The Legal News.

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When the Court of Appeal met at Montreal in September last there were 96 cases on the printed list. The list for the May term of this year exhibits precisely the same number, so that the arrears have not been reduced. During the May term the ninety-second case on the last September list was reached. The five terms were therefore insufficient to hear the list prepared for the first term. In other words, the work is more than a whole year in arrear. A good deal of delay is caused by the increased number of applications each term for leave to appeal from interlocutory judgments, motions for new security, etc. The Chief Justice took occasion during the term to direct the attention of the bar to the expediency of giving the Judges in Chambers concurrent jurisdiction to dispose of these applications. This change would work well in two ways. The applications could be heard and disposed of immediately; and secondly, several hours of term time would be gained for the hearing of ordinary appeals.

In connection with the warrants issued recently for the arrest of two members of the House of Commons (one of whom, Capt. Verney, subsequently returned, and being convicted on his own admission, was expelled from the House), the *London Law Journal* says:—"Where a member is convicted of *felony* and sentenced to penal servitude or any term of imprisonment with hard labour or exceeding twelve months, he forfeits his seat by virtue of 33 & 34 Vict. c. 23, but no such consequence follows a conviction for *misdemeanour*. The offence of flying from justice was in the case of a felony a separate offence, followed by forfeiture of goods, even although the offender should have been acquitted of the felony, until 7 & 8 Geo. IV. c. 28, s. 5; 'for,' as Blackstone says, 'the very flight was held an offence carrying with it a strong presumption of guilt,' though 'in modern times it became unusual for the jury to find the fact of flight, forfeiture being looked upon since the vast increase of personal property of late years as too large a penalty for an offence to which a man is prompted by the natural love of liberty.' There is at least one precedent—that of James Sadleir—for expelling a member who has fled from justice, without any conviction or judgment of outlawry; but in that case (which occurred in 1857) a true bill had been found, the offence being fraud. See May's 'Parl. Pr.' 9th ed. p. 66, from which, also, it appears that in 1796 one Colonel Cawthorne was expelled for 'conduct unbecoming the character of an officer and a gentleman;' also that 'expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not so punished, would bring discredit on Parliament itself.' Modern opinion, however, would perhaps call for an immediate expulsion of a member proved to have fled from justice, on the ground that constituencies are entitled to have vacancies so caused filled up with as little delay as possible."

We think it is of Lord Brougham the anecdote is related that when he sat on a Good Friday, some one observed that he was the first judge since Pontius Pilate who had done so. An English judge, last Good Friday, proposed to follow the same course, but was deterred by the remonstrance of the Bar. The incident is thus described in the *London Law Journal*:—"The chairman of the County of London Sessions recently horrified his Bar by announcing that 'he was prepared to sit on Good Friday, the following Saturday, Easter Monday, and the Tuesday after. He had,' observed he 'never before had to sit on Good Friday, but he could remember cases in which judges on circuit had sat in the afternoon of that day.' The Solicitor-General at once protested against such an interference with 'arrangements which many had already made.' The chairman said 'his position was a painful one, and he was subjected to observations which made him wish to have it understood that, as far as he was concerned, he was ready to sit on those days;' but added that 'he should, of course, be swayed by the

general feeling of the Bar, and would say at once that the Court would not sit on Good Friday.' The allusion to alleged Good Friday sittings of judges on circuit makes the incident one of general importance. Our impression is that in the pre-Judicature Act times at least one judge once sat on Good Friday, but that since the passing of that Act there has been no such sitting. For what is the law under that Act? By section 26, subject to Rules of Court, the High Court and any judge thereof may sit 'at any time and at any place.' Read by itself, no doubt (as the *Solicitors' Journal* once put it), this section might be taken to authorize a midnight sitting in mid-winter in the middle of Salisbury Plain; but it is expressly made subject to Rules of Court, and by the Rules of the Supreme Court, Order lxiii, rule 4, the Easter vacation commences on Good Friday, which, therefore, we submit, is a *dies non*."

