The Legal News.

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SUPREME COURT OF CANADA.

OTTAWA, June 12, 1890.

Nova Scotia.]

O'BRIEN v. COGSWELL.

Assessments and taxes—Assessment Act—Lien—Priority of—Mortgage made before Statute—Construction of Act—Healing clause—Effect and application of.

The Halifax City Assessment Act, 1888, made the taxes assessed on real estate in said city a first lien thereon except as against the Crown.

Held, affirming the judgment of the Court below (21 N. S. Rep. 155, 279) that such lien attached on a lot assessed under the Act in preference to a mortgage made before the Act was passed.

The Act provided that in case of non-payment of taxes assessed upon any lands thereunder, the City Collector should submit to the Mayor a statement in duplicate of lands liable to be sold for such non-payment, to which statements the Mayor should affix his signature and the seal of the Corporation; one of such statements should then be filed with the City Clerk and the other returned to the collector with a warrant annexed thereto, and in any suit or other proceeding relating to the assessment on the real estate therein mentioned, any statements or lists so signed and sealed should be received as conclusive evidence of the legality of the assessment, &c. In a suit to foreclosure a mortgage on land which had been sold for taxes under this Act the legality of the assessment and sale was attacked.

Held, per Strong, Taschereau and Gwynne, JJ., that to make this provision operative to cure a defect in the assessment caused by failure to give a notice required by a previous section, it was necessary for the defendants to show, affirmatively, that the statements had been signed and sealed in duplicate and filed as required by the Act; and the production and proof of one of such statements was not sufficient.

Per Ritchie, C. J., and Patterson, J., that it was sufficient to produce the statement returned to the collector signed and sealed as required, and with the necessary warrant annexed, and in the absence of evidence to the contrary it must be assumed that all the proceedings were regular and that the provision of the statute had been complied with.

The Act also provided that the deed to a purchaser of lands sold for taxes should be conclusive evidence that all the provisions with reference to the sale had been complied with.

Held, per Strong, Taschereau and Gwynne, JJ., that this provision could only operate to make the deed available to cure defects in the proceedings connected with the sale, and would not cover the failure to give notice of assessment required before the taxes could be enforced.

Held, per Ritchie, C. J., and Patterson, J., that the deed could not be invoked in the present case to cure any defects in the proceedings, as it was not delivered to the purchaser until after the suit commenced; therefore a failure to give notice that the land was liable to be sold for taxes, which notice was required by the Act, rendered the sale void.

Appeal dismissed with costs.

Sedgewick, Q.C., and *Lyons* for appellant.
Lash, Q. C., and *McDonald* for respondents.

OTTAWA, June 13, 1890.

Nova Scotia.]

LAWRENCE v. ANDERSON.

Debtor and Creditor—Assignment in trust—Release to debtor by—Authority to sign—Ratification—Estoppel.

L. brought an action against A., on an account stated, to which the defence set up was release by deed. On the trial it was shown that A. had executed a deed of assignment in trust for the benefit of his creditors, and under authority by telegram had signed the same in the name of L. After the execution of the deed by A. the creditor, L., continued, with knowledge of the deed, to send him goods, and about a month after he wrote A. as follows:—"I have done as you

"desired by telegraphing you to sign deed "for me, and I feel confident that you will "see that I am protected and not lose one "cent by you. After you get matters adjusted "I would like you to send me a cheque for "$800." Four years after, A. wrote to L. a letter in which he said: "In one year more "I will try again for myself and hope to pay "you in full." The account sued upon was stated some eighteen months after this last letter.

Held, reversing the judgment of the Court below, Taschereau and Patterson, JJ., dissenting, that L. was not estopped from denying that he executed the deed of assignment; and as it was evident that he did not expect to participate in the benefit of the deed, but looked to the debtor A for payment, he could recover on the account stated.

Held, per Patterson, J., that although A. had no sufficient authority to sign the deed for L., yet there was an agreement to compound the debt dehors the deed which was binding on L., and the understanding that L. was to be paid in full would be a fraud upon the other creditors of A.

Appeal allowed with costs.

Eaton, Q. C., for the appellant.

