent who filled up the application, and the insured signed. Held, that the agent was agent only of the insured.

A condition was contained in a policy, that if an agent of the company fill up the application he shall be held to have done so as agent of the applicant, and not of the company. A misdescription was held fatal, and the above condition was held not unreasonable nor against the Ontario statute.[2]

§ 204. *Declaration of intention affecting risk.*

Language in a policy declaring intention to do or omit an act which materially affects the risk, its extent, or nature, is sometimes to be treated as involving an engagement to do or omit such act.[3]

The insurance was on a factory. Plaintiff answered the question "During what hours is the factory worked?" as follows: "We run the cards, pickers, etc., day and night; the rest only twelve hours daily. We only intend running nights until we get more cards, etc., which are making. We shall not run nights over four months." Held, an agreement to cease running upon receiving the cards.

But the insurers may be estopped from setting up a breach of warranty, or a misre-

[1] 62 N. Y., 5 Bennett's F. Ins. Cases, p. 744.

[2] *Sowden* v. *Standard Ins. Co.*, 44 Q. B. R., Ont., p. 95 (A. D. 1879).

[3] *Bilbrough* v. *Metropolis Ins. Co.*, 5 Duer's Rep., N. Y., 1856. This can be maintained only by reason of an express promise being seen, says Flanders.

Per Hoffman, J.—*Murdock* v. *Chenango Mut. Ins. Co.* has gone far to dissipate the error of Ch. Walworth in *Alston's* case, and of Wilde, J., in *Bryant* v. *Ocean Ins. Co.* In *Murdock's* case, There will be a stone chimney built, was in the application, which was a warranty under condition of policy. The insured lost. *Alston's* case is cited (and *Bryant's*, too) without disapproval, p. 254. See § 297, where Gray, J., supports the *Bryant* case.

presentation on the part of the insured, as a defence to an action on the policy, by having, with a full knowledge of the breach, laid assessments upon the premium note of the insured;[1] *aliter*, if they were not aware of the breach.[2]

In *Howard F. Ins. Co.* v. *Bruner*[3] the insurance company was held estopped from setting up breach of warranty (arising from misdescription) by proof that the description had been prepared by its agent, with knowledge of everything.

§ 205. *Insertion of representations in the policy.*

By the law of France, says Duer, all representations must be inserted in the policy. This is thus stated by Pothier: "The policy contains the conditions. Unless expressed, one party cannot impose conditions upon the other, who disagrees, and denies them. They shall be reputed 'Comme n'ayant pas été convenues,' and shall not be established otherwise than by the policy."

Semble, by the law of Lower Canada representations before policy must be written in the policy.

It would be wise to order so all over the world. Even fraud alleged is nothing; had fraudulent representations been made, they would only have been more plainly proved had there been a writing. The door is open to great frauds against the assured by the contrary doctrine, and perjuries are invited. Yet conditions (Merlin says) may be (in contracts) express or implied.

There is no adjudged case in which it has yet been explicitly acknowledged that the rule of evidence in relation to policies is different from that which prevails in regard to other written agreements, says Duer, Lect. 14, note 3. On the contrary, the fact is denied, he says.

It would have the worst effect if a broker could be permitted to alter a policy by parol accounts of what passed when it was effected, said the Court in *Weston* v. *Ames*.[4]

Powell v. *Edmonds*, 12 East's R.—Parol evidence of what an auctioneer said at the sale of an estate, to explain an alleged ambiguity in conditions, was rejected.

Lord Ellenborough said:—" The purchaser ought to have had it put into writing at the time, if the representation then made swayed him to bid. If the parol evidence were admitted in this case, I know of no instance where a party may not by parol testimony superadd any term to a written agreement." This is very applicable in insurance.

The companies it is who seek to make out these representations generally. Now suppose the insured were to offer parol proof to restrain the effect of the policy. He would be hooted at. Yet he is as right as others in proving, as they do beyond the agreement, and deducting from it.

Misrepresentation and fraud will often be proved by insurance companies' clerks. If the doctrine be admitted that parol evidence of misrepresentation may be received, the effect of every defence founded on a misrepresentation without fraud is to alter the construction of the policy. Per Lord Tenterden, in *Flinn* v. *Tobin*, 1 Moody & M.[1]

In *Alston* v. *Mech. Mut. Ins. Co.*,[2] the assured promised verbally (it was said) to discontinue the use of a fireplace in the basement, and to use a stove instead. Fire happened. He had not discontinued. The Court would not allow this to be a defence to an action after a loss, the policy not mentioning such promise.

Promises for future conduct must be inserted in the policy. By parol proof the terms of a policy cannot be added to nor varied. [Two witnesses in this case proved the representation.] Clearly the loss was covered by the terms of the policy. Part of the contract had been omitted from the policy (according to defendants). If so, it ought to have been written, for it was a warranty, though called a "promissory representation" by defendants.

[1] *Frost* v. *Saratoga Mut. Ins. Co.*, 5 Denio, 154.

[2] *Allen et al.* v. *Vt. Mut. Fire Ins. Co.*, 12 Vt. 363.

[3] 11 Hun.

[4] 1 Taunton.

[1] See [25-26] Smith on Contracts, as to parol proof against writings.