CIRCUIT COURT.

SHERBROOKE, May 14, 1891.

Coram BROOKS, J.

FOURNIER v. THE HOCHELAGA COTTON MANUFACTURING CO.

Master and servant.

HELD:—*That an employee paid fortnightly, who has bound herself to give two weeks' notice of her intention to leave service, and who absents herself for half a day without leave and against the will of her employer, but returns to her work the next morning and is discharged, notwithstanding her offer to work out her notice, does not, through her absence, forfeit two weeks' wages; and that she could only be held for damages, had any been proved.*

Action for wages due plaintiff's wife for work done at the Magog Print Works. Debt admitted by defendants, who pleaded that plaintiff's wife had submitted herself to the following rules and regulations:—

"All employees intending to leave the service of the company shall be held to give two weeks' notice of such intention to their overseers, and upon failure to comply with this stipulation, shall forfeit to the company the amount of two weeks' wages, which shall be deducted from whatever amount may then remain unpaid in the hands of the company.

"The company may at any time, without notice, discharge any employee for incompetence, unfaithfulness, immoral or improper conduct, or for any wilful damage done the property of the company."

It was proved that the employee asked for leave of absence on the 22nd December last, in the afternoon, in order to receive her father and mother, who were returning from the United States. Leave was refused. She absented herself, however, and another operative was put in her place. The next morning she went back to the factory and worked until 9 o'clock, when she was summarily dismissed and her wages for two weeks retained as being forfeited under the agreement. One of the overseers testified there was damage, but it was impossible to appreciate it.

Belanger, for plaintiff, submitted that there was nothing in the regulations to warrant the course pursued by the defendants. The employee had not *left* their service, but absented herself *without leave*. She was not guilty of any of the acts mentioned in the second paragraph. No damage was proved. He cited *Belanger* v. *Cree*, 14 Leg. News, 92; *Sigouin* v. *Montreal Woollen Mills*, 14 Leg. News, 2; *Augé* v. *Dominion Wadding Company*, 11 Leg. News, 138.

The tender was declared insufficient. Judgment for plaintiff with costs.

Belanger & Genest for plaintiff.

Lawrence & Morris for defendants.

(L. C. B.)

*COURT OF QUEEN'S BENCH—MONTREAL.**

Responsibility—Force majeure—Fire—Fall of wall after fire—Damages.

Held:—Affirming the judgment of LORANGER, J., M. L. R., 3 S. C. 283, That where a person pleads inevitable accident in answer to an action of damages, he is not relieved from responsibility if it appear that the accident was preceded by negligence or fault imputable to him, which conduced to the accident. And so where the damage complained

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

of was caused by the fall of a wall during a high wind, seven days after a fire by which a building of defendant was destroyed and the wall in question left standing, and the defendant had taken no precautions to prevent the accident by pulling down the wall, although there had been ample time to do so, and he had been notified of the danger, it was held that it was not a case of inevitable accident, and that the defendant was liable.—*Nordheimer & Alexander*, Dorion, Ch. J., Tessier, Cross, Baby, Bossé, JJ., June 26, 1889.

Sale of real estate—Action by purchaser to enforce sale—Putting vendor in default.

Held:—Where by a contract for the sale of real estate the buyer is to pay part of the price in cash within a fixed delay, in order to put the vendor legally in default to execute a deed, the buyer must tender the cash payment within the delay, and in a suit to enforce the sale, and asking that the judgment be equivalent to title, he must renew the tender and pay the money into Court.—*Foster & Fraser*, Dorion, C. J., Tessier, Cross, Bossé, Doherty, JJ., May 21, 1890.

Constitutional law—47 Vict. (Q.), ch. 84, s. 8—Power of local legislature to authorize municipal corporation to tax wholesale liquor dealers—Statute imposing taxation must be specific.

Held:—1. An Act authorizing a municipal corporation to levy an annual tax for municipal purposes, on wholesale liquor dealers doing business within the municipality, is within the powers of the local legislature.