Newcombe for the respondent.

OTTAWA, June 13, 1890.

Nova Scotia.]

CLARK v. CLARK.

Will—Construction of—Devise to two persons—Joint tenants or tenants in common—Severance.

The will of R. C. devised his real estate to his two sons, their heirs, executors and assigns, and ordered that said sons should jointly and in equal shares pay the testator's debts and the legacies granted by the will. There were six legacies given to two other sons of the testator of $50 each, payable by the devisees in two, three, four, five, six and seven years respectively. The estate vested in the devisees before the passing of the act abolishing joint tenancies in Nova Scotia.

Held, reversing the decision of the Court below (21 N.S. Rep. 378), Taschereau and Gwynne, JJ., dissenting, that the provisions for payment of debts and legacies indicated an intention on the part of the testator to effect a severance of the devise, and the devisees took as tenants in common and not as joint tenants. *Fisher* v. *Anderson* (4 Can. S. C. R. 406) followed.

On the trial of a suit between persons claiming through the respective devisees to partition the real estate so devised, evidence of a conversation between the original devisees as to the manner in which they regarded their tenure of the estate was tendered and rejected.

Held, Gwynne, J., dissenting, that such evidence was properly rejected.

Held, per Gwynne, J., that the evidence could not have had the effect of assisting to explain the will, which was the ground upon which it was rejected at the trial, but it should have been received as evidence of a severance between the devisees themselves holding as joint tenants under the will.

Appeal allowed with costs.

Harrington, Q. C., for the appellants.

Borden for the respondents.

OTTAWA, June 13, 1890.

New Brunswick.]

PROVIDENCE WASHINGTON INSURANCE CO. v. GEROW.

Marine Insurance—Construction of Policy—Port on west coast of South America—Guano Islands—Commercial usage.

A vessel was insured for a voyage from Melbourne to Valparaiso for orders, thence *to a loading port on the western coast of South America*, thence to United Kingdom. She went to Valparaiso and from there proceeded to Lobos, an island from twenty-five to forty miles off the west coast of South America, where she loaded guano and sailed for England. Having met with heavy weather she returned to Valparaiso and a survey was held by which it appeared that to repair her would cost more than she would be worth afterwards. The owner claimed payment on the policy for a constructive total loss, which was resisted on the ground of deviation in the vessel loading at a port off the coast. On the trial of an action on the policy evidence was given by

shipowners and mariners to the effect that, by the usage of the shipping trade, a loading port on the west coast of South America specified in the policy would include the Guano Islands lying off the coast. The jury found for the plaintiff.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the policy must be construed to mean what would be understood by shippers, shipowners, and underwriters, and the jury having based their verdict on evidence of what such understanding would be, their finding could not be disturbed.

Appeal dismissed with costs.

Straton for the appellants.

Weldon, Q.C., for the respondent.

FIRE INSURANCE.

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

CHAPTER V.

THE POLICY.

[Continued from p. 248.]

§ 151. *Effect of valuation in the United States.*

In the United States the rule that, in the absence of fraud, the valuation is conclusive on both parties, and that neither can introduce evidence to show that it differs from the amount really at risk, has been applied, says Shaw, to valued policies against fire in the case of *Harris* v. *Eagle Ins. Co.*[1] But this seems to be open to question. In that case 380 kegs of manufactured tobacco, worth $9,600, were insured by the policy. The value was held fixed, so that, 157 of the kegs having been burnt, the insured was paid a proportional sum for them. But in this very case the value was disputed, though fraud was not pleaded. The tobacco had been manufactured by the plaintiff, and the insurer wanted to pay only its prime cost,[2] cost of manufacturing, and a reasonable allowance for plaintiff's time and the use of his money. Had the policy been a common open one Harris would have recovered as much as he did: he only got the real value of his goods lost. True, the policy was held a valued one.

The cases of *Akin* v. *Mississippi M. & F. Ins. Co.* and *Hodgson* v. *Marine Ins. Co.* favor the valuations in valued policies. In the former case the insured had obtained insurance on barrels of flour by a valued marine policy for $5,000. They were totally lost, and he recovered $5,000, the insurers in vain urging that the cost of them was less, and that there had been fraud in the valuation.