[2] 4 Hill, 329.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Nov. 8.

Judicial Abandonments.

Arthur Demers, tinsmith, St. John's, Nov. 5.

Louis Deschêne, trader, Rivière Ouelle, Oct. 25.

Elzéar Fortier, boot and shoe dealer, Hull, Nov. 3.

John McIntyre, engineer and millwright, Montreal, Oct. 24.

Télesphore Monpas, trader, St Jean Deschaillons, Oct. 31.

Geo. H. Moore, Aylmer, Oct. 28.

Joseph E, Turgeon, trader, Ste. Julie de Somerset, Oct. 31.

Geo. Rhéaume, trader, parish of St. Côme de Kennebec, Oct. 31.

Curators appointed.

Re Damase *alias* Thomas Bedard, trader, Lachute.—G. J. Walker, Lachute, curator, Nov. 3.

Re Dozithé Bonin, Joliette.—Bilodeau & Renaud, Montreal, joint curator, Oct. 28.

Re Hubert Alfred Houde, grocer, Quebec.—H. A. Bedard, Quebec, curator, Nov. 5.

Re John McIntyre, engineer and millwright, Montreal.—A. F. Riddell, Montreal, curator, Nov. 3.

Re Hector Poirier, La Baie du Febvre.—F. Valentine, Three Rivers, curator, Nov. 3.

Re James W. Wight, Montreal.—J. McD. Hains, Montreal, curator, Nov. 5.

Dividends.

Re George Baptist, Son & Co., lumber merchants, Three Rivers.—Dividend, payable Nov. 24, Macintosh & Hyde, Montreal, joint curator.

Re Beauchamp & Co.—First and final dividend, payable Nov. 20, Bilodeau & Renaud, Montreal, joint curator.

Re Bossé & Lee, Montreal.—First and final dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re Joseph Dagenais, grocer, Montreal.—First and final dividend, payable Nov. 25, T. Gauthier, Montreal, curator.

Re Dominion Illustrated Publishing Co.—First dividend (5c.), payable Nov. 10, J. B. Clarkson, Montreal, curator.

Re Philippe A. Donais.—First dividend, payable Nov. 25, C. Desmarteau, Montreal, curator.

Re J. H. Dubois, Drummondville.—First dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re Gédeon Genest, Pierreville.—First dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re Geo. Guay, Yamachiche.—First dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re D. Lanthier, Montreal.—First dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re L. Laurin, Montreal.—First dividend, payable Nov. 25, Kent & Turcotte, Montreal, joint curator.

Re L. H. Mineau, Louiseville.—First and final dividend (on hypothecs only), payable Nov. 26, Kent & Turcotte, Montreal, joint curator.

Re J. D. Tellier, Sorel.—First and final dividend (on hypothecs only), payable Nov. 26, Kent & Turcotte, Montreal, joint curator.

Separation as to property.

Marie Emma Hémond vs. Michael Weston *alias* William Fullum, Montreal, Oct. 25.

Rosianne Majeau vs. Antoine Vincent, trader, Montreal, Nov. 5.

Marie Sophie Ricard vs. Gabrielle Caron, machinist, Montreal, Nov. 4.

Elize Roberge vs. David Limoges, carter, parish of l'Enfant Jésus, Aug. 4.

Onézime Taillefer vs. George Payeur, dyer and manufacturer, Montreal, Oct. 15.

GENERAL NOTES.

Manx Method of Treating Prisoners.—Two men named Peter Thornton and Thomas Smith were, July 1, charged before the Liverpool stipendiary magistrate with having frequented the steamship Mona's Isle with intent to commit a felony. Detective Boyes stated that on Saturday he was a passenger on board the steamer from Liverpool to Douglas, and on arriving at his destination he noticed Thornton endeavoring to pick the pockets of several ladies, his companion acting as a shield to his movements. He took them into custody and gave them in charge of the Manx police. The prisoners were stripped of their money, watches and jewellery, and then allowed to go. They wandered about without means of sustenance until Monday, when they were sent over to Liverpool, and Boyes met them and removed them to prison. In reply to the magistrate, the prisoners said that the Manx police authorities told them that they would not be detained if they delivered up their property. Detective Boyes said that there was no likelihood of the prisoners recovering their valuables, as the Manx police invariably held possession of things belonging to prisoners taken into their custody. Smith asked what proceedings they could take in order to recover their property. The magistrate told them they had better keep away from the island. The prisoners were then discharged.

Paying Unauthorised Agents.—In the City of London Court, on September 5, before Mr. Commissioner Kerr, the case of *Coral* v. *Allen* was heard, in which the plaintiff, a wholesale confectioner, sued the defendant to recover payment of an account for goods supplied. The defendant said he had paid the plaintiff's authorized agent. The plaintiff said the defendant had instructions only to pay with a written authority. The defendant said the agent produced the plaintiff's authority, but this the plaintiff said was a forgery. The agent had since left his employment. Mr. Commissioner Kerr said that raised a very fine but very important point to all men in business. The defendant had paid the debt on a forgery of the plaintiff's authority. He was afraid that, while it was a very hard case on the defendant, he must pay it over again. It was a serious warning to all men to be very careful in making payments. There would be judgment for the plaintiff, with costs.