2. Where an Act of the local legislature authorizes a municipal council to tax certain trades and occupations specially enumerated in the statute, and generally all commerce, manufactures, etc., exercised in the city, a by-law made by the council under the authority of such Act, taxing certain trades and occupations, and omitting to tax other trades and occupations, is not illegal on the ground of discrimination.

3. Where the legislature authorizes the council of a municipality to levy taxes for municipal purposes, the trades or occupations subjected to taxation must be clearly designated in the statute. Hence a power to levy annual taxes on wholesale liquor dealers and "generally on all commerce, manufactures, callings, etc.," does not sufficiently authorize the municipal council to impose a special and additional tax as compounders on persons who compound or bottle spirituous liquors for the purposes of their business as wholesale liquor dealers.—*McManamy et al. & Corporation of Sherbrooke*, Dorion, C. J., Tessier, Cross, Bossé, Doherty, JJ., May 21, 1890.

FIRE INSURANCE.

(By the late Mr. Justice Mackay.)

CHAPTER XII.

PROCEEDINGS ON POLICIES.

[Continued from p. 159.]

In *Willson* v. *The Ætna Ins. Co.*,[1] the Supreme Court of Vermont held the condition, that the action was to be brought within twelve months, to be a good condition. And in *Cray* v. *Hartford F. Ins. Co.*[2] it was held that where a condition of the policy provided that no action should be brought thereon, unless commenced within the term of twelve months after the cause of action should accrue, it was a binding and valid condition, and that it was a good defence to an action on the policy that it was not brought within the time specified.

But the limitation ought not to avail the insurance company if it has brought about the result of no action within the time fixed, say, by proposing arbitration and so forth.[3]

Where the action is required to be brought within a fixed time, what is considered an action? Is it the lodging of a *fiat* only, or the service of a writ of summons? The latter is necessary.

In *Wilson* v. *The State Ins. Co.*[4] Judge Smith said the clause that the action shall be brought in six months is of no effect. "We have our own prescriptions." Judg-

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[1] 27 Vt. Rep.; 18 Law Reporter.

[2] Blatchford C. C. R. 280. See also *Amesbury et al.* v. *Bowditch M. F. Ins. Co.*, 6 Gray's R.

[3] *Ib.*

[4] Superior Court, Montreal, Dec., 1862.

ment was given for plaintiff. This is totally bad law, yet it was judged as *per* Judge Smith in Paris.[1]

The Court of Queen's Bench, Montreal, however, in December, 1869, in the case of *Cornell* v. *The London & Liverpool Assurance Co.*, held that a clause in a policy requiring suit to be brought within a year is not penal, but *de rigueur*, and that an action brought after the year will be dismissed.

In a case of *Madison Ins. Co.* v. *Fellowes* (Disney, 217), it was held that where the action is brought within the year, if it have to be abandoned, a new one may be promptly instituted. This seems bad law, if it be meant that suit may be brought outside of the year, if a renewal of suit abandoned. Art. 2226 C. C. of L. C. is opposed to it. An hypothecary action, if it fail after the ten years or thirty years, cannot be renewed.

Can a civil suit be put off till criminal trial be had, or prosecution (by defendants insurers) of the plaintiff insured for arson? *Guildstone* v. *R. Ins. Co.*, 1 F. & F.[2]

In *Reg.* v. *Kitson*, in the Court of Criminal Appeal, on a trial for arson, notice was given at midday the day before the trial to the prisoner to produce the policy. He did not produce it. Parol secondary evidence was given of it. Kitson was convicted and the conviction was afterwards quashed.

In civil cases it is not always necessary that the policy be produced, but most often. Martin, B., says he cannot understand why always it ought not to be produced.

§ 273. *Proof upon the trial.*

The receipt of the premium is usually recited in the body of the policy, upon proof of the policy, therefore, proof of that payment is unnecessary, if the loss or damage take place during the period of time which the premium covers.