Yet if a statute (as that of Wisconsin) order to the contrary, the statute cannot be derogated from; *e. g.* where a statute says, in case of total loss the values shall be those insured. This cannot by a clause of the policy be derogated from.[1]

§ 152. *Valued policies in France.*

Judge Thompson says that in France almost all policies are valued.[2] This is true in one sense, and not in another. The things insured are valued. The Code de Commerce orders it, but all the French policies that I have seen have a special clause in them that the sum insured can never be taken as conclusive value of the things insured, but that the insured shall be bound to justify the value (which, I am inclined to think in Lower Canada, in the case of valued policies, he need not do at first:—See Civil Code, Art. 2575). Upon the point of value, even in the absence of a special clause such as that just mentioned, valued policies in France cannot conclude the insurers.[3] Of course they bind the insured, who can never recover beyond the value put upon any subject insured; and so it is in England.[4] Art. 1965 Code Napoléon, prohibits gambling, and valued policies are treated as such, where sought to be worked for gain beyond *valeur vénale*.

[1] 5 Johns.

[2] As the insurance company wanted to do in Quinn's case, *ante*.

[1] *Reilly* v. *Franklin Ins. Co. of St. Louis*, 28 Am. Rep. p. 552 (A.D. 1877). The value, in case of total loss, is fixed by the statute of 1874 at the amount insured, and cannot be derogated from. So a policy clause, fixing the value to be the marketable value at the time of the loss, cannot be held a derogation from the statute, which cannot be derogated from, says the Court.

[2] 5 Johns R. p. 373.

[3] In France valuation is good, but not if it exceed reasonable limits. Alauzet.

[4] *Irving* v. *Richardson*, *post*.

In *Holmes* v. *Charleston M. F. Ins. Co.*[1] a valuation was made in the application for insurance. The application was, probably, referred to in the policy, or otherwise made part of it. The valuation was held binding upon the insured, and he only received three-fourths of the value of his buildings as insured and valued. He was non-suited in an action asking for more.[2]

§ 153. *Stipulation that insurance may be reduced.*

The insurer may by a condition stipulate for power to reduce the insurance, and this condition is not to be treated as not written.[3]

§ 154. *Particular stipulations of policies.*

In any country the insurer may limit the force of a valuation by inserting in the policy a clause like the French one,—that the insured shall be bound to justify the value of anything lost, unless a statute like in Wisconsin (*ante*) prohibit.

Some policies, particularly open ones, provide that the loss shall be estimated according to "the true and actual value" of the property at the time of the loss happening. Some say "cash value:" this is what the French policies stipulate. The insurers by such policies stipulate to pay only to the extent of the market value (*valeur vénale*) of the subjects insured.

§ 155. *The true and actual value.*

What is the true and actual value of a thing insured, in other words its "*valeur vénale*"? The French writers are clear upon this. (Emerigon, vol. 1, ch. ix, and Boudousquie, Nos. 132 and 133; also Alauzet.) It is the price that it would sell for, or what a thing of like kind would sell for, in the same place, at the same time, under like circumstances. The cost of a house, or the invoice, or cost, prices of goods, may far exceed their *valeur vénale*. The contract of insurance, says Boudousquie, is not a proceeding to *conserver* the objects insured, but only a contract of indemnity. In the case of a house burned it would be unjust to say to the insurer, "re-establish the house as it was before the fire." The real loss once paid, the obligations of the insurer are extinct. Suppose it to be a perfectly old and tottering house, the insurer ought not to be made pay more than say a next-door neighbour whose operations might make it fall and be lost as a house.[1]

§ 156. *Where the value has depreciated since the date of the insurance.*

The value of everything varies from time to time. If the subject insured has, before the date of the fire, undergone a depreciation, no matter from what cause, the insured cannot ask indemnity according to the value at the date of the policy. If he could do this, he might be interested in burning his property. Doubts may be stated where goods are depreciated by the effect of changes and chances in commerce, but are likely to regain the higher values that they once had. It may be said that if they had not been burnt they would have regained these values. There is nothing in this, for the insurer's contract was only to guarantee against the loss resulting from the fire. This loss is that of the goods reduced to the degree of depreciation in which they were when destroyed by the fire. The insurer is not *garant* for the difference which results from the fire happening at one time rather than at another.

It was held in *McCuaig* v. *Quaker City Insurance Co.*[2] that depression in the value of steamers generally, from circumstances which may be only temporary, and which may have no reference to the original cost, etc., cannot be taken into account.[3]

Shaw (note to Ellis) says: "An interesting inquiry is suggested by the remarks of Jones, Ch. J., in *Laurent* v. *Chatham Fire Insurance Co.*, 1 Hall, 41, in regard to the measure of

[1] 10 Metcalfe.

[2] The company, by statute, was authorized to insure only to three-quarters of the value of any property.

[3] Journal du Palais, 861; A. D. 1871.

[1] *Dodd* v. *Holmes*, 3 Nev. & M.

[2] 18 U. C. Q. B. Rep. 131.

[3] In *Wolfe* v. *Howard Insurance Co.*, 3 Selden (N. Y.), where the insurance was on goods in public stores or bonded warehouse—"loss in case of fire to be estimated according to the true and actual cash value of the property at the time of the fire;" the measure of damages was held to be such value though the duties had not been paid. Note to [254] Sedgwick, Damages. What is meant by this? Surely goods in bond have less value than goods out, duty paid.

indemnity which the owner of a building insured under a fire policy is entitled to receive. Is this governed by the cost of the building, or the cost of erecting one precisely similar to it, or is it by the amount of money for which it would have sold immediately previous to the loss, affected as this amount must necessarily be, by the special and peculiar circumstances of the insured, and the local advantages or disadvantages of the building? Thus, suppose a new building, which cost $5,000, to have been insured for that amount for the term of five years. Shortly after the insurance was effected, and before the building had become at all deteriorated by age or usage, suppose that on account of the decline of business in the place, or the contiguity of some nuisance, or by being rendered difficult of access through the erection of a railroad embankment near it, or the excavation of the street before it, its value became much depreciated, so that it would not have sold, together with the land on which it stood, for more than $2,500. In case of its destruction by fire, under this state of things, what would be the measure of the insurer's liability, the sum for which the building would have sold, or $5,000, the sum which it originally cost and which it would cost to rebuild it?" He adds: "In the case in 1 Hall, Jones, Ch. J., inclines to the latter opinion, and supports it by a clear and cogent argument, and this is probably the more correct view of the question, though it must be admitted that the argument on the other side is not entirely destitute of force." ["The argument on the other side," I consider to possess all the force.]

§ 157. *Cases illustrating the subject.*

In *Laurent's* case the policy ordered that in case of fire the loss or damage was to be "estimated according to the true and actual value of the property at the time the fire should happen," and Laurent did not get more than the true and actual value; the evidence against him was weak.

In *Grant* v. *The Ætna Insurance Co.*, the values of the three subjects (portions of a steamer) insured were debated. Although the plaintiff had proved the *valeur vénale* of these subjects respectively, the defendants having gone into proof of the values of steamboats at the time, Judge Smith, presiding at the trial, in charging the jury, remarked that they "were to find according to the intrinsic value as proved by several of the witnesses," "that the defendants wished to have the values estimated by what the steamer itself would bring in the market, if sold suddenly for cash;" "that he (the Judge) could not accept that view, but that the values were to be estimated at the true, intrinsic, values at the time of the loss, unaffected by local circumstances, which might change." This charge was objected to by defendants, who moved for a new trial, and the judge (Badgley) before whom the motion was argued, said "the money value in the existing market is the only rule and guide to carry out the stipulations of the contract:" "this policy having expressly stipulated for the kind of valuation, according to the true and actual cash value of the property at the time the loss shall happen, any other instruction to the jury is not warranted, and hence the ruling and instruction at the trial were illegal."