The insured must also prove his interest, for as we have seen by stat. 14 George III, c. 48, s. 31, he can only recover to the amount or value of his interest. It appears that a slight interest is sufficient for the purpose of enabling the insured to recover, as that of an agent for the sale of goods, a pawnee or depository for hire, and perhaps a bailee generally. Possession alone *vaut titre*.

Every material averment in the declaration must be proved; one of the most material is that of the truth of such warranties as constitute conditions precedent; as the delivering in an account of the loss and damage to the office, with evidence in support of it, according to the rules laid down by the respective offices; the construction of the building, if the question be raised; and the nature of the property insured.

The accident of fire, which was the cause of the loss or damage, must also be set forth in the declaration, and proved, if not admitted, as it generally is; the loss or damage must be shown; and the loss or damage must appear to have happened during the continuance of the risk.

Is the fire not presumed accidental? Is it not enough to prove the fire? Rev. de Leg., vol. i, p. 113. As between landlord and tenant, fire is presumption of negligence; yet the insurer is liable.

The rule of evidence in regard to usages is the same in policies of insurance as in other contracts; they are admitted in evidence to explain and interpret the policy, but not to control or contradict its obvious meaning.[1]

P. 159 Indian Evidence Act.—A, accused of setting fire to his house (well insured) to cheat. It may be proved that he was burnt out in three other places, insured, though in different companies.

On an indictment for arson the books of the company cannot prove the insurance, unless notice has been given to the accused to produce his policy. *Rex* v. *Doran*, 1 Esp.

The Court will not compel assurers to produce the reports made to them by their surveyors after the fire. *Wolley* v. *Pole*, 32 L. J., p. 263.

Parol evidence is not admissible to alter or vary the policy; what the parties said before the policy is not to be proved, unless mistake, fraud or fraudulent misrepresentation be

[1] Dallos of 1850, 2nd part, p. 40.

[2] As to influence of criminal proceedings or verdict on civil suit, see 1505 Taylor on Evidence; Dickson, vol. 2, p. 652.

[1] *Colt* v. *Commercial Ins. Co.*, 7 Johns. 385; *Fowler* v. *Ætna Ins. Co.*, 7 Wend. 270: *Mut. Safety Ins. Co.* v. *Hone*, 2 Comstock 235: *DeForest* v. *Fulton Ins. Co.*, 1 Hall 84: *Homer* v. *Dorr*, 10 Mass. 26; 1 Phillips Ins. 86; 2 Greenleaf, Evid.

pleaded. § 20, Angell. But if fraudulent misrepresentation be pleaded, then the proof is admissible.

The agent or director of another company than defendant having also insured the thing burned, is not a competent witness for defendant sued by assured; but is competent for plaintiff. Page 652, 2 Phill. Ins. The agent of defendant is a good witness for the assured, plaintiff against insurance company. *Ib.* and p. 653.

Possession is *prima facie* evidence of ownership. Taylor, Ev., p. 126, citing 7 T. R. 397.

In *Hooper* v. *Grimm* it was said by V. C. Wood that an agent's letters to his principal abroad are not privileged.

In *Ricards* v. *Murdoch*, 10 B. & C. (A. D. 1830), the underwriters' opinion was held properly admitted; a portion of a letter not communicated held a concealment and material, and the policy void, and a new trial was refused.

In *Chapman* v. *Walton*, 10 Bingham, an action of damages was brought against a policy-holder for want of skill for not having secured alterations in a policy. For want of the alterations the insurers were freed. The meaning of a letter was allowed to be proved as matter of opinion by witnesses. It was held properly admitted to prove that defendant acted as any other broker would have done, and a new trial was refused.[1]

An interesting question sometimes arises in regard to the admissibility of the testimony of insurers, policy brokers and other persons skilled in the business of insurance, as to their opinion of the materiality of a representation or concealment.