Suppose a man erect a distillery at a cost of £1000, and to insure it from year to year, during several years, at £1000. Owing to various circumstances, particularly the spread of teetotalism in the locality, the business droops, and is finally given up; yet the insurance is continued. The building nobody would be so bold as to touch, as a distillery. It is unoccupied; the proprietor does not know what to do with it; it gets less and less worth day after day. A fire happens, and it is totally destroyed. By the policy the loss of the insured is to be "estimated by the true and actual cash value of the building at the time of the fire." This policy stipulation could not be disregarded, by substituting for the valuation it contemplated a valuation based upon alleged cost, or intrinsic value independent of all local, though perhaps temporary, circumstances. It would offend all our proper notions of public policy and morality if it were.

§ 158. *Limitation of liability to case of total loss.*

The insurers may stipulate to be liable only in case of total loss. In marine insur-

ance such insurances are more common than in fire. In such cases nothing must be saved. If a ship and cargo, or a house, be insured so, and only a room in the house be damaged, or the cargo only be lost or burnt, the insurers go free.

§ 159. *Constructive total loss.*

Yet though insurance be against "total loss only," in marine insurance this would comprehend constructive total loss. An absolute total loss is not, alone, within the policy; both actual and constructive total loss are comprehended.[1]

In the United States and Canada, in fire insurance there is no constructive total loss, neither is the law of marine insurance, one third new for old, applicable. Whatever portion of the insured property is saved belongs to the insured, and its value is deducted from the whole value of the property, to ascertain the amount of the insurer's liability.

§ 160. *Option to rebuild.*

Generally if buildings insured be burnt, the insurer must pay. By some policies he is allowed option to rebuild. If he have stipulated for such option, and choose to rebuild, there will be nothing allowed as for difference in value of the buildings as renewed over those that were burnt. If a person insure for £500 his neighbour's building, however old, which is afterwards burned, the insured must be paid his loss not exceeding £500, unless the insurer have the option to rebuild and choose to do so. If he do rebuild he will in vain invoke the rule one-third new for old.

Sedgwick (on damages) [256] thinks the rule reasonable, and would have it to govern in fire insurance; he says that it has been admitted in Ireland (*Vance* v. *Foster*). It will not be admitted in Lower Canada until stipulated for by policy, which it has never yet been.

§ 161. *The average clause.*

The English offices often insert the average clause in their policies upon farming stock; so where a person insures property collectively of larger value than the amount insured he shall only recover in the proportion which the whole value bears to the part insured. If, having property worth £1000, he insures it only for £100, in case of a fire producing loss or damage to the amount of £100 he will recover only £10. This clause is sometimes inserted in other policies.

Some companies in France make it a condition that the assured shall always be held his own insurer for one-fifth. Agnel, p. 58. The French policies generally state that where the amount of loss exceeds the insurances, the insured is to be considered his own insurer for the excess, and is to bear in that quality a proportion of the loss.

§ 162. *Written words in the policy control the printed portion.*

Written words in the policy control the printed; *e. g.* the written part may treat of alienation of the subject insured, or of the policy, and order things for such cases; condition printed on the back of the policy may do so too, and be more rigid, the written will control.[1]

An illustration of written matter controlling printed condition is to be found in *Blake Ex. M. Ins. Co.*[2] The clause, "other insurance permitted without notice till required," was written. And there was the printed condition, "in case of other insurance not notified or endorsed on the policy, this insurance shall be void; or if the insured shall hereafter make other insurance, etc., not notified and endorsed, this policy shall be avoided."

In France printed clauses have the same force as written ones. It is said in some cases, however, that written ones may be presumed more easily to have been noticed.

§ 163. *Effect of by-laws upon policy.*

It is a general rule that parol evidence shall not be admitted to vary the terms of a policy. Some companies would have their by-laws held part of the policy. Generally this pretension cannot be sustained, unless

[1] Per Erle C. J., *Adams* v. *Mackenzie*, Jan. 1863. So held also in Massachusetts, *Kettell et al.* v. *The Alliance Ins. Co.*, 24 Law Reporter.

[1] See *Supra* v. *The Montreal F. I. Co.*, *post*.

[2] 12 Gray's Rep.

by policy making them so, and the by-laws being annexed to the policy by printed or written copy.[1]

CHAPTER VI.