The authorities are conflicting on this point. The cases of *Carter* v. *Boehm*, 3 Burr. 1905; *Durrell* v. *Bederly*, 1 Holt 283; *Campbell* v. *Richards*, 5 Barn. & Ad. 840, and *Jefferson Ins. Co.* v. *Cotheal*, 7 Wend. 72, hold that such evidence is not admissible; while the contrary is either expressly or incidentally held in *Chourand* v. *Angerstein*, 1 Peake's N. P. Rep. 43; *Berthon* v. *Loughman*, 2 Stark. 229; *Littledale* v. *Dixon*, 4 Bos. & Pul. 151; *Haywood* v. *Rogers*, 4 East. 690; *Richards* v. *Murdock*, 10 Barn. & Cres. 527; *Chapman* v. *Walton*, 10 Bingham 57; *Marshall* v. *M. Ins. Co.*, 2 Wash. C. C. R. 558. See also 3 Kent, Com., 5th ed., 285 *d*, and 2 Duer on Ins., p. 682. Kent would admit the opinions of witnesses to aid the jury.

The general rule in regard to the admission of evidence of this character is that the opinions of experts are admissible, when the subject matter of inquiry "so far partakes of the nature of a science as to require a course of previous habit or study to acquire a knowledge of it." Smith's Leading Cases, Phil. ed., 1852, vol. i, p. 544. Under this rule it is plain and unquestionable that the testimony of medical men is frequently not only admissible, but indispensable, in regard to the materiality of a representation or concealment in life insurance, and we can easily suppose questions in marine insurance, which cannot be satisfactorily determined by a jury without assistance from the opinions of those who are thoroughly acquainted with the various circumstances which are likely to affect the risks assumed by that complex contract.

But the contract of fire insurance is so limited in extent and comprehension, and the risks assumed are so much within the cognizance of every person, that it is difficult to suppose a case where the opinion of experienced insurers in regard to the materiality of a representation or concealment would be necessary to enable a jury to decide the question, and unless such testimony is necessary for this purpose it is never admissible.

Preliminary proofs are not evidence on the question of the amount of damages, unless made so by the terms of the policy. *Sexton* v. *Montgomery Mut. Ins. Co.*, 9 Barbour 191.

The following American cases also relate to the rules of evidence in actions on fire policies: *Phœnix Fire Ins. Co.* v. *Phillip*, 13 Wend. 81; *Lightbody* v. *North American Ins. Co.*, 23 Wend. 18; *N. Y. Fire Ins. Co.* v. *Delevan*, 8 Paige Chan. R. 419; *Pent* v. *Ætna Ins. Co.*, 9 Paige Chan. R. 568; *Columbia Ins. Co.* v. *Lawrence*, 10 Peters 507; *Clark* v. *Manufacturers' Ins. Co.*, 8 Howard 235.

[1] *Campbell* v. *Ricards*, 2 Nev. & Manning (A. D. 1833), was a case against defendants for negligence as agents, growing out of *Ricards* v. *Murdoch*, 10 B. & C. Damages were found—£4,136. A new trial was moved for as plaintiff had examined witnesses to prove that in their judgment defendant had omitted to do a thing material. The jury found gross negligence.

Parol evidence of verbal representations as to the value of the subject to be insured made by the assured at the time of effecting the insurance held to be inadmissible. 2 Hall's N. Y. Rep. 108. But actual fraud was disclaimed to be charged by the insurance company, and representations admitted to be in good faith.

Suppose false and fraudulent representations pleaded, ought not parol evidence to be admitted?

Where an indictment for arson was found: In an action against an insurance company, it cannot ask delay because of such an indictment pending, and ask for stay of proceedings till after the trial of the indictment. 7 L. C. Rep., *McGuire* v. *Liverpool & London Ass. Co.*

Upon the trial the plaintiff must begin by proving every material allegation contained in his declaration. If any of the facts of the case on either side have been agreed to be admitted, these admissions are reduced into writing, and signed by the attorneys on both sides, and being read, they supply the place of actual proof.[1]

The rules of evidence are in general the same in trials upon policies of insurance as in other matters, and there appear to be no cases in the books containing points of evidence peculiarly applicable to trials upon policies of insurance against fire.[2]

The first step on the part of the plaintiff is to prove the contract, which is done by producing the policy, and proving the due execution of it, or the subscriptions, if not under seal. It is not often, however, that offices ever put plaintiffs to the necessity of this proof: the production of the policy, if there be no variance, is conclusive evidence of the contract stated in the declaration; and the general rule is, that no evidence can be received of any parol stipulation or agreement to alter, control or qualify it.[3]

Surveyors of insurance companies make reports before policies. If so, these can be compelled to be produced for insured where he is at trial against insurance company on a question of value or condition of property insured; but the company's servants' reports after a loss cannot be gotten at—are confidential. *Wolley* v. *Pole*, 14 C. B.

Amendments of pleas by insurance companies (defendants) will uot be allowed, to facilitate hard defences. *McKenzie et al.* v. *Van Sickles*, 17 U. C. Q. B. Rep.

The insured opened a communication between the building insured and another: loss happened, but not from this. The defendants, meaning to plead this, described in their plea another opening or communication, which really had existed before and at the date of the policy. At the trial they perceived their error and moved to amend the plea. This was refused. Verdict passed for the plaintiff. Upon motion for a new trial, new trial was refused. There had really been a new opening made after the insurance, but it did not conduce to or aggravate the fire, and wrongful firing was not pleaded.

Suppose a conflict of evidence to exist as to the quantity of goods destroyed. The judge charged that the jury might presume the goods there, because of the amount insured, and goods admitted in quantity there, though no quantity mentioned at the time of policy. A new trial was granted. Clark's case.

In *Thurtell* v. *Beaumont*[1] an insurance company sued pleaded that the plaintiff had wilfully set fire to the property insured. The judge charged that the jury was to require as certain proofs as they would require if trying the plaintiff on an indictment for arson. It was held that the judge charged properly so. But, of course, as in arson, circumstantial evidence may suffice. So judged in *Regnier* v. *Louisiana State M. Fire Ins. Co.*, 12 La. Rep.

The plaintiff must aver a compliance with all express warranties and conditions precedent; and proof is on the plaintiff to prove as far as possible. Many negatives (such as that he had *not* other insurance) cannot be proved.[2]

In *Barrett* v. *Jermy* it was held the burden

[1] 2 Marsh. 712.

[2] If insurance be over 150 fr., it cannot be proved by witness against alleged insurer unless there be a *commencement de preuve par écrit*. Alauzet.

[3] 1 Taunt. 115; 1 Marsh. 352.

[1] 1 Bingham 339. This case has been disapproved.

[2] Phillips on Ins., sec. 2122, vol. ii.

of showing that no notice was given is on the insurers, where alterations material are made and are to make void the policy, *unless notified*, etc. Better law, semble, is in *Gardiner* v. *Piscataquis M. F. Ins. Co.*[1] Under a clause that if the risk be materially increased notice thereof shall be given to the insurers, or the policy shall be void; it was held that such an increase of risk without notice voided the policy, and that the burden of proof of notice was upon the insured, and that it was immaterial whether the loss happened in consequence of such increased risk or not.[2]

He who pretends that a *condition resolutoire* has operated his discharge, is bound to prove. (He is a kind of plaintiff as regards this.) End of No. 56, XI Duranton.

The insured cannot make evidence for himself of values; so his particulars do not make proof. Proof must be made on the trial before the jury. Flanders, 576, 577.

A insures his house and afterwards sells it to B. It is burned during the existence of A's policy. A gets paid the policy amount. B goes to him and says: "Pay me. You "were not owner; it was indemnity to the 'owner, the loser by the burning. You must "be treated as my *procureur*." A won't pay B, and L. Can. codifiers say he need not, and so say the English writers.

A case somewhat like the above occurred, and Ch. J. Dorion advised B to sue A, but B would not, because of the Trust & Loan Co., as holders of A's policy, having received the money, and not A himself; though A got the benefit, for the Trust & Loan Company discharged him from personal liability to them for like amount.