The Conditions of the Policy.

§ 164. *Conditions—express or tacit.*

The contract of fire insurance is a conditional one. Conditions are express, or tacit. Express conditions are by clauses in or upon the policy, or making part of it by agreement, express or implied. These have for object to suspend the obligation of the insurer, to vacate it in certain cases, as to modify it; to suspend it, as when the insurer promises to pay *if* such a thing be lost or damaged; to vacate it, as when the insured agrees that if he alienate the subject insured the policy shall end and the insurance cease; to modify it, as when both agree that if the insured effect other or double insurance the first insurer shall benefit, or be liable to pay only a portion of the amount insured by him.

Such conditions are positive or negative. Under the former such an event or thing must occur or be done positively; under the second an event or thing must not happen, or be done.

Tacit conditions are those that are implied and exist, although not expressed by writing in the contract. These spring from the law and the nature of the contract, or from the intention presumed of the parties; for instance, though a policy be silent on the subject, the insured is bound to make fair disclosure of all circumstances affecting the risk; he must make no misrepresentation; the insured is not, after the policy is granted, to alter a house insured making it to differ, materially, from the description of it in the policy; the insured is to be indemnified only; if, though a fire happen, he lose nothing, he shall recover nothing; if the insured wilfully set fire to the subject insured he shall recover nothing.

The conditions of the policy involve the mutual stipulations of both parties, and are part of one and the same express contract.[2]

§ 165. *In what place the conditions should be written or printed.*

Conditions to be binding ought to be written upon the policy or on a paper annexed to it, and referred to in it as part of it. They may be collected from *proposals* for insurance where these are referred to in the policy as part of it, or by the by-laws of an insurance company if declared to be part of the policy; but whether mere annexing to the policy a paper of conditions and delivery of it will operate so is questionable.

Angell, § 14, says that a written memorandum wafered to a policy will not be held part of it, unless there be a stipulation in the policy that it shall be.

Conditions, though not expressly referred to in the policy, but being on the same sheet of paper, are to be taken *prima facie* as part of the policy.[1] In the case of *Roberts* v. *Chenango M. A. Co.*, it was held that conditions contained in a paper annexed to a policy and delivered with it ought *prima facie* to be considered part of the policy; but in *Bize* v. *Fletcher*,[2] Lord Mansfield would not allow that a mere slip of paper wafered to a policy and describing the subject insured, or containing other statements, could involve warranties, as conditions might, but that it could stand at most a representation.

Before the passing of Revised Statutes, Ontario, c. 162, insurance companies in that province could endorse any conditions upon their policies, whether hard or unreasonable, or the contrary. But now in Ontario, by statute (cap. 162) conditions have to be printed on policies in a particular way. The question often is: has the statute been complied with so as to bind the assured to observance of condition?[3]

Statutory conditions are imposed; and variations and additions the Court, or judge, at the trial, may hold to be reasonable, *or* unreasonable, (p. 72, Ib.) and so says the statute. And these variations and additions must be in conspicuous type and of different color.[4]

[1] *Taylor* v. *Ætna Ins. Co.*, 13 Gray's R.
[2] 1 Phillips (Ed. of 1854) No. 63.

[1] 3 Hill's R. 561. Flanders seems to approve: See p. 236.
[2] 1 Doug.
[3] *Ballagh* v. *Royal Mut. F. Ins. Co.*, Q. B. Rep., Vol. 44 of 1879.
[4] The Insurance Company cannot resort to special, their own conditions avoiding the policy for non-disclosure of a previous insurance, these not printed as "variations," in the mode prescribed by R. S. Ont. ch. 162; nor can the Company resort to the statutory conditions, they not being printed on the policy; *Parsons* v. *Citizens Ins. Co.*, 4 Ont. App. Rep. The first verdict was for plaintiff, the insured. The Q. B., 2dly, confirmed that, maintaining plaintiff in his verdict. On appeal, the appeal was dismissed in the Ontario Court of Appeals, 1879, and this was affirmed by the Supreme Court of Canada.

Revised Statutes Ontario, c. 162, interim receipt. Plaintiff insured subject to all the company's covenants and conditions.