§ 274. *Cost of remitting insurance money.*

In *Burgess et al.* v. *Alliance Insurance Co.*[3] an insurance was effected in Boston of merchandise in Cuba. A loss occurred. The question being what sum was to be recovered, it was held that nothing was to be allowed as for cost of remitting insurance money to Cuba. Nothing can be added as for cost of exchange. The amount of the loss is to be ascertained at the place of the loss, in the currency of that place; then the equivalent in the currency of the place of contract and suit is all that can be claimed.

§ 275. *Partial loss during the term of insurance.*

A house worth $10,000 is insured for $10,000, for twelve months. It is partially damaged, say to the extent of $5,000 in the second month. The insurers repair. Then the house is worth still $10,000. It is totally burned afterwards in the tenth month, and the insured loses $10,000. Can he make the company pay that amount (which would make $15,000 in the year)? If the policy has not been resiliated by condition or agreement after the first loss, the total loss afterwards must be paid, says Pouget, p. 846.

A house is insured for twelve months. It is totally destroyed by fire; but the insurers, under a clause allowing them to rebuild, rebuild it. The policy ceased with the first subject. The new rebuilt house is not covered by the original policy.

But if the house insured be partly burned and the roof be burnt off, and the insurance company rebuild it, the original policy covers the new roof as accessory to a part of the house insured.

But suppose £200 only insured from the beginning; then the roof burnt—loss £100; later the house be totally burnt. Shall the insurer have to pay £200? *Semble* no; but conditions sometimes regulate. Most policies read only to make the insurers liable for a sum not exceeding a fixed sum, say £500 or £200, so if that sum be invaded by a partial loss the company afterwards only has at risk the balance.

Where the defendant loses (the judge having misdirected the jury), and moves for a new trial, and this is granted, has the defendant to pay the costs of the new trial? In *Westbury* v. *Aberdein*[1] it was so held, and a new trial was granted, but in that way.

§ 276. *Reformation of policy.*

In *Petrolia Crude Oil Co.* v. *Englehart*[2] the defendant was held entitled to the reforma-

[1] 38 Maine.

[2] As to the judge's duty in charging where alleged concealment of facts is pleaded, see *Westbury* v. *Aberdein*.

[3] 10 Allen's Rep.

[1] 2 Meeson & W.; Exch. 1837.

[2] 29 Com. Pleas Rep, Ontario, p. 157. In *McKenzie* v. *Coulson*, L. R. 8 Eq., reformation of the policy was denied.

tion of the agreement, by inserting a condition omitted, favorable to defendant. This reformation was fatal to an action of damages by the Oil Company.

In *Molleaux* v. *London Assurance Co.*[1] the policy was amended to agree with the slip originally given to the insured. In subsequent cases Lord Hardwicke refused to alter policies unless it could be shown that clear mistake made it necessary. The American case of *Davega* v. *Crescent Mutual Insurance Co. of New Orleans*[2] is to the same effect.

In *Parsons* v. *Bignold*,[3] in which a bill was filed to have a policy corrected, it was held that the burden of proof in such cases is on the insured. The proceeding failed in that case, but it was admitted that if the misrepresentation (relied on by the insurer) had been the work of insurer's agent, or his fault, the policy would have been made operative.

[1] 1 Atk. 547.

[2] 7 Louisiana, 228.

[3] 15 L. J. Ch.; 12 Engl. Rep. (Albany ed.), p. 855. See also the case of *Wyld & Darling*, 1 Supreme Court Rep. Canada, p. 666, in which an action was brought to reform a policy. In *Wyld & Darling* v. *Liverpool & London & Globe Ins. Co.*, in the Queen's Bench, Wyld & Darling failed. Then a bill was filed in Chancery to reform the policy, etc., and the policy was reformed. This judgment was confirmed by the Supreme Court, the judges being equally divided in opinion, June, 1877. The insurance was of goods in No. 272. Then Wyld & Darling notified that they had added two flats of No. 273 to their former premises, and that part of their stock was in these new flats (an opening had been made). They paid extra insurance, and took a policy ambiguous, not expressly insuring the goods in 273, but stating, by a kind of memorandum, "opening "in E. end gable of the premises is, through which "communication is had with the adjoining house (*i.e.*, 273) "occupied by O." The Queen's Bench held the goods in 273 not covered. The Court of Chancery ordered the policy to be reformed, holding the goods in 273 covered. The Court of Appeals confirmed that, and the judges of the Supreme Court being equally divided, the judgment stood affirmed. The reports illustrate how a circumlocution may be, and a stupid one, on both sides. How not to express intention is well seen here. Could the insurance company reasonably suppose that no intention was by Wyld & Darling to have their goods in 273 insured, seeing that they notify that part of their stock is in there. Then look at the policy. It expresses only goods insured, and only in No. 272, owned by Irvine; between which building and the adjoining house, occupied by one Onyon, there is an opening. Why did Wyld & Darling keep tranquil, with a policy reading so clearly, till after the fire? The agent at Hamilton must have been careless. The company at Montreal seem never to have been informed of Wyld & Darling's goods being in 173. For cases of policies reformed after loss see 1 Supreme Court Rep., p. 618. On correcting mistakes see observations of Lord Eldon in *Henkle* v. *R. Ex. Ass. Co.*, 1 Vesey.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, May 23.

Judicial Abandonments.

Zoël Gagnon, trader, Ste. Agnes, Charlevois, May 16.

Pierre Rhéaume, Levis, April 29.

Joseph Savoie, blacksmith and carriage maker, Plessisville, May 18.

Curators Appointed.

Re Joseph Eugène Dion, Robertson Station.—H. A. Bedard, Quebec, curator, May 19.

Re J. M. Dorion, Staynerville.—Kent & Turcotte Montreal, joint curator, May 20.

Re Emile Lacas & Co.—J. M. Marcotte, Montreal, curator, May 20.

Re Médéric Lapointe, carriage maker, parish of St. Liguori, May 6.

Re Thomas Mercier.—F. Valentine, Three Rivers, curator, May 13.

Re A. Paradis, Montreal.—Bilodeau & Renaud, Montreal, joint curator, May 12.

Dividends.

Re A. Labelle & Co., St. Henri.—First and final dividend, payable June 9, W. A. Caldwell, Montreal, curator.

Re J. B. O. Langlois.—First and final dividend of 5 cents, payable June 1, J. M. Marcotte, Montreal, curator.

Re A. Lanthier, Waterloo.—First and final dividend, payable June 9, W. A. Caldwell, Montreal, curator.

Re Victor Lesage, Pont Rouge.—First and final dividend, payable June 8, H. A. Bedard, Quebec, curator.

Re Lindsay, Gilmour & Co., Montreal.—First dividend, payable June 22, Kent & Turcotte, Montreal, joint curator.

Re Archibald McNair, New Richmond.—First and final dividend, payable June 8, H. A. Bedard, Quebec, curator.

Re Joseph Ménard.—First and final dividend, payable June 10, J. C. Desautels, St. Hyacinthe, curator.

Re David Pettigrew, Isle Verte.—First and final dividend, payable June 8, H. A. Bedard, Quebec, curator.

Re Georges Stewart.—First dividend, payable June 10, C. Desmarteau, Montreal, curator.

Re Edward H. Tarbell.—First and final dividend, payable June 9, J. H. Brassard, Knowlton, curator.

Separation as to Property.

Eliza Jane Thompson vs. Edwin Ham, farmer, township of Barnston, May 21.

DENTAL LAW IN ITALY.—A law has recently been passed in Italy by which it is enacted that whosoever desires to practise dentistry must have the degree in medicine and surgery. It is not, however, in any way retrospective, and does not affect those who are already in practice who may not have the medical qualification. This is, indeed, a progressive step, and we trust that France, in framing the projected Dental Act, will follow upon the same lines, and not make dentistry a separate profession, and that those countries where the latter position has been taken up will, before long, insist upon the higher standing.—*Lancet.*