No conditions were printed on the interim receipt. The Company after being sued was held not to have right to go to their special conditions, nor to the statutory.

The Ont. Q. B. judgment was affirmed so by Court of Appeals, 1879. And this was confirmed in Supreme Court afterwards; but the judgment was reversed by the Privy Council.

The Ontario Act was meant to secure uniform conditions in policies.

The statutory conditions have to be printed; if not, "variations" in the conditions. cannot be allowed.

The insured may repudiate any special conditions unless made with reference to the printed statutory conditions, but the insured can invoke even the unprinted statutory and withstand variation or alteration of them against his will.

The courts have the power now in Ontario under a recent statute to declare that a condition is not reasonable, and to annul it; per Burton, J., in appeal in 1879 in *Parsons* v. *Standard Ins. Co.*, 4, Ont. appeal R.[1]

In Massachusetts, there is a statute in force, passed in 1861, which orders: "In all insurance against loss by fire hereafter made, the conditions of the insurance shall be stated in the body of the policy; and neither the application of the insured nor the by-laws of the insurance company, as such, shall be considered as a warranty or part of the contract."[1] Yet reference may be made to the application in the conditions stated in the policy. But a mere evasion of the statute cannot be allowed, or an attempt to make them as such part of the contract. The substantial correctness of a statement in the application of the insured may be by condition promised, or stated, by the assured; as that the value and situation of the property are stated truly in the application. If there be material misrepresentations in the application, the insurance company may resist payment.

A slip, entitled "conditions of insurance," being on half a sheet of paper, and the policy on the other half, both were held to be taken together, though no express reference was made in the policy.[2]

[1] In *Parsons* v. *The Standard Ins. Co.*, the plaintiff got a verdict. In the Q. B. that verdict was refused to be set aside. Then the Court of Appeal in 1879 set it aside: then the Supreme Court re-established the Q. B. judgment. The applicant was asked: What other insurances and in what office? He answered, four, and named the four companies, but entitled one of them as the Canada Fire & Marine Co., whereas the true name of the company he had insured in was "the Provincial." The true amount of all the insurances being given, unintentional error in the name was held by the Q. B. and Supreme Court not fatal. One of the above four policies having expired, the insured substituted for it another of like amount in a different company (the total insurances not increased). The policy was not avoided, and communication of this new policy was held not requisite. (Yet a condition was that prior or subsequent insurances not communicated were to avoid the policy.)

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, Aug. 9.

Judicial Abandonments.

Alexandre Chaput, hardware merchant, Montreal, July 22.

Moise Clairoux, trader, Hull, Aug. 4.

William Grant, trader, Chicoutimi, July 29.

Jean Lemelin, grocer, Quebec, Aug. 1.

W. & G. H. Tate, manufacturers and ship-builders, Montreal, July 24.

Curators appointed.

Re William H. Arnton, Montreal.—W. A. Caldwell, Montreal, curator, Aug. 5.

Re Alexandre Chaput.—E. Tougas, Montreal, curator, July 29.

Re Pierre Ernest Fugère.—Bilodeau & Renaud, Montreal, joint curator, Aug. 5.

Re George Lapointe, contractor.—T. Gauthier, Montreal, curator, Aug. 5.

Re Bernard Sauvage, St. Johns. — A. Turcotte, Montreal, curator, Aug. 4.

Dividends.

Re Placide Daoust, grocer, Montreal.—First and final dividend, payable Aug. 26, T. Gauthier, Montreal, curator.

Re Jos. L. Gravel.—First and final dividend, payable Aug. 27, C. Desmarteau, Montreal, curator.

Re John Walker, Grenville.—First dividend, payable Aug. 27, A. Pridham, Grenville, curator.

Separation as to Property.

Valérie Lemaire vs. Télesphore Bousquet, farmer, St. Césaire, July 23.

[1] *Barré Boot Co.* v. *Milford M. F. Ins. Co.*, 7 Allen's Rep. (A.D. 1863).

[2] *Roberts* v. *Chenango Co. Mut. Ins. Co.*, 3 Hill, 501. See further *post.*